

RULE CHANGE 2017(10)
COLORADO APPELLATE RULES

Rules 10 and 11

Form 8, Designation of Transcripts (New)
Form 9, Motion to Supplement the Record (New)
Effective for appeals filed on or after January 1, 2018.

Rules 3.4, 4.1, 5, and 12
Effective January 1, 2018.

Rule 30
Effective immediately.

Rule 10. Record on Appeal

(a) Composition of the Record on Appeal. The record on appeal in all cases consists of:

(1) All documents filed in the trial court case as of the date of filing of a notice of appeal or any amended notice of appeal; and

(A) Transcripts designated by counsel as set forth in section (d); or

(B) In limited circumstances, such as when the transcript is unavailable, a statement of the evidence or proceedings certified by the trial court as set forth in section (e).

(2) If a timely filed motion pursuant to C.R.C.P. 59 has been filed, the record must also include that motion, any responses, and any order on the C.R.C.P. 59 motion.

(b) Format of the Record

(1) **Electronic Record.** If all or part of the record is maintained in electronic format by the trial court, the clerk of the trial court is authorized to transmit the record electronically in accordance with procedures established by the appellate court.

(2) **Paper Record.** If all or part of the record is transmitted in paper format, the original papers in the record must be submitted. The paper-filed portion of the record must be properly paginated and fully indexed and must be prepared and bound in accordance with procedures established by the appellate court.

(c) Transmission

(1) **Complete Record.** The clerk of the trial court must transmit the record to the clerk of the appellate court when it is complete. If the record includes any transcripts, the clerk of the trial court will not transmit the record to the clerk of the appellate court until transcripts are available.

(2) **Time.** The record on appeal must be transmitted to the appellate court within 63 days (9 weeks) after the date of filing of the notice of appeal unless the time is shortened or extended by an order of the appellate court.

(A) For good cause shown, the appellate court may extend the time for transmitting the record. A request for extension must be made by the clerk of the trial court or the clerk of the trial court's designee within the time originally prescribed or as previously extended.

(B) Any request for extension of the period of time based upon a court reporter's inability to complete the transcript must be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared and the date by which the transcript will be completed. If the reason stated in a court reporter's affidavit for the reporter's inability to complete the record is the failure of the designating party to make adequate arrangement for payment of the transcripts, the designating party must file a response to the affidavit with the appellate court within 7 days.

(C) The appellate court may direct the trial court to expedite the preparation and transmittal of the record on appeal and, upon motion or of its own initiative, take other appropriate action regarding preparation and completion of the record.

(3) **Oversized Exhibits.** Documents of unusual bulk or weight and physical exhibits will not be transmitted by the clerk of the trial court unless directed to do so by the appellate court.

(4) **Sexually Exploitative Material.** Transmission of sexually exploitative material will be in accordance with Chief Justice Directive 16-03.

(d) Designation of Transcripts.

(1) If appellant intends to include transcripts of any hearings or trial included in the record on appeal, the appellant must file a designation of transcripts with the trial court and an advisory copy with the appellate court within 7 days of the date of filing the appellant's notice of appeal.

(2) Form 8 must be used to file any designation of transcripts. Any party designating transcripts must comply with the policies adopted by the appellate and trial courts for designating transcripts.

(3) The appellant must include in the record transcripts of all proceedings necessary for considering and deciding the issues on appeal. Unless the entire transcript is to be included, the appellant must include in the designation of transcript a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be presented on appeal. The appellee may, within 14 days after the notice of appeal is filed, file with the trial court and an advisory copy with the appellate court its own designation of transcripts if the appellee deems additional transcripts or parts thereof necessary.

(e) Statement of the Evidence or Proceedings. Upon the agreement of the parties, or in cases where a transcript of the evidence or proceedings at a hearing or trial is unavailable, the parties may file a statement of the evidence or proceedings in lieu of designating transcripts with the trial court, and the trial court must certify a statement of the evidence or proceedings in lieu of a transcript.

(f) Supplementing the Record on Appeal.

(1) Before Record is Transmitted. If any material part of the trial court record is omitted or missing from the trial court's record or is misstated therein by error or accident before the record is transmitted to the appellate court, the parties, by stipulation, or the trial court may direct that the omission or misstatement be corrected.

(2) After Record is Transmitted. If any material part of the trial court record is omitted or missing from the record by error or accident or is misstated therein after the record is transmitted to the appellate court, the appellate court, on motion or of its own initiative, may order that the supplemental record be certified and transmitted. Form 9 must be used by any party requesting to supplement the record after the record has been filed in the appellate court.

(g) Settling the Record on Appeal.

(1) If any difference arises as to whether the record truly discloses what occurred in the trial court or a portion of the record is not in the possession of the trial court, the difference must be submitted to and settled by the trial court. The party moving to settle the record must file a motion to stay the appellate court proceedings in the appellate court while the trial court considers the motion to settle the record.

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

COMMENTS

2018

[1] The rule contains the substance of former C.A.R. 11, Transmission of Record. With the adoption of the 2018 revisions, C.A.R. 11 has been deleted from the Colorado Appellate Rules.

[2] The amendments are designed to provide better organization and to create a more comprehensive records rule. With the 2018 revisions, designation of the record, found in prior versions of C.A.R. 10, has been deleted from the rule.

[3] Two new forms, Designation of Transcripts (Form 8) and Motion to Supplement the Record (Form 9) were adopted with the rule change.

Rule 11. Transmission of Record

~~(a) Time for Transmission; Duty of Appellant; 91 Days (13 weeks) to Transmit. The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 91 days (13 weeks) after the filing of the notice of appeal unless the time is shortened or extended by an order entered under section (d) of the Rule. After filing the notice of appeal the appellant shall comply with the provisions of C.A.R. 10(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of C.A.R. 10(b) and this section (a), and a single record shall be transmitted within 91 days (13 weeks) after the filing of the final notice of appeal.~~

COMMENT

This change increases the time for transmitting of the record to 91 days (13 weeks) and provides due date for the record filing to be tied with the date the notice of appeal is filed. The appellate court will not need to set this due date.

~~(b) Duty of Clerk to Transmit the Record.~~

~~(1) When the record, including any designated transcript, is complete for purposes of the appeal, the clerk of the trial court shall transmit the record to the clerk of the appellate court.~~

~~(2) The clerk of the trial court shall number the documents comprising the entire designated record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness.~~

~~(3) Documents of unusual bulk or weight and physical exhibits other than documents which are designated by the parties, shall not be transmitted by the clerk unless directed to do so by the clerk of the appellate court. The designating party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.~~

~~(4) Where the record is maintained in electronic form by the trial court, or can be made available in electronic form by the trial court, the clerk of the trial court is authorized to transmit the record electronically in accordance with procedures established by the appellate court.~~

~~(5) Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the appellate court. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the appellate court.~~

~~(c) Temporary Retention of Record in Trial Court for Use in Preparing Appellate Papers. Notwithstanding the provisions of sections (a) and (b) of this Rule, the parties may stipulate, or the trial court on motion of any party may order, that the clerk of the trial court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by complying with the provisions of C.A.R. 12(a) and by presenting to the clerk of the appellate court a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if he~~

is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the trial court to transmit the record.

(d) ~~Extension of Time for Transmission of the Record; Reduction of Time.~~ The appellate court for good cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted. Any request for extension of the period of time based upon the reporter's inability to complete the transcript shall be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared, the date by which the transcript can be completed, and a statement by the court reporter that all payments due have been made. Failure to pay for the transcript in accordance with C.A.R. 10(b) is grounds for denial of a motion for extension. The appellate court may direct the trial court to expedite the preparation and transmittal of the record on appeal and, upon motion or sua sponte, take other appropriate action regarding preparation and completion of the record.

COMMENT

This rule removes from the trial court the authority to extend the time to transmit the record. The initial time for transmission of the record is set at 91 days (13 weeks) because trial courts appeared to require that amount of time on almost every case. The change should eliminate excess paperwork by attorneys and the court.

(e) ~~Retention of the Record in the Trial Court by Order of Court.~~ The appellate court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the trial court for use there pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the appellate court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the trial court shall allow and copies of such parts as the parties may designate.

(f) ~~Stipulation of Parties that Parts of the Record Be Retained in the Trial Court.~~ The parties may agree by written stipulation filed in the trial court that designated parts of the record shall be retained in the trial court unless thereafter the appellate court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) ~~Record for Preliminary Hearing in the Appellate Court.~~ If prior to the time the record is transmitted a party desires to make in the appellate court a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the appellate court such parts of the original record as any party shall designate.

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(B) In limited circumstances, such as when the transcript is unavailable, a statement of the evidence or proceedings certified by the trial court as set forth in section (e).

(2) If a timely filed motion pursuant to C.R.C.P. 59 has been filed, the record must also include that motion, any responses, and any order on the C.R.C.P. 59 motion.

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(A) For good cause shown, the appellate court may extend the time for transmitting the record. A request for extension must be made by the clerk of the trial court or the clerk of the trial court's designee within the time originally prescribed or as previously extended.

(B) Any request for extension of the period of time based upon a court reporter's inability to complete the transcript must be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared and the date by which the transcript will be completed. If the reason stated in a court reporter's affidavit for the reporter's inability to complete the record is the failure of the designating party to make adequate arrangement for payment of the transcripts, the designating party must file a response to the affidavit with the appellate court within 7 days.

(C) The appellate court may direct the trial court to expedite the preparation and transmittal of the record on appeal and, upon motion or of its own initiative, take other appropriate action regarding preparation and completion of the record.

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(2) Form 8 must be used to file any designation of transcripts. Any party designating transcripts must comply with the policies adopted by the appellate and trial courts for designating transcripts.

(3) The appellant must include in the record transcripts of all proceedings necessary for considering and deciding the issues on appeal. Unless the entire transcript is to be included, the appellant must include in the designation of transcript a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be presented on appeal. The appellee may, within 14 days after the notice of appeal is filed, file with the trial court and an advisory copy with the appellate court its own designation of transcripts if the appellee deems additional transcripts or parts thereof necessary.

(e) Statement of the Evidence or Proceedings. Upon the agreement of the parties, or in cases where a transcript of the evidence or proceedings at a hearing or trial is unavailable, the parties may file a statement of the evidence or proceedings in lieu of designating transcripts with the trial court, and the trial court must certify a statement of the evidence or proceedings in lieu of a transcript.

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(2) **After Record is Transmitted.** If any material part of the trial court record is omitted or missing from the record by error or accident or is misstated therein after the record is transmitted to the appellate court, the appellate court, on motion or of its own initiative, may order that the supplemental record be certified and transmitted. Form 9 must be used by any party requesting to supplement the record after the record has been filed in the appellate court.

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COMMENTS

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[1] The rule contains the substance of former C.A.R. 11, Transmission of Record. With the adoption of the 2018 revisions, C.A.R. 11 has been deleted from the Colorado Appellate Rules.

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[3] Two new forms, Designation of Transcripts (Form 8) and Motion to Supplement the Record (Form 9) were adopted with the rule change.

_____ County District Court Street Address: _____ City: _____ State: _____ Zip: _____ <hr/> Plaintiff-Appell__: _____ v. Defendant-Appell__: _____ <hr/> Filing Party Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____	▲ FOR COURT USE ▲ <hr/> District Court Case Number: _____ Division: _____ Courtroom: _____ Court of Appeals' Case Number: _____
Designation of Transcripts	

I request the District Court Clerk to include the following in the Record on Appeal.

A transcript of the following hearings or trial is necessary to review the issues on appeal. A Transcript Request Form is attached to this Designation.

(For an event that lasted more than one day, please list each day separately.)

Type of Event (Examples: Motions Hearing, Trial Day 1, Status Conference)	Date	Start Time (if available)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

10.		
11.		

Certificate of Service

I certify that on (date) _____, I { e-served }, { mailed }, or { hand delivered } a copy of this document to:

Signature: _____

Print Name: _____

Colorado Court of Appeals 2 East 14 th Avenue Denver, CO 80203 <hr/> _____ County District Court District Court Judge: The Hon. _____ District Court Case Number: _____ <hr/> Plaintiff-Appell _____ v. Defendant-Appell _____: _____ <hr/> Filing Party Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____	<p style="text-align: center;">▲ FOR COURT USE ▲</p> <hr/> Court of Appeals Case Number: _____
Motion to Supplement the Record	

I request the Court of Appeals to issue an order to supplement the record with the following items to the Clerk of the District Court.

Requested Documents to be Added

Be specific. For an exhibit, state the exhibit number and the date it was submitted. For a case filing, state the title of the document and the date it was filed.

Requested Transcript to be Added

A transcript of the following hearings or trial is necessary to review the issues on appeal. A Transcript Request Form is attached to this motion.

(For an event that lasted more than one day, please list each day separately.)

Type of Event (Examples: Motions Hearing, Trial Day 1, Status Conference)	Date	Start Time (if available)
1.		
2.		
3.		

4.		
5.		

Certificate of Service

I certify that on (date) _____, I e-served, mailed, or hand delivered} a copy of this document to:

Signature: _____

Print Name: _____

Rule 3.4. Appeals from Proceedings in Dependency or Neglect

(a) – (d) [NO CHANGE]

(e) Transmission of Record.

(1) Within 42 days after the filing of JDF 545, the record, composed as set forth in subsection (d), must be transmitted to the court of appeals in accordance with C.A.R. [10\(c\)11](#) ~~(b)~~.

(2) [NO CHANGE]

(f) – (o) [NO CHANGE]

Rule 4.1. Interlocutory Appeals in Criminal Cases

(a) – (c) [NO CHANGE]

(d) Record. The record for an interlocutory appeal shall consist of the information or indictment, the plea of the defendant or the defendants, the motions filed by the defendant or defendants on the grounds stated in section (a) above, the reporter's transcript of all testimony taken at the hearing on said motions and such exhibits or reasonable copies, facsimiles, or photographs thereof as the parties may designate (subject to the provisions in C.A.R. [10\(c\)\(3\)11](#) ~~(b)~~ pertaining to exhibits of bulk), the order of court ruling on said motions together with the date, if one has been fixed, that the case is set for trial or a certificate by the clerk that the case has not been set for trial. After the filing of the record, such other exhibits or reasonable copies, facsimiles, or photographs thereof shall be transmitted by the clerk of the trial court to the appellate court as the appellate court may order. The record shall be filed within 14 days of the date of filing the notice of appeal.

(e) – (h) [NO CHANGE]

Rule 5. Entry of Appearance and Withdrawal

(a) – (d) [NO CHANGE]

(e) Notice of Limited Representation Entry of Appearance and Withdrawal. An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party to file a notice of appeal and designation of [transcripts record](#) in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion

proceedings in either court, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceedings(s) for which the attorney appears. The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31.

(f) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 12. Docketing the Appeal and Fees; Proceedings In Forma Pauperis; Filing of the Record

(a) – (d) [NO CHANGE]

(e) Filing of the Record. Upon receipt of the record ~~or papers authorized to be filed in lieu of the record under the provisions of C.A.R. 11(e) and (g) following timely transmittal~~, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(f) [NO CHANGE]

Rule 3.4. Appeals from Proceedings in Dependency or Neglect

(a) – (d) [NO CHANGE]

(e) Transmission of Record.

(1) Within 42 days after the filing of JDF 545, the record, composed as set forth in subsection (d), must be transmitted to the court of appeals in accordance with C.A.R. 10(c).

(2) [NO CHANGE]

(f) – (o) [NO CHANGE]

Rule 4.1. Interlocutory Appeals in Criminal Cases

(a) – (c) [NO CHANGE]

(d) Record. The record for an interlocutory appeal shall consist of the information or indictment, the plea of the defendant or the defendants, the motions filed by the defendant or defendants on the grounds stated in section (a) above, the reporter's transcript of all testimony taken at the hearing on said motions and such exhibits or reasonable copies, facsimiles, or photographs thereof as the parties may designate (subject to the provisions in C.A.R. 10(c)(3) pertaining to exhibits of bulk), the order of court ruling on said motions together with the date, if one has been fixed, that the case is set for trial or a certificate by the clerk that the case has not been set for trial. After the filing of the record, such other exhibits or reasonable copies, facsimiles, or photographs thereof shall be transmitted by the clerk of the trial court to the appellate court as the appellate court may order. The record shall be filed within 14 days of the date of filing the notice of appeal.

(e) – (h) [NO CHANGE]

Rule 5. Entry of Appearance and Withdrawal

(a) – (d) [NO CHANGE]

(e) Notice of Limited Representation Entry of Appearance and Withdrawal. An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party to file a notice of appeal and designation of transcripts in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion

proceedings in either court, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceedings(s) for which the attorney appears. The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31.

(f) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 12. Docketing the Appeal and Fees; Proceedings In Forma Pauperis; Filing of the Record

(a) – (d) [NO CHANGE]

(e) Filing of the Record. Upon receipt of the record, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(f) [NO CHANGE]

Rule 30. E-Filing

(a) – (l) [NO CHANGE]

(m) Form of Electronic Documents.

(1) – (2) [NO CHANGE]

(3) The Court authorized service provider for the program is [Colorado Courts E-Filing ICEES](http://www.courts.states.co.us/fieees)
(www.courts.states.co.us/fieees).

Rule 30. E-Filing

(a) – (l) [NO CHANGE]

(m) Form of Electronic Documents.

(1) – (2) [NO CHANGE]

(3) The Court authorized service provider for the program is Colorado Courts E-Filing
(www.courts.states.co.us).

Amended and Adopted by the Court, En Banc, October 26, 2017, effective as stated.

By the Court:

Allison H. Eid
Justice, Colorado Supreme Court