



APPELLATE RECORD

PREPARATION HANDBOOK

FOR TRIAL COURT CLERKS

**Office of the Appellate Court Clerk
Tennessee Supreme Court Building
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Definitions

- Appellant:** The appellant is the party filing the notice of appeal. The plaintiff(s) or defendant(s) may be the appellant. In Tennessee, the style of the case does not change according to whether the plaintiff or the defendant appeals. For example, if the case in Tennessee was *Smith v. Jones* in the trial court, and Jones files a notice of appeal, the case style does not change to *Jones v. Smith* in the appellate court. It remains *Smith v. Jones* even though Jones is the defendant/appellant.
- Appellee:** The appellee is the party who assumes the position of defending the trial court's judgment on appeal.
- Record:** The record on appeal consists of the technical record, the transcript of the evidence, the exhibits, requests for instructions from the jury and any other items designated by a party that can be properly included in the record as provided by Rule 24(g), T.R.A.P.
- T.E.** T.E. is the abbreviation for the transcript of evidence. The transcript of evidence is the court reporter's transcription of the proceedings at trial.
- T.R.** T.R. is the abbreviation for the technical record. The technical record consists of the papers filed in the trial court and designated for inclusion in the record on appeal.
- T.R.A.P.** T.R.A.P. is the abbreviation for the Tennessee Rules of Appellate Procedure. These rules can be accessed through the website of the Administrative Office of the Courts (AOC) at www.tncourts.gov. Thomson Reuters Publishing publishes the volume annually, and it contains all changes, corrections, and additions made to the court rules during the preceding year. A copy of the book may be obtained from the AOC at 615-741-2687.
- Interlocutory Appeal:** An interlocutory appeal is an appeal of the ruling from a trial court that an appellant makes before the conclusion of the trial.
- Surety** A surety is the person who guarantees the payment of a debt or obligation of another party who is referred to as the principal.

Section 1: Notice of Appeal

1.01. Who fills out the notice of appeal forms that the appellate court provides—the clerk or the attorney? What about pro se appellants?

The appellant's attorney is responsible for filling out the notice of appeal form. If an appellant is pro se (not represented by an attorney), the appellant not the trial court clerk is responsible for filling out the notice of appeal form.

1.02. The notice of appeal form requires a great deal of information. What must the attorney include in the notice of appeal?

The notice of appeal form, which is available at the AOC website, requests information that is necessary to create the appeal file prior to the receipt of the complete record. While all the information requested is important, it is especially important that the Appellate Court Clerk's Office receive the names and the addresses of the attorneys for all parties as well as the names and addresses of all parties involved in the appeal; please do not use "et al." It is also important that the form be legible so that the deputy clerk in the Appellate Court Clerk's Office can process the file.

1.03. To which appellate court should the trial court clerk send a copy of the notice of appeal?

- **Civil cases** (appealed from circuit court, chancery court, general sessions court in certain instances, probate court, and juvenile court in certain instances): the Court of Appeals
- **Criminal cases** (appealed from criminal court, circuit when exercising criminal jurisdiction, or general sessions court in certain instances): the Court of Criminal Appeals
- **Workers' compensation**: Supreme Court

1.04. If both parties file a notice of appeal, which one should the trial court clerk send?

The trial court clerk should send copies of both notices of appeal to the Appellate Court Clerk's Office. The deputy clerk of the Appellate Court Clerk's Office will enter a record of both notices and designate one party as the appellant and the other as the appellee. Usually this designation is determined by which party filed the notice of appeal with the trial court clerk first, but this is not always the case.

1.05 If a notice of appeal is filed without an appeal bond, and the appellant has not been declared a pauper, what should the trial court clerk do?

The trial court clerk must promptly certify to the Appellate Court Clerk's Office the failure of the appellant to provide an appeal bond. In such an event, the appellate court will issue a "show cause" order dismissing the appeal if the appellant does not file the appeal in compliance with Rule 6, T.R.A.P. This procedure will help the trial court clerk to avoid unnecessarily preparing a record for an appeal which the appellate court would later dismiss.

1.06 What if the appellant files the notice of appeal before the judgment being appealed is signed and entered?

The trial court clerk should treat a prematurely filed notice of appeal as if it were filed *after* the entry of the judgment on the same day as the entry of the judgment.

1.07 After the trial court clerk has received the notice of appeal, when is the record due?

Once the appellant files the notice of appeal, the appellant(s) has 60 days in which to file a transcript or statement of the evidence. As stated in Rule 25(a), T.R.A.P., then the trial court clerk should send the record to the Appellate Court Clerk's Office within 45 days after the filing of the transcript or the statement of the evidence. In the event that the parties do not file a transcript or statement by the end of the 60 days, then the clerk of the trial court shall provide written notice within 10 days to the clerk of the appellate court of the appellant's failure to comply with T.R.A.P. 24(b) or (c) or (d), with a copy provided to counsel and pro se parties. If a party files a notice of no transcript within 15 days of filing the notice of appeal in accordance with Rule 25, T.R.A.P., the trial court clerk should prepare and transmit the record within 45 days of the filing of the notice of no transcript.

1.08 When should the trial court clerk send the notice of appeal to the Appellate Court Clerk's Office, and what other documents should be sent?

Upon the filing of the notice of appeal, the trial court clerk should immediately send a stamp-filed copy of the notice of appeal to the Appellate Court Clerk's Office along with a stamp-filed copy of the appeal bond, affidavit of indigency or a notice that no appeal bond has been filed.

1.09 What should the trial court clerk do about preparing the record if the parties opt for voluntary appellate mediation under T.R.A.P. 34?

If parties file a joint stipulation suspending the processing the appeal so as to undertake voluntary appellate mediation, the appellate court clerk will notify the trial court clerk that the deadlines for filing the transcript and record are suspended for a period of 60 days. At the end of 60 days, the appellate court clerk will then notify the trial court clerk either that the mediation was successful and the appeal has been dismissed or that the mediation was not successful and that the appeal should resume along with the new deadlines for filing the transcript and record.

Section 2: Cost Bonds

2.01 Does the appellant have to file a \$1,000.00 cost bond before proceeding with an appeal?

The appellate courts now require an open bond, which states that the principal will be responsible for all the costs of appeal. In addition to the principal, the surety must also sign the bond and is responsible for paying the costs on appeal in the event the principal fails to pay the costs on appeal.

2.02 Who can act as a surety?

A surety is a person who is willing to assume responsibility for the costs of the appeal if the principal is unable or unwilling to pay them. In most cases, the principal's attorney will sign as the surety. However, the principal may also obtain a surety from a resident of Tennessee who has sufficient assets in Tennessee to pay the costs on appeal in the event that the principal against whom the Court taxes costs fails to pay the costs.

2.03 What if the principal does not have anyone to act as surety?

The principal will then need to make deposit of \$1,000.00 cash with the trial court clerk in lieu of a surety bond to secure the payment of costs of appeal.

2.04 What information needs to be included on the bond?

The Appellate Court Clerk's Office checks to make sure that there is a signature for both the principal and the surety. If the attorney signs for the principal and acts as surety, he or she needs to sign the form twice. Other information that the Appellate Court Clerk's Office requires is the street addresses of the principal and the surety and the social security number of the principal and surety if the principal is a person. **Note:** P.O. boxes are not acceptable. Also, the cost bond should be stamped filed and approved as a sufficient bond by the trial court clerk.

2.05 If the appellant was allowed to proceed as a pauper in the trial court, does he still have to provide a cost bond on appeal?

If the trial court judge has declared the party a pauper, or indigent and that party has proceeded as a pauper in the trial court, that party may proceed as a pauper on appeal, and therefore, will not have to file a cost bond with the notice of appeal.

2.06 If the appellant was allowed to proceed as a pauper in the trial court, what must be sent to the Appellate Court Clerk in lieu of the cost bond?

The trial court clerk should send a copy of the trial court's order permitting the appellant to proceed as a pauper or an affidavit of indigency filed by the appellant in the trial court with the notation that the appellant was allowed to proceed as a pauper in the trial court. This document should be sent to the Appellate Court Clerk's Office with a copy of the notice of appeal.

2.07 If the appellant does not file an appeal bond and did not proceed as a pauper at the trial court, what should the trial court clerk do?

The trial court clerk should send to the Appellate Court Clerk's Office a notice that no bond was filed and that the appellant did not proceed as a pauper at the trial court. This notice should be sent to the Appellate Court Clerk's Office when the trial court clerk sends the notice of appeal.

2.08 Who may reject a bond on the basis that the surety does not have sufficient assets in Tennessee to pay the costs of the appeal in the event that the principal fails to pay the costs on appeal at its conclusion?

Under Rule 6, T.R.A.P, the appellate court clerk has the authority to reject an appeal bond on the grounds that the surety for the appellant does not have sufficient assets in Tennessee to pay the costs of the appeal in the event that the principal fails to pay the costs on appeal at its conclusion.

Section 3 Contents of the Record¹

3.01 What should the record contain?

A. Copies of **all** of the papers filed by the parties in the trial court **except** the items listed below.

- Technical Record (T.R.), including:
 - subpoenas or summonses for any witness or defendant who appeared at the trial;
 - all papers relating to discovery, including:
 - depositions
 - interrogatories and answers to them
 - reports of physical or mental examinations
 - requests to admit
 - all notices, motions, or orders related to discovery
 - any list from which jurors are selected
 - trial briefs or memorandums (**Note:** if one of the parties files a memorandum in opposition to a motion or memorandum in response to a motion, then it should be included in the record)
 - correspondence
- Other items, including:
 - court minutes
 - notices sent by the trial court clerk to attorneys regarding docket calls

Note: The trial court clerk should **not** include the above items in the record **unless** a party designates in writing that one or more of them should be included in the record.

B. The **originals** of any exhibits filed in the trial court. (See the “Exhibits” section of this manual for more information.)

C. The transcript of evidence (T.E.)—the transcript or statement of the evidence or proceedings, which clearly indicates and identifies any exhibits offered in evidence and whether the exhibits were received or rejected by the trial judge

D. Any requests for instructions the jury submitted to the trial judge for

¹ This section refers specifically to civil records on appeal. Criminal appeals and appeals from summary judgment may require additional documents or information, and are discussed in other sections of this manual. The information contained in those sections should be used in conjunction with the information contained in this section for criminal appeals and appeals from summary judgment.

consideration, whether acted upon or not.

- E. Any other matter that a party designates and that would be proper to include in the record. Rule 24(g), T.R.A.P. states that “[n]othing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal.”

3.02 What if the appellant chooses not to submit the whole record?

If the appellant takes the position that less than a full record can present a fair, accurate, and complete account of what transpired in court in relation to the issues that he or she is appealing, the appellant must, **within 15 days after filing the notice of appeal**, file with the trial court clerk a description of the parts of the record the appellant intends to include on appeal, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. The appellant must also serve a copy of this notice on the appellee’s attorney or pro se appellant. If an appellant files a designation to limit the record, the trial court clerk is **only** to include the designated items in the record.

3.03 Why might an appellant choose not to have the whole record filed?

The issues on appeal may be so limited that the appellate court would not require the full record, thus, the appellant may designate a smaller record to eliminate any confusion as to the issues raised on appeal.

3.04 What if the appellee disagrees with the appellant’s designation of the record on appeal?

If the appellee feels that any other parts of the record are necessary, the appellee must, **within 15 days after service of the description and declaration** (as described above), file, with the trial court clerk, a designation of additional parts that he or she would like to include in the record. The appellee must also serve a copy of this designation on the appellant’s attorney or pro se appellant.

3.05 Who is responsible for filing the transcript?

The appellant is responsible for filing the transcript. Rule 24(b), T.R.A.P., describes the process by which counsel determines the content of the transcript. The appellant files the transcript, which the appellant, appellant’s attorney, or the court reporter certify as an accurate account of the proceedings, with the trial court clerk within 60 days after filing the notice of appeal. When the appellant files the transcript, he or she must also serve a notice of the filing on the appellee with proof of service filed with the trial court clerk. If the appellee has any objections to the transcript, the appellee must file objections with the

trial court clerk within fifteen days after service of the notice of the transcript filing.

3.06 What if there was no recording of the testimony?

If there was a trial or evidentiary hearing but no recorded testimony, then the appellant is responsible for preparing a statement of the evidence or proceedings from the best available means, including the appellant's recollection. Rule 24(c), T.R.A.P., outlines the proper procedure for preparing this statement, and for dealing with any objections by the appellee. The appellant must file the statement of evidence with the trial court clerk within 60 days of the filing of the notice of appeal.

3.07 What if the appellant does not want to file a transcript or a statement of the evidence?

Within 15 days of filing the notice of appeal, the appellant must file a notice that he or she will not file transcript or statement. In addition, the appellant must serve a copy of that notice on the appellee, as Rule 24(d), T.R.A.P., requires.

3.08 What if the appellee wants to include a copy of the transcript with the record?

Rule 24(d), T.R.A.P., sets out the procedure by which the appellee can prepare and file the transcript if the appellant chooses not to do so. If the appellee is granted permission to file a copy of the transcript, then the trial court clerk's time for the preparation of the record begins from the date the appellee files his or her transcript with the trial court. If the appellee is not granted permission, the time the trial court clerk has to assemble the record begins from the 60th day after the filing of the notice of appeal or from the date that the appellant filed the statement of evidence or Rule 24(d), T.R.A.P., notice.

3.09 What if the trial was extremely long and the court reporter is unable to prepare the transcript in the time allotted?

The court reporter should contact the attorney for whom he/she is preparing the transcript and ask the attorney to file a motion for extension with an affidavit from the court reporter setting forth the grounds for the extension. The court reporter, the trial court clerk, and the attorneys will be notified by the Appellate Court Clerk's Office of the court's decision regarding extension.

3.10 What should the trial court clerk do if the appellant presents the transcript or statement of the evidence for filing after the expiration of 60 days from the date of filing the notice of appeal?

On the upper right-hand corner of the first page, the trial court clerk should write: "Lodged 12/31/05, Joe Smith, Clerk, by Mary Jones, Deputy Clerk." The attorney should

be advised that the transcript or statement has been *lodged* rather than *filed* because it is late and that he or she must file a motion to permit a late-filed transcript with the appellate court. Unless the appellate court grants an order of extension, the transcript or statement will not be transmitted with the record.

3.11 May an appellant or his attorney check out the transcript immediately after he or she files it with the trial court?

During the 15 day “objection period” following the filing of the transcript, the transcript and exhibits must be available to the appellee’s attorney. Neither the transcript nor the trial exhibits should be released to the appellant’s attorney during this period unless the appellee’s attorney has already been given access to the documents. (The appellant’s attorney should have copied the transcript before filing it with the clerk.) The withdrawing party should be advised that the transcript and exhibits must be returned prior to the 16th day from the date of filing in order for the trial court clerk to have time to assemble the record for submission to the trial court judge.

3.12 What should the trial court clerk do if the 60 days from the notice of appeal passes and the appellant files no transcript, statement of the evidence, nor a Rule 24(d), T.R.A.P., notice?

The trial court clerk should notify the Appellate Court Clerk’s Office in the form of an affidavit of the failure to file a transcript or statement of evidence within 60 days of the trial court decision. The appellate court will enter a “show cause” order requiring the appellant to show cause why the appeal should not be dismissed for failure to comply with Rule 24, T.R.A.P.

Note: Sometimes an appellant will include, in either the notice of appeal or the designation of record, a statement that no party wished to file a transcript or statement of the evidence. This is unlikely with the notice of appeal form (see sample in the Forms Section), but the designation of record should be read carefully because the inclusion of such a statement drastically affects timing of the preparation of the record.

Section 4: Organization of the Record

4.01 After the appellant has filed the transcript, when should the trial court clerk send the record of appeal to the Appellate Court Clerk's Office?

Once the appellant has filed the transcript or statement or has filed a notice that he or she will not file a transcript or statement with the trial court clerk's office, the record on appeal is due to be received at the Appellate Court Clerk's Office within 45 days.

4.02 In what order should the trial court clerk prepare the documents in the technical record?

Rule 25, T.R.A.P., states that copies of all papers filed with the trial court (except the transcript or statement of the evidence or proceedings and the exhibits) shall be bound together in chronological order. Chronological order means that the oldest pleading (probably the complaint) is on top, and the newest pleading (possibly the notice of appeal or appeal bond) is at the bottom.

4.03 What other papers belong in the technical record?

- A. There should be a table of contents listing the individual contents of the record and each item's page number. For ease of use, it is helpful if this table of contents is alphabetized, although it is not required.
- B. There must also be a clerk's certificate, which certifies and enumerates the transmittal of:
 - technical record volume(s)
 - transcript of evidence volume(s)
 - exhibit volume(s)
 - depositions
 - any other items transmitted by the trial court that do not fall in the above classifications
- C. The technical record should be paginated using a Bates stamp type numbering device or other similar computerized numbering device. While Rule 25, T.R.A.P., does not specify where the record should be numbered, it is preferable to number the pages in the lower right corner. Rule 3 of the Rules of the Court of Appeals provides that technical record volumes are limited to 150 pages each, so if there are more than 150 pages in the record, the trial court clerk will need to divide the record into multiple volumes. This requirement allows for ease of use when dealing with a very bulky record.

4.04 How should sealed documents be included in the record being sent to the appellate court?

The sealed documents should be clearly marked when they are filed with the appellate court clerk's office. They should not be bound in the technical record or any collection of exhibits. Specifically, the sealed documents should be placed into clearly marked envelopes, or in the event that there are of large quantities of sealed documents, seal them into a separate banker's box. **The order requiring that the documents to be sealed should be attached to the outside of the envelope or box according to Rule 14 Court of Appeals Rules.** Additionally, sealed documents should not be included in the numbering of the technical record.

4.05 What should be included on the cover of the technical record?

- the trial county and court
- the name of the trial court judge
- the trial court docket number
- the correct and complete style of the case
- designation of each party as the plaintiff or defendant **and** appellant or appellee
- the names, addresses, phone numbers, and Board of Professional Responsibility (BPR) numbers of the attorney for each party, along with a designation of which party they represent
- the date the record is being transmitted to the appellate court clerk's office

Note: A cover sheet for a criminal case must also list the following:

- whether the defendant is in custody
- if the defendant is in custody, his or her TDOC number
- if the defendant is on bond and the amount of the bond
- if the defendant is indigent
- the judgment conviction and sentence

Each volume must have a completed cover. Indicate on the cover if there are multiple volumes ("Volume I of IV"). You should make both the front and back covers of a heavier material than ordinary copy paper or construction paper.

Assemble the record with the cover sheet on top, followed by the table of contents, the pleadings in chronological order, and the clerk's certificate on the bottom. Hole-punch and bind the record firmly with fasteners but NOT TAPE at the top because it will be handled by a number of attorneys, judges, and clerks.

4.06 What should the trial court clerk do if he or she is unable to prepare the record in the time allotted?

The trial court clerk should make a written request an extension of time from the appellate court. The request must detail the reason for the extension and must be made within the time originally allowed for completing the record or within any extension previously granted. The time for completing the record can only be extended for a maximum of 15 days past the 45 days the rules set out for preparation of the record.

Note: If the trial court clerk does not prepare the record and file it with the Appellate Court Clerk's Office within the allotted time, plus any extensions granted, the appellate court may enter an order requiring the trial court clerk may forfeit the clerk's entire cost of preparing and transmitting the record.

4.07 What if the trial court judge fails to authenticate the transcript within the 30 days after the expiration of the 15-day objection period?

If the trial court judge has not signed the transcript within 30 days after the expiration of the 15-day objection period, it is automatically authenticated by his or her failure to sign it. The trial court clerk should not withhold a record simply because the trial court judge has not signed the transcript after the passage of the 30 day time period.

4.08 What should the trial court clerk do if he or she realizes that he or she has missed the time to file the record?

If the time has expired for timely filing of the record in a case, the trial court clerk will need to file a motion, affidavit, and a proposed order with the appropriate appellate court to accept the late-file record. The Court can disallow the trial court costs for preparing the record if the record is filed late.

4.09 What if the Appellate Court Clerk's Office contacts the trial court clerk to tell him or her that he or she has made mistakes in putting the record together?

The Appellate Court Clerk's Office will return the record with instructions on how to correct the defects. Repeated returns of the same record for correction of the mistakes that the trial court clerk originally noted may result in a contempt order from the appellate court.

4.11 If one of the parties files a motion or objection while the record is being prepared, should the trial court clerk go ahead and send the record to the Appellate Court Clerk's Office?

In certain circumstances, holding the record until an objection or motion is resolved by the trial court is implicit in the purpose of the rules. For example, if a party objects to a

portion of the transcript or files a motion to exclude or include portions of the record, the trial court clerk should wait until the issue is resolved by an order of the trial court. On the other hand, there are a number of motions that should not effect the transmittal of the record, e.g., motion to execute the judgment, motion for discretionary costs, etc. If in doubt, the trial court clerk should consult either the trial court judge or the Appellate Court Clerk's Office about transmitting the record. In such instances, it is also prudent for the trial court clerk to file a written request for an extension of time for filing the record.

4.12 Should the pages to a deposition, transcript or trial exhibit be numbered as part of the technical record?

If the deposition is included in the technical record as an attachment to a pleading, then the pages should be numbered. If the deposition is **not** attached to a pleading, then the pages should already be numbered by the court reporter. The same is true of the transcript.

Section 5: Exhibits

5.01 Should the trial court clerk send the original exhibits or copies of the exhibits?

The trial court clerk is required to send the original exhibits need to be sent with the record.

5.02 How should the trial court clerk prepare the exhibits to send to the appellate court?

Under Rule 25(a), T.R.A.P., exhibits must be compiled in numerical order and bound in a volume or volumes separate from the volume of papers filed in the trial court and separate from the transcript or statement of the evidence or proceedings. The volume of exhibits must contain a table of contents listing all exhibits, whether or not they are included in the record. Each exhibit to be included in the record must be securely stapled to a blank page, or placed in a durable envelope which must be securely stapled to a blank page, or placed within a plastic sheet protector; each such page or plastic sheet protector then shall be bound within the volume of exhibits, tabbing and numbering each exhibit referenced in the table of contents.

5.03 What should the trial court clerk do with large trial exhibits that are greater than 8 ½" by 11" in size?

If an exhibit is included in the record but cannot be bound into the volume of exhibits due to the size or nature of the exhibit, the trial court clerk must include in numerical order in the volume of exhibits a page indicating the number of the exhibit, a description of the exhibit, and a statement of the reason the exhibit is not contained in the volume of exhibits. All exhibits which are to be included in the record but which cannot be bound in the volume of exhibits due to the nature of the exhibits must be placed securely in a durable envelope or other suitable container, which shall be labeled with the style of the case, the docket number, and the exhibit number or the exhibit contained therein.

Unfortunately, the Appellate Court Clerk's Office does not have the space or resources to store oversized exhibits. A good rule of thumb to determine if an exhibit is oversized is whether or not it will fit into a standard size expanding file. Unless an attorney insists otherwise, all exhibits larger than that size should be held at the trial court clerk's office.

5.04 What other exhibits should *not* be sent?

Money, drugs, weapons or any other physical evidence entered as exhibits should not be sent. Contact the Appellate Court Clerk's Office about any uncertainty as to whether an exhibit should or should not be sent with the record.

5.05 The attorney on this case wants to file the oversized exhibits with the appellate court. What should the trial court clerk do?

If an attorney wants to use his or her oversized exhibits in oral argument, the trial court clerk should instruct the attorney that he/she needs to pick them to the appellate court from the trial court clerk before his/her oral argument date. After the oral argument, if the court deems that it is necessary to retain the oversized exhibit(s), the attorney must bring them to the Appellate Court Clerk's Office and file them. He or she should not leave the exhibits in the courtroom and assume that they will be included in the case file.

5.06 If the trial court clerk determines that an exhibit should not be included in the record sent to the Appellate Clerk's Office, should that exhibit be listed on the clerk's certificate?

Yes. All exhibits must be listed on the clerk's certificate, whether you forward them to the appellate clerk's office or not. See the sample contained in the "Forms" section of this manual.

5.07 What should a trial court clerk do if he or she cannot find some of the exhibits?

List the exhibits on the clerk's certificate in a separate section outlining the exhibits which were unable to be located. See the sample contained in the "forms" section of this manual.

5.08 What if the trial court ordered some of the exhibits to be filed "under seal" at the trial?

Occasionally, the trial court seals exhibits. The trial court clerk should list these exhibits in a separate section on the clerk's certificate. There is a sample contained in the "Forms" section of this manual. In addition, Rule 15 of the Court of Appeals Rule requires the trial court clerk to affix a copy of the order from the trial court sealing the exhibit.

Section 6: Rule 9, Interlocutory Appeal

6.01 When may a party seek a Rule 9 appeal?

A party may seek to appeal any interlocutory or in lay terms, non-final, order issued by the trial court. Rule 9, T.R.A.P., allows for a party to request permission to appeal to the appellate court after obtaining permission from the trial court judge.

6.02 What is the procedure in the trial court?

The party must file with the trial court clerk a motion or application for interlocutory appeal by permission from a non-final order of the trial court within 30 days of the entry of the interlocutory order. The trial court, when ruling on the motion, shall state its reasons for allowing the appeal. Rule 9(b), T.R.A.P. more fully outlines the criteria for this statement from the trial court.

6.03 What should the trial court clerk do when the order is filed allowing the interlocutory appeal?

Because the appellant must make an application to the appellate court within 10 days from the date of entry of the trial court's order or the making of the prescribed statement by the trial court, whichever comes later, the trial court clerk should ensure that the attorneys of record are notified immediately upon the entry of the order or statement.

6.04 What is the procedure after the appellant files an application?

After the appellant files an application for interlocutory appeal with the appellate court, the appellate court will issue an order either allowing or denying the appeal. The trial court clerk does not need to send any documents to the appellate court unless and until the appellate court grants the application for interlocutory appeal.

6.05 When is the record on appeal due?

The time fixed for preparation of the record is generally delineated in the appellate court's order granting permission to appeal and begins from the date of entry of the order by the appellate court. The appellate court's usual practice is to require that the record be sent within 30 days of entry of appellate court's order.

Section 7: Rule 10, Extraordinary Appeal by Permission

7.01 When does a party seek a Rule 10 (extraordinary) appeal?

A Rule 10 appeal, which, like a Rule 9 appeal, is the appeal of an interlocutory order, may be sought by a party if he/she feels that the trial court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review. The appellant files the application directly with the appellate court requesting permission to appeal the interlocutory order. The trial court clerk need not file any document unless and until directed to do so by the appellate court.

7.02 What kind of record is required for an extraordinary appeal?

Usually, the attorney filing the application will include copies of any orders, opinions, or parts of the record which he or she feels are necessary for determining the outcome of the request for permission to appeal. If the appellate court deems that additional portions of the record may be necessary, it will file an order requesting these same records and designating a time limit within which they should be prepared.

Checklist

- ___ **Notice of Appeal(s) sent to the Appellate Court Clerk**
- ___ **Transcript filed and sent to trial judge for approval OR Rule 24(d) notice filed by appellant that no transcript would be filed**
- ___ **Technical record assembled chronologically**
- ___ **Table of contents prepared**
- ___ **Exhibits collected, bound, and prepared for transmittal**
- ___ **Trial Court Clerk's certification prepared**
- ___ **Trial Court Clerk's certification compared against the record**
- ___ **Trial Court Clerk's certification signed by the trial court clerk**
- ___ **Transmittal date noted on front of the technical record**
- ___ **Record sent or delivered to appellate court clerk's office**

Resources

Appellate Court Clerk's Office:

Middle Section
401 7th Avenue North
Nashville, TN 37219
(615) 741-2681

Eastern Section
P.O. Box 444
525 Main St.
Knoxville, TN 37901
(423) 594-6700

Western Section
P.O. Box 909
#6 Highway 45 By-Pass
Jackson, TN 38301
(901) 423-5840

Internet Website Address:

www.tncourts.gov

Administrative Office of the Courts

511 Union Street, Suite 600
Nashville, TN 37243
(615) 741-2687

Forms

NOTICE OF APPEAL

Style

v.

Notice

Notice is given that _____

[List name(s) of all appealing party(ies) on separate sheet if necessary]

appeals the final judgment(s) of the _____ Court of _____

[List the circuit, criminal, chancery or juvenile court]

[List the County]

County filed on _____ to the _____.

[List the date(s) the final judgment(s) was filed in the trial court clerk's office]

[Name the Court of Appeals (civil), Court of Criminal Appeals (criminal), or Supreme Court (Workers' Compensation)]

Additional Information

Type of Case [Check the most appropriate item]

- | | |
|---|--|
| <input type="checkbox"/> Civil | <input type="checkbox"/> Habeas Corpus |
| <input type="checkbox"/> Criminal | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> Post Conviction | <input type="checkbox"/> Dependent and Neglect |
| <input type="checkbox"/> Workers's Compensation | |
| <input type="checkbox"/> Death Penalty | |
| <input type="checkbox"/> Parental Termination | |

Trial Court Number _____

Trial Court Judge _____

Civil Appeal Cost Bond [Check the most appropriate item]

- Filed in trial court with copy attached
 Indigent with copy of indigency order or affidavit attached

_____ Cash bond filed in trial court with copy attached

Criminal Appeal Appearance Bond [Check the most appropriate item]

_____ Order appointing counsel with copy attached

_____ Appearance bond with copy attached

_____ Incarcerated pending appeal

TDOC Number [Appellant is an inmate] _____

List of Parties

Appellant: _____ At trial: Plaintiff Defendant

Party's Address: _____

Party's Telephone: _____

Attorney's Name: _____ BPR#: _____

Attorney's Address: _____ Phone: _____

** Attach an additional sheet for each additional Appellant **

Appellee(s)

Appellee: _____ At trial: Plaintiff Defendant

Appellee's Address: _____

Attorney's Name: _____ BPR#: _____

Attorney's Address: _____ Phone: _____

** Attach an additional sheet for each additional Appellee **

CERTIFICATE OF SERVICE

I, _____, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class, United States Mail, postage prepaid, to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on this the _____ day of _____, 20__.

[Signature of appellant or attorney for appellant]

APPEAL BOND FOR COSTS

I (we), _____, principal(s)/ Appellant(s), and
I (we), _____, the surety(ies)/ Attorney, bind myself/ourselves for the costs of
appeal in:

_____ vs. Cause No. _____

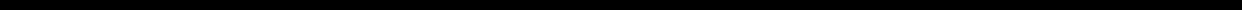
_____, ***or***
PRINCIPAL/APPELLANT (Signature)

_____ by _____ PRINCIPAL
(Print)ATTORNEY (Signature)

PRINCIPAL'S ADDRESS: _____

PRINCIPAL(S) SOCIAL SECURITY NO.: _____
PRINCIPAL(S) DRIVER'S LICENSE NO.: _____

*(street address only; **NO** P.O. boxes; **NO** in care of principal's attorney)*
(Social Security/Driver's License Numbers Required for individual principal(s) per T.C.A. § 25-1-108)



_____ by _____ SURETY
(Print)(Signature)

Note: If you are signing as surety on behalf of a law firm, please print the name of the firm on the space provided. If you are signing as an individual surety, please print your name. If you sign as an individual surety, you are personally responsible for the costs should the principal fail to pay.

SURETY'S ADDRESS: _____

*(street address only; **NO** P.O. boxes)*

IF THE PRINCIPAL(S) PAY ALL COSTS OF APPEAL, THEN THIS OBLIGATION IS VOID. IF PRINCIPAL(S) FAIL(S) TO PAY, THEN THE SURETY IS OBLIGATED TO PAY ALL COSTS OF APPEAL.

***IF YOU DO NOT HAVE A SURETY TO SIGN YOUR BOND FOR COSTS ***: A cash deposit of \$1,000.00 is deemed sufficient instead of a surety bond, except as otherwise required by the trial court clerk and/or the Appellate Court Clerk.

A deposit of \$_____ in cash has been made by _____ with _____
_____ of the _____ court clerk's office on the _____ day of _____, _____.

APPROVED:

_____ or _____
CLERK OF THE TRIAL COURT CLERK OF THE APPELLATE COURT

Sample Index

PAPERS FILED IN THE TRIAL COURT²

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²In the Eastern Grand Division, it is the practice to arrange the table of contents alphabetically. Whereas, it is the practice in the Middle and Western Grand Divisions to arrange the table of contents chronologically.

TRANSCRIPT OF PROCEEDINGS

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Trial Exhibits 1-8	---

Certificate of Appellate Record

I, Betty Smith, Clerk of the Circuit Court of Ashford County, Tennessee, do hereby certify that the following items herewith transmitted to the Court of Appeals are originals or true and correct copies of all of the designated papers on file in my office in the captioned case.

1. Technical record attached to the certificate and consisting of the 186 pages contained in two volume(s).
2. Three volume(s) of Transcript file in my office on June 9, 1999 and authenticated by the Trial Judge or automatically authenticated under T.R.A.P. Rule 24(f).
3. Exhibits filed in my office on May 11, 1998 and authenticated by the Trial Judge or as provided by T.R.A.P. Rule 24(f) and described as follows:
 - Exhibit 1, consisting of county map.
 - Exhibit 2, consisting of warranty deed.
 - Exhibit 3, consisting of easement survey.
 - Exhibit 4, consisting of five photos (collective, in envelope).
 - Exhibit 6, consisting of a cancelled check.
4. Sealed documents and/or exhibits file in my office and authenticated by the Trial Judge or as provided by T.R.A.P. Rule 24(f) as described as follows:
 - Exhibit 7, consisting of net worth statement of plaintiff.
 - One envelope of documents, sealed by order of trial judge entered May 18, 1998.
5. Depositions of Harold Hawkins, Certified Geologist.
6. The following exhibits and/or documents of unusual bulk or weight have been retained in my office due to their size and are described as follows:
 - Exhibit 5, consisting of a large mounted photograph
 - Exhibit 8, consisting of an enlarged page of plaintiff's deposition

This 30th day of June, 1999.

Betty Smith
Clerk of the Circuit Court
Ashford County, Tennessee

TO THE COURT OF APPEALS
AT NASHVILLE, TENNESSEE

**SECOND CIRCUIT COURT
DAVIDSON COUNTY TENNESSEE**

IRVIN H. KILCREASE, JR., DESIGNATED JUDGE

CLAUDIA BONNYMAN, CLERK

MICHAEL TOMLIN,
Plaintiff/Appellant

CERTIFIED
TRANSCRIPT
Of
Cause

Appearance No.04C-1016
CIRCUIT COURT

Vs
No.M2006-00150-COA-R3-CV

Execution No

APPEALED
TO
Next Term,
20

COURT OF APPEALS

TRANSMITTED ON:

June 5, 2004

**D. RANDALL MANTOOTH. d/b/a LEITNER, WILLIAMS, DOOLEY & NAPOLITAN,
PLLCC,**

Defendant/Appellees
