

Basic Lawyering (Or, What To Do When Someone Asks You To Practice Law)

Taking An Appeal To The Court Of Appeals Of North Carolina

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Your firm's senior partner enters your office and asks you to handle an appeal from a North Carolina state trial court's adverse ruling in a civil action. You petrify instantly, for legend has it that fluency in Sanskrit is a prerequisite to performing such a daunting task. Thankfully, the legend is a tad overblown. That being said, there are a number of issues you should analyze—and rules you should know—to successfully navigate your way to the Court of Appeals of North Carolina. The discussion below should help you chart a navigable course for the appellate journey ahead.

Understand Whether The Subject Ruling Is Immediately Appealable. The first issue to analyze along the way is whether you can properly pursue an immediate appeal from the trial court's adverse ruling. Resolving this issue will depend largely upon whether the ruling is "final" or "interlocutory" for appellate purposes. Specifically, while virtually all "final" superior and district court rulings are immediately appealable to the Court of Appeals, see, e.g., N.C. Gen. Stat. § 7A-27(b) & (c) (prescribing appellate review from a "final judgment"), relatively few "interlocutory" rulings enjoy that distinction. See, e.g., N.C. Gen. Stat. §§ 1-277, 7A-27(d) (delineating certain "interlocutory" rulings that are immediately appealable).

Generally speaking, a "final" ruling fully resolves "the rights of all of the parties," whereas an "interlocutory" ruling "adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties..." N.C. Gen. Stat. § 1A-1, Rule 54(a), (b) (2012) (ellipsis added). Distinguishing between "final" and "interlocutory" rulings is not always easy, however, so be sure to thoroughly research the issue before commencing your appeal. This is especially true given that you ultimately will have to explain yourself to the Court of Appeals. See, e.g., N.C. R. App. P. 28(b)(4) (2012) (requiring that an appellant's principal brief detail the grounds permitting appellate review). In sum, you should have a firm grasp of all possible grounds supporting your appeal—before commencing it—to militate against it being dismissed as impermissibly interlocutory.

Understand How To Timely Commence The Appeal. Rule 3 of the North Carolina Rules of Appellate Procedure describes how to timely commence an appeal in a civil action. For example, Rule 3(a) provides that a party entitled to appeal may do so by filing a notice of appeal with the clerk of the trial court and serving such notice upon every other party. N.C. R. App. P. 3(a) (2012). Rule 3(c), in turn, establishes when the appeal must commence, with the general rule requiring filing and service of the notice of appeal within 30 days after entry of the subject ruling. N.C. R. App. P. 3(c)(1) (2012); see also N.C. Gen. Stat. § 1A-1, Rule 58 (2012) (indicating that a ruling "is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court"). Exceptions to the general rule reside elsewhere in Rule 3(c), see N.C. R. App. P. 3(c)(2)-(3) (2012), but you should proceed with caution in relying on any exception given that timeliness is an issue of jurisdictional import. See, e.g., *Dogwood Dev. & Mgmt. Co. v. White Oak Transport Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008) ("Failure to give timely notice of appeal in compliance with ... Rule 3 ... is jurisdictional, and an untimely attempt to appeal must be dismissed.") (quoted source and internal quotation marks omitted). Finally, Rule 3(d) provides that a proper notice of appeal must (1) "specify the party or parties taking the appeal;" (2) "designate the judgment or order from which is taken...;" (3) "designate ... the court to which appeal is taken;" and (4) "be signed by counsel of record for the party or parties taking the appeal..." N.C. R. App. P. 3(d) (2012) (ellipses added).

Understand How To Create The Appellate Record. After timely commencing a proper appeal, the next step is to create a record that enables the Court of Appeals to adequately address each appellate contention. Rules 7, 9, and 11 of the North Carolina Rules of Appellate Procedure meticulously detail the procedure for doing so, and it is worthwhile to carefully read (and re-read) those rules.

As a general overview, Rule 7 addresses how to obtain any transcript(s) needed for the appeal; Rule 9 governs composition of the appellate record, including the printed Record on Appeal, transcripts, documentary exhibits, and Rule 11(c) Supplement to the Printed Record on Appeal; and Rule 11 describes the process for settling the contents of the appellate record. See N.C. R. App. P. 7, 9, 11 (2012). Rules 7 and 11 likewise set the various deadlines applicable during record settlement process—all of which may be extended, see N.C. R. App. P. 7(b)(1), 11(e), 27(c) (2012)—and Appendix A to the rules conveniently lists all of those deadlines (and others). Finally, the Appellate Rules Committee of The North Carolina Bar Association has published an 83-page document entitled, "A Style Manual for the North Carolina Rules of Appellate Procedure," which provides valuable guidance regarding the record settlement process, along with other aspects of the appellate process. It is available online at http://www.ncbar.org/media/16613244/appellateStyleManual_09202011.pdf.

Understand How To "Perfect" The Appeal. An appeal is "perfected" when "docketed" in the Court of Appeals. *Romulus v. Romulus*, N.C. App., 715 S.E.2d 889, 892 (2011) ("An appeal is not 'perfected' until it is docketed in the appellate court, but when it is docketed, the perfection relates back to the time of notice of appeal...") (ellipsis added, quoted source omitted). Docketing, in turn, consists of a two-step process. You (as appellant's counsel) will accomplish the first step by filing the appellate record with the Court of Appeals within 15 days after settling its contents. See N.C. R. App. P. 12(a), (c) (2012); see also N.C. R. App. P. 26(a)(1) (2012) (deeming the record filed when mailed). The Court of Appeals will then accomplish the second step by entering the appeal upon its docket after receiving the requisite appeal bond and docketing fee, which typically are \$250 and \$10, respectively. See N.C. R. App. P. 12(b), Appendix F (2012).

Understand How To Advocate Before The Court Of Appeals. After docketing the appeal, the Court of Appeals will proceed to reproduce the printed Record on Appeal, charge you (as appellant's counsel) \$1.75 per page for the reproduction, and mail the printed record to the parties. See N.C. R. App. P. 12(c), 13(a)(1), Appendix F (2012). You will have 30 days from the date of such mailing to file and serve your client's principal brief. See N.C. R. App. P. 13(a)(1). In preparing that vital piece of appellate advocacy, it is wise to adhere to the form requirements of Rule 26(g), the content requirements prescribed in subsections (b) and (d) of Rule 28, and the length limitations set forth in Rule 28(j). See N.C. R. App. P. 26, 28 (2012).

The appellee has 30 days after being served with your client's principal brief (or 33 days if served by mail) to file and serve a brief in response. See N.C. R. App. P. 13(a)(1), 27(b), 28(c) (2012). You then may be permitted to submit a reply brief, participate in oral argument, or both, although neither opportunity is assured. See N.C. R. App. P. 28(h) (2012)

(governing when reply briefs are allowed); N.C. R. App. P. 30(f)(2) (2012) (indicating that Court of Appeals may decide an appeal without entertaining oral argument). Ultimately, a three-judge panel will decide the appeal via published or unpublished opinion, see N.C. R. App. P. 30(e) (2012), and if the decision disfavors your client, you may attempt to seek further review in either the Court of Appeals or the Supreme Court of North Carolina. See N.C. R. App. P. 14 (2012) (governing appeals to the Supreme Court); N.C. R. App. P. 15 (2012) (governing petitions for discretionary review to the Supreme Court); N.C. R. App. P. 21(a)(2) (2012) (governing petitions for writ of certiorari in the Supreme Court); N.C. R. App. P. 31 (2012) (governing petitions for rehearing in the Court of Appeals).

Conclusion. Hopefully, this article dispels the myth that you must be conversant in an archaic language to competently take an appeal to the Court of Appeals of North Carolina. It also should be readily apparent, on the other hand, that the task will require you to become familiar with appealability principles and the provisions of the North Carolina Rules of Appellate Procedure. Indeed, your success on appeal may depend on it. You're up to the task. •

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