

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-517
SENATE BILL 853**

AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF IN SUPERIOR COURT, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE MOTION IS MADE IN GOOD FAITH AND ON SOUND LEGAL BASIS, THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AS APPROPRIATE, OR IF THE TRANSCRIPT IS UNAVAILABLE, STATE THE EFFORTS UNDERTAKEN TO LOCATE THE TRANSCRIPT, AND THE ATTORNEY HAS NOTIFIED BOTH THE DISTRICT ATTORNEY AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION, TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION; AND TO REQUIRE THAT PRIOR TRIAL AND APPELLATE COUNSEL FOR THE DEFENDANT AND THE STATE MAKE ALL FILES RELATED TO THE DEFENDANT'S CASE AVAILABLE TO THE DEFENDANT'S ATTORNEY FOR POSTCONVICTION PROCEEDINGS IN SUPERIOR COURT.

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



motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

- (3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).
- (4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).
- (5) An oral or written motion for appropriate relief made in superior court and made by an attorney may not be granted by the court unless the attorney has complied with the requirements of sub-subdivision c1. of subdivision (1) of this subsection.

SECTION 2. G.S. 15A-1415(f) reads as rewritten:

"(f) In the case of a defendant ~~who has been convicted of a capital offense and sentenced to death,~~ who is represented by counsel in postconviction proceedings in superior court, 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. The State, to the extent allowed by law, 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. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the ~~capital~~ defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the ~~capital~~ defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files."

SECTION 3. This act becomes effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:30 p.m. this 26th day of August, 2009