

Announcement: February 23, 2017, Rule Changes Overview

The following are amendments to the Rules of the Court of Appeals of Georgia effective February 23, 2017. The changes apply to Rules: 5, 6 (stylistic changes only), 12, 22, 24 (f), 25 (a) (2) and 41 (b). The amended Rules are changed as follows:

1. Rule 5 is a complete rewrite of the rule adding a requirement that affidavits of indigency must be on a form supplied by the Court and that they are conditionally accepted by the Court. The new rule states:

Rule 5. Filing Fees/Affidavit of Indigence.

(a) Fees.

Filing fees are

(1) \$80 in all criminal cases (this includes appeals from probation revocation and juvenile delinquency cases); and

(2) \$300 in all civil cases.

Filing fees accrue upon the docketing of a direct appeal or an application for discretionary or interlocutory appeal. The fees shall be paid by the applicant or appellant or their counsel no later than the filing of the application or, in the case of direct appeals, at the time of the filing of the original brief of the appellant.

(b) Exceptions to payment of fees.

Filing fees shall not be required when:

(1) the applicant/appellant is pro se (not represented by counsel) and incarcerated at the time of the filing;

(2) counsel for the applicant/appellant was appointed to represent the applicant/appellant in the trial court because of indigency and, at the time costs would be due, counsel files a statement that counsel was so appointed by the trial court; or

(3) the applicant/appellant or counsel for the applicant/appellant files an affidavit of indigency that includes an original signature and a proper jurat on the form provided by the Court (forms may be obtained from the Clerk's office or from the Court's website) and the affidavit is approved by the Court.

The clerk shall not receive an application or original brief of the appellant unless filing fees have been paid or one of the exceptions to the rule has been met. Applications or original briefs

accompanied by an affidavit of indigency are accepted by the clerk on a conditional basis until the affidavit of indigency is approved by the Court. If an affidavit is rejected by the Court, filing fees shall be paid within 5 days of the date the affidavit is denied or the application or original brief of appellant will be deemed rejected for filing.

(c) Special fee exception.

If the Court grants an interlocutory or discretionary application, additional filing fees are not required to file an appellant's original brief in the direct appeal.

(d) Payment methods.

All required fees may be paid by credit card with any electronic filing or by check or money order if a paper filing is made. Counsel may pre-pay filing fees by submitting a check prior to the electronic submission. The Clerk is not responsible for any cash accompanying a filing.

2. Rule 6 adds headings to each paragraph to conform to the format of other rules and includes suggested language relative to providing electronic certificate of service. Changes are in bold and underlined.

Rule 6. Copies and Certificate of Service.

(a) Original Document Only.

Paper applications for interlocutory appeals, applications for discretionary appeals, briefs, and all other documents filed with the Clerk in paper form shall include only an original.

(b) Service Process.

All documents shall show that copies have been served upon opposing counsel by United States Postal Service, personal service, or electronic service. Service made by United States Postal Service or personal service shall be shown by signed written acknowledgment, certificate of counsel, or affidavit of server, to include the name and complete mailing address of all opposing counsel, signed by counsel and attached to the document filed.

(c) Timing When Serving Via Personal or Postal Service.

Service shall be made contemporaneously with or before filing accomplished by United States Postal Service or personal service.

(d) Electronic Service Process.

Parties utilizing electronic service shall strictly adhere to the following process: A party may serve a document via email if the filer certifies that, based upon a prior agreement with the recipient party, service of a .pdf copy of the document via email will be deemed sufficient service. The filer shall also, in the accompanying certificate of service, specifically list any recipients served electronically by full

name and email address. **Such certification shall state, “I certify that there is a prior agreement with (insert party or law firm name) to allow documents in a pdf format sent via email to suffice for service.”**

(e) Time for Electronic Service.

Electronic service shall be made contemporaneously with or before filing. Filing of any document with the Court’s eFast system shall not constitute sufficient service under this rule.

(f) Failure to Comply with Rule.

Any document without a certificate of service or otherwise not in compliance with this rule shall not be accepted for filing.

3. Rule 12 is a complete rewrite to, among other things, clarify that the Constitutional requirement to dispose of a case within two terms begins with the term a case is docketed to.

Rule 12. Terms of Court.

The court has three terms of court per year. Cases are docketed to a term as required by the Constitution of the State of Georgia and as otherwise required by law. The docket will specify the specific term to which a case is docketed. Cases docketed to a specific term must be decided before the expiration of the following term.

The Court’s terms (including any motion for reconsideration period) are as follows:

- (1) the December term begins the first Monday in December and ends on March 31 the following year;**
- (2) the April term begins the first Monday in April and ends July 17;**
- (3) the August term begins the first Monday in August and ends November 18.**

4. Section VI and Rule 22 are deleted and listed as “Reserved”. The information from this Rule is transferred to a more logical location in Rule 25 (a) (2). Additions are in bold and underlined.

~~VI. ENUMERATIONS OF ERROR RESERVED~~

~~Rule 22. Filing.~~

~~(a) Time of Filing.~~

~~Pursuant to O.C.G.A. § 5-6-40, the enumeration of errors, which shall be Part 2 of the appellant’s brief, shall be filed within 20 days after the case is docketed. A~~

~~separate enumeration of errors is not required.~~

~~(b) — **Jurisdictional Statement.**~~

~~The enumeration of errors shall contain a statement of jurisdiction as to why this Court, and not the Supreme Court, has jurisdiction.~~

Rule 25(a)(2)

Part Two shall consist of the enumeration of errors and shall contain a statement of jurisdiction as to why this Court, and not the Supreme Court, has jurisdiction. A separately filed enumeration of errors is not required.

5. Rule 24(f) is completely rewritten to provide more clarity.

Rule 24(f)

~~Except upon written motion filed with the Clerk and approved by the Court, briefs and responsive briefs shall be limited to 8,400 words in civil cases or 14,000 words in criminal cases if computer-generated, or limited to 30 pages in civil cases or 50 pages in criminal cases if prepared with a typewriter or hand-written. Supplemental briefs, motions for reconsideration, and appellant's reply briefs shall be limited to 4,200 words if computer-generated or limited to 15 pages if prepared with a typewriter or hand-written. Any brief or motion for reconsideration that, without approval, exceeds the page limit for documents prepared on a typewriter shall include a certificate by the attorney or pro se party that the brief complies with the word count limit. The person signing the certificate may rely on the word count of the word-processing system used to prepare the brief. Tables of contents, tables of citations, cover sheets and certificates of service and of compliance with the word count limit shall not be counted toward the applicable page or word count limit.~~

New language:

(f) Limitation as to Length.

(1) Electronic Filers.

Except upon written motion filed with the Clerk and approved by the Court, briefs and responsive briefs shall be limited to 8,400 words in civil cases or 14,000 words in criminal cases. Supplemental briefs, motions for reconsideration, and appellant's reply briefs shall be limited to 4,200 words. Each submission must contain the following certification just above the signature block of the submitting attorney. "This submission does not exceed the word count limit imposed by Rule 24." The person signing the certificate may rely on the word count of the word-processing system used to prepare the brief.

(2) Pro Se Submissions or Attorneys Allowed to File Paper Copies.

Except upon written motion filed with the Clerk and approved by the Court, briefs and

responsive briefs are limited to 30 pages in civil cases or 50 pages in criminal cases if prepared with a typewriter or hand-written. Supplemental briefs, motions for reconsideration, and appellant's reply briefs shall be limited to 15 pages if prepared with a typewriter or hand-written.

(3) Item Not Considered in Length Limitation.

Tables of contents, tables of citations, cover sheets and certificates of service and of compliance with the word count limit shall not be counted toward the applicable page or word count limit.

6. Rule 41 corrects an error in the prior Rule that seemed to prohibit attachments to Rule 40 (b) motions. Change is in underlined bold type.

Rule 41. Preparation and Filing.

(b) Form and Physical Preparation.

All motions and responses to motions shall be filed as separate documents, and not as joint, compound, or alternative motions. No motions or responses to motions shall be filed in the body of briefs, applications, or responses to applications. Motions and responses shall be prepared in accordance with Rule 24, Preparation of Briefs. Parties may cite to the record, but shall not attach any document to the motion or response. **This prohibition does not apply to Rule 40(b) motions that may contain attachments.** Failure to comply with this rule may result in non-consideration of the motion or responses.