

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER ADOPTING RULE 31.1 OF THE
NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Pursuant to the authority of Article IV of the Constitution of North Carolina and N.C.G.S. § 7A-33, the North Carolina Rules of Appellate Procedure are amended by adding a new Rule 31.1 to read:

Rule 31.1. Motion for En Banc Consideration by Court of Appeals

(a) **When Hearing or Rehearing En Banc May Be Ordered.** A majority of the judges on the Court of Appeals may order that an appeal be heard or reheard by the court en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

- (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
- (2) the case involves a question of exceptional importance that must be concisely stated.

(b) **Content.** The motion for en banc consideration shall explain with particularity why en banc consideration is necessary.

(c) **Motions for Initial En Banc Hearing.** At any point after the appellant's brief is filed but no later than fifteen days after the filing of the appellee brief, any party may file a motion for en banc consideration. The motion shall be accompanied by proof of service upon all other parties. Within ten days after service of the motion, any party may file a response thereto. The filing shall be accompanied by proof of service upon all other parties. The court will rule upon the motion within thirty days after the case is fully briefed and may rule upon it prior to that time. The filing of the motion will not stay the time for briefs to be filed. When a motion for en banc consideration is allowed, the case will be calendared as soon as practicable.

(d) **Motions for En Banc Rehearing.** A motion to rehear any case en banc may be filed within fifteen days after the opinion of the court has been filed. The motion shall be accompanied by proof of service upon all other parties. Within ten days after service of the motion, any party may file a response thereto. The filing shall be accompanied by proof of service upon all other parties. Within thirty days after the motion is filed, the court will either allow or deny the motion. The denial of the motion will trigger the time for taking an appeal of right to the Supreme Court pursuant to N.C.G.S. § 7A-30 and for filing a petition for discretionary review pursuant to Rule 15. If the motion is allowed, the clerk shall forthwith notify the

parties that the motion has been granted. The case will be reconsidered solely upon the record on appeal, the motion for en banc rehearing and any responses thereto, new briefs of the parties if requested by the court, and oral argument if the court decides to hear oral argument. Entry of the en banc opinion vacates the original panel opinion.

(e) **Stay of Mandate.** When a motion for en banc rehearing is filed, the movant may obtain a stay of the mandate from the court. The procedure is as provided by Rule 8 of these rules for stays pending appeal.

(f) **Rule 31.1 Motions to Be Heard First.** If a party files both a motion pursuant to this rule for en banc rehearing and a Rule 31 petition for rehearing, the court will rule on the motion for en banc rehearing first. The time for ruling on the Rule 31 petition for rehearing shall commence to run from the date of entry by the Court of Appeals of an order denying the en banc motion.

This amendment to the North Carolina Rules of Appellate Procedure shall be effective immediately.

This amendment shall be promulgated by publication in the North Carolina Reports and posted on the Court's web site.

Ordered by the Court in Conference, this the 22nd day of December, 2016.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 22nd day of December, 2016.



J. BRYAN BOYD

Clerk of the Supreme Court