

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN THE MATTER OF }
PROMULGATING OR }
AMENDING LOCAL RULES }
OF CRIMINAL PROCEDURE }
FOR THE SUPERIOR COURTS }
OF JUDICIAL DISTRICT 16B }
_____ }

**ORDER ADOPTING LOCAL RULE ON
MOTIONS FOR APPROPRIATE RELIEF**

THIS CAUSE, coming on to be heard and being heard before the undersigned Senior Resident Superior Court Judge of Judicial District 16B. After careful consideration of the matter of promulgating or amending Local Rules of Criminal Procedure for the Superior Courts of Judicial District 16B, the undersigned makes the following Findings and Conclusions:

1. The undersigned has the authority and the duty to promulgate such local rules pursuant to the Caseflow Management Plan, adopted on 1 May 1996 by the North Carolina State Supreme Court, as well as the express, implied and inherent powers, authority and duties of the office of the Senior Resident Judge.

2. The superior court criminal case docketing statute does not address motions for appropriate relief. G.S. §7A-49.4. Therefore, the Senior Resident Judge should address procedural issues concerning such motions by adoption of appropriate local rules.

IT IS NOW, THEREFORE, ORDERED:

01. The Local Rule on Motions for Appropriate Relief, attached hereto and incorporated herein by reference, is hereby adopted as the official rule or policy regarding such motions in the local superior courts.

02. This rule or policy supersedes all prior such rules, policies and customs and shall be effective immediately.

03. The Superior Court Trial Court Coordinator shall file this order, including the local rule, with the Clerk of Superior Court and thereafter with the North Carolina Administrative Office of the Courts.

04. The Clerk shall serve copies of this order, including the local rule, upon the Sheriff, Judges, District Attorney, Public Defender, magistrates, and each attorney or law firm maintaining a mailbox in the Robeson County Courthouse, and shall enter hereon a certificate of such service.

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ENTERED in chambers in the Robeson County Courthouse on this the ____ day of
February 2001.

THE HONORABLE DEXTER BROOKS
Senior Resident Superior Court Judge

LOCAL RULE ON MOTIONS FOR APPROPRIATE RELIEF

- a) **General.** Except as otherwise provided by this rule or the court, motions for appropriate relief and other post-trial relief shall be as provided in Article 89 of Chapter 15A of the General Statutes.
- b) **Procedure by Clerk.** Upon receipt of a motion, the clerk shall promptly bring same to the attention of a presiding or resident judge. G.S. §15A-1420(b1)(2).
- c) **Hearing Not Required.** When a motion for appropriate relief presents only questions of law, including questions of federal constitutional law, the court must determine the motion without an evidentiary hearing. G.S. §15A-1420(c)(3). If the court can determine from the motion and any supporting or opposing information presented that the motion is “without merit”, it may deny the motion without any hearing either on questions of fact or questions of law, including constitutional questions. G.S. §15A-1420(c)(1). Where the facts are in dispute but the court can determine that the defendant is entitled to no relief even upon the facts as asserted in the motion, the court may determine that the motion is “without merit” and deny it without a hearing. State v. McHone, 348 N.C. 254(1998).
- d) **Conclusions and Reasoning.** Summary denial without conclusions and a statement of the court’s reasoning is not proper where the defendant bases the motion upon an asserted violation of his or her constitutional rights. G.S. §15A-1420(c)(7); State v. McHone, supra.
- e) **Court’s Own Motion.** If a defendant would be entitled to relief by motion for appropriate relief, the court, after appropriate notice to the parties, may grant such relief upon its own motion. See G.S. §15A-1420(d).
- f) **Hearing Required.** If the court cannot rule on the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence and must make appropriate findings of fact. G.S. §15A-1420(c)(1) & (4); State v. McHone, supra. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. G.S. §15A-1420(c)(4). In noncapital cases, the judge should enter an order whether the defendant should be allowed to proceed with payment of costs, with respect to appointment of counsel, and directing the State, if necessary, to file an answer. In capital cases, the order should direct the State to file an answer within 60 days of the date of the order. G.S. §15A-1420(b1)(2).
- g) **Request for Hearing.** After the pleadings are closed, counsel for the defendant shall confer with the District Attorney or his/her designee in order to determine a mutually agreeable hearing date. Upon such agreement, the parties shall request that a resident or

presiding judge set such a date for the hearing. Failing such agreement, either party may request that a resident or presiding judge set the motion for hearing upon written notice to the other party.

h) **Calendaring of Hearings.** The authority to set such motions for hearing rests solely with the court. G.S. §15A-1420(b1). While ordinarily the court should accommodate counsel for the parties regarding the dates of such hearings, a motion should be calendared for hearing “without unnecessary delay.” *Id.*

i) **Capital Cases.**

1) **General.** When considering motions for appropriate relief in capital cases, the procedures specified in Rule 25 of the Rules of Practice should be used.

i) All appointments of defense counsel should be made by the Senior Resident Judge or his/her designee. *Id.*

ii) All requests for experts, *ex parte* matters, interim attorney fee awards, and similar matters arising prior to the filing of the motion should be ruled on by the Senior Resident Judge or his/her designee. *Id.*

iii) When filed, the motions should be referred to the Senior Resident Judge or his/her designee for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate action. *Id.*

2) **Discovery.**

i) **Disclosure.** The defendant’s prior trial or appellate counsel shall make available to the capital defendant’s counsel their complete files relating to the case of the defendant. G.S. §15A-1415(f). The prosecution shall make available to the capital defendant’s counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. *Id.*; *State v. Bates*, 348 N.C. 29(1998).

ii) **Requests Not to Disclose.** If the prosecution has a reasonable belief that applicable law prohibits the disclosure of certain information contained within such files or that allowing inspection of any portion of such files by defense counsel would not be in the interest of justice, the prosecution must submit such information or portions for inspection by the court. If upon examination of such information the court determines that disclosure is prohibited by law, the court may deny defense counsel access to such information. If upon examination of such portions, the court finds that the files could not assist defense counsel in investigating, preparing, or presenting a motion for appropriate relief, the court, in its discretion, may allow the prosecution to withhold that portion of the files. G.S. §15A-1415(f).