

## **RULE 9. REQUESTS FOR AND PREPARATION OF TRANSCRIPTS**

### **(a) Appellant's Duty to Request Transcripts.**

**(1) What to Request.** Unless otherwise provided in these Rules, the appellant must request transcripts of district court proceedings that the appellant deems necessary for proper consideration of the issues on appeal but that were not prepared and filed in the district court before the appeal was docketed under Rule 12.

**(2) When and How to Comply with Duty to Request.** The appellant must do either of the following no later than 14 days from the date the appeal is docketed under Rule 12:

(A) request the court reporter or recorder to prepare the necessary transcripts by:

(i) preparing a transcript request form that complies with Rule 9(a)(6); and

(ii) filing the original transcript request form with the district court clerk and a file-stamped copy with the clerk of the Supreme Court; or

(B) file and serve a certificate that substantially complies with the Certificate of No Transcript Request Form on the Nevada Supreme Court website, stating that no transcript will be requested.

**(3) Multiple Appeals from the Same Judgment.** If multiple parties appeal from the same judgment, each appellant must comply with the provisions of this Rule. The appellants must confer and attempt to reach an agreement concerning the transcripts necessary for the appellate court's review to avoid duplicative requests.

**(4) Service of Request Form.** Except as otherwise provided in this Rule, the appellant must serve a copy of the transcript request form on the named court reporter or recorder and on all parties to the appeal within the

time provided in Rule 9(a)(2). An appellant who will seek a waiver of the costs associated with the preparation and delivery of transcripts under Rule 9(a)(9) must serve a copy of the transcript request form on all parties to the appeal within the time provided in Rule 9(a)(2) but need not serve the request form on the named court reporter or recorder.

**(5) Payment of Deposit.** Except as otherwise provided in this Rule, the appellant must pay an appropriate deposit to the court reporter or recorder when the transcript request form is served. Where several parties have appealed from the same judgment or any part thereof, or there is a cross-appeal, the deposit must be borne equally by the parties appealing, or as the parties may agree. An appellant who is not required to serve the transcript request form on the court reporter or recorder under Rule 9(a)(4), is not required to pay a deposit.

**(6) Contents of the Transcript Request Form.** The appellant must prepare a separate transcript request form addressed to each court reporter or recorder who recorded the necessary proceedings, specifying only those proceedings recorded by the named court reporter or recorder. The transcript request form must substantially comply with the Certified Transcript Request Form on the Nevada Supreme Court website and must contain the following information based on appellant's examination of the district court minutes:

- (A) Name of the judge or officer who heard the proceedings;
- (B) Date or dates of the trial or hearing to be transcribed; individual dates must be specified, a range of dates is not acceptable;
- (C) Portions of the transcript requested; specify the type of proceedings (e.g., suppression hearing, trial, closing argument);
- (D) Number of copies required; and

(E) A certification by the appellant or appellant’s counsel, if any, that the required transcripts have been requested and that the required deposits have been paid. This certification must specify from whom the transcript was ordered, the date the transcript was ordered, and the date the deposit was paid. If the appellant is not required to serve the transcript request form on the court reporter or recorder pursuant to Rule 9(a)(4) or pay the deposit, the appellant may omit this certification but must file and serve a motion for waiver of costs pursuant to Rule 9(a)(9) within the time provided in Rule 9(a)(2).

**(7) Number of Copies of Transcript; Costs.** The appellant must provide a copy of the certified transcript to each party appearing separately. Unless otherwise ordered under Rule 9(a)(9), the appellant initially must pay any costs associated with the preparation and delivery of the transcript. Where several parties have appealed from the same judgment or any part thereof, or there is a cross-appeal, the costs associated with the preparation and delivery of the transcript must be borne equally by the parties appealing, or as the parties may agree.

**(8) Supplemental Requests.**

**(A) Partial Transcript.** Unless the entire transcript is ordered, the parties have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the appellate court’s review.

(i) If the parties cannot agree on the necessary transcripts, within 14 days from the date the initial transcript request form is filed, the respondent must notify the appellant in writing of the additional portions it believes are required.

(ii) The appellant then has 14 days to file and serve a supplemental transcript request form and pay any additional deposit required.

(iii) Unless the appellant has ordered all additional portions of the transcript requested by the respondent within 14 days and has so notified the respondent, the respondent may, within the following 14 days either order the additional portions of the transcript or move in the Supreme Court or the Court of Appeals for an order requiring the appellant to do so.

**(B) Pro Bono Program Appeals.** If counsel has been assigned to represent the appellant pro bono pursuant to a program authorized by the Supreme Court, pro bono counsel may proceed as provided in Rule 9(a)(9) to obtain necessary transcripts not previously prepared.

**(9) Motion for Waiver of Costs Associated with Preparation and Delivery of Transcripts.** An appellant who has been permitted to proceed in forma pauperis, is a “client of a program for legal aid” as defined by NRS 12.015(8), or is represented by pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid may request a waiver of the costs associated with the preparation and delivery of the transcripts by filing a motion with the clerk of the Supreme Court. The motion must specify each proceeding for which a transcript is requested and explain why each transcript is necessary for the appellate court’s review. If the court grants the motion, it will specify the transcripts that are necessary for appellate review and direct the district court to order that those transcripts be prepared at county expense in accordance with NRS 12.015(3).

**(10) Consequences of Failure to Comply.** An appellant’s failure to comply with the provisions of this Rule may result in the imposition of sanctions, including dismissal of the appeal.

**(b) Duty of the Court Reporter or Recorder.**

**(1) Preparation, Filing, and Delivery of Transcripts.**

**(A) Time to File and Deliver Transcripts.** Upon receiving a transcript request form and the required deposit, the court reporter or recorder must promptly prepare or arrange for the preparation of the transcript. Except as provided in Rule 9(b)(1)(B) and (b)(4), the court reporter or recorder must—within 30 days after the date that a request form is served:

- (i) file the original transcript with the district court clerk; and
- (ii) deliver to the party ordering the transcript 1 certified copy and an additional certified copy for the appendix.

**(B) Appellant’s Failure to Pay Deposit.** The court reporter or recorder is not obligated to prepare the transcript until receipt of the deposit required by Rule 9(a)(5). If the appellant fails to timely pay the deposit, the court reporter or recorder must—no later than 30 days from the date that the transcript request form is served:

- (i) file with the clerk of the Supreme Court a written notice that the deposit has not been received, setting forth the full amount of the deposit and the amount that remains unpaid; and
- (ii) serve a copy of the notice on the party requesting the transcript.

**(2) Notice to Clerk of the Supreme Court.** Within 14 days after the transcript is filed with the district court and delivered to the requesting party, the court reporter or recorder must file with the clerk of the Supreme Court a notice that the completed transcript has been filed and delivered. The notice must specify the transcripts that have been filed and delivered and the date that those transcripts were filed and delivered. The Notice of Completion and Delivery of Transcript Form on the Nevada Supreme Court website is a suggested form of certificate of delivery.

**(3) Format of Transcript.** A certified transcript may be produced in a conventional page-for-page format. A concordance indexing keywords in the transcript must be provided.

**(4) Extension of Time to Deliver Transcript.**

**(A) Fourteen-Day Telephonic Extension.** A court reporter or recorder may request by telephone a 14-day extension of time to prepare a transcript if the 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.

**(B) Additional Extensions by Motion.** Subsequent extensions of time for filing a transcript will be granted only upon motion to the court on or before the date that the transcript is due. A motion to extend the time for delivering a transcript must be accompanied by an affidavit or declaration of the court reporter or recorder setting forth the reasons for the requested extension and the length of additional time needed to prepare the transcript. The motion must be served on all parties. Requests for extensions of time to prepare a transcript will be closely scrutinized and will be granted only upon a showing of good cause.

**(C) Request for Extension of Briefing Schedule.** The party requesting the transcript may, within 7 days of entry of an order granting a motion to extend the time for delivering a transcript, file a request to extend the briefing schedule by an equivalent amount granted for transcript preparation. The court may, in its discretion, extend the briefing schedule. Such an extension does not preclude a party from obtaining any other extension permitted under Rule 31.

**(5) Sanctions for Failure to Comply.** A court reporter or recorder who fails to file and deliver a timely transcript without sufficient cause as provided in Rule 9(c)(4) may be subject to sanctions under Rule 13.

**(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.** If a hearing or trial was not officially recorded, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including an unofficial recording or the appellant's recollection. The statement must be served on all other parties, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district court clerk in the trial court record, and the appellant must include a file-stamped copy of the statement in an appendix filed with the clerk of the Supreme Court.

#### **REVIEWING NOTE**

The Commission recommends a substantial overhaul of NRAP 9.

Subdivision (b)(4)(A) provides a mechanism by which court reporters and recorders can obtain a 14-day telephonic extension of time of time to prepare transcripts for good cause. If the court grants an extension of time to prepare a transcript, thereby delaying a party's receipt of a transcript, subdivision (b)(4)(C) allows that party to request that the court extend the briefing schedule to accommodate the delay without precluding the party from obtaining any other extension under Rule 31.

The Commission recommends revisions to subdivision (c) to allow parties in short trial cases that are not officially recorded or transcribed to make

unofficial recordings from which they could prepare a statement of the evidence.