

### RULE 3C. FAST TRACK CRIMINAL APPEALS

#### (a) Applicability.

(1) This Rule applies to an appeal from ~~[a district court judgment or order entered in a criminal or postconviction proceeding, whether the appellant is the State or the defendant]~~:

(A) a judgment of conviction pursuant to a plea of guilty, guilty but mentally ill, or nolo contendere provided that the defendant was represented by counsel in the district court and was not sentenced to death; and

(B) an order or amended judgment of conviction revoking or modifying probation provided that the defendant was represented by counsel in the district court.

(2) ~~[The Supreme Court may exercise its discretion and apply this Rule to appeals arising from criminal and postconviction proceedings that are not subject to this Rule.]~~ This Rule does not apply to an appeal filed in accordance with Rule 4(c).

~~[(3) Unless the court otherwise orders, an appeal is not subject to this Rule if:~~

~~(A) the appeal challenges an order or judgment in a case involving a category A, category B, or non-probationable category C felony, as described in NRS 193.130(2)(a), (b), or (c);~~

~~(B) the appeal is brought by a defendant or petitioner who was not represented by counsel in the district court; or~~

~~(C) the appeal is filed in accordance with Rule 4(c).]~~

#### (b) Responsibilities of Trial Counsel.

(1) **Definition.** For purposes of this Rule, “trial counsel” means the attorney or office that ~~[who]~~ represented the defendant ~~[or postconviction petitioner]~~ in district court in the underlying proceedings that are the subject

of the appeal or the State Public Defender following a notice of substitution filed under Rule 3C(b)(4).

**(2) Responsibilities.** Trial counsel ~~[shall] must~~ file the notice of appeal, rough draft transcript request form, docketing statement, and fast track brief(s)~~[and fast track statement and consult with appellate counsel for the case regarding the appellate issues that are raised]~~. Trial counsel ~~[shall] must~~ arrange their calendars and adjust their public or private contracts for compensation to accommodate the additional duties imposed by this Rule.

**(3) Withdrawal.** To withdraw from representation during the appeal, trial counsel ~~[shall] must~~ file with the clerk a motion to withdraw from representation that complies with Rule 46. The motion ~~[shall] will~~ be considered only after trial counsel has ~~[filed the notice of appeal, rough draft transcript request and fast track statement]~~ complied with Rule 3C(b)(2). ~~[The granting of such motions shall be conditioned upon trial counsel's full cooperation with appellate counsel during the appeal.]~~

**(4) Substitution of State Public Defender as Trial Counsel.** The State Public Defender may be substituted as "trial counsel" if the judgment or order being appealed was entered by a court in a county that has opted to have the State Public Defender provide indigent appellate representation. The attorney or office that represented the defendant in district court must file the notice of appeal, rough draft transcript form, and a notice of substitution of counsel. The notice of substitution of counsel must be filed in the district court on the same date as the notice of appeal and the rough draft transcript request form.

(c) **Notice of Appeal.** When an appellant elects to appeal from a district court order or judgment governed by this Rule, appellant's trial counsel [~~shall~~] must serve and file a notice of appeal pursuant to applicable rules and statutes.

(d) **Rough Draft Transcript.** 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.

(1) **Format.** For the purposes of this Rule, a rough draft transcript [~~shall~~] must:

(A) 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;~~]

[~~(C)~~] Include a concordance indexing key words in the transcript; and

[~~(D)~~](C) Include an acknowledgment by the court reporter or recorder that the document submitted under this Rule is a true original or copy of the rough draft transcript.

(2) [~~Notification of Court Reporter or Recorder. When a case may be subject to this Rule, the presiding district court judge shall notify the court reporter or recorder for the case before trial that a rough draft transcript may be required.~~] 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 videotapes in lieu of a rough draft transcript.

(3) **Request for Rough Draft Transcript.**

(A) **Filing and Service.**

(i) When a rough draft transcript is necessary for an appeal, trial counsel **[shall] must** file a rough draft transcript request form with the district court and **[shall]** serve a copy of the request form upon the court reporter or recorder and opposing counsel.

(ii) Trial counsel **[shall] must** serve and file the rough draft transcript request form on the same date the notice of appeal is served and filed.

(iii) Trial counsel **[shall] must** file with the clerk **[2 file-stamped copies] a copy** of the rough draft transcript request form and proof of service of the form upon the court reporter or recorder and opposing counsel.

**(B) Form.** The rough draft transcript request **[shall] must** substantially comply with Form 5 in the Appendix of Forms.

**(C) Necessary Transcripts.** Counsel **[shall] must** order transcripts of only those portions of the proceedings that counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. **[In particular, transcripts of jury voir dire, opening statements, closing arguments, and the reading of jury instructions shall not be requested unless pertinent to the appeal.]**

**(D) No Transcripts.** If no transcript is to be requested, trial counsel **[shall] must** serve and file with the clerk a certificate to that effect within the same period that a rough draft transcript request form must be served and filed under **[subparagraph] Rule 3C(d)(3)(A)**. Such a certificate **[shall] must** substantially comply with Form 14 in the Appendix of Forms.

**(E) Court Reporter or Recorder's Duty.** The court reporter or recorder must:

(i) **[The court reporter or recorder shall submit]** submit an original rough draft transcript, as requested by appellant's or respondent's counsel, to

the district court no more than 21 days after the date that the request is served[.];

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

~~(iii) [The court reporter or recorder shall deliver an additional certified copy of the rough draft transcript to the requesting attorney for inclusion in the appendix. Within]~~ within 7 days after delivering the ~~[certified]~~ copies of the rough draft transcript, ~~[the court reporter or recorder shall]~~ file with the clerk a certificate ~~[acknowledging]~~ of delivery that substantially complies with Form 15 in the Appendix of Forms ~~[of the completed transcript]~~ and ~~[specifying]~~ specifies 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.]~~

~~[(iii) 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 a rough draft transcript.]~~

#### **(4) Supplemental Request for Rough Draft Transcript.**

(A) Opposing counsel may make a supplemental request for portions of the rough draft transcript that were not previously requested. The request ~~[shall]~~ must be made no more than 3 days after opposing counsel is served with the transcript request made under Rule 3C(d)(3)(A).

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

**(5) Sufficiency of the Rough Draft Transcript.** Trial counsel **[shall]** must review the sufficiency of the rough draft transcript. If a substantial question arises regarding **[an inaccuracy in]** the sufficiency of a rough draft transcript, counsel may file a motion and the court may order that a certified transcript be produced.

**(6) Exceptions.** The provisions of Rule 3C(d)(1) **[shall]** do not apply to preparation of transcripts produced by means other than computer-generated technology. But time limits and other procedures governing requests for and preparation of transcripts produced by means other than computer-generated technology **[shall]** must conform with the provisions of this Rule respecting rough draft transcripts.

**(e) Filing of Fast Track [Statement] Opening Brief, Appendix, and Fast Track Reply Brief.**

**(1) Fast Track [Statement]Opening Brief.**

~~[(A) Time for Serving and Filing.]~~ Within 40 days from the date that the appeal is docketed in the court under Rule 12, appellant's trial counsel ~~[shall serve and]~~ must file and serve a fast track ~~[statement]~~ opening brief that ~~[substantially]~~ complies with ~~[Form 6 in the Appendix of Forms]~~ Rule 28(a), except that it need not include a table of contents or table of authorities, and Rule 32.

~~[(B) Length and Contents. Except by court order granting a motion filed in accordance with Rule 32(a)(7)(D), the fast track statement shall not exceed 16 pages in length or shall comply with the~~

~~type-volume limitations stated in Rule 3C(h)(2). The fast track statement shall include the following:~~

- ~~(i) A statement of jurisdiction for the appeal;~~
- ~~(ii) A statement of the case and procedural history of the case;~~
- ~~(iii) A concise statement summarizing all facts material to a consideration of the issues on appeal;~~
- ~~(iv) An outline of the alleged error(s) of the district court;~~
- ~~(v) A statement describing how the alleged issues on appeal were preserved during trial;~~
- ~~(vi) Legal argument, including authorities, pertaining to the alleged error(s) of the district court;~~
- ~~(vii) Where applicable, a statement regarding the sufficiency of the rough draft transcript;~~
- ~~(viii) Where applicable, a reference to all related or prior appeals, including the appropriate citations for those appeals; and~~
- ~~(ix) 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.]~~

~~[(C) References to the Appendix. Every assertion in the fast track statement regarding matters in a rough draft transcript or other~~

~~document shall cite to the page and volume number, if any, of the appendix that supports the assertion.]~~

~~[(D) Number of Copies to Be Filed and Served. An original and 1 copy of the fast track statement shall be filed with the clerk of the court, and 1 copy shall be served on counsel for each party separately represented.]~~

**(2) Appendix.**

**(A) Joint Appendix.** Counsel have a duty 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 and serve an ~~[original and 1 copy of a separate]~~ appellant's appendix with the fast track ~~[statement]~~ opening brief. ~~[Appellant shall serve a copy of the appendix on counsel for each party separately represented.]~~

**(C) Form and Content.** The ~~[preparation]~~ form and contents of appendices ~~[shall]~~ must comply with Rules 30 and 32 ~~[and shall be paginated sequentially]~~.

**(3) Fast Track Reply Brief.** The appellant may file and serve a reply to the ~~[Fast Track Response that shall be entitled "Reply to Fast Track Response]~~ fast track answering brief within 14 days after the fast track answering brief is served.<sup>[2]</sup> The reply brief ~~[shall be no longer than 5 pages or shall comply with the type-volume limitations stated in Rule 3C(h)(2). The reply must be limited to answering matters set forth in the Fast Track Response]~~ must comply with Rule 28(c), except that it need



not include a table of contents or table of authorities, and Rule 32. [The reply must be filed within 14 days of service of the Fast Track Response.]

(f) Filing of Fast Track ~~[Response]~~Answering Brief and Appendix.

(1) Fast Track ~~[Response]~~Answering Brief.

~~[(A) Time for Service and Filing.]~~ Within 21 days from the date ~~[a fast track statement]~~ the fast track opening brief is served, the respondent ~~[shall serve and]~~ must file and serve a fast track ~~[response] answering brief~~ that ~~[substantially]~~ complies with ~~[Form 7 in the Appendix of Forms]~~ Rule 28(b), except that it need not include a table of contents or table of authorities, and Rule 32.

~~[(B) Length and Contents. Except by court order granting a motion filed in accordance with Rule 32(a)(7)(D), the fast track response shall not exceed 11 pages in length or shall comply with the type-volume limitations stated in Rule 3C(h)(2). The fast track response shall include additional authority and factual information necessary to rebut the contentions in the fast track statement. The fast track response also shall include 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 respondent 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.]~~

~~[(C) References to the Appendix. Every assertion in the fast track response regarding matters in a rough draft transcript or other document shall cite to the page and volume number, if any, of the appendix that supports the assertion.]~~

~~[(D) Number of Copies to Be Filed and Served. An original and 1 copy of the fast track response shall be filed with the clerk, and 1 copy shall be served on counsel for each party separately represented.]~~

**(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 ~~[shall] must [prepare and]~~ file and serve ~~[an original and 1 copy of a separate]~~ a respondent's appendix with the fast track [response] answering brief. ~~[Respondent shall serve a copy of the appendix on counsel for each party separately represented.]~~

**(C) Form and Contents.** The ~~[preparation]~~ form and contents of appendices shall comply with Rules 30 and 32 ~~[and shall be paginated sequentially].~~

~~[(g) Filing of Supplemental Fast Track Statement and Response.~~

~~(1) Supplemental Fast Track Statement.~~

~~(A) When Permitted; Length. A supplemental fast track statement of not more than 5 pages or its equivalent calculated under the type-volume limitation provisions of Rule 3C(h)(2) may be filed when appellate counsel differs from trial counsel~~

~~and can assert material issues that should be considered but were not raised in the fast track statement.~~

~~(B) Time for Service and Filing; Number of Copies. When permitted under subparagraph (A), an original and 1 copy of a supplemental fast track statement shall be filed with the clerk, and 1 copy shall be served upon opposing counsel, no more than 21 days after the fast track statement is filed or appellate counsel is appointed, whichever is later.~~

~~(2) Supplemental Fast Track Response. No later than 14 days after a supplemental fast track statement is served, the respondent may file and serve a response of not more than 5 pages or its equivalent calculated under the type-volume limitation provisions of Rule 3C(h)(2).]~~

~~[(h) 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)(D) shall apply in computing permissible length.~~

~~(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)(8). A certificate that includes the first two paragraphs under “Verification” in Forms 6 and 7 of the Appendix of Forms will be regarded as sufficient to meet the requirements of this Rule.]~~

~~(f)~~**(g) Extensions of Time.**

**(1) Preparation of Rough Draft Transcript.**

**(A) Seven-Day Telephonic Extension.** A court reporter or recorder may request by telephone a 7-day extension of time to prepare a rough draft 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 rough draft transcripts ~~[shall]~~ will be granted only upon motion to the court. The motion ~~[shall]~~ must justify the requested extension in light of the time limits provided in this Rule, and ~~[shall]~~ must specify the exact length of the extension requested. Extensions of time for the filing of rough draft transcripts ~~[shall]~~ will be granted only upon demonstration of good cause. Sanctions may be imposed if a motion is brought without reasonable grounds.

**(2) Fast Track ~~[Statement and Response; Supplemental Statement and Response]~~ Briefs.**

**(A) Seven-Day Telephonic Extension.** Counsel may request by telephone a 7-day extension of time for filing ~~[fast track statements and responses, and supplemental fast track statements and responses]~~ fast track briefs. If good cause is shown, the clerk may grant the request by telephone or by written order of the clerk.

**(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.

~~[(B)](C) Additional Extensions by Motion.~~ Subsequent extensions of time for filing fast track ~~[statements and responses,] briefs [and supplemental fast track statements and responses shall]~~ will be granted only upon motion to the court. The motion ~~[shall]~~ must justify the requested extension in light of the time limits provided in this Rule, and ~~[shall]~~ must specify the exact length of the extension requested. Extensions of time ~~[for the filing of fast track statements and responses, and supplemental fast track statements and responses shall]~~ under this provision will be granted only upon demonstration of ~~[extreme need or merit]~~ good cause. Sanctions may be imposed if a motion is brought without reasonable grounds.

~~[(j)](h) Amendments to [Statements and Responses] Briefs.~~ Leave to amend fast track ~~[statements and responses, or supplemental fast track statements and responses shall]~~ briefs will be granted only upon motion to the court. A motion to amend ~~[shall]~~ must justify the absence of the offered arguments in the party's initial ~~[or supplemental fast track statement or response]~~ brief. The motion ~~[shall]~~ will be granted only upon demonstration of ~~[extreme need or merit]~~ good cause.

~~[(k) Full Briefing, Calendaring or Summary Disposition.~~

~~(1) Based solely upon review of the rough draft transcript, fast track statement, fast track response, and any supplemental documents, the court may summarily dismiss the appeal, may affirm or reverse the decision appealed from without further briefing or argument, may order the appeal to be fully briefed and argued or submitted for decision without argument, may order that briefing and~~

~~any argument be limited to specific issues, or may direct the appeal to proceed in any manner reasonably calculated to expedite its resolution and promote justice.~~

~~(2) Motion for Full Briefing.~~

~~(A) A party may seek leave of the court to remove an appeal from the fast track program and direct full briefing. A motion for full briefing shall be granted unless it is filed solely for purposes of delay. It may be filed in addition to or in lieu of the fast track pleading.~~

~~(B) The motion must identify specific reasons why the appeal is not appropriate for resolution in the fast track program. Such reasons may include, but are not limited to, the following circumstances:~~

~~(i) The case raises one or more issues that involve substantial precedential, constitutional, or public policy questions; and/or~~

~~(ii) The case is legally or factually complex.~~

~~(C) No opposition may be filed unless ordered by the court.~~

~~(3) If the court orders an appeal to be fully briefed, and neither party objects to the sufficiency of the rough draft transcripts to adequately inform this court of the issues raised in the appeal, counsel are not required to file certified transcript request forms under Rule 9(a). If a party's brief will cite to a transcript not previously included in an appendix submitted to this court, that party shall file and serve a transcript request form in accordance with Rule 9 within the time specified for filing the brief in the court's briefing order. If a party's brief will cite to documents not previously filed in the court, that~~

~~party shall file and serve an appropriately documented supplemental appendix with the brief.]~~

~~(4)~~(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 ~~[shall]~~ must file with the clerk a notice of withdrawal of appeal. The notice of withdrawal of appeal ~~[shall]~~ must substantially comply with Form 8 in the Appendix of Forms.

~~(m)~~(j) **Court Reporter or Recorder Protection and Compensation.**

**(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 criminal proceeding for which the rough draft transcript is submitted, or willfully and improperly alters stenographic notes from the criminal proceeding, or willfully transcribes audio- or videotapes inaccurately; and

(B) Such willful conduct proximately causes injury or damage to the party asserting the action, and that party demonstrates that appellate or postconviction relief was 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 preparing a rough draft transcript, the court reporter ~~[shall]~~ must receive 100 percent of the rate established by NRS 3.370 for each transcript page as defined by NRS 3.370 and \$25 for costs. Costs include the cost of delivery of the original and copies of the rough draft

transcript. In the event that overnight delivery is required to or from outlying areas, that cost ~~{shall be}~~ is additional.

(B) In the event a certified transcript is ordered after the rough draft transcript is prepared, the court reporter ~~[shall]~~ must receive an additional fee equal to 25 percent of the amount established by NRS 3.370 for the already prepared rough draft portion of the transcript. Any portions not included with the rough draft transcript will be compensated by the amount established by NRS 3.370.

~~[(n)]~~(k) **Sanctions.** Any 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 trial counsel to file a timely fast track statement or fast track response; failure of trial counsel to fully cooperate with appellate counsel during the course of the appeal; and failure of counsel to raise material issues or arguments in a fast track statement, response, supplemental statement or supplemental response.]~~

~~[(o)]~~(l) **Conflict.** The provisions of this Rule shall prevail over conflicting provisions of any other rule.