

Suggested Rule Changes for the Biennial Rules Update

**Rules
Court of Appeals of Georgia**

- Rule 1. To clarify that conformed signatures or s/ signatures are not permitted on pleadings in the Court of Appeals of Georgia.
- Rule 2. Style change.
- Rule 4. To incorporate our commercial overnight delivery amendment and to change the rule to reflect the current operating hours of the Judicial Building.
- Rule 9(c) and (d). Possibly add fee for courtesy appearance. If irrelevant, delete provision regarding agreements or consents.
- Rule 14(a). Grammatical change.
- Rule 17. To add commercial courier delivery service.
- Rule 18(a). To add new Times Roman Western Point 14 type as is allowed in Rule 1.
- Rule 19. To clarify position of persons authorized to certify transcripts.
- Rule 23 (a)(b)(d). To clarify Briefs permitted to be filed, conformity of Briefs to Rule 1, delete name of publisher of Official Reports.
- Rule 24. To limit Reply Briefs to Appellant's Brief only.
- Rule 26(c). To provide that the appellee has not right to respond to the appellant's Reply Brief other than as provided in Rule 24, the Supplemental Brief rule.
- Rule 28(a)(2). To clarify the rule about oral argument on companion and cases in cross appeals.
- Rule 28(b). To add reference to Rule 28(h) which states the presiding judge shall decide all procedural questions arising at oral argument."
- Rule 28(f). Style change.

- Rule 28(g). To change notification for closing oral arguments to the public from five (5) days to 24 hours, same as the rule on Media Requests.
- Rule 29. Correct statement. All arguments are now taped.
- Rule 30(e) and 31(e). To provide that no application nor portion thereof may be filed under seal in unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- Rule 30(d). To add the statement that applications are subject to be returned or dismissed if not properly bound.
- Rule 31(b). Same as Rule 30(d).
- Rule 32. To add the language seven (7) days for a dispossessories pursuant to OCGA §44-7-56.
- Rule 33(a). Style change.
- Rule 37(b). To add to the rule that courier service, like certified mail, does not apply to Motions for Reconsideration.
- Rule 41(f). To clarify that a Motion to Withdraw requires permission.

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I. GENERAL

Rule 1.

(a) Requirement for Written and Signed Documents

(1) All filings, documents, motions, briefs, requests and communications relating to appeals shall be in writing, shall be filed with the Clerk's office, shall be signed by ~~counsel~~ an attorney of record, an attorney granted courtesy appearance or pro se parties, and shall include the mailing address and telephone number of the attorney or pro se party signing the document, and shall show that copies have been furnished to opposing counsel. Conformed signatures by law firm staff or an attorney's employee will not be accepted. Service shall be shown by written acknowledgment, certificate of counsel or affidavit of server, to include the mailing address of all opposing counsel. Service shall be made before filing. Any document without a Certificate of Service will not be accepted for filing. All signed documents shall include the State Bar of Georgia membership number of all submitting attorneys.

(b) Service

All documents shall show that copies have been furnished to opposing counsel. Service shall be shown by written acknowledgment, certificate of counsel or affidavit of server, to include the mailing address of all opposing counsel. Service shall be made before filing. Any document without a Certificate of Service will not be accepted for filing. (The Certificate of Service shall be attached to the document filed.)

(c) Communications with the Court ~~(b)~~— There shall be no communications relating to pending cases to any judge or member of the judge's staff.

(d) Documents ~~(c)~~— All documents filed with the Court shall be typed or printed on non-transparent, letter size (8 ½" x 11") white paper and bound at the top with staples or ~~round head fasteners~~ (round head or Acco) and all matters contained therein, including quotations and footnotes, shall have no less than double spacing

between the lines. Letter spacing and type or font size shall be no smaller than Courier 10 cpi, 12 point (or equivalent). Notwithstanding the ten (10) characters per inch requirement, the Court will accept in lieu thereof Times New Roman Regular 14pt (Western). Any documents which the Court deems inappropriate as to type size, type style and/or form may be returned to counsel after filing by the Court, and counsel may be ordered to redact and recast such documents. All documents filed with this Court shall have a non-glossy, white ~~manuscript cover~~ back of recyclable paper, heavier than regular stationery-type paper.

(e) **Counsel** ~~(d)~~—All reference to counsel in these rules shall include pro se parties.

(f) **Facsimile Filing** ~~(e)~~—The Court does not accept facsimile filings.

Purpose of change: to clarify conformed signatures or s/signatures are not permitted on pleadings

Rule 2.

(a) Clerk's Office Hours of Operation and Location

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, 334 State Judicial Building, 40 Mitchell Street, Atlanta, Georgia 30334. The telephone number is (404) 656-3450.

~~(b) Drop Box~~

~~The Clerk's office has provided a drop box for filing documents after business hours. Any items placed in the drop box after 4:30 p.m., Monday through Friday, will be docketed to the date the documents were placed in the drop box. The Judicial Building is open from 7:30 a.m. until 5:30 generally 5:00 p.m. Court personnel will remove the documents the morning of the following business day and clock documents to the present time and date and file the documents to the date they were placed in the drop box.~~

(b) Filing Fees

All filings requiring fees must be accompanied by a check or money order or a sufficient pauper's affidavit. The Clerk's office cannot be responsible for filings accompanied by cash.

(c) Stamped Filed Copy

If a stamped filed copy of the filed document is needed, parties filing such documents must include an extra copy and a pre-addressed stamped envelope with sufficient postage to have the document returned.

Rule 3. Expiration Date

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

Rule 4. Filing

(a) Drop Box

The Clerk's office has provided a drop box for filing documents after business hours. Any items placed in the drop box after 4:30 p.m., Monday through Friday, will be docketed to the date the documents were placed in the drop box. The Judicial Building is open from 7:30 a.m.

until 5:30 generally 5:00 p.m. Since the building hours of operation are controlled by the Georgia Building Authority, check the court web site at www.ga.appeals.us for current hours. Court personnel will remove the documents the morning of the following business day and clock documents to the present time and date and file the documents to the date they were placed in the drop box.

(b) **Motions for Reconsideration**

Motions for reconsideration are A motion for reconsideration is deemed filed only on the date they are-it is are physically received in the Clerk's office. See Rule. 37.

(c) **Other Documents**

Any other document shall be deemed filed on the date:
(1) It is physically delivered to the Clerk's office, with sufficient costs, if applicable, and clocked in by the Clerk's office staff;
(2) It is deposited in the United States Postal Service registered or certified mail, with sufficient costs, if applicable; or
(3) It is delivered to the United States Postal Service or a commercial delivery company, with sufficient costs, if applicable, for overnight delivery.

(d) **Proof of Filing**

The United States Postal Service or commercial delivery company receipt must be submitted to the Clerk's office upon request. An office or private postage meter date is not sufficient.

Rules 2-4 Purpose of change: Style change. Rule 4-To reflect current operating hours of Judicial Building and to incorporate commercial overnight delivery amendment made December 2003.

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 such member is of good private and professional character. The oath, which is required to be taken in open Court or before a Judge in Chambers, 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) 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 \$30.00, payable to the Clerk, who will issue a license under the seal of the 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, if admitted to practice in the highest court of the state, district, or territory of such attorney's residence, by leave of court, may be heard as associate counsel or counsel in a single case, without being admitted as a regular practitioner in this Court. A resident attorney, who is not a member of the State Bar of Georgia, may petition this Court for courtesy appearance by showing that the attorney is certified in good-standing in the Bar of the highest court of another state. If a petition for courtesy appearance is granted, the attorney shall remit to the court an admission fee of \$30.00 prior to the docketing of any other documents or an appearance at oral argument.

~~(d) **Agreements or Consents to be in Writing.**~~

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

~~(e)~~ **(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 a statement that the client's address is unknown and shall contain the client's last known address.

~~(f)~~ **(e) Change of Address or Telephone Number.**

If during the pendency of any appeal or application counsel for either party has a change of address or telephone number, counsel shall file a notification of change of address or telephone number with the Court, notifying the Court of counsel's correct address and telephone number, and the effective date of such change.

The notification of change of address or telephone number shall be filed as a separate document, an original and two copies, with service made to opposing counsel.

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

Failure of counsel to properly notify the Court of any change of address or telephone number, which may result in counsel not receiving notification of Court action, shall not be grounds to reinstate or reconsider any matter adverse to counsel or parties because of the failure of counsel to receive notification from the Court.

~~(g)~~(f) The Court of Appeals does not recognize, nor grant, Leaves of Court or Leaves of Absence.

Purpose of change: ¶ (c) possibly add a fee for courtesy appearance and ¶ (d) delete provision about agreements and consents if not relevant any longer.

Rule 10. Personal Remarks.

Opposing Counsel or Judge.

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

Rule 14. Notice of Call.

(a) Calendars to be Mailed.

The Clerk shall mail the calendar to counsel in each appeal to be orally argued at least 14 days prior to the date the call is to begin at the addresses shown on the notice of appeal unless the Court is otherwise advised under Rule 9(f) ~~9(e).~~ ~~at least 14 days prior to the date the call is to begin.~~

Purpose of change: Change in grammar structure.

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 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 first class United States mail, ~~or express mail,~~ or commercial courier or delivery service, charges prepaid. Transmittal by a party or attorney is prohibited.

Purpose of change: To add commercial courier or overnight delivery service.

Rule 18. Preparation and Arrangement of Records and Transcripts.

- (a) Records and transcripts, to include depositions, shall be printed on one side of white paper not less than letter size of good quality 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 so that the transcript may be read when folded over at the top. Type size shall not be smaller than Courier 10 cpi, 12 point (or equivalent). Notwithstanding the 10 characters per inch requirement, the Court will accept in lieu thereof Times New Roman Regular 14pt (Western).
- (b) Any records or transcripts delivered to this Court from the trial court, and 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 and/or the record is unsealed by this Court. Counsel for any party may move this Court for an order to unseal or seal any record in the Court.

Purpose of change: ¶ (a) add Times Roman Western Point 14 types as is permitted in Rule 1.

Rule 19. Transmission of Transcript.

The original transcript 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 court reporter and trial court clerk shall certify each part.

Purpose of change: Clarify titles of persons authorized to certify transcript.

VII. BRIEFS

Rule 23. Preparation.

(a) Briefs shall be limited to a initial appellant's brief, a responding appellee's brief and a reply brief of the appellant. Other briefs will be accepted only if filed as a Amicus Curiae brief (Rule 25) or in accordance with Rule 24. Briefs will be not accepted unless filed by 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).

~~(a)~~ **(b) Paper, Spacing.**

All briefs shall be filed in conformity with Rule 1 (a) and ~~(c)~~(b) and (d).

~~(b)~~ **(c) Margins.**

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

~~(c)~~ **(d) Citations.**

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

~~(d)~~ **(e) Pages to be Numbered.**

The pages of each brief shall be sequentially numbered with Arabic numerals.

~~(e)~~ **(f) Limitation as to Length.**

Briefs and responsive briefs shall be limited to 30 pages in civil cases and 50 pages in criminal cases including indexes, exhibits and appendices, except upon written application directed to the Clerk and approved by the Court. Appellant's reply brief shall be limited to 15 pages. See Rule 24 for additional briefs.

~~(f)~~ **(g) Attachments and Exhibits.**

Documents attached to an appellate brief, which have not been certified by the clerk of the trial court as a

part of the appellate record and forwarded to this Court, will not be considered on appeal.

~~(g)~~ (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.

Purpose of change: ¶ (a) Clarify briefs allowed to be filed without motion to permit filing. ¶ (b) Conformity of briefs with Rule 1. ¶ (d) Delete name of publishers of Official Reports because of recent change.

Rule 24. Supplemental Briefs.

(a) Briefs shall be limited to an appellant's brief, an appellee's brief, and ~~a~~ 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. Contemporaneously with filing a motion, counsel may file, as a separate document, an original and two copies of the supplemental brief, not to exceed 15 pages.

(b) Parties are not permitted to file letter briefs nor letter cites. Any communication with the Court regarding recent authority which comes to the attention of a party subsequent to the filing of such party's brief or after oral argument, but before decision, must be filed in compliance with (a) above as a supplemental brief, an original and two copies, with a Certificate of Service, and service must be made on opposing counsel. Any response shall be made promptly and in accordance with this rule.

Purpose of change: Limit reply brief to appellant only.

Rule 25. 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.

Rule 26. Time of Filing; Contempt; Dismissal; Service.

(a) Appellant's brief, which shall contain as Part 2 an enumeration of errors, 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 subject the appeal to dismissal, and may subject the offender to contempt. See Rule 7 and Rule 13.

Appellant's motion for extension of time to file brief and enumeration of errors must be filed prior to the date the documents are due or the Court may dismiss the appeal.

(b) Appellee's brief shall be filed 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 contempt. See also Rule 13.

(c) Appellant may file a reply brief within 20 days from the date of filing of appellee's brief. Appellee has no right to respond to appellant's reply brief except as permitted under Rule 24.

Purpose of change: Restatement that appellee has no right to respond to appellant's reply brief without permission.

VIII. ARGUMENT

Rule 28.

(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 will be placed on the calendar for oral argument only upon the granting of the request of either party.

A request for oral argument shall be filed within 20 days from the date the case is docketed in this Court. The request must be a separate document, an original and two copies, directed to 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 counsel who is scheduled to argue, and any change shall be communicated to the Clerk as soon as practicable.

An extension of time to file brief and enumeration of errors does not extend the time to request oral argument.

A request shall contain a brief statement demonstrating that 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 will be considered in ruling on the request for oral argument.

After either side has been granted oral argument, it may be waived by either side, but waiver by the requester does not remove the case from the oral argument calendar. Argument will not be allowed on behalf of any party whose brief has not been timely filed, unless permission is granted by the Court. Counsel requesting extension of time to file briefs waive oral argument if the extension is beyond the end of the term.

Rule 28 continued.

- (2) Argument is limited to 30 minutes for each case, 15 minutes on each side, unless by special leave an extension of time is granted. No additional time will be granted except on application made in writing at least 5 days before the date set for the call of the case. If additional time is granted, the case will be placed at the end of the calendar unless otherwise ordered by the Court. Appeals, cross-appeals, and companion cases shall be considered to be one case for purpose of oral argument. In the discretion of the Court, a ~~A companion case may, in the discretion of the Court,~~ be treated as a separate case for oral argument if counsel so requests by written motion at least 5 days before the date set for oral argument. Where there are third parties or additional parties with divergent interests, additional time may be requested and granted as set out above.
- (3) Appeals in which oral argument has been granted pursuant to Rule 28 (a) will be assigned to the calendar in the order in which they appear on the docket, unless otherwise ordered. When a case has been reached in its order on the calendar, it will not be postponed except for good reason shown.
- (4) If either counsel decides to waive oral argument after it has been granted, waiving counsel must notify other counsel and the Court of that fact.

(b) Number of Arguments.

Ordinarily, 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. For exception, See paragraph 28(h).

- (c) **Opening and Concluding; Rebuttal.**
Appellant has the right to open and conclude the arguments.
- (d) **Courtroom Decorum.**
- (1) Counsel appearing for oral argument shall check in with the Clerk in the courtroom at 9:30 a.m. on the date of oral argument specifying who will argue and for how long.
 - (2) Talking, reading newspapers or other material, and audibly studying briefs and 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.
- (e) **Presence of Counsel.**
Oral argument is waived if counsel is not actually inside the courtroom when the case is formally called in its order for argument.
- (f) **Time of Argument.**
Counsel may request 5, 10 or 15 minutes for argument. If counsel do not agree on the ~~type~~ length of oral argument, the longer time requested shall prevail and each counsel shall be given the same amount of time. Ordinarily, cases will be argued in the following order: first, 5 minute cases, second 10 minute cases and third, would be called before 10 minute cases and 10 minute cases would be called before 15 minute cases.
- (g) **Oral Argument Open to the Public.**
Unless ordered by the Court, oral argument is open to the public. Counsel may move the Court to exclude the public for a good cause shown. Such motion shall be filed not later than ~~5 days~~ 24 hours prior to oral argument. News media are permitted to photograph or

videotape oral argument pursuant to the Court's standing order regarding media in the Courtroom.

(h) Procedural Questions.

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

Purpose of change: ¶(a) (2) Clarify rule about oral argument on cross-appeals and companion cases. ¶(b) Refer to presiding judge's discretion to control argument. ¶ (f) style change ¶ (g) Alter time limit for requesting closure of argument to public from notification of 5 days to 24 hours which is comparable to rule on media access requests.

Rule 29. Hearing by Quorum.

(a) 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.

(b) ~~In such instances, the~~ Oral arguments shall be tape recorded for the use and benefit of the Court.

Purpose of change: ¶ (b) Correct statement-all arguments are now taped.

IX. APPLICATION FOR INTERLOCUTORY APPEALS

Rule 30. Applications.

- (a) An application for leave to appeal an interlocutory order will be granted only when it appears from the documents submitted that:
- (i) The issue to be decided appears to be dispositive of the case; or
 - (ii) 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
 - (iii) The establishment of precedent is desirable.
- (b) Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped "filed" copy of the court's order to be appealed and a stamped "filed" copy of the certificate of immediate review.
- (c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.
- (d) Applications for interlocutory appeal pursuant to OCGA § 5-6-34 (b) should have copies of all materials from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or Acco). If not tabbed and indexed, indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. 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 should follow the general format of briefs as to margins.

IX. APPLICATION FOR INTERLOCUTORY APPEALS

Rule 30. Applications:

- (a) An application for leave to appeal an interlocutory order will be granted only when it appears from the documents submitted that:
- (i) The issue to be decided appears to be dispositive of the case; or
 - (ii) 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
 - (iii) The establishment of precedent is desirable.
- (b) Applications for interlocutory appeal shall contain a jurisdictional statement and have attached a stamped "filed" copy of the court's order to be appealed and a stamped "filed" copy of the certificate of immediate review.
- (c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.
- (d) Applications for interlocutory appeal pursuant to OCGA § 5-6-34 (b) should have copies of all materials from the record tabbed and indexed and shall be securely bound at the top. If not tabbed ~~and indexed,~~ indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The materials must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. 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 should follow the general format of briefs as to margins.
- (e) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for

permission to file under seal and the Court has granted such motion.

- ~~(e)~~ (f) No extension of time shall be granted for filing of interlocutory applications or responses to interlocutory applications.
- ~~(f)~~ (g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.
- ~~(g)~~ (h) If an interlocutory application is granted, appellant must file a notice of appeal in the trial court within 10 days of the date of the order granting the application.

Purpose of change: ¶(d) to require applications to be bound in manner of briefs and to be subject to return for failure to conform to required format. ¶(e) to provide counsel must request for permission to file application under seal.

X. APPLICATION FOR DISCRETIONARY APPEAL

Rule 31. Leave to Appeal.

- (a) An application for leave to appeal a final judgment in cases subject to appeal under OCGA § 5-6-35 will be granted only when:
- (i) Reversible error appears to exist; or
 - (ii) The establishment of a precedent is desirable.
- (b) Applications for discretionary appeal pursuant to OCGA § 5-6-35 should have copies of all material from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or Acco). If not tabbed ~~and indexed~~, indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. 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 should follow the general format of briefs as to margins.
- (c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.
- (d) Discretionary appeals must contain a stamped "filed" copy of the trial court's order from which the appeal is sought.
- (e) No application for ^{discretion} ~~interlocutory~~ appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- ~~(e)~~ (f) No extensions of time will be granted in filing discretionary applications or responses to discretionary applications.
- ~~(f)~~ (g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

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- (i) Reversible error appears to exist; or
 - (ii) The establishment of a precedent is desirable.
- (b) Applications for discretionary appeal pursuant to OCGA § 5-6-35 should have copies of all material from the record tabbed and indexed and shall be securely bound at the top. If not tabbed ~~and indexed,~~ indexed and securely bound at the top, the petition is subject to dismissal or return for preparation according to the Court's rules. The material must be sufficient to apprise the Court of the appellate issues, in context, and support the arguments advanced. 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 should follow the general format of briefs as to margins.
- (c) The clerk is prohibited from receiving the application without the \$80.00 filing fee or sufficient pauper's affidavit.
- (d) Discretionary appeals must contain a stamped "filed" copy of the trial court's order from which the appeal is sought.
- (e) No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.
- ~~(e)~~ (f) No extensions of time will be granted in filing discretionary applications or responses to discretionary applications.
- ~~(f)~~ (g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court.

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

Purpose of change: ¶(b) same as ¶(d) in Rule 30. ¶(e) same as ¶ (e) in Rule 30.

XI. TIME OF FILING APPLICATIONS

Rule 32. Time of Filing.

- (a) 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. Entry of the trial court's order shall be the date it is filed with the trial court clerk.

- (b) An application for discretionary appeal shall be filed in this Court generally within 30 days of the date of the entry of the trial court's order being appealed. Pursuant to OCGA §44-7-56, a discretionary application involving a dispossessory action must be filed within 7 days of the entry of the trial court's order. Entry of the trial court's order shall be the date it is filed with the trial court clerk.

- (c) Applications to appeal interlocutory or discretionary orders of which the Supreme Court has jurisdiction shall be transferred to that Court, if timely filed.

Purpose of change: add 7 day filing requirement for dispossessory action applications.

XII. OPINIONS AND JUDGMENTS

Rule 33. Showing of Concurrence or Dissent.

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

(a) Judgment as Precedent.

A judgment in which ~~is fully concurred in by~~ all judges of the Division fully concur is a binding precedent; if there is a special concurrence without a statement of agreement with all that is said in the opinion or a concurrence in the judgment only, the opinion is a physical precedent only. If the appeal is decided by a seven or twelve judge Court, a full concurrence by a majority of judges is 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 only, there being general concurrence by less than a majority of the Judges, it is a physical precedent only.

(b) Unreported Opinion.

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

Purpose of change: Style change.

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 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.

XIII. RECONSIDERATION

Rule 37. Motions for Reconsideration.

(a) **Physical Preparation.**

Motions for reconsideration shall be prepared in accordance with Rule 23.

(b) **Time of Filing.**

Motions for reconsideration must be filed within 10 days from the rendition of the judgment or dismissal. Motions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought. The certified mail and commercial overnight delivery rule does not apply to motions for reconsideration. See Rule 4. No extension of time shall be granted except for providential cause on written application 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.

Purpose of change: Clarify that the commercial overnight delivery rule does not apply (just like the certified mail rule) to filing a motion for reconsideration.

(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 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. 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.

XVII. MOTIONS

Rule 41. Preparation and Filing.

(a) Filing in Triplicate.

Motions shall be filed in triplicate as set out in Rule 6. Motions, not letters, should be filed whenever counsel wish the Court to take any action.

(b) Form and Physical Preparation.

All motions shall be filed as separate documents, and shall not be filed as compound motions or alternative motions. No motions shall be filed in the body of briefs, applications or responses. Motions shall be prepared in accordance with Rule 23. Failure to comply with this rule may result in non-consideration of such motions.

(c) Motions to Dismiss.

Notice of a motion to dismiss and of the grounds thereof shall be given in writing to counsel for the appellant by service made and shown as required in Rule 1 (a). If such notice cannot be given, the motion will be entertained and the Court in its discretion will give such direction as may seem proper. Whenever it appears the Court has no jurisdiction of a pending appeal, it will be dismissed or transferred to the Supreme Court, as the facts and/or law require.

(d) Response Time to Motions.

Responses to motions should be made as soon as possible since the Court generally acts on motions quickly. There is no 10 day rule for time to respond to motions.

(e) Reconsideration.

See Rule 37.

(f) Motion to Withdraw Appeal.

(1) Whenever appellant decides not to pursue an appeal, such party shall promptly file a motion for permission to withdraw the appeal.

(2) In a criminal case, unless the state is the appellant, the motion shall include an affidavit from defendant agreeing to the withdrawal of the appeal. Should the defendant refuse to provide

such affidavit, that fact shall be made known to the Court and the grounds for the withdrawal of the appeal shall be stated in the motion.

Purpose of change: Clarify that a motion to withdraw requires permission.