

- Amended: 8 June 1989 -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;
 26 July 1990 -- 7(a)(1), (a)(2), and (b)(1) -- effective 1 October 1990;
 21 November 1997 -- effective 1 February 1998;
 8 April 1999 -- 7(b)(1), para. 5;
 18 October 2001-- 7(b)(1), para. 4 -- effective 31 October 2001;
 15 August 2002 -- 7(a)(1), para. 2;
 25 January 2007 -- 7(b)(1), paras. 3, 5; 7(b)(2) -- effective 1 March 2007 and applies to all cases appealed on or after that date.
- Reenacted and
 Amended: 2 July 2009 -- amended 7(a)(1) & (2), 7(b)(1) & (2) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

RULE 8 STAY PENDING APPEAL

(a) *Stay in Civil Cases.* When appeal is taken in a civil action from a judgment, order, or other determination of a trial court, stay of execution or enforcement thereof pending disposition of the appeal must ordinarily first be sought by the deposit of security with the clerk of the superior court in those cases for which provision is made by law for the entry of stays upon deposit of adequate security, or by application to the trial court for a stay order in all other cases. After a stay order or entry has been denied or vacated by a trial court, an appellant may apply to the appropriate appellate court for a temporary stay and a writ of supersedeas in accordance with Rule 23. In any appeal which is allowed by law to be taken from an agency to the appellate division, application for the temporary stay and writ of supersedeas may be made to the appellate court in the first instance. Application for the temporary stay and writ of supersedeas may similarly be made to the appellate court in the first instance when extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial court for a stay order.

(b) *Stay in Criminal Cases.* When a defendant has given notice of appeal, those portions of criminal sentences which impose fines or costs are automatically stayed pursuant to the provisions of N.C.G.S. § 15A-1451. Stays of imprisonment or of the execution of death sentences must be pursued under N.C.G.S. § 15A-536 or Rule 23.

ADMINISTRATIVE HISTORY

- Adopted: 13 June 1975.
 Amended: 27 November 1984 -- 8(b) -- effective 1 February 1985;
 6 March 1997 -- 8(a) -- effective 1 July 1997.
- Reenacted and
 Amended: 2 July 2009 -- amended 8(a) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

RULE 9 THE RECORD ON APPEAL

(a) *Function; Notice in Cases Involving Juveniles; Composition of Record.* In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal, the verbatim transcript of proceedings, if one is designated, and any other items filed pursuant to this Rule 9. Parties may cite any of these items in their briefs and arguments before the appellate courts.

All filings involving juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e) shall include the following notice in uppercase typeface:

FILED PURSUANT TO RULE [3(b)(1)] [3.1(b)] [4(e)]; SUBJECT TO PUBLIC INSPECTION
 ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.

- (1) *Composition of the Record in Civil Actions and Special Proceedings.* The record on appeal in civil actions and special proceedings shall contain:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - c. a copy of the summons with return, or of other papers showing jurisdiction of the trial court over person or property, or a statement showing same;
 - d. copies of the pleadings, and of any pretrial order on which the case or any part thereof was tried;
 - e. so much of the litigation, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - f. where an issue presented on appeal relates to the giving or omission of instructions to the jury, a transcript of the entire charge given; and identification of the omitted instruction by setting out the requested instruction or its substance in the record on appeal immediately following the instruction given;
 - g. copies of the issues submitted and the verdict, or of the trial court's findings of fact and conclusions of law;
 - h. a copy of the judgment, order, or other determination from which appeal is taken;
 - i. a copy of the notice of appeal, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (c)(3);
 - j. copies of all other papers filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all issues presented on appeal unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2);
 - k. proposed issues on appeal set out in the manner provided in Rule 10;

- l. a statement, where appropriate, that the record of proceedings was made with an electronic recording device;
 - m. a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal; and
 - n. any order (issued prior to the filing of the record on appeal) ruling upon a motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84-4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.
- (2) *Composition of the Record in Appeals from Superior Court Review of Administrative Boards and Agencies.* The record on appeal in cases of appeal from judgments of the superior court rendered upon review of the proceedings of administrative boards or agencies, other than those specified in Rule 18(a), shall contain:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - c. a copy of the summons, notice of hearing, or other papers showing jurisdiction of the board or agency over the persons or property sought to be bound in the proceeding, or a statement showing same;
 - d. copies of all petitions and other pleadings filed in the superior court;
 - e. copies of all items properly before the superior court as are necessary for an understanding of all issues presented on appeal;
 - f. so much of the litigation in the superior court, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - g. a copy of any findings of fact and conclusions of law and of the judgment, order, or other determination of the superior court from which appeal is taken;
 - h. a copy of the notice of appeal from the superior court, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is filed pursuant to Rule 9(c)(2) and (c)(3);

- i. proposed issues on appeal relating to the actions of the superior court, set out in the manner provided in Rule 10; and
 - j. any order (issued prior to the filing of the record on appeal) ruling upon any motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84-4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.
- (3) *Composition of the Record in Criminal Actions.* The record on appeal in criminal actions shall contain:
- a. an index of the contents of the record, which shall appear as the first page thereof;
 - b. a statement identifying the judge from whose judgment or order appeal is taken, the session at which the judgment or order was rendered, or if rendered out of session, the time and place of rendition, and the party appealing;
 - c. copies of all warrants, informations, presentments, and indictments upon which the case has been tried in any court;
 - d. copies of docket entries or a statement showing all arraignments and pleas;
 - e. so much of the litigation, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, or a statement specifying that the entire verbatim transcript of the proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;
 - f. where an issue presented on appeal relates to the giving or omission of instructions to the jury, a transcript of the entire charge given; and identification of the omitted instruction by setting out the requested instruction or its substance in the record on appeal immediately following the instruction given;
 - g. copies of the verdict and of the judgment, order, or other determination from which appeal is taken; and in capitally tried cases, a copy of the jury verdict sheet for sentencing, showing the aggravating and mitigating circumstances submitted and found or not found;
 - h. a copy of the notice of appeal or an appropriate entry or statement showing appeal taken orally; of all orders establishing time limits relative to the perfecting of the appeal; of any order finding defendant indigent for the purposes of the appeal and assigning counsel; and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings, if one is to be filed pursuant to Rule 9(c)(2);

- i. copies of all other papers filed and statements of all other proceedings had in the trial courts which are necessary for an understanding of all issues presented on appeal, unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2);
- j. proposed issues on appeal set out in the manner provided in Rule 10;
- k. a statement, where appropriate, that the record of proceedings was made with an electronic recording device;
- l. a statement, where appropriate, that a supplement compiled pursuant to Rule 11(c) is filed with the record on appeal; and
- m. any order (issued prior to the filing of the record on appeal) ruling upon any motion by an attorney who is not licensed to practice law in North Carolina to be admitted pursuant to N.C.G.S. § 84-4.1 to appear in the appeal. In the event such a motion is filed prior to the filing of the record but has not yet been ruled upon when the record is filed, the record shall include a statement that such a motion is pending and the date that motion was filed.

(4) *Exclusion of Social Security Numbers from Record on Appeal.* Social security numbers shall be deleted or redacted from any document before including the document in the record on appeal.

(b) *Form of Record; Amendments.* The record on appeal shall be in the format prescribed by Rule 26(g) and the appendixes to these rules.

- (1) *Order of Arrangement.* The items constituting the record on appeal should be arranged, so far as practicable, in the order in which they occurred or were filed in the trial tribunal.
- (2) *Inclusion of Unnecessary Matter; Penalty.* It shall be the duty of counsel for all parties to an appeal to avoid including in the record on appeal matter not necessary for an understanding of the issues presented on appeal, such as social security numbers referred to in Rule 9(a)(4). The cost of including such matter may be charged as costs to the party or counsel who caused or permitted its inclusion.
- (3) *Filing Dates and Signatures on Papers.* Every pleading, motion, affidavit, or other paper included in the record on appeal shall show the date on which it was filed and, if verified, the date of verification and the person who verified. Every judgment, order, or other determination shall show the date on which it was entered. The typed or printed name of the person signing a paper shall be entered immediately below the signature.
- (4) *Pagination; Counsel Identified.* The pages of the printed record on appeal shall be numbered consecutively, be referred to as "record pages," and be cited as "(R p ____)." Pages of the Rule 11(c) or Rule 18(d)(3) supplement to the record on appeal shall be numbered consecutively with the pages of the record on appeal, the first page of the record supplement to bear the next consecutive number following the number of the last page of the printed record on appeal. These pages shall be referred to as "record supplement pages" and be cited as "(R S p ____)." Pages of the verbatim transcript of proceedings filed under Rule 9(c)(2) shall be referred to as "transcript pages" and be cited as "(T p ____)." At the end of the record on appeal shall appear the names, office

addresses, telephone numbers, State Bar numbers, and e-mail addresses of counsel of record for all parties to the appeal.

(5) *Additions and Amendments to Record on Appeal.*

(a) *Additional Materials in the Record on Appeal.* If the record on appeal as settled is insufficient to respond to the issues presented in an appellant's brief or the issues presented in an appellee's brief pursuant to Rule 10(c), the responding party may supplement the record on appeal with any items that could otherwise have been included pursuant to this Rule 9. The responding party shall serve a copy of those items on opposing counsel and shall file three copies of the items in a volume captioned "Rule 9(b)(5) Supplement to the Printed Record on Appeal." The supplement shall be filed no later than the responsive brief or within the time allowed for filing such a brief if none is filed.

(b) *Motions Pertaining to Additions to the Record.* On motion of any party or on its own initiative, the appellate court may order additional portions of a trial court record or transcript sent up and added to the record on appeal. On motion of any party, the appellate court may order any portion of the record on appeal or transcript amended to correct error shown as to form or content. Prior to the filing of the record on appeal in the appellate court, such motions may be filed by any party in the trial court.

(c) *Presentation of Testimonial Evidence and Other Proceedings.* Testimonial evidence, voir dire, statements and events at evidentiary and non-evidentiary hearings, and other trial proceedings necessary to be presented for review by the appellate court may be included either in the record on appeal in the form specified in Rule 9(c)(1) or by designating the verbatim transcript of proceedings of the trial tribunal as provided in Rule 9(c)(2) and (c)(3). When an issue presented on appeal relates to the giving or omission of instructions to the jury, a transcript of the entire charge given shall be included in the record on appeal. Verbatim transcripts or narration utilized in a case subject to Rules 3(b)(1), 3.1(b), or 4(e) initiated in the trial division under the provisions of Subchapter I of Chapter 7B of the General Statutes shall be prepared and delivered to the office of the clerk of the appellate court to which the appeal has been taken in the manner specified by said rules.

(1) *When Testimonial Evidence, Voir Dire, Statements and Events at Evidentiary and Non-Evidentiary Hearings, and Other Trial Proceedings Narrated - How Set Out in Record.* When an issue is presented on appeal with respect to the admission or exclusion of evidence, the question and answer form shall be utilized in setting out the pertinent questions and answers. Other testimonial evidence, voir dire, statements and events at evidentiary and non-evidentiary hearings, and other trial proceedings required by Rule 9(a) to be included in the record on appeal shall be set out in narrative form except where such form might not fairly reflect the true sense of the evidence received, in which case it may be set out in question and answer form. Parties shall use that form or combination of forms best calculated under the circumstances to present the true sense of the required testimonial evidence concisely and at a minimum of expense to the litigants. Parties may object to particular narration on the basis that it does not accurately reflect the true sense of testimony received, statements made, or events that occurred; or to particular questions and answers on the basis that the testimony might with no substantial loss in accuracy be summarized in narrative form at substantially less expense. When a judge or referee is required to settle the record on appeal under Rule 11(c) and there is dispute as to the form, the judge or referee shall settle the form in the course of settling the record on appeal.

(2) *Designation that Verbatim Transcript of Proceedings in Trial Tribunal Will Be Used.* Appellant may designate in the record on appeal that the testimonial evidence will be

presented in the verbatim transcript of the evidence of the trial tribunal in lieu of narrating the evidence and other trial proceedings as permitted by Rule 9(c)(1). When a verbatim transcript of those proceedings has been made, appellant may also designate that the verbatim transcript will be used to present voir dire, statements and events at evidentiary and non-evidentiary hearings, or other trial proceedings when those proceedings are the basis for one or more issues presented on appeal. Any such designation shall refer to the page numbers of the transcript being designated. Appellant need not designate all of the verbatim transcript that has been made, provided that when the verbatim transcript is designated to show the testimonial evidence, so much of the testimonial evidence must be designated as is necessary for an understanding of all issues presented on appeal. When appellant has narrated the evidence and other trial proceedings under Rule 9(c)(1), the appellee may designate the verbatim transcript as a proposed alternative record on appeal.

- (3) *Verbatim Transcript of Proceedings - Settlement, Filing, Copies, Briefs.* Whenever a verbatim transcript is designated to be used pursuant to Rule 9(c)(2):
- a. it shall be settled, together with the record on appeal, according to the procedures established by Rule 11;
 - b. appellant shall cause the settled record on appeal and transcript to be filed pursuant to Rule 7 with the clerk of the appellate court in which the appeal has been docketed;
 - c. in criminal appeals, upon settlement of the record on appeal, the district attorney shall notify the Attorney General of North Carolina that the record on appeal and transcript have been settled; and
 - d. the briefs of the parties must comport with the requirements of Rule 28 regarding complete statement of the facts of the case and regarding appendixes to the briefs.
- (4) *Presentation of Discovery Materials.* Discovery materials offered into evidence at trial shall be brought forward, if relevant, as other evidence. In all instances in which discovery materials are considered by the trial tribunal, other than as evidence offered at trial, the following procedures for presenting those materials to the appellate court shall be used: Depositions shall be treated as testimonial evidence and shall be presented by narration or by transcript of the deposition in the manner prescribed by this Rule 9(c). Other discovery materials, including interrogatories and answers, requests for admission, responses to requests, motions to produce, and the like, pertinent to issues presented on appeal, may be set out in the record on appeal or may be sent up as documentary exhibits in accordance with Rule 9(d)(2).
- (5) *Electronic Recordings.* When a narrative or transcript has been prepared from an electronic recording, the parties shall not file a copy of the electronic recording with the appellate division except at the direction or with the approval of the appellate court.
- (d) *Models, Diagrams, and Exhibits of Material.*
- (1) *Exhibits.* Maps, plats, diagrams, and other documentary exhibits filed as portions of or attachments to items required to be included in the record on appeal shall be included as part of such items in the record on appeal. When such exhibits are not necessary to an understanding of the errors assigned, they may by agreement of counsel or by order of the trial court upon motion be excluded from the record on appeal. Social security numbers shall be deleted or redacted from exhibits prior to filing the exhibits in the appellate court.

- (2) *Transmitting Exhibits.* Three legible copies of each documentary exhibit offered in evidence and required for understanding issues presented on appeal shall be filed in the appellate court; the original documentary exhibit need not be filed with the appellate court.
- (3) *Removal of Exhibits from Appellate Court.* All models, diagrams, and exhibits of material placed in the custody of the clerk of the appellate court must be taken away by the parties within ninety days after the mandate of the Court has issued or the case has otherwise been closed by withdrawal, dismissal, or other order of the Court, unless notified otherwise by the clerk. When this is not done, the clerk shall notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the clerk shall destroy them, or make such other disposition of them as to the clerk may seem best.

ADMINISTRATIVE HISTORY

- Adopted: 13 June 1975.
- Amended: 10 June 1981 -- 9(c)(1) -- applicable to all appeals docketed on or after 1 October 1981;
 12 January 1982 -- 9(c)(1) -- applicable to all appeals docketed after 15 March 1982;
 27 November 1984 -- applicable to all appeals in which the notice of appeal is filed on or after 1 February 1985;
 8 December 1988 -- 9(a), (c) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;
 8 June 1989 -- 9(a) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;
 26 July 1990 -- 9(a)(3)(h), 9(d)(2) -- effective 1 October 1990;
 6 March 1997 -- 9(b)(5) -- effective upon adoption 6 March 1997;
 21 November 1997 -- 9(a)(1)(j)-(l), 9(a)(3)(i)-(k), 9(c)(5) -- effective 1 February 1998;
 18 October 2001 -- 9(d)(2) -- effective 31 October 2001;
 6 May 2004 -- 9(a), 9(a)(4), 9(b)(2), 9(b)(6), 9(c), 9(c)(2), 9(c)(3)(c), 9(d)(1), 9(d)(3) -- effective 12 May 2004;
 25 January 2007 -- added 9(a)(1)(m) & 9(a)(3)(l); amended 9(b)(4) -- effective 1 March 2007 and applies to all cases appealed on or after that date.
- Reenacted and
 Amended: 2 July 2009 -- amended and rewrote portions of 9(a), (b), (c), & (d) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

RULE 10

PRESERVATION OF ISSUES AT TRIAL; PROPOSED ISSUES ON APPEAL

- (a) *Preserving Issues During Trial Proceedings.*
- (1) *General.* In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion. Any such issue that was properly preserved for review by action of counsel taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, including, but not limited to, whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction over the subject matter, and whether a criminal charge is sufficient in law, may be made the basis of an issue presented on appeal.