

# Chapter 4

## Discovery

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A defendant’s right to discovery is based primarily on statute and due process. The main statutory provisions appear in Sections 15A-901 through 15A-910 of the North Carolina General Statutes (hereinafter G.S.). In 2004, the General Assembly significantly rewrote those provisions to give criminal defendants the right to “open-file” discovery. Since then, the General Assembly

has made minor revisions to the defendant's discovery rights but has maintained the commitment to open-file discovery for the defense.

This chapter discusses discovery in cases within the original jurisdiction of the superior court—that is, felonies and misdemeanors initiated in superior court. Discovery in misdemeanor cases tried in district court or for trial de novo in superior court is limited and is discussed only briefly. *See infra* § 4.1F, Discovery in Misdemeanor Cases. For a brief discussion of discovery in other types of cases, see *infra* § 4.1G, Postconviction Cases, and § 4.1H, Juvenile Delinquency Cases.

Sample discovery motions can be found in several places on the website of the Office of Indigent Defense Services (IDS), [www.ncids.org](http://www.ncids.org): in the non-capital motions bank (select “Training and Resources,” then “Motions Bank, Non-Capital”), in the juvenile motions bank (follow the same steps), and in the capital motions bank (select “Training & Resources,” then “Capital Trial Motions”). These motions also can be accessed at [www.sog.unc.edu/node/657](http://www.sog.unc.edu/node/657). Whether denominated as non-capital, juvenile, or capital, the motions may be useful in a range of cases. Selected motions currently on the IDS website are identified in the discussion below. For additional motions, see MAITRI “MIKE” KLINKOSUM, NORTH CAROLINA CRIMINAL DEFENSE Ch. 4 (Motions for Discovery), at 180–298, and Ch. 5 (Preventing and Litigating the Illegal Destruction of Evidence), at 349–425 (2d ed. 2012) [hereinafter KLINKOSUM].