

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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

Short Title: Motion for Appropriate Relief/New Requirement.

(Public)

Sponsors:

Referred to:

March 25, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR  
3 APPROPRIATE RELIEF IN SUPERIOR COURT, WHETHER BY ORAL OR WRITTEN  
4 MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE MOTION IS  
5 MADE IN GOOD FAITH AND ON SOUND LEGAL BASIS, THAT THE ATTORNEY  
6 HAS REVIEWED THE TRIAL TRANSCRIPT AS APPROPRIATE, OR IF THE  
7 TRANSCRIPT IS UNAVAILABLE, STATE THE EFFORTS UNDERTAKEN TO  
8 LOCATE THE TRANSCRIPT, AND THE ATTORNEY HAS NOTIFIED BOTH THE  
9 DISTRICT ATTORNEY AND THE DEFENSE ATTORNEY WHO INITIALLY  
10 REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT  
11 THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.

12 The General Assembly of North Carolina enacts:

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

14 "(a) Form, Service, Filing.

15 (1) A motion for appropriate relief must:

16 a. Be made in writing unless it is made:

17 1. In open court;

18 2. Before the judge who presided at trial;

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

20 4. Within 10 days after entry of judgment;

21 b. State the grounds for the motion;

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

23 c1. If the motion for appropriate relief is being made in superior court  
24 and is being made by an attorney, the attorney must certify in writing  
25 that there is a sound legal basis for the motion and that it is being  
26 made in good faith; and that the attorney has notified both the district  
27 attorneys' office and the attorney who initially represented the  
28 defendant of the motion; and further, that the attorney has reviewed  
29 the trial transcript or made a good faith determination that the nature  
30 of the relief sought in the motion does not require that the trial  
31 transcript be read in its entirety. In the event that the trial transcript is  
32 unavailable, instead of certifying that the attorney has read the trial  
33 transcript, the attorney shall set forth in writing what efforts were  
34 undertaken to locate the transcript; and

35 d. Be timely filed.

36 (2) A written motion for appropriate relief must be served in the manner  
37 provided in G.S. 15A-951(b). When the written motion is made more than



1 10 days after entry of judgment, service of the motion and a notice of  
2 hearing must be made not less than five working days prior to the date of the  
3 hearing. When a motion for appropriate relief is permitted to be made orally  
4 the court must determine whether the matter may be heard immediately or at  
5 a later time. If the opposing party, or his counsel if he is represented, is not  
6 present, the court must provide for the giving of adequate notice of the  
7 motion and the date of hearing to the opposing party, or his counsel if he is  
8 represented by counsel.

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

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

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

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