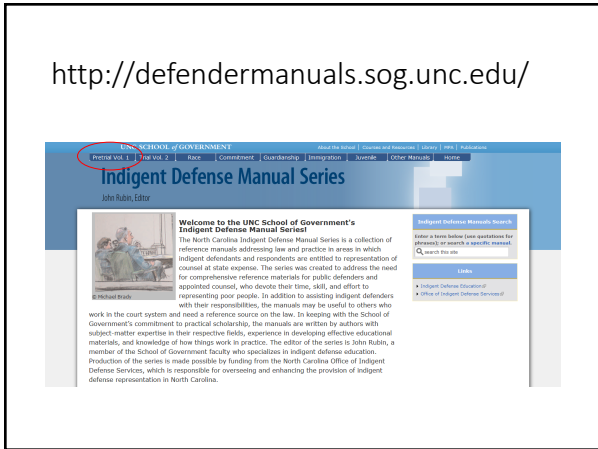
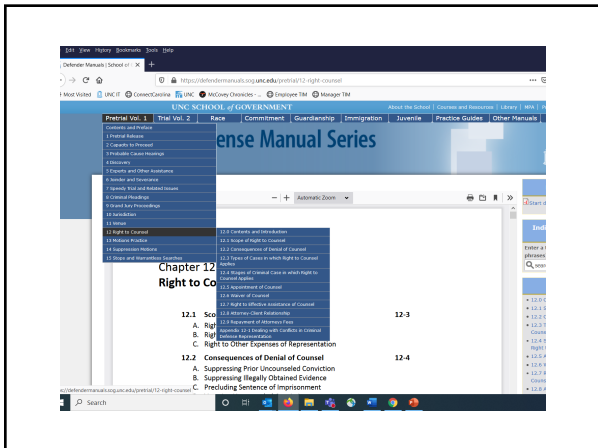




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Agenda

Quick

- Entitlement to Counsel
- Appointment Procedures
 - Attachment
 - Advisement
 - Indigency
 - Payment of counsel

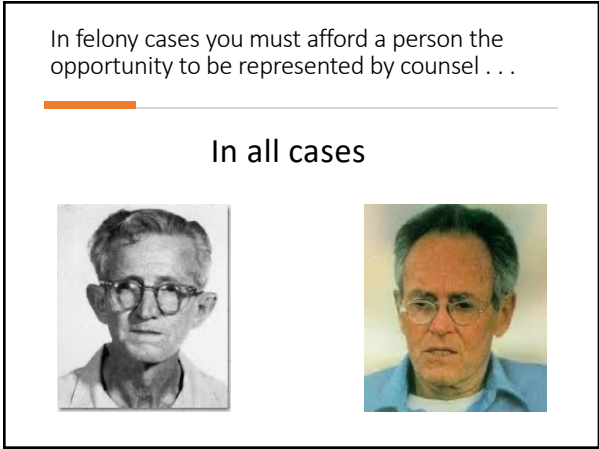
Dirty

- Attorney-Client Relations
 - Decision-making
 - Substitution
 - Waiver
 - Forfeiture

6



7



8



9

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

Appointment Procedures

11

The right to counsel attaches at initial appearance before a magistrate

After the right to counsel attaches, the defendant must be afforded the opportunity for appointed counsel within a reasonable time

12

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




13

An indigent person for appointment of counsel purposes means

"one who does not have available, at the time they are required, adequate funds to pay a necessary cost of his defense"



14



The appellate courts have repeatedly said that before entering a judgment for attorneys' fees against an indigent defendant

You must give the defendant notice and an opportunity to be heard

15

Attorney-Client Relations

16

Decision-making

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.

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

17

Substitution

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?

18

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

19

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

- 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?

20

Waivers

Atwell says she has had enough of appointed counsel who don't do what she asks. She says she wants to hire a lawyer and waives her right to appointed counsel. At the next scheduled court date, 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?

21

STATE OF NORTH CAROLINA		7670
County _____ In the General Court of Justice		
7671 On _____ in the _____ Court Division		
STATE VERSUS _____	WAIVER OF COUNSEL	
S.S. 7A-487, 7A-184		
<p>ACKNOWLEDGMENT OF RIGHTS AND WAIVES</p> <p><small>As the undersigned party in this action, I have read and understand that I have been fully advised of the charges against me, the nature of and the statutory punishment for each such charge, and the nature of the proceedings against me that I have been advised of my right to have counsel appointed to assist me and my right to have the assistance of counsel at defendant against these charges in a pending those proceedings, and that I fully understand and appreciate the consequences of my decision to waive the right to assigned counsel and the right to assistance of counsel.</small></p> <p><small>I hereby, voluntarily and knowingly declare that:</small></p> <p><input type="checkbox"/> 1. I waive my right to assigned counsel and that I, hereby, expressly waive that right.</p> <p><input type="checkbox"/> 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.</p> <p>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME THIS _____ DAY OF _____, 20____.</p> <p>Date _____ Signature of Defendant _____</p> <p>_____ Judge or District Court Clerk _____</p> <p style="text-align: center;">CERTIFICATE OF JUDICIAL OFFICIAL</p> <p><small>I certify that the above named defendant has been fully informed of the charges against her/him, the nature of and the statutory punishment for each charge, and the nature of the proceedings against the defendant and her/his right to have counsel assigned to the court and her/his right to have the assistance of counsel to represent her/him in this action, that the defendant comprehends the nature of the charges and proceedings and the range of punishments that he/she understands and appreciates the consequences of her/his choice and that the defendant has voluntarily, knowingly and intelligently elected in open court to be tried in this action.</small></p> <p><input type="checkbox"/> 1. without the assignment of counsel.</p> <p><input type="checkbox"/> 2. without the assistance of counsel, which includes the right to assigned counsel and the right to assistance of counsel.</p> <p><small>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.</small></p> <p>Date _____ Signature of Judicial Official _____</p> <p><small>NOTE: A magistrate may accept waivers of counsel if assigned to do so by the Chief District Court Judge. See G.S. 7A-146(f) and G.S. 7A-202(f).</small></p> <p style="text-align: right;"><small>JUDICIAL OFFICIAL NO. 507 © 2017 Administration Office of the Courts</small></p>		

22

I freely, voluntarily and knowingly declare that: <i>(check only one)</i>	
<input type="checkbox"/> 1. I waive my right to assigned counsel and that I, hereby, expressly waive that right.	
<input type="checkbox"/> 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.	

23

<input type="checkbox"/> 1. without the assignment of counsel.	
<input type="checkbox"/> 2. without the assistance of counsel, which includes the right to assigned counsel and the right to assistance of counsel.	
<small>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.</small>	

24

Forfeiture

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

- Has Atwell forfeited the right to be represented by counsel?

25

Defendants forfeit the right to counsel by

1. Flagrant or extended delaying tactics, such as repeatedly firing a series of attorneys
2. Offensive or abusive behavior, such as threatening counsel, cursing, spitting, or disrupting proceedings in court
3. Refusal to acknowledge the trial court's jurisdiction or participate in the judicial process, or insistence on nonsensical and nonexistent legal "rights."

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Recap

- You may need 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 forfeiture
- You should try to make a record!

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