

**PREPARING THE RECORD
FOR APPEAL
REFRESHER ON T.R.A.P. 24 AND 25**




PURPOSE - T.R.A.P. 24

**Provide “a method of preparation of the record that is both inexpensive and simple, and to provide that the record conveys an accurate account of what transpired in the trial court.”
Advisory Commission Comments to TRAP 24.**






ITEMS INCLUDED IN THE RECORD ON APPEAL BY T.R.A.P. 24(A)

- ❑ Copies of all papers filed in the trial court, *except those expressly excluded later in the rule;*
 - ❑ Original of any exhibit filed in the trial court, *except for exhibits that T.R.A.P. 25(b) says need not be included;*
 - ❑ Transcript or statement of the evidence or proceedings;
 - ❑ Requests for instructions submitted to the trial judge for consideration, whether expressly acted upon or not; and
 - ❑ Any other matter designated by a party and properly includable in the record on appeal as provided in T.R.A.P. 24(g).
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ITEMS INCLUDED IN THE RECORD ON APPEAL BY OTHER RULES

- ❑ Tenn. R. Crim. P. 36, 2012 Advisory Commission Comment – “Tenn. R. App. P. 24(a) lists the items which must be included in the record on appeal. In an appeal as of right from the entry of a corrected judgment or order pursuant to Tenn. R. Crim. P. 36, *the record on appeal should include the listed items (e.g., papers filed in the trial court, exhibits, transcript or statement of the evidence or proceedings, etc.) pertaining to the original judgment or order*, as well as those items pertaining to the corrected judgment or order.”
- ❑ Tenn. Sup. Ct. R. 12(1), **Trial Judge’s Report in First Degree Murder Cases** – “The report, a copy of which is appended to this rule, shall be completed in its entirety in all cases, including cases remanded by the appellate court for retrial and/or resentencing, in which the defendant is convicted of first-degree murder.” **Additionally, a “copy of the report and any comments of counsel . . . shall be filed with the record on appeal.**

ITEMS EXCLUDED FROM THE RECORD ON APPEAL BY T.R.A.P. 24

- Subpoenas or summonses for any witness or for any defendant when there is an appearance for such a defendant;
 - All papers relating to discovery, including depositions, interrogatories and answers thereto, reports of physical or mental examinations, requests to admit, and all notices, motions or orders relating thereto;
 - Any list from which jurors are selected;
 - Trial briefs; and
 - Minutes of opening and closing of court.
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ITEMS EXCLUDED FROM THE RECORD ON APPEAL BY T.R.A.P. 24

LAST BUT NOT LEAST . . .

❑ No paper need be included in the record more than once.

- What does this mean? Compare with T.R.A.P. 25(a) (“Copies of all papers filed in the trial court . . . shall be bound together in chronological order....”).
- When papers that are already included in the record are also attached as exhibits to motions or other pleadings, should these papers be included in the record a second time? Not clear.
- When in doubt, ask the parties. Where doubt remains, it is generally better practice to include rather than exclude.

ITEMS EXCLUDED FROM THE RECORD BY OTHER RULES

- ❑ **T.R.A.P. 8A(c) – Parental Termination Appeals** - In addition to the papers excluded from the record pursuant to Rule 24(a), any portion of a juvenile court file of a child dependency, delinquency or status case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record.

ITEMS EXCLUDED FROM THE RECORD BY T.R.A.P. 25

- ❑ Documents of unusual bulk or weight **and** physical exhibits, **other than documents**, shall not be transmitted to the appellate court, **UNLESS a party or the clerk of the appellate court directs the trial court to transmit it.**




SEARCH 15130793


"I'M SORRY MAM, BUT THIS REALLY IS TOO BIG TO MAIL."




ITEMS EXCLUDED FROM THE RECORD BY T.R.A.P 25

- What is a document? Is a photograph a document?
 - What is a physical exhibit? Is a video or audio recording preserved in electronic medium (CD or thumb drive) a physical exhibit?
 - When in doubt about including or excluding “physical exhibits,” ask the parties, and default in favor of including exhibits.
 - If an item is excluded, the appellate court has the power (and is not afraid to use it) to order supplementation of the record should the item be needed.
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T.R.A.P. 25 ORGANIZATIONAL REMINDERS

- ❑ **Organize the documents in chronological order**
 - ❑ **Number each page of the bound volumes.**
 - ❑ **Prepare a list/index/table of contents, and include it in the first bound volume. Having a complete table of contents in each bound volume is helpful to the appellate court.**
 - ❑ **Compile exhibits in numerical order and place them in a bound volume separate from the technical record and the trial transcripts. Rule 25 describes how exhibits are to be prepared for transmission to the appellate court.**
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T.R.A.P. 25 ORGANIZATIONAL REMINDERS

- ❑ **Include a table of contents in the separate volume listing all exhibits and indicate whether exhibits are included in the record or retained in the trial court. Include a blank page for each exhibit retained in the trial court and describe the exhibit. Court of Appeals Rule 3 – limits each volume is limited to 150 pages.**
 - ❑ **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.” Don’t forget!**
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PURPOSE ACHIEVED?



T.R.A.P. 24 & 25 are supposed to provide

“a method of preparation of the record that is both inexpensive and simple, and to provide that the record conveys an accurate account of what transpired in the trial court.”

Still room for improvement!

QUESTIONS

**IF YOU HAVE QUESTIONS REGARDING THE PREPARATION, COMPLETION,
OR TRANSMISSION OF AN APPELLATE RECORD, CALL JIM HIVNER'S
OFFICE (APPELLATE COURT CLERK'S OFFICE)**

Jackson (731) 423-5840

Knoxville (865) 594-6700

Nashville (615) 741-2681

ASK THE CLERK

The screenshot shows a Windows Internet Explorer browser window displaying the Tennessee Administrative Office of the Courts website. The address bar shows the URL: <http://www.tncourts.gov/courts/appellate-court-clerks-office/ask-clerk>. The page title is "Ask the Clerk | Tennessee Administrative Office of the Courts".

The page content includes:

- ASK THE CLERK** (Section Header)
- Text: "If you have questions for the Appellate Court Clerk, please fill out the form below. However, please note that in accordance with Tennessee Code Annotated, Section 16-3-804(b), no employee of the state court system shall engage, either directly or indirectly, in the practice of law. This includes making legal referrals, performing legal research or giving legal advice."
- Text: "If you need any legal advice, please [contact a licensed attorney in your area](#). The Appellate Court Clerk's Office has a Pro Se Litigant Filing Guide for the Appellate Courts of Tennessee, which is available on our website."
- DIRECTIONS**: "Please fill in the form fully and accurately so we may promptly provide you with the help you are requesting. Be sure you enter your e-mail address correctly or we will not be able to reply to your request."
- Form fields: "Name: *", "Email: *", "Subject:" (with a dropdown menu set to "- None -"), and "Describe the situation:" (with a text area).

The left sidebar contains a navigation menu with the following items:

- APPELLATE COURT CLERK'S OFFICE
 - Offices
 - Oral Arguments
 - Fee Schedule
 - Forms & Resources
 - Admission to Practice Law
 - Biography of the Clerk
 - Ask the Clerk
 - Rules of Appellate Procedure
 - Proposed Rules & Amendments
 - Court Tour
- SUPREME COURT
- COURT OF APPEALS
- COURT OF CRIMINAL APPEALS
- CIRCUIT, CRIMINAL &

The Windows taskbar at the bottom shows the Start button, several open applications (1109..., JITS, Wor..., Nove..., Micr...), and the system tray with the time 11:42 AM and date 11/19/2011.

SUGGESTIONS FOR IMPROVEMENT

**IF YOU HAVE SUGGESTIONS FOR IMPROVING RULES 24 AND 25, OR ANY
OTHER RULE OF APPELLATE PROCEDURE, EMAIL**

JIM HIVNER at Jim.Hivner@tncourts.gov