

# NORTH CAROLINA RULES OF APPELLATE<sup>1</sup> PROCEDURE CHECKLIST:

## Civil Appeals from Trial Courts to North Carolina Court of Appeals<sup>2</sup>

### CHECK BOXES AS COMPLETED<sup>3</sup>

#### Notice of Appeal

- File with county superior court within **30 days** after entry of order or judgment from which appeal is taken (unless otherwise tolled).<sup>4</sup> (App. R. 3(a), (c))
- Serve all other parties within same period. (App. R. 3(a), (c))  
Other parties generally may file notice of appeal with trial court within **10 days** of service of the initial notice of appeal. (App. R. 3(c))
- Determine whether to seek stay of the trial court's order or judgment. (App. R. 8, 21)

#### Transcript Arrangement

- Appellant must make arrangement with the court reporter or transcriptionist(s) for the preparation of any transcripts within 14 days of filing notice of appeal. (App. R. 7(a)(1))
- Appellant must file written documentation of transcript arrangement with the clerk of the trial court and serve all parties and the transcriptionist(s). (App. R. 7(a)(1) (listing required content))  
Appellee may arrange for preparation of additional transcript parts within 14 days after service of written transcript contract by Appellant. Appellee must file with the clerk of trial court and serve on all other parties of record written documentation of the additional parts of the proceedings to be transcribed, including the name and address of the transcriptionist(s) designated to prepare the transcript. (App. R. 7(a)(1))
- The transcriptionist(s) must prepare and deliver transcript within 60 days after service of written transcript contract. (App. R. 7(b)(1)) (Trial court transcripts are later filed electronically by the transcriptionist(s) after the record on appeal is docketed.)

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<sup>1</sup> This document is intended as a general guideline only and pertains solely to civil appeals from trial courts. For example, it does not apply to Rule 3.1 appeals involving abuse, neglect, dependency, and termination of parental rights. Rather than rely on this document, *always* directly consult and follow the most recent version of the North Carolina Rules of Appellate Procedure when handling appeals. Unless otherwise noted, references to rules are taken from the 2019 North Carolina Rules of Appellate Procedure. To receive updates or to submit comments or suggestions, subscribe to the [NCAPB.com blog](https://www.ncapb.com/blog) or email [knelson@foxrothschild.com](mailto:knelson@foxrothschild.com). Another helpful resource is the *North Carolina Appellate Practice and Procedure* treatise, authored by Beth Scherer and Matthew Leerberg. Also consider consulting the [Appellate Style Manual](#), a free guide produced by the NCBA's Appellate Rules Committee to assist appellate practitioners appearing before North Carolina appellate courts with practical examples, tips and best practices.

<sup>2</sup> The same guidelines generally apply to direct appeals from the North Carolina Business Court to the Supreme Court of North Carolina, except that motions, records, and briefs are filed with the Supreme Court rather than the Court of Appeals. An exception is that word-count limits do not apply to briefs filed in the Supreme Court.

<sup>3</sup> Note that some steps may not apply to every appeal. Consult the Appellate Rules for specific information.

<sup>4</sup> Appellant does not get the benefit of the 3-day mail rule. (App. R. 3(c))



- ❑ Appellant must obtain any necessary extension of time for transcript preparation. The trial court may extend once the time to prepare the transcript for an additional 30 days, but any subsequent motion must be made to the Court of Appeals. (App. R. 7(b)(1))
- ❑ Court reporter certifies delivery/completion of transcript(s) to Appellant and the trial court. (App. R. 7(b)(2))

### **Proposed Record and Settling the Record on Appeal<sup>5</sup>**

- ❑ Parties may settle a proposed record on appeal by agreement within 35 days after certification of delivery of the transcript or 35 days after filing of the notice of appeal if no transcript was ordered. (App. R. 11(a))
- ❑ If not settled by agreement, Appellant serves all other parties a proposed record on appeal within 35 days after certification of delivery of the transcript or 35 days after filing the notice of appeal if no transcript was ordered. (App. R. 11(b))

Within 30 days after service of the proposed record on appeal, Appellee may serve on all parties a notice of approval or may serve objections, amendments, or a proposed alternative record on appeal. (App. R. 11(b)(c))

### **Settlement of Record**

- ❑ If Appellee serves no objections or amendments to the record on appeal, the record is deemed settled as of the date of any notice of approval or as of the date when the time for filing objections expires. (App. R. 11(b))
- ❑ If objections, amendments, or a proposed alternative record are served by any appellee, then judicial settlement of the record by the trial court may be requested in writing by any party within 10 days after expiration of the last day within which an appellee could have served objections, amendments, etc. (App. R. 11(c))

Note: Judicial settlement is limited to narrow circumstances. (See App. R. 11(c))

Each party must promptly provide the trial court judge a reference copy of the record items, amendments, or objections served by that party. (App. R. 11(c))

A judicial settlement hearing must be held no later than **15 days** after service of the request for hearing upon the judge. (App. R. 11(c))

The judge must file an order settling the record on appeal not more than **20 days** after service of the request for hearing upon the judge. (App. R. 11(c))

- ❑ If objections, amendments, or a proposed alternative record is served but judicial settlement is not sought, the record is deemed settled on expiration of 10-day period for requesting judicial settlement. In general, the appellate record includes all required, agreed-upon, and requested items, with any disputed items placed in a Rule 11(c) Supplement. (App. R. 11(c))

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<sup>5</sup> If there are multiple appellants, the parties should come to agreement regarding the procedure for preparing and serving the proposed record or, if necessary, request an order from the trial court. (App. R. 11(d))

## Filing the Record on Appeal

- File final record on appeal with the Court of Appeals within **15 days** after settlement. (App. R. 12(a))
- Appellant files one copy of the printed record on appeal, one copy of any separately indexed and paginated Rule 9(d) Documentary Exhibits, one copy of any Rule 11(c) Supplement, and one copy of any paper deposition transcript. Alternatively, Rule 9(d) Documentary Exhibits, Rule 11(c) Supplements, and deposition transcripts can be filed electronically once the record is filed and a docket number assigned.<sup>6</sup> (App. R. 12(c))
- When the record is filed, Appellant must notify any transcriptionist(s) filing electronic transcript(s). (App. R. 7(b)(2))
- Appellant pays Court of Appeals clerk the \$10.00 docketing fee, and the clerk will docket the appeal. (App. R. 12(b); Appendix F)
- Appellant also pays \$250.00 appeal bond to the Court of Appeals. (App. R. 6; Appendix F)
- When the docket entry notice is received, Appellant notifies any transcriptionist(s) filing electronic transcripts of the appeal's docketing, gives the transcriptionist(s) the Court of Appeal's case number, and requests the transcriptionist(s) electronically file any trial court transcript(s). (App. R. 7(b)(2), 12(c))
- Seek written confirmation from transcriptionist(s) that the transcript(s) have been electronically filed.  
The Court of Appeals will bill Appellant for printing costs (\$1.75 per page). (App. R. 12(c); Appendix F)

## Appellate Mediation<sup>7</sup>

- Return mediation election form by the deadline stated on the form (which is mailed to the parties after the record on appeal is filed).
- If both parties consent to mediation, Appellant will automatically receive an order authorizing a 60-day extension of time to file its brief.

## Appellant's Brief

- Appellant completes Appeal Information Statement using the electronic-filing site (<https://www.ncappellatecourts.org>) before Appellant's brief is filed. (App. R. 41)
- Appellant's brief filed within **30 days** after the record is *filed* with the appellate court. (App. R. 13(a))<sup>8</sup>
- Serve brief on all parties within same time. (App. R. 13(a))

<sup>6</sup> The printed record cannot be filed electronically, except in Rule 3.1 and direct Supreme Court appeals.

<sup>7</sup> For more information, see the Court of Appeals' mediation page at <http://www.nccourts.org/Courts/Appellate/Appeal/Mediation/Default.asp>.

<sup>8</sup> Cross-appellants must file a brief on their cross-appeal issues under same deadlines as the initial Appellant.

- Include all required sections of the brief. (App. R. 28(b))
- Include any required appendix, properly formatted. (App. R. 28(d))
- Follow font requirements, formatting requirements, and word limitations. (App. R. 26(g); Appendix B)
- Include certificate of compliance with word limitations. (App. R. 28(j))  
Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

### **Appellee's Brief**

- Appellee's brief filed within **30 days** after Appellant's brief has been served. (App. R. 13(a))<sup>9</sup>
- Serve brief on all parties within same time. (App. R. 13(a))
- Include all required sections of the brief. (App. R. 28(c))
- Include any required appendix, properly formatted. (App. R. 28(d))
- Follow font requirements, formatting requirements, and word limitations. (App. R. 26(g); Appendix B)
- Include certificate of compliance with word limitations. (App. R. 28(j))  
Printing costs will be billed to Appellee (\$1.75 per page). (Appendix F)

### **Reply Brief**

- Reply brief filed within **14 days** after Appellee's brief has been served. (App. R. 28(h))<sup>10</sup>
- Serve brief on all parties within same time. (App. R. 13(a), 28(h))
- Limit to concise rebuttal of arguments set out in Appellee's brief. (App. R. 28(h))
- Follow font requirements, formatting requirements, and word limitations. (App. R. 26(g); Appendix B)
- Include certificate of compliance with word limitations. (App. R. 28(j))  
Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

### **Oral Argument (Only If Ordered By Court)**

- If the case is selected for oral argument, counsel intending to argue the case must have personally or electronically signed his/her client's brief. (App. R. 33(a))
- If necessary, file memoranda of additional authorities before oral argument. (App. R. 28(g))

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<sup>9</sup> Three extra days are permitted if Appellant's brief was served by mail or electronic mail. (App. R. 27(b))

<sup>10</sup> Three extra days are permitted if Appellee's brief was served by mail or electronic mail. (App. R. 27(b))

## Opinion, Mandate, and Optional Filings

- After a decision is reached by Court of Appeals, the Clerk enters judgment and issues the mandate **20 days** after the written opinion is filed. (App. R. 32) (Note: The mandate is issued automatically. There is no further notification by the Court.)
- A motion for rehearing en banc may be filed within **15 days** after the opinion is filed.<sup>11</sup> (App. R. 31.1(d))
- Consider whether to seek a stay of the mandate from the Court of Appeals. (App. R. 31.1(e)) If the motion is granted, new briefs are only required if the court requests them. (App. R. 31.1(d))
- A petition for panel rehearing may be filed within **15 days** after the mandate is issued. (App. R. 31(a))

Any petition for rehearing must include certificates of two uninterested and qualified attorneys regarding errors. (App. R. 31(a))

Pay the \$20.00 docketing fee applicable to petitions for rehearing. (Appendix F)

Consider whether to seek a stay from the trial court to which the mandate is issued. (App. R. 31(e))

If the petition is granted:

Petitioner's brief filed within 30 days after the case is certified for rehearing. (App. R. 31(d))

Opposing party's brief filed within 30 days after petitioner's brief has been served. (App. R. 31(d))

No reply briefs allowed. (App. R. 31(d))

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<sup>11</sup> A motion for initial en banc determination can also be filed at any point after Appellants' brief is filed but no later than 15 days after the filing of Appellee's brief. (App. R. 31.1(c))



# NORTH CAROLINA RULES OF APPELLATE PROCEDURE CHECKLIST:

## Civil Appeals to the Supreme Court of North Carolina<sup>1</sup>

### CHECK BOXES AS COMPLETED<sup>2</sup>

#### I. APPEALS OF RIGHT BASED ON DISSENT IN COURT OF APPEALS (APP. R. 14; N.C. GEN. STAT. § 7A-30)

##### Notice of Appeal

File notice of appeal of right with the Court of Appeals **and** with the Supreme Court (i) within **15 days** after the mandate of the Court of Appeals has been issued to the trial tribunal or (ii) within **15 days** of entry of order denying motion for rehearing. (App. R. 14(a))

Serve all other parties within same period. (App. R. 14(a))

If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within **10 days** after the first notice of appeal was filed. (App. R. 14(a))

Pay \$10.00 certification fee to Court of Appeals. (Appendix F; *see also* Appellate Style Manual)

Pay \$250.00 bond to Supreme Court. (Appendix F)

Pay \$10.00 docketing fee to Supreme Court. (Appendix F)

Consider whether to file petition for discretionary review (PDR) to seek review by Supreme Court of additional issues. (*See* App. R. 14(a))

If Appellant files both a notice of appeal and PDR, the docketing fee to the Supreme Court is \$20.00. (Appendix F)

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<sup>1</sup> This document is intended as a general guideline only and pertains solely to litigants in civil appeals seeking further appellate review from the Supreme Court of North Carolina. Rather than rely on this document, *always* directly consult and follow the most recent version of the North Carolina Rules of Appellate Procedure when handling appeals. Unless otherwise noted, references to rules are taken from the 2019 North Carolina Rules of Appellate Procedure. To receive updates or to submit comments or suggestions, subscribe to the [NCAPB.com](https://ncapb.com) blog or email [knelson@foxrothschild.com](mailto:knelson@foxrothschild.com). Another helpful resource is the *North Carolina Appellate Practice* and Procedure treatise authored by Beth Scherer and Matthew Leerberg. Also consider consulting the [Appellate Style Manual](#), a free guide produced by the NCBA's Appellate Rules Committee to assist appellate practitioners appearing before North Carolina appellate courts with practical examples, tips, and best practices.

<sup>2</sup> Note that some steps may not apply to every appeal. Consult the Appellate Rules for specific information.





## Briefing

- Appellant's new brief filed with the Supreme Court within **30 days** after filing notice of appeal. (App. R. 14(d)(1))

If filing both a PDR and an appeal of right, seek a stay of briefing as to the dissent issue until an order is issued. In that case, Appellant's new brief must be filed within 30 days of Supreme Court's order regarding the PDR. (App. R. 14(d)(1))

- Serve Appellant's new brief on all parties within same time. (App. R. 14(d)(1))
- Include all required sections of the brief. (App. R. 28(b))
- Include any required appendix, properly formatted. (App. R. 28(d))
- Follow font and formatting requirements. (Word-count limitations do not apply.) (App. R. 28(j))

Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

- Appellee's new brief filed with the Supreme Court within **30 days** after service of Appellant's brief. (App. R. 14(d)(1))<sup>3</sup>

- Serve Appellee's new brief on all parties within same time. (App. R. 14(d)(1))

- Include all required sections of the brief. (App. R. 28(c))

- Include any required appendix, properly formatted. (App. R. 28(d))

- Follow font and formatting requirements. (Word-count limitations do not apply.) (App. R. 28(j))

Printing costs will be billed to Appellee (\$1.75 per page). (Appendix F)

- Appellant's new reply brief filed with the Supreme Court within **14 days** after service of Appellee's brief. (App. R. 14(d)(1), 28(h))<sup>4</sup>

- Serve new reply brief on all parties within same time. (App. R. 14(d)(1), 28(h))

- Limit to concise rebuttal of arguments set out in Appellee's brief. (App. R. 28(h))

- Follow font and formatting requirements. (Word-count limitations do not apply.) (App. R. 28(j))

Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

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<sup>3</sup> Three extra days are permitted if the Appellant's new brief was served by mail or electronic mail. (App. R. 27(b))

<sup>4</sup> Three extra days are permitted if the Appellee's new brief was served by mail or electronic mail. (App. R. 27(b))

## II. DISCRETIONARY REVIEW BY SUPREME COURT OF NORTH CAROLINA (APP. R. 15; N.C. GEN. STAT. § 7A-31)

### Petition for Discretionary Review (PDR)<sup>5</sup>

A PDR filed *after* determination by the Court of Appeals must be filed with the Supreme Court and served on all other parties: (i) within 15 days after the mandate of the Court of Appeals has been issued to the trial tribunal or (ii) within **15 days** of entry of order denying motion for rehearing. (App. R. 15(b)) A PDR filed *prior* to determination by the Court of Appeals must be filed with the Supreme Court and served on all other parties within **15 days** after the appeal is docketed in the Court of Appeals. (App. R. 15(b))

Pay \$10.00 filing fee to Supreme Court. (Appendix F)

If a PDR is filed by either party, any other party may file its own PDR within **10 days** after first PDR is filed. (App. R. 15(b))

Any response to the PDR, including additional issues for which Appellee seeks review, is due **10 days** after service of the PDR. No extensions of time are permitted. (App. R. 15(d))

### Briefing Following Certification of Discretionary Review by the Supreme Court

Appellant's New Brief

For a PDR filed *after* determination by the Court of Appeals, Appellant's new brief must be filed with the Supreme Court within **30 days** after the case is docketed by entry of the order of certification. (App. R. 15(g)(2)) For a PDR filed *prior* to determination by the Court of Appeals, the briefing deadlines are not stayed, and parties should follow the briefing schedule set forth in App. R. 13. (App. R. 15(g)(1))

Pay \$250 appeal bond to Supreme Court after certification order is entered. (Appendix F)

Serve Appellant's new brief on all parties within same time. (App. R. 15(g))

Include all required sections of the brief. (App. R. 28(b))

Include any required appendix, properly formatted. (App. R. 28(d))

Follow font and formatting requirements. (Word-count limitations do not apply.) (App. R. 28(j))

Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

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<sup>5</sup> A Notice of Appeal based on a constitutional question is treated like a petition for discretionary review because the Supreme Court must first determine if the constitutional question is "substantial." Thus, when a Notice of Appeal based on a constitutional question is filed, Appellant submits to the Supreme Court a \$10.00 docketing fee with the Notice of Appeal. If the Supreme Court retains the appeal, it will issue a briefing schedule, at which time Appellant should submit a \$250.00 appeal bond to the Supreme Court and a \$10.00 certification fee to the Court of Appeals. (See App. R. 14(d)(1); Appendix F; Appellate Style Manual)



#### Appellee's New Brief

- File Appellee's new brief with the Supreme Court within **30 days** after service of Appellant's new brief.<sup>6</sup> (App. R. 15(g)(2))<sup>7</sup>
- Serve Appellee's new brief on all parties within same time. (App. R. 15(g))
- Include all required sections of the brief. (App. R. 28(c))
- Include any required appendix, properly formatted. (App. R. 28(d))
- Follow font and formatting requirements. (Word-count limitations do not apply.) (App. R. 28(j))

Printing costs will be billed to Appellee (\$1.75 per page). (Appendix F)

#### Appellant's New Reply Brief

- File new reply brief with the Supreme Court within **14 days** after service of Appellee's new brief.<sup>8</sup> (App. R. 15(g), 28(h))
- Serve new reply brief on all parties within same time. (App. R. 15(g), 28(h))
- Follow font and formatting requirements. (Word-count limitations do not apply.) (App. R. 28(j))

Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

### III. ORAL ARGUMENT BEFORE SUPREME COURT OF NORTH CAROLINA<sup>9</sup>

- Counsel arguing the case must have personally signed the brief. (App. R. 33(a))
- Send written acknowledgment of receipt of Supreme Court's oral argument notification, and inform the Court who will be arguing.
- If necessary, file any memorandum of additional authority before oral argument. (App. R. 28(g))

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<sup>6</sup> Three extra days are permitted if the Appellant's new brief was served by mail or electronic mail. (App. R. 27(b))

<sup>7</sup> For a PDR filed *prior* to determination by the Court of Appeals, Appellee should follow the briefing schedule set forth in App. R. 13. (App. R 15(g)(1))

<sup>8</sup> Three extra days are permitted if the Appellee's new brief was served by mail or electronic mail. (App. R. 27(b))

<sup>9</sup> Unlike in the Court of Appeals, most cases before the Supreme Court of North Carolina are orally argued.