

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference 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 record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

This rule is derived from FRCP 75(a), (b), (c) and (d) and FRCP 76, without change in substance.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

The proposed amendments to Rule 10(b) would require the appellant to place with the reporter a written order for the transcript of proceedings and file a copy with the clerk, and to indicate on the order if the transcript is to be provided under the Criminal Justice Act. If the appellant does not plan to order a transcript of any of the proceedings, he must file a certificate to that effect. These requirements make the appellant's steps in readying the appeal a matter of record and give the district court notice of requests for transcripts at the expense of the United States under the Criminal Justice Act. They are also the third step in giving the court of appeals some control over the production and transmission of the record. See Note to Rules 3(d)(e) above and Rule 11 below.

In the event the appellant orders no transcript, or orders a transcript of less than all the proceedings, the procedure under the proposed amended rule remains substantially as before. The appellant must serve on the appellee a copy of his order or in the event no order is placed, of the certificate to that effect, and a statement of the issues he intends to present on appeal, and the appellee may thereupon designate additional parts of the transcript to be included, and upon appellant's refusal to order the additional parts, may either order them himself or seek an order requiring the appellant to order them. The only change proposed in this procedure is to place a 10 day time limit on motions to require the appellant to order the additional portions.

Rule 10(b) is made subject to local rules of the courts of appeals in recognition of the practice in some circuits in some classes of cases, e. g., appeals by indigents in criminal cases after a short trial, of ordering immediate preparation of a complete transcript, thus making compliance with the rule unnecessary.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rules 10(b) and (c) are technical. No substantive change is intended.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The amendment is technical and no substantive change is intended.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1995 AMENDMENT

*Subdivision (b)(1).* The amendment conforms this rule to amendments made in Rule 4(a)(4) in 1993. The amendments to Rule 4(a)(4) provide that certain postjudgment motions have the effect of suspending a filed notice of appeal until the disposition of the last of such motions. The purpose of this amendment is to suspend the 10-day period for ordering a transcript if a timely postjudgment motion is made and a notice of appeal is suspended under Rule 4(a)(4). The 10-day period set forth in the first sentence of this rule begins to run when the order disposing of the last of such postjudgment motions outstanding is entered.

#### COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

#### COMMITTEE NOTES ON RULES—2009 AMENDMENT

*Subdivisions (b)(1), (b)(3), and (c).* The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

#### REFERENCES IN TEXT

The Criminal Justice Act, referred to in subd. (b)(1)(A)(ii), probably means the Criminal Justice Act of 1964, Pub. L. 88-455, Aug. 20, 1964, 78 Stat. 552, as amended, which enacted section 3006A of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under section 3006A of Title 18. For complete classification of this Act to the Code, see Short Title note set out under section 3006A of Title 18 and Tables.

### Rule 11. Forwarding the Record

(a) **APPELLANT'S DUTY.** An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) **DUTIES OF REPORTER AND DISTRICT CLERK.**

(1) *Reporter's Duty to Prepare and File a Transcript.* The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) *District Clerk's Duty to Forward.* When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents cor-

respondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) **RETAINING THE RECORD TEMPORARILY IN THE DISTRICT COURT FOR USE IN PREPARING THE APPEAL.** The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [ABROGATED.]

(e) **RETAINING THE RECORD BY COURT ORDER.**

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) **RETAINING PARTS OF THE RECORD IN THE DISTRICT COURT BY STIPULATION OF THE PARTIES.** The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) **RECORD FOR A PRELIMINARY MOTION IN THE COURT OF APPEALS.** If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a supersedeas bond; or
- for any other intermediate order—

the district clerk must send the court of appeals any parts of the record designated by any party.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

*Subdivisions (a) and (b).* These subdivisions are derived from FRCP 73(g) and FRCP 75(e). FRCP 75(e) presently

directs the clerk of the district court to transmit the record within the time allowed or fixed for its filing, which, under the provisions of FRCP 73(g) is within 40 days from the date of filing the notice of appeal, unless an extension is obtained from the district court. The precise time at which the record must be transmitted thus depends upon the time required for delivery of the record from the district court to the court of appeals, since, to permit its timely filing, it must reach the court of appeals before expiration of the 40-day period of an extension thereof. Subdivision (a) of this rule provides that the record is to be transmitted within the 40-day period, or any extension thereof; subdivision (b) provides that transmission is effected when the clerk of the district court mails or otherwise forwards the record to the clerk of the court of appeals; Rule 12(b) directs the clerk of the court of appeals to file the record upon its receipt following timely docketing and transmittal. It can thus be determined with certainty precisely when the clerk of the district court must forward the record to the clerk of the court of appeals in order to effect timely filing: the final day of the 40-day period or of any extension thereof.

*Subdivision (c).* This subdivision is derived from FRCP 75(e) without change of substance.

*Subdivision (d).* This subdivision is derived from FRCP 73(g) and FRCP 39(c). Under present rules the district court is empowered to extend the time for filing the record and docketing the appeal. Since under the proposed rule timely transmission now insures timely filing (see note to subdivisions (a) and (b) above) the power of the district court is expressed in terms of its power to extend the time for transmitting the record. Restriction of that power to a period of 90 days after the filing of the notice of appeal represents a change in the rule with respect to appeals in criminal cases. FRCP 39(c) now permits the district court to extend the time for filing and docketing without restriction. No good reason appears for a difference between the civil and criminal rule in this regard, and subdivision (d) limits the power of the district court to extend the time for transmitting the record in all cases to 90 days from the date of filing the notice of appeal, just as its power is now limited with respect to docketing and filing in civil cases. Subdivision (d) makes explicit the power of the court of appeals to permit the record to be filed at any time. See *Pyramid Motor Freight Corporation v. Ispass*, 330, U.S. 695, 67 S.Ct. 954, 91 L.Ed. 1184 (1947).

*Subdivisions (e), (f) and (g).* These subdivisions are derived from FRCP 75(f), (a) and (g), respectively, without change of substance.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

Under present Rule 11(a) it is provided that the record shall be transmitted to the court of appeals within 40 days after the filing of the notice of appeal. Under present Rule 11(d) the district court, on request made during the initial time or any extension thereof, and cause shown, may extend the time for the transmission of the record to a point not more than 90 days after the filing of the first notice of appeal. If the district court is without authority to grant a request to extend the time, or denies a request for extension, the appellant may make a motion for extension of time in the court of appeals. Thus the duty to see that the record is transmitted is placed on the appellant. Aside from ordering the transcript within the time prescribed the appellant has no control over the time at which the record is transmitted, since all steps beyond this point are in the hands of the reporter and the clerk. The proposed amendments recognize this fact and place the duty directly on the reporter and the clerk. After receiving the written order for the transcript (See Note to Rule 10(b) above), the reporter must acknowledge its receipt, indicate when he expects to have it completed, and mail the order so endorsed to the clerk of the court of appeals. Requests for extensions of time must be made by the reporter to the clerk of the court of appeals and action on such requests is entered on the

docket. Thus from the point at which the transcript is ordered the clerk of the court of appeals is made aware of any delays. If the transcript is not filed on time, the clerk of the court of appeals will notify the district judge.

Present Rule 11(b) provides that the record shall be transmitted when it is “complete for the purposes of the appeal.” The proposed amended rule continues this requirement. The record is complete for the purposes of the appeal when it contains the original papers on file in the clerk’s office, all necessary exhibits, and the transcript, if one is to be included. Cf. present Rule 11(c). The original papers will be in the custody of the clerk of the district court at the time the notice of appeal is filed. See Rule 5(e) of the F.R.C.P. The custody of exhibits is often the subject of local rules. Some of them require that documentary exhibits must be deposited with the clerk. See Local Rule 13 of the Eastern District of Virginia. Others leave exhibits with counsel, subject to order of the court. See Local Rule 33 of the Northern District of Illinois. If under local rules the custody of exhibits is left with counsel, the district court should make adequate provision for their preservation during the time during which an appeal may be taken, the prompt deposit with the clerk of such as under Rule 11(b) are to be transmitted to the court of appeals, and the availability of others in the event that the court of appeals should require their transmission. Cf. Local Rule 11 of the Second Circuit.

Usually the record will be complete with the filing of the transcript. While the proposed amendment requires transmission “forthwith” when the record is complete, it was not designed to preclude a local requirement by the court of appeals that the original papers and exhibits be transmitted when complete without awaiting the filing of the transcript.

The proposed amendments continue the provision in the present rule that documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted without direction by the parties or by the court of appeals, and the requirement that the parties make special arrangements for transmission and receipt of exhibits of unusual bulk or weight. In addition, they give recognition to local rules that make transmission of other record items subject to order of the court of appeals. See Local Rule 4 of the Seventh Circuit.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendments to Rule 11(b) are technical. No substantive change is intended.

#### COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

### Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) **DOCKETING THE APPEAL.** Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant’s name if necessary.

(b) **FILING A REPRESENTATION STATEMENT.** Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) **FILING THE RECORD, PARTIAL RECORD, OR CERTIFICATE.** Upon receiving the record, partial

record, or district clerk’s certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

*Subdivision (a).* All that is involved in the docketing of an appeal is the payment of the docket fee. In practice, after the clerk of the court of appeals receives the record from the clerk of the district court he notifies the appellant of its receipt and requests payment of the fee. Upon receipt of the fee, the clerk enters the appeal upon the docket and files the record. The appellant is allowed to pay the fee at any time within the time allowed or fixed for transmission of the record and thereby to discharge his responsibility for docketing. The final sentence is added in the interest of facilitating future reference and citation and location of cases in indexes. Compare 3d Cir. Rule 10(2); 4th Cir. Rule 9(8); 6th Cir. Rule 14(1).

*Subdivision (c).* The rules of the circuits generally permit the appellee to move for dismissal in the event the appellant fails to effect timely filing of the record. See 1st Cir. Rule 21(3); 3d Cir. Rule 21(4); 5th Cir. Rule 16(1); 8th Cir. Rule 7(d).

#### NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

*Subdivision (a).* Under present Rule 12(a) the appellant must pay the docket fee within the time fixed for the transmission of the record, and upon timely payment of the fee, the appeal is docketed. The proposed amendment takes the docketing out of the hands of the appellant. The fee is paid at the time the notice of appeal is filed and the appeal is entered on the docket upon receipt of a copy of the notice of appeal and of the docket entries, which are sent to the court of appeals under the provisions of Rule 3(d). This is designed to give the court of appeals control of its docket at the earliest possible time so that within the limits of its facilities and personnel it can screen cases for appropriately different treatment, expedite the proceedings through prehearing conferences or otherwise, and in general plan more effectively for the prompt disposition of cases.

*Subdivision (b).* The proposed amendment conforms the provision to the changes in Rule 11.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendment to Rule 12(a) is technical. No substantive change is intended.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

Note to new subdivision (b). This amendment is a companion to the amendment of Rule 3(c). The Rule 3(c) amendment allows an attorney who represents more than one party on appeal to “specify” the appellants by general description rather than by naming them individually. The requirement added here is that whenever an attorney files a notice of appeal, the attorney must soon thereafter file a statement indicating all parties represented on the appeal by that attorney. Although the notice of appeal is the jurisdictional document and it must clearly indicate who is bringing the appeal, the representation statement will be helpful especially to the court of appeals in identifying the individual appellants.

The rule allows a court of appeals to require the filing of the representation statement at some time other than specified in the rule so that if a court of appeals requires a docketing statement or appearance form the representation statement may be combined with it.