

1 **Rule 16. The agency record on appeal.**

2 **(a) Composition of the record on appeal.** The original ~~papers~~ documents and exhibits filed in the
3 trial court ~~with the agency~~, including the ~~presentence report in criminal matters~~, the transcript of
4 proceedings, if any, the index prepared by the ~~clerk of the trial court~~ agency, and the docket sheet, if any,
5 shall ~~constitutes~~ the agency record on appeal ~~in all cases~~. A copy of the record certified by the ~~clerk of the~~
6 trial court ~~agency~~ to conform to the original may be substituted for the original as the record on appeal.
7 ~~Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court.~~
8 The agency must include all documents and exhibits in the agency file as part of the record unless
9 otherwise directed by the appellate court on its own initiative or motion of a party.

10 **(b) Pagination and indexing of record.**

11 (b)(1) Immediately upon filing of the ~~notice of appeal petition~~, the ~~clerk of the trial court~~ agency
12 shall ~~must~~ securely fasten and collate the record in a trial court case file, ~~with collation~~ in the following
13 order:

14 (b)(1)(A) ~~the a~~ chronological index prepared by the clerk of the record that contains a
15 reference to the date on which the document, deposition or transcript was filed and the starting
16 page of the record on which the document, deposition or transcript is found;

17 (b)(1)(B) the docket sheet, if any;

18 (b)(1)(C) all original ~~papers~~ documents in chronological order;

19 (b)(1)(D) all published depositions in chronological order;

20 (b)(1)(E) all transcripts prepared for appeal in chronological order; and

21 (b)(1)(F) a list of all exhibits offered in the proceeding; ~~and~~

22 ~~(b)(1)(G) in criminal cases, the presentence investigation report.~~

23 (b)(2)(A) ~~The clerk shall~~ agency must mark the bottom right corner of every page of the collated
24 index, docket sheet, and all ~~original papers~~ documents as well as the cover page only of all published
25 depositions and the cover page only of each volume of transcripts ~~constituting the record~~ with a
26 sequential number using one series of numerals for the entire record.

27 ~~(b)(2)(B)-(b)(3)~~ The agency will transmit a single record unless there is a supplemental record. If a
28 supplemental record is forwarded to the appellate court transmitted, the clerk shall agency must
29 collate the ~~papers~~ documents, depositions, and transcripts of the supplemental record in the same
30 order as the original record and mark the bottom right corner of each page of the collated original
31 ~~papers~~ documents as well as the cover page only of all published depositions and the cover page
32 only of each volume of transcripts constituting the supplemental record with a sequential number
33 beginning with the number next following the number of the last page of the original record.

34 (b)(3) ~~The clerk shall prepare a chronological index of the record. The index shall contain a~~
35 reference to the date on which the paper, deposition or transcript was filed in the trial court and the
36 starting page of the record on which the paper, deposition or transcript will be found.

37 (b)(4) ~~Clerks of the trial~~ The agency and the appellate courts shall will establish rules and
38 procedures for checking out the record after pagination for use by the parties in preparing briefs ~~for~~
39 an appeal or in preparing or briefing a petition for writ of certiorari.

40 **(c) Duty of appellant petitioner.** ~~After filing the notice of appeal, the appellant, or in the event that~~
41 ~~more than one appeal is taken, each appellant, shall~~ Each petitioner must comply with the provisions of
42 paragraphs (d) and (e) of this rule Rule 12 and shall take any other action necessary to enable the clerk
43 of the trial court agency to assemble and transmit the record. ~~A single record shall be transmitted.~~

44 **(d) Papers on appeal.**

45 (d)(1) ~~Criminal cases. All of the papers in a criminal case shall be included by the clerk of the trial~~
46 ~~court as part of the record on appeal.~~

47 (d)(2) ~~Civil cases. Unless otherwise directed by the appellate court upon sua sponte motion or motion~~
48 ~~of a party, the clerk of the trial court shall include all of the papers in a civil case as part of the record on~~
49 ~~appeal.~~

50 (d)(3) ~~Agency cases. Unless otherwise directed by the appellate court upon sua sponte motion or~~
51 ~~motion of a party, the agency shall include all papers in the agency file as part of the record.~~

52 **(e) The transcript of proceedings; duty of appellant petitioner to order; notice to appellee**
53 **respondent if partial transcript is ordered.**

54 (e)(1) ~~Request for transcript; time for filing. Within 40-14 days after filing the notice of appeal~~
55 ~~petition for review, the appellant shall, petitioner must order from the agency a transcript of the entire~~
56 ~~proceeding or desired parts of the proceeding or file a certificate that no parts of the proceeding need~~
57 ~~to be transcribed. The appellant must serve on the respondent a designation of the parts of the~~
58 ~~proceeding to be transcribed or the certificate that no parts of the proceeding need to be~~
59 ~~transcribed~~ order the transcript(s) online at , specifying the entire proceeding or parts of the
60 ~~proceeding to be transcribed that are not already on file. The appellant shall serve on the appellee a~~
61 ~~designation of those parts of the proceeding to be transcribed. If the appellant desires a transcript in a~~
62 ~~compressed format, appellant shall include the request for a compressed format within the request for~~
63 ~~transcript. If no such parts of the proceedings are to be requested, within the same period the~~
64 ~~appellant shall file a certificate to that effect with the clerk of the appellate court and serve a copy of~~
65 ~~that certificate on the appellee.~~

66 (e)(2) ~~Transcript required of all evidence regarding challenged finding or conclusion. If the~~
67 ~~appellant petitioner intends to urge ~~on appeal~~ that a finding or conclusion is unsupported by or is~~
68 ~~contrary to the evidence, the appellant shall petitioner must include in the record a transcript of all~~
69 ~~evidence relevant to ~~such the~~ finding or conclusion. Neither the court nor the appellee respondent is~~
70 ~~obligated to correct ~~appellant's~~ petitioner's deficiencies in providing the relevant portions of the~~
71 ~~transcript.~~

72 (e)(3) ~~Cross-designation by appellee respondent. If the appellant petitioner does not order the~~
73 ~~entire transcript, the appellee respondent may, within 40-14 days after the service filing of the~~

74 designation or certificate described in paragraph (e)(1) ~~of this rule, file and serve on the appellant a~~
75 ~~designation of additional parts to be included~~ order additional parts of the proceeding to be
76 transcribed.

77 **(f) Agreed statement as the record on appeal.** ~~In lieu of the record on appeal as defined in~~
78 ~~paragraph (a) of this rule, the parties may prepare and sign a statement of the case, showing how the~~
79 ~~issues presented by the appeal arose and were decided in the trial court and setting forth only so many of~~
80 ~~the facts averred and proved or sought to be proved as are essential to a decision of the issues~~
81 ~~presented. If the statement conforms to the truth, it, together with such additions as the trial court may~~
82 ~~consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court.~~
83 ~~The clerk of the trial court shall transmit the statement to the clerk of the appellate court within the time~~
84 ~~prescribed by Rule 12(b)(2). The clerk of the trial court shall transmit the index of the record to the clerk of~~
85 ~~the appellate court upon approval of the statement by the trial court.~~

86 **(g) Statement of evidence or proceedings when no report was made or when transcript is**
87 **unavailable.** ~~If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is~~
88 ~~unavailable, or if the appellant is impecunious and unable to afford a transcript in a civil case, the~~
89 ~~appellant may prepare a statement of the evidence or proceedings from the best available means,~~
90 ~~including recollection. The statement shall be served on the appellee, who may serve objections or~~
91 ~~propose amendments within 10 days after service. The statement and any objections or proposed~~
92 ~~amendments shall be submitted to the trial court for settlement and approval and, as settled and~~
93 ~~approved, shall be included by the clerk of the trial court in the record on appeal.~~

94 **(h)-(f) Correction or modification of the record.**

95 (f)(1) For the duration of the review, including any proceedings on writ of certiorari, the agency must
96 maintain and make available to the parties any audio or video record of the agency proceedings. The
97 agency may collect a fee authorized by law for access to the record.

98 (f)(2) If a party claims that the transcript of a hearing is incorrect, the appellate court may compare the
99 transcript to the audio or video record or may remand the case to the agency to compare the records. If
100 the transcript does not correctly reflect the content of the audio or video record, the agency or court will
101 order the court reporter or official court transcriber to correct the transcript.

102 (f)(3) If any difference other than an incorrect transcript arises as to whether the record truly discloses
103 what occurred in the trial court agency, the difference shall must be submitted to and settled by that court
104 the agency and the record made to conform to the truth. If anything material to either party is misstated or
105 is omitted from the record by error, by accident, or because the appellant petitioner did not order a
106 transcript of proceedings that the appellee respondent needs to respond to issues raised in the Brief of
107 Appellant, the parties by stipulation, the trial court, agency or the appellate court, either before or after the
108 record is transmitted, on motion of a party or on its own initiative, may direct that the omission or
109 misstatement be corrected and entered in the agency record and, if necessary, that a supplemental
110 record be certified and transmitted. The moving party, or the court if it is acting on its own initiative, shall

111 ~~must~~ serve on the parties a statement of the proposed changes. Within ~~40-14~~ days after service, any
112 party may serve objections to the proposed changes. All other questions as to the form and content of the
113 record ~~shall~~must be presented to the appellate court.

114 **(g) Transmission of the record.** The clerk of the appellate court will request the index, a non-
115 paginated record, or a paginated record. The agency will transmit the index within 21 days; the non-
116 paginated record within 7 days; and the paginated record within 21 days.

117 **(h) Checking out record.** During the briefing period, counsel for the parties may check out the
118 agency record from the agency or court in possession of the record. Unless picked up in person or by an
119 authorized agent, the record must be delivered and returned by a shipping method that tracks the
120 shipment. Counsel must pay the cost of shipping. Counsel must return the record promptly and not later
121 than when the party's brief is filed.

122 **Advisory Committee Notes**

123 The rule is amended to make applicable in the Supreme Court a procedure of the Court of Appeals
124 for preparing a transcript where the record is maintained by an electronic recording device. The rule is
125 modified slightly from the former Court of Appeals rule to make it the appellant's responsibility, not the
126 clerk's responsibility, to arrange for the preparation of the transcript.

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