

Criminal Superior Court  
First Appearance Rules for Probation Violations  
For the Second Judicial District

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**SUPERIOR COURT CRIMINAL  
PROBATION VIOLATION FIRST APPEARANCE RULES  
SECOND JUDICIAL DISTRICT**

**(BEAUFORT, HYDE, MARTIN, WASHINGTON AND TYRRELL COUNTIES)**

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**RULE 1. Authority and Purpose**

- 1.1** These rules are adopted pursuant to the provisions of NCGS § 15A-601 and 15A-1345 and may be cited as Criminal Superior Court Rules, Second District.
- 1.2** The purpose of these rules are to expedite the processing and hearing of probation violations by advising the probationers of their right to counsel, and if appropriate, appointment of counsel for indigent probationers prior to the first setting in Superior Court.
- 1.3** A copy of these Rules shall be maintained by each Clerk of Court and made available by request. A copy of the Rules will also be posted to the web site [www.nccourts.org](http://www.nccourts.org).

**RULE 2. Probation Violations**

**2.1** Advising Probationers Upon Arrest

When a probation violation is issued and the Defendant arrested, he shall be taken before the Magistrate for the setting of bond. In addition to the regular conditions of bond, the Magistrate shall impose the additional condition that the probationer shall appear at a set time before either a Superior or District Court Judge or the Clerk of Superior Court for purposes of advising the probationer of their right to counsel.

**2.2** Appearance before Superior Court or District Court Judge

If Superior Court or District Court, in that order, is sitting the Defendant shall be brought before the Court for the purpose of advising of their right to Counsel.

**2.3** Appearance before the Clerk of Superior Court

- (a) If neither the Superior Court nor District Court is sitting, the Magistrate shall set the Probationer's appearance before the Clerk of Superior Court at a time and place designated by the Clerk for the purpose of advising the Probationer of their right to counsel.
- (b) If the probationer fails to make bond they shall be brought before either the District Court Judge or Clerk of Superior Court, whichever is available at the earliest possible time for advising as to their right to Counsel.

**2.4** Procedure to Advise and Appoint/ Waive Counsel

- (a) The Probationer shall be advised by either a Judge or the Clerk of Superior Court of their rights as set forth in the attached “Probationer’s Rights to Counsel” document, which shall be executed by the judicial official.
- (b) If the probationer request Court appointed counsel, they shall fill out the Affidavit of Indigent, AOC-CR-226. Pursuant to N.C.G.S. § 7A-450, the Judge or Clerk shall determine by that application if the probationer is indigent, and enter an Order of Assignment or Denial of Counsel, AOC-CR-224.
- (c) Should the probationer elect to waive all counsel, the Judge or Clerk of Superior Court shall determine whether the Probationer is competent to represent them self and that such waiver is made knowingly, voluntarily, and intelligently by using the Personal Inquiry Findings and Order Waiver of All Counsel adopted by the Resident Superior Court Judge.
- (d) In all probation violations the hearing shall be set at the earliest available Superior Court session to be held in the County. The Petitioner and any appointed counsel shall be notified in writing of the violation hearing date immediately.

**2.5** Advising Probationers when not arrested

- (a) If the Probationer is not arrested, but served with a probation violation, it shall be the duty of the probation officer to serve upon the probationer a Notice to Appear before the Clerk of Superior Court at a designated time and place for advising of rights to counsel, and the Clerk of Superior Court shall be so notified. The procedures set forth in Rule 2.4 shall be followed.
- (b) Should the Probationer fail to appear at such time and place before the Clerk of Superior Court the probationer shall be arrested on the probation violation and brought before the Magistrate for bond purposes and the requirements of this rule shall be followed.

Adopted this the 15th day of October, 2010

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Wayland J. Sermons, Jr.  
Senior Resident Superior Court Judge

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Samuel G. Grimes  
Chief District Court Judge

## **Probationer's Rights to Counsel**

You have been charged with violating the conditions of your probation which could result in you going to prison. You have the absolute right to be represented by an attorney in this matter. An attorney may be helpful to you in handling your matter.

You may hire an attorney of your own choosing at your own expense, represent yourself if I deem you are capable of doing so, or apply to the Court for Court appointed counsel. If you seek Court appointed counsel, you will fill out an affidavit of your financial condition. You should tell the absolute truth in filling out this affidavit, as any false statement could lead to a charge of perjury being filed against you. A Court appointed attorney is not free, anything other than a dismissal of your violation or termination of your probation could result in a judgment being recorded against you in the office of the Clerk of Superior Court.

Do you understand your rights to an attorney? \_\_\_\_\_

How do you wish to proceed? \_\_\_\_\_

Given this the \_\_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
District Court Judge/ Clerk of Superior Court

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA )  
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 VS. )  
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**PERSONAL INQUIRY,**  
**FINDINGS AND ORDER**  
**WAIVER OF ALL COUNSEL**

This matter came on before the Undersigned upon the Defendant's request to waive the assistance of all counsel, and the Court made personal inquiry of the Defendant as follows:

ANSWER

1. Are you able to hear and understand me? \_\_\_\_\_
2. Are you now under the influence of alcohol, drugs, narcotics, or other pills? \_\_\_\_\_
3. How old are you? \_\_\_\_\_
4. What is the highest grade level completed? \_\_\_\_\_
5. Are you able to read, write and understand the English language? \_\_\_\_\_
6. Do you suffer from any mental or physical disability? \_\_\_\_\_
7. Do you understand the charges or allegations against you? \_\_\_\_\_
8. Have you received a copy of the charges or allegations, and do you understand them? \_\_\_\_\_
9. Do you understand that you have a right to be represented by a lawyer? \_\_\_\_\_
10. Do you understand that you may request a lawyer be appointed appointed for you if you are unable to hire a lawyer, and one one will be appointed if you cannot afford to pay for one? \_\_\_\_\_
11. Do you understand that if you decide to represent yourself, you you must follow the same rules of evidence and procedure that that a lawyer appearing in this court must follow? \_\_\_\_\_
12. Do you understand that if you decide to represent yourself, the court will not give you legal advice concerning defenses, jury instructions, other legal issues that may be raised in the trial? \_\_\_\_\_
13. Do you understand that I must act as an impartial Judge in this case, that I will not be able to offer you legal advice, and that I must treat you just as I would treat a lawyer? \_\_\_\_\_

14. Do you understand that you are charged with \_\_\_\_\_ ,  
and that if you are convicted of these charges, you could be  
imprisoned for a maximum of \_\_\_\_\_, and that the required  
minimum sentence is \_\_\_\_\_? Do you also understand that  
this offense carries a minimum fine of \_\_\_\_\_.
15. With all these things in mind, do you now wish to ask me any  
any questions about what I have just said to you?
16. Do you now waive your right to assistance of a lawyer, and  
voluntarily and intelligently decide to represent yourself in this case?

**WHEREFORE**, based on upon the above personal inquiry of the Defendant, the Court finds as facts the following:

1. That the Defendant has been clearly advised of his right of to the assistance of counsel.
2. That the Defendant is of sufficient age, education, familiarity with the English language, and mental condition to understand and appreciate the consequences of his/her decision to represent himself/herself.
3. That the Defendant comprehends the nature of the charges and proceedings and the range of permissible punishment.

**NOW THEREFORE**, based upon the foregoing findings of fact, the Court concludes as a matter of law that the Defendant is competent to represent himself/herself and the Defendant's waiver of all counsel is made knowingly, voluntarily, and intelligently.

**NOW, THEREFORE**, it is hereby **ORDERED** that the Defendant's waiver of all counsel is hereby accepted by the Court and ordered recorded.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Judge Presiding