

## **TRANSCRIPT & RECORD ON APPEAL**

### **Transcript Order**

Federal and Local Rule 10 and the Guidelines for Preparation of Appellate Transcripts in the Fourth Circuit set forth the responsibilities and time frames for ordering transcript. The appellant (or cross-appellant) must order necessary transcript from the court reporter within 14 days after filing the notice of appeal. The court's notice of docketing notifies appellant that a copy of the transcript order must be attached to the docketing statement and that the statement of issues in the docketing statement satisfies the statement of issues requirement of Fed. R. App. P. 10(b) if less than the full transcript is ordered. Failure to order transcript or make satisfactory financial arrangements may lead to dismissal of the appeal. Loc. R. 10(c)(2).

### **Designation of Additional Parts of Transcript**

If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the docketing statement and transcript order, file and serve on the appellant a designation of additional parts to be ordered.

### **Ordering Additional Parts of Transcript**

If the appellee designates additional parts of the transcript, the appellant may order the additional parts and notify appellee. If the appellant does not order the additional parts within 14 days, appellee may either order the additional parts within the next 14 days or move in the district court for an order requiring the appellant to do so.

### **Cross-Appeals**

In cross-appeals, each party must order those parts of the transcript pertinent to the issues of such appeals. The parties are encouraged to agree upon those parts of the transcript jointly needed and to apportion the cost, with additional portions being ordered and paid for by the party considering them essential to that party's appeal. Loc. R. 10(c)(1).

### **Transcript Deadlines**

Upon receipt of a copy of the transcript order, the court of appeals will issue a transcript order acknowledgment establishing a deadline by which the court reporter must file the transcript. Although Fed. R. App. P. 11(b) requires that transcripts be completed within 30 days from the purchase order date, the Fourth Circuit uses the time limits set forth in Local Rule 11(b), which establishes a 60-day period for preparation of transcripts, with the following exceptions: (1) criminal transcripts of less than 1000 pages must be filed within 30 days; (2) criminal transcripts of more than 1000 pages, and bail, death penalty and expedited case transcripts must be filed within the time set by the clerk.

If the court reporter needs an extension of time to complete the transcript, the reporter may file a motion for extension at least 10 days prior to the due date. If the transcript is filed late without an extension having been granted, a 10% fee reduction sanction is imposed. If the transcript is filed more than 30 days late, a 20% fee reduction sanction is imposed.

### **Transcript Format**

The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) must be clearly indicated at the top of each page of the appendix where the witness's testimony appears. This requirement applies to in-court testimony and deposition testimony. Loc. R. 30(b). The court will not accept "condensed" transcript, wherein several pages of transcript appear on a single sheet, for inclusion in the appendix, considering the smaller pages not sufficiently legible under Fed. R. App. P. 32(b)(2).

### **Transcript Redaction**

Upon filing of a transcript in the district clerk's office, counsel (or a pro se party) has 7 days to file a notice of redaction with the district clerk setting forth his or her intention to direct the redaction of personal data identifiers from the electronic transcript. Unless otherwise ordered by the court, attorneys must review the following transcript: (1) opening and closing statements made on the party's behalf, (2) statements of the party (3) the testimony of any witnesses called by the party (4) sentencing proceedings and (5) any other portion of the transcript as ordered by the court. Where counsel has given notice of redaction, counsel must, within 21 days of filing of the transcript, submit to the court reporter a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter must, within 31 days of filing of the transcript, perform the requested redactions and file a redacted version of the transcript. Judicial Conference Policy on Privacy and Public Access to Electronic Case Files (March 2008).

### **Statement of the Evidence When No Transcript is Available**

If a record or transcript is unavailable, the appellant may prepare a statement of evidence from the best available means, including the appellant's recollection. Appellant shall serve the statement on appellee, who may serve objections or proposed amendments within 14 days after service. Appellant's statement and any objections or proposed amendments are then submitted to the district court for settlement and approval, and as settled and approved are included in the record on appeal. Fed. R. App. P. 10(c).

### **Compilation of the Record**

The record consists of the original case papers and exhibits filed in the district court, transcripts, and a certified copy of the docket entries. Fed. R. App. P. 10(a). The preparation of the record on appeal is the obligation of the clerk of the lower court, board or agency, and any questions concerning form or content should be addressed to the trial forum in the first instance. Parties should be sure that everything relevant to the

issues on appeal is included initially in the record on appeal in order to obviate the need to supplement the record.

### **District Court Record in Pro Se Cases**

In pro se cases, the assembled electronic record, and any sealed or paper record, are transmitted to the court of appeals at the time the notice of appeal is transmitted.

### **District Court Record in Counseled Cases**

In counseled cases, the record is not transmitted unless requested by the court of appeals. When transmitting the notice of appeal, the district court clerk certifies to the court of appeals that the record of docket entries is available upon request. The district court clerk also notifies the court of appeals of the subsequent filing of any transcript in the case.

### **Access of Counsel to District Court Record**

Counsel desiring to use an existing paper record on appeal in preparing their case should make arrangements with the clerk of the district court in which the record is held pursuant to Local Rule 10(a). Records transmitted to the court of appeals may be withdrawn upon proper application and returned to the trial court for counsel's review. Loc. R. 11(d). Most district court records are available in electronic form on the district court's CM/ECF docket. Record documents can be accessed individually or selected and combined for creation of an electronic appendix.

### **Exhibits**

If bulky documents and physical exhibits are required by a party for oral argument, the party must make advance arrangements with the clerks of both the district court and the court of appeals for their transportation and receipt. Such arrangements are best made after the completion of briefing and receipt of notice of oral argument. Loc. R. 11(c).

### **Agreed Statement of the Record on Appeal**

In lieu of the record on appeal, the parties may prepare and sign a statement of the court setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the district court may consider necessary, shall be approved by the district court and certified as the record on appeal. Copies of the agreed statement may be filed as the appendix required by Rule 30. Fed. R. App. P. 10(d).

### **Supplemental Records, Modification or Correction**

Under Fed. R. App. P. 10(e) and Local Rule 10(d), disputes concerning the accuracy or composition of the record on appeal should be resolved in the trial court in the first instance, although the court of appeals has the power, either on motion or of its own accord, to require that the record be corrected or supplemented. The record may be

supplemented by the parties by stipulation or by order of the district court at any time during the appellate process, without need to seek permission from the court of appeals. Loc. R. 10(d).

### **Administrative Record in Social Security Disability Appeals and Immigration Review Cases**

In social security disability cases appealed from the district court, the record on appeal may be composed of both the agency and the district court records. If the agency record has been filed with the district court, it may be contained within the district court record when it's transmitted to the court of appeals. If the agency record was not transmitted to the district court by the agency, it's not necessary for the agency to file the administrative record with the court of appeals.

In immigration review cases, the agency files an electronic or paper copy of its administrative record in the court of appeals within 40 days after issuance of the notice requesting the record.

### **Record in Other Agency Review Cases**

In other agency review and enforcement cases, the agency files its original record in the court of appeals 40 days after issuance of the notice requesting the record. The court of appeals returns the original record to the agency upon issuance of the mandate.

### **Certified List**

In lieu of filing the entire record in an agency case, the agency may file a certified list of what is encompassed in the record. Fed. R. App. P. 17(b). The parties may also stipulate to dispense with the filing of the certified list. All parts of the record retained by the agency remain part of the record on review. In enforcement proceedings, the agency need not file a record unless the respondent contests enforcement by filing a response or the court otherwise orders.

### **Tax Court Records**

The tax court files the record within 14 days of issuance of the briefing schedule. The tax court record is returned to the tax court upon issuance of the mandate.

### **Related Links**

- [Transcript Guidelines](#)
- [Judicial Conference Privacy Policy for Electronic Case Files](#)
- [Record Access for New Appellate Counsel](#)
- [Rule 10. The Record on Appeal \(with Local Rules\)](#)
- [Rule 11. Forwarding the Record \(with Local Rules\)](#)
- [Court Forms & Fees - Transcripts](#)