

FILED

October 8, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE**

The Rules of Criminal Procedure establish deadlines for ordering the transcript for an appeal. *See* Minn. R. Crim. P. 28.02, subd. 9. This rule also incorporates provisions of the Rules of Civil Appellate Procedure that govern transcript preparation to “the extent applicable.” *Id.*; *see* Minn. R. Civ. App. P. 110.02 (governing transcript preparation, filing, and delivery). Rule 28.02, subdivision 9(a) allows a party to request a paper copy of the transcript.

The Judicial Council, the administrative policy-making authority for the Minnesota Judicial Branch, approved amendments effective October 1, 2021 to Council Policy No. 221, which governs transcript preparation. Among other amendments, the Council decided that paper copies of transcripts will not be provided, thus effectively requiring transcripts that are ordered from a court reporter for an appeal to be provided in an electronic format. This decision requires amendments to the Rules of Criminal Procedure. We therefore opened a public comment period on proposed rule amendments.

None of the comments filed oppose the proposed amendments to the rules that govern transcripts that are ordered for an appeal governed by the Rules of Criminal Procedure. The chair of the Supreme Court Advisory Committee for the Rules of Criminal Procedure noted, however, that the rules should address the limited situations in which a self-represented party is unable to access an electronic transcript and therefore requests a

paper copy. We agree and, thus, have provided direction in these amendments for court reporters and guidance for these self-represented parties on the availability of a paper copy of the transcript. We have also amended Rule 110 of the Rules of Civil Appellate Procedure in an order filed today. *See Order Promulgating Amendments to the Rules of Civil Appellate Procedure*, No. ADM09-8006 (Minn. filed Oct. 8, 2021).

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

IT IS HEREBY ORDERED that the attached amendments to the Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective as of the date of this order. The rules as amended shall apply to transcript requests that are made after the date of this order for an appeal filed under the Rules of Criminal Procedure.

Dated: October 8, 2021

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL 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.]

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Rule 27.04. Probation Revocation

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Subd. 3. Revocation Hearing.

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- (4) Appeal.
 - (a) The defendant or the prosecutor may appeal the revocation decision.
 - (b) Rule 28.05 governs the appeal, except that if an appellant files a notice of appeal within 90 days of the revocation hearing, the appellant's brief must be identified as a probation revocation brief and must be filed within 30 days after delivery of the transcript; or for a self-represented party who requests a paper copy of a transcript under subdivision 2(a), Rule 110.02 of the Rules of Civil Appellate Procedure, 30 days after the date of the notice regarding the availability of the transcript, with 3 days added to the briefing period measured from the date of the court's reporter's notice to that party.
 - (c) The Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript.

Rule 28.02. Appeal by Defendant

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Subd. 9. Transcripts and Transmission of the Transcript and Record.

(a) Transcripts of the Proceedings. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the appellant must order the transcript, ~~and any requested paper copies,~~ within 30 days after filing of the notice of appeal unless the time is extended by the appellate court for good cause. ~~Any other party may request a paper copy of the transcript as provided in Minnesota Rule of Civil Appellate Procedure 110.02, subd. 2(b), within 10 days of the filing of either~~

~~the transcript request or the court reporter's acknowledgement and acceptance of the transcript request, whichever is later.~~—The transcript must be filed with the court administrator and, unless the court reporter is required by Rule 110.02, subdivision 2, of the Rules of Civil Appellate Procedure to provide notice to a self-represented party regarding the availability of a paper copy, an electronic copy must be transmitted promptly to the attorney for each party.

(b) Transcripts of Audio or Video Exhibits. If a transcript of video or audio exhibit is made part of the district court record, it becomes part of the record on appeal. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If a transcript of an 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. The court reporter may correct any transcript prepared by a party and must include the transcript of the exhibit with all other transcripts filed and provided for the appeal. The court reporter need not certify the correctness of the transcript of an audio or video exhibit.

(c) Partial Transcripts. If the appellant does not order the entire transcript of the proceedings, then within the 30 days permitted to order it, the appellant must file with the clerk of the appellate courts and serve on the court administrator and respondent a description of the parts of the transcript the appellant intends to include in the record, and a statement of the issues the appellant intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings necessary, the respondent must order from the reporter, within 10 days of service of the description or notification of no transcript, those other parts deemed necessary, or serve and file a motion in the district court for an order requiring the appellant to do so.

Subd. 10. Briefs. The appellant must serve and file the appellant's brief within 60 days after the court reporter delivers the transcript, or after the filing of the district court's approval of the statement under subd. 8 of this rule or under Minnesota Rule of Civil Appellate Procedure 110.03. If a party is self-represented and requests a paper copy of the transcript, 3 days are added to the briefing period, which is measured from the date the court reporter provides that party notice regarding the availability of the transcript from the court administrator's office. In all other cases, if the parties obtain the transcript before the appeal, or if the record on appeal does not include a transcript, the appellant must serve and file the appellant's brief within 60 days after the appellant filed the notice of appeal. The respondent must serve and file the respondent's brief within 45 days after service of the appellant's brief. The appellant may serve and file a reply brief within 15 days after service of the respondent's brief. In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but the appellant's brief must contain a procedural history.

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Rule 28.05. Appeal from Sentence Imposed or Stayed

Subd. 1. Procedure. The following procedures apply to the appeal of a sentence imposed or stayed under these rules:

- (1) Notice of Appeal and Briefs. Any party appealing a sentence must file with the clerk of the appellate courts, within 90 days after judgment and sentencing:
 - (a) a notice of appeal; and
 - (b) proof of service of the notice on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals the State Public Defender's office.

If all transcripts necessary for the appeal have already been transcribed when the appellant files the notice of appeal, the party appealing the sentence must file with the notice of appeal an informal letter brief in the number of copies prescribed by standing order of the appellate court, which must identify itself as a sentencing appeal brief, with proof of service on opposing counsel, the Minnesota Attorney General, and in the case of prosecution appeals the State Public Defender's office. The brief must set out the arguments concerning the illegality or inappropriateness of the sentence.

When the transcripts necessary for the appeal have not been transcribed, the appellant must file with the notice of appeal a request for transcripts, and proof of service of the request on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals, the State Public Defender's office.

Appellant's brief must be identified as a sentencing appeal brief and must be served and filed within 30 days after delivery of the transcript, or for a self-represented party who requests a paper copy of a transcript and notice is provided under subdivision 4, Rule 110.02 of the Rules of Civil Appellate Procedure, 30 days after the date of the notice regarding the availability of the transcript, with 3 days added to the briefing period measured from the date of that notice. The clerk of the appellate courts must not accept a notice of appeal from sentence unless accompanied by the requisite briefs or transcript request and proof of service.

A defendant appealing the sentence and the judgment of conviction may combine the two into a single appeal; when this option is selected, the procedures in Rule 28.02 continue to apply.