



2017

Georgia Court of Appeals

R U L E S

RULES COURT OF APPEALS OF GEORGIA

These rules are not intended to reiterate all applicable laws. The word “counsel” throughout these rules also applies to pro se parties. The latest version of these rules can be found at the Court website: www.gaappeals.us.

**This publication contains the rules
and all amendments thereto effective February 23, 2017**

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I. GENERAL

Rule 1. Clerk's Office Hours and Location.

The Clerk's office shall be open Monday through Friday from 8:30 a.m. to 4:30 p.m. EST/EDT. The office is closed on all Georgia State holidays and during severe inclement weather. The address is: Clerk, Court of Appeals of Georgia, Suite 501, 47 Trinity Avenue, S.W., Atlanta, Georgia 30334. The Court's website is: www.gaappeals.us. The telephone number is (404) 656-3450.

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.

(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.

(2) Electronic Filings.

(i) All electronic filings must be submitted in a searchable portable document format (.pdf) only.

(ii) Signatures must be electronic or a conformed signature of the counsel filing the document, which means that counsel's typed name is preceded by "/s/" and is underlined. Counsel's typed name must also appear below the underline. If there are signatures of other attorneys on the document, use of the filing attorney's login and password and the conformed signatures of the others will be presumed to mean that the filing attorney has the agreement of the other signatories to what is filed.

(iii) Attorney filings must be in accordance with Rule 46, Electronic Filing of Documents.

(b) Communications with the Court.

There shall be no communications relating to pending cases to any judge or member of the judge's staff.

(c) Documents.

(1) Paper.

All documents filed with the Court shall be on letter size (8 ½" x 11") white paper or in a searchable portable document format (.pdf). All documents filed on paper (i.e., filings not electronically filed) shall be typed or printed on non-transparent white paper.

(2) Double Spacing.

All documents filed with the Court shall have no less than double spacing between the lines, excluding block quotations, headings, captions, and footnotes.

(3) Fonts.

Computer-generated documents must use a serif, proportionally spaced typeface of 14-point or larger. (Examples of compliant typefaces include Times New Roman and Century Schoolbook.) Sans-serif fonts may be used in headings and captions. A monospaced typeface (e.g., Courier) must not be used in computer-generated documents. Text must be set in plain, Roman style, although italics or boldface may be used for emphasis. Case names may be italicized or underlined. For documents prepared with a typewriter, the font size shall be no smaller than 10 characters per inch.

(4) Noncompliance.

Any documents that do not comply with the Court rules may be returned to counsel with notice of the defect of the pleading, and/or counsel may be ordered to redact and recast them.

(d) Counsel.

All reference to counsel in these rules shall include pro se parties.

(e) Facsimile Filing.

The Court does not accept facsimile filings.

(f) Stamped "Filed" Copy.

A party desiring to obtain a return copy of a paper document stamped as "filed" must provide an extra copy of the document and a pre-addressed stamped envelope with sufficient postage.

Rule 3. Due Date.

When a filing deadline falls on a Saturday, Sunday, an official state or national holiday, or a time when the Clerk's office is closed for an emergency (such as inclement weather), the deadline is extended to the next business day. This rule also applies to motions for reconsideration. See Rule 37, Motions for Reconsideration.

Rule 4. Court Filings and Determination of Filing Date.

(a) Physical Delivery Paper Filing.

This section applies to pro se parties and counsel exempt from the electronic filing requirements. Except as otherwise provided in this rule, a paper filing will be deemed filed in the Court of Appeals on the date and time it is physically received in the office of the Clerk of the Court of Appeals with sufficient costs, if applicable, a proper certificate of service, stamped "filed," and otherwise in conformity with these rules.

(b) Drop Box Paper Filing.

This section applies to pro se parties and to counsel exempt from the electronic filing requirements. When the office of the Clerk is not open, documents may be deposited in the Court of Appeals drop box for filing. Documents placed in the drop box are removed each morning and clock stamped with the present time and date, but shall be deemed filed on the prior business day if the documents comply with Court rules. The drop box is located inside the street level entrance to the 47 Trinity Avenue Building, which generally is open between 7:00 a.m. and 5:00 p.m., although the Georgia Building Authority may change the hours during which the building is open without prior notice. Note: This rule does not apply to motions for reconsideration, which must be received by the Court before 4:30 p.m. on the final due date. See Rule 37 (b), Motions for Reconsideration.

(c) Filing by Mail or Commercial Delivery.

This section applies to pro se parties and counsel exempt from the electronic filing requirements. A document transmitted to the office of the Clerk by United States Postal Service priority, express, or first-class mail (including certified or registered mail) or by a commercial carrier for overnight delivery shall be deemed filed on the date shown by the official postmark affixed by the United States Postal Service (not a private or commercial postage meter) or the date shown on the commercial carrier's transmittal form on the envelope or package containing the document, if the envelope or package is properly addressed, postage prepaid, and the postmark or transmittal date is legible. Otherwise, the document will be deemed filed on the date the document was physically received in the office of the Clerk. Note: This rule does not apply to motions for reconsideration. See Rule 37 (b).

(d) Filings by Pro Se Prisoners.

In the absence of an official United States Postal Service postmark showing a date on or before the filing deadline, a document submitted by a prisoner who is not represented by an attorney shall be deemed filed on the date the prisoner delivers the document to prison officials for forwarding to the Clerk of the Court of Appeals. This delivery shall be shown by the date on the certificate of service or on an affidavit submitted by the prisoner with the document stating the date on which the prisoner gave the document to prison officials with sufficient prepaid postage for first-class mail and the name of the prison official to whom the document was delivered. The certificate or affidavit will give rise to a presumption that the date of filing reflected in the affidavit is accurate, but the State may rebut the presumption with evidence that the document was given to prison officials after the filing deadline or with insufficient postage. If the institution has a system designed for legal mail the prisoner must use it to rely upon the provisions of this paragraph. Note: This rule does not apply to motions for reconsideration. See Rule 37 (b).

(e) Electronic Filing/Motions for Reconsideration.

Efiled documents shall be deemed submitted on the date they are filed, up to 11:59 p.m., as long as they comply with this Court's rules, with the exception of motions for reconsideration, which must be filed by 4:30 p.m. See Rule 37 (b), Motions for Reconsideration, and Rule 46, Electronic Filing of Documents.

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 is 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 this 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.

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 Postal Service or Personal 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.

Rule 7. Contempt.

(a) Inherent Power.

Nothing contained in these rules shall be construed to deny or limit the Court of Appeals' inherent power to maintain control over proceedings conducted before it or to deny the Court those powers derived from statute, rules of procedure, or rules of court.

(b) Attorney Misconduct.

When alleged attorney misconduct is brought to the attention of the Court, a lawyer admitted to practice before the Court, an officer or employee of the Court, or otherwise, the Court may dispose of the matter through the use of its inherent, statutory, or other powers, or refer the matter to an appropriate state agency for investigation or disposition. These provisions are not mutually exclusive.

(c) Breach of Rules.

Breach of any rule of the Court of Appeals may result in a Court order requiring compliance. Failure to comply with a Court order may subject the offending party and/or attorney to a finding of contempt and may cause the appeal to be dismissed or the party's brief to be stricken.

(d) Repeated Violations.

Repeated violations of this Court's rules or orders may result in the revocation of the violator's admission to practice before the Court of Appeals.

(e) No Prosecution, Frivolous Appeals, and Penalties.

(1) Failure to Appear and File Brief.

On the call of the case for argument, if the appellant does not appear and has not filed a brief, the Court may dismiss the appeal for want of prosecution.

(2) Penalty.

The panel of the Court ruling on a case, with or without motion, may by majority vote to impose a penalty not to exceed \$2,500 against any party and/or a party's counsel in any civil case in which there is a direct appeal, application for discretionary appeal, application for interlocutory appeal, or motion which is determined to be frivolous.

(3) Money Judgment.

The imposition of this penalty shall constitute a money judgment in favor of appellee against appellant or appellant's counsel or in favor of appellant against appellee or appellee's counsel, as the Court directs. Upon filing of the remittitur in the trial court, the penalty may be collected as are other money judgments.

Rule 8. Notice of Cause for Disqualification or Recusal.

Cause for disqualification or recusal of a judge of this Court shall be brought to the attention of the Clerk as soon as practicable. See Rule 44, Disqualifications and Recusals.

II. ATTORNEYS

Rule 9. Attorneys.

(a) Application and Oath.

Any member of the State Bar of Georgia may be admitted to practice in this Court upon written application, and the certificate of at least two attorneys of this Court, that the member is of good private and professional character. The oath may be administered by the Court Clerk, Court Administrator, Chief Deputy Clerk, or a Deputy Clerk. It may be taken in open court, before a judge in chambers, in the Clerk's office, or at another location in the discretion of a Court Judge or the Court Clerk. Georgia attorneys requiring immediate admission to the Court may contact the Clerk's office to obtain special admission without personally appearing to be sworn in. The Court's website has specific directions. The special admission fee is \$200 in addition to the regular admission fee, payable to the Clerk of the Court of Appeals. The attorney must submit the written application with the certificate of at least two attorneys of this Court that the attorney is of good private and professional character. The form may be submitted in a .pdf format to the Clerk's office. The Clerk will arrange to telephonically administer the oath. Thereafter, the attorney will provisionally be admitted pending receipt of the fee. The oath is as follows:

I do solemnly swear (or affirm) that I will conduct myself as an attorney or counselor of this Court truly and honestly, justly and 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.

The fee for admission is \$30, payable to the Clerk of the Court of Appeals of Georgia, who shall issue a license under the seal of the Court as evidence of the applicant's authority to practice.

(c) Appearance Pro Hac Vice/Courtesy Appearance.

An out-of-state attorney desiring to appear in this Court in a single case shall file an application for admission pro hac vice before making an appearance.

(1) Application Contents.

The application, which shall be served on all parties, shall contain the following information:

(i) a current certificate of good standing from the highest court of the out-of-state lawyer's jurisdiction;

(ii) the applicant's business address, email address, and telephone number; and

(iii) the name of the party or parties sought to be represented.

(2) Requestor.

The application may be made by the attorney requesting pro hac vice appearance or a member of the Bar of this Court on behalf of the out-of-state attorney.

(3) Payment.

Each time an application for admission pro hac vice is submitted under this Rule, the applicant must send a check for \$200 payable to "IOLTA/Georgia Bar Foundation." The check must be mailed directly to "The Georgia Bar Foundation, 104 Marietta Street, Suite 610, Atlanta, GA 30303." The applicant must include a certification with the application stating, "I have submitted a check for \$200 to the Georgia Bar Foundation."

(4) Fee Waiver.

Persons seeking to represent an indigent party may qualify for a waiver of the fee, if counsel files a statement with the application that counsel is representing the client pro bono due to indigency.

(5) Electronic Registration.

The Court will provide electronic filing access to attorneys granted pro hac vice admission. Attorneys granted this status are required to register in the Court's eFast system and to comply with all eFast rules and requirements.

(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.

(e) Change of Address, Telephone Number, or Email Address.

Any change of address, telephone number, or email address must be made by the attorney in the Court's eFast system. Attorneys are personally responsible for ensuring that their eFast profile information is up to date. The Court will not make these changes. Attorneys are encouraged to register an additional "CC" email address for their administrative assistant or another point of contact. See Rule 46, Electronic Filing of Documents.

If a paper filer (non-e-filer) for either party has a change of address or telephone number during the pendency of any appeal or application, counsel shall file a notification of change of address, telephone number, or email address with the Court, notifying the Court of counsel's correct address, telephone number, or email address, and the effective date of the change.

The notification of change of address, telephone number, or email address shall be filed as a separate document with service made to opposing counsel.

Upon receipt of the notification of change of address, telephone number, or email address from a paper filer, the Clerk will enter the change of address, telephone number, or email address on the Court's docket, and all further notices generated from the Court shall be to counsel's new address.

Failure of a party to properly notify the Court of any change of address, telephone number, or email address, which may result in a party not receiving notification of Court action, shall not be grounds to reinstate or reconsider any matter adverse to the party.

(f) Leave of Absence.

The Court of Appeals does not recognize or grant leaves of court or leaves of absence.

Rule 10. Personal Remarks; Opposing Counsel or Judge.

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

III. DOCKETS AND CALENDARS

Rule 11. Appeals, How Entered.

(a) Docketing.

No appeal shall be docketed until the notice of appeal, a record, and transcripts, if requested, are filed in the Clerk's office. Each notice of appeal will be docketed as a separate case.

(b) Transfer of Cases.

When an appeal or application filed in this Court is within the jurisdiction of another court, it shall be transferred by order to that court.

(c) Transferred Cases.

Appeals or applications transferred to this Court from another court shall be docketed as soon as practicable.

(d) Premature Docketing.

Any case docketed before the entire record is delivered to the Court may be remanded to the trial court until such time as the entire record is prepared and delivered to the Court.

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 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.

Rule 13. Notice of Docketing.

Upon the docketing of every appeal and application for appeal, the Clerk shall deliver via email or the United States Postal Service notice of the docketing date and schedule for briefing to all counsel. The notice of docketing a direct appeal shall include a statement that failure to file the enumeration of errors and appellant's brief within the time required may result in the dismissal of the appeal and/or appropriate sanctions. The notice shall also state that failure to timely file responsive briefs may result in their non-consideration and/or appropriate sanctions. Failure of counsel to receive the docketing notice shall not relieve counsel of the responsibility to file briefs timely. See Rule 23, Briefs.

Rule 14. Calendar; Conflicts.

(a) Calendars to be Mailed.

The Clerk shall mail (via email or United States Postal Service, depending upon the status of the filer) the calendar to counsel in each appeal to be orally argued at least 14 days before the date set for oral argument at the addresses shown on the notice of appeal, unless the Court is otherwise advised of a change of address, under Rule 9 (e), Attorneys.

(b) Non-Receipt of Calendar.

Counsel not receiving a calendar at least 10 days before the tentative oral argument dates should check the Court's website. If there is any confusion, counsel should contact the Clerk's office to inquire about oral argument dates.

(c) Conflicts - State and Federal Court.

(1) Counsel shall not be deemed to have a conflict unless he or she:

(i) is lead counsel in two or more of the actions affected; and

(ii) certifies that the matters cannot be adequately handled by other counsel.

(2) When there is an apparent conflict:

(i) Appellate arguments prevail over trials, hearings and conferences.

(ii) The action first filed takes precedence.

(iii) Felony actions prevail over civil actions.

(iv) Misdemeanors stand on equal footing with civil actions.

(v) The courts are assigned the following priorities:

Supreme Court of the United States.

Supreme Court of Georgia.

United States Courts of Appeal and State Courts of Appeal.

United States District Courts and Superior Courts of Georgia.

State Courts of Georgia.

Probate, Juvenile, and Magistrate Courts of Georgia.

(3) The Clerk shall resolve conflicts so as to accommodate all parties insofar as possible.

(4) Using the above criteria, the only time a conflict exists is when the actions are in courts of equal priority, are of the same type, and were filed on the same day. When such a conflict exists, counsel shall give prompt written notice of the conflict to opposing counsel and to the clerk of each court.

(5) When it is evident that counsel's presence is required in more than one court on the same day and no conflict actually exists under the above criteria, counsel shall nevertheless inform all courts concerned, giving the style of the case and the date of filing.

Rule 15. Reserved.

IV. EXTENSION OF TIME FOR FILING

Rule 16. Extension of Time for Filing.

(a) Notices of Appeal.

Pursuant to O.C.G.A. § 5-6-39, requests for extensions of time to file a notice of appeal may be made only upon a showing that a bona fide effort has been made to obtain the extension from the trial court and the reason it could not be obtained. Requests for

extensions of time must be in writing and received by the Court before the expiration of the filing deadline. The request shall be made in accordance with Rule 40 (b), which requires: an explanation of why the order is needed; a stamped “filed” copy of the order being appealed; and a stamped “filed” copy of the notice of appeal if one has been filed in the trial court. The motion shall be accompanied by a filing fee in the appropriate amount in accordance with Rule 5, Filing Fees.

(b) Briefs.

Motions for an extension of time to file a brief are subject to the Court’s discretion. All extensions shall be by written order and no oral extension shall be recognized. Failure to request an extension of time to file a brief before its due date may result in the dismissal of the appeal or non-consideration of the brief if untimely filed.

(c) Discretionary Applications.

Requests for extensions of time to file discretionary applications must be directed to this Court and should be filed pursuant to Rule 40 (b), Emergency Motions. All extensions shall be by written order, and no oral extension shall be recognized. An extension of time may be granted pursuant to Rule 31 (i) to file a discretionary application, but no extension of time may be granted for filing a response to the application.

(d) Interlocutory Applications.

No extension of time shall be granted to file an interlocutory application or a response thereto.

V. RECORDS AND TRANSCRIPTS

Rule 17. Duty of Trial Court Clerks.

The clerk of the trial court shall certify and transmit to the Clerk of this Court a copy of the original transcript (whether printed or on compact disc) and copies of all records as required within the time prescribed by statute. Trial court orders included in the record must contain the signature of the trial court judge. Conformed signatures, stamped signatures, and signatures with permission shall not be permitted, except for those courts in which the official practice is for the judge to electronically sign or stamp his or her signature. Transmittal shall be made by the clerk or deputy clerk personally or by first class United States Postal Service, express mail, or commercial courier or delivery service, charges prepaid. Transmittal by a party or attorney is prohibited. The appellant, court reporters, and the trial court clerk shall cooperate to ensure that the record is complete.

Rule 18. Preparation and Arrangement of Records and Transcripts.

(a) Paper and Format.

Records and transcripts, including depositions, shall be printed on one side of letter-size, white paper of good quality, or an equivalent electronic format, with ample spacing (at least double spaced) and margins so that they may be easily read. The margin at the top shall be of sufficient space that the transcript may be read when folded over at the top. Type size shall not be smaller than 10 characters per inch. Notwithstanding the 10 characters per inch requirement, the Court shall accept in lieu thereof Times New Roman Regular, 14 point. The record shall include an index. The pages of the record shall be numbered consecutively on the bottom of the page. The trial court clerk shall certify each volume of the record.

(b) Recordings.

When the notice of appeal directs that transcripts of a trial or a hearing be included in the record, copies of all video or audio recordings that were introduced into evidence shall be transmitted to this Court along with the trial or hearing transcript. It shall be the responsibility of the party tendering the recordings at a trial or a hearing to ensure that a copy of the recording is included in the trial court record; however, it is the burden of the appealing party to ensure that a complete record is transmitted to this Court on appeal, including the transmission of video or audio recordings. If a transcript of a trial or a hearing is designated as part of the appellate record, the clerk of the trial court shall then include the copy of the recording in the appellate record transmitted to this Court. If a copy of a recording played at a trial or a hearing is not included with the transcript designated to be transmitted in the appellate record, this Court may take whatever action is necessary in order to ensure completion of the record, including, but not limited to, issuing a show-cause order requiring an explanation of its absence. The appellant's failure to complete the record may also result in this Court declining to consider enumerations of error related to the missing evidence.

(c) Proprietary Software.

Copies of any video or audio recordings of evidence shall be submitted to this Court on DVD or on video or audio compact disc, and shall include any proprietary software necessary to play the recordings.

(d) Sealed Records.

Any records or transcripts delivered to this Court as sealed by the trial court, with an order of the trial court attached to the record, shall remain sealed until a motion is made to unseal the record or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any appellate record.

(e) Transcripts on Compact Disc.

In lieu of a printed transcript, the trial court may certify and transmit the transcript on a compact disc, so long as the other requirements for transcripts have been satisfied. Any transcript submitted on a compact disc shall be in a searchable .pdf format.

Rule 19. Transmission of Transcript.

The copy of the original transcript shall be a separate document or compact disc and not attached to the record. It shall show the style of the case, contain an index, and the pages shall be numbered consecutively on the bottom. Voluminous printed transcripts may be bound in separate parts. The court reporter and the trial court clerk shall certify each part.

Rule 20. 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 and ruled upon in the trial court before transmittal and the trial court's order is appealed as provided by law.

Rule 21. Original Evidence.

(a) Do Not Send Original Evidence.

No original evidence or original exhibits shall be transmitted to the Court with the appellate record initially. A party may file a motion asking this Court to issue an order directing the trial court clerk to transmit original evidence or original exhibits for inclusion in the appellate record. The motion shall specify the particular evidence or exhibits that the party seeks to transmit, describe its general size and weight, and explain why the original evidence or exhibits are necessary for the determination of the appeal. The Court may grant the motion or issue an order on its own if it determines that the original evidence or exhibits would assist the Court in deciding the appeal.

(b) Action after Remittitur Issued.

After the remittitur has been issued by this Court to the trial court, all original evidence or exhibits shall be returned to the trial court clerk.

VI. RESERVED

Rule 22. Reserved.

VII. BRIEFS

Rule 23. Time of Filing; Contempt; Dismissal.

(a) Appellant's Brief.

Appellant's brief shall be filed within 20 days after the appeal is docketed. Failure to file within that time, unless extended upon motion for good cause shown, may result in the dismissal of the appeal, and may subject the offending party and/or counsel to sanctions, including contempt. See Rule 7, Contempt, and Rule 13, Notice of Docketing.

Pursuant to Rule 16 (a), appellant's motion for an extension of time to file a brief and enumeration of errors must be filed before the date the documents are due or the Court may dismiss the appeal. If two or more appeals are consolidated, a brief is still required to be filed in each appeal. Parties may adopt, and are encouraged to adopt, all or a portion of another brief in the same case or from another case pending in this Court. The party adopting language from another brief shall specify precisely what portion of the other brief the party is adopting and list the case number, if different.

(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.

(c) Reply Brief.

Appellant may file a reply brief within 20 days from the date the appellee's brief is filed. Appellee has no right to respond to appellant's reply brief except as permitted under Rule 27, Supplemental Briefs.

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.

(b) Paper; Spacing.

Briefs shall be filed in conformity with Rule 2 (a) and (c), Requirements for Documents, and Rule 6, Certificate of Service.

(c) Margins.

Writing shall be on only one side of each sheet, with a margin of not less than one inch at the top, sides, and bottom of each page.

(d) Citations to Authority.

All citations to cases shall be by name of the case as well as by volume, page, and year of the Official Report. Cases not yet reported shall be cited by the Court of Appeals or Supreme Court case number and the date of decision.

(e) Pages to be Numbered.

The pages of each brief shall be sequentially numbered with an Arabic numeral at the bottom of each page.

(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) Items 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.

(g) Attachments and Exhibits.

Do not attach documents or exhibits to appellate briefs or motions for reconsideration.

(h) Address of Defendant.

Counsel for defendant shall include the address of the defendant in a criminal case on the face of the brief and shall notify the Court of any change of address. Efilers shall submit this information in the eFast system under the filing category "Other" and the filing type "Information."

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. 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.

(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.

(3) Part Three shall contain the argument and citation of authorities. It shall also include a concise statement of the applicable standard of review with supporting authority for each issue presented in the brief.

(b) Appellee.

The brief of appellee shall be divided in the following manner:

(1) Part One shall point out any material inaccuracy or incompleteness of appellant's statement of facts and any additional statement of facts deemed necessary, plus citations to additional parts of the record or transcript deemed material. Failure to do so shall constitute consent to a decision based on the appellant's statement of facts. Except as controverted, appellant's statement of facts may be accepted by this Court as true.

(2) Part Two shall contain appellee's argument and the citation of authorities as to each enumeration of error. It shall also include the standard of review if different from that contended by the appellant.

(c) General Provisions.

(1) Sequence of Arguments.

The sequence of arguments in the briefs shall follow the order of the enumeration of errors, and shall be numbered accordingly.

(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 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) Sealing Briefs or Motions.

No briefs or motions shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted the motion.

Rule 26. Amicus Curiae Briefs.

Amicus curiae briefs may be filed without leave of Court, disclosing the identity and interest of the person or group on whose behalf the brief is filed and limited to issues properly raised by the parties. Only members of the Bar of this Court or attorneys appearing by courtesy may file amicus curiae briefs. Amicus curiae briefs shall conform to Rule 24 (b)-(g), Preparation of Briefs.

Rule 27. Supplemental Briefs.

(a) Guidelines.

Briefs of the parties shall be limited to an appellant's brief, an appellee's brief, and an appellant's reply brief. Supplemental briefs may be filed only by leave of the Court. Counsel may file a motion for permission to file supplemental briefs. Counsel may not file a supplemental brief contemporaneously with the motion, but may include a copy of the supplemental brief with the motion for permission to file as an exhibit. Counsel shall file a supplemental brief, in compliance with the limitation on length at Rule 24 (f), only after permission to file is granted. If paper filing, only the original must be filed. A certificate of service must be attached to the supplemental brief, and service must be made upon opposing counsel.

(b) Letter Briefs and Communication with the Court.

Parties are not permitted to file letter briefs. Any communication with the Court regarding recent authority which comes to the attention of a party subsequent to the filing of the party's brief or after oral argument, but before decision, must be filed in compliance with Rule 27 (a) above as a supplemental brief. Any response shall be made promptly and in accordance with this rule.

VIII. ARGUMENT

Rule 28. Oral Argument.

(a) Request and Time.

(1) Unless expressly ordered by the Court, oral argument is never mandatory and argument may be submitted by briefs only. A case may be placed on the calendar for oral argument only if the Court grants the request of either party. Oral argument is not permitted for applications or motions.

(2) A request for oral argument shall be filed as a motion within 20 days from the date the case is docketed in this Court. An extension of time to file brief and enumeration of errors does not extend the time to request oral argument.

(3) The request for oral argument must be a separate document, filed with the Clerk, certifying that opposing counsel has been notified of the request and that opposing counsel desires, or does not desire, to argue orally. The request shall identify the counsel who would argue, and any change of counsel shall be communicated to the Clerk as soon as practicable.

(4) A request shall contain a brief statement describing specifically how the decisional process will be significantly aided by oral argument. The request should be self-contained and should convey the specific reason or reasons oral argument would be beneficial to the Court. Counsel should not assume the brief or the record will be considered in ruling on the request for oral argument.

(b) Waiver.

After either side has been granted oral argument, either side may waive argument, but waiver by either party does not remove the case from the oral argument calendar. If either counsel decides to waive oral argument after it has been granted, waiving counsel must notify opposing counsel and the Court of that fact.

Argument shall not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court. Counsel who have been granted an extension of time to file a brief after the term to which the case was docketed have waived oral argument.

Oral argument is waived if counsel is not inside the courtroom when the case is formally called in its order for argument.

(c) Time of Oral Argument.

Postponements of oral argument are not favored, and no postponement shall be granted under any circumstances that would allow oral argument to take place during a term of the Court subsequent to the term to which the case was docketed.

(d) Length.

Argument is limited to 30 minutes for each case, 15 minutes on each side, unless by special leave an enlargement of time is granted.

No additional time shall be granted for argument except on motion made in writing at least five days before the date set for argument. If additional time is granted, the case shall be placed at the end of the calendar unless otherwise ordered by the Court. Appeals, cross-appeals, companion cases, and related cases shall be considered to be one case for purpose of oral argument. In the discretion of the Court, a companion case may be treated as a separate case for oral argument if counsel so requests by written motion at least five days before the date set for oral argument and the motion is granted by the Court. When there are third parties or additional parties with divergent interests, additional time may be requested and granted as set out above.

(e) Number of Counsel Arguing.

Ordinarily, when both sides of an appeal are argued, only two counsel on each side shall be heard. When only one side of an appeal is argued, or when arguments are made on behalf of more than two parties, no more than one counsel per party shall be heard. For exceptions, see Rule 28 (j), Procedural Questions.

(f) Opening and Concluding.

Appellant has the right to open and conclude the arguments.

(g) Courtroom Decorum.

(1) Counsel appearing for oral argument shall check in with the Clerk in the courtroom 30 minutes before the time scheduled for oral argument and shall specify who shall argue.

(2) Talking, reading newspapers or other material, and audibly studying briefs or arranging papers are prohibited in the courtroom. The lawyers' lounge has been provided for this purpose.

(3) All counsel appearing before the Court must be properly attired.

(4) Only counsel for the parties may be seated at counsel table.

(h) Recording.

Oral arguments may be recorded. Copies of audio recordings, if available, may be purchased for \$30.

(i) Oral Argument Open to the Public.

Counsel may move the Court to exclude the public during argument for a good cause shown no later than 24 hours before oral argument. News media may be granted permission to photograph or videotape oral argument in accordance with the Court's standing order regarding media in the courtroom.

(j) Procedural Questions.

The Presiding Judge shall decide all questions or issues arising at oral argument.

Rule 29. Hearing by Quorum.

Whenever a Division of the Court is on the bench for the purpose of hearing oral argument, and a quorum (two judges) is present, the Division shall proceed with the call of the docket.

IX. APPLICATIONS FOR INTERLOCUTORY APPEAL

Rule 30. Interlocutory Applications.

(a) Filing Deadline.

An application for interlocutory appeal shall be filed in this Court within 10 days of the entry of the trial court's order granting the certificate for immediate review. The trial court's order is entered on the date it is filed with the trial court clerk.

(b) Burden of Proof.

The applicant bears the burden of persuading the Court that the application should be granted. An application for leave to appeal an interlocutory order will be granted only when it appears from the documents submitted that:

(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 will adversely affect the rights of the appealing party until entry of final judgment, in which case the appeal will be expedited; or

(3) The establishment of precedent is desirable.

(c) Jurisdictional Statement, Certificate of Immediate Review and Signatures.

Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped “filed” copy of the trial court’s order to be appealed and a stamped “filed” copy of the certificate of immediate review. The trial court’s order and certificate of immediate review must contain the signature of the trial court judge. Neither conformed signatures nor stamped signatures shall be accepted except for those courts in which the official practice is for the judge to electronically sign or stamp his or her signature. The Court shall return any application not containing a stamped “filed” copy of the trial court order or judgment from which the appeal is based or any application not containing a stamped “filed” copy of the certificate of immediate review.

(d) Filing Fee.

The Clerk shall not receive an application unless filing fees have been paid or one or more of the exceptions set out in Rule 5 have been met. See O.C.G.A. § 5-6-4. The filing fee shall be in the amount set out in Rule 5. The filing date is the date the application is received in conformity with all court rules and all applicable fees are paid.

(e) Required Attachments.

The applicant shall include with the application a copy of any petition or motion that led directly to the order or judgment being appealed and a copy of any responses to the petition or motion.

(f) Sufficient Materials.

Applications for interlocutory appeal pursuant to O.C.G.A. § 5-6-34 (b) must include sufficient material to apprise the Court of the appellate issues, in context, and support the arguments advanced. Failure to submit sufficient material to apprise the Court of the issues and support the argument shall result in denial of the application.

(g) Format.

(1) Efiled Applications.

Applicants who are represented by counsel must efile applications pursuant to Rule 46, Electronic Filing of Documents, and in compliance with this Court's efilings instructions.

(i) Application briefs shall follow the requirements of Rule 24, Preparation of Briefs, including the length limitations for computer-generated documents in Rule 24 (f), and shall also follow the general format of Rule 2 (c), Documents.

(ii) Only documents that are directly relevant to the arguments raised should be uploaded as application exhibits.

(iii) Documents and attachments or exhibits to documents filed below shall be uploaded as separate, independent exhibits.

(iv) Each uploaded exhibit shall be titled to inform the Court of the nature of the exhibit and shall correspond with the application index and citations in the application brief.

(v) The application index, which shall be uploaded immediately following – and separately from – the application brief, shall identify the exhibits in the order they are uploaded.

(vi) Efiled exhibits shall not exceed a total of 100 pages collectively, exclusive of the application brief, application index, trial court order, certificate of immediate review, and motion with supporting documents leading to the trial court order, any responses and supporting documents, and any transcripts. If the page limit is exceeded, the attorney submitting the application shall include, as a separate document, a signed certificate of good faith stating:

“I, the undersigned attorney of record in the above-styled case, certify that all of the documents that have been uploaded as exhibits are directly relevant to the arguments raised in the application, are necessary to apprise the Court of the appellate issues, and support the arguments advanced in the application.”

If the application materials are nevertheless found to include unnecessary or duplicative exhibits, a sanction of up to \$2,500 may be imposed upon the attorney filing the application. See Rule 7 (e) (2), Contempt Penalty.

(vii) Failure to comply with this rule and with the Court's efilng instructions may subject the application to dismissal or return for preparation according to the Court's rules.

(2) Paper-filed applications.

(i) Applications and responses to applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and shall follow the general format of Rule 2 (c), Documents, and Rule 24, Preparation of Briefs.

(ii) Paper-filed applications shall include copies of all supporting materials from the record, indexed and tabbed with a blank sheet between each indexed item.

(iii) Paper-filed applications shall be securely bound at the top with staples or fasteners (round head or ACCO). If not prepared properly, the application is subject to dismissal or return for preparation according to the Court's rules. Tables of content, tables of citations, cover sheets, and certificates of service are not counted toward the page limit.

(h) Filing Under Seal.

No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to do so and the Court has granted the motion.

(i) No Extension of Time.

No extension of time shall be granted to file interlocutory applications or responses to interlocutory applications.

(j) Response Time.

Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

(k) Deadline to File Notice of Appeal.

If the interlocutory application is granted, the appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.

(l) Late Filings.

No pleadings will be accepted on an application for interlocutory appeal which are filed more than 30 days after the date of the order granting, denying, or dismissing the application or the motion for reconsideration.

X. APPLICATIONS FOR DISCRETIONARY APPEAL

Rule 31. Discretionary Applications.

(a) Filing Deadline.

An application for discretionary appeal must generally be filed in this Court within 30 days of the date of the entry of the trial court's order being appealed, although pursuant to O.C.G.A. § 44-7-56, a discretionary application involving a dispossessory action must be filed within seven days of the entry of the trial court's order. The trial court's order is entered on the date it is filed with the trial court clerk.

(b) Burden of Proof.

The applicant bears the burden of persuading the Court that the application should be granted. An application for leave to appeal a final judgment in cases subject to discretionary appeal under O.C.G.A. § 5-6-35 will be granted only when:

(1) Reversible error appears to exist;

(2) The establishment of a precedent is desirable;

(3) Further development of the common law, particularly in divorce cases, is desirable; or

(4) The application is for leave to appeal a judgment and decree of divorce that is final under O.C.G.A. § 5-6-34 (a) (1), timely under O.C.G.A. § 5-6-35 (d), and is determined to have possible merit.

An application filed by an attorney seeking to rely on the standard set forth in Rule 31 (b) (3) or (b) (4) must be accompanied by a certificate of good faith stating as follows:

“I, the undersigned attorney of record in this case, am a member of the State Bar of Georgia in good standing and make this certificate of good faith as required by Rule 31 of the Court of Appeals of Georgia. I hereby certify that I am familiar with the trial court record in this case and based on the record and my understanding of the applicable law, I have a good faith belief that this application has merit and that it is not filed for the purpose of delay, harassment, or embarrassment. I further certify that I have been authorized by my client, the applicant, to file this application. This the _____ day of _____, 20__.”

If the application is nevertheless found to be frivolous, a sanction of up to \$2,500 may be imposed upon the attorney filing it. See Rule 7 (e) (2), Contempt Penalty.

(c) Required Items.

Discretionary applications must contain a stamped “filed” copy of the trial court’s order or judgment from which the appeal is sought. The stamped “filed” copy of the trial court’s order or judgment must contain the signature of the trial court judge. Neither conformed signatures nor stamped signatures are permitted except for those courts in which the official practice is for the judge to electronically sign or stamp his or her signature. The Court will return any application not containing a stamped “filed” copy of the trial court order or judgment on which the application is based.

(d) Filing Fee.

The Clerk shall not receive an application unless filing fees have been paid or an exception set out in Rule 5 has been met. See O.C.G.A. § 5-6-4. The filing fee shall be in the amount set out in Rule 5. The filing date is the date the application is received in conformity with all court rules and all applicable fees are paid.

(e) Required Attachments.

The applicant shall include with the application a copy of any petition or motion that led directly to the order or judgment being appealed and a copy of any responses to the petition or motion.

(f) Sufficient Material.

Applications for discretionary appeal pursuant to O.C.G.A. § 5-6-35 must include sufficient material to apprise the Court of the appellate issues, in context, and to support the arguments advanced. Failure to submit sufficient material to apprise the Court of the issues and support the argument shall result in denial of the application.

(g) Format

(1) Efiled applications.

Applicants who are represented by counsel must efile applications pursuant to Court of Appeals Rule 46, Electronic Filing of Documents, and in compliance with this Court's efilings instructions.

(i) Application briefs shall follow the requirements of Rule 24, Preparation of Briefs, including the length limitations for computer-generated documents in Rule 24 (f), and shall also follow the general format of Rule 2 (c), Documents.

(ii) Only documents directly relevant to the arguments raised should be uploaded as application exhibits.

(iii) Documents and attachments or exhibits to documents filed below must be uploaded as separate, independent exhibits.

(iv) Each uploaded exhibit must be titled to inform the Court of the nature of the exhibit and to correspond with the application index and citations in the application brief.

(v) The application index, which must be uploaded immediately following – and separately from – the application brief, must identify the exhibits in the order they are uploaded.

(vi) Efiled exhibits may not exceed a total of 100 pages collectively, exclusive of the application brief, application index, trial court order, and motion, with supporting documents leading to the trial court order, and any responses and supporting documents, and any transcripts. If the page limit is exceeded, the attorney submitting the application shall include, as a separate document, a signed certificate of good faith stating:

“I, the undersigned attorney of record in the above-styled case, certify that all of the documents that have been uploaded as exhibits are directly relevant to the arguments raised in the application, are necessary to apprise the Court of the appellate issues, and support the arguments advanced in the application.”

If the application materials are nevertheless found to include unnecessary or duplicative exhibits, a sanction of up to \$2,500 may be imposed on the attorney filing the application. See Rule 7 (e) (2), Contempt Penalty.

(vii) Failure to comply with this rule and with the Court's efilng instructions may subject the application to dismissal or return for preparation according to the Court's rules.

(2) Paper-filed applications.

(i) Applications and responses to applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and shall follow the general format of Rule 2 (c), Documents, and Rule 24, Preparation of Briefs.

(ii) Paper-filed applications shall include copies of all supporting materials from the record, indexed and tabbed with a blank sheet between each indexed item.

(iii) Paper-filed applications shall be securely bound at the top with staples or fasteners (round head or ACCO). If not prepared properly, the application is subject to dismissal or return for preparation according to the Court's rules. Tables of content, tables of citations, cover sheets, and certificates of service are not counted toward the page limit.

(h) Filing Under Seal.

No application for discretionary appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted the motion.

(i) No Extension of Time.

No extensions of time will be granted to file a discretionary application unless a motion for extension is filed on or before the application due date. The motion for an extension of time shall be submitted pursuant to Rule 40 (b), Emergency Motions. The filing fee for the Rule 40 (b) motion is separate from the discretionary application fee. No extension of time will be granted to file a response to a discretionary application.

(j) Response Time.

Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

(k) Deadline to File Notice of Appeal.

If the discretionary application is granted, the appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.

(l) Late Filings.

No pleadings will be accepted on an application for discretionary appeal which are filed more than 30 days after the date of the order granting, denying, or dismissing the application or denying or dismissing the motion for reconsideration.

XI. TRANSFER OF APPLICATIONS

Rule 32. Transfer of Applications.

Applications to appeal interlocutory or discretionary orders of which the Supreme Court has jurisdiction shall be transferred to that Court.

XII. OPINIONS AND JUDGMENTS

Rule 33. Judgment Lines.

The judgment line on an opinion shall show, on its face, the vote or non-participation of each judge.

(a) Judgment as Precedent.

If an appeal is decided by a Division of this Court, a judgment in which all three panel judges fully concur is a binding precedent; provided, however, an opinion is physical precedent only with respect to any portion of the opinion in which one or two of the panel judges concur in the judgment only, issue a special concurrence without a statement of agreement with all that is said, or the opinion is issued per curiam.

If the appeal is decided by 9 or 15 judges, a judgment in which a majority of judges fully concur is a binding precedent; provided, however, the opinion is physical precedent only if concurrences in the judgment only or special concurrences without a statement of agreement with all that is said in any portion of the opinion result in a full concurrence by fewer than a majority of the judges. The opinion of a case that is physical precedent shall be marked as such.

(b) Unreported Opinion.

An unreported opinion is neither a physical nor binding precedent but establishes the law of the case as provided by O.C.G.A. § 9-11-60 (h).

(c) Per Curiam.

A Per Curiam opinion is neither a physical nor binding precedent but establishes the law of the case as provided by O.C.G.A. § 9-11-60 (h).

Rule 34. Reporting of Opinions.

Opinions are reported except as otherwise designated by the Court. The Official Reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors of and participants in the opinions.

Rule 35. Copies of Opinions.

As soon as practicable after judgment, the Clerk shall furnish, without charge, a copy of the opinion to counsel for each party and to the trial judge. Additional copies cost \$1.50 per page.

Rule 36. Affirmance without Opinion, When Rendered.

Cases may be affirmed without opinion if:

- (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; or
- (4)** The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

Rule 36 cases have no precedential value.

XIII. RECONSIDERATION

Rule 37. Motions for Reconsideration.

(a) Physical Preparation.

Motions for reconsideration shall be prepared in accordance with Rule 24, Preparation of Briefs.

(b) Time of Filing.

Subject to Rule 3, Due Date, and Rule 4 (e), Filing Date for Motions for Reconsideration, or as otherwise ordered by the Court, motions for reconsideration must be filed within 10 days from the rendition of the judgment or dismissal. To be timely, motions for reconsideration must be received via efileing or paper copy by 4:30 p.m. Motions for reconsideration received via efileing or by paper copy after close of business (4:30 p.m.) will be deemed received on the next business day. No extension of time shall be granted except for providential cause on written motion made before the expiration of 10 days. No response to a motion for reconsideration is required, but any party wishing to respond must do so expeditiously.

(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 decision and judgment are rendered, or at any other time, without awaiting the expiration of 10 days, and may by special order limit the time within which a motion for reconsideration may be filed to any period less than 10 days.

(d) Second Motion.

No party shall file a second motion for reconsideration unless permitted by order of the Court. If not permitted by the Court, the Clerk will return the filing. The filing of a motion for permission to file a second motion for reconsideration does not toll the 10 days for filing a notice of intent to apply for certiorari with the Supreme Court of Georgia.

(e) Basis for Granting.

A reconsideration shall be granted on motion only when it appears that the Court 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.

(f) Opinion May Be Revised without Grant of Motion.

Upon the consideration of a motion for reconsideration, the Court may determine that its judgment is correct but that revision is appropriate, and may therefore revise the opinion without granting the motion for reconsideration.

(g) Voting on Motions, Effect.

A motion for reconsideration shall be voted on by the judges who voted on the original opinion. If there is a dissent on whether to grant or deny the motion for reconsideration in a 3-judge case, the motion shall be voted on by 9 judges, or, should the Court deem it appropriate, by 15 judges.

(h) No Oral Argument.

Oral argument is not permitted on a motion for reconsideration.

XIV. CERTIORARI

Rule 38. Petition for Writ of Certiorari.

(a) Supreme Court of Georgia.

(1) Notice of the intention to petition for a writ of certiorari must be filed with the Clerk of this Court within 10 days after the judgment or, if a motion for reconsideration is filed, within 10 days after the order ruling on that motion. See Rule 39 (a), Remittitur. Filing a motion for reconsideration is not a prerequisite for petitioning for a writ of certiorari.

(2) A petition for writ of certiorari to the Supreme Court of Georgia is governed by the rules of that Court. Notice of filing a petition for writ of certiorari shall be filed in this Court on the same day the petition is filed in the Supreme Court.

(b) Supreme Court of the United States.

(1) Notice of the intention to petition for writ of certiorari to the Supreme Court of the United States shall be filed with the Clerk of this Court within 20 days after the Supreme Court of Georgia denies a petition for a writ of certiorari to that court.

(2) A petition for writ of certiorari to the Supreme Court of the United States is governed by the rules of that Court. Notice of filing a petition for a writ of certiorari shall be filed in this Court on the same day as the petition is filed in the Supreme Court of the United States.

XV. REMITTITUR

Rule 39. Transmittal.

- (a) Remittiturs will be transmitted to the clerk of the trial court as soon as practicable after the expiration of 10 days from the date of the judgment, unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court of Georgia for writ of certiorari has been filed.
- (b) Notice of the intention to apply to the Supreme Court of the United States for writ of certiorari generally will not stay the remittitur.

XVI. SUPERSEDEAS AND EMERGENCY MOTIONS

Rule 40. Supersedeas and Emergency Motions.

(a) Supersedeas in Civil Cases.

The notice of appeal filed as provided in O.C.G.A. §§ 5-6-34 (a), 5-6-37, and 5-6-38 shall serve as supersedeas upon payment of all costs in the trial court by the appellant. See O.C.G.A. § 5-6-46. Upon motion by the appellee, made in the trial court before or after the appeal is docketed in the appellate court, the trial court may require a supersedeas bond to be given with such surety and in such amount as the trial court may require. The filing of an application for discretionary appeal shall act as a supersedeas to the same extent as a notice of appeal. See O.C.G.A. § 5-6-35 (h).

(b) Emergency Motions.

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 shall be exercised sparingly. Generally, no order shall be made or direction given in an appeal until it has been docketed in this Court.

A Rule 40 (b) motion shall:

- (1) Contain an explanation why an order of this Court is necessary and why the action requested is time-sensitive;
- (2) Contain a stamped “filed” copy of the order being appealed;
- (3) Contain a stamped “filed” copy of the notice of appeal, if one has been filed in the trial court;
- (4) Show that service was perfected upon the opposing party before filing the motion with the Court; and
- (5) Be accompanied by the filing fee or evidence that one or more of the fee waiver provisions of Rule 5 apply, unless the motion is filed in a pending case already docketed with the Court. The filing fee shall be in the amount set out in Rule 5, Filing Fees.

XVII. MOTIONS AND RESPONSES

Rule 41. Preparation and Filing.

(a) Filing.

Paper-filed motions and responses to motions shall be filed as set out in Rule 6, Copies and Certificate of Service. Efiled motions and responses shall be filed in accordance with Rule 46, Electronic Filing of Documents. Motions, not letters, shall be filed whenever counsel wish the Court to take any action.

(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 response.

(c) Motion to Supplement the Record.

In a motion to supplement the record, counsel shall specifically describe the material to be supplemented and include the date the material was filed in the trial court, but shall not attach the supplemental materials to the motion unless directed to do so by the Court. The movant must assist the trial court clerk in locating the material when necessary. If the motion is granted, the Clerk of this Court will obtain the supplemental record from the trial court clerk.

(d) Motion to Dismiss.

Notice of a motion to dismiss and the grounds thereof shall be given in writing to counsel for the appellant by service made and shown as required in Rule 6, Copies and Certificate of Service. If notice cannot be given, the motion shall be entertained and the Court in its discretion shall give direction as it deems proper. If the Court determines that it has no jurisdiction over a pending appeal, the appeal shall be dismissed or transferred to the Supreme Court.

(e) Response Time to Motions.

Responses to motions should be made as soon as possible. There is no 10-day rule for time to respond to motions.

(f) Motion to Reconsider.

See Rule 37, Motions for Reconsideration.

(g) Motion to Withdraw Appeal.

(1) An appellant who decides not to pursue an appeal shall promptly file a motion for permission to withdraw it.

(2) In a criminal case, unless the State is the appellant, the motion shall include an affidavit from the defendant agreeing to the withdrawal of the appeal. Should the defendant refuse to provide an affidavit, counsel shall advise the Court of that fact and state in the motion the grounds for withdrawing the appeal.

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 explain 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.

(b) Anticipated Appeal or Return to Court of Appeals.

If the parties anticipate that the case will return to the Court or be appealed to the Supreme Court of the United States, the parties must notify the Clerk, in writing, to hold the record in accordance with the requirements in Rule 42 (a).

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.

(b) Legal Representative May Volunteer.

The legal representative of a deceased party may voluntarily become a party to the appeal at any time.

(c) Temporary Administrator.

A temporary administrator is regarded as a competent party to substitute for the deceased.

(d) Substituted Party.

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

XX. DISQUALIFICATIONS AND RECUSALS

Rule 44. Disqualifications and Recusals.

(a) Motion Content.

Any motion to recuse or disqualify a judge in a particular case shall be filed in writing, and shall contain evidence and affidavits that fully assert the facts upon which the motion is founded. The motion must be filed within 20 days of docketing unless good cause is shown for failure to meet the time requirement.

(b) Affidavit Requirement.

The supporting affidavit shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons, and circumstances that demonstrate either bias or prejudice in favor of or against either party, or demonstrate a systematic pattern of prejudicial conduct. Affidavits containing conclusions and opinions are not legally sufficient to support the motion or to warrant further proceedings.

(c) Base for Determination.

The determination of the recusal motion shall be made upon the written record, and no hearing or oral argument will be permitted.

(d) Decision by Three Judges; Criteria.

A motion to disqualify or recuse a judge shall be decided by the remaining two judges on the Division and the presiding judge of the next Division. A judge may, however, voluntarily disqualify himself or herself before the matter is decided by the other judges. The criteria for disqualification are set forth in statutory law, case law, and the Code of Judicial Conduct.

(e) Process for Disagreement.

If the three judges designated to determine a motion to disqualify or recuse a judge do not agree on the decision, the matter shall be decided by a majority of the other judges on the Court not named in the motion to disqualify or recuse.

(f) Other.

Any motion for disqualification or recusal of multiple judges in which the above process will be unsuitable will be dealt with by the Court on a case-by-case basis.

XXI. EXPEDITED APPEALS UNDER THE PARENTAL NOTIFICATION ACT

Rule 45. Parental Notification Act.

(a) Authority.

This rule is adopted under the authority of the Georgia Constitution, Article VI, § I, Para. IV (1983) and O.C.G.A. §§ 15-1-5 and 15-11-684 (e) to provide for the expedited consideration of appeals under the “Parental Notification Act.” (O.C.G.A. § 15-11-680 et seq.)

(b) Eligibility to File and Computing Time.

Any minor to whom a juvenile court has denied a waiver of notice under O.C.G.A. § 15-11-684 (c) may obtain an expedited appeal to this Court. For the purpose of this rule, in computing time, Saturdays, Sundays and holidays shall be included. Rule 3, Due Date, shall govern in the event a final due date falls on one of those days.

(c) Process.

A minor seeking an expedited appeal shall file a notice of appeal and a certified copy of the order denying waiver of notice with the Clerk of this Court. A copy of the notice of appeal shall also be filed with the juvenile court. The name, address and telephone number of the Guardian Ad Litem and any counsel of record shall be included with the notice of appeal. Upon receipt of the notice of appeal, this Court shall issue an order to the juvenile court directing that the record and transcript of the hearing be transmitted to and received by this Court within 5 days from the date of filing the notice of appeal with this Court. An enumeration of errors shall be filed within the time period for the filing of the record. If a brief is desired, it shall also be filed within the time period for the filing of the record. No filing fee is required.

(d) Trial Court Record.

The record of the juvenile court shall be certified by the clerk of the juvenile court and transmitted to this Court under seal.

(e) Case Assignment.

The Clerk shall assign the appeal to a Division of this Court, which shall take the matter under consideration and shall issue its decision within 5 days of receipt of the record.

(f) Motion for Reconsideration.

In order to expedite further appellate review, a motion for reconsideration shall not be required. However, if the decision of this Court affirms the judgment of the juvenile

court, the minor may file a motion for reconsideration and the same shall be governed by Rule 37, except that such a motion shall be filed within 5 days from the date of the decision of this Court and may be filed out of term. Any motion for reconsideration shall be decided by the Court within 5 days of filing thereof.

(g) Remittitur.

If the decision of this Court reverses the judgment of the juvenile court, the remittitur shall be forwarded to the clerk of the juvenile court immediately after the rendition of the decision. If the decision of this Court affirms the judgment of the juvenile court, the remittitur shall be transmitted to the clerk of the juvenile court as soon as practicable after the expiration of 5 days from the date of the judgment unless otherwise ordered or unless a motion for reconsideration or notice of intention to apply to the Supreme Court of Georgia for writ of certiorari has been filed.

(h) Expediting Case.

Upon good cause shown, the Court shall enter such orders as shall further expedite the processing of these cases.

(i) Filing Notice of Appeal.

In order to invoke the foregoing special procedures, the notice of appeal must be filed within 5 days of receipt by the minor of the juvenile court's order.

(j) Sealing Record.

All pleadings, briefs, orders, transcripts, exhibits and any other written or recorded material that are part of the record shall be considered and treated by the Court as confidential. Upon conclusion of the appellate proceedings, the record shall be sealed, and the contents of the record shall not be disclosed, except upon order of this Court or the Supreme Court of Georgia.

XXII. ELECTRONIC FILING OF DOCUMENTS

Rule 46. Electronic Filing of Documents.

(a) Counsel Required to File Via the Court's eFast System.

Counsel are required to use the Court's electronic filing system, eFast, and to follow the policies and procedures governing electronic filing as set forth in the Court's instructions at <http://www.gaappeals.us/eFile2/instructions.pdf>.

For example, the following must be filed electronically: all briefs, motions (including motions for reconsideration and emergency motions), applications for interlocutory and discretionary appeals, notices of intent to petition for certiorari, and notices of filing a petition for writ of certiorari. The filing date and time of documents filed electronically is determined in accordance with the eFiling instructions. Note that filings that fail to comply with Court rules will be rejected and the filing date will be the date the item is submitted in compliance with Court rules. Motions for reconsideration that are received after 4:30 p.m. are considered to be filed the next business day. The Clerk of Court may grant a request for exemption from mandatory electronic filing for good cause shown. An adverse decision by the Clerk of Court may be appealed by motion via a paper filing.

(b) Consequence of Failure to Register With Court’s eFast System.

Attorneys who fail to register with the Court’s eFast system will receive no further communication from the Court (i.e., court orders, opinions, etc.) through the United States Postal Service other than the original docketing notice.

(c) Counsel’s Personal Responsibility to Update eFast System.

Any change of physical address, telephone number, or email address must be made by the attorney in the Court’s eFast system. Attorneys are personally responsible for ensuring that their eFast profile information is up to date. The Court will not make these changes. Attorneys are encouraged to register an additional “CC” email address for their administrative assistant or another point of contact.

The attorney who uploads a document into the Court’s eFast system from that attorney’s eFast account will be the attorney of record.



*Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta, 02/23/2017*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Stephen E. Caston

, Clerk.