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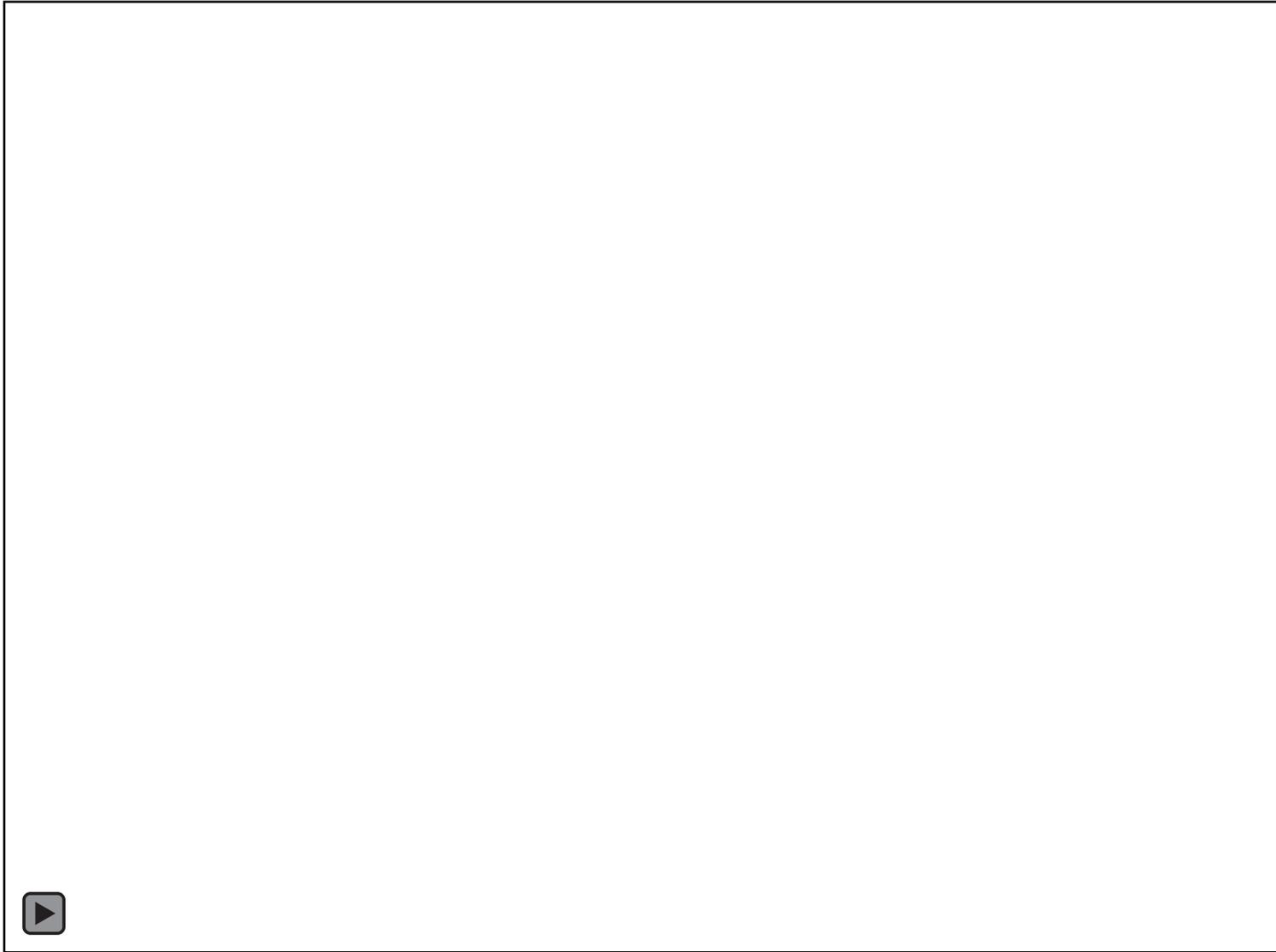
# *Things That Make You Go HMMMM...*

Beth Scherer & Kip Nelson

N.C. Board Certified Appellate Practice Specialists

NORTH  
CAROLINA  
APPELLATE  
PRACTICE AND  
PROCEDURE

ELIZABETH BROOKS SCHERER  
MATTHEW NIS LEERBERG



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# kahoot.it

- Game code:



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# True or False?



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# Appellate Jurisdiction



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# The easy(ish) ones

- Final judgments
- Rule 54(b)



# What does “interlocutory” mean?



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# Substantial rights

- An order affects a substantial right if the order deprives the appealing party of a substantial right which will be lost if the order is not reviewed before a final judgment is entered.



## Section 7A-27

- (b) Appeal lies of right directly to the Court of Appeals in any of the following cases:
- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.
  - e. Determines a claim prosecuted under G.S. 50-19.1.
  - f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly



## Section 7A-27(a)(3)

- Similar rights from interlocutory Business Court decisions



## Section 7A-27

- (b) Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:
  - (4) From any other order or judgment of the superior court from which an appeal is authorized by statute.



## Section 1-277(b)

- Any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant or such party may preserve his exception for determination upon any subsequent appeal in the cause.



# Section 1-569.28

- (a) An appeal may be taken from:
  - (1) An order denying a motion to compel arbitration;
  - (2) An order granting a motion to stay arbitration;
  - (3) An order confirming or denying confirmation of an award;
  - (4) An order modifying or correcting an award;
  - (5) An order vacating an award without directing a rehearing; or
  - (6) A final judgment entered pursuant to this Article.



## Section 1-75.12

- (a) When Stay May be Granted. – If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State.
- (c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal.



## Section 1-72.1

- (a) Any person asserting a right of access to a civil judicial proceeding or to a judicial record in that proceeding may file a motion in the proceeding for the limited purpose of determining the person's right of access.
- (e) A ruling on a motion made pursuant to this section may be the subject of an immediate interlocutory appeal by the movant or any party to the proceeding.



## Section 50-19.1

- Notwithstanding any other pending claims filed in the same action, a party may appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, the validity of a premarital agreement as defined by G.S. 52B-2(1), child custody, child support, alimony, or equitable distribution if the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action.



# What about the Supreme Court?



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## Section 7A-27(a)(4)

- Any trial court's decision regarding class action certification under G.S. 1A-1, Rule 23.



## Section 7A-27(a)(5)

- Any order that terminates parental rights or denies a petition or motion to terminate parental rights.



# N.C. Const. art. IV, § 12(1)

- The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference.





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# Error Preservation In the Trial Tribunal



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The best strategy for winning a case on appeal is

\_\_\_\_\_.



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- More than 50% of Court of Appeals opinions completely affirm the trial tribunal's decision.
- Many “victorious” appellants win the battle, but lose the war.



# Why Do Appellees Have Such an Advantage on Appeal?

- Presumption of regularity
- Deferential standards of review
- Error/prejudicial errors
- Error preservation

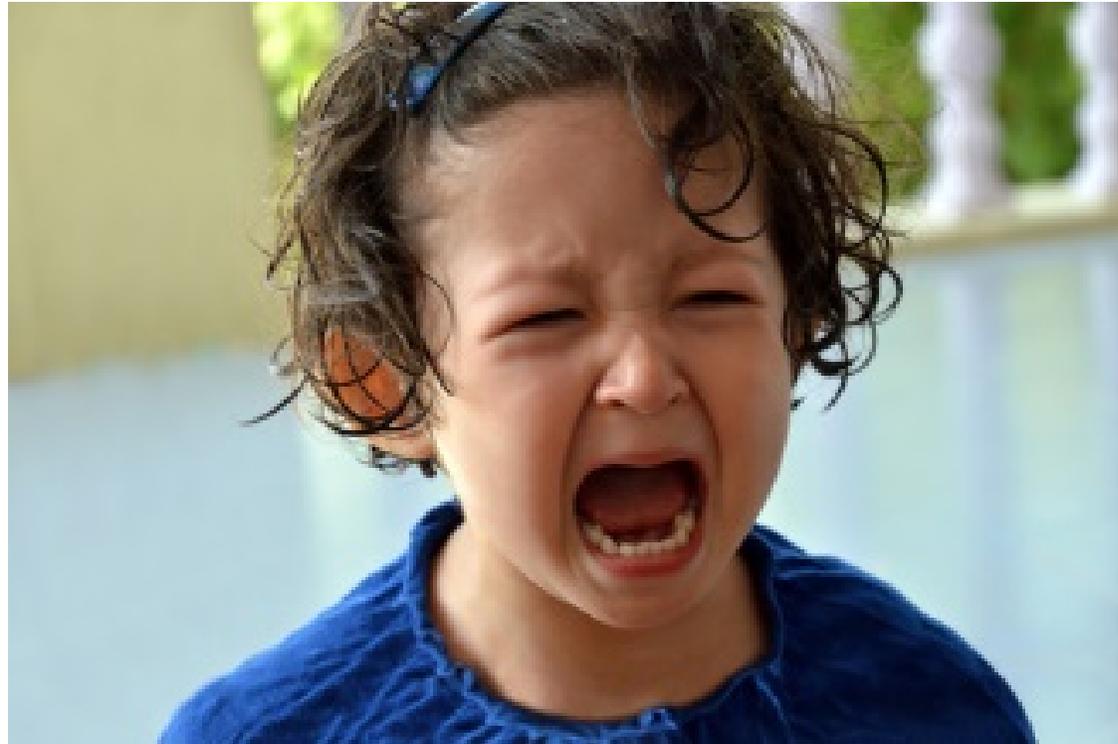


# **Error Preservation: The Place Where Lots of Good Arguments Go to Die**



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# Appellate Lawyer's Reaction To Error Preservation Problems



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# Appellate Lawyer's Perception of Appellate Courts' Reaction to Error Preservation Problems



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# Why is error preservation a graveyard for so many appeals?

- Incompetence?
- Strategy?
- Optimism?
- Absence of hindsight?
- Customs?
- Complicated?



# Basic Components Of Error Preservation Under Appellate Rule 10(a)

- To preserve an issue for appellate review, a party generally must:
  - Lodge a timely request, objection, or motion in the trial tribunal,
  - State specific grounds for the objection, request, or motion, in the trial tribunal, and
  - Obtain a ruling in the trial tribunal.
  
- Common phrase?



**Error Preservation:  
Was Timely and Proper Action Taken in  
the *Trial Tribunal*?**



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# Is Error Preservation a Matter of Trial or Appellate Procedure?

- In most state and federal court systems, error preservation is considered a matter of trial practice and procedure.
- In North Carolina, the answer is more complicated.
- Why does it matter?



## N.C. Const. art. IV, § 13, cl. 2

- “The Supreme Court shall have exclusive authority to make *rules of procedure and practice for the Appellate Division.*”
- “The General Assembly may make rules of procedure and practice *for the Superior Court and District Court Divisions*, and the General Assembly may delegate this authority to the Supreme Court. . . . If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.”



# Constitution (continued)

- Constitution
  - “vest[s] in the General Assembly the authority to promulgate rules of procedure for the superior courts and”
  - **“limit[s] this Court's rule-making authority for the superior court to rules which are not inconsistent with acts of the General Assembly.”**
    - *State v. Rorie*, 348 N.C. 266, 270, 500 S.E.2d 77, 79 (1998) (emphasis added)



# Preserved By Rule Or Law

- Does the Constitution (or in the alternative, the Appellate Rules) authorize the General Assembly to enact a “rule or law” that automatically preserves errors for appellate review?
- *Yes, No, Maybe?*



# Appellate Rule 10(a)'s Rule Or Law Exception

Any 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.”



# ***Duke Power Co. v. Winebarger, 300 N.C. 57 (1980)***

- General Rule under Appellate Rule 10: Timely objection can be abandoned by a party's failure to renew objection
- Civil Rule 46(a)(1): Error is preserved whenever trial counsel obtains from the trial judge a continuing, standing, or line objection
- Challenge to constitutionality of Civil Rule 46(a)(1) under Appellate Rule 10(a)



# Preserved By Rule Or Law: *Duke Power (continued)*

- *Duke Power*: Error preservation “is a question of appellate procedure over which this Court, not the legislature, has final authority.”
- *But . . . .*



# Preserved By Rule Or Law: *Duke Power*

- Appellate Rule 10 contains a “rule or law error” preservation exception.
- “It is thus Appellate Rule 10 in conjunction with Civil Procedure Rule 46 which enables respondents to take advantage of this assignment of error.”
- Because no conflict, the General Assembly’s error preservation statute is

Constitutional



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# The Disappearance of *Duke Power* and the Rule or Law Exception

- *State v. Elam*, 302 N.C. 157, 273 S.E.2d 661 (1981)
- *State v. Bennett*, 308 N.C. 530, 302 S.E.2d 786 (1983)
- *State v. Stocks*, 319 N.C. 437, 355 S.E.2d 492 (1987)
- *State v. Spaugh*, 321 N.C. 550, 364 S.E.2d 368 (1988)
- *State v. Oglesby*, 361 N.C. 550, 648 S.E.2d 819 (2007)

**Unconstitutional**



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# *Revival of the Rule or Law Exception*

- *State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010)
  - When a statute “does not conflict with any specific provision in our appellate rules,” the statute “operates as a ‘rule or law’ under Rule 10(a)(1), which permits review of th[e] issue.”
- *State v. Meadows*, 821 S.E.2d 402 (N.C. 2018) (cleaned up)
  - “[A] statutory provision governing the preservation of issues for purposes of appellate review is unconstitutional only if it conflicts with a specific provision of our appellate rules rather than the general rule stated in Rule of Appellate Procedure 10(a).”

Constitutional



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# Things that make you go hmm...

- Why is error preservation a matter of appellate procedure in North Carolina?
  - Stare Decisis
  - “Whether” versus “when” an argument was made in the trial tribunal.
- Should the “rule or law” exception be interpreted broadly to avoid the potential separation of power issue?



# Things that make you go hmm...

- Were the drafters of the North Carolina Rules of Appellate Procedure aware of the potential constitutional issue surrounding error preservation rules and statutes?



# NCBA Appellate Rules Study Commission

President Bennett announced to the Board the Chairman and Vice-Chairman of Special Study Committee on the Appellate Rules would be Mr. Ralph M. Stockton, Jr. of Winston-Salem and John W. Campbell of Lumberton, respectively. He stated that Dean J. Dickson Phillips, Jr. is interested in serving as the researcher-reporter. Mr. Storey reported that he had talked with Dean Phillips and tentatively the following financial arrangements had been suggested: \$250.00 per month to Dean Phillips as Researcher-Reporter; \$250.00 a month to compensate two additional law school students who will assist Dean Phillips; and approximately \$150.00 per month to compensate a part-time secretary who will be necessary to assist the researcher-reporter. It is also anticipated that an additional secretary will be necessary at the Bar Association headquarters office to service the work of this Committee and that some portion of the Executive Secretary's time will be devoted to its activities. Mr. Storey also reported that he had been informed by Mr. Taylor McMillan that any problem of dual compensation in the case of the researcher-reporter could be worked out without any difficulty.



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# Things that make you go hmm...

- Was the “rule or law” exception added to Appellate Rule 10 to avoid the constitutional issue?
- How can you tell whether an error preservation statute is constitutional?
  - Supreme Court says the statute is constitutional
  - Statute is consistent with a common-law exception to Rule 10



**[b] Statutes Purporting to Preserve Error Without Objection and Related Court Rulings**

Statute or Rule	Error Purportedly Preserved by Rule or Law	Constitutionality Under Appellate Rule 10 <sup>9</sup>
N.C. Gen. Stat. § 15A-1446(d)(1)	"Lack of jurisdiction of the trial court over the offense of which the defendant was convicted."	Consistent with N.C. R. App. P. 10(a)(1), which preserves without objection the question of whether the court has subject matter jurisdiction. <sup>9</sup>
N.C. Gen. Stat. § 15A-1446(d)(2)	"Lack of jurisdiction of the trial court over the person of the defendant."	No appellate opinion has addressed N.C. Gen. Stat. § 15A-1446(d)(2). <sup>10</sup>
N.C. Gen. Stat. § 15A-1446(d)(3)	"The criminal pleading charged acts which, at the time they were committed, did not constitute a violation of criminal law."	This statutory provision refers to the constitutional prohibitions against <i>ex post facto</i> laws. <sup>11</sup> The only appellate opinion that has addressed N.C. Gen. Stat. § 15A-1446(d)(3) did not specifically address the constitutionality of the statute, but did state that the statute preserves errors in appeals by defendants, while not preserving such errors in appeals by the State. <sup>12</sup>



# Appellate Briefs



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## **True or false?**

**When an appellant fails to cite any authority for his assignment of error, it is deemed abandoned pursuant to Rule 28(b)(6).**

# Assignment of what?



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ASSIGNMENTS OF ERROR

Defendants-Appellants assign as error the following:

1. The trial court's denial of Defendants-Appellants' motion for a new trial on the breach of contract claim on the legal basis that the jury's answer to Issue No. 1 on the verdict form demonstrates as a matter of law that there was no meeting of the minds sufficient to form a contract.

R. pp. 1967-1975; 1978-1983; 2000-2011; 2012-2013

2. The trial court's denial of Defendants-Appellants' motion for a new trial on the legal basis that the use of the term "and/or" in Issue No. 1 creates an inherent inconsistency throughout the jury's verdict.

R. pp. 1967-1975; 1978-1983; 2000-2011; 2012-2013



R. pp. 1967-1975; 1978-1983

103. The trial court's denial of Defendants-Appellants' motion for judgment notwithstanding the verdict on the punitive damages claim on the legal basis that there was a lack of evidence of the aggravating factors required under the North Carolina General Statutes and the punitive damages claim therefore should not have been submitted to the jury.

R. pp. 1967-1975; 1978-1983; 2000-2011; 2012-2013

104. The jury verdict finding in favor of Plaintiffs-Appellees on the issue of liability for punitive damages on the legal basis that there was a lack of evidence of the aggravating factors required under the North Carolina General Statutes.

R. pp. 1967-1975

105. The trial court's entry of judgment in favor of Plaintiffs-Appellees on the issue of liability for punitive damages on the legal basis that there was a lack of evidence of the aggravating factors required under the North Carolina General Statutes.

R. pp. 1967-1975; 1978-1983

106. The trial court's order denying Defendants-Appellants' post-trial motion on the legal basis that the trial court failed to address issues that were specifically before it.

R. pp. 1967-1975; 1978-1983; 2000-2011; 2012-2013

I. A NEW TRIAL SHOULD HAVE BEEN GRANTED BECAUSE THE FIRST ISSUE SUBMITTED TO THE JURY WAS AMBIGUOUS AND ERRONEOUS AS A MATTER OF LAW.

Assignments of Error Nos.: 2-4, 7-8, 31, 34-35, 46-48, 106 (R. pp. 2124-25, 2130, 2132-33, 106)

The first issue on the verdict form asked the jury to determine whether “Eddie Land, Cleo Land, and Alan Land enter[ed] into an agreement or agreements that Alan Land would become an owner in and/or share in the profits of Eddie



# N.C. R. App. P. 28

- (b) Content of Appellant's Brief. An appellant's brief shall contain . . . :
  - (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.



- (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 questions/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 question presented. ~~Each question shall be separately stated. Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal. Assignments of error not set out in the appellant's~~ issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned. However, in new briefs before the Supreme Court, a party need not reference assignments of error to the extent that party was the appellee (or cross-appellee) before the Court of Appeals and is urging the Supreme Court to reverse the Court of Appeals.



- (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 questions/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 question presented. Each question shall be separately stated. Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the transcript of proceedings on appeal. Assignments of error not set out in the appellant's issue presented presented in a party's brief, or in support of which no reason or argument and no authority cited, will be taken as abandoned. However, in new briefs filed with the Court, a party need not reference assignments of error to the extent that party was not an appellant (or cross-appellee) before the Court of Appeals and is urging the Supreme Court to reverse the Court of Appeals.

Issues not presented in a party's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.



# The case of first impression

- What if there is no authority?



# What rules are “jurisdictional”?



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# N.C. R. App. P. 1

- (c) Rules Do Not Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of the appellate division as that is established by law.





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# **Are the notice of appeal requirements in Rule 3 jurisdictional?**



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**Is the statement of grounds for appellate review a jurisdictional requirement in an appellant's brief?**

# N.C. R. App. P. 28

- (b) Content of Appellant's Brief. An appellant's brief shall contain . . . :
  - (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 interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.



NORTH CAROLINA  
REPORTS

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VOLUME 354

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SUPREME COURT OF NORTH CAROLINA



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17 AUGUST 2001

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18 DECEMBER 2001

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RALEIGH  
2002

Rule 28 is further amended  
by adding a new subsection  
(b)(4) as follows:



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# Composition and Formatting of Records and Briefs



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# What is the “Record on Appeal”?

- Printed record on appeal (“Goldenrod yellow”)
- Appellate Record
  - Rule 9(d) Documentary Exhibits
  - Trial, Deposition, and Administrative Hearing Transcripts
  - Rule 11(c) Supplements
  - Rule 9(d)(5) Supplements
  - Rule 9(d) Tangible Exhibits
- 261
- Why wouldn’t attorneys put everything in the printed record?



- No reasonable jury could have concluded that the robber depicted in the bank's surveillance video was Mr. Jones. (*Compare* R p 210 (mugshot) *with* R p 296 (surveillance photo)).



**EXHIBIT A**



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- No reasonable jury could have concluded that the robber depicted in the bank's surveillance video was Mr. Jones. (*Compare* Doc.Ex. 210 (mugshot) *with* Doc.Ex. p 296 (surveillance photo)).



**EXHIBIT B**



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# Reading Exercise

- Three Sentences
- Limited time to read
- Choose wisely which one you read



- THE APPELLATE COURTS LOVE WHEN BRIEFS AND RECORDS ARE SUBMITTED IN ALL CAPITAL LETTERS
- THE APPELLATE COURTS LOVE WHEN BRIEFS AND RECORDS ARE SUBMITTED IN ALL CAPITAL LETTERS.
- The appellate courts love when briefs and records are submitted in all capital letters.



# Reading Exercise

**T erribilit y depends on the tone of**

**You can probably easily read these words despite the deletion of the bottom half. <sup>27</sup>**

**Legitim ity depends on the type of**

- Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. Ass'n Legal Writing Directors 108, 116 (2004).



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# TO CAPITALIZE or not capitalize

- When headings include full sentences, they are too long for text to be readable if presented in all capital letters.
  - Matthew Butterick, *How to Read TRAP 9.4*, 23 App. Advoc. 473, 480 (2011).
- “Ironically, readers tend to skip sentences written in all uppercase.”
  - U.S. Sec’y Exch. Comm’n, *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* 43 (1998).



# TO CAPITALIZE or not capitalize (continued)

## NORTH CAROLINA RULES OF APPELLATE PROCEDURE



\*\*\*  
CODIFIED BY THE OFFICE OF ADMINISTRATIVE  
COUNSEL, SUPREME COURT OF NORTH CAROLINA

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GRANT E. BUCKNER  
ADMINISTRATIVE COUNSEL

### (g) Documents Filed with Appellate Courts.

- (1) **Form of Papers.** Papers presented to either appellate court for filing shall be letter size (8½ x 11") with the exception of wills and exhibits. All printed matter must appear in 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 and Century typeface as described in Appendix B to these rules. Unglazed white paper of 16- to 20-pound substance should be utilized so as to produce a clear, black image, leaving a margin of approximately one inch on each side. The body of text shall be presented with double spacing between each line of text. Lines of text shall be no wider than 6½ inches. The format of all papers presented for filing shall follow the additional instructions found in the appendixes to these rules. The format of briefs shall follow the additional instructions found in Rule 28(j).



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# Compare

## 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 ½" from the left margin.

## Appendix B

## Appendix D

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), respectfully petitions the Supreme Court of North Carolina to certify for discretionary review the judgment of the Court of Appeals (describing it) on the basis that (here set out the grounds from N.C.G.S. § 7A-31 that provide the basis for the petition). In support of this petition, (Plaintiff)(Defendant) shows the following:

### Facts

(Here state first the procedural history of the case through the trial division and the Court of Appeals. Then set out factual background necessary for understanding the basis of the petition.)

### Reasons Why Certification Should Issue

(Here set out factual and legal arguments to justify certification of the case for full review. While some substantive argument will certainly be helpful, the focus of

# History of the Appendixes to the Appellate Rules

- Until 1984, printed record's contents were selected by the appellate clerks.
  - “Record proper” or “certified record” (trial tribunal clerk)
  - “Printed record” or “record on appeal” (appellate clerk)



# EXHIBIT C

-30-  
ATTACHMENT B-1

-30-  
ATTACHMENT B-1

CALENDAR YEAR	CUSTOMER	PRODUCT	NO. OF SHIPMENTS	NO. OF POUNDS	\$ REVENUE
1979	G. P. Chemical	CA-83 3* mp-Cresol	6 (RR tank cars) 1 (10 drums)	456,729 5,170	125,260.94 3,050.30
Total For Year			7	461,899	128,311.24
1978	G. P. Chemical	CA-83 3* mp-Cresol	7 (tank cars) 1 (10 drums)	719,292 9,700	142,418.66 2,491.00
Total For Year	American Hoechst	3* mp-Cresol	2 (20 drums) 10	737,392	149,609.66
1977	G. P. Chemical	CA-83 3* mp-Cresol	2 (tank cars) 3 (30 drums)	169,000 14,570	35,498.00 6,847.90
Total For Year	American Hoechst	3* mp-Cresol	5	183,570	42,345.90
1976	G. P. Chemical	CA-83	4 (tank cars)	340,500	83,853.50
Total For Year			4	340,500	83,853.50
1975	G. P. Chemical	CA-83	3 (tank cars)	252,600	77,404.50
Total For Year	Shiland Chemical	CA-83	4 (2 drums)	920	478.40
1974	G. P. Chemical	CA-83	4 (tank cars)	253,520	77,882.90
Total For Year			4	253,520	77,882.90
1973	G. P. Chemical	CA-83	4 (tank cars)	338,900	58,309.00
Total For Year			4	338,900	58,309.00
1972	G. P. Chemical	CA-83	8 (tank cars) 1 (tank car)	674,400 51,439	55,725.00 1,801.07
Total For Year	Weyerhaeuser	Sodium Sulfide	9	725,839	57,526.07
1971	G. P. Chemical	CA-83	1 (tank car)	86,500	Records Not Available
Total For Year			1	86,500	Records Not Available
1970	No Sales TO Customers Located In North Carolina				
Total For Year	Weyerhaeuser	Sodium Sulfide	1 (tank car)	250,000	-
1969	Weyerhaeuser	Sodium Sulfide	1 (tank car)	200,000	-
Total For Year			1	200,000	-

Record p.36

NOTE: This is as far back as Merichem has documents relating to this information.

Record p.36



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# Appellate Typing Pool

- Until the early 1980s, the contents of almost *all* appellate briefs and records were retyped after their submission to the appellate courts
- In-house appellate “typing pool”
- Goal: Uniform appellate briefs and records



NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

ROSE Z. WEAVER KYLE

v

Wilkes County  
No. 80CVD200

JOHN H. GROCE & WILLIAM A. GROCE, JR., CO-ADMINISTRATORS OF THE ESTATE OF JAY GROCE, DECEASED; AND WILKES SAVINGS & LOAN ASSOCIATION

\*\*\*\*\*

Before OSBORNE, J., April 21, 1980 Session of Wilkes County, the General Court of Justice, District Court Division. (Order dated April 22, 1980) PLAINTIFF Appealed. (Filed C.A. May 23, 1980, and docketed C.A. May 30, 1980).

\*\*\*\*\*

SUMMONS issued on 22 February 1980 showing service on Larry S. Moore on 5 March 1980, attorney for John H. Groce and William A. Groce, Jr., Co-Administrators, appears on copy in the original transcript on file with the Clerk.

\*\*\*\*\*

COMPLAINT (Filed Feb. 22, 1980)

THE PLAINTIFF AVERS:

1. That the Plaintiff is a citizen and resident of the County of Wilkes, State of North Carolina.
2. That the Defendants John H. Groce, and William A. Groce, Jr., are presently serving as the personal representatives of the Estate of Jay Groce, now deceased.

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

GARY EARL FOLTZ

v

From Gaston

MERICHEM COMPANY

\*\*\*\*\*

DEFENDANT APPELLEE'S BRIEF  
(Filed Jun 26, 8:18 AM, 1980)

\*\*\*\*\*

I. INTRODUCTION

The question presented for this appeal is correctly set out by plaintiff-appellant ("Foltz") in his brief: whether the trial court properly dismissed this action for lack of in personam jurisdiction over defendant-appellee ("Merichem"). This brief is in support of the trial court's ruling.

II. ARGUMENT

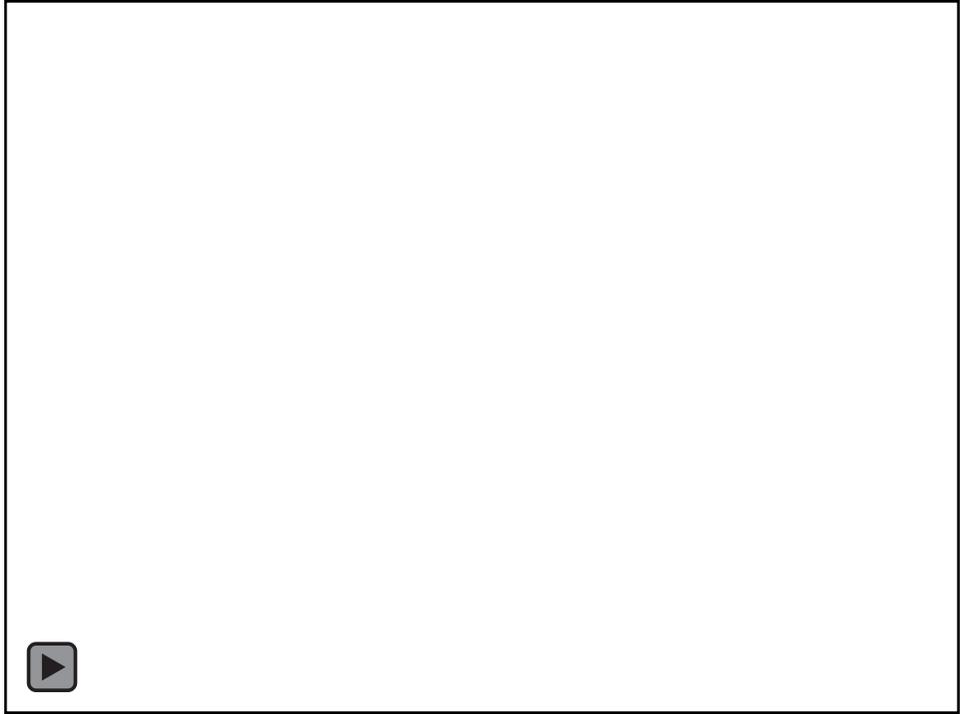
In the statement of facts presented by Foltz, the following connections with North Carolina are asserted as grounds for personal jurisdiction over Merichem: the shipment of some Merichem products to the North Carolina offices of four of its customers and Merichem's advertisements in nationally circulated media which appear to have reached North Carolina. Merichem submits that, however Foltz characterizes these contacts with North Carolina, an analysis of the nature and quality of these contacts shows that the North Carolina courts cannot maintain in personam jurisdiction over Merichem.

The following facts are established and undisputed on this record: Merichem is a corporation organized under the laws of Delaware with its principal business

# Typing Pool Practices

- Goal Consistency
- Internal formatting and style notes
- Typewriters (Good)
  - Underline/capitalization/Courier New/non-proportional font
- Computers and Copiers (Bad)
  - No bold/italic/proportional font
- Ingenious proofing system





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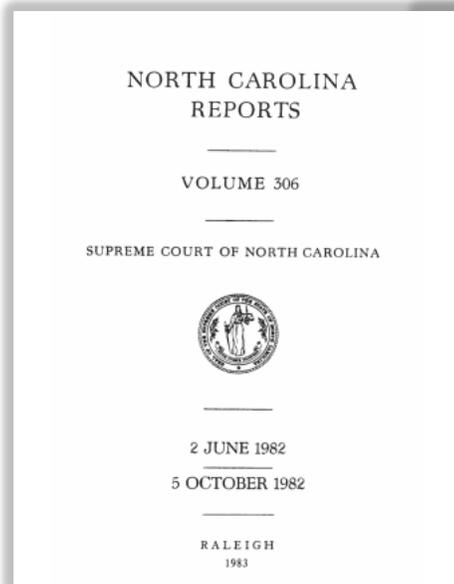
# Typing Pool Practices (continued)

- Costs for retyping records & briefs charged to parties
  - \$4.00 per page (1982)
  - \$5.00 per page (1989)
- Don't include X, Y, Z in the “record on appeal”
- Supreme Court provides parties with *option* to format their own briefs and records (1982)
  - \$4.00 per page when retyped by the court
  - \$1.50 per page when properly formatted by party
- Typing pool remained in place until approximately 1996



# Creation of Modern Day Appendixes

- Court concerned about shift to party-formatted briefs and records
- Typing pool's internal formatting preferences added to Appendix (1982)



## 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 five spaces from the left margin.



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# Why retain formatting and record practices from the 1970s and 1980s?

- Limited resources
- Collaborative record settlement process
- NCBA Appellate Style Manual
- Record promised land: e-filing in the trial courts
  - Will require complete overhaul of Appellate Rules 9 and Appendices
  - “Selectively composed” record versus “Joint Appendix”
- Unnecessary changes often create their own problems



# QUESTIONS?

**Beth Scherer**

**919-755-8790**

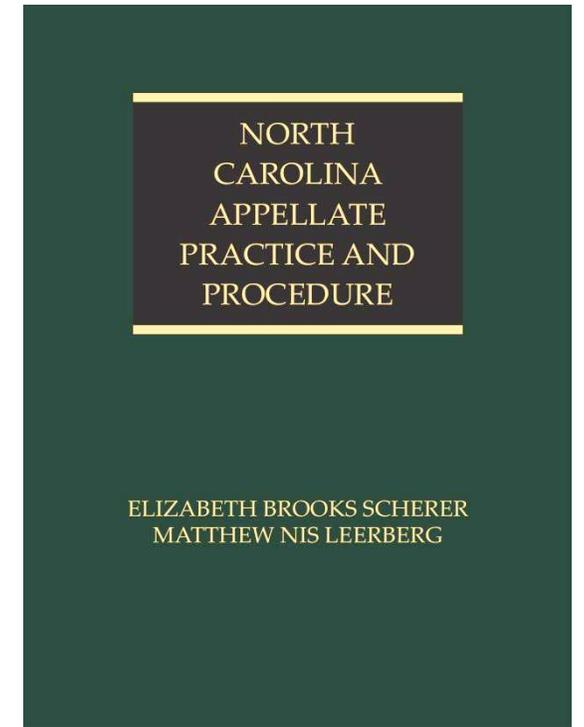
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