

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12- 9140

APPROVAL OF LOCAL RULES FOR THE COURT OF APPEALS FOR THE TWELFTH COURT OF APPEALS DISTRICT

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 1.2, this Court approves the following local rules for the Twelfth Court of Appeals. The procedures prescribed by these local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between the procedures; otherwise, the Rules of Appellate Procedure continue to apply with full force and effect.

Dated: August 22, 2012.

Wallace B. Jefferson

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht

Nathan L. Hecht, Justice

Dale Wainwright

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green

Paul W. Green, Justice

Phil Johnson

Phil Johnson, Justice

Don R. Willett

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann

Debra H. Lehrmann, Justice

TWELFTH COURT OF APPEALS (TYLER)
STATE OF TEXAS

LOCAL RULES FOR ELECTRONIC FILING

The procedures prescribed by these local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are conflicts between the procedures; otherwise, the Rules of Appellate Procedure continue to apply with full force and effect.

RULE 1. CLERK'S RECORD.

Unless otherwise stated, all references to a rule herein are to the TEXAS RULES OF APPELLATE PROCEDURE.

Rule 1.1. 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; and
- 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 12th District of Texas, at Tyler, 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: _____

Rule 1.2. Filing an Electronic Clerk's Record.

The Twelfth Court of Appeals prefers the filing of clerk's records in electronic form. When filing a clerk's record in electronic form, the trial court clerk must:

- a. scan each image in black and white with a resolution of 300 dots per inch (dpi) when filing electronic documents created as scanned images;
- 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, for example, if a case is appealed from Smith County, the file name would be "Smith-[trial court case #]-CLR-Vol001.pdf" indicating the following:
 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 1.2(e)(6) to identify the sequential order of the volumes (e.g., Smith-[trial court case #]-CLR-Vol001.pdf, Smith-[trial court case #]-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., Smith-[trial court case #]-CLR-1Sealed.pdf, Smith-[trial court case #]-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., Smith-[trial court case #]-CLR-1Supp-Vol001.pdf, Smith-[trial court case #]-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 Twelfth Court of Appeals' website.

Rule 1.3. 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, 8 1/2 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 Rule 1 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 court's expense. A supplement to a clerk's record must also be prepared in conformity with this rule.

RULE 2. REPORTER'S RECORD.

- a. **The Twelfth Court of Appeals prefers the filing of reporter's records in electronic form.**
- b. 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. The reporter also must include "/s/" and the reporter's name typed in the space where the signature would otherwise appear.
- c. If proceedings were recorded stenographically, in lieu of filing the reporter's record of the proceedings on paper, it is preferred that the court reporter 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 Twelfth Court of Appeals' website.

- d. 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 3. ELECTRONIC FILINGS OF DOCUMENTS.

- a. **Electronic filing permitted.** A party may electronically file (e-file) any document that may be filed with the court in paper form, except a document under seal or subject to a motion to seal.
- b. **E-filing mechanism.** E-filing must be done through Texas.gov, the portal established by the Texas Legislature. Directions for its use may be found on its website. This is a summary. A person must first register with an Electronic Filing Service Provider (EFSP). A list of approved EFSPs is on the Texas.gov website. The EFSP will provide the registrant with a confidential, secure username and password to use when e-filing a document. This username and password will also function as a signature on each e-filed document, and will authorize payment of all filing fees and service fees. A document to be e-filed must be transmitted to the EFSP, which will send the document to Texas.gov, which in turn will send the document to the clerk. The e-filer will receive by email an immediate acknowledgment of the e-filing, a confirmation of the clerk's acceptance of the filing, and a file-stamped copy of the document. Fees charged by Texas.gov for the e-filing of a document are in addition to any filing fees and are costs of court.
- c. **Electronic service.** A party who has registered to e-file documents through an EFSP may electronically serve (e-serve) documents through that EFSP on any other party who has consented to e-service by registering for the e-service option with an EFSP or by setting up a complimentary account with Texas.gov. Directions may be found on the Texas.gov website.
 - 1. Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary Texas.gov account. The e-filer's EFSP will send proof of service to the e-filer. Fees that an EFSP charges for e-service are not costs of court.
 - 2. If an e-filer must serve a copy of a document on a party who has not consented to e-service, the e-filer must comply with the service

requirements in Texas Rule of Appellate Procedure 9.5 and, on the same day the document is e-filed, must send the document to:

- A. the party's lead counsel by email if the e-filer has an email address for the lead counsel; or
- B. if the party is not represented by counsel, to the party by email if the e-filer has the party's email address.

d. **Redaction of information in an e-filed document.**

The filer must redact specific information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the document may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.

1. Unless the court orders otherwise, an e-filed document must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number; passport number; tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number.
2. The e-filing of a document constitutes a certification by all attorneys of record for the party filing the document that the document complies with paragraph (1) of this rule.
3. If an e-filer believes any information described in paragraph (1) of this rule is essential to an e-filed document or that the e-filed document would be confusing without the information, the e-filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the e-filed document to a listed identifier will be construed to refer to the corresponding item of information. If the e-filer provides a reference list pursuant to this rule, the front page of the e-filed document must indicate that the reference list has been, or will be, provided.
4. On its own initiative, the court may order a sealed reference list in any case. The court may also order that a document be filed under seal in paper form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record.

e. **Format of e-filed document.** An e-filed document must be formatted as follows:

1. An e-filed document must be formatted in accordance with Texas Rule of Appellate Procedure 9.4(b)–(e). The “paper” requirements in Rule 9.4(b)–(e) apply equally to a “page” of the e-filed document.
2. An electronic copy must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader.
3. Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed Texas.gov’s size limits for the document. If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.
4. A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).
5. An e-filed document may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.
6. An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the e-filer that the document has been checked for viruses and malware.
7. The court may strike an e-filed document for nonconformance with this rule.

f. **Signatures on e-filed documents.**

1. Except as otherwise provided by this rule, the confidential, secure username and password that the e-filer must use to e-file a document constitute the e-filer’s signature on the document, in compliance with signature requirements in the Texas Rules of Appellate Procedure. When a signature is provided in this manner, the e-filer must also include either an “/s/” and the e-filer’s name typed in the space where the e-filer’s signature would otherwise appear or an electronic image of the e-filer’s signature, which may take the form of a public key-based digital signature or a scanned image of the e-filer’s signature. The e-filer must not allow the e-

filer's username or password to be used by anyone other than an agent who is authorized by the e-filer.

2. If a document must be notarized, sworn to, or made under oath, the e-filer must e-file the document as a scanned image containing the necessary signature(s).
 3. If a document requires the signature of an opposing party, the e-filer must e-file the document as a scanned image containing the opposing party's signature.
 4. When an e-filer e-files a scanned image of a document pursuant to paragraph (2) or (3) of this rule, the e-filer must retain the original document from which the scanned image was made until the case in which the document was filed is resolved. If the original document is in another party's possession, that party must retain the original document until the case in which the document was filed is resolved.
 5. If an e-served document was also e-filed and the person who completes a certificate of service under Texas Rule of Appellate Procedure 9.5(e) is different from the person who e-filed the document, the person who completes the certificate of service must sign the certificate by including either an "/s/" and his or her name typed in the space where his or her signature would otherwise appear or an electronic image of his or her signature.
- g. **Time of e-filing.** A document will be considered filed timely if it is e-filed at any time before midnight (in the court's time zone) on the date on which the document is due.
1. An e-filed document is deemed filed when the e-filer transmits the document to the e-filer's EFSP, unless the document is transmitted on a Saturday, Sunday, or legal holiday or requires a motion and an order allowing its filing.
 2. If a document is transmitted on a Saturday, Sunday, or legal holiday, it will be deemed filed on the next day that is not a Saturday, Sunday, or legal holiday.
 3. If a document requires a motion and an order allowing its filing, it will be deemed filed on the date the motion is granted.
 4. If an e-filed document is untimely due to a technical failure or a system outage, the e-filer may seek appropriate relief from the court.
- h. **Paper copies.** An e-filer must file one paper copy of any e-filed document in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the document is e-filed.

If a party opts not to e-file a document but to file the document in paper form instead, the original document filed with the court must be in the form provided by Rule 9.4 of the Texas Rules of Appellate Procedure. However, in lieu of filing multiple paper copies of the document as required by Rule 9.3(a)(1) of the Texas Rules of Appellate Procedure, the party must file:

(i) the original and 3 copies of briefs, motions for rehearing, and other petitions or applications other than PDRs; or

(ii) the original and one copy of other motions or other documents not otherwise indicated above. When a party opts not to e-file, in each of the above cases, the original of the item filed must be unbound and one-sided (on 8.5"x11" paper) and contain no hard covers, tabs, or any other item that would impede the scanning of the document. In lieu of tabs, separator pages bearing the title of the immediately following item should be used.

- i. **Email address requirements and communications with the clerk.** An e-filed document must include the e-filer's email address (a working office email address), in addition to any other information required by the Texas Rules of Appellate Procedure. If the e-filer's email address changes, the e-filer must provide the clerk and the e-filer's EFSP with the new email address within one business day of the change. If there is a change in the email address of a party who has consented to receive e-service, the party must provide Texas.gov or, if applicable, the party's EFSP with the new email address within one business day of the change. **The clerk may send notices or other communications about a case to an attorney's email address in lieu of mailing paper documents.**
- j. **Casemail registration.** Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.
- k. **Construction of rules.** This rule must be liberally construed so as to avoid undue prejudice to any person who makes a good-faith effort to comply with requirements in this rule.

RULE 4. SUSPENSION OF LOCAL RULES FOR ELECTRONIC FILINGS.

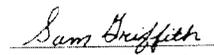
Upon receipt of a motion or on its own initiative, the Twelfth Court of Appeals may, to expedite a decision or for other good cause, suspend a local rule pertaining to the filing of electronic records in a particular case and order a different procedure in accordance with the Texas Rules of Appellate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

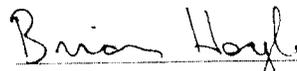
ORDER ADOPTING LOCAL ELECTRONIC RULES

IT IS ORDERED that, on June 20th, 2012, these rules are adopted as the local rules for the Twelfth Court of Appeals and with the permission of the Supreme Court of Texas and the Texas Court of Criminal Appeals, will become effective on the 1st day of September, 2012.

Signed this 20th day of June, 2012


James T. Worthen, Chief Justice


Sam Griffith, Justice


Brian Hoyle, Justice