

NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Adopted 13 June 1975, with amendments received through ~~25 January 2007~~ 2 July 2009.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.
Amended: 14 April 1976;
8 December 1988 -- 3(a), (b), (c), (d) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;
8 June 1989 -- 3(b) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;
28 July 1994 -- 3(c) -- 1 October 1994;
6 March 1997 -- 3(c) -- effective upon adoption 6 March 1997;
18 October 2001 -- 3(c) -- effective 31 October 2001;
1 May 2003 -- 3(b)(1), (2);
6 May 2004 -- 3(b) -- effective 12 May 2004;
27 April 2006 -- 3(b) -- effective 1 May 2006 and applies to all cases appealed on or after that date.

Reenacted and Amended: 2 July 2009 -- amended 3(b) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

RULE 3A-1 **APPEAL IN QUALIFYING JUVENILE CASES - HOW AND WHEN TAKEN; SPECIAL RULES**

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

(b) ——— *Special Provisions Protecting the Identity of Juveniles.* - For appeals filed pursuant to this rule and for extraordinary writs filed in ~~cases to which these provisions apply, the name of the juvenile who is the subject of the action, and of any siblings or other household members~~ this rule applies, the identity of involved persons under the age of eighteen, at the time of the proceedings in the trial division (covered juveniles) shall be referenced only by the use of initials ~~in all filings, or pseudonyms in briefs, petitions, and all other filings, and shall be similarly redacted from all documents, exhibits, appendixes, or arguments submitted to with such filings. If the parties desire to use pseudonyms, they shall stipulate in the record on appeal to the pseudonym to be used for each covered juvenile. Courts of the appellate division are not bound by the stipulation, and case captions will utilize initials. Further, the addresses and social security numbers of all covered juveniles shall be excluded from all filings and documents, exhibits, appendixes, and arguments. In cases subject to this rule, the first document filed in the appellate court with the exception of sealeds and the record on appeal shall contain the notice required by Rule 9(a).~~

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

Filings in cases governed by this rule that are not subject to substitution and redaction requirements will not be published on the Court's electronic filing site and will be available to the public only with the permission of a court of the appellate division. In addition, the juvenile's address; and social security number; and date of birth shall be excluded from all filings, documents, exhibits, or arguments with the exception of sealed verbatim transcripts submitted pursuant to ~~subdivision (b)(1) below~~ or Rule 9(c).

In addition, a(c) *Expediting Filings.* Appeals filed pursuant to these provisions shall adhere strictly to the expedited procedures set forth below:

(1) *Transcripts.*

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

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

When there is no order establishing the indigency of the appellant, the appellant shall have ten days from the date that the transcriptionist is assigned to make written arrangements with the assigned transcriptionist for the production and delivery of the transcript of the designated proceedings. If such written arrangement is made, the transcriptionist shall prepare and deliver a transcript of the designated proceedings to the appellant and provide copies to the office of the clerk of the Court of Appeals and to the respective parties to the appeal at the addresses provided within forty-five days from the date of assignment. The non-indigent appellant shall bear the cost of the appellant's copy of the transcript.

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

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

(2) *Record on Appeal.*

Within ten days after receipt of the transcript, the appellant shall prepare and serve upon all other parties a proposed record on appeal constituted in accordance with Rule 9. Trial counsel for the appealing

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party shall have a duty to assist appellate counsel, if separate counsel is appointed or retained for the appeal, in preparing and serving a proposed record on appeal. Within ten days after service of the proposed record on appeal upon an appellee, the appellee may serve upon all other parties:

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

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

1. the appellant shall file his or her proposed record on appeal, and
2. an appellee shall file his or her objections, amendments, or proposed alternative record on appeal.

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

(3) *Briefs.*

Within thirty days after the record on appeal has been filed with the Court of Appeals, the appellant shall file his or her brief in the office of the Clerk of the Court of Appeals and serve copies upon all other parties of record. Within thirty days after the appellant's brief has been served on an appellee, the appellee shall file his or her brief in the office of the Clerk of the Court of Appeals and serve copies upon all other parties of record. Motions for extensions of time to file briefs will not be allowed absent extraordinary circumstances.

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

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

ADMINISTRATIVE HISTORY

Adopted: 27~~8~~ April 2006 – effective 1 May 2006 and applies to all cases appealed on or after that date.

Amended: 11 June 2008 – 3A(b)(1) – effective 1 December 2008;

Recodified former Rule 3A as Rule 3.1 and

Reenacted Rule 3.1 as amended: 2 July 2009 -- rewrote 3.1(b); renumbered subsections (c) & (e); amended 3.1(c)(1) & (2); added 3.1(d) -- effective 1 October 2009 and applies to all cases appealed on or after that date.