

IN THE SUPREME COURT OF NORTH CAROLINA

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 Rule 3.1 and Rule 33.1.

* * *

Rule 3.1. Review in Cases Governed by Subchapter I of the Juvenile Code

(a) **Scope.** This rule applies in appeals filed under N.C.G.S. § 7B-1001 and in cases certified for review by the appellate courts in which the right to appeal under this statute has been lost.

(b) **Filing the Notice of Appeal.** Any party entitled to an appeal under N.C.G.S. § 7B-1001(a) and (a1) may take appeal by filing notice of appeal with the clerk of superior court and serving copies of the notice on all other parties in the time and manner set out in N.C.G.S. § 7B-1001(b) and (c).

(c) **Expediting the Delivery of the Transcript.** The clerk of superior court must complete the Expedited Juvenile Appeals Form within one business day after the notice of appeal is filed. The court reporting manager of the Administrative Office of the Courts must assign a transcriptionist for the appeal within five business days after the clerk completes the form.

The transcriptionist must produce the transcript of the entire proceedings at the State's expense if there is an order that establishes the indigency of the appellant. Otherwise, the appellant has ten days after the transcriptionist is assigned to contract for the transcription of the entire proceedings. In either situation, the transcriptionist must deliver electronically the transcript to each party to the appeal within forty days after receiving the assignment.

(d) **Expediting the Filing of the Record on Appeal.** The parties may settle the record on appeal by agreement at any time before the record on appeal is settled by any other procedure described in this subsection.

Absent agreement, the appellant must serve a proposed record on appeal on each party to the appeal within fifteen days after delivery of the transcript.

Within ten days after having been served with the proposed record on appeal, the appellee may serve on each party to the appeal:

- (1) a notice of approval of the proposed record on appeal;
- (2) specific objections or amendments to the proposed record on appeal; or
- (3) a proposed alternative record on appeal.

If the appellee serves a notice of approval, then this notice settles the record on appeal. If the appellee serves specific objections or amendments, or a proposed alternative record on appeal, then the provisions of Rule 11(c) apply. If the appellee fails to serve a notice of approval, specific objections or amendments, or a proposed alternative record on appeal, then the expiration of the ten-day period to serve one of these documents settles the record on appeal.

The appellant must file the record on appeal within five business days after the record is settled.

(e) **No-Merit Briefs.** When counsel for the appellant concludes that there is no issue of merit on which to base an argument for relief, counsel may file a no-merit brief. The appellant then may file a pro se brief within thirty days after the date of the filing of counsel's no-merit brief.

In the no-merit brief, counsel must identify any issues in the record on appeal that arguably support the appeal and must state why those issues lack merit or would not alter the ultimate result. Counsel must provide the appellant with a copy of the no-merit brief, the transcript, the printed record on appeal, and any supplements or exhibits that have been filed with the appellate court. Counsel must inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief. Counsel must attach evidence of this communication to the no-merit brief.

(f) **Word-Count Limitations Applicable to Briefs.** Briefs filed in the Supreme Court or in the Court of Appeals must comply with the word-count limitations found in Rule 28(j).

(g) **Motions for Extensions of Time.** Motions for extensions of time to produce and deliver the transcript, to file the record on appeal, and to file briefs are disfavored and will be allowed by the appellate courts only in extraordinary circumstances.

(h) **Duty of Trial Counsel.** Trial counsel for the appellant has a duty to assist appellate counsel with the preparation and service of appellant's proposed record on appeal.

(i) **Electronic Filing Required.** Unless granted an exception for good cause, counsel must file all documents electronically.

* * *

Rule 33.1. Secure-Leave Periods for Attorneys

(a) **Definition; ~~Authorization~~Entitlement.** A “secure-leave period” is ~~a period of time~~one complete calendar week that is designated by an attorney ~~in~~during which the appellate courts will not hold oral argument in any case in which that attorney is ~~listed as~~an attorney of record. ~~An attorney may designate secure-leave periods as provided in this rule.~~An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.

~~(b) — **Length; Number.** A secure-leave period shall consist of one complete calendar week. During a calendar year, an attorney may designate three different weeks as secure-leave periods.~~

(b) **Allowance.**

- (1) Within a calendar year, an attorney may enjoy three different secure-leave periods for any purpose.
- (2) Within the twenty-four weeks after the birth or adoption of an attorney’s child, that attorney may enjoy twelve additional secure-leave periods for the purpose of caring for the child.

(c) **How to Submit Designation.** An attorney ~~shall designate~~must submit his or her ~~secure-leave periods on~~designation of a secure-leave period using the electronic filing site of the appellate courts at <https://www.ncappellatecourts.org>.

(d) **When to ~~Designate~~Submit Designation.** ~~An attorney shall designate a secure-leave period at least ninety days before it begins.~~An attorney must submit his or her designation of a secure-leave period:

- (1) at least ninety days before the secure-leave period begins; and
- (2) before oral argument in any of the attorney’s cases is scheduled for a time that conflicts with the secure-leave period.

But because of the uncertainty of a child’s birth or adoption date, the Supreme Court and the Court of Appeals will make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

* * *

The amendment to Rule 3.1 of the North Carolina Rules of Appellate Procedure becomes effective on 11 September 2019. The amendment to Rule 33.1 of the North Carolina Rules of Appellate Procedure is effective for secure-leave periods designated on or after 11 September 2019.

These amendments shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 4th day of September, 2019.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 4th day of September, 2019.



AMY L. FUNDERBURK
Clerk of the Supreme Court