

# Notice of Appeal Tip Sheet

## Appellate Rules Committee

For *Civil Appeals* to North Carolina's Appellate Courts  
From Superior and District Court Orders and Judgments

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## **Statement of Purpose and Disclaimer**

The Appellate Rules Committee of the North Carolina Bar Association prepared this Notice Of Appeal Tip Sheet to assist North Carolina lawyers in preparing their notices of appeal. North Carolina Bar Association publications are designed to assist attorneys in maintaining professional competence. This publication is a condensed primer of the law. It is not meant to address every issue or exception pertaining to notices of appeal. Nor does the Tip Sheet reflect changes in cases and statutes that develop after the latest revision date.

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The Appellate Rules Committee appreciates the advice and comments of those who use this Tip Sheet. Please send suggestions via email to [communities@ncbar.org](mailto:communities@ncbar.org).

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## **Where Must My Notice Of Appeal Be Filed?**

1. In appeals from the trial tribunal, the notice of appeal in civil cases and special proceedings should be filed with the Clerk of the Superior Court, regardless of whether a party is appealing a Superior Court or District Court decision. The notice of appeal is not filed in the Court of Appeals or the Supreme Court. N.C. R. App. P. 3(a).
2. Most appeals are made to the North Carolina Court of Appeals.
3. However, certain trial court judgments and orders must be appealed directly to the North Carolina Supreme Court.
  - Direct appeals to the Supreme Court include capitally-tried criminal offenses which have resulted in the imposition of a sentence of death. N.C. Gen. Stat. § 7A-27(a)(1).
  - Since 2014, N.C. Gen. Stat. § 7A-27(a)(2) and (3) have required that most appeals from the North Carolina Business Court be appealed to the North Carolina Supreme Court. As numerous versions of section 7A-27 have been enacted since 2014, counsel should carefully review the effective dates for each statutory change. *See also* Tip ¶ 24-27.
  - Effective April 2017, trial court decisions regarding class action certifications under N.C. R. Civ. P. 23 are directly appealable to the Supreme Court. *See* N.C. Gen. Stat. § 7A-27(a)(4).
  - Beginning in 1 January 2019, orders granting or denying termination of parental rights will be appealed directly to the Supreme Court. As of the publication date of this Tip Sheet, conforming Appellate Rules amendments have not been promulgated. *See also* Tip ¶¶ 28-33.
4. When an appeal of right is taken from the North Carolina Court of Appeals to the North Carolina Supreme Court, the notice of appeal must be filed with both the Clerk of the Court of Appeals and the Clerk of the Supreme Court. N.C. R. App. P. 14(a). This Tip Sheet does not address petitions for discretionary review, which are governed by Appellate Rule 15.

## **When Must My Notice Of Appeal Be Filed?**

5. Unless otherwise provided by statute (*see, e.g.*, N.C. Gen. Stat. § 7B-2602), the notice of appeal must be filed within 30 days after the entry of a final judgment. N.C. R. App. P. 3(c), (e).

6. Subject to limited exceptions (*see* Tip ¶ 14), notice of appeal from an immediately appealable interlocutory order may be filed within 30 days either after the entry of the interlocutory order or after the entry of a final judgment in the case.
7. The best practice is to file the notice of appeal within 30 days *after* the entry of the *written* order or judgment. A premature notice of appeal filed after the trial tribunal orally renders its decision, but before entry of the written order, may be untimely. *Mannise v. Harrell*, -- N.C. App.--, 791 S.E.2d 653, 656 (2016); *Penninga v. Travis*, No. COA16-751, 2017 N.C. App. LEXIS 117, at \*6-9 (N.C. Ct. App. 2017) (unpublished). However, earlier cases hold that the oral “rendering of an order commences the time when notice of appeal *may* be taken by filing and serving written notice, . . . while entry of an order initiates the thirty-day time limitation within which notice of appeal *must* be filed and served.” *See, e.g., Abels v. Renfro Corp.*, 126 N.C. App. 800, 804, 486 S.E.2d 735, 738 (1997) (emphasis in original); *Diversified Financial Servs. v. F&F Excavating & Paving, Inc.*, No. COA11-292, 2011 N.C. App. LEXIS 2306, at \*11 (2011) (unpublished) (same). Incidentally, different standards apply to criminal appeals. *See generally* N.C. R. App. P. 4; *State v. Oates*, 366 N.C. 264, 732 S.E.2d 571 (2012).
8. A post-trial motion tolls the filing of a notice of appeal as to the moving party only when it is ruled on by the trial court. *Lovallo v. Sabato*, 216 N.C. App. 281, 284, 715 S.E.2d 909, 912 (2011); *Landin Ltd. v. Sharon Luggage, Ltd., of Greensboro, Inc.*, 78 N.C. App. 558, 564, 337 S.E.2d 685, 689 (1985) (when post-trial motion is withdrawn, moving party cannot take advantage of the tolling provision of Appellate Rule 3). However, the other parties have 30 days from the withdrawal of a post-trial motion to notice any appeal. *Landingham Plumbing & Heating of N.C., Inc. v. Funnell*, 102 N.C. App. 814, 816, 403 S.E.2d 604, 605 (1991) (“To hold otherwise would be to thwart the tolling provision of Rule 3 and to make the exception unmeaningful, as there would always be the possibility that the party who made the motion could withdraw that motion.”).
9. The 30-day period for filing the notice of appeal is jurisdictional and cannot be extended by the trial tribunal. *Henlajon, Inc. v. Branch Highways, Inc.*, 149 N.C. App. 329, 331-32, 560 S.E.2d 598, 600-01 (2002).
10. The notice of appeal must also be served within the 30-day deadline period. Service should be made by hand delivery or mail. Neither email nor fax is a proper method for serving a notice of appeal. *See*

*MNC Holdings, LLC v. Town of Matthews*, 223 N.C. App. 442, 445-47, 735 S.E.2d 364, 366-67 (2012).

11. If timely notice of appeal is made by one party, any other party generally can serve notice of cross-appeal within 10 days of the first notice of appeal. N.C. R. App. P. 3. Several exceptions, however, apply.
  - A cross-appeal is limited to the orders challenged by the original notice of appeal. “In a matter in which multiple, separate orders issue, and one party appeals from some, but not all, of those orders, a cross-appellant who files her cross-appeal outside of the 30-day window contemplated by Appellate Rule 3(c), but within the 10-day window for cross-appeals, shall be limited to appeal from only those orders challenged in the original appeal.” *Slaughter v. Slaughter*, -- N.C. App. --, 803 S.E.2d 419, 428-29 (2017).
  - The Court of Appeals has held that the 10-day cross-appeal provision under Appellate Rule 3 is generally not available for administrative appeals governed by Appellate Rule 18. *Strezinski v. City of Goldsboro*, 187 N.C. App. 703, 710, 654 S.E.2d 263, 268 (2007) (“[T]iming of appealing a decision of the Full Commission . . . is governed by section 97-86, not Appellate Rule 3” and because section 97-86 does not give an appellee additional time to file a cross-appeal, all notices of appeal are due 30 days after receipt of the order being challenged.).
12. In civil cases, a judgment is entered, and consequently the deadline for filing a notice of appeal begins to run, when a judgment is reduced to writing, signed by the judge, and filed with the Clerk of Superior Court pursuant to N.C. R. Civ. P. 5. See N.C. R. Civ. P. 58.
13. Once the trial tribunal enters an order that decides all substantive claims in the litigation, the right to appeal the judgment begins to run. A pending motion for attorneys’ fees and costs is ancillary or collateral to the final judgment on the substantive merits and does not alter the timeline for appeal of the substantive claims. *Duncan v. Duncan*, 366 N.C. 544, 546, 742 S.E.2d 799, 801 (2013).
14. While certain interlocutory orders may be immediately appealed within 30 days of entry of the interlocutory order, the decision to forgo an immediate appeal from an interlocutory order generally does not result in waiver of the right to appellate review of the interlocutory

order at the conclusion of the case. *State Dep't of Transp. v. Rowe*, 351 N.C. 172, 176, 521 S.E.2d 707, 709-10 (1999).

- However, there are limited exceptions to this principle. *See, e.g., State Dep't of Transp. v. Stagecoach Vill.*, 360 N.C. 46, 48, 619 S.E.2d 495, 496 (2005) (holding that orders “concerning title or area taken” of a common area subject to condemnation are immediately appealable and must be immediately appealed).
- For more information regarding interlocutory orders that may be immediately appealed, *see* the latest edition of the Appellate Rules Committee’s “Guide to Appealability of Interlocutory Orders,” available at <https://www.ncbar.org/media/758546/ncba-appellate-rules-committee-guide-to-appealability-2017.pdf>.

### **When Can A Deadline For Filing A Notice Of Appeal Be Tolled?**

15. The 30-day period for filing a notice of appeal is tolled by the filing of timely motions under North Carolina Rules of Civil Procedure 50(b), 52(b), or 59. N.C. R. App. P. 3(c).
16. A motion for relief from judgment or order under N.C. R. Civ. P. 60 does *not* toll the time for noticing an appeal. *Morehead v. Wall*, 224 N.C. App. 588, 593-94, 736 S.E.2d 798, 801-02 (2012). Pending motions for attorneys’ fees or costs also do not toll the time for noticing an appeal. *Duncan v. Duncan*, 366 N.C. 544, 645-46, 742 S.E.2d 799, 800-01 (2013).
17. Appellate Rule 3 provides that when “any party” timely files a motion under N.C. R. Civ. P. 50(b), 52(b), or 59, the deadline for filing a notice of appeal is tolled “as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order.” Despite this language, at least one Court of Appeals decision has suggested that the time for filing a notice of appeal is tolled only as to the party that filed the post-trial motion. *Estate of Hurst ex rel. Cherry v. Moorehead I, LLC*, 228 N.C. App. 571, 575 n.2, 748 S.E.2d 568, 572 n.2 (2013). This footnote’s precedential value may be questionable given that it appears to be in direct conflict with the text of Appellate Rule 3 and the Court of Appeals has not addressed the issue since. Nonetheless, it may be prudent to file a timely post-trial motion or a notice of appeal instead of relying on the tolling effect of another party’s motion.
18. Normally, a civil notice of appeal must be filed within 30 days after entry of the judgment. (*See* Tip ¶ 12). However, Appellate Rule 3(c)

provides a tolling provision whereby if a party is not served with the judgment within 3 days of its entry, then the appellant's deadline for filing a notice of appeal runs from the date that the judgment is served in accordance with N.C. R. Civ. P. 58.

- Relying on Appellate Rule 3(c)'s service tolling provision should be avoided, if possible. Several Court of Appeals opinions hold that the tolling provision of Appellate Rule 3(c) does not apply if the party received "actual notice" that the judgment has been entered.
- Actual notice may include email notification. *Magazian v. Creagh*, 234 N.C. App. 511, 759 S.E.2d 130, 131 (2014).
- Actual notice may occur whenever anyone in the attorney's firm (e.g., another attorney, paralegal, secretary, receptionist, or other support personnel) becomes aware that the judgment has been entered. *See Manone v. Coffee*, 217 N.C. App. 619, 623, 720 S.E.2d 781, 784 (2011).
- When determining whether a party received "actual notice" of the judgment, the court excludes weekends and court holidays in calculating whether actual notice occurred within three days of entry of the judgment. *Magazian v. Creagh*, 234 N.C. App. 511, 512-13, 759 S.E.2d 130, 131 (2014). This is because Appellate Rule 3's three-day service requirement is linked to the requirements of N.C. R. Civ. P. 58. Under the Rules of Civil Procedure, when a party has less than seven days to take an action, the calculation period excludes weekends and court holidays. N.C. R. Civ. P. 6(a). Thus, if actual notice occurs within 3 *business* days of entry of the judgment, the appellant cannot rely on the service tolling provision of Appellate Rule 3.

### **What Information Should The Notice Of Appeal Contain?**

19. Generally, the notice of appeal must:

- Contain the name of the party taking the appeal;
- Designate the judgment or order being appealed from;
- Designate the court to which appeal is being taken;
- Be signed by the counsel of record for the appealing party; and
- Be served under Appellate Rule 26.

20. Civil notices of appeal must be in writing. N.C. R. App. P. 3.

21. Generally, notice of appeal in a criminal matter may be given orally at trial. N.C. R. App. P. 4(a)(1). However, certain matters or proceedings

arising in the criminal context are considered civil in nature and, thus, require written notice of appeal. These include satellite-based monitoring hearings and sex offender registry removal hearings. *See State v. Brooks*, 204 N.C. App. 193, 194-95, 693 S.E.2d 204, 206 (2010); *State v. Stokes*, 216 N.C. App. 529, 537, 718 S.E.2d 174, 180 (2011); *State v. Mann*, 214 N.C. App. 155, 157, 715 S.E.2d 213, 215 (2011). Criminal appeals, as well as appeals from the district court to the superior court for a trial de novo, are often governed by different statutes and rules than those addressed by this Tip Sheet. *See, e.g.*, N.C. Gen. Stat. § 15A-1431.

22. While a notice of appeal that specifies that the final judgment is being appealed can sometimes be construed to encompass earlier interlocutory orders, the best practice is to designate in the notice of appeal every order of the trial court that the party intends to challenge on appeal.
23. Once a final judgment is entered, a party generally may seek appellate review of an interlocutory order entered earlier in the case. *See* Tip ¶ 6. At least one unpublished opinion required that the notice of appeal also designate the final judgment. *Majerske v. Majerske*, No. COA15-839, 2016 N.C. App. LEXIS 410, at \*5-7 (N.C. Ct. App. April 19, 2016) (unpublished).

### **Are There Any Special Requirements For Appeals From The North Carolina Business Court?**

24. Most Business Court judgments and orders are appealable directly to the North Carolina Supreme Court. N.C. Gen. Stat. § 7A-27; *see also* N.C. Sess. Law 2014-102; N.C. Sess. Law 2015-264. Amended section 7A-27 contains potential ambiguities that the appellate courts have not yet addressed. Therefore, practitioners should carefully review the language of the statute, case law, and commentary before filing a notice of appeal from a decision of a Business Court judge. Practitioners should also carefully consider which version of section 7A-27 governs each appeal from the Business Court.
25. In general, only Business Court judgments and orders that were designated on or after October 1, 2014 as mandatory or Rule 2.1 discretionary complex business cases are directly appealable to the North Carolina Supreme Court. N.C. Sess. Law 2014-102, § 1. A party should check the designation order to determine the appellate court to which notice of appeal should be directed. *See* Business Court Rule 2.4.



26. When litigating in the North Carolina Business Court, a party must timely file the notice of appeal electronically in the Business Court *and* file a paper copy with the Clerk of the Superior Court in the county where the case was originally filed. Both notices of appeal should be filed *on or before* the notice of appeal deadline. *Ehrenhaus v. Baker*, 243 N.C. App. 17, 31-32, 776 S.E.2d 699, 708-09 (2015); *see also Ehrenhaus v. Baker*, 2014 NCBC 30, ¶¶ 8-13 (N.C. Super. Ct. July 16, 2014) (analyzing why notice of appeal must be filed in two places).
27. While it is never advisable to wait until the last minute to file a notice of appeal, special care should be taken when filing a notice of appeal in the North Carolina Business Court because of the possibility of technical difficulties with the e-filing system. A party experiencing technical difficulty must have made at least two unsuccessful attempts to e-file and must notify the Business Court of the technical difficulties by email, probably all before the 5:00 p.m. filing deadline. *See* Business Court Rule 3.10. Therefore, a party should make every effort to file its notice of appeal well before the 5:00 p.m. deadline. *See also Carter v. Clements Walker PLLC*, 2014 NCBC 12 (N.C. Super. Ct. April 30, 2014).

**Are There Any Special Requirements For Appeals of  
Termination of Parental Rights and Juvenile  
Abuse/Neglect/Dependency Cases?**

28. Appeals of trial court orders involving termination of parental rights and issues of juvenile dependency, abuse, and neglect are governed by special statutes and rules found in N.C. Gen. Stat. § 7A-27, N.C. Gen. Stat. § 7B-1001, and N.C. R. App. P. 3.1.
29. Only the matters listed in N.C. Gen. Stat. § 7B-1001(a) can be appealed to the North Carolina Court of Appeals in abuse, neglect, and dependency cases.
30. In juvenile appeals filed under N.C. Gen. Stat. § 7B-1001(a), notice of appeal must be signed by *both* the counsel of record for the appealing party and the appealing party. N.C. Gen. Stat. § 7B-1001(c); N.C. R. App. P. 3.1(a).
31. Unless further statutory amendments are enacted, substantial changes to termination of parental right appeals will become effective for appeals taken on or after January 1, 2019. N.C. Sess. Law 2017-7; N.C. Sess. Law 2017-41. Those changes include but are not limited to:

- Orders denying or granting termination of parental rights will be directly appealed to the North Carolina Supreme Court. *See* N.C. Gen. Stat. § 7A-27(a)(5).
- Also, appeal of orders eliminating reunification as a concurrent permanent plan will be made directly to the North Carolina Supreme Court when a termination of parental rights motion or petition was filed within 65 days of entry and service of that permanency planning order and the termination of parental rights is granted and properly and timely appealed. *See* amendments to N.C. Gen. Stat. § 7B-1001(a1) at N.C. Sess. Law 2017-41.
- The time within which a parent may appeal an order eliminating reunification as a concurrent permanent plan will be shortened to 65 days (from 180 days) after the order has been entered and served and a termination of parental rights motion or petition has not been filed. *See* amendments to N.C. Gen. Stat. § 7B-1001(a)(5) at N.C. Sess. Law 2017-41.
- A parent must preserve the right to appeal the order eliminating reunification as a concurrent permanent plan in writing. A separate notice of appeal must also be filed during the appropriate time period to appeal. *See* amendments to N.C. Gen. Stat. § 7B-1001(a)(5) and (a1) at N.C. Sess. Law 2017-41.

32. An indigent person is entitled to court-appointed appellate counsel in actions and proceedings listed in N.C. Gen. Stat. § 7A-451. Appointment of appellate counsel may be considered by the trial court even if the appealing party was represented by retained counsel in the underlying proceeding. N.C. Gen. Stat. § 7B-450(c).

33. Examples of notices of appeal and other resources for appeals in juvenile matters are available on the Indigent Defense Services' Office of Parent Representation website, available at <http://www.ncids.org/ParentRepresentation/index.html>.

### **Are There Any Other Notice Of Appeal Considerations?**

34. A filed-stamped notice of appeal and proof of service of the notice of appeal should be included in the printed record.

35. A trial tribunal order dismissing an appeal for failure to timely perfect the appeal cannot be appealed by filing a notice of appeal from that order. Instead, the proper way to seek appellate review of such orders is by petitioning for writ of certiorari. *State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980).