

Chapter 12

Right to Counsel

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The assistance of counsel is so vital to the proper functioning of the criminal justice system that it has been “deemed necessary to insure fundamental human rights of life and liberty.” *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963) (citation omitted). This chapter addresses the scope of the right to the assistance of counsel. Section 12.1 identifies the constitutional and statutory sources of the right. Section 12.2 discusses the consequences of a violation. Section 12.3 reviews the types of cases in which a person has a right to counsel. Section 12.4 discusses the stages of a criminal case in which a person has the right to have counsel present. Section 12.5 discusses the procedures for appointing counsel. Section 12.6 addresses a defendant’s right to waive counsel and proceed pro se (that is, represent himself or herself without counsel). Section 12.7 describes the law on ineffective assistance of counsel. Section 12.8 addresses the attorney-client relationship and the lawyer’s role and responsibilities within that relationship. Section 12.9 discusses the rules on repayment of attorneys fees, known as recoupment in North Carolina. Last, Appendix 12-1 provides guidance on dealing with conflicts in criminal defense representation.

This chapter refers in several places to the Rules of the N.C. Commission on Indigent Defense Services [hereinafter “IDS Rules”]. A complete set of IDS Rules may be found at www.ncids.org/Attorney/IDSRules.html?c=Information%20for%20Counsel,%20IDS%20Rules.

This chapter also refers to the North Carolina State Bar Rules of Professional Conduct and Ethics Opinions. For those materials, go to www.ncbar.com/menu/ethics.asp and follow the appropriate link.