

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE
RULES OF APPELLATE PROCEDURE

Pursuant to Article IV, Section 13(2), of the Constitution of North Carolina, the Court hereby amends the North Carolina Rules of Appellate Procedure. This order affects Rules 14, 15, and 16 and Appendixes A and D.

* * *

Rule 14. Appeals of Right from Court of Appeals to Supreme Court under N.C.G.S. § 7A-30

(a) **Notice of Appeal; Filing and Service.** Appeals of right from the Court of Appeals to the Supreme Court are taken by filing notices of appeal with the clerk of the Court of Appeals and with the clerk of the Supreme Court and serving notice of appeal upon all other parties within fifteen days after the mandate of the Court of Appeals has been issued to the trial tribunal. For cases which arise from the Industrial Commission, a copy of the notice of appeal shall also be served on the Chair of the Industrial Commission. The running of the time for filing and serving a notice of appeal is tolled as to all parties by the filing by any party within such time of a petition for rehearing under Rule 31 of these rules, and the full time for appeal thereafter commences to run and is computed as to all parties from the date of entry by the Court of Appeals of an order denying the petition for rehearing. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days after the first notice of appeal was filed. A petition prepared in accordance with Rule 15(c) for discretionary review in the event the appeal is determined not to be of right or for issues in addition to those set out ~~as the basis for a dissenting opinion~~ in the notice of appeal may be filed with or contained in the notice of appeal.

(b) **Content of Notice of Appeal.**

- (1) ~~Appeal Based Upon Dissent in Court of Appeals. In an appeal which is based upon the existence of a dissenting opinion in the Court of Appeals, the notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment of the Court of Appeals from which the appeal is taken; shall state the basis upon which it is asserted that appeal lies of right under N.C.G.S. § 7A-30; and shall state the issue or issues which are the basis of the dissenting opinion and which are to be presented to the Supreme Court for review.~~ [Reserved]

- (2) **Appeal Presenting Constitutional Question.** In an appeal which is asserted by the appellant to involve a substantial constitutional question, the notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment of the Court of Appeals from which the appeal is taken; shall state the issue or issues which are the basis of the constitutional claim and which are to be presented to the Supreme Court for review; shall specify the articles and sections of the Constitution asserted to be involved; shall state with particularity how appellant's rights thereunder have been violated; and shall affirmatively state that the constitutional issue was timely raised (in the trial tribunal if it could have been, in the Court of Appeals if not) and either not determined or determined erroneously.
- (c) **Record on Appeal.**
- (1) **Composition.** The record on appeal filed in the Court of Appeals constitutes the record on appeal for review by the Supreme Court. However, the Supreme Court may note de novo any deficiencies in the record on appeal and may take such action in respect thereto as it deems appropriate, including dismissal of the appeal.
- (2) **Transmission; Docketing; Copies.** Upon the filing of a notice of appeal, the clerk of the Court of Appeals will forthwith transmit the original record on appeal to the clerk of the Supreme Court, who shall thereupon file the record and docket the appeal. The clerk of the Supreme Court will procure or reproduce copies of the record on appeal for distribution as directed by the Court, and may require a deposit from appellant to cover the cost of reproduction.
- (d) **Briefs.**
- (1) **Filing and Service; Copies.** ~~Within thirty days after filing notice of appeal in the Supreme Court, the appellant shall file with the clerk of the Supreme Court and serve upon all other parties copies of a new brief prepared in conformity with Rule 28, presenting only those issues upon which review by the Supreme Court is sought; provided, however, that when the appeal is based upon the existence of a substantial constitutional question or when the appellant has filed a petition for discretionary review for issues in addition to those set out as the basis of a dissent in the Court of Appeals,~~In an appeal based upon the existence of a substantial constitutional question, the appellant shall file and serve a new brief within thirty days after entry of the order of the Supreme Court which determines for the purpose of retaining the appeal on the docket that a substantial constitutional question

does exist ~~or allows or denies the petition for discretionary review in an appeal based upon a dissent.~~ Within thirty days after service of the appellant's brief upon appellee, the appellee shall similarly file and serve copies of a new brief. An appellant may file and serve a reply brief as provided in Rule 28(h).

The clerk will reproduce and distribute copies of the briefs as directed by the Court, billing the parties pursuant to these rules.

- (2) **Failure to File or Serve.** If an appellant fails to file or serve its brief within the time allowed, the appeal may be dismissed on motion of an appellee or on the Court's own initiative. If an appellee fails to file and serve its brief within the time allowed, it may not be heard in oral argument except by permission of the Court.

* * *

Rule 15. Discretionary Review on Certification by Supreme Court under N.C.G.S. § 7A-31

(a) **Petition of Party.** Either prior to or following determination by the Court of Appeals of an appeal docketed in that court, any party to the appeal may in writing petition the Supreme Court upon any grounds specified in N.C.G.S. § 7A-31 to certify the cause for discretionary review by the Supreme Court; except that a petition for discretionary review of an appeal from the Industrial Commission, the North Carolina State Bar, the Property Tax Commission, the Board of State Contract Appeals, or the Commissioner of Insurance may only be made following determination by the Court of Appeals; and except that no petition for discretionary review may be filed in any post-conviction proceeding under Article 89 of Chapter 15A of the General Statutes, or in valuation of exempt property under Chapter 1C of the General Statutes.

(b) **Petition of Party—Filing and Service.** A petition for review prior to determination by the Court of Appeals shall be filed with the clerk of the Supreme Court and served on all other parties within fifteen days after the appeal is docketed in the Court of Appeals. For cases that arise from the Industrial Commission, a copy of the petition shall be served on the Chair of the Industrial Commission. A petition for review following determination by the Court of Appeals shall be similarly filed and served within fifteen days after the mandate of the Court of Appeals has been issued to the trial tribunal. Such a petition may be contained in or filed with a notice of appeal of right, to be considered by the Supreme Court in the event the appeal is determined not to be of right or for issues in addition to those set out in the notice of appeal, as provided in Rule 14(a). The running of the time for filing and serving a petition for review following determination by the Court of Appeals is terminated as to all parties by the filing by any party within such time of a petition for rehearing

under Rule 31 of these rules, and the full time for filing and serving such a petition for review thereafter commences to run and is computed as to all parties from the date of entry by the Court of Appeals of an order denying the petition for rehearing. If a timely petition for review is filed by a party, any other party may file a petition for review within ten days after the first petition for review was filed.

(c) **Petition of Party—Content.** The petition shall designate the petitioner or petitioners and shall set forth plainly and concisely the factual and legal basis upon which it is asserted that grounds exist under N.C.G.S. § 7A-31 for discretionary review. The petition shall state each issue for which review is sought and shall be accompanied by a copy of the opinion of the Court of Appeals when filed after determination by that court. No supporting brief is required, but supporting authorities may be set forth briefly in the petition.

(d) **Response.** A response to the petition may be filed by any other party within ten days after service of the petition upon that party. No supporting brief is required, but supporting authorities may be set forth briefly in the response. If, in the event that the Supreme Court certifies the case for review, the respondent would seek to present issues in addition to those presented by the petitioner, those additional issues shall be stated in the response. A motion for extension of time is not permitted.

(e) **Certification by Supreme Court—How Determined and Ordered.**

- (1) **On Petition of a Party.** The determination by the Supreme Court whether to certify for review upon petition of a party is made solely upon the petition, any response thereto, and any briefs filed under Rule 28.1, and is made without oral argument.
- (2) **On Initiative of the Court.** The determination by the Supreme Court whether to certify for review upon its own initiative pursuant to N.C.G.S. § 7A-31 is made without prior notice to the parties and without oral argument.
- (3) **Orders; Filing and Service.** Any determination to certify for review and any determination not to certify made in response to a petition will be recorded by the Supreme Court in a written order. The clerk of the Supreme Court will forthwith enter such order, deliver a copy thereof to the clerk of the Court of Appeals, and mail copies to all parties. The cause is docketed in the Supreme Court upon entry of an order of certification by the clerk of the Supreme Court.

(f) **Record on Appeal.**

- (1) **Composition.** The record on appeal filed in the Court of Appeals constitutes the record on appeal for review by the Supreme Court. However, the Supreme Court may note de novo any deficiencies

in the record on appeal and may take such action in respect thereto as it deems appropriate, including dismissal of the appeal.

- (2) **Filing; Copies.** When an order of certification is filed with the clerk of the Court of Appeals, he or she will forthwith transmit the original record on appeal to the clerk of the Supreme Court. The clerk of the Supreme Court will procure or reproduce copies thereof for distribution as directed by the Court. If it is necessary to reproduce copies, the clerk may require a deposit by the petitioner to cover the costs thereof.

(g) **Filing and Service of Briefs.**

- (1) **Cases Certified Before Determination by Court of Appeals.** When a case is certified for review by the Supreme Court before being determined by the Court of Appeals, the times allowed the parties by Rule 13 to file their respective briefs are not thereby extended. If a party has filed its brief in the Court of Appeals and served copies before the case is certified, the clerk of the Court of Appeals shall forthwith transmit to the clerk of the Supreme Court the original brief and any copies already reproduced for distribution, and if filing was timely in the Court of Appeals this constitutes timely filing in the Supreme Court. If a party has not filed its brief in the Court of Appeals and served copies before the case is certified, the party shall file its brief in the Supreme Court and serve copies within the time allowed and in the manner provided by Rule 13 for filing and serving in the Court of Appeals.
- (2) **Cases Certified for Review of Court of Appeals Determinations.** When a case is certified for review by the Supreme Court of a determination made by the Court of Appeals, the appellant shall file a new brief prepared in conformity with Rule 28 in the Supreme Court and serve copies upon all other parties within thirty days after the case is docketed in the Supreme Court by entry of its order of certification. The appellee shall file a new brief in the Supreme Court and serve copies upon all other parties within thirty days after a copy of appellant's brief is served upon the appellee. An appellant may file and serve a reply brief as provided in Rule 28(h).
- (3) **Copies.** The clerk of the Supreme Court will reproduce copies of the briefs for distribution as directed by the Supreme Court. The clerk may require a deposit by any party to cover the costs of reproducing copies of its brief. In civil appeals *in forma pauperis* a party need not pay the deposit for reproducing copies.
- (4) **Failure to File or Serve.** If an appellant fails to file and serve its brief within the time allowed by this Rule 15, the appeal may

be dismissed on motion of an appellee or upon the Court’s own initiative. If an appellee fails to file and serve its brief within the time allowed by this Rule 15, it may not be heard in oral argument except by permission of the Court.

(h) **Discretionary Review of Interlocutory Orders.** An interlocutory order by the Court of Appeals, including an order for a new trial or for further proceedings in the trial tribunal, will be certified for review by the Supreme Court only upon a determination by the Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm to a party.

(i) **Appellant, Appellee Defined.** As used in this Rule 15, the terms “appellant” and “appellee” have the following meanings:

- (1) With respect to Supreme Court review prior to determination by the Court of Appeals, whether on petition of a party or on the Court’s own initiative, “appellant” means a party who appealed from the trial tribunal; “appellee” means a party who did not appeal from the trial tribunal.
- (2) With respect to Supreme Court review of a determination of the Court of Appeals, whether on petition of a party or on the Court’s own initiative, “appellant” means the party aggrieved by the determination of the Court of Appeals; “appellee” means the opposing party; provided that, in its order of certification, the Supreme Court may designate either party an appellant or appellee for purposes of proceeding under this Rule 15.

* * *

Rule 16. Scope of Review of Decisions of Court of Appeals

(a) **How Determined.** Review by the Supreme Court after a determination by the Court of Appeals, whether by appeal of right or by discretionary review, is to determine whether there is error of law in the decision of the Court of Appeals. ~~Except when the appeal is based solely upon the existence of a dissent in the Court of Appeals, review in~~ Review by the Supreme Court is limited to consideration of the issues stated in the notice of appeal filed pursuant to Rule 14(b)(2) or the petition for discretionary review and the response thereto filed pursuant to Rule 15(c) and (d), unless further limited by the Supreme Court, and properly presented in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court.

(b) ~~**Scope of Review in Appeal Based Solely Upon Dissent.** When the sole ground of the appeal of right is the existence of a dissent in the Court of Appeals, review by the Supreme Court is limited to a consideration of those issues that are (1) specifically set out in the dissenting opinion as the basis for that dissent, (2) stated in the notice of appeal, and (3) properly presented in the new briefs required by~~

~~Rule 14(d)(1) to be filed in the Supreme Court. Other issues in the case may properly be presented to the Supreme Court through a petition for discretionary review pursuant to Rule 15, or by petition for writ of certiorari pursuant to Rule 21.~~[Reserved]

(c) **Appellant, Appellee Defined.** As used in this Rule 16, the terms “appellant” and “appellee” have the following meanings when applied to discretionary review:

- (1) With respect to Supreme Court review of a determination of the Court of Appeals upon petition of a party, “appellant” means the petitioner and “appellee” means the respondent.
- (2) With respect to Supreme Court review upon the Court’s own initiative, “appellant” means the party aggrieved by the decision of the Court of Appeals and “appellee” means the opposing party; provided that, in its order of certification, the Supreme Court may designate either party an “appellant” or “appellee” for purposes of proceeding under this Rule 16.

* * *

Appendix A. Timetables for Appeals

Timetable of Appeals from Trial Division and Administrative Tribunals Under Articles II and IV of the Rules of Appellate Procedure			
<i>Action</i>	<i>Time (Days)</i>	<i>From date of</i>	<i>Rule Ref.</i>
Taking Appeal (Civil)	30	Entry of Judgment (Unless Tolloed)	3(c)
Cross-Appeal	10	Service and Filing of a Timely Notice of Appeal	3(c)
Taking Appeal (Administrative Tribunal)	30	Receipt of Final Administrative Tribunal Decision (Unless Statutes Provide Otherwise)	18(b)(2)
Taking Appeal (Criminal)	14	Entry of Judgment (Unless Tolloed)	4(a)
Serving Transcript Contract (Appellant)	14	Filing or Giving Notice of Appeal	7(b)(2) 18(b)(3)

Serving Transcript Contract (Appellee)	28	Appellant Filing or Giving Notice of Appeal	7(b)(2) 18(b)(3)
Serving Appellate Entries (Clerk of Superior Court)	14	Judge Signing Appellate Entries	7(c)(2)
Delivering Transcript (General Rule)	90	Service of Transcript Contract or Appellate Entries	7(e)(1)
(Capitally Tried Cases)	180		
(Undisciplined or Delinquent Juvenile Cases)	60		
(Special Proceedings about the Admission or Discharge of Clients)	60		
Serving Proposed Record on Appeal (General Rule)	45	All Transcripts Being Delivered or Notice of Appeal, Whichever is Later	11(b) 18(d)
Serving Proposed Record on Appeal (Capitally Tried Cases)	70	All Transcripts Being Delivered	11(b)
Serving Objections or Proposed Alternative Record on Appeal (General Rule)	30	Service of Proposed Record	11(c) 18(d)(2)
(Capitally Tried Cases)	35		
Requesting Judicial Settlement of Record	10	Expiration of the Last Day Within Which an Appellee Who Has Been Served Could Serve Objections, etc.	11(c) 18(d)(3)
Judicial Settlement of Record	20	Service on Judge of Request for Settlement	11(c) 18(d)(3)
Filing Record on Appeal in Appellate Court	15	Settlement of Record on Appeal	12(a)

Filing Appellant's Brief (or Mailing Brief Under Rule 26(a))	30	Filing the Record on Appeal in Appellate Court (60 Days in Death Cases)	13(a)
Filing Appellee's Brief (or Mailing Brief Under Rule 26(a))	30	Service of Appellant's Brief (60 Days in Death Cases)	13(a)
Filing Appellant's Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee's Brief	28(h)
Oral Argument	30	Filing Appellant's Brief (Usual Minimum Time)	29
Certification or Mandate	20	Issuance of Opinion	32
Petition for Rehearing (Civil Action Only)	15	Mandate	31(a)

**Timetable of Appeals from Trial Division Under Article II, Rule 3.1, of the
Rules of Appellate Procedure**

<i>Action</i>	<i>Time (Days)</i>	<i>From date of</i>	<i>Rule Ref.</i>
Taking Appeal	30	Entry of Judgment	3.1(b); N.C.G.S. § 7B- 1001
Notifying Court Reporting Manager	1 (Business)	Filing Notice of Appeal	3.1(c)
Assigning Transcriptionist	5 (Business)	Completion of Expedited Juvenile Appeals Form	3.1(c)
Delivering a Transcript of the Proceedings	40	Assignment by Court Reporting Manager	3.1(c)
Serving Proposed Record on Appeal	15	Delivery of Transcript	3.1(d)

Serving Notice of Approval, Specific Objections or Amendments, or Proposed Alternative Record on Appeal	10	Service of Proposed Record on Appeal	3.1(d)
Requesting Judicial Settlement of Record	10	Expiration of the Last Day Within Which an Appellee Who Has Been Served Could Serve Objections, etc.	3.1(d); 11(c)
Judicial Settlement of Record	20	Service on Judge of Request for Settlement	3.1(d); 11(c)
Filing Record on Appeal in Appellate Court	5 (Business)	Settlement of Record on Appeal	3.1(d)
Filing Appellant's Brief	30	Filing of Record on Appeal	13(a)(1)
Filing Appellee's Brief	30	Service of Appellant's Brief	13(a)(1)
Filing Appellant's Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee's Brief	13(a)(1); 28(h)

**Timetable of Appeals to the Supreme Court from the Court of Appeals
Under Article III of the Rules of Appellate Procedure**

<i>Action</i>	<i>Time (Days)</i>	<i>From date of</i>	<i>Rule Ref.</i>
Petition for Discretionary Review Prior to Determination	15	Docketing Appeal in Court of Appeals	15(b)
Notice of Appeal and/or Petition for Discretionary Review	15	Mandate of Court of Appeals (or From Order of Court of Appeals Denying Petition for Rehearing)	14(a) 15(b)
Cross-Notice of Appeal	10	Filing of First Notice of Appeal	14(a)
Response to Petition for Discretionary Review	10	Service of Petition	15(d)

Filing Appellant’s Brief (or Mailing Brief Under Rule 26(a))	30	Filing Notice of Appeal <u>Order Retaining Appeal</u> Certification of Review	14(d) 15(g)(2)
Filing Appellee’s Brief (or Mailing Brief Under Rule 26(a))	30	Service of Appellant’s Brief	14(d) 15(g)
Filing Appellant’s Reply Brief (or Mailing Brief Under Rule 26(a))	14	Service of Appellee’s Brief	28(h)
Oral Argument	30	Filing Appellee’s Brief (Usual Minimum Time)	29
Certification or Mandate	20	Issuance of Opinion	32
Petition for Rehearing (Civil Action Only)	15	Mandate	31(a)

All of the critical time intervals outlined here except those for taking an appeal, petitioning for discretionary review, responding to a petition for discretionary review, or petitioning for rehearing may be extended by order of the court in which the appeal is docketed at the time. Note that Rule 27 authorizes the trial tribunal to grant only one extension of time for the delivery of a transcript. Note also that Rule 27 authorizes the trial tribunal to grant only one extension of time for service of the proposed record. All other motions for extension of the times provided in these rules must be filed with the appellate court to which the appeal of right lies.

No time limits are prescribed for petitions for writs of certiorari other than that they be “filed without unreasonable delay.” (Rule 21(c)).

* * *

Appendix D. Forms

Captions for all documents filed in the appellate division should be in the format prescribed by Appendix B, addressed to the Court whose review is sought.

NOTICES OF APPEAL

(1) To Court of Appeals from Trial Division

Appropriate in all appeals of right from district or superior court except appeals from criminal judgments imposing sentences of death.

(Caption)

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), hereby gives notice of appeal to the Court of Appeals of North Carolina (from the final judgment)(from the order) entered on (date) in (District)(Superior) Court, _____ County, (describing it).

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for (Plaintiff)(Defendant)-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

(2) To Supreme Court from a Judgment of the Superior Court Including a Sentence of Death

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Name of Defendant), Defendant, hereby gives notice of appeal to the Supreme Court of North Carolina from the final judgment entered by (name of Judge) in Superior Court, _____ County, on (date), which judgment included a conviction of murder in the first degree and a sentence of death.

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for Defendant-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

(3) To Supreme Court from a Judgment of the Court of Appeals

Appropriate in all appeals taken as of right from opinions and judgments of the Court of Appeals to the Supreme Court under N.C.G.S. § 7A-30. The appealing party shall enclose a clear copy of the opinion of the Court of Appeals with the notice. To take account of the possibility that the Supreme Court may determine that the appeal does not lie of right, an alternative petition for discretionary review may be filed with the notice of appeal.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals (describe it), which judgment ~~....~~

~~(Constitutional question N.C.G.S. § 7A-30(1)) . . .~~ directly involves a substantial question arising under the Constitution(s) (of the United States)(and)(or)(of the State of North Carolina) as follows:

(Here describe the specific issues, citing constitutional provisions under which they arise and showing how such issues were timely raised below and are set out in the record of appeal, e.g.:

Issue 1: Said judgment directly involves a substantial question arising under the Fourth and Fourteenth Amendments to the Constitution of the United States and under Article 1, Section 20 of the Constitution of the State of North Carolina, in that it deprives rights secured thereunder to the defendant by overruling defendant's challenge to the denial of (his)(her) Motion to Suppress Evidence Obtained by a Search Warrant, thereby depriving defendant of the constitutional right to be secure in his or her person, house, papers, and effects against unreasonable searches and seizures and violating constitutional prohibitions against warrants issued without probable cause and warrants not supported by evidence. This constitutional issue was timely raised in the trial tribunal by defendant's Motion to Suppress Evidence Obtained by a Search Warrant made prior to trial of defendant (R pp 7-10). This constitutional issue was determined erroneously by the Court of Appeals.)

In the event the Court finds this constitutional question to be substantial, petitioner intends to present the following issues in its brief for review:

(Here list all issues to be presented in appellant's brief to the Supreme Court, not limited to those which are the basis of the constitutional question claim. An issue may not be briefed if it is not listed in the notice of appeal.)

~~(Dissent N.C.G.S. § 7A-30(2)) . . . was entered with a dissent by Judge (name), based on the following issue(s):~~

~~(Here state the issue or issues that are the basis of the dissenting opinion in the Court of Appeals. Do not state additional issues. Any additional issues desired to be raised in the Supreme Court when the appeal of right is based solely on a dissenting opinion must be presented by a petition for discretionary review as to the additional issues.)~~

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for (Plaintiff)(Defendant)-Appellant

(Address, Telephone Number, State Bar Number,
and E-mail Address)

PETITION FOR DISCRETIONARY REVIEW UNDER N.C.G.S. § 7A-31

To seek review of the opinion and judgment of the Court of Appeals when petitioner contends the case involves issues of public interest or jurisprudential significance. May also be filed as a separate document in conjunction with a notice of appeal to the Supreme Court when the appellant contends that such appeal lies of right due to substantial constitutional questions under N.C.G.S. § 7A-30, but desires to have the Court consider discretionary review should it determine that appeal does not lie of right in the particular case.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), respectfully petitions the Supreme Court of North Carolina to certify for discretionary review the judgment of the Court of Appeals (describing it) on the basis that (here set out the grounds from N.C.G.S. § 7A-31 that provide the basis for the petition). In support of this petition, (Plaintiff)(Defendant) shows the following:

Facts

(Here state first the procedural history of the case through the trial division and the Court of Appeals. Then set out factual background necessary for understanding the basis of the petition.)

Reasons Why Certification Should Issue

(Here set out factual and legal arguments to justify certification of the case for full review. While some substantive argument will certainly be helpful, the focus of the argument in the petition should show how the opinion of the Court of Appeals conflicts with prior decisions of the Supreme Court or how the case is significant to the jurisprudence of the State or of significant public interest. If the Court is persuaded to take the case, the appellant may deal thoroughly with the substantive issues in the new brief.)

Issues to Be Briefed

In the event the Court allows this petition for discretionary review, petitioner intends to present the following issues in its brief for review:

(Here list all issues to be presented in appellant's brief to the Supreme Court, not limited to those that are the basis of the petition. An issue may not be briefed if it is not listed in the petition.)

Respectfully submitted this the __ day of _____, 2___.

s/ _____

Attorney for (Plaintiff)(Defendant)-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

Attached to the petition shall be a certificate of service upon the opposing parties and a clear copy of the opinion of the Court of Appeals in the case.

PETITION FOR WRIT OF CERTIORARI

To seek review: (1) by the appropriate appellate court of judgments or orders of trial tribunals when the right to prosecute an appeal has been lost or when no right to appeal exists; and (2) by the Supreme Court of decisions and orders of the Court of Appeals when no right to appeal or to petition for discretionary review exists or when such right has been lost by failure to take timely action.

(Caption)

TO THE HONORABLE (SUPREME COURT)(COURT OF APPEALS) OF NORTH
CAROLINA:

(Plaintiff)(Defendant), (Name of Party), respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the Rules of Appellate Procedure to review the (judgment)(order)(decree) of the [Honorable (name), Judge Presiding, (Superior)(District) Court, _____ County][North Carolina Court of Appeals], dated (date), (here describe the judgment, order, or decree appealed from), and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding the basis of the petition: e.g., failure to perfect appeal by reason of circumstances constituting excusable neglect; non-appealability of right of an interlocutory order, etc.) (If circumstances are that transcript could not be procured from court reporter, statement should include estimate of date of availability and supporting affidavit from the court reporter.)

Reasons Why Writ Should Issue

(Here set out factual and legal arguments to justify issuance of writ: e.g., reasons why interlocutory order makes it impracticable for petitioner to proceed further in trial court; meritorious basis of petitioner's proposed issues, etc.)

Attachments

Attached to this petition for consideration by 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, petitioner respectfully prays that this Court issue its writ of certiorari to the [(Superior)(District) Court, _____ 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 manner provided for in the petition for discretionary review); and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for Petitioner

(Address, Telephone Number, State Bar Number, and E-mail Address)

(Verification by petitioner or counsel)

(Certificate of service upon opposing parties)

(Attach a clear copy of the opinion, order, etc. which is the subject of the petition and other attachments as described in the petition.)

PETITION FOR WRIT OF SUPERSEDEAS UNDER RULE 23 AND MOTION FOR TEMPORARY STAY

A writ of supersedeas operates to stay the execution or enforcement of any judgment, order, or other determination of a trial court or of the Court of Appeals in civil cases under Rule 8 or to stay imprisonment or execution of a sentence of death in criminal cases (other portions of criminal sentences, e.g., fines, are stayed automatically pending an appeal of right).

A motion for temporary stay under Rule 23(e) is appropriate to seek an immediate stay of execution on an *ex parte* basis pending the Court’s decision on the petition for supersedeas or the substantive petition in the case.

(Caption)

TO THE HONORABLE (COURT OF APPEALS)(SUPREME COURT) OF NORTH CAROLINA:

(Plaintiff)(Defendant), (Name of Party), respectfully petitions this Court to issue its writ of supersedeas to stay (execution)(enforcement) of the (judgment)(order)(decree) of the [Honorable _____, Judge Presiding, (Superior)(District) Court, _____ County][North Carolina Court of Appeals] dated _____, pending review by this Court of said (judgment)(order)(decree) which (here describe the judgment, order, or decree and its operation if not stayed); and in support of this petition shows the following:

Facts

(Here set out factual background necessary for understanding the basis of the petition and justifying its filing under Rule 23: e.g., trial judge has vacated the entry upon finding security deposited under N.C.G.S. § ____ inadequate; trial judge has refused to stay execution upon motion therefor by petitioner; circumstances make it impracticable to apply first to trial judge for stay, etc.; and showing that review of the trial court judgment is being sought by appeal or extraordinary writ.)

Reasons Why Writ Should Issue

(Here set out factual and legal arguments for justice of issuing the writ; e.g., that security deemed inadequate by trial judge is adequate under the circumstances; that irreparable harm will result to petitioner if it is required to obey decree pending its review; that petitioner has meritorious basis for seeking review, etc.)

Attachments

Attached to this petition for consideration by the court are certified copies of the (judgment)(order)(decree) sought to be stayed and (here list any other certified items from the trial court record and any affidavits deemed necessary to consideration of the petition).

Wherefore, petitioner respectfully prays that this Court issue its writ of supersedeas to the [(Superior)(District) Court, _____ County][North Carolina Court of Appeals] staying (execution)(enforcement) of its (judgment)(order)(decree) above specified, pending issuance of the mandate to this Court following its review and determination of the (appeal)(discretionary review)(review by extraordinary writ)(now pending)(the petition for which will be timely filed); and that the petitioner have such other relief as to the Court may seem proper.

Respectfully submitted this the __ day of _____, 2__.

s/_____

Attorney for Petitioner

(Address, Telephone Number, State Bar Number, and E-mail Address)

(Verification by petitioner or counsel)

(Certificate of Service upon opposing party)

Rule 23(e) provides that in conjunction with a petition for supersedeas, either as part of it or separately, the petitioner may move for a temporary stay of execution or enforcement pending the Court's ruling on the petition for supersedeas. The following form is illustrative of such a motion for temporary stay, either included as part of the main petition or filed separately.

Motion for Temporary Stay

(Plaintiff)(Defendant) respectfully applies to the Court for an order temporarily staying (execution)(enforcement) of the (judgment)(order)(decree) that is the subject of (this)(the accompanying) petition for writ of supersedeas, such order to be in effect until determination by this Court whether it shall issue its writ. In support of this Application, movant shows that (here set out the legal and factual arguments for the issuance of such a temporary stay order; e.g., irreparable harm practically threatened if petitioner must obey decree of trial court during interval before decision by Court whether to issue writ of supersedeas).

Motion for Stay of Execution

In death cases, the Supreme Court uses an order for stay of execution of death sentence in lieu of the writ of supersedeas. Counsel should promptly apply for such a stay after the judgment of the superior court imposing the death sentence. The stay of execution order will provide that it remains in effect until dissolved. The following form illustrates the contents needed in such a motion.

(Caption)

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now comes the defendant, (name), who respectfully shows the Court:

1. That on (date of judgment), The Honorable _____, Judge Presiding, Superior Court, _____ County, sentenced the defendant to death, execution being set for (date of execution).
2. That pursuant to N.C.G.S. § 15A-2000(d)(1), there is an automatic appeal of this matter to the Supreme Court of North Carolina, and defendant’s notice of appeal was given (describe the circumstances and date of notice).
3. That the record on appeal in this case cannot be served and settled, the matter docketed, the briefs prepared, the arguments heard, and a decision rendered before the date scheduled for execution.

WHEREFORE, the defendant prays the Court to enter an order staying the execution pending judgment and further orders of this Court.

Respectfully submitted this the __ day of _____, 2__.

s/_____
Attorney for Defendant-Appellant
(Address, Telephone Number, State Bar Number,
and E-mail Address)

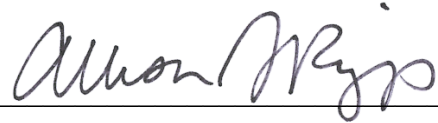
(Certificate of Service on Attorney General, District Attorney, and Warden of Central Prison)

* * *

These amendments to the North Carolina Rules of Appellate Procedure become effective on 1 April 2025.

These amendments shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 19th day of March 2025.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of March 2025.



GRANT E. BUCKNER
Clerk of the Supreme Court