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Order Adopting Amendments to the North Carolina Rules of Appellate Procedure

I. Rules 13, 14, 15, 28, and 30 of the North Carolina Rules of Appellate Procedure are amended as described below:

Rule 13(a) is amended to read:

(a) Time for Filing and Service of Briefs.

(1) *Cases Other Than Death Penalty Cases.* Within 30 days after the clerk of the appellate court has mailed the printed record to the parties, the appellant shall file his brief in the office of the clerk of the appellate court, and serve copies thereof upon all other parties separately represented. The mailing of the printed record is not service for purposes of Rule 27(b); therefore the provision of that rule allowing an additional three days after service by mail does not extend the period for the filing of an appellant's brief. Within 30 days after appellant's brief has been served on an appellee, the appellee shall similarly file and serve copies of his brief. If permitted by Rule 28(h), the appellant may serve and file a reply brief ~~within 14 days after service of the brief of the appellee as provided in that rule.~~

(2) *Death Penalty Cases.* Within 60 days after the Clerk of the Supreme Court has mailed the printed record to the parties, the defendant-appellant, in a criminal appeal which includes a sentence of death, shall file his brief in the office of the Clerk and serve copies thereof upon all other parties separately represented. The mailing of the printed record is not service for purposes of Rule 27(b); therefore the provision of that rule allowing an additional three days after service by mail does not extend the period for the filing of a defendant-appellant's brief. Within 60 days after appellant's brief has been served, the State-appellee shall similarly file and serve copies of its brief. If permitted by Rule 28(h), the appellant may serve and file a reply brief as provided in that rule, except that reply briefs filed pursuant to Rule 28(h)(2) or (3) shall be filed and served within 21 days after service of the brief of the State-appellee.

The first paragraph of Rule 14(d) is amended to read:

(1) *Filing and Service; Copies.* Within 30 days after filing notice of appeal in the Supreme Court, the appellant shall file with the Clerk of the Supreme Court and serve upon all other par-

ties copies of a new brief prepared in conformity with Rule 28, presenting only those questions upon which review by the Supreme Court is sought; provided, however, that when the appeal is based upon the existence of a substantial constitutional question or when the appellant has filed a petition for discretionary review for issues in addition to those set out as the basis of a dissent in the Court of Appeals, the appellant shall file and serve a new brief within 30 days after entry of the order of the Supreme Court which determines for the purpose of retaining the appeal on the docket that a substantial constitutional question does exist or allows or denies the petition for discretionary review in an appeal based on a dissent. Within 30 days after service of the appellant's brief on him, the appellee shall similarly file and serve copies of a new brief. If permitted by Rule 28(h), the appellant may serve and file a reply brief ~~within 14 days after service of the brief of the appellee~~ as provided in that rule.

Rule 15(g)(2) is amended to read:

(2) *Cases Certified for Review of Court of Appeals Determinations.* When a case is certified for review by the Supreme Court of a determination made by the Court of Appeals, the appellant shall file a new brief prepared in conformity with Rule 28 in the Supreme Court and serve copies upon all other parties within 30 days after the case is docketed in the Supreme Court by entry of its order of certification. The appellee shall file a new brief in the Supreme Court and serve copies upon all other parties within 30 days after a copy of appellant's brief is served upon him. If permitted by Rule 28(h), the appellant may serve and file a reply brief ~~within 14 days after service of the brief of the appellee~~ as provided in that rule.

Rule 28 is amended as follows:

Rule 28(b)(6) is amended to read:

(6) 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 argument shall contain a concise statement of the applicable standard(s) of review for each question presented, which shall appear either at the beginning of the discussion of each

question presented or under a separate heading placed before the beginning of the discussion of all the questions presented.

The body of the argument and the statement of applicable standard(s) of review 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.

Rule 28(c) is amended to read:

(c) Content of Appellee's Brief; Presentation of Additional Questions. An appellee's brief in any appeal shall contain a subject index 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, statement of the grounds for appellate review, ~~or~~ statement of the facts, or statement of the standard(s) of review, 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, as well as a statement of the applicable standard(s) of review for those additional questions.

Rule 28(h)(4) is amended to read:

(4) If the parties are notified that the case has been scheduled for oral argument, an appellant may ~~file with the Court,~~

within 14 days after ~~the notice~~ service of argument is mailed, such notification, file and serve a motion for leave to file a reply brief. The motion shall state concisely the reasons why a reply brief is believed to be desirable or necessary and the issues to be addressed in the reply brief. The proposed reply brief may be submitted with the motion for leave and shall be 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. Unless otherwise ordered by the Court, the motion for leave will be determined solely upon the motion and without response thereto or oral argument. The clerk of the appellate court will notify the parties of the Court’s action upon the motion, and if the motion is granted, the appellant shall file and serve the reply brief within ten days of such notice.

The titles of Rule 30 and Rule 30(e) are amended to read:

RULE 30. ORAL ARGUMENT AND UNPUBLISHED OPINIONS.

(e) ~~Decision of Appeal Without Publication of an Opinion~~ Unpublished Opinions.

II. Appendixes A, B, and E of the North Carolina Rules of Appellate Procedure are amended as described below:

Appendix A is amended as follows:

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> |
|--|--------------------|--|------------------|
| * * * | | | |
| Serving proposed record on appeal (civil, non-capital criminal) | 35 | notice of appeal (no transcript) or reporter’s certificate of delivery of transcript | 11(b) |
| (agency) | 35 | | 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 30 | service of proposed record | 11(c) |
| (capital criminal) | 35 | | |
| (agency) | 30 | service of proposed record | 18(d)(2) |

* * *

Appendix B is amended by deleting the parenthetical shown with a strikeout and by adding the words shown in brackets:

* * *

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 [the most recent edition of] A Uniform System of Citation ~~(14th ed.)~~. [Citations shall include parallel citations to official state reporters.]

* * *

Appendix E is amended as follows:

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ARGUMENT

Each question will be set forth in upper case type as the party's contention, followed by the assignments of error pertinent to the question, identified by their numbers and by the pages in the printed record on appeal or in the transcript at which they appear, and separate arguments pertaining to and supporting that contention, e.g.,

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS HIS INCULPATORY STATEMENT BECAUSE THAT STATEMENT WAS THE PRODUCT OF AN ILLEGAL DETENTION.

ASSIGNMENT OF ERROR NO. 2

(T. p. 45, lines 20-23)

The standard of review for each question presented shall be set out in accordance with Appellate Rule 28(b)(6).

Parties should feel free to summarize, quote from, or cite to the record or transcript during the presentation of argument. If the transcript option is selected under Appellate Rule 9(c), the Appendix to the Brief becomes a consideration, as described in Appellate Rule 28 and below.

Where statutory or regulatory materials are cited, the relevant portions should be quoted in the body of the argument or placed in the appendix to the brief. Appellate Rule 28(d)(1)c.

* * *

These amendments to the North Carolina Rules of Appellate Procedure shall be effective on the 1st day of September, 2005.

Adopted by the Court in Conference this the 18th day of August, 2005. 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