

A Style Manual for the North Carolina Rules of Appellate Procedure

Prepared and Distributed by:

The Appellate Rules Committee of
The North Carolina Bar Association
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Statement of Purpose

The Appellate Rules Committee of the North Carolina Bar Association 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 Appellate Rules Committee has attempted to avoid interpretation of the Rules in this manual. To the extent that the manual appears to interpret a Rule, any interpretation has no precedential value. Practitioners are strongly advised to consult the Rules at each stage of the 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.).

In addition to the Rules themselves, the Appendixes to the Rules “are published . . . for their helpfulness to the profession.” See 1 January 2017 Preamble to the Rules. The Appendixes set forth various forms and examples. Although the Preamble states that the Appendixes are “not an authoritative source on parity with the rules,” there are provisions in the Rules themselves that expressly incorporate certain requirements set forth in the Appendixes. See, e.g., Rule 26(g)(1) (“The format of all papers presented for filing shall follow the additional instructions found in the appendixes to these rules.”). 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.

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 record on appeal for a juvenile case. 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. Furthermore, practitioners with a criminal appeal or an administrative appeal will need to adjust the content, if not the style, of the examples provided in this style manual, as the Rules vary slightly among civil, criminal, and administrative appeals.

The committee would be remiss if it did not point practitioners to another source of examples of appellate pleadings: www.ncappellatecourts.org. This website contains copies of the records on appeal and briefs of cases filed in the 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.

The committee appreciates the advice and comments of those who use the manual. Please send your suggestions via email to govaffairs@ncbar.org, or by

conventional mail to the Appellate Rules Committee, NC Bar Association, P.O. Box 3688, Cary, NC 27519.

This 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 from <http://www.ncbar.org/members/committees/appellate-rules>.

I. The Record on Appeal

A Typical Printed Record on Appeal in a Civil Case

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, are 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, they specifically list Constantia, Century, Century Schoolbook, and Century Old Style as appropriate options.
- 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 that follow are printed in 14-point Century Schoolbook typeface.

No. _____

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as in Final Judgment, Plaintiff, v. Defendant's Name as in Final Judgment, Defendant.

From Avery County No. 16 CVS 1234

RECORD ON APPEAL

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I. The Record on Appeal

Notes on Cover Page of Record on Appeal:

- The “No.” of the case at the top left hand corner is left blank. See 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, or “P,” number to the case (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 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 Appendix B. You can retrieve the proper Judicial District from: <http://www.nccourts.org/Courts/Trial/District/Districtmaps.asp>.
- 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 Appendix B.
- Generally, margins for the non-index pages in the record on appeal are one inch all around. See Rule 26(g)(1). Any new typed material should be single-spaced. See Appendix B.
- Index entries, on the other hand, are indented $\frac{3}{4}$ inch from both standard one-inch margins (or, put another way, the index line has margins of 1.75” from each side, yielding a 5” line in the middle). See Appendix B.
- Appendix C provides a “suggested order” for the items to be included in the record on appeal, depending on the type of case on appeal. Items included because they are “necessary for an understanding of all issues presented on appeal,” see Rule 9(a)(1), “should be arranged in the order in which they occurred or were filed in the trial tribunal.” Rule 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.
- By convention, North Carolina appellate courts use the date style, “14 November 2016.”
- Procedures for the record on appeal in a juvenile case are presented in the section of this manual titled “Typical Record on Appeal in a Juvenile Case,” *infra*.

STATEMENT OF ORGANIZATION OF TRIAL COURT

Plaintiff appeals from the 15 November 2016 jury verdict and judgment dismissing the plaintiff's claim, rendered during the 1 November 2016 Civil Session of Superior Court of Avery County, the Honorable [Name of Judge], Judge presiding. Plaintiff filed and served written notice of appeal on 21 November 2016.

The record on appeal was filed in the Court of Appeals on _____ 2016 and was docketed on _____ 2016.

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 Appendix B. The page numbers may appear within the one-inch top margin, as long as the first substantive line is at least one inch from the top edge of the paper. Practitioners should be careful, however, not to place record page numbers within the top one-half-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.
- To find the session of court from which you are appealing, consult the cover page of the trial transcript or the introductory paragraph of the order being appealed, which often include such information.

STATEMENT OF JURISDICTION *[FOR CIVIL APPEALS ONLY]*

This action was commenced by the filing of a complaint and issuance of summons on 1 April 2016. 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) (trial court lacks subject-matter jurisdiction over petition to terminate parental rights if summons not served on juvenile); *see also Conner Bros. Mach. Co. v. Rogers*, 177 N.C. App. 560, 561, 629 S.E.2d 344, 345 (2006) (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.

STATEMENT OF JURISDICTION
[FOR ADMINISTRATIVE APPEALS ONLY]

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 2015. The Administrative Law Judge issued a Decision on 6 December 2015. The Environmental Management Commission, pursuant to N.C. Gen. Stat. § 143B-282.1(b), issued the Final Agency Decision dated 4 January 2016, which was served on 5 January 2016. On 25 January 2016, Petitioner filed a Petition for Judicial Review in the Wake County Superior Court. The parties acknowledge that the Office of Administrative Hearings, the Environmental Management Commission, and the Superior Court of Wake 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 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.

[Copies of other pleadings necessary to understand issues presented on appeal. See Rule 9(a)(1), (2) or (3) 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 Rule 9(c)(4).]

[Copy of pre-trial order]

[Copy of transcript of jury charge given and copy of instruction proposed but omitted]

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." Rules 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 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
 - The particular instruction requested but omitted

[Copy of jury's verdict sheet]

I. The Record on Appeal

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

[Copy of judgment]

AVERY COUNTY
NORTH CAROLINA

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

[Name of Plaintiff],
Plaintiff,

v.

[Name of Defendant],
Defendant.

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff [name] hereby gives notice of appeal to the Court of Appeals of North Carolina from the final judgment of [name of judge], Superior Court Judge, entered on November 15, 2016 in the Superior Court of Avery County, which dismissed the plaintiff's action.

This 21st day of November, 2016.

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

[Name of Counsel]
Attorneys for Plaintiff-Appellants
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 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, 2016.

Name of Counsel

Notes on 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 does not have jurisdiction over your appeal. See *Crowell Constructors, Inc. v. State ex rel. Cobey*, 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 subjects the appeal to dismissal. See *Melvin v. St. Louis*, 132 N.C. App. 42, 510 S.E.2d 177 (1999). 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, not in the appellate court. See Rule 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 is venued. *Ehrenhaus v. Baker*, ---N.C. App. ---, ---, 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 the Clerk of the Court of Appeals and with the Clerk of the Supreme Court. See Rule 14(a).
- For additional tips and information about the Notice of Appeal, see the Appellate Rules Committee's "Tip Sheet" available from <https://www.ncbar.org/members/committees/appellate-rules>.

Notes on Fees and Costs:

- Appendix F sets forth the various fees and costs that parties can 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. See 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 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 Rule 14(a).
- When an appellant-petitioner files a petition for discretionary review with the Supreme Court, it submits to the Supreme Court a \$10.00 docketing fee, and 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 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 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 a “substantial” constitutional question. 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.

[In a criminal case, where notice of appeal can be given orally in open court, insert here the “Appeal Entries.” In criminal cases, this is a printed form (AOC-CR-350). Juvenile cases also utilize appeal entries. See the Typical Record on Appeal in a Juvenile Case section of this manual, *infra*, for more information about such records.]

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rules 7(b) and 9(c), 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 2016 through 15 November 2016, 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 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, Rule 9(c)(1), or submitting a verbatim transcript of those proceedings, 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 Rule 9(a)(1)e.
- The 2009 amendments to the Appellate 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 Rule 7.
- The statement of transcript option may also indicate that deposition testimony (or portions thereof) will be presented in connection with the record on appeal. See Rule 9(c)(4). The Appellate Rules do not require that deposition testimony be submitted in electronic format. Instead, the Appellant should submit the deposition transcript(s) with, but separate from, the printed record on appeal. See *id.*
- By convention, the appellate courts disfavor condensed transcripts (in which multiple pages are displayed on a single sheet of paper). If a deposition 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.

AVERY COUNTY
NORTH CAROLINA

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

[Name of Plaintiff],
Plaintiff,

v.

[Name of Defendant],
Defendant.

TRANSCRIPT DOCUMENTATION

Pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure, Plaintiff [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 2016 to 15 November 2016 in this action. (See Attachment A.)

This the 1st day of December, 2016.

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

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

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

[Sample Contract for Transcription]

December 1, 2016

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,] that took place in this case from November 12, 2016 through November 15, 2016. 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 obtaining 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]

Attachment

[Alternative Sample Contract for Transcription]

AVERY COUNTY
NORTH CAROLINA

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

[Name of Plaintiff],
Plaintiff,

v.

[Name of Defendant],
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 November 12, 2016 through November 15, 2016 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.

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 1st day of December, 2016.

[Name of Counsel]
Counsel for Plaintiff-Appellant

Jane Doe, Signed 12/1/16
Official Superior Court Reporter

Notes on Transcript Contracts:

- If the Appellant elects to obtain a verbatim transcript, Rule 7(a) requires that the Appellant contract for the transcription of the proceedings within fourteen days after filing the notice of appeal. This contract must then be filed with the clerk of the trial tribunal and served on all other parties, including the court reporter.
 - Rule 7(a) requires that the Appellant contract within fourteen days, but the rule is silent as to when the transcript contract must be filed and served. The safest practice is to enter into the contract, file it with the trial court, and serve it on other parties, all within fourteen days of the filing of the notice of appeal.
 - Before the 2009 Amendments, the Rules referred to a “transcript arrangement” and not a “transcript contract.” Rule 7(a) now makes plain that the Appellant and court reporter must not only enter into a contract, but that the contract itself must be filed and served.
- There is no required format for the transcript contract. Rule 7(a)(1), however, sets forth certain information that must be included in the contract. Above are two examples of contracts, one in letter format and one in pleading format.
- If there is an order establishing the indigency of a civil party or criminal defendant, a transcript contract is not required. Rather, the trial court clerk orders the transcript and reflects as much in the appeal entries. Rule 7(a)(1), (2).
- Rules 9(a)(1)i, 9(a)(2)h, and 9(a)(3)h state that the record shall contain “all orders establishing time limits relative to the perfecting of the appeal.” 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 fourteen days after the service of the transcript documentation of the Appellant, the Appellee may contract for any additional parts of the proceedings the Appellee deems necessary. In such instance, the additional transcript documentation should be included in the record as well.
- 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 she files 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.

Notes on Production and Delivery of Transcript:

- 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 the rule, including:
 - The court reporter has sixty days to prepare and deliver the transcript “to the parties . . . as ordered.” Rule 7(b)(1), (2).
 - 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 thirty days from the trial tribunal. Rule 7(b)(1). (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.” Rule 7(b)(2).
 - When the record on appeal is filed, the Appellant “shall promptly notify the court reporter” of that fact. Rule 7(b)(2). 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.” Rule 7(b)(2). 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.

STATEMENT OF RULE 11(c) SUPPLEMENT

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

The Rule 11(c) supplement will be referenced as “(R S p ____).”

Notes on Rule 11(c) Supplement:

- Rule 11 of the North Carolina Rules of Appellate Procedure, 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.” Rule 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 that document should normally 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 “if a party does not agree to the inclusion or specification of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the supplement.”
- Any Rule 11(c) supplement should be numbered consecutively to follow the last page of the printed record on appeal. See Rule 9(b)(4). Citations to the Rule 11(c) supplement should read: “(R S p ____).”
- Rule 9(a)(1)m requires “a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal.” This statement should appear after the Statement of Transcript option and related documents. See Appendix C.

[Copy of any order in the Trial Division extending time to file transcript or serve proposed record]

[Copy of any order in the Appellate Division extending time to file record, etc.]

[Objections to Record by Appellee]

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

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.” Rules 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 Appellate Rules by showing appropriate extensions of time in the trial division and, if necessary, the appellate division, at this point in the Record.

STIPULATION SETTLING RECORD ON APPEAL

Counsel for the Appellant and Appellee stipulate as follows:

1. The proposed record on appeal was timely served on 15 February 2017. The certificate showing service of the proposed record may be omitted from the settled record.

2. Defendant-Appellee's objections were served on 10 March 2017. Appellee 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 2017.

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

2. Defendant-Appellee's objections were served on 10 March 2017. Appellee 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 Defendant filed the notice of appeal, 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 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 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 option, (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 “Doc. Ex. 1” through “Doc. Ex. 150,” which shall be cited as such (and three copies of which are being filed with the clerk pursuant to Rule 9(d)(2) of the North Carolina Rules of Appellate Procedure); and

e. The Rule 11(c) “Supplemental Record on Appeal” identified in stipulation 2, consisting of pages 101 to 119 (three copies of which are filed along with this printed record on appeal).

This 30th day of March, 2017.

For the Plaintiff-Appellant:

Name of Counsel

For the Defendant-Appellee:

Name of Counsel

I. 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, both to show compliance with the Rules and to allow clear identification of the status of material transmitted to the appellate court. For example, items are now placed in the 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. Rule 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.
- As suggested by ¶ 6(d), above, documentary exhibits that are not included in the printed record must be submitted with the proposed record in triplicate. See Rule 9(d)(2).
- 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. Rule 12(a).

[Sample Stipulation Regarding Record Documents under Seal]

Counsel for the Appellants and the Appellees stipulate as follows:

* * *

5. The parties to this appeal entered into an “Agreed Confidentiality and Protective Order” (R pp ___) 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. Defendants-Appellants 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 Appellants’ exhibits submitted to the trial court under seal are included in this record on appeal in Rule 9(d)(2) documentary exhibits consisting of ___ pages, and 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. Three copies of the documentary exhibits are 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 or other banking identification information or any trade secret information of Defendants-Appellants.

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. This sample stipulation is one way to do so, but it is not necessarily the only way.
- Certain information must be kept confidential regardless of any effort to file documents under seal. For example, briefs must protect the identity of juveniles in accordance with Appellate Rules 3, 3.1, and 4. Rule 28(a). Social security numbers must be redacted from any document in the record on appeal and any exhibit submitted to the court. Rules 9(a)(4), 9(d)(1).

Notes on the Use of Slip Sheets:

- The Rules impose a duty on counsel for all parties to ensure that the record on appeal does not contain unnecessary documents. Rule 9(b)(2).
- The Court of Appeals has suggested that including "multiple copies of numerous documents" may violate this duty. See *In Re: JJ*, No. COA09-577, 2009 N.C. App. LEXIS 1538 (2009).
- 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).
- Following *Obo*, counsel may insert a "slip sheet" in place of documents that would have appeared in duplicate. 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 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 John Doe

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

PROPOSED ISSUES ON APPEAL

Pursuant to Rules 10 [and 7(a)(1)], Plaintiff-Appellant intends to present the following proposed issues on appeal:

1. Did the trial court err in denying Plaintiff's motion for summary judgment under N.C. R. Civ. P. 56?
2. Did the trial court err in its finding of fact No. 5 [because the finding is unsupported by the evidence]?
3. Did the trial court err in its conclusion of law No. 9?

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."
- Appendix C, Table 4 presents 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 three copies in a volume captioned “Rule 9(b)(5) Supplement to the Printed Record on Appeal.” See Rule 9(b)(5).
- 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 Rules 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 Rules 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: [NAME OF COUNSEL'S FIRM]

[Name of Counsel]

[State] Bar No. _____

[Counsel's telephone number]

[Counsel's email address]

[Name of Co-Counsel]

[State] Bar No. _____

[Co-Counsel's telephone number]

[Co-Counsel's email address]

[Firm Address]

For the Appellee: [NAME OF COUNSEL'S FIRM]

[Name of Counsel]

[State] Bar No. _____

[Counsel's telephone number]

[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. Because of the varieties of deadlines and service methods, practitioners should consult Rule 26.

Summary of Items Constituting a Typical Record on Appeal

ITEM	HOW SUBMITTED	NUMBER OF COPIES	WHEN SUBMITTED
Printed Record on Appeal	Filed by Appellant in paper form (No electronic filing). Will be reproduced by Court in black and white.	One.	Within 15 days after the record has been settled. See Rule 12(a).
Rule 11(c) Supplement to the Printed Record on Appeal	Filed by Appellant in paper form (No electronic filing).	Three. See Rule 11(c).	With Printed Record.
Rule 9(d) Documentary Exhibits	Filed by Appellant in paper form (No electronic filing).	Three. See Rule 9(d).	Typically with Printed Record.
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.	One.	Typically with Printed Record or, if delivered by clerk, promptly upon request of party. See Rule 9(d)(2).
Deposition Transcripts	Filed by Appellant in paper form (No electronic filing).	One.	With Printed Record.
Transcript of the Proceedings Appealed From	Filed by Court Reporter in electronic (pdf) form.	One.	Upon the Record being docketed by the Court.
Rule 9(b)(5) Supplement to the Printed Record on Appeal	Filed by Appellee in paper form (No electronic filing).	Three. See Rule 9(b)(5).	No later than Appellee's responsive brief.

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.”
- Such documentary exhibits must be included in triplicate. 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 Rule 9(c)(4).
- Oversized and tangible exhibits may be included in the record in accordance with Rule 9(d). Although Rule 9(d)(2) requires *documentary* exhibits to be submitted in triplicate, it is common practice to file a single copy of each oversized or tangible exhibit. However, it may be useful to include an additional, smaller copy of such an 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.

No. COA _____

TWENTY-NINE B JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

Lionel Bell,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 Life Center of America LLC,)
)
 Defendant.)

From Henderson County
 15-CVS-1234

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COASTAL MEDICAL CENTER

Lionel Bell
123 Anywhere Lane
New Bern, North Carolina 28560

**** MENTAL STATE EXAMINATION ****

Lionel presents as a

Dr. Strangelove

A Typical Record on Appeal in a Juvenile Case

No. _____

TWENTY-EIGHTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

In the Matter of:)	
)	
A.B.C.,)	<u>From Buncombe County</u>
a minor child.)	File No. 16 JT 28
)	

RECORD ON APPEAL

FILED PURSUANT TO RULE 3.1(b); SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION

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Notes on Procedures in Cases Involving Juveniles Covered by Rules 3(b)(1), 3.1(b), or 4(e):

- Rule 3.1 provides accelerated deadlines and additional requirements in “qualifying juvenile cases,” which are cases “involving termination of parental rights and issues of juvenile dependency or juvenile abuse and/or neglect.” See Rule 3.1(a).
- Rules 3(b)(1), 3.1(b), 4(e), and 9(a) require parties to protect the identity of the juveniles covered by those rules. These rules require that the juvenile’s identity be referenced only by the use of initials or pseudonyms in briefs, petitions, and all other filings, *except* those documents related to the record on appeal (e.g., the record itself, objections, verbatim transcripts, Rule 11(c) supplements). Documents not subject to the substitution and redaction requirements *are*, however, subject to the notice requirement described below.
- 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.
- In addition, the addresses and social security numbers of juveniles must be redacted from *all* documents and arguments, whether new material or documents included as exhibits or entries in the record on appeal. See Rule 3.1(b).
- In cases involving juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e), a special notice must be provided in uppercase typeface on the first document filed in the appellate courts, the record on appeal, and any pleading or filing not subject to the substitution and redaction requirements of Rule 3.1(b):

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

- Such notice must appear on the first page of the document immediately underneath the title and in uppercase typeface. See Rules 3.1(b), 9(a).
- This special notice helps the Clerk identify which documents should not be published on the Court’s electronic filing site.

I. The Record on Appeal

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF [County]

[File #]

IN THE MATTER OF:

Minor children

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

COMES NOW the Respondent-Mother, [name], pursuant to N.C.G.S. 7B-1001(a)(5) and 7B-1001(a)(6), and hereby gives Notice of Appeal to the Court of Appeals of North Carolina from the properly preserved Order To Cease Reunification Efforts that was filed on [date] and the Order Terminating Parental Rights that was filed on [date] and served on undersigned counsel on [date].

REQUEST FOR APPOINTMENT OF COUNSEL FOR APPEAL

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

THIS the _____ day of _____, 2017.

[Name]

Attorney at Law

[Address]

[Telephone #]

Respondent-Mother

I. The Record on 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.

[Insert 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.

[Insert name of attorney 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 _____, 2017.

Name of Counsel

I. The Record on 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.
- Special requirements apply, however, to such notices of appeal in certain juvenile cases.
 - Notices of appeal in cases falling under Rule 3.1(a) (like the notice of appeal from an order terminating parental rights 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.
 - 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 coordinator.” The Appellant submits the appeal entries to reflect who the coordinator 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 Rules 9(a)(1)l, 9(a)(3)h.
- Forms for the appeal entries are available on the North Carolina Court System website, <http://www.nccourts.org/Forms/FormSearch.asp>, 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), AOC-J-470 (juvenile delinquency cases).
- See the Typical Record on Appeal for Civil Cases, *supra*, for examples of how to complete the other sections of the record on appeal for juvenile cases.
- For more information and resources relating to appeals in juvenile cases, see <http://www.aoc.state.nc.us/www/ids/> and select “Legal Resources” from the “Training & Resources” menu on the left.

II. The Briefs

A Typical Appellant's Brief

Note on Typefaces or Fonts:

- The examples which follow are printed in a 14-point Century Schoolbook typeface, but that is only one permissible font. See Rule 26(g)(1). In the Court of Appeals (but not the Supreme Court) you have word counts to consider: see Rule 28(j) for the details. In the Court of Appeals, 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.*, Alex Kozinski, *The Wrong Stuff*, 1992 BYU L. Rev. 325, 328.
- 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; the Federal Energy Regulatory Commission may be known as “FERC” to attorneys who regularly practice energy law, but might be referred to as “the Commission” in an appellate brief.

No. COA16-123

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as in Final)	
Judgment,)	
Plaintiff,)	
)	
v.)	<u>From Avery County</u>
)	
Defendant's Name as in Final)	
Judgment,)	
Defendant.)	

PLAINTIFF-APPELLANT'S BRIEF

Notes on Filing Appellant's brief:

- The due date for the Appellant's brief varies slightly depending on the type of case:
 - In most cases, the Appellant's brief is due 30 days after the date that the Clerk's office mails the printed record to the parties. Rule 13(a)(1). Note that there is no three-day "mail rule" applicable to the Clerk's office mailing. See *id.*
 - In juvenile cases subject to Rule 3.1 before the Court of Appeals, the Appellant's brief is due 30 days after the record on appeal has been filed.
- Unlike some documents, a brief is considered filed when it is mailed. Rule 26(a)(1). Alternatively, electronic filing allows a brief to be filed in real-time as well. Rule 26(a)(2).

II. The Briefs

Notes on Cover Page of Briefs:

- 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 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 Appendix B.

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II. The Briefs

Notes on Index to Briefs:

- Index entries are indented $\frac{3}{4}$ inch from both standard one-inch margins (or, put another way, the index line has margins of 1.75" from each side, yielding a 5" line in the middle). See Appendix B.
- The ALL-CAPS typography is optional. Some practitioners (and the Appendixes) use dot leaders (". . .") to the page numbers.
- 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 it 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 Rule 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.

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Notes on Table of Cases and Authorities:

- As with the Index, the Table of Cases should have margins of 1.75” from each side, yielding a 5” line in the middle.
- Cases, arranged alphabetically, come first; then constitutional provisions and statutes, each arranged numerically; then regulations and other authorities. Appendix B. Leave out pin cites when bringing the citation to this table.
- Citations should follow the latest edition of The Bluebook: A Uniform System of Citation. Appendix B.

No. COA16-123

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as in Final)	
Judgment,)	
Plaintiff,)	
)	
v.)	<u>From Avery County</u>
)	
Defendant's Name as in Final)	
Judgment,)	
Defendant.)	

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?

II. The Briefs

Notes on Issues Presented:

- Unlike the record on appeal, briefs require an “inside caption” before the issues presented. 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.” Appendix E.
- The Issues Presented page, like the rest of the brief, has margins of one inch all around.
- The Issues Presented should be single-spaced.
- Some practitioners type the Issues Presented in ALL CAPS.
- If the Issues Presented go on past this page, then immediately follow them with the Statement of the Case – otherwise, start the Statement of the Case at the top of the next page.

STATEMENT OF THE CASE

Very Large Corporation, Inc. commenced this trespass action by the filing of a complaint and issuance of summons on 1 January 2016. (R p 3). The defendant moved to dismiss the action on 21 January 2016. (R p 4). The Honorable John Marshall, Avery County Superior Court Judge, presiding, heard arguments on the motion to dismiss on 1 April 2016. (T pp 1-19). A judgment and order dismissing the case was entered 10 May 2016. (R pp 9-14). The plaintiff filed and served notice of appeal on 8 June 2016. (R pp 19-24). A transcript of the 1 April 2016 hearing was ordered on 14 June 2016 and delivered 1 August 2016. (R pp 97-101). The time to serve the proposed record was extended by the trial division until 15 September 2016. (R p 102). The record was settled by stipulation on 1 November 2016, filed in the Court of Appeals on 13 November 2016, and docketed 15 November 2016. (R pp 109-11).

Notes on Statement of the Case:

- Note the page numbering at the top (flanked by dashes). One-inch margins all around. Double spacing for the text, with triple spacing before the section headings (“Statement of the Facts,” etc.).
- 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 2016”).

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Judge Marshall's summary judgment order, dismissing all the 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).

OR

Judge Marshall's partial summary judgment order, dismissing the plaintiff's negligence claim based on the statute of limitations, 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 Rules of Civil Procedure, that there is no just reason for delaying the appeal of the order.

Notes on Rule 54(b) Certification:

- Note that Rule 54(b) of the Rules of Civil Procedure expressly requires a final judgment. 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 delay, then appellate review is mandatory. *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999).
- However, the trial court may not, by certification, render its order immediately appealable if it is not a final judgment. See *James River Equip., Inc. v. Tharpe's Excavating, Inc.*, 179 N.C. App. 336, 340, 634 S.E.2d 548, 552-53 (2006).
- Thus, if there is some doubt that the order is in fact a final judgment on one or more claims or parties, practitioners should proceed with caution and offer an alternative basis for jurisdiction (e.g., that the decision affects a substantial right). See *id.*

OR

Judge Smith’s partial summary judgment order, dismissing the plaintiff’s negligence claim based on the statute of limitations, 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 Smith’s ruling affects a substantial right of the plaintiff, as described in N.C. Gen. Stat. §§ 1-277, 7A-27(d)(1), in that [go on to describe the facts and law that support a “substantial right” determination by the appellate court].

Notes on Statement of Grounds for Appellate Review:

- The Statement of Grounds for Appellate Review is a requirement for the Appellant’s brief. The rule requires the Appellant to provide an explanation of the grounds for review of an interlocutory appeal. If you have this kind of issue, look at the annotations to N.C. Gen. Stat. §§ 1-277 and 7A-27 for what the courts have considered “substantial rights” and tailor your statement accordingly. Also consider consulting the Appellate Rules Committee’s Guide to Appealability of Interlocutory orders, available from <https://www.ncbar.org/members/committees/appellate-rules>.
- 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).

STATEMENT OF THE FACTS

Appellant, V. Ward McClure, 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. Until recently, streets

were used by the residents of Canton and maintained as city streets. (R p 19, Stipulation 7).

The town passed a “Resolution of Intent” on 26 November 2012, (R p 49), and an Order Closing a Portion of East Street on 1 December 2012, (R p 51), which resulted in the imposition of a series of . . .

[Recitation of facts continues]

Notes on Statement of the Facts:

- The Appellant’s brief must contain a “full and complete” and “nonargumentative” Statement of the Facts that are important to understanding the issues argued in the brief. Rule 28(b)(5). Long quotations from the transcript or the record are not encouraged, 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.
- Sometimes the Appellee will include a Statement of Facts that just adds some facts to the Appellant’s recitation.
- It is better to make the Statement of Facts coherent (by weaving the testimony of the various witnesses together, 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 Facts must be scrupulously accurate and include even those facts you must 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 Rule 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 ____).’” The Rule 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 DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Notes on Argument Headers:

- Argument headers, or issues, must appear in ALL CAPS. See 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 Defendants upset the jury's findings by their motion for judgment notwithstanding the verdict, the facts are viewed in the light most favorable to Ms. Jones, 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" Ms. Jones's claim for damages, then the trial court erred in granting Defendants' motion. *Mace v. Pyatt*, 203 N.C. App. 245, 252, 691 S.E.2d 81, 88 (2010).

Notes on Standard of Review:

- Under Rule 28(b), 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 caption “Argument.”
- 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.” It can be accessed at <http://appellate.nccourts.org/NC%20Legal%20Standards.pdf>.

B. Ms. Jones Incurred Expenses in Connection with Defendants’ Fraud that Were Found Compensable by the Jury.

The trial court erred in granting Defendants’ motion for judgment notwithstanding the verdict because there was ample evidence introduced at trial that Ms. Jones suffered direct economic harm as a result of Defendants’ fraud. For example, Ms. Jones testified that she was required to pay the property tax bills on the land as they came due in 2013 and 2014. (*See, e.g.*, T p 23-24 (“After [Defendants] 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 1/4" from the left margin). One-inch margins all around.
- Long quotations from a reported case or statute (more than 3 lines) are indented 3/4" from each margin (making a 5" line) and single-spaced. The case citation immediately follows the quotation, beginning at the regular left margin. See 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 Defendants' 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 Ms. Jones's evidence of additional damages.

Respectfully submitted, this ____ day of March, 2017.

Notes on Conclusion:

- 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 your arguments here. See Rule 28(b)(6). For criminal cases, N.C. Gen. Stat. § 15A-1447 provides the various forms of relief available on appeal.

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

[Name of Counsel]
Attorney for Plaintiff-Appellant
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lawyer@lawfirm.com

Notes on Signing Briefs:

- If you want to orally argue a case, you have to sign the brief. See Rule 33(a). 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 e-mail address, phone number, and state bar number are required. See Appendix B.

Notes on Additional Requirements:

- When mailing the printed record to the parties, the Court of Appeals will include a blank "Appeal Information Statement" and a "Consent to Appellate Mediation" form.
- The "Appeal Information Statement" must be completed and filed "at or before the time his or her appellant's brief is due" and must be served on the other parties to the appeal. See Rule 41.
- The "Consent to Appellate Mediation" form, though not mentioned in the Rules, is sometimes due BEFORE the Appellant's brief comes due. The due date will be provided on the bottom of the form itself.

Notes on Electronic Filing:

- The Court of Appeals and Supreme Court have embraced electronic filing of briefs and certain other documents through the website <http://www.ncappellatecourts.org>. See Rule 26(a)(2).
- Rule 26(a)(2) states that “[m]any documents may be filed electronically through the use of this site.” The website clarifies that “[i]n the Court of Appeals you cannot e-file Records or 9(b)(5) Supplements.”
- Be aware that electronic *filing* does not mean electronic *service*. You are still responsible for serving your electronically filed documents on all parties. See Rule 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:

[Name of Counsel’s Firm]

Electronically submitted

[Name of Counsel]

[State] Bar No. _____

[Counsel’s telephone number]

[Counsel’s email address]

[Firm address]

- If more than one attorney is listed for the party(ies) 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.

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.

[Complete signature block for each additional attorney representing Appellants]

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Appellant certifies that the foregoing brief, which is 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 Length of Briefs:

- The certificate of compliance is only applicable to the Court of Appeals.
- Footnotes and citations must be included in the word count.
- 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 the Appellee 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 March, 2017.

Name of Counsel

Note on Certificate of Service:

- The brief is considered both filed and served when it is put in the mail. See Rule 26.

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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 a 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 call such pages 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 3/4 inch from each one-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 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 Appendix E.

A Typical Appellee's Brief

No. COA16-123

THIRTIETH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Norma Schoolhouse and David)
Schoolhouse,)
Plaintiffs,)
v.)
Dee Mann and Joyce Mann,)
Defendants.)

From Haywood County

PLAINTIFFS-APPELLEES' BRIEF

Note on Appellee's Brief:

- The Appellee has thirty days after service of the Appellant's brief to file the Appellee's brief (add three days if the Appellant's brief was served by mail or by email). Rule 13(a).

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Other Authorities:

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No. COA16-123

THIRTIETH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Norma Schoolhouse and David)
Schoolhouse,)
Plaintiffs,)
))
v.)
))
Dee Mann and Joyce Mann,)
Defendants.)
)

From Haywood County

PLAINTIFFS-APPELLEES' BRIEF

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

The plaintiffs established that there was no genuine issue concerning the width of the driveway easement and that the court . . .

<p>Note on Sections Unnecessary in Appellee's Brief:</p> <ul style="list-style-type: none"> 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 Rule 28(c).
--

[Argument continues]

Plaintiff Norma Schoolhouse 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).

Mrs. Schoolhouse identified photographs of the driveway . . .

[Argument continues]

Notes on Long Quotations:

- The above illustrates the method of including long quotations in the brief: indent 3/4 inch from each margin, and single space the material. See 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 10th day of April, 2017.

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

[Name of Counsel]
Attorneys for Plaintiffs-Appellees
160 N. Main Street
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Appellees 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 in the Court of Appeals. 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 the Appellant 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 April, 2017.

Name of Counsel

Follow the brief with an appendix, if one is needed. See Rule 28(d). See the note about appendixes following A Typical Appellant's Brief, *supra*.

The brief is considered both filed and served when it is put in the mail. See Rule 26.

A Typical Memorandum of Additional Authority

No. COA16-234

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as On Final)	
Judgment,)	
Plaintiff,)	
)	
v.)	<u>From Avery County</u>
)	
Defendant's Name as on Final)	
Judgment)	
Defendant.		

PLAINTIFF-APPELLANT'S MEMORANDUM OF
ADDITIONAL AUTHORITY

Pursuant to N.C. R. App. P. 28(g), 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 (2010).
2. *In re A.B.Q.*, --- N.C. App. ---, 710 S.E.2d 1 (2010).

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

Respectfully submitted, this ____ day of March, 2017.

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

[Name of Counsel]
Attorneys 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 March, 2017.

Name of Counsel

Notes on 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.” Rule 28(g).
- Authorities not cited in the briefs or in a memorandum of additional authority may not be cited and discussed in oral argument. Rule 28(g).
- 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.

III. Extraordinary Writs

A Typical Petition for Writ of Supersedeas and Motion for Temporary Stay

No.

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

SANDRA JOHNSON,)
Plaintiff,)

v.)

From Wake County
No. 10 CVD 3375

ROBERT JOHNSON and XYZ)
CORP., INC.,)
Defendants.)

PETITION FOR WRIT OF SUPERSEDEAS AND
MOTION FOR TEMPORARY STAY

III. Extraordinary Writs

General Notes and Notes on Cover Page for Petition for Writ of Supersedeas and Motion for Temporary Stay:

- 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 of 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 Rule 23(b).
- When you have also 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 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 appropriate appellate court. If the underlying appeal has already been docketed, you can include the Court of Appeals case number here.
- Consult Rule 23 and Appendix D for the circumstances in which this petition is appropriate.
- Service of the Petition for Writ of Supersedeas triggers a ten-day response deadline for any party to oppose it. See Rule 23(d). In practice, it is common to couple a Motion for Temporary Stay with the Petition so that the Court of Appeals has the option to stay the execution or enforcement of the judgment or order while the briefing and consideration on the Petition takes its course. See Rule 23(e).

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Notes on Index:

- Index entries are indented 3/4 inch from both standard one-inch margins (or, put another way, the index line has margins of 1.75" from each side, yielding a 5" line in the middle). See Appendix B.
- The petition only requires an index if it is ten pages or more in length. See *id.*

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Superseding and Staying Judgments: A National
Compendium, American Bar Association,
Chapter 36, “Superseding and Staying
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Notes on Table of Authorities:

- If the petition is fewer than ten pages, this table may be omitted. See Appendix B.
- If included, the format is the same as any brief (consult the Typical Appellant’s Brief, *supra*, for a fuller discussion on the formatting).

No.

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

SANDRA JOHNSON,)
Plaintiff,)

v.)

From Wake County
No. 10 CVD 3375

ROBERT JOHNSON and XYZ)
CORP., INC.,)
Defendants.)

PETITION FOR WRIT OF SUPERSEDEAS AND
MOTION FOR TEMPORARY STAY

TO THE HONORABLE COURT OF APPEALS OF NORTH
CAROLINA:

Defendants Robert Johnson and XYZ Corp., Inc., pursuant to Rule 23 of the North Carolina Rules of Appellate Procedure, respectfully petition 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, Judge Presiding, District Court, Wake County, denied Defendants' motion for stay in an order dated 25 June 2017.

Defendants now petition 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 in which, in addition to awarding the wife over 96% of the marital estate, the district court also ordered the husband's company to make installment payments nearing \$200,000 to the wife.

Defendants are . . . [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.*, trial court has not stayed execution despite the posting of security). See Appendix D.
- Petitioner should here explain its compliance with the requirement of Rule 23(c) that the stay be sought in the trial court in the first instance, or demonstrate that it was impracticable to do so. See *also* Appendix D.
- Petitioner should also include here a statement that review of the judgment or order is being sought by appeal or other extraordinary writ. See Rule 23(a); Appendix D.

REASONS WHY WRIT SHOULD ISSUE

Defendants are entitled to a stay because of the plain language of N.C. Gen. Stat. § 1-289 and the likelihood that Defendants will prevail in their appeal of the order. The trial court's order will have the effect of . . . [Argument continues]

Notes on Reasons Why Writ Should Issue:

- Here set out the factual and legal argument to justify the issuance of the writ. See 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, Defendants respectfully apply 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. In support of this application, Defendants represent 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. Defendants further incorporate and rely on the arguments presented in the foregoing petition for writ of supersedeas in support of this Motion for Temporary Stay.

Notes on Motion for Temporary Stay:

- The Motion for Temporary Stay can be set out in the same or a different paper as the Petition for Writ of Supersedeas. See Rule 23(e).
- Here set out the factual and legal argument to justify the issuance of the temporary stay. See 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

Wherefore, the petitioners respectfully pray this Court to issue its writ of supersedeas to the [(Superior)(District) Court (name) County] [North Carolina Court of Appeals] staying (execution)(enforcement) of the (judgment)(order)(decree) above specified, pending issuance of the mandate to this Court following its review and determination of the (appeal) (discretionary review)(review by extraordinary writ)(now pending) (the petition for which will be timely filed); and that the petitioners have such other relief as to the Court may seem proper. Petitioners also request that this Court temporarily stay enforcement of the equitable distribution order until such time as this Court can rule on Petitioners' Petition for Writ of Supersedeas.

Respectfully submitted, this ____ day of July, 2017.

III. Extraordinary Writs

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

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

ATTACHMENTS

Attached to this petition and motion for consideration by the court 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 Defendants' motion for stay, filed 25 June 2017.
- Exhibit C. Copy of excerpts from the transcript of the deposition of Sandra Johnson, taken 4 January 2016.

Notes on 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. In addition, Rule 23(c) generally permits the petition to be “accompanied by affidavits and by any certified portions of the record pertinent to its consideration.”
- The lower court clerk can provide to the petitioner certified copies of the documents required by this rule.
- 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, using the attorney Verification to testify to their authenticity. See the sample Verification below for an example.

VERIFICATION

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

The contents of the foregoing petition 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 attorney, 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, consider including a statement along these lines:

Pursuant to Appellate Rule 23, I also hereby certify that the documents attached to this Petition for Writ of Supersedeas are true and correct copies of the pleadings and other documents from the file in Wake County Superior Court, including documents that were served or submitted for consideration as contemplated by Appellate Rule 11.]

Petitioner or attorney

_____ 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:

III. Extraordinary Writs

Notes on Verification:

- Rule 23(c) requires that “[t]he petition shall be verified by counsel or the petitioner.”
- The verification page immediately follows on the page after the signature block of counsel. See 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 July, 2017.

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 begins with the Caption, then the Facts, the Reasons Why Writ Should Issue, the Attachments, the conclusion (without a separate "Conclusion" header), the signature block, the Verification, and finally the Certificate of Service. The Appendix does not provide for where the Motion for Temporary Stay should appear, except to note that the Motion may be included as part of the main Petition or filed separately.
- In this manual above, note one possible alternative ordering of the sections so as to integrate the Motion with the Petition.

A Typical Petition for Writ of Certiorari

No.

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

NAMES AS IN TRIAL DIVISION,)

Plaintiffs,)

v.)

NAMES AS IN TRIAL DIVISION,)

Defendants.)

From Wake County
No. 06 CVS 2549

PETITION FOR WRIT OF CERTIORARI

Notes on 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. See Appendix B, and example below of inside cover page.
- Consult Rule 21 and Appendix D for the circumstances in which this petition is appropriate.

INDEX

TABLE OF AUTHORITIES ii

FACTS..... 2

REASONS WHY WRIT SHOULD ISSUE..... 2

 I. THE EXISTENCE OF THE TRIAL COURT’S
 INTERLOCUTORY ORDER IMPAIRS THE
 DEFENSE OF THIS CASE AND MAKES IT
 IMPRACTICAL FOR DEFENDANT TO
 PROCEED FURTHER IN THE TRIAL
 COURT x

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

ATTACHMENTS 3

VERIFICATION 4

CERTIFICATE OF SERVICE 5

Notes on Index:

- Index entries are indented 3/4 inch from both standard one-inch margins (or, put another way, the index line has margins of 1.75” from each side, yielding a 5” line in the middle). See Appendix B.
- The petition 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 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 is fewer than ten pages, this table may be omitted. See Appendix B.
- If included, the format is the same as any brief (consult the Typical Appellant’s Brief, *supra*, for a fuller discussion on the formatting).

No.

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

NAMES AS IN TRIAL DIVISION,)

Plaintiffs,)

v.)

NAMES AS IN TRIAL DIVISION,)

Defendants.)

From Wake County
No. 06 CVS 2549

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff, the North Carolina Insurance Association (“The Association”), respectfully petitions the North Carolina Court of Appeals to issue its writ of certiorari pursuant to Rule 21 of the Rules of Appellate Procedure to review the partial summary judgment order of the Honorable Frank Lee Wright, Judge Presiding, Wake County Superior Court dated 21 June 2017 [further describe the order appealed from, if necessary] and in support of this petition shows the following:

FACTS

The plaintiff filed a complaint on 23 June 2016 in the Superior Court of Wake County. Judge Frank Lee Wright granted the defendant's summary judgment motion as to the applicability of the Statute of Limitations to the plaintiff's First and Second Causes of Action [discussion of facts continues]

Notes on 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 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 judge'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 Reasons Why Writ Should Issue:

- Here set out the factual and legal argument to justify the issuance of the writ. See Appendix D.
- Consult Rule 21 for the bases of the writ, 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 going to be appreciated.

ATTACHMENTS

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

Wherefore, the petitioner respectfully prays this Court to issue its writ of certiorari to the [(Superior)(District) Court (name) County] [North Carolina Court of Appeals] to permit review of the (judgment)(order)(decree) above specified, upon issues stated as follows: (here list the issues, in the 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 July, 2017.

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

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

Notes on 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.”
- The lower court clerk can provide to the petitioner certified copies of the documents required by this rule.
- As a practice pointer, practitioners facing difficulty having the lower court formally certify “parts of the record” should consider submitting such materials as attachments to an attorney affidavit testifying to the authenticity of such materials.

VERIFICATION

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

The contents of the foregoing petition 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 attorney, recast this to state that the material allegations of the petition are true to the attorney’s personal knowledge.]

Petitioner or attorney

_____ 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:

III. Extraordinary Writs

Notes on Verification:

- Rule 21(c) requires that “[t]he petition shall be verified by counsel or the petitioner.”
- The verification page immediately follows on the page after the signature block of counsel. See 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 July, 2017.

Name of Counsel

Following the petition, attach certified copies of the documents described in the "Attachments" section. See Appendix D.

IV. Supreme Court Practice
A Typical Notice of Appeal to the Supreme Court

No. TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

[Name of Plaintiff],

Plaintiff,

v.

[Name of Defendant]

Defendant.

Wake County
No. COA11-209

NOTICE OF APPEAL BASED ON DISSENT IN 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 2016 which was entered with a dissent by Judge McGillicutty. The Court of Appeals opinion and dissent in this case are attached hereto as Attachment A. The dissent by Judge McGillicutty was based on the following issues, which Defendant-Appellant will present to the Supreme Court of North Carolina for appellate review:

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

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

This 9th day of January, 2017.

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

[Name of Counsel]
Attorneys 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 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 January, 2017.

Name of Counsel

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 Rule 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 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 Appendix D.
- For appeals of right to the Supreme Court based on a constitutional question, see N.C. Gen. Stat. § 7A-30(1), the Appendixes contain a detailed example of the kind of description of the issue that the Court requires. See 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 Rules 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 Rule 14(b)(1).

A Typical Petition for Discretionary Review

No.

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Names as in Trial Division,)
)
 Plaintiffs,)
)
 v.)
)
 Names as in Trial Division,)
)
 Defendants.)
)

From Wake County
 No. COA 09-10

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

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

IV. Supreme Court Practice

Notes on Due Date for a Petition for Discretionary Review:

- A Petition for Discretionary Review following a determination by the Court of Appeals must be filed and served within 15 days after the mandate of the Court of Appeals has been issued to the trial tribunal. See Rule 15(b).
- The mandate issues automatically on the 20th day after the issuance of the Court of Appeals opinion. See Rule 32(b). Counsel does not receive any notice that the mandate has issued. Counsel should therefore be careful to calculate herself the deadline for a Petition for Discretionary Review: 35 total days after the issuance of the opinion (20 plus 15). See Rule 15(b).
- The petition must be actually received by the Clerk of the Supreme Court by the 35th day to be considered timely.

INDEX

TABLE OF AUTHORITIES ii

FACTS 1

REASONS WHY CERTIFICATION SHOULD ISSUE 2

I. THIS CASE INVOLVES LEGAL PRINCIPLES
OF MAJOR SIGNIFICANCE TO THE
JURISPRUDENCE OF THIS STATE

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

B. This Court’s precedents foreclose the Court
of Appeals’ expansive interpretation of the
word “claimant” x

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

ISSUE TO BE BRIEFED 3

CERTIFICATE OF SERVICE..... 4

Notes on Index:

- This illustrates another form of a contents page, with a mixture of ALL-CAPS and lower-case section titles.
- The margins are indented 3/4” from each regular one-inch margin, leaving a 5” line.
- The dot leaders (“ . . . ”) for the page numbers are optional.
- The petition only requires an index if it is ten pages or more in length. See 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 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 is fewer than ten pages, this table may be omitted. See Appendix B.
- If a 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).

No.

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA)
 INSURANCE ASSOCIATION,)
)
 Plaintiff,)
)
 v.)
)
 MID-CENTURY INDEMNITY)
 CO.,)
)
 Defendant.

From Wake County
 No. COA 09-1544

PETITION FOR DISCRETIONARY REVIEW
UNDER N.C.G.S. § 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 2017 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, the Association shows the following:

FACTS

The plaintiff filed a complaint on 23 June 2016 in the Superior Court of Wake County. Judge Jonathan R. Smith granted the defendant's summary judgment motion at the 21 November 2016 Civil Session. The plaintiff filed notice of appeal to the Court of Appeals on 1 December 2016. The Court of Appeals affirmed the order of dismissal in a published opinion, filed 14 February 2017.

The Association is an unincorporated non-profit entity created pursuant to the North Carolina Insurance Guaranty Act . . .

Notes on Facts:

- The first part of this 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 Appendix D.
- The second part of this section should set forth a statement of the facts—enough for the Court to understand the basis of the petition. See *id.*

[Factual background continues]

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 Reasons Why Certification Should Issue:

- The focus of this section should be to show: 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, and Appendix D.
- Some factual and legal argument will be necessary in this section, but the new brief will be the place for the substantive discussion of the arguments, if the Supreme Court takes the case. See Rule 15 and 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 Petitioner 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 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 Appendix D.

Respectfully submitted, this the 1st day of March, 2017.

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

[Name of Counsel]
Attorneys 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 Under 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 1st day of March, 2017.

Name of Counsel

Following the petition, 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.
- A petition for discretionary review ("PDR") 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 Rule 15(a).
- A PDR filed *before* the Court of Appeals determines the matter is commonly referred to as a "Bypass Petition" or "Bypass PDR."
- 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 PDR has been ruled upon.

V. Motions and Other Papers
A Typical Motion to Consolidate Appeals

No. COA16-345

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

SANDRA JOHNSON,)
 Plaintiff,)
)
 v.)
)
 ROBERT JOHNSON and XYZ)
 CORP., INC.,)
 Defendants.)

From Wake County

MOTION TO CONSOLIDATE APPEALS

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendant-Appellant XYZ Corp., Inc., through undersigned counsel, moves this Court under Appellate Rule 40 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 Wake County, Case No. 10 CVD 3375, was docketed on 22 April 2017.
2. A similar appeal from Forsyth County, Case No. 09 CVD 4478, was docketed on 10 May 2017.

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

Respectfully submitted, this ____ day of July, 2017.

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

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

V. Motions and Other Papers

Notes on Motions 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.” Rule 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 Appellate Rule 30(b) by written agreement. This agreement must be filed with the court prior to oral argument. Unless modified by the 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. Rules 10(b), (c), and 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 Appellate Rules.

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 July, 2017.

Name of Counsel

A Typical Motion for Extension of Time

No. COA16-456

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

SANDRA JOHNSON,)
 Plaintiff,)
)
 v.)
)
 ROBERT JOHNSON and XYZ)
 CORP., INC.,)
 Defendants.)

From Wake County

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff-Appellee Sandra Johnson, through undersigned counsel, moves this Court under Appellate Rule 27(c) for an extension of time of twenty-one (21) days, up to and including 2 August 2017, in which to file her brief in this matter. In support of this motion, Plaintiff-Appellee shows:

1. The Notice of Appeal was filed on 22 February 2017.
2. The parties settled the record by agreement on 22 April 2017.

3. The Record on Appeal was filed on 1 May 2017.

4. Defendants-Appellants filed their brief on 13 June 2017.

5. The undersigned appellate counsel for Plaintiff-Appellee did not participate in the trial court proceedings.

6. Plaintiff-Appellee's brief is due to be filed with this Court on 13 July 2017.

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

8. The time for filing Plaintiff-Appellee's brief has not expired.

WHEREFORE, Plaintiff-Appellee respectfully moves this Court under Appellate Rule 27(c) for an extension of time of twenty-one (21) days, up to and including 2 August 2017, or whatever other time the Court deems appropriate, in which to file her brief in this matter.

Respectfully submitted, this ____ day of July, 2017.

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

[Name of Counsel]
Attorneys for Plaintiff-Appellee

160 N. Main Street
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Notes on Motions for Extensions of Time:

- Upon motion, the appellate courts may extend any of the times prescribed by the Appellate 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). Rule 27(c).
- This example is a typical motion in the appellate court. In most cases, a motion for an extension of up to thirty days for the court reporter to prepare the transcript, Rule 7(b)(1), or for an extension of up to thirty 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. Rule 27(c)(1). Any other motion for extension of any other deadline, including any subsequent motion for an extension of time for preparation of the transcript or for service of the proposed record, must be filed with the appellate court. Further, motions in juvenile cases covered by Rule 3.1 must be filed in the first instance with the appellate court and will only be granted in extraordinary circumstances. Rule 3.1(c)(1).
- Motions 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. Rule 27(d).
- Motions 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.

**A Typical Motion for Leave
to File an Amicus Curiae Brief**

No. COA16-567

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

SANDRA JOHNSON,)
 Plaintiff,)
)
 v.)
)
 ROBERT JOHNSON and XYZ)
 CORP., INC.,)
 Defendants.)

From Wake 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-Appellants Robert Johnson and XYZ Corp., Inc. 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

Plaintiff-Appellee 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 Defendants-Appellants.

Respectfully submitted, this ____ day of July, 2017.

[LAW FIRM NAME, if any]

[Name of Counsel]
Attorneys for Amicus Curiae
160 N. Main Street
Newland, NC 28786
(828) 456-1245
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Notes on Motions for Leave to File an Amicus Curiae Brief:

- Unless the court requests a brief, an amicus curiae may only file a brief by leave of the court. Rule 28(i). The motion must be served upon all parties, but the motion is generally decided without response from other parties.
- An amicus curiae may file the motion for leave first, with the proposed brief to be filed later, or, alternatively, may attach the proposed brief to the motion for leave, provided that it complies with the deadlines set forth in Appellate Rule 28(i).
- If the motion is granted, the amicus curiae should file its brief within the time granted to the party it supports or, if in support of neither party, within the time allowed for filing the appellant's brief.
- Parties may submit response briefs to an amicus curiae brief, but the response must be "limited to points or authorities presented in the amicus curiae brief" that are not addressed in the parties' principal briefs. Rule 28(i).
- 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.

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 July, 2017.

Name of Counsel

A Typical Designation of Secure Leave

V. Motions and Other Papers

August 21, 2016

Office of the Clerk
of the Court of Appeals
Post Office Box 2779
Raleigh, North Carolina 27602

RE: Secure Leave Designation for [Name of Counsel]

Dear Office of the Clerk:

I write to designate a secure leave period in the North Carolina Court of Appeals for calendar year 2017, pursuant to North Carolina Rule of Appellate Procedure 33.1. As required by Rule 33.1(d), the specifics of the designation are as follows:

(1) I am designating a secure leave period for:

[Name of Counsel]
[NAME OF COUNSEL'S FIRM]
[Firm address]
[Counsel's telephone number]
[State] Bar No. _____
[Counsel's email address]

(2) The leave period will begin Monday, 23 January 2017, and will end Friday, 3 February 2017.

(3) I have not designated any other secure leave periods for calendar year 2017.

(4) This secure leave period is not being designated for the purpose of delaying, hindering, or interfering with the timely disposition of any matter in any pending action or proceeding.

(5) No argument or other in-court proceeding has been scheduled during the designated secure leave period in any matter pending in the appellate division in which I have entered an appearance.

(6) The cases pending before the North Carolina Court of Appeals in which I have made an appearance are:

First Plaintiff v. Defendant, Docket No. COA16-1158

Second Plaintiff v. Defendant, Docket No. COA16-1197

V. Motions and Other Papers

Thank you for your assistance in this matter. Please do not hesitate to contact me if there is any other information needed to process this designation.

Sincerely,

[NAME OF COUNSEL'S FIRM]

[Signature of Counsel]

[Name of Counsel]

cc: [Counsel for First Plaintiff]
[Counsel for Second Plaintiff]

Notes on Designation of Secure Leave:

- Rule 33.1 provides a mechanism for attorneys to designate up to three weeks per year during which no “in-court proceedings” will be scheduled in their cases in the appellate division.
- A designation must be filed no later than ninety days before the beginning of the secure leave period, and before any in-court proceeding has been scheduled during the period. See Rule 33.1(f).
- Only whole weeks can be designated. See Rule 33.1(d)(2).
- Because Rule 33.1(d)(6) contemplates a single designation covering all of the attorney’s cases in the appellate division, the designation can take the form of a letter to the clerk in lieu of a motion in a particular case.
- Nevertheless, it is critical that the letter be served on all other parties in any of the attorney’s cases in the appellate division.
- Alternatively, secure leave may be designated through <http://www.ncappellatecourts.org>. On the My Account page, click the Secured Leave tab and follow the instructions.
- An attorney designating secure leave should not expect an order or ruling from the appellate division; instead, the designation is effective upon filing.
- The designation does not affect any of the “paper” deadlines involved in any appeal. Thus an attorney is still responsible, for example, for timely submitting the brief even if the brief comes due while the attorney is on secure leave.
- Be aware that you must file an additional designation for cases filed and docketed after you first designated a secure leave period, Rule 33.1(d), and for cases that move from the Court of Appeals to the Supreme Court after you first designated a secure leave period, Rule 33.1(e).