

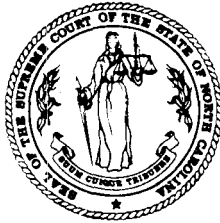
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RALEIGH  
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**AMENDMENTS TO  
RULES OF APPELLATE PROCEDURE**

Rules 18, and 20 of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, are hereby amended to read as in the following pages. Rule 19 of those Rules is hereby repealed and reserved for future use.

Inasmuch as these rules make the procedures for direct appeals from administrative agencies to the appellate division consistent with the rules for bringing appeals from the courts of the trial division which we amended on 27 November 1984, to be effective 1 February 1985, these amendments shall be applicable to all appeals in which the notice of appeal is filed on or after 15 March 1985.

Adopted by the Court in Conference this 27th day of February, 1985. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals.

EARL W. VAUGHN  
For the Court

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ARTICLE IV. DIRECT APPEALS FROM  
ADMINISTRATIVE AGENCIES TO APPELLATE DIVISION

RULE 18

**TAKING APPEAL; RECORD ON APPEAL—  
COMPOSITION AND SETTLEMENT**

- (a) **General.** Appeals of right from administrative agencies, boards, or commissions (hereinafter "agency") directly to the appellate division under G.S. 7A-29 shall be in accordance with the procedures provided in these rules for appeals of right from the courts of the trial divisions, except as hereinafter provided in this Article.
- (b) **Time and Method for Taking Appeals.**
- (1) The times and methods for taking appeals from an agency shall be as provided in this Rule 18 unless the statutes governing the agency provide otherwise, in which case those statutes shall control.
  - (2) Any party to the proceeding may appeal from a final agency determination to the appropriate court of the appellate division for alleged errors of law by filing and serving a notice of appeal within 30 days after receipt of a copy of the final order of the agency. The final order of the agency is to be sent to the parties by Registered or Certified Mail. The notice of appeal shall specify the party or parties taking the appeal; shall designate the final agency determination from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.
- (c) **Composition of Record on Appeal.** The record on appeal in appeals from any agency shall contain:
- (i) an index of the contents of the record, which shall appear as the first page thereof;
  - (ii) a copy of the summons with return, notice of hearing, or other papers showing jurisdiction of the agency over persons or property sought to be bound in the proceeding, or a statement showing same;
  - (iii) copies of all other notices, pleadings, petitions, or other papers required by law or rule of the agency to be filed

with the agency to present and define the matter for determination;

- (iv) a copy of any findings of fact and conclusions of law and a copy of the order, award, decision, or other determination of the agency from which appeal was taken;
  - (v) so much of the evidence taken before the agency or before any division, commissioner, deputy commissioner, or hearing officer of the agency, 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 verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2) and (3);
  - (vi) where the agency has reviewed a record of proceedings before a division, or an individual commissioner, deputy commissioner, or hearing officer of the agency, copies of all items included in the record filed with the agency which are necessary for an understanding of all errors assigned;
  - (vii) copies of all other papers filed and statements of all other proceedings had before the agency or any of its individual commissioners, deputies, or divisions which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings which is being filed pursuant to Rule 9(c)(2) and (3);
  - (viii) a copy of the notice of appeal from the agency, 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 agency, set out as provided in Rule 10.
- (d) **Settling the Record on Appeal.** The record on appeal may be settled by any of the following methods:
- (1) **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 this Rule 18 as the record on appeal.

- (2) **By Appellee's Approval of Appellant's Proposed Record on Appeal.** If the record on appeal is not settled by agreement under Rule 18(d)(1), the appellant shall, within 60 days after appeal is taken, file in the office of the agency head and serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 18(c). Within 30 days after service of the proposed record on appeal upon him, an appellee may file in the office of the agency head 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. 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.
- (3) **By Conference or Agency Order; Failure to Request Settlement.** 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 agency head to convene a conference to settle the record on appeal. A copy of that request, endorsed with a certificate showing service on the agency head, shall be 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 agency conference or settlement by order, the record on appeal is thereupon settled in accordance with the one appellee's, or one set of appellees', 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 agency conference or for settlement by order results in abandonment of the appeal as to those appellees, unless within the time allowed an appellee makes request in the same manner.

Upon receipt of a request for settlement of the record on appeal, the agency head shall send written notice to counsel for all parties setting a place and a time for a conference to settle the record on appeal. The conference shall be held not later than 15 days after service of the request

upon the agency head. The agency head or his delegate shall settle the record on appeal by order entered not more than 20 days after service of the request for settlement upon the agency; provided, however, that when the agency head is a party to the appeal, the agency head shall forthwith request the Chief Judge of the Court of Appeals or the Chief Justice of the Supreme Court, as appropriate, to appoint a referee to settle the record on appeal. The referee so appointed shall proceed after conference with all parties to settle the record on appeal in accordance with the terms of these Rules and the appointing order.

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 agency order.

- (e) **Further Procedures.** Further procedures for perfecting and prosecuting the appeal shall be as provided by these Rules for appeals from the courts of the trial divisions.
- (f) **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: 21 June 1977;

7 October 1980—18(d)(3)—effective 1 January 1981;

27 February 1985—applicable to all appeals in which the notice of appeal is filed on or after 15 March 1985.

## RULE 19

### (PARTIES TO APPEAL FROM AGENCIES)

#### REPEALED

#### RESERVED FOR FUTURE USE

Adopted: 13 June 1975.

Amended: 21 June 1977—19(d).

Repealed: 27 February 1985—effective 15 March 1985.

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**RULE 20****MISCELLANEOUS PROVISIONS OF LAW  
GOVERNING IN AGENCY APPEALS**

Specific provisions of law pertaining to stays pending appeals from any agency to the appellate division, to pauper appeals therein, and to the scope of review and permissible mandates of the Court of Appeals therein shall govern the procedure in such appeals notwithstanding any provisions of these rules which may prescribe a different procedure.

Adopted: 13 June 1975.

Amended: 27 February 1985—effective 15 March 1985.