

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51(A)(7), the Supreme Court of New Hampshire hereby **amends** its prior order, dated June 6, 2008, by postponing the **effective date** of the amendments to rules relating to transcripts to **September 1, 2008**. The amendments in question are the following:

**Rules Governing Transcripts**

The following amendments affect the process by which transcripts are ordered and prepared, and provide for an electronic version of the transcript, in most instances, to be deemed the official transcript.

1. Amend Supreme Court Rule 15, regarding transcripts, on a temporary basis, as set forth in Appendix A.
2. Adopt Supreme Court Rule 59, regarding preparation of transcripts of court proceedings, designation of transcriber, and approval of transcript fees, on a temporary basis, as set forth in Appendix B.
3. Amend the Transcript Order Form, which appears as the fourth page of both the Supreme Court Rule 7 Notice of Discretionary Appeal form and the Supreme Court Rule 7 Notice of Mandatory Appeal form, on a temporary basis, as set forth in Appendix C.
4. Amend Superior Court Rule 71, regarding reading excerpts of transcripts to the jury, on a temporary basis, as set forth in Appendix D.
5. Amend Superior Court Rule 80, regarding preparation of transcripts, on a temporary basis, as set forth in Appendix E.
6. Repeal District Court Rule 1.18, regarding stenographers, as set forth in Appendix F.
7. Amend District Court Rule 1.19, regarding sound recordings of proceedings, on a temporary basis, as set forth in Appendix G.
8. Amend District Court Rule 4.27, regarding appeals and records requirements in small claim actions, on a temporary basis, as set forth in Appendix H.
9. Amend Probate Court Rule 78-A, regarding transcripts, on a temporary basis, as set forth in Appendix I.
10. Amend Probate Court Rule 80, regarding transcripts, on a temporary basis, as set forth in Appendix J.

**Effective Date**

The June 6, 2008 order, to the extent that it provided that the effective date of these amendments would be July 1, 2008, is hereby vacated. These amendments shall instead take effect on **September 1, 2008**, and they shall be referred to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis.

Date: June 30, 2008

ATTEST: \_\_\_\_\_  
Eileen Fox, Clerk of Court  
Supreme Court of New Hampshire

## APPENDIX A

Amend Supreme Court Rule 15, on a temporary basis, as follows:

### Unofficial Annotated Version

#### **RULE 15. Transcripts**

(1) The parties shall attempt to enter into stipulations, such as an agreed statement of facts, that will reduce the size of transcripts or avoid them completely. If such a stipulation is entered into, an original and 8 copies thereof must be filed with the clerk's office if it is not included in the notice of appeal.

(2) (a) *Mandatory appeals.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the date of the proceedings to be transcribed, the length of the proceedings, ~~the name(s) of any court reporters,~~ and the deposit required. A transcript of the parts of the proceedings necessary for appeal and not already on file in the trial court ~~from which the questions of law have been transferred~~ shall be prepared. The supreme court clerk's office shall issue a scheduling order notifying the moving party ~~to pay the deposit for the transcript to the clerk of the trial court [that]~~ within 15 days from the date on the written notice **[the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the date specified,]** ~~or have~~ the appeal **[may be]** deemed waived ~~or have~~ **[and]** the case dismissed. Upon timely receiving the required deposit, the ~~trial court clerk~~ **[transcriber]** shall ~~immediately notify the court reporter to proceed with the transcription and shall notify the clerk of the supreme court that the court reporter has been so notified~~ **[deposit was received and that the transcriber will begin preparation of the transcript].** If the ~~trial court clerk does not~~ ~~timely receive the required deposit~~ **[is not timely received]**, the ~~clerk~~ **[transcriber]** shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals, the court, within its discretion, may assess transcription costs as justice requires.

(b) *Other appeals from trial court decisions on the merits.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the date of the proceedings to be transcribed, the length of the proceedings, ~~the name(s) of any court reporters,~~ and the deposit required. If the appeal is accepted by the court for briefing, the supreme court clerk's office shall issue a scheduling order notifying the moving party ~~to pay the deposit for the transcript to the clerk of the trial court [that]~~ within 15 days from the date on the written notice **[the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the transcriber by the date specified,]** ~~or have~~ the appeal **[may be]** deemed waived ~~or have~~ **[and]** the case dismissed. Upon timely receiving the required deposit, the ~~trial court clerk~~ **[transcriber]** shall ~~immediately notify the court reporter to proceed with the transcription and shall notify the clerk of the supreme court that the court reporter has been so notified~~ **[deposit was received and that the transcriber will begin preparation of the transcript].** If the ~~trial court clerk does not~~ ~~timely receive the required deposit~~ **[is not timely received]**, the ~~clerk~~ **[transcriber]** shall

immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals, the court, within its discretion, may assess transcription costs as justice requires.

(3) If the moving party intends to argue in the supreme court that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless otherwise ordered by the supreme court, the transcript shall contain all the oral proceedings except opening statements, medical testimony, arguments, and charge.

(4) Unless the parties agree, or the court otherwise orders, the ~~trial court reporter~~ **[transcriber]** shall produce a **[n electronic version of the transcript for the court, which shall be deemed the official transcript, as well as a paper copy of the transcript. The transcriber shall also produce]** ~~completed original and 2 copies~~ **[an electronic copy]** of a **[the]** transcript **[for each party to the case requiring a transcript. The transcript shall be completed]** as early as possible within 45 days after ~~the reporter is notified by~~ **[receiving the recording of the proceedings from]** the trial court clerk to ~~proceed with the transcription.~~ Requests for extensions of time in which to prepare a transcript shall not be favored, but a ~~trial court reporter~~ **[the transcriber]** may request that the supreme court grant an extension of time. Such a request shall give the reasons for the need for an extension. ~~The trial court reporter shall send a copy of the letter to the chief justice of the superior court.~~

(5) The supreme court may order that the preparation of a transcript in a case be given immediate attention.

(6) The ~~original~~ **[official electronic]** transcript **[and the paper copy of the transcript]** shall be transmitted to the supreme court as part of the record on appeal, and the **[electronic]** copies shall be transmitted to the parties.

~~(7) The trial court reporter shall bind the transcript in a volume or volumes, with the pages consecutively numbered throughout all volumes. The transcript shall be indexed. The index in the first volume shall refer to the number of each volume and the page, and shall be cumulative for all volumes; the index in each other volume shall cover the subject matter in that volume. The index shall list each witness alphabetically, and under the name of the witness, shall refer to the page number where the direct and each other examination of the witness begins. There shall be a list of exhibits by number or letter, with a brief indication of the nature of the contents, and a list of the pages of the transcript where each exhibit has been identified, offered, received, or rejected. There shall be a list of other important parts of the trial that may have been transcribed, such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.~~

~~(8) The court may order the State or the appealing party in every case in which the State is not a party to file with the clerk of the supreme court a copy of the transcript immediately after oral argument or immediately after the case is submitted for decision on the briefs and without oral argument.~~

#### Comment

It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. Absent a transcript of the proceedings below, the supreme court will generally assume that the evidence was sufficient to support the result reached by the trial court. It is the burden of the appealing party to provide the supreme court with a record sufficient to decide the issues on appeal, as well as to demonstrate that those issues were properly raised before the trial court. In deciding whether a transcript of the trial court's proceedings is necessary, the appealing party should keep in mind that the appealing party is responsible for providing the supreme court with a sufficient record to decide the issues on appeal. If the appealing party fails to provide a sufficient record, the appeal may be dismissed or the supreme court may not review an issue that the appealing party has raised. *See Bean v. Red Oak Prop. Mgmt.*, 151 N.H. 248 (2004).

## **Official Version**

### **RULE 15. Transcripts**

(1) The parties shall attempt to enter into stipulations, such as an agreed statement of facts, that will reduce the size of transcripts or avoid them completely. If such a stipulation is entered into, an original and 8 copies thereof must be filed with the clerk's office if it is not included in the notice of appeal.

(2) (a) *Mandatory appeals.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the date of the proceedings to be transcribed, the length of the proceedings, and the deposit required. A transcript of the parts of the proceedings necessary for appeal and not already on file in the trial court shall be prepared. The supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription and shall notify the clerk of the supreme court that the deposit was received and that the transcriber will begin preparation of the transcript. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals, the court, within its discretion, may assess transcription costs as justice requires.

(b) *Other appeals from trial court decisions on the merits.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the date of the proceedings to be transcribed, the length of the proceedings, and the deposit required. If the appeal is accepted by the court for briefing, the supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the transcriber by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription and shall notify the clerk of the supreme court that the deposit was received and that the transcriber will begin preparation of the transcript. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of

multiple appeals, the court, within its discretion, may assess transcription costs as justice requires.

(3) If the moving party intends to argue in the supreme court that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless otherwise ordered by the supreme court, the transcript shall contain all the oral proceedings except opening statements, medical testimony, arguments, and charge.

(4) Unless the parties agree, or the court otherwise orders, the transcriber shall produce an electronic version of the transcript for the court, which shall be deemed the official transcript, as well as a paper copy of the transcript. The transcriber shall also produce an electronic copy of the transcript for each party to the case requiring a transcript. The transcript shall be completed as early as possible within 45 days after receiving the recording of the proceedings from the trial court clerk. Requests for extensions of time in which to prepare a transcript shall not be favored, but the transcriber may request that the supreme court grant an extension of time. Such a request shall give the reasons for the need for an extension.

(5) The supreme court may order that the preparation of a transcript in a case be given immediate attention.

(6) The official electronic transcript and the paper copy of the transcript shall be transmitted to the supreme court as part of the record on appeal, and the electronic copies shall be transmitted to the parties.

#### **Comment**

It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. Absent a transcript of the proceedings below, the supreme court will generally assume that the evidence was sufficient to support the result reached by the trial court. It is the burden of the appealing party to provide the supreme court with a record sufficient to decide the issues on appeal, as well as to demonstrate that those issues were properly raised before the trial court. In deciding whether a transcript of the trial court's proceedings is necessary, the appealing party should keep in mind that the appealing party is responsible for providing the supreme court with a sufficient record to decide the issues on appeal. If the appealing party fails to provide a sufficient record, the appeal may be dismissed or the supreme court may not review an issue that the appealing party has raised. *See Bean v. Red Oak Prop. Mgmt.*, 151 N.H. 248 (2004).

## APPENDIX B

Adopt new Supreme Court Rule 59, on a temporary basis, as follows:

### **RULE 59. Preparation Of Transcripts Of Court Proceedings; Designation Of Transcriber And Approval Of Transcript Fees**

#### *(1) Preparation of A Transcript Other Than for An Appeal*

(a) Any person may request that a transcript be prepared of a recorded court proceeding except when the case or proceeding is confidential by statute or court rule or order. In a confidential case or proceeding, a request for a transcript made by a person who is not a party ordinarily will be denied.

A transcript will be prepared from the recording of the proceeding by the transcriber designated by the court in accordance with paragraph 3 of this rule.

(b) A person requesting the preparation of a transcript (requesting party) will be required to pay the cost of preparing the transcript in accordance with the fee schedule approved by the Supreme Court pursuant to paragraph 3 of this rule. Requests to have a transcript prepared at the expense of the State or other governmental entity are governed by paragraph (j) below. Preparation of transcripts at the request of a court are governed by paragraph (k) below.

(c) The requesting party will be required to pay the transcriber a deposit for preparation of the transcript before the transcriber begins work. The deposit is an estimate of the cost of preparing the transcript. The cost of the transcript will be determined by the fee schedule approved by the Supreme Court. If the deposit amount is insufficient to cover the cost of the transcript, the requesting party may be required to pay the balance of the transcript cost before receiving the transcript. If the deposit exceeds the cost of the transcript, the excess deposit will be refunded.

(d) The requesting party shall complete the Transcript Request Form and specify the portion or portions of a court proceeding to be transcribed. An excerpt of a proceeding may be requested, provided that if any portion of the testimony of a witness is requested, the entire testimony of that witness must be transcribed. The requesting party shall submit the Transcript Request Form to the transcriber with the required deposit.

(e) Upon receipt of the Transcript Request Form and required deposit, the transcriber shall send a copy of the Transcript Request Form to the trial court clerk. Immediately upon receipt of the Transcript Request Form from the transcriber, the trial court clerk shall send the transcriber the recording of the court proceeding(s) to be transcribed, along with pertinent case information.

(f) The transcriber shall proceed to transcribe the court proceeding upon receipt of the recording and pertinent case information. The transcriber shall complete the transcript within the time requested on the Transcript Request Form. If the transcriber cannot prepare the transcript within the time requested, the transcriber shall notify the requesting

party. The time allowed the transcriber for completion of the transcript shall be calculated from the date that the transcriber receives the recording of the proceeding from the trial court.

(g) The transcriber shall certify that the completed transcript is an accurate transcription of the court proceeding. The certification shall be in the following form:

To the best of my professional ability, skill, and knowledge, I certify that this transcript is a true and accurate record of the recording.

Name:

Date:

(h) The transcriber shall provide the trial court clerk with the certified transcript, which shall be digitally signed, in PDF format on CD. The transcriber shall provide the requesting party with a certified, digitally-signed copy of the transcript in PDF format on CD.

(i) Requests for transcripts previously requested or prepared:

(A) If the subsequent request is made prior to the completion of a transcript, the transcriber shall notify the trial court, which shall allocate the cost of the transcript among the requesting parties, and shall determine whether an additional deposit is required.

(B) If the subsequent request is made within 90 days of completion of a transcript, the transcriber shall advise the subsequent requesting party to submit the request directly to the trial court. The trial court may order the subsequent requesting party to reimburse the original requesting party for a portion of the cost of preparing the transcript.

(C) If the subsequent request is made more than 90 days after completion of the transcript, the transcriber shall advise the requesting party to submit the request directly to the trial court. The trial court shall provide a copy of the transcript on CD for a fee of \$25.00. The trial court will not provide a paper copy of the transcript.

(j) Requests for transcripts in cases in which the requesting party is entitled to preparation of a transcript at the expense of the State or other governmental entity:

(A) Any person requesting that a transcript of a proceeding be prepared at the expense of the State or other governmental entity must file a motion for authorization to obtain services other than counsel in the trial court. If the motion is granted, counsel shall complete the Transcript Request Form and submit it to the trial court. The trial court clerk shall submit the Transcript Request Form and the recording of the court proceeding and pertinent case information to the transcriber. No deposit shall be required for preparation of the transcript in such cases.

(B) Upon completion of the transcript, the transcriber shall send an itemized invoice to the trial court clerk with the completed transcript and a Services for Other than Counsel form for approval by the trial court.

(C) Upon the trial court's receipt of the transcript and itemized invoice, and after verification that the transcript is correct, payment of the transcriber's invoice shall be approved and sent to the authority responsible for payment along with the necessary paperwork.

(D) In all other respects, the procedures set forth in paragraphs (a)-(i) will govern the preparation of a transcript prepared in such cases.

(k) Preparation of transcript for the trial court:

(A) When the trial court orders a transcript for the court's use, it shall issue an order requiring that the transcript be prepared at the expense of the judicial branch. The trial court clerk shall complete the Transcript Request Form and shall submit it with the recording of the court proceeding and pertinent case information to the transcriber. No deposit shall be required for preparation of a transcript for use by the trial court.

(B) Upon completion of the transcript, the transcriber shall send an itemized invoice to the trial court clerk with the completed transcript.

(C) Upon the trial court's receipt of the transcript and itemized invoice, and after verification that the transcript is correct, payment of the transcriber's invoice shall be approved and sent to the Administrative Office of the Courts for payment along with the order approving payment.

(D) In all other respects, the procedures set forth in paragraphs (a)-(i) will govern the preparation of a transcript prepared in such cases.

(2) *Preparation of Transcripts for Appeal*

The preparation of a transcript for appeal is governed by Supreme Court Rule 15.

(3) *Designation of Transcriber and Approval of Fees*

(a) The Supreme Court shall designate a person or entity which shall be responsible for transcribing all trial court proceedings.

(b) The Supreme Court shall approve a fee schedule for the preparation of transcripts.

(c) After a transcript of court proceedings has been prepared by the transcriber and provided to the trial court clerk, the transcript shall become the property of the judicial branch, and the judicial branch shall have the right to make copies of the transcript for its own use and to provide copies to others with or without charge. The transcriber shall not be entitled to payment of any additional fees for copies made by the judicial branch.

(4) *Official Record*

(a) When a transcript of a court proceeding is prepared by the transcriber designated by the Supreme Court, the certified, digitally-signed transcript provided to the trial court or the Supreme Court in the case of an appeal shall be considered the official record of the trial court proceeding.

(b) Any person may request a copy of the audio recording of a hearing except when a case or proceeding is confidential by statute or court rule or order. The recording will be provided on CD or audiotape for a fee of \$25.00 per case, except that when a request is made that the recording be provided on a daily basis, the fee will be \$25.00 for each

recording requested. A copy of the recording of a court proceeding shall not be deemed to be the official record of the proceeding.

## **APPENDIX C**

Amend the Transcript Order Form, which appears as the fourth page of both the New Hampshire Supreme Court Rule 7 Notice of Discretionary Appeal form and the New Hampshire Supreme Court Rule 7 Notice of Mandatory Appeal form, on a temporary basis, as follows:

## TRANSCRIPT ORDER FORM

**INSTRUCTIONS:**

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. A paper copy of the transcript will be prepared for the court. Parties will be provided with an electronic copy of the transcript in PDF format.

DATE OF PROCEEDING	TYPE OF PROCEEDING	LENGTH OF PROCEEDING	NAME OF JUDGE(S)	PORTIONS PREVIOUSLY PREPARED	DEPOSIT (SEE SCHEDULE BELOW)
					\$
					\$
					\$
					\$
					\$
<b>DO NOT SEND DEPOSIT AT THIS TIME.</b>					TOTAL DEPOSIT: \$

### SCHEDULE OF DEPOSITS

<u>Length of Proceeding</u>	<u>Deposit Amount</u>
Hearing or trial of one hour or less	\$ 175
Hearing or trial up to ½ day	\$ 450
Hearing or trial of more than ½ day	\$ 900/day

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

## APPENDIX D

Amend Superior Court Rule 71, on a temporary basis, as follows:

### **Unofficial Annotated Version**

71. Opening statements shall not be argumentative and shall not be longer than 30 minutes unless the Court otherwise directs. Closing arguments shall be limited to one hour each, unless otherwise ordered by the Court in advance. Before any **[person]** attorneys shall read to the jury any excerpt of testimony **[from a transcript]** prepared by the ~~Court stenographer~~ **[designated court transcriber]**, he **[or she]** shall furnish **[the]** opposing **[party]** counsel with a copy thereof prepared by said stenographer.

### **Official Version**

71. Opening statements shall not be argumentative and shall not be longer than 30 minutes unless the Court otherwise directs. Closing arguments shall be limited to one hour each, unless otherwise ordered by the Court in advance. Before any person shall read to the jury any excerpt of testimony from a transcript prepared by the designated court transcriber, he or she shall furnish the opposing party with a copy thereof.

## APPENDIX E

Amend Superior Court Rule 80, on a temporary basis, as follows:

### Unofficial Annotated Version

80. **[The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.]** ~~When the Supreme Court orders that a transcript be prepared, if a question of law is transferred by appeal, the appealing party shall advance the estimated cost of the transfer, and the expense of such transfer shall be taxed in his bill of costs if he shall prevail; but if transferred by virtue of an agreement signed by the parties or otherwise without ruling, such expense shall be advanced as the court, within its discretion, may rule that justice requires.~~

~~—The stenographer shall transcribe the original and two copies of all the oral proceedings except opening statements, medical testimony, arguments, and charge, unless otherwise ordered by the Supreme Court.~~

~~—After determination of what is to be transcribed as provided by these rules and the Supreme Court rules, the Clerk of the Supreme Court shall notify the party liable therefor of the estimated cost to him at the prevailing per page rate for the original and each copy thereof, and shall notify him to pay the estimated cost to the Clerk of the Superior Court within fifteen days from the date of the notice; otherwise his appeal shall be deemed waived; or if it is an agreed case or if otherwise transferred without ruling, the action shall be dismissed unless the other party will advance such expense within fifteen days after notice, in which event he may tax it as costs if he prevails. Upon receipt of the required advance payment, the Clerk shall notify the stenographer to proceed with the transcription.~~

~~—In cases tried by the Court without jury or by a master or referee, the oral proceedings of the trial shall not be transcribed by the stenographer in advance of verdict or decree unless the Court rules that justice so requires, and then portions thereof may be omitted as may be expressly ordered. In the event that such prior transcription is ordered, the stenographer shall prepare not less than the typewritten original and two copies thereof and the Court shall determine the apportionment of the cost thereof.~~

### Official Version

80. The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.

**APPENDIX F**

Repeal District Court Rule 1.18 in its entirety.

## APPENDIX G

Amend District Court Rule 1.19, on a temporary basis, as follows:

### Unofficial Annotated Version

#### **Rule 1.19. Sound Recordings of Proceedings**

**[The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.]** ~~Whenever a party desires to use a sound recording of District Court proceedings on appeal, a written transcript of the sound recording will be required.~~

### Official Version

#### **Rule 1.19. Sound Recordings of Proceedings**

The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.

## APPENDIX H

Amend District Court Rule 4.27, on a temporary basis, as follows:

### Unofficial Annotated Version

#### **Rule 4.27. Appeals — ~~Records Requirement~~**

~~I. Any person who is a party to a small claim action may, at least 5 days prior to trial, request the district court that a tape recording be kept of all proceedings in the trial. If such a request is made, the person making the request for the recording shall be responsible for the cost of the tape recording and any associated transcription costs.~~

H. Any party to a small claim judgment may, at the time judgment is declared or within 30 days of the notice of judgment date, appeal therefrom to the supreme court. ~~On any such appeal, the district court shall provide the tape recording requested under paragraph I. to the supreme court.~~ The district court shall not grant any requests for extensions of time to file an appeal document in the supreme court or requests for late entry of an appeal document in the supreme court; such requests shall be filed with the supreme court. See Supreme Court Rule 21(6).

### Official Version

#### **Rule 4.27. Appeals**

Any party to a small claim judgment may, at the time judgment is declared or within 30 days of the notice of judgment date, appeal therefrom to the supreme court. The district court shall not grant any requests for extensions of time to file an appeal document in the supreme court or requests for late entry of an appeal document in the supreme court; such requests shall be filed with the supreme court. See Supreme Court Rule 21(6).

## APPENDIX I

Amend Probate Court Rule 78-A, on a temporary basis, as follows:

### Unofficial Annotated Version

#### **Rule 78-A. TRANSCRIPTS.**

(a) **Request that Proceedings be Recorded.** A Party may request that any probate proceedings be recorded. Such request shall be made in writing to the Court no later than ten (10) days prior to the proceeding. Any denial of a request for recording shall include the reason(s) supporting the denial. A request for recording, not timely filed, may be granted within the discretion of the Court.

(b) **Official Record.** ~~[When a transcript of a probate court proceeding is prepared by the transcriber designated by the Supreme Court, the certified, digitally-signed transcript provided to the probate court or the Supreme Court in the case of an appeal shall be considered the official record of the proceeding.]~~ For all purposes, including Supreme Court Rules 13-15, the official record of a recorded probate court proceeding shall be the printed transcript of the proceeding as prepared by an approved transcriber or stenographer at the request of the Register.

(c) **Transcripts for Appeal.** ~~[The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.]~~ The Party or Parties shall advance the estimated cost of the transcript as ordered by the Court. Upon receipt of the required advance payment, the Register shall direct the transcriber or stenographer to proceed with the transcription.

(d) **Request for Excerpts.** During the course of a trial, either party may request to have parts of the evidence transcribed for use during the trial. ~~[The procedure for preparation of a transcript other than for appeal is governed by Supreme Court Rule 59(1).]~~ The furnishing of a transcript or excerpts from the evidence is to be done under the direction of the probate judge or probate master.

(e) **Transcripts Required for Other Than Appeal.** ~~[The procedure for preparation of a transcript other than for appeal is governed by Supreme Court Rule 59(1).]~~ ~~In the event there is a Motion for a transcript of a proceeding, either partial or complete, by a Party to the proceeding or other interested Persons, for purposes other than appeal, that purpose shall be stated in the Motion.~~

~~When a Motion for transcript is granted, any other Party desiring a copy shall notify the Court within ten (10) days of the Register's notice. After the ten-day period has elapsed, the Register shall proceed in the usual manner to compute the estimated cost of the transcript and require the Party or Parties to advance this amount. Upon receipt of the required advance payment, the Register shall direct the transcriber or stenographer to proceed with the transcription.~~

~~When completed, if the transcriber or stenographer's bill exceeds the estimated payment, the Register shall collect the additional cost before releasing the transcript(s). The original shall be retained by the Register.~~

~~(f) **Transcript Order by Court, Master or Referee.** If a complete or partial transcript of any proceeding is ordered by a probate judge or probate master, the transcriber or stenographer shall prepare an original and such copies as ordered. The Register's office shall provide the probate judge or probate master with a copy and retain the original and any other copies. Neither, the original or any copy shall be defaced in any way so that they may be used in the event of subsequent appeal.~~

~~(g) **Special Circumstances.** Any and all of the outlined procedures for preparation of transcripts may be amended at the discretion of the Court in special circumstances; e.g., when there is a limited time available for processing an appeal, etc.~~

### Official Version

#### **Rule 78-A. TRANSCRIPTS.**

(a) **Request that Proceedings be Recorded.** A Party may request that any probate proceedings be recorded. Such request shall be made in writing to the Court no later than ten (10) days prior to the proceeding. Any denial of a request for recording shall include the reason(s) supporting the denial. A request for recording, not timely filed, may be granted within the discretion of the Court.

(b) **Official Record.** When a transcript of a probate court proceeding is prepared by the transcriber designated by the Supreme Court, the certified, digitally-signed transcript provided to the probate court or the Supreme Court in the case of an appeal shall be considered the official record of the proceeding.

(c) **Transcripts for Appeal.** The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.

(d) **Request for Excerpts.** During the course of a trial, either party may request to have parts of the evidence transcribed for use during the trial. The procedure for preparation of a transcript other than for appeal is governed by Supreme Court Rule 59(1).

(e) **Transcripts Required for Other Than Appeal.** The procedure for preparation of a transcript other than for appeal is governed by Supreme Court Rule 59(1).

## APPENDIX J

Amend Probate Court Rule 80, on a temporary basis, as follows:

### Unofficial Annotated Version

#### **Rule 80. INTERLOCUTORY TRANSFERS AND APPEALS TO THE SUPREME COURT -- *Transcripts***

~~[The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.] When the Supreme Court orders that a transcript be prepared, if a question of law is transferred by appeal, the appealing Party shall advance the estimated cost of the transfer, and the expense of such transfer shall be taxed in the appealing Party's bill of costs if the appealing Party shall prevail; but if transferred by virtue of an agreement signed by the Parties or otherwise without ruling, such expense shall be advanced as the Court, within its discretion, may rule that justice requires.~~

~~The transcriber or stenographer shall transcribe the original and two copies of all the oral proceedings except opening statements and arguments, unless otherwise ordered by the Supreme Court.~~

~~After determination of what is to be transcribed as provided by these rules and the Supreme Court rules, the Clerk of the Supreme Court shall notify the Party liable therefor of the estimated cost to that Party at the prevailing per page rate for the original and each copy thereof, and shall notify that Party to pay the estimated cost to the Register within fifteen (15) days from the date of the notice; otherwise, that Party's appeal shall be deemed waived; or if it is an agreed case or if otherwise transferred without ruling, the action shall be dismissed unless the other Party will advance such expense within fifteen (15) days after notice, in which event the other Party may tax it as costs if the other Party prevails. Upon receipt of the required advance payment, the Register shall notify the transcriber or stenographer to proceed with the transcription.~~

~~The oral proceedings of the trial shall not be transcribed by the transcriber or stenographer in advance of decree unless the Court rules that justice so requires. In the event that such prior transcription is ordered, the transcriber or stenographer shall prepare not less than the typewritten original and two copies thereof and the Court shall determine the apportionment of the cost thereof.~~

### Official Version

#### **Rule 80. INTERLOCUTORY TRANSFERS AND APPEALS TO THE SUPREME COURT -- *Transcripts***

The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.