

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 853

Short Title: Motion for Appropriate Relief/New Requirement. (Public)

Sponsors: Senator Vaughan.

Referred to: Judiciary II.

March 25, 2009

A BILL TO BE ENTITLED

AN ACT 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.

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. Certify in writing that the attorney making the motion 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 in the case, if the defendant was represented by counsel, of the motion; and

d. Be timely filed.

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



- 1 motion and the date of hearing to the opposing party, or his counsel if he is
2 represented by counsel.
- 3 (3) A written motion for appropriate relief must be filed in the manner provided
4 in G.S. 15A-951(c).
- 5 (4) An oral or written motion for appropriate relief may not be granted in district
6 court without the signature of the district attorney, indicating that the State
7 has had an opportunity to consent or object to the motion. However, the
8 court may grant a motion for appropriate relief without the district attorney's
9 signature 10 business days after the district attorney has been notified in
10 open court of the motion, or served with the motion pursuant to
11 G.S. 15A-951(c).
- 12 (5) An oral or written motion for appropriate relief may not be granted by the
13 court without written certification by the attorney making the motion that the
14 attorney has reviewed the trial transcript and has notified and consulted with
15 or has made a good faith effort to notify and consult with both the attorney
16 who initially prosecuted the case and the defense attorney who initially
17 represented the defendant in the case, if the defendant was represented by
18 counsel, of the motion. The written certification required by this subdivision
19 shall appear on the motion."

20 **SECTION 2.** This act becomes effective December 1, 2009, and applies to all
21 motions for appropriate relief made on or after that date.