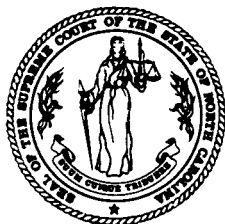


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ORDER ADOPTING
AMENDMENTS TO RULES OF APPELLATE PROCEDURE

Rules 3, 7, 9, 13, 14, 15, and 28 of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, are hereby amended to read as in the following pages. All amendments shall be effective as follows:

Rules 3, 7, and 9: effective for all judgments of the trial tribunal entered on or after 1 July 1989;

Rules 13, 14, 15, and 28: 1 September 1989;

Appendixes A through F: 1 July 1989.

The amendments to Rule 4(a), adopted 8 December 1988 to become effective 1 July 1989, are hereby rescinded. Rule 4 shall continue in effect without change.

Adopted by the Court in Conference this 8th day of June, 1989. These amendments shall be promulgated by publication in the Advance sheets of the Supreme Court and the Court of Appeals. The Appellate Court Reporter shall publish the North Carolina Rules of Appellate Procedure, in their entirety as amended through this action, at the earliest practicable time.

WHICHARD, J.
For the Court

Rule 3

APPEAL IN CIVIL CASES—HOW AND WHEN TAKEN

(a) *Filing the Notice of Appeal.* Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subdivision (c) of this rule.

(b) *Special Provisions.* Appeals in the following types of cases shall be taken in the time and manner set out in the General Statutes section noted.

(1) Termination of Parental Rights, G.S. 7A-289.34.

(2) Juvenile matters, G.S. 7A-666.

(c) *Time for Taking Appeal.* Appeal from a judgment or order in a civil action or special proceeding must be taken within 30 days after its entry. The running of the time for filing and serving a notice of appeal in a civil action or special proceeding is tolled as to all parties by a timely motion filed by any party pursuant to the Rules of Civil Procedure enumerated in this subdivision, and the full time for appeal commences to run and is to be computed from the entry of an order upon any of the following motions:

- (1) a motion under Rule 50(b) for judgment *n.o.v.* whether or not with conditional grant or denial of new trial;
- (2) a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;
- (3) a motion under Rule 59 to alter or amend a judgment;
- (4) a motion under Rule 59 for a new trial.

If a timely notice of appeal is filed and served by a party, any other party may file and serve a notice of appeal within 10 days after the first notice of appeal was served on such party.

(d) *Content of Notice of Appeal.* The notice of appeal required to be filed and served by subdivision (a) 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.

(e) *Service of Notice of Appeal.* Service of copies of the notice of appeal may be made as provided in Rule 26 of these rules.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 14 April 1976;

8 December 1988—3(a),(b),(c),(d)—effective for all judgments of the trial tribunal entered on or after 1 July 1989;

8 June 1989—3(b)—effective for all judgments of the trial tribunal entered on or after 1 July 1989.

Rule 7

PREPARATION OF THE TRANSCRIPT; COURT REPORTER'S DUTIES

(a) *Ordering the Transcript.*

- (1) **Civil Cases.** Within 10 days after filing the notice of appeal the appellant shall order, in writing, from the court reporter a transcript of such parts of the proceedings not already on file as he deems necessary. A copy of the order shall be filed with the clerk of the trial tribunal. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall file with the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be filed, the appellant shall, within the time above provided, file and serve on the appellee a description of the parts of the transcript which he intends to file with the record and a statement of the issues he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within 10 days after the service of the statement of the appellant, file and serve on the appellant a designation of additional parts ordered by the appellee. At the time of ordering, a party shall make

satisfactory arrangements with the court reporter for payment of the cost of the transcript.

- (2) **Criminal Cases.** Upon the filing of a notice of appeal, unless the parties file therewith a stipulation designating the parts of the proceedings which need not be transcribed, the clerk of the trial tribunal shall order from the court reporter a transcript of the proceedings and shall file a certificate of such order. The clerk's order of transcript shall include the caption of the case; date or dates of trial; portions of transcript requested; number of copies required; the name, address and telephone number of appellant's counsel; and the trial court's order establishing indigency for the appeal, if any. In criminal cases where there is no order establishing indigency, the defendant shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript at the time of the clerk's order of transcript.

(b) *Preparation and Delivery of Transcript.*

- (1) From the date of the reporter's receipt of an order for a transcript, the reporter shall have 60 days for preparation and filing of the transcript in civil cases and non-capital criminal cases and shall have 120 days for preparation and filing of the transcript in capitally tried cases. The trial tribunal, in its discretion, and for good cause shown by the reporter or by a party on behalf of the reporter may extend the time for preparation of the transcript for an additional 30 days. Where the clerk's order of transcript is accompanied by the trial court's order establishing the indigency of the appellant and directing the transcript to be prepared at State expense, the time for preparation of the transcript commences seven days after the filing of the clerk's order of transcript.
- (2) The court reporter shall deliver the completed transcript to the parties, as ordered, within the time provided by this rule, unless an extension of time has been granted under Rule 7(b)(1) or Rule 27(c). The reporter shall certify to the clerk of the trial tribunal that the parties' copies have been so delivered, and shall send a copy of

such certification to the appellate court to which the appeal is taken. The appealing party shall retain custody of the original of the transcript and shall transmit the original transcript to the appellate court upon settlement of the record on appeal.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

REPEALED: JULY 1, 1978.

(See note following Rule 17.)

Re-adopted: 8 December 1988—effective for all judgments of the trial tribunal entered on or after 1 July 1989.

Amended: 8 June 1989—effective for all judgments of the trial tribunal entered on or after 1 July 1989.

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:

- a. an index of the contents of the record, which shall appear as the first page thereof;
- b. 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;
- c. 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;
- d. copies of the pleadings, and of any pre-trial order on which the case or any part thereof was tried;

- e. 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 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;
 - f. where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;
 - g. copies of the issues submitted and the verdict, or of the trial court's findings of fact and conclusions of law;
 - h. a copy of the judgment, order, or other determination from which appeal is taken;
 - i. a copy of the notice of appeal, 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);
 - j. 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
 - k. ~~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:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. 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;

- c. 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;
 - d. copies of all petitions and other pleadings filed in the superior court;
 - e. copies of all items properly before the superior court as are necessary for an understanding of all errors assigned;
 - f. 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;
 - g. a copy of the notice of appeal from the superior court, 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
 - h. ~~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:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. 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;
 - c. copies of all warrants, informations, presentments, and indictments upon which the case has been tried in any court;
 - d. copies of docket entries or a statement showing all arraignments and pleas;

- e. 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;
- f. where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;
- g. copies of the verdict and of the judgment, order, or other determination from which appeal is taken; and in capitally tried cases, a copy of the jury verdict sheet for sentencing, showing the aggravating and mitigating circumstances submitted and found or not found;
- h. a copy of the notice of appeal, 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);
- i. 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
- j. ~~exceptions~~ and assignments of error set out in the manner provided in Rule 10.

(b) *Form of Records; 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.
- (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.

- (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.
- (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.
- (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.

(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 by designating 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 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. When appellant has narrated the evidence and trial proceedings under Rule 9(c)(1), the appellee may designate the verbatim transcript as a proposed alternative record on appeal.

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- (3) **Verbatim Transcript of Proceedings—Settlement, Filing, Copies, Briefs.** Whenever a verbatim transcript is designated to be used pursuant to Rule 9(c)(2):
- a. it shall be settled, together with the record on appeal, according to the procedures established by Rule 11;
 - b. appellant shall cause the settled, verbatim transcript to be filed, contemporaneously with the record on appeal, with the clerk of the appellate court in which the appeal is docketed;
 - c. 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
 - d. 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.

ADMINISTRATIVE HISTORY

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;

8 December 1988—9(a), (c)—effective for all judgments of the trial tribunal entered on or after 1 July 1989;

8 June 1989—9(a)—effective for all judgments of the trial tribunal entered on or after 1 July 1989.

Rule 13

FILING AND SERVICE OF BRIEFS

(a) *Time for Filing and Service of Briefs.*

- (1) **Cases Other Than Death Penalty Cases.** Within 30 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 30 days for filing and serving the brief shall run from the date of docketing the record on appeal in the appellate court. Within 30 days after appellant's brief has been served on an appellee, the appellee shall similarly file and serve copies of his brief. If permitted by Rule 28(h), the appellant may serve and file a reply brief within 14 days after service of the brief of the appellee.
- (2) **Death Penalty Cases.** Within 60 days after the Clerk of the Supreme Court has mailed the printed record to the parties, the defendant-appellant in a criminal appeal which includes a sentence of death shall file his brief in the office of the Clerk and serve copies thereof upon all other parties separately represented. Within 60 days after appellant's brief has been served, the State-appellee shall similarly file and serve copies of its brief. If permitted by Rule 28(h), the appellant may serve and file a reply brief within 21 days after service of the brief of the State-appellee.

(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.

ADMINISTRATIVE HISTORY

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;

30 June 1988—13(a)—effective 1 September 1988;

8 June 1989—13(a)—effective 1 September 1989.

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 petition 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 issue or issues which are the basis of the constitutional claim and which are to be presented to the Supreme Court for review; 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 Su-

preme 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 30 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 30 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 30 days after service of the appellant's brief upon him, the appellee shall similarly file and serve copies of a new brief. If permitted by Rule 28(h), the appellant may serve and file a reply brief within 14 days after service of the brief of the appellee.

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.

ADMINISTRATIVE HISTORY

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;

30 June 1988—14(b)(2), (d)(1)—effective 1 September 1988;

8 June 1989—14(d)(1)—effective 1 September 1989.

Rule 15

DISCRETIONARY REVIEW ON CERTIFICATION BY SUPREME COURT UNDER G.S. 7A-31

(a) *Petition of Party.* Either prior to or following determination by the Court of Appeals of an appeal docketed in that court, any party to the appeal may in writing petition the Supreme Court upon any grounds specified in G.S. 7A-31 to certify the cause for discretionary review by the Supreme Court; except that a petition for discretionary review of an appeal from the Industrial Commission, the North Carolina State Bar, the Property Tax Commission, the Board of State Contract Appeals, or the Commissioner of Insurance may only be made following determination by the Court of Appeals; and except that no petition for discretionary review may be filed in any post-conviction proceeding under G.S. Chap. 15A, Art. 89, or in valuation of exempt property under G.S. Chap. 1C.

(b) *Same; Filing and Service.* A petition for review prior to determination by the Court of Appeals shall be filed with the Clerk of the Supreme Court and served on all other parties within 15 days after the appeal is docketed in the Court of Appeals. A petition for review following determination by the Court of Appeals shall

be similarly filed and served within 15 days after the mandate of the Court of Appeals has been issued to the trial tribunal. Such a petition may be contained in or filed with a notice of appeal of right, to be considered by the Supreme Court in the event the appeal is determined not to be of right, as provided in Rule 14(a). The running of the time for filing and serving a petition for review following determination by the Court of Appeals is terminated 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 filing and serving such a petition for review 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 petition for rehearing. If a timely petition for review is filed by a party, any other party may file a petition for review within 10 days after the first petition for review was filed.

(c) *Same; Content.* The petition shall designate the petitioner or petitioners and shall set forth plainly and concisely the factual and legal basis upon which it is asserted that grounds exist under G.S. 7A-31 for discretionary review. The petition shall state each question for which review is sought, and shall be accompanied by a copy of the opinion of the Court of Appeals when filed after determination by that court. No supporting brief is required; but supporting authorities may be set forth briefly in the petition.

(d) *Response.* A response to the petition may be filed by any other party within 10 days after service of the petition upon him. No supporting brief is required, but supporting authorities may be set forth briefly in the response. If, in the event that the Supreme Court certifies the case for review, the respondent would seek to present questions in addition to those presented by the petitioner, those additional questions shall be stated in the response.

(e) *Certification by Supreme Court; How Determined and Ordered.*

- (1) **On Petition of a Party.** The determination by the Supreme Court whether to certify for review upon petition of a party is made solely upon the petition and any response thereto and without oral argument.
- (2) **On Initiative of the Court.** The determination by the Supreme Court whether to certify for review upon its own initiative pursuant to G.S. 7A-31 is made without prior notice to the parties and without oral argument.

- (3) **Orders; Filing and Service.** Any determination to certify for review and any determination not to certify made in response to petition will be recorded by the Supreme Court in a written order. The Clerk of the Supreme Court will forthwith enter such order, deliver a copy thereof to the Clerk of the Court of Appeals, and mail copies to all parties. The cause is docketed in the Supreme Court upon entry of an order of certification by the Clerk of the Supreme Court.
- (f) *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) **Filing; Copies.** When an order of certification is filed with the Clerk of the Court of Appeals, he will forthwith transmit the original record on appeal to the Clerk of the Supreme Court. The Clerk of the Supreme Court will procure or reproduce copies thereof for distribution as directed by the Court. If it is necessary to reproduce copies, the Clerk may require a deposit of the petitioner to cover the costs thereof.
- (g) *Filing and Service of Briefs.*
- (1) **Cases Certified Before Determination by Court of Appeals.** When a case is certified for review by the Supreme Court before being determined by the Court of Appeals, the times allowed the parties by Rule 13 to file their respective briefs are not thereby extended. If a party has filed his brief in the Court of Appeals and served copies before the case is certified, the Clerk of the Court of Appeals shall forthwith transmit to the Clerk of the Supreme Court the original brief and any copies already reproduced by him for distribution, and if filing was timely in the Court of Appeals this constitutes timely filing in the Supreme Court. If a party has not filed his brief in the Court of Appeals and served copies before the case is certified, he shall file his brief in the Supreme Court and serve copies within the time allowed and in the manner provided by Rule 13 for filing and serving in the Court of Appeals.

- (2) **Cases Certified for Review of Court of Appeals Determinations.** When a case is certified for review by the Supreme Court of a determination made by the Court of Appeals, the appellant shall file a new brief prepared in conformity with Rule 28 in the Supreme Court and serve copies upon all other parties within 30 days after the case is docketed in the Supreme Court by entry of its order of certification. The appellee shall file a new brief in the Supreme Court and serve copies upon all other parties within 30 days after a copy of appellant's brief is served upon him. If permitted by Rule 28(h), the appellant may serve and file a reply brief within 14 days after service of the brief of the appellee.
- (3) **Copies.** A party need file or the Clerk of the Court of Appeals transmit, but a single copy of any brief required by this Rule 15 to be filed in the Supreme Court upon certification for discretionary review. The Clerk of the Supreme Court will thereupon procure from the Court of Appeals or will himself reproduce copies for distribution as directed by the Supreme Court. The Clerk may require a deposit of any party to cover the costs of reproducing copies of his brief.

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 reproduced by typewriter carbon or other means.

- (4) **Failure to File or Serve.** If an appellant fails to file and serve his brief within the time allowed by this Rule 15, the appeal may be dismissed on motion of an appellee or upon the Court's own initiative. If an appellee fails to file and serve his brief within the time allowed by this Rule 15, he may not be heard in oral argument except by permission of the Court.

(h) *Discretionary Review of Interlocutory Orders.* An interlocutory order by the Court of Appeals, including an order for a new trial or for further proceedings in the trial tribunal, will be certified for review by the Supreme Court only upon a determination by the Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm to a party.

(i) *Appellant, Appellee Defined.* As used in this Rule 15, the terms "appellant" and "appellee" have the following meanings:

- (1) With respect to the Supreme Court Review prior to determination by the Court of Appeals, whether on petition of a party or on the Court's own initiative, "appellant" means a party who appealed from the trial tribunal; "appellee," a party who did not appeal from the trial tribunal.
- (2) With respect to Supreme Court review of a determination of the Court of Appeals, whether on petition of a party or on the Court's own initiative, "appellant" means the party aggrieved by the determination of the Court of Appeals; "appellee," the opposing party. Provided, that in its order of certification, the Supreme Court may designate either party appellant or appellee for purposes of proceeding under this Rule 15.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 7 October 1980—15(g)(2)—effective 1 January 1981;
18 November 1981—15(a);
30 June 1988—15(a), (c), (d), (g)(2)—effective 1
September 1988;
8 December 1988—15(i)(2)—effective 1 January
1989;
8 June 1989—15(g)(2)—effective 1 September 1989.

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 stated in the notice

of appeal or the petition, accepted by the Supreme Court for review, 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 cover page, followed by 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 pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal. Assignments of error 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, statement 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 is entitled 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;
 - (iii) relevant portions of statutes, rules, or regulations, the study of which is required to determine questions presented in the brief.
- (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;
 - (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 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.* 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, except as herein provided.

(1) If the appellee has presented in its brief new or additional questions as permitted by Rule 28(c), an appellant may, within 14 days after service of such brief, file and serve a reply brief limited to those new or additional questions.

(2) If the parties are notified under Rule 30(f) that the case will be submitted without oral argument on the record and briefs, an appellant may, within 14 days after serv-

ice of such notification, file and serve a reply brief limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principal brief.

(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 printed record is mailed by the Clerk and ten days after the record is docketed in pauper cases. 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. The proposed *amicus curiae* brief may be conditionally filed with the motion for leave. 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. Reply briefs of the parties to an *amicus curiae* brief 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.

(j) Page Limitations Applicable to Briefs Filed in the Court of Appeals. Principal briefs filed in the North Carolina Court of Appeals, whether filed by appellant, appellee, or *amicus curiae*, formatted according to Rule 26 and the Appendixes to these Rules, shall be limited to 35 pages of text, exclusive of tables

of contents, tables of authorities, and appendixes. Reply briefs, if permitted by this Rule shall be limited to 15 pages of text.

ADMINISTRATIVE HISTORY

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;
30 June 1988—28(a), (b), (c), (d), (e), (h), and (i)—
effective 1 September 1988;
8 June 1989—28(h) and (j)—effective 1 September
1989.

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.

ADMINISTRATIVE HISTORY

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;
8 December 1988—4(a)—effective for all judgments of the trial tribunal entered on or after 1 July 1989;
8 June 1989—4(a)—8 December 1988 amendment rescinded prior to effective date.

APPENDIXES A THROUGH F

Appendixes A through F, effective 1 July 1989, were adopted by the Supreme Court pursuant to its Order Adopting Amendments to the Rules of Appellate Procedure entered on 8 June 1989. In order to avoid duplication, they are printed only as a part of the North Carolina Rules of Appellate Procedure published in their entirety in the following pages.