

NORTH CAROLINA REPORTS

VOLUME 357

SUPREME COURT OF NORTH CAROLINA



28 MARCH 2003

5 DECEMBER 2003

RALEIGH
2005

IN THE SUPREME COURT OF NORTH CAROLINA

**Order Adopting Amendments to the General Rules
of Practice for the Superior and District Courts**

Rule 25 of the General Rules of Practice for the Superior and District Courts is hereby amended to read as follows:

**RULE 25. MOTIONS FOR APPROPRIATE RELIEF AND
HABEAS CORPUS APPLICATIONS IN CAPITAL CASES**

When considering motions for appropriate relief and/or applications for writs of habeas corpus in capital cases, the following procedures shall be followed:

(1) All appointments of defense counsel shall be in accordance with G.S. 7A-451(c), (d), and (e) and rules adopted by the Office of Indigent Defense Services ~~should be made by the senior resident superior court judge in each district or the senior resident superior court judge's judicial designee;~~

(2) All requests for appointment of experts, *ex parte* matters, interim attorney fee awards, and similar matters arising made prior to the filing of a motion for appropriate relief and subsequent to a denial by the Director of Indigent Defense Services shall ~~should~~ be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee in accordance with rules adopted by the Office of Indigent Defense Services;

(3) All requests for other *ex parte* and similar matters arising prior to the filing of a motion for appropriate relief shall be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee in accordance with rules adopted by the Office of Indigent Defense Services;

(4) All motions for appropriate relief, when filed, shall ~~should~~ be referred to the senior resident superior court judge or the senior resident superior court judge's designee for that judge's review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions; ~~and~~

(5) Subsequent to direct appeal, an application for writ of habeas corpus shall not be used as a substitute for appeal and/or a motion for appropriate relief and is not available as a means of reviewing and correcting nonjurisdictional legal error. If the

applicant has been sentenced pursuant to a final judgment issued by a competent tribunal of criminal jurisdiction (i.e., by a trial court having subject matter jurisdiction to enter the sentence), the application for writ of habeas corpus shall be denied. In the event the application for writ of habeas corpus raises a meritorious challenge to the original jurisdiction of the sentencing court, and the writ is granted, the judge shall make the writ returnable before the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee. In the event the application for writ of habeas corpus raises a meritorious nonjurisdictional challenge to the applicant's conviction and sentence, the judge shall immediately refer the matter to the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee for disposition as a motion for appropriate relief; and-

(6) All requests for and awards of attorney fees and other expenses of representation shall be made in accordance with rules adopted by the Office of Indigent Defense Services.

These amendments to the General Rules of Practice for the Superior and District Courts shall be effective upon adoption by the Supreme Court.

Adopted by the Court in Conference this the 1st day of May, 2003. These amendments shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals. These amendments shall also be published as quickly as practicable on the North Carolina Judicial Branch of Government Internet Home Page (<http://www.nccourts.org>).

Brady, J.
For the Court