

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 377
SENATE BILL 799

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 G.S. 1-279 is repealed.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 62(a) reads as rewritten:

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

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

"(b) Stay on motion for new trial or for judgment. – In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b). If the time provided in the controlling statute or rule of appellate procedure for giving notice of appeal from the judgment had not expired before a stay under this subsection was entered, that time shall begin to run immediately upon the expiration of any stay under this section, and no execution shall

issue nor shall proceedings be taken for enforcement of the judgment until the expiration of that time."

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

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

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

(1) A case remains open for the taking of an appeal to the appellate division for a ~~period of 10 days after the entry of judgment. the period provided in the rules of appellate procedure for giving notice of appeal.~~

(2) When a motion for appropriate relief is made ~~during the 10-day period, under G.S. 15A-1414 or G.S. 15A-1416(a),~~ the case remains open for the taking of an appeal until the ~~expiration of 10 days after court has ruled on the motion. The time for taking an appeal as provided in subsection (b) shall begin to run immediately upon the entry of an order under G.S. 15A-1420(c)(7), and the case shall remain open for the taking of an appeal until the expiration of that time.~~

(3) The jurisdiction of the trial court with regard to the case is divested, except as to actions authorized by G.S. 15A-1453, when notice of appeal has been given and the period described in (1) and (2) has expired.

(4) Repealed by Session Laws 1987, c. 624.

(5) The right to appeal is not waived by withdrawal of an appeal if the appeal is reentered within the time specified in (1) and (2).

(6) The right to appeal is not waived by compliance with all or a portion of the judgment imposed. If the defendant appeals, the court may enter appropriate orders remitting any fines or costs which have been paid. The court may delay the remission pending the determination of the appeal.

(b) How and When Appeal of Right Taken. –

~~(1) Oral notice of appeal may be given in open court:~~

a. At the time final judgment is entered; or

b. ~~When the court rules upon a post-verdict motion for appropriate relief, if appeal is then available.~~

~~(2) Written notice of appeal may be filed with the clerk after final judgment and before the time for taking an appeal has expired.~~

Notice of appeal shall be given within the time, in the manner and with the effect provided in the rules of appellate procedure.

(c) **Certiorari.** – Petitions for writs of **certiorari** are governed by rules of the appellate division."

Sec. 6. This act shall become effective July 1, 1989, and shall apply to all judgments of the district or superior court entered on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1989.