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THE FOLLOWING TWO ORDERS, WHICH WERE
ORIGINALLY PUBLISHED IN 92 N.C. APP. 761 (1988) AND 113
N.C. APP. 841 (1994), RESPECTIVELY, WERE INADVERTENTLY
OMITTED FROM PUBLICATION IN THE NORTH CAROLINA
REPORTS. THESE ORDERS ARE PRINTED IN THE
FOLLOWING PAGES TO REMEDY THE OMISSION.

ORDER ADOPTING
AMENDMENTS TO RULES OF APPELLATE PROCEDURE

Rules 3, 4, 7, 9, 10, 11, 12, 15, 21, 25, 27, 31, 34, and 39 of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, are hereby amended to read as in the following pages. All amendments shall be effective as follows:

Rules 15, 31 and 39: 1 January 1989;

Rules 25, and 34: 1 July 1989;

Rule 21: applicable to all cases in which the superior court order is entered on or after 1 July 1989; and

Rules 3, 4, 7, 9, 10, 11, 12, and 27: effective for all judgments of the trial division entered on or after 1 July 1989.

Adopted by the Court in Conference this 8th day of December 1988. These amendments shall be promulgated by publication in the Advance sheets of the Supreme Court and the Court of Appeals.

WHICHARD, J.
For the Court

Rule 3

APPEAL IN CIVIL CASES—HOW AND WHEN TAKEN

(a) *Filing the Notice of Appeal.* Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subdivision (c) of this rule.

(b) *RESERVED.*

(c) *Time For Taking Appeal.* Appeal from a judgment or order in a civil action or special proceeding must be taken within 30 days after its entry. The running of the time for filing and serving a notice of appeal in a civil action or special proceeding is tolled as to all parties by a timely motion filed by any party pursuant to the Rules of Civil Procedure enumerated in this subdivision, and the full time for appeal commences to run and is to be computed from the entry of an order upon any of the following motions:

- (1) a motion under Rule 50(b) for judgment *n.o.v.* whether or not with conditional grant or denial of new trial;
- (2) a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;
- (3) a motion under Rule 59 to alter or amend a judgment;
- (4) a motion under Rule 59 for a new trial.

If a 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.

(d) *Content of Notice of Appeal.* The notice of appeal required to be filed and served by subdivision (a) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(e) *Service of Notice of Appeal.* Service of copies of the notice of appeal may be made as provided in Rule 26 of these rules.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 14 April 1976;

8 December 1988—3(a), (b), (c), (d)—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 4**APPEAL IN CRIMINAL CASES—HOW AND WHEN TAKEN**

(a) *Manner and Time.* Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within 30 days after entry of the judgment or order or within 30 days after a ruling on a motion for appropriate relief made during the ten-day period following entry of the judgment or order.

(b) *Content of Notice of Appeal.* The notice of appeal required to be filed and served by subdivision (a) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(c) *Service of Notice of Appeal.* Service of copies of the notice of appeal may be made as provided in Rule 26 of these rules.

(d) *To Which Appellate Court Addressed.* An appeal of right from a judgment of a superior court by any person who has been convicted of murder in the first degree and sentenced to life imprisonment or death shall be filed in the Supreme Court. In all other criminal cases, appeal shall be filed in the Court of Appeals.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 4 October 1978—(a)(2)—effective 1 January 1979;

13 July 1982—(d);

3 September 1987—(d)—effective for all judgments of the superior court entered on or after 24 July 1987;

8 December 1988—4(a)—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 7

**PREPARATION OF THE TRANSCRIPT;
COURT REPORTER'S DUTIES**

(a) *Ordering the Transcript.*

- (1) **Civil Cases.** Within 10 days after filing the notice of appeal the appellant shall order, in writing, from the court reporter a transcript of such parts of the proceedings not already on file as he deems necessary. A copy of the order shall be filed with the clerk of the trial tribunal. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall file with the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be filed, the 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 the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within 10 days after the service of the statement of the appellant, file and serve on the appellant a designation of additional parts ordered by the appellee. At the time of ordering, a party shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript.
- (2) **Criminal Cases.** Upon the filing of a notice of appeal, unless the parties file therewith a stipulation designating the parts of the proceedings which need not be transcribed, the clerk of the trial tribunal shall order from the court reporter a transcript of the proceedings and shall file a certificate of such order. The clerk's order shall include the caption of the case; date or dates of trial; portions of transcript requested; 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.

(b) *Preparation and Delivery of Transcript.*

- (1) From the date of the reporter's receipt of an order for a transcript, the reporter shall have 60 days for preparation and filing of the transcript in civil cases and non-capital criminal cases and shall have 120 days for preparation and filing of the transcript in capitally tried cases. The trial tribunal, in its discretion, and for good cause shown by the reporter or by a party on behalf of the reporter may extend the time for preparation of the transcript for an additional 30 days. Where the clerk's order 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 preparation of the transcript commences seven days after the filing of the clerk's order of transcript.
- (2) The court reporter 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 reporter shall certify to the clerk of the trial tribunal that the parties' copies have been so delivered. 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.

ADMINISTRATIVE HISTORY

- Adopted: 13 June 1975.
 REPEALED: JULY 1, 1978.
 (See note following Rule 17.)
 Re-adopted: 8 December 1988—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 9

THE RECORD ON APPEAL

(a) *Function; Composition of Record.* In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal and the verbatim transcript of proceedings, if one is designated, constituted in accordance with this Rule 9.

- (1) **Composition of the Record in Civil Actions and Special Proceedings.** The record on appeal in civil actions and special proceedings shall contain:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - c. a copy of the summons with return, or of other papers showing jurisdiction of the trial court over person or property, or a statement showing same;
 - d. copies of the pleadings, and of any pre-trial order on which the case or any part thereof was tried;
 - e. so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - f. where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;
 - g. copies of the issues submitted and the verdict, or of the trial court's findings of fact and conclusions of law;
 - h. a copy of the judgment, order, or other determination from which appeal is taken;
 - i. a copy of the notice of appeal, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (3);
 - 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 tran-

script of proceedings which is being filed with the record pursuant to Rule 9(c)(2); and

k. exceptions and assignments of error set out in the manner provided in Rule 10.

(2) Composition of the Record in Appeals from Superior Court Review of Administrative Boards and Agencies.

The record on appeal in cases of appeal from judgments of the superior court rendered upon review of the proceedings of administrative boards or agencies, other than those specified in Rule 18(a), shall contain:

a. an index of the contents of the record, which shall appear as the first page thereof;

b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;

c. a copy of the summons, notice of hearing or other papers showing jurisdiction of the board or agency over the persons or property sought to be bound in the proceeding, or a statement showing same;

d. copies of all petitions and other pleadings filed in the superior court;

e. copies of all items properly before the superior court as are necessary for an understanding of all errors assigned;

f. a copy of any findings of fact and conclusions of law and of the judgment, order, or other determination of the superior court from which appeal is taken;

g. a copy of the notice of appeal from the superior court, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is filed pursuant to Rule 9(c)(2) and (3); and

h. exceptions and assignments of error to the actions of the superior court, set out in the manner provided in Rule 10.

- (3) **Composition of the Record in Criminal Actions.** The record on appeal in criminal actions shall contain:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - c. copies of all warrants, informations, presentments, and indictments upon which the case has been tried in any court;
 - d. copies of docket entries or a statement showing all arraignments and pleas;
 - e. so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned, or a statement that the entire verbatim transcript of the proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - f. where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given;
 - g. copies of the verdict and of the judgment, order, or other determination from which appeal is taken; and in capitally tried cases, a copy of the jury verdict sheet for sentencing, showing the aggravating and mitigating circumstances submitted and found or not found;
 - h. a copy of the notice of appeal, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding defendant indigent for the purposes of the appeal and assigning counsel, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is to be filed pursuant to Rule 9(c)(2);
 - 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 as-

signed, unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2); and

- j. exceptions and assignments of error set out in the manner provided in Rule 10.

(b) *Form of Record; Amendments.* The record on appeal shall be in the format prescribed by Rule 26(g) and the appendixes to these rules.

- (1) **Order of Arrangement.** The items constituting the record on appeal should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal.
- (2) **Inclusion of Unnecessary Matter; Penalty.** It shall be the duty of counsel for all parties to an appeal to avoid including in the record on appeal matter not necessary for an understanding of the errors assigned. The cost of including such matter may be charged as costs to the party or counsel who caused or permitted its inclusion.
- (3) **Filing Dates and Signatures on Papers.** Every pleading, motion, affidavit, or other paper included in the record on appeal shall show the date on which it was filed and, if verified, the date of verification and the person who verified. Every judgment, order, or other determination shall show the date on which it was entered. The typed or printed name of the person signing a paper shall be entered immediately below the signature.
- (4) **Pagination; Counsel Identified.** The pages of the record on appeal shall be numbered consecutively, be referred to as "record pages" and be cited as "(R p)." Pages of the verbatim transcript of proceedings filed under Rule 9(c)(2) shall be referred to as "transcript pages" and cited as "(T p _)." At the end of the record on appeal shall appear the names, office addresses, and telephone numbers of counsel of record for all parties to the appeal.
- (5) **Additions and Amendments to Record on Appeal.** On motion of any party or on its own initiative, the appellate court may order additional portions of a trial court record or transcript sent up and added to the record on appeal. On motion of any party the appellate

court may order any portion of the record on appeal or transcript amended to correct error shown as to form or content. Prior to the docketing of the record on appeal in the appellate court, such motions may be made by any party to the trial tribunal.

(c) *Presentation of Testimonial Evidence and Other Proceedings.* Testimonial evidence, voir dire, and other trial proceedings necessary to be presented for review by the appellate court may be included either in the record on appeal in the form specified in Rule 9(c)(1) or by designating the verbatim transcript of proceedings of the trial tribunal as provided in Rule 9(c)(2) and (c)(3). Where error is assigned to the giving or omission of instructions to the jury, a transcript of the entire charge given shall be included in the record on appeal.

- (1) **When Testimonial Evidence Narrated—How Set Out in Record.** Where error is assigned with respect to the admission or exclusion of evidence, the question and answer form shall be utilized in setting out the pertinent questions and answers. Other testimonial evidence required to be included in the record on appeal by Rule 9(a) shall be set out in narrative form except where such form might not fairly reflect the true sense of the evidence received, in which case it may be set out in question and answer form. Counsel are expected to seek that form or combination of forms best calculated under the circumstances to present the true sense of the required testimonial evidence concisely and at a minimum of expense to the litigants. To this end, counsel may object to particular narration that it does not accurately reflect the true sense of testimony received; or to particular question and answer portions that the testimony might with no substantial loss in accuracy be summarized in narrative form at substantially less expense. When a judge or referee is required to settle the record on appeal under Rule 11(c) and there is dispute as to the form, he shall settle the form in the course of his general settlement of the record on appeal.
- (2) **Designation that Verbatim Transcript of Proceedings in Trial Tribunal Will Be Used.** Appellant may designate in the record that the testimonial evidence will be presented in the verbatim transcript of the evidence in the trial tribunal in lieu of narrating the evidence as permitted by Rule 9(c)(1). Appellant may also designate

that the verbatim transcript will be used to present voir dire or other trial proceedings where those proceedings are the basis for one or more assignments of error and where a verbatim transcript of those proceedings has been made. Any such designation shall refer to the page numbers of the transcript being designated. Appellant need not designate all of the verbatim transcript which has been made, provided that when the verbatim transcript is designated to show the testimonial evidence, so much of the testimonial evidence must be designated as is necessary for an understanding of all errors assigned. When appellant has narrated the evidence and trial proceedings under Rule 9(c)(1), the appellee may designate the verbatim transcript as a proposed alternative record on appeal.

- (3) **Verbatim Transcript of Proceedings—Settlement, Filing, Copies, Briefs.** Whenever a verbatim transcript is designated to be used pursuant to Rule 9(c)(2):
- a. it shall be settled, together with the record on appeal, according to the procedures established by Rule 11;
 - b. appellant shall cause the settled, verbatim transcript to be filed, contemporaneously with the record on appeal, with the clerk of the appellate court in which the appeal is docketed;
 - c. in criminal appeals, the district attorney, upon settlement of the record, shall forward one copy of the settled transcript to the Attorney General of North Carolina; and
 - d. the briefs of the parties must comport with the requirements of Rule 28 regarding complete statement of the facts of the case and regarding appendixes to the briefs.
- (4) **Presentation of Discovery Materials.** Discovery materials offered into evidence at trial shall be brought forward, if relevant, as other evidence. In all instances where discovery materials are considered by the trial tribunal, other than as evidence offered at trial, the following procedures for presenting those materials to the appellate court shall be used: Depositions shall be treated as testimonial evidence and shall be presented

by narration or by transcript of the deposition in the manner prescribed by this Rule 9(c). Other discovery materials, including interrogatories and answers, requests for admission, responses to requests, motions to produce, and the like, pertinent to questions raised on appeal, may be set out in the record on appeal or may be sent up as documentary exhibits in accordance with Rule 9(d)(2).

(d) *Models, Diagrams, and Exhibits of Material.*

- (1) **Exhibits.** Maps, plats, diagrams and other documentary exhibits filed as portions of or attachments to items required to be included in the record on appeal shall be included as part of such items in the record on appeal. Where such exhibits are not necessary to an understanding of the errors assigned, they may by agreement of counsel or by order of the trial court upon motion be excluded from the record on appeal.
- (2) **Transmitting Exhibits.** Three legible copies of each documentary exhibit offered in evidence and required for understanding of errors assigned shall be filed in the appellate court. When an original exhibit has been settled as a necessary part of the record on appeal, any party may within 10 days after settlement of the record on appeal in writing request the clerk of superior court to transmit the exhibit directly to the clerk of the appellate court. The clerk shall thereupon promptly identify and transmit the exhibit as directed by the party. Upon receipt of the exhibit, the clerk of the appellate court shall make prompt written acknowledgment thereof to the transmitting clerk and the exhibit shall be included as part of the records in the appellate court. Portions of the record on appeal in either appellate court which are not suitable for reproduction may be designated by the Clerk of the Supreme Court to be exhibits. Counsel may then be required to submit three additional copies of those designated materials.
- (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 may seem best.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 10 June 1981—9(c)(1)—applicable to all appeals docketed on or after 1 October 1981;

12 January 1982—9(c)(1)—applicable to all appeals docketed after 15 March 1982;

27 November 1984—applicable to all appeals in which the notice of appeal is filed on or after 1 February 1985;

8 December 1988—9(a), (c)—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 10

ASSIGNING ERROR ON APPEAL

(a) *Function in Limiting Scope of Review.* Except as otherwise provided herein, the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10. Provided, that upon any appeal duly taken from a final judgment any party to the appeal may present for review, by properly making them the basis of assignments of error, the questions whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction of the subject matter, and whether a criminal charge is sufficient in law.

(b) *Preserving Questions for Appellate Review.*

- (1) **General.** In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion. Any such question which was properly preserved for review by action of counsel

taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, may be made the basis of an assignment of error in the record on appeal.

(2) **Jury Instructions; Findings and Conclusions of Judge.**

A party may not assign as error any portion of the jury charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly that to which he objects and the grounds of his objection; provided, that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

(3) **Sufficiency of the Evidence.** A defendant in a criminal case may not assign as error the insufficiency of the evidence to prove the crime charged unless he moves to dismiss the action, or for judgment as in case of nonsuit, at trial. If a defendant makes such a motion after the State has presented all its evidence and has rested its case and that motion is denied and the defendant then introduces evidence, his motion for dismissal or judgment as in case of nonsuit made at the close of State's evidence is waived. Such a waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

A defendant may make a motion to dismiss the action or judgment as in case of nonsuit at the conclusion of all the evidence, irrespective of whether he made an earlier such motion. If the motion at the close of all the evidence is denied, the defendant may urge as ground for appeal the denial of his motion made at the conclusion of all the evidence. However, if a defendant fails to move to dismiss the action or for judgment as in case of nonsuit at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

If a defendant's motion to dismiss the action or for judgment as in case of nonsuit is allowed, or shall be sustained on appeal, it shall have the force and effect of a verdict of "not guilty" as to such defendant.

(c) *Assignments of Error.*

- (1) **Form; Record References.** A listing of the assignments of error upon which an appeal is predicated shall be stated at the conclusion of the record on appeal, in short form without argument, and shall be separately numbered. Each assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned. An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is made, with clear and specific record or transcript references. Questions made as to several issues or findings relating to one ground of recovery or defense may be combined in one assignment of error, if separate record or transcript references are made.
- (2) **Jury Instructions.** Where a question concerns instructions given to the jury, the party shall identify the specific portion of the jury charge in question by setting it within brackets or by any other clear means of reference in the record on appeal. A question of the failure to give particular instructions to the jury, or to make a particular finding of fact or conclusion of law which finding or conclusion was not specifically requested of the trial judge, shall identify the omitted instruction, finding or conclusion by setting out its substance in the record on appeal immediately following the instructions given, or findings or conclusions made.
- (3) **Sufficiency of Evidence.** In civil cases, questions that the evidence is legally or factually insufficient to support a particular issue or finding, and challenges directed against any conclusions of law of the trial court based upon such issues or findings, may be combined under a single assignment of error raising both contentions if the record references and the argument under the point sufficiently direct the court's attention to the nature of the question made regarding each such issue or finding or legal conclusion based thereon.
- (4) **Assigning Plain Error.** In criminal cases, a question which was not preserved by objection noted at trial and which is not deemed preserved by rule or law without any such action, nevertheless may be made the basis of an assignment of error where the judicial

action questioned is specifically and distinctly contended to amount to plain error.

(d) *Cross-Assignments of Error by Appellee.* Without taking an appeal an appellee may cross-assign as error any action or omission of the trial court which was properly preserved for appellate review and which deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. Portions of the record or transcript of proceedings necessary to an understanding of such cross-assignments of error may be included in the record on appeal by agreement of the parties under Rule 11(a), may be included by the appellee in a proposed alternative record on appeal under Rule 11(b), or may be designated for inclusion in the verbatim transcript of proceedings, if one is filed under Rule 9(c)(2).

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 10 June 1981—10(b)(2), applicable to every case the trial of which begins on or after 1 October 1981;

7 July 1983—10(b)(3);

27 November 1984—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985;

8 December 1988—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 11

SETTLING THE RECORD ON APPEAL

(a) *By Agreement.* Within 35 days after the reporter'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.

(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 15 days (30 days in capitally tried cases) after service of the proposed record on appeal upon him an 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 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.

(c) *By Judicial Order or Appellant's Failure to Request Judicial Settlement.* Within 15 days (30 days in capitally tried cases) after service upon him of appellant's proposed record on appeal, an 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 files amendments, objections, or a proposed alternative record on appeal, the appellant or any other appellee, within 10 days after expiration of the time within which the appellee last served might have filed, 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 filed, 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 filed, 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 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.

(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 exceptions and assignments of error of the several appellants shall be set out separately in the single record on appeal and related 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.

(e) *RESERVED.*

(f) *Extensions of Time.* The times provided in this rule for taking any action may be extended in accordance with the provisions of Rule 27(c).

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 27 November 1984—11(a), (c), (e), and (f)—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985;

8 December 1988—11(a), (b), (c), (e), and (f)—effective for all judgments of the trial division entered on or after 1 July 1989.

Note: Paragraph (e) formerly contained the requirement that the settled record on appeal be certified by the clerk of the trial tribunal. The 27 November 1984 amendments deleted that step in the process. Under the new version of the rules, once the record is settled by the parties, by agreement or by judicial settlement, the appellant has 15 days to file the settled record with the appropriate appellate court.

Rule 12

**FILING THE RECORD; DOCKETING THE APPEAL;
COPIES OF THE RECORD**

(a) *Time for Filing Record on Appeal.* Within 15 days after the record on appeal has been settled by any of the procedures provided in this Rule 11 or Rule 18, the appellant shall file the record on appeal with the clerk of the court to which appeal is taken.

(b) *Docketing the Appeal.* At the time of filing the record on appeal, the appellant shall pay to the clerk the docket fee fixed pursuant to G.S. 7A-20(b), and the clerk shall thereupon enter the appeal upon the docket of the appellate court. If an appellant is authorized to appeal in forma pauperis as provided in G.S. 1-288 or 7A-450 et seq., the clerk shall docket the appeal upon timely filing of the record on appeal. An appeal is docketed under the title given to the action in the trial division, with the appellant identified as such. The clerk shall forthwith give notice to all parties of the date on which the appeal was docketed in the appellate court.

(c) *Copies of Record on Appeal.* The appellant need file but a single copy of the record on appeal. Upon filing, the appellant may be required to pay to the clerk of the appellate court a deposit fixed by the clerk to cover the costs of reproducing copies of the record on appeal. The clerk will reproduce and distribute copies as directed by the court. By stipulation filed with the record on appeal the parties may agree that specified portions of the record on appeal need not be reproduced in the copies prepared by the clerk.

In civil appeals in forma pauperis the appellant need not pay a deposit for reproducing copies, but at the time of filing the original record on appeal shall also deliver to the clerk two legible copies thereof.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 27 November 1984—applicable to appeals in which the notice of appeal is filed on or after 1 February 1985;

8 December 1988—12(a) and (c)—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 15

**DISCRETIONARY REVIEW ON CERTIFICATION BY
SUPREME COURT UNDER G.S. 7A-31**

(a) *Petition of Party.* Either prior to or following determination by the Court of Appeals of an appeal docketed in that court, any party to the appeal may in writing petition the Supreme Court upon any grounds specified in G.S. 7A-31 to certify the cause for discretionary review by the Supreme Court; except that a petition for discretionary review of an appeal from the Industrial Commission, the North Carolina State Bar, the Property Tax Commission, the Board of State Contract Appeals, or the Commissioner of Insurance may only be made following determination by the Court of Appeals; and except that no petition for discretionary review may be filed in any post-conviction proceeding under G.S. Chap. 15A, Art. 89, or in valuation of exempt property under G.S. Chap. 1C.

(b) *Same; Filing and Service.* A petition for review prior to determination by the Court of Appeals shall be filed with the Clerk of the Supreme Court and served on all other parties within 15 days after the appeal is docketed in the Court of Appeals. A petition for review following determination by the Court of Appeals shall be similarly filed and served within 15 days after the mandate of the Court of Appeals has been issued to the trial tribunal. Such a petition may be contained in or filed with a notice of appeal of right, to be considered by the Supreme Court in the event the appeal is determined not to be of right, as provided in Rule 14(a). The running of the time for filing and serving a petition for review following determination by the Court of Appeals is terminated as to all parties by the filing by any party within such time of a petition for rehearing under Rule 31 of these rules, and the full time for filing and serving such a petition for review thereafter commences to run and is computed as to all parties from the date of entry by the Court of Appeals of an order denying the petition for rehearing. If a timely petition for review is filed by a party, any other party may file a petition for review within 10 days after the first petition for review was filed.

(c) *Same; Content.* The petition shall designate the petitioner or petitioners and shall set forth plainly and concisely the factual and legal basis upon which it is asserted that grounds exist under G.S. 7A-31 for discretionary review. The petition shall state each question for which review is sought, and shall be accompanied by a copy of the opinion of the Court of Appeals when filed after

determination by that court. No supporting brief is required; but supporting authorities may be set forth briefly in the petition.

(d) *Response.* A response to the petition may be filed by any other party within 10 days after service of the petition upon him. No supporting brief is required, but supporting authorities may be set forth briefly in the response. If, in the event that the Supreme Court certifies the case for review, the respondent would seek to present questions in addition to those presented by the petitioner, those additional questions shall be stated in the response.

(e) *Certification by Supreme Court; How Determined and Ordered.*

- (1) **On Petition of a Party.** The determination by the Supreme Court whether to certify for review upon petition of a party is made solely upon the petition and any response thereto and without oral argument.
- (2) **On Initiative of the Court.** The determination by the Supreme Court whether to certify for review upon its own initiative pursuant to G.S. 7A-31 is made without prior notice to the parties and without oral argument.
- (3) **Orders; Filing and Service.** Any determination to certify for review and any determination not to certify made in response to petition will be recorded by the Supreme Court in a written order. The Clerk of the Supreme Court will forthwith enter such order, deliver a copy thereof to the Clerk of the Court of Appeals, and mail copies to all parties. The cause is docketed in the Supreme Court upon entry of an order of certification by the Clerk of the Supreme Court.

(f) *Record on Appeal.*

- (1) **Composition.** The record on appeal filed in the Court of Appeals constitutes the record on appeal for review by the Supreme Court. However, the Supreme Court may note *de novo* any deficiencies in the record on appeal and may take such action in respect thereto as it deems appropriate, including dismissal of the appeal.
- (2) **Filing; Copies.** When an order of certification is filed with the Clerk of the Court of Appeals, he will forthwith transmit the original record on appeal to the Clerk of the Supreme Court. The Clerk of the Supreme

Court will procure or reproduce copies thereof for distribution as directed by the Court. If it is necessary to reproduce copies, the Clerk may require a deposit of the petitioner to cover the costs thereof.

(g) *Filing and Service of Briefs.*

- (1) **Cases Certified Before Determination by Court of Appeals.** When a case is certified for review by the Supreme Court before being determined by the Court of Appeals, the times allowed the parties by Rule 13 to file their respective briefs are not thereby extended. If a party has filed his brief in the Court of Appeals and served copies before the case is certified, the Clerk of the Court of Appeals shall forthwith transmit to the Clerk of the Supreme Court the original brief and any copies already reproduced by him for distribution, and if filing was timely in the Court of Appeals this constitutes timely filing in the Supreme Court. If a party has not filed his brief in the Court of Appeals and served copies before the case is certified, he shall file his brief in the Supreme Court and serve copies within the time allowed and in the manner provided by Rule 13 for filing and serving in the Court of Appeals.
- (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. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee.
- (3) **Copies.** A party need file or the Clerk of the Court of Appeals transmit, but a single copy of any brief required by this Rule 15 to be filed in the Supreme Court upon certification for discretionary review. The Clerk of the Supreme Court will thereupon procure from the Court of Appeals or will himself reproduce copies for distribution as directed by the Supreme

Court. The Clerk may require a deposit of any party to cover the costs of reproducing copies of his brief.

In civil appeals in forma pauperis a party need not pay the deposit for reproducing copies, but at the time of filing his original new brief shall also deliver to the clerk two legible copies thereof reproduced by typewriter carbon or other means.

- (4) **Failure to File or Serve.** If an appellant fails to file and serve his brief within the time allowed by this Rule 15, the appeal may be dismissed on motion of an appellee or upon the Court's own initiative. If an appellee fails to file and serve his brief within the time allowed by this Rule 15, he may not be heard in oral argument except by permission of the Court.

(h) *Discretionary Review of Interlocutory Orders.* An interlocutory order by the Court of Appeals, including an order for a new trial or for further proceedings in the trial tribunal, will be certified for review by the Supreme Court only upon a determination by the Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm to a party.

(i) *Appellant, Appellee Defined.* As used in this Rule 15, the terms "appellant" and "appellee" have the following meanings:

- (1) With respect to the Supreme Court review prior to determination by the Court of Appeals, whether on petition of a party or on the Court's own initiative, "appellant" means a party who appealed from the trial tribunal; "appellee," a party who did not appeal from the trial tribunal.
- (2) With respect to Supreme Court review of a determination of the Court of Appeals, whether on petition of a party or on the Court's own initiative, "appellant" means the party aggrieved by the determination of the Court of Appeals; "appellee," the opposing party. Provided, that in its order of certification, the Supreme Court may designate either party appellant or appellee for purposes of proceeding under this Rule 15.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 7 October 1980—15(g)(2)—effective 1 January 1981;
18 November 1981—15(a);
30 June 1988—15(a), (c), (d), (g)(2)—effective 1 September 1988;
8 December 1988—15(i)(2)—effective 1 July 1989.

Rule 21

CERTIORARI

(a) *Scope of the Writ.*

- (1) **Review of the Judgments and Orders of Trial Tribunals.** The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to G.S. 15A-1422(c)(3) of an order of the trial court denying a motion for appropriate relief.
- (2) **Review of the Judgments and Orders of the Court of Appeals.** The writ of certiorari may be issued by the Supreme Court in appropriate circumstances to permit review of the decisions and orders of the Court of Appeals when the right to prosecute an appeal of right or to petition for discretionary review has been lost by failure to take timely action; or for review of orders of the Court of Appeals when no right of appeal exists.

(b) *Petition for Writ; to Which Appellate Court Addressed.* Application for the writ of certiorari shall be made by filing a petition therefor with the clerk of the court of the appellate division to which appeal of right might lie from a final judgment in the cause by the tribunal to which issuance of the writ is sought.

(c) *Same; Filing and Service; Content.* The petition shall be filed without unreasonable delay and shall be accompanied by proof of service upon all other parties. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the reasons why the writ should issue; and certified copies of the judgment, order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The peti-

tion shall be verified by counsel or the petitioner. Upon receipt of the prescribed docket fee, the clerk will docket the petition.

(d) *Response; Determination by Court.* Within 10 days after service upon him of the petition any party may file a response thereto with supporting affidavits or certified portions of the record not filed with the petition. Filing shall be accompanied by proof of service upon all other parties. The Court for good cause shown may shorten the time for filing a response. Determination will be made on the basis of the petition, the response and any supporting papers. No briefs or oral argument will be received or allowed unless ordered by the court upon its own initiative.

(e) *Petition for Writ in Post Conviction Matters; to Which Appellate Court Addressed.* Petitions for writ of certiorari to review orders of the trial court denying motions for appropriate relief upon grounds listed in G.S. 15A-1415(b) by persons who have been convicted of murder in the first degree and sentenced to life imprisonment or death shall be filed in the Supreme Court. In all other cases such petitions shall be filed in and determined by the Court of Appeals and the Supreme Court will not entertain petitions for certiorari or petitions for further discretionary review in these cases.

(f) *Petition for Writ in Post Conviction Matters—Death Penalty Cases.* A petition for writ of certiorari to review orders of the trial court denying motions for appropriate relief in death penalty cases shall be filed in the Supreme Court within 60 days after delivery of the transcript of the hearing on the motion for appropriate relief to the petitioning party. The responding party shall file its response within 30 days of service of the petition.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 18 November 1981—21(a) and (e);

27 November 1984—21(a)—effective 1 February 1985;

3 September 1987—21(e)—effective for all judgments of the superior court entered on and after 24 July 1987;

8 December 1988—21(f)—applicable to all cases in which the superior court order is entered on or after 1 July 1989.

Rule 25

PENALTIES FOR FAILURE TO COMPLY WITH RULES

(a) *Failure of Appellant to Take Timely Action.* If after giving notice of appeal from any court, commission, or commissioner the appellant shall fail within the times allowed by these rules or by order of court to take any action required to present the appeal for decision, the appeal may on motion of any other party be dismissed. Prior to the filing of an appeal in an appellate court motions to dismiss are made to the court, commission, or commissioner from which appeal has been taken; after an appeal has been docketed in an appellate court motions to dismiss are made to that court. Motions to dismiss shall be supported by affidavits or certified copies of docket entries which show the failure to take timely action or otherwise perfect the appeal, and shall be allowed unless compliance or a waiver thereof is shown on the record, or unless the appellee shall consent to action out of time, or unless the court for good cause shall permit the action to be taken out of time.

Motions heard under this rule to courts of the trial divisions may be heard and determined by any judge of the particular court specified in Rule 36 of these rules; motions made under this rule to a commission may be heard and determined by the chairman of the commission; or if to a commissioner, then by that commissioner. The procedure in all motions made under this rule to trial tribunals shall be that provided for motion practice by the N.C. Rules of Civil Procedure; in all motions made under this rule to courts of the appellate division, shall be that provided by Rule 37 of these rules.

(b) *Sanctions for Failure to Comply With Rules.* A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these appellate rules. The court may impose sanctions of the type and in the manner prescribed by Rule 34 for frivolous appeals.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 8 December 1988—effective 1 July 1989.

Rule 27

COMPUTATION AND EXTENSION OF TIME

(a) *Computation of Time.* In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

(b) *Additional Time After Service by Mail.* Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

(c) *Extensions of Time; By Which Court Granted.* Except as herein provided, courts for good cause shown may upon motion extend any of the times prescribed by these rules or by order of court for doing any act required or allowed under these rules; or may permit an act to be done after the expiration of such time. Courts may not extend the time for taking an appeal or for filing a petition for discretionary review or a petition for rehearing prescribed by these rules or by law.

- (1) **Motions for Extension of Time in the Trial Division.** The trial tribunal for good cause shown by the appellant may extend once for no more than 30 days the time permitted by Rule 11 for the service of the proposed record on appeal.

Motions for extensions of time made to a trial tribunal may be made orally or in writing and without notice to other parties and may be determined at any time or place within the state. Such motions may be determined *ex parte*, but the moving party shall promptly serve on all other parties to the appeal a copy of any order extending time. Provided that motions made after the expiration of the time allowed in these rules for the action sought to be extended must be in writing and with notice to all other parties and may be allowed only after all other parties have had opportunity to be heard.

Motions made under this Rule 27 to a court of the trial divisions may be heard and determined by any of those judges of the particular court specified in Rule 36 of these rules. Such motions made to a commission may be heard and determined by the chairman of the commission; or if to a commissioner, then by that commissioner.

- (2) **Motions for Extension of Time in the Appellate Division.** All motions for extensions of time other than those specifically enumerated in Rule 27(c)(1) may only be made to the appellate court to which appeal has been taken.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 7 March 1978—27(c);

4 October 1978—27(c)—effective 1 January 1979;
27 November 1984—27(a) and (c)—effective 1
February 1985;

8 December 1988—27(c)—effective for all judgments of the trial division entered on or after 1 July 1989.

Rule 31

PETITION FOR REHEARING

(a) *Time for Filing; Content.* A petition for rehearing may be filed in a civil action within 15 days after the mandate of the court has been issued. The petition shall state with particularity the points of fact or law which, in the opinion of the petitioner, the court has overlooked or misapprehended, and shall contain such argument in support of the petition as petitioner desires to present. It shall be accompanied by a certificate of at least two attorneys who for periods of at least five years respectively, shall have been members of the bar of this State and who have no interest in the subject of the action and have not been counsel for any party to the action, that they have carefully examined the appeal and the authorities cited in the decision, and that they consider the decision in error on points specifically and concisely identified. Oral argument in support of the petition will not be permitted.

(b) *How Addressed; Filed.* A petition for rehearing shall be addressed to the court which issued the opinion sought to be reconsidered. Two copies thereof shall be filed with the clerk.

(c) *How Determined.* Within 30 days after the petition is filed, the court will either grant or deny the petition. Determination to grant or deny will be made solely upon the written petition; no written response will be received from the opposing party; and no oral argument by any party will be heard. Determination by the court is final. The rehearing may be granted as to all or less than all points suggested in the petition. When the petition is denied the clerk shall forthwith notify all parties.

(d) *Procedure When Granted.* Upon grant of the petition the clerk shall forthwith notify the parties that the petition has been granted. The case will be reconsidered solely upon the record on appeal, the petition to rehear, new briefs of both parties, and the oral argument if one has been ordered by the court. The briefs shall be addressed solely to the points specified in the order granting the petition to rehear. The petitioner's brief shall be filed within 30 days after the case is certified for rehearing, and the opposing party's brief, within 30 days after petitioner's brief is served upon him. Filing and service of the new briefs shall be in accordance with the requirements of Rule 13. No reply brief shall be received on rehearing. If the court has ordered oral argument, the clerk shall give notice of the time set therefor, which time shall be not less than 30 days after the filing of the petitioner's brief on rehearing.

(e) *Stay of Execution.* When a petition for rehearing is filed, the petitioner may obtain a stay of execution in the trial court to which the mandate of the appellate court has been issued. The procedure is as provided for stays pending appeal by Rule 8 of these rules.

(f) *Waiver by Appeal from Court of Appeals.* The timely filing of a notice of appeal from, or of a petition for discretionary review of, a determination of the Court of Appeals constitutes a waiver of any right thereafter to petition the Court of Appeals for rehearing as to such determination or, if a petition for rehearing has earlier been filed, an abandonment of such petition.

(g) *No Petition in Criminal Cases.* The courts will not entertain petitions for rehearing in criminal actions.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 27 November 1984—31(a)—effective 1 February 1985;
3 September 1987—31(d);
8 December 1988—31(b) and (d)—effective 1 January 1989.

Rule 34

FRIVOLOUS APPEALS; SANCTIONS

(a) A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that an appeal or any proceeding in an appeal was frivolous because of one or more of the following:

- (1) the appeal was not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (2) the appeal was taken or continued for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (3) a petition, motion, brief, record, or other paper filed in the appeal was so grossly lacking in the requirements of propriety, grossly violated appellate court rules, or grossly disregarded the requirements of a fair presentation of the issues to the appellate court.

(b) A court of the appellate division may impose one or more of the following sanctions:

- (1) dismissal of the appeal;
- (2) monetary damages including, but not limited to,
 - a. single or double costs,
 - b. damages occasioned by delay,
 - c. reasonable expenses, including reasonable attorney fees, incurred because of the frivolous appeal or proceeding;
- (3) any other sanction deemed just and proper.

(c) A court of the appellate division may remand the case to the trial division for a hearing to determine one or more of the sanctions under (b)(2) or (b)(3) of this rule.

(d) If a court of the appellate division deems a sanction appropriate under this rule, the court shall order the person subject to sanction to show cause in writing or in oral argument or both why a sanction should not be imposed. If a court of the appellate division remands the case to the trial division for a hearing to determine a sanction under (c) of this rule, the person subject to sanction shall be entitled to be heard on that determination in the trial division.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 8 December 1988—effective 1 July 1989.

Rule 39

DUTIES OF CLERKS; WHEN OFFICES OPEN

(a) *General Provisions.* The clerks of the courts of the appellate division shall take the oaths and give the bonds required by law. The courts shall be deemed always open for the purpose of filing any proper paper and of making motions and issuing orders. The offices of the clerks with the clerks or deputies in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the respective courts may provide by order that the offices of their clerks shall be open for specified hours on Saturdays or on particular legal holidays or shall be closed on particular business days.

(b) *Records to be Kept.* The clerk of each of the courts of the appellate division shall keep and maintain the records of that court, on paper, microform, or electronic media, or any combination thereof. The records kept by the clerk shall include indexed listings of all cases docketed in that court, whether by appeal, petition, or motion and a notation of the dispositions attendant thereto; a listing of final judgments on appeals before the court, indexed by title, docket number, and parties, containing a brief memorandum of the judgment of the court and the party against whom costs were adjudicated; and records of the proceedings and ceremonies of the court.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 8 December 1988—39(b)—effective 1 January 1989.

**ORDER ADOPTING
AMENDMENTS TO RULES OF APPELLATE PROCEDURE**

Rules 41 and 42 of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, are hereby amended to read as in the following pages. Rule 41 is added, and former Rule 41 is renumbered Rule 42. The amendments shall be effective 15 March 1994, and Rule 41 shall apply to all appeals docketed in the Court of Appeals on or after that date.

Adopted by the Court in conference this 3rd day of March 1994. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals.

s/Parker, J.

PARKER, J.

For the Court

WITNESS my hand and the Seal of the Supreme Court of North Carolina, this the 8th day of March 1994.

s/Christie Speir Cameron

CHRISTIE SPEIR CAMERON

Clerk of the Supreme Court

Rule 41

APPEAL INFORMATION STATEMENT

(a) The Court of Appeals has adopted an APPEAL INFORMATION STATEMENT which will be revised from time to time. The purpose of the APPEAL INFORMATION STATEMENT is to provide the Court the substance of an appeal and the information needed by the Court for effective case management.

(b) Each appellant shall complete, file and serve the APPEAL INFORMATION STATEMENT as set out in this Rule.

- (1) The Clerk of the Court of Appeals shall furnish an APPEAL INFORMATION STATEMENT form to all parties to the appeal when the record on appeal is docketed in the Court of Appeals.
- (2) Each appellant shall complete and file the APPEAL INFORMATION STATEMENT with the Clerk of the Court of Appeals at or before the time his or her appellant's brief is due and shall serve a copy of the statement upon all other parties to the appeal pursuant to Rule 26. The APPEAL INFORMATION STATEMENT may be filed by mail addressed to the clerk and, if first class mail is utilized, is deemed filed on the date of mailing as evidenced by the proof of service.
- (3) If any party to the appeal concludes that the APPEAL INFORMATION STATEMENT is in any way inaccurate or incomplete, that party may file with the Court of Appeals a written statement setting out additions or corrections within 7 days of the service of the APPEAL INFORMATION STATEMENT and shall serve a copy of the written statement upon all other parties to the appeal pursuant to Rule 26. The written statement may be filed by mail addressed to the clerk and, if first class mail is utilized, is deemed filed on the date of mailing as evidenced by the proof of service.

ADMINISTRATIVE HISTORY

Adopted: 3 March 1994.

Effective 15 March 1994 for all appeals docketed in the Court of Appeals on or after 15 March 1994.

Rule 42

TITLE

The title of these rules is "North Carolina Rules of Appellate Procedure." They may be so cited either in general reference or in reference to particular rules. In reference to particular rule the abbreviated form of citation, "App. R. _____," is also appropriate.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.

Amended: 3 March 1994—renumbered—effective 15 March 1994