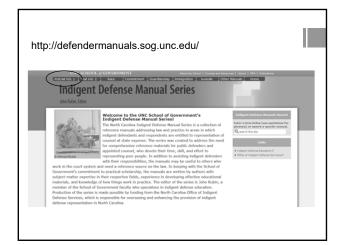
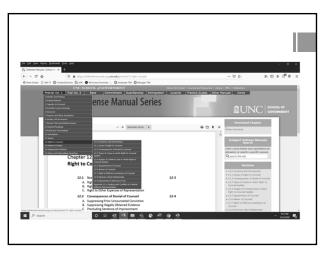
Right to Counsel in Superior Court

John Rubin UNC School of Government January 2023

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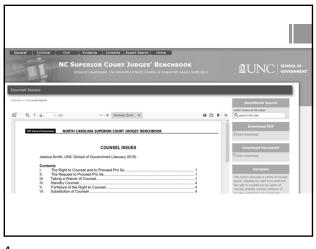


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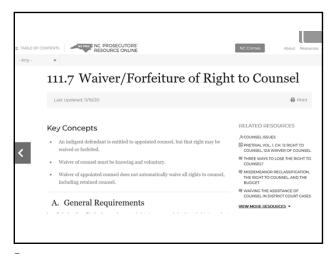




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Entitlement to Counsel

In felony cases you must afford a person the opportunity to be represented by counsel . . .

I

In all cases



8

7



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

10

Advisement of Counsel

11

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

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

Who Decides

counsel?

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

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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

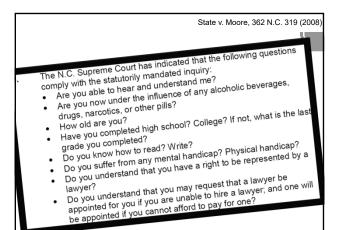
 Before becoming a superior court judge, you saw judges take waivers of counsel. Some would advise the defendant of their right to counsel and, if the defendant stated that he wanted to represent himself, the judge directed the defendant to see the clerk and sign a waiver form.

Is that legally sufficient?

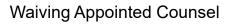
Defendants may represent themselves in a criminal case if

(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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 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?

STATE O	F NORTH CAROLINA		Pie No.	
	County		In The General Court Of Justice	
name Or Defension	STATE VERSUS		WAIVER OF COUNSEL	
			G.S. 74-457; 154-1242	
Apploral File House	And Or Offensell			
	100000000000	MENT OF RIGHTS AN	0.00181850	
As the undersig	ned party in this action, I freely and volunt	rily declare that I have be	en fully informed of the charges against me, the	
nature of and the my right to have	te statutory punishment for each such char e counsel assigned to assist me and my rig	pe, and the nature of the ht to have the assistance	proceedings against me; that I have been advised of of counsel in defending against these charges or in	
handing these counsel and the	proceedings, and that I fully understand an right to assistance of counsel.	d appreciate the consequ	ences of my decision to waive the right to assigned	
I freely, volunta	rily and knowingly declare that (onex only ny right to assigned counsel and that I, here	ne) he averagely wains that	Lobe .	
-			w~ ed counsel and my right to the assistance of counsel.	
	pects, I desire to appear in my own behalf,			
SWORNIAFF	REME			
Jelt	Signature .	Signature Of Date	-terr	
		Nouty-COO Chapterian		
Logdly that the		ATE OF JUDICIAL OF	RCIAL institute of and the statutory	
punishment for	each charge, and the nature of the proceed	ing against the defendant	and his/her right to have counsel assigned by the action: that the defendant comprehends the nature	
of the charges a	and proceedings and the range of punishm at the defendant has voluntarily, knowingly	ents; that he/she understa	nds and appreciates the consequences of his/her	
(check only one)		and manifestry elected a		
-	he assignment of counsel. he assistance of counsel, which includes th		and the cide to enclose a descent	
NOTE: For a we	ilver of assigned counsel only, both blocks in		i and the right to assistance of counsel. ted. For a walver of all assistance of counsel, both	
blocks numbers	d "2" muel be checked. Name of Judical Official from or print		Sprature Of Lotice Officer	
NOTE: A maple	rate may accept walvers of counsel # designated	IS do to by the Chief District	Court Judge, See G.S. 7A-145(11) and G.S. 7A-292(18).	
A00-CR-227, R	ex 2/21 table of the Courts			



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I freely, voluntarily and knowingly declare that: (check only one)
I 1. I waive my right to assigned counsel and that I, hereby, expressly waive that right.

2. I waive my right to all assistance of counsel which includes my right to assigned counsel and my right to the assistance of counsel In all respects, I desire to appear in my own behalf, which I understand I have the right to do.

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(check only one) 1. without the assignment of counsel.

2. without the assistance of counsel, which includes the right to assigned counsel and the right to assistance of counsel.
NOTE: For a waiver of assigned counsel only, both blocks numbered "1" must be checked. For a waiver of all assistance of counsel, both blocks numbered "2" must be checked.

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!