

- (2) *Transmitting Exhibits.* Three legible copies of each documentary exhibit offered in evidence and required for understanding issues presented on appeal shall be filed in the appellate court; the original documentary exhibit need not be filed with the appellate court.
- (3) *Removal of Exhibits from Appellate Court.* All models, diagrams, and exhibits of material placed in the custody of the clerk of the appellate court must be taken away by the parties within ninety days after the mandate of the Court has issued or the case has otherwise been closed by withdrawal, dismissal, or other order of the Court, unless notified otherwise by the clerk. When this is not done, the clerk shall notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the clerk shall destroy them, or make such other disposition of them as to the clerk may seem best.

#### ADMINISTRATIVE HISTORY

- Adopted: 13 June 1975.
- Amended: 10 June 1981 -- 9(c)(1) -- applicable to all appeals docketed on or after 1 October 1981;  
 12 January 1982 -- 9(c)(1) -- applicable to all appeals docketed after 15 March 1982;  
 27 November 1984 -- applicable to all appeals in which the notice of appeal is filed on or after 1 February 1985;  
 8 December 1988 -- 9(a), (c) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;  
 8 June 1989 -- 9(a) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;  
 26 July 1990 -- 9(a)(3)(b), 9(d)(2) -- effective 1 October 1990;  
 6 March 1997 -- 9(b)(5) -- effective upon adoption 6 March 1997;  
 21 November 1997 -- 9(a)(1)(j)-(l), 9(a)(3)(i)-(k), 9(c)(5) -- effective 1 February 1998;  
 18 October 2001 -- 9(d)(2) -- effective 31 October 2001;  
 6 May 2004 -- 9(a), 9(a)(4), 9(b)(2), 9(b)(6), 9(c), 9(c)(2), 9(c)(3)(c), 9(d)(1), 9(d)(3) -- effective 12 May 2004;  
 25 January 2007 -- added 9(a)(1)(m) & 9(a)(3)(l); amended 9(b)(4) -- effective 1 March 2007 and applies to all cases appealed on or after that date.
- Reenacted and Amended: 2 July 2009 -- amended and rewrote portions of 9(a), (b), (c), & (d) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

#### RULE 10

#### PRESERVATION OF ISSUES AT TRIAL; PROPOSED ISSUES ON APPEAL

- (a) *Preserving Issues During Trial Proceedings.*
- (1) *General.* In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion. Any such issue that was properly preserved for review by action of counsel taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, including, but not limited to, whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction over the subject matter, and whether a criminal charge is sufficient in law, may be made the basis of an issue presented on appeal.

(2) *Jury Instructions.* A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection; provided that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

(3) *Sufficiency of the Evidence.* In a criminal case, a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action, or for judgment as in case of nonsuit, is made at trial. If a defendant makes such a motion after the State has presented all its evidence and has rested its case and that motion is denied and the defendant then introduces evidence, defendant's motion for dismissal or judgment in case of nonsuit made at the close of State's evidence is waived. Such a waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

A defendant may make a motion to dismiss the action, or for judgment as in case of nonsuit, at the conclusion of all the evidence, irrespective of whether defendant made an earlier such motion. If the motion at the close of all the evidence is denied, the defendant may urge as ground for appeal the denial of the motion made at the conclusion of all the evidence. However, if a defendant fails to move to dismiss the action, or for judgment as in case of nonsuit, at the close of all the evidence, defendant may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

If a defendant's motion to dismiss the action, or for judgment as in case of nonsuit, is allowed, or shall be sustained on appeal, it shall have the force and effect of a verdict of "not guilty" as to such defendant.

(4) *Plain Error.* In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.

(b) *Appellant's Proposed Issues on Appeal.* Proposed issues that the appellant intends to present on appeal shall be stated without argument at the conclusion of the record on appeal in a numbered list. Proposed issues on appeal are to facilitate the preparation of the record on appeal and shall not limit the scope of the issues presented on appeal in an appellant's brief.

(c) *Appellee's Proposed Issues on Appeal as to an Alternative Basis in Law.* Without taking an appeal, an appellee may list proposed issues on appeal in the record on appeal based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. An appellee's list of proposed issues on appeal shall not preclude an appellee from presenting arguments on other issues in its brief.

Portions of the record or transcript of proceedings necessary to an understanding of such proposed issues on appeal as to an alternative basis in law may be included in the record on appeal by agreement of the parties under Rule 11(a), may be included by the appellee in a proposed alternative record on appeal under Rule 11(b), or may be designated for inclusion in the verbatim transcript of proceedings, if one is filed under Rule 9(c)(2).