

### RULE 3E. FAST TRACK CHILD CUSTODY APPEALS

(a) **Applicability.** This Rule applies to appeals and cross-appeals from district court orders primarily pertaining to child custody, guardianship of minors, parenting time, or visitation.

**Commented [JO1]:** Added to address concerns about cases being assigned to the program where the primary issues are not related to child custody, guardianship, etc.

Also address this concern: Form 2, item 12 should probably be modified to say "If this is a civil case, indicate whether child custody, guardianship of a minor, parenting time, or visitation is a primary issue in this appeal."

(b) **Responsibilities of Appellant.** Appellant and cross-appellant are responsible for filing the notice of appeal, case appeal statement, docketing statement, a transcript request form, and a fast track statement-opening brief for the case identifying the appellate issues that are raised. An appellant and/or cross-appellant who is proceeding without counsel need not prepare a case appeal statement, as the district court clerk will prepare this document in accordance with Rule 3(f)(2).

(c) **Request for Transcripts or Rough Draft Transcripts.**

(1) **Rough Draft Transcript.** For the purposes of this Rule, a rough draft transcript is a computer-generated transcript that can be expeditiously prepared in a condensed fashion, but is not proofread, corrected, or certified to be an accurate transcript.

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(A) Format. For the purposes of this Rule, a rough draft transcript shall must:

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(i) Be printed on paper 8 1/2 by 11 inches in size, double sided, with the words "Rough Draft Transcript" printed on the bottom of each page;

(B) be produced with a yellow cover sheet;

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(ii) Include a concordance, indexing key words contained in the transcript; and

(iii) Include an acknowledgment by the court reporter or recorder that the document submitted pursuant to this Rule is an true original or accurate copy of the rough draft transcript.

~~(B2)~~ **Audio or Video Recorded Proceedings.** Relevant portions of the district court proceedings that were audio recorded or video recorded must be submitted in typewritten form. The court will not accept audio- or video recordings in lieu of a rough draft transcript.

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~~(C32)~~ **Transcript Requests.**

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~~(4AA)~~ **Filing and Service.** Filing and Serving Request Form. The parties have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the court's review on appeal.

~~(ai)~~ When a transcript is necessary for an appeal, appellant ~~shall~~ must file the transcript or rough draft transcript request form with the district court and ~~shall~~ must serve a copy of the request form upon the court reporter or recorder and the opposing party.

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~~(bii)~~ Appellant ~~shall~~ must file and serve the request form within 14 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle or, if the case was exempted or removed from the settlement program, within 14 days of the date that the case was exempted or removed from the settlement program.

~~(eiii)~~ Appellant ~~shall~~ must file with the clerk of the Supreme Court ~~12~~ file-stamped copyies of the transcript or rough draft transcript request form and proof of service of the form upon the court reporter or recorder and the opposing party.

~~(2B)~~ **Form.** The transcript request form ~~shall~~ must substantially comply with Form 3 or 11 in the Appendix of Forms unless the party filing the form is proceeding pro se, in which case the transcript request form ~~shall~~ must substantially comply with Form 17 in the Appendix of Forms.

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(3C) Necessary Transcripts. Appellant must order transcripts of only those portions of the proceedings that appellant reasonably and in good faith believes are necessary to determine the appellate issues.

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(4D) No Transcripts. If no transcript is to be requested, appellant shall must file with the clerk of the Supreme Court and serve the opposing party with a certificate to that effect within the same period that the transcript request form must be filed and served under this subsection. Such a certificate shall must substantially comply with Form 14 in the Appendix of Forms.

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~~(B) Appellant shall must order transcripts of only those portions of the proceedings that appellant reasonably and in good faith believes are necessary to determine the appellate issues.~~

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(54C) Court Reporter or Recorder's Duty. The court reporter or recorder shall must:

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(aA) submit an original transcript or rough draft transcript, as requested by appellant, to the district court no more than 21 days after the date that the request is served;

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~~(bB).~~ The court reporter or recorder shall also deliver one certified copies of the transcript or rough draft transcript to the requesting attorney and one copy of the transcript or rough draft transcript to counsel for each party appearing separately and opposing parties no more than 21 days after the date when the request is served.; and

~~(eC) W~~within 7 days after delivering the certified copies of the rough draft transcript, file with the clerk a certificate of delivery that substantially complies with Form 15 in the Appendix of Forms and specifies the transcripts that have been delivered and the date that they were delivered to the requesting party. ~~the court reporter or recorder shall file with the clerk~~

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~~of the Supreme Court a certificate acknowledging delivery of the completed transcript and specifying the transcripts that have been delivered and the date that they were delivered to the requesting party. Form 15 in the Appendix of Forms is a suggested form of certificate of delivery. The preparation of transcripts shall conform with the provisions of this Rule.~~

(D) When a transcript request form is submitted by a pro se party who is proceeding in forma pauperis, the court reporter or recorder ~~shall~~must take no action on the request unless directed to do so by the Supreme Court or Court of Appeals in accordance with Rule 9(b).

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~~(E) Relevant portions of the trial or hearing that were audio recorded or video recorded shall be submitted in typewritten form. The court will not accept audio or videotapes in lieu of transcripts.~~

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**~~(653)~~ Supplemental Request for Transcripts or Rough Draft Transcripts. The**

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(A) ~~An O~~opposing party may make a supplemental request for portions of the transcript or rough draft transcript that were not previously requested. The request ~~shall~~must be made no more than 7 days after appellant served the transcript request made pursuant to subsection (c)~~(32)~~ of this Rule.

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(B) In all other respects, the opposing party ~~shall~~must comply with the provisions of this Rule governing a transcript or rough draft transcript request when making a supplemental transcript request.

**~~(764)~~ Sufficiency of the Rough Draft Transcript.** In the event that appellant elects to use rough draft transcripts, appellant ~~shall~~must be responsible for reviewing the sufficiency of the rough draft transcripts. ~~In the event that~~If a substantial question arises regarding the sufficiency of a rough

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draft transcript's accuracy, counsel a party may file a motion and the court may order the production of that a certified transcript be produced.

**(97) Transmission of transcripts.** Parties represented by counsel must include copies of all transcripts that are necessary to the review of the issues presented on appeal in the appendix as provided in Rule 32. Pro se parties who have not been granted in forma pauperis status must file a copy of each requested transcript with the clerk of the Supreme Court within 14 days of receipt of the transcript from the court reporter or court recorder.

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**(d) Filing Fast Track Statement Opening Brief, Appendix, Response, and Fast Track Reply Brief, and Appendix.**

**(1) Filing Fast Track Statement Opening Brief.** Within ~~460~~ days after the Supreme Court approves the settlement conference report indicating that the parties were unable to settle the case or, if the appeal is removed or exempted from the settlement program, within ~~460~~ days after the appeal is removed or exempted, appellant and cross-appellant ~~shall must~~ file and serve their fast track opening brief pursuant to Rule 25. ~~A party appearing shall file an original and 1 copy of both a fast track statement form and an appendix with the clerk of the Supreme Court and serve 1 copy of the fast track statement and appendix on the opposing party.~~ The fast track statement opening brief must substantially comply with Rule 32 and Rule 28(a), except that it need not include a table of contents or table of authorities if the brief is under no more than 20 pages or 9,334 words or, if it uses a monospaced typeface, no more than 866 lines of text. ~~shall substantially comply with Form 12 in the Appendix of Forms. The fast track statement shall not exceed 16~~

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~~pages in length or shall comply with the type volume limitations stated in Rule 3E(e)(2). The fast track statement shall include the following:~~

- ~~(A) A statement of jurisdiction for the appeal;~~
- ~~(B) A statement of the case and procedural history of the case;~~
- ~~(C) A concise statement summarizing all facts material to a consideration of the issues on appeal;~~
- ~~(D) An outline of the alleged district court error(s);~~
- ~~(E) Legal argument, including authorities, pertaining to the alleged error(s) of the district court;~~
- ~~(F) When applicable, a statement regarding the sufficiency of the rough draft transcript;~~
- ~~(G) When applicable, a reference to all related or prior appeals, including the appropriate citations for those appeals; and~~
- ~~(H) A statement, setting forth whether the matter should be retained by the Supreme Court or assigned to the Court of Appeals, including reference to any appropriate provisions in Rule 17. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment under Rule 17 to the Court of Appeals, the statement shall identify the specific issue(s) or circumstance(s) that warrant retaining the case and an explanation of their importance or significance.~~

**(2) (5) Appendix.**

**(A) Joint Appendix.** ~~The parties Counsel have a duty under Rule 30 to confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast track statement opening brief.~~

**(B) Appellant's Appendix.** ~~In the absence of an agreement respecting a joint appendix, appellant shall must prepare and file a separate appendix with the fast track statement opening brief, and respondent may~~

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prepare and file a separate appendix with the fast track response answering brief.

**(C) Form and Content.** The ~~preparation form~~ and contents of appendices ~~shall~~ **must** comply with Rules 30 and 32 ~~and shall be paginated sequentially. Every assertion in the fast track statement or response regarding matters in an appendix shall cite to the specific page number that supports that assertion.~~

**(D6) Pro Se Appellant; Appendix.** A pro se appellant or cross-appellant ~~shall~~ **must** not file an appendix. If the court's review of the record is necessary in such a case, the court may direct that ~~the~~ **a partial or complete** record be transmitted as provided in Rule 11(a)(2). Pro se parties are encouraged, but not required, to support assertions made in the fast track ~~statement~~ **opening brief or response answering brief** regarding matters in the record by citing to the specific page number in the record that supports the ~~assertions.~~

**Filing Fast Track Response.** ~~Within 21 days from the date a fast track statement is served, the respondent and cross respondent shall file an original and 1 copy of a fast track response and serve 1 copy of the fast track response on the opposing party. The fast track response shall substantially comply with Form 13 in the Appendix of Forms. The fast track response shall not exceed 11 20 pages in length or shall comply with the type volume limitations stated in Rule 3E(e)(2). The fast track response shall include additional authority and factual information necessary to rebut the contentions in the fast track statement. In cases involving a pro se appellant and/or cross appellant, Rule 46A(e) shall not apply and the respondent/cross respondent shall file a fast track response as required by this Rule.~~

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**(3) Fast Track Reply Brief.** The appellant may file and serve pursuant to Rule 25 a reply to the fast track ~~response-answering brief that shall be entitled “Reply to Fast Track Response.” within 14 days after the fast track answering brief is served. The reply shall must be no longer than 5 1 pages or shall comply with the type volume limitations stated in Rule 3E(c)(2). The reply must be limited to answering matters set forth in the fast track response-comply with Rule 32 and Rule 28(c), except that it need not include a table of contents or table of authorities,~~ **if the brief is no more than 10 pages or 4,667 words, or if it uses a monospaced typeface, no more than 433 lines of text.** The reply must be filed within 14 days of service of the fast track response.

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**Commented [OJ2]:** Since adding similar language for the opening brief, thought we should add something similar here. Since for opening brief the 20 page limit is 2/3 of the 30 pages allowed for a brief, I choose 10 pages for the reply since it is 2/3 of the 15 normally allowed for a reply.

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~~(4) Expanded Fast Track Statement, Response, or Reply. A party may seek leave of the court to expand the length of the fast track statement, response, or reply. The requesting party must demonstrate that the complexity of the case and the issues presented warrant granting the request. A request for expansion must be filed at least 14 days before the fast track statement, response, or reply is otherwise due, and must specify the number of additional pages requested.~~

~~(5) Appendix. The parties have a duty under Rule 30 to confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast track statement. In the absence of an agreement respecting a joint appendix, appellant shall prepare and file a separate appendix with the fast track statement, and respondent may prepare and file a separate appendix with the fast track response. The preparation and contents of appendices shall comply with Rules 30 and 32 and shall be paginated sequentially. Every assertion in the fast track statement or response regarding matters in an appendix shall cite to the specific page number that supports that assertion.~~



~~(6) Pro Se Appellant; Appendix. A pro se appellant or cross appellant shall not file an appendix. If the court's review of the record is necessary in such a case, the court may direct that the complete record be transmitted as provided in Rule 11(a)(2). Pro se parties are encouraged, but not required, to support assertions made in the fast track statement or response regarding matters in the record by citing to the specific page number in the record that supports the assertions.~~

**(e) Fast Track Answering Brief and Appendix.**

**(1) Fast Track Answering Brief.** Within 21 days from the date a fast track opening brief is served, the respondent and cross-respondent must file and serve their fast track answering brief on the opposing party pursuant to Rule 25. The fast track answering brief must substantially comply with Rule 32 and Rule 28(b), except that it need not include a table of contents or table of authorities, if the brief is no more than 20 pages or 9,334 words or, if it uses a monospaced typeface, no more than 866 lines of text.

**(2) Appendix.**

**(A) Joint Appendix.** Counsel have a duty to confer and attempt to reach an agreement concerning a possible joint appendix.

**(B) Respondent's Appendix.** In the absence of an agreement respecting a joint appendix, respondent must file and serve a respondent's appendix with the fast track answering brief.

**(C) Form and Contents.** The form and contents of appendices must comply with Rules 30 and 32.

**(f) Expanded Fast Track Opening Brief, Answering Brief, or Reply Brief.** When a case presents complex issues, a party may seek leave of the court to expand the length of the fast track opening brief, answering brief, or reply brief pursuant to Rule 32.

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~~(e) Format; Type Volume Limitation; Certificate of Compliance.~~

~~(1) Format. Fast track filings shall comply with the formatting requirements of Rule 32(a)(4) (6), and Rule 32(a)(7)(C) shall apply in computing permissible length, and Rule 32(a)(8) shall apply with regard to handwritten documents by pro se parties.~~

~~(2) Type Volume Limitation. The size of a fast track filing may be calculated by type volume in lieu of page limitation. Using a type volume limitation, a fast track statement is acceptable if it contains no more than 7,267 words or 693 lines of text. A fast track response is acceptable if it contains no more than two-thirds the type volume specified for a fast track statement (4,845 words or 462 lines of text); and a fast track reply or supplement is acceptable if it contains no more than 2,333 words or 216 lines of text.~~

~~(3) Certificate of Compliance. Fast track filings must include a certificate of compliance in substantially the form required by Rule 32(a)(98). A certificate that includes the first two paragraphs under "Verification" in Forms 126 and 137 of the Appendix of Forms will be regarded as sufficient to meet the requirements of this Rule.~~

~~(g) Extensions of Time.~~

~~(1) Preparation of Transcripts or Rough Draft Transcripts.~~

~~(A) Seven-Day Telephonic Extension. A court reporter or recorder may request, by telephone, a 7-day extension of time for the preparation of a transcript or rough draft transcript if such preparation requires more time than is allowed under this Rule. If good cause is shown, the clerk or a designated deputy may grant the request by telephone or by written order of the clerk. ~~The clerk of the Supreme Court or designated deputy may, for good cause, grant such requests by telephone or by written order.~~~~

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(B) Additional Extensions by Motion. Subsequent extensions of time for filing transcripts or rough draft transcripts will be granted only upon motion to the court. The motion must justify the requested extension in light of the time limits provided in this Rule, and must specify the exact length of the extension requested. Extensions of time for the filing of transcripts or rough draft transcripts will be granted only upon demonstration of good cause. Sanctions may be imposed if a motion is brought without reasonable grounds.

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(2) Case Appeal Statements, Docketing Statements, Fast Track Statements Opening Briefs, Responses Answering Briefs, or Reply Briefs.

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(A) Seven-Day Telephonic Extension. Either party may request, by telephone, a 7-day extension of time for filing a case appeal statement, docketing statement, fast track— opening brief statement, response answering brief, or reply brief and related documents. The clerk of the Supreme Court or designated deputy may, for good cause, grant such requests by telephone or by written order. If good cause is shown, the clerk may grant the request by telephone or by written order of the clerk.

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(B) Extensions of Time Due to Transcript Unavailability. When an extension of time has been granted to a court reporter or recorder under this Rule, the court will extend the time for filing the brief to 21 days after the date set for the transcript to be filed.

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(C) Additional Extensions by Motion. Subsequent extensions of time for filing fast track briefs will be granted only upon motion to the court. The motion must justify the requested extension in light of the time limits provided in this Rule, and must specify the exact length of the extension requested. Extensions of time under this provision will be granted only upon

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demonstration of good cause. Sanctions may be imposed if a motion is brought without reasonable grounds.

~~(3) Subsequent Request for Extensions. Any subsequent request for an extension of time must be made by written motion to the court. The motion must justify the requested extension in light of the time limits provided in this Rule, and shall specify the exact length of the extension requested. Extensions of time for the filing of fast track statements, responses, and replies shall be granted only upon demonstration of extreme need or merit. Sanctions may be imposed if a subsequent motion for an extension of time is brought without reasonable grounds.~~

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(h) Amendments to Briefs. Leave to amend fast track briefs will be granted only upon motion to the court. A motion to amend must justify the absence of the offered arguments in the party's initial brief. The motion will be granted only upon demonstration of good cause.

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(i) Withdrawal of Appeal. If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, ~~counsel responsible for the appeal at that time~~ appellant must file with the Nevada Supreme Court clerk a notice of withdrawal of appeal. ~~The notice of withdrawal of appeal must substantially comply with Form 8 in the Appendix of Forms.~~

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**(jg) Appeal Disposition, ~~Full Briefing,~~ or Calendaring.**

(1) Based solely upon review of the transcripts or rough draft transcripts, fast track ~~statement~~ opening brief, fast track answering brief ~~response~~, reply brief, and any other documents filed with the court, the court may resolve the matter ~~or direct full briefing~~.

**Commented [OJ3]:** Since there may be times when a pro se appellant may want to withdraw the appeal, I suggest changing counsel to appellant. Also, I am recommending removing the last sentence that refers to Form 8, since that form is specifically designed for criminal appeals and references NRAP 3C.

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(2) A party may seek leave of the court to remove an appeal from the fast track program and extend deadlines.

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The motion must demonstrate that the specific issues raised in the appeal are complex and/or too numerous for resolution in the fast track program or that the orders pertaining to child custody, guardianship of minors, parenting time, or visitation are not a primary issue on appeal. ~~If the moving party is represented by counsel, the movant must attach a written waiver from the client certifying that counsel has discussed the implications of full briefing and that the client waives expeditious resolution of the appeal.~~

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(3) If the court ~~orders an appeal to be fully briefed~~ removes an appeal from the fast track program, the parties are not required to file transcript request forms pursuant to Rule 9(a) unless otherwise ordered. If a party's brief cites to a transcript not previously filed in the court, that party ~~shall~~ must cause a supplemental transcript to be prepared and filed in the district court and the court under Rule 9 within the time specified for filing the brief in the court's briefing order. If a represented party's brief cites to documents not previously filed in the court, that party ~~shall~~ must file and serve an appropriately documented supplemental appendix with the brief. In accordance with Rule 30, pro se parties ~~shall~~ must not file an appendix, but when the court's review of the record is necessary in a pro se appeal, the court may direct that the complete record be transmitted as provided in Rule 11(a)(2).

(4) Subject to extensions, and if the court does not ~~order full briefing~~ remove an appeal from the fast track program, the court ~~shall~~ must attempt to dispose of all fast track child custody appeals within 90 days of the date the case is transferred to the Court of Appeals, unless the disposition will consist of a published opinion. If a fast track child custody appeal is retained by the Supreme Court, the court must attempt to dispose of it within 90 days

~~of the date the case is submitted for a decision, but the appeal will be given priority fast track response is filed.~~

**(k) Court Reporter or Recorder Protection and Compensation.**

~~When preparing and submitting rough draft transcripts under this Rule,~~

**(1) Liability.** Court reporters or recorders ~~shall are not be~~ subject to civil, criminal or administrative causes of action for inaccuracies in a rough draft transcript unless the court reporter or recorder willfully

(A) fails to take full and accurate stenographic notes of the proceeding for which the rough draft transcript is submitted, or willfully and improperly alters stenographic notes from the proceeding, or willfully transcribes audio- or videotapes inaccurately; and

(B) such willful conduct proximately causes injury or damage to a party ~~asserting the action~~, and that party demonstrates that appellate relief was likely granted or denied based upon the court reporter's or recorder's inaccuracies.

**(2) Compensation.** Court reporters ~~shall must~~ be compensated as follows:

(A) For the preparation of a transcript or rough draft transcript, the court reporter ~~shall must~~ receive 100 percent of the rate established by NRS 3.370 for each transcript page and for costs. A party ordering transcripts or copies must pay the court reporter's fee. No reporter may be required to perform any service in a civil case until the fees have been paid to him or her, or deposited with the court clerk.

(B) In the event that a certified transcript is ordered after the rough draft transcript is prepared, the court reporter ~~shall must~~ receive an additional fee as established by NRS 3.370.

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**(il) Sanctions.** Any party, attorney, court reporter, or court recorder who lacks due diligence in compliance with this Rule may be subject to sanctions by the court. Sanctionable actions include, but are not limited to, failure of appellant to timely file a fast track ~~statement opening brief~~ or respondent's failure to file a fast track ~~response answering brief; and failure of a party to raise material issues or arguments in a fast track statement or response.~~

**(ml) Conflict.** The provisions of this Rule ~~shall~~must prevail over conflicting provisions of any other rule.