

# A Style Manual for the North Carolina Rules of Appellate Procedure

## Appellate Rules Committee

Latest revision date: April 2021

[www.ncbar.org/members/committees/appellate-rules](http://www.ncbar.org/members/committees/appellate-rules)

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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 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 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](mailto:NCAppellateStyleManual@gmail.com).

<p>This Style Manual was first published on 13 May 1999. The latest revision date is shown on the cover page. The latest edition of the manual may also be viewed and downloaded <a href="#">here</a>.</p>
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## Additional Resources

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

- The Appendixes to the Rules set forth various forms and examples. Although the Appendixes have historically not been considered an “authoritative source on parity with the [R]ules,”<sup>1</sup> there are provisions in the Rules themselves that expressly incorporate certain requirements set forth in the Appendixes. See, e.g., N.C. R. App. P. 26(g)(1) (“The format of all papers presented for filing shall follow the additional instructions found in the [A]ppendixes to these [R]ules.”). The examples in this Style Manual therefore reflect compliance with both the Rules and the Appendixes. In any event, the Appendixes can be quite helpful to practitioners. The timetables in Appendix A, for example, can serve as an excellent roadmap for an appeal.
- There are several other invaluable resources, including:
  - North Carolina Rules of Appellate Procedure Checklist;
  - [Notice of Appeal Tip Sheet](#);
  - [Guide to Appealability of Interlocutory Orders](#); and
  - Elizabeth Brooks Scherer & Matthew Nis Leerberg, *North Carolina Appellate Practice and Procedure* (LexisNexis, 1st ed., 2019).
- Finally, the Committee would be remiss if it did not point practitioners to another source of examples of appellate pleadings: <https://www.ncappellatecourts.org/>. This website contains copies of the records on appeal and briefs of cases filed in the North Carolina Court of Appeals and Supreme Court in recent years. Of course, practitioners should take care not to rely solely on the contents of such documents, but they should always be guided by the Rules and their own good sense.

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<sup>1</sup> The 2017 version of North Carolina Rules of Appellate Procedure included a preamble that stated: “Appendixes are published with the rules for their helpfulness to the profession. Although authorized to be published for this purpose, they are not an authoritative source on parity with the rules.” N.C. R. App. P. pmb1. (2017), *reprinted at* 369 N.C. 763, 764. However, this preamble was omitted when the Rules were codified on 7 January 2019.

## 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 appeal for failure to include notice of appeal in record).
- Likewise, failure to properly serve the Notice of Appeal can subject the appeal to dismissal. *See Melvin v. St. Louis*, 132 N.C. App. 42, 43, 510 S.E.2d 177, 177 (1999) (finding that an oral notice of appeal before the trial court is insufficient notice of appeal in a civil action under Rule 3). The certificate of service for the Notice of Appeal should therefore also be included in the record.
- For appeals from the superior or district court, 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).
  - 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 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, however, the Notice of Appeal is 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).
- For additional tips and information about the Notice of Appeal, see the Appellate Rules Committee's [Notice of Appeal Tip Sheet](#).

## I. Notice of Appeal

### Notes on Fees and Costs Associated with Filing an Appeal:

- Appendix F 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. Printing costs for the record and the briefs are billed separately.
- In an appeal from the Court of Appeals to the Supreme Court based on a dissent, the appellant submits to the Supreme Court the \$10.00 docketing fee and a \$250.00 appeal bond. In addition, the appellant must also send a \$10.00 certification fee to the Court of Appeals. See N.C. R. App. P. Appendix F. In such a case, the Notice of Appeal is filed with the clerks of both the Supreme Court and the Court of Appeals. See N.C. R. App. P. 14(a).
- 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 and submits to the Court of Appeals a \$10.00 certification fee. See N.C. R. App. P. Appendix F.
- If the appellant files a Notice of Appeal based on a dissent and simultaneously files a petition for discretionary review of an issue on which the Court of Appeals was unanimous, 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, and the appellant immediately submits to the Court of Appeals a \$10.00 certification fee. See N.C. R. App. P. Appendix F.
- A Notice of Appeal based on a constitutional question is treated like a petition for discretionary review because the Supreme Court must first determine if the constitutional question is “substantial.” Thus, when a Notice of Appeal based on a constitutional question is filed, the appellant submits to the Supreme Court a \$10.00 docketing fee with the Notice of Appeal. If the Supreme Court accepts the appeal, it will issue a briefing schedule, at which time the appellant should submit a \$250.00 appeal bond to the Supreme Court and a \$10.00 certification fee to the Court of Appeals.

## I. Notice of Appeal

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

I. Notice of Appeal

AVERY COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS 1234

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or 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 of  
[Judge's Name], Superior Court Judge, entered on 15 November  
2018, in the Superior Court of Avery County, which dismissed  
Plaintiff's action.



I. Notice of Appeal

This the 21st day of November, 2018.

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

---

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

I. Notice of Appeal

CERTIFICATE OF SERVICE

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

[Name and address of opposing counsel]

This the 21st day of November, 2018.

---

[Name of Counsel]

I. Notice of Appeal

*[Sample Notice of Appeal in a Juvenile Case]*

EVERY COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

15 J 1234

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 and filed 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.

I. Notice of Appeal

This the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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

I. Notice of Appeal

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF APPEAL and REQUEST FOR APPOINTMENT OF COUNSEL has been served on the parties listed below by:

( ) depositing said notice in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.

*[Name and address of attorney or party served in this manner]*

( ) hand-delivery to the attorney or party by leaving it at the attorney's office with a partner or employee.

*[Name of attorney or party served in this manner]*

( ) sending it to the attorney's office by a confirmed facsimile transmittal for receipt by 5:00 P.M. Eastern Time.

*[Insert name and fax number of attorney served in this manner]*

This the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
[Name of Counsel]

## I. Notice of Appeal

### 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.
- As of January 2019, some juvenile cases are appealed directly to the Supreme Court. See N.C. Gen. Stat. § 7B-1001(a1).
- 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.” N.C. R. App. P. 3.1(c). 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).
- See A Typical Printed Record on Appeal for a Juvenile Case, *infra*, for examples of how to compile the other sections of the record on appeal for juvenile 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](#);

## I. Notice of Appeal

- 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 Juvenile Defender](#), which for example, lists a variety of resources, including more information regarding Preserving the Record on Appeal in Delinquency Cases.

## I. Notice of Appeal

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

#### Notes on Notice of Appeal to the Supreme Court:

- 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).
- To the right of the parties' names should appear at least the Court of Appeals docket number. The Rules and Appendixes are not clear on whether other information should be included as well. 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.
- For appeals of right to the Supreme Court based on a constitutional question, see N.C. Gen. Stat. § 7A-30(1) (2017), the Appendixes contain a detailed example of the kind of description of the issue that the Court requires. See N.C. R. App. P. Appendix D.
- If the appellant wishes to present issues beyond those that formed the basis of the dissenting opinion in the Court of Appeals, the appellant must do so by filing a petition for discretionary review as to the additional issues. See N.C. R. App. P. 14, 15, Appendix D. Such a petition may be filed with the Notice of Appeal, in a separate paper, or may be contained within the Notice of Appeal itself. See N.C. R. App. P. 14(b)(1).



I. Notice of Appeal

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or Order on Appeal],

Defendant.

**From Avery County**  
**[Case Number from Court of  
Appeals]**

**NOTICE OF APPEAL BASED ON DISSENT IN NORTH  
CAROLINA COURT OF APPEALS PURSUANT TO N.C. GEN.  
STAT. § 7A-30(2) & N.C. R. APP. P. 14**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA

Plaintiff [name] hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals, issued on 6 December 2018, which was entered with a dissent by the Honorable Suzy McGillicutty. The Court of Appeals' opinion and dissent in this case are attached hereto as EXHIBIT A. The dissent by Judge McGillicutty was based on the following issues, which Plaintiff will present to the Supreme Court of North Carolina for appellate review:

I. Notice of Appeal

I. Did the Court of Appeals' majority err in affirming the district court's award of alimony to Defendant?

II. Did the Court of Appeals' majority err in affirming the district court's award of 83% of the marital estate to Defendant in equitable distribution?

This the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

---

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

I. Notice of Appeal

CERTIFICATE OF SERVICE

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

[Name and address of opposing counsel]

This the \_\_\_\_ day of \_\_\_\_\_, 2019.

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[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, 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.
- 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 on appeal." N.C. R. App. P. 9(c) (emphasis added).
- By convention, the appellate courts disfavor condensed transcripts (in which multiple pages are 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.

## II. Transcript Contract and Documentation

### Notes on Recent Amendments to the Transcript Rules:

- On 17 November 2020, the Supreme Court of North Carolina amended the Rules governing the process for ordering and filing transcripts in both civil and criminal appeals, but the bulk of these amendments were made to Rule 7. The amended Rules apply to all appeals noticed on or after 1 January 2021. See [17 November 2020 Order](#) Amending the Rules of Appellate Procedure.
- Because amended Rule 7 differs so substantially from the Rule's prior version, the following addresses the principle distinctions between the appeals noticed on or after 1 January 2021 (Section II(a)) and in appeals noticed on or before 31 December 2020 (Section II(b)).
- In essence, the 17 November 2020 Amendments updated the transcript ordering and filing process as follows:
  - The Supreme Court introduced two standardized forms to streamline the transcript ordering process: the Appellate Division Transcript Contract form and the Appellate Division Transcript Documentation form. As discussed below, the use of these forms is mandatory in almost every appeal noticed on or after 1 January 2021. (Prior to the 17 November 2020 Amendments, there were no standard forms for the transcript contracts or documentation.)
  - The party ordering the transcript(s) is no longer required to file a copy of the transcript contract with the trial court. (Prior to the 17 November 2020 Amendments, the parties were required to file a copy of the transcript contract with the clerk of the trial tribunal.)
  - The appellant now files all transcripts with the applicable appellate court. (Prior to the 17 November 2020 Amendments, the court reporter(s) hired to prepare each transcript would file his or her assigned transcript(s) with the applicable appellate court.)

## II(a). Transcript Rules for Appeals Noticed on or after 1 January 2021

### Notes on Transcript Contracts for Appeals Noticed on or after 1 January 2021:

- In most appeals noticed on or after 1 January 2021, 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 this general rule 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).
- The current version of the [Appellate Division Transcript Contract form](#) can be found on the North Carolina Judicial Branch's official [website](#). However, 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 the appeal arises under Rule 3.1 or involves an indigent party who is entitled to appellate counsel, 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

## II. Transcript Contract and Documentation

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).

- Under the amended Rules, a party ordering a transcript does not need to file the transcript contract 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 Transcript Documentation for Appeals Noticed on or after 1 January 2021:

- Any party that orders a transcript "***must*** complete an Appellate Division Transcript Documentation form." N.C. R. App. P. 7(b)(3) (emphasis added).
- The [Appellate Division Transcript Documentation form](#) can be found on the North Carolina Judicial Branch’s official [website](#). However, 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.
- In addition to service of the Appellate Division Transcript Documentation form, any party serving Transcript Documentation also must serve a copy of all pre-appeal transcripts to be filed with the Appellate Division.
- Under the amended Rules, however, the ordering party is *not* also required to file the completed Appellate Division Transcript Documentation form with either the clerk of the trial tribunal or appellate court.

## II. Transcript Contract and Documentation

### Notes on Delivery and Filing of the Transcript for Appeals Noticed on or after 1 January 2021:

- 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 newly amended 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). N.C. R. App. P. 7(e)(1).
  - 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).
- Once the record on appeal has been filed and docketed, "the appellant must file each transcript that the parties have designated as part of the record on appeal." N.C. R. App. P. 7(f). The appellant must file each transcript "[a]s soon as practicable after the appeal is docketed." *Id.*
  - Unless an exception has been granted for “good cause” shown, the appellant “**must** file each transcript electronically,” N.C. R. App. P. 7(f) (emphasis added), and directed to with “the clerk of the appellate court in which the appeal has been docketed,” N.C. R. App. P. 9(c)(3)(b).



## II(b). Transcript Rules for Appeals Noticed on or before 31 December 2020

Notes on Transcript Contracts and Documentation for Appeals Noticed on or before 31 December 2020:

- As previously stated, the Supreme Court of North Carolina amended all Rules governing the process for ordering and filing transcripts in both civil and criminal appeals on 17 November 2020. See [17 November 2020 Order](#) Amending the Rules of Appellate Procedure. The amended Rules apply to all appeals noticed on or after 1 January 2021. *Id.* **The following notes and examples, reflected in Section II(b) of this Style Manual, are only applicable to appeals noticed on or before 31 December 2020.**
- If the appellant elects to obtain a verbatim transcript, the appellant must contract for the transcription of the proceedings within 14 days after filing the Notice of Appeal. See N.C. R. App. P. 7(a) (2020).
  - If there is an order establishing the indigency of a civil party or criminal defendant, however, then a transcript contract is not required. Rather, the trial court clerk orders the transcript and reflects as much in the appeal entries. See N.C. R. App. P. 7(a)(1)-(2) (2020).
- There is no required format for the transcript contract. However, Rule 7(a)(1) sets forth certain information that must be included in the contract for both civil and criminal cases. Below are two examples of transcript contracts—one in letter format and one in pleading format.
- Once it is prepared, the transcript contract must be filed with the clerk of the trial tribunal and served on all other parties and the court reporter. The transcript contract is usually filed and served as an attachment to a filing titled “Transcript Documentation.” (See below for an example of this Transcript Documentation filing.)
  - Taken together, the transcript contract and corresponding filing are often jointly referred to as the “Transcript Documentation.”
- Rule 7(a) requires that the appellant *contract* within 14 days, but the Rules are silent as to when the Transcript Documentation must be filed and served. See N.C. R. App. P. 7(a) (2020) (addressing the requirements for ordering the transcript in both civil and criminal cases). The safest practice is to enter into the contract, file it with the trial court, and serve it on other parties, all within 14 days of the filing of the Notice of Appeal.
- The Rules specifically require that the Transcript Documentation be filed with the clerk of the trial tribunal. However, 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) (2020). To comply with these provisions, the appellant may include the transcript contract in the record or may include a stipulation that the transcript contract was properly filed and served.
- Within 14 days after the appellant serves the Transcript Documentation, the appellee may contract for any additional parts of the proceedings the appellee deems necessary. See N.C. R. App. P. 7(a) (2020). In such instance, the appellee will then be required to file their own Transcript Documentation with the trial tribunal

## II. Transcript Contract and Documentation

and serve a copy of the same upon all parties to the appeal and the contracted transcriptionist.

- Rule 7(a) does not specify the time in which an appellee must contract for a transcript if the appellant does not do so. As a practice pointer, it is advisable in such a situation for the appellee to order any desired transcript promptly after it has become clear that the appellant does not intend to do so.
- In some instances, the appellant may have already ordered and received the transcript before filing the Notice of Appeal. The Rules do not specify whether a transcript documentation must be filed when the appellant already has the transcript in hand. The better practice is to file a transcript documentation in accordance with Rule 7(a) to give notice to the appellee and to the court reporter as to what transcripts will be included in the record. Nevertheless, the proposed record is still generally due within 35 days of the filing of the Notice of Appeal, because Rule 11(a) makes the appellant's proposed record due 35 days after the reporter certifies delivery of the transcript or 35 days after the appellant files notice of appeal, whichever is later.

II. Transcript Contract and Documentation

*[Sample Contract for Transcription for Appeals Noticed on or before 31  
December 2020]*

December 1, 2017

Jane Doe  
Court Reporter, Inc.  
123 Steno Lane  
Raleigh, NC 27601

Re: *Plaintiff v. Defendant, Avery County - 15 CVS 1234*

Dear Ms. Doe:

As we discussed by telephone earlier today, this letter confirms our contract for a transcript for the appeal in the above-referenced case. We have agreed that you will prepare a complete transcript of the proceedings [except for the selection of the jury and the attorneys' opening and closing statements], which took place in this case from 12 November 2017 through 15 November 2017. We have agreed that we will pay your usual and customary fees for this transcription.

Rule 7(b) of the North Carolina Rules of Appellate Procedure makes this transcript due in electronic "PDF" format sixty (60) days after service of this contract. We would appreciate receiving the transcript as soon as possible. If, however, circumstances arise that will make it difficult for you to meet that deadline, please let me know at once, and I will assist you in seeking an extension. Please send a compact disc with the transcript in PDF format to [Name of Counsel] at 160 N. Main Street, Newland, NC 28786.

If I can answer any questions, please feel free to call me at (919) 555-9876. Thank you for your help with this appeal.

Sincerely,

[LAW FIRM NAME]  
[Name of Counsel]

II. Transcript Contract and Documentation

*[Alternative Sample Contract for Transcription for Appeals Noticed on or before 31 December 2020]*

EVERY COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS 1234

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or Order on Appeal],  
Defendant.

**CONTRACT**

The undersigned hereby contracts with Jane Doe that upon receipt of payment of a \$3,150.00 deposit, the transcript of the proceedings in the above-captioned matter from 12 November 2017 through 15 November 2017 is duly ordered.

The undersigned agrees that payment of the balance due for said transcript will be paid immediately upon delivery of said transcript, and that if the transcript order is cancelled, the undersigned will be responsible for payment for any completed portion of the transcript exceeding the deposit.

## II. Transcript Contract and Documentation

The undersigned understands that if the transcript is completed and the total cost of the transcript is less than the deposit paid, the difference will be refunded.

This the \_\_\_ day of \_\_\_\_\_, 2018.

---

[Name of Counsel]  
Counsel for Plaintiff-Appellant

---

Jane Doe, Signed 12/1/17  
Official Superior Court Reporter

II. Transcript Contract and Documentation

*[Sample Transcript Documentation for Appeals Noticed on or before 31  
December 2020]*

AVERY COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS 1234

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or Order on Appeal],  
Defendant.

**TRANSCRIPT  
DOCUMENTATION**

Pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure, Plaintiff [Full Name] hereby files a copy of her agreement with Jane Doe, Court Reporter Inc., 123 Steno Lane, Raleigh, North Carolina, 27601, to contract for the transcription of the proceedings that took place from 12 November 2017 to 15 November 2017 in this action. (See Attachment A.)

## II. Transcript Contract and Documentation

This the \_\_\_ day of \_\_\_\_\_, 2018.

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

---

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

## II. Transcript Contract and Documentation

### Notes on Production and Delivery of Transcript for Appeals Noticed on or before 31 December 2020:

- Rule 7(b) imposes a number of requirements on the appellant and the court reporter whenever a transcript is ordered. Pay close attention to the duties described in this Rule, including the following:
  - The court reporter has 60 days to prepare and deliver the transcript “to the parties . . . as ordered.” N.C. R. App. P. 7(b)(1), (2) (2020).
  - If the court reporter will not be able to deliver the transcript in such time, it is the duty of the appellant to request an extension of up to 30 days from the trial tribunal. N.C. R. App. P. 7(b)(1) (2020). Additional motions for extensions must be sought from the appellate court. *Id.*
  - After the court reporter delivers the transcript, the court reporter must “certify to the clerk of the trial tribunal that the transcript has been so delivered and shall send a copy of such certification to the appellate court to which the appeal is taken.” N.C. R. App. P. 7(b)(2) (2020).
  - When the record on appeal is filed, the appellant “shall promptly notify the court reporter” of that fact. N.C. R. App. P. 7(b)(2) (2020). It is good practice to notify the court reporter in writing and contemporaneously with the filing of the record on appeal, should any question arise as to whether the appellant has complied with this Rule.
  - The court reporter must then “electronically file the transcript with that court using the docket number assigned by that court.” N.C. R. App. P. 7(b)(2) (2020). Of course, the court reporter cannot do so until the docket number is assigned. Thus, the Rules may require that the appellant contact the court reporter twice: once to notify the court reporter that the record on appeal has been filed, and again to forward the docket number when it arrives.
  - In juvenile cases governed by Rule 3.1, the transcriptionist must deliver the transcript within 40 days after receiving the assignment from the court reporting manager. N.C. R. App. P. 3.1(c) (2020).



### III. The Record on Appeal

### **III. The Record on Appeal**

### III. The Record on Appeal

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

III. The Record on Appeal

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[Plaintiff's Name as in Final Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final Judgment or 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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### III. The Record on Appeal

#### 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. Note that the Judicial Districts were realigned in 2019. 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.
- 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.
- Appendix C provides a “suggested order” for the items to be included in the record on appeal, which depend on the type of case on appeal. Items are included because they are “necessary for an understanding of all issues presented on appeal,” see N.C. R. App. P. 9(a)(1), and “should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal,” N.C. R. App. P. 9(b)(1).
- 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.
- See Appendix C for other items that might be included in the record and listed in the index.
- 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 2017 jury verdict and judgment dismissing Plaintiff's claim, rendered during the 1 November 2017 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 2017.

The record on appeal was filed in the Court of Appeals on \_\_\_\_\_ 2018 and was docketed on \_\_\_\_\_ 2018.

#### Notes on Page Numbers and the Statement of Organization of Trial Court:

- Page numbers are centered and flanked by dashes at the top of each page of the record on appeal. See N.C. R. App. P. Appendix B. 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 record 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.
- The first page after any cover page, index, or table of authorities 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.
- By convention, spaces are provided in the Statement of Organization of Trial Court section for the Clerk's office to insert, by hand, the dates of filing and docketing.
- To find the session of court from which the appeal is taken, consult the cover page of the trial transcript and the introductory paragraph of the order being appealed, which often include such information.

*[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 2017. 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," because a copy of the 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 2017. The Administrative Law Judge issued a Decision on 6 December 2017. The Environmental Management Commission, pursuant to N.C. Gen. Stat. § 143B-282.1(b), issued the Final Agency Decision dated 4 January 2018, which was served on 5 January 2018. On 25 January 2018, 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]

[Copy of Answer]

Note on Date Stamps:

- Rule 9(b)(3) requires all papers to show the date on which they were filed. Often the Clerk's time stamp becomes illegible when copied. 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.

[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]

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 jury's verdict sheet]

[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 2017 through 15 November 2017, 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 on appeal, but rather the printed record must include a statement explaining that a verbatim transcript will be filed separately by the court reporter after a docket number is assigned to the appeal. See N.C. R. App. P. 9(a)(1)(e).
- By convention, the appellate courts 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.

[Certificate of service of Transcript Documentation on parties and on court reporter]

## 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, which governs settlement of the record on appeal, was amended significantly in 2004 and 2007. The amendments limited and clarified judicial settlement of the record on appeal. Judicial settlement is now 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).
- The 2007 amendments also created a new type of document, the "Rule 11(c) Supplement to the Printed Record on Appeal." If either party objects to inclusion of a particular document in the record, and the parties cannot agree on its inclusion, then per the 2007 amendments, that document should usually be submitted to the appellate court as part of the Rule 11(c) Supplement to the Printed Record.
- Note also that Rule 11(c) provides that "[i]f a party does not agree to the inclusion or specification of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the Rule 11(c) Supplement." N.C. R. App. P. 11(c).
- 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 \_\_\_\_)."
- The Rules also require "a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) [to be] filed with the record on appeal." 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.
- On 19 December 2018, Rule 11(c) was amended to only require the filing of one copy of any Rule 11(c) Supplement rather than three copies as previously required. The amended Rule became effective on 1 January 2019. See [19 December 2018 Order](#) Amending the Rules of Appellate Procedure..

[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), 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 2018. The certificate showing service of the proposed record may be omitted from the settled record.

2. Defendant's objections were served on 10 March 2018. 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 2018.

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

2. Defendant's objections were served on 10 March 2018. 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 30th day of March, 2018.

For the Plaintiff-Appellant:

\_\_\_\_\_  
[Name of Counsel]

For the Defendant-Appellee:

\_\_\_\_\_  
[Name of Counsel]

### III. The Record on Appeal

#### 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).
- On 19 December 2018, Rule 9(d)(2) was amended to only require the filing of one copy of any Rule 9(d)(2) documentary exhibits rather than three copies as previously required. The amended Rule became effective on 1 January 2019. See [19 December 2018 Order](#) Amending the Rules of Appellate Procedure.

[*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.

### III. The Record on Appeal

#### 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 the confidentiality. The above sample stipulation is one way to do so, but it is not necessarily the only way.
- As of 1 January 2019, Rule 42 now governs sealed items and identification numbers. 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."

### III. The Record on Appeal

#### 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:

- The 2009 amendments abolished the former practice of "assigning error" to limit the scope of the appeal. In place of such assignments of error, the appellant (and, if necessary, the appellee) now need only present "proposed issues on appeal" in the record. 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).
- Table 4 in Appendix C includes sample proposed issues on appeal. Each example reads, "Did the trial court err in . . . ?" Unlike assignments of error, a proposed issue on appeal need not state the "legal basis" for the error and is not binding on appeal.
- Nevertheless, it remains the best practice to identify and challenge here any findings of fact that underlie a conclusion of law that the appellant has listed as a proposed issue.



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 to the Printed Record on Appeal." 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.
- Any such supplement is generally due no later than the due date for the responsive brief.
- 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 in filing the record on appeal and in filing and serving briefs and other papers. Due to the varieties of deadlines and service methods, practitioners should consult Rule 26.

### III. The Record on Appeal

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

III. The Record on Appeal

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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### III. The Record on Appeal

#### 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. Note that the Judicial Districts were realigned in 2019. 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.
- 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.
- Appendix C provides a "suggested order" for the items to be included in the record on appeal, which depend on the type of case on appeal. Items are included because they are "necessary for an understanding of all issues presented on appeal," see N.C. R. App. P. 9(a)(1), and "should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal," N.C. R. App. P. 9(b)(1).
- 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.
- See Table 3 in Appendix C for other items that might be included in the record and listed in the index.

## ORGANIZATION OF TRIAL COURT

This case came on for trial before the Honorable Julie Smith at the 30 November 2018 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 2018. Mr. Doe filed and served written notice of appeal on 3 December 2018.

The record on appeal was filed in the Court of Appeals on \_\_\_\_\_ and docketed on \_\_\_\_\_.



### III. The Record on Appeal

#### Notes on Statement of Organization of Trial Court:

- Page numbers are centered and flanked by dashes at the top of each page of the record on appeal. See N.C. R. App. P. Appendix B. 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 record 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.
- 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.
- By convention, spaces are provided in the statement of organization of trial court for the Clerk's office to insert, by hand, the dates of filing and docketing.
- The Statement of Organization of Trial Court is prescribed by Rule 9(a), which states "[t]he record on appeal 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." N.C. R. App. P. 9(a)(3)(b).
- 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]

Note on Warrants:

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

[Copy of indictment]

[Copy of arraignment and plea]

Note on Date Stamps:

- Rule 9(b)(3) requires all papers to show the date on which they were filed. Often the Clerk's time stamp becomes illegible when copied. The easiest solution is to make a clear, handwritten or typed date entry on the copy you are including 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.

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.

### III. The Record on Appeal

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#### 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 on appeal. Rather, the printed record must include a statement explaining that a verbatim transcript will be filed separately by the court reporter after a docket number is assigned to the appeal. See N.C. R. App. P. 9(a)(1)(e).
  - The 2009 amendments to the Rules involved substantial changes to the handling of verbatim transcripts of trial-level proceedings. Whereas the appellant used to file a printed copy of the transcript with the final record on appeal, the court reporter now files the transcript directly with the appellate court in electronic format. See N.C. R. App. P. 7.
- For criminal cases in which there is no order establishing the indigency of the defendant, the defendant must contract for the transcription of the proceedings as in civil cases. N.C. R. App. P. 7(a)(2).
- When indigency has been established, however, the clerk of the trial court orders the transcript of the proceedings. N.C. R. App. P. 7(a)(2). The clerk serves papers on the court reporter or transcriptionist, who then produces and serves the transcript. See N.C. R. App. P. 7(b).

#### [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."

### III. The Record on Appeal

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[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 record on appeal 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]

### III. The Record on Appeal

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

##### Notes on the Notice of Appeal:

- "Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal" by either giving oral notice of appeal at trial or "by 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, however, 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).
- "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).
- "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]

### III. The Record on Appeal

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[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 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 2019.

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 on Appeal, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

For the Defendant-Appellant:

\_\_\_\_\_  
[Name of Counsel]

For the State:

\_\_\_\_\_  
[Name of Counsel]



### III. The Record on Appeal

#### 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).
- On 19 December 2018, Rule 9(d) was amended to only require the filing of one copy of any Rule 9(d) documentary exhibits rather than three copies as previously required. The amended Rule became effective on 1 January 2019. See [19 December 2018 Order](#) Amending the Rules of Appellate Procedure.

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:

- The 2009 amendments abolished the former practice of "assigning error" to limit the scope of the appeal. In place of such assignments of error, the appellant (and, if necessary, the appellee) now need only present "proposed issues on appeal" in the record. Rule 10 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).
- Table 4 in Appendix C includes sample proposed issues on appeal. Each example reads, "Did the trial court err in . . . ?" Unlike assignments of error, a proposed issue on appeal need not state the "legal basis" for the error and is not binding on appeal.
- Nevertheless, it remains the best practice to identify and challenge here any findings of fact that underlie a conclusion of law that the appellant has listed as a proposed issue.

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

I hereby certify that the foregoing Proposed Record on Appeal has been duly served by mailing a copy in a postage-prepaid envelope, properly addressed, as follows:

[Name of Counsel for the State]  
[Mailing Address of Counsel for the State]

This the 7th day of February, 2019.

---

[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]

*Attorneys for Defendant-Appellant*

III. The Record on Appeal

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]

\*\*\*\*\*

CERTIFICATE OF FILING AND SERVICE  
OF SETTLED RECORD ON APPEAL

\*\*\*\*\*

I hereby certify that the Settled Record on Appeal has been filed  
by sending it first-class mail to the following:

Mr. Daniel Horne  
Clerk of Court, North Carolina Court of Appeals  
P.O. Box 2779  
Raleigh, NC 27602

I hereby certify that a copy of the Settled Record on Appeal has  
been served on the State by sending it through first-class mail to the  
following counsel:

[Name of Counsel for the State]  
[Mailing Address of Counsel for the State]

### III. The Record on Appeal

This the \_\_\_\_ day of \_\_\_\_\_, 2019.

---

[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]

*Attorneys for Defendant-Appellant*

**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 in filing the record on appeal and in filing and serving briefs and other papers. Due to the varieties of deadlines and service methods, practitioners should consult Rule 26.

### III. The 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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### III. The 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 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. The Record on Appeal

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

ITEM	HOW TO SUBMIT <sup>2</sup>	WHEN TO SUBMIT
Printed Record on Appeal	One copy filed by appellant electronically “if permitted to do so by electronic-filing site.” See N.C. R. App. P. 12(c), 26(a)(2). Will be reproduced by appellate court in black and white.	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 on Appeal	One copy filed by appellant electronically “if permitted to do so by electronic-filing site.” See N.C. R. App. P. 12(c), 26(a)(2).	With printed record or as soon thereafter as possible. See N.C. R. App. P. 12(a).
Rule 9(d) Documentary Exhibits	One copy filed by appellant electronically “if permitted to do so by electronic-filing site.” See N.C. R. App. P. 12(c), 26(a)(2).	With printed record or as soon thereafter as possible. See N.C. R. App. P. 12(a).
Rule 9(d) Oversized or Tangible Exhibits	Filed by appellant in original form or, if retained by superior court, delivered by clerk of superior court to clerk of appellate court. See N.C. R. App. P. 9(d)(2).	With printed record or, if delivered by clerk, promptly upon request and when a docket number has been assigned. See N.C. R. App. P. 9(d)(2).
Deposition or Administrative Hearing Transcripts	One copy filed by appellant electronically, unless “good cause” shown to file in paper form. See N.C. R. App. P. 12(c), 26(a)(2).	With printed record. See N.C. R. App. P. 12(a).
Transcript of the Trial Tribunal Proceedings	One copy filed electronically, unless “good cause” shown to file in paper form. See N.C. R. App. P. 7(f), 12(c), 26(a)(2). For appeals noticed on or after 1 January 2021, transcripts must be submitted to the appellate court by the appellant. For appeals noticed on or before 31 December 2020, transcripts are submitted to the appellate court by the court reporter(s). See <a href="#">17 November 2020 Order</a> Amending the Rules of Appellate Procedure.	“As soon as practicable after the appeal is docketed.” N.C. R. App. P. 7(f).
Rule 9(b)(5) Supplement to the Printed Record on Appeal	Filed electronically or in paper form by either appellee or appellant. See N.C. R. App. P. 9(b)(a)-(b), 26(a)(2).	Unless otherwise ordered by the court, no later than the filing of a response brief or within time for filing responsive brief if none if filed. See N.C. R. App. P. 9(b)(a)-(b).

<sup>2</sup> The paper filing options do not apply to Rule 3.1 appeals, as Rule 3.1(i) provides that “counsel must file all documents electronically” unless they are “granted an exception for good cause.”

The applicable party is only required to file *one* copy of each of the above-listed items. (On 19 December 2018, the Rules were amended to only require the filing of one copy of any Rule 9(d)(2) documentary exhibits or Rule 9(b)(5) or Rule 11(c) Supplement, rather than three copies as previously required. The amended Rules became effective on 1 January 2019. See [19 December 2018 Order](#) Amending the Rules of Appellate Procedure.)

### III. The Record on Appeal

#### 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."
- 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.
- In addition to a paper copy, litigants are permitted to submit compact discs containing documentary exhibits to the appellate courts. Practitioners should coordinate that process with the appellate court clerk.

III. The Record on Appeal

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff’s Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

From Avery County  
[Case Number as in Final  
Judgment or Order on Appeal]

v.

[Defendant’s Name as in Final  
Judgment or Order on Appeal],  
Defendant.

\*\*\*\*\*

RULE 9(d) DOCUMENTARY EXHIBITS

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III. The Record on Appeal

- 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 which follow are printed in a 14-point Century Schoolbook typeface, but that is only one example of the permissible fonts. 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:
  - Prior to 1 January 2019, the appellant's brief was generally due 30 days after the date that the clerk's office mailed the printed record to the parties. See N.C. R. App. 13(a)(1) (2017), reprinted at 369 N.C. 763, 804. However, Rule 13(a)(1) was amended to now require 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).
- Unlike some documents, a brief is considered filed when it is mailed. N.C. R. App. P. 26(a)(1). Alternatively, electronic filing allows a brief to be filed in real-time as well. N.C. R. App. P. 26(a)(2).
- 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.
  - Historically, the Court of Appeals would mail the parties a blank "Appeal Information Statement" and a "Consent to Appellate Mediation" form along with the printed record. The appellant was then required to complete and file the Appellate Information Statement "at or before the time his or her appellant's brief is due" and was required to serve it the other parties to the appeal. See N.C. R. App. 41(b)(2) (2017), reprinted at 369 N.C. 763, 862.
- "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).

IV. The Briefs

No. COA17-123

TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or 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 comes but not the indictment or docket numbers of the case below. 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.

Notes on the Index to Briefs:

- 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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**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 and other authorities. See N.C. R. App. P. Appendix B. Omit pincites in this table.
- 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, it 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).
  - 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.

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or 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?

## IV. The Briefs

### 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 used to be called "Questions Presented." The 2009 Amendments changed the terminology, perhaps to suggest that the issues might mirror those "Proposed Issues on Appeal" presented in the record on appeal. Nevertheless, "[t]he phrasing of the issues presented need not be identical to that set forth in the proposed issues on appeal in the record." N.C. R. App. P. Appendix E.
- 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.
- 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 the page numbering at the top is flanked by dashes, and there is a 1-inch margin all around. Use double spacing for the text and triple spacing before the section headings ("Statement of the Facts," etc.).

STATEMENT OF THE CASE

Plaintiff commenced this trespass action by the filing of a complaint and issuance of summons on 1 January 2018. (R p 3). Defendant moved to dismiss the action on 21 January 2018. (R p 4). The Honorable John Marshall, Avery County Superior Court Judge presiding, heard arguments on the motion to dismiss on 1 April 2018. (T pp 1-19). A judgment and order dismissing the case was entered 10 May 2018. (R pp 9-14). Plaintiff filed and served notice of appeal on 8 June 2018. (R pp 19-24). A transcript of the 1 April 2018 hearing was ordered on 14 June 2018 and delivered 1 August 2018. (R pp 97-101). The time to serve the proposed record was extended by the trial division until 15 September 2018. (R p 102). The record was settled by stipulation on 1 November 2018, filed in the Court of Appeals on 13 November 2018, and docketed 15 November 2018. (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.
- The North Carolina appellate courts use the date style shown (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 identify if 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 a Rule 54(b) Certification:

- Note that Rule 54(b) of the North Carolina Rules of Civil Procedure expressly requires a final judgment as 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 makes the Rule 54(b) certification that there is no just reason for delaying the appeal. *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." *Id.*
- 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. Tarpe'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.
- Sometimes the appellee will include a Statement of the Facts that just adds some facts to the appellant's recitation.
- 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 you will later spend a lot of time explaining away in the Argument section. If you leave out a harmful fact, you can be sure the appellee will point it out to the court, and your credibility will suffer.
- The 2009 amendments made clear that 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. Appendix B, on the other hand, shows record citations without a closing period: (R pp 38-40) 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.
- Argument headers used to require citation to the corresponding assignments of error. The 2009 Amendments eliminated the need for such citation.

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) 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 a 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 \_\_\_\_\_, 2018.

**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)(6).

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

---

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

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.

---

[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 box in the word count dialog box to include textboxes, footnotes, and endnotes in your word count.

CERTIFICATE OF SERVICE

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

[Name and address of opposing counsel]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[Name of Counsel]

Notes on Certificate of Service:

- When the brief is mailed, it is considered both filed, N.C. R. App. P. 26(a)(2), and served, N.C. R. App. P. 26(c).
- For briefs filed in the Supreme Court, the certificate of service has historically required an indication of whether you filed the brief by mail, hand delivery, or electronically.

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Excerpts from cross examination of Mr. Smith.....	App. 15-19
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## Notes on Appendix:

- Following the brief is an appendix, which collects those portions of the transcript, the statutes, and the 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 inch from each 1-inch regular margin.
- The page numbers on the right refer to the *Appendix* pages on which the material appears. The 2009 Amendments eliminated any requirement that the table of contents cross-reference the brief pages on which such material is cited. 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. The Briefs

### **IV(b). A Typical Appellee's Brief**

IV. The Briefs

No. COA17-123

TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or 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 (plus an additional three days if the appellant's brief was served by mail or by email). N.C. R. App. P. 13(a)(1).
- 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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*Cochran v. Keller*, 84 N.C. App. 205, 352 S.E.2d 458  
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SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff’s Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

From Avery County

[Defendant’s Name as in Final  
Judgment or Order on Appeal],  
Defendant.

\*\*\*\*\*

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 desires to amend the appellant’s Statement of the Facts, Statement of Grounds for Appellate Review, Standard of Review, or present additional questions. 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.

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

---

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

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.

---

[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

The undersigned hereby certifies that he served a copy of the foregoing brief on counsel for Plaintiff by email addressed as follows:

[Name and email address of opposing counsel]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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 appendixes following A Typical Appellant's Brief, *supra*.]

Notes on Filing and Serving Briefs:

- When the brief is mailed, it is considered both filed, N.C. R. App. P. 26(a)(2), and served, N.C. R. App. P. 26(c).
- When a document is filed electronically on the appellate courts' e-filing website, the document can be served by email. N.C. R. App. P. 26(c).



## IV. The Briefs

### **IV(c). A Typical Memorandum of Additional Authority**

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final Judgment or 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 (2019).
2. In re A.B.Q., \_\_\_ N.C. App. \_\_\_, 710 S.E.2d 1 (2019).

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

IV. The Briefs

- 2 -

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

---

[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 the foregoing PLAINTIFF-APPELLANT'S MEMORANDUM OF ADDITIONAL AUTHORITY has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Names and addresses of counsel for all parties]

This the \_\_\_\_ day of \_\_\_\_\_, 2019.

---

[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. Extraordinary Writs

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

## V. Extraordinary Writs

### 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 Petition for Temporary Stay:

- “Upon the filing of a petition for supersedeas, the applicant may apply, either within the petition or by separate paper, 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 separate paper, 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).

V. Extraordinary Writs

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as it  
appears in Final Judgment],  
Defendant.

From Avery County  
[Case Number as in Final  
Judgment or Order on Appeal]

\*\*\*\*\*

PETITION FOR WRIT OF SUPERSEDEAS AND  
MOTION FOR TEMPORARY STAY

\*\*\*\*\*



## V. Extraordinary Writs

### 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 is 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-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.
- The petition only requires an index if it is ten pages or more in length. See *id.*

TABLE OF AUTHORITIES

**Cases**

*Barrett v. Barrett*, 122 N.C. App. 185, 468 S.E.2d 264  
(1996) ..... 6

*Estate of Nelson ex rel. Brewer v. Nelson*, 179 N.C. App.  
166, 633 S.E.2d 124 (2006) ..... 9

*Faught v. Faught*, 50 N.C. App. 635, 274 S.E.2d 883  
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**Statutes**

N.C. Gen. Stat. § 1-289 (2017) ..... 5, 6, 7, 8

N.C. Gen. Stat. § 50-20 (2017) ..... 4, 9, 10

**Rules**

N.C. R. App. P. 8 ..... 1, 7, 8

N.C. R. App. P. 23 ..... 1, 11

**Other Authorities**

Superseding and Staying Judgments: A National  
Compendium, American Bar Association,  
Chapter 36, “Superseding and Staying  
Judgments in North Carolina” ..... 6, 7

Notes on the Table of 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 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 in Final Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as it appears in Final Judgment],  
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 COURT OF APPEALS OF NORTH CAROLINA:

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 2017 entry of an order dividing the Johnsons' marital estate by equitable distribution, Defendants moved to stay the equitable distribution pending appeal of the order. The Honorable Meredith Adams of Avery County Superior Court denied Defendant's motion for stay in an order dated 25 June 2017. Defendant now petitions

this Court to stay enforcement of the equitable distribution order, and in support of this petition show 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 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 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 their 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 they sought from, and were 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 Superior Court, staying the enforcement of the equitable distribution order during the pendency of this appeal.

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

---

[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 2017.

Exhibit B. Certified copy of the Order denying Defendant's motion for stay, filed 25 June 2017.

Exhibit C. Copy of excerpts from the transcript of the deposition of Sandra Johnson, taken 4 January 2018.



## V. Extraordinary Writs

### 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 Superior Court, including documents that were served or submitted for consideration as contemplated by Appellate Rule 11.]

V. Extraordinary Writs

- 7 -

---

[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

The undersigned hereby certifies that the foregoing Petition for Writ of Supersedeas and Motion for Temporary Stay has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Opposing counsel's name and address]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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).

V. Extraordinary Writs

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[Plaintiff's Name as in Final Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final Judgment or 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 Appendix B and example below.
- Consult Rule 21 and Appendix D for the circumstances in which this petition is appropriate.

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Notes on the Index:

- 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 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 ten pages or more in length. See *id.*

TABLE OF 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 (2017) ..... 13

**Rules:**

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

**Other Authorities:**

U.S. Const. amend. IV ..... 14

Notes on Table of Authorities:

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



V. Extraordinary Writs

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[[Plaintiff's Name as in Final  
Judgment or Order on Appeal],  
Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or 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 COURT OF APPEALS OF NORTH  
CAROLINA:

Plaintiff-Petitioner, the North Carolina Insurance Association (“the Association”), respectfully petitions the Court of Appeals of North Carolina 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 2017, [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 2017 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.
- Because this writ is so flexible, the argument section of the petition is likewise flexible. Brevity, however, is always appreciated.

ATTACHMENTS

For the Court's consideration, attached to this Petition of 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 seem proper.

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

---

[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 such difficulty should consider submitting such materials as attachments to the petition or motion, using the attorney Verification to testify to their authenticity.

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

The undersigned hereby certifies that the foregoing Petition for Writ of Certiorari has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Opposing counsel's name and address]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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**

### **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, the 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).
- 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.



VII. Formatting of Appellate Filings

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or Order on Appeal],

Defendant.

From Avery County  
[Case Number from the Court of  
Appeals]

\*\*\*\*\*

PETITION FOR DISCRETIONARY REVIEW  
UNDER N.C. GEN. STAT. § 7A-31(C)

\*\*\*\*\*

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 Rule 15, Appendix D, and N.C. Gen. Stat. § 7A-31 for time limits and similar information.

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ISSUE TO BE BRIEFED ..... 4

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Notes on the Index:

- 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 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 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 (2017) ..... 13

**Rules:**

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

**Other Authorities:**

U.S. Const. amend. IV ..... 14

Notes on the Table of Authorities:

- If the Petition for Discretionary Review is fewer than ten pages, the Table of Authorities may be omitted. See N.C. R. App. P. Appendix B.
- If the Table of 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).

VI. Motions and Other Papers

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

[Plaintiff's Name as in Final Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final Judgment or Order on Appeal],

Defendant.

From Avery County  
[Case Number from the Court of Appeals]

\*\*\*\*\*

PETITION FOR DISCRETIONARY REVIEW

UNDER N.C. GEN. STAT. § 7A-31(c)

\*\*\*\*\*

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiff, the North Carolina Insurance Association (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 2018 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 Petition of Discretionary Review, the Association shows the following:

FACTS

The Association filed a complaint on 23 June 2017 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 2017 Civil Session. The Association filed notice of appeal to the Court of Appeals on 1 December 2017. The Court of Appeals affirmed the order of dismissal in a published opinion, filed 14 February 2018.

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, Rule 15 (2017); N.C. R. App. P. 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, Rule 15 (2017); N.C. R. App. P. 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.

ISSUE TO BE BRIEFED

In the event the Court 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.”

Note on the Issue to be Briefed:

- Be careful to be precise and complete in this section, because “[a]n issue may not be briefed if it is not listed in the petition.” See N.C. R. App. P. Appendix D.

Respectfully submitted, this the \_\_\_ day of \_\_\_\_\_, 2018.

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

---

[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 Petition for Discretionary Review, pursuant to N.C. Gen. Stat. § 7A-31, has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Counsel's name and address]

This the \_\_\_ day of \_\_\_\_\_, 2019.

---

[Name of Counsel]

[Attach a copy of the decision of the Court of Appeals if you are 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. 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.
- 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. N.C. R. App. P. 10(b), (c), 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.

No. COA17-123

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or Order on Appeal],

Defendant.

From Avery County

\*\*\*\*\*

MOTION TO CONSOLIDATE APPEALS

\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

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. 10 CVD 3375, was docketed on 22 April 2018.

2. A similar appeal from Forsyth County, Case No. 09 CVD 4478, was docketed on 10 May 2018.

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.

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

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

---

[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

The undersigned hereby certifies that the foregoing MOTION TO CONSOLIDATE APPEALS has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Opposing counsel's name and address]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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 extend any of the times prescribed by the Rules except the time for taking an appeal, for filing a petition for discretionary review, or for filing a petition for rehearing (or the responses to any of the above). N.C. R. App. P. 27(c).
- This example 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 prepare the transcript per Rule 7(b)(1) 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.
- 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.

No. COA17-123

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[Plaintiff's Name as in Final  
Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final  
Judgment or Order on Appeal],

Defendant.

From Avery County

\*\*\*\*\*

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

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 2018, 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 2018.

2. The parties settled the record by agreement on 22 April 2018.
3. The Record on Appeal was filed on 1 May 2018.
4. Plaintiff filed its brief on 13 June 2018.
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 2018.
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.

WHEREFORE, Defendant respectfully moves this Court under Rule 27(c) for an extension of time of twenty-one (21) days, up to and including 2 August 2018, or whatever other time the Court deems appropriate, in which to file her brief in this matter.

VI. Motions and Other Papers

- 3 -

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

---

[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

The undersigned hereby certifies that the foregoing MOTION FOR EXTENSION OF TIME TO FILE BRIEF has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Opposing counsel's name and address]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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(i)(1). The Motion for Leave to File an Amicus Curiae Brief must be served upon all parties, but the motion is generally decided without response from other parties.
- Prior to March 2018, an amicus curiae had the option to file the Motion for Leave to File an Amicus Curiae Brief first, with the proposed brief to be filed later. See [2 March 2018 Order](#) Amending Rules 28, 29, and 33.1 of the North Carolina Rules of Appellate Procedure. However, now, Rule 28(i)(2) states that "[t]he motion must be accompanied by amicus curiae's brief."
- "When amicus curiae files its motion and brief, it must serve a copy of its motion and brief on all parties to the appeal." N.C. R. App. P. 28(i)(4).
- Rule 28(i)(3) 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 brief within the time allowed for filing that party's principal brief.
  - If amicus curiae's brief does not support either party, then amicus curiae shall file its motion and proposed brief within the time allowed for filing appellee's principal brief.
- Within 30 days after having been served with the amicus curia brief, the parties may submit response briefs to an amicus curiae brief, but the response must be "limited to a concise rebuttal of arguments set out in the amicus curiae brief and shall not reiterate or rebut arguments set forth in the party's principal brief." N.C. R. App. P. 28(i)(6).
- 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.

No. COA17-123

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

[[Plaintiff's Name as in Final Judgment or Order on Appeal],

Plaintiff,

v.

[Defendant's Name as in Final Judgment or Order on Appeal],

Defendant.

From Avery County

\*\*\*\*\*

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

The North Carolina Association of Lawyers (“NCAL”) hereby requests leave, pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, to file an amicus curiae brief in support of Defendant-Appellant. The 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].

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.

- 3 -

Respectfully submitted, this \_\_\_\_ day of \_\_\_\_\_, 2018.

[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

The undersigned hereby certifies that the foregoing MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

[Names and addresses of counsel for all parties]

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

---

[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). Notably, Rule 26(g)(1) dictates:
  - “Papers filed to either appellate court for filing shall be letter size (8 ½ x 11”) with the exception of wills and exhibits”;
  - “Unglazed white paper of 16- to 20-pound substance should be utilized”;
  - “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.”
- Rule 26(g)(1) further instructs practitioners to “follow the additional instructions found in Rule 28(h)” when formatting appellate briefs and to “follow the additional instructions found in the appendixes to these rules.”
- 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) of the Rules of Appellate Procedure requires print to be in a font no smaller than 12-point and no larger than 14-point, using a proportionally spaced font with serifs.
- Prior fonts endorsed by the Rules, including Courier New, were prohibited by the 2017 changes to the Rules. Those changes became effective on 1 January 2017 and apply to all cases appealed on or after that date.
- 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).
- 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 appendixes, 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.



## VII. Formatting of Appellate Filings

### Notes on Signature Blocks:

- “Unless filed *pro se*, all original papers filed in a case will bear the original signature of at least one counsel participating in the case. . . .” N.C. R. App. P. at Appendix B. If the document is filed “electronically using the electronic-filing site at <https://www.ncappellatecourts.org>,” however, then the attorney’s physical, wet-ink signature is not required. N.C. R. App. P. 26(g)(3). (See below for more information regarding electronic filing.)
  - *Important Note:* Rule 33(a) and Appendix B dictate that all attorneys who wish to participate “in argument must have signed the brief in the case prior to that argument.” N.C. R. App. P. at 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 (discussed below) is sufficient to allow the signatory to orally argue the case.
- Said signature shall appear at the end of each document filed with either appellate court. See N.C. R. App. P. 26(g)(1). In addition to the signature of counsel of record, the signature block must also reflect “the printed name, post office address, telephone number, State Bar number and e-mail address” of the person signing. See N.C. R. App. P. 26(g)(3), Appendix B.
- Examples of these signature blocks can be found in Appendix B 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.
  - If counsel has been retained, “the firm name should be included above the signature” line. N.C. R. App. P. at Appendix B. For example:

[LAW FIRM NAME]

By: \_\_\_\_\_

[Attorney 1’s Name (N.C. State Bar No.: #####)]

By: \_\_\_\_\_

[Attorney 2’s Name (N.C. State Bar No.: #####)]

*Attorneys for Plaintiff-Appellants*

P.O. Box #####

Raleigh, NC 24600

(919) 999-9999

Attorney1@email.com

Attorney2@email.com

## VII. Formatting of Appellate Filings

- 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:

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

### Notes on Electronic Filing:

- The Court of Appeals and Supreme Court of North Carolina have embraced the electronic filing of most documents through its e-filing website: <https://www.ncappellatecourts.org/>. See N.C. R. App. P. 26(a)(2).
- Refer to this [e-filing website](#) for the current listing of which documents may be filed electronically. As of 27 April 2021, the e-filing website dictates: “Until further notice, all document types may be filed electronically in the appellate courts, including the Record on Appeal in Court of Appeals cases.”
- 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).
- Electronically filed documents need not be signed by hand. Instead, it is customary to type “Electronically submitted” where the signature would have appeared, as follows:

[LAW FIRM NAME]

\_\_\_\_\_  
Electronically submitted  
[Name of Counsel]  
*Attorney for Plaintiff-Appellant*  
160 N. Main Street  
Newland, NC 28786  
(823) 456-1245  
State Bar No. 12345  
lawyer@lawfirm.com

## VII. Formatting of Appellate Filings

- If more than one attorney is listed for a party on an electronically filed document, Rule 33(b) requires the below certification to follow the lead counsel's signature block, including the address, phone number, state bar number, and email address for each additional attorney. For example:

[LAW FIRM NAME]

Electronically submitted

[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

[Attorney 3's Name]

N.C. State Bar No. #####

Attorney3@email.com

P.O. Box 12345

Raleigh, NC 27622

(919) 999-9999

*Attorneys for Plaintiff-Appellant*

### 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 consistently used throughout any filings.

## VII. Formatting of Appellate Filings

### VII(b). Citations

#### Notes on Citations:

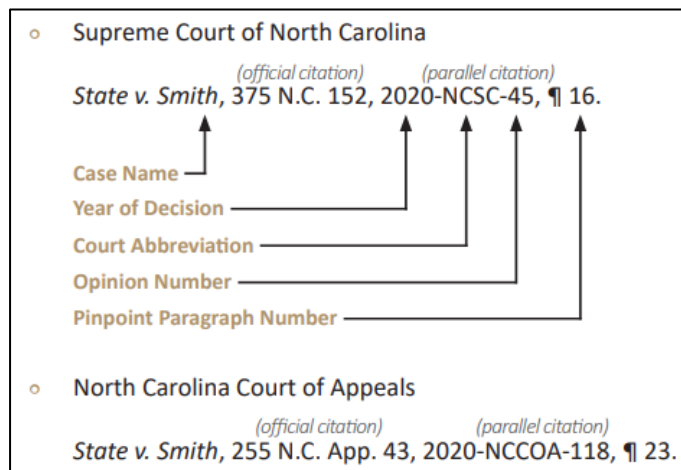
- Generally, citations “should be made according to the most recent edition of *The Bluebook: A Uniform System of Citation*,” and citations to “regional reporters shall include parallel citations to official state reporters.” N.C. R. App. P. at Appendix B. There are several exceptions, however. Most notably, the Supreme Court of North Carolina recently adopted a new “universal citation” method for citing to any new North Carolina case law. See below for more information.
- 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 recently updated on 23 September 2020. The Guidebook is a 9-page PDF that has been prepared and approved by the Supreme Court of North Carolina. It 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 Universal Citations:

- Beginning on 1 January 2021, practitioners are now expected to use a new “universal citation” format when citing to any new opinions that have been published by either North Carolina’s Supreme Court or Court of Appeals on or after 1 January 2021. The Supreme Court of North Carolina introduced this new citation method via an [Administrative Order](#), entered on 4 December 2019.
- To help implement this new citation format, the Supreme Court published a two-page [Fact Sheet](#) to illustrate North Carolina’s adoption of universal citations.
  - In relevant part, the Fact Sheet explains that universal citations are “a type of citation used for printed and electronically published appellate opinions that uses a paragraph-based numbering system rather than pages. Each case is given a sequential number for identification that is not dependent on any particular source, such as the volume and page number in the official printed reporter.” In so doing, universal citations increase public access to judicial opinions, facilitate searching content on electronic sources, and provide a permanent citation for a case the day it is made available.
  - Accordingly, all new opinions published by either of North Carolina’s appellate courts from now on will reflect paragraph numbers in the left column. These paragraph numbers will appear regardless of whether you review the new opinion in WestLaw, Lexis, or directly from the nccourts.gov website.

## VII. Formatting of Appellate Filings

- Importantly, this new universal citation format *only* applies when citing to brand new opinions that have been published by either the Supreme Court of North Carolina or the North Carolina Court of Appeals on or after 1 January 2021. Continue to use your familiar formats when citing all other sources, including any opinions published by either the Supreme Court of North Carolina or the North Carolina Court of Appeals on or before December 31, 2020.
  - Stated differently, when citing to older North Carolina case law, use the traditional citation format—with references to both the official reporter with a parallel citation to the South Eastern Reporter (e.g., *Meiselman v. Meiselman*, 309 N.C. 279, 281, 307 S.E.2d 551, 553 (1983)).
- The new universal citation format includes the following information: [Case Name], [Traditional Citation to the Bound Volume and Page Number of the Court’s Official Reporter], [Citation to the Year]-[Court Abbreviation]-[Opinion Number], [Pinpoint Paragraph Number].
  - The Fact Sheet also provides the following examples to illustrate the new universal citation format:



- Notably, universal citations should continue to reference the official reporter, followed by a parallel citation in the universal citation format. (The official reports of the opinions of the Supreme Court of North Carolina and the North Carolina Court of Appeals remain the *North Carolina Reports* and the *North Carolina Court of Appeals Reports*, respectively.) However, universal citations no longer require a pinpoint cite to the applicable page(s) of the official reporter. Rather, practitioners include only one pincite—to the applicable paragraph number(s).
- Remember to use the appropriate number of paragraph symbols (¶)—i.e., use ¶ when citing to one paragraph and ¶¶ when citing to two or more paragraphs. For example:
  - *State v. Smith*, 375 N.C. 152, 2021-NCSC-45, ¶ 16.
  - *State v. Smith*, 255 N.C. App. 15, 2021-NCCOA-121, ¶¶ 10-11.
- If a case has not yet been published in the official reporter, drop the parallel citation to the official reporter entirely (e.g., *State v. Defendant*, 2021-NCSC-425, ¶ 5). The placeholder citations (i.e., \_\_\_ N.C. \_\_\_) should be avoided.