Missouri Court of Appeals

Western District

Quick Guide to Appellate Practice for Attorneys

(Revised July 2026)

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Missouri Court of Appeals - Western District
Quick Guide to Appellate Practice

The Quick Guide is prepared for use as a reference tool for attorneys appearing before this Court. It is not to be used as a substitute for the Missouri Court Rules, the Western District Special Rules, or the judicial decisions interpreting those Rules. **Should there be a conflict between information within this document and the Missouri Court Rules, the Western District Special Rules, or case law, the Rules and case law are controlling**.

The following is only a summary of the procedures for filing and perfecting an appeal in the Western District of the Court of Appeals.

MISSOURI JUDICIARY WEBSITE

The Western District maintains a website which can be found at the Missouri Judiciary website, www.courts.mo.gov. Several useful tools are available on the website including full-text opinions of the court, monthly dockets, the Special Rules of the Western District, the Quick Guide to Appellate Practice, and Court announcements. The Missouri Judiciary website provides full-text opinions of the Missouri Supreme Court and the other Missouri intermediate appellate courts.

I. JURISDICTION AND JUDGMENT

A. Jurisdiction

The Court must have jurisdiction or the authority to hear an appeal. When an appeal is available, this Court has jurisdiction, except where jurisdiction is vested in the Supreme Court of Missouri, pursuant to article V, section 3 of the Missouri Constitution. This Court hears appeals from cases arising out of:

1. Circuit Courts within the Western District. *See generally* § 512.020, RSMo.
2. Associate Division of the Circuit Court. Only where permitted under §§ 512.180.2 and 543.335. **IMPORTANT**: § 512.180.1 requires aggrieved parties seeking review of a judgment of the associate division tried without a jury under the provisions of chapter 482 or 535 to first request a trial de novo in the Circuit Court.
3. Probate Division of the Circuit Court. *See* § 472.160, RSMo.
4. Administrative Appeals

B. Judgment

Generally, an appeal may be taken only from a final judgment. A judgment is final and appealable when a writing signed by a judge and denominated "judgment" or "decree" is filed. Rule 74.01(a). A judgment includes a decree and

any order from which an appeal lies. Rule 74.01(a). Effective January 1, 2026, a docket entry may meet the signature requirement of Rule 74.01(a) if the entry is signed in the following manner: /s/ John or Jane Judge. Rule 41.08(a).

A final judgment disposes of all issues, claims, and parties. A judgment that disposes of fewer than all parties or claims may be made final for purposes of appellate review if the trial court makes an express determination that there is "no just reason for delay." Rule 74.01(b). In the absence of this express determination, the appellate court has no jurisdiction. *Tendai v. Mo. State Bd. of Registration for the Healing Arts*, 77 S.W.3d 1, 2 (Mo. banc 2002). The trial court's designation, however, is only effective when the order disposes of a distinct "judicial unit." *Wilson v. City of St. Louis*, 600 S.W.3d 763 (Mo. banc 2020).

In a **civil case**, a motion for new trial or to amend the judgment must be filed within 30 days after the entry of a judgment. Rule 78.04. The time for filing the motion for new trial or to amend the judgment in a civil case may not be extended either by the trial court or the appellate court. Rule 44.01(b). In civil cases, the judgment becomes final 30 days after the entry of the judgment if no timely authorized after-trial motion is filed. Rule 75.01; Rule 81.05(a)(1). Under Rule 81.05(a)(4) the phrase "authorized after-trial motion" means a motion seeking relief authorized by Rules 72.01(b), 73.01(d), or 78. In jury-tried cases, allegations of error must be included in a motion for new trial to be preserved for appellate review. Rule 78.07(a). In cases tried without a jury, a motion for new trial or to amend the judgment is not necessary to preserve any matter for appellate review *if the matter was previously presented to the trial court*. Rule 78.07(b). In all cases, allegations as to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment to be preserved for appellate review. Rule 78.07(c). If a timely authorized after-trail motion is filed, the judgment becomes final at the expiration of 90 days after the filing of the motion or, if such motion is passed on at an earlier date, the latter of: (1) 30 days after the entry of judgment, or (2) disposition of the motion. Rule 78.06; Rule 81.05(a). A timely filed authorized after-trial motion is overruled if the trial court does not rule on it within 90 days after the date the timely motion is filed. Rule 78.06; Rule 81.05(a)(2)(A). Please note, after the filing of the notice of appeal, the trial court may shorten the 30-day period provided for in Rule 75.01. Rule 81.045

In a **criminal case**, the judgment is final when the motion for new trial is overruled, allocution given, judgment and sentence entered in accordance with the jury verdict, and sentence is imposed. *State v. Bone*, 447 S.W.3d 757, 758 (Mo. App. E.D. 2014); Rule 29.07(b)(1); Rule 29.11(c). A criminal case is not final until a sentence is imposed. *State ex rel. Zahnd v. Van Amburg*, 533 S.W.3d 227

(Mo. banc 2017); *State v. Larson*, 79 S.W.3d 891 (Mo. banc 2002); *State v. Lynch*, 679 S.W.2d 858 (Mo. banc 1984). Pursuant to Rule 29.07(c), "A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence." In a criminal case, the motion for new trial must be filed 15 days after return of the verdict. Rule 29.11(b). The time may be extended by the court for one additional period of 10 days. Rule 29.11(b). No judgment shall be rendered until the time for filing a motion for new trial has expired, and, if a motion for new trial is filed, no judgment shall be rendered until the motion for new trial has been determined. Rule 29.11(c). If the motion for new trial is not ruled upon within 90 days after the motion is filed, it is denied for all purposes. Rule 29.11(g). In jury-tried cases, allegations of error must be included in a motion for new trial to be preserved for appellate review except for issues regarding jurisdiction of the court over the offense charged, whether the indictment or information states an offense, and the sufficiency of the evidence to sustain the conviction. Rule 29.11(d). A motion for new trial is optional in a case tried without a jury. Rule 29.11(e). If, however, a motion for new trial is filed in a case tried without a jury, allegations of error to be preserved for appellate review must be included in the motion for new trial, except for issues regarding jurisdiction of the court over the offense, whether the indictment or information states an offense, and the sufficiency of the evidence to sustain the conviction. Rule 29.11(e).

II. ELECTRONIC FILING REQUIREMENTS

See Rules 103.01-103.10, Western District Special Rule 12; Rule 84.025 and Rule 84.026; Rule 30.005 and Rule 30.006

An attorney in good standing with the Missouri Bar representing a party before the court must register as a user of the electronic filing system to file documents with the court. Western District Special Rule 12(A). The court serves notices, opinions, and other documents to registered users through the electronic filing system and on all others as provided by Rule 43.01. Western District Special Rule 12(E); Rule 84.025(c).

A. Service of Filings

The electronic filing system does not serve the initial filings on parties. Rule 84.026(a). For any new case filed in the electronic filing system, service of the initially filed documents shall be made pursuant to Rule 43.01. Rule 84.026(a). Initial filings also include filings seeking special orders permitting a late filing of the notice of appeal, applications for transfer, appeals from orders granting or denying class certifications, and filings of original writs. Rule 84.026(a). For filings on an existing case, registered users serve and receive service of filings through the electronic filing system; no additional service or certificate of service is required. Rule 84.026(b). After service of the initial filing, registered users shall serve documents as provided by Rule 43.01 on any party ineligible to use the

electronic filing system. Rule 84.026(c)(1). After service of the initial filing, any party ineligible to use the electronic filing system shall serve documents as provided by Rule 43.01 on every party not represented by an attorney but service of documents need not be made on parties represented by an attorney because the notice generated by the electronic filing system shall constitute service on such parties. Rule 84.026(c)(2).

For Criminal Cases – Filings of documents in this court and notices from this court shall be as provided by Rule 84.025. Rule 30.005. Further, service of all filings in this court shall be as provided by Rule 84.026. Rule 30.006.

B. Transcripts

All transcripts shall be prepared in Portable Document Format (.pdf). The electronic version shall be prepared and submitted one page per sheet. The paper copy shall be prepared in page reduction format. The court reporter shall provide Appellant with an electronic version and at least one paper copy. Western District Special Rule 12(C).

C. Exhibits

Registered electronic filers may submit trial exhibits to this court through electronic filing. Exhibits submitted electronically shall include a separate cover page containing the following information: (1) the number and style of the case; (2) the name and telephone number of the attorney submitting the exhibits; (3) an index of the exhibits enclosed; and (4) a statement signed by the submitting party or attorney certifying the exhibits are in fact the original exhibits submitted to the court or agency from which the appeal is taken. Western District Special Rule 12(D).

D. Paper Copies

Registered electronic filers permitted to create and file a system-generated legal file shall provide one paper copy of all briefs. Western District Special Rule 12(B).

E. Format of Electronically Filed Documents

All electronic documents shall be filed in the PDF format and shall be formatted according to the applicable rules governing formatting of paper documents, including page and word limits. Rule 103.04(a). Electronic documents that are part of the official court record shall be self-contained and shall not contain hyperlinks other than those generated by the electronic filing system. Rule 103.04(b).

F. Signature

Electronic documents requiring a signature shall be signed by an original signature, stamped signature or an electronic graphic representation of a signature, or in the following manner: /s/ John or Jane Person. Rule 103.04(d).

G. Unavailability of Electronic Filing System

If a registered user believes the unavailability of the electronic filing system prevented a timely filing to the party's prejudice, the registered user may file a motion to the court within ten days of the user's first unsuccessful attempt to file the document and state the date and time of the first unsuccessful attempt and why the delay was prejudicial. Rule 103.06(b). If the court determines that the unavailability of the electronic filing system prevented the court from receiving the filing, the court shall deem the document filed on the day that the user initially attempted to file the document. Rule 103.06(c).

H. Filing Deadline

Filing deadline for an electronically filed document is 11:59:59 p.m. central time (Rule 103.06(d)), and such document is submitted for filing when the electronic filing system receives the document and sends the confirmation (Rule 103.06(e)). The electronic filing system will affix the date and time of filing of the document. Rule 103.06(f).

III. REDACTION

Documents filed in cases are open and available to the public unless they are set at a higher security level by statute, rule, or court order. Unless otherwise ordered by the Court, all filers shall redact information that is confidential as defined in Supreme Court Operating Rule 4.24(b). Rule 84.015(a). Supreme Court Operating Rule 4.24(b) states that the following information shall be confidential:

(1) The full date of birth of any party, full social security number of any party or any child, full motor vehicle operator license number, or any other full state identification number, under section 509.520, RSMo;
(2) The full credit card number, financial institution account number, personal identification number, or password used to secure an account of any party, under section 509.520, RSMo;
(3) The name and address of any individual who is a minor and, if applicable, any next friend of the minor, under section 509.520, RSMo; provided, however, that the term "minor" shall mean any person under 18 years of age, except for:
    (A) An emancipated minor as defined un section 302.178, RSMo;
    (B) A juvenile who has been certified to stand trial as an adult for juvenile offenses pursuant to section 211.071, RSMo; or

(C) A juvenile who is alleged to have violated a state or municipal ordinance or regulation, as described in section 211.031.1(2)(e), RSMo;

(4) The identity of and all references to the identity of any child involved in a juvenile court proceeding described in subsection 1 of section 211.319, RSMo, except the perpetrator, and all information that may identify or lead to the disclosure of the identity of a reporter of child abuse, as required under section 211.319, RSMo;

(5) Any information that would be likely to publicly reveal the identity or location of a party protected under an order of protection or restraining order, pursuant to 18 U.S.C. section 2265(d)(3);

(6) Any information relative to the identity of an applicant or recipient of IV-D services, under sections 208.120 and 454.440, RSMO;

(7) Any information that could be used to identify or locate a victim of a sexual offense under chapter 566, RSMo, or a victim of domestic assault or stalking, under section 595.226, RSMo; and

(8) The personal information of a court-related officer or judicial officer, under sections 476.1300 to 476.131, RSMo.

The responsibility for redacting confidential information rests solely with the party filing the document. Rule 84.015(b).

All redactions must be done in a manner that makes it clear that information has been redacted. When a filer redacts information from a document filed with this Court, the filer must contemporaneously file either: (1) a confidential unredacted version of the filing; or (2) a confidential redacted information filing sheet that sets out the information redacted from the filing with an explanation as to where the information was redacted in the filing or the generic descriptors used in the filing to reference the redacted information.. Rule 84.015(c). A Confidential Redacted Information Filing Sheet is available on the Missouri Supreme Court's website.

All filers shall affirmatively certify compliance with the redaction requirements in Rule 84.015 when a document is filed. Rule 84.015(d).

IV. NOTICE OF APPEAL

A. FILING THE NOTICE OF APPEAL

Generally, in criminal and civil appeals, the notice of appeal is filed with the clerk of the trial court no later than ten days after the judgment becomes final. Rules 30.01(a) and 81.04(a).

In **civil cases** and in **criminal cases**, for the initial filings of any new case with the court of appeals, service shall be made pursuant to Rule 43.01. Rule 84.026(a)

and Rule 30.006. The clerk of the trial court shall give notice of the transmittal of the notice of appeal to all parties, but the failure to do so does not affect the validity of the appeal. Rule 81.04(g). In **criminal cases involving a felony conviction or a post-conviction proceeding**, the clerk of the trial court shall serve the notice of appeal on the attorney general pursuant to Rule 43.01. Rule 30.01(c).

1. Notice of Appeal Form

   The form and contents of a notice of appeal are contained in Form 8-A(2) for civil cases and Form 8-A(3) for criminal cases. Rules 30.01(a) and 81.04(a).

   The notice of appeal must specify:
   - *parties taking the appeal,
   - *judgment, decree, or order appealed from and the date entered,
   - *court to which the appeal is taken,
   - *date of filing of post-trial motion (if any) and date the post-trial motion was ruled upon, and
   - *and what the Record on Appeal will consist of—Legal File Only or Legal File and Transcript.

2. Copy of Judgment
3. Docket Fee – If Required

   The notice of appeal should be accompanied by:

   (a) a docket fee of $70.00—Rule 81.04(d) and (e)(1); **or**

   See Goldsby v. Lombardi, 559 S.W.3d 878, 885 (Mo. banc 2018) regarding payment of filing fee. If after the timely filing of a notice of appeal, appellant fails to take the further steps required to secure review of the appeal within the time periods allowed or extended, Appellant's case may be placed on a dismissal docket for failing to pay the filing fee. *Id*.; Rule 84.08. "The clerk shall notify all parties that the appeal will be dismissed unless the appellant remedies the default before a specified date. The date shall not be less than 15 days from the date of the notice. If the default is not remedied by that date, an order of dismissal shall be entered." Rule 84.08.

(b) a statement citing specific statutory or other authority demonstrating a docket fee is not required by law--Rule 81.04(e)(2); **or**

(c) a motion to prosecute the appeal in forma pauperis. Rule 81.04(e)(3) and Rule 30.01(a).

B. CROSS-APPEAL

If a notice of appeal is timely filed by a party, any other party may file a notice of appeal within ten days of the date the first of notice of appeal was filed. Rule 81.04(c). The court generally consolidates all appeals arising from the same circuit court judgment into one case for judicial efficiency. Any party may file a motion requesting that the appeals be consolidated.

C. LATE NOTICE OF APPEAL

If a party fails to file a timely notice of appeal, a party may seek leave from this court to file a late notice of appeal. To seek leave, a party must file with the clerk of the court of appeals a written motion for special order permitting a late notice of appeal. A motion for leave to file a notice of appeal out of time may be filed:

1. Civil Cases

   Must be filed within six months from the date the judgment became final. The court of appeals may issue a special order only upon motion, with notice to the adverse parties, and a showing by affidavit or otherwise that the delay was not due to the appellant's culpable negligence. Rule 81.07(a).

2. Criminal Cases

   Must be filed within twelve months after the judgment becomes final, including post-conviction proceedings. The court of appeals may issue a special order in its discretion "for good cause shown." Rule 30.03.

In either case, a copy of the final judgment from which the appeal is sought shall be attached to the motion. When a special order is granted, this court shall specify the time within which the notice of appeal is to be filed in the trial court, and the clerk of the trial court shall permit the appellant to file a notice of appeal within the time specified by the appellate court. Rule 30.03 and Rule 81.07(a). The notice of appeal should not be filed with the trial court until after the appellate court has granted the motion. If a notice of appeal has been previously filed, it is still necessary to file a new notice of appeal.

D. INTERLOCUTORY APPEALS BY STATE

Pursuant to § 547.200.1, RSMo, the State may appeal from an order: quashing an arrest warrant, suppressing evidence, suppressing a confession or admission, or from a determination that the accused lacks mental capacity or fitness to proceed to trial. The notice of appeal must be filed in the trial court within five days of the

entry of the order. § 547.200.4, RSMo. See also Rule 20.01(a) and Rule 44.01(a)—when period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation of days. The filing of the record on appeal and the briefing cycle are expedited. Rule 30.02.

E. SPECIAL TIME LIMITS FOR NOTICE OF APPEAL

1. Workers' Compensation cases

   Notice of appeal must be filed within thirty days of the date of the Commission's decision (final award) with the Commission. § 287.495.1, RSMo. See also §287.480.1, RSMo (When Division or Commission receives the notice of appeal, the date mailed as noted by post office on envelope or date received by fax is the date notice of appeal is filed—excludes Sundays and legal holidays if last day falls on one of those, but not Saturdays).

2. Unemployment cases

   Commission decision becomes final ten days after the date of notification or mailing of the decision to the parties. § 288.200.2, RSMo. Notice of appeal must be filed within twenty days of finality with the Commission. § 288.210, RSMo. See also § 288.240, RSMo (When Commission receives the notice of appeal, the date mailed as noted by post office on envelope is the date notice of appeal is filed—excludes Saturday, Sundays, and legal holidays if last day falls on one of those).

3. Juvenile Matters and Termination of Parental Rights

   Although § 211.261, RSMo, instructs that notice of appeals must be filed within thirty days after final judgment, the Missouri Supreme Court has held that the Civil Rules of Procedure apply and govern the time within which an appeal can be taken. *In the Interest of D.J.B.*, 704 S.W.2d 217, 218 (Mo. banc 1986). Thus, a judgment becomes final after the expiration of thirty days after the entry of such judgment, if no timely motion for new trial is filed, *see* Rule 81.05(a)(1), and a notice of appeal shall be filed no later than ten days after the judgment or order appealed from becomes final, *see* Rule 81.04(a). *Id*. at 217-18.

V. STAY OF EXECUTION/BONDS

A. CIVIL APPEAL

The filing of a notice of appeal automatically stays execution on a judgment during the pendency of an appeal only when the appellant is an executor, administrator, personal representative, conservator, guardian, curator, or when the appellant is a county, city, township, town, school district, or other municipality. Rule 81.09(a).

In all other cases, the appellant may, at or prior to the filing of the notice of appeal, file a supersedeas bond in an amount determined under Rule 81.09(b), which, if approved and accepted by the trial court, shall have the effect of staying execution on the judgment while the appeal is pending. Rule 81.09(a). A copy of the appeal bond should be filed with the appellate court within ten days after filing the appeal bond. Rule 81.09(a).

If the notice of appeal has not been filed, a bond may be filed with permission of the trial court. Rule 81.10. After the notice of appeal has been filed or where an appeal is taken out of time after a special order of the appellate court, the application to file a bond may be made only in the appellate court. Rule 81.10. The appellate court may, in its discretion, decline to grant the application, issue a stay upon such terms with respect to a supersedeas bond as may be appropriate, or remand to the trial court for a determination in accordance with Rule 81.09. Rule 81.10. It is the general practice of this court, if it sustains the application, to remand the matter to the trial court to approve the amount and form of the bond.

Any party who believes that the bond is inadequate or excessive may file an application with the court in which the appeal is pending stating the grounds for the application and the relief sought. Rule 81.09(c). If the appellate court finds that the bond is inadequate or excessive, the court will modify the conditions of the stay of execution. Rule 81.09(c).

B. CRIMINAL APPEAL

If a convicted defendant is entitled to a conditional release pending an appeal, the conditions shall be determined by the trial court pursuant to Rule 33. Rule 30.16.

Section 547.170, RSMo, contains a list of the offenses for which a defendant may not be released on bail pending appeal. A defendant/appellant on an appeal bond is only entitled to release until an opinion is issued affirming the conviction or dismissing the appeal. The appellate court may in its discretion, order the defendant/appellant arrested before the opinion is made public. § 547.330, RSMo.

Western District Special Rule 18 requires that if an eligible defendant is released on bail pending appeal pursuant to Rules 30.16 and 33.01, the stated conditions of the bond shall be: (1) that the defendant will report to and appear in person before any designated judge of this court or the clerk of this court, with surety if so directed, at such places and times as shall be directed by the court; (2) that the defendant will not depart the geographical jurisdiction of the State of Missouri without prior written permission of this court; (3) that defendant state his place of abode and mailing address on the face of the bond, together with the address of his surety, and notify the court immediately in writing of any changes of his place of

abode or mailing address; and (4) that the surety notify the court immediately in writing of any change of defendant's place of abode or mailing address.

Failure to comply with the conditions of bond may result in the court issuing an order for the arrest of the accused. Rule 33.08.

VI. ATTORNEY'S FEES

Any party claiming an amount due for attorney's fees on appeal pursuant to contract, statute, or otherwise and which this court has jurisdiction to consider, must file a separate written motion before submission of the cause. Western District Special Rule 29. Motions for attorney's fees on appeal concerning domestic issues must be filed in the circuit court. § 452.355, RSMo. Under § 452.355, RSMo, the circuit court has authority in domestic cases to award attorney's fees for services rendered on appeal, even after the appeal has been filed. *Travis v. Travis*, 63 S.W.3d 296, 299 (Mo. App. 2001).

VII. SETTLEMENT CONFERENCE

After the notice of appeal has been filed, the court may schedule a settlement conference for the purpose of exploring the possibility of settlement. If any party fails to comply with any part of the settlement conference scheduling order, that party may be subject to sanctions, including dismissal. Western District Special Rule 36.

VIII. MOTIONS

All motions must be in writing and must be filed with the clerk's office. Motions should be addressed to the clerk of the court. Rule 84.20. All motions must be signed by at least one attorney of record or by the self-represented party. Rule 84.01. **Attorneys are required to file all motions electronically. Rule 103.05(a).** For filings on an existing case, registered users of the electronic filing system serve and receive service of filings through the electronic filing system; no additional service or certificate of service is required. Rule 84.026(b). Registered users shall serve documents as provided by Rule 43.01 on any party ineligible to use the electronic filing system. Rule 84.026(c)(1).

> Criminal Cases – Filings of documents in this court and notices from this court shall be as provided by Rule 84.025. Rule 30.005. Further, service of all filings in this court shall be as provided by Rule 84.026. Rule 30.006. The provisions of Rule 84.01 shall apply to motions and suggestions filed in the appellate court. Rule 30.10

Unless otherwise ordered by this court, suggestions in opposition to a motion may be filed within five days after the date of service. Rule 84.01(b); Rule 30.10. Motions are decided on the pleadings; there is no oral argument unless directed by

the court. Rules 84.01(b); Rule 30.10. Motions are generally held five business days before disposition. Orders ruling on the motions are delivered via the electronic filing system to an attorney of record and, if applicable, mailed to any self-represented party.

IX. RECORD ON APPEAL

The record on appeal shall contain all of the record, proceedings, and evidence necessary to the determination of all questions to be presented to the court by either party for decision. Rule 81.12(a) and Rule 30.04(a). The record on appeal consists of two parts - the "legal file" and the "transcript." Rule 81.12 (a) and Rule 30.04(a). In criminal cases, Rule 30.04(b) directs that the "legal file shall be prepared as provided in Rule 81.12[.])" A legal file must be filed. A transcript may be filed.

A. LEGAL FILE

Appellant shall prepare the legal file. Rule 81.12(b) and Rule 30.04(b). If the electronic filing system permits creation of a system-generated legal file as provided in Rule 81.12(b)(1) and Court Operating Rule 27.04, that method shall be used. If that method cannot be used, the legal file shall be prepared as provided in Rule 81.12(b)(2).

1. System-Generated Legal File

   Rule 81.12(b)(1):

   (a) The legal file shall consist of a legal file index generated by the system and all of the hyperlinked documents referenced in the index. Rule 81.12(b)(1)(A).

   (b) Appellant shall designate the trial court documents to be included in the legal file and submit such designations for filing in the manner provided by the system for the generation of the legal file index. Rule 81.12(b)(1)(B).

   (c) If any documents in the trial court record is not available for designation, the appellant shall file with the clerk of the trial court, within 10 days after the notice of appeal is filed, a written request that those unavailable documents be entered into the system. Such request shall specifically identify each requested document by reference to the case number, document title, and date of filing. The clerk of the trial court shall promptly make the requested documents available for designation through the system and shall make a record of such availability with an appropriated docket entry. Rule 81.12(b)(1)(e)

   (d) **For civil cases, pursuant to Rule 81.12(b)(1)(C)**, the system generated legal file shall **always include**:

(1) the circuit court docket sheets;
(2) the pleadings upon which the action was tried;
(3) the verdict;
(4) the findings of the court or jury;
(5) the judgment or order appealed from;
(6) the motions and orders after judgment;
(7) the notice of appeal.

In addition, if instructional error is at issue, Western District Special Rule 19 requires the legal file to include an annotated copy of **all** instructions as required by Rule 70.02(e).

If an appeal is from a motion to modify a dissolution proceeding, Western District Special Rule 19 requires the legal file to include the original judgment that was requested to be modified in the underlying action.

(e) **For criminal cases, pursuant to Rule 30.04(b)**, the system-generated legal file shall **always include** in chronological order:

(1) the circuit court docket sheets;
(2) the indictment or information on which the defendant was tried;
(3) the defendant's arraignment or waiver thereof and plea;
(4) the fact of defendant's presence at the trial;
(5) the verdict;
(6) any motion for new trial or waiver thereof and plea or other after-trial motion;
(7) the court's rulings thereon;
(8) the fact that allocution was accorded defendant;
(9) the judgment and sentence;
(10) the notice of appeal.

In addition, if instructional error is at issue, Western District Special Rule 19 requires the legal file to include an annotated copy of ALL instructions as required by Rule 28.02.

(f) Generally, the following items should be **omitted** unless necessary to the resolution of issues on appeal: motions, continuances, abandoned pleadings, briefs, memoranda, notices of filing, subpoenas, summonses, motions to extend time, affidavits and admissions of service and mailing, notices of settings, jury lists, and depositions and notices. Further the legal file shall not include the original or any subsequent writ or the return thereto unless a question is raised as to the regularity of the process or its execution or as to the jurisdiction of the court. Rule 81.12(b)(1)(d) and Rule 30.04(b).

2. Public Service Commission Cases:

Pursuant to Western District Special Rule 42, records in appeals from the Missouri Public Service Commission ("PSC") pursuant to section 386.510, RSMo, shall consist of two parts:

(a) a paper version that consists of:
    (i) index of documents filed in the PSC proceeding
    (ii) complete transcript of the oral testimony given by witnesses in the PSC proceeding
    (iii) index of all exhibits in the PSC proceeding
(b) an electronic version that consists of a complete compilation of the documents, transcripts, and exhibits in the PSC proceeding.

To the extent feasible, all documents that are allowed to be filed under seal shall be submitted together in a separate volume of legal file.

B. TRANSCRIPT

The transcript must contain the portions of the proceedings and evidence not previously reduced to written form and necessary to determination of the issues on appeal. Rule 81.12(c)(2) and Rule 30.04(c)(1). In criminal cases, Rule 30.04(c)(2) directs that "the form, content, and filing of the transcript shall conform to Rule 81.12." The appellant must order the transcript, in writing, from the court reporter or from the clerk of the trial court, if the proceedings were electronically recorded or if there was no reporter. Rule 81.12(c)(1) and Rule 30.04(c)(1). The Office of the State Court Administrator in Jefferson City, Missouri, supervises the transcriptions of proceedings ordered from the clerk that have been recorded electronically.

The written order for the transcript should designate the portions of the proceedings and evidence not previously reduced to written form that are to be included in the transcript. Rule 81.12(c)(1) and Rule 30.04(c)(1). All charges due to the court reporter for preparation of the transcript shall be paid within ten days of ordering the transcript. § 512.050, RSMo. If the actual charges for the transcript cannot be readily determine, the court reporter shall provide written notification of the amount of the estimated charges within ten days of receiving a request for a transcript. § 512.050, RSMo. The deposit in the amount of the estimated charges shall be paid within ten days of the written notification by the court reporter. § 512.050. If the appellant is appealing *in forma pauperis*, the appellant will receive the transcript at no cost.

In **civil cases**, the transcript must be ordered, in writing, within ten days after the notice of appeal is filed. Rule 81.12(c)(1). Within ten days after payment of the charges, appellant shall file a written certificate in the appellate court stating the

date on which the transcript was ordered and the date on which the charges were paid. Rule 81.12(c)(1).

In **criminal cases**, the transcript must be ordered, in writing, within thirty days after the notice of appeal is filed. Rule 30.04(c)(1). A copy of the written order must also be filed with the court of appeals. Rule 30.04(c)(1).

In **all** cases:

- The transcript pages shall be numbered consecutively and shall contain a complete index at the front. Rule 81.12(c)(3) and Rule 30.04(c)(2).
- A volume of transcript shall not exceed 200 pages. Rule 81.12(c)(3) and Rule 30.04(c)(2).
- Transcript shall be filed in a text searchable PDF format (except for those filed by parties ineligible for electronic filing). Rule 81.12(c)(4) and Rule 30.04(c)(2). For parties ineligible to file documents through the electronic filing system, the party shall file the electronic medium provided by the court reporter. Rule 81.21(d). The court reporter shall certify that the electronic copy has been scanned and is virus-free. Rule 81.21(d).
- For format and filing requirements see Rule 81.12(c)(4); Rule 30.04(c)(2); Western District Special Rules 12 and 13.
- In criminal cases, the parties may agree in writing to an abbreviated or partial transcript. Rule 30.04(c)(3).
- The transcript must be **certified** by the court reporter as a true and accurate reproduction of the proceedings transcribed or by the transcriber as a true and accurate reproduction of the sound recording. Rule 81.12(c)(5) and Rule 30.04(c)(2).
    - Certification is not necessary if the parties agree in writing that the transcript is true and accurate. Rule 81.15(a).

C. RECORD ON APPEAL DEADLINES AND SPECIFIC RULES

The record on appeal must be filed with the appellate court within ninety days from the date of filing of the notice of appeal in the trial court, if both a legal file and a transcript are to be filed. Rule 81.12(d), Rule 81.19(b), and Rule 30.04(b) and (c)(2). If the record on appeal consists of only a legal file, it is due within thirty days. Rule 81.12(d), Rule 81.19(a), and Rule 30.04(b).

- Termination of Parental Rights or Adoption Appeals: the transcript shall be ordered from the court reporter within ten days of the filing of the notice of appeal, and the record on appeal is due **thirty days** after the notice of appeal is filed. Western District Special Rule

30(A). Appeal may be dismissed for failure to file a record on appeal. Western District Special Rule 30(G).

- Guardianships and other appeals affecting the custody of children: the transcript shall be ordered from the court reporter within ten days of the filing of the notice of appeal, and the record on appeal is due **sixty days** of the filing of the notice of appeal. Western District Special Rule 30(A). Any appeal may be dismissed for failure to file a record on appeal. Western District Special Rule 30(G).
- Interlocutory Appeal by State: the record on appeal is due within **fifteen days** after the notice of appeal is filed. Rule 30.02(b)

Service of Record on Appeal - For filings on an existing case, registered users of the electronic filing system serve and receive service of filings through the electronic filing system; no additional service or certificate of service is required. Rule 84.026(b). Registered users shall serve documents as provided by Rule 43.01 on any party ineligible to use the electronic filing system. Rule 84.026(c)(1). Any party ineligible to use the electronic filing system shall serve documents as provided by Rule 43.01 on every party not represented by an attorney but service of documents need not be made on parties represented by an attorney because the notice generated by the electronic filing system shall constitute service on such parties. Rule 84.026(c)(2).

> Criminal Cases – Filings of documents in this court and notices from this court shall be as provided by Rule 84.025. Rule 30.005. Further, service of all filings in this court shall be as provided by Rule 84.026. Rule 30.006.

A copy of the record on appeal shall not be filed with the trial court except upon court order or as provided in Rule 30.04. Rule 81.12(d).

The record on appeal or any part thereof shall be filed by the clerk of the appellate court without need for the parties to approve it. The filing of the legal file and transcript shall not operate as a waiver by the filing party of the right to dispute the correctness thereof as provided by Rule 81.15. Rule 81.12(d).

Extension of Time to File Record on Appeal

The appellate court, either on application or on its own motion, may enlarge or shorten the time for filing the record on appeal. Rule 81.20. If an extension is sought because the transcript has not been completed, the appellant or counsel must request from the court reporter or the Office of the State Court Administrator, whichever is appropriate, a written statement in support of the request for an extension. Western District Special Rule 15(A) and Western District Form 3.

See also Rules regarding the special situations:

Rule 81.13—Agreed Statement as the Record on Appeal
Rule 81.15—Record on Appeal—Uncertified or Disputed Record
Rule 81.17—Record on Appeal—Reviewing Legal Effect of Instructions—When Evidence Not Necessary

D. SUPPLEMENTAL RECORD

If the respondent is dissatisfied with the record on appeal filed by appellant, the respondent may, without leave of court within the time for filing its brief, file such additional parts of the record on appeal as respondent considers necessary. Rules 81.12(e) and 30.04(d). If a system-generated legal file has been filed by appellant, a registered electronic filer shall use the method in Rule 81.12(b)(1) to create a respondent's legal file. Parties ineligible to file documents through the electronic filing system shall prepare the respondent's supplemental legal file under Rule 81.12(b)(2) for non-system generated supplement legal files. If a non-system-generated legal file has been filed by appellant, a respondent's supplemental legal file shall be created using the method in Rule 81.12(b)(2). Rule 81.12(e) and Rule 30.04(d).

If either party omitted anything material from the record, the parties by stipulation shall direct that the omission or misstatement be corrected. Rule 81.12(f)(1). The court, on its own initiative or on a proper suggestion, shall direct that the omission or misstatement be corrected or order the clerk of the trial court to send up any original documents or exhibits. Rule 81.12(f)(2)(A). The court may also order that a supplemental record on appeal be prepared and filed by either party or by the clerk of the trial court. Rule 81.12(f)(2)(B). The supplemental record must comply with the filing requirements for a transcript or legal file. Rule 81.12(g) and Rule 30.04(d).

E. EXHIBITS

Appellant is responsible for depositing in the appellate court all original exhibits that are necessary for the determination of any point relied on. Rule 81.16(a). In both civil and criminal cases, the parties shall submit their exhibits no later than the date on which they file their initial briefs in this court. Western District Special Rule 4. Any exhibits not timely deposited may be considered as immaterial to the issues on appeal. Rule 81.16(d); Rule 30.05.

Exhibits that are not submitted electronically shall be contained collectively in an envelope labeled with the number and style of the case; the name and address of the attorney or party depositing the exhibits with the court; an index of the exhibits enclosed; and a statement signed by the filing attorney or party certifying that the envelope in fact contains the document listed in the index and certifying that the exhibits are in fact the original exhibits, or true and accurate copies thereof, submitted to the court or agency from which the appeal is taken. If an exhibit is

too large to be placed in an envelope, the exhibit shall be labeled with the number and style of the case, the name and address of the attorney depositing the exhibit, along with an index which lists the separately submitted exhibits. Western District Special Rule 4.

If a case necessitates the submission of both exhibits which may be submitted collectively and exhibits which must be submitted separately because of size, the index affixed to the envelope shall also state the existence and description of the separately submitted exhibits. Western District Special Rule 4.

If it is impracticable to deposit any exhibit, it may be represented by photograph, mechanical drawing, or other means that fairly depict the exhibit. Rule 81.16(c).

A separate index of all exhibits must be provided to be filed in the electronic file. Western District Special Rule 4.

Registered electronic filers may submit trial exhibits through the electronic filing system. Electronically submitted exhibits shall include a separate cover page which contains (1) the number and style of the case; (2) the name and telephone number of attorney or party submitting the exhibits; (3) an index of the exhibits; and (4) a statement signed by the submitting party or attorney certifying that the exhibits are the original exhibits submitted to the court or agency from which the appeal is taken. Western District Special Rule 12(D).

F. CROSS-APPEAL

If more than one appeal is taken from the same judgment, a single record on appeal may be prepared with each appellant sharing the cost. Rule 81.12(h).

X. BRIEFS

A. DUE DATES

- Appellant's Brief – due within **sixty days** after the record on appeal is filed. Rule 84.05(a) and Rule 30.06(d).

- Respondent's Brief – due within **thirty days** after filing of appellant's brief. Rule 84.05(a) and Rule 30.06(d).

- Reply Brief – due within **fifteen days** after filing of respondent's brief. Rule 84.05(a) and Rule 30.06(d).

- Amicus Curiae or Intervenor's Brief – allowed by consent of all parties or by order of the court. Western District Special Rule 26. See Western District Special Rule 26 for the requirements.

- Termination of Parental Rights/Adoption Cases-Western District Special Rule 30:
    - Appellant's brief due within **thirty days** after the filing of the record on appeal.
    - Respondent's brief due within **thirty days** after the filing of the appellant's brief.
    - Reply brief, if any, is due within **fifteen days** after the filing of the respondent's brief.
    - Guardian Ad Litem's Brief—a guardian ad litem who is not an appellant and who desires to file a brief shall file a brief within the time allowed for the Respondent's brief.
    - No extension of time shall exceed 30 days for Appellant's brief, fifteen days for Respondent's brief, or 10 days for the filing of a reply brief.
    - Appeal may be dismissed for failure to file Appellant's brief within the required time.

Extension of Time for Filing Briefs – A request for extension of time in filing briefs will not be granted unless good cause is shown. The "press of business," without specific details given, will not be considered good cause for a second extension. Western District Special Rule 17.

B. CROSS APPEALS

The plaintiff in the court below is deemed the appellant-respondent, unless the parties otherwise agree or the court otherwise orders. Rule 84.04(i). If the parties otherwise agree, written notice shall be provided to the court prior to the filing of the appellant's brief. Western District Special Rule 43.

- Appellant-respondent's initial brief shall be filed as provided in Rule 84.04 and Rule 84.05 and Rule 30.06(d).
- Respondent-appellant's initial brief shall contain all the issues and argument involved in the respondent-appellant's appeal and the response to the brief of the appellant-respondent.
- The appellant-respondent may file a second brief in response to the respondent-appellant's brief setting forth respondent-appellant's appeal and in reply to the respondent-appellant's brief opposing appellant-respondent's appeal.
- The respondent-appellant may file a reply brief in reply to appellant-respondent's response to the issues presented by respondent-appellant's appeal.

C. GENERAL INFORMATION & REQUIREMENTS FOR ALL BRIEFS

1. Paper Copies of Briefs

Attorneys must deliver to the court one paper copy of briefs not later than five days after the date the document is electronically filed. Western District Special Rule 12(B).

2. Paper Size, Type Style, and Spacing

Rule 84.06(a) requirements (apply to criminal cases also pursuant to Rule 30.06)

**Electronically Filed Briefs - Shall be filed in text searchable PDF, except those filed by parties ineligible for electronic filing (Rule 84.06(a))

Paper: 8 ½ x 11 inches

Margins: Have margins for left, right, top and bottom of not less than one inch. Page numbers shall appear in the bottom margin but no other text may appear in margins.

Line Spacing: Have line spacing not less than 1.5, except that the following may be single-spaced: the cover, headings, quotations more than two lines long, footnotes, certificate required by Rule 84.06(c), and signature block.

Font: Font size no smaller than 13 point, Times New Roman—including footnotes.

Pagination: All pages must be consecutively numbered using Arabic numerals, including the cover page.

Paper copies should be securely bound. Examples of secure binding include staples, spiral binding, edge sealing products, or a three-ring binder.

3. Certification – Rule 84.06(c); Rule 30.06(a)

The brief shall contain a certificate of compliance that states: (1) the brief complies with the page/word limitations contained in Western District Special Rule 41, (2) the number of words in the brief, and (3) the information that is required by Rule 55.03, and (4) the information as to how the brief was served on the opposing party, whether pursuant to Rule 43.01(c) or Rule 103.08.

4. Length of Briefs – Western District Special Rule 41; Rule 84.06; Rule 30.06(a)

Pursuant to Western District Special Rule 41(A), the following page limitations shall apply to briefs prepared pursuant to Rule 84.06(a):

(1) Appellant's initial brief and all briefs in a cross appeal shall not exceed 15,500 words.

(2) Respondent's brief shall not exceed 13,950 words.

(3) Any reply brief shall not exceed 5,115 words.

A party may file a motion requesting permission from the court to exceed the limits set forth in this rule. Such motion shall be filed at least ten days prior to the due date for the brief. The court may grant such request only on a showing of good cause. Western District Special Rule 41(C).

In calculating the limits set forth in this rule, this court shall not count the words or lines of text of a brief's table of contents, table of authorities, or appendix. Western District Special Rule 41(D).

D. SECTIONS OF BRIEF – Rules 84.04 and Rule 30.06(a)

The contents of the brief must conform to the requirements set forth in 84.04 in civil and in criminal cases (See Rule 30.06(a)). Briefs not in compliance with the rules may be stricken; the party may be ordered to file a new or amended brief; or the appeal may be dismissed. In general, under Rule 30.20 and Rule 84.13, the court shall not consider any allegations of error that are not briefed or are not properly briefed.

1. Appellant's Brief - Rules 84.04 and Rule 30.06(a)

The appellant's brief shall contain:

a. Table of Contents - A detailed table of contents with page references. Rule 84.04(a)(1) and Rule 30.06(a).

b. Table of Cases - A table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where they are cited. Rule 84.04(a)(1) and Rule 30.06(a).

c. Jurisdictional Statement - A concise statement of the grounds upon which the jurisdiction of the reviewing court is based. Bare recitals are insufficient. Rules 84.04(b) and Rule 30.06(b). The jurisdictional statement shall set forth sufficient facts to demonstrated the applicability of the particular provision(s) of article V, section 3 of the Missouri Constitution upon which jurisdiction is sought to be predicated.

d. Statement of Facts - A fair and concise statement of the facts relevant to the issues presented for review, without argument. Page references to the record on appeal must be included. Rules 84.04(c) and Rule 30.06(a). If the citation is to the system-generated legal file, it shall include the system-generated document number and page number (e.g., D6, p.7). If the portion cited is also contained in the appendix, a page reference to the appendix shall also be included (e.g., D6, p.7, App.9).

e. Points Relied On - A brief statement of what actions or rulings are sought to be reviewed and why they are claimed to be erroneous. Immediately following each point relied on, the party must list the cases and other legal authority, not to exceed four, upon which the party principally relies. Rules 84.04(d)(5) and Rule 30.06(a).

> Each point relied on shall: (A) identify the trial court ruling or administrative ruling that the appellant challenges; (B) state concisely the legal reasons for the appellant's claim of reversible error; and (C) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.
>
> For an action reviewing the decision of a trial court, the point shall be in substantially the following form:
>
> "The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*]."
>
> For an action reviewing an administrative agency, the point shall be in substantially the following form:
>
> "The [*name of the agency*] erred [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error, including the reference to the applicable statute authorizing review*], in that [*explain why, in the context of the case, the legal reasons support the claim of reversible error*]."
>
> For an action in prohibition, the point shall be in substantially the following form:

"Relator is entitled to an order prohibiting Respondent [*describe the challenged action*], because [*state the legal reasons for the challenge*], in that [*explain why, in the context of the case, the legal reasons support the challenge*]."

**For other remedial writs, the introductory language should be altered appropriately.

f. Argument - The argument must substantially follow the order of the "Points Relied On" and be limited to those errors included in the "Points Relied On."

- The point relied on shall be restated at the beginning of the section of the argument discussing that point.
- The argument shall include a concise statement describing whether the error was preserved for appellate review and if so how it was preserved.
- The argument shall include a concise statement of the applicable standard of review.
- Page references to the transcript or legal file must also be included. If the citation is to the system-generated legal file, it shall include the system-generated document number and page number (e.g., D6, p.7). If the portion cited is also contained in the appendix, a page reference to the appendix shall also be included (e.g., D6, p.7, App.9).
- If a point relates to the giving, refusal, or modification of an instruction, the instruction must be set out in full in the argument portion of the brief. Rules 84.04(e) and Rule 30.06(a).

g. Conclusion - At the end of the brief, the party should provide a short conclusion stating the precise relief sought. Rule 84.04(a)(6).

h. Certification--The brief shall also include a Certification as required by Rule 84.06(c) and 30.06(a) and as discussed above.

i. Appendix – A party's brief shall contain or be accompanied by a separate appendix. Rule 84.04(h); Western District Special Rule 38. The appendix, regardless of the number of pages it contains, shall be filed as a separate document. The appendix shall contain:

- The judgment, order, or decision in question;
- The complete text of all statutes, ordinances, or rules claimed to be controlling as to a point on appeal;

- The complete text of any instruction to which a point relied on relates;
- Other information pertinent to the issues discussed in the brief, such as copies of exhibits, excerpts from the written record, and copies of new cases or other pertinent authorities.
    - Original exhibits may not be included in the appendix. Copies of exhibits or excerpts from the record may be included in the appendix ONLY IF the original exhibits and the excerpts are properly deposited as part of the record on appeal in accordance with Rule 81.16, Western District Special Rule 38; Rule 30.05.
- Index to Appendix must list separately each item in the appendix. The pages in the appendix shall be numbered consecutively beginning with page A1.

**After the filing of an Appellant's brief, this court may review the brief for substantial compliance with Rule 84.04. If a brief is not in proper form, the court will strike the brief and require an amended brief to be filed within fifteen days. The court does not review amended appellant's briefs, respondent's briefs, or reply briefs for Rule 84.04 compliance issues.

2. Respondent's Brief

The respondent's brief shall include a detailed table of contents and a table of authorities in conformity with Rule 84.04(a)(1) and an argument in conformity with Rule 84.04(e). Rule 84.04(f); Rule 30.06(a). If respondent is dissatisfied with the accuracy or completeness of the jurisdictional statement or statement of facts in appellant's brief, the respondent's brief may include a jurisdictional statement or statement of facts. Rule 84.04(f), Rule 30.06(a). The argument portion shall contain headings identifying the points relied on contained in the appellant's brief to which each argument responds. The respondent's brief may also contain additional arguments in support of the judgment that are not raised by the points relied on in the appellant's brief. Rule 84.04(f); Rule 30.06(a).

**The brief shall also include a Certification as required by Rule 84.06(c) and Rule 30.06(a) and as discussed above.

3. Reply Brief

The appellant may file a reply brief but shall not reargue points covered in the initial brief. Rules 84.04(g) and 30.06(a).

**The brief shall also include a Certification as required by Rule 84.06(c) and Rule 30.06(a) and as discussed above.

4. Supplemental Brief and Supplemental Citations after Submission

No supplemental brief may be filed by a party without leave of court. The chief judge or the presiding judge of the division to which a case has been assigned may order additional or supplemental briefs from counsel. Counsel may call attention to intervening decisions or new developments by directing a short letter providing supplemental citations to the clerk in accordance with Rule 84.20 or Rule 30.08. Western District Special Rule 37. A copy of the intervening decision or new development shall be attached to the letter.

5. Amicus Brief

A brief may be filed by amicus curiae in cases before the court on the merits. The brief shall be filed only with the consent of all parties or upon order of the court (consent is not required when the brief is presented by the attorney general or by a state entity). The procedures for briefs of amicus curiae are set out in Western District Special Rule 26.

XI. FORMAT OF DOCUMENTS

BRIEFS

As stated previously, briefs shall conform to the requirements of Rule 84.06. See Rule 81.18(a).

TRANSCRIPTS

As stated previously, transcripts shall conform to the requirements of Rule 81.12. See Rule 81.18 (a).

ALL OTHER DOCUMENTS

See Rule 81.18(b). Except as provided by local court rules, all other documents shall conform to these requirements:

1. 8 ½ x 11 inches
2. All pages, including cover page, numbered consecutively using Arabic numerals at the bottom.
3. Margins not less than one inch for left, right, top and bottom. Page numbers may appear in margins but no other text.
4. Line spacing not less than 1.5 except that the following may be single spaced: caption, headings, quotations more than two lines long, footnotes, certificate of service, and signature block.

5. Font size no smaller than 13 point, Times New Roman, including footnotes.

TEXT SEARCHABLE PDF

See Rule 81.18(c). Following documents shall be filed in text searchable PDF, except those filed by parties ineligible for electronic filing:

1. Applications and Motions
2. Suggestions
3. Briefs
4. Petitions for a Writ
5. Answers and Returns to a Writ.

XII. DOCKETING

After the appellant's and respondent's briefs have been filed, or the time has expired for respondent's brief to be filed, cases are docketed for oral argument or for submission on the briefs without argument.

Prior to the filing of the respondent's brief, any party may request oral argument by filing a written notice of request for oral argument with this court. After the respondent's brief is filed, in any case where no prior request has been made, the court will notify the parties that their case will be submitted on the briefs without oral argument unless, within ten (10) days of the court's notification, counsel or self-represented party requests oral argument. In all cases, it is within the court's discretion to deny a request for oral argument. Western District Special Rule 44.

Parties are encouraged to request to be on either the submitted on briefs docket or oral argument docket at any point prior to respondent's brief being filed.

XIII. ORAL ARGUMENT

Oral argument is optional. Cases may be submitted on the briefs without oral argument. A respondent who fails to file a brief will not be permitted to participate in oral argument unless permitted by the court for good cause shown. Rule 84.12(b)

The published oral argument docket will indicate whether the court has designated a particular case either: (1) Extended Oral Argument - a maximum argument time of fifteen minutes each for appellant and respondent with five additional minutes for rebuttal by appellant; or (2) Regular Argument - for a maximum argument time of ten minutes each for appellant and respondent with three additional minutes for rebuttal by appellant. No additional argument time shall be allowed unless the

court for cause shown before commencement of the argument in any particular case shall order otherwise. Western District Special Rule 1.

Motion for continuances of oral arguments are discouraged absent exceptional circumstances. However, in the event a motion to continue oral argument is filed, it should be filed within ten (10) days of publication of the docket and shall contain, at minimum, a specific reason(s) for the continuance request that details the alleged exceptional circumstances, consent of the client, and the position of opposing counsel. Should a motion for continuance be filed after ten (10) days from publication of the docket, the motion must be accompanied by the attorney's representation that, after the ten (10) day window, circumstances arose outside the control of the attorney necessitating the delayed filing of the motion to continue.

If multiple appellants or respondents desire to present oral argument, they shall divide the allotted time among themselves, but the time shall not exceed the maximum time for a single appellant or respondent as provided. Western District Special Rule 1.

Cross-appeals shall be treated as one cause, and, in such cases, the plaintiff in the trial court shall be entitled to open and close the argument. Western District Special Rule 1.

Appeals from Termination of Parental Rights and Adoption receive expedited placement on the docket at the conclusion of the briefing schedule. The decision in such cases shall be handed down within thirty days of oral argument. Western District Special Rule 2.

After termination of parental rights and adoption case, priority placement on the docket shall be given to appeals under sections 386.540, 188.028, 512.025, 542.301, 573.070, and 632.430, RSMo. Western District Special Rule 2.

Any motion to expedite a cause on the docket shall be accompanied by affidavits showing the particular facts on which such is based. Western District Special Rule 2.

XIV. OPINION

In each case, the judicial decision is reduced to writing and filed in the cause. In cases where all judges agree to affirm and believe that an opinion would have no precedential value, disposition may be by a memorandum decision or written order. Rules 84.16(b) and 30.25(b). Opinions are handed down and filed each Tuesday. The opinions are available on the court's website Tuesday afternoon. A copy of the opinion will be mailed to self-represented parties. Attorneys will be notified that an opinion has been handed down via the electronic filing system.

XV. ADMINISTRATIVE APPEALS

A. Workers' Compensation

An appeal is taken from a workers' compensation decision of the Labor and Industrial Relations Commission by filing a notice of appeal along with any required docket fee with the Commission within thirty days from the date of the final award. (See Rule 100.02(b) regarding docket fees). Any notice of appeal filed with the Commission shall be deemed to be filed as of the date endorsed by the United States post office on the envelope or the date received if filed by facsimile. § 287.480.1, RSMo. In instances where the last day for the filing of any such paper falls on a Sunday or legal holiday, the filing shall be deemed timely if accomplished on the next day subsequent which is neither a Sunday or a legal holiday. § 287.480.1, RSMo. The Commission shall send a copy of the notice of appeal and the docket fee, if required, to the clerk of the court. The Commission shall file with this court all documents and papers on file, together with a transcript of any evidence and the findings and award, which shall constitute the record on appeal. § 287.495.1

B. Unemployment Compensation

An appeal is taken from an unemployment compensation decision of the Labor and Industrial Relations Commission by filing a notice of appeal with the Commission within twenty days after the decision has become final. A decision of the Commission becomes final ten days after the date of notification or mailing thereof to the parties. § 288.200.1, RSMo. Any notice of appeal filed with the Commission shall, when mailed to and received by the Commission, be deemed to be filed as of the date endorsed by the United States post office on the envelope in which such paper is received. § 288.240, RSMo. In instances where the last day for the filing of any such paper falls on a Saturday, Sunday, or legal holiday, the filing shall be deemed timely if accomplished on the next day which is neither a Saturday, Sunday, nor a legal holiday. § 288.240, RSMo. No individual claiming benefits shall be charged a docket fee. § 288.380.5, RSMo. The Commission shall send a copy of the notice of appeal to the clerk of the court. The Commission shall file with this court all documents and papers on file, together with a transcript of any evidence and the findings and award, which shall constitute the record on appeal. § 288.210, RSMo.

C. Public Service Commission

Within thirty days after the application for a rehearing is denied, or if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may file a notice of appeal with the appellate court with the territorial jurisdiction over the county where the hearing was held or in which the commission has its principal office, which shall be served on the commission and the parties to the commission proceeding. § 386.510, RSMo (see Rule

100.02(b) regarding docket fee). The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, RSMo, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, all necessary filing fees, and any other information specified by the rules of the court. § 386.510, RSMo. Unless otherwise ordered by this court, the commission shall within thirty days of the filing of the notice of appeal, certify its record in the case to this court. § 386.510, RSMo.

D. Review of Administrative Decisions - Rule 100.02

The petition for review or notice of appeal shall specify the party seeking review, the decision sought to be reviewed, and a concise statement of the grounds on which jurisdiction is invoked. Rule 100.02(c). At the time of filing the petition for review or notice of appeal, the appellant shall serve a copy thereof on each party of record and on the commission from which the matter is appealed. Rule 100.02(d).

The record on appeal shall contain the items set forth in Rule 100.02(e).

The transcript shall be certified by the commission's reporter as true and accurate. The remaining part of the record shall be prepared and certified by the commission as being true, accurate, and complete. In appeals filed pursuant to section 386.510, RSMo, the commission shall certify its record to the appellate court within 30 days of the filing of the notice of appeal, unless otherwise ordered by the court. Rule 100.02(f).

When commission transmits the record to the appellate court, it shall do so within thirty days after the filing of the petition for review or notice of appeal. In all other cases, the appellant shall file the record with the appellate court within thirty days after the filing of the petition for review or notice of appeal. The appellate court, either on application or on its own motion, may enlarge or shorten the time for filing the record. Rule 100.02(g). At the time of filing the record, the filer shall give all parties notice of the filing and an index of the items filed. Rule 100.02(i).

The form, contents, filing, and service of briefs and motions shall be as provided in Rule 84. Rule 100.02(j).

E. Reversal of Administrative Agency Decision by Circuit Court

If the circuit court reverses a decision of an administrative agency and this court reviews the decision of the administrative agency rather than the decision of the circuit court, the party aggrieved by the circuit court decision shall file a notice of appeal and the record on appeal and shall file with the record on appeal a notice

designating the party that is aggrieved by the agency decision. The party aggrieved by the agency decision shall file the appellant's brief and reply brief. Rule 84.05(e).

The appellant shall file a statement that respondent shall file the first brief in accordance with Rule 84.05(e). Appellant shall file the statement with this court on or before the time when the record on appeal is filed and shall serve a copy on respondent via the electronic filing system. Western District Special Rule 35.

XVI. CLASS ACTION CERTIFICATION

A party seeking permission to appeal from an order granting or denying class action certification shall file a petition for permission to appeal within ten days of the entry of the order. Rule 84.035(a); Western District Special Rule 40(A). The petition shall include the items listed in Rule 84.035(b). In reviewing petitions filed pursuant to Rule 84.035 to determine whether to exercise the court's discretion to permit an appeal, the court will consider the following circumstances:

> (1) Whether the trial court's denial of class status would effectively end the litigation and any realistic chance that individual claims could be prosecuted;
> (2) Whether the trial court's grant of class status would put substantial pressure on the defendant to settle without regard to the merits of the case;
> (3) Whether an interlocutory appeal of the trial court's class action determination would facilitate the development of the law pertaining to class actions;
> (4) Whether the trial court's order granting or denying class certification is clearly erroneous; and
> (5) Whether there are any other special circumstances sufficient to justify an interlocutory appeal.

Western District Special Rule 40(B). A party may file a response opposing the petition within ten days after the petition is filed. Rule 84.035(c). An original of all filings associated with a petition for appeal by permission shall be filed. Rule 84.035(d). The petition to appeal will be decided on the basis of the petition and response without further briefing or oral argument unless the court otherwise orders. Rule 84.035(e).

If the petition is granted, the appellant shall file a notice of appeal, the required docket fee, and all necessary attachments with the appropriate circuit clerk within ten days of entry of the order granting permission to appeal. Rule 84.035(f). The petition for permission to appeal, together with attached exhibits, the response, and any potions of the record filed with the response by the party opposing the petition

shall constitute the record, and no separate record need be prepared for the appellate court. Rule 84.035(h). Either party may supplement the appellate record by filing on or before the date the main brief is filed any additional portions of the trial court record and proceedings necessary to the determination of the questions presented on appeal. Rule 84.035(h).

The appellant shall file a brief within thirty days of the filing of the notice of appeal in the circuit court. The respondent may file a brief within twenty days of the filing of the appellant's brief. The appellant may file a reply brief within ten days of the filing of the respondent's brief. Rule 84.035(g).

The appeal of any order granting or denying class action certification shall not stay the proceedings in the trial court unless the trial judge or the appellate court so orders. Rule 84.035(i).

If the petition to appeal is denied, further review, if any, of the trial court's order granting or denying class action certification shall be by petition for original remedial writ filed directly in this Court. Rule 84.035(j).

XVII. DISMISSAL OF APPEALS

A. Voluntary

An appellant may file a voluntary dismissal of an appeal in the appellate court at any time prior to submission of the cause. Rules 84.09 and 30.13. After submission, a motion for voluntary dismissal will be at the court's discretion.

B. Involuntary

After the appellant files a notice of appeal, if the appellant fails to take the further steps required to secure review of the appeal within the periods of time allowed or extended, the clerk shall place the case on a dismissal docket. Rule 84.08(a) and Rule 30.14(a).

In a civil case, the clerk shall notify all parties that the appeal will be dismissed unless the appellant remedies the default before a specified date, not less than fifteen days from the date of the notice. If the default is not remedied by that date, an order of dismissal shall be entered. Rules 84.08(a).

In a criminal case, when a case is placed on the dismissal docket, notice shall be given as provided by Rule 84.025; in addition, the appellant shall be given personal notice by registered or certified mail. The notice shall state that the appeal will be dismissed unless the appellant remedies the default prior to a specified date. The date shall not be less than fifteen days from the date of the notice. If the default is not remedied by that date, an order of dismissal shall be entered. Rule 30.14(a). If an appeal is subject to dismissal under the provisions of

this Rule 30.14, the prosecuting attorney in misdemeanor cases and the attorney general in felony cases, in lieu of the dismissal procedure, may file a motion in the appellate court requesting that the judgment of the trial court be affirmed. Rule 30.14(b).

XVIII. POST-DISPOSITION PROCESS

A. POST-DISPOSITION MOTIONS

1. Motion for Transfer

A. Rule 83.02 – By Court of Appeals

A case disposed of by an opinion, memorandum decision, written order, or order of dismissal in the court of appeals may be transferred to the Supreme Court of Missouri by order of a majority of the participating judges, regular and special, on their own motion or on application of a party. Transfer may be ordered because of the general interest or importance of a question involved in the case or for the purpose of reexamining existing law. Application by a party for transfer shall be filed within fifteen days of the date on which the opinion, memorandum decision, written order, or order of dismissal is filed unless for good cause shown the court of appeals extends the time for filing. The application for transfer may not exceed twelve pages. Rule 83.05. No response to an application for transfer shall be filed unless requested by the court, and an order for transfer shall not be granted in the absence of such a request. Motions for reconsideration of the court's action in refusing an application for transfer shall not be accepted or filed.

The form and contents of an application for transfer are set forth in Rule 83.05. If the court requests a response, within ten days after such request, any other party may file suggestions in opposition to the application, not to exceed six pages. Rule 83.06.

B. Rule 83.04 – By Supreme Court

A party does not need to file an application for transfer in the Western District pursuant to Rule 83.02 prior to filing an application for transfer with the Supreme Court. Rule 83.04

An application for transfer may be filed in the Supreme Court within the later of:

(1) 15 days of the date on which the court of appeals denied transfer or overruled any Rule 84.17 post-disposition motion; or

(2) 30 days of the date on which the court of appeals files its opinion, memorandum decision, written order, or order of dismissal.

Rule 83.04. The application for transfer may not exceed twelve pages. Rule 83.05. Upon a showing of good cause, an application for transfer may be filed out of time, but no application for transfer shall be filed if the court of appeals has issued its mandate that is still in effect. No response to an application for transfer shall be filed unless requested by the Supreme Court of Missouri. Motions for reconsideration of the Court's action in refusing an application for transfer or in overruling a motion to file an application for transfer out of time shall not be accepted or filed.

The form and contents of an application for transfer are set forth in Rule 83.05. If the court requests a response, within ten days after such request any other party may file suggestions in opposition to the application, not to exceed six pages. Rule 83.06.

**Rule 30.27 states that Rule 83 governs transfer of criminal appellate cases.

2. Motion for Rehearing - Rule 84.17(a)(1)

The motion shall briefly and distinctly state the grounds upon which rehearing is sought. The purpose of a motion for rehearing is to call attention to material matters of law or fact overlooked or misinterpreted by the court. Reargument of issues determined by the court will be disregarded.

3. Motion to Modify - Rule 84.17(a)(2)

The motion shall briefly and distinctly state the grounds upon which modification is sought. The purpose of a motion to modify is to correct errors of law or fact that do not affect the disposition of the case.

4. Motion to Publish - Rule 84.17(a)(3)

The motion shall briefly and distinctly explain why the court's disposition of the appeal has precedential value, in whole or in part.

*A motion under Rule 84.17 shall be filed within fifteen days after the court files its opinion, written order under Rules 84.16(b) or 30.25(b), memorandum decision, or order of dismissal and may be accompanied by suggestions in support containing citation authority. Rule 84.17(b). No suggestions in opposition to a post-disposition motion shall be filed unless

requested by the court. Rule 84.17(c). Within ten days after the court's request for suggestions, any party may file suggestions in opposition to the motion. Rule 84.17(c). If a motion for rehearing is overruled and the opinion is not materially modified, no further motion by the same party for rehearing or to set aside the order overruling the motion for rehearing may be filed. Rule 84.17(d). If the opinion is materially modified, any party may file a motion for rehearing as though the modified opinion is the original opinion. Rule 84.17(d).

Rule 30.26 – Rule 84.17 shall govern post-disposition motions in criminal cases.

B. MANDATES

Generally, a decision of the appellate court is considered final at the time the mandate is issued. *Amburn v. Aldridge*, 296 S.W.3d 32, 33 (Mo. App. 2009). Generally, a mandate is not issued until the time for filing a post-disposition motion has expired. If a post-disposition motion is filed, the mandate will not issue until the appellate court and the Supreme Court of Missouri resolve all such motions.

XIX. EXTRAORDINARY WRITS

Article V, section 4 of the Missouri Constitution authorizes the court of appeals to issue extraordinary original remedial writs.

The five types of remedial writs are:

1. Prohibition – Rule 97
2. Mandamus – Rule 94
3. Habeas Corpus – Rule 91
4. Quo Warranto – Rule 98
5. Certiorari.

Rules 84.22 through 84.24 set forth the procedure governing extraordinary remedial writs in general. The remedial writs are extraordinary remedies. The writs are distinct from a direct appeal, are not intended as a substitute for appeal, and will not lie if an appeal is possible or where there is another adequate remedy. The Missouri Bar CLE desk book on Appellate Court Practice is helpful in explaining the purpose and application of each of the five extraordinary writs.

The writ duty division of the court consists of a presiding judge and one other judge. Each writ division serves for a one-month period. A third judge is added to the division if the writ proceeds to the briefing and oral argument stage.

What is needed to file a writ: Rule 94.03; Rule 97.03; Rule 98.03

(1) Writ Petition – Rule 84.24(a)(1) - Petition shall contain a statement of the facts, the relief sought, and a statement of the reasons why the writ should issue.

(2) Writ summary – Civil Procedure Form No. 16 -- identifies the parties, the nature of the underlying action, the action being challenged, the relief sought, and the date the case is set for trial or date of any other event bearing upon the relief sought. See Rule 84.24(a)(1). The writ summary shall not exceed one page exclusive of the caption and the identity of the parties and their attorneys in the underlying action. Rule 84.24(a)(1).

(3) Suggestions in Support – Rule 84.24(a)(2)

(4) $70.00 docket fee – or a statement citing specific statutory or other authority demonstrating a docket fee is not required by law or a motion to proceed in forma pauperis. Rule 84.24(a)(3); Rule 81.04(d).

(5) Proof of Service – Proof of service shall be filed that identifies the name, address, electronic mail address, and phone number of each attorney served and the name of the party such attorney represents, and each party served who is not represented by an attorney. Rule 84.24(a)(4).

(6) Exhibits – shall be attached to the petition along with an index of all exhibits. The exhibits shall be identified in the index by number or letter and page, and, in addition, shall be described so the court can distinguish the exhibits. The pages of the exhibits shall be numbered consecutively. A copy of any order, opinion, record or part thereof, document, or other item that may be essential to an understanding of the matters set forth in the petition shall be attached as exhibits if not set forth therein. The party filing the petition shall include in the exhibits to the petition any legal memorandum (e.g., motion or suggestions in opposition) filed in the lower court or agency, which advocated a position contrary to the relief requested in the petition. If the legal memorandum included exhibits or attachments exceeding twenty-five pages, the exhibits or attachments to the legal memorandum may be omitted. Any such omission shall be indicated on the copy of the legal memorandum filed as an exhibit to the petition. Western District Special Rule 20.

Within ten days after the filing of the petition for an original writ, the respondent may file suggestions in opposition to the issuance of the writ. Within that same

time, any party in the underlying matter may file suggestions in opposition, either individually or jointly with any other person filing such suggestions. Rule 84.24(c). Except as provided in Rule 84.24(e), the writ shall not issue before the expiration of the time for the respondent to file suggestions in opposition to the issuance of the writ. Rule 84.24(d). If the ten-day time limit would defeat the purpose of the writ the court may, on the motion of the petitioner, relator, or on the court's own motion, shorten the time or dispense with such time limits altogether for filing suggestions in opposition. Rule 84.24(e).

After the petition is filed, the judges of the writ division shall determine whether to request suggestions in opposition from respondent, issue a preliminary order, issue a peremptory writ, or deny the writ petition. Oral argument is not granted at this stage of the proceedings. A denial of the petition for the writ may be made at any time after filing of the petition. Rule 84.24(d).

If the petition is denied - The parties involved will be informed by a written order. The court rarely states a reason why the petition for the writ is denied. Denial of the petition ends the matter in this court. Motions for reconsideration shall not be filed. Rule 84.24(l). The relator's only remedy is to file an original petition in the Supreme Court of Missouri.

If a preliminary order is issued – The order may require the respondent to file an answer. Rule 84.24(d). The answer admits or denies the allegations of the relator's petition.

The petition for the writ, together with the suggestions in support thereof, any exhibits accompanying the petition, all suggestions in opposition, the writ and return of service thereon, the answer made to the petition for the writ, and all other papers, documents, orders, and records filed in the appellate court shall constitute the record. No record under Rule 81.12 is required. Rule 84.24(g).

Rule 84.24(f) states that oral arguments will not be granted on petitions for original remedial writs, but if the court so desires it may set a case for oral argument. The preliminary order may also set forth a briefing schedule and a date for oral argument. Rule 84.24(h). Briefs shall be filed in accordance with Rule 84.04, except that the time for filing the briefs shall be as follows: petition or relator – filed within thirty days from the answer date of the preliminary order; respondent's brief shall be filed within twenty days thereafter; and if petitioner or relator wants to file a reply brief, it shall be filed within ten days thereafter. Rule 84.24(h).

If a permanent writ in mandamus or prohibition is ordered to issue, the court shall issue an opinion setting out its reasons for issuing the writ. Rule 84.24(k). The opinion shall be filed contemporaneously with the order to issue the writ or, if

exigent circumstances require, within a reasonable time after the issuance of the writ. Rule 84.24(k).

All initially issued writs shall be preliminary writs that, upon final determination, shall be quashed or made permanent. *State ex rel. Unnerstall v. Berkemeyer*, 298 S.W.3d 513, 516 (Mo. banc 2009). A preliminary order may be quashed by order with or without an opinion setting forth the court's reasons. *Id*. at 516 n.3.

If the court disposes of a petition for a writ by the issuance of an opinion, further review of the action shall be allowed only as provided in Rule 83 and Rule 84.17. Rule 84.24(m).

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