NORTH CAROLINA
BAR ASSOCIATION

A Style Manual for the North Carolina Rules of Appellate Procedure

Appellate Rules Committee

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www.ncbar.org/members/committees/appellate-rule

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Statement of Purpose

The Appellate Rules Committee of the North Carolina Bar Association (the "Committee") has prepared this Style Manual to assist North Carolina lawyers appearing in the state appellate courts.

This Style Manual is not a substitute for the North Carolina Rules of Appellate Procedure (the "Rules"). The Committee has attempted to avoid interpretation of the Rules in this Style Manual. To the extent that this Style Manual appears to interpret a Rule, any interpretation has no precedential value. Practitioners are strongly advised to consult the Rules at each stage of an appeal, to acquaint themselves with the process, and to read appellate opinions that interpret the Rules. Note that the Rules are generally organized around the sequence and elements of an appeal (notice of appeal, record on appeal, briefs, etc.).

This Style Manual is an effort to synthesize the Rules and the Appendixes into a series of practical examples. The first record on appeal in the Style Manual, for example, contains each of the elements of a typical civil-case record, with a few commentaries by the Committee on important points. The Style Manual also contains a printed record on appeal for a typical juvenile case and a typical criminal case. However, practitioners should carefully note that juvenile appeals (involving termination of parental rights or the neglect, abuse, or dependency of juveniles) are subject to unique rules and deadlines. Further, practitioners with a criminal appeal or an administrative appeal will need to adjust the content, if not the style, of the remaining examples provided in this Style Manual, as the Rules vary slightly among civil, criminal, and administrative appeals.

The Committee appreciates the advice and comments of those who use this Style Manual. Please direct your suggestions to the Style Manual Editor, Caitlin Mitchell, at NCAppellateStyleManual@gmail.com.

This Style Manual was first published on 13 May 1999. The latest revision date is shown on the cover page. To ensure that you are referencing the current edition, click here to download the latest edition. This edition of the Style Manual has been updated to incorporate the relevant amendments to the Rules that were adopted as of 1 February 2026. Click here to verify if any additional amendments to the Rules have been adopted after 1 February 2026.

Additional Resources

In addition to reviewing the Rules themselves, the Committee also strongly recommends that practitioners consult the following helpful sources:

- In addition to this Style Manual, the Committee also prepares and publishes several helpful and free appellate guides, including:
  - Notice of Appeal Tip Sheet; and
  - Guide to Appealability of Interlocutory Orders..
- Two longstanding members of the Committee, Elizabeth Brooks Scherer and Matthew Nis Leerberg, authored a commercial treatise, entitled *North Carolina Appellate Practice and Procedure*, which was first published by LexisNexis in 2019.
- Finally, anyone can freely search and review appellate records, briefs, motions, and orders that were recently filed with the North Carolina Court of Appeals and Supreme Court through the Court's Document Library, available here: https://www.ncappellatecourts.org/. Of course, practitioners should take care not to rely solely on the contents of such documents, as not all documents that have been filed are correct or proper. When reviewing the online dockets and recent filings in prior matters, practitioners should always be guided by the current Rules and their own good sense.

Recent Rule Amendments

Since this Style Manual was last updated in June 2023, the Supreme Court of North Carolina amended the N.C. Rules of Appellate Procedure (the "Rules") three times, as follows (collectively, the "Rule Amendments"):

Order Entered	Effective Date of Amendments	Changes Made
18 October 2023 Order	20 November 2023	Adopting Rule 28.1 and amending Rules 15, 21, 22, 23, 28, and 31
19 March 2025 Order	1 April 2025	Amending Rules 14, 15, and 16 and Appendixes A and D
20 August 2025 Order	2 September 2025	Amended Rule 36

The relevant portions of these recent Rule Amendments are reflected in this version of the Style Manual. All of these Rule Amendments have been incorporated in the current and official codification of the Rules, which were codified 2 September 2025 and are available here.

Important Note: To ensure that you are always referencing the current and official version of the Rules, refer to the "North Carolina Rules of Appellate Procedure" page of the nccourts.gov website. This website also identifies any recent Supreme Court Orders, amending the Rules.

I. Notice of Appeal

Notes on the Notice of Appeal:

- The Notice of Appeal is one of the most important documents to include in the record because without it, the appellate court may not have jurisdiction over the appeal. *See Crowell Constructors, Inc. v. State*, 328 N.C. 563, 563-64, 402 S.E.2d 407, 408 (1991) (dismissing the appeal for failure to include the notice of appeal in the record).
- Appeals may be dismissed not only for failing to properly file *and* serve the Notice of Appeal, but also for failing to provide such proof in the record. *See, e.g., Melvin v. St. Louis*, 132 N.C. App. 42, 43, 510 S.E.2d 177, 177 (1999) (dismissing a civil appeal in the absence of a filed and served notice of appeal regardless of prior oral notice). The certificate of service for the Notice of Appeal should therefore also be included in the record.
- Although the Court of Appeals addresses most appeals from the superior or district court divisions, certain matters are appealed directly to and addressed by the Supreme Court, including all decisions made by a North Carolina Business Court. *See* N.C. Gen. Stat. § 7A-27(a).
- For appeals from the superior or district court division, the Notice of Appeal is filed with the clerk of superior court rather than in the appellate court. *See* N.C. R. App. P. 3(a).
    - Counties' local rules and practices vary as it relates to notifying parties of judicial orders/judgments and who is responsible for serving the same. The best practice is to make sure orders are served directly to the opposing party. Of equal importance, it is prudent to identify the date and manner that the order/judgment being appealed was served in your Notice of Appeal, especially in cases where the order/judgment was not served within the three-day window under Civil Procedure Rule 58. *See* N.C.R. App. P. 3(c).
    - If the underlying matter arises from a superior court using Odyssey's electronic-filing system, then Rules 3(e) and 26(c) dictate that the Notice of Appeal may be considered "served" on all represented parties when appellant electronically files and serves the Notice of Appeal. However, a prudent and cautious practitioner should consider noting on their Notice of Appeal's Certificate of Service that a courtesy copy of the same will also be emailed to all represented parties on the same day that the Notice of Appeal is filed and electronically served, as demonstrated in the below example.
    - Be aware that in cases assigned to the Business Court, the filing of the Notice of Appeal through the Business Court's electronic filing system will *not* satisfy Rule 3. The Notice of Appeal still must be timely filed with the clerk of superior court in the county in which the case was filed. *Ehrenhaus v. Baker*, 243 N.C. App. 17, 31, 776 S.E.2d 699, 708-09 (2015).
- For appeals of right from the Court of Appeals to the Supreme Court, however, the Notice of Appeal should be filed with both the Clerk of the Court of Appeals and with the Clerk of the Supreme Court. *See* N.C. R. App. P. 14(a).
- In the Notice of Appeal, parties' names should appear as they do on the final judgment/order. Attorneys are encouraged to ensure names are correct in submitted

proposed orders. Captions and party names can be amended throughout litigation. If necessary, motions can be made to amend judgments for clerical errors if the identification error only appears in the judgment. N.C.R. Civ. P. 60(a).For additional tips and information about the Notice of Appeal, see the Appellate Rules Committee's Notice of Appeal Tip Sheet.

Notes on Fees and Costs Associated with Filing an Appeal:

- Appendix F to the Rules sets forth the various fees and costs that parties can expect to incur in the Appellate Division.
- In a typical civil appeal to the Court of Appeals, a "docketing fee" of $10.00, along with an "appeal bond or cash deposit" of $250.00, is submitted to the Court of Appeals by the appellant in connection with the filing of the record on appeal. N.C. R. App. P. Appendix F. A single firm check in the amount of $260.00 is sufficient. Printing costs for the record and the briefs are billed separately.
    - Attorneys representing indigent clients are not responsible for these costs. Although estimates received by indigent clients may be ignored, if an actual invoice is received, the attorney should contact Indigent Defense Services.
- To file a petition for discretionary review with the Supreme Court, the appellant-petitioner submits to the Supreme Court a $10.00 docketing fee. If (and only if) the petition is granted, the appellant-petitioner then submits to the Supreme Court a $250.00 appeal bond. *See* N.C. R. App. P. Appendix F.
- If the appellant files a Notice of Appeal with the Supreme Court based on a constitutional question and simultaneously files a petition for discretionary review of an issue, the appellant submits to the Supreme Court a $20.00 docketing fee (for both the petition and the notice of appeal) and a $250.00 appeal bond. *See* N.C. R. App. P. Appendix F.

I(a). A Typical Notice of Appeal to the Court of Appeals

[Sample Notice of Appeal to the Court of Appeals in a Civil Case]

STATE OF NORTH CAROLINA AVERY COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21CV001234-050
[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	**NOTICE OF APPEAL**

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff [Full Name] hereby gives notice of appeal to the Court of Appeals of North Carolina from the final judgment, dismissing Plaintiff's action against all parties, which was entered on [date] by [Judge's Name], Superior Court Judge, in the Superior Court of Avery County, and which was served upon Plaintiff on [date] via email and the Superior Court's e-filing system.

This the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

By: /s/ [Name of Counsel]_____
[Name of Counsel]
Attorney for Plaintiff-Appellant
160 N. Main Street
Newland, NC 28786
(828) 456-1245
State Bar No. 12345
lawyer@lawfirm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, pursuant to Rules 3(e) and 26 of the North Carolina Rules of Appellate Procedure, the foregoing NOTICE OF APPEAL was filed through the superior court's electronic-filing system and was served by selecting the service feature in the electronic-filing system. A copy was also sent by email on this date, addressed as follows:

[Name and email address of opposing counsel]

This the ___ day of [month], [year].

By: /s/ [Name of Counsel]_____
[Name of Counsel]

[Sample Notice of Appeal in a Juvenile Case]

STATE OF NORTH CAROLINA AVERY COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION 21J001234-050
In the Matter of: A.B.C. a minor child.	**NOTICE OF APPEAL and REQUEST FOR APPOINTMENT OF COUNSEL**

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Pursuant to N.C. Gen. Stat. § 7B-1001(a)(3), Respondent-Mother [name] hereby gives Notice of Appeal to the Court of Appeals of North Carolina from the Disposition Order, which was entered by the Honorable George Jetson of the Avery County District Court on [date].

REQUEST FOR APPOINTMENT OF COUNSEL FOR APPEAL

Respondent-Mother [name] respectfully requests that counsel be appointed to represent her in this appeal, in that she is indigent and has previously had counsel appointed to represent her in this case, and there has been no change in her financial circumstances since counsel was appointed.

This the ___ day of [month], [year].

_____

[Name of Counsel]
[LAW FIRM NAME, if any]
Attorney for Respondent-Mother
160 N. Main Street
Newland, NC 28786
(828) 456-1245
State Bar No. 12345
lawyer@lawfirm.com

_____

Respondent-Mother

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, pursuant to Rules 3.1 and 26 of the North Carolina Rules of Appellate Procedure, the foregoing NOTICE OF APPEAL was filed through the district court's electronic-filing system and was served by selecting the service feature in the electronic-filing system. A copy was also sent by email on this date, addressed as follows:

[Name and email address of opposing counsel]

This the ___ day of [month], [year].

_____

[Name of Counsel]

Notes on Notices of Appeal and Appeal Entries in Juvenile Cases:

- A written Notice of Appeal is required in all civil cases, even those involving a juvenile.
- Special requirements apply, however, to such Notices of Appeal in certain juvenile cases.
  - Notices of Appeal in cases falling under Rule 3.1 (like the Notice of Appeal set forth in the example above) must be signed by both the parent and the trial lawyer if the appellant is represented by trial counsel. *See* N.C. Gen. Stat. § 7B-1001(c).
  - Note also that the Notice of Appeal is an appropriate location to request appointment of appellate counsel for an indigent appellant.
- "Appeal entries" (sometimes called "appellate entries") are used in juvenile delinquency; termination of parental rights; and abuse, neglect, or dependency cases.
- In cases where the appellant is indigent, the appeal entries are used to establish indigency and appoint the appellate defender. In juvenile delinquency and indigent cases, the appeal entries are submitted to order the transcript. In termination of parental rights and abuse, neglect, and dependency cases, the appeal entries indicate who has been designated to transcribe the transcript.
- Under Rule 3.1(c), the transcriptionist is designated by the "court reporting manager." The clerk submits the appeal entries to reflect who the manager designated, authorize the tapes to be delivered to the transcriptionist, and track receipt and delivery.
- The appeal entries are usually included in the record on appeal after the notice of appeal. *See* N.C. R. App. P. 9(a)(1)(i), 9(a)(3)(h).
- Forms for the appeal entries are available on the North Carolina Court System website, as follows: AOC-CR-350 (adult criminal cases and indigent civil appeals), AOC-J-160 (termination of parental rights, and abuse, neglect or dependency cases in which the parent appeals), AOC-J-161 (same, in which the Department of Social Services or the Guardian Ad Litem appeals), and AOC-J-470 (juvenile delinquency cases).
- For more information and resources relating to appeals in juvenile cases, see the materials available:
  - On the "Training and Reference Materials Index" page of North Carolina's Office of Indigent Defense Services website;
  - In the UNC School of Government's Indigent Defense Manual Series (Chapter 16 is dedicated to Appeals); or
  - On the website for the North Carolina Office of the Parent Defender.

I(b). A Typical Notice of Appeal to the Supreme Court

Notes on Notice of Appeal to the Supreme Court:

- Although the Court of Appeals addresses most appeals from the superior or district court divisions, certain matters are appealed directly to and addressed by the Supreme Court, including all decisions made by a North Carolina Business Court. *See* N.C. Gen. Stat. § 7A-27(a). The below example reflects an example Notice to appeal a Business Court matter to the Supreme Court.
    - Remember, the filing of the Notice of Appeal through the Business Court's electronic filing system will *not* satisfy Rule 3. The Notice of Appeal still must be timely filed with the clerk of superior court for the county in which the case was filed. *Ehrenhaus v. Baker*, 243 N.C. App. 17, 31, 776 S.E.2d 699, 708-09 (2015).
- For appeals of right from the Court of Appeals to the Supreme Court, the Notice of Appeal is filed with the Clerk of the Court of Appeals *and* with the Clerk of the Supreme Court. *See* N.C. R. App. P. 14(a).
    - The Court of Appeals' docket number should appear in the caption, under the county name and to the right of the parties' names. *See* N.C. R. App. P. Appendix B.
    - The appellant must include a clear copy of the opinion of the Court of Appeals with a Notice of Appeal to the Supreme Court. *See* N.C. R. App. P. Appendix D.
    - Appendix D contains a detailed example of the kind of description that must be included in a Notice of Appeal of right from the Court of Appeals to the Supreme Court to comply with Rule 14. *See* N.C. R. App. P. Appendix D.
    - When appealing to the Supreme Court, a Petition for Discretionary Review may be filed along with a Notice of Appeal. Although practitioners are encouraged to file both in a single document, this does not negate the separate filing or fee requirements. Parties must comply with the Rules relating to both.

[A Typical Notice of Appeal from a Business Court Decision to the Supreme Court]

STATE OF NORTH CAROLINA COUNTY OF AVERY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21CV001234-050
[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	**NOTICE OF APPEAL**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA

Pursuant to N.C.G.S. § 7A-27(a)(2) and Rule 3 of the North Carolina Rules of Appellate Procedure, Plaintiff [Full Name] hereby gives notice of appeal to the Supreme Court of North Carolina from the final judgment, dismissing Plaintiff's action against all parties, which was entered on [date] by [Judge's Name], Superior Court Judge, of the North Carolina Business Court, and which was served upon Plaintiff on [date] via email and the Business Court's e-filing system.

This the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

By: /s/ [Name of Counsel]
[Name of Counsel]

160 N. Main Street
Newland, NC 28786
(828) 456-1245
State Bar No. 12345
lawyer@lawfirm.com
Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEAL, was served on the other parties in this action by electronically filing the document with the North Carolina Business Court, pursuant to Rule 3.9 of North Carolina Business Court Rules; by electronically filing the same with the clerk of [County's] Superior Court using *Odyssey*, which will send notification to their attorneys at their email of record pursuant to Rule 26(c) of the North Carolina Rules of Appellate Procedure; and by emailing a courtesy copy of the same on this date, addressed as follows:

[Name and address of opposing counsel]

This the ___ day of [month], [year].

By: /s/ [Name of Counsel]

_____

[Name of Counsel]

II. Transcript Contract and Documentation

Transcript Overview:

- Appeals routinely require the parties to refer to testimonial evidence that was admitted or gathered during a trial tribunal proceeding, hearing, *voir dire*, or deposition.
- Per Appellate Rule 9(c), such testimonial evidence can usually be presented to the appellate court for review via either (1) a verbatim transcript or (2) a narrative statement.
    - In most instances, a verbatim transcript of the testimony, which has been prepared by a neutral transcriptionist pursuant to Rule 9(c)(2), will be submitted to the applicable appellate court for review. The procedures for ordering and filing the transcript are set out in Rule 7.
    - Under Rule 9(c)(1), the parties may alternatively elect to present a "narrative" of certain relevant testimony to the appellate court. Rather than a verbatim transcript, a narrative statement is a summary of the pertinent testimony or proceedings, which is placed directly in the record. The narrative statement (or "narrative option") might be selected if a verbatim transcript cannot be produced but such evidence is nevertheless necessary to the appeal. Narrative statements may also be used for unrecorded proceedings, *e.g.*, small claims court hearings or a bench or chambers conference.
- When selecting the manner in which to present relevant evidence on appeal, Rule 9(c)(1) instructs the parties to use the "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 expense to the litigants." N.C. R. App. P. 9(c)(1). That being said, there are several instances when the narrative option may *not* be used. For example, when the issue on appeal "relates to the giving or omission of instructions to the jury, a transcript of the entire charge *shall* be included in the record." N.C. R. App. P. 9(c) (emphasis added).
- By convention, the appellate courts disfavor condensed transcripts (multiple pages displayed on a single sheet of paper). Therefore, if certain testimony is only available in condensed format, consider converting it to a full-page format and entering a stipulation that the parties agree that the substituted transcript is authentic.

Notes on the Appellate Division Transcript Documentation Form:

- Any party that wishes to have the appellate court review *any* verbatim transcript (*e.g.*, trial, hearing, or deposition transcripts) "*must* complete an Appellate Division Transcript Documentation form." N.C. R. App. P. 7(b)(3) (emphasis added).
    - Only one completed Appellate Division Transcript Documentation form is required per appeal. If the appellant's completed form lists all relevant transcripts, then the appellee is not required to complete a separate Transcript Documentation form. In other words, an appellee is only required to complete this form if the appellee chooses to add any additional transcripts to the appellant's Transcript Documentation form.
- The Appellate Division Transcript Documentation form can be found on the North Carolina Judicial Branch's official website. Practitioners are advised to periodically check the website for updates.
- Once completed, the Appellate Division Transcript Documentation form must be *served* on the other parties to the appeal within the time allowed under Rule 7(b)(2). *See* N.C. R. App. P. 7(b)(4).
    - For the appellant, this is 14 days after giving notice of appeal.
    - For the appellee, this is 28 days after the appellant gives notice of appeal.

Notes on the Appellate Division Transcript Contract Form:

- Any party "who orders a transcript for the appeal *after* notice of appeal is filed or given *must* use an Appellate Division Transcript Contract form." N.C. R. App. P. 7(b)(1) (emphasis added). The only exceptions to Transcript Contract form requirement apply if
    - (a) a party orders a transcript *before* the notice of appeal is filed, *see* N.C. R. App. P. 7(b)(1);
    - (b) the matter arises under Rule 3.1, *see* N.C. R. App. P. 3.1(c); or
    - (c) the matter involves an indigent party who is "entitled to be appointed appellate counsel," N.C. R. App. P. 7(c).
- In other words, if a party already possess all of the trial court transcripts required for the pending appeal, then an Appellate Division Transcript Contract Form is not required. However, if either party still needs to order any relevant trial court transcripts after the Notice of Appeal has been filed, then the party must complete and properly serve this requisite Transcript Contract form.
- The current version of the Appellate Division Transcript Contract form can be found on the North Carolina Judicial Branch's official website. Practitioners are advised to periodically check the website for updates.
- The Appellate Division Transcript Contract form standardizes the process for contracting with the transcriptionist, as well as the terms of the contract. For example, among the form's standard conditions, the transcriptionist "agrees to deliver the transcript to the requestor and to each person or entity that the requestor

has identified as a party to the appeal." The transcriptionist also "agrees that the requestor may reproduce the transcript, prepare derivative works from the transcript, distribute copies of the transcript, and display the transcript publicly."

- Unless one of the above exceptions apply, the appellant must serve the completed Appellate Division Transcript Contract form on all parties to the appeal, as well as the transcriptionist, no later than 14 days after giving notice of appeal. N.C. R. App. P. 7(b)(2). The appellant thus must order any transcripts before this 14-day period expires. If the appellee orders any additional transcripts, the appellee must serve its own form 28 days after the appellant gives notice of appeal. *Id.*
    - Within the first six days after a Notice of Appeal is filed in a Rule 3.1 matter, the superior court clerk will coordinate with the court reporting manager of the Administrative Office of the Courts to assign a transcriptionist to the matter. *See* N.C. R. App. P. 3.1(c). Thereafter, the transcriptionist will automatically prepare the "the transcript of the entire proceedings at the State's expense if there is an order that establishes the indigency of the appellant." *Id.* In all other Rule 3.1 appeals, the appellate must enter into a contract with the assigned transcriptionist within 10 days after the transcriptionist has been assigned to the matter. *See id.*
    - If "a party is indigent and entitled to be appointed appellate counsel," then the indigent party "is entitled to have the clerk of superior court order a transcript on that party's behalf." N.C. R. App. P. 7(c)(1). In such instances, the clerk of superior court "must use an appropriate appellate entries form to order a transcript," and must "serve the appellate entries on each party and on each transcriptionist no later than 14 days after a judge signs the form." N.C. R. App. P. 7(c)(2). These forms are also available on the North Carolina Judicial Branch's website. N.C. R. App. P. 7(c)(1).
- It is important to begin this process as soon as it is apparent a party may appeal, especially because some counties do not have court reporters present during trial court hearings. In these counties, an audio recording of the hearing may be created instead. Accordingly, in order to obtain a verbatim hearing transcript, some parties may need to first order a copy of the audio recording of the hearing from the clerk's office using Form AOC G-114. Additionally, some transcriptionists may not be willing to sign the required Transcript Contract form before they receive the correlating audio recording. Accordingly, practitioners should factor in time to order and receive the audio recording from the clerk's office before the requisite Transcript Contract form must be executed and served.
- A party ordering a transcript does *not* need to file the Transcript Contract form with the trial court. *See* N.C. R. App. P. 7(b)(1)-(2).
    - However, the appellant should include a copy of the transcript contract in the record on appeal. Rule 9 states that the record shall contain "all orders establishing time limits relative to the perfecting of the appeal." N.C. R. App. P. 9(a)(1)(i), (2)(h), (3)(h). Alternatively, the record may include a stipulation that the transcript contract was properly filed and served.

Notes on the Transcriptionist's Delivery of Any Ordered Transcripts:

- After being served with the Appellate Division Transcript Contract form, the transcriptionist usually has 90 days to deliver the transcript. N.C. R. App. P. 7(e)(1).
  - However, this deadline varies per Rule 7(e)(1) in the following three instances:
    - (1) the deadline is 180 days in death-penalty cases;
    - (2) the deadline is 60 days in "an undisciplined or delinquent juvenile case under Subchapter II of Chapter 7B of the General Statutes" (*i.e.*, N.C. Gen. Stat. §§ 7B-1500 through -2706); and
    - (3) the deadline is also 60 days in "a special proceeding about the admission or discharge of clients under Article 5 of Chapter 122C of the General Statutes" (*i.e.*, N.C. Gen. Stat. §§ 122C-201 through -366).
  - Additionally, in juvenile cases governed by Rule 3.1, the transcriptionist must deliver the transcript to each party within 40 days after receiving the assignment from the court reporting manager. N.C. R. App. P. 3.1(c).
- When the transcriptionist delivers the transcript, the transcriptionist must "certify to the parties and to the clerk of superior court that the transcript has been delivered." N.C. R. App. P. 7(e)(2).

Notes on Filing Transcripts with Appellate Court:

- "Counsel must file documents [including transcripts] in the appellate courts electronically," via the "electronic-filing site for the appellate courts . . . located at https://www.ncappellatecourts.org." N.C. R. App. P. 26(a). "A person who is not represented by counsel is encouraged to file items in the appellate court electronically but is not required to do so." *Id.*
- "[N]o later than 15 fifteen days after [the Record on Appeal] has been settled," the "appellant shall file the transcript pursuant to Rule 12 with the clerk of the appellate court in which the appeal has been docketed." *See* N.C. R. App. P. 9(a), (c)(3) and 12(a).

III. The Record on Appeal

Notes on Page Numbers in the Printed Record:

- Although page numbers are not reflected in this Style Manual, the "Numbering Pages" section of Appendix B dictates that page numbers are generally required in appellate filings, including the Printed Record.

- In the Printed Record, page numbers should be centered and flanked by dashes at the top of each page after the cover page—*i.e.*, the first page of the filing that reflects the case caption should not be numbered. *See* N.C. R. App. P. at Appendix B.

    - If the index continues onto one or more pages, any subsequent pages should be numbered with lowercase Roman numerals, flanked by dashes (*i.e.*, -ii-, -iii-, -iv-), starting with "ii" since page "i" is the unnumbered cover page. *See id.*

    - The first and all subsequent pages of the substantive document should be numbered by Arabic numbers, flanked by dashes (*i.e.*, -1-, -2-. -3-). *See id.*

- The page numbers may appear within the 1-inch top margin, as long as the first substantive line is at least 1-inch from the top edge of the paper. Practitioners should be careful, however, not to place page numbers within the top 0.5-inch of the page as numbers may be cut off when the page is photocopied by the Clerk's Office.

- Unlike the appellate briefs, no "inside caption"—that is, a repeat of the case number, court information, and party names—is required in the Printed Record.

III(a). A Typical Printed Record on Appeal in a Civil Case

No. _____ TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number as in Final] Judgment or Order on Appeal

****
PRINTED RECORD ON APPEAL
****

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Notes on Cover Page of Printed Record on Appeal:

- The case number ("No.") in the top left-hand corner is left blank. *See* N.C. R. App. P. Appendix B. The Clerk's office will assign a number when the record is filed, which will be electronically stamped onto the printed record.. Therefore, counsel may want to download and save a copy of the printed record after it is electronically filed.
    - In some circumstances, one or both parties will have filed a motion (*e.g.,* for extension of time) or a petition (*e.g.*, for writ of supersedeas) before the record on appeal has been filed. In those situations, the Clerk's office will have assigned a temporary case number, designated with a "P" (*e.g.,* "COA 09-P100").
    - This "P number" will not correspond to the docket number later assigned to the appeal.
    - Many "P number" documents should be included in the subsequently filed record on appeal under Rule 9, including orders extending time and orders disposing of a petition for writ of supersedeas or certiorari.
- The Judicial District from which the case arises should be listed in the top right corner. *See* N.C. R. App. P. Appendix B. A list of the Judicial Districts can be found on the Judicial Branch's website.
- To the right of the parties' names should appear the county from which the case comes and the indictment or docket numbers of the case below. The county name stays on all subsequent documents, but after the case is assigned its own case number by the appellate court, the trial docket number is dropped from subsequent filings. *See* N.C. R. App. P. Appendix B.
- Any new typed material within the Printed Record (*e.g.*, Statement of Organization of Trial Court") "should be single-spaced, with double spaces between paragraphs." N.C. R. App. P. Appendix B. Comparatively, the body of the notice of appeal, appellate petitions, motions, briefs, and responses should be double-spaced. *Id.*
- Generally, margins for the non-index pages in the Printed Record are 1-inch all around. *See* N.C. R. App. P. Rule 26(g)(1). Index entries, on the other hand, are indented 0.75-inch from both standard 1-inch margins (or, put another way, the index line has margins of 1.75-inches from each side, yielding a 5-inch line in the middle). See N.C. R. App. P. Appendix B.
- Though not required, it is helpful to the appellate courts to provide additional explanatory material in the index entries, such as identifying which party filed the pleading, the date it was filed, etc. One way to include such explanatory information is to present the added material in brackets, as shown in the sample index above.

- Procedures for the record on appeal in criminal cases and juvenile cases are presented below.

STATEMENT OF ORGANIZATION OF TRIAL COURT

Plaintiff-Appellant appeals from the 15 November 2022 jury verdict and judgment dismissing Plaintiff's claim, rendered during the 1 November 2022 Civil Session of Superior Court of Avery County, the Honorable [Name of Judge], presiding. Plaintiff filed and served written notice of appeal on 21 November 2022.

The record on appeal was filed in the Court of Appeals on [date the full record will be e-filed and served].

[Sample of "Statement of Jurisdiction" in a Civil Appeal]

STATEMENT OF JURISDICTION

This action was commenced by the filing of a complaint and issuance of summons on 1 April 2022. The parties acknowledge that the trial court had personal and subject-matter jurisdiction.

Notes on Statement of Jurisdiction:

- In a civil case, if jurisdiction is not at issue, the parties can insert this statement. Nevertheless, it is advisable to include the summons and return of service, particularly in cases involving termination of parental rights. *See, e.g.*, *In re K.A.D.*, 187 N.C. App. 502, 504, 653 S.E.2d 427, 429 (2007) (concluding the trial court lacked subject-matter jurisdiction over petition to terminate parental rights when summons was not served on juvenile); *Conner Bros. Mach. Co. v. Rogers*, 177 N.C. App. 560, 561, 629 S.E.2d 344, 345 (2006) (holding that in the absence of issuance of a summons, the action is "deemed never to have commenced" and the court lacks subject-matter jurisdiction).
- In a criminal case, there is no "Statement of Jurisdiction," but a copy of the required warrant or similar process usually follows the "Statement of Organization" page.
- An example of a jurisdictional statement in an administrative appeal is set forth below.

[For Administrative Appeals Only – Alternative Sample of "Statement of Jurisdiction"]

STATEMENT OF JURISDICTION

This action was commenced by the filing of a petition for contested case hearing with the Office of Administrative Hearings, pursuant to N.C. Gen. Stat. § 150B-23 on 8 November 2022. The Administrative Law Judge issued a Decision on 6 December 2022. The Environmental Management Commission, pursuant to N.C. Gen. Stat. § 143B-282.1(b), issued the Final Agency Decision dated 4 January 2022, which was served on 5 January 2022. On 25 January 2022, Petitioner filed a Petition for Judicial Review in the Avery County Superior Court. The parties acknowledge that the Office of Administrative Hearings, the Environmental Management Commission, and the Superior Court of Avery County had personal and subject-matter jurisdiction.

Notes on Statement of Jurisdiction for Administrative Appeals:

- The example set out above concerns an appeal from an agency decision pursuant to the North Carolina Administrative Procedure Act, Chapter 150B of the General Statutes.
- When the appeal of an agency decision is not governed by the Administrative Procedure Act, this example should be tailored accordingly.
- Rules 18 through 20 set forth requirements for administrative appeals directly to the appellate division under N.C. Gen. Stat. § 7A-29.

[Copy of Complaint]

Note on Date Stamps:

- Rule 9(b)(3) requires that all documents included in the Printed Record show the date on which they were filed. Often the Clerk's time stamp becomes illegible when copied, however. The easiest solution is to make a clear, handwritten, or typed date entry on the copy included in the record. For example, just above or just below the Clerk's stamp, you might type: "Filed 24 Jan. 2010." Obviously, this should only be done where there is no dispute about the filing of the document. If there is some dispute, do not mark the copy.

[Copy of Answer]

[Copies of other pleadings necessary to understand issues presented on appeal. Refer to Rule 9(a) for a description of the documents to be included here. Note that discovery materials may be included here or may be submitted to the court separately. *See* N.C. R. App. P. 9(c)(4).]

[Copy of pre-trial order]

[Copy of transcript of jury charge given and copy of instruction proposed but omitted if relevant to the appeal]

[Copy of jury's verdict sheet]

Notes on Jury Instructions:

- Rules 9(a)(1)(f) and 9(a)(3)(f) impose additional requirements when the appellant seeks to challenge the giving or omission of instructions to the jury.
- In such appeals, the appellant must include (after the pre-trial order) "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." N.C. R. App. P. 9(a)(1)(f), (3)(f).
- When the trial court issues a different instruction than the omitted instruction requested, it may be useful to recapitulate the actual instruction given, after the "entire charge" but before the presentation of the omitted instruction, for ease of comparison. That is, the record would present, in order:
  - The entire jury charge;
  - The particular instruction challenged; and, if applicable,
  - The particular instruction requested but omitted.

[Copy of post-verdict motions and rulings, if any and if relevant to the appeal]

[Copy of judgment]

[Notice of Appeal]

[See below for information regarding insertion of "Appeal Entries" in criminal cases. Juvenile cases also use appeal entries. See A Typical Printed Record on Appeal in a Juvenile Case section of this manual, *infra*, for more information about such documents.]

STATEMENT OF TRANSCRIPT OPTION

Per Rules 7(b) and 9(c) of the North Carolina Rules of Appellate Procedure, the transcript of the entire proceedings in this case (excepting the jury selection and arguments of counsel), taken by Jane Doe, Court Reporter, from 12 November 2022 through 15 November 2022, consisting of 399 pages, numbered 1-399, bound in one volume, will be electronically filed by Jane Doe promptly once a docket number is assigned to this appeal.

Transmitted with the record are the portions of the deposition of Wyle E. Coyote (Vol. 1, pages 10-45) that were submitted to the trial court in connection with the motion for summary judgment.

Notes on Statement of Transcript Option:

- Under Rule 9(a)(1)(e), the appellant has the option of setting forth a narration of the proceedings below, per Rule 9(c)(1), or submitting a verbatim transcript of those proceedings, per Rule 9(c)(2).
    - The narration option might be selected if a verbatim transcript cannot be produced and such evidence is necessary to the appeal. Narration involves producing a written summary of such evidence, which is then placed directly in the record. If the parties cannot agree on the content of the narration, the trial judge can settle the narration under Rule 11(c), upon timely request for judicial settlement.
    - If a verbatim transcript is used instead, the transcript is not included in the Printed Record, but rather the Printed Record must include a statement explaining that a verbatim transcript will be filed separately. *See* N.C. R. App. P. 9(a)(1)(e).
- Appellate courts generally disfavor condensed transcripts (in which multiple pages are displayed on a single sheet of paper). If a transcript is only available in condensed format, consider converting it to a full-page format and entering a stipulation that the parties agree that the substituted transcript is authentic.

[Copy of completed Appellate Division Transcript Documentation form]

STATEMENT OF RULE 11(c) SUPPLEMENT

In accordance with Rules 9(a) and 11(c) of the North Carolina Rules of Appellate Procedure, a "Rule 11(c) Supplement to the Printed Record on Appeal," consisting of 174 pages, numbered 175-348, is being filed contemporaneously herewith.

The Rule 11(c) Supplement will be referenced as "(R S p _____)."

Notes on Rule 11(c) Supplement:

- Rule 11 limits the need for judicial settlement of the record on appeal. Judicial settlement is appropriate only when "any party to the appeal contends that materials proposed for inclusion in the record or for filing therewith pursuant to [Rule 9(c) or 9(d)] 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." N.C. R. App. P. 11(c).
- If either party objects to inclusion of a particular document, exhibit, or transcript in the record and the parties cannot agree on its inclusion, then that document should usually be submitted to the appellate court as a "Rule 11(c) Supplement."
- Any Rule 11(c) Supplement should be numbered consecutively to follow the last page of the printed record on appeal. *See* N.C. R. App. P. 9(b)(4). Citations to the Rule 11(c) Supplement should read: "(R S p ___)."
- When a Rule 11(c) Supplement is required, the Rules dictate that the printed record must include a description of the supplement. *See* N.C. R. App. P. 9(a)(1)(m). This statement should appear after the Statement of Transcript option and related documents. *See* N.C. R. App. P. Appendix C.
- Rule 11(c) only requires the filing of one copy of any Rule 11(c) Supplement rather than three copies as previously required.

[If applicable, a copy of any order entered at the trial court level extending time to produce the transcript(s) or serve the proposed Printed Record]

[If applicable, a copy of any order from the appellate court extending time to file the Record on Appeal, etc.]

Notes on Extensions of Time:

- Extensions of time relating to the transcript or the record on appeal may be included here, because they relate to the "time limits relative to the perfecting of the appeal." N.C. R. App. P. 9(a)(1)(i), 9(a)(2)(h), and 9(a)(3)(h). Alternatively, the parties may set forth the relevant dates and extensions and stipulate that documents were timely filed and served.
- The idea is to demonstrate compliance with the time limits of the Rules by showing appropriate extensions of time at the trial court and, if necessary, the appellate division, at this point in the record.

[Objections to the record by appellee, if necessary]

Note on Objections to Record by Appellee:

- It is typically not necessary to include the objections to the proposed record, especially if the parties later settled the record by agreement. In that situation, the parties can simply include a stipulation explaining the procedural history of the record being settled, to show compliance with the time limits related to perfecting the appeal.

[If needed, a copy of the court order settling the contents of the record on appeal. If settled by agreement of the parties, see the following page.]

STIPULATION SETTLING RECORD ON APPEAL

Counsel for the Plaintiff-Appellant and Defendant-Appellee stipulate as follows:

1. The proposed record on appeal was timely served on 15 February 2023. The certificate showing service of the proposed record may be omitted from the settled record.

2. Defendant's objections were served on 10 March 2023. Defendant objected to the omission of certain documents from the Record on Appeal and the inclusion of certain documents in the Record on Appeal. The parties came to an agreement as to which documents would be included in the printed record. Because no party moved for judicial settlement, the Record on Appeal was deemed settled on 20 March 2023.

[Alternative ¶ 2 where parties do not agree on the record]

2. Defendant's objections were served on 10 March 2023. Defendant objected to the omission of certain documents from the record. The parties were unable to reach an agreement about the inclusion of these documents in the printed record. The parties determined that judicial settlement of the supplemental record documents was inappropriate under the criteria listed in Rule 11(c). Accordingly, all of these documents are included in the Rule 11(c) Supplement to the Printed Record on Appeal. The parties shall cite to this document as "(R S p ____)." The grounds for excluding the supplemental record documents from the printed record are as follows:

a. Defendant contends that the deposition exhibits are not relevant to the proposed issues on appeal. Plaintiff contends that the exhibits are relevant and are therefore a proper part of the record. (See R S pp 101-10).

b. Defendant contends that because Plaintiff's Reply to Counterclaim was not filed until after the Notice of Appeal was filed, it is not relevant to this appeal. Plaintiff contends that the

Reply is necessary for an understanding of the issues on appeal and is therefore a proper part of the record. (See R S pp 111-19).

3. All captions, signatures, headings of papers, certificates of service, and documents filed with the trial court that are not necessary for an understanding of the appeal may be omitted from the record, except as required by Rule 9 of the North Carolina Rules of Appellate Procedure.

4. The parties have undergone a reasonable search for duplicative or substantially similar documents in the record and in the Rule 9(d)(2) documentary exhibits. For voluminous duplicates, a slip sheet has been inserted into the record or into the Rule 9(d)(2) documentary exhibits indicating where in the record the exhibit is set forth in its entirety.

5. The portions of the deposition of Wyle E. Coyote (Vol. 1, pages 10-45) that were submitted to the trial court in connection with Plaintiff's motion for summary judgment were in condensed format. For ease of review, the parties include that deposition transcript in "full-page" format with this printed Record on Appeal. The parties stipulate that the full-page transcript is an accurate substitute for the condensed transcript.

6. The parties stipulate that the following documents constitute the agreed-upon Record on Appeal to be filed with the Clerk of the Court of Appeals:

a. This printed Record on Appeal, consisting of pages 1 to 100;

b. The trial transcript described in the Statement of Transcript Option (R p 7) , which will be submitted by the court reporter upon receipt of a docket number for the appeal;

c. The deposition transcript described in the Statement of Transcript (R p 7) (a paper copy of which is filed along with this printed record);

d. Rule 9(d)(2) documentary exhibits consisting of 150 pages, consecutively numbered and cited as "Doc. Ex. 1" through "Doc. Ex. 150"; and

e. The Rule 11(c) "Supplemental Record on Appeal" identified in stipulation 2, consisting of pages 101 to 119.

This the ___ day of [month], [year].

For the Plaintiff-Appellant: _____
[Name of Counsel]

For the Defendant-Appellee: _____
[Name of Counsel]

Notes on Stipulation of Service and Settlement of Record:

- Stipulations are useful for explaining how the record was settled and why parties are filing certain items separately from the record, and both show compliance with the Rules and allow clear identification of the status of material transmitted to the appellate court. For example, items are now placed in the Rule 11(c) Supplement because all parties do not agree to their inclusion in the record. The record should readily identify those items. The simplest and clearest way to do that is through a stipulation of settlement of the record.
- If the parties can stipulate to the contents of the record, the appellant may avoid the inclusion of a certificate showing the service of the proposed record. It is sensible and conventional, however, to recite the dates of serving the proposed record and later actions leading to the settlement of the record, so the appellate court can calculate compliance with the time limits. Rule 11 describes five different methods for settling the record and the time limits for those methods. The parties should demonstrate in the stipulations page the settlement method they used.
- Note that if neither party requests judicial settlement, the record is automatically deemed settled upon expiration of the ten-day period. N.C. R. App. P. 11(c).
- The stipulations page also gives the parties an opportunity to memorialize aspects of their agreement as to the construction of the record and to explain the same to the appellate court. For example, the parties may elect to omit duplicative copies of documents that appeared as attachments to multiple pleadings in the record. In such instance, the parties may include a stipulation to explain that slip sheets will appear instead of the duplicative copies (see below for example). Likewise, the parties may agree that depositions or exhibits should be cited in a certain format and include a stipulation to that effect.
- Whether the record is settled by agreement or by judicial settlement, the appellant must file the record with the appellate court within 15 days of settlement. N.C. R. App. P. 12(a).
- Rule 9(d)(2) only requires the filing of one copy of any Rule 9(d)(2) documentary exhibits rather than three copies as previously required.

[*Optional:* Sample Stipulation about Record Documents under Seal]

7. The parties to this appeal entered into an "Agreed Confidentiality and Protective Order" (R p ___) in the course of the litigation before the trial court below. Some of the exhibits considered by the trial court in arriving at the Judgment now on appeal were designated "Confidential" pursuant to that protective order. Defendant filed a series of "Notices of Submission of Confidential Documents to the Court" in the trial court, indicating that the exhibits supporting their motions to dismiss would be submitted to the trial court separately and not placed in the public court file. The parties now agree to the following provisions regarding such documents for purposes of this appeal:

a. All of Plaintiff's exhibits submitted to the trial court under seal are included in this Record on Appeal, designated as Rule 9(d)(2) documentary exhibits, and consist of 50 pages, including those marked Exhibits A through G. The Rule 9(d)(2) documentary exhibits are being filed with this Court UNDER SEAL.

b. The pages of the documentary exhibits have been labeled "Doc. Ex. ____" and may be cited as such. One copy of the documentary exhibits is being filed with this Court pursuant to Rule 9(d)(2) of the North Carolina Rules of Appellate Procedure.

c. The documentary exhibits are filed under seal and transmitted to the Court in sealed envelopes. Those exhibits subject to the protective order (including Exhibits A through G) should not be made available to the public.

d. The parties may freely discuss, disclose, and cite in their briefs and any other appellate filings the information contained in the sealed Rule 9(d)(2) documentary exhibits, provided that the parties do not reveal any account numbers, other banking identification information, or any trade secret information of Defendant.

Notes on Sealing Documents:

- See below, under section VII(b) for more information regarding sealing documents and a Rule 42 Checklist.

Notes on the Use of Slip Sheets When Omitting Documents:

- The Rules impose a duty on counsel for all parties to ensure that the record on appeal does not contain unnecessary documents. N.C. R. App. P. 9(b)(2).
- The Court of Appeals has suggested that including "multiple copies of numerous documents" may violate this duty. *In Re: J.J.*, No. COA09-577, 2009 N.C. App. LEXIS 1538, *8 (N.C. App. Sept. 15, 2009) (unpublished).
- The Court of Appeals has also held, however, that counsel should make it clear to the Court if and where in the record any duplicative documents have been omitted. "At the place in the record in which a document was omitted, counsel should have included a notation of that fact. In other words, if a document had multiple attachments, counsel should have included a page listing the attachments that were omitted and referring to the pages in the record on appeal where copies of those documents could be found." *Obo v. Steven B.*, 201 N.C. App. 532, 537, 687 S.E.2d 496, 499 (2009).
- To designate when the duplicative documents have been omitted from the record, counsel may insert a "slip sheet" in place of omitted documents. For example, in a case involving a lengthy will, the will may appear early in the record as an attachment to the complaint. A party's later motion for summary judgment may reattach the will. Instead of including the will twice, counsel might replace the second appearance of the will with a slip sheet notifying the appellate court that the will was submitted as an attachment to the motion but can be found in its entirety elsewhere in the record.
- An example of just such a slip sheet follows on the next page of this Style Manual. The motion for summary judgment itself would be included in full, but where the will had appeared as Exhibit A, a slip sheet like that below would be included instead.
- Because the use of slip sheets is intended to streamline the record without making it difficult for the appellate court to locate record documents, counsel should use their own judgment as to whether it is sensible to use slip sheets to replace short documents of only one or two pages.

[Sample Slip Sheet for Omitted Document in Printed Record or Supplement]

EXHIBIT A to Motion to Dismiss

Last Will and Testament of Bob Hope

Duplicate Copy Omitted.
Original set forth in its entirety on R pp 17-35.

PROPOSED ISSUES ON APPEAL

Pursuant to Rules 10 and 9(a)(1) of the North Carolina Rules of Appellate Procedure, Plaintiff-Appellant intends to present the following proposed issues on appeal:

1. Did the trial court err in entering judgment for Defendant following the close of all evidence?

2. Did the trial court err in its finding of fact No. 5 when it was not supported by the evidence?

3. Did the trial court err in its conclusion of law No. 3?

Notes on Proposed Issues on Appeal:

- Rule 10(b) explains that the proposed issues on appeal "are to facilitate the preparation of the record on appeal and shall not limit the scope of the issues presented on appeal in an appellant's brief." N.C. R. App. P. 10(b).
- Proposed issues are to “be stated without argument at the conclusion of the printed record in a numbered list.” N.C. R. App. P. 10(b).
- Appellees may also submit proposed issues on appeal “based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which an appeal has been taken.” N.C. R. App. P. 10(c).

Notes on the Rule 9(b)(5) Supplement to the Printed Record on Appeal:

- The appellant may argue issues in its brief that were not forecast in the "Proposed Issues" listed in the record. If the appellee believes that certain documents should be included in the record to adequately respond to the new issues presented in the brief, it can supplement the record at the briefing stage by serving a copy of those documents on opposing counsel and filing one copy in a volume captioned "Rule 9(b)(5) Supplement." *See* N.C. R. App. P. 9(b)(5).
    - Prior to 1 January 2019, the appellee was required to file three copies of the Rule 9(b)(5) Supplement. Now, the appellee is only required to file one copy. *See* 19 December 2018 Order Amending the Rules of Appellate Procedure.
- A Rule 9(b)(5) Supplement, if any, "shall be filed no later than the due date for the responsive brief or within the time allowed for filing such a brief if none is filed."
- The appellant might have reason to file a Rule 9(b)(5) Supplement as well, in cases in which the appellee raised its own proposed issues on appeal. *See* N.C. R. App. P. 9(b)(5), 10(c).
- The Rules do not specify how the Rule 9(b)(5) Supplement should be numbered. One option is to consecutively number the Rule 9(b)(5) Supplement after the last page of the printed record on appeal (or Rule 11(c) Supplement, if any), and cite to it: "(R S p ___)."
- The Rule 9(b)(5) Supplement should usually include a separate index for the convenience of the appellate court.

[Copy of any order ruling upon a *pro hac vice* motion]

Notes on Pro Hac Vice Motions:

- The Rules require that any order ruling upon a motion to appear pro hac vice be included in the record here. *See* N.C. R. App. P. 9(a)(1)(n), (a)(2)(j), (a)(3)(m).
- If a motion to appear *pro hac vice* has been filed but not ruled upon at the time the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.

IDENTIFICATION OF COUNSEL FOR THE APPEAL

For the Appellant:

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]
[Name of Counsel]
[Counsel's bar number]
[Counsel's telephone number]
[Counsel's email address]

[Name of Co-Counsel, if applicable]
[Co-Counsel's bar number]
[Co-Counsel's telephone number]
[Co-Counsel's email address]
[Firm Address]

For the Appellee:

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

[Name of Counsel]
[Counsel's bar number]
[Counsel's telephone number]
[Counsel's email address]
[Name of Co-Counsel, if applicable]
[Co-Counsel's bar number]
[Co-Counsel's telephone number]
[Co-Counsel's email address]
[Firm Address]

Note on Identification of Counsel for the Appeal:

- Rule 9(b)(4) and Appendix B require that the record identify the names, office addresses, telephone numbers, State Bar numbers, and e-mail addresses of counsel of record for all parties to the appeal.

[Certificate of Service of Proposed Record on Appeal]

[Certificate of Service of Final Record on Appeal]

Note on Filing and Serving Papers:

- Rule 26 describes the process of filing and serving papers in the Appellate Division. There are strict deadlines to be met to timely file and serve the record on appeal, briefs, and other papers. Due to the varieties of deadlines and service methods, practitioners should consult Rule 26.

III(b). A Typical Printed Record on Appeal in a Criminal Case

No. _____ TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

STATE OF NORTH CAROLINA v. [Defendant's Name as it appears in Final Judgment], Defendant.	From Avery County [Case Number as it appears in Final Judgment]

****

PRINTED RECORD ON APPEAL

****

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Notes on Cover Page of Printed Record on Appeal:

- The case number ("No.") in the top left-hand corner is left blank. *See* N.C. R. App. P. Appendix B. The Clerk's office will assign a number when the record is filed, and it will appear in the printed record on appeal.
    - In some circumstances, one or both parties will have filed a motion (*e.g.,* for extension of time) or a petition (*e.g.,* for writ of supersedeas) before the record on appeal has been filed. In those situations, the Clerk's office will have assigned a temporary case number, designated with a "P" (*e.g.,* "COA 09-P100").
    - This "P number" will not correspond to the docket number later assigned to the appeal.
    - Many "P number" documents should be included in the subsequently filed record on appeal under Rule 9, including orders extending time and orders disposing of a petition for writ of supersedeas or certiorari.
- The Judicial District from which the case arises should be listed in the top right corner. *See* N.C. R. App. P. Appendix B. The proper Judicial District can be retrieved here.
- To the right of the parties' names should appear the county from which the case comes and the indictment or docket numbers of the case below. The county name stays on all subsequent documents, but after the case is assigned its own case number by the appellate court, the trial docket number is dropped from subsequent filings. *See* N.C. R. App. P. Appendix B.
- Any new typed material within the Printed Record (*e.g.*, Statement of Organization of the Trial Court") "should be single-spaced, with double spaces between paragraphs." N.C. R. App. P. Appendix B. Comparatively, the body of the notice of appeal, appellate petitions, motions, briefs, and responses should be double spaced. *Id.*
- Generally, margins for the non-index pages in the record on appeal are 1-inch all around. *See* N.C. R. App. P. Rule 26(g)(1). Any new typed material should be single-spaced. *See* N.C. R. App. P. Appendix B.
- Index entries, on the other hand, are indented 0.75-inch from both standard 1-inch margins (or, put another way, the index line has margins of 1.75 inches from each side, yielding a 5-inch line in the middle). *See* N.C. R. App. P. Appendix B.
- Though not required, it is helpful to the appellate courts to provide additional explanatory material in the index entries (e.g., date of filing or entry). One way to include such explanatory information is to present the added material in brackets, as shown in the sample index above.

ORGANIZATION OF TRIAL COURT

This case came on for trial before the Honorable Julie Smith at the 30 November 2022 session of Criminal Superior Court of Avery County. Mr. Doe was tried by jury on one count of first-degree murder and one count of discharging a firearm in city limits. The jury convicted Mr. Doe of both charges. The trial court consolidated the charges and sentenced Mr. Doe to a sentence of life in prison without parole on 2 December 2022. Mr. Doe filed and served written notice of appeal on 3 December 2022.

The record on appeal was filed in the Court of Appeals on [dated e-filed].

Notes on Statement of Organization of Trial Court:

- The statement of organization of trial court should be marked page "- 1 -". No "inside caption"—that is, a repeat of the case number, court information, and party names—is required for the record on appeal.
- The Statement of Organization of Trial Court is prescribed by Rule 9(a)(3)(b), which states "[t]he printed record in criminal actions shall contain . . . 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."
- To find the session of court from which you are appealing, consult the cover page of the trial transcript and the introductory paragraph of the order being appealed, which often include such information.

[Copy of warrant]

[Copy of indictment]

Note on Warrants and Indictments:

- Rule 9(a)(3)(c) states that "[t]he printed record in criminal actions shall contain . . . copies of all warrants, informations, presentments, and indictments upon which the case has been tried in any court."

[Copy of arraignment and plea]

STATEMENT OF TRANSCRIPT OPTION

Per Rules 7(b) and 9(c) of the North Carolina Rules of Appellate Procedure, the transcript of the entire proceedings in this case, taken by Jane Doe, Court Reporter, from 29 November 2018 through 1 December 2018, consisting of 199 pages, numbered 1–199, bound in one volume, will be electronically filed by Jane Doe promptly once a docket number is assigned to this appeal.

Testimonial evidence contained in the transcripts designated above shall be presented in the transcript of trial in lieu of narrating the evidence and other trial proceedings as permitted by Rule 9(c)(1). The verbatim transcript pages designated above shall also be used to present voir dire, statements and events at evidentiary and non-evidentiary hearings, or other trial proceedings.

Also considered part of the record on appeal are all exhibits offered or admitted into evidence, as well as any exhibits of the court.

Notes on Statement of Transcript Option:

- Under Rule 9(a)(3)(e), the appellant has the option of setting forth a narration of the proceedings below, per Rule 9(c)(1), or submitting a verbatim transcript of those proceedings, per Rule 9(c)(2).
    - The narration option might be selected if a verbatim transcript cannot be produced and such evidence is necessary to the appeal. Narration involves producing a written summary of such evidence, which is then placed directly in the record. If the parties cannot agree on the content of the narration, the trial judge can settle the narration under Rule 11(c) upon timely request for judicial settlement.
    - If a verbatim transcript is used instead, the transcript is not included in the printed record. Rather, the printed record must include a statement explaining that a verbatim transcript will be filed separately. *See* N.C. R. App. P. 9(a)(3)(e).
- See above, Section II (Transcript Contract and Documentation), for more information regarding the requirements and process for ordering transcripts. Notably, when indigency has been established in a criminal matter, the indigent party is entitled to have the clerk of the trial court order the transcript of the proceedings on the party's behalf. N.C. R. App. P. 7(c).

[Copy of applicable Exhibit Log(s)]

Notes on Exhibit Logs:

- Include a copy of all trial court "Exhibits/Evidence Log" forms that are relevant to the appeal. The blank form (No. AOC-G-150) can be found here.
- For example, if the issues on appeal arise from a pretrial motion to suppress hearing as well as issues arising from trial, then include a copy of both the "Exhibits Log, motion hearing" and "Exhibits Log, trial."

[If relevant to the appeal, include a copy of the transcript of the jury charge given and a copy of any instruction proposed but omitted]

Notes on Jury Instructions:

- Rule 9(a) imposes additional requirements when the appellant seeks to challenge the giving or omission of instructions to the jury. In such appeals, the appellant must include "a transcript of the entire charge given; and identification of the omitted instruction by setting out the requested instruction or its substance in the printed record immediately following the instruction given." N.C. R. App. P. 9(a)(3)(f).
- When the trial court issues a different instruction than the omitted instruction requested, it may be useful to recapitulate the actual instruction given (after the "entire charge" but before the presentation of the omitted instruction) for ease of comparison. That is, the record would present, in order:
  - The entire jury charge;
  - The particular instruction challenged; and, if applicable,
  - The particular instruction requested but omitted.

[Copy of jury's verdict sheet]

[Copy of post-verdict motions and rulings, if any and if relevant to the appeal]

[Copy of the prior record level worksheet]

[Copy of the judgment]

[Copy of Notice of Appeal or Transcript of Oral Notice]

Notes on the Notice of Appeal:

- "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." N.C. R. App. P. 4(d).
- "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" either "giving oral notice of appeal at trial" or "filing a 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." N.C. R. App. P. 4(a).
    - If a party orally notices his or her appeal, then include here a copy of the relevant transcript pages documenting such oral notice.
- Note that criminal appeals from district court to superior court are governed by sections 15A-1431 and -1432 of the North Carolina General Statutes. N.C. R. App. P. 4(a)(2).
- For appeals of right from the Court of Appeals to the Supreme Court, the Notice of Appeal is filed both with the Clerk of the Court of Appeals and with the Clerk of the Supreme Court. N.C. R. App. P. 14(a).
- "Service of copies of the notice of appeal may be made as provided in Rule 26." N.C. R. App. P. 4(c).

[Copy of the Appeal Entries Form]

Note on the Appeal Entries Form:

- The Appeal Entries form (sometimes called "appellate entries") is a printed form (AOC-CR-350), which is available at https://www.nccourts.gov/documents/forms/appellate-entries.

[Copy of the Appointment of Appellate Counsel, if applicable]

[If applicable, a copy of any order entered at the trial court level extending time to produce the transcript(s) or serve the proposed record on appeal]

[If applicable, a copy of any order from the appellate court extending time to file the proposed record on appeal, etc.]

Notes on Extensions of Time:

- Extensions of time relating to the transcript or the record on appeal may be included here, because they relate to the "time limits relative to the perfecting of the appeal." N.C. R. App. P. 9(a)(1)(i), 9(a)(2)(h), 9(a)(3)(h). Alternatively, the parties may set forth the relevant dates and extensions and stipulate that documents were timely filed and served.
- The idea is to demonstrate compliance with the time limits of the Rules by showing appropriate extensions of time at the trial court and, if necessary, the appellate division, at this point in the printed record.

STIPULATIONS SETTLING RECORD ON APPEAL

Counsel for the Defendant-Appellant and the State stipulate as follows:

1. The proposed record on appeal was timely served on 15 February 2023.

2. The parties stipulate that the following documents constitute the agreed-upon Record on Appeal to be filed with the Clerk of the Court of Appeals:

a. This printed record, consisting of pages 1 to 57; and

b. The trial transcript described in the Statement of Transcript Option, which will be submitted by the court reporter upon receipt of a docket number for the appeal.

This the ___ day of [month], [year].

For the Defendant-Appellant:

_____
[Name of Counsel]

For the State:

_____
[Name of Counsel]

Notes on Stipulation of Service and Settlement of Record:

- Stipulations are useful for explaining how the record was settled and why parties are filing certain items separately from the record, and both show compliance with the Rules and allow clear identification of the status of material transmitted to the appellate court. For example, items are now placed in the Rule 11(c) Supplement because all parties do not agree to their inclusion in the record. The record should readily identify those items. The simplest and clearest way to do that is through a stipulation of settlement of the record.
- If the parties can stipulate to the contents of the record, you may avoid the inclusion of a certificate showing the service of the proposed record. It is sensible and conventional, however, to recite the dates of serving the proposed record and later actions leading to the settlement of the record, so the appellate court can calculate compliance with the time limits. Rule 11 describes five different methods for settling the record and the time limits for those methods. You should demonstrate in the stipulations page the settlement method you used.
- Note that if neither party requests judicial settlement, the record is automatically deemed settled upon expiration of the ten-day period. N.C. R. App. P. 11(c).
- The stipulations page also gives the parties an opportunity to memorialize aspects of their agreement as to the construction of the record and to explain the same to the appellate court. For example, the parties may elect to omit duplicative copies of documents that appeared as attachments to multiple pleadings in the record. In such instance, the parties may include a stipulation to explain that slip sheets will appear instead of the duplicative copies (see below for example). Likewise, the parties may agree that exhibits should be cited in a certain format and include a stipulation to that effect.
- Whether the record is settled by agreement or by judicial settlement, the appellant must file the record with the appellate court within 15 days of settlement. N.C. R. App. P. 12(a).
- The appellant is only required to file one copy of any Rule 9(d) documentary exhibits rather than three copies as previously required.

PROPOSED ISSUES ON APPEAL

1. Did the trial court err in denying Defendant's request for the jury to be instructed on self-defense?

2. Did the trial court err in denying Defendant's request for the jury to be instructed on the defense of accident?

Notes on Proposed Issues on Appeal:

- Rule 10(b) explains that the proposed issues on appeal "are to facilitate the preparation of the record on appeal and shall not limit the scope of the issues presented on appeal in an appellant's brief."
- Proposed issues are to "be stated without argument at the conclusion of the printed record in a numbered list." N.C. R. App. P. 10(b).
- Appellees may also submit proposed issues on appeal "based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which an appeal has been taken." N.C. R. App. P. 10(c).

IDENTIFICATION OF COUNSEL FOR THE APPEAL

For the Defendant-Appellant:

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

[Name of Counsel]
[Counsel's bar number]
[Counsel's telephone number]
[Counsel's email address]
[Name of Co-Counsel, if applicable]
[Co-Counsel's bar number]
[Co-Counsel's telephone number]
[Co-Counsel's email address]

[Firm Address]

For the State:

[Name of Assistant District Attorney]
[Counsel's bar number]
[Counsel's telephone number]
[Counsel's email address]

[Name of Current Attorney General]
Attorney General
[Attorney General's bar number]
(919) 716-6400
[Attorney General's email address]
P.O. Box 629
Raleigh, NC 27602-0629

Note on Identification of Counsel for the Appeal:

- Rule 9(b)(4) and Appendix B require that the record identify the names, office addresses, telephone numbers, State Bar numbers, and e-mail addresses of counsel of record for all parties to the appeal.

[Certificate of Service of Proposed Record on Appeal]

[Certificate of Service of Final Record on Appeal]

III(c). A Typical Printed Record on Appeal in a Juvenile Case

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

No. _____ TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

In the Matter of: A.B.C. a minor child.	From Avery County [Case Number as in Final Judgment or Order on Appeal]

****
PRINTED RECORD ON APPEAL
****

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Notes on Procedures in Certain Cases Involving Juveniles:

- Rule 3.1 provides accelerated deadlines and additional requirements in appeals filed under N.C. Gen. Stat. § 7B-1001. *See* N.C. R. App. P. 3.1(d).
- Juvenile delinquency appeals are more similar to criminal appeals. *See* A Typical Printed Record on Appeal in a Criminal Case, *supra*.
- Rule 42(b) requires parties to protect the identity of the juveniles involved in appeals covered by Rule 3.1. These rules require that the juvenile's identity be referenced only by the use of initials or pseudonyms in briefs, motions, and petitions.
- If the parties choose to use a pseudonym, they must include a stipulation in the record on appeal identifying which pseudonym corresponds to which juvenile. N.C. R. App. P. 42(b).
- In such cases, a special notice must be provided at the top of the first page of any document filed with the appellate court:

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

  - If the document is included within another document, 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 must be submitted in an envelope or box that contains the same notice.
  - This special notice helps the clerk identify which documents should not be published on the appellate court's electronic filing site.

III(d). Summary of Items Constituting the Record on Appeal

ITEM	HOW TO SUBMIT[1]	WHEN TO SUBMIT
Printed Record	Appellant submits printed record electronically. *See* N.C. R. App. P. 12(a), 26(a). Will be reproduced by appellate court in black and white. N.C. R. App. P. 12(c).	Within 15 days after the record has been settled. *See* N.C. R. App. P. 12(a). In juvenile cases, within 5 business days after the record has been settled. *See* N.C. R. App. P. 3.1(d).
Rule 11(c) or 18(d)(3) Supplement to the Printed Record	Electronically. *See* N.C. R. App. P. 26(a).	With printed record. *See* N.C. R. App. P. 12(a).
Rule 9(d) Documentary Exhibits	Electronically. *See* N.C. R. App. P. 9(d)(1), 26(a).	With printed record. *See* N.C. R. App. P. 12(a).
Rule 9(d) Oversized or Tangible Exhibits	"Original exhibits and other original items that have been settled as part of the record on appeal may be relied on by the parties in their briefs and arguments, but they may *not* be delivered to the appellate court without the appellate court's permission." N.C. R. App. P. 9(d)(2) (emphasis added).	Original exhibits and items "may not be delivered to the appellate court without the appellate court's permission." N.C. R. App. P. 9(d)(2). If permitted, the custodian "must promptly deliver" the item(s) "to the clerk of the appellate court in a manner that ensures its security and availability for use in further trial proceedings." *Id.*
Deposition or Administrative Hearing Transcripts	Electronically. *See* N.C. R. App. P. 26(a).	With printed record. *See* N.C. R. App. P. 12(a).
Transcript of the Trial Tribunal Proceedings	Electronically. *See* N.C. R. App. P. 26(a).	With printed record. *See* N.C. R. App. P. 12(a).
Rule 9(b)(5) Supplement to the Printed Record	Electronically. *See* N.C. R. App. P. 26(a).	Unless otherwise ordered, no later than the filing of a response brief or within time for filing responsive brief if none if filed. N.C. R. App. P. 9(b)(5).

III(e). Typical Rule 9(d) Documentary Exhibits

Notes on Documentary Exhibits:

- Rule 9(d) allows for certain documentary exhibits to be presented to the appellate court in a separate volume, often titled "Rule 9(d) Documentary Exhibits."

[1] "Counsel must file documents in the appellate courts electronically at https://www.ncappellatecourts.org." N.C. R. App. P. 26(a). "If a technical failure prevents counsel from filing a document by use of the electronic-filing site, then the clerk of the appellate court may permit the document to be filed in paper by hand delivery, mail, or fax." *Id.* If a party is not represented by counsel, then they are still "encouraged to file items in the appellate courts electronically," but they are alternatively permitted to "file items by hand delivery or mail." *Id.*

- If multiple exhibits are filed, a separate index must be included. An example of such an index is provided below, after the printed record. Be sure that the index notes the existence of any oversized or tangible exhibits (*e.g.,* a firearm).
- The Rule 9(d) Documentary Exhibits must be consecutively paginated. For example, a collection of trial exhibits totaling 150 pages might be set forth in a volume of Rule 9(d) Documentary Exhibits, indexed, and numbered at the top center, "Doc. Ex. 1" through "Doc. Ex. 150." The "Doc. Ex." numbering should represent consecutive page numbers—not the underlying trial exhibit numbers.
- Briefs may cite simply to "Doc. Ex. 57" instead of, for example, "Plaintiff's Exhibit 9-Attachments to Mr. Bell's Resident Admission Agreement, at page 3."
- Note, however, that the Rules alternatively allow for inclusion of discovery materials (e.g., interrogatories and answers, requests for admission) in the printed record instead, or in the Rule 9(d) Supplement, at the option of the parties. *See* N.C. R. App. P. 9(c)(4).
- Oversized and tangible exhibits may be included in the record in accordance with Rule 9(d). Although only a single copy of each oversized or tangible exhibit must be filed, it may be useful to include an additional, smaller copy of an oversized exhibit in the printed record or a supplement, as appropriate, provided that the Rule 9(d) Index makes clear that the oversized or tangible exhibit is also being submitted.
- The printed record on appeal is reproduced in black and white. One way to submit a color document is to include it in the Rule 9(d) Supplement you prepare and submit yourself. Regardless, be sure that any documents that were originally in color that are included in the printed record remain readable when reproduced in black and white. A color photo included in the printed record, for example, may just look like a black rectangle to the appellate court.

No. _____ TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number as in Final Judgment or Order on Appeal]

****
RULE 9(d) DOCUMENTARY EXHIBITS
****

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- Doc. Ex. 1 -

COASTAL MEDICAL CENTER

Lionel Bell
123 Anywhere Lane
New Bern, North Carolina 28560

** MENTAL STATE EXAMINATION **

Lionel presents as a . . . .

_____
Dr. Strangelove

IV. The Briefs

Note on Fonts and Word Counts:

- The examples that follow are printed in a 14-point Century Schoolbook typeface, but that is only one example of a permissible font. *See* N.C. R. App. P. 26(g)(1).
- In the Court of Appeals (but usually not in the Supreme Court), there are word counts to consider. *See* Rule 28(j) for the details.
- In the Court of Appeals and in direct appeals to the Supreme Court under Rule 3.1, you also must include a Certificate of Compliance (as shown in the example after the signature block at the end of the brief).

Notes on the Use of Acronyms and Abbreviations:

- The use of acronyms and abbreviations that are not in common use can be distracting and hinder the clarity of an appellate brief, and the practice is therefore discouraged. *See, e.g.*, Hon. Alex Kozinski, *The Wrong Stuff*, 1992 BYU L. Rev. 325, 328 (1992).
- When the use of acronyms or abbreviations is appropriate, each term should be fully spelled out first, before the acronym or abbreviation is introduced.
- The use of short names for parties (using common vernacular) can make an appellate brief more readable, as compared to either the use of generic party designations or lengthy and unfamiliar acronyms. For instance, the "Virginia Polytechnic Institute and State University" might be referred to as "Virginia Tech" or "the University," rather than "Plaintiff-Appellant" or "VPI&SU."
- A concept, such as "the Northeastern Urban Hydro-Electrical Power Plant Upgrade Project," might be referred to with a plain-English descriptor, such as "the Project," rather than "the NUHEPPUP."
- Finally, acronyms that are commonly used in one forum can constitute jargon in another. For example, the Federal Energy Regulatory Commission may be known as "FERC" to attorneys who regularly practice energy law, but it might be referred to as "the Commission" in an appellate brief.

IV(a). A Typical Appellant's Brief

Note on Reviewing Examples of the Appellant's Brief and the Appellee's Brief

- Although this Style Manual provides examples of both an appellant's brief and an appellee's brief, the Committee encourages practitioners to review both examples, as the comment boxes in each example may provide information that is applicable to all briefs but may not be reiterated in both examples.

Notes on Deadlines for Filing and Serving the Appellant's Brief:

- The due date for the appellant's brief varies slightly depending on the type of case:
  - Rule 13(a)(1) requires that the appellant's brief be filed with the clerk of the appellate court and served on the parties within 30 days "after the record on appeal has been filed with the appellate court." N.C. R. App. P. 13(a)(1).
  - In death penalty cases, the appellant's brief must now be filed with the Clerk of the Supreme Court and served upon the parties within 60 days after the record on appeal has been filed with the Supreme Court. N.C. R. App. P. 13(a)(2).
- Counsel must file briefs in the appellate courts electronically. N.C. R. App. P. 26(a). A brief is considered filed when it is received by the electronic-filing site. N.C. R. App. P. 26(a). A person who is not represented by counsel is encouraged to file briefs in the appellate courts electronically but may file by hand delivery or mail. N.C. R. App. P. 26(a). A brief is filed by hand delivery when it is received by the clerk, and a brief filed by mail is deemed filed on the date of mailing, as evidenced by the proof of service. N.C. R. App. P. 26(a).
- Before filing the appellant's brief, "[t]he appellant must complete an Appeal Information Statement using the electronic-filing site at https://www.ncappellatecourts.org/." N.C. R. App. P. 41.
- "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." N.C. R. App. P. 13(c).

No. COA17-123 TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

PLAINTIFF-APPELLANT'S BRIEF

****

Notes on the Cover Page of the Appellant's Brief:

- The caption of the appellant's brief, for the most part, follows the format of the caption of the record on appeal. Note, however, that the right-hand side includes the name of the county from which the case is venued but not the indictment or docket numbers of the case below. Those numbers should only be included in petitions for writ of certiorari, other petitions and motions in which no record on appeal has yet been created in the case, and in notices of appeal or petitions to the Supreme Court from decisions of the Court of Appeals. *See* N.C. R. App. P. Appendix B.
- Briefs filed in the Supreme Court of North Carolina in a case previously heard and decided by the Court of Appeals should be entitled "New Brief" (*e.g.,* "Plaintiff-Appellant's New Brief"). *See* N.C. R. App. P. Appendix B.

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Notes on the Index to Briefs:

- All documents with 10 or more pages, except the record on appeal, must contain an index. N.C. R. App. P. 26(g)(2).
- Index entries are indented 0.75-inch from both standard 1-inch margins (or, put another way, the index line has margins of 1.75 inches from each side, yielding 5-inches of content in the middle). *See* N.C. R. App. P. Appendix B.
- Unlike the record on appeal index, the ALL-CAPS typography is optional in an appellate brief index. Also, some practitioners (and the examples in the Appendix of the Rules) use dot leaders (". . . .") to the page numbers.

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U.S. Const. amend. IV 14

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Notes on Table of Cases and Authorities:

- All documents with 10 or more pages, except the record on appeal, must contain a table of authorities. N.C. R. App. P. 26(g)(2).
- As with the Index, the Table of Cases and Authorities section should have margins of 1.75 inches from each side, yielding 5 inches of content in the middle.
- Cases, arranged alphabetically, come first; followed by constitutional provisions and statutes, each arranged numerically; then regulations, textbooks, and other authorities. *See* N.C. R. App. P. 26(g)(2). Omit pincites in this table. *See* N.C. R. App. P. Appendix B.
- Citations should follow the latest edition of *The Bluebook: A Uniform System of Citation*. *See* N.C. R. App. P. Appendix B.
- A citation in a brief to an unpublished decision is disfavored. If a party does cite to an unpublished decision, they must serve a copy of the decision on all other parties in the case and on the court to which the citation is offered. One easy way to accomplish that service is to attach the unpublished decision to the brief in which it is cited, as an "Addendum." *See* N.C. R. App. P. 30(e)(3).
    - Note: The *Appendix* and the *Addendum* serve separate purposes. The *Appendix* is governed by Rule 28(d) and contains certain materials for the appellate court's ease of reference. The *Addendum* is governed by Rule 30(e) and is used only to submit unpublished opinions to the court.

No. COA17-123 TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****
PLAINTIFF-APPELLANT'S BRIEF
****

ISSUES PRESENTED

I. Did the trial court err in admitting a hearsay statement made to a non-treating physician when the physician's examination was made solely for the purpose of testimony at the trial of the case?

II. Was the trial court's award of attorney fees to the prevailing party in a contempt proceeding contrary to North Carolina law governing contempt?

Notes on the Issues Presented Section:

- Unlike the record on appeal, briefs require an "inside caption" before the issues presented. N.C. R. App. P. Appendix E. That is, the case number, parties, and document title are repeated here.
- The Issues Presented section, like the rest of the brief, has margins of 1 inch all around.
- The Issues Presented should be single-spaced.
- Some practitioners type the Issues Presented in ALL CAPS, though it is not required by the Rules.
- If the Issues Presented continue past the first page, then immediately follow them with the Statement of the Case heading; otherwise, start the Statement of the Case at the top of the second page. N.C. R. App. P. Appendix E.

Note on Page Numbering and Margins:

- Note that the page numbering at the top is flanked by dashes (*e.g.,* -4-), with a 1-inch margin all around. Use double spacing for the text and triple spacing before the section headings ("Statement of the Facts," etc.). *See* N.C. R. App. P. Appendix B.

STATEMENT OF THE CASE

Plaintiff commenced this trespass action by the filing of a complaint and issuance of summons on 1 January 2022. (R p 3). Defendant moved to dismiss the action on 21 January 2022. (R p 4). The Honorable John Marshall, Avery County Superior Court Judge presiding, heard arguments on the motion to dismiss on 1 April 2022. (T pp 1-19). A judgment and order dismissing the case was entered 10 May 2022. (R pp 9-14). Plaintiff filed and served notice of appeal on 8 June 2022. (R pp 19-24). A transcript of the 1 April 2022 hearing was ordered on 14 June 2023 and delivered 1 August 2022. (R pp 97-101). The time to serve the proposed record was extended by the trial division until 15 September 2022. (R p 102). The record was settled by stipulation on 1 November 2022, filed in the Court of Appeals on 13 November 2022, and docketed 15 November 2022. (R pp 109-11).

Notes on Statement of the Case:

- The Statement of the Case recites the procedural steps and dates that got the case to the appellate court. It is usually quite short. The appellee's brief need not have a Statement of the Case. *See* N.C. R. App. P. Appendix E.
- The North Carolina appellate courts use the date style shown above (*e.g.,* "14 December 2018").

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Judge Marshall's summary judgment order, dismissing all Plaintiff's claims, is a final judgment, and appeal therefore lies to the Court of Appeals pursuant to N.C. Gen. Stat. § 7A-27(b).

Notes on the Statement of the Grounds for Appellate Review:

- The Statement of Grounds for Appellate Review is a requirement for the appellant's brief. N.C. R. App. P. 28(b)(4). The Rules require the appellant to provide an explanation of the grounds for review of an interlocutory appeal.
- In the Statement of the Grounds for Appellate Review, the appellant must state whether the appealed order is interlocutory or a final judgment on the merits. "An appeal is interlocutory when noticed from an order entered during the pendency of an action, which does not dispose of the entire case and where the trial court must take further action in order to finally determine the rights of all parties involved in the controversy." *Beroth Oil Co. v. N.C. Dep't of Transp*., 256 N.C. App. 401, 410, 808 S.E.2d 488, 496 (2017).
- "While an interlocutory appeal may be allowed in exceptional cases, [the appellate court] must dismiss an interlocutory appeal for lack of subject-matter jurisdiction, unless the appellant is able to carry its burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature." *C. Terry Hunt Indus., Inc. v. Klausner Lumber Two, LLC*, 255 N.C. App. 8, 11, 803 S.E.2d 679, 682 (2017) (internal quotations omitted).
- The two most common routes to appellate jurisdiction over interlocutory appeals in civil matters are "(1) the trial court certified the order for immediate review under North Carolina Rule of Civil Procedure 54(b), or (2) the order affects a substantial right that would be lost without immediate review." *Foster v. Crandell*, 181 N.C. App. 152, 160, 638 S.E.2d 526, 532 (2007).
- For more information regarding appeals from interlocutory orders, consider consulting the Committee's Guide to Appealability of Interlocutory Orders.

[ALTERNATIVE OPTION IN CIVIL MATTERS]

Judge Marshall's partial summary judgment order, dismissing Plaintiff's negligence claim based on statute of limitations grounds, is a final disposition of that claim. Other claims remain outstanding, so this order is interlocutory. It is appropriate, however, to pursue the appeal of this order now because Judge Marshall's ruling affects a substantial right of the plaintiff, as described in N.C. Gen. Stat. §§ 1-277, 7A-27(d)(1), in that [describe the facts and law that support a "substantial right" determination by the appellate court].

Notes on Interlocutory Appeals on "Substantial Rights" Grounds:

- If you are appealing an interlocutory order or judgment on "substantial rights" grounds, consider the annotations to N.C. Gen. Stat. §§ 1-277 and 7A-27 for what the courts have deemed "substantial rights" and tailor your statement accordingly.
- It is generally insufficient to simply assert that the appellant's substantial rights have been affected without providing an explanation of the facts and law demonstrating it. *See, e.g., Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 444 S.E.2d 252 (1994).
- For more information regarding interlocutory appeals on substantial rights grounds, see the Committee's Guide to Appealability of Interlocutory Orders.

[ALTERNATIVE OPTION IN CIVIL MATTERS]

Judge Marshall's partial summary judgment order dismissing Plaintiff's negligence claim on the statute of limitations grounds is a final disposition of that claim. Other claims remain outstanding. Judge Marshall's order contains a finding, pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, that there is no just reason for delaying the appeal of the order.

Notes on Civil Interlocutory Appeals via Rule 54(b) Certification:

- Note that Rule 54(b) of the North Carolina Rules of Civil Procedure expressly requires a final judgment as a prerequisite for appeal. However, appellate review is also available if the order is in fact a final judgment on one or more, but fewer than all, claims or parties, and the trial court certifies under Rule 54(b) that there is no just reason for delaying the appeal. *See Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) ("When the trial court certifies its order for immediate appeal under Rule 54(b), appellate review is mandatory.").
- However, the trial court may not, by certification, render its order immediately appealable if it is not a final judgment. *See James River Equip., Inc. v. Tharpe's Excavating, Inc.*, 179 N.C. App. 336, 340, 634 S.E.2d 548, 552-53 (2006).
- Thus, if there is some doubt that the order is in fact a final judgment on one or more claims or parties, practitioners should proceed with caution and offer an alternative basis for jurisdiction (e.g., that the decision affects a substantial right). *See id*.

STATEMENT OF THE FACTS

Plaintiff is the owner of property in the town of Canton, North Carolina. (R pp 4-6). His property adjoins an unopened private street known as East Street. (R p 5). [Continue recitation of facts].

Notes on Statement of the Facts:

- The appellant's brief must contain a "full and complete" and "non-argumentative" Statement of the Facts that are important to understanding the issues argued in the brief. N.C. R. App. P. 28(b)(5). Long quotations from the transcript or the record are discouraged, but accurate references to the place where the facts can be found are required.
- The appellee's brief need not contain a Statement of the Facts unless the appellee disagrees with the appellant's Statement of the Facts or desires to present issues in addition to those stated by the appellant. N.C. R. App. P. 28(c).
- It is better to make the Statement of the Facts coherent (by weaving the testimony of the various witnesses together or by tying them by time or subject) than to mechanically recite what each witness said. If there is a conflict in the evidence on an important point, recite first the evidence on one side, then recite the evidence on the other side.
- The Statement of the Facts must be scrupulously accurate and include even those facts that you will later discuss further in the Argument section. If you leave out a harmful fact, your credibility may suffer.
- There should be no period after a "p" or a "pp" in citations to the record, transcript, etc. *See* N.C. R. App. P. 9(b)(4).
- The Rules do not expressly state how to punctuate record citations. Rule 9(b)(4) requires record citations to "be cited as '(R p ___).'" Rule 9(b)(4) does not indicate whether the closing period is part of the citation or just the closing period for the sentence. In any event, be certain to use consistent formatting throughout the brief.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Notes on Argument Headers:

- Argument headers, or issues, *must* appear in ALL CAPS. *See* N.C. R. App. P. Appendix E.

A. Standard of Review

Because Defendant challenged the jury's findings by its motion for judgment notwithstanding the verdict, the facts are viewed in the light most favorable to Plaintiff, the non-moving party. *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322, 411 S.E.2d 133, 138 (1991). "[I]f there is more than a scintilla of evidence supporting" Plaintiff's claim for damages, then the trial court erred in granting Defendant's motion. *Mace v. Pyatt*, 203 N.C. App. 245, 252, 691 S.E.2d 81, 88 (2010).

Notes on Standard of Review:

- Per Rule 28(b)(6), the appellant's brief must contain "a concise statement of the standard(s) of review for each issue."
- Rule 28(b)(6) provides two options for the location of the standard of review:
  - (1) at the beginning of the discussions of each issue presented, in which case the brief will present the standard of review at the beginning of each section of the argument; or
  - (2) under a separate heading placed before the beginning of all sections of the argument, in which case the brief will have a single separate section labeled "Standard of Review" placed immediately under the "Argument" caption.
- When an appeal presents multiple issues with multiple standards of review, the best practice is to present the applicable standard of review at the beginning of each substantive section of the argument, as in the first option above.
- The Court of Appeals publishes the "Legal Standards Database," a collection of quotes from the leading North Carolina appellate decisions organized by topic. The document "is intended to provide illustrations of the wide variety of standards of review, legal tests, and general statements of law employed at the N.C. Court of Appeals."

B. Plaintiff incurred expenses in connection with Defendant's fraud that were found compensable by the jury.

The trial court erred in granting Defendant's motion for judgment notwithstanding the verdict because there was ample evidence introduced at trial that Plaintiff suffered direct economic harm as a result of Defendant's fraud. For example, Plaintiff testified that she was required to pay the property tax bills on the land as they came due in 2015 and 2016. (*See, e.g.*, T pp 23-24 ("After [Defendant] forged the deeds, . . . I had no choice but to pay the bills or risk foreclosure.") [App. 1-2]). Moreover, ...

Notes on Argument:

- Subsection headings are set out as shown (indented 0.25-inch from the left margin with 1-inch margins all around).
- Long quotations from a reported case or statute (more than three lines) are single-spaced and indented 0.75-inch from each margin (making a 5-inch line). The citation immediately follows the quotation, beginning at the regular left margin. *See* N.C. R. App. P. Appendix B.
- Rule 28 and Appendix E require copies of certain materials (such as key transcript pages, statutes, and rules) to be included in a separately paginated appendix to be submitted with the brief. It is best practice to cross-reference those appendix pages in the brief itself. For example, in the above text, the appendix to this brief contains a copy of transcript pages 23 and 24, and the citation to those transcript pages in the brief contains a cross-reference—[App. 1-2]—for the convenience of the court.

CONCLUSION

The Court of Appeals should reverse the trial court's order granting Defendant's motion for judgment notwithstanding the verdict and should remand the case with instructions for the trial court to enter judgment consistent with the jury's verdict. Alternatively, the Court of Appeals should remand for a new trial because the trial court erred in excluding Plaintiff's evidence of additional damages.

Respectfully submitted, this ____ day of [month], [year].

Notes on Conclusion:

- For criminal cases, N.C. Gen. Stat. § 15A-1447 provides the various forms of relief available on appeal.
- The Conclusion should state briefly and clearly the relief sought in the appeal. If different errors yield different remedies, pray for relief in the alternative, as shown.
- There is no need to repeat a party's arguments here. *See* N.C. R. App. P. 28(b)(7).

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

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[Name of Counsel]
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Notes on Signing Briefs:

- If you want to orally argue a case, you have to sign the brief. *See* N.C. R. App. P. 33(a), Appendix B. Having a colleague sign your name for you and initial the signature does not count as a signature for purposes of Rule 33(a).
- For electronic filers, the electronic signature is sufficient to allow the signatory to orally argue the case.
- In indigent criminal cases, where the attorney is appointed, the firm name is omitted (but the firm name may appear if the attorney is privately retained).
- In every case, counsel's printed name, e-mail address, phone number, post office address, and state bar number are required. *See* N.C. R. App. P. 26(g)(3), Appendix B.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for Plaintiff certifies that the foregoing brief, which was prepared using a 14-point proportionally spaced font with serifs, is less than 8,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendixes) as reported by the word-processing software.

This the ___ day of [month], [year].

By: /s/ [Name of Counsel]
[Name of Counsel]

Notes on the Length of Briefs:

- The Certificate of Compliance is only applicable to briefs filed in the Court of Appeals and in direct appeals to the Supreme Court under Rule 3.1. *See* N.C. R. App. P. 28(j).
- Otherwise, there are no length limitations for briefs in the Supreme Court.
- Footnotes and citations must be included in the word count. Note, however, that the default setting of Microsoft Word does not include footnotes in its word count feature. To account for footnotes, you will need to check the box in the word count dialog box to include textboxes, footnotes, and endnotes in your word count.

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that a copy of the foregoing brief was electronically filed and served on counsel for Defendant by e-mail on this day, addressed as follows:

[Name and e-mail address of opposing counsel]

This the ___ day of [month], [year].

By: /s/ [Name of Counsel]
[Name of Counsel]

Notes on Certificate of Service:

- Counsel must file documents in the appellate courts electronically. N.C. R. App. P. 26(a).
- When a document is filed electronically to the electronic-filing site, a certificate of service is still required and should note the date of service, manner of service, and names of the persons served. N.C. R. App. P. 26(c), (d).

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Notes on Appendix:

- Following the brief is an appendix, which collects those portions of the transcripts, statutes, and regulations referred to in the brief. Not every brief will have an appendix. If you directly quote the relevant material in the body of the brief, there is no need to have an appendix of that same material. Consult Rule 28(d) for guidance on when an appendix is required.
- The Appendix, which is reproduced "as is" and attached to the printed brief, allows the judges to reference cited material with ease. In some instances, it would be more persuasive to just include the relevant material directly in the brief at the appropriate point. At a certain point, though, the word-count limits for briefs in the Court of Appeals might come into play. Recall that there is no page limit for appendices.
- It is improper for a party to attach to its brief "a document not in the record and not permitted under N.C. R. App. P. 28(d) in an appendix to its brief." *Horton v. New S. Ins. Co.*, 122 N.C. App. 265, 268, 468 S.E.2d 856, 858 (1996); *see also Citifinancial, Inc. v. Messer*, 167 N.C. App. 742, 748, 606 S.E.2d 453, 457 (2005) (Steelman, J., concurring).
- The *Appendix* must be preceded by a table of contents. The Rules usually refer to the table of contents as an "Index," but Appendix E labels it "Contents of Appendix." The table of contents is formatted just like any other index or table in the brief or record: use a 5-inch line, indented 0.75 inches from each 1-inch regular margin.
- The page numbers on the right refer to the *Appendix* pages on which the material appears. *See* N.C. R. App. P. Appendix E.
- *Note:* The *Appendix* and the *Addendum* serve separate purposes. The *Appendix* is governed by Rule 28(d) and contains certain materials for the appellate court's ease of reference. The *Addendum* is governed by Rule 30(e) and is only used to submit unpublished opinions to the court.
- One way to distinguish Appendix pages from the body of the brief is to number the Appendix pages: "-App. 1-", "-App. 2-," etc. *See* N.C. R. App. P. Appendix E.

IV(b). A Typical Appellee's Brief

No. COA17-123 TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

DEFENDANT-APPELLEE'S BRIEF

****

Notes on Deadlines for Filing and Serving the Appellee's Brief:

- The appellee must file and serve his brief within 30 days after service of appellant's brief. N.C. R. App. P. 13(a)(1). The deadline is extended by three days if the appellant's brief was served by mail or by email. N.C. R. App. P. 27(b).
- In death penalty cases, the appellee must file and serve his brief within 60 days after they receive service of appellant's brief. N.C. R. App. P. 13(a)(2).
- "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." N.C. R. App. P. 13(c).

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No. COA17-123 TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

DEFENDANT-APPELLEE'S BRIEF

****

ARGUMENT

I. THE TRIAL COURT PROPERLY DIRECTED VERDICT ON THE WIDTH OF THE DRIVEWAY, BECAUSE THERE WAS NO GENUINE ISSUE OF A MATERIAL FACT CONCERNING IT.

Plaintiff established that there was no genuine issue concerning the width of the driveway easement and that the court . . . [argument continues].

Note on Sections Unnecessary in Appellee's Brief:

- The appellee's brief may proceed directly to the Argument, unless the appellee disagrees with the appellant's Statement of the Facts, Statement of Grounds for Appellate Review, or Standard of Review, or if appellee wishes to present additional issues. *See* N.C. R. App. P. 28(c).

Plaintiff described the width of the easement in 1973 as follows:

> We had a, it was a black-top drive. The driveway was only like two lanes. It was, but they were wide black-top lanes when we bought that. I guess you'd call it the lip or whatever of the driveway where we turned.

(T p 12).

Plaintiff identified photographs of . . . [argument continues].

Notes on Long Quotations:

- The above illustrates the method of including long quotations in the brief: indent 0.75 inch from each margin, and single space the material. *See* N.C. R. App. P. Appendix B.
- Important material should be quoted directly in the brief for persuasive purposes, rather than merely including it in the Appendix to the brief.

CONCLUSION

The judgment of the trial court should be affirmed because . . . .

Respectfully submitted, this ____ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

By: /s/ [Name of Counsel]
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for Defendant certifies that the foregoing brief, which is prepared using a 14-point proportionally spaced font with serifs, is fewer than 8,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendixes) as reported by the word-processing software.

/s/ [Name of Counsel]
[Name of Counsel]

Note on Certificate of Compliance:

- The Certificate of Compliance is only required for briefs filed in the Court of Appeals and in direct appeals to the Supreme Court under Rule 3.1. *See* N.C. R. App. P. 28(j).
- Otherwise, there are no length limitations for briefs in the Supreme Court.

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that a copy of the foregoing brief was electronically filed and served on counsel for Defendant by e-mail on this day, addressed as follows:

[Name and e-mail address of opposing counsel]

This the ___ day of [month], [year].

/s/ [Name of Counsel]
[Name of Counsel]

[Follow the brief with an appendix, if needed. *See* N.C. R. App. P. 28(d). For more information, refer to the note about appendices following A Typical Appellant's Brief, *supra*.]

Notes on Filing and Serving Briefs:

- When a document is filed electronically on the appellate courts' e-filing website, the document can be served "by e-mail to the attorney's correct and current e-mail address." N.C. R. App. P. 26(c).
- Counsel must file briefs in the appellate courts electronically. N.C. R. App. P. 26(a). A brief is considered filed when it is received by the electronic-filing site. *Id.* A person who is not represented by counsel is encouraged to file briefs in the appellate courts electronically but may file by hand delivery or mail. *Id.* A brief is filed by hand delivery when it is received by the clerk, and a brief filed by mail is deemed filed on the date of mailing, as evidenced by the proof of service. *Id.*
- "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." N.C. R. App. P. 13(c). Comparatively, "[i]f 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." *Id.*

IV(c). A Typical Memorandum of Additional Authority

No. COA17-123 TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

PLAINTIFF-APPELLANT'S MEMORANDUM OF ADDITIONAL AUTHORITY

****

Pursuant to Rule 28(g) of the North Carolina Rules of Appellate Procedure, Plaintiff-Appellant submits the following additional authority for the Court's consideration in the above-captioned case:

1. *Smith v. Jones*, ___ N.C. App. ___, 709 S.E.2d 886 (2016).

2. *In re A.B.Q.*, ___ N.C. App. ___, 710 S.E.2d 1 (2016).

The cited cases concern the issue of standing. (*See* Plaintiff-Appellant's Br. at 9-12) (Issue I).

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

/s/ [Name of Counsel]
[Name of Counsel]
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PLAINTIFF-APPELLANT'S MEMORANDUM OF ADDITIONAL AUTHORITY has been served this day by e-mail, addressed as follows:

[Names and e-mail addresses of counsel for all parties]

This the ___ day of [month], [year].

/s/ [Name of Counsel]
[Name of Counsel]

Notes on the Memorandum of Additional Authority:

- Pursuant to Rule 28(g), a memorandum of additional authority may be filed to bring to the court's attention authority not cited in the brief.
- A memorandum of additional authority should not include parenthetical summaries or quotes from the cases set out in the memorandum. *State v. Cunningham*, 140 N.C. App. 315, 317, 536 S.E.2d 341, 344 (2000).
- A memorandum of additional authority "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." N.C. R. App. P. 28(g).
- Authorities not cited in the briefs or in a memorandum of additional authority may not be cited and discussed in oral argument. *Id.*
- It remains the best practice and the strong preference of the appellate courts for a memorandum of additional authority to be filed and served several days prior to a scheduled argument. Nevertheless, a memorandum of additional authority may also be filed and served after oral argument, where appropriate.

V. Extraordinary Writs

V(a). A Typical Petition for Writ of Supersedeas and Motion for Temporary Stay

Note on the Petition for Writ of Supersedeas:

- "Application may be made to the appropriate appellate court for a writ of supersedeas to stay the execution or enforcement of any judgment, order, or other determination of a trial tribunal which is not automatically stayed by the taking of appeal when an appeal has been taken, or a petition for mandamus, prohibition, or certiorari has been filed to obtain review of the judgment, order, or other determination; and (1) a stay order or entry has been sought by the applicant by deposit of security or by motion in the trial tribunal and such order or entry has been denied or vacated by the trial tribunal, or (2) extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial tribunal for a stay order." N.C. R. App. P. 23(a)(1).

Note on the Motion for Temporary Stay:

- "Upon the filing of a petition for supersedeas, the applicant may apply, either within the petition or by a separate filing, for an order temporarily staying enforcement or execution of the judgment, order, or other determination pending decision by the court upon the petition for supersedeas. If application is made by a separate filing, it shall be filed and served in the manner provided for the petition for supersedeas in Rule 23(c)." N.C. R. App. P. 23(e).

No. _____ TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number as in Final Judgment or Order on Appeal]

****

PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR TEMPORARY STAY

****

Notes on Petitions for Writ of Supersedeas and Motions for Temporary Stay:

- Consult Rule 23 and Appendix D for the circumstances in which this petition and motion are appropriate.
- This sample petition focuses on the styles used in filing such a petition with the Court of Appeals under Rule 23(a), to stay the execution or the enforcement of a judgment, order, or other determination of a trial tribunal. Note that slightly different procedures apply when you seek a stay of a Court of Appeals decision. *See* N.C. R. App. P. 23(b).
- When you have noticed an appeal from the order to be stayed, it is the best practice to include a copy of the Notice of Appeal as an exhibit to your petition.
- If the motion is extraordinarily time-sensitive, you should consider alerting the Court of Appeals to any such timing issues or "deadlines" early in the document.
- The petition number in the upper left corner is typically left blank, to be filled in by the Court of Appeals. If the underlying appeal has already been docketed, you can include the Court of Appeals case number here.
- Service of the Petition for Writ of Supersedeas triggers a ten-day response deadline for any party to oppose it. *See* N.C. R. App. P. 23(d). In practice, it is common to couple a Motion for Temporary Stay with the Petition for Writ of Supersedeas, so the Court of Appeals has the option to stay the execution or the enforcement of the judgment or order while the briefing and consideration on the Petition for Writ of Supersedeas takes its course. *See* N.C. R. App. P. 23(e).

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Notes on Index:

- Index entries are indented 0.75-inches from both standard 1-inch margins (or, put another way, the index line has margins of 1.75-inches from each side, yielding a 5-inch line in the middle). *See* N.C. R. App. P. Appendix B.
- The petition only requires an index if it is ten pages or more in length. *See id*.

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Notes on Table of Cases and Authorities:

- If the petition is fewer than ten pages, this table may be omitted. *See* N.C. R. App. P. Appendix B.
- If included, the format of the Table of Cases and Authorities is the same as any brief (consult A Typical Appellant's Brief section, *supra*, for a fuller discussion on the formatting).

No. _____ TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number as in Final Judgment or Order on Appeal]

****

PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR TEMPORARY STAY

****

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Defendant, pursuant to Rule 23 of the North Carolina Rules of Appellate Procedure, respectfully petitions this Court to issue a temporary stay and a writ of supersedeas. Following the 20 May 2024 entry of an order dividing the Johnsons' marital estate by equitable distribution, Defendant moved to stay the equitable distribution pending appeal of the order. The Honorable Meredith Adams of Avery County District Court denied Defendant's motion

for stay in an order dated 25 June 2024. Defendant now petitions this Court to stay enforcement of the equitable distribution order, and in support of this petition shows the following:

FACTS

This lawsuit stems from an equitable distribution of a divorcing couple's assets, which awarded the wife over 96% of the marital estate and ordered the husband's company to make installment payments nearing $200,000 to the wife. Defendant is . . . [discussion of facts continues]

Notes on Facts:

- Here, set out the factual background necessary to understand why you are petitioning for a writ of supersedeas (*e.g.,* the trial court has not stayed execution despite the posting of security). *See* N.C. R. App. P. Appendix D.
- Petitioner should explain here its compliance with the requirement of Rule 23(c), which dictates that the stay be sought in the trial court in the first instance, or for the petitioner to demonstrate that it was impracticable to do so. *See also id.*
- Petitioner should also include here a statement that review of the judgment or order is being sought by appeal or other extraordinary writ. *See* N.C. R. App. P. 23(a), Appendix D.

REASONS WHY WRIT OF SUPERSEDEAS SHOULD ISSUE

Defendant is entitled to a stay because of the plain language of Section 1-289 of the North Carolina General Statutes and the likelihood that Defendant will prevail in its appeal of the order. The trial court's order will have the effect of . . . [argument continues]

Notes on the Reasons Why Writ Should Issue:

- Here set out the factual and legal argument to justify the issuance of the writ. *See* N.C. R. App. P. Appendix D.
- Consult Rule 23 for the bases of the writ.
- Because this writ is so flexible, the Argument section of the petition is likewise flexible. Brevity, however, is always going to be appreciated.

MOTION FOR TEMPORARY STAY

Pursuant to Rule 23(e) of the North Carolina Rules of Appellate Procedure, Defendant respectfully applies to this Court for an order temporarily staying enforcement of the equitable distribution order until determination by this Court of whether it shall issue its writ of supersedeas. In support of this application, Defendant represents that it sought from, and was denied by, the trial court an order to stay the equitable distribution order pending this Court's review. A temporary stay is necessary to prevent irreparable harm while this Court determines whether it shall issue its writ of supersedeas, because the corporation cannot sustain the payments ordered without liquidation. Defendant further incorporates and relies on the arguments presented in the foregoing petition for writ of supersedeas in support of this Motion for Temporary Stay.

Notes on the Motion for Temporary Stay:

- The Motion for Temporary Stay can be set out in the same or in a different document as the Petition for Writ of Supersedeas. *See* N.C. R. App. P. 23(e).
- If reflected in the same document, the Motion for Temporary Stay section should set out the factual and legal argument to justify the issuance of the temporary stay. *See* N.C. R. App. P. Appendix D. Nevertheless, this section can be brief provided it meets the requirements of Rule 23(e), as the arguments for the temporary stay may overlap considerably with the arguments for the Petition for Writ of Supersedeas.

CONCLUSION

Defendant respectfully requests for this Court to issue a temporary stay and writ of supersedeas to the Avery County District Court, staying the enforcement of the equitable distribution order during the pendency of this appeal.

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

/s/ [Name of Counsel]
[Name of Counsel]
Attorney for Defendant-Petitioner
245 S. Main Street
Newland, NC 28786
(919) 456-1245
State Bar No. 67890
lawyer@lawfirm.com

ATTACHMENTS

Attached to this Petition for Writ of Supersedeas and Motion for Temporary Stay are copies of the following documents from the trial court record:

Exhibit A. Certified copy of the Order dividing the Johnsons' marital estate by equitable distribution, filed 20 May 2024.

Exhibit B. Certified copy of the Order denying Defendant's motion for stay, filed 25 June 2024.

Exhibit C. Copy of excerpts from the transcript of the deposition of Sandra Johnson, taken 4 January 2024.

Notes on the Attachments:

- The language of Rule 23 itself does not specifically require any item to be attached to the Petition for Writ of Supersedeas or to the Motion for Temporary Stay. However, Appendix D makes clear that the appellate courts expect that a certified copy of the judgment/order/decree sought to be stayed be attached to the petition or motion. In addition, Rule 23(c) generally permits the petition or motion to be "accompanied by affidavits and by any certified portions of the record pertinent to its consideration." N.C. R. App. P. 23(c).
- The lower court clerk can provide to the petitioner certified copies of the documents required by the Rules.
- In practice, practitioners may face difficulty having the clerk of the trial court formally certify certain "parts of the record." For example, the clerk is not likely to certify as part of the record any item served but not filed (*e.g.,* a Notice of Deposition, Memorandum of Law, or, in some instances, a transcript of a deposition).
- As a practice pointer, practitioners facing such difficulty should consider submitting such materials as attachments to the petition or motion, using the attorney Verification to testify to their authenticity. See the sample Verification below for an example.

VERIFICATION

The undersigned [petitioner or counsel for petitioner], after being duly sworn, says:

The contents of the foregoing Petition for Writ of Supersedeas and Motion for Temporary Stay are true to my knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

[If verified by counsel for petitioner, recast this to state that the material allegations of the petition are true to the attorney's personal knowledge.]

[If counsel will be testifying to the authenticity of any documents attached to the petition or motion, consider including a statement along these lines: Pursuant to Rule 23 of the North Carolina Rules of Appellate Procedure, I also hereby certify that the documents attached to this Petition for Writ of Supersedeas and Motion for Temporary Stay are true and correct copies of the pleadings and other documents from the file in Avery County District Court, including documents that were served or submitted for consideration as contemplated by Appellate Rule 11.]

_____
[Name of Petitioner or Counsel]

_____ County, North Carolina

Sworn to (or affirmed) and subscribed
before me by [name of principal]

Date:_____

_____
[Notary's Printed or Typed Name], Notary Public

My Commission expires:

Notes on Verification:

- Rule 23(c) requires that "[t]he petition shall be verified by counsel or the petitioner." N.C. R. App. P. 23(c).
- The verification page immediately follows on the page after the signature block of counsel. *See* N.C. R. App. P. Appendix D.

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that the foregoing Petition for Writ of Supersedeas and Motion for Temporary Stay has been electronically filed and served by e-mail on this day, addressed as follows:

[Opposing counsel's name and e-mail address]

This the ___ day of [month], [year].

s/ [Name of Counsel]
[Name of Counsel]

Notes on Order of Materials in Petition for Writ of Supersedeas and Motion for Temporary Stay:

- Rule 23 does not provide an order in which the sections of the Petition for Writ of Supersedeas and Motion for Temporary Stay must be presented.
- The sample petition in Appendix D is organized in the following order: the case caption, the Facts, the Reasons Why Writ Should Issue, the Conclusion (without a separate "Conclusion" header), the Attachments, the signature block, the Verification, and finally the Certificate of Service.
- Appendix D does not state where the Motion for Temporary Stay should appear, except to note that the Motion may be included as a part of the main petition or filed separately.

V(b). A Typical Petition for Writ of Certiorari

Notes on the Petition for Writ of Certiorari:

- Rule 21(a) dictates the scope of the writ of certiorari as follows:

> (1) *Review of the Judgments and Orders of Trial Tribunals.* The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to N.C.G.S. § 15A-1422(c)(3) of an order of the trial court ruling on a motion for appropriate relief.
>
> (2) *Review of the Judgments and Orders of the Court of Appeals.* The writ of certiorari may be issued by the Supreme Court in appropriate circumstances to permit review of the decisions and orders of the Court of Appeals when the right to prosecute an appeal of right or to petition for discretionary review has been lost by failure to take timely action, or for review of orders of the Court of Appeals when no right of appeal exists.

N.C. R. App. P. 21(a).

- "A writ of certiorari is not intended as a substitute for a notice of appeal. If this Court routinely allowed a writ of certiorari in every case in which the appellant failed to properly appeal, it would render meaningless the rules governing the time and manner of noticing appeals. Instead, as our Supreme Court has explained, [a] petition for the writ must show merit or that error was probably committed below." *State v. Bishop*, 255 N.C. App. 767, 769, 805 S.E.2d 367, 369 (2017) (citations and quotation marks omitted).

No. _____ TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number as in Final Judgment or Order on Appeal]

****

PETITION FOR WRIT OF CERTIORARI

****

Notes on the Cover Page for Petition for Writ of Certiorari:

- The petition number in the upper left corner is blank, to be filled in by the appropriate appellate court.
- When petitioning to the Supreme Court from a decision of the Court of Appeals, the Court of Appeals docket number should appear below the county name instead of the trial court docket number on the right side. For an example of the inside cover page, refer to Appendix B and the example below.
- Consult Rule 21 and Appendix D for the circumstances in which this petition is appropriate.

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II. THE TRIAL COURT'S ORDER IS DIRECTLY CONTRARY TO THIS COURT'S RECENT DECISIONS ON THIS SUBJECT x

ATTACHMENTS 3

VERIFICATION 4

CERTIFICATE OF SERVICE 5

Notes on the Index:

- Index entries are indented 0.75-inches from both standard 1-inch margins (or, put another way, the index line has margins of 1.75-inches from each side, yielding a 5-inch line in the middle). *See* N.C. R. App. P. Appendix B.
- The Petition for Writ of Certiorari only requires an index if it is 10 pages or more in length. *See id.*

TABLE OF CASES AND AUTHORITIES

Cases:

City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984) 7

Statutes:

N.C. Gen. Stat. § 15A-221 13

Rules:

N.C. R. Civ. P. 10 4

Other Authorities:

U.S. Const. amend. IV 14

Notes on Table of Cases and Authorities:

- If the Petition for Writ of Certiorari is fewer than 10 pages, the Table of Cases and Authorities may be omitted. *See* N.C. R. App. P. 26(g)(2).
- If included, the format is the same as any brief (see A Typical Appellant's Brief, *supra*, for a fuller discussion on the formatting).

No. _____ TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number as in Final Judgment or Order on Appeal]

****

PETITION FOR WRIT OF CERTIORARI

****

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Plaintiff-Petitioner, the North Carolina Insurance Association ("the Association"), respectfully petitions the North Carolina Court of Appeals to issue its writ of certiorari, pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure, to review the partial summary judgment of the Honorable Frank Lee Wright of Avery County Superior Court, dated 21 June 2024,

[further describe the order appealed from, if necessary]. In support of this petition, the Association shows the following:

STATEMENT OF THE FACTS

The Association filed a complaint on 23 June 2022 in the Superior Court of Avery County. The trial court granted summary judgment in favor of Defendant as to the applicability of the statute of limitations governing the Association's first and second causes of action . . . [discussion of facts continues]

Notes on the Statement of the Facts:

- Here set out the factual background necessary to understand why you are petitioning for certiorari (*e.g.,* failure to perfect an appeal of right because of circumstances constituting excusable neglect; non-appealability of an interlocutory order, etc.). *See* N.C. R. App. P. Appendix D.
- If the transcript could not be procured from the court reporter, this statement should include an estimate of the date that the transcript will become available, with a supporting affidavit from the reporter. *See id.*

REASONS WHY WRIT SHOULD ISSUE

The trial court's partial summary judgment order has the effect of imposing a liability on the Association that is contrary to this Court's recent decisions in . . . [argument continues]

Notes on the Reasons Why Writ Should Issue:

- Here set out the factual and legal argument to justify the issuance of the writ of certiorari. *See* N.C. R. App. P. Appendix D.
- Consult Rule 21 for the bases of the writ of certiorari, and tailor the argument to that law.

ATTACHMENTS

For the Court's consideration, attached to this Petition for Writ of Certiorari are certified copies of the partial summary judgment sought to be reviewed and [list any other certified items from the trial court record and any affidavits attached as pertinent to consideration of the petition].

Wherefore, the petitioner respectfully prays this Court to issue its writ of certiorari to the Avery County Superior Court to permit review of the trial court's partial summary judgment, upon issues stated as follows: [list the issues, in the same manner provided for in the Rules for a petition for discretionary review]; and that the petitioner have such other relief as to the Court may deem proper.

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

/s/ [Name of Counsel]
[Name of Counsel]
Attorney for Plaintiff-Petitioner
160 N. Main Street
Newland, NC 28786
(828) 456-1245
State Bar No. 12345
lawyer@lawfirm.com

Notes on the Attachments:

- Rule 21(c) requires "certified copies of the judgment, order, or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition." N.C. R. App. P. 21(c).
- The lower court clerk can provide to the petitioner certified copies of the documents required by this Rule.
- As a practice pointer, practitioners facing difficulty obtaining certified copies should consider submitting such materials as attachments to the petition or motion, using the attorney Verification to testify to their authenticity. See the example below.

VERIFICATION

The undersigned [petitioner or counsel for petitioner], after being duly sworn, says:

The contents of the foregoing Petition for Writ of Certiorari are true to my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.

[If verified by counsel for petitioner, recast this to state that the material allegations of the petition are true to the attorney's personal knowledge.]

_____
[Name of Petitioner or Counsel]

_____ County, North Carolina

Sworn to (or affirmed) and subscribed
before me by [name of principal]

Date:_____

_____

[Notary's Printed or Typed Name], Notary Public

My Commission expires:

Notes on the Verification:

- Rule 21(c) requires that "[t]he petition shall be verified by counsel or the petitioner." N.C. R. App. P. 21(c).
- The Verification immediately follows on the page after the signature block of counsel. *See* N.C. R. App. P. Appendix D.

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that the foregoing Petition for Writ of Certiorari was electronically filed and served this day by e-mail, addressed as follows:

[Opposing counsel's name and e-mail address]

This the ___ day of [month], [year].

/s/ [Name of Counsel]
[Name of Counsel]

[Following the Petition for Writ of Certiorari, attach certified copies of the documents described in the Attachments section. *See* N.C. R. App. P. Appendix D.]

VI. Motions and Other Papers

Notes on Appellate Motions:

- Rule 37(c) requires that appellate motions in all cases, except for appeals involving *pro se* litigants, document: (1) "counsel's good-faith effort to inform counsel for all other parties of the intended filing of the motion," (2) "whether the other parties consent to the relief being sought," and (3) "whether any other party intends to file a response." N.C. R. App. P. 37(c).
- Rule 26(a) provides that "[c]ounsel must file documents in the appellate courts electronically at https://www.ncappellatecourts.org." N.C. R. App. P. 26(a). An item is filed when it is "received" by this site. *Id.*
- Rule 27(a) clarifies that, for purposes of calculating filing deadlines under the appellate rules, a legal holiday is "when the courthouse is closed for transactions." N.C. R. App. P. 27(a). Accordingly, federal holidays may not count if the state courts are open.

VI(a). A Typical Petition for Discretionary Review

Notes on the Due Date for a Petition for Discretionary Review:

- Following a determination by the Court of Appeals, a Petition for Discretionary Review must be filed and served within 15 days after the mandate of the Court of Appeals has been issued to the trial tribunal. *See* N.C. R. App. P.15(b).
- Normally, the mandate issues automatically on the 20th day after the issuance of the Court of Appeals' opinion. *See* N.C. R. App. P. 32(b). Counsel does not receive any notice that the mandate has issued. Counsel should therefore be careful to calculate his or herself the deadline for filing the Petition for Discretionary Review as 35 days after the issuance of the opinion (*i.e.*, 20 plus 15). *See* N.C. R. App. P. 15(b).
- The Petition for Discretionary Review must be actually received by the Clerk of the Supreme Court by the 35th day to be considered timely. Revised Rule 26(a) now clarifies, however, that "[a]n item is filed in the appellate court electronically when it is received by the electronic-filing site."

Notes on the Combined Notice of Appeal and Petition for Discretionary Review:

- By statute, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals which directly involves a substantial question arising under the federal or state constitution. N.C. Gen. Stat. § 7A-30(1).
- "In an appeal which is asserted by the appellant to involve a substantial constitutional question, the notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment of the Court of Appeals from which the appeal is taken; shall state the issue or issues which are the basis of the constitutional claim and which are to be presented to the Supreme Court for review; shall specify the articles and sections of the Constitution asserted to be involved; shall state with particularity how appellant's rights thereunder have been violated; and shall affirmatively state that the constitutional issue was timely raised (in the trial tribunal if it could have been, in the Court of Appeals if not) and either not determined or determined erroneously." N.C. R. App. P. 14(b)(2).
- Typically, the notice of appeal is filed along with a petition for discretionary review, as in the example below. *See* N.C. R. App. P. Appendix D.
- The notice of appeal must "enclose a clear copy of the opinion of the Court of Appeals with the notice." *Id.*

No. _____ TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number from the Court of Appeals]

****

NOTICE OF APPEAL AND
PETITION FOR DISCRETIONARY REVIEW

****

Notes on the Cover Page of Petition for Discretionary Review:

- The petition number in the upper left corner is blank, to be filled in by the Supreme Court.
- Note that the Court of Appeals docket number, not the trial court docket number, appears below the county name on the right side. *See* N.C. R. App. P. Appendix B.
- Consult Rules 14 and 15, Appendix D, and N.C. Gen. Stat. § 7A-31 for time limits and similar information.

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A. Because Century is not a "claimant" or "policyholder" and does not possess a "covered claim" under the Act, it is not entitled to any recovery from the Association. 2

B. This Court's precedents foreclose the Court of Appeals' expansive interpretation of the word "claimant" 2

II. THE SUBJECT MATTER OF THIS APPEAL HAS SIGNIFICANT PUBLIC INTEREST 3

ISSUES TO BE BRIEFED 4

CERTIFICATE OF SERVICE 5

Notes on the Index:

- Index entries are indented 0.75-inches from both standard 1-inch margins (or, put another way, the index line has margins of 1.75-inches from each side, yielding a 5-inch line in the middle). *See* N.C. R. App. P. Appendix B.
- The above Index example illustrates another form of an Index, with a mixture of ALL-CAPS and lower-case section titles.
- The dot leaders (". . . .") for the page numbers are optional.
- The Petition for Discretionary Review only requires an index if it is ten pages or more in length. *See* N.C. R. App. P. Appendix B.

TABLE OF CASES AND AUTHORITIES

Cases:

City of Greensboro v. Reserve Ins. Co., 70 N.C. App. 651, 321 S.E.2d 232 (1984) 7

Statutes:

N.C. Gen. Stat. § 15A-221 13

Rules:

N.C. R. Civ. P. 10 4

Other Authorities:

U.S. Const. amend. IV 14

Notes on Table of Cases and Authorities:

- If the Petition for Discretionary Review is fewer than ten pages, the Table of Cases and Authorities may be omitted. *See* N.C. R. App. P. Appendix B.
- If the Table of Cases and Authorities is included, the format is the same as any brief (*see* A Typical Appellant's Brief, *supra*, for a fuller discussion on the formatting).

No. _____ TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County [Case Number from the Court of Appeals]

****

NOTICE OF APPEAL AND
PETITION FOR DISCRETIONARY REVIEW

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiff, the North Carolina Insurance Association (the "Association"), hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals affirming the trial court's partial grant of summary judgment, which judgment directly involves a substantial question arising under the Constitution of the State of North Carolina as follows:

The judgment directly involves a substantial question arising under Article I, Section 1 of the North Carolina State Constitution, which

protects "the enjoyment of the fruits of [all persons'] own labor." This constitutional issue was timely raised in the trial tribunal in response to the defendant's motion for summary judgment (R pp 123–34). This constitutional issue was determined erroneously by the Court of Appeals.

In addition, the Association respectfully petitions the Supreme Court of North Carolina to certify for discretionary review the judgment of the North Carolina Court of Appeals filed on 21 February 2025 in this cause, on the grounds that the subject matter of this case involves legal principles of major significance to the jurisprudence of this State and raises issues of significant public interest. In support of this Notice of Appeal and Petition of Discretionary Review, the Association shows the following:

FACTS

The Association filed a complaint on 23 June 2024 in the Superior Court of Avery County. Judge Jonathan R. Smith granted summary judgment in favor of the defendant, Mid-Century Indemnity Co. ("Mid-Century") at the 21 November 2024 Civil Session. The Association filed notice of appeal to the Court of Appeals on 1 December 2024. The Court

of Appeals affirmed the summary judgment order in a published opinion, filed 14 February 2025.

The Association is an unincorporated non-profit entity created pursuant to the North Carolina Insurance Guaranty Act . . . [factual background continues]

Notes on the Facts:

- The first part of the Facts section should set forth a statement of the case—the procedural history of the case through the trial tribunal and the Court of Appeals. *See* N.C. R. App. P. Appendix D.
- The second part of the Facts section should set forth a statement of the facts—enough for the Supreme Court to understand the basis of the Petition for Discretionary Review. *See id*.

REASONS WHY CERTIFICATION SHOULD ISSUE

The decision below imposes a liability on the Association that is contrary to the language and intent of the statutory scheme governing the Association's existence and presents . . . [argument continues]

Notes on the Reasons Why Certification Should Issue:

- The focus of this section should be to show either: (a) how the opinion of the Court of Appeals conflicts with prior decisions of the Supreme Court; (b) how the case is significant to the jurisprudence of the State; or (c) why the case is one of significant public interest. *See* N.C. Gen. Stat. § 7A-31; N.C. R. App. P. 15, Appendix D.
- Some factual and legal argument will be necessary in the Reasons Why Certification Should Issue section, but the new brief will be the place for the substantive discussion of the arguments, if the Supreme Court takes the case. *See* N.C. Gen. Stat. § 7A-31; N.C. R. App. P. 15, Appendix D.
- N.C. Gen. Stat. § 7A-31 explains the procedures for petitions filed prior to the determination of the case in the Court of Appeals.

ISSUES TO BE BRIEFED

In the event the Court finds the constitutional question to be substantial and/or allows this Petition for Discretionary Review, the Association intends to present the following issue in its brief to the Court:

I. Whether a claim founded upon the doctrine of equitable subrogation entitles an insurer to recover from the Association to the extent of the Association's statutory obligations, despite the Act's clear exclusion of claims founded upon subrogation from the definition of a "covered claim."

II. [Other issues presented]

Note on the Issue to be Briefed:

- Be careful to be precise and complete in this section, because "an issue may not be briefed if it is not listed in the notice of appeal or petition." *See* N.C. R. App. P. Appendix D.

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

/s/ [Name of Counsel]
[Name of Counsel]
Attorney for Plaintiff-Appellant
160 N. Main Street
Newland, NC 28786
(828) 456-1245
State Bar No. 12345
lawyer@lawfirm.com

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Notice of Appeal and Petition for Discretionary Review has been electronically filed and served this day by e-mail, addressed as follows:

[Counsel's name and e-mail address]

This the ___ day of [month], [year].

/s/ [Name of Counsel]
[Name of Counsel]

[Attach a copy of the decision of the Court of Appeals if you are noticing an appeal or petitioning after a decision by that court.]

Notes on "Bypass Petitions":

- N.C. Gen. Stat. § 7A-31 and Rule 15 allow a party to petition for Supreme Court review of certain matters either before or after determination by the Court of Appeals.
- The Petition for Discretionary Review cannot be filed until the appeal is docketed in the Court of Appeals, which occurs shortly after the final record on appeal is filed. *See* N.C. R. App. P. Rule 15(a).
- A Petition for Discretionary Review filed *before* the Court of Appeals determines the matter is commonly referred to as a "Bypass Petition" or "Bypass PDR (Petition for Discretionary Review)."
- Bypass Petitions are rarely granted.
- The filing of a Bypass Petition *does not* stay proceedings in the Court of Appeals. Parties may, of course, move the Court of Appeals for an extension of time in which to file their briefs while a Bypass Petition is pending before the Supreme Court. It is not uncommon, however, for briefing in the Court of Appeals to proceed before the Bypass Petition has been ruled upon.

VI(b). A Typical Motion to Consolidate Appeals

Notes on the Motion to Consolidate:

- This motion is appropriate to consolidate for hearing two separate appeals from two separate cases that involve a similar legal issue or issues. Any party to an action may move to consolidate two or more appeals "that involve common issues of law." N.C. R. App. P. 40. After they have been consolidated, the actions will be calendared and heard as a single case.
- If granted oral argument, the parties in a consolidated appeal may allocate their argument time under Rule 30(b) by written agreement. *See* N.C. R. App. P. 40.This agreement must be filed with the appropriate appellate court prior to oral argument. Unless modified by the appellate court, the written agreement will control. *See id.*
- There are other situations in which parties seek to "consolidate" appeals that do not fall within the narrow scope of Rule 40. For example, where an appeal involves more than one appellant (including a cross-appeal), then Rule 11(d) requires that the parties file a single record on appeal. No motion is required for this "consolidation" of appeals. Each appellant sets forth its proposed issues on appeal separately in the single record on appeal. *See* N.C. R. App. P. 11(d).
- Another example of "consolidation" can arise when a party wishes to appeal two different orders entered in the same case. If the orders are entered sufficiently close in time, the party may consolidate the appeals into a single record on appeal without the filing of a motion, provided that the party acts within the deadlines applicable to the appeals as prescribed by the Rules.
- Remember that Rule 37(c) requires that appellate motions in all cases, except for appeals involving *pro se* litigants, document: (1) “counsel’s good-faith effort to inform counsel for all other parties of the intended filing of the motion,” (2) “whether the other parties consent to the relief being sought,” and (3) “whether any other party intends to file a response.”

No. COA17-123 TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

MOTION TO CONSOLIDATE APPEALS

****

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Defendant-Appellee XYZ Corp., Inc., through undersigned counsel, moves this Court under Rule 40 of the North Carolina Rules of Appellate Procedure to consolidate this appeal for hearing with another appeal in a related case. In support of this motion, XYZ Corp. shows:

1. This appeal from Avery County, Case No. 21 CVD 3375, was docketed on 22 April 2022.

2. A similar appeal from Forsyth County, Case No. 20 CVD 4478, was docketed on 10 May 2022.

3. Both actions involve common issues of law, namely [describe the common issues of law].

4. It would be reasonable and efficient for the Court to consider the two appeals together.

5. Pursuant to Appellate Rule 37(c), the undersigned counsel certifies that all counsel of record were notified of Defendant-Appellee's intent to file this Motion to Consolidate Appeals. Plaintiff-Appellant does not object to this Motion and does not intend to file a response.

WHEREFORE, XYZ Corp. respectfully moves this Court under Appellate Rule 40 to consolidate these appeals.

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

/s/ [Name of Counsel]
[Name of Counsel]
Attorney for Defendant-Appellee
245 S. Main Street
Newland, NC 28786
(919) 456-1245
State Bar No. 67890
lawyer@lawfirm.com

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that the foregoing MOTION TO CONSOLIDATE APPEALS has been electronically filed and served this day by e-mail, addressed as follows:

[Opposing counsel's name and e-mail address]

This the ___ day of [month], [year].

/s/ [Name of Counsel]
[Name of Counsel]

VI(c). A Typical Motion for Extension of Time

Notes on the Motion for Extension of Time:

- Upon motion, the appellate courts may generally extend any of the times prescribed by the Rules. However, no court is permitted to "extend the time for taking an appeal or for filing a petition for discretionary review or a petition for rehearing or the responses thereto prescribed by these rules or by law." N.C. R. App. P. 27(c).
- The example reflected below is a typical motion in the appellate court. In most cases, a motion for an extension of up to 30 days for the court reporter to deliver the transcript per Rule 7 or a motion for an extension of up to 30 days to serve the proposed record on appeal is made in the trial court and can be made orally or in writing and without notice to other parties. N.C. R. App. P. 27(c)(1). Any other motion for extension of time for any other deadline, including any subsequent motion for extension of time to prepare the transcript or for service of the proposed record, must be filed with the appellate court. *See* N.C. R. App. P. 27(c).
- A motion for extension of time may generally be determined *ex parte*, although the moving party must promptly serve the order on all other parties. However, if the time sought to be extended has already expired, the moving party must give notice to all other parties, and the motion will only be allowed after the other parties have had an opportunity to be heard. N.C. R. App. P. 27(d).
- A motion for extension of time should provide as much explanation for the request as possible. These reasons may include conflicts with other cases, other commitments of counsel, etc.
- Motions for extensions of time are disfavored in juvenile cases governed by Rule 3.1 and will only be allowed in extraordinary circumstances.
- Remember that Rule 37(c) requires that appellate motions in all cases, except for appeals involving *pro se* litigants, document: (1) "counsel's good-faith effort to inform counsel for all other parties of the intended filing of the motion," (2) "whether the other parties consent to the relief being sought," and (3) "whether any other party intends to file a response."

No. COA17-123 TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS
****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

****

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Defendant-Appellee, through undersigned counsel, moves this Court under Rule 27(c) of the North Carolina Rules of Appellate Procedure for an extension of time of twenty-one (21) days, up to and including 2 August 2022, in which to file her brief in this matter. In support of this motion, Defendant shows:

1. The Notice of Appeal was filed on 22 February 2025.

2. The parties settled the record by agreement on 22 April 2025.

3. The Record on Appeal was filed on 1 May 2025.

4. Plaintiff filed its brief on 13 June 2025.

5. The undersigned appellate counsel for Defendant did not participate in the trial court proceedings.

6. Defendant's brief is due to be filed with this Court on 13 July 2025.

7. The undersigned counsel reasonably believe that they will require additional time to prepare Defendant's brief because [add reasons with as much specificity as possible].

8. The time for filing Defendant's brief has not expired.

5. Pursuant to Appellate Rule 37(c), the undersigned counsel certifies that all counsel of record were notified of Defendant-Appellee's intent to file this Motion for Extension of Time. Plaintiff-Appellant does not object to this Motion and does not intend to file a response.

WHEREFORE, Defendant respectfully moves this Court under Appellate Rule 27(c) for an extension of time of twenty-one (21) days, up to and including 2 August 2025, or whatever other time the Court deems appropriate, in which to file her brief in this matter.

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any, and only if counsel is retained and not appointed]

/s/ [Name of Counsel]
[Name of Counsel]
Attorney for Defendant-Appellee
245 S. Main Street
Newland, NC 28786
(919) 456-1245
State Bar No. 67890
lawyer@lawfirm.com

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that the foregoing MOTION FOR EXTENSION OF TIME TO FILE BRIEF has been electronically filed and served this day by e-mail, addressed as follows:

[Opposing counsel's name and e-mail address]

This the ___ day of [month], [year].

/s/ [Name of Counsel]
[Name of Counsel]

VI(d). A Typical Motion for Leave to File an Amicus Curiae Brief

Notes on the Motion for Leave to File an Amicus Curiae Brief:

- Unless the appellate court requests a brief, an amicus curiae may only file a brief by leave of the court. N.C. R. App. P. 28.1(a). "An amicus who has been permitted to submit a brief about an issue on appeal may also file a motion asking for permission to participate in oral argument." *Id.*
- To be granted leave to file a brief, the "amicus curiae must file its motion and proposed brief contemporaneously as separate documents." N.C. R. App. P. 28.1(b)(1).
    - The amicus curiae's motion "must state the nature of the amicus's interest, the reasons why the brief would be beneficial to the court, the issues that are addressed in the brief, and the amicus's position on those issues." N.C. App. P. 28.1(b)(2).
    - The required content and organization of the amicus curiae's accompanying brief are outlined in Rule 28.1(b)(3).
    - The title of both the amicus curiae's motion and proposed brief "shall identify the names of all individuals or legal entities joining the motion or brief." N.C. R. App. P. 28.1(d). If listing all amici in the title is not practical, "then the amici may instead list a smaller number of names followed by 'et al.' in the title of the document and include a full list of the amici in an appendix." *Id.*
- Rule 28.1(b)(4) dictates the time for filing an amicus curiae brief and motion as follows:
    - If the amicus curiae brief is in support of a party to the appeal, then amicus curiae shall file its motion and proposed brief "no later than seven days after that party's petition, response to a petition, or principal brief is filed." N.C. R. App. P. 28.1(b)(4).
    - If amicus curiae's brief does not support any party, then the amicus curiae shall file its motion and proposed brief within seven days after the response brief is filed. *See id.*
    - At the same time that the amicus curiae files its motion and proposed brief, a copy of the same must also be served on the parties. N.C. R. App. P. 28.1(b)(5).
- It is also helpful for an amicus curiae to describe the positions of the parties with respect to the issue(s) of law to be addressed. The best practice is for a potential amicus curiae to obtain consent of the party whose position it seeks to support.
- Remember that Rule 37(c) requires that appellate motions in all cases, except for appeals involving *pro se* litigants, document: (1) "counsel's good-faith effort to inform counsel for all other parties of the intended filing of the motion," (2) "whether the other parties consent to the relief being sought," and (3) "whether any other party intends to file a response."

No. COA17-123 TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

[Plaintiff's Name as it appears in judgment/order on appeal], Plaintiff, v. [Defendant's Name as it appears in judgment/order on appeal], Defendant.	From Avery County

****

NORTH CAROLINA ASSOCIATION OF LAWYERS' MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

****

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

The North Carolina Association of Lawyers ("NCAL") hereby requests leave, pursuant to Rule 28.1 of the North Carolina Rules of Appellate Procedure, to file an amicus curiae brief in support of Plaintiff-Appellant. NCAL's proposed brief is filed contemporaneously with this motion.

INTEREST OF NCAL AS AMICUS CURIAE

The NCAL is a not-for-profit organization of attorneys. It has a substantial interest in ensuring that [describe the interest of the amicus curiae].

REASONS WHY AN AMICUS CURIAE BRIEF IS DESIRABLE

Defendant seeks to avoid her obligations under a binding agreement. In addition to reviewing the case law from North Carolina and other jurisdictions, the NCAL will demonstrate why [explain why an amicus curiae brief is desirable].

ISSUE OF LAW TO BE ADDRESSED

The NCAL will address the following issue of law: [describe the issue of law to be addressed].

POSITION OF AMICUS CURIAE

It is the position of the NCAL that [describe the position of the amicus curiae].

APPELLATE RULE 37(c) CERTIFICATION

Pursuant to Appellate Rule 37(c), NCAL certifies that all counsel of record were notified of NCAL's intent to file this Motion for Leave to File Amicus Curiae Brief. Plaintiff has no objection and does not intend to file

a response. However, Defendant objects to NCAL's Motion and intends to file a response.

CONCLUSION

For the foregoing reasons, the NCAL respectfully requests that the Court grant it leave to file an amicus curiae brief in support of Plaintiff-Appellant.

Respectfully submitted, this the ___ day of [month], [year].

[LAW FIRM NAME, if any]

_____

[Name of Amicus Curiae or Counsel for Amicus Curiae, if any]
[*Counsel for Amicus Curiae*]
160 N. Main Street
Newland, NC 28786
(828) 456-1245
State Bar No. 12345
lawyer@lawfirm.com

CERTIFICATE OF SERVICE

Pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure, the undersigned hereby certifies that the foregoing MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF has been served this day by [manner of service] on this day, addressed as follows:

[Names and e-mail addresses of counsel for all parties]

This the ___ day of [month], [year].

_____

[Name of Amicus Curiae or Counsel for Amicus Curiae, if any]

VII. Formatting of Appellate Filings

VII(a). Form of Documents Filed with Appellate Courts

Notes on Form of Papers Presented to Appellate Courts:

- Although formatting and style requirements may be found throughout the Rules, the primary source for formatting requirements is Rule 26(g) and Appendix B. Notably, Rule 26(g)(1) dictates:
  - Documents "shall be letter size (8 ½ x 11")";
  - "The body of the text shall be presented with double spacing between each line of text"; and
  - "Lines of text shall be no wider than 6 ½ inches, leaving a margin of approximately one inch on each side."
- Appendix B recognizes two exceptions to the general rule that double-spacing should be used in appellate filings:
  - Any new typed material within the Printed Record "should be single-spaced, with double spaces between paragraphs." N.C. R. App. P. Appendix B. Comparatively, the body of the notice of appeal, appellate petitions, motions, briefs, and responses should be double-spaced. *Id.*
  - Single spaces between lines for block quotes. More specifically, Appendix B states: "Quotations of more than three lines in length should be indented ¾" from each margin and should be single-spaced. The citation should immediately follow the quote."
- Practitioners should also remember that the Printed Record on appeal is reproduced in black and white. One way to submit a color document is to include it in the Rule 9(d) Supplement you prepare and submit yourself. Regardless, be sure that any documents that were originally in color and are included in the Printed Record remain readable when reproduced in black and white. A color photo included in the Printed Record, for example, may just look like a black rectangle to the appellate court.

Notes on Typefaces or Fonts:

- Rule 26(g)(1) requires for documents to be "prepared using a proportionally spaced font with serifs that is no smaller than 12-point and no larger than 14-point in size."
- Although the Rules do not require a particular type of proportionally spaced font, appellate court decisions are published in Century Schoolbook font, and the Rules specifically list Constantia and Century typefaces as appropriate options. N.C. R. App. P. 26(g)(1). Prior fonts endorsed by the Rules, including Courier New, were prohibited by the 2017 changes to the Rules.
- The typeface and font requirements do not apply, however, to trial court documents or other pre-printed documents that are included in the record on appeal or as appendices, addendums, exhibits, or attachments to motions or briefs filed in the appellate courts.
- The examples reflected in this Style Manual are printed in 14-point Century Schoolbook typeface.

Notes on Page Numbers in the Printed Record:

- Although page numbers are not reflected in this Style Manual, the "Numbering Pages" section of Appendix B dictates that page numbers are generally required in appellate filings and should be included as follows:
    - Page numbers should be centered and flanked by dashes at the top of most pages. *See* N.C. R. App. P. at Appendix B (Numbering Pages). The cover page—*i.e.*, the first page of the filing that reflects the case caption—should not be numbered. *Id.*
    - Any subsequent introductory pages after the cover page (*e.g.*, index, table of authorities) should be numbered with lowercase Roman numerals, flanked by dashes (*i.e.*, -ii-, -iii-, -iv-), starting with "ii" since page "i" is the unnumbered cover page. *See id.*
    - The first and all subsequent pages of the substantive document should be numbered by Arabic numbers, flanked by dashes (*i.e.*, -1-, -2-. -3-). *See id.*
- The page numbers may appear within the 1-inch top margin, as long as the first substantive line is at least 1-inch from the top edge of the paper. Practitioners should be careful, however, not to place page numbers within the top 0.5-inch of the page, as they may not be reproduced when the page is photocopied by the Clerk's office.

Notes on Formatting Dates:

- North Carolina appellate opinions have traditionally reflected the day-month-year date style (*e.g.*, "14 November 2018").
- However, the Rules do not prescribe a particular date format, so practitioners may use either method when referencing dates in their appellate filings. Either way, the selected method should be used consistently throughout any filings.

Notes on Electronic Filing:

- All documents to be filed with either the North Carolina Court of Appeals or Supreme Court must be electronically filed via https://www.ncappellatecourts.org. *See* N.C. R. App. P. 26(a). There are only three exceptions to this otherwise mandatory e-filing rule:
  - (a) An unrepresented party is "encouraged" to e-file "but is not required to do so." *Id.* In lieu of e-filing, an unrepresented party "may file items by hand delivery or mail." *Id.*
  - (b) "If a technical failure prevents counsel from filing a document by use of the electronic-filing site, then the clerk of the appellate court may permit the document to be filed in paper by hand delivery, mail, or fax." *Id.*
  - (c) "Counsel may file copies of oversized documents and non-documentary items electronically if permitted to do so by the electronic-filing site, but otherwise by hand delivery or mail." *Id.*
- All electronically filed items are considered to be "filed" in the appellate court "when it is received by the electronic-filing site." *Id.*
- Items that are physically submitted to the appellate court in paper form are generally considered "filed" when the item "is received by the clerk." *Id.* However, "motions, responses to petitions, the record on appeal, and briefs filed by mail are deemed filed on the date of mailing as evidenced by the proof of service." *Id.*
- Be aware that electronic filing does not mean electronic service. You are still responsible for serving your electronically filed documents on all parties. *See* N.C. R. App. P. 26(b). See Rule 26(c) for the acceptable manners of service. Notably, if an item "is electronically filed in the appellate courts using the appellate courts' electronic-filing site, then service may alternatively be made upon a party's attorney of record by e-mail to the attorney's correct and current e-mail address. N.C. R. App. P. 26(c).

Notes on Signature Blocks:

- Rule 26(g)(3) dictates: "The body of a document composed for an appeal 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 signature of counsel of record."
- "Unless filed *pro se*, documents filed in a case will bear the signature of at least one counsel participating in the case." N.C. R. App. P. at Appendix B.
  - *Important Note:* Any attorneys who wish to participate in oral argument must "have personally signed the *brief* prior to oral argument." N.C. R. App. P. 33(a) (emphasis added).
- Electronically filed documents need not be signed by hand, however. Indeed, since e-filing is now mandatory (with limited exceptions noted above), the October 2021 Amendments eliminated all references that required "manuscript" or "wet" signatures throughout the Rules. In lieu of a manuscript signature, it is customary to

type "/s/ [Name of Counsel]" on the signature line where the manuscript or wet signature would have appeared. *See* N.C. R. App. P. at Appendix D.

- Examples of signature blocks can be found in Appendices B and D of the Rules, which further instructs that the formatting of the signature blocks will differ based on whether counsel of record has been retained or appointed, as follows:
    - If "counsel is appointed in an indigent criminal appeal, only the name of the appointed counsel should appear, without identification of any firm affiliation." N.C. R. App. P. at Appendix B. For example:

      /s/ [Name of Counsel]
      [Attorney Name]
      Attorney for Defendant-Appellant
      P.O. Box ####
      Raleigh, NC 24600
      (919) 999-9999
      State Bar No. #####
      Attorney1@email.com

    - If counsel has been retained, "the firm name should be included above the signature" line. N.C. R. App. P. at Appendix B. Additionally, to list more than one attorney, Rule 33(b) requires that the following certification be included below the e-filing attorney's signature block, along with the address, phone number, State Bar number, and email address for each additional attorney:

      [LAW FIRM NAME]

      By: /s/ [Name of Counsel]
      [Attorney 1's Name (N.C. State Bar No.: #####)]
      Attorney1@email.com

      N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

      [Attorney 2's Name (N.C. State Bar No. #####)]
      Attorney2@email.com
      P.O. Box 12345
      Raleigh, N.C. 27622
      (919) 999-9999
      Attorneys for Plaintiff-Appellant

VII(b). Sealing Documents and Rule 42 Checklist

Notes on Sealing Documents:

- Generally, documents filed with the appellate courts are available to the public. This includes the record on appeal, a party's brief, and anything appended to it. If a party wishes to keep documents confidential, it must take steps to ensure its confidentiality. The above sample stipulation, under section III(a), is one way to do so, but it is not necessarily the only way.
- Rule 42 governs sealed items and identification numbers. See immediately below for a Rule 42 Checklist for Counsel.
- Rule 42(a) states that "[i]tems 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." N.C. R. App. P. 42(a).
- "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." N.C. R. App. P. 42(c).
- Certain information must be kept confidential regardless of any effort to file documents under seal. For example, "[d]river 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." N.C. R. App. P. 42(e).
- Per Rule 42(d), 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." N.C. R. App. P. 42(d).

RULE 42 CHECKLIST FOR COUNSEL
FOR ALL FILINGS (RECORDS, EXHIBITS, BRIEFS, MOTIONS)

Protected by N.C. Rule of Appellate Procedure 42

- ☐ Items sealed in the trial court (Rule 42(a)) (attach copy of sealing order)
- ☐ Automatically sealed by Rule: (Rule 42(b))
    - ☐ Appeals in child welfare cases (G.S. 7B-1001)
    - ☐ Appeals in delinquency cases (G.S. 7B-2602)
    - ☐ Appeals cases of sexual offenses against minors (G.S. 7A-27)
        - ☐ Minors at time of offense, even if adults now
    - ☐ Appeals in these cases where right to appeal lost (PWC, etc)
    - ☐ When minors involved: use initials or pseudonyms (Rule 42(b))
- ☐ Information to be redacted by Rule: (Rule 42(e))
    - ☐ Social Security Numbers (Rule 42(e))
    - ☐ Financial Account Numbers (Rule 42(e))
    - ☐ Tax ID Numbers (Rule 42(e))
    - ☐ Drivers License or other identification numbers (Rule 42(e))

Protected by Law (provide copy of statute or other authority sealing documents)

- ☐ HIPAA (G.S. 122C-55)
- ☐ Mental Health & Treatment Records (G.S. 122C-52)
- ☐ Substance Abuse Treatment Records (42 U.S.C. § 290dd-2)
- ☐ Trade secrets (G.S. 66-156; 18 U.S.C. § 1833(b)(1)(B))
- ☐ Addresses when there is a DVPO (G.S. 15C-9)

Items to consider (and which likely contain confidential information)

☐ Drug test results	☐ Traffic tickets (driver license numbers)
☐ DNA/Paternity results	☐ Loan applications
☐ Child support worksheets	☐ Credit card statements
☐ Paystubs	☐ Bank statements
☐ Equitable distribution worksheets	☐ Adoptions
☐ Tax returns	☐ Retirement plans

IF **CLERKS OR OTHER JUDICIAL PERSONNEL** NOTICE UNREDACTED/CONFIDENTIAL INFORMATION:

☐ Notify trial counsel of need to redact/remove/seal information

☐ Remove from online access

IT IS NOT THE DUTY OF THE CLERKS OR OTHER JUDICIAL PERSONNEL TO PROTECT THIS INFORMATION!

Additional Laws Specifying Information That Must Be Kept Private:

- Chapter 115C contains a number of legal confidentiality requirements. Are they worth adding to the checklist? *See* G.S. 115C-150.15 (information about deaf and blind students), -174.13 (information about tests), -321 (information in personnel files)
- G.S. 7B-3001 requires a juveniles delinquency record and related documents be withheld from public inspection
- G.S. 7B-2901 requires all abuse, neglect, and dependency cases be withheld from public inspection

VII(c). Citations

Notes on Citations:

- Generally, citations "should be made according to the most recent edition of *The Bluebook: A Uniform System of Citation*," and citations to "regional reporters shall include parallel citations to official state reporters." N.C. R. App. P. at Appendix B.
- The best resource to review North Carolina's customary citation standards is *The Guidebook: Citation, Style, and Usage at the Supreme Court of North Carolina*, which was prepared and approved by the Supreme Court on 14 June 2023. The Guidebook is a 15-page PDF that was created to provide North Carolina's appellate court judges with examples and recommended instructions for formatting the citations reflected in their judicial opinions.
    - In its opening Foreword, *The Guidebook* reiterates that the appellate courts "generally follow[ ] the Uniform System of Citation that is described in *The Bluebook* and the style and usage conventions found in the Texas Law Review's *Manual on Usage & Style*." Therefore, *The Guidebook* is "purposefully concise" as it solely focuses on "the Court's deviations from these two reference books."

Notes on North Carolina's Temporary Adoption of Universal Citations:

- For a brief period (between 1 January 2021 to 1 February 2023), practitioners were required to cite to any new cases published by either North Carolina's Supreme Court or Court of Appeals according to North Carolina's universal citation format. However, in a 13 January 2023 Order, the Supreme Court of North Carolina rescinded this mandate, effective 1 February 2023. (*See* corresponding 13 January 2023 Press Release)
- In other words, continue to utilize the traditional citation method to cite to any North Carolina case law.