



## **Notice Of Appeal Tip Sheet** **For *Civil Appeals* To North Carolina's** **Appellate Courts From Superior And District** **Court Orders and Judgments**

Helpful Tips Providing Guidance On The Following Questions:

- Where Must My Notice Of Appeal Be Filed?
- When Must My Notice Of Appeal Be Filed?
- When Can A Deadline For Filing A Notice Of Appeal Be Tolloed?
- What Information Should The Notice Of Appeal Contain?
- Are There Any Special Requirements For Appeals From The North Carolina Business Court?
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- Are There Any Other Notice Of Appeal Considerations?

## **Where Must My Notice Of Appeal Be Filed?**

1. The Notice of Appeal in civil cases and special proceedings should be filed with the Clerk of the Superior Court, regardless of whether you are appealing a judgment or order from Superior Court or District Court. It should not be filed in the Court of Appeals. N.C. R. App. P. 3(a).
2. Most appeals are made to the North Carolina Court of Appeals.
3. However, certain judgments and orders must be appealed directly to the North Carolina Supreme Court. See N.C. Gen. Stat. § 7A-27. These appeals include offenses for which the death penalty is imposed and both final and interlocutory orders that hold a state statute unconstitutional on its face. Section 7A-27 also indicates that most appeals from the North Carolina Business Court should be filed with the North Carolina Supreme Court. (See separate section below on special requirements for Business Court appeals.)
4. Note that when an appeal of right is taken from the North Carolina Court of Appeals to the North Carolina Supreme Court, the notice of appeal must be filed with both the Clerk of the Court of Appeals and the Clerk of the Supreme Court. N.C. R. App. P. 14(a). Note also that this Tip Sheet does not address petitions for discretionary review, which are governed by Appellate Rule 15.

## **When Must My Notice Of Appeal Be Filed?**

5. Unless otherwise provided by statute (see, e.g., N.C. Gen. Stat. § 7B-2602), the Notice of Appeal must be filed within 30 days after the entry of a final judgment. N.C. R. App. P. 3(c), (e). Subject to limited exceptions (see Tip 11, below), notice of appeal from an immediately appealable interlocutory order may either be filed within 30 days after the entry of that order or after the entry of a final judgment in the case.
6. The 30-day period for filing the Notice of Appeal is jurisdictional and cannot be extended by the trial court. *Henlajon, Inc. v. Branch Highways, Inc.*, 149 N.C. App. 329, 331-32, 560 S.E.2d 598, 600-01 (2002).
7. The Notice of Appeal must also be served within the 30-day deadline period. Service should be made by hand delivery or mail. Email is not a proper method for serving the Notice of Appeal. *MNC Holdings, LLC v. Town of Matthews*, 223 N.C. App. 442, 445-47, 735 S.E.2d 364, 366-67 (2012).
8. If timely notice of appeal is made by one party, any other party can serve notice of cross-appeal within 10 days of that first notice of appeal. N.C. R. App. P. 3. Note that Appellate Rule 18 does not contain a specific 10-day

cross-appeal provision. Therefore, the 10-day cross-appeal provision may not apply to administrative appeals governed by Appellate Rule 18. *Strezinski v. City of Goldsboro*, 187 N.C. App. 703, 710, 654 S.E.2d 263, 268 (2007) (holding that the “timing of appealing a decision of the Full Commission . . . is governed by section 97-86, not Appellate Rule 3,” and that because section 97-86 does not contain a provision giving an appellee additional time to file a cross-appeal after another party appeals, the notice of appeal is due 30 days after receipt of the order being challenged).

9. A judgment is entered, and the Notice of Appeal clock begins to run, when a judgment is reduced to writing, signed by the judge, and filed with the Clerk of Superior Court. N.C. R. Civ. P. 58.
10. Once a trial court enters an order that decides all substantive claims in the litigation, the right to appeal the judgment begins to run immediately. A pending motion for attorneys’ fees and costs is ancillary or collateral to the final judgment on the substantive merits and does not alter the timeline for appeal of the substantive claims. *Duncan v. Duncan*, 366 N.C. 544, 546, 742 S.E.2d 799, 801 (2013).
11. Certain interlocutory orders may be immediately appealed within 30 days of entry of the interlocutory order, but the decision to forego an immediate appeal from an interlocutory order does not generally result in waiver of the right to appeal that interlocutory order at the conclusion of the case. *State Dep’t of Transp. v. Rowe*, 351 N.C. 172, 176, 521 S.E.2d 707, 709-10 (1999). However, there are limited exceptions to this rule. See, e.g., *State Dep’t of Transp. v. Stagecoach Vill.*, 360 N.C. 46, 48, 619 S.E.2d 495, 496 (2005) (holding that orders “concerning title or area taken” of a common area subject to condemnation are immediately appealable and must be immediately appealed). For more information concerning examples of interlocutory orders that may be immediately appealed, see the Appellate Rules Committee’s “Guide to Appealability of Interlocutory Orders,” available at <http://www.ncbar.org/media/464950/ncba-appellate-rules-committee-guide-to-appealability-2015.pdf>.

## **When Can A Deadline For Filing A Notice Of Appeal Be Tolled?**

12. The 30-day period for filing a notice of appeal is tolled by the filing of timely motions under North Carolina Rules of Civil Procedure 50(b), 52(b), or 59. N.C. R. App. P. 3(c).
13. A motion for relief from judgment or order under Civil Rule 60 does *not* toll the time for appeal. *Morehead v. Wall*, 224 N.C. App. 588, 593-94, 736 S.E.2d 798, 801-02 (2012). Pending motions for attorneys’ fees or costs

also do not toll the time for appeal. *Duncan v. Duncan*, 366 N.C. 544, 645-46, 742 S.E.2d 799, 800-01 (2013).

14. Appellate Rule 3 provides that when “any party” timely files a motion under Rule 50(b), 52(b), or 59, the deadline for filing a notice of appeal is tolled “as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order.” Despite this language, at least one Court of Appeals decision has concluded that the time for filing a notice of appeal is tolled only as to the party that filed the post-trial motion. *Estate of Hurst ex rel. Cherry v. Moorehead I, LLC*, 748 S.E.2d 568, 572 n.2 (N.C. Ct. App. 2013). Therefore, it may be prudent to file a timely post-trial motion or a notice of appeal instead of relying on the tolling effect of another party’s motion.
15. Normally, a notice of appeal must be filed within 30 days after entry of the judgment. (See Tip 9, above, discussing the entry of a judgment). However, Appellate Rule 3(c) provides a tolling provision whereby if a party is not served with the judgment within 3 days of its entry, then the appellant’s deadline for filing a notice of appeal runs from the date that the judgment is served in accordance with N.C. R. Civ. P. 58.
  - However, relying on Appellate Rule 3(c)’s service tolling provision should be avoided if at all possible. Several Court of Appeals opinions hold that the tolling provision of Rule 3(c) does not apply if the party received “actual notice” that the judgment has been entered.
  - Actual notice may include email notification. *Magazian v. Creagh*, 759 S.E.2d 130, 131 (N.C. Ct. App. 2014).
  - Actual notice may occur whenever anyone in the attorney’s firm (e.g., another attorney, paralegal, secretary, receptionist, or other support personnel) becomes aware that the judgment has been entered. See *Manone v. Coffee*, 217 N.C. App. 619, 623, 720 S.E.2d 781, 784 (2011).
  - Finally, when determining whether a party received “actual notice” of the judgment, the court excludes weekends and court holidays when determining whether actual notice occurred within three days of entry of the judgment. *Magazian v. Creagh*, 759 S.E.2d 130, 131 (N.C. Ct. App. 2014). In other words, if actual notice occurs within 3 business days of entry of the judgment, the appellant cannot rely on the service tolling provision of Appellate Rule 3.

## **What Information Should The Notice Of Appeal Contain?**

16. Generally, the Notice of Appeal must:

- Contain the name of the party taking the appeal;
- Designate the judgment or order being appealed from;
- Designate the court to which appeal is being taken;
- Be signed by the counsel of record for the appealing party; and
- Be served under Appellate Rule 26.

17. Civil notices of appeal must always be in writing. N.C. R. App. P. 3.

18. Generally, notice of appeal in a criminal matter may be given orally at trial. N.C. R. App. P. 4(a)(1). However, if you are representing a criminal defendant in a satellite-based monitoring hearing or in a sex offender registry removal hearing, those hearings are considered civil hearings, and consequently, an oral notice of appeal is insufficient and written notice of appeal is required. *State v. Brooks*, 204 N.C. App. 193, 194-95, 693 S.E.2d 204, 206 (2010); *State v. Stokes*, 216 N.C. App. 529, 537, 718 S.E.2d 174, 180 (2011); *State v. Mann*, 214 N.C. App. 155, 157, 715 S.E.2d 213, 215 (2011). Note that criminal appeals, as well as appeals from the district court to the superior court for a trial de novo, are often governed by different statutes and rules than those addressed by this Notice of Appeal Tip Sheet. See, e.g., N.C. Gen. Stat. § 15A-1431.

19. While a notice of appeal that specifies that the final judgment is being appealed can sometimes be construed to encompass earlier interlocutory orders, the best practice is to designate in the Notice of Appeal every order of the trial court that the party intends to challenge on appeal.

### **Are There Any Special Requirements For Appeals From The North Carolina Business Court?**

20. In October 2014, the General Assembly passed the Business Court Modernization Act, which, among other things, provides that certain Business Court Cases are appealable directly to the North Carolina Supreme Court. N.C. Gen. Stat. § 7A-27; see also N.C. Session Law 2014-102. Section 7A-27 was further amended in October 2015. See N.C. Session Law 2015-264. Amended section 7A-27 contains potential ambiguities that the appellate courts have not yet addressed. Therefore,

practitioners should carefully review the language of the statute, case law, and commentary before filing a notice of appeal from the Business Court. Practitioners should also carefully consider which version of section 7A-27 governs their appeals from the Business Court.

21. Only judgments and orders in cases that have been designated as mandatory complex business cases on or after October 1, 2014 are directly appealable to the North Carolina Supreme Court. N.C. Session Law 2014-102, § 1. Therefore, always check the designation order to determine the appellate court to which your notice of appeal should be directed.
22. If you are litigating in the North Carolina Business Court, you must timely file the Notice of Appeal electronically in the Business Court and file a paper copy with the Clerk of the Superior Court in the county where the case was originally filed. Both notices of appeal should be filed *on or before the notice of appeal deadline*. *Ehrenhaus v. Baker*, COA 14-1083 (N.C. Ct. App. Sept. 15, 2015); *see also Ehrenhaus v. Baker*, 2014 NCBC 30, ¶¶ 8-13 (N.C. Super. Ct. July 16, 2014) (analyzing why notice of appeal must be filed in two places).
23. While it is never advisable to wait until the last minute to file a notice of appeal, special care should be taken when filing a notice of appeal in the North Carolina Business Court because of the possibility of technical difficulties with the e-filing system. Under the Business Court's local rules governing technical difficulties (Business Court Rules 6.13 & 6.14), you should try to file your notice of appeal before 4:00 p.m. on the day the Notice of Appeal is due, *at the very latest*. *See Carter v. Clements Walker PLLC*, 2014 NCBC 12 (N.C. Super. Ct. April 30, 2014).

### **Are There Any Special Requirements For Appeals of Termination of Parental Rights and Juvenile Abuse/Neglect/Dependency Cases?**

24. Appeals of trial court orders involving termination of parental rights and issues of juvenile dependency, abuse, and neglect are governed by special rules found in N.C. Gen. Stat. § 7B-1001 and N.C. R. App. P. 3.1.
25. Only the matters listed in N.C. Gen. Stat. § 7B-1001(a) can be appealed to the North Carolina Court of Appeals in abuse, neglect, and dependency cases.
26. In all juvenile appeals filed under N.C. Gen. Stat. § 7B-1001(a), notice of appeal must be signed by *both* the counsel of record for the appealing party and the appealing party. N.C. Gen. Stat. § 7B-1001(c); N.C. R. App. P. 3.1(a).

27. An indigent person is entitled to court-appointed appellate counsel in actions and proceedings listed in N.C. Gen. Stat. § 7A-451. Appointment of appellate counsel may be considered by the trial court even if the appealing party was represented by retained counsel in the underlying proceeding. N.C. Gen. Stat. § 7B-450(c). Examples of notices of appeal and other resources for appeals in juvenile matters are available on the Indigent Defense Services' Office of Parent Representation website, available at <http://www.ncids.org/ParentRepresentation/index.html>.

## **Are There Any Other Notice Of Appeal Considerations?**

28. A filed-stamped notice of appeal and the certificate of service of the Notice of Appeal must be included in the printed record on appeal.

29. A trial court order dismissing an appeal for failure to timely perfect the appeal cannot be appealed by filing a notice of appeal of that order. Instead, the proper way to seek appellate review of such orders is by petitioning for a writ of certiorari. *State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980).

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