

Rule 110. The Record on Appeal**110.01 Composition of the Record on Appeal**

The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

(Amended effective July 1, 2014.)

110.02 The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript

Subdivision 1. Duty to Order Transcript. Within 14 days after filing the notice of appeal, the appellant shall:

(a) pursuant to subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record; or

(b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04; or

(c) notify the respondent in writing that no transcript or statement will be ordered or prepared.

If the entire transcript is not to be included, the appellant, within the 14 days, shall file and serve on the respondent a description of the parts of the transcript which appellant intends to include in the record and a statement of the issues intended to be presented on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, respondent shall order, within 14 days of service of the description or notification of no transcript, those other parts from the reporter, pursuant to subdivision 2 of this rule, or serve and file a motion in the trial court for an order requiring the appellant to do so. A copy of any order of the trial court affecting the transcript shall be filed by the appellant with the clerk of the appellate courts.

If a transcript of an audio or video exhibit is made part of the district court record, it becomes part of the record on appeal. If no such transcript exists, a transcript of the exhibit need not be prepared unless expressly requested by the appellant or respondent. If a transcript of an audio or video exhibit is requested, the court reporter may prepare the transcript. In the alternative, on the written request of the court reporter, the party who offered the exhibit must provide a transcript to the court reporter within 30 days of the date of the request.

Subd. 2. Transcript Certificates. (a) If any part of the proceedings is to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel or self-represented party and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record within 14 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; a statement that satisfactory financial arrangements have been made for the transcription; the court reporter's address and telephone number; and whether a self-represented party has requested a paper copy of the transcript under this paragraph. A self-represented party who orders a transcript may request a paper copy when ordering the transcript if the party does not have an email address to which the transcript can be delivered or does not have access to email.

(b) Upon filing of the transcript with the trial court administrator and delivery to counsel of record, the reporter shall file with the clerk of the appellate courts a certificate of filing and delivery. The certificate shall identify the transcript(s) delivered; specify the dates of filing of the transcript with the trial court administrator and delivery to counsel, or for a self-represented party

who does not receive an electronic copy, the date on which the party was notified by the court reporter of the availability of the transcript at the court administrator's office; and shall indicate the method of delivery. The certificate shall also contain the court reporter's address and telephone number.

(c) The reporter's certificates required by sections (a) and (b) of this subdivision shall be filed electronically with the clerk of appellate courts using the appellate courts' e-filing and e-service system and shall be served on all attorneys and unrepresented parties. The reporter may, but need not, use that system to serve copies of these certificates on attorneys registered for use of the system, and need not provide separate proof of service for certificates served electronically.

Subd. 3. Overdue Transcripts. If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the appellate court pursuant to Rule 127, showing good cause therefor. A justice, judge or a person designated by the appellate court shall act as a referee in hearing the motion and shall file with the appellate court appropriate findings and recommendations for a dispositional order. A failure to comply with the order of the appellate court fixing a time within which the transcript must be delivered may be punished as a contempt of court. The appellate court may declare a reporter ineligible to act as an official court reporter in any court proceeding and prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

Subd. 4. Transcript Requirements. The transcript shall be formatted for 8-1/2 by 11 inch or 8-1/2 by 10-1/2 inch paper with double spacing between each line of text and shall contain a table of contents. To the extent possible, the transcript of a trial or other single court proceeding shall be consecutively paginated, regardless of the number of volumes. The name of each witness shall appear at the top of each page containing that person's testimony. A question and its answer may be contained in a single paragraph. Compressed formats allowing more than one page of transcription to appear on a single page are not permitted for filed transcripts or for service on any party unless the party has consented to a compressed format.

In all appeals from the trial court, the court reporter shall file the transcript with the trial court administrator in electronic format acceptable to the trial court administrator. The court reporter shall promptly transmit an electronic copy of the transcript to the attorney for each party to the appeal separately represented and to any self-represented party by use of (a) the trial court's electronic filing and service system, if the recipient is a registered service recipient on the case being appealed, or (b) email, if the recipient is not a registered service recipient on the case being appealed. For a self-represented party who orders a transcript and requests a paper copy under subdivision 2(a) of this rule because the party does not have an email address to which the transcript can be delivered or does not have access to email, the court reporter shall provide notice by U.S. Mail to the self-represented party that the transcript has been filed with the trial court administrator and a paper copy of that transcript is available at the court administrator's office.

All copies must be legible. Other than with respect to transcripts for audio or video exhibits, the reporter shall certify the correctness of the transcript. The court reporter need not certify the correctness of a transcript of an audio or video exhibit.

The court reporter may correct any transcript prepared by a party for an audio or video exhibit, and must include the transcript of that exhibit with all other transcripts filed and provided for the appeal.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective March 1, 2001; amended effective January 1, 2009; amended effective July 1, 2014; amended effective January 1, 2020; amended effective March 1, 2020; amended effective October 8, 2021; amended effective March 1, 2024.)

See **Appendix** for form of certificate as to transcript (**Form 110**).

Comment - 1983

The transcript must be ordered within ten days after the notice of appeal is filed.

Since a prehearing conference will be held only if the court so directs, within ten days after filing the notice of appeal the appellant must order the transcript or file a notice of intent to proceed on a statement of the proceedings pursuant to Rule 110.03 or 110.04 or notify the respondent that no transcript or statement will be ordered or prepared.

Rule 110.02, subdivision 2, introduces the certificate as to transcript, which includes a statement that financial arrangements satisfactory to the reporter and counsel have been made (see appendix for form). Rule 110.02, subdivision 3, provides sanctions in addition to contempt in the event of the reporter's failure to make timely delivery of the transcript. The certificate must be filed with the clerk of the appellate courts within ten days after the date the transcript was ordered.

The typewritten transcript requirement of Rule 110.02, subdivision 4, is intended to authorize the use of legible computerized or mechanically produced transcripts.

See Appendix for form of certificate as to transcript (Form 110).

Advisory Committee Comment - 1998 Amendments

Subdivision 2 is divided into two sections to emphasize that the court reporter has to file both a transcript certificate and a certificate of filing and delivery, each with different requirements. Court reporters sometimes do not include their telephone number on the certificates, which makes it difficult for the clerk's office to contact them if there is a problem with the certificate. The proposed amendment includes the reporter's telephone number as one of the pieces of information that must be included on the certificate.

Currently, the delivery certificates filed by most reporters only specify the date that the transcript was filed with the trial court administrator, together with a general statement that the transcript was "transmitted promptly" to counsel. The clerk's office uses the filing date as the delivery date for the purpose of calculating the briefing period, which may not be accurate if the reporter does not deliver the transcript on the same day filed. In addition, the certificates usually do not indicate the method of delivery. This makes a difference for calculation of the briefing period, because if the transcript is delivered by mail, three days are added to the briefing period. See Minn. R. Civ. App. P. 125.03. The amended rule introduces the certificate of filing and delivery, which must specify the dates the transcript was filed with the court administrator and delivered to counsel. This certificate may show delivery by hand, by courier, or may show mailing. The court reporter and counsel should insure that the certificate accurately reflects the date and method of delivery of the transcript, because those factors determine the due date of appellant's brief. See Minn. R. Civ. App. P. 125.03, 131.01.

Subdivision 4 includes a new requirement that the transcript be paginated consecutively, to the extent possible. This requirement is intended to reduce the number of transcripts requiring complicated citation forms. The goal is to have consecutive pagination of the entire trial, and any pretrial proceedings that immediately precede the trial as well as any other portions of the transcript that are ordered at the same time. If multiple court reporters were involved in transcribing the proceedings, various segments of the transcript can be assigned blocks of numbers so that pagination will be consecutive, albeit with potential for "missing" numbers. In that event, the transcript should clearly show that the missing numbers are intentionally omitted and identify the correct following transcript page number. There may be situations where it is impossible to paginate the transcript in this manner, and the rule recognizes such occasions may exist. The Committee believes that consecutive pagination should become the norm for transcripts, however, and this rule should make consecutive pagination the standard practice of court reporters.

The rule also includes the requirement that any testimony given by audio, video or other electronic means must be transcribed unless the court reporter provides an existing transcript of the videotape testimony, verifying its accuracy. The requirement for transcription applies only to testimony offered as such at trial, and not to non-testimonial evidence such as ordinary audio or video recordings, witness statements used for impeachment, or other recordings received as exhibits. If an existing transcript exists, it must be submitted with the electronic testimony and it is made part of the record on appeal. The reporter at trial certifies that what is included in the transcript is what transpired at the trial, but does not need to certify the accuracy or quality of the previously prepared transcription. This rule change does not affect the procedure for criminal appeals, as they are governed by Minn. R. Crim. P. 28.02, subd 9.

See Appendix for form of certificate as to transcript and certificate of filing and delivery (Forms 110A and 110B).

Advisory Committee Comment - 2000 Amendments

Rule 110.02, subd. 4, is amended to allow parties to file transcripts in electronic form. With increasing frequency, transcripts of trials and other proceedings are available to counsel and the courts in electronic format, in addition to the traditional typed or printed format. Electronic format offers some significant advantages in the areas of handling, storage, and use. There is no currently accepted standard for preparation of electronic transcripts, which are available in a variety of formats and software contexts. This amendment allows parties the opportunity to file an electronic version of transcripts in addition to the paper transcripts required under the rules; it does not permit this format to replace the traditional paper transcript. As technology advances, additional forms of media may become acceptable.

Advisory Committee Comment - 2008 Amendments

Rule 110.02, subd. 4, is amended to delete provision for filing a transcript in electronic form on 3-1/2 inch diskettes. That format is obsolescent, and CD-ROM is the format best suited to this use and most convenient for the courts and the parties.

Advisory Committee Comment - 2014 Amendments

The amendments in Rule 110.02 serve a single purpose: to replace the presumed production of a paper transcript with an electronic transcript that becomes part of the record on appeal. The rule retains the provision for filing the transcript with the trial court, where it will become part of the record prepared for the appellate court. For districts and counties where electronic filing is in place, transcripts should be filed using the electronic filing system. In counties where electronic filing is not in use, the appellate court may require that the electronic transcript be filed on CD-ROM or other electronically accessible medium.

The rule presumes that all parties in civil appeals from the trial court will receive transcripts in electronic format, but permits them to request them in paper format by making a written request not later than the 10 days after service of the transcript certificate. A party is entitled to a transcript in only one format at the expense of the party ordering the transcript, so a party electing to receive a paper transcript will not receive an electronic transcript. If a party makes a timely request in writing for a paper transcript in lieu of the electronic transcript after the transcript certificate required by Rule 110.02, subdivision 2(a), has been filed, the appellant must prepare an amended transcript certificate confirming that adequate financial arrangements have been made for any paper copies that are timely requested and not originally provided for. Because this necessarily occurs early in the transcript-preparation period, the rule provides that changing the format does not affect the projected delivery date for the transcript. If unusual circumstances warrant, the appellant may move for an extension of the transcript due date. For civil appeals not from the trial court, including agency or other administrative body appeals, it is not necessary that an electronic transcript be prepared. The rule permits an electronic transcript for those agencies or bodies that are able to prepare a transcript in electronic form.

The committee does not contemplate that this rule would be made effective for criminal appeals for purposes of the presumptive delivery to the parties of an electronic transcript, at least not upon adoption in 2014. Paper transcripts are needed in criminal cases, and many clients lack access to devices that would permit them to read electronic transcripts.

Advisory Committee Comment - 2024 Amendment

Rule 110.02, subdivision 2, is amended in 2024 to clarify that self-represented parties are responsible for preparing and signing the transcript certificate.

Rule 110.02, subdivision 4, is amended in 2024 to clarify how copies of transcripts are provided to parties.

110.03 Statement of the Proceedings When No Report Was Made or When the Transcript is Unavailable

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the proceedings from the best available means, including recollection. The statement is not intended to be a complete re-creation of testimony or arguments.

Appellant shall file the original proposed statement with the trial court administrator and the clerk of the appellate courts, and serve a copy on respondent, within 14 days after filing the notice of appeal. Within 14 days after service of appellant's statement, respondent may file with the trial court administrator and the clerk of the appellate courts objections or proposed amendments, and serve a copy on appellant.

The trial court may approve the statement submitted by appellant, or modify the statement based on respondent's submissions or the court's own recollection of the proceedings. The statement as approved by the trial court shall be included in the record. Within 60 days of the filing of the notice of appeal, the original trial court approval of the statement shall be filed with the trial court administrator and copies of the approval shall be served on counsel for the parties and filed with the clerk of the appellate court.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective January 1, 2020.)

Advisory Committee Comment - 1998 Amendments

The statement of the proceedings under Rule 110.03 may not be used if a transcript is available. The use of an agreed statement as the record under Rule 110.04 is restricted to situations where the parties agree on the essential facts and the portions of the record necessary for appellate review.

It was not clear under the former rule who was responsible for submitting the proposed statement and any objections to the trial court, or what the time period for the submission was. Under the amended rule, each party is responsible for filing their documents with the trial court administrator at the same time that the documents are served.

The amendment requires service of the proposed statement and objections on the clerk of the appellate courts, to allow the clerk's office to monitor whether the statement is being processed in a timely fashion. In addition, the amendment clarifies that the original approval is to be filed with the trial court administrator, with copies to counsel and the clerk of the appellate courts. Under the rule, the original statement and approval were filed with the clerk of the appellate courts. The amendment requires that the original be filed with the trial court administrator, because it is part of the record of the proceedings.

The amendment is also intended to clarify that the trial court is not bound by the parties' submissions but may modify the statement based on the court's recollection.

110.04 Agreed Statement as the Record

In lieu of the record as defined in Rule 110.01, the parties may prepare and sign a statement of the record showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only the facts averred and proved or sought to be proved which are essential to a decision of the issues presented. The agreed statement shall be approved by the trial court with any additions the trial court may consider necessary to present the issues raised by the appeal and shall be the record on appeal. The trial court's approval of the statement shall be filed with the clerk of the appellate courts within 60 days of the filing of the notice of appeal.

Comment - 1983

Within ten days after filing the notice of appeal the appellant must file notice of intent to proceed under either Rule 110.03 or Rule 110.04. The trial court's approval of the statement must be filed with the clerk of the appellate courts within 60 days after filing of the notice of appeal. The time for filing the appellant's brief and appendix begins to run with the filing of the trial court's approval. See Rule 131.01.

110.05 Correction or Modification of the Record

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform. If anything material to either party is omitted from the record by error or accident or is misstated in it, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented to the appellate court by motion.

(Amended effective July 1, 2014.)