

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 799

Short Title: Rules for Notice of Appeal.

(Public)

Sponsors: Senator Winner.

Referred to: Judiciary II.

April 5, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT NOTICE OF APPEAL TO THE APPELLATE DIVISION SHALL BE GIVEN AS PROVIDED IN THE RULES OF APPELLATE PROCEDURE, AS RECOMMENDED BY THE APPELLATE RULES STUDY COMMITTEE OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 2-279 is repealed.

Sec. 2. Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-279.1. Manner and time for giving notice of appeal to appellate division in civil actions and in special proceedings.

Any party entitled by law to appeal from a judgment or order rendered by a judge in superior or district court in a civil action or in a special proceeding may take appeal by giving notice of appeal within the time, in the manner, and with the effect provided in the rules of appellate procedure."

Sec. 3. G.S. 1A-1, Rule 59 reads as rewritten:

"Rule 59. New trials; amendment of judgments.

(a) Grounds. – A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds:

- (1) Any irregularity by which any party was prevented from having a fair trial;
- (2) Misconduct of the jury or prevailing party;
- (3) Accident or surprise which ordinary prudence could not have guarded against;

- 1 (4) Newly discovered evidence material for the party making the motion
2 which he could not, with reasonable diligence, have discovered and
3 produced at the trial;
- 4 (5) Manifest disregard by the jury of the instructions of the court;
- 5 (6) Excessive or inadequate damages appearing to have been given under
6 the influence of passion or prejudice;
- 7 (7) Insufficiency of the evidence to justify the verdict or that the verdict is
8 contrary to law;
- 9 (8) Error in law occurring at the trial and objected to by the party making
10 the motion, or
- 11 (9) Any other reason heretofore recognized as grounds for new trial.

12 On a motion for a new trial in an action tried without a jury, the court may open the
13 judgment if one has been entered, take additional testimony, amend findings of fact and
14 conclusions of law or make new findings and conclusions, and direct the entry of a new
15 judgment.

16 (b) Time for motion. – A motion for a new trial shall be served not later than 10
17 ~~days after entry of the judgment.~~ the expiration of time provided in the controlling statute
18 or rule of appellate procedure for giving notice of appeal from the judgment.

19 (c) Time for serving affidavits. – When a motion for new trial is based upon
20 affidavits they shall be served with the motion. The opposing party has 10 days after
21 such service within which to serve opposing affidavits, which period may be extended
22 for an additional period not exceeding 30 days either by the court for good cause shown
23 or by the parties by written stipulation. The court may permit reply affidavits.

24 (d) On initiative of court. – Not later than 10 days after entry of judgment the
25 court of its own initiative, on notice to the parties and hearing, may order a new trial for
26 any reason for which it might have granted a new trial on motion of a party, and in the
27 order shall specify the grounds therefor.

28 (e) Motion to alter or amend a judgment. – A motion to alter or amend the
29 judgment under section (a) of this rule shall be served not later than 10 ~~days after entry of~~
30 ~~the judgment.~~ the expiration of time provided in the controlling statute or rule of
31 appellate procedure for giving notice of appeal from the judgment."

32 Sec. 4. G.S. 1A-1, Rule 62(a) reads as rewritten:

33 "(a) Automatic stay; exceptions - Injunctions and receiverships.–Except as
34 otherwise stated herein, no execution shall issue upon a judgment nor shall proceedings
35 be taken for its enforcement until the expiration of 10 ~~days after its entry.~~ the time
36 provided in the controlling statute or rule of appellate procedure for giving notice of
37 appeal from the judgment. Unless otherwise ordered by the court, an interlocutory or
38 final judgment in an action for an injunction or in a receivership action shall not be
39 stayed during the period after its entry and until an appeal is taken or during the
40 pendency of an appeal. The provisions of section (c) govern the suspending, modifying,
41 restoring, or granting of an injunction during the pendency of an appeal."

42 Sec. 5. G.S. 15A-1448 reads as rewritten:

43 "**§ 15A-1448. Procedures for taking appeal.**

44 (a) Time for Entry of Appeal; Jurisdiction over the Case. –

- 1 (1) A case remains open for the taking of an appeal to the appellate
2 division for ~~a period of 10 days after the entry of judgment. the period~~
3 provided in the rules of appellate procedure for giving notice of
4 appeal.
- 5 (2) When a motion for appropriate relief is made during ~~the 10 day such~~
6 period, the case remains open for the taking of an appeal until the
7 expiration of ~~10 days after the court has ruled on the motion. the period~~
8 provided in the rules of appellate procedure for giving notice of
9 appeal.
- 10 (3) The jurisdiction of the trial court with regard to the case is divested,
11 except as to actions authorized by G.S. 15A- 1453, when notice of
12 appeal has been given and the period described in (1) and (2) has
13 expired.
- 14 (4) Repealed by Session Laws 1987, c. 624.
- 15 (5) The right to appeal is not waived by withdrawal of an appeal if the
16 appeal is reentered within the time specified in (1) and (2).
- 17 (6) The right to appeal is not waived by compliance with all or a portion
18 of the judgment imposed. If the defendant appeals, the court may enter
19 appropriate orders remitting any fines or costs which have been paid.
20 The court may delay the remission pending the determination of the
21 appeal.
- 22 (b) How and When Appeal of Right Taken. –
- 23 (1) ~~Oral notice of appeal may be given in open court:~~
24 a. ~~At the time final judgment is entered; or~~
25 b. ~~When the court rules upon a post-verdict motion for appropriate~~
26 ~~relief, if appeal is then available.~~
- 27 (2) ~~Written notice of appeal may be filed with the clerk after final~~
28 ~~judgment and before the time for taking an appeal has expired.~~
- 29 Notice of appeal shall be given within the time, in the manner, and with the effect
30 provided in the rules of appellate procedure.
- 31 (c) Certiorari. – Petitions for writs of certiorari are governed by rules of the
32 appellate division."
- 33 Sec. 6. This act shall become effective July 1, 1989, and shall apply to all
34 judgments of the district or superior court entered on or after that date.