

**FILED**

December 10, 2019

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8006

**ORDER PROMULGATING AMENDMENTS TO  
THE RULES OF CIVIL APPELLATE PROCEDURE**

In an order filed on November 13, 2018, we directed the Advisory Committee for the Rules of Civil Appellate Procedure to review the rules that govern the use and preparation of transcripts in appeals in light of the recommendations made to the Judicial Council by the Court Record Workgroup to clarify the role of court reporters with respect to transcripts for audio or video exhibits. We also noted some inconsistency between the rule that governs transcript preparation for appeals in criminal matters, *see* Minn. R. Crim. P. 28.02, subd. 9, and the rule that governs transcript preparation for appeals in civil matters, *see* Minn. R. Civ. App. P. 110.02.

In a report filed on April 1, 2019, the committee explained that the Rules of Civil Appellate Procedure state, clearly, that court reporters are required to transcribe and certify only testimonial evidence, such as video depositions, but not other digital recordings. The committee reviewed the report filed on February 28, 2019, by the Advisory Committee for the Rules of Criminal Procedure, which proposed amendments to Minn. R. Crim. P. 28.02, subd. 9, to clarify the responsibilities related to transcript preparation for an appeal; but concluded that the amendments recommended by that committee addressed issues that exist primarily in criminal proceedings. Thus, the committee concluded that the existing provisions of Rule 110.02 work well and, therefore, no amendments are needed.

We opened a public comment period. Only one written comment was received, from the State Court Administrator on behalf of the Judicial Council, which asked that Rule 110.02 be amended to clarify the court reporter's role in preparing transcripts of audio or video exhibits. We also held a public hearing, on September 25, 2019, and received further input from the chair of the Advisory Committee for the Rules of Civil Appellate Procedure.

We have carefully considered the Advisory Committee's conclusion that Rule 110 of the Rules of Civil Appellate Procedure works well and needs no amendments. We appreciate the committee's review of the extensive work done on this topic by the Court Record Workgroup, and its consideration of the recommendations made by the Advisory Committee on the Rules of Criminal Procedure. We have concluded, however, that amendments to Rule 110.02 regarding the court reporter's role with respect to transcript requests in appeals in which audio or video evidence is part of the record on appeal will provide clarity in identifying the evidence that is part of the record on appeal. *See* Minn. R. Civ. App. P. 110.01 (defining the record on appeal). Further, amendments to Rule 110.02 will promote consistency between the rules that govern transcript preparation for appeals, whether in criminal or civil cases, which will aid court reporters in fulfilling transcript requests. *See* Minn. R. Crim. P. 28.01, subd. 2 (noting that the Rules of Civil Appellate Procedure govern appellate procedure in criminal proceedings to the extent not inconsistent with the criminal rules). Clarity is also important given that a transcript of digital evidence may not be substantive evidence, but instead may serve an illustrative purpose. *See State v. Stewart*, 643 N.W.2d 281, 293 (Minn. 2002) (noting that illustrative exhibits are not original evidence).

Thus, the amendments we adopt here clarify that a court reporter can, but is not required to, prepare a transcript of audio or video recordings that are part of the record on appeal, and is not required to certify the correctness of such a transcript. The court reporter is, however, responsible for filing that transcript with the district court, whether it is prepared by the court reporter or by the party.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to the Rules of Civil Appellate Procedure be, and the same are, prescribed and promulgated to be effective as of March 1, 2020. The rules as amended will be effective for appeals filed on or after the effective date.

Dated: December 10, 2019

BY THE COURT:



Lorie S. Gildea  
Chief Justice

## AMENDMENTS TO THE RULES OF CIVIL APPELLATE PROCEDURE

*[Note: in the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]*

### Rule 110. The Record on Appeal

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#### **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 10 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 10 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 10 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 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 10 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; and the court reporter's address and telephone number.

(b) If, within 10 days after the filing of a transcript certificate required by subdivision 2(a) of this rule, any party makes a written request to the designating counsel that a paper transcript be provided to that party in lieu of an electronic transcript, the appellant or designating attorney or party shall file with the clerk of the appellate courts an amended transcript certificate confirming that satisfactory financial arrangements have been made for the preparation of the transcript and any timely requested paper copy or copies. The amended transcript certificate shall not extend the estimated completion date.

(c) 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; and shall indicate the method of delivery. The certificate shall also contain the court reporter's address and telephone number.

(d) The reporter's certificates required by sections (a) and (c) 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 8½ by 11 inch or 8½ by 10½ 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 a paper copy of the transcript to the attorney for each party to the appeal

separately represented who has timely requested a paper copy in lieu of an electronic copy. For all other parties, the court reporter shall promptly transmit an electronic copy of the transcript to the attorney for each party to the appeal separately represented. For civil appeals other than from the district court, a paper transcript may be substituted for an electronic transcript if an electronic transcript is not available.

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. ~~The transcript shall include transcription of any testimony given by audiotape, videotape, or other electronic means, unless that testimony has previously been transcribed, in which case the transcript shall include the existing transcript of testimony, with appropriate annotations and verification of the portions that were replayed at trial, as part of the official trial transcript.~~