

# NORTH CAROLINA REPORTS

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SUPREME COURT OF NORTH CAROLINA



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Rule 9(d)(3) is amended to read as follows:

(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~~the Clerk may seem best.

These amendments to the North Carolina Rules of Appellate Procedure shall be effective on the 12th day of May, 2004.

Adopted by the Court in Conference this the 6th day of May, 2004. 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.nccourts.org>).

Edmunds, J.  
For the Court

## IN THE SUPREME COURT OF NORTH CAROLINA

### **Order Adopting Amendments to the North Carolina Rules of Appellate Procedure**

Rule 11 of the North Carolina Rules of Appellate is hereby amended as described below:

Rule 11(b) is amended to read as follows:

(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~~30 days (35 days in capitally tried cases) after service of the proposed record on appeal upon ~~him~~ an appellee, that 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.

Rule 11(c) is amended to read as follows:

(c) ~~By Judicial Order or Agreement, by Operation of Rule, or by Court Order After Appellant's Appellee's Failure to Request Judicial Settlement~~**Objection or Amendment.** Within ~~2130~~ 30 days (35 days in capitally tried cases) after service upon ~~him~~ ~~appellee~~ of appellant's proposed record on appeal, ~~and that~~ 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 serves amendments, objections, or a proposed alternative record on appeal, the record on appeal shall consist of each item that is either among those items required by Rule 9(a) to be in the record on appeal or that is requested by any party to the appeal and agreed upon for inclusion by all other parties to the appeal. If a party requests that an item be included in the record on appeal but not all other parties to the appeal agree to its inclusion, then that item shall not be included in the printed record on appeal, but shall be filed with the record on appeal, along with any verbatim transcripts, narrations of proceedings, documentary exhibits, and other items that are filed pursuant to Rule 9(c) or 9((d); provided that any item not filed, served, submitted for consideration, admitted, or for which no offer of proof was tendered, shall not be included.

If any party to the appeal contends that materials proposed alternative for inclusion in the record on appeal or for filing therewith pursuant to Rule 9(c) or 9(d) were not filed, served, submitted for consideration, admitted, or made the appellant or any other appellee subject of an offer of proof, then that party, within 10 days after expiration of the time within which the appellee last served with the appellant's proposed record on appeal might have served amendments, objections, or a proposed alternative record on appeal, 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 served, 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 served, 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 functions of the judge in the settlement of the record on appeal are to settle narrations of proceedings under Rule 9(c)(1) and to determine whether the record accurately reflects material filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, but not to decide whether material desired in the record by either party is relevant to the issues on appeal, non-duplicative, or otherwise suited for inclusion in the record on appeal.

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.

Rule 11(d) is amended to read as follows:

**(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~~attributed 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.

These amendments to the North Carolina Rules of Appellate Procedure shall be effective on the 12th day of May, 2004.

Adopted by the Court in Conference this the 6th day of May, 2004. 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.nccourts.org>).

Edmunds, J.  
For the Court

## IN THE SUPREME COURT OF NORTH CAROLINA

### **Order Adopting Amendments to the North Carolina Rules of Appellate Procedure**

Rule 18 of the North Carolina Rules of Appellate is hereby amended as described below:

Rule 18(c)(1) is amended to read as follows:

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

Rule 18(d)(2) is amended to read as follows:

(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, that 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.

Rule 18(d)(3) is amended to read as follows:

(3) ~~*By Conference or Agency Agreement, by Operation of Rule, or by Court Order; Failure to Request Settlement After Appellee's Objection or Amendment.*~~ If any appellee timely files amendments,