

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) the transcript of proceedings, if any; and
- (3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.** Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

- (i) the order must be in writing;
- (ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and
- (iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) **Partial Transcript.** Unless the entire transcript is ordered:

- (A) the appellant must — within the 14 days provided in Rule 10(b)(1) — file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;
- (B) 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 order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

- (C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

Local Rule 10(a). Retention of the Record on Appeal in the District Court.

In cases in which all parties are represented by counsel on appeal, the district court clerk will transmit with the notice of appeal sent to the Court of Appeals a certificate that the record of docket entries is available upon request. The district court clerk will notify the Court of Appeals of the subsequent filing of any transcript in the case. The district court will then retain the record on appeal until and unless a judge of this Court asks the Clerk of this Court to obtain it. Upon receipt of a request from the Clerk of the Court of Appeals, the clerk of the district court will assemble and transmit the record on appeal within 48 hours.

Local Rule 10(b). Records on Appeal.

The preparation and transmittal 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 check with the clerk of the lower court, board or agency to determine whether everything relevant to the issues on appeal will be included initially in the record on appeal in order to obviate motions to supplement the record. The record is transmitted to the appellate court as soon as it is complete, except as provided in Local Rule 10(a). Local Rule 10(a) does not apply to records in cases in which one or more parties are proceeding without counsel on appeal.

Local Rule 10(c). Transcripts.

*(1) **Responsibilities and designation.** The appellant has the duty of ordering transcript of all parts of the proceedings material to the issues to be raised on appeal whether favorable or unfavorable to appellant's position. Appellant should complete the transcript order (form available at www.ca4.uscourts.gov) and distribute the form to the Clerk of the Court of Appeals, the court reporter, the clerk of the district court, and the appellee.*

Before the transcript order is distributed, appellant must make appropriate financial arrangements with the court reporter for either immediate payment in full or in other form acceptable to the court reporter, payment pursuant to the Criminal Justice Act, or at government expense pursuant to 28 U.S.C. § 753(f).

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.

If the entire transcript of proceedings is not to be prepared, the appellant's docketing statement filed pursuant to Local Rule 3(b) may constitute the statement of issues required by FRAP 10(b)(3)(A).

*(2) **Monitoring and receipt by clerk.** Failure to order timely a transcript, failure to make satisfactory financial arrangements with the court reporter, or failure to specify in adequate detail those proceedings to be transcribed will subject the appeal to dismissal by the clerk for want of prosecution pursuant to Local Rule 45. The Clerk's Office is charged with monitoring the status of transcripts pending with court reporters.*

*(3) **Statement in lieu of transcript.** The parties may prepare and sign a statement of the case in lieu of the transcript or the entire record on appeal. The use of a statement in lieu of a transcript of a hearing substantially accelerates the appellate process. The statement should contain a description of the essential facts averred and proved or sought to be proved and a summary of pertinent testimony.*

*(4) **Guidelines for Preparation of Appellate Transcripts in the Fourth Circuit.** The Fourth Circuit Judicial Council has adopted guidelines to define the obligations of appellants, appellees, clerks of the district court, court reporters and the Clerk of the Court of Appeals in the ordering, preparation, and filing of transcripts completed pursuant to these rules.*

Local Rule 10(d). Supplemental Records, Modification, or Correction.

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. It is unnecessary to seek permission of the Court of Appeals to supplement the record and the record may be supplemented by the parties by stipulation or by order of the district court at any time during the appellate process.

Former Local Rule 10 redesignated Local Rule 10(a) December 1, 1995; amended April 1, 2008.

Former I.O.P.-10.1 redesignated Local Rule 10(b) December 1, 1995; amended December 1, 1998, and December 1, 2009.

Former I.O.P.-10.2 redesignated Local Rule 10(c) December 1, 1995; amended December 1, 1998, and December 1, 2009.

Former I.O.P.-10.3 redesignated Local Rule 10(d) December 1, 1995; amended December 1, 2000, and May 18, 2004.

Former Local Rule 10(d) amended and renumbered as Local Rule 25(c) April 16, 2007.

Former I.O.P.-10.4 redesignated Local Rule 10(e) December 1, 1995; redesignated Local Rule 10(d) April 16, 2007.