33.4 Number of Addresses

Misdemeanor and noncapital felony cases in superior court. G.S. 7A-97 (formerly G.S. 84-14) states that "[i]n all trials in the superior courts there shall be allowed two addresses to the jury for the State . . . and two for the defendant." If the defendant does not offer evidence, he or she is entitled to open and close the arguments to the jury. *See* N.C. GEN. R. PRAC. SUPER. & DIST. CT. 10; *see also State v. Eury*, 317 N.C. 511 (1986). If the defendant is represented by two attorneys, one may make the opening argument to the jury and the other the closing, or the defendant can waive opening argument and both attorneys can do a closing. *Eury*, 317 N.C. 511. However, if the defendant does offer evidence, he or she is only entitled to argue to the jury before the State argues. *See infra* § 33.5A, Right to Last Argument. If the defendant has two attorneys, both may address the jury during that closing argument as long as they stay within the time limits set out *supra* in § 33.3, Time Limits. *See Eury*, 317 N.C. 511 (discussing G.S. 84-14, the predecessor to G.S. 7A-97); *State v. Gladden*, 315 N.C. 398 (1986) (same); *State v. McCaskill*, 47 N.C. App. 289 (1980) (same).

Capital cases. There is no limit as to the number of addresses, but the judge may limit the number of attorneys who address the jury to three on each side. G.S. 7A-97. This statute (formerly G.S. 84-14) has been interpreted to mean that if the defendant offers evidence at the guilt-innocence phase, all of his or her addresses to the jury must be made before the State's closing argument. Up to three attorneys may address the jury during this argument, and each attorney may argue as often and for as long as he or she wishes. "Thus, for example, if one defense attorney grows weary of arguing, he may allow another defense attorney to address the jury and may, upon being refreshed, rise again to make another address during the defendant's time for argument." *State v. Gladden*, 315 N.C. 398, 421 (1986).

If the defendant does not offer evidence at the guilt-innocence phase, he or she is entitled both to open and close the arguments to the jury, and the defendant's attorneys (up to three) may address the jury "as many times as they desire during the closing phase of the argument." *State v. Eury*, 317 N.C. 511, 516–17 (1986). In *Eury*, the capital defendant did not present evidence, and her two attorneys sought permission for both to be allowed to address the jury after the State's closing argument. The trial judge denied this request and ruled that one of the defendant's attorneys could "open" argument, the State would argue, then the defendant's other attorney could make the final argument. The N.C. Supreme Court found that the trial judge erred in refusing the defendant's request and that the defendant was entitled to have both of his attorneys address the jury for as long as they wished after the State's closing argument. *See also State v. Mitchell*, 321 N.C. 650 (1988) (trial judge erred in refusing to permit both of defendant's attorneys to address the jury during final arguments of both phases of his capital trial).

A trial judge's refusal to permit up to three of the defendant's counsel to address the jury if they wish during the defendant's final arguments in both the guilt-innocence and sentencing phases constitutes prejudicial error per se. That error in the guilt-innocence phase entitles the defendant to a new trial as to the capital felony. Also, if a capital felony has been joined for trial with noncapital charges, the trial judge's failure to allow all of the defendant's counsel to make the closing argument is prejudicial error on the noncapital as well as the capital charges. *Mitchell*, 321 N.C. 650; *Eury*, 317 N.C. 511; *see also State v. Campbell*, 332 N.C. 116 (1992) (new trial granted where trial judge only allowed one of defendant's attorneys to address the jury during final argument in the guilt-innocence phase of his trial). If the error is made during the sentencing phase, the defendant is entitled to a new sentencing hearing. *See State v. Simpson*, 320 N.C. 313 (1987).

Practice note: If more than one attorney wishes to argue during final argument of a noncapital case or during either phase of a capital case, you should specifically announce this intention to the court and "request permission" to do so. Unless the record shows a clear refusal of the trial judge to permit more than one attorney to argue during final argument, the error may be waived for appellate purposes. *Compare State v. Williams*, 343 N.C. 345, 369 (1996) (overruling defendant's assignment of error because the court could not interpret the judge's ambiguous statements in the transcript as showing that he "refused to permit both of defendant's attorneys to argue after the State where they never specifically requested to do so and never objected"), *with State v. Barrow*, 350 N.C. 640, 644 (1999) (defense attorney's announcement in the guilt-innocence phase of a capital case in which defendant presented no evidence that the defense wished to make three closing arguments—one opening argument by one defense attorney and two final arguments, one by each of defendant's two attorneys, after the State's closing arguments—was a "clear request" and the trial judge's failure to allow the request was prejudicial error per se).
