

THE EXPEDITED APPEALS PROCESS AND SUPREME COURT TPR REVIEW

2/20/2020

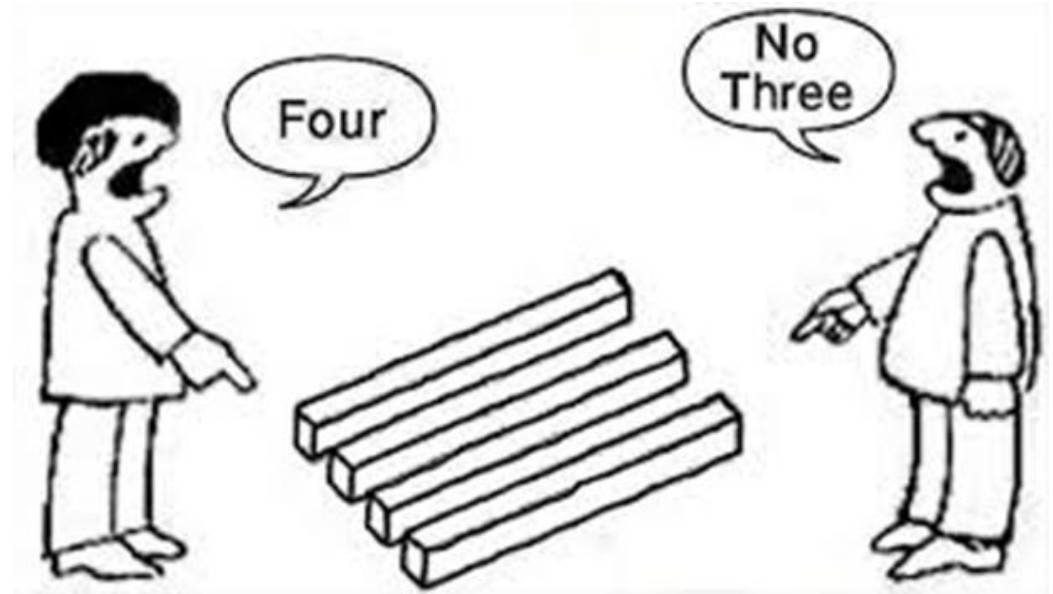


North Carolina

GUARDIAN AD LITEM
A CHILD'S ADVOCATE IN COURT

MY PERSPECTIVE

- Assistant Appellate Defender, 2003-08
- Staff Attorney, North Carolina Court of Appeals, 2008-15
- Current GAL Appellate Counsel



WHY THE RULES/PROCESS CHANGES?

- In 2017, the General Assembly amended N.C. Gen. Stat. 7B-1001 to redirect appeals from TPR cases to go directly to the North Carolina Supreme Court, rather than first going through the Court of Appeals (as well as orders that eliminate reunification from the PP along with the TPR appeal when properly preserved).



WHEN YOU COME TO A FORK IN THE ROAD . . .

- In 2017, the GA also changed N.C. Gen. Stat. 7B-1001(a)(5), so that a parent can appeal to the COA an order eliminating reunification if a TPR petition or motion has not been filed within 65 days. Formerly, it was 180 days. Some appeals from orders that CRE will go to the COA and others will go to the SC.



2019 APPELLATE RULES CHANGES

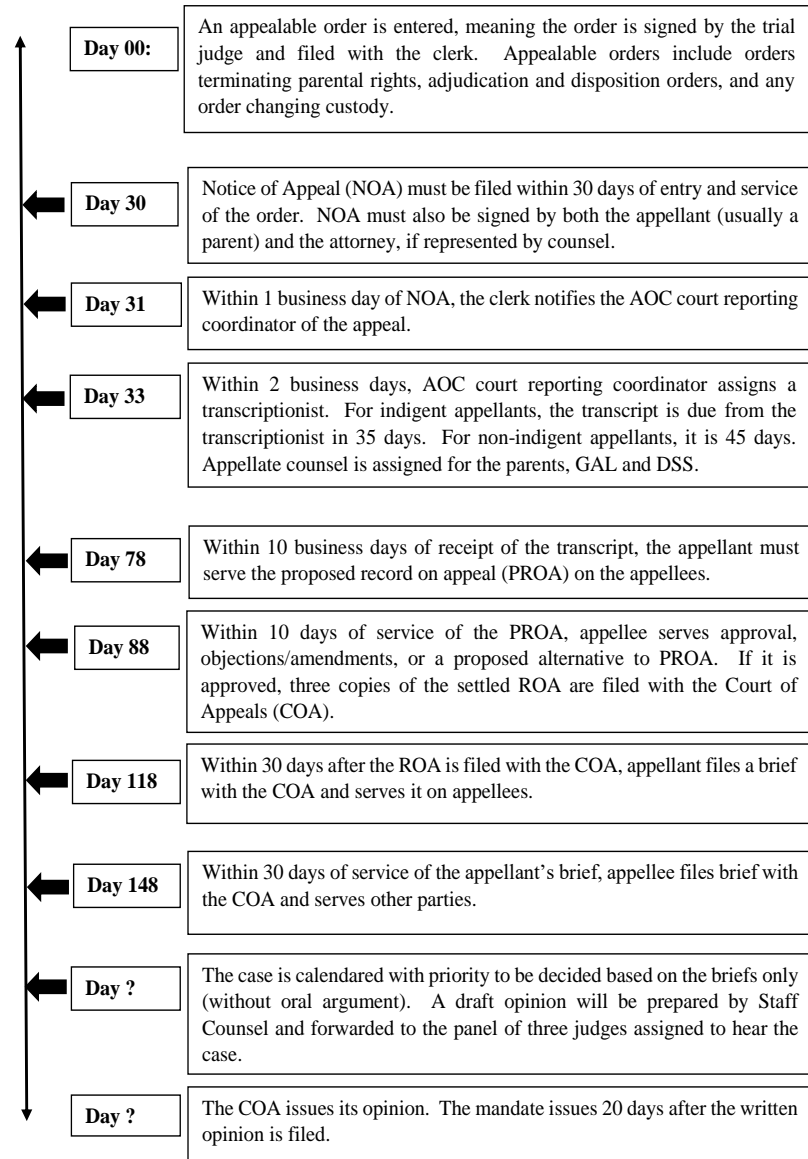
- As a result of the 2017 legislative change, the Supreme Court adopted changes to the appellate rules to accommodate their new case load in December 2018. Changes were effective 1 January 2019.
- This includes changes to Rules 3, 3.1, 4, 9, 11-13, 18, 26, 28, 30, 37, and 41, and adding Rule 42.
- For the most current version of the Rules, use the internet, not the printed books!
 - <https://www.nccourts.gov/courts/supreme-court/court-rules/north-carolina-rules-of-appellate-procedure>

2019 CHANGES TO RULE 3.1 DEADLINES

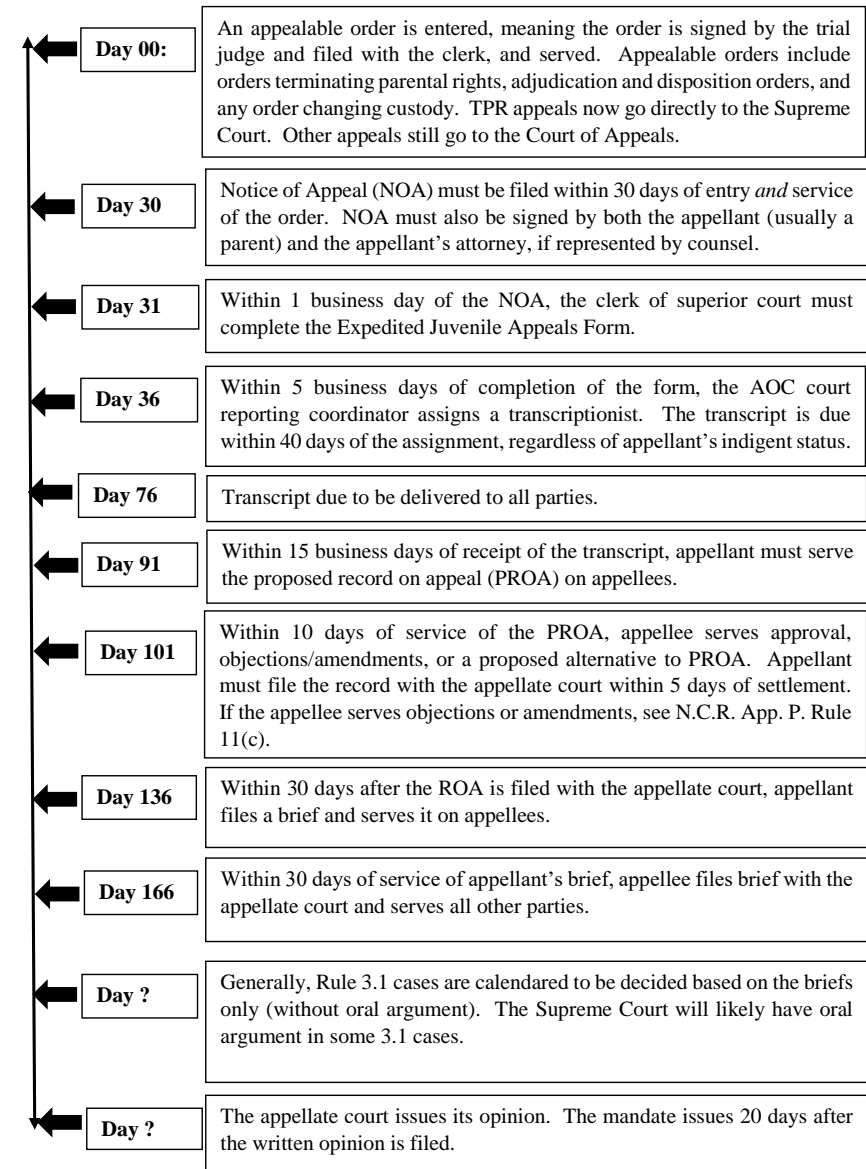
- Transcript is due within 40 days of the assignment of the transcriptionist (formerly 35 days in indigent cases; 45 non-indigent).
- Proposed Record on Appeal must be served by appellant within 15 days of the delivery of the transcript (formerly 10 days).
- Record filed within 5 days of settlement.
- Appellants' brief now due within 30 days of *filing* of settled ROA (formerly within 30 days of mailing of printed record). Appellee's brief is still due 30 days after appellant's.



AN APPROXIMATE TIMELINE FOR EXPEDITED RULE 3.1 APPEALS



AN APPROXIMATE TIMELINE FOR EXPEDITED RULE 3.1 APPEALS



CHANGES TO THE RULE 3.1 PROCESS

- Disagreements over the PROA are now settled per Rule 11(c). (Rule 3.1 formerly had its own process.)
 - Appellees still have 10 days to serve objections, amendments, or an alternative proposed record.
 - If they can't agree, *appellant* is now responsible for submitting a “Rule 11(c) Supplement to the Printed Record on Appeal.” (Formerly the appellee’s responsibility to file them.)
 - There is also the possibility of judicial settlement if the parties can't agree about the provenance of proposed additions to the ROA.
- Word counts apply to 3.1 briefs filed in both appellate court. (Formerly no word limit in Supreme Court briefs.)

PROCESS CHANGES: NO “PRIORITY” IN NEW RULE 3.1

- The prior version of Rule 3.1 explicitly provided that Rule 3.1 cases would be “given priority” over other appeals at the COA. That official priority no longer exists.
 - Extensions of time still disfavored.



CONFIDENTIALITY: RULE 42

- Items filed in appellate courts in 7B-1001 appeals are automatically sealed. Items sealed in the trial courts are also automatically sealed.
- Must use initials or pseudonym instead of a minor's name, as stipulated in the record on appeal.
- All sealed documents must display at the top of the first page: UNDER SEAL AND SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.



MANDATORY(!) E-FILING

- Rule 3.1(i): “Unless granted an exception for good cause, counsel must file all documents electronically.” (Formerly just for briefs and optional.)
- Electronic filing website: <https://www.ncappellatecourts.org/>
- Register with your email address
- Convert/scan documents into PDFs for filing



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Registration is only needed if you intend to FILE documents with either the NC Supreme Court or the NC Court of Appeals.

Note 1: In the Court of Appeals you cannot e-file Records, except for Rule 3.1 cases. You can file Record Supplements and Rule 9(d)(2) exhibits (in PDF format).

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19-966	In re: C.M., K.S., J.S., M.A.S., K.S.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-966"/>	<input type="button" value="Start SC Docket 19-966"/>
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19-943	In re: K.W. & J.W.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-943"/>	<input type="button" value="Start SC Docket 19-943"/>
19-870	In re: M.M.	Docket Sheet	Documents	No AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-870"/>	<input type="button" value="Start SC Docket 19-870"/>
19-803	In re: E.P-L.M.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-803"/>	<input type="button" value="Start SC Docket 19-803"/>
19-803	In re: E.P-L.M.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-803"/>	<input type="button" value="Start SC Docket 19-803"/>
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19-279	In re: C.S.B. & B.A.B.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-279"/>	<input type="button" value="Start SC Docket 19-279"/>
19-150	In re: J.C., L.N.B., Q.J.C., Z.N.W.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-150"/>	<input type="button" value="Start SC Docket 19-150"/>
19-150	In re: J.C., L.N.B., Q.J.C., Z.N.W.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 19-150"/>	<input type="button" value="Start SC Docket 19-150"/>
18-1222	In re: A.K.G.	Docket Sheet	Documents	AIS	File AIS	Transcripts	<input type="button" value="Upload Document 18-1222"/>	<input type="button" value="Start SC Docket 18-1222"/>



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In the Court of Appeals you CANNOT e-file the Record on Appeal, except for Rule 3.1 cases. You can file Record Supplements and Rule 9(d) (2) exhibits (in PDF format).

Documents for 3.1 cases must be redacted as follows: 42 (b) In briefs, motions, and petitions filed in these matters, counsel must use initials or a pseudonym instead of the minor's name. Counsel for each party must agree on the initials or pseudonym and must include a stipulation that evidences this agreement in the record on appeal.

If this is not a TPR 3.1 case, please fill out a problem report.

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pdf	Affidavit	Wunsche, Matthew D.	1/16/2020 9:16 AM
pdf	Appointment Order	Wunsche, Matthew D.	10/22/2019 12:34 PM
pdf	Cert Petition Response WIM	Wunsche, Matthew D.	1/16/2020 9:19 AM
pdf	COD-In Re WIM, Haywood	Wunsche, Matthew D.	10/15/2019 9:01 AM

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- Word 97-2003 Document (*.doc)

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SUPREME COURT'S REVIEW PROCESS

Supreme Court Review

- The SC hears everything (including TPRs) *en banc* (meaning all seven justices hear every case).
- The Supreme Court decides everything in conference. Conferences are generally held every four to six weeks. The SC files opinions after conferences.
- Once briefs are filed, the Supreme Court will begin to track them internally and each case will be assigned to a justice. That justice will decide whether to submit the case to the next court conference.
- There are internal circulation deadlines for every case, but no “30-Day Rule.” Authoring justice circulates draft opinions to all six other justices for comment.

COA Review

- The COA has 15 judges and hears everything (pretty much) in random panels of three.
- Individual panels hear cases. The COA files opinions the first and third Tuesday of every month.
- COA cases are assigned to a panel, and then a judge. The senior judge on the panel generally assigns the case to the authoring judge. The judge will draft an opinion and circulate to the rest of the panel.
- The COA’s “30-day” rule means that the panel is supposed to file its opinion within 30 days of the calendar date.



SUPREME COURT TPR REVIEW: ORAL ARGUMENT

- No firm policy commitment from the Supreme Court on oral argument in TPR cases, but *not* every case will be orally argued to avoid unnecessary delay.
 - The justice to whom the case is assigned will review the case and make an initial recommendation to the next conference whether to have argument. The entire Court will vote.
 - No quota of cases to orally argue.
 - Appellants can request argument on the Appeal Information Statement. Other parties can file a motion.
 - Bottom line is “similar” to PDR – is this case “important” enough to warrant oral argument? Issues of first impression, confusion as to the existing law, issue repeatedly comes up despite cases on point.
 - Don’t use children’s names in oral argument!

SUPREME COURT REVIEW: PUBLISHED OPS

- In non-orally argued cases, the assigned justice will circulate an opinion. The rest of the Court will review and comment, re-circulate, and then decide whether to join, concur, or dissent.
- All opinions will be published, meaning they are controlling case law from our state's highest court. Our published TPR case law is going to explode!



HELPFUL TRAINING LINK

- The Supreme Court held a training on 20 March 2019. Justices Hudson and Ervin presented about the Rules and administrative changes. You can find the training here:
 - <https://www.nccourts.gov/about/nc-administrative-office-of-the-courts/training/training-library#tpr-appeals-in-the-supreme-court-7977>





QUESTIONS?

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