

CONFERENCE OF COURT OF APPEAL JUDGES  
RULE CHANGES  
ADOPTED AT THE OCTOBER 2013 FALL CONFERENCE MEETING

TO BE EFFECTIVE JANUARY 1, 2014

Language with ~~strike through~~ are deletions from current rules; language with **bold and underline** are additions to current rules.

*1. Proposed change to Rule 2-11.4 clarifies that the request for oral argument must be made in a motion or letter and cannot be included in the party's brief:*

Rule 2-11.4. Request for Oral Argument

Appeals in all cases shall be submitted for decision without oral argument unless a written request for permission to orally argue is filed in the clerk's office by a party within thirty (30) days after the filing of the record in the court, and permission is granted. **Pursuant to this rule, the request for oral argument must be in the form of a motion or a letter. A request made within a party's brief will NOT suffice. A request for oral argument by only one of the parties is acceptable.** Ordinarily, timely requests for oral argument will be granted, except in cases assigned for summary disposition. When permission for oral argument has been granted to one party, the right to oral argument extends to all parties, unless the right to orally argue had been forfeited. ~~A request for oral argument in letter form by one of the parties is acceptable.~~

*2. Proposed changes to Rules 2-8.2, 2-14.1 and 2-14.2 authorize litigants on appeal to use the same various means (including email) to serve opposing parties as is authorized at the trial court level pursuant to Code of Civil Procedure art. 1313:*

2-8.2. Service of Motion

A copy of a motion to dismiss or to remand an appeal, together with a copy of the accompanying brief, if any, shall be ~~delivered or mailed~~ **served in accordance with the provisions of Louisiana Code of Civil Procedure art. 1313** to opposing counsel of record, and to each opposing party not represented by counsel.

Rule 2-14. Service of Legible Copies; Certificate

2-14.1. Service of Legible Copies

**At or before the time of filing,** legible copies of all papers filed in a Court of Appeal by any party shall, ~~at or before the time of filing, be delivered or mailed by the party to all other parties, or counsel of record.~~ **be served in accordance with the provisions of Louisiana Code of Civil Procedure art. 1313 to opposing counsel of record and to each opposing party not represented by counsel.**

## 2-14.2. Certificate

The fact of such service shall be evidenced by a certificate listing all parties and all counsel, indicating the parties each represents, and showing how and when **and by what means** such service was accomplished.

3. *Proposed changes to Rules 3-1.1 and 3-3.2 remove the requirement that an assignment of errors be filed with an application for appeal in administrative appeals and generally conform the language of the rules to the records preparation articles in the Louisiana Code of Civil Procedure:*

### 3-1.1. Application for Appeal

Every application for appeal from a final decision of any administrative body shall be filed with the appropriate administrative body in writing as required by law and shall **may** include an ~~assignment of errors, which shall set out separately and particularly each error asserted and a designation of the portions of the record~~ **documents filed and transcripts** desired to be incorporated into the transcript. **record on appeal. If such a designation is made,** within 5 days after the filing of an application for appeal, any other party to the appeal may file a designation of additional portions of the record to be included for a proper review of the questions comprised within the assignment of errors. **If no designation is made, the record shall be a transcript of all the proceedings as well as all documents filed with the administrative body.** The administrative body shall transmit to a Court of Appeal, as a transcript of the record, ~~only the portions of the record so designated.~~ Costs for the inclusion of any unnecessary part of the record in any transcript may be assessed against the party requiring such inclusion. If by written stipulation filed with the administrative body, all parties agree on the portions of the record to be included in the transcript, only such portions shall be included. In all cases **The record on appeal shall include** the application for appeal, the assignment of errors and the **any** designation of the record shall be copied into the transcript. The administrative body shall certify the correctness of the transcript of the record, **and a certification by the administrative body as to the correctness of the record.**

Appeals from the Office of Workers' Compensation. In addition, the record on appeal from the Office of Worker's Compensation shall include a jurisdictional statement as contemplated by LSA-R.S. 23:1310.4 and 23:1310.5(A)(2).

### 3-1.2. Filing and Return Dates

The administrative body shall endorse on every application for an appeal the date of its filing and shall fix the return date, which shall not be more than 60 days from the date of filing the application for appeal. **The administrative body shall transmit the record to the appropriate Court of Appeal by the return date.**

4. Proposed changes to Rules 2-12.2, 2-12.4 and 2-12.5 hone the requirements for the appellant brief and the appellee brief:

## 2-12.2. Preparation of Briefs

**A. The provisions of this Section shall apply to briefs submitted in appeals and to briefs or supporting memoranda submitted in connection with motions, applications for supervisory writs and applications for rehearing.**

**B.** Briefs may be printed, typewritten, or produced by any copying or duplicating process which produces a clear black image on white paper. Illegible copies and photocopies produced on wet copiers are not acceptable. Briefs may be typewritten or otherwise acceptably produced on either letter or legal-size, white, unglazed, opaque paper, with a margin of 1" on each side, using only one side of each page. ~~Briefs may be backed with a flexible or plastic manuscript cover, such as the customary "Blue back".~~ The text of briefs shall be double-spaced except for matters which are customarily single-spaced. The pages in the briefs shall be numbered consecutively.

**C.** The language used in the brief shall be courteous, free from vile, obscene, obnoxious, or offensive expressions, and free from insulting, abusive, discourteous, or irrelevant matter or criticism of any person, class of persons or association of persons, or any court, or judge or other officer thereof, or of any institution. Any violation of this Rule **Subsection** shall subject the author, or authors, of the brief to punishment for contempt of court, and to having such brief returned.

**D.** ~~The requirements listed above shall apply to briefs submitted both in appeals and in briefs or supportive memoranda submitted in connection with motions, applications for supervisory writs, applications for rehearing and~~ **The preparation of briefs** shall be subject to the following requirements and limitations:

**(1)** Original briefs on 8 1/2" X 14" paper shall not exceed ~~twenty-eight~~ **thirty-one** pages; reply briefs on such paper shall not exceed thirteen pages. Original briefs on 8 1/2" X 11" paper shall not exceed ~~thirty-eight~~ **forty-one** pages; reply briefs on such paper shall not exceed eighteen pages. These limitations do not include pages containing the cover, jurisdictional statement, syllabus, specification or assignment of errors, and issues presented for review **table of contents required by Rule 2-12.4, Subsection A(1) and the table of authorities required by Rule 2-12.4, Subsection A(2).**

**(2)** The size type in all briefs will be: (a) Roman or Times New Roman 14 point or larger computer font, normal spacing; or (b) no more than 10 characters per inch typewriter print. A margin of at least one inch at the top and bottom of each page shall be maintained. Footnotes may be single-spaced but shall not be used to circumvent the spirit of this rule.

**(3)** A motion for leave to file a brief in excess of the page limitation of this rule must be filed at least ten days in advance of the due date of the brief. Such a motion will be granted only for extraordinary and compelling reasons.

## 2-12.4. Appellant's Brief

A. The brief of the appellant or relator shall set forth **contain, under appropriate headings and in the order indicated:**

(1) a table of contents with page references;

(2) a table of authorities, including cases alphabetically arranged, statutes and other authorities, with references to the pages of the brief where the authorities are cited;

(3) the jurisdiction of the court, a jurisdictional statement setting forth the constitutional and statutory basis for the court to exercise appellate jurisdiction, with citations to applicable provisions. The jurisdictional statement shall also include the dates of the judgment appealed and of the motion and order for appeal to establish the timeliness of the appeal and the following, as applicable:

(a) an assertion that the appeal is from a final appealable judgment and, if the appealability is dependent upon a designation by the trial court, a reference to the specific page numbers of the record where the designation and reasons for the designation are to be found, or

(b) an assertion that the appeal is from an interlocutory judgment or order which is appealable as expressly provided by law, or

(c) an assertion of information establishing the court of appeal's jurisdiction on some other basis;

(4) a concise statement of the case, indicating the nature of the case, the ruling or action of the trial court thereon, and the disposition;

(5) a specification or assignments of alleged errors relied upon;

(6) the a listing of issues presented for review;

(7) a statement of facts relevant to the assignments of error and issues for review, with references to the specific page numbers of the record;

(8) a short summary of the argument, i.e., a succinct, clear and accurate statement of the arguments made in the body of the brief;

(9) an the argument, which shall contain:

(a) confined strictly to the issues of the case, free from unnecessary repetition, giving accurate citations of appellant's contentions, with reference to the specific pages numbers of the record and citations to the authorities cited, and on which the appellant relies,

(b) for each assignment of error and issue for review, a concise statement of the applicable standard of review, which may appear in the discussion or under a separate heading placed before the discussion, and

(c) for each assignment of error and issue for review which required an objection or proffer to preserve, a statement that the objection or proffer was made, with reference to the specific page numbers of the record; and

(10) a short conclusion stating the precise relief sought.

**B. (1)** A copy of the judgment, order, or ruling complained of, and a copy of either the trial court's written reasons for judgment, transcribed oral reasons for judgment, or minute entry of the reasons, if given, shall be appended to the brief of the complaining litigant on appeal **appellant**. If reasons for judgment were not given, the brief shall so declare.

**(2)** Citation of Louisiana cases shall be in conformity with Section VIII of the Louisiana Supreme Court General Administrative Rules. Citations of other cases shall be to volume and page of the official reports (and when possible to the unofficial reports). It is recommended that where United States Supreme Court cases are cited, all three reports be cited, e.g., *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). When a decision from another state is cited, a copy thereof should be attached to the brief.

**(3)** ~~The argument on a specification or assignment of error in a brief shall include a suitable reference by volume and page to the place in the record which contains the basis for the alleged error.~~ The court may disregard the argument on that error in the event **an assignment of error or issue for review if** suitable reference to the **specific page numbers of the** record is not made.

**(4)** All specifications or assignments of error **and issues for review** must be briefed. The court may consider as abandoned any ~~specification or~~ assignment of error **or issue for review** which has not been briefed.

~~The language used in the brief shall be courteous, free from vile, obscene, obnoxious, or offensive expressions, and free from insulting, abusive, discourteous, or irrelevant matter or criticism of any person, class of persons or association of persons, or any court, or judge or other officer thereof, or of any institution. Any violation of this Rule shall subject the author, or authors, of the brief to punishment for contempt of court, and to having such brief returned.~~

## 2-12.5. Appellee's Brief

The brief of the appellee shall **contain appropriate and concise responses and arguments to the contentions and arguments of the appellant and shall** conform to the requirements for the appellant's brief as set out **forth** in the preceding Rule **2-12.4**, except that a statement of the jurisdiction, the ruling or action of the trial court, the facts and of the issues need not be included unless the appellee considers the statements of the appellant to be insufficient or incorrect. It should contain appropriate and concise answers and arguments and reference to the contentions and arguments of the appellant, **the following need not be included unless the appellee is dissatisfied with the appellant's statements:**

**(1) the jurisdictional statement, Rule 2-12-4, Subsection A(3);**

**(2) the statement of the case, Rule 2-12-4, Subsection A(4);**

**(3) the listing of issues, Rule 2-12.4, Subsection A(6);**

**(4) the statement of facts, Rule 2-12.4, Subsection A(7); and**

**(5) the statement of the standard of review, Rule 2-12.4, Subsection A(9)(b).**