

## 28.1 Right to Opening Statement

---

### 28.1 Right to Opening Statement

Section 15A-1221(a)(4) of the North Carolina General Statutes grants the defendant the right to give an opening statement before the introduction of evidence. Rule 9 of the General Rules of Practice for the Superior and District Courts also provides that counsel for each party, at any time before the presentation of evidence, may make an opening statement setting forth the grounds for his or her claim or defense. The defendant has the right to make an opening statement regardless of whether he or she intends to present evidence. *State v. Paige*, 316 N.C. 630, 648 (1986) (“Even if the defendant does not intend to offer evidence, he may in his opening statement point out to the jury facts which he reasonably expects to bring out on cross-examination.”)

Although North Carolina law gives the defendant the right to make an opening statement before the guilt-innocence phase of the case, it does not give a defendant the right to give an opening statement before the sentencing phase of a capital trial. *State v. Call*, 349 N.C. 382 (1998) (trial judge did not abuse his discretion in forbidding opening statement before sentencing phase of capital case; N.C. Supreme Court found no authority that defendant is entitled to opening statement before sentencing phase of capital case). In practice, however, trial courts will often grant the defendant’s request to make an opening statement before sentencing in a capital case, and counsel should take advantage of this additional opportunity to address the jury.

Unlike the right to make a closing argument, the right to make an opening statement is not guaranteed by the U.S. Constitution. *See Herring v. New York*, 422 U.S. 853 (1975); *United States v. Salovitz*, 701 F.2d 17 (2d Cir. 1983); *United States v. Ciancaglini*, 945 F. Supp. 813 (E.D. Pa. 1996).