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SUPREME COURT OF NORTH CAROLINA



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In the Supreme Court of North Carolina
Order Adopting Amendments to the North Carolina
Rules of Appellate Procedure

Rules 3, 4, 7, 9, 15, 26, 27, 28, 31, 33, 40, and 42 are hereby amended as described below:

Rule 3(c) is amended to read as follows:

“(c) *Time for Taking Appeal.* In civil actions and special proceedings, a party must file and serve a notice of appeal:

- “(1) within 30 days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or
- “(2) within 30 days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that
- “(3) if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the 30-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subsections (1) and (2) of this subdivision (c).

“In computing the time for filing a notice of appeal, the provision for additional time after service by mail of N.C. R. App. P. 27(b) and N.C. R. Civ. P. 6(e) shall not apply.

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

Rule 4(a)(2) is amended by striking all references to the number “10” and replacing them with the number “14.”

Rule 4(d) is amended by striking the words “life imprisonment or.”

Rule 7(b)(1) para 4, is amended by replacing the words “Appendix G” in the fourth paragraph with the words “Appendix B.”

Rule 9(d)(2) is amended by adding the word “nondocumentary” in the beginning of the second sentence after the words “When an original.”

Rule 15(d) is amended by adding the following sentence at the end:

“A motion for extension of time is not permitted.”

Rule 26(g), para.1, is amended in the second sentence by replacing the numeral “11” to “12” before the words “point type.”

Rule 27(c) is amended by adding the words “or the responses thereto” after the word “rehearing,” and prior to the words “prescribed by these rules or by law” in the last sentence of the first paragraph.

Rule 28(b)(1) is amended is amended by replacing the phrase “table of contents” with the phrase “subject index.”

Rule 28(b)(4) through (9) are renumbered (5) through (10), respectively.

Rule 28 is further amended by adding a new subsection (b)(4) as follows:

“(4) A statement of the grounds for appellate review. Such statement shall include citation of the statute or statutes permitting appellate review. When an appeal is based on Rule 54(b) of the Rules of Civil Procedure, the statement shall show that there has been a final judgment as to one or more but fewer than all of the claims or parties and that there has been a certification by the trial court that there is no just reason for delay. When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.”

Rule 28(c), para 1, first sentence is amended by replacing the phrase “table of contents” with the phrase “subject index.”

Rule 28(c), para 1, second sentence is amended by inserting the phrase “statement of the grounds for appellate review,” after the phrase “history of the case.”

Rule 28(j), first sentence is amended by replacing the words “table and contents” with the phrase “subject index.”

Rule 31(b) is amended by deleting the following sentence as follows:

~~“Two copies thereof shall be filed with the clerk.”~~

Rule 33(a) is amended in the fifth sentence, beginning “Only those counsel,” by deleting the next to the last word so that it reads “heard in argument.”

Rule 33 is amended by adding a new subsection (b) as follows and by renumbering the existing subsection (b) to (c):

“(b) Signatures on electronically filed documents. If more than one attorney is listed as being an attorney for the party(ies) on an electronically filed document, it is the responsibility of the attorney actually filing the document from his or her computer to (1) list his or her name first on the document, and (2) place on the document under his or her signature line the following statement: ‘I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.’ ”

Rule 40 is amended by changing “App. R.” to “N.C. R. App. P.”

Rule 42 is amended by changing “App. R. . . .” to “N.C. R. App. P. . . .”

Minor typographical and grammatical corrections have been made throughout the Rules, and they are highlighted in the redline version of the Rules released with this order.

The Appendixes to the North Carolina Rules of Appellate Procedure are amended as follows:

Appendix A is amended to read as follows:

APPENDIX A TIMETABLES FOR APPEALS

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

<i>Action</i>	<i>Time (Days)</i>	<i>From date of</i>	<i>Rule Ref.</i>
Taking Appeal (civil)	30	entry of judgment (unless tolled)	3(c)
Taking Appeal (agency)	30	final agency determination receipt of final agency order (unless statutes provide otherwise)	18(b)(2)
Taking Appeal (crim.)	14 14	entry of judgment (unless tolled)	4(a)
Ordering Transcript (civil, agency)	14 14	filing notice of appeal	7(a)(1) 18(b)(3)

Ordering Transcript (criminal indigent)	40 14	order filed by clerk of superior court	7(a)(2)
Preparing & delivering transcript (civil, non-capital criminal) (capital criminal)	60 120	receipt service of order for transcript	7(b)(1)
Serving proposed record on appeal (civil, non-capital criminal) (agency)	35 35	notice of appeal (no transcript) or reporter's certificate of delivery of transcript	11(b) 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) (capital criminal) (agency)	21 35 30	service of proposed record service of proposed record	11(c) 18(d)(2)
Requesting judicial settlement of record	10	expiration of the last day within which an appellee served could serve 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)
<hr/>			
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~~ RULES OF APPELLATE PROCEDURE**

<u>Action</u>	<u>Time (Days)</u>	<u>From date of</u>	<u>Rule Ref.</u>
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)
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	20	Clerk's mailing of printed record or from docketing record in civil appeals	14(d) 15(g)
Rule 26(a))		in forma pauperis	
Filing appellant's brief (or mailing brief under Rule 26(a))		Filing notice of appeal Certification of review	14(d) 15(g)(2)
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 appellee'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).)

Appendix B is amended to read as follows:

APPENDIX B FORMAT AND STYLE

All documents for filing in either Appellate Court are prepared on 8½ x 11 inch, ~~white~~-plain, white unglazed paper of 16 to 20 pound weight. Typing is done on one side only, although the document will

be reproduced in two-sided format. No vertical rules, law firm marginal return addresses, or punched holes will be accepted. The papers need not be stapled; a binder clip or rubber bands are adequate to secure them in order.

Papers shall be prepared using at least ~~10~~ 12-point type and spacing, so as to produce a clear, black image. To allow for binding of documents, a margin of approximately one inch shall be left on all sides of the page. The formatted page should be approximately 6½ inches wide and 9 inches long. Tabs are located at the following distances from the left margin: ½", 1", 1½", 2", 4¼" (center), and 5".

CAPTIONS OF DOCUMENTS.

All documents to be filed in either appellate court shall be headed by a caption. The caption contains: the number to be assigned the case by the Clerk; the Judicial District from which the case arises; the appellate court to whose attention the document is addressed; the style of the case showing the names of all parties to the action; the county from which the case comes; the indictment or docket numbers of the case below (in records on appeal and in motions and petitions in the cause filed prior to the filing of the record); and the title of the document. The caption shall be placed beginning at the top margin of a cover page and, again, on the first textual page of the document.

No. _____ (Number) DISTRICT
(SUPREME COURT OF NORTH CAROLINA)
(or)
(NORTH CAROLINA COURT OF APPEALS)

STATE OF NORTH CAROLINA)
or)
(Name of Plaintiff)) From (Name) County
) No. _____
v)
)
(Name of Defendant))

(TITLE OF DOCUMENT)

The caption should reflect the title of the action (all parties named) as it appeared in the trial division. The appellant or petitioner

is not automatically given topside billing; the relative position of the plaintiff and defendant should be retained.

The caption of a record on appeal and of a notice of appeal from the Trial Division should include directly below the name of the county, the indictment or docket numbers of the case in the trial division. Those numbers, however, should not be included in other documents except for a petition for writ of certiorari or other petitions and motions where no record on appeal has yet been created in the case. In notices of appeal or petitions to the Supreme Court from decisions of the Court of Appeals, the caption should show the court of appeals' docket number in similar fashion.

Immediately below the caption of each document, centered and underlined, in all capital letters, should be the title of the document, e.g., PETITION FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31, or DEFENDANT-APPELLANT'S BRIEF. A brief filed in the Supreme Court in a case previously heard and decided by the Court of Appeals is entitled ~~to a~~ NEW BRIEF.

INDEXES

A brief or petition which is long or complex or which treats multiple issues, and all Appendixes to briefs (Rule 28) and Records on Appeal (Rule 9) must contain an index to the contents.

The index should be indented approximately 3/4" from each margin, providing a five-inch line. The form of the index for a record on appeal should be as follows (indexes for briefs are addressed in Appendix E):

(Record)

I N D E X

Organization of the Court	1
Complaint of Tri-Cities Mfg. Co.	1
* * *	
*PLAINTIFF'S EVIDENCE:	
John Smith	17
Tom Jones	23
Defendant's Motion for Nonsuit	84
*DEFENDANT'S EVIDENCE:	
John Q. Public	86
Mary J. Public	92
Request for Jury Instructions	101
Charge to the Jury	101

Jury Verdict 102
 Order or Judgment 108
 Appeal Entries 109
 Order Extending Time 111
 Assignments of Error 113
 Certificate of Service 114
 Stipulation of Counsel 115
 Names and Addresses of Counsel 116

USE OF THE TRANSCRIPT OF EVIDENCE WITH
 RECORD ON APPEAL

Those portions asterisked (*) in the sample index above would be omitted if the transcript option were selected under Appellate Rule 9(c). In their place in the record, counsel should place a statement in substantially the following form:

“Per Appellate Rule 9(c) the transcript of proceedings in this case, taken by (name), court reporter, from (date) to (date) and consisting of (# of pages) pages, numbered (1) through (last page #), and bound in (# of volumes) volumes is filed contemporaneously with this record.”

The transcript should be prepared with a clear, black image on 8½ x 11 paper of 16-20 pound substance. Enough copies should be reproduced to assure the parties of a reference copy, and file one copy in the Appellate Court. In criminal appeals, the District Attorney is responsible for conveying a copy to the Attorney General (App. Rule 9(c)).

The transcript should not be inserted into the record on appeal, but, rather, should be separately bound and submitted for filing in the proper appellate court with the record. Transcript pages inserted into the record on appeal will be treated in the manner of a narration and will be printed at the standard page charge. Counsel should note that the separate transcript will not be reproduced with the record on appeal, but will be treated and used as an exhibit.

TABLE OF CASES AND AUTHORITIES

Immediately following the index and before the inside caption, all briefs, petitions, and motions greater than five pages in length shall contain a table of cases and authorities. Cases should be arranged alphabetically, followed by constitutional provisions, statutes, regulations, and other textbooks and authorities. The format should be similar to that of the index. Citations should be made according to A Uniform System of Citation. (14th ed.).

FORMAT OF BODY OF DOCUMENT

The body of the document of records on appeal should be single-spaced with double-spaces between paragraphs. The body of the document of petitions, notices of appeal, responses, motions, and briefs should be double-spaced, with captions, headings, and long quotes single-spaced.

Adherence to the margins is important since the document will be reproduced front and back and will be bound on the side. No part of the text should be obscured by that binding.

Quotations of more than three lines in length should be indented $\frac{3}{4}$ inch from each margin and should be single-spaced. The citation should immediately follow the quote.

References to the record on appeal should be made through a parenthetical entry in the text. (R. pp. 38-40) References to the transcript, if used, should be made in similar manner. (T. p. 558, line 21)

TOPICAL HEADINGS

The various sections of the brief or petition should be separated (and indexed) by topical headings, centered and underlined, in all capital letters.

Within the argument section, the issues presented should be set out as a heading in all capital letters and in paragraph format from margin to margin. Sub-issues should be presented in similar format, but block indented $\frac{1}{2}$ inch from the left margin.

NUMBERING PAGES

The cover page containing the caption of the document (and the index in Records on Appeal) is unnumbered. The index and table of cases and authorities are on pages numbered with lower case roman numerals, e.g., i, ii, iv.

While the page containing the inside caption and the beginning of the substance of the petition or brief bears no number, it is page 1. Subsequent pages are sequentially numbered by arabic numbers, flanked by dashes, at the center of the top margin of the page, e.g. -4-.

An appendix to the brief should be separately numbered in the manner of a brief.

SIGNATURE AND ADDRESS

All original papers filed in a case will bear the original signature of at least one counsel participating in the case, as in the example

below. The name, address, ~~and~~ telephone number, and e-mail address of the person signing, together with the capacity in which he signs the paper will be included. Where counsel or the firm is retained, the firm name should be included above the signature; however, if counsel is appointed in an indigent criminal appeal, only the name of the appointed counsel should appear, without identification of any firm affiliation. Counsel participating in argument must have signed the brief in the case prior to that argument.

(Retained) ATTORNEY, COUNSELOR, LAWYER & HOWE
 By: _____
 John Q. Howe
 By: _____
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Appendix C is amended by rewriting item 23 in Tables 1 and 3 and item 13 in Table 2 to read as follows:

“23. Names, office addresses, telephone numbers, and e-mail addresses of counsel for all parties to appeal.”

Appendix C is amended by changing all occurrences of “Record, p.” to “R. p.” and all occurrences of “Transcript,” to “T.”

Appendix D(1)(a) is amended by deleting the words “or of imprisonment for life” after the word “death.”

Appendix D(1)(b) is amended by deleting the words “Life Imprisonment or” after the words “Sentence of” and before the word “Death” and by deleting the words “(imprisonment for life)” before the words “Respectfully submitted.”

Appendix D is amended by striking all dates ending with “19__” and replacing them with “2__.”

Appendix E is amended by adding the following section after the section entitled "Statement of the Case":

"STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

"Set forth the statutory basis for permitting appellate review. For example, in an appeal from a final judgment to the Court of Appeals, the appellant might state that the ground for appellate review is a final judgment of the superior court under G.S. § 7A-27(b). If the appeal is based on N.C. R. Civ. P. 54(b), the appellant must also state that there has been a final judgment as to one or more but fewer than all of the claims or parties and that there has been a certification by the trial court that there is no just reason for delay. If the appeal is from an interlocutory order or determination based on a substantial right, the appellant must present, in addition to the statutory authorization, facts and argument showing the substantial right that will be lost, prejudiced, or less than adequately protected absent immediate appellate review."

Appendix F is amended by changing the last paragraph as follows:

"Photocopying charges are \$.20 per page. The ~~electronic~~ facsimile 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."~~

These amendments to the North Carolina Rules of Appellate Procedure and the Appendixes thereto shall be effective 31 October 2001.

Adopted by the Court in conference the 18th day of October 2001. The Appellate Division Reporter shall publish the Rules in their entirety in the Advance Sheets of the Supreme Court and the Court of Appeals, at the earliest practicable date. The Rules in their entirety shall also be placed on the Judicial Branch web page at www.aoc.state.nc.us.

Edmunds, J.
For the Court

Witness my hand and the Seal of the Supreme Court of North Carolina, this the 18th day of October, 2001.

Christie Speir Cameron
Clerk of the Supreme Court

NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Adopted 13 June 1975, with amendments received through 18 October 2001.

These rules were promulgated by the Court under the rule-making authority conferred by Article IV, § 13(2) of the Constitution of North Carolina. They are effective with respect to all appeals taken from orders and judgments of the Superior Courts, the District Courts, the North Carolina Industrial Commission, the North Carolina Utilities Commission and the Commissioner of Insurance of North Carolina in which notice of appeal was given on and after July 1, 1975. As to such appeals, these rules supersede the Rules of Practice in the Supreme Court of North Carolina, 254 N.C. 783 (1961), as amended; the Supplementary Rules of the Supreme Court, 271 N.C. 744 (1967), as amended; and the Rules of Practice in the Court of Appeals of North Carolina, 1 N.C. App. 632 (1968), as amended. With respect to all appeals in which notice of appeal was given prior to July 1, 1975, the rules of court and statutes then controlling appellate procedure are continued in force as the Rules of Practice of the Courts of the Appellate Division until final disposition of the appeals.

An Appendix of Tables and Forms prepared by the Drafting Committee, as revised, is published with the rules for its possible helpfulness to the profession in the early stages of experience with these rules. Although authorized to be published for this purpose, it is not an authoritative source on parity with the rules.

Article I **Applicability of Rules**

- Rule 1. Scope of Rules: Trial Tribunal Defined
- (a) Scope of Rules.
 - (b) Rules Do Not Affect Jurisdiction.
 - (c) Definition of Trial Tribunal.
- Rule 2. Suspension of Rules