

## **Rule 11. Forwarding the Record**

**(a) Appellant's Duty.** An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

### **(b) Duties of Reporter and District Clerk.**

**(1) Reporter's Duty to Prepare and File a Transcript.** The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

**(2) District Clerk's Duty to Forward.** When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

### **(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal.**

The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

### **(d) [Abrogated]**

**(e) Retaining the Record by Court Order.**

- (1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.
- (2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.
- (3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

**(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties.** The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

**(g) Record for a Preliminary Motion in the Court of Appeals.** If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a bond or other security provided to obtain a stay of judgment; or
- for any other intermediate order —

the district clerk must send the court of appeals any parts of the record designated by any party.

***Local Rule 11(a). Transcript Acknowledgments.***

*Upon receipt of an order for a transcript, the Clerk of the Court of Appeals will prepare for the reporter a transcript order acknowledgment which will set forth the date the transcript order was received in the Clerk's Office and the transcript due date, computed from the order receipt date in accordance with the time limits set forth in the applicable district court reporter management plan. If the transcript order is correct in all respects, except for an order date error in the reporter's favor, no response will be required from the reporter. If the reporter believes that there is a problem with the transcript order, he or she must complete a copy of the acknowledgment form noting the problem and return it to the Court of Appeals within 7 days of receipt of the form by the reporter, or within such further time as the Court of Appeals allows. The time for completion of the transcript will automatically cease to run until the problem has been remedied. The Clerk of the Court of Appeals will send a new transcript order acknowledgment setting forth new transcript order and filing dates taking into account the delay caused by resolving the problem with the original transcript order.*

**Local Rule 11(b). Time Limits for Filing Transcripts.**

Although FRAP 11(b)(1)(B) requires that transcripts be completed within 30 days from the purchase order date, this Court routinely uses instead the time limits set forth in the district court reporter management plans. All of the plans establish a 60-day period for preparation of transcripts, with the following exceptions:

- (1) Special provisions adopted by the Fourth Circuit Judicial Council for appeals by incarcerated criminal defendants:
  - (a) transcripts of 1000 pages or less shall be filed within 30 days of transcript order and completion of satisfactory financial arrangements.
  - (b) transcripts of more than 1000 pages shall be filed within the time ordered by the Clerk of the Court of Appeals.
- (2) Special circumstances, such as:
  - (a) bail appeals,
  - (b) death penalty cases, or
  - (c) other expedited procedures in which the transcript shall be filed within the time ordered by the Clerk of the Court of Appeals.

**Local Rule 11(c). Exhibits.**

Counsel should be aware that certain portions of the record will not be transmitted to the Court of Appeals as part of the record. 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 courts for their transportation and receipt. Such arrangements are best made after the completion of the briefing schedule on appeal and receipt of notice of oral argument.

**Local Rule 11(d). Access of Counsel to Original Record.**

Counsel desiring to use the record on appeal in preparing their case should make arrangements with the clerk of the district court for access to the record. Under Local Rule 10(a), records in cases in which all parties are represented by counsel are retained by the district court clerk during appeal unless a judge of the Court of Appeals requests that they be obtained. If the record is transmitted to the Court of Appeals, the record may be withdrawn upon proper application and returned to the trial court or the nearest district court clerk's office for counsel's review. Law professors representing indigents by Court appointment may request that the record be sent to the law school for their review.

**I.O.P.-11.1. Sanctions for Court Reporter's Failure to File a Timely Transcript.**

The Fourth Circuit Judicial Council has implemented a resolution of the Judicial Conference of the United States which mandates sanctions for the late delivery of transcripts. For transcripts not delivered within the time limits set forth in Local Rule 11(b), the reporter may charge only 90 percent of the prescribed fee; for a transcript not delivered within 30 days after that time the reporter may charge only 80 percent of the prescribed fee. The time period in criminal proceedings for the preparation of transcripts that are ordered before sentencing shall not begin to run until after entry of the judgment and commitment order.

*Former Local Rule 11 redesignated Local Rule 11(a) December 1, 1995.*  
*Former I.O.P.-11.1 redesignated Local Rule 11(b) December 1, 1995; amended December 1, 1998.*  
*Former I.O.P.-11.3 redesignated Local Rule 11(c) December 1, 1995.*  
*Former I.O.P.-11.4 redesignated Local Rule 11(d) December 1, 1995.*  
*Former I.O.P.-11.2 amended and redesignated I.O.P.-11.1 December 1, 1995; amended December 1, 2002.*