

Correction Order Number 1 to Rule Change #1998(5)

Rule Change #1998(5) is corrected to reflect an inadvertent omission to C.A.R. 10(b), as amended. The rule change includes the following language to read as the last sentence of 10(b): “Each party shall advance the cost of preparing and transmitting to the appellate court that part of the record designated by such party, except as otherwise ordered by the trial court for good cause shown.”

No other part of rule change 1998(5) is affected by this correction. This correction order number 1 to rule change #1998(5) is adopted May 26, 1998, effective along with the entire rule change on July 1, 1998.

The entire rule change, as corrected, follows.

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**

Rule Change #1998(5)

**Chapter 32. Colorado Appellate Rules
Appeals from Judgments and Orders of Trial Courts and Agencies
Rule 10 Record on Appeal
Rule 11 Transmission of the Record**

C.A.R. 10. Record on Appeal

(a) Composition of the Record on Appeal.

(1) and (2) * * * [NO CHANGE] * * *

(3) The records and files of the ~~clerk~~ COURT shall be certified by the ~~trial~~
judge CLERK OF COURT.

(4) and (5) * * * [NO CHANGE] * * *

(b) Record of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Record is Ordered; Costs. Within ten days after filing the notice of appeal, the appellant shall file with the clerk of the trial court AND WITH THE CLERK OF THE APPELLATE COURT IN WHICH THE NOTICE OF APPEAL HAS BEEN FILED either: (1) a statement that no portions of the record other than those numerated in section (a) are desired or (2) a detailed designation of record, setting forth specifically those portions of the record to be included and all dates of proceedings for which transcripts are requested and the name(s) of the court reporter(s) who reported the proceedings which the appellant directs to be included in the record. The appellant shall serve a copy of the designation of record on each court reporter listed therein. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall include in the designation of record a description of the part of the transcript which the appellant intends to include in the record and a statement of the issues to be presented on appeal. If the appellee deems to be necessary a transcript of other proceedings, or other parts of the record, the appellee shall, within ten days after the service of the statement or the appellant's designation of the record, file WITH THE TRIAL COURT AND THE APPELLATE COURT and serve on the appellant and on any court reporter who reported proceedings of which the appellee desires additional transcript a designation of additional items to be included. Service on any court reporter of the appellant's designation of record or the appellee's additional designation of record shall constitute a request for transcription of the specified proceedings. Within fourteen days after service of any such designation of record, each such court reporter shall provide in writing to all counsel and pro se parties in the appeal: (1) the estimated number of pages to be transcribed; (2) the estimated completion date; AND (3) the estimated cost of transcription ; ~~and (4) the proposed terms of payment for the transcript.~~ WITHIN TWENTY DAYS AFTER RECEIVING THE REPORTER'S ESTIMATE, THE DESIGNATING PARTY SHALL DEPOSIT THE FULL AMOUNT OF SUCH ESTIMATE WITH THE COURT REPORTER. FOR GOOD CAUSE SHOWN, WITHIN SAID TWENTY DAYS AND UPON THE AGREEMENT OF THE COURT REPORTER, THE TRIAL COURT

MAY ORDER A PAYMENT SCHEDULE EXTENDING THE TIME FOR PAYMENT. WHEN THE COST OF THE TRANSCRIPTION WILL BE PAID BY PUBLIC FUNDS, THE PUBLIC ENTITY SHALL MAKE ARRANGEMENTS WITH THE COURT REPORTER FOR PAYMENT OF THE TRANSCRIPTION COSTS. WITHIN THIRTY DAYS OF TRANSMITTAL OF THE COURT REPORTER'S COST ESTIMATE TO THE PRO SE PARTY OR COUNSEL, THE COURT REPORTER SHALL FILE WITH THE TRIAL COURT AND THE APPELLATE COURT A STATEMENT OF: (1) THE DATE THE COURT REPORTER'S ESTIMATE WAS PROVIDED AND THE DATE ON WHICH THE REPORTER RECEIVED FULL PAYMENT OF THE ESTIMATE, OR (2) THE SCHEDULE OF PAYMENTS APPROVED BY THE TRIAL COURT UNDER A GOOD CAUSE EXTENSION, OR (3) THAT THE COST OF THE TRANSCRIPT WILL BE PAID FROM PUBLIC FUNDS. ~~The designating party shall immediately make arrangements for payment for the designated transcript.~~—Each party shall advance the cost of preparing and transmitting to the appellate court that part of the record designated by such party, EXCEPT AS OTHERWISE ORDERED BY THE TRIAL COURT FOR GOOD CAUSE SHOWN.; ~~provided, however, that upon a showing by any party that such allocation of costs would be inequitable, the trial court may order that costs be allocated in some other way.~~

(c) * * * [NO CHANGE] * * *

(d) * * * [NO CHANGE] * * *

(e) * * * [NO CHANGE] * * *

C.A.R. 11. Transmission of Record.

(a) * * * [NO CHANGE] * * *

(b) **Duty of Clerk to Transmit the Record.** When the record, INCLUDING ANY DESIGNATED TRANSCRIPT, is complete for purposes of the appeal, the clerk of the trial court shall transmit ~~it~~ THE RECORD to the clerk of the appellate court. The clerk of the trial court shall number the documents comprising the ENTIRE DESIGNATED record and shall transmit with the record a list of the documents correspondingly

numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the appellate court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the appellate court. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the appellate court.

(c) * * * [NO CHANGE] * * *

(d) Extension of Time for Transmission of the Record; Reduction of Time. The appellate court for GOOD cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted. Any request for extension of the period of time based upon the reporter's inability to complete the transcript shall be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared, the date by which the transcript can be completed, AND A STATEMENT BY THE COURT REPORTER THAT ALL PAYMENTS DUE HAVE BEEN MADE. FAILURE TO PAY FOR THE TRANSCRIPT IN ACCORDANCE WITH C.A.R. 10(b) IS GROUNDS FOR DENIAL OF A MOTION FOR EXTENSION. The appellate court may direct the trial court to expedite the preparation and transmittal of the record on appeal AND, UPON MOTION OR SUA SPONTE, TAKE OTHER APPROPRIATE ACTION REGARDING PREPARATION AND COMPLETION OF THE RECORD.

(e) * * * [NO CHANGE] * * *

(f) * * * [NO CHANGE] * * *

(g) * * * [NO CHANGE] * * *

Amended and Adopted by the Court, En Banc, April 27, 1998, effective July 1, 1998.

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**