

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 10- 9164

APPROVAL OF LOCAL RULES FOR THE COURT OF APPEALS FOR THE FIRST COURT OF APPEALS DISTRICT OF TEXAS

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 1.2, this Court approves the following amendments to the local rules for the Court of Appeals for the First Court of Appeals District of Texas, effective November 1, 2010. To the extent these local rules vary from the standards in Appendix C to the Texas Rules of Appellate Procedure, these local rules control.

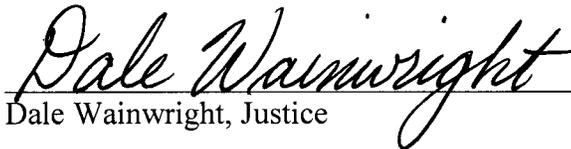
SIGNED this 28th day of September, 2010.



Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice



Dale Wainwright, Justice

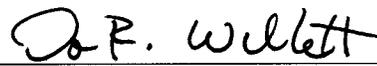
David M. Medina, Justice



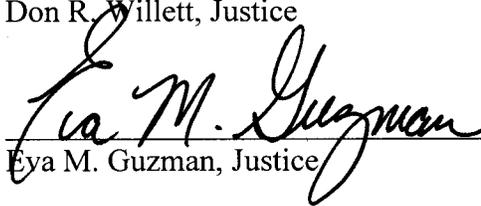
Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice



Eya M. Guzman, Justice

Debra H. Lehrmann, Justice

First Court of Appeals Local Rules

RULE 1. ASSIGNMENT OF RELATED CASES TO AND TRANSFERS OF RELATED CASES BETWEEN THE FIRST AND FOURTEENTH COURTS OF APPEALS.

Rule 1.1. Definitions.

- (a) “Underlying case” means a trial court case number that is filed in one of the counties that comprise the jurisdiction of the First and Fourteenth Courts of Appeals and is subsequently the subject of either an appeal or original proceeding in the First or Fourteenth Court of Appeals.
- (b) “Related” means arising from the same underlying case or a case that has been remanded by either the First or Fourteenth Court of Appeals and includes cases severed from the main case.
- (c) “Previously filed” means that a case has been opened at either the First or Fourteenth Court of Appeals and that an appellate case number has been assigned to the underlying case.

Rule 1.2. Assignment of Original Proceedings to either the First or Fourteenth Court of Appeals.

- (a) Except as noted below, assignment of original proceedings must be alternated between the First and Fourteenth Courts of Appeals.
- (b) During the first six months of a calendar year, relators must first present any original proceeding to the clerk of the First Court of Appeals. During the last six months of a calendar year, relators must first present any original proceeding to the clerk of the Fourteenth Court of Appeals. Hereinafter, the “intake clerk” means the clerk receiving the original proceeding.
- (c) The intake clerk must log in each original proceeding sequentially, assigning original proceedings between the First and Fourteenth Courts of Appeals on an alternating basis.
- (d) If a related appeal or original proceeding has been previously filed in one of the courts, the intake clerk must assign the original proceeding in the manner provided for in Rule 1.3(a)-(b) below.

Rule 1.3. Notice of and Assignment of Related Cases in Original Proceedings.

- (a) At the time an original proceeding is filed in either the First or Fourteenth Court of Appeals, the relator must file a notice indicating whether any related appeal or original proceeding has been previously filed in either the First or Fourteenth Court of Appeals. The notice must include the caption, trial court case number, and appellate court case number of the related appeal or original proceeding.
- (b) If any related appeal or original proceeding has been previously filed in or assigned to either the First or Fourteenth Court of Appeals, the clerk of the appellate court receiving the original proceeding must assign it to the court of appeals in which the related appeal or original proceeding was previously filed.
- (c) If related appeals or original proceedings have been filed in both the First and Fourteenth Courts of Appeals, the clerk of the appellate court receiving the original proceeding must assign it to the court of appeals in which the most recent related appeal or original proceeding was previously filed or assigned.

Rule 1.4. Notice of and Assignment of Related Cases in Appeals.

- (a) At the time the notice of appeal is filed in the trial court, the notice of appeal must contain a statement indicating whether a related appeal or original proceeding has been previously filed in either the First or Fourteenth Court of Appeals and must include the caption, trial court case number, and appellate court case number of the related appeal or original proceeding.
- (b) If a related appeal or original proceeding has been previously filed in or assigned to either the First or Fourteenth Court of Appeals, the trial court clerk must assign the appeal to the court of appeals in which the related appeal or original proceeding was previously filed, pursuant to TEX. GOV'T CODE ANN. § 22.202(h) (Vernon 2004), which provides for companion cases to be assigned to the same court of appeals.
- (c) If related appeals or original proceedings have been previously filed in both the First and Fourteenth Courts of Appeals, the trial court clerk must assign the appeal to the court of appeals in which the most recent related appeal or original proceeding was previously filed or assigned, pursuant to TEX. GOV'T CODE ANN. § 22.202(h) (Vernon 2004), which provides for companion cases to be assigned to the same court of appeals.

Rule 1.5. Transfers of Related Cases Between the First and Fourteenth Courts of Appeals.

- (a) The First or Fourteenth Court of Appeals may, either sua sponte or on motion of a party, transfer an appeal or an original proceeding to the other Houston court of appeals when a related appeal or original proceeding has been previously filed.
- (b) The transferring court must forward the case file, together with a transfer order, to the clerk of the transferee court. The clerk of the transferee court must docket the transferred appeal or original proceeding and must assign it a new appellate case number pursuant to TEX. R. APP. P. 12.1 and 12.2.

RULE 2. CLERK'S RECORD IN CIVIL CASES.

Unless otherwise stated, all references to a rule herein are to the Texas Rules of Appellate Procedure.

Rule 2.1. Preparation of Clerk's Record.

The trial court clerk must prepare and file the clerk's record in accordance with Rules 34.5 and 35. Even if more than one notice of appeal or request for inclusion of items is filed, the clerk should prepare only one record in a case. To prepare the clerk's record, the trial court clerk must:

- (a) gather the documents required by Rule 34.5(a) and those requested by a party under Rule 34.5(b);
- (b) start each document on a new page;
- (c) include the date of filing on each document;
- (d) arrange the documents in ascending chronological order, by date of filing or occurrence;
- (e) start the page numbering **on the front cover of the first volume** of the clerk's record and **continue to number all pages consecutively** — including the front and back covers, tables of contents, certification page, and separator pages, if any — until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page;
- (f) prepare, label, and certify the clerk's record as required by this rule;
- (g) as far as practicable, include the date of signing by the judge on each order and judgment;
- (h) include on the front cover of the first volume of the clerk's record, whether filed in paper or electronic form, the following information, in substantially the following form:

CLERK'S RECORD

VOLUME ____ of ____

Trial Court Cause No. _____

In the _____ (District or County) Court

of _____ County, Texas,

Honorable _____, Judge Presiding

_____, Plaintiff(s)

vs.

_____, Defendant(s)

Appealed to the

(Supreme Court of Texas at Austin, Texas,

or Court of Criminal Appeals of Texas at Austin, Texas,

or Court of Appeals for the _____ District of Texas, at _____, Texas).

Attorney for Appellant(s):

Name

Address

Telephone no.: _____

Fax no.: _____

E-mail address: _____

SBOT no.: _____

Attorney for: _____, Appellant(s)

Name of clerk preparing the clerk's record: _____

- (b) create electronic bookmarks to mark the first page of each document in the clerk’s record;
- (c) limit the size of each computer file to 100 MB or less;
- (d) file each computer file in text-searchable Portable Document Format (PDF), compatible with the latest version of Adobe Reader;
- (e) include the following elements in the computer file name, exemplified as FortBend-DC-09-29-CLR-Vol001.pdf:
 - (1) county name without spaces between words;
 - (2) a hyphen;
 - (3) the trial-court cause number, preferably in the format the trial court uses for cause numbers;
 - (4) a hyphen;
 - (5) “CLR-Vol”;
 - (6) the volume number as three digits with leading zeroes if needed;
 - (7) a period; and
 - (8) “pdf”;
- (f) if there are multiple volumes in a clerk’s record, use volume numbers pursuant to 2.2(e)(6) to identify the sequential order of the volumes (e.g., FortBend-DC-09-29-CLR-Vol001.pdf, FortBend-DC-09-29-CLR-Vol002.pdf, etc.);
- (g) if filing a sealed document, include a hyphen, the number of the sealed document, and the term “Sealed” after the term “CLR” in the computer file name (e.g., FortBend-DC-09-29-CLR-1Sealed.pdf, FortBend-DC-09-29-CLR-2Sealed.pdf), and file each sealed document separately from the remainder of the clerk’s record;
- (h) if filing a supplement to the clerk’s record, include a hyphen, the number of the supplement, the term “Supp,” and another hyphen after the term “CLR” in the computer file name (e.g., FortBend-DC-09-29-CLR-1Supp-Vol001.pdf, FortBend-DC-09-29-CLR-2Supp-Vol001.pdf); and
- (i) submit each computer file to the Texas Appeals Management and E-filing System web portal, using the guidelines on the First Court of Appeals’ website.

Rule 2.3. Filing a Paper Clerk’s Record.

When filing a paper record, the trial court clerk must:

- (a) bind the documents together in one or more volumes with a top bound, two-inch capacity, two-and-three-quarter-inch, center-to-center removable fastener and no other binding materials, like wax, ribbon, glue, staples, tape, etc.;
- (b) include no more than 500 pages in each volume, or limit the thickness of each volume to a maximum of two inches;
- (c) include only one-sided copies in the clerk’s record;
- (d) number the first volume “1” and each succeeding volume sequentially;

- (e) if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and
- (f) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

In the event of a material violation of this rule 2 in the preparation of the clerk's record, on motion of a party or on its own initiative, the appellate court may require the trial court clerk to amend the clerk's record or to prepare a new clerk's record in proper form — and provide it to any party who has previously made a copy of the original, defective clerk's record — at the trial clerk's expense. A supplement to a clerk's record must also be prepared in conformity with this rule.

RULE 3. ELECTRONIC REPORTER'S RECORD IN CIVIL CASES.

- (a) The court reporter or court recorder must prepare and file the reporter's record in accordance with Rules 34.6 and 35 of the Texas Rules of Appellate Procedure and the Uniform Format Manual for Texas Reporters' Records. Even if more than one notice of appeal or request for preparation of the record is filed, the court reporter or court recorder should prepare only one record in the case.
- (b) If proceedings were recorded stenographically, in lieu of filing the reporter's record of the proceedings on paper, the court reporter **must** file the reporter's record in an electronic format via the Texas Appeals Management and E-filing System web portal, in accordance with Section 8 of the Uniform Format Manual for Texas Reporters' Records and the guidelines posted on the First Court of Appeals' website.
- (c) In the event of a material violation of this rule in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter or court recorder to amend the reporter's record or to prepare a new reporter's record in proper form — and provide it to any party who has previously made a copy of the original, defective reporter's record — at the reporter's or recorder's expense. A court reporter who fails to comply with the requirements of the Uniform Format Manual for Texas Reporters' Records is also subject to discipline by the Court Reporters Certification Board.

RULE 4. SUSPENSION OF LOCAL RULES FOR ELECTRONIC FILINGS.

Upon receipt of a motion or on its own initiative, the First Court of Appeals may, to expedite a decision or for other good cause, suspend a local rule pertaining to the filing of electronic records in a particular case and order a different procedure in accordance with the Texas Rules of Appellate Procedure.