

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 853
PROPOSED HOUSE COMMITTEE SUBSTITUTE S853-PCS85254-SA-56

Short Title: Motion for Appropriate Relief/New Requirement.

(Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

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

11 The General Assembly of North Carolina enacts:

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

13 "(a) Form, Service, Filing.

14 (1) A motion for appropriate relief must:

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

- 16 1. In open court;
- 17 2. Before the judge who presided at trial;
- 18 3. Before the end of the session if made in superior court; and
- 19 4. Within 10 days after entry of judgment;

20 b. State the grounds for the motion;

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

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



* S 8 5 3 - P C S 8 5 2 5 4 - S A - 5 6 *

- 1 d. Be timely filed.
- 2 (2) A written motion for appropriate relief must be served in the manner
- 3 provided in G.S. 15A-951(b). When the written motion is made more than
- 4 10 days after entry of judgment, service of the motion and a notice of
- 5 hearing must be made not less than five working days prior to the date of the
- 6 hearing. When a motion for appropriate relief is permitted to be made orally
- 7 the court must determine whether the matter may be heard immediately or at
- 8 a later time. If the opposing party, or his counsel if he is represented, is not
- 9 present, the court must provide for the giving of adequate notice of the
- 10 motion and the date of hearing to the opposing party, or his counsel if he is
- 11 represented by counsel.
- 12 (3) A written motion for appropriate relief must be filed in the manner provided
- 13 in G.S. 15A-951(c).
- 14 (4) An oral or written motion for appropriate relief may not be granted in district
- 15 court without the signature of the district attorney, indicating that the State
- 16 has had an opportunity to consent or object to the motion. However, the
- 17 court may grant a motion for appropriate relief without the district attorney's
- 18 signature 10 business days after the district attorney has been notified in
- 19 open court of the motion, or served with the motion pursuant to
- 20 G.S. 15A-951(c).
- 21 (5) An oral or written motion for appropriate relief made in superior court and
- 22 made by an attorney may not be granted by the court unless the attorney has
- 23 complied with the requirements of sub-subdivision (1)c1. of this subsection."

24 **SECTION 2.** This act becomes effective December 1, 2009, and applies to all

25 motions for appropriate relief made on or after that date.