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**ORDER AMENDING THE
RULES OF APPELLATE PROCEDURE**

Pursuant to Article IV, Section 13(2), of the Constitution of North Carolina, the Court hereby amends the North Carolina Rules of Appellate Procedure. This order affects Rules 7, 9, 10, 11, 12, 18, 27, and 28, and Appendixes A and B.

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Rule 7. Preparation of the Transcript; Court Reporter's Duties

(a) Ordering the Transcript.

- (1) ~~**Civil Cases.** Within fourteen days after filing the notice of appeal the appellant shall contract for the transcription of the proceedings or of such parts of the proceedings not already on file, as the appellant deems necessary, in accordance with these rules, and shall provide the following information in writing: a designation of the parts of the proceedings to be transcribed; the name and address of the court reporter or other neutral person designated to produce the transcript; and, where portions of the proceedings have been designated to be transcribed, a statement of the issues the appellant intends to raise on appeal. The appellant shall file the written documentation of this transcript contract with the clerk of the trial tribunal, and serve a copy of it upon all other parties of record and upon the person designated to produce the transcript. If an appellee deems a transcript of other parts of the proceedings to be necessary, the appellee, within fourteen days after the service of the written documentation of the appellant, shall contract for the transcription of any additional parts of the proceedings or such parts of the proceedings not already on file, in accordance with these rules. The appellee shall file with the clerk of the trial tribunal, and serve on all other parties of record, written documentation of the additional parts of the proceedings to be transcribed and the name and address of the court reporter or other neutral person designated to produce the transcript. In civil cases and special proceedings where there is an order establishing the indigency of a party entitled to appointed appellate counsel, the ordering of the transcript shall be as in criminal cases where there is an order establishing the indigency of the defendant as set forth in Rule 7(a)(2).~~

- (2) ~~**Criminal Cases.** In criminal cases where there is no order establishing the indigency of the defendant for the appeal, the defendant shall contract for the transcription of the proceedings as in civil cases.~~

~~When there is an order establishing the indigency of the defendant, unless the trial judge's appeal entries specify or the parties stipulate that parts of the proceedings need not be transcribed, the clerk of the trial tribunal shall order a transcript of the proceedings by serving the following documents upon either the court reporter(s) or neutral person designated to produce the transcript: a copy of the appeal entries signed by the judge; a copy of the trial court's order establishing indigency for the appeal; and a statement setting out the name, address, telephone number, and e-mail address of appellant's counsel. The clerk shall make an entry of record reflecting the date these documents were served upon the court reporter(s) or transcriptionist.~~

~~(b) **Production and Delivery of Transcript.**~~

- (1) ~~**Production.** In civil cases: from the date the requesting party serves the written documentation of the transcript contract on the person designated to produce the transcript, that person shall have sixty days to produce and electronically deliver the transcript.~~

~~In criminal cases where there is no order establishing the indigency of the defendant for the appeal: from the date the requesting party serves the written documentation of the transcript contract on the person designated to produce the transcript, that person shall have sixty days to produce and electronically deliver the transcript in non-capital cases and one hundred twenty days to produce and electronically deliver the transcript in capitally-tried cases.~~

~~In criminal cases where there is an order establishing the indigency of the defendant for the appeal: from the date listed on the appeal entries as the "Date order delivered to transcriptionist," that person shall have sixty-five days to produce and electronically deliver the transcript in non-capital cases and one hundred twenty-five days to produce and electronically deliver the transcript in capitally-tried cases.~~

The transcript format shall comply with standards set by the Administrative Office of the Courts.

Except in capitally-tried criminal cases which result in the imposition of a sentence of death, the trial tribunal, in its discretion and for good cause shown by the appellant, may, pursuant to Rule 27(c)(1), extend the time to produce the transcript for an additional thirty days. Any subsequent motions for additional time required to produce the transcript may only be made pursuant to Rule 27(c)(2) to the appellate court to which appeal has been taken. All motions for extension of time to produce the transcript in capitally-tried cases resulting in the imposition of a sentence of death shall be made directly to the Supreme Court by the appellant.

- (2) ~~**Delivery.**~~ The court reporter, or person designated to produce the transcript, shall electronically deliver the completed transcript to the parties, including the district attorney and Attorney General of North Carolina in criminal cases, 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 court reporter or transcriptionist shall certify to the clerk of the trial tribunal that the transcript has been so delivered. The appellant shall promptly notify the court reporter when the record on appeal has been filed. Once the court reporter, or person designated to produce the transcript, has been notified by the appellant that the record on appeal has been filed with the appellate court to which the appeal has been taken, the court reporter must electronically file the transcript with that court using the docket number assigned by that court.
- (3) ~~**Neutral Transcriptionist.**~~ The neutral person designated to produce the transcript shall not be a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or be financially interested in the action unless the parties agree otherwise by stipulation.

Rule 7. Transcripts

(a) **Scope.** This rule applies to the ordering, preparation, delivery, and filing of each transcript that is to be designated as part of the record on appeal.

(b) **Ordering by a Party.** A party may order a transcript of any proceeding that the party considers necessary for the appeal.

- (1) **Transcript Contract.** A party who orders a transcript for the appeal after notice of appeal is filed or given must use an Appellate Division Transcript Contract form to order the transcript. That form is available on the Supreme Court's rules webpage.
- (2) **Service of Transcript Contract.** An appellant must serve its transcript contract on each party and on the transcriptionist no later than fourteen days after filing or giving notice of appeal. An appellee must serve its transcript contract on each party and on the transcriptionist no later than twenty-eight days after any appellant files or gives notice of appeal.
- (3) **Transcript Documentation.** A party who has ordered a transcript for the appeal, whether ordered before or after notice of appeal, must complete an Appellate Division Transcript Documentation form. That form is available on the Supreme Court's rules webpage.
- (4) **Service of Transcript Documentation.** A party must serve the transcript documentation on all other parties within the time allowed under subsection (b)(2) of this rule for that party to serve a transcript contract.

(c) **Ordering by the Clerk of Superior Court.** If a party is indigent and entitled to appointed appellate counsel, then that party is entitled to have the clerk of superior court order a transcript on that party's behalf.

- (1) **Appellate Entries.** The clerk of superior court must use an appropriate appellate entries form to order a transcript. Those forms are available on the Judicial Branch's forms webpage.
- (2) **Service of Appellate Entries.** The clerk must serve the appellate entries on each party and on each transcriptionist no later than fourteen days after a judge signs the form. Service on a party who has appointed appellate counsel must be made upon that party's appointed appellate counsel.

(d) **Formatting.** The transcriptionist must format the transcript according to standards set by the Administrative Office of the Courts.

(e) **Delivery.**

- (1) **Deadlines.** The transcriptionist must deliver the transcript to the parties no later than ninety days after having been served with the transcript contract or the appellate entries, except:
- a. In a capitally tried case, the deadline is one hundred eighty days.
 - b. In an undisciplined or delinquent juvenile case under Subchapter II of Chapter 7B of the General Statutes, the deadline is sixty days.
 - c. In a special proceeding about the admission or discharge of clients under Article 5 of Chapter 122C of the General Statutes, the deadline is sixty days.
- (2) **Certification.** The transcriptionist must certify to the parties and to the clerk of superior court that the transcript has been delivered.

(f) **Filing.** As soon as practicable after the appeal is docketed, the appellant must file each transcript that the parties have designated as part of the record on appeal. Unless granted an exception for good cause, the appellant must file each transcript electronically.

(g) **Neutral Transcriptionist.** The transcriptionist must not have a personal or financial interest in the proceeding, unless the parties otherwise agree by stipulation.

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Rule 9. The Record on Appeal

(a) **Function; Notice in Cases Involving Juveniles; Composition of Record.** In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal, the ~~verbatim~~ transcript of proceedings, if one is designated, and any other items filed pursuant to this Rule 9. Parties may cite any of these items in their briefs and arguments before the appellate courts.

- (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 persons or property, or a statement showing same;
- d. copies of the pleadings, and of any pretrial order on which the case or any part thereof was tried;
- e. so much of the litigation, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, 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 an issue presented on appeal relates to the giving or omission of instructions to the jury, a transcript of the entire charge given; and identification of the omitted instruction by setting out the requested instruction or its substance in the record on appeal immediately following the instruction 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 issues presented on appeal unless they appear in the ~~verbatim~~ transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2);
- k. proposed issues on appeal set out in the manner provided in Rule 10;

- l. a statement, where appropriate, that the record of proceedings was made with an electronic recording device;
 - m. a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal; and
 - n. any order (issued prior to the filing of the record on appeal) ruling upon a motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84-4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.
- (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 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 issues presented on appeal;
 - f. so much of the litigation in the superior court, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented, 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;

- g. 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;
- h. 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);
- i. proposed issues on appeal relating to the actions of the superior court, set out in the manner provided in Rule 10; and
- j. any order (issued prior to the filing of the record on appeal) ruling upon any motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84-4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.

(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 litigation, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, or a statement specifying 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 an issue presented on appeal relates to the giving or omission of instructions to the jury, a transcript of the entire charge given; and identification of the omitted instruction by setting out the requested instruction or its substance in the record on appeal immediately following the instruction given;
- g. copies of the verdict and of the judgment, order, or other determination from which appeal is taken; and in ~~capitally tried~~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 or an appropriate entry or statement showing appeal taken orally; 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 issues presented on appeal, unless they appear in the ~~verbatim~~ transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2);
- j. proposed issues on appeal set out in the manner provided in Rule 10;
- k. a statement, where appropriate, that the record of proceedings was made with an electronic recording device;
- l. a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal; and

- m. any order (issued prior to the filing of the record on appeal) ruling upon any motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84-4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.

(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 issues presented on appeal. 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 it. 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 printed record on appeal shall be numbered consecutively, be referred to as “record pages,” and be cited as “(R p ____).” Pages of the Rule 11(c) or Rule 18(d)(3) supplement to the record on appeal shall be numbered consecutively with the pages of the record on appeal, the first page of the record supplement to bear the next consecutive number following the number of the last page of the printed record on appeal. These pages shall be referred to as “record supplement pages” and be cited as “(R S p ____).” Pages of the ~~verbatim~~ transcript

of proceedings filed under Rule 9(c)(2) shall be referred to as “transcript pages” and be cited as “(T p ____).” At the end of the record on appeal shall appear the names, office addresses, telephone numbers, State Bar numbers, and e-mail addresses of counsel of record for all parties to the appeal.

(5) **Additions and Amendments to Record on Appeal.**

- a. **Additional Materials in the Record on Appeal.**
If the record on appeal as settled is insufficient to respond to the issues presented in an appellant’s brief or the issues presented in an appellee’s brief pursuant to Rule 10(c), the responding party may supplement the record on appeal with any items that could otherwise have been included pursuant to this Rule 9. The responding party shall serve a copy of those items on opposing counsel and shall file the items in a volume captioned “Rule 9(b)(5) Supplement to the Printed Record on Appeal.” The supplement shall be filed no later than the responsive brief or within the time allowed for filing such a brief if none is filed.
- b. **Motions Pertaining to Additions to the Record.**
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 filing of the record on appeal in the appellate court, such motions may be filed by any party in the trial court.

(c) **Presentation of Testimonial Evidence and Other Proceedings.** Testimonial evidence, voir dire, statements and events at evidentiary and non evidentiary hearings, 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 (3). When an issue presented on appeal relates 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, Voir Dire, Statements and Events at Evidentiary and Non-Evidentiary Hearings, and Other Trial Proceedings Narrated—How Set Out in Record.** When an issue is presented on appeal 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, voir dire, statements and events at evidentiary and non-evidentiary hearings, and other trial proceedings required by Rule 9(a) to be included in the record on appeal 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. Parties shall use 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. Parties may object to particular narration on the basis that it does not accurately reflect the true sense of testimony received, statements made, or events that occurred; or to particular questions and answers on the basis 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, the judge or referee shall settle the form in the course of settling the record on appeal.
- (2) **Designation that ~~Verbatim~~ Transcript of Proceedings in Trial Tribunal Will Be Used.** Appellant may designate in the record on appeal that the testimonial evidence will be presented in the ~~verbatim~~ transcript of the evidence of the trial tribunal in lieu of narrating the evidence and other trial proceedings as permitted by Rule 9(c)(1). When a ~~verbatim~~ transcript of those proceedings has been made, appellant may also designate that the ~~verbatim~~ transcript will be used to present voir dire, statements and events at evidentiary and non-evidentiary hearings, or other trial proceedings when those proceedings are the basis for one or more issues presented on appeal. Any such designation shall refer to the page numbers of the transcript being designated. Appellant need not designate all of the ~~verbatim~~ transcript that 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 issues presented on appeal. When appellant has narrated the evidence and other 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~~ Notice, 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 record on appeal~~ and transcript to be filed pursuant to Rule 7 with the clerk of the appellate court in which the appeal has been docketed;
 - c. in criminal appeals, upon settlement of the record on appeal, the district attorney shall notify the Attorney General of North Carolina that the record on appeal and transcript have been settled; 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 appendices 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 in which 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 issues presented 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).

- (5) **Electronic Recordings.** When a narrative or transcript has been produced from an electronic recording, the parties shall not file a copy of the electronic recording with the appellate division except at the direction or with the approval of the appellate court.

(d) **Exhibits.** Any exhibit filed, served, submitted for consideration, admitted, or made the subject of an offer of proof may be made a part of the record on appeal if a party believes that its inclusion is necessary to understand an issue on appeal.

- (1) **Documentary Exhibits Included in the Printed Record on Appeal.** A party may include a documentary exhibit in the printed record on appeal if it is of a size and nature to make inclusion possible without impairing the legibility or original significance of the exhibit.
- (2) **Exhibits Not Included in the Printed Record on Appeal.** A documentary exhibit that is not included in the printed record on appeal can be made a part of the record on appeal by filing a copy of the exhibit with the clerk of the appellate court. The copy shall be paginated. If multiple exhibits are filed, an index must be included in the filing. A copy that impairs the legibility or original significance of the exhibit may not be filed. An exhibit that is a tangible object or is an exhibit that cannot be copied without impairing its legibility or original significance can be made a part of the record on appeal by having it delivered by the clerk of superior court to the clerk of the appellate court. When a party files a written request with the clerk of superior court that the exhibit be delivered to the appellate court, the clerk must promptly have the exhibit delivered to the appellate court in a manner that ensures its security and availability for use in further trial proceedings. The party requesting delivery of the exhibit to the appellate court shall not be required to move in the appellate court for delivery of the exhibit.
- (3) [Reserved]
- (4) **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 ninety 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 the clerk may seem best.

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Rule 10. Preservation of Issues at Trial; Proposed Issues on Appeal

(a) **Preserving Issues During Trial Proceedings.**

- (1) **General.** In order to preserve an issue 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 issue that 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, including, but not limited to, whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction over the subject matter, and whether a criminal charge is sufficient in law, may be made the basis of an issue presented on appeal.
- (2) **Jury Instructions.** A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the 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.** In a criminal case, a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action, or for judgment as in case of nonsuit, is made 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, defendant's motion for dismissal or judgment 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 for judgment as in case of nonsuit, at the conclusion of all the evidence, irrespective of whether defendant 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 the 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, defendant 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.

- (4) **Plain Error.** In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.

(b) **Appellant's Proposed Issues on Appeal.** Proposed issues that the appellant intends to present on appeal shall be stated without argument at the conclusion of the record on appeal in a numbered list. Proposed issues on appeal are to facilitate the preparation of the record on appeal and shall not limit the scope of the issues presented on appeal in an appellant's brief.

(c) **Appellee's Proposed Issues on Appeal as to an Alternative Basis in Law.** Without taking an appeal, an appellee may list proposed issues on appeal in the record on appeal based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. An appellee's list of proposed issues on appeal shall not preclude an appellee from presenting arguments on other issues in its

brief. Portions of the record or transcript of proceedings necessary to an understanding of such proposed issues on appeal as to an alternative basis in law 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).

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Rule 11. Settling the Record on Appeal

(a) **By Agreement.** Within ~~thirty-five~~forty-five days after the court reporter or transcriptionist certifies delivery of the transcript, if ~~such was ordered~~all of the transcripts that have been ordered according to Rule 7 are delivered (seventy days in ~~capitally tried~~capitally tried cases); or ~~thirty-five~~forty-five days after ~~appellant files~~the last notice of appeal ~~is filed or given~~, whichever is later, the parties may by agreement entered in the record on appeal settle a proposed record on appeal that has been 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 thirty days (thirty-five days in ~~capitally tried~~capitally tried cases) after service of the proposed record on appeal upon 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.

(c) **By Agreement, by Operation of Rule, or by Court Order After Appellee's Objection or Amendment.** Within thirty days (thirty-five days in ~~capitally tried~~capitally tried cases) after service upon appellee of appellant's proposed record on appeal, 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 and shall specify any item(s) for which an objection is based on the contention that the item was not filed, served,

submitted for consideration, admitted, or made the subject of an offer of proof, or that the content of a statement or narration is factually inaccurate. An appellant who objects to an appellee's response to the proposed record on appeal shall make the same specification in its request for judicial settlement. The formatting of the ~~proposed~~ record on appeal and the order in which items appear in it are the responsibility of the appellant.

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 by the appellant with the printed record on appeal in a volume captioned "Rule 11(c) Supplement to the Printed Record on Appeal," along with any ~~verbatim~~ transcripts, narrations of proceedings, documentary exhibits, and other items that are filed pursuant to these rules; provided that any item not filed, served, submitted for consideration, or admitted, or for which no offer of proof was tendered, shall not be included. Subject to the additional requirements of Rule 28(d), items in the Rule 11(c) supplement may be cited and used by the parties as would items in the printed record on appeal.

If a party does not agree to the wording of a statement or narration required or permitted by these rules, there shall be no judicial settlement to resolve the dispute unless the objection is based on a contention that the statement or narration concerns an item that was not filed, served, submitted for consideration, admitted, or tendered in an offer of proof, or that a statement or narration is factually inaccurate. Instead, the objecting party is permitted to have inserted in the settled record on appeal a concise counter-statement. Parties are strongly encouraged to reach agreement on the wording of statements in records on appeal. Judicial settlement is not appropriate for disputes that concern only the formatting of a record on appeal or the order in which items appear in a record on appeal.

The Rule 11(c) supplement to the printed record on appeal shall contain an index of the contents of the supplement, which shall appear as the first page thereof. The Rule 11(c) supplement shall be paginated as required by Rule 9(b)(4) and the contents should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal. If a party does not agree to the inclusion or specification

of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the supplement.

If any party to the appeal contends that materials proposed for inclusion in the record or for filing therewith pursuant to these rules were not filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, or that a statement or narration permitted by these rules is not factually accurate, then that party, within ten 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 that the judge from whose judgment, order, or other determination appeal was taken 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.

The functions of the judge in the settlement of the record on appeal are to determine whether a statement permitted by these rules is not factually accurate, 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 fifteen 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 twenty 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.

If any appellee timely serves amendments, objections, or a proposed alternative record on appeal, and no judicial settlement of the record is timely sought, the record is deemed settled as of the expiration of the ten-day period within which any party could have requested judicial settlement of the record on appeal under this Rule 11(c).

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 (two 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. The proposed issues on appeal of the several appellants shall be set out separately in the single record on appeal and 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.

(e) **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).

* * *

Rule 12. Filing the Record; Docketing the Appeal; Copies of the Record

(a) **Time for Filing Record on Appeal.** Within fifteen days after the record on appeal has been settled by any of the procedures provided in 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 N.C.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 N.C.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 shall file one copy of the printed record on appeal, one copy of each exhibit designated pursuant to Rule 9(d), one copy of any supplement to the record on appeal submitted pursuant to Rule 11(c) or Rule 18(d)(3), and one copy of any paper deposition or administrative hearing transcript, and shall cause any court proceeding transcript to be filed electronically pursuant to Rule 7. The appellant is encouraged to file each of these documents electronically, if permitted to do so by the electronic-filing site. Unless granted an exception for good cause, the appellant shall file one

copy of each transcript that the parties have designated as part of the record on appeal electronically pursuant to Rule 7. The clerk will reproduce and distribute copies of the printed record on appeal as directed by the court, billing the parties pursuant to these rules.

* * *

Rule 18. Taking Appeal; Record on Appeal—Composition and Settlement

(a) **General.** Appeals of right from administrative agencies, boards, commissions, or the Office of Administrative Hearings (referred to in these rules as “administrative tribunals”) directly to the appellate division under N.C.G.S. § 7A-29 shall be in accordance with the procedures provided in these rules for appeals of right from the courts of the trial divisions, except as provided in this Article.

(b) Time and Method for Taking Appeals.

- (1) The times and methods for taking appeals from an administrative tribunal shall be as provided in this Rule 18 unless the General Statutes provide otherwise, in which case the General Statutes shall control.
- (2) Any party to the proceeding may appeal from a final decision of an administrative tribunal to the appropriate court of the appellate division for alleged errors of law by filing and serving a notice of appeal within thirty days after receipt of a copy of the final decision of the administrative tribunal. The final decision of the administrative tribunal is to be sent to the parties by Registered or Certified Mail. The notice of appeal shall specify the party or parties taking the appeal; shall designate the final administrative tribunal decision 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.
- (3) If a transcript of fact-finding proceedings is not made as part of the process leading up to the final administrative tribunal decision, ~~the appealing party may contract with a court reporter for production of such parts of the proceedings not already on file as it deems necessary, pursuant to the procedures prescribed in Rule 7~~ then the parties may order transcripts using the procedures applicable to court proceedings in Rule 7.

(c) **Composition of Record on Appeal.** The record on appeal in appeals from any administrative tribunal shall contain:

- (1) an index of the contents of the record on appeal, which shall appear as the first page thereof;
- (2) a statement identifying the administrative tribunal from whose judgment, order, or opinion appeal is taken; the session at which the judgment, order, or opinion was rendered, or if rendered out of session, the time and place of rendition; and the party appealing;
- (3) a copy of the summons with return, notice of hearing, or other papers showing jurisdiction of the administrative tribunal over persons or property sought to be bound in the proceeding, or a statement showing same;
- (4) copies of all other notices, pleadings, petitions, or other papers required by law or rule to be filed with the administrative tribunal to present and define the matter for determination, including a Form 44 for all workers' compensation cases which originate from the Industrial Commission;
- (5) a copy of any findings of fact and conclusions of law and a copy of the order, award, decision, or other determination of the administrative tribunal from which appeal was taken;
- (6) so much of the litigation before the administrative tribunal or before any division, commissioner, deputy commissioner, or hearing officer of the administrative tribunal, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, or a statement specifying that the ~~verbatim~~ transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2) and (3);
- (7) when the administrative tribunal has reviewed a record of proceedings before a division or an individual commissioner, deputy commissioner, or hearing officer of the administrative tribunal, copies of all items included in the record filed with the administrative tribunal which are necessary for an understanding of all issues presented on appeal;
- (8) copies of all other papers filed and statements of all other proceedings had before the administrative tribunal or any of its individual commissioners, deputies, or

divisions which are necessary to an understanding of all issues presented on appeal, unless they appear in the ~~verbatim~~ transcript of proceedings being filed pursuant to Rule 9(c)(2) and (3);

- (9) a copy of the notice of appeal from the administrative tribunal, 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);
- (10) proposed issues on appeal relating to the actions of the administrative tribunal, set out as provided in Rule 10;
- (11) a statement, when appropriate, that the record of proceedings was made with an electronic recording device;
- (12) a statement, when appropriate, that a supplement compiled pursuant to Rule 18(d)(3) is filed with the record on appeal; and
- (13) any order (issued prior to the filing of the record on appeal) ruling upon any motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84 4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.

(d) **Settling the Record on Appeal.** The record on appeal may be settled by any of the following methods:

- (1) **By Agreement.** Within ~~thirty-five~~forty-five days after ~~filing of the notice of appeal, or after production of the transcript if one is ordered pursuant to Rule 18(b)(3)~~all of the transcripts that have been ordered according to Rule 7 and Rule 18(b)(3) are delivered or forty-five days after the last notice of appeal is filed, whichever is later, the parties may by agreement entered in the record on appeal settle a proposed record on appeal ~~that has been prepared by any party in accordance with this Rule 18 as the record on appeal.~~
- (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 thirty-five days after filing of the notice of appeal, or after production of the transcript if one is ordered pursuant to Rule 18(b)(3)~~ within the same times provided, serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 18(c). Within thirty days after service of the proposed record on appeal upon 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. Amendments or objections to the proposed record on appeal shall be set out in a separate paper and shall specify any item(s) for which an objection is based on the contention that the item was not filed, served, submitted for consideration, admitted, or made the subject of an offer of proof, or that the content of a statement or narration is factually inaccurate. An appellant who objects to an appellee's response to the proposed record on appeal shall make the same specification in its request for judicial settlement. The formatting of the ~~proposed~~ record on appeal and the order in which items appear in it is the responsibility of the appellant. Judicial settlement is not appropriate for disputes concerning only the formatting or the order in which items appear in the settled record on appeal. 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.

- (3) **By Agreement, by Operation of Rule, or by Court Order After Appellee's Objection or Amendment.** 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 18(c) 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, in the absence of contentions that the item was not filed, served, or offered into evidence. If a party requests that an item be included in the record on appeal but not all 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 by the appellant with the record on appeal in a volume captioned "Rule 18(d)(3) Supplement to the Printed Record on Appeal," along with any ~~verbatim~~ transcripts, narrations of proceedings, documentary exhibits, and other items that are filed pursuant to these rules; provided that any item not filed, served, submitted for consideration, admitted, or for which no offer of proof was tendered shall not be included. Subject to the additional requirements of Rule 28(d), items in the Rule 18(d)(3) supplement may be cited and used by the parties as would items in the printed record on appeal.

If a party does not agree to the wording of a statement or narration required or permitted by these rules, there shall be no judicial settlement to resolve the dispute unless the objection is based on a contention that the statement or narration concerns an item that was not filed, served, submitted for consideration, admitted, or tendered in an offer of proof, or that a statement or narration is factually inaccurate. Instead, the objecting party is permitted to have inserted in the settled record on appeal a concise counter-statement. Parties are strongly encouraged to reach agreement on the wording of statements in records on appeal.

The Rule 18(d)(3) supplement to the printed record on appeal shall contain an index of the contents of the supplement, which shall appear as the first page thereof. The Rule 18(d)(3) supplement shall be paginated consecutively with the pages of the record on appeal, the first page of the supplement to bear the next consecutive number following the number of the last page of the record on appeal. These pages shall be referred to as "record supplement pages," and shall be cited as "(R S p ____)." The contents of the supplement should be arranged, so far as practicable, in the order in which they occurred or were filed in the administrative tribunal. If a party does not agree to the inclusion or specification of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the supplement.

If any party to the appeal contends that materials proposed for inclusion in the record or for filing therein pursuant to these rules were not filed, served, submitted for consideration, admitted, or offered into

evidence, or that a statement or narration permitted by these rules is not factually accurate, then that party, within ten 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 that the administrative tribunal convene a conference to settle the record on appeal. A copy of that request, endorsed with a certificate showing service on the administrative tribunal, shall be served upon all other parties. Each party shall promptly provide to the administrative tribunal a reference copy of the record items, amendments, or objections served by that party in the case.

The functions of the administrative tribunal in the settlement of the record on appeal are to determine whether a statement permitted by these rules is not factually accurate, to settle narrations of proceedings under Rule 18(c)(6), 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.

Upon receipt of a request for settlement of the record on appeal, the administrative tribunal shall send written notice to counsel for all parties setting a place and time for a conference to settle the record on appeal. The conference shall be held not later than fifteen days after service of the request upon the administrative tribunal. The administrative tribunal or a delegate appointed in writing by the administrative tribunal shall settle the record on appeal by order entered not more than twenty days after service of the request for settlement upon the administrative tribunal. If requested, the settling official shall return the record items submitted for reference during the settlement process with the order settling the record on appeal.

When the administrative tribunal is a party to the appeal, the administrative tribunal shall forthwith request the Chief Judge of the Court of Appeals or the

Chief Justice of the Supreme Court, as appropriate, to appoint a referee to settle the record on appeal. The referee so appointed shall proceed after conference with all parties to settle the record on appeal in accordance with the terms of these rules and the appointing order.

If any appellee timely serves amendments, objections, or a proposed alternative record on appeal, and no judicial settlement of the record is sought, the record is deemed settled as of the expiration of the ten-day period within which any party could have requested judicial settlement of the record on appeal under this Rule 18(d)(3).

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 administrative tribunal decision.

(e) **Further Procedures and Additional Materials in the Record on Appeal.** Further procedures for perfecting and prosecuting the appeal shall be as provided by these rules for appeals from the courts of the trial divisions.

(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).

* * *

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.** Except as to filing of notice of appeal pursuant to Rule 3(c), 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 and the notice or paper is served by mail, or by e-mail if allowed by these rules, 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 or the responses thereto 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 thirty days, the time permitted by: (1) Rule 7(b)(1) for the person designated to prepare the transcript to produce such transcript a transcriptionist to deliver a transcript; and (2) Rule 11 or Rule 18 for 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.

Motions made under this Rule 27 to a court of the trial division 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 chair 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 be made only to the appellate court to which appeal has been taken.

(d) **Motions for Extension of Time; How Determined.** Motions for extension of time made in any court 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 an opportunity to be heard.

* * *

Rule 28. Briefs—Function and Content

(a) **Function.** The function of all briefs required or permitted by these rules is to define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. The scope of

review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned. Similarly, issues properly presented for review in the Court of Appeals, but not then stated in the notice of appeal or the petition accepted by the Supreme Court for review and discussed in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court for review by that Court, are deemed abandoned.

(b) **Content of Appellant's Brief.** An appellant's brief shall contain, under appropriate headings and in the form prescribed by Rule 26(g) and the appendixes to these rules, in the following order:

- (1) A cover page, followed by a subject index and table of authorities as required by Rule 26(g).
- (2) A statement of the issues presented for review. The proposed issues on appeal listed in the record on appeal shall not limit the scope of the issues that an appellant may argue in its brief.
- (3) A concise statement of the procedural history of the case. This shall indicate the nature of the case and summarize the course of proceedings up to the taking of the appeal before the court.
- (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.
- (5) A full and complete statement of the facts. This should be a non argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.
- (6) An argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.

The argument shall contain a concise statement of the applicable standard(s) of review for each issue, which shall appear either at the beginning of the discussion of each issue or under a separate heading placed before the beginning of the discussion of all the issues.

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 issue may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

- (7) A short conclusion stating the precise relief sought.
- (8) Identification of counsel by signature, typed name, post office address, telephone number, State Bar number, and e-mail address.
- (9) The proof of service required by Rule 26(d).
- (10) Any appendix required or allowed by this Rule 28.

(c) **Content of Appellee's Brief; Presentation of Additional Issues.** An appellee's brief 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 required or allowed by this Rule 28. It does not need to contain a statement of the issues presented, procedural history of the case, grounds for appellate review, the facts, or 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 issues in addition to those stated by the appellant.

Without taking an appeal, an appellee may present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. Without having taken appeal or listing proposed issues as permitted by Rule 10(c), an appellee may also argue on appeal whether a new trial should be granted to the appellee rather than a judgment notwithstanding the verdict awarded to the appellant when the latter relief is sought on appeal by the appellant. If the appellee presents issues 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 issues 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 issues.

An appellee may supplement the record with any materials pertinent to the issues presented on appeal, as provided in Rule 9(b)(5).

(d) **Appendixes to Briefs.** Whenever the transcript of proceedings is filed pursuant to Rule 9(c)(2), the parties must file ~~verbatim~~ portions of the transcript as appendixes to their briefs, if required by this Rule 28(d).

(1) **When Appendixes to Appellant's Brief Are Required.** Except as provided in Rule 28(d)(2), the appellant must reproduce as appendixes to its brief:

- a. those portions of the transcript of proceedings which must be reproduced ~~verbatim~~ in order to understand any issue presented in the brief;
- b. those portions of the transcript showing the pertinent questions and answers when an issue presented in the brief involves the admission or exclusion of evidence;
- c. relevant portions of statutes, rules, or regulations, the study of which is required to determine issues presented in the brief;
- d. relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal, the study of which are required to determine issues presented in the brief.

(2) **When Appendixes to Appellant's Brief Are Not Required.** Notwithstanding the requirements of Rule 28(d)(1), the appellant is not required to reproduce an appendix to its brief with respect to an issue presented:

- a. whenever the portion of the transcript necessary to understand an issue presented in the brief is reproduced ~~verbatim~~ in the body of the brief;
- b. to show the absence or insufficiency of evidence unless there are discrete portions of the transcript where the subject matter of the alleged insufficiency of the evidence is located; or
- c. to show the general nature of the evidence necessary to understand an issue presented in the brief if such evidence has been fully summarized as required by Rule 28(b)(4) and (5).

(3) **When Appendixes to Appellee's Brief Are Required.**

An appellee must reproduce appendixes to its brief in the following circumstances:

- a. Whenever the appellee believes that appellant's appendixes do not include portions of the transcript or items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal that are required by Rule 28(d)(1), the appellee shall reproduce those portions of the transcript or supplement it believes to be necessary to understand the issue.
- b. Whenever the appellee presents a new or additional issue in its brief as permitted by Rule 28(c), the appellee shall reproduce portions of the transcript or relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal as if it were the appellant with respect to each such new or additional issue.

(4) **Format of Appendixes.** The appendixes to the briefs of any party shall be in the format prescribed by Rule 26(g) and shall consist of clear photocopies of transcript pages that have been deemed necessary for inclusion in the appendix under this Rule 28(d). The pages of the appendix shall be consecutively numbered, and an index to the appendix shall be placed at its beginning.

(e) **References in Briefs to the Record.** References in the briefs to parts of the printed record on appeal and to parts of the *verbatim* transcript or parts of documentary exhibits shall be to the pages where those portions appear.

(f) **Joinder of Multiple Parties in Briefs.** Any number of appellants or appellees in a single cause or in causes consolidated for appeal may join in a single brief even though they are not formally joined on the appeal. Any party to any appeal may adopt by reference portions of the briefs of others.

(g) **Additional Authorities.** Additional authorities discovered by a party after filing its brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority. Authorities not cited in the briefs or in such a memorandum may not be cited and discussed in oral argument.

(h) **Reply Briefs.** Within fourteen days after an appellee's brief has been served on an appellant, the appellant may file and serve a reply brief, subject to the length limitations set forth in Rule 28(j). Any reply brief which an appellant elects to file shall be limited to a concise rebuttal of arguments set out in the appellee's brief and shall not reiterate arguments set forth in the appellant's principal brief. Upon motion of the appellant, the Court may extend the length limitations on such a reply brief to permit the appellant to address new or additional issues presented for the first time in the appellee's brief. Otherwise, motions to extend reply brief length limitations or to extend the time to file a reply brief are disfavored.

(i) **Amicus Curiae Briefs.** An amicus curiae may file a brief with the permission of the appellate court in which the appeal is docketed.

- (1) **Motion.** To obtain the court's permission to file a brief, amicus curiae shall file a motion with the court that states concisely the nature of amicus curiae's interest, the reasons why the brief is desirable, the issues of law to be addressed in the brief, and the position of amicus curiae on those issues.
- (2) **Brief.** The motion must be accompanied by amicus curiae's brief. The amicus curiae brief shall contain, in a footnote on the first page, a statement that identifies any person or entity—other than amicus curiae, its members, or its counsel—who, directly or indirectly, either wrote the brief or contributed money for its preparation.
- (3) **Time for Filing.** If the amicus curiae brief is in support of a party to the appeal, then amicus curiae shall file its motion and brief within the time allowed for filing that party's principal brief. If amicus curiae's brief does not support either party, then amicus curiae shall file its motion and proposed brief within the time allowed for filing appellee's principal brief.
- (4) **Service on Parties.** When amicus curiae files its motion and brief, it must serve a copy of its motion and brief on all parties to the appeal.
- (5) **Action by Court.** Unless the court orders otherwise, it will decide amicus curiae's motion without responses or argument. An amicus motion filed by an individual on his or her own behalf will be disfavored.
- (6) **Reply Briefs.** A party to the appeal may file and serve a reply brief that responds to an amicus curiae brief no

later than thirty days after having been served with the amicus curiae brief. A party's reply brief to an amicus curiae brief shall be limited to a concise rebuttal of arguments set out in the amicus curiae brief and shall not reiterate or rebut arguments set forth in the party's principal brief. The court will not accept a reply brief from an amicus curiae.

- (7) **Oral Argument.** The court will allow a motion of an amicus curiae requesting permission to participate in oral argument only for extraordinary reasons.

(j) **Word-Count Limitations Applicable to Briefs Filed in the Court of Appeals.** Each brief filed in the Court of Appeals, whether filed by an appellant, appellee, or amicus curiae, shall be set in font as set forth in Rule 26(g)(1) and described in Appendix B to these rules. A principal brief may contain no more than 8,750 words. A reply brief may contain no more than 3,750 words. An amicus curiae brief may contain no more than 3,750 words.

- (1) **Portions of Brief Included in Word Count.** Footnotes and citations in the body of the brief must be included in the word count. Covers, captions, indexes, tables of authorities, certificates of service, certificates of compliance with this rule, counsel's signature block, and appendices do not count against these word count limits.
- (2) **Certificate of Compliance.** Parties shall submit with the brief, immediately before the certificate of service, a certification, signed by counsel of record, or in the case of parties filing briefs pro se, by the party, that the brief contains no more than the number of words allowed by this rule. For purposes of this certification, counsel and parties may rely on word counts reported by word-processing software, as long as footnotes and citations are included in those word counts.

* * *

Appendix A. Timetables for Appeals

**Timetable of Appeals from Trial Division and Administrative
Tribunals Under Articles II and IV 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 Tolloed)	3(c)
Cross-Appeal	10	Service and Filing of a Timely Notice of Appeal	3(c)
Taking Appeal (Administrative Tribunal)	30	Receipt of Final Administrative Tribunal Decision (Unless Statutes Provide Otherwise)	18(b)(2)
Taking Appeal (Criminal)	14	Entry of Judgment (Unless Tolloed)	4(a)
Ordering Transcript (Civil, Administrative Tribunal)Serving Transcript Contract (Appellant)	14	Filing or Giving Notice of Appeal	7(a)(1) 7(b)(2) 18(b)(3)
Serving Transcript Contract (Appellee)	28	Appellant Filing or Giving Notice of Appeal	7(b)(2) 18(b)(3)
Ordering Transcript (Criminal Indigent) Serving Appellate Entries (Clerk of Superior Court)	14	Order Filed by Clerk of Superior CourtJudge Signing Appellate Entries	7(a)(2) 7(c)(2)
Preparing and Delivering Transcript (Civil, Non-Capital Criminal)	60	Service of Order for TranscriptService of Transcript Contract or Appellate Entries	7(b)(1) 7(e)(1)
(Capital Criminal)	120		
Delivering Transcript (General Rule)	90		
(Capitally Tried Cases)	180		
(Undisciplined or Delinquent Juvenile Cases)	60		

<u>(Special Proceedings about the Admission or Discharge of Clients)</u>	<u>60</u>		
Serving Proposed Record on Appeal (Civil, Non-Capital Criminal)	35	Notice of Appeal (No Transcript) or Court Reporter's Certificate of Delivery of Transcript	11(b) 18(d)
(Administrative Tribunal)	35	<u>Transcripts Being Delivered or Notice of Appeal, Whichever is Later</u>	
(General Rule)	<u>45</u>		
Serving Proposed Record on Appeal (Capital)(Capitally Tried Cases)	70	<u>Court Reporter's Certificate of Delivery All Transcripts Being Delivered</u>	11(b)
Serving Objections or Proposed Alternative Record on Appeal (Civil, Non-Capital Criminal)	30	Service of Proposed Record	11(c)
(Capital Criminal)	35		
(Administrative Tribunal)	30	Service of Proposed Record	18(d)(2)
(General Rule)	<u>30</u>		
(Capitally Tried Cases)	<u>35</u>		
Requesting Judicial Settlement of Record	10	Expiration of the Last Day Within Which an Appellee Who Has Been 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)
Filing Appellant's Brief (or Mailing Brief Under Rule 26(a))	30	Filing the Record on Appeal in Appellate Court (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)
Filing Appellant's Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee's Brief	28(h)
Oral Argument (Usual Minimum Time)	30	Filing Appellant's Brief	29
Certification or Mandate	20	Issuance of Opinion	32
Petition for Rehearing (Civil Action Only)	15	Mandate	31(a)

**Timetable of Appeals from Trial Division Under Article II,
Rule 3.1, of the Rules of Appellate Procedure**

<i>Action</i>	<i>Time (Days)</i>	<i>From date of</i>	<i>Rule Ref.</i>
Taking Appeal	30	Entry of Judgment	3.1(b); N.C.G.S. § 7B-1001
Notifying Court Reporting Manager	1 (Business)	Filing Notice of Appeal	3.1(c)
Assigning Transcriptionist	5 (Business)	Completion of Expedited Juvenile Appeals Form	3.1(c)
Delivering a Transcript of the Proceedings	40	Assignment by Court Reporting Manager	3.1(c)
Serving Proposed Record on Appeal	15	Delivery of Transcript	3.1(d)
Serving Notice of Approval, Specific Objections or Amendments, or Proposed Alternative Record on Appeal	10	Service of Proposed Record on Appeal	3.1(d)

Requesting Judicial Settlement of Record	10	Expiration of the Last Day Within Which an Appellee Who Has Been Served Could Serve Objections, etc.	3.1(d); 11(c)
Judicial Settlement of Record	20	Service on Judge of Request for Settlement	3.1(d); 11(c)
Filing Record on Appeal in Appellate Court	5 (Business)	Settlement of Record on Appeal	3.1(d)
Filing Appellant's Brief	30	Filing of Record on Appeal	13(a)(1)
Filing Appellee's Brief	30	Service of Appellant's Brief	13(a)(1)
Filing Appellant's Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee's Brief	13(a)(1); 28(h)

Timetable of Appeals to the Supreme Court from the Court of Appeals Under Article III of the Rules of Appellate Procedure

<i>Action</i>	<i>Time (Days)</i>	<i>From date of</i>	<i>Rule Ref.</i>
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 Rule 26(a))	30	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)
Filing Appellant's Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee's Brief	28(h)
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)

All of the critical time intervals outlined here except those for taking an appeal, petitioning for discretionary review, responding to a petition for discretionary review, or petitioning for rehearing may be extended by order of the court in which the appeal is docketed at the time. Note that Rule 7(b)(1)27 authorizes the trial tribunal to grant only one extension of time for ~~production of the transcript and that the trial tribunal lacks such authority in criminal cases in which a sentence of death has been imposed~~the delivery of a transcript. Note also that Rule 27 authorizes the trial tribunal to grant only one extension of time for service of the proposed record. All other motions for extension of the times provided in these 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. Format and Style

All documents for filing in either appellate court are prepared on 8½ x 11", 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 font no smaller than 12-point and no larger than 14-point using a proportionally spaced font with serifs. Examples of proportionally spaced fonts with serifs include, but are not

limited to, Constantia, Century, Century Schoolbook, and Century Old Style typeface. 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, except as provided by Rule 42; 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))	<u>From (Name) County</u>
)	
v)	No. _____
)	
(Name of Defendant))	

(TITLE OF DOCUMENT)

The caption should reflect the title of the action (all parties named except as provided by Rule 42) as it appeared in the trial division. The appellant or petitioner is not automatically given topside billing; the relative positions 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 a petition for writ of certiorari or other petitions and motions in which 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 N.C.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 NEW BRIEF.

INDEXES

A brief or petition that is ten pages or more in length and all appendices to briefs (Rule 28) must contain an index to the contents.

The index should be indented approximately 3/4" from each margin, providing a 5" line. The form of the index for a record on appeal should be as follows (indexes for briefs are addressed in Appendix E):

(Record)

INDEX

Organization of the Court 1

Complaint of Tri-Cities Mfg. 1

* * *

*PLAINTIFF'S EVIDENCE:

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Tom Jones 23

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Names and Addresses of Counsel 116

USE OF THE TRANSCRIPT OF EVIDENCE WITH RECORD ON APPEAL

Those portions of the printed record on appeal that correspond to the items asterisked (*) in the sample index above would be omitted if the transcript option were selected under Rule 9(c). In their place, counsel should insert a statement in substantially the following form:

“Per Rule 9(c) of the Rules of Appellate Procedure, the transcript of proceedings in this case, taken by (name), ~~court reporter~~ transcriptionist, from (date) to (date) and consisting of (# of volumes) volumes and (# of pages) pages, numbered (1) through (last page #), is electronically filed pursuant to Rule 7.”

Entire transcripts should not be inserted into the printed record on appeal, but rather should be electronically filed by the ~~court reporter~~ appellant pursuant to Rule 7. Transcript pages inserted into the record on appeal will be treated as a narration and will be printed at the standard page charge. Counsel should note that transcripts 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 that are ten pages or greater 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 *The Bluebook: A Uniform System of Citation*. Citations to regional reporters shall include parallel citations to official state reporters.

FORMAT OF BODY OF DOCUMENT

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

Adherence to the margins is important because 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 $\frac{3}{4}$ " from each margin and should be single-spaced. The citation should immediately follow the quote.

References to the record on appeal should be made using a parenthetical in the text: (R pp 38-40). References to the transcript, if used, should be made in a 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 $\frac{1}{2}$ " 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 lowercase 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.

Ordered by the Court in Conference, this the 17th day of November, 2020.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 17th day of November, 2020.

s/Amy L. Funderburk
AMY L. FUNDERBURK
Clerk of the Supreme Court