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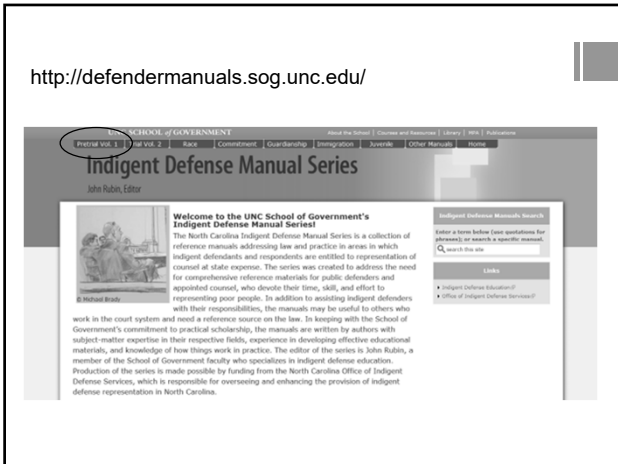
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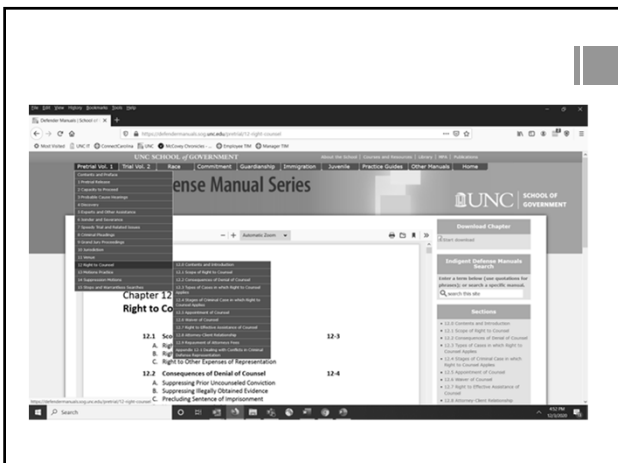
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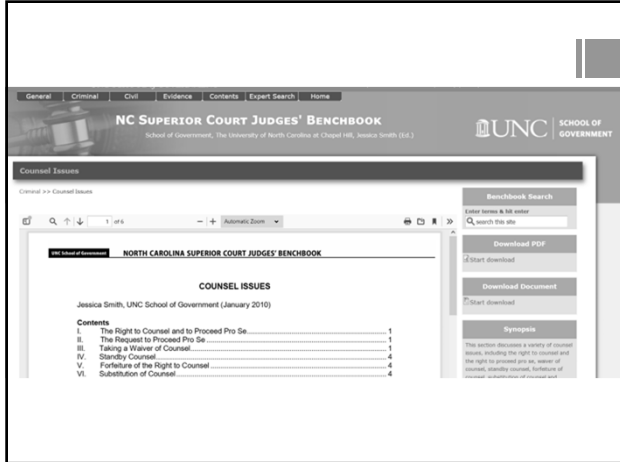
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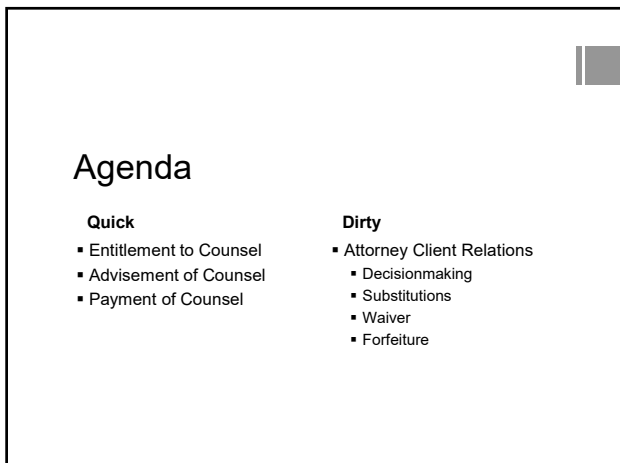
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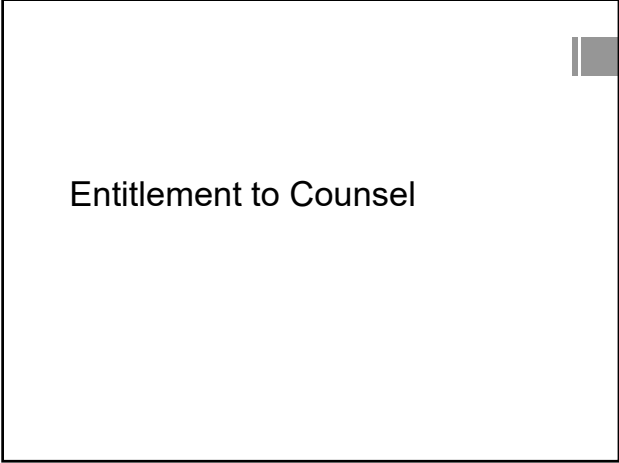
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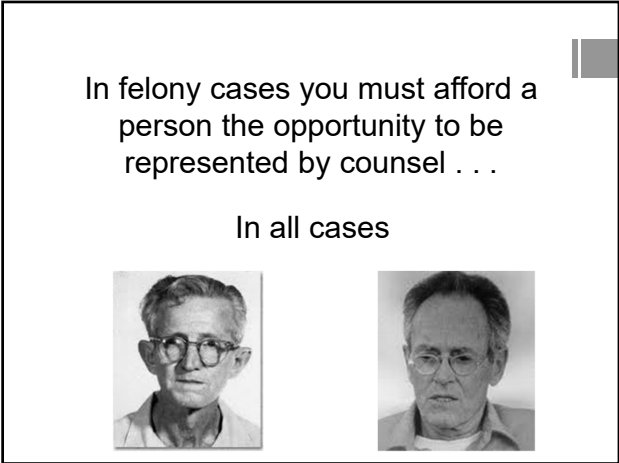
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If you want to impose an active or suspended sentence of imprisonment in a misdemeanor case

You must afford a person the opportunity to be represented by counsel

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Advisement of Counsel

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The court should advise or inquire about counsel of an unrepresented defendant at . . .

Initial appearance, first appearance, probable cause hearing, arraignment, entry of guilty plea, and trial

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Recovery of Attorneys' Fees

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Before entering a judgment for attorneys' fees against an indigent defendant who has been convicted

The **Court of Appeals** has **Repeatedly** said that you **Must** give the defendant notice and an opportunity to be heard

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Attorney-Client Relations

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**Who Decides**

- Ms. Atwell was charged with a felony violation of a DVPO for purchasing a firearm in Tennessee. She believes that NC lacks jurisdiction to prosecute her. Counsel believes a motion to dismiss will be unsuccessful.

1. Must counsel file the motion if the defendant insists?
2. May the defendant file a "pro se" motion while represented by counsel?

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**When to Substitute**

- Atwell's appointed lawyer moves to withdraw from the case over disagreements with Atwell about how to proceed with the case. Atwell agrees and asks for the court to appoint a different lawyer.

1. Does the law require that you substitute counsel?
2. Does the law allow you to substitute counsel?

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**Taking a Waiver**

- Before becoming a superior court judge, you saw judges take waivers of counsel. Some would advise the defendant of their right to counsel and, if the defendant stated that he wanted to represent himself, the judge directed the defendant to see the clerk and sign a waiver form.

- Is that legally sufficient?

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**Defendants may represent themselves in a criminal case if**

(1) they have been advised of the right to counsel, (2) express the desire to proceed without counsel, and (3) waive the right to counsel

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State v. Moore, 362 N.C. 319 (2008)

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The N.C. Supreme Court has indicated that the following questions comply with the statutorily mandated inquiry:

- Are you able to hear and understand me?
- Are you now under the influence of any alcoholic beverages, drugs, narcotics, or other pills?
- How old are you?
- Have you completed high school? College? If not, what is the last grade you completed?
- Do you know how to read? Write?
- Do you suffer from any mental handicap? Physical handicap?
- Do you understand that you have a right to be represented by a lawyer?
- Do you understand that you may request that a lawyer be appointed for you if you are unable to hire a lawyer; and one will be appointed if you cannot afford to pay for one?

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**Waiving Appointed Counsel**

▪ Atwell says she has had enough of appointed counsel who do not do what she asks. She says she wants to hire a lawyer and waives her right to appointed counsel. At the next proceeding, she appears without a lawyer.

1. Can you proceed without inquiring about counsel?
2. If the defendant says I want an appointed lawyer, what do you do?

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**What Constitutes Forfeiture**

- Atwell tells the court shortly before trial that she cannot find a lawyer that she can afford and asks for her fifth appointed attorney. The previous attorneys asked to withdraw for their own reasons or at Atwell's request. Atwell signed previous waivers of appointed counsel when she wanted to hire a lawyer but withdrew them when she couldn't hire one.

1. Has Atwell forfeited the right to be represented by counsel?
2. If not, what should you do now?

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**Recap**

- You may be asked to address decision making by counsel and client
- You may and sometimes must appoint new counsel
- You must take a waiver of all counsel for it to be effective
- You must find that client's conduct was egregious for a forfeiture to occur

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**Make a record!**

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