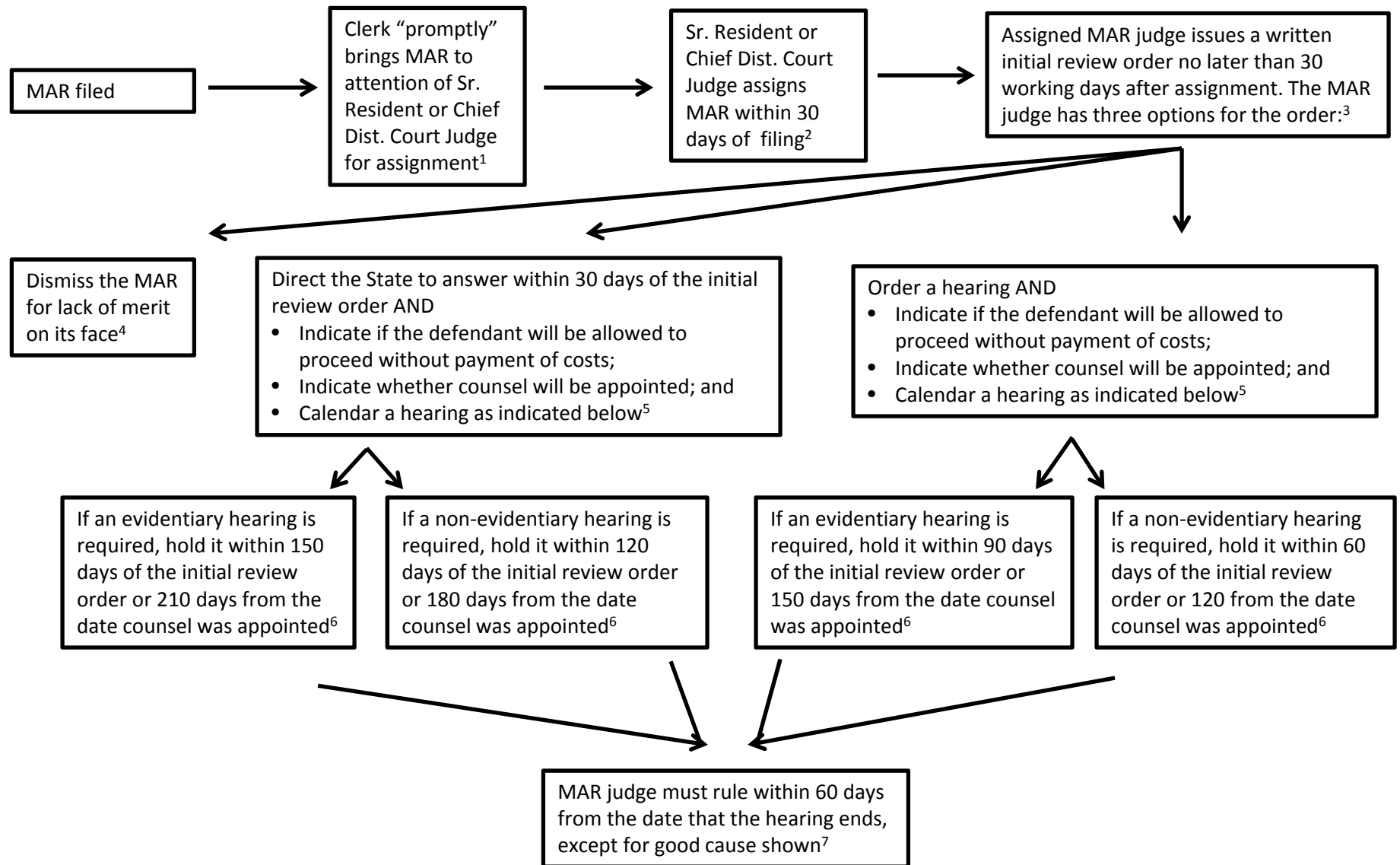


Non-Capital Motions for Appropriate Relief (MARs) – Case Processing

Jessica Smith, UNC School of Government (Sept. 2012)

S.L. 2012-168 enacted new deadlines for processing non-capital MARs. This flowchart summarizes the new rules.



¹ G.S. 15A-1420(b1)(2); *see also* G.S. 15A-1413(d).

² G.S. 15A-1420(b2)(1). Assignment is for an “initial review.” *Id.* Assignment is in the discretion of the assigning judge. G.S. 15A-1413(e). The statutory deadline for assignment is within “30 days.” G.S. 15A-1420(b2)(1). Other subsections of the new law specify “working days,” G.S. 15A-1420(b2)(2); (b2)(5), suggesting that “30 days” includes weekends and holidays. For judges who may hear and determine MARs, *see* G.S. 15A-1413, as amended by S.L. 2012-168.

³ G.S. 15A-1420(b2)(2).

⁴ *Id.*

⁵ *Id.* If a hearing is ordered, the court must provide notice of the date of the hearing to the parties (or the defendant if unrepresented) no less than five working days before the hearing. G.S. 15A-1420(b2)(5).

⁶ G.S. 15A-1420(b2)(3); (4). Other provisions of the new law specify “working days.” G.S. 15A-1420(b2)(2); (b2)(5). This section however specifies the period as “days,” suggesting that weekends and holidays are included.

⁷ G.S. 15A-1420(b2)(5). For an explanation of “good cause” this section refers to G.S. 15A-1420(b2)(6), reproduced below, which does not actually use that term; instead, that provision talks about “extraordinary circumstances.”

NOTE ON AGREEMENTS TO DEVIATE FROM THE STATUTORY TIMETABLE: G.S. 15A-1420(e) provides that “[n]othing in this section shall prevent the parties to the action from entering into an agreement for appropriate relief, including an agreement as to any aspect, procedural or otherwise, of a [MAR].” This seems to suggest that if the parties agree, the judge may deviate from the statutory timetable. However, the language stating that nothing prevents the parties from entering into an agreement for appropriate relief should not be read to authorize “consent MARs” when no statutory basis for relief exists. For more on that issue, *see* Jessica Smith, *Motions for Appropriate Relief*, ADMIN. OF JUSTICE BULL. 2010/03, at p. 13 (June 2010) (<http://sogpubs.unc.edu/electronicversions/pdfs/aojb1003.pdf>).

NOTE ON EXTENSIONS OF TIME: Extensions of time may be requested by a party or the MAR judge.

Party’s Request. On request by a party, the court may grant an extension of time of up to 30 days to comply with the statutory deadlines. G.S. 15A-1420(b2)(6). No other extension request by a party may be granted unless the court enters a written order with “detailed findings of fact of extraordinary circumstances.” *Id.* The term “extraordinary circumstances” is not defined.

Judge’s Request. Upon request of the MAR judge, the senior resident superior court judge or chief district court judge may grant the MAR judge an extension of time of up to 30 days to comply with the statutory deadlines. *Id.* No other extension request by the MAR judge may be granted unless the senior resident superior court judge or the chief district court judge enters a written order with “detailed findings of fact of extraordinary circumstances.” *Id.* The term “extraordinary circumstances” is not defined.

NOTE ON FAILURE TO COMPLY WITH STATUTORY DEADLINES: The failure of the court to comply with the statutory deadlines (1) is grounds for any party to petition the senior resident superior court judge or chief district court judge to reassign the motion to a different judge and (2) entitles any party to seek a writ of mandamus to obtain compliance with the deadline. G.S. 15A-1420(b2)(6). However, failure to meet a deadline is not a ground “for the summary granting of a [MAR] or other summary relief, including without limitation, ordering the release of the prisoner.” G.S. 15A-1420(b2)(7).

NOTE ON EFFECTIVE DATE: The relevant portions of S.L. 2012-168 become effective December 1, 2012 and apply to MARs “pending, and for which no answer has been filed, or filed on or after that date.”