



TPR APPEALS IN THE SUPREME COURT

March 20, 2019
North Carolina Judicial Center
901 Corporate Center Drive, Raleigh, NC 27607

Agenda

- 8:30 a.m. **Check-in; Coffee and Conversation**
- 9:00 a.m. **Welcome and Introductions**
Chief Justice Cheri Beasley, Supreme Court of North Carolina
Grant Buckner, Administrative Counsel, Supreme Court of North Carolina
- 9:15 a.m. ***Rules of Appellate Procedure Update***
Justice Robin Hudson, Supreme Court of North Carolina
Grant Buckner, Administrative Counsel, Supreme Court of North Carolina
- 10:15 a.m. ***What to Expect at the Supreme Court in TPR Appeals***
Justice Sam Ervin IV, Supreme Court of North Carolina
- 11:00 a.m. **Q&A Session with Panelists**
Justice Robin Hudson, Supreme Court of North Carolina
Justice Sam Ervin IV, Supreme Court of North Carolina
Grant Buckner, Administrative Counsel, Supreme Court of North Carolina
Amy Funderburk, Clerk, Supreme Court of North Carolina
Fred Wood, Director of Information Technology, Supreme Court of North Carolina
- 11:15 a.m. **Adjournment with Networking to Follow**

The program is free, and refreshments will be served.

Two CLE general credit hours have been approved by the State Bar for this program. Attorneys who desire CLE credit for the program will be responsible for paying CLE fees to the State Bar at a rate of \$3.50 per credit hour.

Questions? Please contact Betse Hamilton at betse.hamilton@sc.nccourts.org or 919-831-5825.





Information about Termination-of-Parental-Rights Cases and the Rules of Appellate Procedure

As a result of [Session Law 2017-7](#), [Session Law 2017-41](#), and [Session Law 2017-102](#), litigants will soon appeal directly to the Supreme Court of North Carolina orders that terminate parental rights or deny a petition or motion to terminate parental rights. This change in the law is effective for all appeals filed on or after 1 January 2019.

These appeals will be calendared in the Supreme Court according to North Carolina Rule of Appellate Procedure 29. The calendar published by the Supreme Court Clerk will indicate whether the appeal will be disposed of on the record and briefs according to North Carolina Rule of Appellate Procedure 30(f).

The Supreme Court has [amended](#) the North Carolina Rules of Appellate Procedure to accommodate these changes. The amendments, however, affect more than termination-of-parental-rights cases. All appellate practitioners should take notice of these amendments.

Supreme Court Amends Rules of Appellate Procedure: What You Need to Know

By Beth Brooks Scherer¹

In December 2018, the North Carolina Supreme Court issued its latest order amending the state's Rules of Appellate Procedure. The amendments, which became effective January 1, 2019, impact Appellate Rules 3, 3.1, 4, 9, 11, 12, 13, 18, 26, 28, 30, 37, 41, brand new Appellate Rule 42, and Appendixes A, B, and D. A summary of those amendments follows.

An Appellant's Brief Now is Due 30 Days (60 Days in Capital Cases) from the Filing—Rather Than Mailing—of the Printed Record.

Under the old rules, the appellant's initial briefing deadline was tied to the appellate clerk's mailing of the printed record to the parties. This was a remnant of a bygone era when the appellate clerk selected from the settled record a subset of documents to include in the printed record. Because the precise contents of the printed record were unknown when the settled record was filed, the appellant's briefing deadline was tied to the mailing of this newly-created printed record.

In modern appellate practice, the printed record is produced verbatim from the settled record filed by the appellant. Other than affixing that iconic "goldenrod yellow" cover page, inserting the date the record was filed and docketed, and dividing large printed records into multiple volumes, the printed record is essentially reproduced as filed by the parties.

Because of the new rule, appellants now have a little less time to prepare and file their initial appellate brief. Also remember that when a printed record is mailed to the appellate court, the record is "deemed filed as of the date of mailing, as evidence by the proof of service" under Appellate Rule 26(a)(1). In these instances, the appellant's briefing deadline likely is calculated 30 days from the date the printed record is served—and not 30 days from the date the appellate clerk receives and file-stamps the printed record.

¹ Beth is a N.C. State Bar Board Certified Appellate Practice Specialist at Fox Rothschild in Raleigh. She focuses her practice on helping businesses and attorneys navigate state and federal appeals. Beth and her colleague, Matt Leerberg, are the co-authors of the forthcoming North Carolina Appellate Practice and Procedure treatise, which will be published by Lexis in the spring of 2019. An earlier version of this article was published on North Carolina Appellate Practice Blog. www.ncapb.com.

Parties Must Now File Only a Single Copy of Record-Related Supplements and Memoranda of Additional Authorities.

Under the old rules, parties filed one copy of the printed record and transcripts. All other record documents were filed in triplicate (unless the document was e-filed in the Supreme Court, which has long accepted electronically-filed records). Under the new rules, the appellant only has to file a single copy of any Rule 9(d) Documentary Exhibits, Rule 11(c) Supplement, Rule 18 Supplement, or Rule 9(b)(5) Supplement. A similar change applies to memoranda of additional authorities.

While parties cannot presently e-file most components of the appellate record in the Court of Appeals, the ability to electronically file all, if not most, record components is a feature that likely will be coming soon.

Overhaul to Appellate Rule 3.1

Rule 3.1 governs the procedures for qualifying juvenile appeals involving claims of abuse, neglect, and dependency. Based on a 2017 amendment to N.C. Gen. Stat. § 7A-27, a subset of Rule 3.1 appeals (i.e., Termination of Parental Rights cases) now must be appealed directly to the Supreme Court. Because old Rule 3.1 only contemplated direct appeals to the Court of Appeals, a tweak to Rule 3.1 was necessary.

Rule 3.1 juvenile appeals have always seemed a bit like a three-headed monster when compared to other appeals. For example, the process of settling the record bore little resemblance to the normal record-settlement process, with parties who disagreed about the contents of the record filing separate records in the Court of Appeals. Rather than applying a transitory fix, the Supreme Court gave Rule 3.1 an overhaul. A few noteworthy changes include:

- *Transcript Delivery.* The court reporting manager and the court reporter now have a little extra time to prepare and deliver Rule 3.1 transcripts to the parties in indigent appeals (but a little less time in non-indigent Rule 3.1 appeals).
- *Service of Transcripts.* The court reporter must serve copies of the appellate transcript on all parties to the appeal. This is a 180-degree change from the prior rule, under which the transcript was served only on the ordering party. This change basically means that in Rule 3.1 cases, the ordering party will purchase a single “appellate transcript” that the transcriptionist will deliver to all parties.
- *Proposed Record Process.* The process in Rule 3.1 appeals for serving a proposed record (as well as filing objections or amendments to that proposed record) now

follows the basic structure found in Rule 11(c)—just on a more abbreviated schedule. Moreover, the appellant has an extra five days (i.e., 15 days total) to serve the proposed record on appeal.

- *Record Disputes.* When the parties to the appeal disagree regarding the contents of the record on appeal, the regular appeal procedures for settling the record found in Rule 11 are now followed. Consequently, parties in Rule 3.1 cases can no longer file separate appellate records when they disagree on a record's content. Instead, disputed content usually will be placed in a Rule 11(c) Supplement, while in more limited circumstances judicial settlement of the record may be necessary.
- *No Separate Briefing Rule.* Although the old and new briefing deadlines are essentially the same (except that the appellant's briefing deadline in Rule 3.1 cases has always been tied to the filing of the printed record), the previous version of Rule 3.1 had a separate provision regarding the timing for filing appellate briefs. New Rule 3.1 does not. Thus, the briefing requirements in Rule 3.1 cases are now governed by the same timing rules found in Rules 13 and 28(h).
- *Electronic Filing Mandatory.* Unless an exception is granted, appellate counsel is required to file all appellate filings in Rule 3.1 cases electronically. This includes appellate records in Rule 3.1 appeals taken to the Court of Appeals. Mandatory electronic filing is a significant change from the traditional practice, in which attorneys more comfortable with paper filings could continue to do so even after the advent of e-filing capabilities.
- *No-Merit Briefs.* Revised Rule 3.1 contains different language about no-merit briefs, but it does not address an ongoing debate among Court of Appeals judges about how the appellate courts are to review such cases. The Supreme Court may resolve those differences of opinion through the Rule 3.1 cases now making their way to the Supreme Court.
- *Oral Arguments.* The revised Rules do not explain whether (or to what extent) oral arguments will be different for Rule 3.1 cases. That is likely an example of the evolving nature of oral arguments in these appeals.
- *No Priority (at Least on Paper).* Old Rule 3.1 provided that those cases would be "given priority" over other cases before the Court of Appeals. Revised Rule 3.1 contains no such language.

Revised Appeal Information Statement

Rule 41, which addresses Appeal Information Statements (“AIS”), has been abridged. It now provides simply: “The appellant must complete an Appeal Information Statement using the electronic-filing site at <https://www.ncappellatecourts.org> before the appellant’s brief is filed.” Embedded in this sentence are a lot of new features:

An AIS must (1) be electronically completed at <https://www.ncappellatecourts.org>; (2) is now due before the filing of the appellant’s brief, and (3) is now required in direct appeals to both Court of Appeals and the Supreme Court. An updated AIS also is presumably required in secondary appeals to the Supreme Court following a decision by the Court of Appeals.

If you have not done so already, apply for appellate court e-filing privileges! The appellate courts have moved another step further into the world of mandatory e-filings.

New Appellate Rule 42: Sealed Items and Confidential Information

New Appellate Rule 42 now governs the handling of sealed items and confidential information in the appellate courts. The beginning of this column listed numerous appellate rules being affected by the 2019 amendments. Most of these relate to the Supreme Court’s decision to take privacy-related requirements out of individual rules and consolidate them under newly created Rule 42, which has several important features:

- *Once Sealed, Always Sealed.* Items sealed in the trial tribunal remain under seal in the appellate courts. Rather than filing a motion, counsel must attach a copy of the order, statute, or other legal authority that authorized the sealing of the item in the trial tribunal.
- *Types of Cases Automatically Sealed in the Appellate Division.* Certain types of appeals (whether taken as an appeal of right or by writ of certiorari) are automatically sealed, regardless of their confidentiality status in the trial tribunal: abuse, neglect, dependency, and termination of parental rights cases; juvenile delinquency appeals; and any appeal under § 7A-27 involving a sexual offense committed against a minor.
- *Stipulations.* Parties must insert a stipulation in the record regarding the agreed-to pseudonyms that the parties will use when referring to minors in their briefs, petitions, and motions.

- *Motions to Seal.* When an item was not sealed in the trial tribunal and is not automatically sealed by operation of Rule 42, parties may move in the appellate court for permission to file the item under seal.
- *New Notice for Sealed Documents.* Filings that include sealed documents must include the following notice on the first page: “UNDER SEAL AND SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.” When a document under seal is included within another appellate filing, this notice must also be displayed at the top of the first page of that other filing. In other words, if a party attaches a sealed record document to its appellate brief, then the first page of the appellate brief must contain the notice as well.

Non-documentary exhibits filed under seal must be submitted in a box or envelope that contains the notice. The previous version of the notice mandated under old Rule 3.1 is no longer required.

- *Expanded List of Protected “Identification Numbers.”* Under the old rules, only Social Security numbers were specifically required to be redacted. Under new Rule 42, drivers’ license numbers, financial account numbers, Social Security numbers, and tax identification numbers all must either be excluded or redacted from documents filed in the appellate courts.

However, whenever one of the above numbers is “necessary to the disposition of the appeal,” the rule permits a party to move to seal the document in which the number appears.

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 Rules 3, 3.1, 4, 9, 11, 12, 13, 18, 26, 28, 30, 37, 41, 42 (new) and Appendixes A, B, and D.

* * *

Rule 3. Appeal in Civil Cases—How and When Taken

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

(b) **Special Provisions.** Appeals in the following types of cases shall be taken in the time and manner set out in the General Statutes and Rules of Appellate Procedure sections noted:

- (1) Juvenile matters pursuant to N.C.G.S. § 7B-2602; ~~the identity of persons under the age of eighteen at the time of the proceedings in the trial division shall be protected pursuant to Rule 3.1(b).~~
- (2) Appeals pursuant to N.C.G.S. § 7B-1001 shall be subject to the provisions of Rule 3.1.

(c) **Time for Taking Appeal.** In civil actions and special proceedings, a party must file and serve a notice of appeal:

- (1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or
- (2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that
- (3) if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an

order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subdivisions (1) and (2) of this subsection (c).

In computing the time for filing a notice of appeal, the provision for additional time after service by mail in Rule 27(b) of these rules and Rule 6(e) of the Rules of Civil Procedure shall not apply.

If timely notice of appeal is filed and served by a party, any other party may file and serve a notice of appeal within ten days after the first notice of appeal was served on such party.

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

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

* * *

~~Rule 3.1. Appeal in Qualifying Juvenile Cases How and When Taken; Special Rules~~

~~(a) **Filing the Notice of Appeal.** Any party entitled by law to appeal from a trial court judgment or order rendered in a case involving termination of parental rights and issues of juvenile dependency or juvenile abuse and/or neglect, appealable pursuant to N.C.G.S. § 7B-1001, may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties in the time and manner set out in Chapter 7B of the General Statutes of North Carolina. Trial counsel or an appellant not represented by counsel shall be responsible for filing and serving the notice of appeal in the time and manner required. If the appellant is represented by counsel, both the trial counsel and appellant must sign the notice of appeal, and the appellant shall cooperate with counsel throughout the appeal. All such appeals shall comply with the provisions set out in subsection (b) of this rule and, except as hereinafter provided by this rule, all other existing Rules of Appellate Procedure shall remain applicable.~~

~~(b) **Protecting the Identity of Juveniles.** For appeals filed pursuant to this rule and for extraordinary writs filed in cases to which this rule applies, the identity of involved persons under the age of eighteen at the time of the proceedings in the trial division (covered juveniles) shall be referenced only by the use of initials or pseudonyms in briefs, petitions, and all other filings, and shall be similarly redacted from all documents, exhibits, appendixes, or arguments submitted with such filings. If the parties desire to use pseudonyms, they shall stipulate in the record on~~

~~appeal to the pseudonym to be used for each covered juvenile. Courts of the appellate division are not bound by the stipulation, and case captions will utilize initials. Further, the addresses and social security numbers of all covered juveniles shall be excluded from all filings and documents, exhibits, appendixes, and arguments. In cases subject to this rule, the first document filed in the appellate courts and the record on appeal shall contain the notice required by Rule 9(a).~~

~~The substitution and redaction requirements of this rule shall not apply to settled records on appeal; supplements filed pursuant to Rule 11(c); objections, amendments, or proposed alternative records on appeal submitted pursuant to Rule 3.1(c)(2); and any verbatim transcripts submitted pursuant to Rule 9(c). Pleadings and filings not subject to substitution and redaction requirements shall include the following notice on the first page of the document immediately underneath the title and in uppercase typeface: FILED PURSUANT TO RULE [3(b)(1)] [3.1(b)] [4(c)]; SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.~~

~~Filings in cases governed by this rule that are not subject to substitution and redaction requirements will not be published on the Court's electronic filing site and will be available to the public only with the permission of a court of the appellate division. In addition, the juvenile's address and social security number shall be excluded from all filings, documents, exhibits, or arguments with the exception of sealed verbatim transcripts submitted pursuant to Rule 9(c).~~

~~(c) — **Expediting Filings.** Appeals filed pursuant to these provisions shall adhere strictly to the expedited procedures set forth below:~~

- ~~(1) — **Transcripts.** Within one business day after the notice of appeal has been filed, the clerk of superior court shall notify the court-reporting coordinator of the Administrative Office of the Courts of the date the notice of appeal was filed and the names of the parties to the appeal and their respective addresses or addresses of their counsel. Within two business days of receipt of such notification, the court reporting coordinator shall assign a transcriptionist to the case.~~

~~—— When there is an order establishing the indigency of the appellant, the transcriptionist shall produce and deliver a transcript of the designated proceedings to the appellant and provide copies to the office of the clerk of the Court of Appeals and to the respective parties to the appeal at the addresses provided within thirty-five days from the date of assignment.~~

~~—— When there is no order establishing the indigency of the appellant, the appellant shall have ten days from the date that the transcriptionist is assigned to make written arrangements with the assigned transcriptionist for the production and delivery of the transcript of the designated proceedings. If such written~~

~~arrangement is made, the transcriptionist shall produce and deliver a transcript of the designated proceedings to the appellant and provide copies to the office of the clerk of the Court of Appeals and to the respective parties to the appeal at the addresses provided within forty five days from the date of assignment. The non-indigent appellant shall bear the cost of the appellant's copy of the transcript.~~

~~——— When there is no order establishing the indigency of the appellee, the appellee shall bear the cost of receiving a copy of the requested transcript.~~

~~——— Motions for extensions of time to produce and deliver transcripts are disfavored and will not be allowed by the Court of Appeals absent extraordinary circumstances.~~

~~(2) **Record on Appeal.** Within ten days after receipt of the transcript, the appellant shall prepare and serve upon all other parties a proposed record on appeal constituted in accordance with Rule 9. Trial counsel for the appealing party shall have a duty to assist appellate counsel, if separate counsel is appointed or retained for the appeal, in preparing and serving a proposed record on appeal. Within ten days after service of the proposed record on appeal upon an appellee, the appellee may serve upon all other parties:~~

~~a. — a notice of approval of the proposed record;~~

~~b. — specific objections or amendments to the proposed record on appeal; or~~

~~c. — a proposed alternative record on appeal.~~

~~If the parties agree to a settled record on appeal within twenty days after receipt of the transcript, the appellant shall file three legible copies of the settled record on appeal in the office of the clerk of the Court of Appeals within five business days from the date the record was settled. If all appellees fail within the times allowed them either to serve notices of approval or to serve objections, amendments, or proposed alternative records on appeal, the appellant's proposed record on appeal shall constitute the settled record on appeal, and the appellant shall file three legible copies thereof in the office of the clerk of the Court of Appeals within five business days from the last date upon which any appellee could have served such objections, amendments, or proposed alternative record on appeal. If an appellee timely serves amendments, objections, or a proposed alternative record on appeal and the parties cannot agree to the settled record within thirty days after receipt of the transcript, each party shall~~

~~file three legible copies of the following documents in the office of the clerk of the Court of Appeals within five business days after the last day upon which the record can be settled by agreement:~~

- ~~a. the appellant shall file his or her proposed record on appeal; and~~
- ~~b. an appellee shall file his or her objections, amendments, or proposed alternative record on appeal.~~

~~No counsel who has appeared as trial counsel for any party in the proceeding shall be permitted to withdraw, nor shall such counsel be otherwise relieved of any responsibilities imposed pursuant to this rule, until the record on appeal has been filed in the office of the clerk of the Court of Appeals as provided herein.~~

- ~~(3) **Briefs.** Within thirty days after the record on appeal has been filed with the Court of Appeals, the appellant shall file his or her brief in the office of the clerk of the Court of Appeals and serve copies upon all other parties of record. Within thirty days after the appellant's brief has been served on an appellee, the appellee shall file his or her brief in the office of the clerk of the Court of Appeals and serve copies upon all other parties of record. An appellant may file and serve a reply brief as provided in Rule 28(h). Motions for extensions of time to file briefs will not be allowed absent extraordinary circumstances.~~

~~(d) **No Merit Briefs.** In an appeal taken pursuant to N.C.G.S. § 7B-1001, if, after a conscientious and thorough review of the record on appeal, appellate counsel concludes that the record contains no issue of merit on which to base an argument for relief and that the appeal would be frivolous, counsel may file a no-merit brief. In the brief, counsel shall identify any issues in the record on appeal that might arguably support the appeal and shall state why those issues lack merit or would not alter the ultimate result. Counsel shall provide the appellant with a copy of the no-merit brief, the transcript, the record on appeal, and any Rule 11(e) supplement or exhibits that have been filed with the appellate court. Counsel shall also advise the appellant in writing that the appellant has the option of filing a pro se brief within thirty days of the date of the filing of the no-merit brief and shall attach to the brief evidence of compliance with this subsection.~~

~~(e) **Calendaring Priority.** Appeals filed pursuant to this rule will be given priority over other cases being considered by the Court of Appeals and will be calendared in accordance with a schedule promulgated by the Chief Judge. Unless otherwise ordered by the Court of Appeals, cases subject to the expedited procedures set forth in this rule shall be disposed of on the record and briefs and without oral argument.~~

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 must comply with 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.

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Rule 4. Appeal in Criminal Cases—How and When Taken

(a) **Manner and Time.** Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

- (1) giving oral notice of appeal at trial, or
- (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order. Appeals from district court to superior court are governed by N.C.G.S. §§ 15A-1431 and -1432.

(b) **Content of Notice of Appeal.** The notice of appeal required to be filed and served by subdivision (a)(2) of this rule shall specify the party or parties taking

the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

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

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

~~(e) **Protecting the Identity of Juvenile Victims of Sexual Offenses.** For appeals filed pursuant to this rule and for extraordinary writs filed in cases to which this rule applies, the identities of all victims of sexual offenses the trial court record shows were under the age of eighteen when the trial division proceedings occurred, including documents or other materials concerning delinquency proceedings in district court, shall be protected pursuant to Rule 3.1(b).~~

* * *

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.

~~All filings involving juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e) shall include the following notice in uppercase typeface:~~

~~FILED PURSUANT TO RULE [3(b)(1)] [3.1(b)] [4(e)]; SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.~~

(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 capital-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.

~~(4) — **Exclusion of Social Security Numbers from Record on Appeal.** Social security numbers shall be deleted or redacted from any document before including the document in the record on appeal.~~

(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, ~~such as social security numbers referred to in Rule 9(a)(4).~~ 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

~~three copies of~~ 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. ~~Verbatim transcripts or narration utilized in a case subject to Rules 3(b)(1), 3.1(b), or 4(c) initiated in the trial division under the provisions of Subchapter I of Chapter 7B of the General Statutes shall be produced and delivered to the office of the clerk of the appellate court to which the appeal has been taken in the manner specified by said rules.~~

- (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, 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 appendixes to the briefs.

(4) **Presentation of Discovery Materials.** Discovery materials offered into evidence at trial shall be brought forward, if relevant, as other evidence. In all instances 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 ~~three copies~~ a copy of the exhibit with the clerk of the appellate court. The ~~three copies~~ copy shall be paginated. If multiple exhibits are filed, an index must be included in the filing. ~~Copies~~ A copy that ~~impair~~ 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) ~~**Exclusion of Social Security Numbers from Exhibits.** Social security numbers must be deleted or redacted from copies of exhibits.~~[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.

* * *

Rule 11. Settling the Record on Appeal

- (a) **By Agreement.** ~~This rule applies to all cases except those subject to expedited schedules in Rule 3.1.~~

Within thirty-five days after the court reporter or transcriptionist certifies delivery of the transcript, if such was ordered (seventy days in capitally-tried cases), or thirty-five days after appellant files notice of appeal, whichever is later, the parties may by agreement entered in the record on appeal settle a proposed record on appeal prepared by any party in accordance with Rule 9 as the record on appeal.

- (b) **By Appellee's Approval of Appellant's Proposed Record on Appeal.** If the record on appeal is not settled by agreement under Rule 11(a), the appellant shall, within the same times provided, serve upon all other parties a proposed record on appeal constituted in accordance with the provisions of Rule 9. Within thirty days (thirty-five days in 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 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 ~~three copies of~~ 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, ~~three copies~~ one copy of each exhibit designated pursuant to Rule 9(d), ~~three copies~~ one copy of any supplement to the record on appeal submitted pursuant to Rule 11(c) or Rule 18(d)(3), 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 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 13. Filing and Service of Briefs

(a) **Time for Filing and Service of Briefs.**

(1) **Cases Other Than Death Penalty Cases.** Within thirty days after the ~~clerk of~~ record on appeal has been filed with the appellate court ~~has mailed the printed record to the parties~~, the appellant shall file a brief in the office of the clerk of the appellate

court and serve copies thereof upon all other parties separately represented. ~~The mailing of the printed record is not service for purposes of Rule 27(b); therefore, the provision of that rule allowing an additional three days after service by mail does not extend the period for the filing of an appellant's brief.~~ Within thirty days after appellant's brief has been served on an appellee, the appellee shall similarly file and serve copies of a brief. An appellant may file and serve a reply brief as provided in Rule 28(h).

- (2) **Death Penalty Cases.** Within sixty days after the ~~clerk of record on appeal has been filed with the Supreme Court~~has mailed the printed record to the parties, the appellant in a criminal appeal which includes a sentence of death shall file a brief in the office of the clerk and serve copies thereof upon all other parties separately represented. ~~The mailing of the printed record is not service for purposes of Rule 27(b); therefore, the provision of that rule allowing an additional three days after service by mail does not extend the period for the filing of an appellant's brief.~~ Within sixty days after appellant's brief has been served, the appellee shall similarly file and serve copies of a brief. An appellant may file and serve a reply brief as provided in Rule 28(h).

(b) **Copies Reproduced by Clerk.** A party need file but a single copy of a brief. At the time of filing the party may be required to pay to the clerk of the appellate court a deposit fixed by the clerk to cover the cost of reproducing copies of the brief. The clerk will reproduce and distribute copies of briefs as directed by the court.

(c) **Consequence of Failure to File and Serve Briefs.** If an appellant fails to file and serve a brief within the time allowed, the appeal may be dismissed on motion of an appellee or on the court's own initiative. If an appellee fails to file and serve its brief within the time allowed, the appellee may not be heard in oral argument except by permission of the court.

* * *

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.

(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 days after filing of the notice of appeal, or after production of the transcript if one is ordered pursuant to Rule 18(b)(3), the parties may by agreement entered in the record on appeal settle a proposed record on appeal 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), 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 ~~three copies of~~ 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 therewith 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 26. Filing and Service

(a) **Filing.** Papers required or permitted by these rules to be filed in the trial or appellate divisions shall be filed with the clerk of the appropriate court. Filing may be accomplished by mail or by electronic means as set forth in this rule.

(1) **Filing by Mail.** Filing may be accomplished by mail addressed to the clerk but is not timely unless the papers are received by the clerk within the time fixed for filing, except that motions, responses to petitions, the record on appeal, and briefs shall be deemed filed on the date of mailing, as evidenced by the proof of service.

(2) **Filing by Electronic Means.** Filing in the appellate courts may be accomplished by electronic means by use of the electronic-filing site at <https://www.ncappellatecourts.org>. Many documents may be filed electronically through the use of this site. The site identifies those types of documents that may not be filed electronically. A document filed by use of the electronic-filing site is deemed filed as of the time that the document is received electronically. Responses and motions may be filed by facsimile machines, if an oral request for permission to do so has first been tendered to and approved by the clerk of the appropriate appellate court. In all cases in which a document has been filed by facsimile machine pursuant to this rule, counsel must forward the following items by first class mail, contemporaneously with the transmission: the original signed document, the electronic-

transmission fee, and the applicable filing fee for the document, if any. The party filing a document by electronic means shall be responsible for all costs of the transmission, and neither they nor the electronic transmission fee may be recovered as costs of the appeal. When a document is filed to the electronic-filing site at <https://www.ncappellatecourts.org>, counsel may either have his or her account drafted electronically by following the procedures described at the electronic-filing site, or counsel must forward the applicable filing fee for the document by first class mail, contemporaneously with the transmission.

(b) **Service of All Papers Required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served on all other parties to the appeal.

(c) **Manner of Service.** Service may be made in the manner provided for service and return of process in Rule 4 of the Rules of Civil Procedure and may be so made upon a party or upon its attorney of record. Service may also be made upon a party or its attorney of record by delivering a copy to either or by mailing a copy to the recipient's last known address, or if no address is known, by filing it in the office of the clerk with whom the original paper is filed. Delivery of a copy within this rule means handing it to the attorney or to the party, or leaving it at the attorney's office with a partner or employee. Service by mail is complete upon deposit of the paper enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, or, for those having access to such services, upon deposit with the State Courier Service or Inter-Office Mail. When a document is filed electronically to the electronic-filing site, service also may be accomplished electronically by use of the other counsel's correct and current e-mail address(es), or service may be accomplished in the manner described previously in this subsection.

(d) **Proof of Service.** Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service shall appear on or be affixed to the papers filed.

(e) **Joint Appellants and Appellees.** Any paper required by these rules to be served on a party is properly served upon all parties joined in the appeal by service upon any one of them.

(f) **Numerous Parties to Appeal Proceeding Separately.** When there are unusually large numbers of appellees or appellants proceeding separately, the trial tribunal, upon motion of any party or on its own initiative, may order that any papers required by these rules to be served by a party on all other parties need be served only upon parties designated in the order, and that the filing of such a paper and service thereof upon the parties designated constitutes due notice of it to all other

parties. A copy of every such order shall be served upon all parties to the action in such manner and form as the court directs.

(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).
- (2) **Index Required.** All documents presented to either appellate court other than records on appeal, which in this respect are governed by Rule 9, shall, unless they are less than ten pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of authorities, i.e., cases (alphabetically arranged), constitutional provisions, statutes, and textbooks cited, with references to the pages where they are cited.
- (3) **Closing.** The body of the document shall at its close bear the printed name, post office address, telephone number, State Bar number and e-mail address of counsel of record, and in addition, at the appropriate place, the manuscript signature of counsel of record. If the document has been filed electronically by use of the electronic-filing site at <https://www.ncappellatecourts.org>, the manuscript signature of counsel of record is not required.
- ~~(4) **Protecting the Identity of Certain Juveniles.** Parties shall protect the identity of juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e) pursuant to said rules.~~

* * *

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. ~~Parties shall protect the identity of juveniles covered by Rules 3(b)(1), 3.1(b), or 4(c) pursuant to said rules.~~

(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). ~~Parties must modify~~

~~verbatim portions of the transcript filed pursuant to this rule in a manner consistent with Rules 3(b)(1), 3.1(b), or 4(e).~~

(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. ~~Before the Court of Appeals, the party shall file an original and three copies of the memorandum; in the Supreme Court, the party shall file an original and fourteen copies of the memorandum.~~

(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 appendixes 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.

* * *

Rule 30. Oral Argument and Unpublished Opinions

(a) **Order and Content of Argument.**

- (1) The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Oral arguments should complement the written briefs, and counsel will therefore not be permitted to read at length from briefs, records, and authorities.
- (2) ~~In cases involving juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e), counsel shall refrain from using a juvenile's name in oral argument and shall refer to the juvenile pursuant to said rules.~~
In matters listed in Rule 42(b), counsel must use initials or a pseudonym in oral argument instead of the minor's name.

(b) **Time Allowed for Argument.**

- (1) **In General.** Ordinarily a total of thirty minutes will be allowed all appellants and a total of thirty minutes will be allowed all appellees for oral argument. Upon written or oral application of any party, the court for good cause shown may extend the times limited for argument. Among other causes, the existence of adverse interests between multiple appellants or between multiple appellees may be suggested as good cause for such an

extension. The court of its own initiative may direct argument on specific points outside the times limited.

Counsel is not obliged to use all the time allowed, and should avoid unnecessary repetition; the court may terminate argument whenever it considers further argument unnecessary.

- (2) **Numerous Counsel.** Any number of counsel representing individual appellants or appellees proceeding separately or jointly may be heard in argument within the times herein limited or allowed by order of court. When more than one counsel is heard, duplication or supplementation of argument on the same points shall be avoided unless specifically directed by the court.

(c) **Non-Appearance of Parties.** If counsel for any party fails to appear to present oral argument, the court will hear argument from opposing counsel. If counsel for no party appears, the court will decide the case on the written briefs unless it orders otherwise.

(d) **Submission on Written Briefs.** By agreement of the parties, a case may be submitted for decision on the written briefs, but the court may nevertheless order oral argument before deciding the case.

(e) **Unpublished Opinions.**

- (1) In order to minimize the cost of publication and of providing storage space for the published reports, the Court of Appeals is not required to publish an opinion in every decided case. If the panel that hears the case determines that the appeal involves no new legal principles and that an opinion, if published, would have no value as a precedent, it may direct that no opinion be published.
- (2) The text of a decision without published opinion shall be posted on the ~~Court's web site~~ opinions web page of the Court of Appeals at <https://appellate.nccourts.org/opinions>, <https://appellate.nccourts.org/opinion-filings/coa> and reported only by listing the case and the decision in the advance sheets and the bound volumes of the North Carolina Court of Appeals Reports.
- (3) An unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority. Accordingly, citation of unpublished opinions in briefs, memoranda, and oral arguments in the trial and appellate divisions is disfavored, except for the purpose of establishing claim preclusion, issue preclusion, or the law of the case. If a party believes, nevertheless, that an unpublished opinion has precedential value to a material issue in the case and that there is no published

opinion that would serve as well, the party may cite the unpublished opinion if that party serves a copy thereof on all other parties in the case and on the court to which the citation is offered. This service may be accomplished by including the copy of the unpublished opinion in an addendum to a brief or memorandum. A party who cites an unpublished opinion for the first time at a hearing or oral argument must attach a copy of the unpublished opinion relied upon pursuant to the requirements of Rule 28(g). When citing an unpublished opinion, a party must indicate the opinion's unpublished status.

- (4) Counsel of record and pro se parties of record may move for publication of an unpublished opinion, citing reasons based on Rule 30(e)(1) and serving a copy of the motion upon all other counsel and pro se parties of record. The motion shall be filed and served within ten days of the filing of the opinion. Any objection to the requested publication by counsel or pro se parties of record must be filed within five days after service of the motion requesting publication. The panel that heard the case shall determine whether to allow or deny such motion.

(f) Pre-Argument Review; Decision of Appeal Without Oral Argument.

- (1) At any time that the Supreme Court concludes that oral argument in any case pending before it will not be of assistance to the Court, it may dispose of the case on the record and briefs. In those cases, counsel will be notified not to appear for oral argument.
- (2) The Chief Judge of the Court of Appeals may from time to time designate a panel to review any pending case, after all briefs are filed but before argument, for decision under this rule. If all of the judges of the panel to which a pending appeal has been referred conclude that oral argument will not be of assistance to the Court, the case may be disposed of on the record and briefs. Counsel will be notified not to appear for oral argument.

* * *

Rule 37. Motions in Appellate Courts

(a) **Time; Content of Motions; Response.** An application to a court of the appellate division for an order or for other relief available under these rules may be made by filing a motion for such order or other relief with the clerk of the court, with service on all other parties. Unless another time is expressly provided by these rules, the motion may be filed and served at any time before the case is called for oral

argument. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion and shall state with particularity the grounds on which it is based and the order or relief sought. If a motion is supported by affidavits, briefs, or other papers, these shall be served and filed with the motion. Within ten days after a motion is served or until the appeal is called for oral argument, whichever period is shorter, a party may file and serve copies of a response in opposition to the motion, which may be supported by affidavits, briefs, or other papers in the same manner as motions. The court may shorten or extend the time for responding to any motion.

(b) **Determination.** Notwithstanding the provisions of Rule 37(a), a motion may be acted upon at any time, despite the absence of notice to all parties and without awaiting a response thereto. A party who has not received actual notice of such a motion, or who has not filed a response at the time such action is taken, and who is adversely affected by the action may request reconsideration, vacation, or modification thereof. Motions will be determined without argument, unless the court orders otherwise.

(c) ~~**Protecting the Identity of Certain Juveniles.** Parties shall protect the identity of juveniles covered by Rules 3(b)(1), 3.1(b), or 4(c) pursuant to said rules.~~[Reserved]

(d) **Withdrawal of Appeal in Criminal Cases.** Withdrawal of appeal in criminal cases shall be in accordance with N.C.G.S. § 15A-1450. In addition to the requirements of N.C.G.S. § 15A-1450, after the record on appeal in a criminal case has been filed in an appellate court but before the filing of an opinion, the defendant shall also file a written notice of the withdrawal with the clerk of the appropriate appellate court.

(e) **Withdrawal of Appeal in Civil Cases.**

- (1) Prior to the filing of a record on appeal in the appellate court, an appellant or cross-appellant may, without the consent of the other party, file a notice of withdrawal of its appeal with the tribunal from which appeal has been taken. Alternatively, prior to the filing of a record on appeal, the parties may file a signed stipulation agreeing to dismiss the appeal with the tribunal from which the appeal has been taken.
- (2) After the record on appeal has been filed, an appellant or cross-appellant or all parties jointly may move the appellate court in which the appeal is pending, prior to the filing of an opinion, for dismissal of the appeal. The motion must specify the reasons therefor, the positions of all parties on the motion to dismiss, and the positions of all parties on the allocation of taxed costs. The appeal may be dismissed by order upon such terms as agreed to by the parties or as fixed by the appellate court.

(f) **Effect of Withdrawal of Appeal.** The withdrawal of an appeal shall not affect the right of any other party to file or continue such party's appeal or cross-appeal.

* * *

Rule 41. Appeal Information Statement

~~(a) — The Court of Appeals has adopted an Appeal Information Statement (AIS) which will be revised from time to time. The purpose of the AIS is to provide the Court the substance of an appeal and the information needed by the Court for effective case management.~~

~~(b) — Each appellant shall complete, file, and serve the AIS as set out in this rule.~~

~~(1) — The clerk of the Court of Appeals shall furnish an AIS form to all parties to the appeal when the record on appeal is docketed in the Court of Appeals.~~

~~(2) — Each appellant shall complete and file the AIS with the clerk of the Court of Appeals at or before the time his or her appellant's brief is due and shall serve a copy of the AIS upon all other parties to the appeal pursuant to Rule 26. The AIS may be filed by mail addressed to the clerk and, if first class mail is utilized, is deemed filed on the date of mailing as evidenced by the proof of service. Parties shall protect the identity of juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e) pursuant to said rules.~~

~~(3) — If any party to the appeal concludes that the AIS is in any way inaccurate or incomplete, that party may file with the Court of Appeals a written statement setting out additions or corrections within seven days of the service of the AIS and shall serve a copy of the written statement upon all other parties to the appeal pursuant to Rule 26. The written statement may be filed by mail addressed to the clerk and, if first class mail is utilized, is deemed filed on the date of mailing as evidenced by the proof of service.~~

The appellant must complete an Appeal Information Statement using the electronic-filing site at <https://www.ncappellatecourts.org> before the appellant's brief is filed.

* * *

Rule 42. Protecting Identities—Sealed Items and Identification Numbers

(a) Items Sealed in the Trial Tribunal. Items sealed in the trial tribunal remain under seal in the appellate courts. When these items are filed with the appellate courts, counsel must attach a copy of the order, statute, or other legal authority that sealed the item below.

(b) Items Sealed by Operation of Rule. By virtue of this subsection, items filed with the appellate courts are under seal in the following matters:

- (1) Appeals filed under N.C.G.S. § 7B-1001;**
- (2) Appeals filed under N.C.G.S. § 7B-2602;**
- (3) Appeals filed under N.C.G.S. § 7A-27 that involve a sexual offense committed against a minor; and**
- (4) Cases in which the right to appeal under one of these statutes has been lost.**

In briefs, motions, and petitions filed in these matters, counsel must use initials or a pseudonym instead of the minor's name. Counsel for each party must agree on the initials or pseudonym and must include a stipulation that evidences this agreement in the record on appeal.

(c) Items Sealed by the Appellate Courts. If an item was not sealed in the trial tribunal or by operation of rule, then counsel may move the appellate court to seal that item. Items subject to a motion to seal will be held under seal pending the appellate court's disposition of the motion.

(d) Labeling Sealed Items. Documents filed with the appellate courts that are under seal must display at the top of the first page this notice:

UNDER SEAL AND SUBJECT TO PUBLIC INSPECTION ONLY
BY ORDER OF A COURT OF THE APPELLATE DIVISION

If the document under seal is included within another document, then this notice must also be displayed at the top of the first page of that other document. Non-documentary items filed with the appellate courts that are under seal must be submitted in an envelope or box that displays the same notice.

(e) Identification Numbers. Driver license numbers, financial account numbers, social security numbers, and tax identification numbers must be excluded or redacted from all documents that are filed with the appellate courts unless the number is necessary to the disposition of the appeal. If the number is necessary to the disposition of the appeal, then counsel may move to seal the documents in which the number appears.

* * *

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)	14	Filing Notice of Appeal	7(a)(1) 18(b)(3)
Ordering Transcript (Criminal Indigent)	14	Order Filed by Clerk of Superior Court	7(a)(2)
Preparing and Delivering Transcript (Civil, Non-Capital Criminal) (Capital Criminal)	60 120	Service of Order for Transcript	7(b)(1)
Serving Proposed Record on Appeal (Civil, Non-Capital Criminal) (Administrative Tribunal)	35 35	Notice of Appeal (No Transcript) or Court Reporter's Certificate of Delivery of Transcript	11(b) 18(d)
Serving Proposed Record on Appeal (Capital)	70	Court Reporter's Certificate of Delivery	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)
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	Clerk's Mailing of Printed Record <u>Filing the Record on Appeal in Appellate Court</u> (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	30	Filing Appellant's Brief (Usual Minimum Time)	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 (a) (b); N.C.G.S. § 7B- 1001
Notifying Court- Reporting Coordinator Court Reporting Manager (Clerk of Superior Court)	1 (Business)	Filing Notice of Appeal	3.1(c) (1)
Assigning Transcriptionist (Court- Reporting Coordinator)	25 (Business)	Receipt of Notification Court Reporting Coordinator Completion of <u>Expedited Juvenile</u> <u>Appeals Form</u>	3.1(c) (1)
Preparing and Delivering a Transcript of Designated Proceedings (Indigent Appellant) Delivering a <u>Transcript of the</u> <u>Proceedings</u>	35 <u>40</u>	Assignment by Court- Reporting Coordinator Court <u>Reporting Manager</u>	3.1(c) (1)
Preparing and Delivering a Transcript of Designated Proceedings (Non- Indigent Appellant)	45	Assignment of Transcriptionist	3.1(c)(1)
Serving Proposed Record on Appeal	10 <u>15</u>	Receipt <u>Delivery of</u> Transcript	3.1 (e) (2) (d)
Serving Notice of Approval, or Objections <u>Specific Objections or</u> <u>Amendments</u> , or Proposed Alternative Record on Appeal	10	Service of Proposed Record <u>on Appeal</u>	3.1 (e) (2) (d)

Filing Record on Appeal When Parties Agree to a Settled Record Within 20 Days of Receipt of Transcript	5 (Business)	Settlement of Record	3.1(e)(2)
Filing Record on Appeal if All Appellees Fail Either to Serve Notices of Approval, or Objections, or Proposed Alternative Records on Appeal	5 (Business)	Last Date on Which Any Appellee Could so Serve	3.1(e)(2)
Appellant Files Proposed Record on Appeal and Appellee(s) Files Objections and Amendments or an Alternative Proposed Record on Appeal When Parties Cannot Agree to a Settled Record on Appeal Within 30 Days After Receipt of the Transcript	5 (Business)	Last Date on Which the Record Could be Settled by Agreement	3.1(e)(2)
<u>Requesting Judicial Settlement of Record</u>	<u>10</u>	<u>Expiration of the Last Day Within Which an Appellee Who Has Been Served Could Serve Objections, etc.</u>	<u>3.1(d); 11(c)</u>
<u>Judicial Settlement of Record</u>	<u>20</u>	<u>Service on Judge of Request for Settlement</u>	<u>3.1(d); 11(c)</u>
<u>Filing Record on Appeal in Appellate Court</u>	<u>5 (Business)</u>	<u>Settlement of Record on Appeal</u>	<u>3.1(d)</u>
Filing Appellant's Brief	30	Filing of Record on Appeal	3.1(e)(3) <u>13(a)(1)</u>
Filing Appellee's Brief	30	Service of Appellant's Brief	3.1(e)(3) <u>13(a)(1)</u>
Filing Appellant's Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee's Brief	3.1(e)(3) <u>13(a)(1); 28(h)</u>

**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) 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. 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 ~~Rules 3(b)(1), 3.1(b), and 4(e)~~ 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 ~~Rules 3(b)(1), 3.1(b), and 4(e)~~ 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 appendixes to briefs (Rule 28) must contain an index to the contents.

The index should be indented approximately ¾" 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)

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* * *

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Stipulation of Counsel	115
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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, 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 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.

SIGNATURE AND ADDRESS

Unless filed pro se, all original papers filed in a case will bear the original signature of at least one counsel participating in the case, as in the example below. The name, address, telephone number, State Bar number, and e-mail address of the person signing, together with the capacity in which that person signs the paper, will be included. When counsel or the firm is retained, the firm name should be included above the signature; however, if counsel is appointed in an indigent criminal appeal, only the name of the appointed counsel should appear, without identification of any firm affiliation. Counsel participating in argument must have signed the brief in the case prior to that argument.

(Retained)

[LAW FIRM NAME]

By: _____

[Name]

By: _____

[Name]

Attorneys for Plaintiff-Appellants

P. O. Box 0000

Raleigh, NC 27600

(919) 999-9999

State Bar No. _____

[e-mail address]

(Appointed)

[Name]

Attorney for Defendant-Appellant

P. O. Box 0000

Raleigh, NC 27600

(919) 999-9999

State Bar No. _____

[e-mail address]

* * *

Appendix D. Forms

Captions for all documents filed in the appellate division should be in the format prescribed by Appendix B, addressed to the Court whose review is sought.

NOTICES OF APPEAL

(1) To Court of Appeals from Trial Division

Appropriate in all appeals of right from district or superior court except appeals from criminal judgments imposing sentences of death.

(Caption)

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), hereby gives notice of appeal to the Court of Appeals of North Carolina (from the final judgment)(from the order) entered on (date) in (District)(Superior) Court, _____ County, (describing it).

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for (Plaintiff)(Defendant)-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

(2) To Supreme Court from a Judgment of the Superior Court Including a Sentence of Death

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Name of Defendant), Defendant, hereby gives notice of appeal to the Supreme Court of North Carolina from the final judgment entered by (name of Judge) in Superior Court, _____ County, on (date), which judgment included a conviction of murder in the first degree and a sentence of death.

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for Defendant-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

(3) To Supreme Court from a Judgment of the Court of Appeals

Appropriate in all appeals taken as of right from opinions and judgments of the Court of Appeals to the Supreme Court under N.C.G.S. § 7A-30. The appealing party shall enclose a clear copy of the opinion of the Court of Appeals with the notice. To take account of the possibility that the Supreme Court may determine that the appeal does not lie of right, an alternative petition for discretionary review may be filed with the notice of appeal.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals (describe it), which judgment

(Constitutional question—N.C.G.S. § 7A-30(1)) . . . directly involves a substantial question arising under the Constitution(s) (of the United States)(and)(or)(of the State of North Carolina) as follows:

(Here describe the specific issues, citing constitutional provisions under which they arise and showing how such issues were timely raised below and are set out in the record of appeal, e.g.:

Issue 1: Said judgment directly involves a substantial question arising under the Fourth and Fourteenth Amendments to the Constitution of the United States and under Article 1, Section 20 of the Constitution of the State of North Carolina, in that it deprives rights secured thereunder to the defendant by overruling defendant's challenge to the denial of (his)(her) Motion to Suppress Evidence Obtained by a Search Warrant, thereby depriving defendant of the constitutional right to be secure in his or her person, house, papers, and effects against unreasonable searches and seizures and violating constitutional prohibitions against warrants issued without probable cause and warrants not supported by evidence. This constitutional issue was timely raised in the trial tribunal by defendant's Motion to Suppress Evidence Obtained by a Search Warrant made prior to trial of defendant (R pp 7-10). This constitutional issue was determined erroneously by the Court of Appeals.)

In the event the Court finds this constitutional question to be substantial, petitioner intends to present the following issues in its brief for review:

(Here list all issues to be presented in appellant's brief to the Supreme Court, not limited to those which are the basis of the constitutional question claim. An issue may not be briefed if it is not listed in the notice of appeal.)

(Dissent—N.C.G.S. § 7A-30(2)) . . . was entered with a dissent by Judge (name), based on the following issue(s):

(Here state the issue or issues that are the basis of the dissenting opinion in the Court of Appeals. Do not state additional issues. Any additional issues desired to be raised in the Supreme Court when the appeal of right is based solely on a dissenting opinion must be presented by a petition for discretionary review as to the additional issues.)

Respectfully submitted this the __ day of _____, 2__.

s/ _____

Attorney for (Plaintiff)(Defendant)-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

PETITION FOR DISCRETIONARY REVIEW UNDER N.C.G.S. § 7A-31

To seek review of the opinion and judgment of the Court of Appeals when petitioner contends the case involves issues of public interest or jurisprudential significance. May also be filed as a separate paper in conjunction with a notice of appeal to the Supreme Court when the appellant contends that such appeal lies of right due to substantial constitutional questions under N.C.G.S. § 7A-30, but desires to have the Court consider discretionary review should it determine that appeal does not lie of right in the particular case.

(Caption)

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 the argument in the petition should show how the opinion of the Court of Appeals conflicts with prior decisions of the Supreme Court or how the case is significant to the jurisprudence of the State or of significant public interest. If the Court is

persuaded to take the case, the appellant may deal thoroughly with the substantive issues in the new brief.)

Issues to Be Briefed

In the event the Court allows this petition for discretionary review, petitioner intends to present the following issues in its brief for review:

(Here list all issues to be presented in appellant's brief to the Supreme Court, not limited to those that are the basis of the petition. An issue may not be briefed if it is not listed in the petition.)

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for (Plaintiff)(Defendant)-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

Attached to the petition shall be a certificate of service upon the opposing parties and a clear copy of the opinion of the Court of Appeals in the case.

PETITION FOR WRIT OF CERTIORARI

To seek review: (1) by the appropriate appellate court of judgments or orders of trial tribunals when the right to prosecute an appeal has been lost or when no right to appeal exists; and (2) by the Supreme Court of decisions and orders of the Court of Appeals when no right to appeal or to petition for discretionary review exists or when such right has been lost by failure to take timely action.

(Caption)

TO THE HONORABLE (SUPREME COURT)(COURT OF APPEALS) OF NORTH
CAROLINA:

(Plaintiff)(Defendant), (Name of Party), respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the Rules of Appellate Procedure to review the (judgment)(order)(decree) of the [Honorable (name), Judge Presiding, (Superior)(District) Court, _____ County][North Carolina Court of Appeals], dated (date), (here describe the judgment, order, or decree appealed from), and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding the basis of the petition: e.g., failure to perfect appeal by reason of circumstances constituting excusable neglect; non-appealability of right of an interlocutory order, etc.) (If circumstances are that transcript could not be procured from court reporter, statement should include estimate of date of availability and supporting affidavit from the court reporter.)

Reasons Why Writ Should Issue

(Here set out factual and legal arguments to justify issuance of writ: e.g., reasons why interlocutory order makes it impracticable for petitioner to proceed further in trial court; meritorious basis of petitioner's proposed issues, etc.)

Attachments

Attached to this petition for consideration by the Court are certified copies of the (judgment)(order)(decree) sought to be reviewed, and (here list any other certified items from the trial court record and any affidavits attached as pertinent to consideration of the petition).

Wherefore, petitioner respectfully prays that this Court issue its writ of certiorari to the [(Superior)(District) Court, _____ County][North Carolina Court of Appeals] to permit review of the (judgment)(order)(decree) above specified, upon issues stated as follows: (here list the issues, in the manner provided for in the petition for discretionary review); and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for Petitioner

(Address, Telephone Number, State Bar Number,
and E-mail Address)

(Verification by petitioner or counsel)

(Certificate of service upon opposing parties)

(Attach a clear copy of the opinion, order, etc. which is the subject of the petition and other attachments as described in the petition.)

PETITION FOR WRIT OF SUPERSEDEAS UNDER RULE 23 AND MOTION FOR TEMPORARY STAY

A writ of supersedeas operates to stay the execution or enforcement of any judgment, order, or other determination of a trial court or of the Court of Appeals in civil cases under Rule 8 or to stay imprisonment or execution of a sentence of death in criminal cases (other portions of criminal sentences, e.g., fines, are stayed automatically pending an appeal of right).

A motion for temporary stay under Rule 23(e) is appropriate to seek an immediate stay of execution on an *ex parte* basis pending the Court's decision on the petition for supersedeas or the substantive petition in the case.

(Caption)

TO THE HONORABLE (COURT OF APPEALS)(SUPREME COURT) OF NORTH
CAROLINA:

(Plaintiff)(Defendant), (Name of Party), respectfully petitions this Court to issue its writ of supersedeas to stay (execution)(enforcement) of the (judgment)(order)(decree) of the [Honorable _____, Judge Presiding, (Superior)(District) Court, _____ County][North Carolina Court of Appeals] dated _____, pending review by this Court of said (judgment)(order)(decree) which (here describe the judgment, order, or decree and its operation if not stayed); and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding the basis of the petition and justifying its filing under Rule 23: e.g., trial judge has vacated the entry upon finding security deposited under N.C.G.S. § ____ inadequate; trial judge has refused to stay execution upon motion therefor by petitioner; circumstances make it impracticable to apply first to trial judge for stay, etc.; and showing that review of the trial court judgment is being sought by appeal or extraordinary writ.)

Reasons Why Writ Should Issue

(Here set out factual and legal arguments for justice of issuing the writ; e.g., that security deemed inadequate by trial judge is adequate under the circumstances; that irreparable harm will result to petitioner if it is required to obey decree pending its review; that petitioner has meritorious basis for seeking review, etc.)

Attachments

Attached to this petition for consideration by the court are certified copies of the (judgment)(order)(decree) sought to be stayed and (here list any other certified items from the trial court record and any affidavits deemed necessary to consideration of the petition).

Wherefore, petitioner respectfully prays that this Court issue its writ of supersedeas to the [(Superior)(District) Court, _____ County][North Carolina Court of Appeals] staying (execution)(enforcement) of its (judgment)(order)(decree) above specified, pending issuance of the mandate to this Court following its review and determination of the (appeal)(discretionary review)(review by extraordinary writ)(now pending)(the petition for which will be timely filed); and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted this the __ day of _____, 2__.

s/ _____

Attorney for Petitioner

(Address, Telephone Number, State Bar Number, and E-mail Address)

(Verification by petitioner or counsel)

(Certificate of Service upon opposing party)

Rule 23(e) provides that in conjunction with a petition for supersedeas, either as part of it or separately, the petitioner may move for a temporary stay of execution or enforcement pending the Court's ruling on the petition for supersedeas. The following form is illustrative of such a motion for temporary stay, either included as part of the main petition or filed separately.

Motion for Temporary Stay

(Plaintiff)(Defendant) respectfully applies to the Court for an order temporarily staying (execution)(enforcement) of the (judgment)(order)(decree) that is the subject of (this)(the accompanying) petition for writ of supersedeas, such order to be in effect until determination by this Court whether it shall issue its writ. In support of this Application, movant shows that (here set out the legal and factual arguments for the issuance of such a temporary stay order; e.g., irreparable harm practically threatened if petitioner must obey decree of trial court during interval before decision by Court whether to issue writ of supersedeas).

Motion for Stay of Execution

In death cases, the Supreme Court uses an order for stay of execution of death sentence in lieu of the writ of supersedeas. Counsel should promptly apply for such a stay after the judgment of the superior court imposing the death sentence. The stay of execution order will provide that it remains in effect until dissolved. The following form illustrates the contents needed in such a motion.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now comes the defendant, (name), who respectfully shows the Court:

1. That on (date of judgment), The Honorable _____, Judge Presiding, Superior Court, _____ County, sentenced the defendant to death, execution being set for (date of execution).
2. That pursuant to N.C.G.S. § 15A-2000(d)(1), there is an automatic appeal of this matter to the Supreme Court of North Carolina, and defendant's notice of appeal was given (describe the circumstances and date of notice).
3. That the record on appeal in this case cannot be served and settled, the matter docketed, the briefs prepared, the arguments heard, and a decision rendered before the date scheduled for execution.

WHEREFORE, the defendant prays the Court to enter an order staying the execution pending judgment and further orders of this Court.

Respectfully submitted this the __ day of _____, 2__.

s/_____
Attorney for Defendant-Appellant

(Address, Telephone Number, State Bar Number,
and E-mail Address)

(Certificate of Service on Attorney General, District Attorney, and Warden of
Central Prison)

PROTECTING THE IDENTITY OF CERTAIN JUVENILES: NOTICE

~~In cases governed by Rules 3(b), 3.1(b), and 4(e), the notice requirement of
Rules 3.1(b) and 9(a) is as follows:~~

~~(Caption)~~

~~*****~~

~~TO THE HONORABLE (COURT OF APPEALS)(SUPREME COURT) OF NORTH
CAROLINA:~~

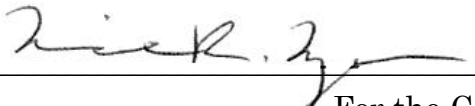
~~FILED PURSUANT TO RULE [3(b)(1)][3.1(b)][4(e)]; SUBJECT TO PUBLIC
INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.~~

* * *

These amendments to the North Carolina Rules of Appellate Procedure become
effective on 1 January 2019.

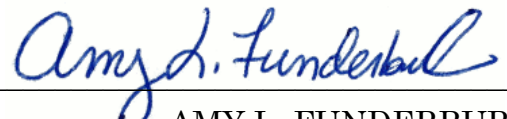
These amendments shall be published in the North Carolina Reports and
posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 19th day of December, 2018.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 19th day of December, 2018.



AMY L. FUNDERBURK
Clerk of the Supreme Court