August 16, 2019

**REQUEST FOR COMMENTS ON PROPOSED RULE CHANGES**
*(Comments Due by Monday, September 16, 2019)*

The Alaska Supreme Court seeks comments on the following proposed rule changes. Proposed changes to existing rules are shown in "legislative" style: new language is underlined, and deleted language is struck through. Except as otherwise indicated, new text is not underlined when a new rule is proposed or when an existing rule is rescinded and readopted.

*Comments are due by Monday, September 16, 2019.* Please direct your comments via email to hflint@akcourts.us, or use the mailing address or fax number shown above. Thank you for your time and consideration.

**Proposed Changes to the District Court Civil Rules**



**Proposed Changes to the Criminal Rules**



**Proposed Changes to the Appellate Rules**

**THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**1. District Court Civil Rule 11(a)**—Allowing service by publication or posting in small claims cases.

Under current District Court Rule 11(a), a defendant in a small claims case cannot be served through publication or posting. This rule proposal would change that.

The prohibition against serving a small claims defendant through publication or posting has been in effect since the initial adoption of the small claims rules in 1975. A district court judge who regularly presides over small claims cases suggests that this current prohibition, at least in today's world, interferes with the goal of resolving small claims cases expeditiously, simply, and economically. If the plaintiff cannot serve a defendant personally or through certified mail, then the plaintiff must file a motion to move the case from the small claims rules into formal civil rules. This can cause delay as well as additional legal expense. Some plaintiffs must hire an attorney. Defendants are exposed to more attorney fees. The court also incurs additional administrative burdens. The proponet notes that in many cases removed to the formal rules, the plaintiff then requests posting on the court system's legal posting website.[1]

The Civil Rules Committee supports this change and recommends the following proposal:

**Rule 11. Process.**

(a) The summons shall be issued and the summons and complaint served, according to the procedures of Civil Rule 4, except that:
(1) If personal service is used, the clerk shall deliver the summons for service to a peace officer or to a person specially appointed to serve it.
(2) If service is by registered or certified mail, the clerk shall mail the summons and a copy of the complaint as provided in Civil Rule 4(h).
~~(3) Service by publication or posting shall not be allowed.~~
(3~~4~~) Service on a defendant who is outside the state shall be allowed
(A) in accordance with the Landlord-Tenant Act, AS 34.03.340;
(B) in accordance with AS 09.05.020, entitled Service of Process on Nonresident Owner or Operator of Motor Vehicle; or
(C) as otherwise permitted under Civil Rule 4.
(4~~5~~) The affidavit required by Civil Rule 4(f) is not required in small claims cases and Civil Rule 4(j) shall not apply.
* * *

[1] Service of process by posting on the court system's legal notice website is a relatively new process. The supreme court approved this manner of service in 2014. Prior to that time, newspaper publication, which could be costly, was the default method of "other" service under Civil Rule 4(e).

**THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**2. Criminal Rule 23(a)—**Clarifying waiver of a jury trial in a misdemeanor case.

The Rule 23(a) proposal would clarify that court approval and government consent is required when a defendant waives a jury trial in a misdemeanor case.

In May 2013, the Criminal Rules Committee first considered the Rule 23(a) language and discussed the ambiguity of whether court approval and government consent was required when a defendant waives a jury trial in a misdemeanor case. At that meeting, the committee did not recommend any change. In 2017, the court of appeals answered the question. In *Treptow v. State*, 408 P.3d 1220 (Alaska Ct. App. 2017), the defendant argued that the rule did not require court approval and government consent when the defendant waived a jury trial in a misdemeanor case, unlike a felony case. The Alaska Court of Appeals disagreed with this interpretation and held that Rule 23(a) required court approval and government consent in both felony and misdemeanor cases. The proposal is to amend Rule 23 by adding clarifying language based on the *Treptow* opinion.

To clarify the rule, the Criminal Rules Committee recommends the following proposal:

**Rule 23. Trial by Jury or by the Court.**

**(a) Trial by Jury.** Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court and the consent of the government. ~~In felony cases, the waiver must be in writing with the approval of the court and the consent of the state.~~ In misdemeanor cases, the defendant's waiver may be in writing or made on the record in open court. In felony cases, the defendant's waiver must be in writing.

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**THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**3. Criminal Rule 23(c)**—Findings in a nonjury trial.

The proposed change to Rule 23(c) would specify the findings the court must make in a criminal nonjury trial.

The committee discussed Rule 23 governing criminal trials and *Klecka v. State*, 2014 WL 819504 (Alaska App. 2014). In *Klecka*, the defendant was convicted of the criminal offense of disorderly conduct under AS 11.61.110(a)(6). The case was tried to the district court without a jury. In its written decision, the district court relied on the wrong legal test and the wrong burden of proof. The court of appeals vacated the verdict and remanded the case to the district court.

The committee discussed whether there is a danger of wrongful conviction that could escape review in a judge-tried case. The committee considered the parallel federal criminal rule that requires the court to state specific findings of fact in a nonjury trial. The committee agreed that the trial court should state the elements of each offense charged and find whether the prosecution proved each element beyond a reasonable doubt. Also, the court should state the burden of proof for any defense asserted by the defendant, and whether the burden has been met.

The Criminal Rules Committee recommends the following proposal:

**Rule 23. Trial by Jury or by the Court.**

* * * *

(c) **Trial Without a Jury**. In a case tried without a jury, the court shall ~~make a general finding and shall, in addition, on request, find the facts specially~~ state, orally or in writing, the elements of each offense charged and find whether the prosecution has proved each element beyond a reasonable doubt. The court shall also state the burden of proof for any defense asserted by the defendant, and whether the burden has been met. ~~If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.~~

**THE CRIMINAL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**4. Criminal Rule 24(b)(2)**—Allowing mid-deliberation juror substitution.

The proposed change to Rule 24(b)(2) would allow an alternate juror to replace a regular juror after deliberations have begun.

The supreme court asked the Criminal Rules Committee to consider whether Rule 24(b)(2) should be amended to allow an alternate juror to be retained after the jury retires to deliberate and, after deliberations begin, for an alternate juror to replace a regular juror who becomes disqualified or unable to serve. This issue arose in *Coffin v. State*, 425 P.3d 172 (Alaska App. 2018). In that case, the court of appeals held that, despite a violation of Criminal Rule 24(b)(2), substituting an alternate juror for a regular juror after deliberations had already begun did not violate the defendant's constitutional rights under the facts of the case, and the trial court employed procedural safeguards. The appellate court noted that the parallel federal criminal rule allowed mid-deliberation juror substitution as well as a number of other states.

Over the course of three meetings, the Criminal Rules Committee discussed the proposal including review of Federal Criminal Rule 24. While the committee favored the proposal, it wanted to bolster the language taken from the federal rule. The committee included the federal rule language that the jury must be instructed to start its deliberations anew. But it included more detailed rule language specifying the retained alternate juror's duties. It further required the court to inquire of each juror individually, outside the presence of the other jurors, to determine if each juror could set aside any opinion formed during deliberations, and consult and exchange views with the other jurors, including the alternate juror. While two members still expressed reservations about allowing mid-deliberation juror substitution, the committee voted unanimously in favor of the proposal with the added provision that the parties must consent to replacement of the regular juror.

Also, the committee recommended changing the number of undesignated alternate jurors from two to four in subsection (b)(2)(B) to match the number for designated alternate jurors in subsection (b)(2)(A). Listing two instead of four jurors in (b)(2)(B) was an apparent oversight when the undesignated-alternate-juror method was added to the rule in 1992.

The Criminal Rules Committee recommends the following proposal:

**Rule 24. Jurors.**

* * * *

(b) **Alternate Jurors.**

* * * *

(2) *Procedures.*

(A) The court may direct that not more than four jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. ~~An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.~~ The additional peremptory challenges allowed by section (b)(1)(B) may be used against an alternate juror~~jury~~ only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror; or~~.~~

(B) The court may direct that not more than four ~~one or two~~ jurors be called and impaneled in addition to the number of jurors required by law to comprise the jury. The court may excuse jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. If more than the required number are left on the jury when the jury is ready to retire, the clerk in open court shall select at random the names of a

sufficient number of jurors to reduce the jury to the number required by law. ~~The jurors selected for elimination shall be discharged after the jury retires to consider its verdict.~~

(C) The court may retain and renumber alternate jurors selected under (b)(2)(A) or (B) after the jury retires to deliberate. The court shall instruct all retained alternate jurors that, until discharged, the jurors must not:

(i) communicate with any person, including other jurors, on any subject connected with the trial;

(ii) allow any other person to discuss the case in the juror's presence;

(iii) conduct any investigation or research concerning the case;

(iv) not read, view, or listen to any reports about the case in any form~~,~~; and

(v) form any conclusions about the case.

(D) If a juror becomes unable or disqualified to perform their duties after deliberations have begun, the court may replace the juror with an alternate juror with the consent of all parties.

The court must ensure that the alternate juror has complied with the court's instructions. The court must ensure that the alternate juror will set aside any opinion formed about the case. The court must instruct the jury to begin its deliberations anew. The court must also inquire of each juror individually, outside the presence of the other jurors, and determine whether each juror can set aside any opinion formed during deliberations, and consult and exchange views with the other jurors, including the alternate, when deliberations begin anew.

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**THE APPELLATE RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**5. Appellate Rules 206, 207, 507, and 512—**When judgment takes effect; return of jurisdiction.

The proposed rule amendments clarify when an appellate court decision takes effect, and when jurisdiction returns to the trial court.

The current rules, Rules 507 and 512, specify that an appellate judgment takes effect and jurisdiction returns to the trial court, along with the record, after the time for filing a petition for hearing or rehearing expires, or if a timely petition is filed, after it is resolved. The rule proposal simply clarifies certain areas, such as appellate cases that are dismissed. The committee did not intend to change case law under *State v. Seigle*, 394 P.3d 627 (Alaska App. 2017). The rule proposal accomplishes two goals: (1) addresses orders not currently covered by the rules such as a dismissal granted by a clerk or judge, and adds post-judgment appeals under Rule 207; and (2) eliminates the fiction in the rules that jurisdiction follows the physical file, especially considering the appellate clerk's office now scans the trial court file. The amendments are intended to assist the trial court so it knows when jurisdiction is returned to it, and clarify the "final" date for other actions such as post-conviction relief.

The proposal also clarifies the effective date for appellate decisions under Rule 206 and 207 cases, releases pending appeal and releases prior to judgment in criminal cases. Rule 512's jurisdiction return provisions are moved to Rule 507 so that rule will now address both the effective date of the appellate court's decision and return of jurisdiction to the trial court. The return of the record provisions in Rule 512 are deleted; those provisions are no longer necessary under the court system's current internal electronic procedures.

The Appellate Rules Committee recommends the following proposal:

**Rule 206. Stay of Execution and Release Pending Appeal in Criminal Cases.**

*** * * ***

(c) The decision of the court of appeals on any application under this rule is a "final decision" within the meaning of Rule 302, governing when petitions for hearing are permitted. The decision of the court of appeals concerning release pending appeal takes effect on the day it is issued, notwithstanding whether a petition for hearing is filed in the supreme court.

**Rule 207. Appeals Relating to Release Prior to Judgment.**

An appeal authorized by AS 12.30.030(a), relating to the release of a criminal defendant prior to the entry of final judgment, shall be determined promptly. The appeal shall take the form of a motion and shall comply with Rules 206(b) and 503. The appellee may respond as provided in Rule 503(d). The court of appeals or a judge thereof may order the release of the appellant pending such an appeal. The decision of the court of appeals on such an appeal is a "final decision" within the meaning of Rule 302, governing when petitions for hearing are permitted. The decision of the court of appeals concerning release pending appeal takes effect on the day it is issued, notwithstanding whether a petition for hearing is filed in the supreme court.

**Rule 507. Judgment and Return of Jurisdiction**

(a) The opinion of the appellate court, or its order summarily disposing of the appeal under Appellate Rule 214, or an order from the appellate court or the clerk of the appellate courts dismissing the appeal, shall constitute its judgment~~,~~

~~and shall contain its directions to the trial court, if any~~. No mandate shall be issued.

(b) Unless the opinion or order ~~expressly~~ states otherwise, the appellate court's judgment ~~of the appellate court~~ takes effect and full jurisdiction over the case returns to the trial court on the day specified in (c) and (d) below. ~~Rule 512(a) for return of the record.~~

(c) In a case decided by the supreme court,

(1) if a timely petition for rehearing or motion for reconsideration is filed, then jurisdiction returns on the day after the supreme court disposes of the case on rehearing or reconsideration;

(2) if no timely petition for rehearing or motion for reconsideration is filed, then jurisdiction returns on the day after the deadline for filing a petition for rehearing or reconsideration expires; or

(3) if the supreme court denies a petition for hearing, then jurisdiction returns on the day after the court denies the petition for hearing.

(d) In a case decided by the court of appeals, if no petition for hearing is filed, then jurisdiction returns on the day after the deadline for filing a petition for hearing expires. This subsection does not apply to an appeal filed under Rule 206 or 207.

(e) An untimely filing in the appellate court after jurisdiction has returned to the lower court has no effect on the jurisdiction that has been returned under this rule, unless the appellate court orders otherwise.

~~(c)~~ (f) ~~A~~ Any motion to stay the effect of the judgment of the appellate court, or otherwise alter the timelines in this rule, ~~beyond the day specified in Rule 512(a)~~ shall be made to that court.

**~~Rule 512. Record and Other Papers after Final Disposition.~~**

~~(a) (1) Unless the court otherwise orders, the clerk shall return the original record to the clerk of the trial courts on the day specified in this subsection.~~

~~(2) In a case decided by the court of appeals, the record shall be returned:~~

~~(a) (1) Unless the court otherwise orders, the clerk shall return the original record to the clerk of the trial courts on the day specified in this subsection.~~

~~(2) In a case decided by the court of appeals, the record shall be returned:~~

~~[a] on the day after the time for filing a petition for hearing expires, if no timely petition for hearing is filed;~~

~~[b] on the day after the petition for hearing is denied, if a timely petition for hearing is denied; or~~

~~[c] as provided in paragraph (3), if a petition for hearing is granted.~~

~~(3) In a case decided by the supreme court, the record shall be returned:~~

~~[a] on the day after the time for filing a petition for rehearing expires, if no timely petition for rehearing is filed; or~~

~~[b] on the day after the supreme court disposes of the case on rehearing, if a timely petition for rehearing is filed.~~

~~(b) All documents filed with the appellate courts shall be retained by the clerk subject to Administrative Rule 37.~~

**THE APPELLATE RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**6. Appellate Rule 212(c)—**Requiring a "preservation of error" section identifying where the asserted error was raised below.

Appellate Rule 212(c) addresses the substantive requirements of appellate briefs. The rule proposal would require a party to specify in its brief the exact location in the record where the asserted error was raised in the trial court, or if the error was not asserted, for the party to make a "plain error" argument. The goal is to save the appellate court and opposing parties from searching the record to determine if an issue was preserved. An ancillary effect may be better briefing and developments of arguments.

The committee recommended proposal has six noteworthy changes. First, paragraph (c)(1) now allows the statement of the case to be divided so the description of the lower court proceedings relevant to a particular issue is paired with the arguments pertaining to the case. Second, the last sentence in subparagraph (c)(1)(F) is deleted; this sentence says a cross appeal is waived if the court affirms the lower court's decision. A cross appeal may be mooted if the appellate court affirms the decision, but it is not "waived." Third, subparagraph (c)(1)(G) is re-written. A party's statement of the case must include the facts and trial court proceedings pertinent to the issues raised on appeal. Except for sufficiency of the evidence issues, the statement of the case must also explain whether the issue was raised and argued in the trial court, and the trial court's ruling. All assertions must be supported by the references to the record. Fourth, the standard of review is moved to the argument section. Also, for any issue not raised or ruled on, the appropriate argument section must address the applicability of the plain error doctrine. Current subparagraph (c)(1)(H)(standard of review) is deleted (because the standard is moved), and subsequent subparagraphs are re-lettered. Fifth, a party may include a summary before the argument section. Sixth, subparagraph (c)(8)(B) is deleted. The current provisions in this subparagraph are either incorporated into the above changes or are unnecessary. Last, the committee made other stylistic and clarifying edits.

The Appellate Rules Committee recommends the following proposal:

**Rule 212. Briefs.**

* * * *

(c) **Substantive Requirements.**

(1) *Brief of Appellant.* The ~~brief of the~~ appellant's brief shall contain the following items under appropriate headings. The items shall be presented ~~and~~ in the order here indicated, except the statement of the case may be divided so that the description of the lower court proceedings relevant to a particular issue is paired with the arguments pertaining to that issue:

(A) A table of contents, including the titles and subtitles of all arguments, with page references.

(B) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(C) The constitutional provisions, statutes, court rules, ordinances, and regulations principally relied upon, set out in full ~~verbatim~~ or in ~~their~~ pertinent part ~~provisions appropriately summarized~~.

(D) A jurisdictional statement of the date ~~on which~~ judgment was entered, whether the judgment is final and disposes of all claims by all parties or whether it is a partial final judgment entered under Civil Rule 54(b), and of legal authority of the appellate court to consider the appeal.

(E) A list of all parties to the case, without using "et al.," or any similar indication, unless the caption of the case on the cover of the brief contains the names of all parties. This list may be contained in a footnote.

(F) A statement of the issues presented for review. In cases ~~of~~ involving a cross-appeal, the cross-appellant may present a statement of the issues presented for review that ~~which~~ would require determination if the case is to be reversed and remanded for further proceedings in the trial court. ~~In the event that the decision is affirmed on the appeal, such issues on the cross-appeal may be deemed waived by the appellate court.~~

~~(G)~~ A statement of the case, which shall provide a brief description of the facts of the case and the trial court proceedings pertinent to the issues raised on appeal. ~~a concise statement of the course of proceedings in, and the decision of, the trial court. Appellant shall state the facts relevant to each issue, with references to the record as required by paragraph (c)(8), in this section or in the appropriate argument sections.~~ For each appellate issue, other than those concerning the sufficiency of the evidence, the statement of the case must explain whether that issue was raised and argued in the lower court. For each appellate issue, the statement of the case must identify whether, and if so, when and how, the lower court ruled on that issue. All assertions in the statement of the case must be supported by references to the record as required by paragraph (c)(8).

~~(H) A discussion of the applicable standard of review. (If the brief concerns several issues with different standards of review, the discussion of each issue should be preceded by a discussion of the standard of review applicable to that issue).~~

(H~~I~~) An argument section, which shall ~~contain~~ explain the contentions of the appellant with respect to the issues presented on appeal, and the ~~reasons therefor~~ legal and factual support for those contentions, with citations to the authorities, statutes, and parts of the record relied on. References to the record shall conform to the requirements of paragraph (c)(8).

For each issue raised, the party must identify the standard of review that governs the appellate court's consideration of that issue. For any issue not raised or ruled on, the appropriate argument section must address the applicability of the plain error doctrine. ~~The section may be preceded by a summary.~~

Each major contention shall be preceded by a heading indicating the subject matter. ~~References to the record shall conform to the requirements of paragraph (c)(8).~~ The argument section may be preceded by a summary.

(I~~J~~) A short conclusion stating the precise relief sought.

(J~~K~~) If the appeal concerns a property division in a divorce case, an appendix consisting of a table listing all assets and liabilities of the parties as reflected in the record, including the trial court's findings as to the nature (marital or individual), value, and disposition of each asset or liability.

(2) *Brief of Appellee.* The ~~brief of the~~ appellee's brief shall conform to the requirements of subdivisions (1)(A) through (1)(I~~J~~) except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant, and a list of all parties need not be included.

(3) *Reply Brief.* The appellant may file a brief in reply to the appellee's brief ~~of the appellee~~. The reply brief shall conform to the requirements of subdivisions (1)(A), (1)(B), (1)(C), (1)(H~~I~~), and (1)(I~~J~~). This brief may raise no contentions not previously raised in either the appellant's or appellee's brief. If the appellee has cross-appealed and has not filed a single brief under (c)(6) of this rule, the appellee may file a brief in reply to the response of the appellant to the issues

presented by the cross-appeal. No further briefs may be filed except with leave of the court.

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(8) *References in Briefs to the Record or Excerpt.*

(A) ~~*References in Cases in Which Excerpts are Prepared.*~~ References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. _____ ]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is [Tr. _____ ] and to pages of the trial court file is [R._____ ]. The form for references to untranscribed portions of the electronic record is [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00 or Date at Time 00:00:00].

~~(B) *References to be Included.* If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised for the first time on appeal. Failure to comply with the requirements of this paragraph may result in return of the brief as provided in paragraph 11 of this subdivision.~~

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**THE APPELLATE RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**7. Appellate Rule 215(f)—**The record in sentence appeals.

Appellate Rule 215 governs sentence appeals. The proposal is that the regular appeal records process contained in Rule 210 should also govern sentence appeals with a few minor differences specific to sentence appeals to remain in Rule 215(f). The proposal is designed to meet two goals: (1) reflect the current process within the Alaska Court System for preparing the record on appeal and the transcripts; and (2) clarify that only certain proceedings need to be transcribed and a full trial transcript is not necessary for a sentence appeal. Under the proposal, the parties must designate transcripts as set forth in Rule 210(b). The rule further outlines the required designation: the entire sentencing hearing at which the sentence was imposed. Also, if the sentence appeal is from a probation revocation proceeding, the designation must also include the original sentencing hearing and all prior probation revocation sentencing hearings. The time for preparing the transcript would change from 15 days to 40 days under Rule 210. The committee commented that the concept is that a sentencing appeal moves faster through the appeal process than other appeals, hence the 15-day transcript deadline in the current rule, but the reality is that it does not. And for the few instances in which a party needs a quick turnaround for the record and transcript, the party could ask for expedited transcript and record preparation.

The Appellate Rules Committee recommends the following proposal:

**Rule 215. Sentence Appeal.**

* * * *

(f) **Record on Appeal.**

(1) ~~*Preparation and Contents.*~~ Except as provided in paragraph (2), Appellate Rule 210 governs the content and preparation of the record on appeal. ~~Within 15 days after the filing of a notice of sentence appeal, the clerk of the trial court shall prepare sufficient copies of the record on appeal, which shall consist of the following:~~

~~[a] all charging documents;~~

~~[b] the judgment being appealed;~~

~~[c] a transcript of the entire sentencing proceeding; and, if the sentence appeal is from a probation revocation, the transcript shall include the original sentencing and all probation revocation sentencing proceedings.~~

~~[d] all reports, documents, motions and memoranda pertaining to sentencing which were available to the sentencing court.~~

The clerk shall number the pages of the record consecutively. Appellate Rule 210(c) shall not apply.

(2) ~~*Distribution.*~~ The parties must designate transcripts as set forth in Rule 210(b). The designation in a sentence appeal must include at least the entire sentencing hearing at which the sentence was imposed. If the sentence appeal is from a probation revocation proceeding, the designation must also include the original sentencing hearing and all prior probation revocation sentencing hearings. ~~Immediately upon preparation of the record on appeal, the clerk shall send the original to the clerk of the appellate courts, two copies to the defendant's counsel, and a copy to the attorney for the prosecution. Unless otherwise ordered by the appellate court, limitations that the trial court placed on disclosure of documents that are contained in the record continue to apply while the case is on appeal.~~

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**THE APPELLATE RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:**

**8. Appellate Rule 513.5—**Approved typeface.

The recommended proposal addresses typeface in appellate documents. The proposal would eliminate certain fonts, add a new font, add a tiered system of approved fonts, and require a certification of font used and availability.

Typeface can affect a brief's readability so the committee undertook a review of approved typeface. The current rule seems to default to Courier, a font disfavored by the majority of committee members. The committee consensus was that Courier and Garamond should not be approved typefaces with an exception for self-represented parties. Courier is the standard typeface on a typewriter, and a self-represented party might prepare a brief on a typewriter. But Courier should be the font of last resort. The committee considered the various typefaces used by the state agencies represented on the committee, and the subcommittee recommendations.

With the above issues in mind, the committee agreed on the following changes:

1. Eliminate Garamond as an approved typeface;
2. Add Palatino Linotype as an approved typeface;
3. Require the party to certify the typeface and point size used; and
4. Set up a three-tiered system of approved typeface
   a. Tier 1 approved typeface: retained most fonts except Courier, Garamond, and the "substantially similar" language, and added Palatino Linotype;
   b. Tier 2 approved typeface: if Tier 1 typefaces (i.e. (c)(1) list) are not reasonably available, the party may use either 13 point proportionally-spaced serifed roman text style or 12.5 point proportionally-spaced non-serifed text style. The party must include in the certificate that Tier 1 typefaces are not reasonably available and list the typeface and point size used; and
   c. Tier 3 approved typeface: if Tier 1 and 2 typefaces are not reasonably available, then the party may use Courier or a substantially similar monospaced text style with 12 point font size (10 monospaced characters per line). The party must include in the certificate a statement that Courier or a similar monospaced font is the only available font and identify the typeface and point size used.

The Appellate Rules Committee's recommendation is as follows:

**Rule 513.5. Form of Papers**

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(c) **Typeface.** (1) The text of documents, including headings and footnotes, must be at least

~~(A) 12 point (10 monospaced characters per inch) Courier, or substantially similar monospaced text style;~~

(A)~~(B)~~ 13 point (proportionally spaced) Times New Roman, ~~Garamond~~, CG Times, New Century Schoolbook, or Palatino Linotype~~substantially similar serifed, roman text style~~; or

~~(C)~~(B) 12.5 point (proportionally spaced) Arial, Helvetica, or Univers~~, or substantially similar non-serifed text style~~.

(2) ~~When a typeface other than 12 point Courier is used, the~~ The party filing the document must ~~also~~ file a certificate that identifies the typeface and point size used in the document.

(3) If a party does not have any typeface listed in subsection (c)(1) reasonably available, the party may use a substantially similar typeface, either at least 13

point proportionally-spaced serifed, roman text style or at least 12.5 point proportionally-spaced non-serifed text style. The party must file a certificate stating that none of the typefaces specified in (c)(1) are reasonably available, and identifying the typeface and point size used in the document.

(4) If the only reasonably available typeface is Courier or a substantially similar monospaced text style, the party may use this typeface with at least 12 point size (10 monospaced characters per inch). The party must file a certificate identifying the typeface and point size used in the document, and stating that Courier, or a similar monospaced font, is the only available font.