

**KENTUCKY BAR ASSOCIATION
KENTUCKY RULES OF CIVIL PROCEDURE**

SPECIAL RULES OF THE CIRCUIT COURT FOR THE ECONOMICAL LITIGATION DOCKET

CR 98 Procedures for using videotape equipment to record court proceedings

CR 98. Procedures for using videotaped court proceedings and appeals

(1) Scope of Rule.

The provisions of this Rule shall apply to any court proceeding presided over by, or to any appeal from a judgment entered by, a trial judge upon his/her activation and use of video recording equipment to record the court proceeding.

(2) Record of Trial Court Proceedings.

In addition to those provisions of the Kentucky Rules of Court relating to video recorded court proceedings the following procedures shall apply:

(a) Video Recordings. The official record of these court proceedings shall be constituted as follows:

1. two (2) videotape recordings, recorded simultaneously, of court proceedings utilizing video cassette equipment; or,
2. two (2) copies of the digital video recording when court proceedings are otherwise electronically recorded.

Upon the filing of a notice of appeal, one of the two video recordings, or a court-certified copy of that portion thereof recording the court proceeding being appealed shall be filed with the clerk and certified by the clerk as part of the record on appeal. The second video recording, or a court-certified copy of that portion thereof recording the court proceeding being appealed, also shall be retained by the clerk.

(i) Method of identification. For identification purposes, the clerk shall designate on each of the two video recordings, on one line, the judicial circuit or district number, the court division number (if any), the last two digits of the current year, the letters "VR", the number of the video recording (counting all video records used since the start of the current calendar year), either the letter "A", if the video recordings retained by the clerk, or the letter "B", if the video recording is filed with the clerk, the number of the video recording used in the proceeding being identified, and the case file number of the proceeding being identified (for example: 22-3-06-VR-015-A-1, 06-CR-123). On the second line, the clerk shall designate the caption of the proceeding recorded on the video (for example: Smith v. Jones) or refer to the video recording log for the captions of the proceedings when multiple proceedings are recorded thereon. On the third line, the clerk shall designate the date on which the video record was made (for example; 10/27/06).

(ii) Duplicate copies. The clerk shall arrange for the recording of duplicate copies of video recordings for use by counsel in preparing an appeal. The clerk shall charge the person requesting a duplicate video recording a reasonable fee, which shall be set by the Administrative Office of the Courts, for each duplicate video tape, disk or other media requested.

(b) Exhibit List: Trial Log. The trial judge or his/her designee shall make a written exhibit list, a written trial log, and a written log listing the date and time of where each witness' testimony

begins and ends on the video recording. The trial judge shall keep one copy of each log and list as part of the record, and shall place a second copy of each log and list with the video recording, or portion thereof.

(c) Exhibits. By pretrial order, the trial judge may require that at the time an exhibit is introduced into evidence, a photograph or photographs of the exhibit be submitted and included as part of the record, in lieu of the exhibit itself being retained by the clerk as part of the record. The photograph(s) shall serve as part of the official record, and the exhibit itself may be returned for safekeeping to the custody of the party introducing the exhibit. The clerk shall not be required to certify the exhibit itself as part of the record on appeal, unless so ordered by the appellate court.

(d) Depositions. In a court proceeding in which video recording equipment is being used to record the proceeding, the official record of a deposition admitted into evidence may be, in the trial judge's discretion, either the transcript of the deposition or the video recording of the deposition.

(e) Court Reporters in Mechanically Recorded Proceedings. Any party to the case may have a stenographic reporter present as part of the public or at counsel table and the court shall, to the extent it can do so without unduly disrupting its proceeding, accommodate the reporter inside the bar.

(3) Record on Appeal.

Unless otherwise ordered by the court, no transcript of court proceedings shall be made a part of the record on appeal except as provided in Paragraph 4 of this rule. The official video recordings, together with the clerk's written record, shall constitute the entire original record on appeal. To facilitate the timely preparation and certification of the record as set out in this rule, appellant or counsel for appellant, if any, shall provide the clerk with a list setting out the dates on which video recordings were made for all pre-trial and post-trial proceedings necessary for inclusion in the record on appeal. Designation of the video recordings shall be filed within the ten (10) day time limitation and in the manner described in Rule 75.01(1). Supplemental designation by other parties shall likewise conform with the requirements of Rule 75.01(1).

(a) Preparation and Certification by Clerk. The circuit court clerk shall prepare and certify the entire original record on file in his/her office. All parts of the written record on appeal shall be arranged in the order in which they were filed or entered. If the record comprises more than 150 pages, it shall be divided into two or more volumes not exceeding 150 pages each. Each volume shall be securely bound at the left side. There shall be a general index at the beginning of the record and an index to each volume in the front thereof which shall show, in the order in which they appear, the pages on which all pleadings, orders, judgments, instructions, and papers may be found. Except for documents, maps and charts, and other papers reasonably capable of being enclosed in envelopes, exhibits, unless otherwise ordered by the trial court pursuant to paragraph (2)(c) of this rule, shall be retained by the clerk and shall not be transmitted to the appellate court unless specifically directed by the appellate court on motion of a party or upon its own motion. All exhibits filed with the record shall be sufficiently identified and the index shall direct where they may be found.

(b) Time for Certification. The record on appeal shall be prepared and certified by the circuit court clerk as soon after the filing of the notice of appeal as possible, but in any event within thirty (30) days after the date of filing the notice of appeal. Extension of time for certification shall be by motion for cause filed with the court to which the appeal is taken.

The matter certified under this section shall constitute the record on appeal. It is the responsibility of the appellant to see that the record is prepared and certified by the clerk within the time prescribed by this rule.

(c) Notice of Certification. The circuit court clerk shall immediately give written notice to the clerk

of the appellate court when the record has been completed and certified as required herein, and shall simultaneously serve copies of such notice upon all parties to the appeal. The clerk shall enter the fact and date of such notice in the docket of the case.

(d) **Withdrawal and Transmission of Record on Appeal.** The circuit court clerk shall transmit the record on appeal to the appellate court when so requested by the clerk of the appellate court. Until the record on appeal is so requested, the record on appeal shall be retained under the responsibility and control of the clerk of the circuit court. Except for the official video recording of the proceedings which shall be retained by the clerk until transmitted to the appellate court, the record on appeal will be made available first to counsel for the appellant and then to the counsel for the appellee. If the record on appeal is removed from the clerk's office, counsel for the appellant shall return it before submitting his/her brief to the appellate court in order that it may be available to counsel for the appellee. If it is withdrawn by counsel for the appellant for the purpose of preparing a reply brief it shall be returned before such brief is submitted to the appellate court. A record on appeal shall not be retained by counsel beyond the filing date on which his/her brief is due. Withdrawals and returns of the record on appeal shall be noted by the clerk on the docket kept for that action.

(e) **Perfection of Appeal.** An appeal shall be perfected within sixty (60) days after the date of the notation on the docket of the service of notice required by paragraph (3)(c) of this rule. To perfect an appeal, the appellant shall: (1) cause the clerk's notice required by paragraph (3)(c) of this rule to be transmitted to the clerk of the appellate court; and (2) file with the clerk of the appellate court the brief required by CR 76.12.

(4) Briefs.

The provisions of CR 76.12 pertaining to briefs shall apply to appeals taken pursuant to this rule, as well as the following provisions:

(a) **Video Recording Reference.** Each reference in a brief to a segment of the video recordings shall set forth in parentheses the letters "VR", the number of the video recording, and the month, day, year, hour, minute, and second at which the reference begins as recorded on the video recording. For example: (VR No. 1: 10/27/06; 14:24:05).

(b) **Evidentiary Appendix.** An appendix of the evidence (hereinafter, evidentiary appendix) that consists of a transcription of the evidence or other court proceeding may be attached to a brief on appeal. The filing of an evidentiary appendix and index attached to a brief shall not exceed fifty (50) pages if filed in the Supreme Court, nor twenty-five (25) pages if filed in the Court of Appeals, except that an evidentiary appendix and index attached to a reply brief shall not exceed fifteen (15) pages. An evidentiary appendix shall contain transcriptions of only those parts of the video recording that support the specific issues or contentions raised in a brief on appeal, or that relate to the question of whether an alleged error was properly preserved for appellate review.

(i) **Organization of Appendix.** At the top of each page of an evidentiary appendix, there shall be a video recording reference which corresponds to the transcription on each page of the appendix. Each evidentiary appendix shall include an index setting forth: (a) a list of video recording references cross-indexed to pages of the appendix; (b) an alphabetical list of witnesses whose testimony is transcribed in the appendix, listing the video recording references with the pages of the appendix where each witness' testimony begins; (c) the name of each witness at the place in the appendix where the testimony of that witness begins.

(ii) **Purpose of Appendix: Sanctions.** The purpose of this evidentiary appendix is to facilitate the efforts of each appellate judge in studying the briefs in a meaningful way. Inclusion of transcript unnecessary to the disposition of the case imposes a burden on both the parties and the court and may subject counsel to sanctions set forth below:

(a) The appellate court may deny costs to, or assess costs against, a party who has been responsible for the insertion of unnecessary material into an evidentiary appendix. Moreover, any counsel who so multiplies an appendix in any brief as to increase delay or costs may be required by the court to satisfy personally such excess costs, and may be subject to the imposition of fines as set forth in CR 73.02(2)(c).

(b) The appellate court may strike any part or all of an evidentiary appendix, or brief to which it is attached, which has been determined by the appellate court to contain unnecessary material.

(5) Further Provisions.

(a) Transcription for Appellate Court. The appellate court may request the Administrative Office of the Courts to transcribe any portion of the video recordings it determines is necessary for a decision in the case. The costs of transcriptions under this paragraph shall be certified by the Director of the Administrative Office of the Courts, or his or her designee, and shall be paid by the parties to the appeal in such proportions as directed by the appellate court requesting the transcription.

(b) Effect of Rule on Practice in Court of Appeals. Nothing in this rule shall be construed to supersede the provisions of CR 76.03.

HISTORY: Amended by Order 2006-09, eff. 1-1-07; prior amendments eff. 1-1-03 (Order 2002-1); 2-1-01 (Order 2000-2, 2000-1), 1-1-99 (Order 98-2), 10-1-94 (Order 94-1), 8-1-92, 9-15-90; adopted eff.8-28-89