

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter XIV. Correction of Errors and Appeal
Article 91. Appeal to Appellate Division (Refs & Annos)

N.C.G.S.A. § 15A-1448

§ 15A-1448. Procedures for taking appeal

Currentness

(a) Time for Entry of Appeal; Jurisdiction over the Case.--

- (1) A case remains open for the taking of an appeal to the appellate division for the period provided in the rules of appellate procedure for giving notice of appeal.
- (2) When a motion for appropriate relief is made under [G.S. 15A-1414](#) or [G.S. 15A-1416\(a\)](#), the case remains open for the taking of an appeal until the court has ruled on the motion. The time for taking an appeal as provided in subsection (b) shall begin to run immediately upon the entry of an order under [G.S. 15A-1420\(c\)\(7\)](#), and the case shall remain open for the taking of an appeal until the expiration of that time.
- (3) The jurisdiction of the trial court with regard to the case is divested, except as to actions authorized by [G.S. 15A-1453](#), when notice of appeal has been given and the period described in (1) and (2) has expired.
- (4) Repealed by Laws 1987, c. 624.
- (5) The right to appeal is not waived by withdrawal of an appeal if the appeal is reentered within the time specified in (1) and (2).
- (6) The right to appeal is not waived by compliance with all or a portion of the judgment imposed. If the defendant appeals, the court may enter appropriate orders remitting any fines or costs which have been paid. The court may delay the remission pending the determination of the appeal.

(b) How and When Appeal of Right Taken.--Notice of appeal shall be given within the time, in the manner and with the effect provided in the rules of appellate procedure.

(c) Certiorari.--Petitions for writs of certiorari are governed by rules of the appellate division.

Credits

Added by Laws 1977, c. 711, § 1. Amended by Laws 1977 (2nd Sess.), c. 1147, § 29; Laws 1987, c. 624; Laws 1989, c. 377, § 5.

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

Most procedure for the appeal itself will be as provided in the rules of appellate procedure and not in statutory law. However, one appropriate area for statutory regulation is the question timing of the taking of an appeal, for that relates to activity which must be conducted in the trial division.

Problems have arisen in the processing of appeals when post-trial motions are pending. The system here proposed by the Commission provides the usual (for North Carolina) ten-day period for taking an appeal, and provides that if a post-trial motion is made within ten days after the trial there will be a period of not less than ten days after the ruling on the motion in which to take an appeal. This is in accord with the North Carolina Rules of Appellate Procedure with regard to civil cases under Rule 3, but such an extension has not been incorporated in those rules with regard to criminal cases in Appellate Rule 4.

This section adds a further modification to the prior system. If giving notice of appeal of the case “divests the trial court of jurisdiction” (see, *State v. Grundler* and *State v. Jelly*, 251 NC 177, 111 S.E.2d 1 (1959)) giving notice of appeal must wait until the determination of any post-trial motion. Instead the Commission proposes a system which permits the defendant to give his notice of appeal, and yet retains the case in the trial court for the full ten-day period. This will insure a period during which matters may, if possible, be corrected at the trial level, without problem as to the timely notice of appeal. In addition to the full ten-day period, the right of the trial court to act in a case is extended for the period of time that a motion for appropriate relief is pending in the trial court. (§ 15A-1448(a)(2).)

If no motion for relief is pending and the parties wish to expedite the processing of the appeal, they may pursuant to G.S. 15A-1448(a)(3)b file written consent that the case be transferred immediately to the appellate division without waiting for the ten days to run. Similarly, if a motion for appropriate relief has been made, thirty days have passed, and no ruling has been made on the motion, the appealing party may file a written request that the case be transferred immediately to the appellate division. Of course the trial court would have no power to act once the case was transferred.

The appellant has free choice during the ten-day period. Thus, if appeal is entered and withdrawn, it may be entered again if time remains. To the same end, the statute provides that compliance with all or a portion of the judgment does not waive the right to appeal. There is provision for remitting fines which have been paid, but, in order to simplify collection and remittance procedures, the remittance may be delayed until the appeal is determined. The free right to enter appeal, withdraw it and reenter it, or to comply with a portion of the judgment and then enter the appeal are substantially more important in criminal cases than in civil cases. The litigants are frequently less sophisticated and the consequences of an unknowing waiver may be substantially more severe than loss of monetary damages or property rights.

Subsection (b) provides for oral notice of appeal in open court, and written notice of appeal to be filed with the clerk. No effort is made here to specify additional steps and the formalities of the filed notice. The contents of the notice of appeal, service of copies on other parties, and other procedural details with regard to the notice of appeal are left to the rules of the appellate division, which should be consulted.

N.C.G.S.A. § 15A-1448, NC ST § 15A-1448

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

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