

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

Prepared and Distributed by:

**The Appellate Rules Study Committee of
The North Carolina Bar Association**

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Statement of Purpose

The Appellate Rules Study Committee of the North Carolina Bar Association prepared this style manual to assist North Carolina lawyers when they appear in the state appellate courts.

Practitioners should consult the Rules of Appellate Procedure at each stage of the appeal, to acquaint themselves with the process. 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 are very helpful in summarizing the contents of the Rules.

This style manual is an effort to synthesize the Rules and the Appendixes into a series of practical examples. The Record on Appeal, for example, contains each of the elements of a typical civil-case record, with a few commentaries by the committee on important points. The practitioner with a criminal appeal or a juvenile case will need to adjust the content, if not the style, of that document.

The committee would be remiss if it did not point practitioners to another source of examples of appellate pleadings: www.ncappellatecourts.org contains copies of all the scanned records on appeal and briefs of cases filed in the Court of Appeals and Supreme Court in recent years. Beware: there are no annotations to those documents – some of them are wonderful and some aren't.

The committee appreciates the advice and comments of those who use the manual. Please send your suggestions to the Appellate Rules Study 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.barlinc.org.

A Typical Record on Appeal

No.

TWENTY-EIGHT-A DISTRICT

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as in)	
Final Judgment,)	
Plaintiff)	
)	
v.)	
)	
)	From Avery County
)	94 CVS 2345
Defendants' Names as in)	
Final Judgment,)	
Defendants)	

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Index entries are indented ¾ 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. The “No.” of the case (at the top left corner of the page) is left blank. The Clerk’s office assigns the number and inserts it before the Record is printed.

Page numbers are centered, flanked by dashes, at the top of each page in the Record on Appeal. The Statement of Organization is always the first page. No inside caption is required for a record on appeal.

STATEMENT OF ORGANIZATION OF TRIAL COURT

From the 1 May 1997 Civil Session of Superior Court of Avery County, the Honorable Cant B. Wrong, Judge presiding. From the 15 May 1997 jury verdict and judgment dismissing the plaintiff's claim, the plaintiff appealed.

The record on appeal was filed in the Court of Appeals on _____, 1997 and was docketed on _____, 1997.

By convention, spaces are provided for the Clerk's office to insert by hand the dates of filing and docketing.

**The "regular" margins for the pages in the Record on Appeal are 1" all around.
Typed material is single-spaced in the Record on Appeal.**

STATEMENT OF JURISDICTION

This action was commenced by the filing of a complaint and issuance of summons on 1 April 1994. The parties acknowledge that the trial court had jurisdiction over the persons and subject matter of the action.

In a civil case, if jurisdiction is not at issue, the parties can insert this statement to avoid the unnecessary inclusion of the summons and return of service. In a criminal case, there is no "Statement of Jurisdiction," since a copy of the warrant or similar process usually follows the "Statement of Organization" page.

[Copy of Complaint]

[Copy of Answer]

[Copies of other pleadings necessary to understand assignments of error. See Rule 9(1), (2) or (3) for a description of the documents to be included here.]

Tip: Rule 9(c) requires all the papers to show the date on which they were filed. Often the Clerk's time stamp is illegible when copied. The normal solution is to make a clear, handwritten or typed entry on the copy you are including in the Record (say, below the Clerk's stamp) of something like: "Filed 24 Jan 01." 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.

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rule 9(c), the transcript of the entire proceedings in this case (excepting the jury selection and arguments of counsel), taken by Elaine Wicker, Court Reporter, from May 12, 1995 through May 15, 1995, consisting of 399 pages, numbered 1-399, bound in one volume, is filed contemporaneously with this record.

Also transmitted are the portions of the depositions of Wyle E. Coyote (Vol. 1, pages 24-56; 67-91 and 104-112) and Wright Patterson (Vol. 1, pages 10-45) that were submitted to the court in ruling on the motion for summary judgment.

Neither the transcript nor the depositions are printed in the Record on Appeal at this point – see Rule 9(c). What is included here is a reference to the materials that are being sent with the record. This might include trial transcripts, depositions and even discovery materials (if relevant to the issues on appeal).

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[Copy of jury's verdict sheet]

[Copy of judgment]

AVERY COUNTY
NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 95 CVS 1234

Name of the Plaintiff,)
Plaintiff)
v.)
Name of the Defendant,)
Defendant)

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA

Plaintiff Sad Lee Mistaken hereby gives notice of appeal to the Court of Appeals of North Carolina from the final judgment of Cant B. Wrong, Superior Court Judge, entered on May 15, 1997 in the Superior Court of Avery County, which dismissed the plaintiff's action.

This 21st day of May, 1997.

Grievous Lee Wronged
Small, Proud & Angry, PA
160 N. Main Street
Smallville, NC 28786
(828) 456-1245
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing pleading 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 May, 1997, addressed as follows:

Wright A. Gain
Suite 1450, Third Megatower Center
Metropolis, NC 27510

Grievous Lee Wronged

[In a criminal or juvenile case, where notice of appeal is given orally in open court, you insert here the “Appeal Entries.” In criminal cases, this is a printed form (AOC CR 350). In juvenile cases, the trial attorney would prepare and have the trial judge sign something like the “appeal entries” document described in Appendix D of the Rules of Appellate Procedure.]

[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.]

[If needed, order of court settling the contents of the record on appeal. If settled by agreement of the parties, see following page.]

If extensions of time are granted (to prepare the transcript and to prepare the proposed Record on Appeal, for example), they would appear at this point. See Rule 9(a)(1)(i) for other pleadings or agreements that would appear here.

Tip: 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 OF SERVICE AND SETTLEMENT OF
RECORD**

Counsel for the appellant and appellee stipulate as follows:

1. The proposed record on appeal was duly served on 10 April 1997, in apt time. The certificate showing service of the proposed record is omitted from the settled record.

2. Objections were served on 29 April 1997. Judge Wyatt set a hearing on 14 May 1997 for settling the record. Before the hearing, the parties resolved the contents of the record on the date shown below.

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 foregoing, including the transcript described in the Statement of Transcript option (accompanying this record) and the trial exhibit labeled "Defendant's Exhibit 2" (which is being transmitted directly from the Clerk of Court of Avery County to the Clerk of the Court of Appeals), constitutes the agreed-upon record on appeal.

This 13th day of May, 1997.

For the Plaintiff Appellant: _____
Grievous Lee Wronged

For the Defendant Appellee: _____
Wright A. Gain

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. At

this point you should demonstrate the settlement method you used.

Assignments of error follow on immediately afterwards.

ASSIGNMENTS OF ERROR

The defendant assigns as error:

1. The court's failure to grant the defendant's pre-trial motion for summary judgment, on the ground that there was no genuine issue of material fact that the statute of limitations had run and that the defendant was therefore entitled to judgment as a matter of law.

R p. 4 (Order denying motion)

2. The court's admission of the testimony of the witness E.F., on the ground that the testimony was hearsay.

T p. 324, lines 23-25

T pp. 325-327, lines 4 through 27

3. The court's Conclusion of Law No. 4, on the ground that the findings of fact support the conclusion that the plaintiff had the last clear chance to avoid the collision.

R p. 29 (Order)

4. The trial court's denial of the defendant's motion *in limine* to exclude all evidence of settlement discussions between the parties, on the ground that the evidence was inadmissible as a matter of law to prove liability for the claim or its amount.

T pp. 35, 57-59, 100-01, 123-26

Assignments should be generally limited to a single point of legal error. The citations point to the place in the Record or the transcript where the error and related references (if needed for context) can be found. Other examples of Assignments of Error are in Table 4 of Appendix C of the Rules of Appellate Procedure.

NAMES AND ADDRESSES OF COUNSEL FOR THE APPEAL

For the Appellant: Grievous Lee Wronged
Small, Proud & Angry, PA
160 N. Main Street
Smallville, NC 28786
(704) 456-7890
Wronglee@wow.com

In criminal cases, the firm name is omitted if the attorney is appointed, but included if the attorney is privately retained.

For the Appellee: Wright A. Gain
Fat, Happy & Rich, PA
Suite 1450, Third Megatower Center
Metropolis, NC 27510
(919) 234-4567
wrighton@bigdog.com

A 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.

The Supreme Court has also embraced electronic filing of documents, through the web-site www.ncappellatecourts.org. But before depending on electronic filing to get that document in on time, consult the web site and be confident in your technology.

A Typical Appellant's Brief

A note on typefaces or fonts: Most of the examples which follow are printed in a 12-point Courier typeface. Rule 28(j) of the Rules of Appellate Procedure has been recently revised to provide “safe harbor” provisions: if you use a 14 point proportional font (such as Times New Roman) or a 12 point non-proportional font (such as Courier) you will be safe on font sizes. 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. A new requirement, if you use a proportional font in the Court of Appeals, is a Certificate of Compliance (see the example after the signature block at the end of the brief).

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as on)
 Final Judgment,)
 Plaintiff,)
))
 v.)
))
))
 Defendants' Names as on)
 Final Judgment,)
 Defendants.)

From Avery County

PLAINTIFF APPELLANT'S BRIEF

This is similar to the Record on Appeal. But note: no trial-division case number under the county name; by convention, no hyphen or slash between "Plaintiff" and "Appellant" in the title of the brief. The index is on the next page.

Note on filing: The brief is due 30 days after the date that the Clerk's office mails its notification of the printing of the record on appeal (except in civil cases *in forma pauperis*, where it runs 30 days from the docketing date of the Record). The brief is considered filed when it is mailed by you, if you use the US Postal Service. If you use a 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, mail it. Rule 26(a)(1).

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**The index is indented in from each regular 1" margin by ¾"
(making the line 5" long).**

**The ALL-CAPS typography is optional. Some practitioners
use dot leaders (". . .") to the page numbers.**

TABLE OF CASES AND AUTHORITIES

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The lines are indented just like the Index page (3/4" in from each 1" margin, making a 5" line).

Cases, arranged alphabetically, come first; then constitutional provisions and statutes, each arranged numerically; then regulations and other authorities. Leave out the subsequent history of the cases when bringing the citation to this table.

Citations should follow the latest edition of A Uniform System of Citation.

QUESTIONS 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?

The Questions Presented are typed margin-to-margin, single-spaced. This page (and the rest of the brief) has the regular margins of 1" all around. Some practitioners type the Questions Presented in ALL CAPS.

If the Questions 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 1995. A judgment and order dismissing the case was entered 10 May 1996. The plaintiff filed and served notice of appeal on 8 June 1996. Transcript was ordered on 14 June 1996 and delivered 1 August 1996. The time to file the proposed record was extended by the trial division until 15 September 1996. The record was settled by stipulation on 1 November 1996, filed in the Court of Appeals on 13 November 1996 and docketed 15 November 1996.

Note the page numbering at the top. 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.

Tip: Idiomatically, the North Carolina appeals courts use the date style shown (“14 November 2001”).

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Judge Jackson’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 Jackson'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 and Judge Jackson'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 his order.

Tip: Be aware, before relying entirely on a Rule 54(b) finding by the trial judge, of a tension between the line of cases holding that the appellate court makes its own determination of the appealability issue (*First Atlantic Management v. Dunlea Realty*, 131 N.C.App. 242, 507 S.E.2d 56 (1998)) and the line holding that the appellate court should give deference to the Rule 54(b) determination of the trial court (*DKH Corp v. Rankin-Patterson Oil Co.*, 348 N.C. 583, 500 S.E.2d 66 (1998)).

OR

Judge Jackson'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 Jackson's order is interlocutory. It is appropriate, however, to pursue the appeal of this order now because Judge Jackson's ruling affects a substantial right of the plaintiff, as described in G.S. 1-277 and 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].

The Statement of Grounds for Appellate Review is a new requirement for North Carolina appellant briefs. The new 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 G.S. 1-277 and G.S. 7A-27 for what the courts have considered “substantial rights” and tailor your statement accordingly.

The Statement of the Facts follows on immediately afterwards.

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 1991 (R p. 49) and an Order Closing a Portion of East Street on 1 December 1992 which resulted in the imposition of a series of

[Recitation of facts continues]

The appellant’s brief contains a “full and complete” “non-argumentative” Statement of the Facts that are important to understanding the issues argued in the brief. Long quotations from the transcript or the Record are not encouraged, but accurate references to the place where the facts can be found are.

The appellee’s brief needn’t 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.

Tip: 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.

Tip: 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 Argument Section follows on immediately afterwards.

ARGUMENT

I. 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.

ASSIGNMENT OF ERROR NO. 2, R p. 45

The defendant argues that 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 the acts of the defendant,

[Argument continues]

Each numbered argument is followed by the Assignments of Error that relate to it. The Assignments of Error are followed by the location in the Record where the Assignments may be found. All of that is single-spaced, as shown.

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]

Subsection headings are set out as shown (underlined at the left margin). One-inch margins all around. Double spacing.

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.

The Conclusion follows on immediately after the Arguments.

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, for the error of the court 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, 1997.

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.

Tip: Don't repeat your arguments – they've heard enough of that by now. See Rule 28(b)(6), which requires the conclusion to be short and precise. In criminal cases, take a look at G.S. 15A-1447 for the various forms of relief available -- ask for what you are entitled to.

Cann I. Getawitness
Getawitness & Getawin, PA
Attorney for the Defendant-
Appellant
160 N. Main Street
Murphy NC 28736
(828) 234-5678
getthere@awesome.com

If you want to appear at oral argument, you have to sign the brief. Some firms list the firm name above the signature line, with "By:" before the signature. Recall that 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). The e-mail address is a new feature.

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 the appellant

Applicable only to the Court of Appeals, the certificate of compliance is a new requirement. It also only applies if you choose to use a proportional font (such as Times New Roman). If you use a non-proportional font (such as Courier or Courier New), the length of the

brief is governed by the number of pages and no certification is necessary. See Rule 28(j) for the number of words allowed. 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, this _____ day of April, 1997:

[Name and address of opposing counsel]

Cann I. Getawitness

The brief is considered both filed and served when you put it in the mail, if you use first-class US 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, use the mail.

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The page numbers on the right refer to the page in the brief where the material is cited. For further information on the appendix, see the end of Appendix E of the Rules of Appellate Procedure.

This is a 5" line, indented ¾ inch from each 1" regular margin, just like the other Indexes and Tables.

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.

Tip: The purpose of the appendix, which is reproduced “as is” and attached to the printed brief, is to avoid the judges having to rifle through the transcript to find what you are talking about. It is probably more persuasive to actually just include the relevant material directly in the brief at the appropriate point, if technically possible. 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.

A Typical Appellee's Brief

NORTH CAROLINA COURT OF APPEALS

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

From Haywood

PLAINTIFFS APPELLEES' BRIEF

<p>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).</p>
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See the notes in Appellant's Brief for layout of this page.

TABLE OF CASES AND AUTHORITIES

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<u>Cochran v. Keller</u> , 84 N.C. App. 205, 352 S.E.2d 458 (1987)	3
<u>Jacobs v. Jennings</u> , 221 N.C. 24, 18 S.E.2d 715 (1942)	2
<u>Skvarla v. Park</u> , 62 N.C. App. 48 , 303 S.E.2d 354 (1983)	6
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<u>Zaaroli v. Pollock</u> , 94 N.C. App. 46, 379 S.E.2d 653 (1989)	5

See notes in the Appellant's Brief for the layout of this section.

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.

Assignment of Error No. 2 (R p. 123)

The plaintiffs established that there was no genuine issue concerning the width of the driveway easement and that the court

[Argument continues]

The appellee's brief generally goes directly to the argument, unless the appellee desires to amend the appellant's Statement of the Facts, Statement of Grounds for Appellate Review or present additional questions. See Rule 28(c) for the additional contents of appellee's brief in such cases.

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]

This illustrates the method of including long transcript sections into the brief (which is by indenting and single-spacing the material).

Tip: It is easier to get the court to follow your argument if you directly import the material, rather than just referring to an appendix or the transcript pages.

CONCLUSION

The judgment of the trial court should be affirmed.

Respectfully submitted, this 10th day of November, 1997.

MEGAFIRM INDEED, PA

By: _____
Cant B. Wrong
1234 Highrise Tower
Metropolis, NC 28786
(704) 124-5678
Attorneys for the
Appellees
cantI@nosir.comm

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 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 the appellee

Applicable only to the Court of Appeals, the certificate of compliance is a new requirement. It also only applies if you choose to use a proportional font (such as Times New Roman). If you use a non-proportional font (such as Courier or Courier New), the length of a brief is governed by the number of pages and no certification is necessary. See Rule 28(j). There are no page 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 the 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, 1997, addressed as follows:

Small & Understaffed, PA
41 Clayton Street
Smallville, NC 28801

Cant B. Wrong

Follow the brief with an appendix, if one is needed, to gather the transcript portions and statutes referred to in the arguments. See the note about appendixes following the Appellant's Brief.

The brief is considered both filed and served when you put it in the mail, if you use first-class US 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, use the mail.

A Typical Petition for Discretionary Review

No.

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NAMES AS IN TRIAL DIVISION,)
Plaintiff,)

v)

NAMES AS IN TRIAL DIVISION,)
Defendant)

From Wake County
No. 9710COA1544

PETITION FOR DISCRETIONARY REVIEW
UNDER G.S. 7A-31(c)

The petition number in the upper left corner is blank, to be filled in by the Supreme Court.

Note the addition of the Court of Appeals docket number below the county name on the right side.

Consult Rule 15 of the Rules of Appellate Procedure, Appendix D, Section 3 of the Rules, and G.S. 7A-31 for time limits and similar information.

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A. Because Century is not a “claimant” or “policyholder” and does not possess a “covered claim” Under the Act, it is not entitled to any recovery from the Association	6
II. THE SUBJECT MATTER OF THIS APPEAL HAS SIGNIFI- CANT PUBLIC INTEREST.....	8
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This illustrates another form of a contents page, with a mixture of ALL-CAPS and lower-case section titles.

The margins are indented ¾” from each regular (1”) margin, leaving a 5” line.

The dot leaders (.....) for the page numbers are optional.

TABLE OF AUTHORITIES

City of Greensboro v Reserve Ins. Co., 70 N.C.App. 651,
321 S.E.2d 232 (1984) 7

**If the petition is ten substantive pages or less, this table may be omitted.
If included, the format is the same as any brief (see the Appellant’s
Brief for a fuller discussion on the formatting).**

of Appeals on 10 September 1996. The Court of Appeals affirmed the order of dismissal in an unpublished opinion, filed 14 July 1997.

The first part of this section sets out the procedural history of the case through the trial division and the Court of Appeals.

The Association is an unincorporated non-profit entity created pursuant to the North Carolina Insurance Guaranty Act (N.C. Gen. Stat. § 58-48-1) to protect a limited class

[Factual background continues]

The second part of this section sets out the factual background, enough for the Court to understand the basis of the petition.

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]

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, or b) how the case is significant to the jurisprudence of the State, or c) why the case is one of significant public interest. See G.S. 7A-31 and Rule 15 of the Rules of Appellate Procedure.

Tip: 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 G.S. 7A-31 for situations involving a petition 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."

Respectfully submitted, this the 15th day of December, 1997.

HAPPY, GO & LUCKY PLLC

By: _____

Christopher S. Happy
Post Office Box 12345
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
ATTORNEYS FOR PETITIONER

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 15th day of December, 1997.

Jack B. Lucky

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

SUPREME COURT OF NORTH CAROLINA

NAMES AS IN TRIAL DIVISION,)
Plaintiff,)

v)

NAMES AS IN TRIAL DIVISION,)
Defendant)

From Wake County
96CVS2549
COA97-1544

PETITION FOR WRIT OF CERTIORARI

The petition number in the upper left corner is blank, to be filled in by the Supreme Court.

Note the addition of the Court of Appeals docket number below the county name and county case file number on the right side, when appropriate.

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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II. THE TRIAL COURT’S ORDER IS DIRECTLY CONTRARY TO THIS COURT’S RECENT DECISIONS ON THIS SUBJECT.....	8
ISSUES TO BE BRIEFED.....	8
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CERTIFICATE OF SERVICE	9

A petition which is “long or complex or treats multiple issues” needs an index. If the petition is none of these things, the index could be omitted.

The margins are indented ¾” from each regular (1”) margin, leaving a 5” line.

The dot leaders (.....) for the page numbers are optional.

TABLE OF AUTHORITIES

City of Greensboro v Reserve Ins. Co., 70 N.C.App. 651,
321 S.E.2d 232 (1984) 7

This table may be omitted if the petition is five pages or less in length. See Appendix B of the Rules of Appellate Procedure, Table of Cases and Authorities. If included, the style is the same as any brief (see the Appellant’s Brief for a discussion on the formatting).

No.

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA INSURANCE)
ASSOCIATION,)
Plaintiff,)
v)
MID-CENTURY INDEMNITY COMPANY,)
Defendant)

From Wake County
96CVS5468
COA97-1544

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 June 21, 1994 [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 1993 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

Here set out the factual background necessary to understand why you are petitioning for certiorari (eg., failure to perfect an appeal of right because of circumstances constituting excusable neglect; non-appealability of an interlocutory order, etc.). If the availability of a transcript is the problem, include an estimate of the date of availability and attach a supporting affidavit from the court reporter.

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 the cases of *Walls v.*

[Argument continues]

Here set out the factual and legal argument to justify the issuance of the writ. See Rule 21 of the Rules of Appellate Procedure for the bases of the writ and tailor the argument to that law.

Tip: Because this writ is so flexible, the argument section of the petition is likewise flexible. Brevity, however, is always going to be appreciated and possibly rewarded.

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 or evidentiary copies which are pertinent to the petition).

Wherefore, the petitioner respectfully prays this Court to issue its writ of certiorari to the [Superior Court of (name) County] [North Carolina Court of Appeals] to permit review of the judgment (order)(decree) above specified, upon errors [(to be assigned in the record on appeal constituted in accordance with the Rules of Appellate Procedure] or [stated as follows: (here list the errors, written as issues, in the same manner as in the Petition for Discretionary Review)] and that the petitioner have such other relief as to the Court may seem just.

Respectfully submitted, this ____ day of July, 1996.

HAPPY, GO & LUCKY PLLC

By: _____

Christopher S. Happy
Post Office Box 12345
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
ATTORNEYS FOR PETITIONER

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: a) that the material allegations of the petition are true to the attorney's personal knowledge and b) give the reason the verification is not being made by the petitioner.]

Petitioner or attorney

Sworn to and subscribed before me, this ____ day of _____, 1997.

My commission expires

Notary Public

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 December, 1997.

Jack B. Lucky

Following the petition, attach certified copies of the documents described in the "Attachments" section.