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**AMENDMENTS TO
RULES OF APPELLATE PROCEDURE**

Rules 1, 6, 8, 9, 10, 11, 12, 13, 14, 21, 26, 27, 28, 31, and 32 of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, are hereby amended to read as in the following pages.

The effective date for these amendments shall be 1 February 1985. However, the amendments to Rules 9, 10, 11, 12, and 14 shall be applicable to all appeals in which the notice of appeal is filed on or after 1 February 1985; and Rule 26 shall be effective for documents filed on or after 1 February 1985.

Adopted by the Court in Conference this 27th day of November, 1984. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals.

BRANCH, C. J.
For the Court

WITNESS my hand and the Seal of the Supreme Court of North Carolina, this the 28th day of November, 1984.

J. GREGORY WALLACE
Clerk of the Supreme Court

RULE 1

SCOPE OF RULES: TRIAL TRIBUNAL DEFINED

- (a) **Scope of Rules.** These rules govern procedure in all appeals from the courts of the trial division to the courts of the appellate division; in appeals in civil and criminal cases from the Court of Appeals to the Supreme Court; in direct appeals from administrative agencies, boards, and commissions to the appellate division; and in applications to the courts of the appellate division for writs and other relief which the courts or judges thereof are empowered to give.
- (b) **Rules Do Not Affect Jurisdiction.** These rules shall not be construed to extend or limit the jurisdiction of the courts of the appellate division as that is established by law.
- (c) **Definition of Trial Tribunal.** As used in these rules, the term "trial tribunal" includes the superior courts, the district courts, and any administrative agencies, boards, or commissions from which appeals lie directly to the appellate division.

Adopted: 13 June 1975.

Amended: 27 November 1984—1(a) and (c)—effective 1 February 1985.

RULE 6

SECURITY FOR COSTS ON APPEAL

- (a) **In Regular Course.** Except in pauper appeals an appellant in a civil action must provide adequate security for the costs of appeal in accordance with the provisions of G.S. 1-285 and 1-286.
- (b) **In Forma Pauperis Appeals.** An appellant in a civil action may be allowed to prosecute an appeal in forma pauperis without providing security for costs in accordance with the provisions of G.S. 1-288.
- (c) **Filed with Record on Appeal.** When security for costs is required, the appellant shall file with the record on appeal a certified copy of the appeal bond or a certificate of the clerk of the trial tribunal showing cash deposit made in lieu of bond.
- (d) **Dismissal for Failure to File or Defect in Security.** For failure of the appellant to provide security as required by subdivision (a) or to file evidence thereof as required by subdivision (c), or

for a substantial defect or irregularity in any security provided, the appeal may on motion of an appellee be dismissed by the appellate court where docketed, unless for good cause shown the court permits the security to be provided or the filing to be made out of time, or the defect or irregularity to be corrected. A motion to dismiss on these grounds shall be made and determined in accordance with Rule 37 of these rules. When the motion to dismiss is made on the grounds of a defect or irregularity, the appellant may as a matter of right correct the defect or irregularity by filing a proper bond or making proper deposit with the clerk of the appellate court within 10 days after service of the motion upon him or before the case is called for argument, whichever first occurs.

- (e) **No Security for Costs in Criminal Appeals.** Pursuant to G.S. 15A-1449, no security for costs is required upon appeal of criminal cases to the appellate division.

Adopted: 13 June 1975.

Amended: 27 November 1984—6(e)—effective 1 February 1985.

RULE 8

STAY PENDING APPEAL

- (a) When appeal is taken in a civil action from a judgment, order, or other determination of a trial court, stay of execution or enforcement thereof pending disposition of the appeal must ordinarily first be sought by the deposit of security with the clerk of the superior court in those cases for which provision is made by law for the entry of stays upon deposit of adequate security, or by application to the trial court for a stay order in all other cases. After a stay order or entry has been denied or vacated by a trial court, an appellant may apply to the appropriate appellate court for a writ of supersedeas in accordance with Rule 23. Application for the writ of supersedeas may similarly be made to the appellate court in the first instance when extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial court for a stay order.
- (b) **Stay in Criminal Cases.** When a defendant has given notice of appeal, those portions of criminal sentences which impose fines or costs are automatically stayed pursuant to the provisions of G.S. 15A-1451. Stays of imprisonment or of the execu-

tion of death sentences must be pursued under G.S. 15A-536 or Appellate Rule 23, Writ of Supersedeas.

Adopted: 13 June 1975.

Amended: 27 November 1984—8(b)—effective 1 February 1985.

RULE 9

THE RECORD ON APPEAL

- (a) **Function; Composition of Record.** In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal and the verbatim transcript of proceedings, if one is designated, constituted in accordance with this Rule 9.
- (1) **Composition of the Record in Civil Actions and Special Proceedings.** The record on appeal in civil actions and special proceedings shall contain:
- (i) an index of the contents of the record, which shall appear as the first page thereof;
 - (ii) a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - (iii) a copy of the summons with return, or of other papers showing jurisdiction of the trial court over person or property, or a statement showing same;
 - (iv) copies of the pleadings, and of any pre-trial order on which the case or any part thereof was tried;
 - (v) so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement specifying that the entire verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - (vi) where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;

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- (vii) copies of the issues submitted and the verdict, or of the trial court's findings of fact and conclusions of law;
 - (viii) a copy of the judgment, order, or other determination from which appeal is taken;
 - (ix) a copy of the notice of appeal, or of an appropriate entry showing appeal taken orally, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (3);
 - (x) copies of all other papers filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2); and
 - (xi) exceptions and assignments of error set out in the manner provided in Rule 10.
- (2) **Composition of the Record in Appeals from Superior Court Review of Administrative Boards and Agencies.** The record on appeal in cases of appeal from judgments of the superior court rendered upon review of the proceedings of administrative boards or agencies, other than those specified in Rule 18(a), shall contain:
- (i) an index of the contents of the record, which shall appear as the first page thereof;
 - (ii) a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - (iii) a copy of the summons, notice of hearing or other papers showing jurisdiction of the board or agency over the persons or property sought to be bound in the proceeding, or a statement showing same;
 - (iv) copies of all petitions and other pleadings filed in the superior court;

- (v) copies of all items included in the record of administrative proceedings which were filed in the superior court for review; (formerly (vi))
 - (vi) so much of the evidence before the superior court, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement that the entire verbatim transcript of the proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed; (formerly (vii))
 - (vii) a copy of any findings of fact and conclusions of law and of the judgment, order, or other determination of the superior court from which appeal is taken; (formerly (v))
 - (viii) a copy of the notice of appeal from the superior court, or of an appropriate entry showing appeal taken orally, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is filed pursuant to Rule 9(c)(2) and (3); and
 - (ix) exceptions and assignments of error to the actions of the superior court, set out in the manner provided in Rule 10.
- (3) **Composition of the Record in Criminal Actions.** The record on appeal in criminal actions shall contain:
- (i) an index of the contents of the record, which shall appear as the first page thereof;
 - (ii) a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - (iii) copies of all warrants, informations, presentments, and indictments upon which the case has been tried in any court;
 - (iv) copies of docket entries or a statement showing all arraignments and pleas;

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- (v) so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement that the entire verbatim transcript of the proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - (vi) where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;
 - (vii) copies of the verdict and of the judgment, order, or other determination from which appeal is taken;
 - (viii) a copy of the notice of appeal, or of an appropriate entry showing appeal taken orally, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding defendant indigent for the purposes of the appeal and assigning counsel, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is to be filed pursuant to Rule 9(c)(2);
 - (ix) copies of all other papers filed and statements of all other proceedings had in the trial courts which are necessary for an understanding of all errors assigned, unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2); and
 - (x) exceptions and assignments of error set out in the manner provided in Rule 10.
- (b) **Form of Record; Amendments.** The record on appeal shall be in the format prescribed by Rule 26(g) and the appendixes to these rules.
- (1) **Order of Arrangement.** The items constituting the record on appeal should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal. (formerly (b)(4))
 - (2) **Inclusion of Unnecessary Matter; Penalty.** It shall be the duty of counsel for all parties to an appeal to avoid including in the record on appeal matter not necessary for an understanding of the errors assigned. The cost of including such matter may be charged as costs to the party

or counsel who caused or permitted its inclusion. (formerly (b)(5))

- (3) **Filing Dates and Signatures on Papers.** Every pleading, motion, affidavit, or other paper included in the record on appeal shall show the date on which it was filed and, if verified, the date of verification and the person who verified. Every judgment, order, or other determination shall show the date on which it was entered. The typed or printed name of the person signing a paper shall be entered immediately below the signature. (formerly (c)(3))
 - (4) **Pagination; Counsel Identified.** The pages of the record on appeal shall be numbered consecutively, be referred to as "record pages" and be cited as "(R p__)." Pages of the verbatim transcript of proceedings filed under Rule 9(c)(2) shall be referred to as "transcript pages" and cited as "(T p__)." At the end of the record on appeal shall appear the names, office addresses, and telephone numbers of counsel of record for all parties to the appeal. (formerly (c)(4))
 - (5) **Additions and Amendments to Record on Appeal.** On motion of any party or on its own initiative, the appellate court may order additional portions of a trial court record or transcript sent up and added to the record on appeal. On motion of any party the appellate court may order any portion of the record on appeal or transcript amended to correct error shown as to form or content. Prior to the docketing of the record on appeal in the appellate court, such motions may be made by any party to the trial tribunal. (formerly (b)(6))
- (c) **Presentation of Testimonial Evidence and Other Proceedings.** Testimonial evidence, voir dire, and other trial proceedings necessary to be presented for review by the appellate court may be included either in the record on appeal in the form specified in Rule 9(c)(1) or in the verbatim transcript of proceedings of the trial tribunal as provided in Rule 9(c)(2) and (c)(3). Where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given shall be included in the record on appeal.
- (1) **When Testimonial Evidence Narrated—How Set Out in Record.** Where error is assigned with respect to the admission or exclusion of evidence, the question and answer form shall be utilized in setting out the pertinent questions and answers. Other testimonial evidence required to

be included in the record on appeal by Rule 9(a) shall be set out in narrative form except where such form might not fairly reflect the true sense of the evidence received, in which case it may be set out in question and answer form. Counsel are expected to seek that form or combination of forms best calculated under the circumstances to present the true sense of the required testimonial evidence concisely and at a minimum of expense to the litigants. To this end, counsel may object to particular narration that it does not accurately reflect the true sense of testimony received; or to particular question and answer portions that the testimony might with no substantial loss in accuracy be summarized in narrative form at substantially less expense. When a judge or referee is required to settle the record on appeal under Rule 11(c) and there is dispute as to the form, he shall settle the form in the course of his general settlement of the record on appeal.

- (2) **Designation that Verbatim Transcript of Proceedings in Trial Tribunal Will Be Used.** Appellant may designate in the record that the testimonial evidence will be presented in the verbatim transcript of the evidence in the trial tribunal in lieu of narrating the evidence as permitted by Rule 9(c)(1). Appellant may also designate that the verbatim transcript will be used to present voir dire, jury instructions or other trial proceedings where those proceedings are the basis for one or more assignments of error and where a verbatim transcript of those proceedings has been made. Any such designation shall refer to the page numbers of the transcript being designated. Appellant need not designate all of the verbatim transcript which has been made, provided that when the verbatim transcript is designated to show the testimonial evidence, so much of the testimonial evidence must be designated as is necessary for an understanding of all errors assigned.
- (3) **Verbatim Transcript of Proceedings—Settlement, Filing, Copies, Briefs.** Whenever a verbatim transcript is designated to be used pursuant to Rule 9(c)(2):
- (i) it shall be settled, together with the record on appeal, according to the procedures established by Rule 11;
 - (ii) appellant shall cause the settled, verbatim transcript to be filed, contemporaneously with the record on ap-

peal, with the clerk of the appellate court in which the appeal is docketed;

(iii) in criminal appeals, the district attorney, upon settlement of the record, shall forward one copy of the settled transcript to the Attorney General of North Carolina; and

(iv) the briefs of the parties must comport with the requirements of Rule 28 regarding complete statement of the facts of the case and regarding appendixes to the briefs.

(4) **Presentation of Discovery Materials.** Discovery materials offered into evidence at trial shall be brought forward, if relevant, as other evidence. In all instances where discovery materials are considered by the trial tribunal, other than as evidence offered at trial, the following procedures for presenting those materials to the appellate court shall be used: Depositions shall be treated as testimonial evidence and shall be presented by narration or by transcript of the deposition in the manner prescribed by this Rule 9(c). Other discovery materials, including interrogatories and answers, requests for admission, responses to requests, motions to produce, and the like, pertinent to questions raised on appeal, may be set out in the record on appeal or may be sent up as documentary exhibits in accordance with Rule 9(d)(2).

(d) **Models, Diagrams, and Exhibits of Material.**

(1) **Exhibits.** Maps, plats, diagrams and other documentary exhibits filed as portions of or attachments to items required to be included in the record on appeal shall be included as part of such items in the record on appeal. Where such exhibits are not necessary to an understanding of the errors assigned, they may by agreement of counsel or by order of the trial court upon motion be excluded from the record on appeal.

(2) **Transmitting Exhibits.** Three legible copies of each documentary exhibit offered in evidence and required for understanding of errors assigned shall be filed in the appellate court. When an original exhibit has been settled as a necessary part of the record on appeal, any party may within 10 days after settlement of the record on appeal in writing request the clerk of superior court to transmit

the exhibit directly to the clerk of the appellate court. The clerk shall thereupon promptly identify and transmit the exhibit as directed by the party. Upon receipt of the exhibit, the clerk of the appellate court shall make prompt written acknowledgment thereof to the transmitting clerk and the exhibit shall be included as part of the records in the appellate court. Portions of the record on appeal in either appellate court which are not suitable for reproduction may be designated by the Clerk of the Supreme Court to be exhibits. Counsel may then be required to submit three additional copies of those designated materials.

- (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 90 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 him may seem best.

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.

RULE 10

EXCEPTIONS AND ASSIGNMENTS OF ERROR IN RECORD ON APPEAL

- (a) **Function in Limiting Scope of Review.** Except as otherwise provided in this Rule 10, the scope of review on appeal is confined to a consideration of those exceptions set out in the record on appeal or in the verbatim transcript of proceedings, if one is filed pursuant to Rule 9(c)(2), and made the basis of assignments of error in the record on appeal in accordance

with this Rule 10. No exception not so set out may be made the basis of an assignment of error; and no exception so set out which is not made the basis of an assignment of error may be considered on appeal. Provided, that upon any appeal duly taken from a final judgment any party to the appeal may present for review, by properly raising them in his brief, the questions whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction of the subject matter, and whether a criminal charge is sufficient in law, notwithstanding the absence of exceptions or assignments of error in the record on appeal.

(b) **Exceptions.**

- (1) **General.** Any exception which 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, may be set out in the record on appeal or in the verbatim transcript of proceedings, if one is filed pursuant to Rule 9(c)(2) and made the basis of an assignment of error. Bills of exception are not required. Each exception shall be set out immediately following the record of judicial action to which it is addressed and shall identify the action, without any statement of the grounds or argumentation, by any clear means of reference. Exceptions so set out shall be numbered consecutively in order of their occurrence.
- (2) **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 objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury. In the record on appeal an exception to instructions given the jury shall identify the portion in question by setting it within brackets or by any other clear means of reference. An exception to the failure to give particular instructions to the jury, or to make a particular finding of fact or conclusion of law which finding or conclusion was not specifically requested of the trial judge, shall identify the omitted instruction, finding or conclusion by setting out its

substance immediately following the instructions given, or findings or conclusions made. A separate exception shall be set out to the making or omission of each finding of fact or conclusion of law which is to be assigned as error.

- (3) **Sufficiency of the Evidence.** A defendant in a criminal case may not assign as error the insufficiency of the evidence to prove the crime charged unless he moves to dismiss the action, or for judgment as in case of nonsuit, 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, his motion for dismissal or judgment as 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 judgment as in case of nonsuit at the conclusion of all the evidence, irrespective of whether he 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 his 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, he 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.

- (c) **Assignments of Error—Form.** The exceptions upon which a party intends to rely shall be indicated by setting out at the conclusion of the record on appeal assignments of error based upon such exceptions. Each assignment of error shall be consecutively numbered; shall, so far as practicable, be confined to a single issue of law; shall state plainly and concisely and without argumentation the basis upon which error is assigned; and shall be followed by a listing of all the exceptions upon which it is based, identified by their numbers and by the record pages or transcript pages at which they appear. Exceptions not thus listed will be deemed abandoned. It is not necessary to include in an assignment of error those portions of the record or transcript of proceedings to which it is

directed, a proper listing of the exceptions upon which it is based being sufficient.

- (d) **Exceptions and Cross-Assignments of Error by Appellee.** Without taking an appeal an appellee may set out exceptions to and cross-assign as error any action or omission of the trial court to which an exception was duly taken or as to which an exception was deemed by rule or law to have been taken, and which deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. Portions of the record or transcript of proceedings necessary to an understanding of such cross-assignments of error 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).

Adopted: 13 June 1975.

Amended: 10 June 1981—10(b)(2), applicable to every case the trial of which begins on or after 1 October 1981;

7 July 1983—10(b)(3);

27 November 1984—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985.

RULE 11

SETTLING THE RECORD ON APPEAL

- (a) **By Agreement.** Within 60 days after appeal is taken, the parties may by agreement entered in the record on appeal settle a proposed record on appeal prepared by any party in accordance with Rule 9 as the record on appeal.
- (b) **By Appellee's Approval of Appellant's Proposed Record on Appeal.** If the record on appeal is not settled by agreement under Rule 11(a), the appellant shall, within 60 days after appeal is taken, file in the office of the clerk of superior court and serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 9. Within 15 days after service of the proposed record on appeal upon him an appellee may file in the office of the clerk of superior

court and serve upon all other parties a notice of approval of the proposed record on appeal, or objections, amendments, or a proposed alternative record on appeal in accordance with Rule 11(c). If all appellees within the times allowed them either file notices of approval or fail to file either notices of approval or objections, amendments, or proposed alternative records on appeal, appellant's proposed record on appeal thereupon constitutes the record on appeal.

- (c) **By Judicial Order or Appellant's Failure to Request Judicial Settlement.** Within 15 days after service upon him of appellant's proposed record on appeal, an appellee may file in the office of the clerk of superior court and serve upon all other parties specific amendments or objections to the proposed record on appeal, or a proposed alternative record on appeal. Amendments or objections to the proposed record on appeal shall be set out in a separate paper.

If any appellee timely files amendments, objections, or a proposed alternative record on appeal, the appellant or any other appellee, within 10 days after expiration of the time within which the appellee last served might have filed, may in writing request the judge from whose judgment, order, or other determination appeal was taken to settle the record on appeal. A copy of the request, endorsed with a certificate showing service on the judge, shall be filed forthwith in the office of the clerk of the superior court, and served upon all other parties. If only one appellee or only one set of appellees proceeding jointly have so filed, and no other party makes timely request for judicial settlement, the record on appeal is thereupon settled in accordance with the appellee's objections, amendments or proposed alternative record on appeal. If more than one appellee proceeding separately have so filed, failure of the appellant to make timely request for judicial settlement results in abandonment of the appeal as to those appellees, unless within the time allowed an appellee makes request in the same manner.

The judge shall send written notice to counsel for all parties setting a place and a time for a hearing to settle the record on appeal. The hearing shall be held not later than 15 days after service of the request for hearing upon the judge. The judge shall settle the record on appeal by order entered not more than 20 days after service of the request for hearing upon the judge.

Provided, that nothing herein shall prevent settlement of the record on appeal by agreement of the parties at any time within the times herein limited for settling the record by judicial order.

- (d) **Multiple Appellants; Single Record on Appeal.** When there are multiple appellants (2 or more), whether proceeding separately or jointly, as parties aligned in interest, or as cross-appellants, there shall nevertheless be but one record on appeal, and the appellants shall attempt to agree to the procedure for constituting a proposed record on appeal. The exceptions and assignments of error of the several appellants shall be set out separately in the single record on appeal and related to the several appellants by any clear means of reference. In the event multiple appellants cannot agree to the procedure for constituting a proposed record on appeal, the judge from whose judgment, order, or other determination the appeals are taken shall, on motion of any appellant with notice to all other appellants, enter an order settling the procedure, including the allocation of costs.
- (e) **Extensions of Time.** The times provided in this rule for taking any action may be extended in accordance with the provisions of Rule 27(c).

Adopted: 13 June 1975.

Amended: 27 November 1984—11(a), (c), (e), and (f)—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985.

RULE 12

FILING THE RECORD; DOCKETING THE APPEAL; COPIES OF THE RECORD

- (a) **Time for Filing Record on Appeal.** Within 15 days after the record on appeal has been settled by any of the procedures provided in this Rule 11 or Rule 18, but no later than 150 days after giving notice of appeal, the appellant shall file the record on appeal with the clerk of the court to which appeal is taken.
- (b) **Docketing the Appeal.** At the time of filing the record on appeal, the appellant shall pay to the clerk the docket fee fixed pursuant to G.S. 7A-20(b), and the clerk shall thereupon enter

the appeal upon the docket of the appellate court. If an appellant is authorized to appeal in forma pauperis as provided in G.S. 1-288 or 7A-450 et seq., the clerk shall docket the appeal upon timely filing of the record on appeal. An appeal is docketed under the title given to the action in the trial division, with the appellant identified as such. The clerk shall forthwith give notice to all parties of the date on which the appeal was docketed in the appellate court.

- (c) **Copies of Record on Appeal.** The appellant need file but a single copy of the record on appeal. Upon filing, the appellant may be required to pay to the clerk of the appellate court a deposit fixed by the clerk to cover the costs of reproducing copies of the record on appeal. The clerk will reproduce and distribute copies as directed by the court. By stipulation filed with the record on appeal the parties may agree that specified portions of the record on appeal need not be reproduced in the copies prepared by the clerk. Upon prior agreement with the clerk, the appellant may file with the record on appeal a proposed printed record prepared in accordance with Rule 26 and the appendixes to these rules.

In civil appeals in forma pauperis the appellant need not pay a deposit for reproducing copies, but at the time of filing the original record on appeal shall also deliver to the clerk two legible copies thereof.

Adopted: 13 June 1975.

Amended: 27 November 1984—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985.

RULE 13

FILING AND SERVICE OF BRIEFS

- (a) **Time for Filing and Service.** Within 20 days after the clerk of the appellate court has mailed the printed record to the parties, the appellant shall file his brief in the office of the clerk of the appellate court, and serve copies thereof upon all other parties separately represented. In civil appeals in forma pauperis, no printed record is created; accordingly, appellant's 20 days for filing and serving the brief shall run from the date of docketing the record on appeal in the appellate court. Within 20 days after appellant's brief has been served on an

appellee, the appellee shall similarly file and serve copies of his brief.

- (b) **Copies Reproduced by Clerk.** A party need file but a single copy of his brief. At the time of filing the party may be required to pay to the clerk of the appellate court a deposit fixed by the clerk to cover the cost of reproducing copies of the brief. The clerk will reproduce and distribute copies of briefs as directed by the court.

In civil appeals in forma pauperis a party need not pay the deposit for reproducing copies, but at the time of filing his original brief shall also deliver to the clerk two legible photocopies thereof.

- (c) **Consequence of Failure to File and Serve Briefs.** If an appellant fails to file and serve his brief within the time allowed, the appeal may be dismissed on motion of an appellee or on the court's own initiative. If an appellee fails to file and serve his brief within the time allowed, he may not be heard in oral argument except by permission of the court.

Adopted: 13 June 1975.

Amended: 7 October 1980—13(a)—effective 1 January 1981;

27 November 1984—13(a) and (b)—effective 1 February 1985.

RULE 14

APPEALS OF RIGHT FROM COURT OF APPEALS TO SUPREME COURT UNDER G.S. 7A-30

- (a) **Notice of Appeal; Filing and Service.** Appeals of right from the Court of Appeals to the Supreme Court are taken by filing notices of appeal with the Clerk of the Court of Appeals and with the Clerk of the Supreme Court and serving notice of appeal upon all other parties within 15 days after the mandate of the Court of Appeals has been issued to the trial tribunal. The running of the time for filing and serving a notice of appeal is tolled as to all parties by the filing by any party within such time of a petition for rehearing under Rule 31 of these rules, and the full time for appeal thereafter commences to run and is computed as to all parties from the date of entry by the Court of Appeals of an order denying the peti-

tion for rehearing. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days after the first notice of appeal was filed. A petition prepared in accordance with Rule 15(c) for discretionary review in the event the appeal is determined not to be of right or for issues in addition to those set out as the basis for a dissenting opinion may be filed with or contained in the notice of appeal.

(b) Content of Notice of Appeal.

(1) **Appeal Based Upon Dissent in Court of Appeals.** In an appeal which is based upon the existence of a dissenting opinion in the Court of Appeals the notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment of the Court of Appeals from which the appeal is taken; shall state the basis upon which it is asserted that appeal lies of right under G.S. 7A-30; and shall state the issue or issues which are the basis of the dissenting opinion and which are to be presented to the Supreme Court for review.

(2) **Appeal Presenting Constitutional Question.** In an appeal which is asserted by the appellant to involve a substantial constitutional question, the notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment of the Court of Appeals from which the appeal is taken; shall state the basis upon which it is asserted that appeal lies of right under G.S. 7A-30; shall specify the articles and sections of the Constitution asserted to be involved; shall state with particularity how appellant's rights thereunder have been violated; and shall affirmatively state that the constitutional issue was timely raised (in the trial tribunal if it could have been, in the Court of Appeals if not) and either not determined or determined erroneously.

(c) Record on Appeal.

(1) **Composition.** The record on appeal filed in the Court of Appeals constitutes the record on appeal for review by the Supreme Court. However, the Supreme Court may note de novo any deficiencies in the record on appeal and may take such action in respect thereto as it deems appropriate, including dismissal of the appeal.

(2) **Transmission; Docketing; Copies.** Upon the filing of a notice of appeal, the Clerk of the Court of Appeals will

forthwith transmit the original record on appeal to the Clerk of the Supreme Court, who shall thereupon file the record and docket the appeal. The Clerk of the Supreme Court will procure or reproduce copies of the record on appeal for distribution as directed by the Court, and may require a deposit from appellant to cover the cost of reproduction. In appeals in forma pauperis, the Clerk of the Court of Appeals will transmit with the original record on appeal the copies filed by the appellant in that Court under Rule 12(c).

(d) **Briefs.**

- (1) **Filing and Service; Copies.** Within 20 days after filing notice of appeal in the Supreme Court, the appellant shall file with the Clerk of the Supreme Court and serve upon all other parties copies of a new brief prepared in conformity with Rule 28, presenting only those questions upon which review by the Supreme Court is sought; provided, however, that when the appeal is based upon the existence of a substantial constitutional question or when the appellant has filed a petition for discretionary review for issues in addition to those set out as the basis of a dissent in the Court of Appeals, the appellant shall file and serve a new brief within 20 days after entry of the order of the Supreme Court which determines for the purpose of retaining the appeal on the docket that a substantial constitutional question does exist or allows or denies the petition for discretionary review in an appeal based upon a dissent. Within 20 days after service of the appellant's brief upon him, the appellee shall similarly file and serve copies of a new brief.

The parties need file but single copies of their respective briefs. At the time of filing a brief, the party may be required to pay to the Clerk a deposit fixed by the Clerk to cover the cost of reproducing copies of the brief. The Clerk will reproduce and distribute copies as directed by the Court.

In civil appeals in forma pauperis a party need not pay the deposit for reproducing copies, but at the time of filing his original new brief shall also deliver to the Clerk two legible copies thereof.

- (2) **Failure to File or Serve.** If an appellant fails to file and serve his brief within the time allowed, the appeal may be

dismissed on motion of an appellee or on the court's own initiative. If an appellee fails to file and serve his brief within the time allowed, he may not be heard in oral argument except by permission of the Court.

Adopted: 13 June 1975.

Amended: 31 January 1977—14(d)(1);

7 October 1980—14(d)(1)—effective 1 January 1981;

27 November 1984—14(a), (b), and (d)—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985.

RULE 21

CERTIORARI

(a) **Scope of the Writ.**

(1) **Review of the Judgments and Orders of Trial Tribunals.**

The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to G.S. 15A-1422(c)(3) of an order of the trial court denying a motion for appropriate relief.

(2) **Review of the Judgments and Orders of the Court of Appeals.**

The writ of certiorari may be issued by the Supreme Court in appropriate circumstances to permit review of the decisions and orders of the Court of Appeals when the right to prosecute an appeal of right or to petition for discretionary review has been lost by failure to take timely action; or for review of orders of the Court of Appeals when no right of appeal exists.

(b) **Petition for Writ; to Which Appellate Court Addressed.**

Application for the writ of certiorari shall be made by filing a petition therefor with the clerk of the court of the appellate division to which appeal of right might lie from a final judgment in the cause by the tribunal to which issuance of the writ is sought.

- (c) **Same; Filing and Service; Content.** The petition shall be filed without unreasonable delay and shall be accompanied by proof of service upon all other parties. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the reasons why the writ should issue; and certified copies of the judgment, order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The petition shall be verified by counsel or the petitioner. Upon receipt of the prescribed docket fee, the clerk will docket the petition.
- (d) **Response; Determination by Court.** Within 10 days after service upon him of the petition any party may file a response thereto with supporting affidavits or certified portions of the record not filed with the petition. Filing shall be accompanied by proof of service upon all other parties. The court for good cause shown may shorten the time for filing a response. Determination will be made on the basis of the petition, the response and any supporting papers. No briefs or oral argument will be received or allowed unless ordered by the court upon its own initiative.
- (e) **Petition for Writ in Post Conviction Matters; to Which Appellate Court Addressed.** Petitions for writ of certiorari to review orders of the trial court denying motions for appropriate relief upon grounds listed in G.S. 15A-1415(b) by persons who have been sentenced to life imprisonment or death shall be filed in the Supreme Court. In all other cases such petitions shall be filed in and determined by the Court of Appeals and the Supreme Court will not entertain petitions for certiorari or petitions for further discretionary review in these cases.

Adopted: 13 June 1975.

Amended: 18 November 1981—21(a) and (e);

27 November 1984—21(a)—effective 1 February 1985.

RULE 26

FILING AND SERVICE

- (a) **Filing.** Papers required or permitted by these rules to be filed in the trial or appellate divisions shall be filed with the clerk

of the appropriate court. Filing may be accomplished by mail addressed to the clerk but is not timely unless the papers are received by the clerk within the time fixed for filing, except that proposed records on appeal and briefs shall be deemed filed on the date of mailing, as evidenced by the proof of service, if first class mail is utilized.

- (b) **Service of All Papers Required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served on all other parties to the appeal.
- (c) **Manner of Service.** Service may be made in the manner provided for service and return of process in Rule 4 of the N. C. Rules of Civil Procedure, and may be so made upon a party or upon his attorney of record. Service may also be made upon a party or his attorney of record by delivering a copy to either or by mailing it to either at his last known address, or if no address is known, by filing it in the office of the clerk with whom the original paper is filed. Delivery of a copy within this Rule means handing it to the attorney or to the party, or leaving it at the attorney's office with a partner or employee. Service by mail is complete upon deposit of the paper enclosed in a postpaid, properly addressed wrapper in a Post Office or official depository under the exclusive care and custody of the United States Post Office Department, or, for those having access to such services, upon deposit with the State Courier Service or Inter-Office Mail.
- (d) **Proof of Service.** Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service shall appear on or be affixed to the papers filed.
- (e) **Joint Appellants and Appellees.** Any paper required by these rules to be served on a party is properly served upon all parties joined in the appeal by service upon any one of them.
- (f) **Numerous Parties to Appeal Proceeding Separately.** When there are unusually large numbers of appellees or appellants proceeding separately, the trial tribunal upon motion of any party or on its own initiative, may order that any papers required by these rules to be served by a party on all other parties need be served only upon parties designated in the order, and that the filing of such a paper and service thereof upon

the parties designated constitutes due notice of it to all other parties. A copy of every such order shall be served upon all parties to the action in such manner and form as the court directs.

- (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.

Adopted: 13 June 1975.

Amended: 5 May 1981—26(g)—effective for all appeals arising from cases filed in the court of original jurisdiction after 1 July 1982;

11 February 1982—26(c);

7 December 1982—26(g)—effective for documents filed on and after 1 March 1983;

27 November 1984—26(a)—effective for documents filed on and after 1 February 1985.

RULE 27

COMPUTATION AND EXTENSION OF TIME

- (a) **Computation of Time.** In computing any period of time prescribed or allowed by these rules, by order of court, or by

any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

- (b) **Additional Time After Service by Mail.** Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.
- (c) **Extensions of Time; By Which Court Granted.** Except as herein provided, courts for good cause shown may upon motion extend any of the times prescribed by these rules or by order of court for doing any act required or allowed under these rules; or may permit an act to be done after the expiration of such time. Courts may not extend the time for taking an appeal or for filing a petition for discretionary review or a petition for rehearing prescribed by these rules or by law.
- (1) **Motions for Extension of Time in the Trial Division.** All motions for extensions of time not to exceed 150 days from the date the notice of appeal is given are made to the trial tribunal from whose judgment, order, or other determination the appeal has been taken during the time prior to docketing of the appeal in the appellate division. No extension of time which runs beyond 150 days from the date the notice of appeal is given shall be granted by the trial tribunal.

Motions for extensions of time made to a trial tribunal may be made orally or in writing and without notice to other parties and may be determined at any time or place within the state; provided that motions to extend the time for serving the proposed record on appeal made after the expiration of any time previously allowed for such service must be in writing and with notice to all other parties and may be allowed only after all other parties have had opportunity to be heard. Such motions may be determined ex parte, but the moving party shall promptly serve on all other parties to the appeal a copy of any order extending time.

Motions made under this Rule 27 to a court of the trial divisions may be heard and determined by any of

those judges of the particular court specified in Rule 36 of these rules. Such motions made to a commission may be heard and determined by the chairman of the commission; or if to a commissioner, then by that commissioner.

(2) **Motions for Extension of Time in the Appellate Division.**

All motions for extensions of time, including the time for filing the record on appeal, to a time greater than 150 days from the date the notice of appeal is given may only be made to the appellate court to which appeal has been taken. Any subsequent motion for any extension of time shall be made to the appellate court.

Adopted: 13 June 1975.

Amended: 7 March 1978—27(c);

4 October 1978—27(c)—effective 1 January 1979;

27 November 1984—27(a) and (c)—effective 1 February 1985.

RULE 28

BRIEFS: FUNCTION AND CONTENT

- (a) **Function.** The function of all briefs required or permitted by these rules is to define clearly the questions presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. Review is limited to questions so presented in the several briefs. Questions raised by assignments of error in appeals from trial tribunals but not then presented and discussed in a party's brief, are deemed abandoned. Similarly, questions properly presented for review in the Court of Appeals but not then presented and discussed in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court for review by that Court are deemed abandoned.
- (b) **Content of Appellant's Brief.** An appellant's brief in any appeal shall contain, under appropriate headings, and in the form prescribed by Rule 26(g) and the Appendixes to these rules, in the following order:
- (1) A table of contents and table of authorities required by Rule 26(g).

- (2) A statement of the questions presented for review.
- (3) A concise statement of the procedural history of the case. This shall indicate the nature of the case and summarize the course of proceedings up to the taking of the appeal before the court.
- (4) A full and complete 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 transcript of proceedings, the record on appeal, or exhibits, as the case may be.
- (5) An argument, to contain the contentions of the appellant with respect to each question presented. Each question shall be separately stated. Immediately following each question shall be a reference to the assignments of error and exceptions pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal, or the transcript of proceedings if one is filed pursuant to Rule 9(c)(2). Exceptions not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.

The body of the argument shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the question presented may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal or the transcript of proceedings, or the exhibits.

- (6) A short conclusion stating the precise relief sought.
 - (7) Identification of counsel by signature, typed name, office address and telephone number.
 - (8) The proof of service required by Rule 26(d).
 - (9) The appendix required by Rule 28(d).
- (c) **Content of Appellee's Brief; Presentation of Additional Questions.** An appellee's brief in any appeal shall contain a table of contents and table of authorities as required by Rule 26(g), an argument, a conclusion, identification of counsel and proof of service in the form provided in Rule 28(b) for an appellant's brief, and any appendix as may be required by Rule 28(d). It need contain no statement of the questions presented, state-

ment of the procedural history of the case, or statement of the facts, unless the appellee disagrees with the appellant's statements and desires to make a restatement or unless the appellee desires to present questions in addition to those stated by the appellant.

Without having taken appeal, an appellee may present for review, by stating them in his brief, any questions raised by cross-assignments of error under Rule 10(d). Without having taken appeal or made cross-assignments of error, an appellee may present the question, by statement and argument in his brief, whether a new trial should be granted to the appellee rather than a judgment n.o.v. awarded to the appellant when the latter relief is sought on appeal 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 record on appeal, the transcript of proceedings, or the appendixes, as appropriate.

- (d) **Appendixes to Briefs.** Whenever the transcript of proceedings is filed pursuant to Rule 9(c)(2), the parties must file verbatim portions of the transcript as appendixes to their briefs, if required by this Rule 28(d).
- (1) **When Appendixes to Appellant's Brief Are Required.** Except as provided in Rule 28(d)(2), the appellant must reproduce as appendixes to its brief:
- (i) those portions of the transcript of proceedings which must be reproduced verbatim in order to understand any question presented in the brief;
 - (ii) those portions of the transcript showing the pertinent questions and answers when a question presented in the brief involves the admission or exclusion of evidence.
- (2) **When Appendixes to Appellant's Brief Are Not Required.** Notwithstanding the requirements of Rule 28(d)(1), the appellant is not required to reproduce an appendix to its brief with respect to an assignment of error:
- (i) whenever the portion of the transcript necessary to understand a question presented in the brief is reproduced verbatim in the body of the brief;

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- (ii) to show the absence or insufficiency of evidence unless there are discrete portions of the transcript where the subject matter of the alleged insufficiency of the evidence is located; or
 - (iii) to show the general nature of the evidence necessary to understand a question presented in the brief if such evidence has been fully summarized as required by Rule 28(b)(4) and (5).
- (3) **When Appendixes to Appellee's Brief Are Required.** Appellee must reproduce appendixes to his brief in the following circumstances:
- (i) Whenever the appellee believes that appellant's appendixes do not include portions of the transcript required by Rule 28(d)(1), the appellee shall reproduce those portions of the transcript he believes to be necessary to understand the question.
 - (ii) Whenever the appellee presents a new or additional question in his brief as permitted by Rule 28(c), the appellee shall reproduce portions of the transcript as if he were the appellant with respect to each such new or additional question.
- (4) **Format of Appendixes.** The appendixes to the briefs of any party shall be in the format prescribed by Rule 26(g) and shall consist of clear photocopies of transcript pages which have been deemed necessary for inclusion in the appendix under this Rule 28(d). The pages of the appendix shall be consecutively numbered and an index to the appendix shall be placed at its beginning.
- (e) **References in Briefs to the Record.** References in the briefs to exceptions and assignments of error shall be by their numbers and to the pages of the printed record on appeal or of the transcript of proceedings, or both, as the case may be, at which they appear. Reference to parts of the printed record on appeal and to the verbatim transcript or documentary exhibits shall be to the pages where the parts appear.
- (f) **Joinder of Multiple Parties in Briefs.** Any number of appellants or appellees in a single cause or in causes consolidated for appeal may join in a single brief although they are not formally joined on the appeal. Any party to any appeal may adopt by reference portions of the briefs of others.

- (g) **Additional Authorities.** Additional authorities discovered by a party after filing his brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority. Authorities not cited in the briefs nor in such a memorandum may not be cited and discussed in oral argument.

Before the Court of Appeals, the party shall file an original and three copies of the memorandum; in the Supreme Court, the party shall file an original and 14 copies of the memorandum.

(h) **Reply Briefs.**

(1) If the appellee has presented in its brief new or additional questions as permitted by Rule 28(c), an appellant may, within 20 days after service upon him of such brief, file and serve a reply brief limited to those new or additional questions presented in the appellee's brief.

(2) Except for a reply brief filed under Rule 28(h)(1), or unless the court, upon its own initiative, orders a reply brief to be filed and served, none will be received or considered by the court.

- (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.

Adopted: 13 June 1975.

Amended: 27 January 1981—repeal 28(d)—effective 1 July 1981;

10 June 1981—28(b) and (c)—effective 1 October 1981;

12 January 1982—28(b)(4)—effective 15 March 1982;

7 December 1982—28(i)—effective 1 January 1983;

27 November 1984—28(b), (c), (d), (e), (g), and (h)—effective 1 February 1985.

RULE 31

PETITION FOR REHEARING

- (a) **Time for Filing; Content.** A petition for rehearing may be filed in a civil action within 15 days after the mandate of the court has been issued. The petition shall state with particularity the points of fact or law which, in the opinion of the petitioner, the court has overlooked or misapprehended, and shall contain such argument in support of the petition as petitioner desires to present. It shall be accompanied by a certificate of at least two attorneys who for periods of at least five years respectively, shall have been members of the bar of this State and who have no interest in the subject of the action and have not been counsel for any party to the action, that they have carefully examined the appeal and the authorities cited in the decision, and that they consider the

decision in error on points specifically and concisely identified. Oral argument in support of the petition will not be permitted.

- (b) **How Addressed; Filed.** A petition to the Supreme Court shall be addressed to the court. Two copies thereof shall be filed with the clerk.

A petition to the Court of Appeals shall be addressed to the court. Two copies thereof shall be filed with the clerk.

- (c) **How Determined.** Within 30 days after the petition is filed, the court will either grant or deny the petition. Determination to grant or deny will be made solely upon the written petition; no written response will be received from the opposing party; and no oral argument by any party will be heard. Determination by the court is final. The rehearing may be granted as to all or less than all points suggested in the petition. When the petition is denied the clerk shall forthwith notify all parties.
- (d) **Procedure When Granted.** Upon grant of the petition the clerk shall forthwith notify the parties that the petition has been granted, and if the court has ordered oral argument, shall give notice of the time set therefor, which time shall be not less than 30 days from the date of such notice. The case will be reconsidered solely upon the record on appeal, the petition to rehear, and new briefs of both parties, and the oral argument if one has been ordered by the court. The briefs shall be addressed solely to the points specified in the order granting the petition to rehear. The petitioner's brief shall be filed within 10 days after the clerk has given notice of the grant of the petition; and the opposing party's brief, within 20 days after petitioner's brief is served upon him. Filing and service of the new briefs shall be in accordance with the requirements of Rule 13.
- (e) **Stay of Execution.** When a petition for rehearing is filed, the petitioner may obtain a stay of execution in the trial court to which the mandate of the appellate court has been issued. The procedure is as provided for stays pending appeal by Rule 8 of these rules.
- (f) **Waiver by Appeal from Court of Appeals.** The timely filing of a notice of appeal from, or of a petition for discretionary review of, a determination of the Court of Appeals constitutes a waiver of any right thereafter to petition the Court of Ap-

peals for rehearing as to such determination or, if a petition for rehearing has earlier been filed, an abandonment of such petition.

- (g) **No Petition in Criminal Cases.** The courts will not entertain petitions for rehearing in criminal actions.

Adopted: 13 June 1975.

Amended: 27 November 1984—31(a)—effective 1 February 1985.

RULE 32

MANDATES OF THE COURTS

- (a) **In General.** Unless a court of the appellate division directs that a formal mandate shall issue, the mandate of the court consists of certified copies of its judgment and of its opinion and any direction of its clerk as to costs. The mandate is issued by its transmittal from the clerk of the issuing court to the clerk or comparable officer of the tribunal from which appeal was taken to the issuing court.
- (b) **Time of Issuance.** Unless a court orders otherwise, its clerk shall enter judgment and issue the mandate of the court 20 days after the written opinion of the court has been filed with the clerk.

Adopted: 13 June 1975.

Amended: 27 November 1984—32(b)—effective 1 February 1985.