

February 21, 2008

## Court of Appeals Issues New Rules

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The Georgia Court of Appeals has “amended its rules for cases docketed in this court on or after February 21, 2008. Copies of the rules are posted on the Court’s web site at [www.gaappeals.us](http://www.gaappeals.us) and printed paper copies are available at the Clerk’s Office, located at: Suite 501, 47 Trinity Avenue, S. W., Atlanta, Georgia.”

The new rules include several significant changes that could affect prosecutors. The following summary of the changes is taken from the Court of Appeals web site. We have bolded those changes that prosecutors need to be especially aware of. Your attention is specially called to the new provision in Rule 23(b) which reads “**A brief shall be filed by the appellee in all criminal appeals when the State is the appellee; and upon failure to file such brief, the State’s representative may be subject to contempt.**” (Emphasis added)

### Summary of Changes to Court of Appeals Rules

Change has been made throughout the text to make it more uniform grammatically.

#### RULE 1.

(a) Clarifies that stamped signatures and **signatures with permission** as well as conformed signatures of **judges and attorneys are not permitted**.

[Note by PAC: We contacted the Clerk’s Office about the signature requirement. The Clerk of Court stated that the change to this Rule means that **at least one** of the signatures on a brief must be the signature of a lawyer who is admitted to practice before the Court of Appeals. If more than one attorney’s signature is on the brief, one must be an original; the others may be stamped, conformed or signed by permission.]

(c) Contains minor changes to accommodate e-filing; removes specification of Courier font; specifies that **clerk may reject documents that do not comply with rules prior to filing**.

#### RULE 2.

(a) Inserts the new address for the Clerk’s Office.

(b) Permits submission of a public defender appointment in lieu of a pauper’s affidavit; adds statement about Clerk’s responsibility for cash payments.

#### RULE 4.

(a) Describes new location of the drop box. Clarifies language related to clocking drop box documents.

(c) Eliminates the certified mail and overnight delivery rules providing that documents are deemed filed either on the postmark date or commercial firm transmittal date shown on the document’s container or envelope or the date of physical delivery to the clerk’s office whichever is earlier.



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**RULE 5.**

Permits submission of a public defender appointment in lieu of a pauper's affidavit; clarifies that no additional cost is due for a direct appeal filed pursuant to an order granting an application.

**RULE 6.**

Clarifies counsel must sign the Certificate of Service. [Note by PAC: This must be an actual signature. See Note to Rule 1(a).]

**RULE 7.**

**Increases maximum fine for contempt to \$2,500.00.**

**RULE 9.**

(a) Clearly authorizes Clerk, Deputy Clerk and Deputy Administrator to give oath in Clerk's office; modernizes language.

(c) Clarifies attorney's motion for courtesy appearance must contain proof of admission and good standing in highest bar of another state, district or territory. Requires the motion to be accompanied by a fee of \$30.

**RULE 10.**

Changes phrase "to opposing counsel, to any judge or the Court" to "to any judge, opposing counsel or any court."

**RULE 13.**

Revises paragraph to more closely match language in current docketing notice.

**RULE 14.**

Changes the title to reflect content of this Rule.

**RULE 15.**

(a) Removes the last sentence of the paragraph.

(b) Increases frivolous appeal penalty to \$2,500.

**RULE 16.**

Clarifies that a motion for extension of time to file a Notice of Appeal shall be made as a Rule 40 (b) motion.

**RULE 17.**

States that stamped signatures and signatures with permission as well as conformed signatures



*Court of Appeals Issues New Rules (continued)*

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of judges on orders shall not be permitted. [Note by PAC: See Note to Rule 1(a).]

**RULE 18.**

Removes specific mention of Courier font; requires record to have an index and the pages of the record to be numbered at the bottom of the page and consecutively.

**RULE 19.**

Requires transcript pages to be consecutively numbered.

**RULE 21.**

Removes “tape” and replaces it with the word “recording” since recordings are now made in different ways; describes types of recordings Court will accept.

**RULE 23.**

(b) **Adds language here from Rule 13 that requires the State as appellee to file a brief.**

**RULE 24.**

(a) Specifies that a supplemental brief is a type of brief accepted if submitted in accordance with Rule 27. Clarifies that counsel must file an original and two copies in the main case and also in any companion case or any cross-claim.

(f) Clarifies that **the certificate of service is counted in the page limit for briefs**; replaces the word “application” with “motion” to remove any confusion with the application process.

(g) Specifies that **counsel should not attach documents to the brief that have not been certified by the trial court clerk as a part of the record.**

**RULE 25.**

(a) Adds the word “trial” before the word “court” and removes the word “below” in order to make language more understandable by lay persons.

(c) Changes title to section (2) to cover all three sub-parts; renumbers subpart (iv) to section (3) since it contains different content than the remainder of (2).

(a) Adds the word “trial” before the word “court” and removes the word “below” in order to make language more understandable by lay persons.

(c) Changes title to section (2) to cover all three sub-parts; renumbers subpart (iv) to section (3) since it contains different content than the remainder of (2).

**RULE 26.**

Clarifies that **amicus curiae briefs must conform to Rule 24 in format and length.**



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RULE 27.

(a) & (b) Clarifies that the first sentence applies to briefs of the parties; changes location of requirement concerning service so that it is clear it applies to all supplemental briefs.

RULE 28.

Rearranges sentences and sections to follow a logical order and adds additional section titles.

(a) (1) Adds a sentence to clarify that there is no oral argument for applications or motions..

(a) (4) Strengthens requirement that request specify benefit of oral argument.

(h) Adds language from Rule 29 (b) about recording oral argument.

RULE 29.

Removes (b) and places it in Rule 28 (g) as this topic fits better under that Rule title.

RULE 30.

(b) Clarifies that stamped as well as conformed signatures are not permitted. [Note by PAC: See Note to Rule 1(a).]

(c) Permits submission of a public defender appointment in lieu of a pauper's affidavit.

(d) Adds this new section and renumbers remaining sections.

(e) The word "petition" has been changed to "application" for consistency; a statement has been added that the application will be denied if not accompanied by sufficient materials for the Court to determine the issues; clarifies that responses to applications are limited to the same number of pages as applications.

RULE 31.

Same changes as in Rule 30

(b) Adds a new section (b) and renumbers remaining sections.

(c) The word "petition" has been changed to "application" for consistency; a statement has been added that the application will be denied if not accompanied by sufficient materials for the Court to determine the issues; clarifies that responses to applications are limited to the same number of pages as applications.

(d) Permits submission of public defender appointment in lieu of pauper's affidavit.

(e) Clarifies that stamped as well as conformed signatures are not permitted. Adds the words "or judgment" to the end of the phrase "a stamped "filed" copy of the trial court's order." [See Note to Rule 1(a).]



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**RULE 33.**

Clarifies that the Rule is referring to the judgment line of the opinion and that the judgment line will indicate judges who are disqualified, recused, or not participating.

(a) Clarifies that physical precedent may apply only to a specific division of the opinion and requires the opinion to be marked as physical precedent.

**RULE 37.**

(b) The word “application” has been changed to “motion” to avoid any confusion with the application process.

(h) Adds a new (h) to state that oral argument is not permitted on motions for reconsideration.

**RULE 38.**

Wording has been clarified using the full phrase “petition for writ of certiorari.”

**RULE 40.**

(a) O.C.G.A. ‘5-6-34 (a) has been added to the list of code citations concerning a notice of appeal and supersedes.

(b) Numbering of the list of motion contents has been made consistent with the numbering pattern of other Rules.

(b) (3) Clarifies that the copy of the notice of appeal contained in the motion shall be a stamped “filed” copy.

(b) (5) Permits submission of a public defender appointment in lieu of a pauper’s affidavit.

**RULE 41.**

(b) Adds joint motions to those not permitted; changes wording.

(c) Adds a new (c) to state that counsel should not attach supplemental materials to a motion to supplement record.

**RULE 46.**

Adds a Rule 46 Reserved for E-filing.