

March 24, 2009

**S 853. MOTION FOR APPROPRIATE RELIEF/NEW REQUIREMENT.** Filed 3/24/09. *TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AND HAS NOTIFIED AND CONSULTED WITH OR HAS MADE A GOOD FAITH EFFORT TO NOTIFY AND CONSULT WITH BOTH THE ATTORNEY WHO INITIALLY PROSECUTED THE CASE AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.*

Amends GS 15A-1420(a) as title indicates. Effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date.

**Intro. by Vaughan.**

GS 15A

July 2, 2009

**S 853. MOTION FOR APPROPRIATE RELIEF/NEW REQUIREMENT.** Filed 3/24/09. House committee substitute makes the following changes to 1st edition. Changes title to *AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF IN SUPERIOR COURT, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE MOTION IS MADE IN GOOD FAITH AND ON SOUND LEGAL BASIS, THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AS APPROPRIATE, OR IF THE TRANSCRIPT IS UNAVAILABLE, STATE THE EFFORTS UNDERTAKEN TO LOCATE THE TRANSCRIPT, AND THE ATTORNEY HAS NOTIFIED BOTH THE DISTRICT ATTORNEY AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.* Amends GS 15A-1420(a)(1)(c1) requiring that a motion for appropriate relief made in superior court by an attorney also contain certifications stating that there is a sound legal basis and that the motion is made in good faith, and make statements concerning the trial transcript as indicated in the title. New GS 15A-1420(a)(5) provides that a court may not grant an oral or written motion for appropriate relief made by an attorney unless the attorney has complied with the requirements of GS 15A-1420(a)(1)c1.

July 28, 2009

**S 853. MOTION FOR APPROPRIATE RELIEF/NEW REQUIREMENT.** Filed 3/24/09. House committee substitute makes the following changes to 2nd edition. Amends GS 15A-1415(f) to require that the following be made available to a defendant's council when the defendant is represented by council in post-conviction proceedings in superior court: (1) files from the defendant's prior trial or appellate counsel related to the defendant's case and (2) files from law enforcement and the prosecution involved in the investigation of crimes committed or prosecution of the defendant. Under current law, these files are required to be made available when the defendant is a capital defendant. Also allows the court, when it finds that portions of the files will not assist the defendant with investigating, preparing, or presenting a motion for appropriate relief, to allow the state to withhold portions of the files when the state has a reasonable belief that allowing inspection of the files by the defendant's (was, capital defendant's) counsel would not be in the interest of justice and therefore submits portions of the files to the court for inspection. Makes a technical change to proposed GS 15A-1420(a)(5). Makes conforming changes to the title.

September 1, 2009

**SL 2009-517 (S 853). MOTION FOR APPROPRIATE RELIEF/NEW REQUIREMENT.** *AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF IN SUPERIOR COURT, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE MOTION IS MADE IN GOOD FAITH AND ON SOUND LEGAL BASIS, THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AS*

APPROPRIATE, OR IF THE TRANSCRIPT IS UNAVAILABLE, STATE THE EFFORTS UNDERTAKEN TO LOCATE THE TRANSCRIPT, AND THE ATTORNEY HAS NOTIFIED BOTH THE DISTRICT ATTORNEY AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION, TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION; AND TO REQUIRE THAT PRIOR TRIAL AND APPELLATE COUNSEL FOR THE DEFENDANT AND THE STATE MAKE ALL FILES RELATED TO THE DEFENDANT'S CASE AVAILABLE TO THE DEFENDANT'S ATTORNEY FOR POSTCONVICTION PROCEEDINGS IN SUPERIOR COURT. Summarized in *Daily Bulletin* 3/24/09, 7/2/09, and 7/28/09. Enacted August 26, 2009. Effective December 1, 2009.