



## RULE 10. THE RECORD

**(a) The Trial-District Court Record.** The ~~trial~~district court record consists of the papers and exhibits filed in or otherwise retained by the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.

**(1) Retention of Record.** The district court clerk shall retain the ~~trial~~district court record. When the court deems it necessary to review the ~~trial~~district court record, the district court clerk shall assemble and transmit the portions of the record designated by the clerk of the Supreme Court in accordance with the provisions of Rule 11. Any costs associated with the preparation and transmission of the record shall be paid initially by the appellant, unless otherwise ordered.

### **(b) The Record on Appeal.**

**(1) The Appendix.** For the purposes of appeal, the parties shall submit to the clerk of the Supreme Court copies of the portions of the ~~trial~~district court record to be used on appeal, including all transcripts necessary to the Supreme Court's or Court of Appeals' review, as appendices to their briefs. Under Rule 30(a), a joint appendix is preferred. This Rule does not apply to pro se parties. The Supreme Court or Court of Appeals will determine whether its review of the complete record is necessary in a pro se appeal and direct the district court clerk to transmit the record as provided in Rule 11(a)(2).

**(2) Exhibits.** If exhibits cannot be copied to be included in the appendix, the parties may request transmittal of the original exhibits to the clerk of the Supreme Court under Rule 30(d).

**(3) Audio or Video Recordings.** If an official audio or video recording of a district court proceeding is necessary to the appellate court's meaningful

Commented [DW1]: Sharon proposes the following definition instead:

- (a) The Trial Court Record. The following items constitute the trial court record:
- (1) The papers and exhibits filed, lodged, or used on the record in district court;
  - (2) The transcript of court proceedings, in court or outside the presence of the jury;
  - (3) Video and audio, if applicable;
  - (4) The district court minutes; and
  - (5) The docket entries made by the district court clerk

Per Sharon, these changes are necessary because:

[NRAP 10 \(a\) - Why change the definition of "trial court record."](#)

[1. Nevada Supreme Court allows items observed but not preserved to be reconstructed as part of the record on appeal.](#)

- *Philips v. State*, 105 Nev. 631, 782 P.2d 381 (1989) (when the record does not include the race of prospective jurors within the venire, the court suggests appellate counsel could put together a statement regarding the race of the prospective jurors when arguing a *Batson* claim);
- *Watters v. State*, 129 Nev. Adv. Op. No. 94, 313 P.3d 243 (2013) (court reversed a conviction based on the words and pictures on the prosecutor's Opening Statement PowerPoint); *State v. Hecht*, 319 P.3d 836 (Wash. Ct. App. Div. I 2014) (improper pictures or improper written arguments within a Closing PowerPoint are grounds for reversal).
- Additionally, NRAP 10 (c) allows a litigant to correct inaccuracies in an interpreter's translation of a witness' testimony during the appellate process, thereby modifying the record to reflect what was actually testified to by the witness. *Quangbenghoun v. State*, 125 Nev. 763, 220 P.3d 1122 (2009).
- *Preciado v. State*, 130 Nev. Adv. Op. No. 6, 318 P.3d 176, 178 (2014), bench and chamber conferences are part of the record on appeal.

[2. Appellate attorneys must review everything for error.](#)

There are 2 main standards of review used in criminal cases: (1) harmful error and (2) plain error. When evaluating a record for plain error, an appellate attorney looks for error not objected to at trial. Therefore, all portions of the trial must be included as the record for plain error review.

- NRS 178.602: Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

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review of an issue raised on appeal, a party may request that the court direct the district court clerk to transmit the recording to the clerk of the Supreme Court. The court will not accept audio or video recordings in lieu of a transcript.

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**(c) Correction or Modification of the Record.**

(1) If any difference arises about whether the ~~trial~~district court record truly discloses what occurred in the district court, the difference ~~shall~~must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the district court record by error or accident, the omission or misstatement must be corrected:

(A) on stipulation of the parties;

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(B) on order of the district court; or

(C) on order of the Supreme Court or Court of Appeals.

(3) ~~Questions~~All other questions as to the form and content of the ~~appellate court~~ record shall be presented to the ~~clerk~~Supreme Court or Court of Appeals.

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##### 2. Appellate attorneys must review everything for error.

There are 2 main standards of review used in criminal cases: (1) harmful error and (2) plain error. When evaluating a record for plain error, an appellate attorney looks for error not objected to at trial. Therefore, all portions of the trial must be included as the record for plain error review.

- NRS 178.602: Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.
- NRS 178.598: Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.
- Nevada's performance standards for appellate defense counsel require her to raise all meritorious issues to include investigating unpreserved claims of error. *See Appellate and Post-Conviction Representation: Standard 3- 2: Identification of Issues on Appeal, Nevada Supreme Court Rule.*

### 3. Many documents are not filed with the court but are part of the record on appeal.

- Court exhibits.

In Clark County, court exhibits are exhibits or documents entered into evidence but not filed in the clerk's office. They are lodged or used at trial or at other hearings but filed in the district court clerk's evidence vault. Court exhibits are not given to the jury.

Court exhibits many include police reports, witness statements, the defendant's interrogation, jury questions, exhibits not admitted into evidence by the court, offers of proof, copies of PowerPoint presentations prepared by experts for their testimony, copies of PowerPoint presentations used by the attorneys for opening statements or closing arguments, jury instructions offered but rejected, all documents pertaining to the jury venire and jury selection, prior judgments of convictions used for habitual criminal proceedings, DVDs, etc.

- Sealed documents or sealed exhibits.

It is my understanding that documents filed under seal are not file stamped because all filed stamped documents are available to the public.