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Order Adopting Amendment to Rule 26 of the Rules of Appellate Procedure

Rule 26 of the Rules of Appellate Procedure is hereby amended to read as follows:

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. *Filing may be accomplished by mail or by electronic means as set forth in this Rule.*

(1) **Filing by Mail:** 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 by Electronic Means:** Filing in the appellate courts may be accomplished by electronic means *by the use of the electronic filing site at www.ncappellate-courts.org. All documents may be filed electronically through the use of this site. A document filed by use of the official electronic web site is deemed filed as of the time that the document is received electronically.*

Responses and motions may be filed by facsimile machines, if an oral request for permission to do so has first been tendered to and approved by the clerk of the appropriate appellate court. ~~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~~ *facsimile machine* pursuant to this rule, counsel must forward the following items by first class mail, contemporaneously with the transmission: the orig-

inal 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. *When a document is filed to the electronic filing site at www.ncappellatecourts.org, counsel may either have their account drafted electronically by following the procedures described at the electronic filing site, or they must forward the applicable filing fee for their document by first class mail, contemporaneously with the transmission.*

~~“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 was 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. *When a document is filed electronically to the official web site, service also may be accomplished electronically by use of the other counsel(s)’s correct and current electronic mail address(es) or service may be accomplished in the manner described previously in this subsection.*

(d) ***Proof of Service.*** Papers presented for filing shall contain an acknowledgment of service by the person served or proof of serv-

ice 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 (8-½ x 11") with the exception of wills and exhibits. ~~Documents filed in the trial division prior to July 1, 1992, may be included in records on appeal whether they are letter size or legal size (8-¾ 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 text books 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. *If the document has been filed electronically by use of the official web site at www.ncappellatecourts.org, the manuscript signature of counsel of record is not required.*

Adopted by the Court in Conference this the 4th day of November, 1999. This amendment shall become effective on the 15th of November, 1999, and it shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals. This amendment 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>).

Freeman, J
For the Court