

RULES
COURT OF APPEALS OF GEORGIA

(These rules are not intended to reiterate all applicable laws.)

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NOTE: An index is located at the end of these rules.

I. GENERAL.

Rule 1. All filings, motions, requests, and communications relating to appeals pending in this Court must be transmitted through the Clerk's office during office hours, and not to the Judges directly, nor to any member of a Judge's staff, and shall show that copies thereof have been furnished to opposing counsel or pro se party.

All documents filed with the Court, excluding letters, but including briefs, reply briefs, supplemental briefs, motions and other such documents, and all copies thereof, shall be backed with a manuscript cover.

Rule 2. The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. E.S.T./E.D.T. The address is: Clerk, Court of Appeals of Georgia, 433 State Judicial Building, Atlanta, Georgia, 30334.

Rule 3. When an expiration date falls on a Saturday, Sunday, or official holiday the time is extended to the next business day.

Rule 4. The contents of properly addressed registered or certified mail shall be deemed filed on the official postmark date.

Rule 5. An original and two clearly legible copies of briefs, motions, petitions and applications shall be filed. Service on the opposing attorney or pro se parties, stating the name and address, shall be certified and must show that they were served before they were offered for filing. One separate copy of the enumeration of errors shall be filed at the time of the filing of the brief. (See Rule 14).

Rule 6. The volume of cases necessarily suggests that all matters be presented succinctly. Inclusion of extraneous facts and frivolous issues tends to obscure critical issues. Recitations showing compliance with rules authorizing appeals are unnecessary. If compliance is contested, answers may be filed.

Rule 7. Breach of any of the rules of this Court subjects the offender to contempt and revocation of license to practice in the Court of Appeals.

II. ARGUMENT.**Rule 8. Argument, Oral.****(a) Time.**

Argument is limited to forty minutes in each case, twenty minutes on each side, unless by special leave an extension of time is granted; and none will be granted except on application made in writing at least five days before the date set for the call of the case. On the granting of a request, the appeal will be placed at the end of the calendar. A cross appeal may, in the discretion of the Court, be treated as a separate case for oral argument if counsel so request prior to commencing argument. Where there are third parties, or additional parties with divergent interests, time may be requested and granted on the terms as above set out.

(b) Number of Arguments.

When both sides of an appeal are argued, only two counsel on each side will be heard. When only one side of an appeal is argued, or when arguments are to be made on behalf of more than two parties, no more than one counsel per party shall be heard.

(c) Opening and Concluding; Rebuttal.

The appellant has the right to open and conclude the arguments, and appellant's conclusion shall be confined to matters covered in argument of opposing counsel.

(d) Courtroom Decorum.

(1) On arrival in the courtroom, counsel appearing for oral argument are directed to notify the court of their intention to argue by presenting an informal legible writing to the Clerk showing their names, the number and style of their case, and the party whom they represent. Conversation with the Clerk during the oral argument of other counsel is strictly prohibited. Counsel appearing for oral argument shall be properly attired.

(2) Talking, reading newspapers or other material, and audibly studying briefs and arranging papers are prohibited in the courtroom as this may be done in the lawyers lounge which has been provided for the convenience of counsel.

(e) Presence of Counsel.

Oral argument is waived by counsel for the appellant if counsel is not actually inside the courtroom when the

particular case is formally called in its order for argument; likewise counsel for the appellee waives oral argument if counsel is not actually inside the courtroom when the case is first called.

- (f) **Limited Argument.**
As an accommodation to the bar, the Court will call cases out of the order listed on the calendar in which all counsel present in the courtroom inform the Clerk that time of argument will be limited to five minutes or less per side.
- (g) **Oral Argument Not Mandatory.**
Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only.

III. ATTORNEYS.

Rule 9. Attorneys, How Admitted.

- (a) **Application and Oath.**
Any member of the State Bar of Georgia may be admitted to practice in this Court upon such member's written application and the certificate of at least two attorneys of this Court, that such member is of good private and professional character. The oath required to be taken and which shall be subscribed in a book to be kept by the Clerk and known as the "Roll Book," is as follows:
"I do solemnly swear (or affirm as the case may be) that I will demean myself as an attorney or counsellor of this Court uprightly and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God."
- (b) **Fee.**
On such member's admission, the applicant must pay the Clerk a fee of fifteen dollars, and the Clerk will issue to applicant a license in proper form, under the seal of this Court, as evidence of applicant's authority to practice.
- (c) **Appearance by Courtesy.**
As a matter of professional courtesy, a visiting attorney from another state, or from a district or territory, may, if admitted to practice in the highest court of the state, district, or territory of such attorney's residence, by leave of the Court, be heard as associate, or

even as leading counsel, in a single case, without being admitted as a regular practitioner. This indulgence, however, will not be extended to any attorney who is a resident of this State, or who is admitted to practice in the superior courts of this State.

(d) **Court Personnel Prohibited to Practice.**

Attorneys employed by the Court shall not engage in the private practice of law.

(e) **Agreements or Consents to be in Writing.**

No agreement or consent will be recognized unless in writing signed by the parties or their attorney, and filed with the Clerk.

Rule 10. Personal Remarks.

(a) **Opposing Counsel or Judge.**

Personal remarks, whether oral or written, discourteous or disparaging to opposing counsel or to any judge are strictly forbidden.

(b) **Government and Officials of Government.**

In the argument of appeals, whether oral or written, counsel are entitled to all the latitude necessary to a full and fair discussion of the questions involved in the appeal or other matter before the Court, but they must not indulge in vituperative denunciation of any branch of the Government, State or Federal, or call in question the integrity or impugn the motives of any official, unless such official is on trial or otherwise a party to the record, and such official's official conduct is properly the subject of scrutiny and adjudication.

IV. BRIEFS.

Rule 11. Preparation.

(a) **Paper, Spacing.**

Briefs must be plainly written or printed upon white legal-size paper, not so thin as to be transparent, and all matter contained therein, including quotations, shall not have less than double spacing between the lines.

(b) **Margins.**

Writing with pen or typewriter must be on only one side of each sheet, and a margin of at least two inches shall be left at the top. A margin of at least one and one-half inches is required on the left side of each page.

- (c) **Citations.**
All citations of cases, whenever and wherever they shall appear, shall be by name of the case as well as by volume and page of the official report.
- (d) **Pages to be Numbered.**
The pages of each brief and each copy thereof shall be numbered.
- Rule 12. Supplemental Briefs.**
Supplemental briefs may be filed without permission any time within five days after the date assigned for argument and calendar call.
- Rule 13. Amicus Curiae Briefs.**
Amicus curiae briefs may be filed without leave of the Court. The brief shall disclose the identity and interest of the person on whose behalf the brief is filed.
- Rule 14. Time of Filing; Contempt; Dismissal; Service.**
Appellant's and cross appellant's brief shall be filed within twenty days after the appeal or cross appeal, respectively, is docketed. Failure to file within that time subjects the offender to contempt. A copy of the enumeration of errors shall be incorporated in the brief of appellant (See Rule 15(a)(2)). The separate original enumeration of errors shall be filed at the time of filing of the brief. Briefs of appellee and cross appellee shall be filed within forty days after the appeal is docketed or twenty days after the filing of appellant's or cross appellant's brief, whichever is later. Appeal and cross appeal may be argued in one brief but this shall not extend the time for filing. Failure to comply with an order of this Court directing the filing of the brief (which includes the enumeration of errors) may be cause for dismissal of the appeal. Briefs may be served personally or by mail. Service may be shown by written acknowledgment, or by the certificate of counsel, or by the affidavit of the party who delivered or mailed the brief, showing that service has been made as above prescribed. Unless service is impossible because of lack of known addresses of parties and counsel, all briefs, reply briefs, supplemental briefs, and written arguments, must show that they were served before they were offered for filing.
- Rule 15. Structure and Content.**
(a) **Appellant; Cross Appellant.**
The brief of appellant or cross appellant shall consist of three parts:

- (1) **Part One; Contents.**
Part One shall contain a succinct and accurate statement of such pleadings, facts, and issues of law as are made in the appeal and a citation of such other parts of the record or transcript as are essential to a consideration of the errors complained of.
- (2) **Part Two; Contents.**
Part Two shall consist of a copy of the enumeration of errors. It may be copied into the brief, or a clearly legible copy of the enumeration may be inserted following Part One as Part Two. This requirement is to enable the Court with more ease and convenience to correlate the errors enumerated to the arguments and citations of authority in the brief, and it shall in no wise obviate the requirement that the enumeration of errors itself be filed as a separate document so that it may become a part of the official record and thus complete the appeal.
- (3) **Part Three; Contents.**
Part Three shall contain the argument and citation of authorities.

(b) **Appellee; Cross Appellee.**

The brief of appellee or cross appellee shall be subdivided in the following manner:

- (1) **Part One, Contents; Implied Consent to Facts.**
Part One shall point out any material inaccuracy or incompleteness of statement in the brief of counsel for the appellant, and shall contain such additional statement as may be deemed necessary, and shall cite such additional parts of the record or transcript as are deemed material thereto. If the appellee should fail to do so, appellee will be held to have consented to a decision of the case on the statement made by the appellant. Except as controverted, the statement of facts by the appellant may be accepted by this Court as being prima facie true.
- (2) **Part Two, Contents.**
Part Two shall contain the argument and the citation of authorities.

(c) **General Provision.**

- (1) **Sequence of Argument.**
The sequence of argument or arguments in the briefs shall follow generally the order of the

enumeration of errors, and shall be numbered correspondingly.

(2) **Unsupported Claim of Error Treated as Abandoned.**

Any enumerated error which is not supported in the brief by citation of authority or argument shall be deemed to have been abandoned.

(3) **References to Record or Transcript.**

(i) **Specific Reference to Support Enumerated Errors.**

Each enumerated error shall be supported in the brief by specific reference to the record or transcript or both.

(ii) **Evidence, Page Reference.**

Any argument or assertion, which is founded on a particular portion of the evidence, must be supported by a reference to the page or pages in the transcript where the evidence may be found.

(iii) **Colloquy, etc.**

If colloquy or other matter appearing in the transcript of evidence, which is not strictly evidence, is relied upon, the page or pages therein where such matters may be found shall be indicated, and in the absence of such reference, this Court will not read or consider colloquy or other matter which appears in the transcript.

(iv) **Claim of No Evidence.**

In defending against a contention that certain findings, rulings, or other matters are not supported by any evidence, counsel shall, by references to particular pages of the transcript, point out where supporting evidence may be found.

(v) **Appellee Unrepresented.**

Where the appellee is not represented on the call of the case either by brief or by oral argument, no appearance of counsel for the appellee shall be entered by the Clerk or published in the official reports. If briefs should be offered after the case is submitted, they shall be received only as information.

V. CERTIORARI.**Rule 16. Applications, How Made.**

- (a) Application to the Georgia Supreme Court for the writ of certiorari shall be made under rules prescribed by that Court. Notice of intention to apply will be filed with this Court. Simultaneously with the filing of the application for certiorari counsel or pro se party shall certify to this Court that such application has been filed with the Georgia Supreme Court.
- (b) Petition to the United States Supreme Court shall be made under rules prescribed by that Court. Notice of intention to petition for certiorari shall be made to this Court not later than 20 days following denial of certiorari by the Georgia Supreme Court. Simultaneously with the filing of the petition for certiorari counsel or pro se party shall certify to this Court that such petition has been filed with the United States Supreme Court.

VI. COSTS.**Rule 17. Amount; Payment; Responsibility.**

Costs in all cases are \$30.00 unless a pauper's affidavit is filed; if the case is withdrawn before being submitted \$10.00 shall be refunded. Costs shall be paid upon filing the original brief. Attorneys are liable for the costs except where the pauper's affidavit is filed in the clerk's office of the court below, and the certified original or a certified copy thereof is transmitted to this Court as a part of the record.

VII. DIVISIONS; DISQUALIFICATIONS; QUORUM.**Rule 18. Division Changes; Full Divisions.**

- (a) **Assignment to Divisions.**
The membership of the three divisions of this Court, as established by order of the Court, except the Presiding Judges thereof, shall change with each calendar year, under a systematic method of rotation, and at such other time and manner as may be ordered by the Court, pursuant to Code § 24-3501.
- (b) **Methods of Obtaining Full Division.**
Whenever two or more of the Judges of a division are disqualified or recuse themselves from hearing any case coming before that division, it shall be transferred to another division. Where one of the Judges in a

division is disqualified or becomes recused, a full division shall be made by the Chief Judge temporarily assigning another Judge to that division.

(c) **Appointment of Superior Court Judges.**

If in any case seven or more Judges are disqualified or become recused, so that there will not be a full division to decide the case, a full division shall be made up by designating one or more judges of the superior courts to serve.

(d) **Counsel to Advise of Disqualification.**

Whenever it shall become necessary to proceed under this rule, the matter should be brought to the attention of the Court promptly. Counsel are expected to exercise due diligence in complying with this requirement.

Rule 19. Chief Judge Absent or Disqualified.

(a) **Chief Judge.**

Whenever the Chief Judge is absent or disqualified in any matter coming before the Court as a whole, any duty devolving specially upon the Chief Judge shall be performed by a Presiding Judge, or, in the absence or disqualification of all Presiding Judges, by the Judge present who has been longest in commission.

(b) **First Division.**

Whenever the Chief Judge is absent or disqualified in any matter coming before the First Division of the Court, any duty devolving specially upon the Chief Judge shall be performed by the Judge present in that division who has been longest in commission.

(c) **Other Divisions.**

Whenever a Presiding Judge is absent or disqualified in any matter coming before such Presiding Judge's division of the Court, any duty devolving specially upon such Presiding Judge shall be performed by the Judge present in that division who has been longest in commission.

Rule 20. Hearing by Quorum.

Whenever a division of the Court is on the bench for the purpose of having appeals submitted to it, with or without oral argument, and a quorum of the division is present, the division shall proceed with the call of the docket, and counsel in no case shall have the right to demand that the oral argument be heard by a full division merely because of the absence of the other member of the division, such member not being disqualified from participating in the decision of the case.

VIII. DOCKETS; CALENDARS; HEARINGS.**Rule 21. Appeals, How Entered.****(a) Docketing.**

All appeals brought to this Court shall be consecutively numbered and entered upon the docket in the order of their filing in the Clerk's office. No appeal shall be docketed until the notice of appeal or notice of cross appeal and a record, and transcript, if any, conforming to Rules 41 - 44 are filed in the Clerk's office. Notice of docketing shall be given as provided in Rule 23.

(b) Transfer of Cases.

Whenever it shall appear that an appeal has been transmitted to this Court which is within the jurisdiction of the Supreme Court, this Court by order shall direct that it be transferred to that Court.

(c) Transferred Cases.

Appeals transferred to this Court from the Supreme Court shall be docketed as of the date of their reception here, provided, however, that the time for filing the enumerations of error shall begin to run from the date of docketing in the Supreme Court.

(d) Numbering of Appeals.

The consecutive numbering of appeals shall be continuous from term to term. The filing and the docket number shall be the same.

(e) Docketing of Cross Appeal.

A cross appeal shall be entered upon the docket of the term to which the appeal is returnable, and no cross appeal shall be docketed until the main appeal has been entered.

Rule 22. Closing of Dockets.

The docket of this Court for the January, April, and September terms shall close on the fifteenth day of January, May, and September, respectively, at noon. However, by order of the Court, a docket closed by this Rule may be opened for the docketing of a case or cases so that a judgment may be rendered by the Court at the earliest practicable date if the Court deems it expedient to do so.

Rule 23. Notice of Docketing.

Upon the docketing of every appeal and application for appeal in this Court, the Clerk shall give notice of the docketing and date thereof by mail to all attorneys and all pro se parties.

Rule 24. Calendar and Call of Appeals.**(a) The Calendar.**

The calls for the hearing of appeals will be on such days as shall be fixed by the Court. A calendar of the appeals set for hearing at each call shall be prepared by the Clerk, under the direction of the Court.

(b) Notice of Call.

The Clerk shall mail to the parties in each appeal or their attorneys, at the addresses shown on the notice of appeal, at least fourteen days prior to the day the call is to begin, a written or printed notice of the fact the appeal has been assigned to that call.

Rule 25. Order of Hearing.

Ordinarily appeals will be assigned to the calendar in the order in which they appear upon the docket, unless otherwise ordered. When a case has been reached in its order on the calendar, it will not be postponed except for providential cause or other good reasons shown.

Rule 26. No Prosecution.

On the call of the case for argument, if the appellant shall not appear, or if appellant be unrepresented by counsel or by brief, the Court shall dismiss the appeal for want of prosecution and it will not be reinstated except for providential cause. If the appellee or appellee's counsel shall appear, such appellee or counsel may move to reopen the record and insist upon an affirmance of the case and an assessment of 10% damages for delay.

IX. ENUMERATION OF ERRORS.**Rule 27. Filing; Preparation; Service.****(a) Time of Filing.**

The enumeration of errors shall be filed with the Clerk of this Court within twenty days after the case is docketed in this office. Concerning appeals transferred from the Supreme Court, see Rule 21(c). Failure to file the enumeration of errors within the time specified in these rules shall subject the offender to contempt. Failure to comply with an order of this Court directing the filing of the enumeration of errors may be cause for dismissal of the appeal.

(b) Physical Preparation.

The enumeration of errors shall follow generally the rules for the physical preparation of briefs in regard

to paper size and quality, double spacing, margins, etc. It shall be bound in manuscript cover of good quality.

(c) **Statement of Jurisdiction.**

At the conclusion of the enumeration of errors and immediately preceding the signature of counsel for appellant or cross appellant, there must be a statement of the reasons why the Court of Appeals and not the Supreme Court has jurisdiction of the appeal, with citation of the part or parts of the record or transcript, and if possible the particular paragraphs thereof, showing jurisdiction.

(d) **Service.**

(1) **Residents.**

Service on resident appellees or cross appellees shall be as provided by statute.

(2) **Nonresidents.**

Service on nonresident appellees or cross appellees shall be perfected by the method set out in Rule 33(d) (2).

(e) **Review.**

The enumeration of errors shall be deemed to include and present for review all judgments necessary for a determination of the errors specified.

X. EXTENSION OF TIME FOR NOTICE OF APPEAL, ETC.

Rule 28. Extensions of Time for Filing.

Pursuant to the provisions of Ga. L. 1965, pp. 18, 21 (Code Ann. § 6-804), application to this Court for extensions of time for filing a notice of appeal or of a cross appeal, or of any other item included in Section 6 of the Appellate Practice Act, may be made upon showing that a bona fide effort has been made to obtain the extension from the trial court and of the reason why it could not be obtained. This shall not, however, effect any enlargement of the provisions for obtaining extensions, or of the time within which the application must be made.

XI. INTERLOCUTORY ORDERS, APPLICATION TO APPEAL.

Rule 29. Applications.

An application for leave to appeal an interlocutory

order will be granted only when:

- (1) The issue to be decided appears to be dispositive of the case, or
- (2) The order appears erroneous and will probably cause a substantial error at trial, or
- (3) The establishment of a precedent is desirable.

Rule 30. Time of Filing.

An application for interlocutory appeal shall be filed in this Court within ten days of the granting of the trial court's certificate for immediate review. This Court has determined that "granting" the certificate is not effective until the certificate has been filed in the trial court clerk's office. Therefore, the filing date controls.

XII. MANDAMUS.

Rule 31. Filing; Costs.

Applications for mandamus shall be docketed as other cases. The costs shall be thirty dollars and shall be paid to the Clerk on the filing of the application, unless a sufficient pauper's affidavit is filed therewith. On failure to pay the costs or to file a sufficient pauper's affidavit, the Clerk shall not file the application.

XIII. MOTIONS.

Rule 32. Preparation and Filing.

(a) **Filing in Triplicate.**

Motions of all kinds shall be filed in triplicate as set out in Rule 5.

(b) **Service.**

All motions must show that a copy has been served on opposing counsel in the manner provided for the service of briefs in Rule 14.

(c) **Physical Preparation.**

The physical preparation of motions must follow the provisions as to the preparation of briefs as set out in Rule 11.

(d) **Motion to Dismiss.**

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant not less than five days before the appeal is called for argument, service thereof to be made and shown as required for service of briefs. If, because of absence of counsel for appellant, such notice cannot be given, the

motion will be entertained and the Court in its discretion will give such direction as may seem proper; provided, however, whenever it appears to the Court that it has no jurisdiction of a pending appeal, it will be dismissed or will be transferred to the Supreme Court, as the facts may require, whenever and however its lack of jurisdiction may appear.

- (e) **Rehearing.**
See Rule 48.

XIV. NOTICE OF APPEAL; CROSS APPEAL.

Rule 33. General Provisions; Mailing Address; Service.

- (a) **Form.**

The notice of appeal and notice of cross appeal shall follow the statutory provisions as to general form.

- (b) **Mailing Address.**

When signing a notice of appeal or notice of cross appeal, or when acknowledging service thereof, counsel shall add their mailing address, and upon failure to do this, they shall not be entitled to the benefit of any notices required by these rules to be given by the Clerk. It shall be the duty of the appellant or cross appellant when preparing a certificate of service or a showing of service by certified mail, to add the mailing address of opposing counsel.

- (c) **Physical Preparation.**

The rules as to the preparation of records and transcripts in regard to double spacing, margins, etc., shall apply to the physical preparation of the notice of appeal and notice of cross appeal.

- (d) **Service.**

- (1) **Service on Residents.**

Service on resident appellees or cross appellees shall be as provided by statute.

- (2) **Nonresidents.**

When an appellee is a nonresident, whose post office address, or that of the appellee's attorney, is unknown, and who is not represented by any attorney who resides in this State, service of a notice of appeal, unless waived or acknowledged, may be perfected by publishing a notice in the newspaper in which sheriff's advertisements are published in the county where the case is pending.

Such notice shall contain the style of the case and of the fact that a notice of appeal has been filed, and shall call upon the appellee to appear in this Court and said notice shall be published once within 10 days from the date of filing of the notice of appeal. When the notice has been published as above provided, the clerk of the court in which the notice of appeal is filed shall add such clerk's certificate to the notice of appeal that notice by publication has been perfected. Compliance with these requirements shall be a sufficient service on the appellee.

(3) **Waiver of Service by Appearance.**

In the event it appears that service has not been perfected, if counsel for the appellee or cross appellee shall appear personally or by brief at the time of the call for argument, service shall be deemed to have been waived.

(4) **Proof of Service.**

Service shall be shown by written acknowledgment or certificate of counsel or as provided in sub-paragraph (d) (2) above. The written acknowledgment or certificate of counsel, whichever is utilized, shall show the name of the attorney or pro se party served and the present complete mailing address of such attorney or pro se party, with the date of such service, and shall be typed or printed.

XV. OFFICE PAPERS.

Rule 34. Not Taken Without Leave of Court.

No paper belonging to the Clerk's office shall be taken therefrom without leave of the Court and, when leave is granted, the party receiving the paper shall receipt the Clerk therefor. However, the Clerk may, for their respective official uses, deliver records to the Justices of the Supreme Court and The Attorney General (or such deputies or assistants upon The Attorney General's direction) upon their giving a proper receipt therefor, to be returned on demand of the Clerk.

XVI. OPINIONS AND JUDGMENTS.

Rule 35. Showing of Concurrence or Dissent.

Each judgment shall show on its face the votes, non-participation, or disqualification of each Judge.

(a) **Concurrence and Dissent.**

Judges concurring agree with the opinion and judgment. Judges concurring specially may or may not agree with all that is said in the opinion but do agree with the judgment. Judges concurring in the judgment only do not agree with all that is said in the opinion. Judges dissenting disagree with the opinion and judgment.

(b) **Judgment as Precedent.**

A judgment in an appeal pending before a division which is generally concurred in by all Judges of that division shall be a binding precedent; if there is a special concurrence without a statement of agreement with all that is said in the opinion or concurrence in the judgment only, it shall be a physical precedent only. If the appeal is pending before the whole Court a general concurrence by a majority of the Judges shall be a binding precedent, but if the judgment is made only by special concurrences without a statement of agreement with all that is said in the opinion or by concurrence in the judgment, there being general concurrence by less than a majority of the Judges, it shall constitute a physical precedent only.

Rule 36. Affirmance Without Opinion, When Rendered.

Cases in which one or more of the following circumstances exist and are dispositive of the appeal, to-wit:

- (1) the evidence supports the judgment;
- (2) no reversible error of law appears and an opinion would have no precedential value;
- (3) the judgment of the court below adequately explains the decision,

may be affirmed as follows: "AFFIRMED IN ACCORDANCE WITH COURT OF APPEALS RULE 36."

Those cases affirmed under this Rule shall not be cited in any court for any purpose.

Rule 37. Publication of Opinions.

All opinions shall be published except as otherwise designated by this Court.

Rule 38. Copies of Opinions.

As soon as is practicable after a judgment has been rendered, the Clerk shall furnish, without charge, one copy of the opinion to counsel for each party to the appeal and to any pro se party, and a copy to the trial

judge, giving priority in this service to counsel for the losing party or parties and to any losing pro se party. If a party is represented by more than one counsel, it shall be designated on the brief who is to receive the one free copy for that side. The usual charge shall be made for any out-of-state orders for copies by parties at interest not parties to the record, or for any extra copies other than as herein provided.

XVII. PARTIES.

Rule 39. Parties, How Made.

(a) **Suggestion of Death of Party.**

The death of a party to an appeal pending in this Court may be suggested by counsel for either side or pro se party at any time and the Court shall thereupon cause to be issued and served upon the legal representative of the deceased party, if there be one, a rule nisi requiring such representative to show cause upon a day named, why such representative should not be made a party, and upon return of the rule the Court shall take appropriate action in the premises.

(b) **Legal Representative May Volunteer.**

The legal representative of the deceased party may voluntarily become a party to the appeal at any time. If such legal representative does so on or before the call of the appeal at the first term, it will be heard at that term, unless for good cause it is postponed or continued.

(c) **Limiting Date for Making Party.**

The representative of the deceased party must be appointed and made a party in this Court on or before the last day for argument at the second term; otherwise the appeal shall be dismissed.

(d) **Temporary Administrator.**

A temporary administrator will be regarded in this Court as a competent party.

(e) **Death After Date of Argument.**

Where a party dies after the argument of an appeal in this Court, it is unnecessary to make the deceased party's representative a party. Unless the death of the party has rendered the question moot (in which event the appeal will be dismissed), the judgment shall be effective as of the date of the argument.

XVIII. PETITION TO ALLOW AN APPEAL.**Rule 40. Leave to Appeal, Type of Cases.**

When appellate review is desired a petition for leave to appeal from decisions of the superior courts must be filed in the following cases:

- (1) Workers' Compensation;
- (2) Auditors;
- (3) State and local administrative agencies;
- (4) Lower Court cases that come to the superior court by certiorari or de novo proceedings; and,
- (5) Child custody and contempt cases over which this Court has jurisdiction.

NOTE: Cases involving the Public Service Commission, Probate Court, taxes and condemnations are excluded from the above rule.

XIX. RECORDS AND TRANSCRIPTS.**Rule 41. Duty of Clerks of Trial Courts.**

The Clerk of the trial court shall certify and transmit to the Clerk of this Court the original transcript and copies of all records as required within the time prescribed by statute. Transmittal shall be by the Clerk or deputy personally or by mail or express, charges prepaid. Transmittal by a party or attorney is prohibited.

Rule 42. Preparation of Records and Transcripts.

Records and transcripts shall be written or printed on one side of white legal-size paper of good quality with ample spacing and margins so that they may be read easily (at least doubled spaced). The margin at the top shall be ample for tying. Metal fasteners which cover the top center are prohibited.

Rule 43. Arrangement of Record.

The record with pages numbered at the bottom and a manuscript cover shall be arranged as follows:

- (1) Index;
- (2) Notice of Appeal;
- (3) Other items in chronological order; and
- (4) Clerk's certificate.

Voluminous records may be bound in separate parts but each part shall be certified separately.

Rule 44. Transmission of Transcript.

The transcript (original) shall be a separate document and not attached to the record. It should show the style

of the case and an index. Voluminous transcripts may be bound in separate parts. The Reporter and Clerk shall certify each part.

Rule 45. Physical Evidence.

Where there is reliance upon physical evidence, the party so relying may include as a part of the transcript a photograph thereof, together with an explanation or description thereof, if deemed necessary, in lieu of sending up the original evidence. If, however, the relying party deems the original evidence to be of such importance and that a photograph or a description thereof cannot suffice to demonstrate such party's contention, such party may apply to the trial court for an order directing the transmission thereof to this Court, or such party may apply to this Court for such an order if it is not obtainable from the trial court after a bona fide effort; provided, however, that in no event, unless directed by this Court, shall physical evidence be sent up which is bulky, cumbersome or expensive to transport, or which, by reason of its nature, is dangerous in the handling thereof. Where the admissibility of photographs is attacked the originals or exact duplicates, to be furnished by appellant, shall be included in the transcript.

Rule 46. Copying by Photographs or Other Means.

Photographic or other methods of reproducing records or transcripts may be used provided the finished copy meets the test of complete legibility and permanence.

Rule 47. Objections to Records or Transcripts; Waiver.

Appellee shall be deemed to have waived any failure of the appellant to comply with the provisions of the Appellate Practice Act relating to the filing of the transcript of the evidence and proceedings or transmittal of the record to this Court unless objection thereto was made in the trial court prior to docketing in this Court.

XX. REHEARING.

Rule 48. Motions for Rehearing.
(a) Physical Preparation.

The physical preparation of motions must follow the provisions as to preparation of briefs as set out in Rule 11. Service of motions must follow the provisions as set out in Rules 5, 14 and 32.

- (b) **Time of Filing.**
Motions for rehearing must be filed during the term at which the judgment sought to be reviewed was rendered and before the remittitur has been forwarded to the clerk of the trial court, and, in any event, must be filed within ten days from the rendition of the judgment. No extension of time shall be granted except for providential cause on written application made before the expiration of ten days.
- (c) **Time May Be Limited.**
The Court may by special order in any case direct that the remittitur be transmitted to the clerk of the trial court immediately after the rendition of the decision and judgment, or at any other time, without awaiting expiration of the usual period of ten days, and may otherwise by special order limit the time within which a motion for rehearing may be filed to any period less than ten days. Counsel and pro se parties shall be notified of any such limitation of time.
- (d) **Failure to Transmit Remittitur Does Not Extend Time.**
Unless an extension of time is requested and granted, a motion for rehearing must in any event be filed within ten days from the rendition of the decision and judgment, regardless of whether the remittitur has been transmitted to the lower court.
- (e) **Second Motion.**
No motion for rehearing by the same party after a first motion has been denied will be filed except by special order of the Court, although the Clerk may receive any later motion and deliver it to the Court for direction as to whether it shall be filed.
- (f) **Basis for Granting.**
A rehearing will be granted on motion of the losing party, only when it appears that the Court has overlooked a material fact in the record, a statute, or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority. No motion for a rehearing will be entertained which does not expressly point out what material fact in the record, or controlling statute or decision, has been overlooked by the Court, or what provision of law or controlling authority has been erroneously construed or misapplied.

- (g) **Certificate of Counsel.**
There shall be attached to the motion a certificate of counsel that upon careful examination of the opinion of the Court such counsel believes that the fact, statute, or decision has been overlooked, or the provision of law or controlling authority has been erroneously construed or misapplied. The motion, when filed, shall show that a copy thereof has been served on opposing counsel, who may thereupon file a brief on the questions raised.
- (h) **Opinion May Be Revised Without Grant of Motion.**
If, upon the consideration of a motion for rehearing, this Court should be of the opinion that its judgment as rendered is correct, but that some revision of the opinion would be appropriate, it may, in its discretion, and according to its power as heretofore exercised, revise the opinion accordingly, without granting a rehearing. In this event the Court shall so advise the Clerk, who shall then promptly notify counsel as to the alterations made.
- (i) **Later Revision.**
After motions for rehearing have been disposed of, or in the absence of any motion, the Court or its Judges may revise opinions prior to the printing thereof in the official reports.
- (j) **Voting on Motions, Effect.**
A motion for rehearing in an appeal pending before a division of the Court shall be granted or denied by a majority vote of the Judges on that division; if pending before the whole Court it shall be granted or denied by a majority vote of all the Judges. A vote to grant the motion does not amount to a dissent; if a Judge voting to grant the motion desires to enter a dissent such Judge may do so, but must so indicate in connection with such Judge's vote on the motion.

XXI. REMITTITUR.

- Rule 49. Transmittal.**
Remittiturs shall be transmitted to the Clerk of the trial court as soon as practicable after the expiration of ten days from the date of the judgment unless otherwise ordered or unless a motion for rehearing or notice of intention to apply to the Supreme Court for writ of certiorari has been filed.

XXII. SUPERSEDEAS.**Rule 50. Supersedeas.****(a) Civil Cases.**

In all civil cases supersedeas shall be effective when and in the manner provided by law.

(b) Criminal Cases.

In all criminal cases supersedeas shall be effective when and in the manner provided by law.

(c) Emergencies.

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. As a general rule no order will be made or direction given in an appeal until it has been docketed in this Court.

Adopted en banc this 23rd day of February, 1981, to be effective September 1, 1981

J. Kelley Quillian, Chief Judge.
Braswell D. Deen, Jr., Presiding Judge.
William LeRoy McMurray, Jr., Presiding Judge.
Arnold Shulman, Presiding Judge.
Harold R. Banke, Judge.
A. W. Birdsong, Jr., Judge.
George H. Carley, Judge.
John W. Sognier, Judge.
Marion T. Pope, Jr., Judge.

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