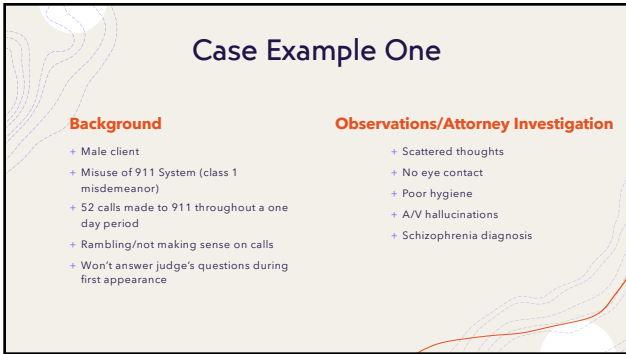
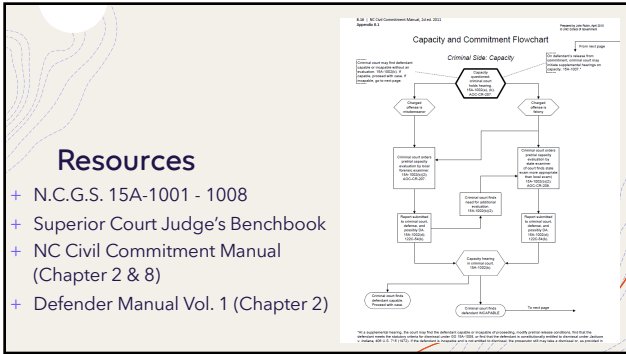


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Capacity to Proceed

N.C.G.S. § 15A-1001 et seq.

Drope v. Missouri, 420 U.S. 162 (1975)

- No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.

4

Try to talk to client first, but...

- Attorney may not allow client to proceed if believes client is incapable of doing so
- Duty to raise capacity to proceed if good faith doubt
- May be raised over client objection

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- Misdemeanors = Local Forensic Screener only per 15A-1002(b)(1a)
- Nccourts.gov/documents/forms
- Be specific in the body of your motion
- Serve ADA
- Varying levels of formality

6

[illegible]

- + Out of custody, can schedule appointment and appear on own
- + #7—compels record release
- + Know your local management facility
- + NCDHHS.GOV
- + CONTACT LOCAL EVALUATOR

7

[illegible]

N.C.G.S. 15A-1002(b1): May stipulate that defendant is capable to proceed. Prohibited from stipulating to incapacity.

N.C.G.S. 15A-1002(b1): May stipulate that defendant is capable to proceed. Prohibited from stipulating to incapacity.

8

[illegible]

Case Example Two

Background

- + Male client
- + Robbery with a Dangerous Weapon
- + Was told by God to take property

Observations/Attorney Investigation

- + Seems to have general understanding of legal system
- + Paranoid
- + Schizoaffective, bipolar type
- + Refuses to discuss potential defenses—adamant that did what he was told to do

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9

[illegible]

Fourth Prong

- The ability to cooperate with counsel to the end that any available defense may be interposed

State v. Jackson, 302 N.C. 101 (1981)

State v. O'Neal, 116 N.C. App. 390 (1994)

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Central Regional Hospital vs Retained Defense Expert

Central Regional Hospital

- Current 2-4 month waiting period for an appointment
- Generally a one day evaluation
- CRH easily gets records using the Order
- State often accepts CRH assessment

Retained Defense Counsel

- Potential for expedited evaluation
- If want expert to review records, counsel needs to obtain and provide
- Consider type of case
- Head start on MSO evaluation
- Forensicsresources.org
- Talk to Sarah Olson
- Use form AOC-G-309

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AOC-CR-208B

- Nccourts.gov/documents/forms
- Be specific in the body of your motion
- Serve ADA
- Varying levels of formality

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NC Civil Commitment Manual

After making IVC determination:

- + Determination of violent vs non-violent offense
- + Violent offense—no perfect definition.
 - + Assault with dangerous weapon
 - + Use, attempted use, threatened use, etc of physical force against person or property of another
 - + Can look to underlying facts of case
- + Send to 24 hour facility (violent) or local exam (non-violent)

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Inpatient Commitment

- + Cherry, Broughton, Central Regional Hospital
- + Team including psychiatrist, psychologist, social worker, SLP
- + IVC hearings in facility county; D represented by other counsel
- + Capacity Restoration Program
 - + Helping patients achieve three prongs of CTP
 - + "Opinions vary on the nature and value of these efforts."

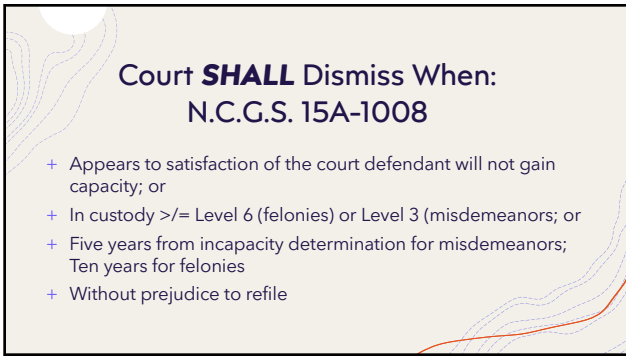
---NC Superior Court Judges' Benchbook

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ITP from Mental Defect vs. Illness

- + e.g. Intellectual Disability, Dementia, Alzheimer's, Traumatic Brain Injury causing Major Neurocognitive Disorder
- + Set up client for success the best you can

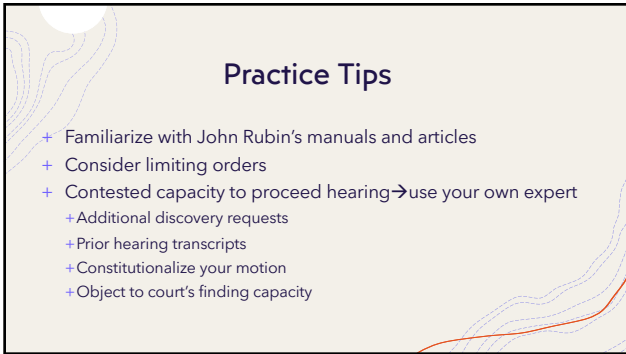
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Court **SHALL** Dismiss When: N.C.G.S. 15A-1008

- + Appears to satisfaction of the court defendant will not gain capacity; or
- + In custody >= Level 6 (felonies) or Level 3 (misdemeanors); or
- + Five years from incapacity determination for misdemeanors; Ten years for felonies
- + Without prejudice to refile

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Practice Tips

- + Familiarize with John Rubin's manuals and articles
- + Consider limiting orders
- + Contested capacity to proceed hearing → use your own expert
 - + Additional discovery requests
 - + Prior hearing transcripts
 - + Constitutionalize your motion
 - + Object to court's finding capacity

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Thank You

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