

MEMORANDUM

TO: North Carolina Appellate Practitioners

FROM: Drew Erteschik
Chair, NCBA Appellate Rules Committee

CC: Beth Scherer,
Past Chair (2012-2014), NCBA Appellate Rules Committee

DATE: January 27, 2021

Historically, the chair of the Appellate Rules Committee has circulated a memo to North Carolina's appellate practitioners when there have been significant amendments to the North Carolina Rules of Appellate Procedure that deserve careful study. Consistent with that tradition, I write to you now about a development that, in all likelihood, most of you are already aware: On November 17, 2020, the Supreme Court of North Carolina adopted amendments to the North Carolina Rules of Appellate Procedure to provide clarity on how various transcript-related issues should work in practice.

You can find a complete copy of the amendments [here](#). As you will see, the Court revised Appellate Rule 7 in its entirety, and it adopted changes to Appellate Rules 9, 10, 11, 12, 18, 27, and 28. The Court also made conforming changes to Appendixes A and B. The amendments apply to cases appealed on or after January 1, 2021.

Beth Scherer, a past chair of the Appellate Rules Committee, has authored an excellent article that summarizes the amendments in detail. You can find a copy of her article [here](#). For those looking for a brief summary, this memo—with Beth's permission—reproduces much of Beth's article, only in condensed form.

Before getting into substance, though, I want to take a moment to share my enthusiasm for the amendments—enthusiasm that, as so many of you have told me, is shared widely among the members of the Appellate Bar. As many of you are aware, this is a project that the members of the Supreme Court, the Court's staff, and the Appellate Rules Committee have been working on in concept for a long time. In particular, Senior Associate Justice Robin Hudson, Supreme Court Administrative Counsel Grant Buckner, Beth Scherer, and other Appellate Rules Committee past chairs have devoted countless hours to this project over the years, especially in the past couple years leading up to the amendments. For those efforts, they deserve our gratitude.

I would encourage everyone to study the transcript amendments in their entirety, but for those looking for a short summary in the meantime, here are the key features:

- **The Court has created new appellate forms for transcripts.** The Court has created two standardized forms that are referenced in revised Appellate Rule 7(b) and are located on the Supreme Court’s website. See [Appellate Division Transcript Contract Form](#) and [Appellate Division Transcript Documentation Form](#). These fillable, PDF forms will help to streamline and standardize the process for ordering and designating transcripts for an appeal. These transcript forms also establish minimum expectations for transcriptionists and the parties when ordering or designating transcripts for an appeal.
- **After a notice of appeal is filed, an ordering party must use the appellate division transcript contract.** Unless indigent and entitled to appointed counsel, a party must use the [Appellate Division Transcript Contract Form](#) to order a transcript for the appeal once notice of appeal is filed or given. N.C. R. App. P. 7(b)(1). A party ordering a transcript must give the transcriptionist the contact information (including the email address) of each party to the appeal.
- **Transcriptionists must deliver transcripts to all parties.** There has long been a debate about whether an appellant had an unwritten duty to pay for an appellee’s copy of a transcript for an appeal. The Supreme Court’s amendments resolve this debate by requiring the transcriptionist to electronically deliver any post-appeal transcripts on “the parties,” and by requiring the transcriptionist in the [Appellate Division Transcript Contract Form](#) to: (1) “deliver the transcript to the requestor and to each person or entity that the requestor has identified as a party to the appeal”; and (2) agree that the ordering party may “reproduce the transcript, prepare derivative works from the transcript, distribute copies of the transcript, and display the transcript publicly.”
- **Expect a slight price increase for appellate transcripts.** In the past, some transcriptionists used contracts that prohibited service of the transcripts on other parties. Many appellate practitioners worked around this issue by asking transcriptionists to remove that prohibition in exchange for paying a slightly higher, per-page transcription fee. Because the new [Appellate Division Transcript Contract Form](#) eliminates these transcript-service prohibitions, appellate practitioners should expect transcriptionists to implement a conforming increase in the per-page cost for appellate transcripts.

- **The ordering party must serve any pre-appeal transcripts during the record-settlement process.** For transcripts that were obtained before the filing of a notice of appeal, the transcript-service requirements are set forth in the new [Appellate Division Transcript Documentation Form](#).
- **The time for contracting for and serving transcript documentation has been clarified.** Amended Rule 7 gives appellants 14 days from the notice of appeal to arrange for a transcript and serve the transcript contract and documentation. N.C. R. App. P. 7(b)(2). Appellees essentially have 28 days from the *last* notice of appeal to order and designate any additional transcripts for the appeal. Unlike the prior version of Appellate Rule 7, appellees now have an explicit right to order or designate a transcript for the appeal even when an appellant declines to do so. Note, however, that for Rule 3.1 termination of parental rights cases and cases in which a party is indigent and entitled to appointed counsel, different procedures apply. N.C. R. App. P. 3.1(c), 7(c).
- **Transcript contracts and documentations are no longer filed with the trial court.** Before the amendments, parties had to file transcript documentations with the trial court and serve them on the remaining parties. Under the amendments, Appellate Rule 7 only requires *service* of the transcript contract and documentation on the other parties.
- **The due date for the proposed record has been extended from 35 days to 45 days.** Revised Appellate Rule 11(a) increases the time for serving the proposed record from 35 to 45 days. This change promotes two goals. First, it ensures that appellate transcripts normally will be ordered before the proposed record is due to be served. These extra ten days give the transcript-record tolling provision of Appellate Rule 11(a) extra time to be triggered so that the appellee can order its transcript. Second, the extra time to serve the proposed record gives appellants some extra time to put together and properly format a proposed record. Note, however, that the changes to Appellate Rule 11 would not appear to have a direct impact on the Appellate Rule 3.1 deadlines for termination of parental rights cases, which have their own record deadlines. N.C. R. App. 3.1(d). Also, the general timeframe for serving proposed records in capitally tried cases remains 70 days. N.C. R. App. P. 11(a).
- **There are changes to transcriptionists' deadlines for completing transcripts.** For most appeals, transcriptionists now have 90 days after service of the transcript contract or appellate entries to deliver appellate transcripts to the parties—an increase from 60 days. N.C. R. App. P. 7(e)(1). In capitally tried cases, the deadline has moved from 120 to 180 days. N.C. R. App. P. 7(e)(1)(a). In juvenile delinquency and discipline cases, as well as civil-

commitment cases, however, the delivery deadline remains 60 days. N.C. R. App. P. 7(e)(1)(b)-(c). Note that for Appellate Rule 3.1 cases, transcript deadlines continue to be governed by the separate deadline set out in that rule. N.C. R. App. P. 3.1(c) (“[T]he transcriptionist must deliver electronically the transcript to each party to the appeal within forty days after receiving the assignment.”).

- **The parties are now responsible for filing all appellate transcripts with the appellate courts.** In 2009, the Appellate Rules shifted responsibility for filing transcripts from the appellant to the transcriptionist. The amended Rules shift the responsibility for filing transcripts back to the appellant. N.C. R. App. P. 7(f), 12(c).
- **Parties normally should file the entire record electronically.** Electronic filing of transcripts is now *required* absent a court order. N.C. R. App. P. 7(f), 12(c), Appendix B. In addition, the electronic filing of all appellate record components is encouraged as long as permitted by the appellate courts’ electronic filing website. N.C. R. App. P. 12(c).

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Again, I commend the Supreme Court for an outstanding set of Appellate Rules amendments that will provide great clarity to practitioners. I hope that you will join me in thanking the members of the Court and its staff, especially those who have worked so hard on this project over the years.