

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 853  
House Committee Substitute Favorable 7/2/09  
House Committee Substitute #2 Favorable 7/28/09

Short Title: Motion for Appropriate Relief/New Requirement.

(Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

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.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and

4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; ~~and~~

c1. If the motion for appropriate relief is being made in superior court and is being made by an attorney, the attorney must certify in writing that there is a sound legal basis for the motion and that it is being made in good faith; and that the attorney has notified both the district attorney's office and the attorney who initially represented the defendant of the motion; and further, that the attorney has reviewed the trial transcript or made a good-faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety. In the event that the trial transcript is unavailable, instead of certifying that the attorney has read the trial



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1 transcript, the attorney shall set forth in writing what efforts were  
2 undertaken to locate the transcript; and

3 d. Be timely filed.

4 (2) A written motion for appropriate relief must be served in the manner  
5 provided in G.S. 15A-951(b). When the written motion is made more than  
6 10 days after entry of judgment, service of the motion and a notice of  
7 hearing must be made not less than five working days prior to the date of the  
8 hearing. When a motion for appropriate relief is permitted to be made orally  
9 the court must determine whether the matter may be heard immediately or at  
10 a later time. If the opposing party, or his counsel if he is represented, is not  
11 present, the court must provide for the giving of adequate notice of the  
12 motion and the date of hearing to the opposing party, or his counsel if he is  
13 represented by counsel.

14 (3) A written motion for appropriate relief must be filed in the manner provided  
15 in G.S. 15A-951(c).

16 (4) An oral or written motion for appropriate relief may not be granted in district  
17 court without the signature of the district attorney, indicating that the State  
18 has had an opportunity to consent or object to the motion. However, the  
19 court may grant a motion for appropriate relief without the district attorney's  
20 signature 10 business days after the district attorney has been notified in  
21 open court of the motion, or served with the motion pursuant to  
22 G.S. 15A-951(c).

23 (5) An oral or written motion for appropriate relief made in superior court and  
24 made by an attorney may not be granted by the court unless the attorney has  
25 complied with the requirements of sub-subdivision c1. of subdivision (1) of  
26 this subsection."

27 **SECTION 2.** G.S. 15A-1415(f) reads as rewritten:

28 "(f) In the case of a defendant ~~who has been convicted of a capital offense and sentenced~~  
29 ~~to death,~~ who is represented by counsel in postconviction proceedings in superior court, the  
30 defendant's prior trial or appellate counsel shall make available to the ~~capital~~-defendant's  
31 counsel their complete files relating to the case of the defendant. The State, to the extent  
32 allowed by law, shall make available to the ~~capital~~-defendant's counsel the complete files of all  
33 law enforcement and prosecutorial agencies involved in the investigation of the crimes  
34 committed or the prosecution of the defendant. If the State has a reasonable belief that allowing  
35 inspection of any portion of the files by counsel for the ~~capital~~-defendant would not be in the  
36 interest of justice, the State may submit for inspection by the court those portions of the files so  
37 identified. If upon examination of the files, the court finds that the files could not assist the  
38 ~~capital~~-defendant in investigating, preparing, or presenting a motion for appropriate relief, the  
39 court in its discretion may allow the State to withhold that portion of the files."

40 **SECTION 3.** This act becomes effective December 1, 2009, and applies to all  
41 motions for appropriate relief made on or after that date.