

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Gino J. Agnello, Clerk of Court

March 22, 2018

**Notice of Proposed Circuit Rule
Changes and Opportunity for Comment**

Notice is hereby given that the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 2071 proposes the modification of Circuit Rule 10 and the rescision of Circuit Rule 11. Deletions are shown by strikeouts. New text is highlighted. Written comments on the proposed rule changes must be sent by April 25, 2018, to:

Advisory Committee
c/o Clerk of Court
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Comments can also be made via e-mail at: USCA7_Clerk@ca7.uscourts.gov

CIRCUIT RULE 10. Preparation and Accessibility of Record in District Court Appeals

(a) Record Preparation Duties.

(1) Within 14 days of filing the notice of appeal the district court must ensure the district court docket is complete and made available electronically to the court of appeals.

(2) The clerk of the district court must prepare and hold any confidential record or exhibit not available electronically on the district court docket until requested by the court of appeals.

(3) Counsel must ensure, within 21 days of filing the notice of appeal, that all electronic and non electronic documents necessary for review on appeal are on the district court docket.

~~The clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court, and exhibits received or offered in evidence (with the exceptions listed below). The transcript of a deposition is "filed" within the meaning of this rule, and an exhibit is "received or~~

offered," to the extent that it is tendered to the district court in support of a brief or motion, whether or not the rules of the district court treat deposition transcripts or exhibits as part of the record. These materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e). Counsel must ensure exhibits and transcripts to be included in the record which are not in the possession of the district court clerk are furnished to the clerk within fourteen days after the filing of the notice of appeal. The following items will not be included in a record unless specifically requested by a party by item and date of filing within fourteen days after the notice of appeal is filed or unless specifically ordered by this court:

- briefs and memoranda;
- notices of filings;
- subpoenas;
- summonses;
- motions to extend time;
- affidavits and admissions of service and mailing;
- notices of settings;
- depositions and notices, and
- jury lists.

(b) *Correction or Modification of Record.* A motion to correct or modify the record pursuant to Rule 10(e), Fed. R. App. P., or a motion to strike matter from the record on the ground that it is not properly a part thereof shall **must** be presented first to the district court. That court's order ruling on the motion **will must** be included as part of the record and a notice of the order must be sent to the court of appeals transmitted to this court as part of the record.

(c) *Order or Certification with Regard to Transcript.* Counsel and court reporters are to utilize the form prescribed by this court when ordering transcripts or certifying that none will be ordered. For specific requirements, see Rules 10(b) and 11(b), Fed. R. App. P.

(d) *Ordering Transcripts in Criminal Cases.*

(1) *Transcripts in Criminal Justice Act Cases.* At the time of the return of a verdict of guilty or, in the case of a bench trial, an adjudication of guilt in a criminal case in which the defendant is represented by counsel appointed under the Criminal Justice Act (C.J.A.), counsel for the defendant shall **must** request a transcript of testimony and other relevant proceedings by completing a C.J.A. Form No. 24 and giving it to the district judge. If the district judge believes an appeal is probable, the judge shall **must** order transcribed so much of the proceedings as the judge believes necessary for an appeal. The transcript shall **must** be filed with the clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a

bench trial, the adjudication of guilt or within seven days after sentencing, whichever occurs later. If the district judge decides not to order the transcript at that time, the judge shall **must** retain the C.J.A. Form No. 24 without ruling. If a notice of appeal is filed later, appointed counsel or counsel for a defendant allowed after trial to proceed on appeal in forma pauperis shall **must** immediately notify the district judge of the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 24 for a free transcript.

(2) *Transcripts in Other Criminal Cases.* Within 14 days after filing the notice of appeal in other criminal cases, the appellant or appellant's counsel shall **must** deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed. R. App. P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay a pro rata share of the cost of a transcript prepared at the request of an indigent co-defendant under the Criminal Justice Act unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

(e) *Indexing of Transcript.* The transcript of proceedings to be ~~transmitted to this court as part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal)~~ shall **must** be produced by the reporter ~~in a volume or volumes, with the pages consecutively numbered throughout all volumes.~~ The transcript of proceedings, ~~or the first volume thereof,~~ shall **must** contain a suitable index, **as well as** ~~which shall refer to the number of the volume as well as the page, shall be cumulative for all volumes, and shall include the following information:~~

(1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination of each witness begins.

(2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of its contents, and with a reference to the pages of the transcript where each exhibit has been identified, offered, and received or rejected.

(3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and it would be cumbersome to apply this paragraph to all the transcripts taken together as one, the rule may be applied separately to each transcript of one trial or other distinct proceeding.

(f) *Presentence Reports.* The presentence report is part of the record on appeal

in every criminal case. The district court must **maintain** ~~transmit~~ this report under seal, unless it has already been placed in the public record in the district court. If the report is ~~transmitted~~ under seal, the report may not be included in the appendix to the brief or the separate appendix under Fed. R. App. P. 30 and Circuit Rule 30. Counsel of record may review the presentence report ~~at the clerk's office~~ but may not review the probation officer's written comments and any other portion submitted in camera to the trial judge.

(g) *Effect of Omissions from the Record on Appeal.* When a party's argument is countered by a contention of waiver for failure to raise the point in the trial court or before an agency, the party opposing the waiver contention must give the record cite where the point was asserted and also ensure that the record before the court of appeals contains the relevant document or transcript.

(h) *Extension of Time for Preparation of Transcript.* Any request by a court reporter for an extension of time longer than 30 days from the date the transcript was first ordered must be filed with the clerk of this court on a form prescribed by the court. The request must include the date the transcript was ordered, the reasons for both that request, and any previous requests for extensions of time, and a certificate that all parties or their counsel have been sent a copy of the request. If the request is for an extension of time longer than 60 days from the date the transcript was first ordered, it must include a statement from the district judge who tried the case or the chief judge of the district court that the request has been brought to that judge's attention and that steps are being taken to insure that all ordered transcripts will be promptly prepared.

CIRCUIT RULE 11. [Rescinded]