

## Defense Motions and Notices in Superior Court

This practice guide is intended as a primer on defense motions and notices in superior court. It is not meant to be an exhaustive list of all possible motions, nor a comprehensive analysis of the motions that are listed. Rather, it is a guide on the basic principles, authorities, and timelines of common defense motions at the trial level. Generally, the guide is formatted to identify

- the type of motion;
- the basic statutory or constitutional authority governing the motion, which can be cited in the motion along with other authority;
- any deadline for filing the motion;
- key principles applicable to the particular motion;
- practice tips, where applicable; and
- reference materials about the motion.

Comments and suggestions are welcome and may be sent to Phil Dixon, [dixon@sog.unc.edu](mailto:dixon@sog.unc.edu).

### I. Principles for All Motions

#### Authority

Chapter 15A, Section 951 of the North Carolina General Statutes (hereinafter G.S.); various statutory and constitutional grounds.

#### Key Principles

Motions should be made in writing; state grounds with specificity; cite legal authority; request specific relief; be signed and filed with clerk; and be served on the opposing party, with a signed certificate of service attached.

Some motions have special timing rules or require an affidavit in support. It is vital to know the applicable statutory rules as well as local rules and practices. All motions should be made pretrial, with the exception of certain in-trial motions.

There must be a ruling on a motion or the issue is waived on appeal. A written order, signed by the judge and filed with the clerk, will ensure that rulings on pretrial motions are memorialized in the court file.

Object to adverse rulings on pretrial motions and object again at trial or the issue may be waived on appeal. If a ruling on a motion limits the ability to present evidence or explore a topic, an offer of proof must be made to preserve the issue.

Pursuant to G.S. 15A-952, the potential scope of motions is very broad. Any defense, objection, or request capable of being decided without ruling on the merits of the case may be addressed with motions.

#### Practice Tips

- Motions are a way to improve the posture of a case, obtain more information, narrow issues, improve a plea offer, and demonstrate your dedication and ability to the client and the State.

- Consider submitting briefs in support of complex motions.
- Where possible, constitutionalize every argument under both the state and federal constitutions.
- For significant or unusual motions, consider the need to formally present evidence at a motion hearing, particularly when the defense has the burden of proof on the subject of the motion.
- Be creative!

**References**

NORTH CAROLINA DEFENDER MANUAL Vol. 1, ch. 13 (Motions Practice) (UNC School of Government, 2d ed. 2013) (hereinafter N.C. DEFENDER MANUAL).