

\* The proposed amendments to Appellate Rule 12(B) and Appellate Rule 12(C) would require the trial court clerk to upload the transcript into the appellate cause at the time of uploading the notice of filing transcript. Current procedure follows the practice of allowing counsel to check out the paper transcripts from their local counties during the briefing process. The digital age has made obsolete the need to keep the record at the local clerk's office.

The proposed amendments to Appellate Rules 28(F) and 29(B) implement the changes to Rule 12 and streamline distribution of electronic exhibits to the appellate clerk and parties.\*

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## **Rule 12. Transmittal Of the Record**

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### **B. Transcript.** When filing the Notice of Completion of Transcript,

~~(1) Except as otherwise provided below,~~ the trial court clerk shall also file ~~retain~~ the Transcript with ~~until~~ the Clerk. If the case includes audio or video recordings under Rule 29(B), the clerk shall mail one copy to the Clerk and one copy to counsel for the Appellant. ~~notifies the trial court clerk that all briefing is completed, and the trial court clerk shall then transmit one (1) copy of the Transcript to the Clerk in accordance with Rules 28 and 29.~~

~~(a) In Criminal Appeals in which the appellant is not represented by the State Public Defender, the Clerk shall notify the trial court clerk when the Appellant's Brief has been filed, and the trial court clerk will then transmit one (1) copy of the Transcript to the Clerk in accordance with Rules 28 and 29.~~

~~(b) In Criminal Appeals in which the appellant is represented by the State Public Defender, the trial court clerk shall transmit one (1) copy of the Transcript to the Clerk in accordance with Rules 28 and 29 when the Court Reporter has completed the preparation, certification and filing in accordance with Rule 11(A).~~

~~(c) In juvenile termination of parental rights and juvenile child in need of services appeals, the Clerk shall notify the trial court clerk when the Appellant's Brief has been filed, and the trial court clerk will then transmit one (1) copy of the Transcript to the Clerk in accordance with Rules 28 and 29.~~

~~(d) Any party may move the Court on Appeal to order the trial court clerk to transmit the Transcript at a different time than provided for in this Rule.~~

~~(2) Any party may withdraw the Transcript, or, at the trial court clerk's option, a copy, at no extra cost, from the trial court clerk for a period not to exceed the period in which the party's brief is to be filed.~~

**C. Access to Record on Appeal.** Upon receipt, the Clerk shall make the Transcript available to all parties of record. After the filing of the Appellee's Brief, the Clerk shall make the Transcript

~~(except for any portions deemed confidential under the Rules on Access to Court Records) accessible to the public. Unless limited by the trial court, any party may copy any document from the Clerk's Record and any portion of the Transcript. After a Transcript or Appendix has been transmitted to or filed with the Clerk, a party to the appeal may arrange to have access to that Transcript or Appendix during the time period that party is working on a brief, subject to any internal rules the Clerk may adopt to provide an accounting for the location of those materials and for ensuring fair access to the Transcript and Appendices by all parties. In Criminal Appeals, juvenile termination of rights appeals, and child in need of services appeals, the Attorney General shall obtain any Rule 29(B) materials from the Clerk.~~

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### **Rule 28. Preparation of Transcript By Court Reporter**

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#### **F. Court Records Excluded by the Rules on Access to Court Records.**

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(3) Additionally, until the ~~filing of the Appellee's Brief~~ time the Transcript is transmitted to the Court on Appeal, any party or person may file written notice with the Trial Court identifying:

- (a) the exhibit or Transcript page and line number(s) containing any Court Record to be excluded from Public Access; and
- (b) the specific Access to Court Records Rule 5(B), 5(C), or 5(D) grounds upon which that exclusion is based. (See Form #App.R. 11-3).

This written notice must be served on the Court Reporter and, upon receipt of the written notice, the Court Reporter must refile the Transcript in compliance with the requirements of Appellate Rule 23(F) and must note in the Transcript the specific Access to Court Records Rule 5(B), 5(C), or 5(D) grounds(s) identified by a party or person. The Clerk shall replace the Transcript on file with a corrected Transcript.

(4) After ~~the the filing of the Appellee's Brief~~ Transcript has been transmitted to the Court on Appeal, any request by a party or person to exclude a Court Record in the Transcript from Public Access must be made to the Court on Appeal and must contain the specific Access to Court Records Rule 5(B), 5(C), or 5(D) ground(s) upon which that exclusion is based. Upon receipt of an order from the Court on Appeal, the Court Reporter must re-file the Transcript in compliance with the requirements of Appellate Rule 23(F).

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**Rule 29. Exhibits**

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**B. Audio and Video Recordings.** If a case includes eExhibits in the form of audio or video recordings, the court reporter must prepare two copies.

(1) The trial court clerk shall mail one copy ~~shall be separately submitted~~ to the Clerk on CD, DVD, flash drive, or other physical media at the same time as the Transcript and documentary exhibits are filed. Such CDs, DVDs, flash drives, or physical media shall be submitted in an envelope stapled into a conventional volume.

(2) The trial court clerk shall mail one copy of the CD, DVD, flash drive, or other physical media to the Appellant.

(3) Upon filing of the Appellant's Brief, except in cases described in Rule 12(C), the Appellant shall provide the CD, DVD, flash drive, or other physical media to the Appellee.

(4) Audio or video recordings submitted on physical media in criminal cases shall be returned to the trial court five (5) years after the appellate case is concluded. Audio or video recordings submitted on physical media in civil cases shall be returned to the trial court sixty (60) days after the appellate case is concluded.

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