Court of Appeals Summary of Rules Changes
Effective October 23, 2019

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Bolded language was added and lined-out language omitted.

I. GENERAL

Rule 2. Documents; Communications; General.

(a) Requirement for Written and Signed Documents.

All filings, including, but not limited to, documents, motions, briefs, requests, applications, and communications relating to appeals shall be in writing and legible; shall be filed with the Clerk's office; shall be signed, as further specified in subsections (1) and (2), by an attorney of record, an attorney granted courtesy appearance, or pro se party; shall include the mailing address, telephone number, and email address, if any, of the attorney or the pro se party signing the document; shall include the State Bar of Georgia membership number of all submitting attorneys; and shall show that copies have been served upon opposing counsel in accordance with Rule 6, Copies and Certificate of Service. **Filings or communications with the Court by corporate entities, including all classes of corporations and partnerships, professional associations, and limited liability companies, must be signed by an attorney authorized to practice before the Court.**

Why: To clarify that only attorneys may represent corporate entities before the Court, which will not accept filings on behalf of a corporate entity that are signed by a non-attorney..

(1) Paper Filings.

~~Signatures must be handwritten by the submitting attorney or may be handwritten by another individual with express permission. Documents with conformed or stamped signatures shall not be accepted.~~ **Signatures on pro se filings must be handwritten by the submitting individual. Documents with conformed or stamped signatures shall not be accepted.**

Why: Attorneys may not submit handwritten documents and this change clarifies that the Court does not accept documents from pro se parties signed by someone other than the party, even with express permission.

Rule 5. Filing Fees/Affidavit of Indigence

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(b) Exceptions to Payment of Fees.

Filing fees shall not be required when:

. . .

~~(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~~

(2) **counsel for the applicant/appellant was appointed because of indigency and, at the time costs would be due, counsel files a statement that he or she was appointed or the record contains a notice of the appointment of an attorney from the Georgia Public Defender Council; or**

Why: This change eliminated the phrase "appointed by the trial court," because some attorneys are appointed by the public defender's office.

(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. **Each case filed in this Court requires a separate affidavit.**

Why: The bolded language simply clarifies what is sometimes misunderstood, i.e., that even if parties have filed an affidavit of indigency in one case, they must still do so in other cases.

II. ATTORNEYS

Rule 9. Attorneys.

. . .

(d) Withdrawal or Substitution of Counsel.

~~Any withdrawal or substitution of attorneys of record in the Court shall be communicated to the Court by written motion with a copy to substituted counsel, opposing counsel, and the withdrawing or substituting attorney's client. A motion to withdraw as counsel shall contain the address of the withdrawing counsel's client, or if the address is unknown, the motion shall contain the client's last known address and a statement that the client's current address is unknown.~~

(1) Substitution of Counsel.

If a new attorney is substituting for an existing attorney, the new attorney must file a notice of substitution. The notice must be served on the former attorney and on opposing counsel (or opposing party if unrepresented), be signed by both the represented party and the new attorney, and include the new attorney's physical mailing address, e-mail address, phone number, and bar number. The former attorney need take no further action to withdraw as counsel of record for the party. The substitution may not delay the appeal of the case.

(2) Withdrawal of Counsel.

If an attorney seeks to withdraw and leave the client unrepresented, the attorney must give written notice to the client 10 days before moving the Court for permission to withdraw. The motion must be served on the client and any opposing counsel (or opposing party if unrepresented), and must contain the client's physical mailing address. If the withdrawing attorney does not know the client's current address, the motion must contain a statement to that effect and the client's last known physical address and telephone number. The motion shall state that the attorney has given written notice to the affected client setting forth the attorney's intent to withdraw, that 10 days have expired since notice, and the client's objection, consent, or failure to respond. The request to withdraw will be granted unless in the Court's discretion to do so would delay the appeal, interrupt the orderly operation of the Court, or be manifestly unfair to the client.

Why: This change clarifies the phrase,"copy to substituted counsel"; to include standards for review on motions to withdraw; and to allow for substitution of counsel by notice rather than motion.

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(g) Past-due Fees. *(new)*

An attorney's admission to practice before the Court of Appeals may be revoked if, after notice and an opportunity to be heard, past-due fees remain unpaid for 30 days.

Why: The Clerk's Office sends notices to all attorneys and parties who have unpaid court fees, often incurred when an appeal is docketed and then dismissed before briefs are filed, but some attorneys fail to pay those fees despite repeated notices. This rule now provides a sanction for an attorney's failure to pay. The Court will not decline to accept filings from attorneys with unpaid fees, but the Court may revoke those attorneys' ability to practice before it and decline to accept their filings.

III. BRIEFS

Rule 23. Time of Filing; Contempt; Dismissal.

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(b) Appellee's brief.

~~Appellee's brief shall be due within 40 days after the appeal is docketed or 20 days after the filing of appellant's brief, whichever is later. Failure to timely file may result in non-consideration of the brief and may subject counsel to sanctions, including contempt. See Rule 7. A brief shall be filed by the State when it is the appellee in the appeal of a criminal case, and the State's representative may be subject to sanctions, including contempt, for failing to file a responsive brief.~~

To be considered, appellee's brief should be filed within 40 days after the appeal is docketed or 20 days after the appellant's brief is filed, whichever is later. Appellees are encouraged but, other than the State in a criminal case, are not required to file a brief. A brief shall be filed by the State when it is the appellee in the appeal of a criminal case. The State's representative may be subject to sanctions, including contempt, for failing to file a timely responsive brief.

Why: Except for the state in criminal cases, appellees do not have to file a brief.

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(d) Other Parties. *(new)*

Parties listed on the court's docket as "Other Parties" may file a single brief, no later than the due date of the appellee's brief, and must comply with the requirements of an initial brief per Rule 24.

Why: The Court previously had no briefing schedule for Other Parties.

Rule 24. Preparation.

(a) Limitations.

~~Briefs shall be limited to an initial appellant's brief, a responding appellee's brief, and a reply brief of the appellant. Other briefs shall be accepted only if filed as an amicus curiae brief or a supplemental brief under Rules 26 and 27. Briefs shall not be accepted unless filed by~~

~~a pro se party, a member of the State Bar of Georgia admitted to the Court, or an attorney granted a courtesy appearance in accordance with Rule 9 (c). Counsel are required to efile in accordance with Rule 46, Electronic Filing of Documents. Paper filers need only file the original brief for each docketed appeal.~~

The parties to the appeal are entitled as of right to file an initial appellant's brief, a responding appellee's brief, and an appellant's reply brief. Supplemental briefs and responses to amicus briefs are only accepted pursuant to the Court's grant of a motion under Rule 27. Amicus curiae briefs conforming to Rule 26 will also be accepted. All counsel are required to efile in accordance with Rule 46, Electronic Filing of Documents. Paper filers need only file the original brief for each docketed appeal.

Why: The Rule was unclear about which specific requirements applied to parties' briefs, amicus briefs, and supplemental briefs, and also repeated requirements set out in Rule 26, Amicus Curiae Briefs. This edit clarifies the requirements.

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(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, **emergency motions,** motions for reconsideration, appellant's reply briefs, **and responses to motions for reconsideration** 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.

Why: To provide guidance for those submitting emergency motions and responses to motions for reconsideration.

Rule 25. Structure and Content.

(a) Appellant.

The brief of appellant shall consist of three parts:

(1) Part One shall contain a succinct and accurate statement of the proceedings below

and the material facts relevant to the appeal; a citation of the parts of the record or transcript essential to a consideration of the errors; and a statement of the method by which each enumeration of error was preserved for consideration. **Parties are encouraged but not required to include a summary of argument section in their briefs.** ~~Record and transcript citations shall be to the volume or part of the record or transcript and the page numbers that appear on the appellate record or transcript as sent from the trial court.~~

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(c) General Provisions.

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(2) Unsupported Claim of Error; References to Record and Transcripts.
Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned.

(i) Each enumerated error shall be supported in the brief by specific reference to the record or transcript. In the absence of a specific reference, the Court will not search for and may not consider that enumeration.

(ii) A contention that certain matters are not supported by the record may be answered by reference to particular **volume and** pages where the matters appear.

~~(iii) Reference to the record should be indicated by specific volume or part of the record and by (R-Page Number of the Record). Reference to the transcript should be indicated by specific volume or part of the transcript and by (T-Page Number of the Transcript). Reference to a motion transcript shall be indicated by (MT-Page Number of the Transcript and date of the hearing).~~

(3) Citations to the record.
Reference to a paper record should be indicated by the volume number of the appellate record and the trial court's stamped page number (Vol Number - Stamped Number; for example, V2-46).

Reference to an electronic record should be indicated by the volume number of the electronic record and the pdf page number within that volume (Vol. Number - Pdf Page Number; for example, V2-46).

Citations to audio and video recordings should identify the recording itself according to its location in the record and specify the relevant portion of the recording by indicating the time range during which the cited material is found.

Why: Directions about how to cite to the record apply to both parties, not just to appellants, so those directions have been moved to the General section. The rule now provides direction regarding citations to electronic records. Also, parties sometimes cite only to a recording itself, which necessitates review of the entire recording to find the statement at issue.

XVII. MOTIONS AND RESPONSES.

Rule 41. Preparation and Filing.

. . .

(b) Forms 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, **and if efiled, limited to 4,200 words as certified by the filer. Paper filers are limited to 15 pages.** 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 **or motions to file supplemental briefs under Rule 27 (a), which may include as an exhibit a copy of the proposed supplemental brief**. Failure to comply with this rule may result in nonconsideration of the motion or response.

Why: This change provides guidance and clarification to motion requirements.

XVIII. DOCUMENT RETENTION

Rule 42. Access to and Retention of Office Papers.

(a) One Year Retention Unless Party Requests Longer Period.

The Court will maintain the record of an appeal for one year after the remittitur date unless a party asks the Court in writing to maintain the record for an additional six months, and explains why. The requesting party must send an additional request fourteen days before the expiration of each six-month period to avoid the record being destroyed. The Court will not provide any notice that the record is being destroyed other than that contained in the notice of remittitur. **Pursuant to Rule 46 (a), counsel are required to file these requests via the**

Court's eFast System. Pro se parties must submit their requests in writing.

Why: This change clarifies the process for asking the Clerk to hold records. Attorneys have been filing these requests via paper.

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(c) Notification of Prior Record. *(new)*

An appellant who intends to rely on the record in a prior appeal of the same case, and who has previously notified the Clerk to hold the record in accordance with Rules 42 (a) and (b), shall promptly notify the Court of that intention. This notice should be filed as "Information" on the Court docket and should be served on opposing counsel or parties.

Why: Judges and their staff sometimes must rely on vague clues from the parties that they are relying on a record from a previous appeal.

XIX. PARTIES

Rule 43. Changing, Substituting Parties.

(a) Notice of Death of Party.

Either party in a pending appeal may provide notice to the Court of the death of a party to the appeal. **This notice should be filed as "Information" on the Court docket and should be served on opposing counsel or parties.**

Why: Parties historically have sent notice of death via letters, Information, and Suggestions of Death. This edit provides guidance and standardizes the process.

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(d) Substituted Party.

~~When a party is substituted, counsel for the substituting party shall notify the Clerk and opposing counsel.~~

When a party substitution is sought in a case, the party shall file a motion in this Court and serve opposing counsel.

Why: Whether a party should be substituted is not the parties' decision. This edit provides guidance and standardizes the process.