

## **16.4 Transmitting the Appeal to the Appellate Defender**

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## **16.4 Transmitting the Appeal to the Appellate Defender**

Once the trial court enters disposition and counsel has filed notice of appeal, counsel should take steps to ensure that the appeal proceeds in a timely manner. Although some juveniles might be represented by retained counsel on appeal, most are represented by the Office of the Appellate Defender or an attorney assigned by the Office of the Appellate Defender. If the juvenile will not be represented by a retained attorney on appeal, counsel should make sure that the trial court enters an order of appellate entries appointing the Office of the Appellate Defender to the case. Counsel should make sure that the clerk sends a copy of the signed order of appellate entries to the Office of the Appellate Defender.

### **A. The Appellate Entries**

An order of appellate entries is a court order that appoints the Appellate Defender to an appeal. In adult criminal appeals, the court will not appoint the Appellate Defender unless the court finds that the defendant is indigent. Juveniles in delinquency cases are presumed to be indigent. G.S. 7B-2000(b). Thus, no finding of indigency is required. Counsel should still review the appellate entries to ensure that the box identifying the Appellate Defender as the juvenile's initial appellate counsel is checked. If the box is not checked, the Appellate Defender must return the form to the clerk to check the box for the Appellate Defender.

An order of appellate entries also identifies the hearings that will be transcribed for the appeal, assigns a court reporter to prepare the transcripts, directs the clerk to send a copy of the complete trial division court file to the juvenile's appellate attorney, and assigns a translator to the appeal if a translator is needed. If counsel does not prepare the order of appellate entries, counsel should ensure that the order of appellate entries lists all of the hearing dates and that section five, which concerns a translator, identifies the juvenile's native language if the juvenile needs a translator. If all of the relevant hearing dates are not listed, the appellate attorney will have to identify the hearings, file a motion to have the hearings transcribed, and coordinate with the court reporter to prepare transcripts of the hearings, which will delay the appeal. Additionally, if the order of appellate entries does not appoint a translator when one is needed, the appellate attorney will be required to file a motion to appoint a translator, which will delay communication with the juvenile while the motion is ruled on by the court and the appellate attorney coordinates with the translator.

A blank order of appellate entries is available on the Administrative Office of the Courts website. See [Form AOC-J-470](#) (Appellate Entries in Delinquency Proceeding) (June

2015). Although the order of appellate entries includes a notation that the juvenile entered notice of appeal, the order is *not* a substitute for giving proper notice of appeal. *State v. Blue*, 115 N.C. App. 108, 113 (1994).

## **B. Timeliness of the Transfer**

Currently, there is no deadline under the Rules of Appellate Procedure for the trial court to enter an order of appellate entries. In part because of the lack of any deadline, there is usually a delay between the filing of the notice of appeal and the appointment of the Appellate Defender. In some cases, the delay lasts several weeks, which in turn delays the appeal. One of the purposes of the Juvenile Code is to provide “swift” dispositions in juvenile delinquency cases. G.S. 7B-1500(2)a. Counsel therefore should take the following steps to reduce delays that may occur in district court after notice of appeal is filed.

First, counsel should talk to the juvenile before the dispositional hearing about whether the juvenile intends to appeal. Although G.S. 7B-2602 gives the juvenile 10 days to enter notice of appeal, giving notice of appeal when disposition is entered will prevent delays at the outset of the appeal. *See supra* § 16.2, Notice of Appeal (discussing giving oral notice of appeal).

Second, counsel should fill out the order of appellate entries and submit it to the judge after giving oral notice of appeal or filing written notice of appeal. Although the order of appellate entries is often prepared by the clerk, there is no rule preventing counsel from completing the form. If counsel prepares the order of appellate entries and presents it to the judge, counsel can reduce any delays that might result from the clerk completing the order. Counsel should ensure that the originals of a written notice of appeal and order of appellate entries are filed with the clerk.

Third, counsel should work with the clerk to ensure that a court reporter is assigned to the appeal in a timely manner. Generally, the first deadline in an appeal is for the preparation of the transcript. *See N.C. R. APP. P. 7* (stating that the court reporter has 60 days to prepare the transcript in civil appeals). In some counties, the clerk knows which court reporter to assign to a juvenile delinquency appeal. In other counties, the clerk does not immediately know who to assign and must identify a court reporter, which delays commencement of the initial deadline for the transcript. If the clerk is unsure which court reporter to assign, counsel should contact the Court Reporting Manager for the Administrative Office of the Courts (AOC). David Jester, the current Court Reporting Manager, will assist the clerk in identifying a court reporter for the juvenile’s appeal. He can be reached by phone at (919) 831-5974 or by email at [David.E.Jester@nccourts.org](mailto:David.E.Jester@nccourts.org). Counsel should also check that the clerk completes the “Tracking and Receipt” section on the second page of the order of appellate entries as the date that the recording of the hearing is transmitted to the court reporter starts the initial 60-day period that the court reporter has to prepare the transcript.

Fourth, counsel should ensure that the clerk sends a copy of the order of appellate entries to the Office of the Appellate Defender in a timely manner. According to Rule 3.2(c) of the [Rules of the Office of Indigent Defense Services for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals](#) (May 2015), the clerk “shall immediately” send the judgment and order of appellate entries to the Office of the Appellate Defender once the order of appellate entries is filed. If there is any question of whether the order has been sent, counsel may contact the Office of the Appellate Defender and advise the office of the appeal. The Office of the Appellate Defender will follow up with the clerk or counsel if there is a delay in receiving the order of appellate entries.