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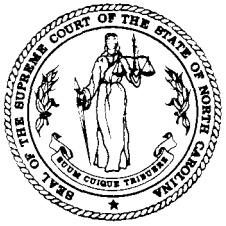
SUPREME COURT OF NORTH CAROLINA



26 JULY 1990

5 DECEMBER 1990

RALEIGH
1991

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER ADOPTING AMENDMENTS TO RULES OF APPELLATE PROCEDURE

Rules 6, 7, 9, 11, 16, 17, 18, 26, 27, 28, and 29, and Appendixes A, C, and F 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 1 October 1990.

Adopted by the Court in Conference this 26th day of July, 1990. These amendments shall be promulgated by publication in the Advance sheets of the Supreme Court and the Court of Appeals.

WHICHARD, J.
For the Court

WITNESS my hand and the Seal of the Supreme Court of North Carolina, this the 30th day of July, 1990.

J. GREGORY WALLACE
Clerk of the Supreme Court

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 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.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 27 November 1984—6(e)—effective 1 February 1985;
26 July 1990—6(c)—effective 1 October 1990.

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 contract, in writing, with the court reporter for production of a transcript of such parts of the proceedings not already on file as he deems necessary. The appellant shall file a copy of the contract 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, an 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 an 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 copy of the contract ordering any additional parts of the transcript. As a part of the contract ordering the transcript, the ordering party shall provide such deposit toward payment of the cost of the transcript as the court reporter may require.

(2) **Criminal Cases.** In criminal cases where there is an order establishing the indigency of the defendant for the appeal, unless the trial judge's appeal entries specify or the parties stipulate that parts of the proceedings need not be transcribed, the clerk of the trial tribunal shall order from the court reporter a transcript of the proceedings by forwarding a copy of the appeal entries signed by the judge and a statement of the portions of transcript requested; the 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

contract with the court reporter for production of the transcript, as in civil cases.

(b) **Production and Delivery of Transcript.**

(1) From the date of the reporter's receipt of a contract for production of a transcript, the reporter shall have 60 days to produce and deliver the transcript in civil cases and non-capital criminal cases and shall have 120 days to produce and deliver 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 to produce the transcript for an additional 30 days. Any subsequent motions for additional time required to produce the transcript may only be made to the appellate court to which appeal has been taken. 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 production 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;

26 July 1990—7(a)(1), (a)(2), and (b)(1)—effective 1 October 1990.

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. 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. 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 or an appropriate entry or statement 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);

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. 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.

(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 deter-

mination 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.

(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; the original documentary exhibit need not be filed with the appellate court. When an original, non-documentary 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;

26 July 1990 – 9(a)(3)h and 9(d)(2) – effective 1 October 1990.

Rule 11

SETTLING THE RECORD ON APPEAL

(a) **By Agreement.** Within 35 days after the reporter's certification of delivery of the transcript, if such was ordered (70 days in capitally tried cases), or 35 days after filing of the notice of appeal if no transcript was ordered, 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 the same times provided, serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 9. Within 21 days (35 days in capitally tried cases) after service of the proposed record on appeal upon him an appellee may 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 serve notices of approval or fail to serve 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 21 days (35 days in capitally tried cases) after service upon him of appellant's proposed record on appeal, an appellee may 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. Each party shall promptly provide to the judge a reference copy of the record items, amendments, or objections served by that party in the case. 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. If requested, the judge shall return the record items submitted for reference during the judicial settlement process with the order settling the record on appeal.

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 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) **RESERVED.**

(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).

ADMINISTRATIVE HISTORY

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;
8 December 1988—11(a), (b), (c), (e), and (f)—effective for all judgments of the trial tribunal entered on or after 1 July 1989;
26 July 1990—11(b), (c), and (d)—effective 1 October 1990.

Note: Paragraph (e) formerly contained the requirement that the settled record on appeal be certified by the clerk of the trial tribunal. The 27 November 1984 amendments deleted that step in the process. Under the present version of the rules, once the record is settled by the parties, by agreement or by judicial settlement, the appellant has 15 days to file the settled record with the appropriate appellate court.

Rule 16

SCOPE OF REVIEW OF DECISIONS OF COURT OF APPEALS

(a) **How Determined.** Review by the Supreme Court after a determination by the Court of Appeals, whether by appeal of right or by discretionary review, is to determine whether there is error of law in the decision of the Court of Appeals. Except where the appeal is based solely upon the existence of a dissent in the Court of Appeals, review in the Supreme Court is limited to consideration of the questions stated in the notice of appeal filed pursuant to Rule 14(b)(2) or the petition for discretionary review and the response thereto filed pursuant to Rule 15(c) and (d), unless further limited by the Supreme Court, and properly presented in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court.

(b) **Scope of Review in Appeal Based Solely Upon Dissent.** Where the sole ground of the appeal of right is the existence

of a dissent in the Court of Appeals, review by the Supreme Court is limited to a consideration of those questions which are (1) specifically set out in the dissenting opinion as the basis for that dissent, (2) stated in the notice of appeal, and (3) properly presented in the new briefs required by Rule 14(d)(1) to be filed in the Supreme Court. Other questions in the case may properly be presented to the Supreme Court through a petition for discretionary review, pursuant to Rule 15, or by petition for writ of certiorari, pursuant to Rule 21.

(c) **Appellant, Appellee Defined.** As used in this Rule 16, the terms "appellant" and "appellee" have the following meanings when applied to discretionary review:

(1) With respect to Supreme Court review of a determination of the Court of Appeals upon petition of a party, "appellant" means the petitioner, "appellee" means the respondent.

(2) With respect to Supreme Court review upon the Court's own initiative, "appellant" means the party aggrieved by the decision of the Court of Appeals; "appellee" means 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 16.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 3 November 1983—16(a) and (b)—applicable to all notices of appeal filed in the Supreme Court on and after 1 January 1984;
30 June 1988—16(a) and (b)—effective 1 September 1988;
26 July 1990—16(a)—effective 1 October 1990.

Rule 17

APPEAL BOND IN APPEALS UNDER G.S. 7A-30, 7A-31

(a) **Appeal of Right.** In all appeals of right from the Court of Appeals to the Supreme Court in civil cases, the party who takes appeal shall, upon filing the notice of appeal in the Supreme Court, file with the Clerk of that Court a written undertaking,

with good and sufficient surety in the sum of $250, or deposit cash in lieu thereof, to the effect that he will pay all costs awarded against him on the appeal to the Supreme Court.

(b) **Discretionary Review of Court of Appeals Determination.** When the Supreme Court on petition of a party certifies a civil case for review of a determination of the Court of Appeals, the petitioner shall file an undertaking for costs in the form provided in subdivision (a). When the Supreme Court on its own initiative certifies a case for review of a determination of the Court of Appeals, no undertaking for costs shall be required of any party.

(c) **Discretionary Review by Supreme Court Before Court of Appeals Determination.** When a civil case is certified for review by the Supreme Court before being determined by the Court of Appeals, the undertaking on appeal initially filed in the Court of Appeals shall stand for the payment of all costs incurred in either the Court of Appeals or the Supreme Court and awarded against the party appealing.

(d) **Appeals in Forma Pauperis.** No undertakings for costs are required of a party appealing in forma pauperis.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 19 June 1978, effective 1 July 1978;
26 July 1990—17(a)—effective 1 October 1990.

Note to 1 July 1978 Amendment.

Repeal of Rule 7 and limiting Rule 17's application to civil cases are to conform the Rules of Appellate Procedure to Chap. 711, 1977 Session Laws, particularly that portion of Chap. 711 codified as G.S. 15A-1449 which provides, "In criminal cases no security for costs is required upon appeal to the appellate division." Section 33 of Chap. 711 repealed, among other statutes, G.S. 15-180 and 15-181 upon which Rule 7 was based. Chap. 711 becomes effective 1 July 1978. While G.S. 15A-1449, strictly construed, does not apply to cost bonds in appeals from or petitions for further review of decisions of the Court of Appeals, the Supreme Court believes the legislature intended to eliminate the giving of security for costs in criminal cases on appeal or on petition to the Supreme Court from the Court of Appeals. The Court has, therefore, amended Rule 17 to comply with what it believes to be the legislative intent in this area.

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.

(3) If a transcript of fact-finding proceedings is not made by the agency as part of the process leading up to the final agency determination, the appealing party may contract with the reporter for production of such parts of the proceedings not already on file as he deems necessary, pursuant to the procedures prescribed in Rule 7.

(c) **Composition of Record on Appeal.** The record on appeal in appeals from any agency shall contain:

(1) an index of the contents of the record, which shall appear as the first page thereof;

(2) 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;

(3) 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;

(4) 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;

(5) 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);

(6) 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;

(7) 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);

(8) 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

(9) 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 35 days after filing of the notice of appeal or after production of the transcript if one is ordered pursuant to Rule 18(b)(3), 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 35 days after filing of the notice of appeal or after production of the transcript if one is ordered pursuant to Rule 18(b)(3), 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. Each party shall promptly provide to the agency head a reference copy of the record items, amendments, or objections served by that party in the case. 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 a delegate appointed in writing by the agency head shall settle the record on appeal by order entered not more than 20 days after service of the request for settlement upon the agency. If requested, the settling official shall return the record items submitted for reference during the settlement process with the order settling the record on appeal.

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).

ADMINISTRATIVE HISTORY

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;
26 July 1990—18(b)(3), (d)(1) and (d)(2)—effective 1 October 1990.

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.

(1) 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 motions, responses to petitions, and briefs shall be deemed filed on the date of mailing, as evidenced by the proof of service, if first class mail is utilized.

(2) Filing in the appellate courts may be accomplished by electronic means only as hereinafter provided.

In any case, responses and motions may be filed by electronic means, but only if an oral request for permission to do so has first been tendered to and approved by the clerk of the appropriate appellate court upon a showing of good cause.

In all cases where a document has been filed by electronic means pursuant to this rule, counsel must forward the following items by first class mail, contemporaneously with the transmission: the original signed document, the electronic transmission fee, and the applicable filing fee for the document, if any. The party filing a document by electronic means shall be responsible for all costs of the transmission and neither they nor the electronic transmission fee may be recovered as costs of the appeal.

"Electronic means" means any method of transmission of information between two machines designed for the purpose of sending and receiving such transmissions, and which results in the fixation of the information transmitted in a tangible medium of expression.

(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 acknowledgement 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"). All printed matter must appear in at least 11 point type on unglazed white paper of 16-20 pound substance so as to produce a clear, black image, leaving a margin of approximately one inch on each side. The body of text shall be presented with double spacing between each line of text. 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.

ADMINISTRATIVE HISTORY

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;
30 June 1988—26(a) and (g)—effective 1 September 1988;
26 July 1990—26(a)—effective 1 October 1990.

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.** The trial tribunal for good cause shown by the appellant may extend once for no more than 30 days the time permitted by Rule 11 or Rule 18 for the service of the proposed record on appeal.

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.

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 other than those specifically enumerated in Rule 27(c)(1) may only be made to the appellate court to which appeal has been taken.

(d) **Motions for Extension of Time; How Determined.** Motions for extension of time made in any court 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. Provided that motions made after the expiration of the time allowed in these rules for the action sought to be extended 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.

ADMINISTRATIVE HISTORY

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;
8 December 1988—27(c)—effective for all judgments of the trial tribunal entered on or after 1 July 1989;
26 July 1990—27(c) and (d)—effective 1 October 1990.

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:

a. those portions of the transcript of proceedings which must be reproduced verbatim in order to understand any question presented in the brief;

b. 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;

c. 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:

a. whenever the portion of the transcript necessary to understand a question presented in the brief is reproduced verbatim in the body of the brief;

b. 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

c. 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:

a. 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.

b. 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 service 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 or in a reply brief filed pursuant to Rule 28(h)(1).

(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;
26 July 1990—28(h)(2)—effective 1 October 1990.

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.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 3 March 1982—29(a)(1);
3 September 1987—29(a)(1);
26 July 1990—29(b)—effective 1 October 1990.

TIMETABLE OF APPEALS FROM TRIAL DIVISION UNDER ARTICLE II OF THE RULES OF APPELLATE PROCEDURE

Action	*Time (Days)*	*From date of*	*Rule Ref.*
Taking Appeal (civil)	30	entry of judgment (unless tolled)	3(c)
Taking Appeal (agency)	30	final agency determination (unless statutes provide otherwise)	18(b)(2)
Taking Appeal (crim.)	10	entry of judgment (unless tolled)	4(a)
Ordering Transcript (civil) (agency)	10	filing notice of appeal	7(a)(1) 18(b)(3)
Ordering Transcript (criminal indigent)	—	order filed by clerk of superior court	7(a)(2)
Ordering Transcript (criminal)	10	filing notice of appeal	7(a)(2)
Preparing & delivering transcript (civil, non-capital criminal)	60	receipt of order for transcript	7(b)(1)
(capital criminal)	120		
Serving proposed record on appeal (civil, non-capital criminal)	35	notice of appeal (no transcript) or reporter's certificate	11(b)
(agency)	35	of delivery of transcript	18(d)
Serving proposed record on appeal (capital)	70	reporter's certificate of delivery	11(b)
Serving objections or proposed alternative record on appeal (civil, non-capital criminal)	21	service of proposed record	11(c)
(capital criminal)	35		

Action	*Time (Days)*	*From date of*	*Rule Ref.*
(agency)	30	service of proposed record	18(d)(2)
Requesting judicial settlement of record	10	last day within which an appellee served could file objections, etc.	11(c) 18(d)(3)
Judicial settlement of record	20	service on judge of request for settlement	11(c) 18(d)(3)
Filing Record on Appeal in appellate court	15	settlement of record on appeal	12(a)
Filing appellant's brief (or mailing brief under Rule 26(a))	30	Clerk's mailing of printed record—or from docketing record in civil appeals in forma pauperis (60 days in Death Cases)	13(a)
Filing appellee's brief (or mailing brief under Rule 26(a))	30	service of appellant's brief (60 days in Death Cases)	13(a)
Oral Argument	30	filing appellant's brief (usual minimum time)	29
Certification or Mandate	20	Issuance of opinion	32
Petition for Rehearing (civil action only)	15	Mandate	31(a)

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

Action	*Time (Days)*	*From date of*	*Rule Ref.*
Petition for Discretionary Review prior to determination	15	docketing appeal in Court of Appeals	15(b)
Notice of Appeal and/or Petition for Discretionary Review	15	Mandate of Court of Appeals (or from order of Court of Appeals denying petition for rehearing)	14(a) 15(b)

Action	*Time (Days)*	*From date of*	*Rule Ref.*
Cross-Notice of Appeal	10	filing of first notice of appeal	14(a)
Response to Petition for Discretionary Review	10	service of petition	15(d)
Filing appellant's brief (or mailing brief under Rule 26(a))	30	Clerk's mailing of printed record or from docketing record in civil appeals in forma pauperis	14(d) 15(g)
Filing appellee's brief (or mailing brief under Rule 26(a))	30	service of appellant's brief	14(d) 15(g)
Oral Argument	30	filing appellant's brief (usual minimum time)	29
Certification or Mandate	20	Issuance of opinion	32
Petition for Rehearing (civil action only)	15	Mandate	31(a)

NOTES

All of the critical time intervals here outlined except those for taking an appeal and petitioning for discretionary review or for rehearing may be extended by order of the Court wherein the appeal is docketed at the time. Note that Rule 27 has been amended and now grants the trial tribunal the authority to grant only one extension of time for service of the proposed record. All other motions for extension of the times provided in the rules must be filed with the appellate court to which the appeal of right lies.

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

ARRANGEMENT OF RECORD ON APPEAL

Only those items listed in the following tables which are required by Rule 9(a) in the particular case should be included in the record. See Rule 9(b)(2) for sanctions against including unnecessary items in the record. The items marked by an asterisk (*) could be omitted from the record proper if the transcript option of Rule 9(c) is used, and there exists a transcript of the items.

Table 1

SUGGESTED ORDER IN APPEAL FROM CIVIL JURY CASE

1. Title of action (all parties named) and case number in caption per Appendix B
2. Index, per Rule 9(a)(1)a.
3. Statement of organization of trial tribunal, per Rule 9(a)(1)b.
4. Statement of record items showing jurisdiction, per Rule 9(a)(1)c.
5. Complaint
6. Pre-answer motions of defendant, with rulings thereon
7. Answer
8. Motion for summary judgment, with rulings thereon (* if oral)
9. Pre-trial order

*10. Plaintiff's evidence, with any evidentiary rulings assigned as error

*11. Motion for directed verdict, with ruling thereon

*12. Defendant's evidence, with any evidentiary rulings assigned as error

*13. Plaintiff's rebuttal evidence, with any evidentiary rulings assigned as error

14. Issues tendered by parties
15. Issues submitted by court
16. Court's instructions to jury, per Rule 9(a)(1)f.
17. Verdict
18. Motions after verdict, with rulings thereon (* if oral)
19. Judgment
20. Items required by Rule 9(a)(1)i.
21. Entries showing settlement of record on appeal, extension of time, etc.
22. Assignments of error, per Rule 10
23. Names, office addresses, and telephone numbers of counsel for all parties to appeal

Table 2

SUGGESTED ORDER IN APPEAL FROM SUPERIOR COURT REVIEW OF ADMINISTRATIVE AGENCY

1. Title of action (all parties named) and case number in caption per Appendix B
2. Index, per Rule 9(a)(2)a.
3. Statement of organization of superior court, per Rule 9(a)(2)b.
4. Statement of record items showing jurisdiction of the board or agency, per Rule 9(a)(2)c.

5. Copy of petition or other initiating pleading
6. Copy of answer or other responsive pleading
7. Copies of all pertinent items from administrative proceeding filed for review in superior court, including evidence
*8. Evidence taken in superior court, in order received
9. Copies of findings of fact, conclusions of law, and judgment of superior court
10. Items required by Rule 9(a)(2)g.
11. Entries showing settlement of record on appeal, extension of time, etc.
12. Assignments of error, per Rule 9(a)(2)h.
13. Names, office addresses, and telephone numbers of counsel for all parties to appeal

Table 3

SUGGESTED ORDER IN APPEAL OF CRIMINAL CASE

1. Title of action (all parties named) and case number in caption per Appendix B
2. Index, per Rule 9(a)(3)a.
3. Statement of organization of trial tribunal, per Rule 9(a)(3)b.
4. Warrant
5. Judgment in district court (where applicable)
6. Entries showing appeal to superior court (where applicable)
7. Bill of indictment (if not tried on original warrant)
8. Arraignment and plea in superior court
9. Voir dire of Jurors
*10. State's evidence, with any evidentiary rulings assigned as error
11. Motions at close of state's evidence, with rulings thereon (* if oral)
*12. Defendant's evidence, with any evidentiary rulings assigned as error
13. Motions at close of defendant's evidence, with rulings thereon (* if oral)
*14. State's rebuttal evidence, with any evidentiary rulings assigned as error
15. Motions at close of all evidence, with rulings thereon (* if oral)
16. Court's instructions to jury, per Rules 9(a)(3)f., 10(b)(2)
17. Verdict
18. Motions after verdict, with rulings thereon (* if oral)
19. Judgment and order of commitment
20. Appeal entries

21. Entries showing settlement of record on appeal, extension of time, etc.
22. Assignments of error, per Rule 9(a)(3)j.
23. Names, office addresses and telephone numbers of counsel for all parties to appeal

Table 4

ASSIGNMENTS OF ERROR

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

Defendant assigns as error:

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

   Record, p. 4.

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

   Record, p. 7.

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

   Transcript, vol. 1, p. 137, lines 17-20.

4. The court's denial of defendant's motion for summary judgment, on the ground that there was not genuine issue of fact that the statute of limitations had run and defendant was therefore entitled to judgment as a matter of law.

   Record, p. 15.

B. Examples related to civil jury trial rulings

Defendant assigns as error the following:

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

Transcript, vol. 1, p. 295, line 5, through p. 297, line 12. Transcript, vol. 1, p. 299, lines 1-8.

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

Record, p. 45.

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

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

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

Record, p. 80; Transcript, vol. 3, p. 764, lines 8-23.

C. Examples related to civil non-jury trial

Defendant assigns as error:

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

Record, p. 20.

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

Record, p. 25.

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

Record, p. 27.

FEES AND COSTS

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

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

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

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

An appeal bond of $250.00 is required in civil cases per Appellate Rules 6 and 17. The bond should be filed contemporaneously with the record in the Court of Appeals and with the notice of appeal in the Supreme Court. The Bond will not be required in cases brought by petition for discretionary review or certiorari unless and until the Court allows the petition.

Costs for printing documents are $2.00 per printed page where the Clerk determines that the document is in proper format and can be printed from the original, and $5.00 per printed page where the document must be retyped and printed. The Appendix to a brief under the Transcript option of Appellate Rules 9(c) and 28(b) and (c) will be reproduced as is, but billed at the rate of the printing of the brief.

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

Court costs on appeal total $9.00, plus the cost of copies of the opinion to each party filing a brief, and are imposed when a notice of appeal is withdrawn or dismissed and when the mandate is issued following the opinion in a case.

Photocopying charges are $.20 per page. The electronic transmission fee for documents sent from the clerk's office, which is in addition to standard photocopying charges, is $5.00 for the first 25 pages and $.20 for each page thereafter. The electronic transmission fee for documents received by the clerk's office for filing pursuant to Rule 26(a)(2) is $10.00 per document filed.