

NORTH CAROLINA **Judicial** COLLEGE

Self-Represented Criminal Defendants

Allen Baddour

Senior Resident Superior Court Judge

District 18

February 2025: Advanced Criminal Procedure



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Self-Represented?

Yes, Self-Represented Litigants...
Self-Represented Criminal Defendants
instead of *pro se*

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6th Amendment: Right to Counsel

... and right to self-representation



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Waiver



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- Knowing, voluntary, intelligent waiver
AND
- Possesses capacity to proceed
representing himself/herself



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- Knowing, voluntary, intelligent waiver
AND
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A defendant may be permitted at his/her election to proceed in the trial of the case without the assistance of counsel **only after** the trial judge makes **thorough inquiry** and is satisfied that the defendant:

- (1) Has been **clearly advised** of the right to the assistance of counsel, including the right to the assignment of counsel
- (2) **Understands and appreciates** the consequences of this decision; and
- (3) **Comprehends the nature of the charges and proceedings and the range** of permissible punishments.

NCGS§ 15A-1242



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An indigent person who has been informed of the right to be represented by counsel at any in-court proceeding, may, **in writing**, waive the right to in-court representation by counsel

NCGS§ 7A-457



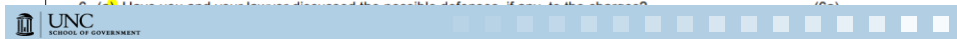
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See
Superior Court Judges Bench Book Questions



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STATE OF NORTH CAROLINA			File No. _____
_____ County			In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERSUS		TRANSCRIPT OF PLEA	
Name Of Defendant _____			
DOB _____	Age _____ Highest Level Of Education Completed _____		
G.S. 15A-1022, 15A-1022.1			
<p>NOTE: Use this section <i>ONLY</i> when the Court is rejecting the plea arrangement.</p> <p><input type="checkbox"/> The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. (Applies to plea arrangements disclosed on or after December 1, 2009.)</p>			
Date _____	Name Of Presiding Judge (Type or print) _____	Signature Of Presiding Judge _____	
<p>The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of <input type="checkbox"/> guilty <input type="checkbox"/> guilty pursuant to <i>Alford</i> decision <input type="checkbox"/> no contest, and (3) offered the following answers to the questions set out below:</p>			
			Answers
1. Are you able to hear and understand me?			(1) _____
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you?			(2) _____
3. At what grade level can you read and write?			(3) _____
4. (a) Are you now using or consuming alcohol, drugs, narcotics, medicines, pills, or any other substances?			(4a) _____
(b) When was the last time you used or consumed any such substance?			(4b) _____
(c) How long have you been using or consuming this medication or substance?			(4c) _____
(d) Do you believe your mind is clear, and do you understand what you are doing in this hearing?			(4d) _____
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge?			(5) _____
6. (a) Have you and your lawyer discussed the possible defenses, if any, to the charges?			(6a) _____



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- Knowing, voluntary, intelligent waiver
AND
- Possesses capacity to proceed
representing himself/herself

In Indiana v. Edwards, 554 U.S. 164 (2008), the U.S. Supreme Court held that a state may limit a defendant's right to self-representation by insisting on representation by counsel at trial when the defendant is competent to stand trial but lacks the mental capacity to conduct the defense unless represented.



Standby Counsel



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Standby Counsel

But... No hybrid



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Non-compliant or Non-responsive



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Forfeiture



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Hybrid: waiver by conduct



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Sovereign Citizens



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Trial practices



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Consider:

- Frame subject matter of hearing
- Explain process
- Articulate decision from bench if able
- Provide written order
- Set expectations for next steps



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Ensure procedural fairness

Be fair
Appear fair



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