

# A Style Manual for the North Carolina Rules of Appellate Procedure

**CAUTION: This manual only applies to appeals in which the Notice of Appeal was filed on or after October 1, 2009. Please consult [www.aoc.state.nc.us/www/public/html/rules.htm](http://www.aoc.state.nc.us/www/public/html/rules.htm) for the manual applicable to appeals in which the Notice of Appeal was filed prior to October 1, 2009.**

Prepared and Distributed by:

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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 possible helpfulness to the profession." The appendixes set forth various forms and examples. See 2 July 2009 Preamble to the Rules. Although the Preamble suggests 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 the practitioner. The timetables in Appendix A, for example, can serve as an excellent road map 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. The practitioner should carefully note that juvenile appeals (involving termination of parental rights and the neglect, abuse and dependency of juveniles) are subject to unique rules and deadlines. Furthermore, the practitioner with a criminal appeal or an administrative appeal will need to adjust the content, if not the style, of the examples provided in the 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](http://www.ncappellatecourts.org) 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 should always be guided by the appellate 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](mailto: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 [www.aoc.state.nc.us/www/public/html/rules.htm](http://www.aoc.state.nc.us/www/public/html/rules.htm) and from [www.ncbar.org/about/committees/appellate.aspx](http://www.ncbar.org/about/committees/appellate.aspx).**

## A Typical Record on Appeal in a Civil Case

### Notes on typefaces or fonts:

- The examples that follow are printed in either 12-point Courier New typeface or 14-point Times New Roman typeface.
- Rule 26(g) (1) of the Rules of Appellate Procedure requires print to be in at least 12-point type.
- Appendix B, however, requires that all documents filed with either appellate court "be set either in nonproportional type or in proportional type." Nonproportional type is defined as "10-character-per-inch Courier (or an equivalent style of Pica) type that devotes equal horizontal space to each character." See Appendix B. Proportional type is defined as "any non-italic, non-script font, other than nonproportional type, that is 14-point or larger." See *id.*
- Although the Rules do not require a particular type of font and appear to allow the use of 12-point nonproportional type in the Record (but not the briefs), it is the safer practice to use only 12-point Courier, 12-Point Courier New, or 14-Point Times New Roman in all appellate documents.
- Do not make the mistake of filing a brief in 12-point proportional type (e.g., 12-point Times New Roman). Such a brief would not comply with Appendix B, as described above. Furthermore, Rule 28(j) (1) (B) requires that all briefs filed in the Court of Appeals use either 12-point nonproportional type or 14-point proportional type.
- Note also that each page of a document filed with the appellate courts may not exceed 27 lines of double-spaced text, even if proportional type is used. See Rule 26(g) (1). Please see Rule 28(j) for a discussion of additional requirements for briefs in proportional type (e.g., Times New Roman).
- 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.

No. \_\_\_\_\_

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

Plaintiff's Name as in	)	
Final Judgment,	)	
Plaintiff,	)	
	)	<u>From Avery County</u>
v.	)	No. 06 CVS 2345
	)	
Defendant's Name as in	)	
Final Judgment,	)	
Defendant.	)	

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RECORD ON APPEAL

\*\*\*\*\*

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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 granting a petition for writ of supersedeas or certiorari.
- Generally, margins for the non-index pages in the record on appeal are 1 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 1" 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," Rule 9(a)(1)e; see also Rule 9(a)(1)j, "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 court 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 2010."
- 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 2009 jury verdict and judgment dismissing the plaintiff's claim, rendered during the 1 November 2009 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 2009.

The record on appeal was filed in the Court of Appeals on \_\_\_\_\_ 2010 and was docketed on \_\_\_\_\_ 2010.

**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.
- The statement of the 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 APPEAL ONLY]

This action was commenced by the filing of a complaint and issuance of summons on 1 April 2008. The parties acknowledge that the trial court had personal and subject-matter jurisdiction.

**Notes on Statement of Jurisdiction for Civil and Criminal Appeals:**

- 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.*, 653 S.E.2d 427, 429 (N.C. Ct. App. 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 APPEAL 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 2009. The Administrative Law Judge issued a Decision on 6 December 2009. The Environmental Management Commission, pursuant to N.C. Gen. Stat. § 143B-282.1(b), issued the Final Agency Decision dated 4 January 2010 which was served on 5 January 2010. On 16 December 2010, Petitioner filed a Petition for Judicial Review in the Wake County Superior Court. The parties acknowledge the Office of Administrative Hearings, the Environmental Management Commission and the Superior Court of Wake County had personal and subject-matter jurisdiction.

**Note on Statement of Jurisdiction for Administrative Appeals:**

- The example set out above concerns an appeal of 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, don't mark on 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).]

**Note 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 and should include a separate index for the convenience of the court.
- Note, however, that the rules 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).

[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 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]

[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  
09 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, 2009 in the Superior Court of Avery County, which dismissed the plaintiff's action.

This 21<sup>st</sup> day of November, 2009.

[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 placing a copy, contained in a first-class postage-paid wrapper, into a depository under the exclusive custody of the United States Postal Service, this 21st day of November, 2009, addressed as follows:

Name of Counsel  
Suite 1450, Third Megatower Center  
Metropolis, NC 27510

\_\_\_\_\_  
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 Court of Appeals 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 Court of Appeals. See Rule 3(a).
- 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). In particular, the party appealing to the Supreme Court must file the Notice of Appeal, a \$10 docketing fee, and a \$250 appeal bond with the Supreme Court and, at the same time, file the Notice of Appeal and a \$10 certification fee with the North Carolina Court of Appeals. See Appendix F.

[In a criminal case, where notice of appeal can be given orally in open court, you 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 2009 through 15 November 2009, 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 ruling on the motion for summary judgment.

**Notes on Statement of Transcript Option:**

- By 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 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 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 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, for example, 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  
09 CVS 1234

[Name of the 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 2009 to 15 November 2009 in this action. (See Attachment A.)

This the 1<sup>st</sup> day of December, 2009.

[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, 2009

Jane Doe  
Court Reporter, Inc.  
123 Steno Lane  
Raleigh, NC 27601

Re: *Plaintiff v. Defendant*, Avery County - 09 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, 2009 through November 15, 2009. 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 (828) 456-1245. 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  
09 CVS 1234

[Name of the 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, 2009 through November 15, 2009 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, 2009.

\_\_\_\_\_  
[Name of Counsel]  
Counsel for Plaintiff-Appellant

\_\_\_\_\_  
Jane Doe, Signed 12/1/09  
Official Superior Court Reporter

Notes on Transcript Contract:

- 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 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.
- 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 Appellee deems necessary. In such instance, the additional transcript documentation should be included in the record as well.

Note on Challenges to Sufficiency of the Evidence:

- When the Appellant intends to argue on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the Appellant must cite in the record on appeal the volume number, page number, and line number of all evidence relevant to such finding or conclusion. See Rule 7(a)(1). Rule 7 does not specify where in the record such citation should appear. The Appellate Rules Committee suggests including this information in the section of the record that sets out the "Proposed Issues on Appeal." Such an example is included in this Typical Record on Appeal. See Proposed Issues on Appeal, no. 2.

**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 and shall send a copy of such certification to the appellate court." Rule 7(b) (2).
  - When the record on appeal is filed, the Appellant "shall promptly notify the court reporter" of that fact. *Id.* 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." *Id.* 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.

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

**Note 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 2010. 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 2010. 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 2010.

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

2. Defendant-Appellee's objections were served on 10 March 2010. 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 stipulate that the following documents appeared as attachments to multiple filings in the trial court, but will be included only once in the Record on Appeal to avoid unnecessary duplication. Where a duplicative copy would have appeared, a slip sheet referring to the pages where the first copy appears in the printed record is substituted instead.

- a. Transportation Contract. Copy included in the record at R pp 12-19.
- b. Basic Auto Policy - Policy Certificate No. 457099. Copy included in the record at R pp 20-31.

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. The trial exhibit labeled "Defendant's Exhibit 2" (a paper copy of which is filed along with this printed record); 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, 2010.

For the Plaintiff-Appellant: \_\_\_\_\_  
Name of Counsel

For the Defendant-Appellee: \_\_\_\_\_  
Name of Counsel

Notes on Stipulation of Service and Settlement of Record:

- 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 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 exclusion 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 \_\_\_\_)."
- Stipulations are useful for explaining how the Record was settled and why you 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 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 your compliance with the time limits.) Appellate 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.
- 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. 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 ¶ 5(d), above, documentary exhibits that are not included in the printed record must be submitted with the proposed record in triplicate. No longer can an Appellant ask the trial court to transmit the exhibit on Appellant's behalf. See Rule 9(d)(2).

### 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? See T Vol. 1, p 317 line 4 through p 325 line 19.]

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.
- When the Appellant intends to argue on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the Appellant must cite in the record on appeal the volume number, page number, and line number of all evidence relevant to such finding or conclusion. See Rule 7(a)(1). Rule 7 does not specify where in the record such citation should appear. The Appellate Rules Committee suggests including this information in the section of the record that sets out the "Proposed Issues on Appeal." As shown above, the bracketed information provides a reference to Rule 7(a)(1) and the required citation.

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 now 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 court.

[Copy of any order ruling upon a *pro hac vice* motion]

Note on *Pro Hac Vice* Motions:

- The 2009 Amendments to the Appellate 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." *Id.*

**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]

**Notes 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, you should consult Rule 26.

**A Typical Record on Appeal in a Juvenile  
Case**

No. \_\_\_\_\_

TWENTY-EIGHTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

In the Matter of:	)	
	)	<u>From Buncombe County</u>
A.F.G.,	)	File No. 09 JT 28
a minor child.	)	

\*\*\*\*\*

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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Statement of Organization of Trial Court ..... x

Petition to Terminate Parental Rights [filed 1  
November 2009] ..... x

Summons in Proceeding for Termination of  
Parental Rights [served 1 November 2009] .. x

Answer [filed 10 November 2009] ..... x

Evidentiary Exhibits [submitted 1 December  
2009] ..... x

Judgment Terminating Parental Rights [filed 3  
December 2009] ..... x

Notice of Appeal [filed 5 December 2009] ..... x

Appellate Entries [filed 6 December 2009] ..... x

Appointment of Appellate Counsel for Indigent  
Parent [filed 21 December 2009] ..... x

Statement of Transcript Option ..... x

Certificate of Delivery of Transcript ..... x

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Certificate of Settlement of Record on Appeal .. x

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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 identify 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.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

COUNTY OF **[County]**

**[File #]**

IN THE MATTER OF:

**NOTICE OF APPEAL**

Minor children

---

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 \_\_\_\_\_, 2009.

---

**[Name]**  
Attorney at Law  
**[Address]**  
**[Telephone #]**

---

Respondent-Mother

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 \_\_\_\_\_, 2009.

---

**[Name]**  
Attorney at Law  
**[Address]**  
**[Telephone #]**

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 criminal 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)I & 9(a)(3)h.
- Forms for the appeal entries are available on the North Carolina Court System website, [www.nccourts.org/Forms/FormSearch.asp](http://www.nccourts.org/Forms/FormSearch.asp), as follows: AOC-CR-350 (adult criminal cases), 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 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 [www.aoc.state.nc.us/www/ids/](http://www.aoc.state.nc.us/www/ids/) and select "Legal Resources" from the menu on the left.

## A Typical Appellant's Brief

A note on typefaces or fonts: Most of the examples which follow are printed in a 12-point Courier New typeface. Rule 28(j) of the Rules of Appellate Procedure has been revised to provide "safe harbor" provisions: if you use 14-point Times New Roman or 12-point Courier New, you will be safe on font sizes. See Rule 28(j)(1)(B)3. In the Court of Appeals (but not the Supreme Court) you have page limitations/word counts to consider: see the revised Rule 28(j) for the details. If you use a proportional font in the Court of Appeals, you must include a Certificate of Compliance (as shown in the example after the signature block at the end of the brief).

### 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 shall 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 form itself at the bottom.

NORTH CAROLINA COURT OF APPEALS  
\*\*\*\*\*

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

\*\*\*\*\*

PLAINTIFF-APPELLANT'S BRIEF

\*\*\*\*\*

**Notes on filing Appellant's brief:**

- The due date for Appellant's brief varies slightly depending on the type of case:
  - In most cases, 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, Appellant's brief is due 30 days after the record on appeal has been filed.
- If a party mails its brief by U.S. Postal Service, the brief is considered filed when it is mailed. If instead the brief is mailed by commercial carrier, it is not considered filed until it is actually received at the Clerk's office in Raleigh. So, if you are in a pinch, one option is to mail the brief by U.S. Postal Service. Rule 26(a)(1). Alternatively, electronic filing allows a brief to be filed in real-time as well. Rule 26(a)(2).

**Note on the title of briefs:** Briefs filed in the North Carolina Supreme Court 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 of the Rules of Appellate Procedure.

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**Notes on Index to Brief:**

- Index entries are indented  $\frac{3}{4}$  inch from both standard 1" 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).

TABLE OF CASES AND AUTHORITIES

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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. 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.

NORTH CAROLINA COURT OF APPEALS  
\*\*\*\*\*

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

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 1" 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 July 2009. (R p 3). The defendant moved to dismiss the action on 1 January 2010. (R p 4). The Honorable John Marshall, Avery County Superior Court Judge, presiding, heard arguments on the motion to dismiss on 1 April 2010. (T pp 1-19). A judgment and order dismissing the case was entered 10 May 2010. (R pp 9-14). The plaintiff filed and served notice of appeal on 8 June 2010. (R pp 19-24). A transcript of the 1 April 2010 hearing was ordered on 14 June 2010 and delivered 1 August 2010. (R pp 97-101). The time to file the proposed record was extended by the trial division until 15 September 2010. (R p 102). The record was settled by stipulation on 1 November 2010, filed in the Court of Appeals on 13 November 2010 and docketed 15 November 2010. (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 needn't have a Statement of the Case.**
- **The North Carolina appellate courts use the date style shown ("14 December 2009").**

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.

**Note 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 Equipment, 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, a practitioner 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 appeal from Judge Smith's 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.G.S. 1-277 and N.C.G.S. 7A-27(d)(1), in that [go on to describe the facts and law that support a "substantial right" determination by the appellate court].

**Note on the Statement of Grounds for Appellate Review:**

- **The Statement of Grounds for Appellate Review is a requirement for North Carolina Appellant briefs. 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.**

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

2007, (R p 49), and an Order Closing a Portion of East Street on 1 December 2008, (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 contains a "full and complete" and "non-argumentative" 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).

ARGUMENT

I. Standard of Review

An appeal of a superior court order granting a motion to dismiss for failure to state a claim is subject to *de novo* review. *Leary v. North Carolina Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, *aff'd per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003). When determining whether a complaint should be dismissed under Rule 12(b)(6) of the Rules of Civil Procedure, the complaint must be liberally construed in favor of the plaintiff. *Ladd v. Estate of Kellenberger*, 314 N.C. 477, 481, 334 S.E.2d 751, 755 (1985).

**Notes on the 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(s) of Review" placed immediately under the caption "Argument".

II. THE TRIAL COURT ERRED IN ALLOWING A PSYCHOLOGIST TO EXPRESS HIS OPINION ABOUT THE CAUSE OF THE POST-TRAUMATIC STRESS DISORDER, WHEN THAT OPINION WAS DELIVERED WITHOUT ANY LIMITING INSTRUCTION.

The trial court erred in allowing Dr. Fine to testify, over objection, about his diagnosis of post-traumatic stress disorder and specifically that the disorder was caused in this case by

[Argument continues]

**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 have eliminated the need for such citation.**

A. The Doctor's Testimony Was Received Without a Limiting Instruction

The testimony of the doctor was received in violation of the requirement of *State v. Hall*, 330 N.C. 808, 412 S.E.2d 883 (1992), that testimony of this sort be admitted only after a limiting instruction that required the jury to consider the

[Argument continues]

**Notes on the Argument:**

- **Subsection headings are set out as shown (underlined at 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.**

CONCLUSION

The Court of Appeals should reverse the trial court's order denying the defendant's motion to dismiss and should remand the case for the entry of an order granting the motion to dismiss. Alternatively, due to the trial court's error in admitting the hearsay testimony of the non-treating physician, the case should be remanded for a new trial.

Respectfully submitted, this \_\_\_\_\_ day of March, 2010.

**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, see section 15A-1447 for the various forms of relief available on appeal.

[NAME OF COUNSEL'S FIRM]

By: \_\_\_\_\_ [Signature of counsel]  
[Name of Counsel]  
[State] Bar No. \_\_\_\_\_  
[Counsel's telephone number]  
[Counsel's email address]  
[Firm Address]

Attorney for Plaintiff-Appellant

**Notes on Signing Briefs:**

- If you want to appear at oral argument, 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).
- 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.

The Court of Appeals and Supreme Court have embraced electronic filing of briefs and certain other documents through the website [www.ncappellatecourts.org](http://www.ncappellatecourts.org). But before depending on electronic filing to get that document in on time, consult the website and be confident in your technology.

For documents to be filed electronically, the signature block should appear 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]

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

**NOTE:** If a party is represented by multiple attorneys from different firms, Rule 33(b) requires the certification provided above, as well as the address, phone number, state bar number, and email address for each additional attorney.

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 proportional font, is less than 8,750 words (excluding cover, indexes, tables of authorities, certificates of service, this certificate of compliance and appendixes) as reported by the word-processing software.

---

Counsel for Appellant

**Note on Certificate of Compliance:**

- **The certificate of compliance is only applicable to the Court of Appeals and only when a proportional font (such as Times New Roman) is used. 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, 2010.

\_\_\_\_\_  
Name of Counsel

**Note on Certificate of Service:**

- The brief is considered both filed and served when you put it in the mail, if you use first-class U.S. Mail. However, if you use a commercial carrier, it is not considered filed until it is actually received in the Clerk's office. See Rule 26. Thus, if you are in a time crunch, use the mail or, alternatively, electronic filing.

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Voir dire cross-examination of [Name] .....9-17

**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 page limits for briefs in the Court of Appeals (Rule 28(j)) might come into play. Recall that there is no page limit for appendixes.
- 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 South Ins. Co.*, 122 N.C. App. 265, 268, 468 S.E.2d 856, 858 (1996); see *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 1 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.

## **A Typical Appellee's Brief**

No. COA10-1234

THIRTIETH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

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

From Haywood County

\*\*\*\*\*

PLAINTIFF-APPELLEE'S BRIEF

\*\*\*\*\*

<p><b>Note on Appellee's Brief:</b></p> <ul style="list-style-type: none"> <li>• 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). Rule 13(a).</li> </ul>
--

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APPENDIX

ADDENDUM

TABLE OF CASES AND AUTHORITIES

Cases:

*Bank v. Burnette*, 297 N.C. 524, 256 S.E.2d  
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*Cochran v. Keller*, 84 N.C. App. 205, 352  
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N.C. Gen. Stat. § 15A-245 ..... 11

Rules:

N.C. R. Civ. P. 10 ..... 4  
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Other Authorities:

U.S. Const. amend. IV ..... 14  
U.S. Const. amend. XI ..... 15  
N.C. Const. art. VI ..... 18

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

Norma Schoolhouse and	)	
David Schoolhouse,	)	
Plaintiffs	)	
	)	
v.	)	<u>From Haywood County</u>
	)	
Dee Mann and Joyce Mann,	)	
Defendants	)	

\*\*\*\*\*

PLAINTIFF-APPELLEE'S BRIEF

\*\*\*\*\*

ARGUMENT

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

[Argument continues]

<p><b>Note on sections unnecessary in Appellee's Brief:</b></p> <ul style="list-style-type: none"> <li>• 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).</li> </ul>
---

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 and in a jury view showed the court and jury the location of the

[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 November 2010.

[NAME OF COUNSEL'S FIRM]

By: \_\_\_\_\_ [Signature of counsel]  
[Name of Counsel]  
Attorney for Plaintiff-Appellee  
[Firm address]  
[Counsel's telephone number]  
[State] Bar No. \_\_\_\_\_  
[Counsel's email address]

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Appellee certifies that the foregoing brief, which is prepared using a proportional font, is fewer than 8,750 words (excluding cover, indexes, tables of authorities, certificates of service, this certificate of compliance and appendixes) as reported by the word-processing software.

---

Counsel for the Appellee

**The certificate of compliance is only required in the Court of Appeals and only when a proportional font (such as Times New Roman) is used. There are no length limitations for briefs in the Supreme Court.**

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing brief on counsel for Defendant-Appellants by depositing a copy enclosed in a first-class postage-paid wrapper into a depository under the exclusive care and custody of the United States Postal Service this 10th day of November, 2010, addressed as follows:

Name of Counsel's Firm  
41 Clayton Street  
Newland, NC 28801

\_\_\_\_\_  
Name of Counsel

**Follow the brief with an appendix, if one is needed. See Rule 26 (d). See the note about appendixes following Appellant's Brief.**

**The brief is considered both filed and served when you put it in the mail, if you use first-class U.S. Mail. However, if you use a commercial carrier, it is not considered filed until it is actually received in the Clerk's office. See Rule 26 of the Rules of Appellate Procedure. Thus, if you are in a time crunch to file your brief (or motion, response to petition, or record on appeal), use the mail. See Rule 26(a)(1).**

**A Typical Memorandum of  
Additional Authority**

NORTH CAROLINA COURT OF APPEALS  
\*\*\*\*\*

Plaintiff's Name as on	)	
Final Judgment,	)	
Plaintiff,	)	
	)	<u>From Avery County</u>
v.	)	
	)	
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, 887-88 (2010).
2. *In re A.B.Q.*, --- N.C. App. ---, ---, 710 S.E.2d 1, 3 (2010).

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

Respectfully submitted, this \_\_\_\_ day of March, 2010.

[NAME OF COUNSEL'S FIRM]

By: \_\_\_\_\_ [Signature of counsel]  
[Name of Counsel]  
[State] Bar No. \_\_\_\_\_  
[Counsel's telephone number]  
[Counsel's email address]  
[Firm address]

Attorney for Plaintiff-Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing Memorandum of Additional Authority 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, this \_\_\_\_\_ day of March, 2010:

[Name and address of opposing counsel]

\_\_\_\_\_  
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 to file and serve any memorandum of additional authority to be discussed in oral argument several days prior to the scheduled argument. Nevertheless, a memorandum of additional authority may also be filed and served *after* oral argument, where appropriate.

**A Typical Petition for  
Discretionary Review**



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    B. This Court's precedents foreclose the Court of Appeal's 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 (1") 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  
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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 the Typical Appellant's Brief, *supra*, for a fuller discussion on the formatting).



defendant's summary judgment motion at the 21 November 2009 Civil Session. The plaintiff filed notice of appeal to the Court of Appeals on 1 December 2009. The Court of Appeals affirmed the order of dismissal in a published opinion, filed 14 February 2010.

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 1<sup>st</sup> day of March, 2010.

[NAME OF COUNSEL'S FIRM]

By: \_\_\_\_\_ [Signature of counsel]  
[Name of Counsel]  
Attorney for Plaintiff-Appellee  
[Firm address]  
[Counsel's telephone number]  
[State] Bar No. \_\_\_\_\_  
[Counsel's email address]

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 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
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.**

**A Typical Petition  
for Writ of Certiorari**

No.

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

NAMES AS IN TRIAL DIVISION, )  
PLAINTIFF, )

v. )

From Wake County

No. 06 CVS 2549

NAMES AS IN TRIAL DIVISION, )  
DEFENDANT )

\*\*\*\*\*

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.
- The Court of Appeals docket number should appear below the county name and county case file number on the right side, when petitioning from a decision of the Court of Appeals.
- Consult Rule 21 of the Rules of Appellate Procedure and Appendix D, Section 4 of the Rules for the circumstances where this petition is appropriate.

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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 THE  
        DEFENDANT TO PROCEED FURTHER IN THE TRIAL  
        COURT ..... x

    I. 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 1" 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

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

NORTH CAROLINA INSURANCE	)	
ASSOCIATION,	)	
PLAINTIFF,	)	
	)	<u>From Wake County</u>
v.	)	No. 06CVS5468
	)	COA10-1544
MID-CENTURY INDEMNITY CO.,	)	
DEFENDANT.	)	

\*\*\*\*\*

PETITION FOR WRIT OF CERTIORARI

\*\*\*\*\*

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 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 2007 [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 2006 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 of the Rules of Appellate Procedure 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, 2010.

[NAME OF COUNSEL'S FIRM]

By: \_\_\_\_\_ [Signature of counsel]  
[Name of Counsel]  
Attorney for Plaintiff-Appellee  
[Firm address]  
[Counsel's telephone number]  
[State] Bar No. \_\_\_\_\_  
[Counsel's email address]

**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.

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:

**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 15th day of July, 2010.

\_\_\_\_\_  
Name of Counsel

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

## **A Typical Designation of Secure Leave**

October 21, 2010

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

**RE: Secured 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 2011, 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, 24 January 2011, and will end Friday, 4 February 2011.

(3) I have not designated any other secure leave periods for calendar year 2011.

(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. COA10-1158

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.
- 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).