

Short Title: GSC Assignments of Error.

A BILL TO BE ENTITLED

AN ACT TO UPDATE OBSOLETE INSTANCES OF THE TERMS "ASSIGNMENTS OF
ERROR" AND "EXCEPTIONS" THROUGHOUT THE GENERAL STATUTES TO
CONFORM TO THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE AND
TO MAKE TECHNICAL CHANGES IN THE SURROUNDING LANGUAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-186 is repealed.

[Staff Note: G.S. 1-186 appears to be obsolete in light of NC Rules of Appellate Procedure 3, 3.1, 4, and 10:]

§ 1-186. Exceptions to decision of court.

(a) *For the purposes of an appeal, either party may except to a decision on a matter of law arising upon a trial by the court within 10 days after the judgment, in the same manner and with the same effect as upon a trial by jury. Where the decision does not authorize a final judgment, but directs further proceedings before a referee or otherwise, either party may except thereto, and make a case or exception as above provided in case of an appeal.*

(b) *Either party desiring a review, upon the evidence appearing on the trial of the questions of law, may at any time within 10 days after the judgment, or within such time as is prescribed by the rules of the court, make a case or exceptions in like manner as upon a trial by jury, except that the judge in settling the case must briefly specify the facts found by him, and his conclusions of law.*

Rule 3. Appeal in Civil Cases—How and When Taken

(a) *Filing the Notice of Appeal. Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c) of this rule.*

(b) *Special Provisions. Appeals in the following types of cases shall be taken in the time and manner set out in the General Statutes and Rules of Appellate Procedure sections noted:*

(1) *Juvenile matters pursuant to N.C.G.S. § 7B-2602.*

(2) *Appeals pursuant to N.C.G.S. § 7B-1001 shall be subject to the provisions of Rule 3.1.*

(c) *Time for Taking Appeal. In civil actions and special proceedings, a party must file and serve a notice of appeal:*

(1) *within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or*

(2) *within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that*

(3) *if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subdivisions (1) and (2) of this subsection (c).*

In computing the time for filing a notice of appeal, the provision for additional time after service by mail in Rule 27(b) of these rules and Rule 6(e) of the Rules of Civil Procedure shall not apply.

If timely notice of appeal is filed and served by a party, any other party may file and serve a notice of appeal within ten days after the first notice of appeal was served on such party.

(d) *Content of Notice of Appeal. The notice of appeal required to be filed and served by subsection (a) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.*

(e) *Service of Notice of Appeal. Service of copies of the notice of appeal may be made as provided in Rule 26.*

Rule 3.1. Review in Cases Governed by Subchapter I of the Juvenile Code

(a) *Scope. This rule applies in appeals filed under N.C.G.S. § 7B-1001 and in cases certified for review by the appellate courts in which the right to appeal under this statute has been lost.*

(b) *Filing the Notice of Appeal. Any party entitled to an appeal under N.C.G.S. § 7B-1001(a) may take appeal by filing notice of appeal with the clerk of superior court in the time and manner set out in N.C.G.S. § 7B-1001(b) and (c) and by serving copies of the notice of appeal on all other parties.*

(c) *Expediting the Delivery of the Transcript. The clerk of superior court must complete the Expedited Juvenile Appeals Form within one business day after the notice of appeal is filed. The court reporting manager of the Administrative Office of the Courts must assign a transcriptionist for the appeal within five business days after the clerk completes the form.*

The transcriptionist must produce the transcript of the entire proceedings at the State's expense if there is an order that establishes the indigency of the appellant. Otherwise, the appellant has ten days after the transcriptionist is assigned to contract for the transcription of the entire proceedings. In either situation, the transcriptionist must deliver electronically the transcript to each party to the appeal within forty days after receiving the assignment.

(d) *Expediting the Filing of the Record on Appeal. The parties may settle the record on appeal by agreement at any time before the record on appeal is settled by any other procedure described in this subsection.*

Absent agreement, the appellant must serve a proposed record on appeal on each party to the appeal within fifteen days after delivery of the transcript. Within ten days after having been served with the proposed record on appeal, the appellee may serve on each party to the appeal:

- (1) *a notice of approval of the proposed record on appeal;*
- (2) *specific objections or amendments to the proposed record on appeal; or*
- (3) *a proposed alternative record on appeal.*

If the appellee serves a notice of approval, then this notice settles the record on appeal. If the appellee serves specific objections or amendments, or a proposed alternative record on appeal, then the provisions of Rule 11(c) apply. If the appellee fails to serve a notice of approval, specific objections or amendments, or a proposed alternative record on appeal, then the expiration of the ten-day period to serve one of these documents settles the record on appeal. The appellant must file the record on appeal within five business days after the record is settled.

(e) *No-Merit Briefs.* When counsel for the appellant concludes that there is no issue of merit on which to base an argument for relief, counsel may file a no-merit brief. The appellant then may file a pro se brief within thirty days after the date of the filing of counsel's no-merit brief.

In the no-merit brief, counsel must identify any issues in the record on appeal that arguably support the appeal and must state why those issues lack merit or would not alter the ultimate result. Counsel must provide the appellant with a copy of the no-merit brief, printed record, transcripts, copies of exhibits and other items included in the record on appeal pursuant to Rule 9(d), and any supplement prepared pursuant to Rule 11(c). Counsel must inform the appellant in writing that the appellant may file a pro se brief and that the pro se brief is due within thirty days after the date of the filing of the no-merit brief. Counsel must attach evidence of this communication to the no-merit brief.

(f) [Reserved]

(g) *Motions for Extensions of Time.* Motions for extensions of time to produce and deliver the transcript, to file the record on appeal, and to file briefs are disfavored and will be allowed by the appellate courts only in extraordinary circumstances.

(h) *Duty of Trial Counsel.* Trial counsel for the appellant has a duty to assist appellate counsel with the preparation and service of appellant's proposed record on appeal.

(i) [Reserved]

(j) *Calendaring Priority.* Cases subject to this rule will be given priority over other cases being considered by the Court of Appeals and will be calendared in accordance with a schedule promulgated by the Chief Judge. Unless otherwise ordered by the Court of Appeals, cases subject to this rule shall be disposed of on the record and briefs and without oral argument.

Rule 4. Appeal in Criminal Cases—How and When Taken

(a) *Manner and Time.* Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

- (1) giving oral notice of appeal at trial, or
- (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order. Appeals from district court to superior court are governed by N.C.G.S. §§ 15A-1431 and -1432.

(b) *Content of Notice of Appeal.* The notice of appeal required to be filed and served by subdivision (a)(2) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(c) *Service of Notice of Appeal.* Service of copies of the notice of appeal may be made as provided in Rule 26.

(d) *To Which Appellate Court Addressed.* An appeal of right from a judgment of a superior court by any person who has been convicted of murder in the first degree and sentenced to death shall be filed in the Supreme Court. In all other criminal cases, appeal shall be filed in the Court of Appeals.

Rule 10. Preservation of Issues at Trial; Proposed Issues on Appeal

(a) *Preserving Issues During Trial Proceedings.*

- (1) *General.* In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the

specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion. Any such issue that was properly preserved for review by action of counsel taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, including, but not limited to, whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction over the subject matter, and whether a criminal charge is sufficient in law, may be made the basis of an issue presented on appeal.

(2) *Jury Instructions.* A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection; provided that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

(3) *Sufficiency of the Evidence.* In a criminal case, a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action, or for judgment as in case of nonsuit, is made at trial. If a defendant makes such a motion after the State has presented all its evidence and has rested its case and that motion is denied and the defendant then introduces evidence, defendant's motion for dismissal or judgment in case of nonsuit made at the close of State's evidence is waived. Such a waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

A defendant may make a motion to dismiss the action, or for judgment as in case of nonsuit, at the conclusion of all the evidence, irrespective of whether defendant made an earlier such motion. If the motion at the close of all the evidence is denied, the defendant may urge as ground for appeal the denial of the motion made at the conclusion of all the evidence. However, if a defendant fails to move to dismiss the action, or for judgment as in case of nonsuit, at the close of all the evidence, defendant may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

If a defendant's motion to dismiss the action, or for judgment as in case of nonsuit, is allowed, or shall be sustained on appeal, it shall have the force and effect of a verdict of "not guilty" as to such defendant.

(4) *Plain Error.* In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.

(b) *Appellant's Proposed Issues on Appeal.* Proposed issues that the appellant intends to present on appeal shall be stated without argument at the conclusion of the printed record in a numbered list. Proposed issues on appeal are to facilitate the preparation of the record on appeal and shall not limit the scope of the issues presented on appeal in an appellant's brief.

(c) *Appellee's Proposed Issues on Appeal as to an Alternative Basis in Law.* Without taking an appeal, an appellee may list proposed issues on appeal in the printed record based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment, order, or

1 *other determination from which appeal has been taken. An appellee's list of proposed issues on*
2 *appeal shall not preclude an appellee from presenting arguments on other issues in its brief.*
3 *Portions of the record or transcript of proceedings necessary to an understanding of such*
4 *proposed issues on appeal as to an alternative basis in law may be included in the record on*
5 *appeal by agreement of the parties under Rule 11(a), may be included by the appellee in a*
6 *proposed alternative record on appeal under Rule 11(b), or may be designated for inclusion in*
7 *the transcript of proceedings, if one is filed under Rule 9(c)(2).]*

8
9 **SECTION 2.** G.S. 1-271 reads as rewritten:

10 **"§ 1-271. Who may appeal.**

11 Any party aggrieved may appeal in the cases prescribed in this Chapter. A party ~~who cross~~
12 ~~assigns error in that cross-appeals~~ the grant or denial of a motion under the Rules of Civil
13 Procedure is a party aggrieved."

14 **SECTION 3.** G.S. 1-277 reads as rewritten:

15 **"§ 1-277. Appeal from superior or district court judge.**

16 (a) An appeal may be taken from every judicial order or determination of a judge of a
17 superior or district court, upon or involving a matter of law or legal inference, whether made in
18 or out of session, ~~which that~~ affects a substantial right claimed in any action or proceeding; or
19 ~~which that~~ in effect determines the ~~action,~~ action and prevents a judgment from which an appeal
20 might be taken; or discontinues the ~~action,~~ action or grants or refuses a new trial.

21 (b) Any interested party ~~shall have~~ has the right of immediate appeal from an adverse
22 ruling as to the jurisdiction of the court over the person or property of the ~~defendant party,~~ or
23 ~~such the~~ party may preserve ~~his exception the party's objection~~ for determination upon any
24 subsequent appeal in the cause."

25 **SECTION 4.** G.S. 1-286 reads as rewritten:

26 **"§ 1-286. Justification of sureties.**

27 The written undertaking on appeal under G.S. 1-285 must be accompanied by ~~the an~~ affidavit
28 of one of the sureties that ~~he the surety~~ is worth double the amount specified ~~therein,~~ in the
29 undertaking. The respondent may ~~except object~~ to the sufficiency of the sureties within ~~ten~~ 10

days after the notice of appeal; and unless they or other sureties justify within ~~the ten~~ 10 days
~~thereafter, after the objection,~~ the appeal shall be regarded as if no undertaking had been given.
The justification must be upon a notice of not less than five days."

[Staff Note: G.S. 1-285 provides:

§ 1-285. Undertaking on appeal.

(a) To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in the sum of two hundred fifty dollars (\$250.00), or any lesser sum as might be adjudged by the court, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk with whom the judgment or order was filed; or such sum must be deposited with the appropriate clerk of the appellate division in compliance with the North Carolina Rules of Appellate Procedure.

(b) The provisions of this section do not apply to the State of North Carolina, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof.]

North Carolina Rule of Appellate Procedure 6 provides:

Rule 6. Security for Costs on Appeal

(a) *In Regular Course.* Except in pauper appeals, an appellant in a civil action must provide adequate security for the costs of appeal in accordance with the provisions of N.C.G.S. §§ 1-285 and -286.

(b) *In Forma Pauperis Appeals.* A party in a civil action may be allowed to prosecute an appeal in forma pauperis without providing security for costs in accordance with the provisions of N.C.G.S. § 1-288.

(c) *Filed with Record on Appeal.* When security for costs is required, the appellant shall file with the record on appeal a certified copy of the appeal bond or make a monetary deposit in lieu of bond.

(d) *Dismissal for Failure to File or Defect in Security.* For failure of the appellant to provide security as required by subsection (a) or to file evidence thereof as required by subsection (c), or for a substantial defect or irregularity in any security provided, the appeal may on motion of an appellee be dismissed by the appellate court where docketed, unless for good cause shown the court permits the security to be provided or the filing to be made out of time, or the defect or irregularity to be corrected. A motion to dismiss on these grounds shall be made and determined in accordance with Rule 37. When the motion to dismiss is made on the grounds of a defect or irregularity, the appellant may as a matter of right correct the defect or irregularity by filing a proper bond or making proper deposit with the clerk of the appellate court within ten days after service of the motion upon appellant or before the case is called for argument, whichever first occurs.

(e) *No Security for Costs in Criminal Appeals.* Pursuant to N.C.G.S. § 15A-1449, no security for costs is required upon appeal of criminal cases to the appellate division.]

SECTION 5. G.S. 1A-1, Rule 46, reads as rewritten:

"Rule 46. Objections and exceptions. to admissibility of evidence.

(a) Rulings on admissibility of evidence. –

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it ~~shall be~~ is deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it ~~shall be~~ is deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court ~~shall be~~ is deemed ~~excepted~~ objected to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court ~~shall be~~ is deemed ~~excepted~~ objected to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it ~~shall be~~ is deemed that each ~~such~~ question has been properly objected to by all parties to the action and that the objection has ~~been overruled and that an exception has been taken to the ruling of the court by all parties to the action.~~ overruled.

(b) Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. – With respect to pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections ~~and exceptions~~ are unnecessary. In order to preserve an ~~exception~~ objection to ~~any such~~ the ruling or order or to the court's failure to make ~~any such~~ the ruling or order, it ~~shall be~~ is sufficient if a party, at the time the ruling or order is made or sought, makes known to the court the party's

objection to the action of the court or makes known the action that the party desires the court to take and the party's grounds for its position. If a party has no opportunity to object ~~or except~~ to a ruling or order at the time it is made, the absence of an objection ~~or exception~~ does not thereafter prejudice that party.

(c) Repealed by Session Laws 2001-379, s. 6."

SECTION 6. G.S. 15-173 reads as rewritten:

"§ 15-173. ~~Demurrer to the evidence.~~ Motion to dismiss based on the evidence.

When on the trial of any criminal action in the superior or district court, the State has introduced its evidence and rested its case, the defendant may move to dismiss the ~~action, or for judgment as in case of nonsuit.~~ action. If the motion is allowed, judgment shall be entered accordingly; and ~~such the judgment shall have~~ has the force and effect of a verdict of "not guilty" as to ~~such the~~ defendant. If the motion is refused and the defendant does not choose to introduce evidence, the case shall be submitted to the jury as in other cases, and the defendant may on appeal urge as ground for reversal, the trial court's denial of ~~his the~~ motion without the necessity of the defendant's having ~~taken exception~~ objected to ~~such the~~ denial.

If the defendant introduces evidence, ~~he the defendant~~ thereby waives any motion ~~for dismissal or judgment as in case of nonsuit which he to dismiss that the defendant~~ may have made prior to the introduction of ~~his the defendant's~~ evidence and cannot urge ~~such the~~ prior motion as ground for appeal. The defendant, however, may make ~~such the~~ motion at the conclusion of all the evidence in the case, irrespective of whether or not ~~he the defendant~~ made a motion ~~for dismissal or judgment as in case of nonsuit theretofore.~~ to dismiss beforehand. If the motion is allowed, or ~~shall be~~ is sustained on appeal, it ~~shall has~~ in all cases ~~have~~ the force and effect of a verdict of "not guilty." If the motion is refused, the defendant may on appeal, after the jury has rendered its verdict, urge as ground for reversal the trial court's denial of ~~his the~~

motion made at the close of all the evidence without the necessity of the defendant's having taken
~~exception~~objected to ~~such~~the denial."

[Staff Note: "As used in G.S. s 15-173, there is no difference in legal significance between a
motion 'to dismiss the action' and a motion 'for judgment as in case of nonsuit.'" State v. Cooper,
275 N.C. 283, 285, 167 S.E.2d 266, 267 (1969).]

SECTION 7. G.S. 15A-1446 reads as rewritten:

"§ 15A-1446. Requisites for preserving the right to appellate review.

(a) Except as provided in subsection ~~(d)~~, (d) of this section, error ~~may~~shall not be
asserted upon appellate review unless the error has been brought to the attention of the trial court
by appropriate and timely objection or motion. No particular form is required in order to preserve
the right to assert the alleged error upon appeal if the motion or objection clearly presented the
alleged error to the trial court. Formal ~~exceptions~~objections are not required, but when evidence
is excluded a record must be made in the manner provided in G.S. 1A-1, Rule 43(c), in order to
assert upon appeal error in the exclusion of that evidence.

(b) Failure to make an appropriate and timely motion or objection constitutes a waiver of
the right to assert the alleged error upon appeal, but the appellate court may review ~~such~~any
errors affecting substantial rights in the interest of justice if it determines it appropriate to do so.

(c) The making of post-trial motions is not a prerequisite to the assertion of error on
appeal.

(d) Errors based upon any of the following ~~grounds, which are asserted to have occurred,~~
grounds may be the subject of appellate review even though no ~~objection, exception~~objection or
motion has been made in the trial ~~division~~division:

(1) Lack of jurisdiction of the trial court over the offense of which the defendant
was convicted.

(2) Lack of jurisdiction of the trial court over the person of the defendant.

- (3) The criminal pleading charged acts ~~which,~~that, at the time they were committed, did not constitute a violation of criminal law.
- (4) The pleading fails to state essential elements of an alleged violation, as required by G.S. 15A-924(a)(5).
- (5) The evidence was insufficient as a matter of law.
- (6) The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
- (7) Repealed by Session Laws 1977, 2nd Sess., c. 1147, s. 28.
- (8) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (9) Subsequent admission of evidence from a witness when there has been an improperly overruled objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified.
- (10) Subsequent admission of evidence involving a specified line of questioning when there has been an improperly overruled objection to the admission of evidence involving that line of questioning.
- (11) Questions propounded to a witness by the court or a juror.
- (12) Rulings and orders of the court, not directed to the admissibility of evidence during trial, when there has been no opportunity to make an objection or motion.
- (13) Error of law in the charge to the jury.
- (14) The court has expressed to the jury an opinion as to whether a fact is fully or sufficiently proved.

(15) The defendant was not present at any proceeding at which ~~his~~ the defendant's presence was required.

(16) Error occurred in the entry of the plea.

(17) The form of the verdict was erroneous.

(18) The sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.

(19) A significant change in law, either substantive or procedural, applies to the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required."

SECTION 8. G.S. 15A-2000 reads as rewritten:

"§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

(a) Separate Proceedings on Issue of Penalty. –

(1) Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt of a defendant of a capital felony in which the State has given notice of its intent to seek the death penalty, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one ~~which~~ that may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those

selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the alternate juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there ~~shall not be any~~ is no requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all ~~such~~ this evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to ~~sentence~~, sentence and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f) of this section. Any evidence ~~which~~ that the court deems to have probative value may be received.

(4) The State and the defendant or ~~his~~ the defendant's counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel ~~shall have~~ has the right to the last argument.

(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge to be warranted by the evidence shall be given by the court in its charge to the jury prior to its deliberation in determining sentence. The court shall give appropriate instructions in those cases in which evidence of the defendant's intellectual disability requires the consideration by the jury of the provisions of G.S. 15A-2005. In all cases in which the death penalty may be authorized,

1 the judge shall include in the judge's instructions to the jury that it must consider any aggravating
2 circumstance or circumstances or mitigating circumstance or circumstances from the lists
3 provided in subsections (e) and (f) of this section ~~which may be~~ that are supported by the
4 ~~evidence, evidence~~ and shall furnish to the jury a written list of issues relating to ~~such the~~
5 aggravating or mitigating circumstance or circumstances.

6 After hearing the evidence, argument of counsel, and instructions of the court, the jury shall
7 deliberate and render a sentence recommendation to the court, based upon all of the following
8 matters:

- 9 (1) Whether any sufficient aggravating circumstance or circumstances as
10 enumerated in subsection (e) of this section ~~exist~~ exists.
- 11 (2) Whether any sufficient mitigating circumstance or circumstances as
12 enumerated in subsection (f) of this section, ~~which~~ that outweigh the
13 aggravating circumstance or circumstances found, ~~exist~~ exists.
- 14 (3) Based on these considerations, whether the defendant should be sentenced to
15 death or to imprisonment in the State's prison for life.

16 The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors.
17 Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be
18 individually polled to establish whether each juror concurs and agrees to the sentence
19 recommendation returned.

20 If the jury cannot, within a reasonable time, unanimously agree to its sentence
21 recommendation, the judge shall impose a sentence of life imprisonment. The judge shall in no
22 instance impose the death penalty when the jury cannot agree unanimously to its sentence
23 recommendation.

(c) Findings in Support of Sentence of Death. – When the jury recommends a sentence of death, the foreman of the jury shall sign a writing on behalf of the jury that shows all of the following:

(1) The statutory aggravating circumstance or circumstances ~~which~~that the jury finds beyond a reasonable doubt.

(2) That the statutory aggravating circumstance or circumstances found by the jury are sufficiently substantial to call for the imposition of the death penalty.

(3) That the mitigating circumstance or circumstances are insufficient to outweigh the aggravating circumstance or circumstances found.

(d) Review of Judgment and Sentence. –

(1) The judgment of conviction and sentence of death ~~shall be~~is subject to automatic review by the Supreme Court of North Carolina pursuant to procedures established by the Rules of Appellate Procedure. In its review, the Supreme Court shall consider the punishment imposed as well as any ~~errors~~ assigned arguments raised on appeal.

(2) The sentence of death shall be overturned and a sentence of life imprisonment imposed in lieu thereof by the Supreme Court upon a finding that the record does not support the jury's findings of any aggravating circumstance or circumstances upon which the sentencing court based its sentence of death, or upon a finding that the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, or upon a finding that the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The Supreme Court may suspend consideration of death penalty cases until ~~such time as the~~

1 ~~court determines~~ it is prepared to make the comparisons required under this
2 section.

3 (3) If the sentence of death and the judgment of the trial court are reversed on
4 appeal for error in the post-verdict sentencing proceeding, the Supreme Court
5 shall order that a new sentencing hearing be conducted in conformity with the
6 procedures of this Article.

7 (e) Aggravating Circumstances. – Aggravating circumstances ~~which~~that may be
8 considered are limited to the following:

9 (1) The capital felony was committed by a person lawfully incarcerated.

10 (2) The defendant had been previously convicted of another capital felony or had
11 been previously adjudicated delinquent in a juvenile proceeding for
12 committing an offense that would be a capital felony if committed by an adult.

13 (3) The defendant had been previously convicted of a felony involving the use or
14 threat of violence to the person or had been previously adjudicated delinquent
15 in a juvenile proceeding for committing an offense that would be a Class A,
16 B1, B2, C, D, or E felony involving the use or threat of violence to the person
17 if the offense had been committed by an adult.

18 (4) The capital felony was committed for the purpose of avoiding or preventing a
19 lawful arrest or effecting an escape from custody.

20 (5) The capital felony was committed while the defendant was engaged, or was
21 an aider or abettor, in the commission of, or an attempt to commit, or flight
22 after committing or attempting to commit, any homicide, robbery, rape or a
23 sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful
24 throwing, placing, or discharging of a destructive device or bomb.

25 (6) The capital felony was committed for pecuniary gain.

- 1 (7) The capital felony was committed to disrupt or hinder the lawful exercise of
2 any governmental function or the enforcement of laws.
- 3 (8) The capital felony was committed against a law-enforcement officer,
4 employee of the Department of Adult Correction, an employee of the Division
5 of Juvenile Justice of the Department of Public Safety, jailer, fireman, judge
6 or justice, former judge or justice, prosecutor or former prosecutor, juror or
7 former juror, or witness or former witness against the defendant, while
8 engaged in the performance of ~~his~~ official duties or because of the exercise of
9 ~~his~~ official duty.
- 10 (9) The capital felony was especially heinous, atrocious, or cruel.
- 11 (10) The defendant knowingly created a great risk of death to more than one person
12 by means of a weapon or device ~~which~~ that would normally be hazardous to
13 the lives of more than one person.
- 14 (11) The murder for which the defendant stands convicted was part of a course of
15 conduct in which the defendant engaged and ~~which~~ that included the
16 commission by the defendant of other crimes of violence against another
17 person or persons.
- 18 (f) Mitigating Circumstances. – Mitigating circumstances ~~which~~ that may be considered
19 include, but are not limited to, the following:
- 20 (1) The defendant has no significant history of prior criminal activity.
- 21 (2) The capital felony was committed while the defendant was under the influence
22 of mental or emotional disturbance.
- 23 (3) The victim was a voluntary participant in the defendant's homicidal conduct
24 or consented to the homicidal act.

(4) The defendant was an accomplice in or accessory to the capital felony committed by another person and the defendant's participation was relatively minor.

(5) The defendant acted under duress or under the domination of another person.

(6) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was impaired.

(7) The age of the defendant at the time of the crime.

(8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

(9) Any other circumstance arising from the evidence ~~which~~ that the jury deems to have mitigating value."

[Staff Note: The section above reflects a change to subdivision (e)(8) made by S.L. 2021-180, s. 19C.9(ff), that will become effective January 1, 2023.]

SECTION 9. G.S. 62-90 reads as rewritten:

"§ 62-90. Right of ~~appeal; filing of exceptions.~~ appeal.

(a) Any party to a proceeding before the Commission may appeal from any final order or decision of the Commission within 30 days after the entry of ~~such~~ the final order or decision, or within ~~such~~ an additional time ~~thereafter as may be fixed~~ by the Commission, not to exceed 30 additional days, and by order made within 30 days, if the party aggrieved by ~~such~~ the decision or order ~~shall file~~ files with the Commission a notice of appeal ~~and exceptions which shall set that~~ sets forth specifically the ground or grounds on which the aggrieved party considers ~~said~~ the ~~decisions~~ decision or order to be unlawful, unjust, ~~unreasonable or unwarranted, and including~~ unreasonable, or unwarranted and that includes the errors alleged to have been committed by the Commission.

All other parties may give a notice of cross appeal and set out exceptions which shall set
cross-appeal that sets forth specifically the grounds on which the ~~said~~ party considers ~~said the~~
decision or order to be unlawful, unjust, ~~unreasonable or unwarranted, and including~~
unreasonable, or unwarranted and that includes the errors alleged to have been committed by the
Commission. ~~Such The notice of cross appeal and exceptions cross-appeal~~ shall be filed with the
Commission within 20 days after the first notice of appeal ~~and exceptions~~ has been filed, or
within ~~such an additional time thereafter as may be fixed by the Commission, not to exceed 20~~
additional days by order made within 20 days of the first filed notice of ~~appeal and exceptions.~~
appeal.

(b) Any party may appeal from all or any portion of any final order or decision of the
Commission in the manner ~~herein provided.~~ provided in this section. Copy of the notice of appeal
shall be mailed by the appealing ~~party party,~~ at the time of filing with the Commission, to each
party to the proceeding to the addresses as they appear in the files of the Commission in the
proceeding. The failure of any party, other than the Commission, to be served with or to receive
a copy of the notice of appeal ~~shall does~~ not affect the validity or regularity of the appeal.

(c) The Commission may on motion of any party to the proceeding or on its own motion
set the ~~exceptions~~ objections to the final order upon which ~~such the~~ appeal is based for further
hearing before the Commission.

(d) The appeal ~~shall lie~~ lies to the appellate division of the General Court of Justice as
provided in G.S. 7A-29. The procedure for the appeal ~~shall be as is~~ provided by the rules of
appellate procedure.

(e), (f) Repealed by Session Laws 1975, c. 391, s. 12.

(g) Repealed by Session Laws 1983, c. 526, s. 5."

SECTION 10. G.S. 62-94 reads as rewritten:

"§ 62-94. Record on appeal; extent of review.

(a) On appeal the court shall review the record and the ~~exceptions and assignments of error~~ issues raised in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the ~~same decision~~ decision null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, ~~conclusions~~ conclusions, or decisions ~~are~~ are any of the following:

(1) In violation of constitutional ~~provisions, or~~ provisions.

(2) In excess of statutory authority or jurisdiction of the ~~Commission, or~~ Commission.

(3) Made upon unlawful ~~proceedings, or~~ proceedings.

(4) Affected by other errors of ~~law, or~~ law.

(5) Unsupported by competent, ~~material~~ material, and substantial evidence in view of the entire record as ~~submitted, or~~ submitted.

(6) Arbitrary or capricious.

(c) In making ~~the foregoing~~ these determinations, the court shall review the whole record or ~~such the portions thereof as may be~~ of it that are cited by any ~~party~~ party, and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal ~~which that~~ which were not set forth specifically in ~~his~~ the appellant's notice of appeal filed with the Commission.

(d) The court shall also compel action of the Commission unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, ~~regulation~~, finding, determination, or order made by the Commission under ~~the provisions of this Chapter shall be~~ is prima facie just and reasonable."

SECTION 11. G.S. 105-345 reads as rewritten:

"§ 105-345. Right of ~~appeal~~; ~~filing of exceptions~~. appeal.

(a) No party to a proceeding before the Property Tax Commission may appeal from any final order or decision of the Commission unless within 30 days after the entry of ~~such the~~ final order or decision the party aggrieved by ~~such the~~ decision or order ~~shall file~~ files with the Commission a notice of appeal ~~and exceptions which shall set that sets~~ forth specifically the ground or grounds on which the aggrieved party considers ~~said the~~ decision or order to be unlawful, unjust, ~~unreasonable or unwarranted, and including unreasonable, or unwarranted and~~ that includes the errors alleged to have been committed by the Commission.

(b) Any party may appeal from all or any portion of any final order or decision of the Commission in the manner ~~herein provided~~. provided in this section. Copy of the notice of appeal shall be mailed by the appealing ~~party~~ party, at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party, other than the Commission, to be served with or to receive a copy of the notice of appeal ~~shall~~ does not affect the validity or regularity of the appeal.

(c) The Commission may on motion of any party to the proceeding or on its own motion set the ~~exceptions~~ objections to the final order upon which ~~such the~~ appeal is based for further hearing before the Commission.

(d) The appeal ~~shall lie~~ lies to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal ~~shall be as~~ is provided by the rules of appellate procedure.

(e) The Court of Appeals shall hear and determine all matters arising on ~~such~~ the appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of ~~said~~ the appeal to any panel of the Court of Appeals."

SECTION 12. G.S. 105-345.2 reads as rewritten:

"§ 105-345.2. Record on appeal; extent of review.

(a) On appeal the court shall review the record and the ~~exceptions and assignments of error~~ issues raised in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Property Tax Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the ~~same~~ decision null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, ~~conclusions~~ conclusions, or decisions ~~are~~ are any of the following:

(1) In violation of constitutional ~~provisions~~; or provisions.

(2) In excess of statutory authority or jurisdiction of the ~~Commission~~; or Commission.

(3) Made upon unlawful ~~proceedings~~; or proceedings.

(4) Affected by other errors of ~~law~~; or law.

(5) Unsupported by competent, ~~material~~ material, and substantial evidence in view of the entire record as ~~submitted~~; or submitted.

(6) Arbitrary or capricious.

(c) In making ~~the foregoing these~~ determinations, the court shall review the whole record or ~~such the~~ portions thereof ~~as may be of it that are~~ cited by any ~~party party~~, and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal ~~which that~~ were not set forth specifically in ~~his the~~ appellant's notice of appeal filed with the Commission."

SECTION 13. This act is effective when it becomes law.

Background Statute:

§ 7A-29. Appeals of right from certain administrative agencies.

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, the State Board of Elections under G.S. 163-127.6, the Office of Administrative Hearings under G.S. 126-34.02, or the Secretary of Environmental Quality under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court. (1967, c. 108, s. 1; 1971, c. 703, s. 5; 1975, c. 582, s. 12; 1979, c. 584, s. 1; 1981, c. 704, s. 28; 1983, c. 526, s. 1; c. 761, s. 188; 1983 (Reg. Sess., 1984), c. 1000, s. 2; c. 1087, s. 2; c. 1113, s. 2; 1985, c. 462, s. 3; 1987, c. 850, s. 2; 1991, c. 546, s. 2; c. 679, s. 2; 1993, c. 501, s. 2; 1995, c. 115, s. 1; c. 504, s. 2; c. 509, s. 2; 1997-443, ss. 11A.118(a), 11A.119(a); 2003-63, s. 1; 2006-155, s. 1.1; 2013-382, s. 6.4; 2015-241, s. 14.30(v); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)