

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

CAUTION: This manual only applies to appeals in which the Notice of Appeal was filed before October 1, 2009. Please consult www.aoc.state.nc.us/www/public/html/rules.htm for the manual applicable to appeals in which the Notice of Appeal was filed on or after October 1, 2009.

Prepared and Distributed by:

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The North Carolina Bar Association
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Statement of Purpose

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

This manual does not substitute for the North Carolina Rules of Appellate Procedure (the "Rules"). The Appellate Rules Committee has attempted to avoid interpretation of the Rules in this manual. To the extent that the manual appears to interpret a Rule, any interpretation has no precedential value. Practitioners are strongly advised to consult the Rules of Appellate Procedure at each stage of the appeal, to acquaint themselves with the process, and to read appellate opinions that interpret the Rules. 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 to the Rules can be 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 in the style manual, 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, a juvenile case or administrative appeal will need to adjust the content, if not the style, of that example. The Rules vary slightly for civil and criminal appeals. Additionally, juvenile appeals involving termination of parental rights and the neglect, abuse and dependency of juveniles are subject to unique rules, especially regarding deadlines. This manual does not address juvenile appeals, and does not attempt to cover every nuance of the Appellate Rules.

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 the 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 are not.

The committee appreciates the advice and comments of those who use the manual. Please send your suggestions to the Appellate Rules 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.aoc.state.nc.us/www/public/html/rules.htm and from www.ncbar.org/about/committees/appellate.aspx.

A Typical Record on Appeal

A note on typefaces or fonts: The examples that follow are printed on either 12-point Courier typeface or 14-point Time New Roman type face. Rule 26(g) of the Rules of Appellate Procedure requires print to be in at least 12-point type. The Rules distinguish between "proportional" and "nonproportional" type. Appendix B to the Rules defines nonproportional type as "10-character-per-inch Courier (or an equivalent style of Pica) type that devotes equal horizontal space to each character." Appendix B defines proportional type as "any non-italic, non-script font, other than nonproportional type, that is 14-point or larger." Although the Rules do not require a particular type of font and appear to allow the use of 12-point nonproportional type in the Record (but not the briefs!), it is the safer practice to use only 12-point Courier, 12-Point Courier New, or 14-Point Times New Roman in all appellate documents.

Do not make the mistake of filing a brief in 12-point nonproportional type. Under Rule 28(j)(1)(B), all briefs must use either 12-point proportional type or 14-point nonproportional type. Under Rule 26(g)(1), each page of all documents filed with the Appellate Courts may not exceed 27 lines of double-spaced type, even if proportional type is used. Please see Rule 28(j) for a discussion of additional requirements for briefs in proportional type (e.g., Times New Roman).

No. _____

TWENTY-FOURTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as in)	
Final Judgment,)	
Plaintiff)	
)	From Avery County
v.)	No. 06 CVS 2345
)	
Defendant's Name as in)	
Final Judgment,)	
Defendant)	

RECORD ON APPEAL

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Note: 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 hand corner is left blank. The Clerk's office will assign a number when the record is filed and it will appear in the printed record on appeal.

Page numbers are centered and flanked by dashes at the top of each page of the record on appeal. The page numbers can appear within the one-inch margin, as long as the first substantive line is at least one inch from the top edge of the paper. The statement of the organization of the court is the first page. No inside caption is required for the record on appeal.

STATEMENT OF ORGANIZATION OF TRIAL COURT

From the 1 May 2008 Civil Session of Superior Court of Avery County, the Honorable [Name of Judge], Judge presiding. From the 15 May 2008 jury verdict and judgment dismissing the plaintiff's claim, the plaintiff filed and served written notice of appeal on 21 May 2008.

The record on appeal was filed in the Court of Appeals on _____, 2008 and was docketed on _____, 2008.

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 2006. The parties acknowledge that the trial court had personal and subject-matter jurisdiction.

In a civil case, if jurisdiction is not at issue, the parties can insert this statement. Nevertheless, it is advisable to include the summons and return of service, particularly in cases involving termination of parental rights. See, e.g., *In re K.A.D.*, 653 S.E.2d 427, 429 (N.C. Ct. App. 2007) (trial court lacks subject matter jurisdiction over petition to terminate parental rights if summons not served on juvenile); see also *Conner Bros. Mach. Co. v. Rogers*, 177 N.C. App. 560, 561, 629 S.E.2d 344, 345 (2006) (in the absence of issuance of a summons, the action is "deemed never to have commenced" and the court lacks subject matter jurisdiction). 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. An example of a jurisdictional statement in an administrative appeal is set out below.

STATEMENT OF JURISDICTION

This action was commenced by the filing of a petition for contested case hearing with the Office of Administrative Hearings pursuant to N.C. Gen. Stat. § 150B-23 on 8 July 2008. The Administrative Law Judge issued a Decision on 6 August 2008. The Environmental Management Commission, pursuant to N.C. Gen. Stat. § 143B-282.1(b), issued the Final Agency Decision dated 4 September 2008 which was served on 5 September 2008. On 16 September 2008, Petitioner filed a Petition for Judicial Review in the Wake County Superior Court. The parties acknowledge the Office of Administrative Hearings, the Environmental Management Commission and the Superior Court of Wake County had personal and subject-matter jurisdiction.

The example set out above concerns an appeal of an agency decision pursuant to the Administrative Procedure Act. When the appeal of an agency decision is not governed by the Administrative Procedure Act, this example should be tailored accordingly.

[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 08." 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 12 May 2008 through 15 May 2008, 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 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).

Rule 9(c)(6) provides for the narration of the trial evidence in lieu of a transcript. Practitioners will have to use this option if a verbatim transcript cannot be produced. Narration involves producing a written summary of the evidence which is placed directly in the record. If the parties cannot agree on the content of the narration, the trial judge can settle the narration under Rule 11(c), upon timely request for judicial resolution.

-8-

[Copy of jury's verdict sheet]

[Copy of judgment]

AVERY COUNTY
NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 06 CVS 1234

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

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff [name] hereby gives notice of appeal to the Court of Appeals of North Carolina from the final judgment of [name of judge], Superior Court Judge, entered on May 15, 2008 in the Superior Court of Avery County, which dismissed the plaintiff's action.

This 21st day of May, 2008.

Name of Counsel
Name of Counsel's Firm
160 N. Main Street
Newland, NC 28786
(828) 456-1245

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, 2008, addressed as follows:

Name of Counsel
Suite 1450, Third Megatower Center
Metropolis, NC 27510

Name of Counsel

[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

Rule 11 of the North Carolina Rules of Appellate Procedure, which governs settlement of the record on appeal, was amended significantly in 2004 and 2007. The amendments limit and clarify judicial settlement of the record on appeal and focus largely on the procedure for settlement of the Record when the parties do not agree as to whether a document was filed or served at the trial court level.

The 2007 amendments create a new type of document, the "Rule 11(c) Supplement to the Printed Record on Appeal." This supplement enables a party who seeks admission of material in the record over objection of another party to submit the material in the Rule 11(c) Supplement to the Printed Record. The Supplement is also the proper location for any document to which a party has objected.

Note also that Rule 11(c) provides that "if a party does not agree to the exclusion or specification of an exhibit or transcript in the printed record, the printed record shall include a statement that such items are separately filed along with the supplement."

At this point in the Record it is important to explain how the Record was settled and to explain to the Court why you are filing certain items separately from the Record, both to show compliance with the Rules and to allow clear identification of the status of material transmitted to the Court. For example, items are now placed in the Supplement because all parties do not agree to their inclusion in the Record. The Record should readily identify those items. The simplest and clearest way to do that is through a statement of settlement of the Record. This manual provides two examples of the statement of settlement.

Counsel for the appellant and appellee stipulate as follows:

1. The proposed record on appeal was timely served on 10 April 2008. The certificate showing service of the proposed record is omitted from the settled record.

2. Objections were served on 29 April 2008. Appellee objected to the omission of certain documents from the Record on Appeal and the inclusion of certain documents in the Record on Appeal. All documents to which the appellee objected or sought to include in the record are contained in the Rule 11(c) Supplement to the printed Record on Appeal.

[Alternate 2, where parties do not agree on the record]

2. Objections were served on 29 April 2008. Appellee objected to the omission of certain documents from the record. The parties were unable to reach an agreement about the inclusion of these documents in the record. Accordingly, all of these documents are included in the Rule 11(c) Supplement to the Printed Record on Appeal.

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, 2008.

For the Plaintiff Appellant: _____
Name of Counsel

For the Defendant Appellee: _____
Name of Counsel

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 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 inadmissible hearsay under Rule 802 of the Rules of Evidence.

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 always be limited to a single point of error. Multiple alleged errors should not be combined into one assignment of error. Thus, if you're challenging multiple findings of fact, each challenged finding should be the basis of a separate assignment. Likewise, if you're challenging multiple conclusions of law, each conclusion of law should be set out in a separate assignment.

In addition to identifying *what* action of the trial court you are challenging (e.g., a finding of fact or conclusion of law; the admission or exclusion of evidence; the grant or denial of a particular motion), each assignment of error must also identify (without argument) *why* you are contending that the action was erroneous. This is necessitated by Rule 10(c)'s requirement that an assignment must state the "legal basis" upon which error is assigned. The legal basis may be a statute, a rule, a judicial precedent, a principle of law, etc. This "legal basis" requirement is typically handled by adding to the assignment (after you've identified the action of the trial court that you are challenging) a clause that begins "on the ground that" followed by a contention. For example, if you are assigning error to the trial court's admission into evidence of plaintiff's Exhibit No. 5, you should not simply say "To the trial court's admission into evidence of plaintiff's Exhibit No. 5" and end the assignment at that point; rather, you must go further by identifying *why* the trial court's admission of that evidence constituted error (e.g., ". . . on the ground that Exhibit No. 5 contains hearsay testimony of plaintiff's treating physicians which does not constitute admissible hearsay under Rules 803 or 804 of the North Carolina Rules of Evidence").

When identifying the *legal basis* for your assertion of error, be as specific as possible. For example, the assignment should not read, "The trial court's admission of testimony of E.F., on the ground that it violated the North Carolina Rules of Evidence." The assignment should identify the particular rule in question (e.g., ". . . on the ground that it was inadmissible hearsay under Rule 802 of the North Carolina Rules of Evidence and did not satisfy any of the exceptions to the hearsay rule found in Rules 803 and 804 of the Rules of Evidence"). In short, the assignment should (a) identify precisely what action of the trial court that you are challenging on appeal and (b) identify precisely the legal basis for your contention that such action constitutes a reversible error. We strongly advise drafting each assignment of error to address only a single issue of law.

NAMES AND ADDRESSES OF COUNSEL FOR THE APPEAL

For the Appellant:

Name of Counsel
Name of Counsel's Firm
160 N. Main Street
Newland, NC 28786
(704) 456-7890
Counsel's email address

For the Appellee:

Name of Counsel
Name of Counsel's Firm
Suite 1450, Third Megatower Center
Metropolis, NC 27510
(704) 124-5678
Counsel's email address

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

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.

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 revised to provide "safe harbor" provisions: if you use a 14-point proportional font (such as Times New Roman) or a 12-point nonproportional 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. If you use a proportional font in the Court of Appeals, you must include 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,)	
)	<u>From Avery County</u>
v.)	
)	
Defendant's Name as on)	
Final Judgment,)	
Defendant.)	

PLAINTIFF APPELLANT'S BRIEF

<p>Note on filing: The brief is due 30 days after the date that the Clerk's office <u>mails</u> its notification of the printing of the record on appeal (except in civil cases <i>in forma pauperis</i>, 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 U.S. 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).</p>
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<p>Note on the title of briefs: Briefs filed in the North Carolina Supreme Court in a case previously heard and decided by the Court of Appeals should be entitled "New Brief" (e.g., "Plaintiff Appellant's New Brief"). See Appendix B of the Rules of Appellate Procedure.</p>

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Index entries are indented $\frac{3}{4}$ 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 ALL-CAPS typography is optional. Some practitioners use dot leaders (". . . .") to the page numbers.

TABLE OF CASES AND AUTHORITIES

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As with the Index, the Table of Cases should have margins of 1.75" from each side, yielding a 5" line in the middle.

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.

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as on)	
Final Judgment,)	
Plaintiff,)	
)	<u>From Avery County</u>
v.)	
)	
Defendant's Name as on)	
Final Judgment,)	
Defendant.)	

PLAINTIFF APPELLANT'S BRIEF

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?

<p>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.</p> <p>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.</p>
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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 2005. A judgment and order dismissing the case was entered 10 May 2006. The plaintiff filed and served notice of appeal on 8 June 2006. Transcript was ordered on 14 June 2006 and delivered 1 August 2006. The time to file the proposed record was extended by the trial division until 15 September 2006. The record was settled by stipulation on 1 November 2006, filed in the Court of Appeals on 13 November 2006 and docketed 15 November 2006.

Note the page numbering at the top (flanked by dashes). 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 2007").

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Judge Smith'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 Smith'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 Smith'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: Note that Rule 54(b) of the Rules of Civil Procedure expressly requires a final judgment. If the order is in fact a final judgment on one or more, but fewer than all claims or parties, and the trial court makes the Rule 54(b) certification that there is no just reason for delay, then appellate review is mandatory. *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999). However, the trial court may not, by certification, render its order immediately appealable if it is not a final judgment. Where the appeal is from an interlocutory, non-final order as to any party (e.g., one which disposes of some but not all claims against that party), the appellant must include an explanation of why the case affects a substantial right, even if the trial court certified that there is no just reason for delay. See *James River Equipment, Inc. v. Tharpe's Excavating, Inc.*, 179 N.C. App. 336, 340, 634 S.E.2d 548, 552-53 (2006).

OR

Judge Smith'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 Smith's order is interlocutory. It is appropriate, however, to pursue the appeal of this order now because Judge Smith'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 requirement for North Carolina appellant briefs. The 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 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

2007 (R p. 49) and an Order Closing a Portion of East Street on 1 December 2008 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.

ARGUMENT

I. Standard of Review

An appeal of a superior court order granting a motion to dismiss for failure to state a claim is subject to *de novo* review. *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, *aff'd per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003). When determining whether a complaint should be dismissed under Rule 12(b)(6) of the Rules of Civil Procedure, the complaint must be liberally construed in favor of the plaintiff. *Ladd v. Estate of Kellenberger*, 314 N.C. 477, 481, 334 S.E.2d 751, 755 (1985).

Under Rule 28(b), the appellant's brief must contain "a concise statement of the Standard(s) of Review for each question presented." Location of the Standard of Review in your brief is important. Rule 28(b) requires it to be placed either: (1) at the beginning of the discussions of each question presented (with this option the brief will have a discussion of the standard of review at the beginning of each section of the argument) or (2) under a separate heading placed before the beginning of all sections of the argument (with this option, the brief will have a separate section labeled "Standard(s) of Review" placed immediately under the caption "Argument").

II. 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. 3 (R p. 45)

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

[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.

Long quotations from a reported case or statute (more than 3 lines) are indented $\frac{3}{4}$ " 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 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, 2008.

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.

Name of Counsel's Firm

By: _____

Name of Counsel
Attorneys for Defendant Appellant
160 N. Main Street
Murphy, NC 28736
(828) 234-5678
Counsel's email address

If you want to appear at oral argument, you have to sign the brief. 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 required.

The Court of Appeals and Supreme Court have embraced electronic filing of briefs and certain other 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.

For documents to be filed electronically, the signature block should appear as follows:

Name of Counsel's Firm

Electronically submitted

Name of Counsel

Counsel's email address

N.C. R. App. P. 33(b) Certification: I certify that the attorney listed below has authorized me to list her name on this document as if she had personally signed.

Name of Other Counsel

Other counsel's email address

160 N. Main Street

Newland, NC 28786

(704) 456-7890

Attorney for Appellants

NOTE: If a party is represented by multiple attorneys from different firms, the address/phone number for each firm needs to be set out.

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 Appellant

The certificate of compliance is only applicable to the Court of Appeals and only when a proportional font (such as Times New Roman) is used. 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 March, 2008:

[Name and address of opposing counsel]

Name of Counsel

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

Table of Contents for Appendix

<u>Appendix</u> <u>Pages</u>		<u>Appearing in</u> <u>brief at</u>
1-7	Voir dire direct examination of Officer Name (T pp. 38-45)	6
8-16	Voir dire cross examination of Officer Name (T pp. 46-54)	12

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. See Rule 28(d), for guidance on when an appendix is required.

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.

The North Carolina Court of Appeals has stated that it is improper for a party to attach to its brief "a document not in the record and not permitted under N.C. R. App. P. 28(d) in an appendix to a brief." *Horton v. New South Ins. Co.*, 122 N.C. App. 265, 268, 468 S.E.2d 856, 858 (1996); see *Citifinancial, Inc. v. Messer*, 167 N.C. App. 742, 748, 606 S.E.2d 453, 457 (2005) (Steelman, J., concurring).

A Typical Appellee's Brief

No. COA07-1234

THIRTIETH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Norma Schoolhouse and)
David Schoolhouse,)
Plaintiffs)

v.)
Dee Mann and Joyce Mann,)
Defendants)

From Haywood County

PLAINTIFF APPELLEES' BRIEF

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).

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

TABLE OF CASES AND AUTHORITIES

<i>Bank v. Burnette</i> , 297 N.C. 524, 256 S.E.2d 388 (1979)	2
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<i>Zaaroli v. Pollock</i> , 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.

NORTH CAROLINA COURT OF APPEALS

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

From Haywood County

PLAINTIFF APPELLEES' BRIEF

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]

<p>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, Standard of Review, or present additional questions. See Rule 28(c) for the additional contents of appellee's brief in such cases.</p>

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, 2008.

Name of Counsel's Firm

By: _____

Name of Counsel
Attorneys for the Appellees
1234 Highrise Tower
Metropolis, NC 28786
(704) 124-5678
Counsel's email address

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 fewer 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

The certificate of compliance is only required in the Court of Appeals and only when a proportional font (such as Times New Roman) is used. There are no length 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, 2008, addressed as follows:

Name of Counsel's Firm
41 Clayton Street
Newland, NC 28801

Name of Counsel

Follow the brief with an appendix, if one is needed (see Rule 26 (d)). 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 U.S. 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 Memorandum of Additional Authority

NORTH CAROLINA COURT OF APPEALS

Plaintiff's Name as on)	
Final Judgment,)	
Plaintiff,)	
)	<u>From Avery County</u>
v.)	
)	
Defendant's Name as on)	
Final Judgment,)	
Defendant.)	

PLAINTIFF APPELLANT'S MEMORANDUM
OF ADDITIONAL AUTHORITY

Pursuant to N.C.R. App. P. 28(g), Plaintiff Appellant submits the following additional authority for the Court's consideration in the above-captioned case:

1. *Habitat for Humanity v. Board of Comm'rs*, __ N.C. App. __, __, 653 S.E.2d 886, 887-88 (2007).
2. *In re D.D.F.*, __ N.C. App. __, __, 654 S.E.2d 1, 3 (2007).

The cited cases concern the issue of standing. (Plaintiff Appellant's Br., pp. 9-12) (Issue I).

Respectfully submitted, this ___ day of March, 2008.

Name of Counsel's Firm

By: _____

Name of Counsel
Attorneys for Defendant Appellant
160 N. Main Street
Murphy, NC 28736
(828) 234-5678
Counsel's email address

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing Memorandum of Additional Authority 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 March, 2008:

[Name and address of opposing counsel]

Name of Counsel

Tip: Pursuant to Rule 28(g), a memorandum of additional authority may be filed to bring to the court's attention authority not cited in the brief. The North Carolina Court of Appeals has stated that a memorandum of additional authority should not include parenthetical summaries or quotes from the cases set out in the memorandum. *State v. Cunningham*, 140 N.C. App. 315, 317, 536 S.E.2d 341, 344 (2000). Rule 28(g) states that when a memorandum of additional authority is filed, it "may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority."

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. 07 CVS 316
 COA07-10

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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STATEMENT OF THE CASE AND FACTS	1
REASONS WHY CERTIFICATION SHOULD ISSUE	4
I. THIS CASE INVOLVES LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE JURISPRUDENCE OF THIS STATE	5
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 SIGNIFICANT PUBLIC INTEREST	8
ISSUE TO BE BRIEFED	8
CERTIFICATE OF SERVICE	9

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 fewer than ten substantive pages, 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).

defendant's summary judgment motion at the 21 August 2007 Civil Session. The plaintiff filed notice of appeal to the Court of Appeals on 10 September 2007. The Court of Appeals affirmed the order of dismissal in a published opinion, filed 14 February 2008.

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

[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, 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 1st day of March, 2008.

Name of Counsel's Firm

By: _____
Name of Counsel
Attorneys for Petitioner
Post Office Box 12345
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
Counsel's email address

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 1st day of March, 2008.

Name of Counsel

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.)

From Wake County

No. 06 CVS 2549

NAMES AS IN TRIAL DIVISION,)
DEFENDANT)

COA07-1544

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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES. ii
STATEMENT OF THE CASE AND FACTS. 1
REASONS WHY WRIT SHOULD ISSUE. 4

I. THE EXISTENCE OF THE TRIAL COURT’S
INTERLOCUTORY ORDER IMPAIRS THE
DEFENSE OF THIS CASE AND MAKES IT
IMPRACTICAL FOR THE DEFENDANT TO
PROCEED FURTHER IN THE TRIAL COURT. . . 5

II. THE TRIAL COURT’S ORDER IS DIRECTLY
CONTRARY TO THIS COURT’S RECENT
DECISIONS ON THIS SUBJECT. 8

ISSUES TO BE BRIEFED. 8
CERTIFICATE OF SERVICE. 9

Note: 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).

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.

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 fewer than ten substantive pages, 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).

FACTS

The plaintiff filed a complaint on 23 June 2006 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 [discussion of facts continues]

Here set out the factual background necessary to understand why you are petitioning for certiorari (e.g., 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

[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] [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, 2007.

Name of Counsel's Firm

By: _____

Name of Counsel
Attorneys for Petitioner
Post Office Box 12345
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
Counsel's email address

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 _____, 2007.

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 July, 2007.

Name of Counsel

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