

NORTH CAROLINA REPORTS

VOLUME 306

SUPREME COURT OF NORTH CAROLINA



2 JUNE 1982

5 OCTOBER 1982

RALEIGH

1983

AMENDMENTS TO NORTH CAROLINA
RULES OF APPELLATE PROCEDURE

Rule 26(g) of the North Carolina Rules of Appellate Procedure, 304 NC 591, is hereby amended to read as follows:

(g) FORM OF PAPERS; COPIES. Papers presented to either appellate court for filing shall be letter size (8½ x 11") with the exception of wills and exhibits. Documents filed in the trial division prior to July 1, 1982 may be included in records on appeal whether they are letter size or legal size (8½ x 14"). Papers shall be prepared on white paper of 16-20 pound substance in pica type so as to produce a clear, black image, leaving a margin of approximately one inch on each side. The format of all papers presented for filing shall follow the instructions found in the Appendixes to these Appellate Rules.

All documents presented to either appellate court other than records on appeal, which in this respect are governed by Appellate Rule 9, shall, unless they are less than 5 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of authorities, *i.e.*, cases (alphabetically arranged), constitutional provisions, statutes, and textbooks cited, with references to the pages where they are cited.

The body of the document shall at its close bear the printed name, post office address, and telephone number of counsel of record, and in addition, at the appropriate place, the manuscript signature of counsel of record.

Rule 28(i) of the North Carolina Rules of Appellate Procedure, 287 NC 671, 743-744, is hereby amended to read as follows:

(i) *Amicus Curiae Briefs.* A brief of an amicus curiae may be filed only by leave of the appellate court wherein the appeal is docketed or in response to a request made by that Court on its own initiative.

A person desiring to file an amicus curiae brief shall present to the Court a motion for leave to file, served upon all parties, within ten days after the appeal is docketed. The motion shall state concisely the nature of the applicant's interest, the reasons why an amicus curiae brief is believed desirable, the questions of law to be addressed in the amicus curiae brief and the applicant's position on those questions.

Unless otherwise ordered by the Court, the application for leave will be determined solely upon the motion, and without responses thereto or oral argument.

The clerk of the appellate court will forthwith notify the applicant and all parties of the court's action upon the application. Unless other time limits are set out in the order of the Court permitting the brief, the amicus curiae shall file the brief within the time allowed for the filing of the brief of the party supported or, if in support of neither party, within the time allowed for filing appellant's brief. In all cases where amicus curiae briefs are permitted by a court, the clerk of the court at the direction of the court will notify all parties of the times within which they may file reply briefs. Such reply briefs will be limited to points or authorities presented in the amicus curiae brief which are not presented in the main briefs of the parties. No reply brief of an amicus curiae will be received.

A motion of an amicus curiae to participate in oral argument will be allowed only for extraordinary reasons.

The Appendix of Tables and Forms to the North Carolina Rules of Appellate Procedure, 287 NC 671, 763-789, is hereby repealed and the following Appendixes A through F are adopted in its stead:

APPENDIXES

- Appendix A: Timetables for Appeals
- Appendix B: Format and Style
- Appendix C: Arrangement of Record on Appeal
- Appendix D: Forms
- Appendix E: Content of Briefs
- Appendix F: Fees and Costs

APPENDIX A**TIMETABLE OF APPEALS FROM TRIAL DIVISION
UNDER ARTICLE II OF THESE RULES**

Action	Time (Days)	From date of	Rule Reference
Taking Appeal (civil)	10	entry of judgment (unless tolled)	3(c)
Taking Appeal (criminal)	10	entry of judgment (unless tolled)	4(a)(2)
Filing and serving proposed record on appeal	30	Taking appeal	11(b)
Filing and serving objections or proposed alternative record	15	Service of proposed record	11(c)
Requesting judicial settlement of record	10	Last day within which last appellee served could file objections, etc.	11(c)
Settlement of record by judge	15	Receipt by judge of request for settlement	11(c)
Certification of record by clerk	10	Record on appeal settled	11(e)
Filing record on appeal in appellate court	10	Certification by clerk (but not more than 150 days from taking appeal)	12(a)
Filing appellant's brief	20	Clerk's Mailing of Printed Record	12(b), 13(a)
Filing appellee's brief	20	Service of appellant's brief	13(a)
Oral argument	30 (usual minimum)	Filing appellant's brief	29
Certification or Mandate	20	Issuance of Opinion	32
Petition for Rehearing (civil action only)	20	Mandate	31(a)

**TIMETABLE OF APPEALS TO THE SUPREME COURT
FROM THE COURT OF APPEALS UNDER
ARTICLE III OF THESE RULES**

Action	Time (Days)	From date of	Rule Reference
Petition for Discretionary Review Prior to Determination	15	Docketing appeal in Court of Appeals	15(a)
Notice of Appeal	15	Mandate (or from order of Court of Appeals denying petition for rehearing)	14(a)
Cross-Notice of Appeal	10	Filing of first Notice	14(a)
Petition for Discretionary Review	15	Mandate (or from order of Court of Appeals denying petition for rehearing)	15(a)
Response to Petition for Discretionary Review	10	Service of Petition	15(d)
Appellant's Brief	20	Docketing Case	14(d), 15(a)
Appellee's Brief	20	Service of Appellant's Brief	14(d), 15(g)
Oral Argument	30 (usual minimum)	Filing Appellant's Brief	29
Certification or Mandate	20	Issuance of Opinion	32
Petition for rehearing (civil action only)	20	Mandate	31(a)

NOTE: All of the critical time intervals here outlined except those for taking an appeal and petitioning for discretionary review may be extended by order of the Court wherein the appeal is docketed at the time. However, the time for filing the record on appeal may be extended past 150 days from the date of taking appeal only by order of the appellate court to which the appeal of right lies.

No time limits are prescribed for petitions for writs of certiorari other than that they be "filed without unreasonable delay." (Rule 21)

APPENDIX B

Format and Style

All documents for filing in either appellate court are prepared on 8½ x 11 inch, white paper of 16 to 20 pound weight. Typing is done on one side only, although the document will be reproduced in two-sided format.

Papers shall be prepared using pica (10 pitch) type and spacing, so as to produce a clear, black image. To allow for binding of documents, a margin of approximately one inch shall be left on all sides of the page. The formatted page should be 60 spaces wide and 57 lines long. Tabs are located at the following spaces from the left margin: 5, 10, 15, 20, 30 (center), and 40.

Captions of Documents

All documents to be filed in either appellate court shall be headed by a caption. The caption contains: the number to be assigned the case by the Clerk; the Judicial District from which the case arises; the appellate court to whose attention the document is addressed; the style of the case showing the names of all parties to the action; the county from which the case comes; the indictment or docket numbers of the case below (in records on appeal and in motions and petitions in the cause filed prior to the filing of the record); and the title of the document. The caption shall be placed beginning at the top margin of a cover page and, again, on the first textual page of the document.

No. _____ (Number) DISTRICT

(SUPREME COURT OF NORTH CAROLINA)

(or)

(NORTH CAROLINA COURT OF APPEALS)

STATE OF NORTH CAROLINA)

or)

(Name of Plaintiff))

From (Name) County _____

No. _____

v)

(Name of Defendant))

(TITLE OF DOCUMENT)

The caption should reflect the title of the action (all parties named) as it appeared in the trial division. The appellant or petitioner is not automatically given topside billing; the relative position of the plaintiff and defendant should be retained.

The caption of a record on appeal and of a notice of appeal from the Trial Division should include directly below the name of the county and indictment or docket numbers of the case in the trial division. Those numbers, however, should not be included in other documents except for a petition for writ of certiorari or other petitions and motions where no record on appeal has yet been created in the case. In notices of appeal or petitions to the Supreme Court from decisions of the Court of Appeals, the caption should show the Court of Appeals' docket number in similar fashion.

Immediately below the caption of each document, centered and underlined, in all capital letters, should be the title of the document, *e.g.*, PETITION FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31, or DEFENDANT-APPELLANT'S BRIEF. A brief filed in the Supreme Court in a case previously heard and decided by the Court of Appeals is to be entitled NEW BRIEF.

Indexes

A brief or petition which is long or complex or which treats multiple issues, and all Appendixes to briefs (Rule 28) and Records on Appeal (Rule 9) must contain an index to the contents.

The index should be indented ten spaces from *each* margin, providing a 40-space line. The form of the index for a record on appeal should be as follows (indexes for briefs are addressed in Appendix E):

(Record)

INDEX

Organization of the Court	1
Complaint of Tri-Cities Mfg. Co.	1
* * *	
*PLAINTIFF'S EVIDENCE:	
John Smith	17
Tom Jones	23
Defendant's Motion for Nonsuit	84
*DEFENDANT'S EVIDENCE:	
John Q. Public	86
Mary J. Public	92

* * *

Request for Jury Instructions	101
*Charge to the Jury	102
Jury Verdict	108
Order or Judgment	109
Appeal Entries	110
Order Extending Time	110
Assignments of Error	112
Certificate of Service	113
Stipulation of Counsel	114
Names and Addresses of Counsel	115

Use of the Transcript of Evidence with Record on Appeal

Those portions asterisked (*) in the sample index above would be omitted if the transcript option were selected under Appellate Rule 9(c). In their place in the record, counsel should place a statement in substantially the following form:

“Per Appellate Rule 9(c) the complete stenographic transcript of proceedings in this case, taken by (name), court reporter, from (date) to (date) and consisting of (# of pages) pages, numbered (1) through (last page#), and bound in (# of volumes) volumes is filed contemporaneously with this record. The transcript has been certified by (name), (deputy) (ass't) Clerk of the Superior Court of (name) County.”

The transcript should be prepared with a clear, black image on 8½ x 11 paper of 16-20 pound substance. Enough copies should be reproduced to assure the parties of a reference copy, file one copy in the appellate court, and provide the Clerk of the Superior Court with a copy if required. In criminal appeals, the District Attorney is responsible for conveying a copy to the Attorney General (App. Rule 9(c)).

The transcript should not be inserted into the record on appeal, but, rather, should be separately bound and submitted for filing in the proper appellate court with the record. Transcript pages inserted into the record on appeal will be treated in the manner of a narration and will be printed at the standard page charge. Counsel should note that the separate transcript will not be reproduced with the record on appeal, but will be treated and used as an exhibit.

Table of Cases and Authorities

Immediately following the index and before the inside caption, all briefs, petitions, and motions greater than five pages in

length shall contain a table of cases and authorities. Cases should be arranged alphabetically, followed by constitutional provisions, statutes, regulations, and other textbooks and authorities. The format should be similar to that of the index. Citations should be made according to *A Uniform System of Citation* (13th ed.).

Format of Body of Document

The body of the document should be single spaced with double spaces between paragraphs and triple spaces before topical headings.

Adherence to the margins is important since the document will be reproduced front and back and will be bound on the side. No part of the text should be obscured by that binding.

Quotations of more than three lines in length should be indented 10 spaces from the left margin and about five spaces from the right. The citation should immediately follow the quote.

References to the record on appeal should be made through a parenthetical entry in the text. (R pp 38-40) References to the transcript, if used, should be made in similar manner. (T p 558)

Topical Headings

The various sections of the brief or petition should be separated (and indexed) by topical headings, centered and underlined, in all capital letters.

Within the argument section, the issues presented should be set out as a heading in all capital letters and in paragraph format from margin to margin. Sub-issues should be presented in similar format, but block indented five spaces from the left margin.

Numbering Pages

The cover page containing the caption of the document (and the index in Records on Appeal) is unnumbered. The index and table of cases and authorities are on pages numbered with lower case roman numerals, *e.g.*, i, ii, iv.

While the page containing the inside caption and the beginning of the substance of the petition or brief bears no number, it is page 1. Subsequent pages are sequentially numbered by arabic numbers, flanked by dashes, at the center of the top margin of the page, *e.g.* -4-.

An appendix to the brief should be separately numbered in the manner of a brief.

Signature and Address

All original papers filed in a case will bear the original signature of at least one counsel participating in the case. The name, address, and telephone number of the person signing, together with the capacity in which he signs the paper will be included. Counsel participating in argument must have signed the brief in the case prior to that argument.

APPENDIX C**ARRANGEMENT OF RECORD ON APPEAL**

Only those items listed in the following tables which are required by Rule 9(b) in the particular case should be included in the record. See Rule 9(b)(5) for sanctions against including unnecessary items in the record. The items marked by an asterisk (*) could be omitted from the record proper if the transcript option of Rule 9(c) is used, and there exists a transcript of the items.

Table 1**SUGGESTED ORDER IN APPEAL FROM CIVIL JURY CASE**

1. Title of action (all parties named) and case number in caption per Appendix B
2. Index, per Rule 9(b)(1)(i)
3. Statement of organization of trial tribunal, per Rule 9(b)(1)(ii)
4. Statement of record items showing jurisdiction, per Rule 9(b)(1)(iii)
5. Complaint
6. Pre-answer motions of defendant, with rulings thereon
7. Answer
8. Motion for summary judgment, with rulings thereon (* if oral)
9. Pre-trial order
- *10. Plaintiff's evidence, with any evidentiary rulings assigned as error
- *11. Motion for directed verdict, with ruling thereon
- *12. Defendant's evidence, with any evidentiary rulings assigned as error
- *13. Plaintiff's rebuttal evidence, with any evidentiary rulings assigned as error
14. Issues tendered by parties
15. Issues submitted by court
- *16. Court's instructions to jury, per Rule 9(b)(1)(vi)
17. Verdict
18. Motions after verdict, with rulings thereon (* if oral)

19. Judgment
20. Appeal entries, per Rule 9(b)(1)(ix)
21. Assignments of error, with pertinent exceptions, per Rule 10
22. Entries showing settlement of record on appeal, extension of time, etc.
23. Clerk's certification of record on appeal
24. Names, office addresses, and telephone numbers of counsel for all parties to appeal

Table 2

**SUGGESTED ORDER IN APPEAL FROM SUPERIOR COURT
REVIEW OF ADMINISTRATIVE AGENCY**

1. Title of action (all parties named) and case number in caption per Appendix B
2. Index, per Rule 9(b)(2)(i)
3. Statement of organization of superior court, per Rule 9(b)(2)(ii)
4. Statement of record items showing jurisdiction of the board or agency, per Rule 9(b)(2)(iii)
5. Copy of petition or other initiating pleading
6. Copy of answer or other responsive pleading
7. Copies of all items from administrative proceeding filed for review in superior court, including evidence
- *8. Evidence taken in superior court, in order received
9. Copies of findings of fact, conclusions of law, and judgment of superior court
10. Appeal entries, per Rule 9(b)(2)(viii)
11. Assignments of error, with pertinent exceptions, per Rule 9(b)(2)(ix)
12. Entries showing settlement of record on appeal, extension of time, etc.
13. Clerk's certification of record on appeal
14. Names, office addresses, and telephone numbers of counsel for all parties to appeal

Table 3**SUGGESTED ORDER IN APPEAL OF CRIMINAL CASE**

1. Title of action (all parties named) and case number in caption per Appendix B
2. Index, per Rule 9(b)(3)(i)
3. Statement of organization of trial tribunal, per Rule 9(b)(3)(ii)
4. Warrant
5. Judgment in district court (where applicable)
6. Entries showing appeal to superior court (where applicable)
7. Bill of indictment (if not tried on original warrant)
8. Arraignment and plea in superior court
9. Voir dire of Jurors
- *10. State's evidence, with any evidentiary rulings assigned as error
11. Motions at close of state's evidence, with rulings thereon (* if oral)
- *12. Defendant's evidence, with any evidentiary rulings assigned as error
13. Motions at close of defendant's evidence, with rulings thereon (* if oral)
- *14. State's rebuttal evidence, with any evidentiary rulings assigned as error
15. Motions at close of all evidence, with rulings thereon (* if oral)
- *16. Court's instructions to jury, per Rules 9(b)(3)(vi), 10(b)(2)
17. Verdict
18. Motions after verdict, with rulings thereon (* if oral)
19. Judgment and order of commitment
20. Appeal entries
21. Assignments of error, with pertinent exceptions, per Rule 10
22. Entries showing settlement of record on appeal, extension of time, etc.
23. Clerk's certification of record on appeal
24. Names, office addresses and telephone numbers of counsel for all parties to appeal

Table 4**EXCEPTIONS SET OUT IN RECORD ON APPEAL****A. Examples related to evidentiary rulings****1. Evidence admitted**

Q. Did you hear D. call a name?

A. Yes.

Q. Whose name did he call?

Objection.

Objection overruled.

EXCEPTION No. 7.

A. The name of E. F.

2. Evidence excluded

Q. Did you hear D. call a name?

A. Yes.

Q. Whose name did he call?

Objection.

Objection sustained.

(Witness would have testified: "The name of E. F.")

EXCEPTION No. 8.

B. To ruling on motion for directed verdict

At the close of all the evidence the defendant renewed his motion for directed verdict on the stated grounds that the plaintiff's evidence established as a matter of law his contributory negligence.

Motion denied.

EXCEPTION No. 9.

C. To refusal of court to submit issue tendered by defendant

Issues tendered by the defendant:

. . .

2. If so, did the plaintiff by his own negligence contribute to his injuries, as alleged in the answer?

. . .

The court refused to submit issue No. 2.

EXCEPTION No. 10.

D. Examples related to judge's instructions to jury

1. Instruction erroneously given

(Enclose in brackets portion of instructions to which exception is directed, followed by entry:)

EXCEPTION No. 11.

2. Law not explained, as required by N.C.R.Civ.P. 51

(Entry to be made at end of instructions given by court:)

The court failed to instruct the jury on the doctrine of last clear chance.

EXCEPTION No. 12.

3. Law not applied to evidence, as required by N.C.R.Civ.P. 51

(Entry to be made at end of instructions given by court.)

The court failed in instructing the jury to apply the doctrine of last clear chance to plaintiff's evidence, Record pp. 80-90.

EXCEPTION No. 13.

Table 5

ASSIGNMENTS OF ERROR

A. Examples related to pre-trial rulings in civil action

Defendant assigns as error:

1. The court's denial of defendant's motion under N.C.R.Civ.P. 12(b)(2) to dismiss for lack of jurisdiction over the person of the defendant, on the grounds (that the uncontested affidavits in support of the motion show that no grounds for jurisdiction existed) (or other appropriately stated grounds).

EXCEPTION No. 1, R p. 4.

2. The court's denial of defendant's motion under N.C.R.Civ.P. 12(b)(6) to dismiss for failure of the complaint to state a claim upon which relief can be granted, on the ground that the complaint affirmatively shows that the plaintiff's own negligence contributed to any injuries sustained.

EXCEPTION No. 2, R p. 7.

3. The court's denial of defendant's motion requiring the plaintiff to submit to physical examination under N.C.R.Civ. P. 35, on the ground that on the record before the court, good cause for the examination was shown.

EXCEPTION No. 3, R p. 10.

4. The court's denial of defendant's motion for summary judgment, on the ground that there was no genuine issue of fact that the statute of limitations had run and defendant was therefore entitled to judgment as a matter of law.

EXCEPTION No. 4, R p. 15.

B. Examples related to civil jury trial rulings

Defendant assigns as error the following:

1. The court's admission of the testimony of the witness E.F., on the ground that the testimony was hearsay.

EXCEPTION No. 7, R p. 29.

EXCEPTION No. 8, R p. 30.

2. The court's denial of the defendant's motion for directed verdict at the conclusion of all the evidence, on the ground that plaintiff's evidence as a matter of law established his contributory negligence.

EXCEPTION No. 8, R p. 45.

3. The court's instructions to the jury, R pp. 50-51, explaining the doctrine of last clear chance, on the ground that the doctrine was not correctly explained.

EXCEPTION No. 10, R p. 51.

4. The court's instructions to the jury, R pp. 53-54, applying the doctrine of sudden emergency to the evidence, on the ground that the evidence referred to by the court did not support application of the doctrine.

EXCEPTION No. 11, R p. 54.

5. The court's denial of defendant's motion for a new trial for newly discovered evidence, on the ground that on the uncontested affidavits in support of the motion the court abused its discretion in denying the motion.

EXCEPTION No. 9, R p. 80.

C. Examples related to civil non-jury trial

Defendant assigns as error:

1. The court's refusal to enter judgment of dismissal on the merits against plaintiff upon defendant's motion for dismissal made at the conclusion of plaintiff's evidence, on the ground that plaintiff's evidence established as a matter of law that plaintiff's own negligence contributed to the injury.

EXCEPTION No. 1, R p. 20.

2. The court's Finding of Fact No. 10 on the ground that there was insufficient evidence to support it.

EXCEPTION No. 2, R p. 25.

3. The court's Conclusion of Law No. 3, on the ground that there are no findings of fact which support the conclusion that defendant had the last clear chance to avoid the collision alleged.

EXCEPTION No. 3, R p. 27.

APPENDIX D

FORMS

Captions for all documents filed in the Appellate Division should be in the format prescribed by Appendix B, addressed to the Court whose review is sought.

1. Notices of Appeal

a. to Court of Appeals from Trial Division

Appropriate in all appeals of right from district or superior courts, except appeals from criminal judgments imposing sentences of death or of imprisonment for life.

(Caption)

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

(Plaintiff) (Defendant) (NAME OF PARTY) hereby gives notice of appeal to the Court of Appeals of North Carolina (from the final judgment) (from the order) entered on (date) in the (District) (Superior) Court of (name) County, (describing it).

Respectfully submitted this _____ day of _____ 19____.

s / _____
Attorney for (Plaintiff) (Defendant)
(Address and Telephone)

b. to Supreme Court from a Judgment of the Superior Court Including a Sentence of Life Imprisonment or Death

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Name of Defendant), Defendant, hereby gives notice of appeal to the Supreme Court of North Carolina from the final judgment, entered by (name of Judge), in the Superior Court of (name) County on (date), which judgment included a sentence of (death) (imprisonment for life).

Respectfully submitted this _____ day of _____ 19 ____.

s / _____
Attorney for Defendant-Appellant
(Address and Telephone)

c. to the Supreme Court from a Judgment of the Court of Appeals

Appropriate in all appeals taken as of right from opinions and judgments of the Court of Appeals to the Supreme Court under G.S. 7A-30. The appealing party shall enclose a certified copy of the opinion of the Court of Appeals with the notice. To take account of the possibility that the Supreme Court may determine that the appeal does not lie of right, an alternative petition for discretionary review may be filed with the notice of appeal.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff) (Defendant) (name of party) hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals (describing it), which judgment . . .

(Constitutional question — G.S. 7A-30(1)) . . . directly involves substantial questions arising under the Constitution(s) (of the United States) (and) (or) (of the State of North Carolina) as follows:

(here describe the specific issues, citing Constitutional provisions under which they arise, and showing how such issues were timely raised below and are set out in the record on appeal, *e.g.*.)

“Question 1: Said judgment directly involves a substantial question arising under the Fourth and Fourteenth Amendments to the Constitution of the United States and under Article 1, Section 20 of the Constitution of the State of North Carolina, in that it deprives rights secured thereunder to the defendant by overruling defendant’s assignment of error to the denial of his Motion to Suppress Evidence Obtained by a Search Warrant, thereby depriving the defendant of his Constitutional right to be secure in his person, house, papers, and effects, against unreasonable searches and seizures and violating constitutional prohibitions against warrants issued without probable cause and warrants not supported by evidence. This constitutional issue was timely raised in the trial tribunal by defendant’s Motion to Suppress Evidence Obtained by a Search Warrant made prior to trial of defendant (R pp 7 thru 10). Exception No. 11 (R p 136). This constitutional issue was determined erroneously by the Court of Appeals.”

(**dissent** — G.S. 7A-30(2)) . . . was entered with a dissent by Judge (name).

(**rate-making** — G.S. 7A-30(3)) . . . was entered upon review of a decision of the North Carolina Utilities Commission in a general rate-making case.

Respectfully submitted this ____ day of _____ 19____.

s / _____

Attorney for (Plaintiff) (Defendant)-Appellant
(Address and Telephone)

2. Appeal Entries

The appeal entries are appropriate as a ready means of providing in composite form for the record on appeal:

- 1) the entry required by App. Rule 9(b) showing appeal duly taken by oral notice under App. Rule 3(a)(1) or 4(a)(1);
- 2) judicial approval of the undertaking on appeal required by App. Rule 6; and
- 3) the entry required by App. Rule 9(b) showing any judicial extension of time for serving proposed record on appeal under App. Rule 27(c).

These entries of record may also be made separately.

Where appeal is taken by filing and serving written notice, a copy of the notice with filing date and proof of service is appropriate as the record entry required.

Per Tables 1, 2, and 3 of Appendix C, such "appeal entries" are appropriately included in the record on appeal following the judgment from which appeal is taken.

The judge's signature, while not technically required, is traditional, and serves as authentication of the substance of the entries.

(Defendant) gave due notice of appeal to the (Court of Appeals) (Supreme Court). Appeal bond in the sum of \$_____ adjudged to be sufficient. (Defendant) is allowed ____ days in which to serve proposed record on appeal, and (Plaintiff) is allowed ____ days thereafter within which to serve objections or a proposed alternative record on appeal.

This ____ day of _____ 19____.

s / _____

Judge Presiding

3. Petition for Discretionary Review Under G.S. 7A-31

To seek review of the opinion and judgment of the Court of Appeals where appellant contends case involves issues of public interest or jurisprudential significance. May also be filed as a separate paper in conjunction with a notice of appeal to the Supreme Court when the appellant considers that such appeal lies of right due to substantial constitutional questions under G.S. 7A-30, but desires to have the Court consider discretionary review should it determine that appeal does not lie of right in the particular case.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff) (Defendant), (Name of Party), respectfully petitions the Supreme Court of North Carolina that the Court certify for discretionary review the judgment of the Court of Appeals (describing it) on the basis that (here set out the grounds from G.S. 7A-31 which provide the basis for the petition). In support of this petition, (Plaintiff) (Defendant) shows the following:

Facts

(Here state first the procedural history of the case through the trial division and the Court of Appeals.

Then set out factual background necessary for understanding the basis of the petition.)

Reasons Why Certification Should Issue

(Here set out factual and legal argument to justify certification of the case for full review. While some substantive argument will certainly be helpful, the focus of the argument in the petition should be to show how the opinion of the Court of Appeals conflicts with prior decisions of the Supreme Court or how the case is one significant to the jurisprudence of the State or one which offers significant public interest. If the Court is persuaded to take the case, then the appellant may deal thoroughly with the substantive issues in the new brief.)

Respectfully submitted this _____ day of _____ 19____.

s / _____
 Attorney for (Plaintiff) (Defendant)
 (Address and Telephone)

Attached to the petition shall be a certificate of service upon the opposing parties and a clear copy of the opinion of the Court of Appeals in the case.

4. **Petition for Writ of Certiorari**

To seek review 1) of the judgments or orders of trial tribunals in the appropriate appellate court when the right to prosecute an appeal has been lost or where no right to appeal exists; 2) by the Supreme Court of the decisions and orders of the Court of Appeals where no right to appeal or to petition for discretionary review exists or where such right has been lost by failure to take timely action.

(Caption)

TO THE HONORABLE (SUPREME COURT) (COURT OF APPEALS) OF NORTH CAROLINA:

(Plaintiff) (Defendant), (Name of Party), respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the N.C. Rules of Appellate Procedure to review the (judgment) (order) (decree) of the (Honorable (name), Judge Presiding, (name) County (Superior) (District) Court) (North Carolina Court of Appeals), dated (date) (here describe the judgment, order, or decree appealed from); and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding the basis of petition: *e.g.* failure to perfect appeal by reason of circumstances constituting excusable neglect; nonappealability of right of an interlocutory order, etc.) (If circumstances are that transcript could not be procured from reporter, statement should include estimate of date of availability, and supporting affidavit from the Court Reporter.)

Reasons Why Writ Should Issue

(Here set out factual and legal argument to justify issuance of writ: *e.g.*, reasons why interlocutory order makes it impractical for petitioner to proceed further in trial court; meritorious basis of petitioner's proposed assignments of error; etc.)

Attachments

Attached to this petition for consideration by the Court are certified copies of the (judgment) (order) (decree) sought to be

reviewed, and (here list any other certified items from the trial court record and any affidavits attached as pertinent to consideration of the petition.)

Wherefore, petitioner respectfully prays that this Court issue its writ of certiorari to the (Superior Court of (name) County) (North Carolina Court of Appeals) to permit review of the (judgment) (order) (decree) above specified, upon errors (to be) assigned in the record on appeal constituted in accordance with the Rules of Appellate Procedure; and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted, this the _____ day of _____, 19____.

s / _____
Attorney for Petitioner
(Address and Telephone)

(Verification by petitioner or counsel)
(Certificate of service upon opposing parties)
(Attach a clear copy of the opinion, order, etc. which is the subject of the petition and other attachments as described in petition.)

5. Petition for Writ of Supersedeas under Rule 23 and Motion for Temporary Stay

A writ of supersedeas operates to stay the execution or enforcement of any judgment, order, or other determination of a trial court or of the Court of Appeals in civil cases under Appellate Rule 8 or to stay imprisonment or execution of a sentence of death in criminal cases (other portions of criminal sentences, e.g., fines, are stayed automatically pending an appeal of right).

A motion for temporary stay is appropriate to show good cause for immediate stay of execution on an ex parte basis pending the Court's decision on the Petition for Supersedeas or the substantive petition in the case.

(Caption)

TO THE HONORABLE (COURT OF APPEALS) (SUPREME COURT) OF NORTH CAROLINA:

(Plaintiff) (Defendant), (Name of Party), respectfully petitions this Court to issue its writ of supersedeas to stay (execution) (enforcement) of the (judgment) (order) (decree) of the (Honorable

_____, Judge Presiding, (Superior) (District) Court of _____ County) (North Carolina Court of Appeals), dated _____, pending review by this Court of said (judgment) (order) (decree) which (here describe the judgment, order, or decree and its operation if not stayed); and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding basis of petition and justifying its filing under Rule 23: *e.g.*, trial judge has vacated the entry upon finding security deposited under G.S. Section _____ inadequate; or that trial judge has refused to stay execution upon motion therefor by petitioner; or that circumstances make it impracticable to apply first to trial judge for stay, *etc.*; and showing that review of the trial court judgment is being sought by appeal or extraordinary writ.)

Reasons Why Writ Should Issue

(Here set out factual and legal argument for justice of issuing writ: *e.g.*, that security deemed inadequate by trial judge is adequate under the circumstances; that irreparable harm will result to petitioner if he is required to obey decree pending its review; that petitioner has meritorious basis for seeking review, *etc.*)

Attachments

Attached to this petition for consideration by the court are certified copies of the (judgment) (order) (decree) sought to be stayed and (here list any other certified items from the trial court record and any affidavits deemed necessary to consideration of the petition).

Wherefore, petitioner respectfully prays that this Court issue its writ of supersedeas to the ((Superior) (District) Court of _____ County) (North Carolina Court of Appeals) staying (execution) (enforcement) of its (judgment) (order) (decree) above specified, pending issuance of the mandate to this Court following its review and determination of the (Appeal) (discretionary review) (review by extraordinary writ) (now pending) (the petition for which will be timely filed); and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted, this the _____ day of _____, 19____.

s/ _____
Attorney for Petitioner
(Address and Telephone)

(Verification by petitioner or counsel.)
(Certificate of Service upon opposing party.)

Rule 23(e) provides that in conjunction with such a petition for supersedeas, either as part of it or separately, the petitioner may move for a temporary stay of execution or enforcement pending the Court's ruling on the petition for supersedeas. The following form is illustrative of such a motion for temporary stay, either included in the main petition as part of it or filed separately.

Motion for Temporary Stay

(Plaintiff) (Defendant) respectfully applies to the Court for an order temporarily staying (execution) (enforcement) of the (judgment) (order) (decree) which is the subject of (this) (the accompanying) petition for writ of supersedeas, such order to be in effect until determination by this Court whether it shall issue its writ. In support of this Application, movant shows that (here set out legal and factual argument for the issuance of such a temporary stay order; e.g., irreparable harm practically threatened if petitioner must obey decree of trial court during interval before decision by Court whether to issue writ of supersedeas).

Motion for Stay of Execution

In death cases, the Supreme Court uses an order for stay of execution of death sentence in lieu of the writ of supersedeas. Counsel should promptly apply for such a stay after the judgment of the Superior Court imposing the death sentence. The stay of execution order will provide that it remains in effect until dissolved. The following form illustrates the contents needed in such a motion.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now comes the defendant, (name), who respectfully shows the Court:

1. That on (date of judgment), The Honorable _____, Judge Presiding, Superior Court of _____ County, sentenced the defendant to death, execution being set for (date of execution).

2. That pursuant to G.S. 15A-2000(d)(1), there was an automatic appeal of this matter to the Supreme Court of North Carolina, and that defendant's notice of appeal was given (describe the circumstances).

3. That the record on appeal in this case cannot be served and settled, the matter docketed, the briefs prepared, the arguments heard, and a decision rendered before the scheduled date for execution.

WHEREFORE, the defendant prays the Court to enter an Order staying the execution pending judgment and further orders of this Court.

Respectfully submitted, this the _____ day of _____, 19____.

s/ _____
Attorney for Defendant
(Address and Telephone)

(Certificate of Service on
Attorney General, District Attorney,
and Warden of Central Prison)

APPENDIX E
CONTENT OF BRIEFS

Caption

Briefs should use the caption as shown in Appendix B. The Title of the Document should reflect the position of the filing party both at the trial level and on the appeal, *e.g.*, DEFENDANT-APPELLANT'S BRIEF, PLAINTIFF-APPELLEE'S BRIEF, or BRIEF FOR THE STATE. A brief filed in the Supreme Court in a case decided by the Court of Appeals is captioned a "New Brief" and the position of the filing party before the Supreme Court should be reflected, *e.g.*, DEFENDANT-APPELLEE'S NEW BRIEF (where the State has appealed from the Court of Appeals in a criminal matter).

The cover page should contain only the caption of the case. Succeeding pages should present the following items, in order.

Index of the Brief

Each brief should contain a topical index beginning at the top margin of the first page following the cover, in substantially the following form:

INDEX

TABLE OF CASES AND AUTHORITIES	ii
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	2
ARGUMENT:	
I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS HIS INCUHPATORY STATEMENT BECAUSE THAT STATEMENT WAS THE PRODUCT OF AN ILLEGAL DETENTION	10
* * *	
IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS THE FRUITS OF A WARRANTLESS SEARCH OF HIS APARTMENT BECAUSE THE CONSENT GIVEN WAS THE PRODUCT OF POLICE COERCION	28

CONCLUSION 34

CERTIFICATE OF SERVICE 35

APPENDIX:

 VOIR DIRE DIRECT EXAMINATION OF
 JOHN Q. PUBLIC App. 1-7

 VOIR DIRE CROSS-EXAMINATION OF
 JOHN Q. PUBLIC App. 8-11

 VOIR DIRE DIRECT EXAMINATION OF
 OFFICER LAW N. ORDER App. 12-17

 VOIR DIRE CROSS-EXAMINATION OF
 OFFICER LAW N. ORDER App. 18-20

* * * * *

Table of Cases and Authorities

This table should begin at the top margin of the page following the Index. Page reference should be made to the first citation of the authority in each question to which it pertains.

TABLE OF CASES AND AUTHORITIES

Dunaway v New York, 442 US 200, 99 SCt 2248,
60 LEd2d 824 (1979) 11

State v Perry, 298 NC 502, 259 SE2d 496 (1979) ... 14

State v Reynolds, 298 NC 380, 259 SE2d 843
(1979) 12

United States v Mendenhall, 446 US 544, 100
SCt 1870, 64 LEd2d 497 (1980) 14

4th Amendment, U. S. Constitution 28

14th Amendment, U. S. Constitution 28

GS 15A-221 29

GS 15A-222 28

GS 15A-223 29

* * * * *

Questions Presented

The inside caption is on "page 1" of the brief, followed by the questions presented. The phrasing of the questions presented

need not be identical with that set forth in the assignments of error in the Record; however, the brief may not raise additional questions or change the substance of the questions already presented in those documents. The appellee's brief need not restate the questions unless the appellee desires to present additional questions to the Court.

QUESTIONS PRESENTED

I. DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS HIS INCULPATORY STATEMENT BECAUSE THAT STATEMENT WAS THE PRODUCT OF AN ILLEGAL DETENTION?

* * *

Statement of the Case

If the Questions Presented carry beyond page 1, the Statement of the Case should follow them, separated by the heading. If the Questions Presented do not carry over, the Statement of the Case should begin at the top of page 2 of the brief.

Set forth a concise chronology of the course of the proceedings in the trial court and the route of appeal, including pertinent dates. For example:

STATEMENT OF THE CASE

The defendant, John Q. Public, was convicted of first degree rape at the October 5, 1981, Criminal Session of the Superior Court of Bath County, the Honorable I. M. Wright presiding, and received the mandatory life sentence for the Class B felony. The defendant gave notice of appeal in open court to the Supreme Court of North Carolina at the time of the entry of judgment on October 8, 1981.

A motion to extend the time for serving and filing the record on appeal was allowed by the Supreme Court on January 22, 1982. The record was filed and docketed in the Supreme Court on April 5, 1982.

Statement of the Facts

The facts constitute the basis of the dispute or criminal charges and the procedural mechanics of the case if they are significant to the questions presented. The facts should be stated objectively and concisely and should be limited to those which are relevant to the issue or issues presented.

Do not include verbatim portions of the record or other matters of an evidentiary nature in the statement of the facts. Summaries and record or transcript citations should be used. No appendix should be compiled simply to support the statement of the facts.

The appellee's brief need contain no statement of the case or facts if there is no dispute. The appellee may state additional facts where deemed necessary, or, if there is a dispute of the facts, may restate the facts as they objectively appear from the appellee's viewpoint.

Argument

Each question will be set forth in upper case type as the party's contention, followed by the assignments of error and exceptions pertinent to the question, identified by their numbers and by the pages in the printed record on appeal or in the transcript at which they appear, and separate arguments pertaining to and supporting that contention, *e.g.*,

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS HIS INCUHPATORY STATEMENT BECAUSE THAT STATEMENT WAS THE PRODUCT OF AN ILLEGAL DETENTION.

ASSIGNMENT OF ERROR NO. 2 (R p 45)

EXCEPTION NOS. 5 (R p 23), 6 (T p 366), and 7 (T pp 367-390)

Parties should feel free to summarize, quote from, or cite to the record or transcript during the presentation of argument. If the transcript option is selected under Appellate Rule 9(c), the Appendix to the Brief becomes a consideration, as described in Appellate Rule 28 and below.

Where statutory or regulatory materials are cited, the relevant portions should be quoted in the body of the argument.

Conclusion

State briefly and clearly the specific objective or relief sought in the appeal. It is not necessary to restate the party's contentions, since they are presented both in the index and as headings to the individual arguments.

Signature and Certificate of Service

Following the conclusion, the brief must be dated and signed, with the attorney's mailing address and telephone number, all indented to the third tab.

The Certificate of Service is then shown with centered, upper case heading, the certificate itself, describing the manner of service upon the opposing party, with the complete mailing address of the party or attorney served blocked on the first tab, followed by the date and the signature of the person certifying the service.

Appendix to the Brief under the Transcript Option

Appellate Rules 9(c) and 28 require additional steps to be taken in the brief to point the Court to appropriate excerpts of the transcript considered essential to the understanding of the arguments presented.

Counsel is encouraged to cite, narrate, and quote freely within the body of the brief. However, if because of length a verbatim quotation is not included in the body of the brief, that portion of the transcript and others like it shall be gathered into an appendix to the brief which is situated at the end of the brief, following all signatures and certificates. Counsel should *not* compile the entire transcript into an appendix to support issues involving a directed verdict, sufficiency of evidence, or the like.

The appendix should be prepared so as to be clear and readable, distinctly showing the transcript page or pages from which each passage is drawn. Counsel may reproduce transcript pages themselves, clearly indicating those portions to which attention is directed.

The Appendix should include a table of contents, showing the issue from the brief, followed by the pertinent contents of the appendix, the transcript or appendix page reference and a reference back to the page of the brief citing the appendix. For example:

CONTENTS OF APPENDIX

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS HIS INCUHPATORY STATEMENT BECAUSE THAT STATEMENT WAS THE PRODUCT OF AN ILLEGAL DETENTION.

Voir Dire Direct Examination of John Q. Public (T pp 17-24) (Brief p. 8)	1
Voir Dire Cross-Examination of John Q. Public (T pp 24-28) (Brief p. 8)	8

Voir Dire Direct Examination of Officer Law N. Order (T pp 29-34) (Brief p. 9).....	12
Voir Dire Cross-Examination of Officer Law N. Order (T pp 34-36) (Brief p. 10).....	18

* * *

The appendix will be printed with the brief to which it is appended; however, it will not be retyped, but run as is. Therefore, clarity of image is extremely important.

APPENDIX F

Fees and Costs

Fees and costs are provided by order of the Supreme Court and apply to proceedings in either appellate court. There is no fee for filing a motion in a cause; other fees are as follows, and should be submitted with the document to which they pertain, made payable to the Clerk of the appropriate appellate court:

Notice of Appeal, Petition for Discretionary Review, Petition for Writ of Certiorari or other extraordinary writ, Petition for Writ of Supersedeas—docketing fee of \$10.00 for each document, *i.e.*, docketing fees for a notice of appeal and petition for discretionary review filed jointly would be \$20.00.

Petitions to rehear require a docketing fee of \$20.00. (Petitions to rehear are only entertained in civil cases.)

Certification fee of \$10.00 (payable to Clerk, Court of Appeals) where review of judgment of Court of Appeals is sought in Supreme Court by notice of appeal or by petition.

An appeal bond of \$200.00 is required in civil cases per Appellate Rule 6. The bond should be filed contemporaneously with the record in the Court of Appeals and with the notice of appeal in the Supreme Court. The Bond will not be required in cases brought by petition for discretionary review or certiorari unless and until the Court allows the petition.

Costs for printing documents are \$4.00 per printed page where the document is retyped and printed; \$1.50 per printed page where the Clerk determines that the document is in proper format and can be printed from the original. The Appendix to a brief under the Transcript option of Appellate Rules 9(c) and 28(b) and (c) will be reproduced as is, but billed at the rate of the printing of the brief.

The Clerk of the Court of Appeals requires that a deposit for estimated printing costs accompany the document at filing. The Clerk of the Supreme Court prefers to bill the party for the costs of printing after the fact.

Court costs on appeal total \$9.00 and are imposed when a notice of appeal is withdrawn or dismissed and when the mandate is issued following the opinion in a case.

Adopted by the Court in conference this 7th day of December 1982. Rule 28(i) and the Appendixes shall become effective 1 January 1983. Rule 26(g) shall become effective for all documents filed on or after 1 March 1983. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals.

Martin, J.

For the Court