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IN THE SUPREME COURT OF NORTH CAROLINA

**Order Adopting Amendments to the
Rules of Appellate Procedure**

Rules 7, 9, 11, and 18 are hereby amended to read as in the following pages. All amendments shall become effective on 1 February 1998.

Adopted by the Court in Conference this the 6th day of November. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals. These amendments shall also be published as quickly as practical on the North Carolina Judicial Branch of Government Internet Home Page (<http://www.aoc.state.nc.us>).

Orr, J
For the Court

RULE 7

PREPARATION OF THE TRANSCRIPT;
COURT REPORTER'S DUTIES

(a) Ordering the Transcript.

- (1) **Civil Cases.** Within ~~10~~ 14 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.~~ arrange for the transcription of the proceedings or of such parts of the proceedings not already on file, as the appellant deems necessary, in accordance with these rules, and shall provide the following information in writing: a designation of the parts of the proceedings to be transcribed; the name and address of the court reporter or other neutral person designated to prepare the transcript; and, where portions of the proceedings have been designated to be transcribed, a statement of the issues the appellant intends to raise on appeal. The appellant shall file the written documentation of this transcript arrangement with the clerk of the trial tribunal, and serve a copy of it upon all other parties of record, and upon the person designated to prepare the transcript. If the appellant intends to urge on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the appellant shall file with the record on appeal 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, the appellee,~~ within 10 14 days after the service of the statement written documentation of the appellant, file and serve on the appellant a copy of the contract ordering any additional parts of the transcript. As 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. shall arrange for the transcription of any additional parts of the proceedings or such parts of the proceedings not already on file, in accordance with these rules. The appellee shall file with the clerk of the trial tri-

bunal, and serve on all other parties of record, written documentation of the additional parts of the proceedings to be transcribed; and the name and address of the court reporter or other neutral person designated to prepare the transcript.

- (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 arrange for production of the transcript, as in civil cases.~~

In criminal cases where there is no order establishing the indigency of the defendant for the appeal, the defendant shall arrange for the transcription of the proceedings as in civil cases.

Where there is an order establishing the indigency of the defendant, 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 a transcript of the proceedings by serving the following documents upon either the court reporter(s) or neutral person designated to prepare the transcript : a copy of the appeal entries signed by the judge; a copy of the trial court's order establishing indigency for the appeal; and a statement setting out the number of copies of the transcript required and the name, address and telephone number of appellant's counsel. The clerk shall make an entry of record reflecting the date these documents were served upon the court reporter(s) or transcriptionist.

(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 procure and deliver the transcript in civil cases and non-capital criminal cases and shall have 120 days to procure and deliver the transcript in capitally tried cases.~~

- (1) In civil cases: from the date the requesting party serves the written documentation of the transcript arrangement on the person designated to prepare the transcript, that person shall have 60 days to prepare and deliver the transcript.

In criminal cases where there is no order establishing the indigency of the defendant for the appeal: from the date the requesting party serves the written documentation of the transcript arrangement upon the person designated to prepare the transcript, that person shall have 60 days to produce and deliver the transcript in non-capital cases and 120 days to produce and deliver the transcript in capitally tried cases.

In criminal cases where there is an order establishing the indigency of the defendant for the appeal: from the date the clerk of the trial court serves the order upon the person designated to prepare the transcript, that person shall have 60 days to procure and deliver the transcript in non-capital cases and 120 days to produce and deliver the transcript in capitally tried cases.

The transcript format shall comply with Appendix G of these Rules.

The trial tribunal, in its discretion, and for good cause shown by the appellant 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, or person designated to prepare the transcript, 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 court reporter or transcriptionist 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.

- (3) The neutral person designated to prepare the transcript shall not be a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or be financially interested in the action unless the parties agree otherwise by stipulation.

RULE 9

THE RECORD ON APPEAL

(a) Function; Composition of Record.

(1) Composition of the Record in Civil Actions and Special Proceedings.

- 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; and
- l. a statement, where appropriate, that the record of proceeding was made with an electronic recording device.

(3) Composition of the Record in Criminal Actions.

- 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. assignment of error set out in the manner provided in Rule 10; and
- k. a statement, where appropriate, that the record of proceedings was made with an electronic recording device.

(c) Presentation of Testimonial Evidence and Other Proceedings.

- (5) Electronic Recordings.** When a narrative or transcript has been prepared from an electronic recording, the parties shall not file a copy of the electronic recording with the appellate division except at the direction or with the approval of the appellate court.

Rule 11.**Settling the Record on Appeal**

- (a) **By Agreement.** Within 35 days after the reporter's or transcriptionist'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.

RULE 18.**TAKING APPEAL; RECORD ON APPEAL—
COMPOSITION AND SETTLEMENT**

- (c) **Composition of Record on Appeal.**

(10) a statement, where appropriate, that the record of proceedings was made with an electronic recording device.