

RULE 76E. JOINT OR SEVERAL APPEALS TO THE SUPERIOR COURT

Parties interested jointly, severally, or otherwise in a judgment of the District Court may join in an appeal therefrom; or any one or more of them may appeal separately or any two or more of them may join in an appeal.

RULE 76F. RECORD ON APPEAL TO THE SUPERIOR COURT

(a) Record to Be Filed in Superior Court. When an appeal is completed, the clerk of the division shall file the record with the Superior Court. The original papers and exhibits filed in the District Court and a copy of the docket entries prepared by the clerk of the District Court, together with any transcript made pursuant to Rule 76H of these rules, shall constitute the record on appeal in all cases. A party must make advance arrangements with the clerk for the transportation and receipt of documents or exhibits of unusual bulk or weight.

The record on appeal prepared in accordance with this subdivision shall be filed in the Superior Court not later than 40 days after the filing of the notice of appeal or 10 days after the filing of any transcript of the proceedings requested in accordance with Rule 76H, whichever occurs later. It shall be the appellant's responsibility to insure that these time limits are met and to provide the clerk such assistance as is necessary in preparing and copying the record for filing in the Superior Court. If the appellant fails to comply with the requirements of this rule, the District Court may on motion of any party or on its own initiative, dismiss the appeal for want of prosecution. Upon showing of good cause, the District Court may increase or decrease the time allowed for filing the record.

Upon receipt of the record from the District Court, the clerk of the Superior Court shall send each counsel of record or unrepresented party a written notice of the docketing of the receipt of the record on appeal, the Superior Court docket number, the date upon which the record was received, the date upon which the appellant's brief is due, and a copy of the briefing schedule required by Rule 76G(a).

(b) Power of Court to Correct or Modify Record. It is not necessary for the record on appeal to be approved by the District Court judge except as provided in subdivisions (c) and (d) of this rule but, if any difference arises as to whether the

record truly discloses what occurred, the difference shall be submitted to and settled by the District Court judge and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the District Court judge, either before or after the record is transmitted to the Superior Court, or the Superior Court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk.

(c) Appeals When No Electronic Recording Was Made. In any case in which electronic recording would be routine or has been timely requested under Rule 76H(a) of these rules, if for reasons beyond the control of any party, no recording, or no transcript thereof, was made, or is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection, for use instead of a transcript. This statement shall be served on the appellee within 10 days after an appeal is taken to the Superior Court, and the appellee may serve objections or propose amendments thereto within 10 days after service upon the appellee. Thereupon the statement, with the objections or proposed amendment, shall be submitted to the court for settlement and approval and as settled and approved shall be included in the record on appeal filed with the Superior Court.

(d) Record on Agreed Statement. When the questions presented by an appeal to the Superior Court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the Superior Court.

The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the District Court judge may consider necessary fully to present the questions raised by the appeal, shall be approved by the District Court judge and shall then be certified to the Superior Court as the record on appeal.

Advisory Committee's Notes
June 1, 2000

Rule 76F, subdivision (a), is amended to remove the requirement that the copy of the docket entries be “certified.”

Advisory Committee’s Notes
March 1, 1994

Rule 76F(a) is amended for consistency with Rule 74(a) to provide that, as on appeal from the Superior Court to the Law Court, the record in a District Court appeal to the Superior Court consists of the original of all papers and exhibits in the District Court and that those originals are to be forwarded to the Superior Court. The amendment makes the practice in District Court civil appeals consistent with that in criminal appeals. *See* M.R.Crim.P. 36A(b). The purpose of consistency among all three forms of appeal is to eliminate confusion on the part of the District Court clerks, who must handle the record not only in civil and criminal appeals to the Superior Court but in occasional direct District Court appeals to the Law Court.

Advisory Committee’s Notes
1981

[Note: Former D.C.C.R. 75(a), after the 1987 abrogation of the District Court Civil Rules, became M.R. Civ. P. 76F(a)]

This amendment [to D.C.C.R. 75(a)] imposes deadlines, which presently do not exist, for filing the record on appeal from District Court.

Basically, the record would have to be filed 40 days after filing the notice of appeal or ten days after any transcript of the proceedings which has been requested in accordance with District Court Civil Rule 76, whichever occurs later. Further, the amendment makes it clear that although the clerk bears the responsibility for sending the record to the Superior Court, the appellant is held responsible to assure that the record is prepared and to provide the clerk such assistance, including copying and other matters which might impose significant cost upon the court, as is necessary to assure that the record can be submitted within the time limits specified in the rule.