



NORTH CAROLINA COURT *of* APPEALS SELF-REPRESENTATION PACKET



CONTENTS

- Self-Representation Guide
- Legal Resources for North Carolina Residents
- North Carolina's General Court of Justice: An Overview of the State Court System
- Overview of General Steps to Take an Appeal
- Notice of Appeal (Form)
- Petition for Writ of Certiorari (Form)
- Petition for Writ of Mandamus (Form)
- Petition for Writ of Supersedeas and Motion for Temporary Stay (Form)
- Petition for Writ of Habeas Corpus (Form)





NORTH CAROLINA COURT of APPEALS



SELF-REPRESENTATION GUIDE

This document aims to help explain the appellate court system to people who are not represented by an attorney. Appeals are complex, and there are many rules to follow. This document does not cover all the rules. Instead, it is designed to help answer common questions that people may have when they represent themselves in an appeal.

In addition to this document, there are other resources that you may want to review if you are handling your own appeal:

- **The North Carolina Rules of Appellate Procedure:** <https://www.nccourts.gov/courts/supreme-court/court-rules/north-carolina-rules-of-appellate-procedure>
- **Notice of Appeal Tip Sheet:** <https://www.ncbar.org/wp-content/uploads/2021/09/Notice-of-Appeal-Tip-Sheet.pdf>
- **A Style Manual for the North Carolina Rules of Appellate Procedure:** https://www.ncbar.org/wp-content/uploads/2023/06/2023-06-06-NC-Appellate-Style-Manual_FINAL.pdf
- **Resources created or organized by the Appellate Practice Section of the North Carolina Bar Association:** <https://www.ncbar.org/members/communities/committees/appellate-rules/>

If you are interested in finding an attorney who can help with your appeal, then please consult the attachment called “Legal Resources for North Carolina Residents,” which is located at the end of this document. It will point you to organizations that may be able to provide you with an attorney or help you find an attorney for your appeal.



North Carolina's Court System

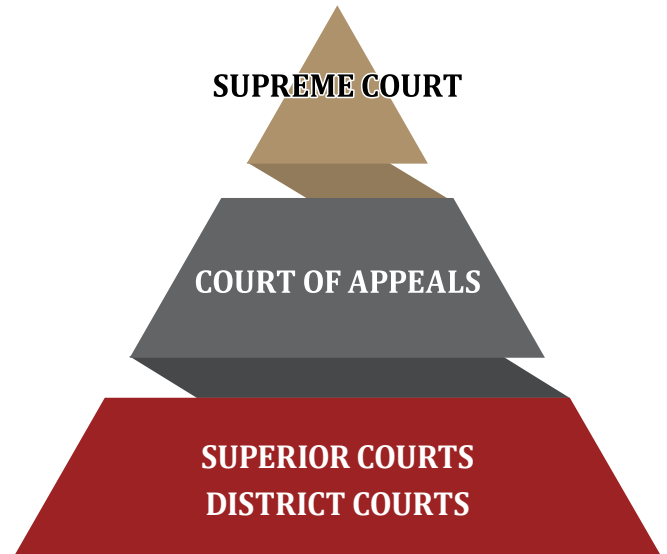
The court system in North Carolina is like a pyramid. At the bottom of the pyramid are the trial courts. North Carolina has two types of trial courts: superior courts and district courts. There are laws that determine what types of cases begin in superior court and what types begin in district court. Both superior and district courts hear civil and criminal cases.

Above the trial courts in the pyramid are two appellate courts, the North Carolina Court of Appeals and the Supreme Court of North Carolina. The Court of Appeals is in the center of the pyramid, and the Supreme Court is at the top.

More information about each of these types of courts can be found in the attachment called "North Carolina's General Court of Justice: An Overview of the State Court System," which is located at the end of this document.

The job of an appellate court is to decide whether a lower court committed some type of legal error. Appellate courts do not decide facts. There are no juries or trials in the appellate courts. There is no new evidence allowed.

For example, if a criminal defendant is found guilty and appeals, the appellate court does not decide whether the defendant is guilty or not. Instead, the appellate court only decides whether there was a legal error in the original trial. Ordinarily, if the criminal defendant wins on appeal, then he will receive a new trial.



Nearly all appeals from a decision of a trial court will first go to the Court of Appeals. There are some very narrow exceptions, which are mentioned below. If a party believes that the Court of Appeals also committed a legal error, then the party may then try to appeal further to the Supreme Court.

This document explains the appellate court system for North Carolina **state** courts. The federal government also has appellate courts. These different court systems do not cross paths. If your case began in a North Carolina trial court, then an appeal in that case would be considered by a North Carolina appellate court. If your case began in a federal trial court (called a United States District Court), then the appeal would be considered by a federal appellate court (for example, the United States Court of Appeals for the Fourth Circuit). Appeals in federal court are not covered in this document.





Should I Appeal to the Court of Appeals or the Supreme Court?

In nearly all cases, the original appeal of a decision of a trial court (either a district court or superior court) goes to the North Carolina Court of Appeals. However, there are exceptions, such as when:

- You are a criminal defendant sentenced to death for first-degree murder;
- You are appealing an order entered by the North Carolina Business Court (the Business Court is a special trial court that hears complex and significant issues of corporate and commercial law); or
- You are appealing from a class-certification order in a class action.



Unless your case falls into one of those very narrow categories, you should appeal first to the North Carolina Court of Appeals, ***not*** to the Supreme Court of North Carolina.

How May I Appeal an Order by the North Carolina Court of Appeals?

Appealing to the North Carolina Court of Appeals is unlike anything you have been involved with at the trial court level. There is an entirely new set of rules that you have to learn and follow – the North Carolina Rules of Appellate Procedure. Please review these Rules carefully, because you must comply with what they say. Even information found in the appendices to the Rules can be very helpful to you.

Appendix A of the Rules has a timeline of the major steps in taking an appeal, the deadline to complete each step, and which appellate rule sets that deadline. For example, the first step in taking an appeal is giving Notice of Appeal. In an appeal from a civil case, giving Notice of Appeal is governed by Rule 3 of the Rules. Pursuant to Rule 3, in general, the Notice of Appeal must be filed within 30 days after the order or judgment being

appealed has been entered. Rule 3 also provides that the Notice of Appeal is filed in the clerk's office where the order being appealed was entered and sets out what must be included in the notice of appeal. Once you file your notice of appeal, the deadline for the next step of the appellate process begins.

There are a few forms that you can use to help you prepare the documents required to be filed in an appeal to the Court of Appeals, but you must prepare many documents yourself. Please refer to the enclosed Self-Representation Guide for resources that may be useful to you. Appendices B, D and E of the Rules provide some information that may be useful to you as you prepare the documents you will be filing in your appeal. Costs for an appeal may be found in Appendix F.

justice for all





When Will My Appeal Be Decided?

There is no deadline for the Court of Appeals of North Carolina to rule on anything you file with the Court. The Clerk's Office does not know when the Court will issue a ruling, so there is no need to call to ask when to expect a ruling from the Court.

Are There Forms Available to Help Me with My Appeal?

Yes. Attached to this document are several forms. You will not need to use every form in every appeal. Below is a short description of the forms included with this document, including when you should consider using them. Please follow the instructions on each form.



Notice of Appeal. This document is used to start an appeal from one court to an appellate court when a party has an appeal of right. The purpose of this form is to tell the court and opposing parties you are appealing a judgment or order.



Petition for Writ of Certiorari. This document is used to seek appellate review of a judgment or order where there is no appeal of right. The purpose of this form is to tell the appellate court about an error committed in the court below.

Petition for Writ of Supersedeas and Motion for Temporary Stay. A petition for a writ of supersedeas is used to ask an appellate court to stay (or put on hold) a judgment or order entered by a lower court. If a writ of supersedeas is issued by the appellate court, it stays enforcement of the lower court's order while the appellate court reviews the order for error. A motion for temporary stay is used to seek an immediate stay pending the appellate court's decision on the petition for writ of supersedeas or the substantive petition in the case.



Petition for Writ of Mandamus. A petition for a writ of mandamus is used to compel a judge or commission(er) to take some action lawfully owed to the petitioner.

Petition for Writ of Habeas Corpus. A petition for a writ of habeas corpus is used to challenge imprisonment as unlawful. A petition for a writ of habeas corpus may be filed with a superior court judge or with either appellate court.



The North Carolina Court System and Administrative Office of the Courts are not permitted to give legal advice to members of the general public. The legal analysis of any situation depends on a variety of factors that cannot be properly represented or accounted for on a website; therefore, if you have any questions about your legal rights and remedies, you may consult an attorney licensed to practice law in North Carolina.

NCOURTS.GOV



NCcourts



@NCcourts



NC courts



North Carolina Administrative
Office of the Courts



All Things Judicial

NC Equal Access to Justice COMMISSION

LEGAL RESOURCES FOR NORTH CAROLINA RESIDENTS

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

Investigates claims of innocence from individuals already convicted of a crime.

AREA SERVED: STATEWIDE

MAIL: P.O. BOX: 2448, RALEIGH, NC 27602

WEBSITE: INNOCENCECOMMISSION-NC.GOV

NC PRISONER LEGAL SERVICES

Serving incarcerated individuals on various civil issues.

AREA SERVED: STATEWIDE

PHONE: 919.856.2200

MAIL: PO BOX 25397, RALEIGH, NC 27611

WEBSITE: NCPLS.ORG/CONTACT

LEGAL AID OF NORTH CAROLINA

Helping low-income persons in civil legal matters such as domestic violence, housing, consumer protection, healthcare.

AREA SERVED: STATEWIDE

PHONE: HELPLINE: 866.219.5262

WEBSITE: LEGALAIDNC.ORG/GET-HELP

CHARLOTTE CENTER FOR LEGAL ADVOCACY

Assisting low-income persons in civil legal matters such as veterans cases, family law & DV, housing, youth, healthcare, employment, consumer.

AREA SERVED: Mecklenburg County

PHONE: Client Helpline: 704.376.1600

OUTSIDE MECKLENBURG COUNTY: 800.438.1254

MAIL: 5535 Albemarle Avenue, Charlotte, NC 28212

WEBSITE: charlottelegaladvocacy.org

DISABILITY RIGHTS NORTH CAROLINA

Protecting the legal rights of people with disabilities.

AREA SERVED: STATEWIDE

PHONE: 877.235.4210 / TTY: 888.268.5535

WEBSITE: DISABILITYRIGHTSNC.ORG/

NC STATE BAR

Regulating the legal profession in N.C

AREA SERVED: STATEWIDE

PHONE: 919.828.4620

WEBSITE: NCBAR.GOV

MAIL: 217 E. EDENTON ST, RALEIGH, NC 27601

NC JUSTICE CENTER

Serving low-income persons in areas such as housing, youth, healthcare, employment, consumer.

AREA SERVED: STATEWIDE

PHONE: 919.856.2570

MAIL: PO BOX 28068, RALEIGH, NC 27611

WEBSITE: NCJUSTICE.ORG

LAND LOSS PREVENTION PROJECT

Serving landowners, homeowners, farmers, and farm-related businesses with real property, consumer, and other matters.

AREA SERVED: STATEWIDE

PHONE: 800.672.5839

MAIL: PO BOX 179, DURHAM, NC 27702

WEBSITE: LANDLOSS.ORG

PISGAH LEGAL SERVICES

Serving low-income persons in civil legal matters such as veterans, domestic violence, housing, health care, consumer, other.

AREA SERVED: WESTERN NORTH CAROLINA

PHONE: 800.489.6144

MAIL: PO BOX 2276, ASHEVILLE, NC 28802

WEBSITE: PISGAHLEGAL.ORG

JUDICIAL STANDARDS COMMISSION

Considering complaints against judges at all levels in North Carolina.

AREA SERVED: STATEWIDE

MAIL TO: PO BOX 1122, RALEIGH, NC 27601

WEBSITE: NCCOURTS.GOV/COMMISSIONS

FINANCIAL PROTECTION LAW CENTER

Assisting North Carolina families who are victims of predatory lending in housing or consumer matters

AREA SERVED: PRIMARILY SOUTHEASTERN NC

PHONE: 910.442.1013

WEBSITE: FINANCIALPROTECTIONLAWCENTER.ORG



NORTH CAROLINA'S GENERAL COURT *of* JUSTICE: AN OVERVIEW *of* THE STATE COURT SYSTEM



Under the North Carolina Constitution, the Judicial Branch is established as an equal branch of state government with the Legislative and Executive branches. North Carolina's court system, called the General Court of Justice, is a state-operated and state-funded unified court system. The General Court of Justice consists of three divisions: appellate, superior court, and district court.



The Supreme Court building is located at 2 East Morgan Street.

APPELLATE DIVISION

SUPREME COURT

The Supreme Court is the state's highest court. This court has a Chief Justice and six associate justices, who sit as a body and decide cases appealed from lower courts, including the Court of Appeals. The Supreme Court has no jury, and it makes no determination of fact; rather it considers only questions of law, which means resolving a party's claim that there were errors in legal procedures or in judicial interpretation of the law in the trial court or the Court of Appeals.



The Court of Appeals building is located at 1 West Morgan Street.

COURT OF APPEALS

The Court of Appeals is an intermediate appellate court that was created to relieve the Supreme Court of a portion of its heavy caseload. Like the Supreme Court, the Court of Appeals decides only questions of law. It has 15 judges, who sit in panels of three to hear cases. One of the judges is the Chief Judge of the Court of Appeals, who is appointed by the Chief Justice of the Supreme Court.



SUPERIOR COURT DIVISION

Unlike the appellate division that decides only questions of law when a party appeals a case, the superior and district court divisions are the trial court divisions that hold trials, and empanel juries to determine the facts of cases.

Superior courts hear cases involving felony crimes, civil cases involving \$25,000 or more, and appeals from district courts. This court “sits” (holds court) at least twice a year in each county of the state. In the busiest counties, several sessions may be held concurrently each week.

justice for all



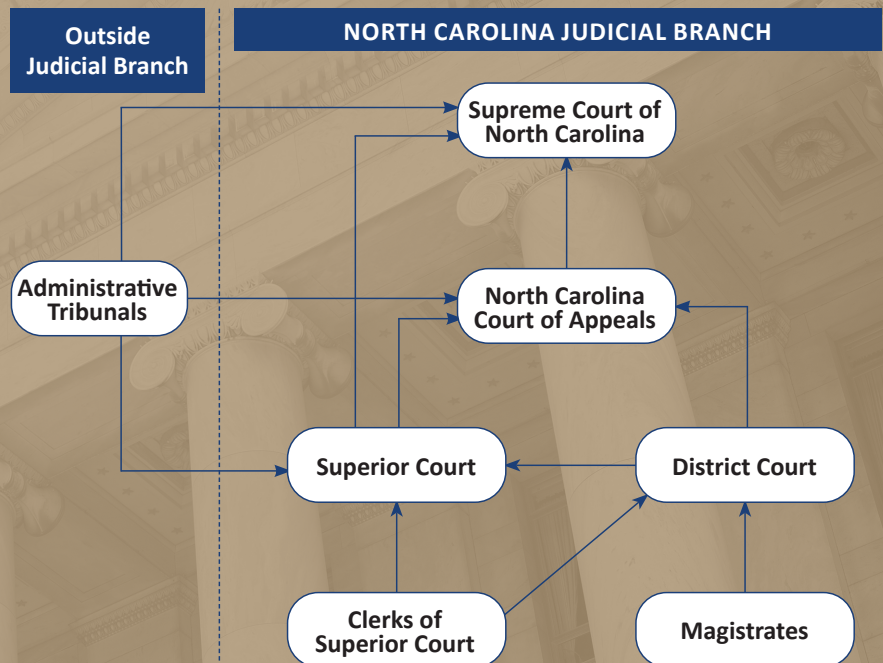
DISTRICT COURT DIVISION

Like the superior court division, district courts hold trials and empanel juries to determine the facts of specific cases. District courts handle serious, but lower level crimes, and civil cases between \$10,000 - \$25,000. The state is divided into district court districts where the court usually sits in the county seat of each county. Each district has a chief district court judge who manages the administrative duties of the court.

Magistrates hold court in both civil and criminal matters as officers of the district court under the authority of the chief district court judge. In the civil context, magistrates are generally assigned to preside over “small claims” court which hears disputes for claims under \$10,000. For criminal matters, magistrates conduct certain preliminary proceedings and are authorized to dispose of some cases by pleas of guilt or by trial.

COURT STRUCTURE *and* ROUTES of APPEAL

North Carolina's unified court system handles nearly 3 million cases each year; cases that help keep our citizens safe, our economy vibrant, and our rights and liberties secure.



NCcourts



@NCcourts



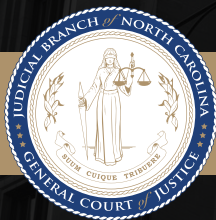
NC courts



North Carolina Administrative Office of the Courts



All Things Judicial



AN OVERVIEW *of the* APPEALS PROCESS



A party (the appellant) gives notice of appeal from entry of an order or judgment.

- *Civil (Rules 3 & 3.1 – within 30 days; must be in writing; file in trial court clerk’s office)*
- *Administrative (Rule 18(b)(2) – within 30 days; must be in writing; file with the agency)*
- *Criminal (Rule 4 – within 14 days; oral notice in open court **or** in writing filed with superior court clerk’s office)*

Appellant arranges for the transcript. (IF no transcript ordered, skip to proposed record.)

- *Civil (Rule 7(b)) – within 14 days of notice of appeal to **serve** transcript contract and documentation forms*
- *Administrative (Rule 18(b)(3))*
- *Criminal pauper (Rule 7(c)(2) – appellate entries)*
- *Civil- indigent **and** entitled to appointed counsel (Rule 7(c)(2) – appellate entries)*

Transcriptionist prepares and delivers transcript to parties.

- *Civil & Criminal (Rule 7(b)(1) – Transcriptionist has 90 days to deliver)*
- *Administrative (Rule 18(b)(3))*
- *First extension of time shall be filed with the trial court (Rule 27(c)(1))*

Appellant prepares and serves the proposed record on appeal on appellee.

- *Civil & Criminal (Rule 11(b)) – 45 days to prepare and serve from delivery of transcript or filing of notice of appeal if no transcript sought; proposed record is prepared in accordance with Rule 9)*
- *Administrative (Rule 18(d))*
- *First extension of time shall be filed with the trial court (Rule 27(c)(1))*

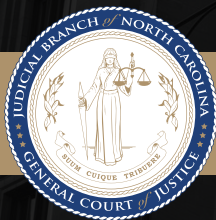
Appellee approves or seeks to amend proposed record on appeal.

- *Civil & Criminal (Rule 11(c) – within 30 days after being served with proposed record)*
- *Administrative (Rule 18(d))*

The parties settle the record on appeal.

- *Civil & Criminal (Rule 11(c) – by agreement or by appellee taking no action)*
- *Civil & Criminal (Rule 11(c) – if appellee objects/amends, 10 additional days to settle).*
- *Administrative (Rule 18(d)(3))*





AN OVERVIEW *of the* APPEALS PROCESS



Appellant files the record on appeal.

- *Rule 12 – 15 days to file after settling record.*
 - *\$250 appeal bond & \$10 docketing fee – money order or cashier’s check. Waived if found to be indigent by order of the trial court and included in record*
 - *Printing and processing fee of \$1.75 per page*
-

Appellant files their brief.

- *Rule 13(a)(1) – within 30 days after **filing** of printed record*
 - *Printing and processing fee of \$1.75 per page*
-

Appellee files their brief.

- *Rule 13(a)(1) – within 30 days after **service** of appellant’s brief*
-

Appellant may file a reply brief.

- *Rule 28(h) – within 14 days after **service** of appellee’s brief*
-

Appeal is calendared before a three-judge panel that either hears oral argument or decides the matter on the briefs alone.

- *Rule 29(c) – calendaring of appeals docketed in the court*
 - *Rule 30(f)(2) – an appeal can be heard without oral argument*
-

The Court files its opinion.

- *1st and 3rd Tuesdays are filing dates; appellate.nccourts.org*
-

The mandate is issued by this Office to the trial court.

- *Rule 32(b) –mandate **issues** 20 days after the opinion is filed*

justice for all



_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
_____ COURT DIVISION

File No(s): _____

_____,
Plaintiff(s),

v.

_____,
Defendant(s).

NOTICE OF APPEAL

TO THE COURT OF APPEALS OF NORTH CAROLINA:

_____ hereby gives notice of appeal to the Court
of Appeals of North Carolina from the final judgment or order of:

Judge's Name: _____

Court in which the Judgment or Order was Entered:

North Carolina Superior Court North Carolina District Court

Other: _____

County: _____

Date Judgement or Order was Entered: _____

Name or Describe Order: _____

Date: _____

Name: _____

Signature: _____

Street Address: _____

City, State Zip Code: _____

Phone Number _____

Email Address: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing NOTICE OF APPEAL on the opposing party by depositing a copy, contained in a first-class, postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

(Include the name and address of each party or their counsel)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

This the _____ day of _____, _____.

By: _____
Signature

COURT OF APPEALS OF NORTH CAROLINA

<p>_____ , Plaintiff(s),</p> <p>v.</p> <p>_____ , Defendant(s).</p>	<p>From _____</p> <p>File No(s): _____</p>
---	--

PETITION FOR WRIT OF CERTIORARI

A petition for writ of certiorari is used to ask an appellate court to review a judgment or an order entered by a lower court when there is no appeal of right from the judgment or order or that appeal of right has been lost. (See Rule 21 of the North Carolina Rules of Appellate Procedure.) Please supply the information below so the Court of Appeals of North Carolina can understand (1) what judgment or order you are asking the Court to review, (2) what you claim is the error in that judgment or order, and (3) what you wish for the Court to do about the error.

Your name: _____

Your contact information:

Address: _____

Phone number: _____

E-mail address: _____

Which court entered the judgment or order you are asking the Court to review? (Check one.)

North Carolina Superior Court

North Carolina District Court

Other: _____

File number(s) in which the judgment or order was entered:

County of the trial court case: _____

The plaintiff(s) in the trial court: _____

The defendant(s) in the trial court: _____

Other persons who were parties in the trial court, if any:

The name or type of judgment or order that you are asking this Court to review:

Date on which the judgment or order was entered:

Name of the judge who entered the judgment or order:

You MUST attach a full copy of the judgment or order that you are asking this Court to review. Have you attached a copy of that judgment or order? (Check one.)

- Yes No (Your petition may be automatically dismissed.)

Have you attached any other supporting documents to this petition?

- Yes No

In the space below, describe what you contend are the errors in the judgment or order entered by the lower court. You may attach another sheet if needed to explain the errors.

Explain what you want this Court to do about the error(s) by the lower court:

Directions for Service: You are required to serve a copy of this petition on all other parties in the case. One way to serve this petition is by mailing a copy of this petition to all other parties. If you choose to serve by mail, please use the space below to list the names of the parties and the address to which you mailed a copy. If you choose to serve this document by some other method permitted by Rule 26 of the North Carolina Rules of Appellate Procedure, please explain the method of service used.

VERIFICATION

I affirm that the statements in this petition are true and correct to the best of my knowledge.

Your signature: _____

Today's date: _____

COURT OF APPEALS OF NORTH CAROLINA

<p>_____ , Plaintiff(s),</p> <p>v.</p> <p>_____ , Defendant(s).</p>	<p>From _____</p> <p>File No(s): _____</p>
---	--

PETITION FOR WRIT OF MANDAMUS

A petition for writ of mandamus is used to ask the Court of Appeals to order a lower court (such as the superior court or district court) to do something that the petitioner has the legal right to ask for and the lower court is required to do (such as hold a hearing or enter a ruling on a pending motion). (See Rule 22 of the North Carolina Rules of Appellate Procedure.) While a petition for writ of mandamus can be used to make the lower court enter a ruling on a pending filing, it cannot be used to make the court rule in a certain way (in other words, this Court will not order the lower court to allow or deny a motion, just to enter a ruling on the motion). A writ of mandamus can only be used if there is no other legal remedy the petitioner can ask for.

Please supply the information below so that the North Carolina Court of Appeals can understand (1) what you want the lower court to do, (2) why you have the right to make the lower court take that action, and (3) what you have already done to try to make the lower court take the action.

Your name: _____

Your contact information:

Address: _____

Phone number: _____

E-mail address: _____

Which court do you want to do something? (Check one.)

North Carolina Superior Court

North Carolina District Court

Other: _____

File number(s) in which the judgment or order was entered:

County of the trial court case: _____

The plaintiff(s) in the trial court: _____

The defendant(s) in the trial court: _____

Other persons who were parties in the trial court, if any:

Explain what you want this Court to order the lower court to do:

Date(s) you filed documents related to what you want the lower court to do:

You MUST attach full copies of any documents you have filed in the trial court that are related to what you want the lower court to do. Have you attached copies? (Check one.)

- Yes No (Your petition may be automatically dismissed.)

Describe why you are entitled to have the court take the requested action: (1) Why do you have a right to have the action done (for example, are there statutes or court cases that show you have this right)? and (2) Why does the court have a duty to take the action? You may attach another sheet if needed to explain.

Explain what you have done to try to make the lower court act before filing this petition:

Directions for Service: You are required to serve a copy of this petition on all other parties in the case, **including the judicial official you are asking the Court of Appeals to order to take action.** One way to serve this petition is by mailing a copy of this petition to all other parties. If you choose to serve by mail, please use the space below to list the names of the parties and the address to which you mailed a copy. If you choose to serve this document by some other method permitted by Rule 26 of the North Carolina Rules of Appellate Procedure, please explain the method of service used.

VERIFICATION

I affirm that the statements in this petition are true and correct to the best of my knowledge.

Your signature: _____

Today's date: _____

COURT OF APPEALS OF NORTH CAROLINA

<p>_____ , Plaintiff(s),</p> <p>v.</p> <p>_____ , Defendant(s).</p>	<p>From _____</p> <p>File No(s): _____</p>
---	--

**PETITION FOR WRIT OF SUPERSEDEAS AND
MOTION FOR TEMPORARY STAY**

A petition for writ of supersedeas is used to ask an appellate court to stay (or put on hold) a judgment or order entered by a lower court. (See Rule 23 of the North Carolina Rules of Appellate Procedure.) If a writ of supersedeas is issued by the appellate court, it stays enforcement of the lower court’s order while the appellate court reviews the judgment or order for error. A Motion for Temporary Stay stays the order or judgment pending the appellate court’s ruling on the Petition for Writ of Supersedeas. Please supply the information below so the Court of Appeals of North Carolina can understand whether to issue a writ of supersedeas in your case.

Your name: _____

Your contact information:

Address: _____

Phone number: _____

E-mail address: _____

**Which court entered the judgment or order you want stayed by the Court?
(Check one.)**

North Carolina Superior Court

North Carolina District Court

Other: _____

File number(s) in which the judgment or order was entered:

County of the trial court case: _____

The plaintiff(s) in the trial court: _____

The defendant(s) in the trial court: _____

Other persons who were parties in the trial court, if any:

The name or type of judgment or order that you are asking the Court to stay:

For the judgment or order you are asking the Court to stay, give the date on which that judgment or order was entered:

You MUST attach a full copy of the judgment or order that you are asking the Court to stay. Have you attached a copy of the judgment or order?

Yes No (Your petition may be automatically dismissed.)

Supersedeas relief is typically allowed to stay a lower court's judgment or order while the appellate court reviews that judgment or order for error. Have you filed any document asking this Court to review the judgment or order below for error? If so, please identify the type of filing(s) you have made and the date on which you filed it.

Type of filing (such as a notice of appeal or petition for writ of certiorari):

Court in which document was filed: _____

Date on which document was filed: _____

IF the filing is a notice of appeal, you should attach a copy to this petition. Have you attached a copy of the Notice of Appeal?

Yes No (Your petition may be automatically dismissed.)

The Court will generally not stay a trial court's judgment or order unless you have first asked the trial court to stay its own judgment or order.

1. If you seek to stay a trial court judgment or order, have you asked the trial court for a stay or attempted to comply with the statutory requirements for a stay? (See N.C.G.S. § 1-289 et. seq.)

Yes No (please explain why) Does Not Apply (please explain why)

2. If you have already asked the trial court for a stay, has the trial court ruled on your request? Yes No

3. If yes, please attach a document showing the trial court's denial of your stay request.

In the space below, describe what you contend are the errors in the judgment or order entered by the lower court. You may attach another sheet if needed to explain the error.

In the space below, describe what you contend the lower court’s judgment or order requires you to do.

In the space below, describe how you will be harmed if the judgment or order you are asking to be reviewed by the Court is NOT stayed.

Directions for Service: You are required to serve a copy of this petition on all other parties in the case. One way to serve this petition is by mailing a copy of this petition to all other parties. If you choose to serve by mail, please use the space below to list the names of the parties and the address to which you mailed a copy. If you choose to serve this document by some other method permitted by Rule 26 of the North Carolina Rules of Appellate Procedure, please explain the method of service used.

VERIFICATION

I affirm that the statements in this petition are true and correct to the best of my knowledge.

Your signature: _____

Today's date: _____

[NAME OF COURT IN WHICH YOU ARE FILING THE PETITION]

Petitioner(s),		
v.		From _____
_____		County
Respondent(s).		

[The Respondent is the prison warden if you are held in the North Carolina Department of Adult Correction or the sheriff if you are held in a county jail.]

PETITION FOR WRIT OF HABEAS CORPUS

A petition for writ of habeas corpus is used to challenge imprisonment as “unlawful.” N.C.G.S. § 17-1. A petition for writ of habeas corpus may be filed with a superior court judge or with either appellate court under N.C.G.S. § 17-6. Contact information for North Carolina’s superior courts can be found on the North Carolina Judicial Branch website at <https://www.nccourts.gov/courts/superior-court>.

Under N.C.G.S. § 17-7, a petition for writ of habeas corpus must state in substance:

(1) That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known.

(2) The cause or pretense of such imprisonment or restraint, according to the knowledge or belief of the applicant.

(3) If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.

(4) If the imprisonment or restraint is alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of habeas corpus, to the knowledge or belief of the applicant.

(5) The facts set forth in the application must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits.

Your name: _____

Where are you detained or imprisoned?

Name of jail or prison: _____

Address: _____

Who is the warden or sheriff where you are detained or imprisoned?

Name: _____

Address: _____

Why are you detained or imprisoned? Include details such as the name of the offenses of conviction, the county of conviction, the file number(s), the name of the presiding judge who entered the order of imprisonment. (Attach additional pages if necessary.)

You MUST attach a copy of any judgments or orders that impose the detention or imprisonment you are challenging. Have you attached a copy of the judgments or orders? (Circle one.)

Yes.

No. (Your petition may be automatically denied.)

In the space below, describe the reasons you contend your detention or imprisonment is unlawful. (You may attach additional pages if needed.)

Directions for Filing and Service: You must file this petition with the court where you are seeking relief.

You are required to serve a copy of this petition on the person you have named as the respondent. One way to serve this petition is by mailing a copy of this petition to the respondent. If you choose to serve by mail, please use the space below to list the names of the respondent and the address to which you mailed a copy. If you choose to serve this document by some other method permitted by Rule 26 of the North Carolina Rules of Appellate Procedure, please explain the method of service used.

Under N.C.G.S. § 17-7(5), the facts set forth in the petition for writ of habeas corpus must be verified by the oath of the applicant or of some other credible witness. The oath may be administered by any person authorized by law to take affidavits.

VERIFICATION

I affirm that the statements in this petition are true and correct to the best of my knowledge.

Your signature: _____

Today's date: _____