

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9068

## APPROVAL OF AMENDED LOCAL RULES FOR THE COURT OF APPEALS FOR THE EIGHTH COURT OF APPEALS DISTRICT

**ORDERED** that:

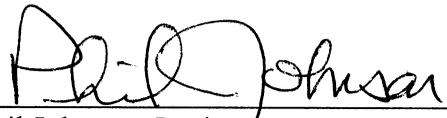
Pursuant to Texas Rule of Appellate Procedure 1.2, this Court approves the following amended local rules for the Eighth Court of Appeals. The procedures prescribed by these local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between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

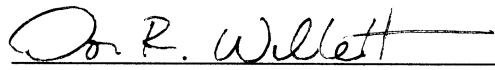
Dated: May 13<sup>th</sup>, 2013.

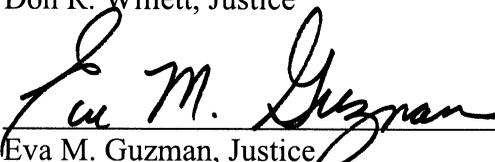
  
Wallace B. Jefferson, Chief Justice

  
Nathan L. Hecht, Justice

  
Paul W. Green, Justice

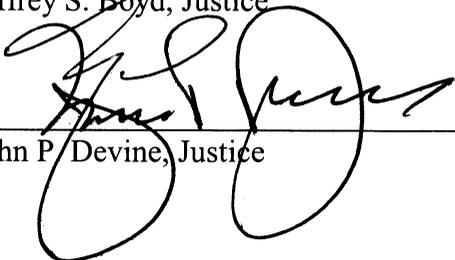
  
Phil Johnson, Justice

  
Don R. Willett, Justice

  
Eva M. Guzman, Justice

  
Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

  
John P. Devine, Justice

## **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;
- (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)

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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).

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Attorney for Appellant(s):

Name

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Address

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Telephone no.: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

SBOT no.: \_\_\_\_\_

Attorney for: \_\_\_\_\_, Appellant(s)

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Name of clerk preparing the clerk's record: \_\_\_\_\_

- (i) include on the front cover of the second and subsequent volumes of the clerk's record the same information required under Local Rule 1.1(h), in substantially the same form;
- (j) prepare and include after the front cover of the clerk's record a detailed table of contents identifying each document in the entire record (including sealed documents), the date each document was filed, and, except for sealed documents, the page on which each document begins. The table of contents must be double-spaced and conform to the order in which documents appear in the clerk's record, rather than in alphabetical order. If the clerk's record consists of multiple volumes, the table of contents must indicate the page on which each volume begins. **If the clerk's record is filed in electronic form, the clerk must use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins;** and
- (k) conclude the clerk's record with a certificate in substantially the following form:

The State of Texas                    )  
 County of \_\_\_\_\_            )  
 I, \_\_\_\_\_, Clerk of the \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas  
 do hereby certify that the documents contained in this record to which this  
 certification is attached are all of the documents specified by Texas Rule  
 of Appellate Procedure 34.5(a) and all other documents timely requested  
 by a party to this proceeding under Texas Rule of Appellate Procedure  
 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in \_\_\_\_\_, County, Texas  
 this \_\_\_ day of \_\_\_\_\_.

signature of clerk \_\_\_\_\_  
 name of clerk \_\_\_\_\_  
 title \_\_\_\_\_

If the clerk's record is filed in electronic form, the trial court clerk's login and password serves as the clerk's signature on the certification page. The clerk also must include either a scanned image of the clerk's signature or "/s/" and the clerk's name typed in the space where the signature would otherwise appear.

## **Rule 1.2 Filing an Electronic Clerk's Record.**

The Eighth Court of Appeals **prefers** the filing of clerk's records in electronic form. Effective January 1, 2014, e-filing of the clerk's record in civil cases is **required**. 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 El Paso County, the file new would be "ElPaso-[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 Local Rule 1.2(e)(6) to identify the sequential order of the volumes (e.g., ElPaso-[trial court case #]-CLR-Vol001.pdf, ElPaso-[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., ElPaso-[trial court case #]-CLR-1Sealed.pdf, ElPaso-[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., ElPaso-[trial court case #]-CLR-1Supp-Vol001.pdf, ElPaso-[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 Eighth 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) not include any tabs or dividers;
- (e) number the first volume “1” and each succeeding volume sequentially;
- (f) if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and

- (g) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

**Rule 1.4. Material Violation of Local Rule 1.**

In the event of a material violation of this rule 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 Local Rule 1.

**Rule 2. Reporter's Record.**

The Eighth Court of Appeals **prefers** the filing of reporter's records in electronic form. Effective January 1, 2014, e-filing of the clerk's record in civil cases is **required**.

**Rule 2.1. Preparation of the Reporter's Record.**

- (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, 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 Eighth Court of Appeals' website.

**Rule 2.2. Material Violation of Local Rule 2.**

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 Filing of Documents.**

- (a) **Electronic filing permitted and preferred.** 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. Effective January 1, 2014, e-filing will be **required** in civil cases. Persons not represented by an attorney may e-file documents, but e-filing is not required.
- (b) **E-filing mechanism.** E-filing must be done through the statewide e-filing 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 statewide e-filing portal 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 the statewide e-filing portal, 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 the statewide e-filing portal 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 the statewide e-filing portal. Directions may be found on the statewide e-filing portal website.

- (1) Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary statewide e-filing portal 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 courts.
  - (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 e-filed document.**
- (1) Unless the court orders otherwise, a document other than a clerk's record or a reporter's record, including the contents of any appendices, 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. The filer must redact all of this 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.
  - (2) The 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 a 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 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 document to a listed identifier will be construed to refer to the corresponding item of information. If the filer provides a reference list pursuant to this rule, the front page of the 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. 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) and 9.4(i). The “paper” requirements in Rule 9.4(b)-(c) apply equally to a “page” of the e-filed document.
  - (2) An e-filed document must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. Except as otherwise provided by this rule, an e-filed document created by a word processing program must not be a scan of the original but must instead be converted directly into a PDF file using Adobe Acrobat, a word processing program’s PDF conversion utility, or another software program. Whenever possible, scanning should be avoided. An

EFSP may convert each e-filed document from its original form into a PDF file that complies with this rule.

- (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 the statewide e-filing portal'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 reject 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 an **“/s/” and the e-filer’s name typed in the space where the e-filer’s signature would otherwise appear.** 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 an **“/s/”** and his or her name typed in the space where his or her signature would otherwise appear.
- (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 (1) paper copy of a record in an original proceeding, one (1) paper copy of a petition, response, and reply in original proceedings, and one (1) paper copy of any brief on the merits. The paper copies must be filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the document is e-filed. An e-filer is not required to file any paper copies of any other e-filed document. The Court may request additional copies when necessary.
- (i) **Casemail registration.** Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.
- (j) **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.
- (k) **Email address requirements and communications with the clerk.** An e-filed document must include the e-filer's 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 the statewide e-filing portal or, if applicable, the party's EFSP with the new email address within one business day of the change. The clerk may send notices of other communications about a case to an attorney's email address in lieu of mailing paper documents.

#### **Rule 4. Suspension of Local Rules for Electronic Filings.**

Upon receipt of a motion or on its own initiative, the Eighth 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.

#### **Rule 5. Briefs in cross-appeals.**

- (a) In a civil appeal in which a cross-appeal has been timely filed, the briefs to be filed by the parties are:
  - (1) the appellant's brief;
  - (2) a combined appellee's and cross-appellant's brief;
  - (3) a combined appellant's reply and cross-appellee's brief;  
and
  - (4) the cross-appellant's reply brief.
  
- (b) The aggregate number of pages for all briefs filed by any party may not exceed 37,500 words if computer-generated or 125 pages if not. The calculation of length will be made as specified by Texas Rule of Appellate Procedure 9.4(i). The limitations on length are those set forth in Rule 9.4(i)(2), except as provided for herein for the combined appellee/cross-appellant's and appellant's reply/cross-appellee's briefs. The combined appellee/cross-appellant's brief may be 30,000 words if computer-generated or 100 pages if not, 15,000 words (50 pages) for the appellee's portion and 15,000 words (50 pages) for the cross-appellant's portion. The combined appellant's reply/cross-appellee's brief may be 22,500 words if computer-generated or 75 pages if not, 7,500 words (25 pages) for the reply brief and 15,000 words (50 pages) for the cross-appellee's brief.
  
- (c) The deadlines for filing the briefs are:

- (1) The appellant's brief is due no later than thirty days after the date the record is filed with the court.
  - (2) The appellee/cross-appellant's brief is due no later than thirty days after the date the appellant's brief is filed.
  - (3) The appellant's reply/cross-appellee's brief is due no later than thirty days after the date the appellee/cross-appellant's brief is filed.
  - (4) The cross-appellant's reply brief is due twenty days after the date the cross-appellee's brief is filed.
- (d) If appellant or cross-appellant's appeal is dismissed and the appeal remains pending on the undismissed notice of appeal, the briefing schedule and page limitations will be as provided for in the rules of appellate procedure.
- (e) The court may change the requirements of this rule on its own motion or motion of any party to the appeal.

**Rule 6. Number of Paper Copies if not Electronically Filed.**

If not electronically filed, a party must file:

- (a) the original and one copy of a motion to dismiss pursuant to Rule 42.2;
- (b) the original of any motion filed before submission of the case with the exception of a motion addressed by Local Rule 6(a);
- (c) the original and one copy of a motion for rehearing;
- (d) the original of a motion for extension of time to file a motion for rehearing;
- (e) the original and three copies of a petition seeking extraordinary relief or the response; and
- (f) only one copy of the record in an original proceeding

**Rule 7. Request for Temporary or Emergency Relief in Original Proceedings.**

If temporary relief is requested in an original proceeding, a separate motion must be filed. The motion must comply with the requirements of Rule 52.10 of the Texas Rules of Appellate Procedure.

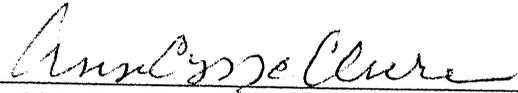
**Rule 8. Identity of Parties, Attorneys, and Trial Judges.**

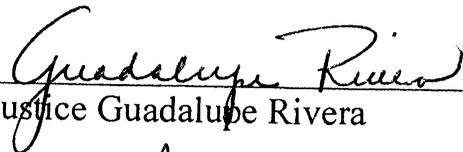
In addition to the requirement of Rules 38.1(a) and 52.3 that the brief give a complete list of all parties and the names and addresses of counsel, the appellant's brief and the relator's petition should include the identity of all trial judges, including visiting judges, presiding in the case below.

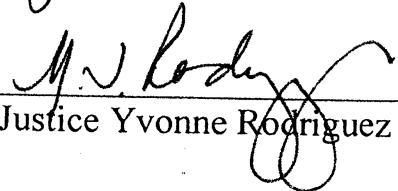
## ORDER ADOPTING LOCAL RULES

These local rules for the Eighth Court of Appeals are adopted effective \_\_\_\_\_, 2013, subject to the approval of the Supreme Court of Texas and the Texas Court of Criminal Appeals. All local rules promulgated prior to the date of this order are rescinded, but this shall not affect any proper action taken pursuant to those rules.

Signed this 1 day of March, 2013.

  
\_\_\_\_\_  
Chief Justice Ann Crawford McClure

  
\_\_\_\_\_  
Justice Guadalupe Rivera

  
\_\_\_\_\_  
Justice Yvonne Rodriguez