

NORTH CAROLINA REPORTS

VOLUME 303

SUPREME COURT OF NORTH CAROLINA



SPRING TERM 1981

RALEIGH

1982

AMENDMENTS TO NORTH CAROLINA
RULES OF APPELLATE PROCEDURE

Rule 9(c)(1) is amended by adding a third paragraph to read as follows:

As an alternative to narrating the testimonial evidence as a part of the record on appeal, the appellant may cause the complete stenographic transcript of the evidence in the trial tribunal, as agreed to by the opposing party or parties or as settled by the trial tribunal as the case may be, to be filed with the clerk of the court in which the appeal is docketed. If this alternative is selected, the briefs of the parties must comport with Rule 28(b)(4) and 28(c).

Rule 28(b) is amended as follows:

(1) By striking the third sentence from Section (b)(2).

(2) By adding a new Section (b)(3) reading as follows:

(3) A full statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all questions presented for review, supported by references to pages in the stenographic transcript, or the record on appeal, or both, as the case may be.

(3) By adding a new subsection (b)(4) reading as follows:

(4) If pursuant to Rule 9(c)(1) appellant utilizes the stenographic transcript of the evidence in lieu of narrating the evidence as part of the record on appeal, the appellant's brief must contain an appendix which sets out verbatim those portions of the certified stenographic transcript which form the basis for and are necessary to understand each question presented in the brief.

(4) By renumbering the present subsections (b)(3) and (4) and making them (5) and (6).

Rule 28(c) is amended as follows:

(1) By changing (3) and (4) in the first sentence to (5) and (6).

(2) By changing the second sentence thereof to read as follows:

It need contain no statement of the questions presented, statement of the case, statement of the facts, or appendixes, unless the appellee disagrees with the appellant's statements or appendixes, and desires to make a restatement or suggest errors in or supplement the appellant's appendixes, or unless the appellee desires to present questions in addition to those stated by the appellant. If the appellee desires to present questions in addition to those stated by the appellant, the appellee's brief must contain a full, non-argumentative summary of all material facts necessary to understand the new questions supported by references to pages in the stenographic transcript, or the record on appeal, or both, as the case may be. If the stenographic transcript is used in lieu of narrating the testimony pursuant to Rule 9(c)(1), the appellee's brief must contain appendixes which set out verbatim those portions of the certified stenographic transcript which form the basis for and are necessary to understand the new questions presented by the appellee.

This amendment shall become effective and relate to all appeals docketed on and after 1 October 1981.

By order of the Court in conference, this 10th day of June, 1981.

MEYER, J.
For the Court

Commentary: These amendments to Rules 9 and 28 will provide litigants with an *alternative* to the provision of Rule 9(c)(1) which requires that generally the evidence must be set out in narrative form. This alternative pertains only to the testimony given at trial. Other items necessary to the appeal, *e.g.*, pleadings, jury instructions, judgments, etc. should be contained in the record on appeal as required by appropriate appellate rules.

Rule 10(b)(2) of the Rules of Appellate Procedure is amended by rewriting said section to read as follows:

Jury Instructions; Findings and Conclusions of Judge.
No party may assign as error any portion of the jury charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly that to which he objects and the grounds of his objection; provided, that opportunity was given to the party to make the objec-