

New Appellate Rules for Preparation of Transcripts

Summary Highlights

What Stays the Same and What Changes

Each Court Reporter/Transcriber is advised to read the Appellate Rules <http://www.in.gov/judiciary/rules/appellate/index.html> and Order Amending Rules <http://www.in.gov/judiciary/2784.htm> very carefully.

App. Rule 2. Definitions

- Remains the Same
 - Definitions like “Court Reporter” (a person who is designated by a court to perform official reporting services, including preparing the transcript) remain the same.
- Adds new terms
 - Adds the phrase “conventional filing” (meaning the physical non-electronic presentation of documents to the Clerk or Court) to the appellate rules.
 - Adds other new terms with definitions for purposes of electronic filing. See the new rule language.

App. Rule 9 A Initiation of the Appeal

- Adds language an appeal is initiated by “conventionally filing” a Notice of Appeal with the Clerk.

App. Rule 9 F (5). Request for Transcript.

- Remains the same
 - A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.
 - In Criminal Appeals, the Notice of Appeal must request the Transcript of the entire trial or evidentiary hearing, unless the party intends to limit the appeal to an issue requiring no Transcript.
- What is new
 - The appellant must include the email address of the Court Reporter **and** must send by electronic transmission to the Court Reporter the Notice of Appeal.
Note: Your work email address will need to be readily available to the public and attorneys.

App. Rule 9 H. Payment for Transcript

- Remains the same
 - The party must enter into an agreement with the Court Reporter for payment of the cost of the Transcript.
 - Unless a court order requires otherwise, each party shall be responsible to pay for all transcription costs associated with the Transcript that party requests
- What is new
 - The payment arrangements must be made with 10 days of the filing of the notice of Appeal.
 - The Court Reporter may require from the appellant a fifty percent (50%) deposit based on the estimated cost of the Transcript.
 - **NOTE:** No deposit may be charged for a state or county paid Transcript.

App. Rule 11 A. Preparation of Transcript

- Remains the same
 - The Court Reporter shall prepare, certify, and file the Transcript designated in the Notice of Appeal with the trial court clerk or Administrative Agency in accordance with Rules 28, and 29.
 - Preparation of exhibits as required by Rule 29 is considered part of the Transcript preparation process.
 - The Court Reporter shall provide notice to all parties to the appeal that the Transcript has been filed with the clerk of the trial court or Administrative Agency in accordance with Rules 28, and 29. (See Form # App.R. 11-1)
- What is new
 - **With the exception of the preparation of documentary exhibits pursuant to Rule 29(A)**, the Court Reporter may engage the services of outside transcribers or transcription services to assist in all or part of the transcription.
 - **NOTE Criminal Rule 5 and Trial Rule 74 have not changed**
The judge of the court in which the oral matters were recorded may direct the court reporter or any other responsible, competent person, in his discretion, to make a transcription of recorded oral matters and certify the accuracy of the transcription.
 - **Best Practice:** a Reporter should consult with the Judge **before** engaging the service of another transcriber.
 - Changes to Rule 28 and 29 (see below)

App. Rule 11 B. Deadline for Filing Transcript

- What is new
 - The Court Reporter shall have **forty-five (45) days** after the appellant files the Notice of Appeal to file the Transcript with the trial court clerk or Administrative Agency.

App. Rule 12 B. Transmittal of the Record

- What is new
 - With five (5) days of the Court Reporter filing the Transcript, the **trial court clerk** shall transmit the Transcript to the Clerk in accordance with Rules 28 and 29.

App. Rule 23(F)

This Rule deals with the parties' responsibility to submit documents in a manner that complies with Admin. R. Rule 9(G).

- Remains the same
 - Court Records are accessible to the public, except as provided in Administrative Rule 9(G).
 - If a Court Record was excluded from Public Access in the trial court in accordance with Administrative Rule 9(G), the Court Record shall remain excluded from Public Access on appeal unless the Court on Appeal determines the conditions in Administrative Rule 9(G)(7) are satisfied.
- Note: If the party has not taken steps to comply with Admin. Rule 9(G), then the court reporter is under no obligation to comply with the rule. The documents should be filed with the appellate court as they were submitted and accessible to the public.
- What is new
 - If the party has complied with Admin. Rule 9(G), then the Court Reporter must file the documents with the appellate court in a manner that complies with Appellate Rule 23(F).
 - In the Public Access Version of a document, the confidential information should be omitted or redacted. Each omission or redaction should be indicated at the place it occurs in the Public Access Version. If multiple pages are omitted, then a separate place holder page must be inserted for each page that is omitted.
 - In the Non-Public Access Version, the first page should be conspicuously marked "Not for Public Access" or "Confidential" and should include the case's caption and cause number. The Non-Public Access Version should consist of a complete, consecutively paginated replication of the document including both the public access material and the non-public access material.
 - The use of green paper is abolished for e-filing. If the transcript and exhibits are e-filed, pages in the Non-Public Access Version containing court records that are excluded from public access should be identified with a header, label, or stamp that states, "Confidential Per A.R. 9(G)" or "Excluded from Public Access Per A.R. 9(G)."

App. Rule 24 Service of Documents

- What is new
 - The Court Reporter shall be served with the Notice of Appeal by electronic transmission. See the summary of App. Rule 9F.

App. Rule 28 Preparation of Transcript by Court Reporter

- What is new
 - The Court Reporter shall prepare an electronic Transcript in accordance with Appendix A (see below).
 - Certification
 - The Court Reporter shall certify the Transcript is correct.
 - The Court Reporter's certification shall be the last page of the last volume of the Transcript, signed by the Court Reporter in accordance with Appendix A.
 - Submission of Electronic Transcript
 - Following certification of the Transcript, the Court Reporter shall seal the official record and official working copy in an envelope or package bearing the trial court case number and marked "Transcript."
 - ❖ **Note:** This language would indicate the court reporter either makes and transfers (by copy and paste) an electronic copy of the transcript to a USB flash memory drive or burns an electronic copy of the transcript to a compact CD or DVD. The flash drive/CD/DVD is sealed in an envelope or package bearing the case number and marked "Transcript."
 - The Court Reporter shall retain the Court Reporter's copy of the electronic Transcript.
 - ❖ **Best Practice Note:** The court reporter's copy of the electronic transcript should be backed up to a secure location.
 - The sealed electronic Transcript copies, separate Exhibit volume(s), and photographic reproductions of oversized exhibits (if included pursuant to Rule 29(C)) shall be filed with the trial court clerk in accordance with Rule 11.

App. Rule 29 Exhibits

- Remains the same
 - Documentary exhibits, including testimony in written form filed in Administrative Agency proceedings and photographs shall be included in separate volumes.
 - Must conform to requirements of Appendix A(1), (2(a), (11), (12), and (14)
 - Must prepare an index of the exhibits contained in the separate volumes with the index placed at the front of the first volume of exhibits.
 - Non-documentary and oversized exhibits remains the same.
- What is new
 - Documentary exhibit volumes may be submitted in either electronic or paper format.
 - Documentary exhibit volumes submitted in electronic format shall additionally conform to the requirements of Appendix A(15)-(19).
 - The documentary exhibit volumes shall be transmitted to the Clerk with the electronic Transcript, using the same method of transmission as the electronic Transcript.
 - Audio and Video Recordings. Exhibits in the form of audio or video recordings 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. App. Rule 29 (B)

- If an exhibit was accompanied by the separate written notice required by Administrative Rule 9(G)(5)(a)(i)(b), the Court Reporter must comply with the requirements of Appellate Rule 23(F) when the exhibit is thereafter filed with the Trial Court Clerk. App. Rule 29 (B)

Appendix A Standards for Preparation of Electronic Transcripts

- Remains the same
 - Page size 8 ½ x 11 inch page size
 - No less than twenty-five (25) lines on each page, unless it is a final page.
 - Top, bottom and right margins remain one (1) inch from the edge of the page
 - 12-point font or smaller
 - Table of Contents
 - The Court Reporter shall prepare a table of contents listing each witness and the volume and page where that witness's direct, cross, and redirect examination begins.
 - The table of contents shall identify each exhibit offered and shall show the Transcript volumes and pages at which the exhibit was identified and at which a ruling was made on its admission in evidence.
 - The table of contents shall be a separate volume.
- What is new
 - Each volume of the Transcript shall be independently and consecutively numbered at the bottom. Each volume shall begin with numeral one on its front page. Appendix A(2)(a)
 - Page numbers or header notations shall not be considered part of the 25 lines of text. Appendix A (2)(b)
 - Exception: A page break may be inserted before and after sidebar conferences, bench conferences, and hearings on motions.
 - Court Reporters are required to reduce the page count for billing purposes by one-half page for every page of Transcript that includes a sidebar conference, bench conference, or hearing on motions that is marked by such a page break. Appendix A (2)(c)
 - Left margin: One (1) inch from the edge of the page. Appendix A (3)
 - Top = 1 inch
 - Bottom = 1 inch
 - Left = 1 inch
 - Right = 1 inch
 - Indentations: Certain text may be indented as follows:
 - Q and A.
 - Must begin at the left margin.
 - A period following the “Q” and “A” designation is optional.
 - The statement following the “Q” and “A” must begin on the fifth (5th) space following the “Q” or “A” (or period if used following the “Q” or “A” designation).

- Subsequent lines must begin at the left margin.
- Depositions read at trial:
 - The indentations for “Q” and “A” must be the same as described above.
 - In the Transcript, each question and answer read from a deposition must be preceded by a quotation mark. At the conclusion of the reading, a closing quotation mark must be used.
- Colloquy
 - Speaker identification must begin on the tenth (10th) space from the left margin, followed immediately by a colon.
 - The statement must begin on the third (3rd) space after the colon.
 - Subsequent lines must begin at the left margin.
- Quotations—Quoted material other than depositions.
 - Must begin on the tenth (10th) space from the left margin
 - Additional quoted lines beginning at the tenth (10th) space from the left margin, with appropriate quotation marks used. Appendix A (4) (a)-(d)
- Headers
 - The Court Reporter shall note in boldface capital letters at the top of each page where a witness' direct, cross, or redirect examination begins.
 - Header notations of other types of persons and/or events are permitted but not required.
 - Listing the last name of the witness or other party and the type of examination or other event is sufficient. Appendix A (5)
- Typeface and Line Spacing
 - The font, which must be 12-point type or smaller
 - Font must be: Arial, Baskerville, Book Antigua, Bookman, Bookman Old Style, Century, Century Schoolbook, Courier, Courier New, CG Times, Garamond, Georgia, New Baskerville, New Century Schoolbook, Palatino or Times New Roman
 - Font must be black in color.
 - Lines shall be double-spaced. Appendix A (6)
- Interruptions of speech must be denoted by the use of a dash at the point of interruption, and again at the point the speaker resumes speaking. Appendix A (7)
- Transcript **must** contain all words and other verbal expressions uttered during course of the proceeding, **except as noted below**. Appendix A (8)
 - No portion of the proceeding must be omitted from the record by an order to strike.
 - The material ordered stricken, as well as the order to strike, must appear in the Transcript.
 - The Transcript must provide an accurate record of words spoken in the course of proceedings.
 - All grammatical errors, changes of thought, contractions, misstatements, and poorly constructed sentences must be transcribed as spoken.

- Every effort should be made to produce a complete Transcript; however, the Court Reporter may label a portion of the Transcript “indiscernible” or “inaudible” if it is impossible to transcribe the record.
- Private communications and off the record conversations inadvertently recorded must not be included in the Transcript.
- Standard Summary Phrases. Appendix A (8)(e)
 - Call to Order, Swearing in, Affirmation of Witnesses or Jurors, and other customary introductory statements must be noted in the Transcript using standard summary phrases.
 - Standard summary phrases must appear in parentheses or brackets and begin with an open parenthesis or bracket on the fifth (5th) space from the left margin, with the phrase beginning in the sixth (6th) space from the left margin. Examples: (Call to Order of the Court); (The Jury is Sworn); (The Witness is Sworn); (The Witness is Affirmed)
- All speakers must be properly identified throughout the Transcript, initially by their full name, thereafter by the following designations or courtesy titles, in capital letters indented ten (10) spaces from the left margin. Appendix A (8)(f)
 - The judge shall be identified as THE COURT
 - An attorney shall be identified as MR., MRS., MS., or MISS (last name)
 - A witness shall be identified as THE WITNESS
 - An interpreter shall be identified as THE INTERPRETER
 - The defendant in a criminal case shall be identified as THE DEFENDANT
- References to speakers and events that occur throughout proceedings must be properly noted in **capital letters and centered on the appropriate line**. Appendix A(9). Examples: AFTER RECESS; DIRECT EXAMINATION; CROSS EXAMINATION; REDIRECT EXAMINATION; RECROSS EXAMINATION; FURTHER REDIRECT EXAMINATION; PLAINTIFF’S EVIDENCE; PLAINTIFF RESTS; DEFENDANT’S EVIDENCE; DEFENDANT RESTS; PLAINTIFF’S EVIDENCE IN REBUTTAL
- Parenthetical notations
 - Must begin with an open parenthesis or bracket on the fifth (5th) space from the left margin, with the remark beginning on the sixth (6th) space from the left margin.
 - Parenthetical notations in a Transcript are a Court Reporter’s own words, enclosed in parentheses or brackets, recording some action or event.
 - Parenthetical notations should be as short as possible but consistent with clarity and standard word usage.
 - Parenthetical notations are used for customary introductory statements such as a call to order of court or swearing in a witness, and indicating non-verbal behavior, pauses, and readback/playback.
 - The following parenthetical notations should be used to designate portions of proceedings: Appendix A (10)
 - Proceedings Started, Recessed, and Adjourned, with Time of Day and Any Future Date Indicated where Appropriate. Examples: (Recess at 12:00 p.m.); (Recess at 12:00 p.m. until 1:30 p.m.); (Proceedings concluded at 5:00 p.m.)
 - Jury In/Out. Examples: (Jury out at 2:15 p.m.); (Jury in at 2:40 p.m.)

If a jury is involved, it is essential to indicate by the proper parenthetical notation whether the proceeding occurred: in the presence of the jury, out of the presence of the jury, out of the hearing of the jury, prior to the jury entering the courtroom, or after the jury left the courtroom.

- Defendant Present/Not Present. In criminal trials, this designation must be made if not stated in the record by the judge.
- Bench/Side Bar Conferences. This designation must note whether the bench/side bar conference is on or off the record. If all the attorneys in court are not participating in bench/side bar conference, the parenthetical notation must so indicate. Examples: (Bench conference on the record); (Bench conference off the record with Mr. Johnson and Ms. Smith); (At side bar on the record); (At side bar); (End of discussion at side bar).
- Discussions off the Record. This designation must note where the discussion took place.
- Chambers Conferences. This designation must note the presence or absence of parties in chambers. Examples: (Discussion off the record in chambers with defendant not present); (Discussion on the record in chambers with defendant present)
- Nonverbal Behavior, Pauses, and Readback/playback.
 - Attorneys, and judges in some instances, should note for the record any nonverbal behavior (e.g. physical gestures, lengthy pauses by witnesses).
 - Parenthetical phrases may be used to indicate physical gestures to which attorneys or judges refer. Examples: (Nods head up and down); (Shakes head from side to side); (Indicating)
 - If an attorney or judge refers to a physical gesture, but the nature of the gesture is specified in the log notes, then the transcriber may use the parenthetical phrase “(inaudible response).”
 - All readbacks and/or playbacks and the party requesting must be noted parenthetically as follows:
 - ❖ If the question and/or answer requested to be read or played back appears on the same page as the request, the following parenthetical must be used: (The last question and/or answer was read/played back)
 - ❖ If the question and/or answer, or both, appear on a previous page, the Court Reporter should restate the question and/or answer in full, with appropriate quotation marks and parentheses.
- Transcript Volume
 - A Transcript volume shall be a single PDF or PDF/A file consisting of no more than the lesser of two hundred fifty (250) pages or twenty megabytes (20 MB).
 - Each volume shall be numbered at the bottom starting with numeral one on each volume’s front page. Appendix A (11)
 - The front page of each volume shall conform to Form #App.R. 28-1. Appendix A (12)

- Table of Contents
 - Prepare a table of contents listing each witness and volume and page where that witness's direct, cross, and redirect examination begins
 - Table of contents must identify each exhibit offered and show the Transcript volumes and pages at which the exhibit was identified and at which a rule was made on its admission in evidence
 - Table of contents shall be a separate volume.
- Court Records Excluded by Administrative Rule 9 (G)
 - In cases where all of the Court Records are excluded from Public Access pursuant to Administrative Rule 9(G)(1), the Transcript shall be excluded from Public Access. Appendix A (14)
 - If, during the hearing or trial a party or person identified any oral statement(s) to be excluded from Public Access, the Court Reporter must comply with the requirements of Appellate Rule 23(F) with regard to the statement(s) and must note in the Transcript the specific Administrative 9(G)(2) or 9(G)(3) ground(s) identified by the party or person.
 - Additionally, until the time the Transcript is transmitted to the Court on Appeal, any party or person may file written notice with the Trial Court identifying: the Transcript page and line number(s) containing any Court Record to be excluded from Public Access; and the specific Administrative Rule 9(G)(2) or 9(G)(3) 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 Administrative Rule 9(G)(2) or 9(G)(3) grounds(s) identified by a party or person.
 - After the 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 Administrative Rule 9(G)(2) or 9(G)(3) 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 Administrative Rule 9(G)(5)(b).
- File Format and Size
 - File saved in one or more files in searchable PDF or searchable PDF/A format
 - File size limited to lesser of 250 pages or 20MB
 - Specified naming convention for file names. See Appendix A(15).
 - Valid document types include: Table of Contents, Transcript, Index, and Exhibit.
- Electronic Storage Devices
 - USB flash memory drive, CD, or DVD formatted to store electronic data in a File Allocation Table (FAT) or File Allocation Table 32 (FAT-32) file system.

- CD/DVD must be prepared for distribute (finalized, closed session) to ensure filed can be opened by the Clerk,
- Each storage device must be labeled or labeled or tagged to identify the names of the parties and case number in the proceedings in the trial court; the Court on Appeal case number, if known; the device sequence number, if more than one (1) device is required for a complete Transcript; the Signature of the Court Reporter; and whether the device is the official record, official working copy, Court Reporter's copy, or party copy. See Appendix A(16)
- Original Version
 - The Court Reporter shall retain a copy of the electronic Transcript in the original word processing version used for the transcription. Appendix A (17)
- Signature. All electronic documents that require a signature must include a person's signature using one of the following methods: a graphic image of a handwritten signature, including an actual signature on a scanned document; or the indicator "/s/" followed by the person's name. Appendix A (18)
- Malware
 - Court Reporter must take reasonable steps to ensure that the Transcript and other files do not contain malicious software ("malware"), such as viruses, worms, and Trojan horses.
 - The Clerk will scan all files for malware.
 - Any files that contain malware will be rejected by the Clerk and will not be processed.
 - Rejection of a filing because it contains malware will not necessarily excuse a late filing. Appendix A(19)