



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

**LOCAL RULES
Including Amendments Received Through February 7, 2024**

RULE 1. BRIEFS

All briefs, in both civil and criminal cases, must conform to Rules 9 and 38 of the Texas Rules of Appellate Procedure. All briefs must also meet the following requirements, unless the court, upon motion, permits an exception to the rules:

A. Cover. The front cover of the brief must (1) be addressed to the Court of Appeals for the Second District of Texas and (2) identify the presiding judge and the trial court from which the appeal is taken, for example, “Appeal from the [number] District Court, [name] County, Texas, the Hon. [name] presiding.”

B. Motions for Leave to File Briefs. The appellant’s opening brief, the appellee’s opening brief, and the appellant’s reply brief may be filed without leave of court, if timely. All other briefs of the parties must be accompanied by a motion for leave to file, unless the brief is requested by the court.

C. Letter Briefs. Letter briefs must be addressed to the clerk and refer to the style and number of the case. They must be double-spaced, except for the address to the clerk.

D. Filing Dates. The court will set filing dates for appellant’s and appellee’s opening briefs when the record is filed and notify the parties of the filing dates. Motions to extend the filing dates for briefs will not be granted except upon a reasonable explanation of the need for an extension.

E. Recording or Exhibit. Whenever a party raises an issue in a brief that requires the court to view a video or audio recording or physical exhibit, the party must file in this court a motion to supplement the appellate record with the recording or exhibit when the party files its brief if the party did not designate the exhibit to be included in the reporter’s record.

RULE 1.1. APPENDIX IN LIEU OF CLERK’S RECORD IN A CIVIL CASE

This rule sets out additional procedures to be followed in this court when a party opts to file an appendix in lieu of a clerk’s record in a civil case. See Tex. Civ. Prac. & Rem. Code Ann. § 51.018 (applicable to notices of appeal filed on or after January 1, 2024). An appendix in lieu of a clerk’s record is different from the appendix required in civil cases under Rule 38.1(k) of the Texas Rules of Appellate Procedure. The below rule contains the text of proposed Rule 34.5a as published in the Texas Supreme Court’s Misc. Docket No. 23-9106, which substantially comprises subsections (a)–(b), and additional Second-Court-specific sections and additions to the proposed rule. For clarity, this court’s augmentations to the supreme court’s proposed rule are italicized.

(a) **Notice of Election.** Within 10 days after the date that an appellant files a notice of appeal for a civil suit, an appellant may file a notice of election with the trial court and the court of appeals stating that the appellant will file an appendix that replaces the clerk’s record for the appeal.

(b) **Time to File Original Appendix.** The appellant filing a notice of election under (a) must file the appendix with the appellant’s brief. Except by order of the court under *Texas Rule of Appellate Procedure* 38.6(d), the brief and appendix must be filed within 30 days—or 20 days in an accelerated appeal—after the later of:

- (1) the date the appellant filed the notice of election under (a); or
- (2) the date the reporter’s record, if any, is filed with the court of appeals.

(c) **Supplemental or Joint Appendices.** If the appellant files an appendix under (b), any other party may file a supplemental appendix with that party's brief. The parties may agree under *Texas Rule of Appellate Procedure* 6.6 to file a joint appendix. *Such an agreed joint appendix must be filed at the same time as the appellant's brief.*

(d) **Court-Directed Supplement.** The court of appeals may direct the appellant to file a supplemental appendix containing items described by the court of appeals. If the appellant fails to supplement as requested, and the record fails to establish the court of appeals' jurisdiction, the court of appeals may dismiss the appeal. In cases where the court of appeals has jurisdiction, and the appellant fails to supplement as requested, the court of appeals may presume that the missing items support the trial court's judgment.

(e) **Contents of Original Appendix.** The appendix filed under (b) must contain a copy of:

(1) each document required by *Texas Rule of Appellate Procedure* 34.5(a) for a civil case; and

(2) any other item in the record and referenced in the appellant's brief.

(f) **Contents of All Appendices.** When available, the contents of an appendix must be file-stamped. An appendix must not contain a document that was not filed with the trial court, except:

(1) if the document was issued by the trial court; or

(2) by agreement of the parties under *Texas Rule of Appellate Procedure* 6.6.

(g) **Filing Requirements for All Appendices.** An appendix must be filed separately from any other document, and the pages must be consecutively numbered. An appendix must meet the applicable filing requirements of *Texas Rules of Appellate Procedure* 9.4, 9.8, and 9.9. A nonconforming appendix is subject to court action under *Texas Rule of Appellate Procedure* 9.4(k). A conforming appendix becomes a part of the appellate record under *Texas Rule of Appellate Procedure* 34.1

(h) **No Clerk's Record.** A court clerk must not prepare or file a clerk's record or assess a fee for preparing a clerk's record if a party files an appendix under this rule.

(i) ***Additional Filing Requirements for Second Court of Appeals.***

1. ***Separate filing.*** *Because a Section 51.018 appendix must be filed separately from any other document, it must satisfy the certificate requirements of Texas Rule of Appellate Procedure 9.5(e).*

2. ***Cover page.*** *The appendix must contain a cover page that includes (i) the case style; (ii) the case number; (iii) the trial-court cause number of the matter being appealed; (iv) the name*

of the party filing the appendix; and (v) the name, mailing address, telephone number, fax number (if any), email address, and State Bar of Texas identification number of the lead counsel for the filing party or the name, mailing address, telephone number, fax number (if any), and email address of an unrepresented party filing an appendix.

3. Index; appendix format. Each Section 51.018 appendix must contain an index immediately following the cover page. The index must be in chronological order from the earliest to the latest date that a pleading contained in the appendix was filed with a court clerk or that an order was signed. The appendix pages must be sequentially numbered. For each document included in the appendix, the index must separately list such document and identify it by (i) the verbatim title of the pleading or order (or by other information sufficient to identify the document if it is not a pleading or order), (ii) the file-mark date of the document or the date of an order's signature, and (iii) a listing of the number within the appendix's sequence of documents where the first page of the included document is found. The appendix must be electronically bookmarked for each document contained in the appendix. The index listing of any document filed by the parties' agreement pursuant to Section 51.018(c) must contain a notation that it is being filed pursuant to that subsection, and such agreed document(s) must appear in the appendix after documents filed with a court clerk. For a document filed by agreement, the parties are reminded that the court cannot consider materials outside the appellate record. *In re K.M.*, 401 S.W.3d 864, 866 (Tex. App.—Houston [14th Dist.] 2013, no pet.). For an electronically filed appendix in lieu of a clerk's record, the appendix must comply with the e-filing requirements of Texas Rule of Appellate Procedure 9.4(j). An unrepresented party not filing an appendix electronically must include an index that meets this subsection's requirements. A nonconforming appendix is subject to court action under Texas Rule of Appellate Procedure 9.4(k).

(j) **Redaction.** An appendix in lieu of a clerk's record must comply with (i) the requirements for the protection of a minor's identity contained in Texas Rule of Appellate Procedure 9.8, (ii) the privacy protection for documents filed in civil cases contained in Texas Rule of Appellate Procedure 9.9,

and (iii) Local Rule 7. The party filing the appendix must also follow any other redaction requirement imposed under Texas or federal law.

(k) **References in Briefs or Other Appellate Filings.** To distinguish between an appellant's Texas Rule of Appellate Procedure 38.1(k) appendix and a Section 51.018 appendix in lieu of a clerk's record, the parties should cite to a page (or page range) within a Section 51.018 appendix as "ALCR ____."

RULE 2. ORIGINAL PROCEEDINGS

Original proceedings are governed by Rule 52 of the Texas Rules of Appellate Procedure and this rule. If the court is of the tentative opinion that relator is entitled to relief or that a serious question concerning the relief requires further consideration, the clerk will send the parties notice stating (1) the date the real party in interest's response must be filed, if one has not been filed, (2) the date the relator's reply to the response must be filed, if permitted by the court, (3) whether the court will allow argument or will submit the case without oral argument, (4) if oral argument is permitted, the date and the time allotted for argument, and (5) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court.

RULE 3. MOTIONS

All motions must comply with Rules 9 and 10 of the Texas Rules of Appellate Procedure and this rule.

A. Number of Copies. If a motion is not electronically filed, the original and one copy of every motion must be filed with the clerk.

B. Signatures and Certificates. In both civil and criminal cases, all motions must contain a signature, a certificate of service, and, except motions for rehearing, a certificate of conference stating substantially one of the following:

- (1) A conference was held on [date] with the opposing party on the merits of this motion, and the opposing party [does][does not] oppose the motion.
- (2) The following diligent attempts were made to confer with the opposing party [list attempts], but a conference was not held because [provide explanation].

C. Motions for Extension of Time in Criminal Cases. In addition to complying with Rule 10 of the Texas Rules of Appellate Procedure, all motions for extension of time in criminal cases must state whether the defendant is incarcerated.

D. Motions for Rehearing and En Banc Reconsideration. A motion for rehearing and a motion for en banc reconsideration must include a copy of the opinion and judgment of the court of appeals.

RULE 4. ORAL ARGUMENT

Oral argument is governed by Rule 39 of the Texas Rules of Appellate Procedure and this rule.

A. Request. Oral argument should not be requested unless the party requesting argument intends to appear on the date set for submission. Conditional requests for argument (e.g., “Appellant requests oral argument only if oral argument is requested by appellee.”) are acceptable.

B. Time Allowed. Unless additional time is granted by the presiding justice of the panel to which the case is assigned, oral argument will be limited to twenty minutes for the appellant’s argument and twenty minutes for the appellee’s argument. Appellant may reserve up to five minutes from the time allotted for appellant’s argument for rebuttal. To reserve time for rebuttal, appellant must notify the court before oral argument begins. Requests for additional time must be made by motion filed at least ten days before the scheduled submission date.

C. Continuance. After a case has been set for argument, oral argument may be continued only by an order of the court for good cause. It may not be continued by agreement of the parties.

D. Waiver. A party who desires to waive an oral argument that has been previously requested or scheduled must notify the clerk and all opposing parties at least seven days before the scheduled submission date.

RULE 5. FAX FILING OF DOCUMENTS

A. By the Court. Except as specifically required by the Texas Rules of Appellate Procedure, any notices issued by the clerk of the court or any orders issued by the court may be made by fax, at the discretion of the court. Fax notification will be made to the fax number provided by the attorney of record for each party to the appeal.

B. By the Parties.

(1) **Permissible Fax Filings.** A party may fax file a document only if the party is not required to electronically file the document. The clerk will accept for fax filing any document that is a total of ten transmitted pages or less, excluding the cover sheet. Documents may be faxed to the court (fax number: 817-884-1932) both during and after normal working hours, but documents received after 4:45 p.m. will be considered filed the next day the court is open to the public.

(2) **Cover Sheet.** A cover sheet must accompany all documents transmitted by fax and must clearly identify: (1) the name, address, telephone number, fax number, and email address, if any, of the sender; (2) the name of the party the sender represents; (3) the document being transmitted; (4) the cause number; (5) the number of pages being transmitted; and (6) the name of the clerk or deputy clerk, if any, to whose attention the document is directed.

(3) **Receipt of Transmission.** The quality of the original must be clear and dark enough to be transmitted legibly by fax. The clerk will be responsible for events that disrupt, impair, or render impossible the receipt of documents transmitted by fax. The sender is obligated to ensure that documents transmitted by fax have been received legibly and completely by the clerk. Although the clerk's office will verify by telephone that a document has been received legibly and completely, it will not initiate the telephone call. If a document transmitted by fax is not complete or is otherwise illegible, the clerk will nonetheless file it and bring it to the attention of the court. However, the incompleteness or illegibility of a document may be grounds for striking or denying a motion.

(4) **Service on Parties.** The party transmitting a document by fax must serve a copy of the document on all parties to the appeal by fax or other expedited means.

(5) **Fees.** The sender must deposit any applicable fees in the U.S. mail on the day the fax is transmitted. Failure of the clerk to receive the fees within seven days after the day the fax is filed may result in the striking of the filing transmitted by fax.

RULE 6. WITHDRAWAL OF RECORD ON APPEAL

In addition to the conditions in Rule 12.4 of the Texas Rules of Appellate Procedure, the clerk may permit a paper-filed record or other paper-filed item to be taken from the clerk's office on the following conditions:

A. Civil Cases. In civil cases, attorneys may check out a paper-filed record from the clerk at any time up to three days before the date on which the case is scheduled to be submitted to the court. After that time, attorneys may not check out the court of appeals' record except on leave of the court. An attorney who checks out the record must return it promptly to the clerk on demand. Pro se parties may inspect

a paper-filed record only on the premises of this court. Parties may request one CD copy of an electronically filed record at any time.

B. Criminal Cases. In criminal cases, the court will not allow the record to be checked out. Records must be checked out through the district clerk's office or county clerk's office in the county from which the appeal arose.

RULE 7. PROTECTION OF PARTIES' IDENTITIES IN FILED DOCUMENTS

In parental termination and child protection cases, as defined in Rule 28.4(a) of the Texas Rules of Appellate Procedure, and juvenile court cases, in all documents submitted to the court other than a docketing statement—including all appendix items submitted with a brief, petition, or motion—a party must use an alias, as defined in Rule 9.8(a) of the Texas Rules of Appellate Procedure, to identify not only a minor, but also a minor's parent, family member, foster parent, and any other person necessary to protect a minor's identity and must redact all such documents accordingly. Additionally, in other appeals or original proceedings in which the court determines that a child's or other person's identity should be protected, the clerk's office may request that the parties use aliases in their documents filed with the court.