

SMITHMOORE LEATHERWOOD

ATTORNEYS AT LAW

NORTH CAROLINA RULES OF APPELLATE PROCEDURE CHECKLIST: Civil Appeals from Trial Courts to North Carolina Court of Appeals¹

CHECK BOXES AS COMPLETED:²

- ☐ **Notice of Appeal**
 - ☐ File with trial court within **30 days** after entry of order or judgment from which appeal is taken (unless otherwise tolled).³ (App. R. 3(c), (d))
 - ☐ Serve all other parties within same period. (App. R. 3(c), (e))
 - ☐ Other parties may file notices 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)

- ☐ **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))

¹This document is intended as a general guideline only and pertains solely to civil appeals from trial courts. Rather than rely on this document, you should *always* directly consult and follow the North Carolina Rules of Appellate Procedure when handling appeals. Unless otherwise noted, references to rules are taken from the 2013 North Carolina Rules of Appellate Procedure. To receive updates or to submit comments or suggestions, subscribe to the NCAPB.com blog or contact beth.scherer@smithmoorelaw.com

Also consider consulting the Appellate Rules 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. A link to the style manual is available on the resources page of the NCAPB.com blog.

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

³ Appellant does not get the benefit of the 3-day mail rule. (App. R. 3(c))

- ☐ 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 filed electronically by the transcriptionist(s) after the record on appeal is docketed, and notice is also sent to the trial court. Deposition transcripts are usually filed by Appellant in paper format when the record on appeal is filed.]
- ☐ 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). (App. R. 7(b)(2))
- ☐ **Proposed Record and Settling the Record on Appeal**⁴
 - ☐ 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 shall serve 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 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 is served, 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 Appellee could serve objections, amendments, etc. (App. R. 11(c))
 - Note: Judicial settlement is limited to narrow circumstances. (See App. R. 11(c))

⁴ 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))

- 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 not 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 date of expiration of **10-day** period for requesting judicial settlement. (App. R. 11(c))
- ☐ **Filing the Record on Appeal**
- ☐ File record on appeal with the Court of Appeals within **15 days** after settlement. (App. R. 12)
 - ☐ Appellant files one copy of the printed record on appeal, three copies of any separately indexed and paginated Rule 9(d) Documentary Exhibits, three copies of any paper transcripts, and three copies of any supplement to the record on appeal. (App. R. 12)
 - ☐ 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)
 - ☐ Pay \$250.00 appeal bond to the Court of Appeals. (App. R. 6, 17; 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))
 - ☐ 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**⁵

- ☐ 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, determine whether to seek extension of briefing schedule.

☐ **Appellant's Brief**

- ☐ Appellant's brief filed within **30 days** after the clerk mails⁶ the printed record to the parties. (App. R. 13)⁷
- ☐ Serve brief on all parties within same time. (App. R. 13)
- ☐ File and serve Appeal Information Statement with Appellant's brief or before that time. (App. R. 41)⁸
- ☐ 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/page limitations. For proportional font, 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)⁹
- ☐ Serve brief on all parties within same time. (App. R. 13)
- ☐ 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/page limitations. For proportional font, include certificate of compliance with word limitations. (App. R. 28(j))
- ☐ Printing costs will be billed to Appellee (\$1.75 per page). (Appendix F)

⁵For more information, see the Court of Appeals' mediation page at <http://www.nccourts.org/Courts/Appellate/Appeal/Mediation/Default.asp>.

⁶ Appellant does not get the benefit of the 3-day mail rule. (App. R. 13(a)(1))

⁷ Cross-Appellants must file a brief on their cross-appeal issues under same deadlines as the initial Appellant.

⁸ If the Appeal Information Statement is inaccurate or incomplete, other parties must file corrections within **7 days** of service of the original Appeal Information Statement. (App. R. 41(b)(3))

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

- ☐ **Reply Brief**
 - ☐ Reply brief filed within **14 days** after Appellee's brief has been served. (App. R. 28(h))¹⁰
 - ☐ Serve brief on all parties within same time. (App. R. 13)
 - ☐ Limit to concise rebuttal of arguments set out in Appellee's brief. (App. R. 28(h))
 - ☐ Follow font requirements, formatting requirements, and word/page limitations. For proportional font, 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 signed his/her client's brief. (App. R. 33(a))
 - ☐ If necessary, file original plus three memoranda of additional authorities before oral argument. (App. R. 28(g)) [Memoranda of additional authority cannot be filed electronically in the Court of Appeals.]

- ☐ **Opinion, Mandate, and Optional Petition for Rehearing**
 - ☐ 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 petition for 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))

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

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

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NORTH CAROLINA RULES OF APPELLATE PROCEDURE CHECKLIST: Civil Appeals from North Carolina Court of Appeals to Supreme Court of North Carolina¹

CHECK BOXES AS COMPLETED:²

APPEALS OF RIGHT BASED ON DISSENT IN COURT OF APPEALS (APP. R. 14(b); 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)
 - ☐ Serve all other parties within same period. (App. R. 14)
 - ☐ 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)
 - ☐ 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 that were not part of dissenting opinion.

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

- ☐ If Appellant files both a notice of appeal and PDR, the docketing fee to the Supreme Court is \$20.00. (Appendix F)
- ☐ **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, 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 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. [Page and word count limitations do not apply in the Supreme Court.] (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))³
 - ☐ Serve Appellee's 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. [Page and word count limitations do not apply in the Supreme Court.] (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. 28(h))⁴
 - ☐ Serve reply brief on all parties within same time. (App. R. 13)
 - ☐ Limit to concise rebuttal of arguments set out in Appellee's brief. (App. R. 28(h))
 - ☐ Follow font and formatting requirements. [Page and word count limitations do not apply in the Supreme Court.] (App. R. 28(j))
 - ☐ Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

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

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

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

- ☐ **Petition for Discretionary Review (“PDR”)**⁵
 - ☐ PDR filed *after* determination by Court of Appeals must be filed and served: (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)) PDR filed *prior* to determination by Court of Appeals must be filed and served 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)
 - ☐ Pay \$10.00 certification fee to Court of Appeals. (Appendix F; *see also* Appellate Style Manual)
 - ☐ If 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 is due **10 days** after service of the PDR. No extensions of time are permitted. (App. R. 15(d))
- ☐ **Briefing Following Certification of Discretion Review by the Supreme Court**
 - ☐ Appellant’s New Brief
 - ☐ For a PDR filed *after* determination by 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 parties should follow the briefing schedule set forth in App. R. 13. (App. R. 15(g)(1))
 - ☐ Pay \$250.00 appeal bond to Supreme Court after certification order is entered.
 - ☐ Serve Appellant’s new brief on all parties within same time.
 - ☐ Include all required sections of the brief. (App. R. 28(b))
 - ☐ Include any required appendix, properly formatted. (App. R. 28(d))

⁵A 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, 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 Appellant should submit a \$250.00 appeal bond to the Supreme Court and a \$10 certification fee to the Court of Appeals. (*See* App. R. 14(d)(1); Appellate Style Manual)

- ☐ Follow font and formatting requirements. [Page and word count limitations do not apply in the Supreme Court.] (App. R. 28(j))
- ☐ Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)
- ☐ Appellee's New Brief
 - ☐ File Appellee's new brief with the Supreme Court within **30 days** after service of Appellant's brief.⁶ (App. R. 15(g)(2))⁷
 - ☐ Serve Appellee's 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. [Page and word count limitations do not apply in the Supreme Court.] (App. R. 28(j))
 - ☐ Printing costs will be billed to Appellee (\$1.75 per page). (Appendix F)
- ☐ Appellant's Reply Brief
 - ☐ File reply brief with the Supreme Court within **14 days** after service of Appellee's brief.⁸ (App. R. 28(h))
 - ☐ Serve reply brief on all parties within same time. (App. R. 15(g))
 - ☐ Follow font and formatting requirements. [Page and word count limitations do not apply in the Supreme Court.] (App. R. 28(j))
 - ☐ Printing costs will be billed to Appellant (\$1.75 per page). (Appendix F)

ORAL ARGUMENT BEFORE SUPREME COURT OF NORTH CAROLINA

- ☐ Most cases before the Supreme Court of North Carolina are orally argued.
- ☐ 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 original plus **14** copies of any memorandum of additional authorities before oral argument. (App. R. 28 (g)) Alternatively, memoranda of additional authority may be filed electronically with the Supreme Court.

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

⁷ 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))

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

PETITIONS FOR REHEARING TO SUPREME COURT OF NORTH CAROLINA

- ☐ A petition for 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 attorneys regarding errors. (App. R. 31(a))
- ☐ Consider whether to seek a stay from the trial court to which the mandate is issued. (App. R. 31(e))
- ☐ Pay \$20.00 docketing fee applicable to petitions for rehearing. (Appendix F)
 - ☐ If the petition is granted, the petitioner's brief must be filed within **30 days** after the case is certified for rehearing. (App. R. 31(d))
 - ☐ Opposing party's brief must be filed within **30 days** after petitioner's brief has been served.
 - ☐ No reply briefs are allowed.