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AMENDMENT TO RULES OF APPELLATE PROCEDURE

Rules 4, 21, 29 and 31 of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, are hereby amended to read as in the following pages. The amendments to Rules 4 and 21 shall be applicable to all appeals from judgments entered on and after 24 July 1987. The Amendments to Rules 29 and 31 shall be applicable to all appeals in which the notice of appeal is filed on or after 1 October 1987.

Adopted by the Court in Conference this 3rd day of September, 1987. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals.

s/WHICHARD, J.
For the Court

WITNESS my hand and the Seal of the Supreme Court of North Carolina, this the 22nd day of June, 1988.

J. GREGORY WALLACE
Clerk of the Supreme Court

RULE 4

APPEAL IN CRIMINAL CASES—HOW AND WHEN TAKEN

- (a) **Manner and Time.** Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by
- (1) giving oral notice of appeal at trial, or
 - (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within 10 days after entry of the judgment or order or within 10 days after a ruling on a motion for appropriate relief made during the ten-day period following entry of the judgment or order.
- (b) **Content of Notice of Appeal.** The notice of appeal required to be filed and served by subdivision (a)(2) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order 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) **Service of Notice of Appeal.** Service of copies of the notice of appeal may be made as provided in Rule 26 of these rules.
- (d) **To Which Appellate Court Addressed.** An appeal of right from a judgment of a superior court by any person who has been convicted of murder in the first degree and sentenced to life imprisonment or death shall be filed in the Supreme Court. In all other criminal cases, appeal shall be filed in the Court of Appeals.

Adopted: 13 June 1975:

Amended: 4 October 1978—(a)(2)—effective 1 January 1979;
13 July 1982—(d);
3 September 1987—(d)—effective for all judgments of the superior court entered on or after 24 July 1987.

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 convicted of murder in the first degree and 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;

3 September 1987—21(e)—effective for all judgments of the superior court entered on and after 24 July 1987.

RULE 29

SESSIONS OF COURTS; CALENDAR OF HEARINGS

(a) Sessions of Court.

- (1) **Supreme Court.** The Supreme Court shall be in continuous session for the transaction of business. Unless otherwise scheduled by the Court, hearings in appeals will be held during the week beginning the second Monday in the months of February through May and September through December. Additional settings may be authorized by the Chief Justice.
- (2) **Court of Appeals.** Appeals will be heard in accordance with a schedule promulgated by the Chief Judge. Panels of the Court will sit as scheduled by the Chief Judge. For the transaction of other business, the Court of Appeals shall be in continuous session.

- (b) **Calendaring of Cases for Hearing.** Each appellate court will calendar the hearing of all appeals docketed in the court. In general, appeals will be calendared for hearing in the order in which they are docketed, but the court may vary the order for any cause deemed appropriate. On motion of any party, with notice to all other parties, the court may determine without hearing to give an appeal peremptory setting or otherwise to vary the normal calendar order. Except as advanced for peremptory setting on motion of a party or the court's own initiative, no appeal will be calendared for hearing at a time less than 30 days after the filing of the appellant's brief. The clerk of the appellate court will give reasonable notice to all counsel of record of the setting of an appeal for hearing by mailing a copy of the calendar. When a reply brief is allowed by rule or ordered by the Court, the appeal will be calendared or re-calendared for hearing at a time not less than 10 days after the time for filing the reply brief.

Adopted: 13 June 1975.

Amended: 3 March 1982—29(a)(1);

3 September 1987—29(a)(1).

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. The case will be reconsidered solely upon the record on appeal, the petition to rehear, 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 20 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. If the court has ordered oral argument, the clerk shall give notice of the time set therefor, which time shall be not less than 30 days after the filing of the petitioner's brief on rehearing.
- (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 Appeals 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;

3 September 1987—31(d).