




Motions for Appropriate Relief: Common Abuses

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Why
should
you care:

- ▶ ***Resources that are
already over-burdened***
 - ▶ Clerks
 - ▶ Judges
 - ▶ District Attorneys
 - ▶ State supported Attorneys (not in
all cases)



Who we are:

- ▶ State employees that are in the trenches with MARs
- ▶ Not policy makers
- ▶ Interested in ensuring access to the criminal justice system without wasting man-hours we do not have
- ▶ Every hour wasted is one not spent on a case that deserves attention

Resources: MAR filings on the rise

- ▶ Judge's Office – Cumberland County
 - ▶ 24 orders last calendar year
 - ▶ 46 orders this calendar year
 - ▶ Average of 3 hours work per MAR
 - ▶ Estimated 90% are dismissed before hearing
 - ▶ Does not account for those that went to hearing in Superior Court

Resources:

- ▶ Forsyth County
 - ▶ 15-20 MARs a month
 - ▶ Overwhelming majority (90%) frivolous
 - ▶ Around 20% are repeat filers
 - ▶ All falls on senior resident and a single judicial assistant to sift through and enter appropriate orders
 - ▶ Nearly two days each month spent addressing them
 - ▶ When the defendant is not satisfied with the result (75%), the judges' office has to send a letter to defendant explaining the appeal process
 - ▶ Judge Wood relies on input from the State (not all counties have senior residents like this)

Resources:

- ▶ Clerk's Office – Cumberland County
 - ▶ They have a geek on the other end – not labor intensive
 - ▶ Not necessarily a geek in all 100 counties
 - ▶ Most print files – serious cases normally hundreds of pages

Resources:

Forsyth County
Clerk's Office

- ▶ 15A-1420(b1)(2) requires new MAR placed on first docket
- ▶ Clerks retrieve the court file; on older cases, have to recreate the file from microfilm
- ▶ Clerks enter the MAR in the system
- ▶ Clerk takes file to the judges' office
- ▶ Judge's Order time-stamped and mailed to the defendant
- ▶ Appropriate status is entered into system following disposition, new action microfilmed
- ▶ Unsatisfied defendant files Motion to Reconsider, starting process anew

Resources

- ▶ District Attorney's Office – Cumberland County
 - ▶ Has to be a person with experience
 - ▶ Process in our office
 - ▶ File together – digital / paper
 - ▶ Research
 - ▶ Track / communicate
 - ▶ Respond
- ▶ Conservatively - 300 hours this calendar year

Resources: District Attorney's Office Forsyth County

- ▶ Needs to be a senior ADA – Violent Felony Prosecutor
- ▶ Each MAR thoroughly reviewed for merit
- ▶ Most are poorly-written; have to extrapolate what defendant is actually claiming
- ▶ Check for required affidavit and/or documentary evidence (15A-1420(b)(1))
- ▶ Check court file for procedural bar
- ▶ Go through plea agreement to; claims waived by default?
- ▶ Research substantive law and factual allegations in MAR
- ▶ In 2013, DA's office filed 50 Answers, either by Order or voluntarily
 - ▶ Only one was entitled to evidentiary hearing, although ultimately denied

Common Abuses:

- ▶ Frivolous Filings
 - ▶ Hail Mary – repeated
 - ▶ No facts or law supporting position
 - ▶ Alleging facts impossible to verify
- ▶ Bad-Faith Filings
 - ▶ Fabrications
 - ▶ File MAR to get discovery to attempt to renegotiate
- ▶ Lack of familiarity with the rules
 - ▶ Judges and inmates

Potential Solutions: Generally

- ▶ Add manpower
 - ▶ Judges
 - ▶ Assistants to the Judges
 - ▶ Assistant District Attorneys
- ▶ Training for the different groups on efficiency

Potential Solutions: Generally

- ▶ Specific statutory provision authorizing contempt sanctions for frivolous and repetitive filings
- ▶ Greater use of Rule 11 sanctions for lawyers who file frivolous and repetitive filings
- ▶ Preliminary finding of no procedural bar and facial merit before docketing required or discovery ordered (with State input)
- ▶ Specific training for MAR coordinators in DA's offices on procedural and substantive law
- ▶ Special judicial panels to address MARS

Potential Solutions: Frivolous Filings

STATE OF NORTH CAROLINA
Cumberland Co.

State of North Carolina
Respondent,
vs.
Gerald (Terry) Adams
Defendant,

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
(File No.)
[00CR556201]

MOTION FOR
APPROPRIATE RELIEF

North Carolina
Hurky
Defendant,
North Carolina
Respondent,

IN THE GENERAL COURT
OF JUSTICE,
SUPERIOR COURT DIVISION
File No. 07CR5-057207-
08-09.

MOTION FOR
APPROPRIATE RELIEF

North Carolina
County
North Carolina
Nathaniel J. Barron
Defendant,

IN the General Court of
JUSTICE
SUPERIOR COURT SECTION
FILE NO. 08CR5018252

Motion For
APPROPRIATE RELIEF

Potential Solutions:

Frivolous Filings - Sanctions

- ▶ Problem: Most inmates do frivolous MARs because there is no reason not to
- ▶ Solution: Add sanctions directly to the MAR statutes (§ 15A Art. 89 N.C.G.S.)
 - ▶ Put everyone, attorneys and inmates, on notice of the sanctions already available, and...
 - ▶ Potentially new sanctions, including those that could be imposed by the Department of Adult Corrections

Potential Solutions: Frivolous Filings - Sanctions

Benefit:

- ▶ Deter conduct with monetary sanctions – example – Rule 11
- ▶ Avoid future conduct with gatekeeper orders
- ▶ Potential criminal sanctions with charging prisoners with unauthorized practice of law if assisting another prisoner (“jail-house lawyer”)

Cost:

- ▶ Cannot sanction anyone without hearing – due process
- ▶ Gatekeeper order could bar future potential meritorious claim based on new evidence or retroactive change in law
- ▶ Criminal investigations with prisoners difficult to do, and expensive to follow through with

Potential Solutions:

Require Inmates to file by form

- ▶ Problem: Most inmates do not have the legal knowledge – most use form language passed inmate to inmate
- ▶ Solution: A form designed by someone with experience could cut down on the judge's review time



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