

North Carolina Defender Manual

Volume 1, Pretrial

**Second Edition
2009**

**John Rubin
Alyson Grine**

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North Carolina Indigent Defense Manual Series
John Rubin, Editor



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ABOUT THE NORTH CAROLINA INDIGENT DEFENSE MANUAL SERIES

The North Carolina Indigent Defense Manual Series is a collection of reference manuals addressing law and practice in areas in which indigent defendants and respondents are entitled to the representation of counsel at state expense. The series was created to address the need for comprehensive, up-to-date reference materials for public defenders and appointed counsel, who devote their time, skill, and effort to representing poor people. In addition to assisting indigent defenders with their responsibilities, the manuals also may be useful to others who work in the court system and who need a reference source on the law. In keeping with the School of Government's commitment to practical scholarship, the manuals are written by authors with subject-matter expertise in their respective fields, experience in developing effective educational materials, and knowledge of how things actually work in practice. The editor of the series is John Rubin, a member of the School of Government faculty who specializes in indigent defense education. For a current listing of manuals in the series, see www.indigentdefense.unc.edu. Production of the series is made possible by funding from the North Carolina Office of Indigent Defense Services, which is responsible for overseeing and enhancing the provision of indigent defense representation in North Carolina.

ABOUT THE AUTHORS OF THE NORTH CAROLINA DEFENDER MANUAL VOLUME 1, PRETRIAL

John Rubin is the Albert and Gladys Coates Term Professor of Public Law and Government at the School of Government. He joined the faculty in 1991 and specializes in criminal law and procedure and indigent defense education. Prior to this appointment, he practiced law for nine years in Washington, D.C., and Los Angeles. He teaches, writes for, and consults with indigent defenders, judges, magistrates, and others who work in the court system. Mr. Rubin earned a B.A. from the University of California at Berkeley and a J.D. from the University of North Carolina at Chapel Hill.

Alyson Grine is a faculty member at the School of Government, where she has served as the Defender Educator since 2006, focusing on criminal law and procedure and indigent defense education. Prior to joining the School of Government, she worked for five years as an assistant public defender representing many non-English speaking Hispanic clients in Orange and Chatham counties. She previously served as a judicial clerk for Chief Justice Henry Frye of the North Carolina Supreme Court in 2000 and Judge Patricia Timmons-Goodson of the North Carolina Court of Appeals in 1999. Ms. Grine earned a B.A. with distinction from the University of North Carolina at Chapel Hill, a M.A. in Spanish from the University of Virginia, and a J.D. with honors from the University of North Carolina at Chapel Hill.

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Preface

The Institute of Government has produced several manuals over the years for those who work in North Carolina’s criminal courts—for judges, clerks of court, prosecutors. The Institute is proud to issue this first edition of a manual for public defenders, who likewise play a vital role in the administration of justice.

This project began with an appropriation from the North Carolina Administrative Office of the Courts, which enabled the Institute to hire Thomasin (“Tamsie”) Hughes to assist in researching and writing the manual. The AOC also appointed a committee of experienced public defenders and former public defenders—Joal Broun, Elaine Gordon, Ann Groninger, Henderson Hill, Fred Lind, James Parish, Daniel Pollitt, and Marc Towler—who reviewed each draft and offered their insights into how things really work in the criminal courts. This manual would not have been possible without the contributions of all of these people. Thanks also go to Joan Brannon, Stevens Clarke, Robert Farb, Malcolm Hunter, and Thomas Maher, who read all or part of the manual and offered useful suggestions; to countless criminal defense lawyers and others involved in the criminal justice system, who patiently listened to our questions, provided us with crucial practical advice, and furnished many of the forms in the manual; and to Michael Brady and Elaine Welch in the Institute’s publications department, who helped with the often tedious work of compiling and producing the manual.

We began this project with the lofty goal of creating a manual on all of North Carolina criminal law and procedure. As the difficulty of reaching that goal became clear, we scaled back our aspirations. This first edition covers a portion of pretrial procedure. As additional chapters are completed, they will be released as supplements.

We hope that the manual will be a useful reference for public defenders and others who work in the criminal courts. Comments and suggestions are welcome and may be sent to me at the Institute of Government, CB #3330, Knapp Building, The University of North Carolina at Chapel Hill, Chapel Hill, North Carolina, 27599-3330. I also can be reached by telephone at (919) 962-2498 or by e-mail at rubin.iog@mhs.unc.edu.

John Rubin
May 1998

Preface to 2002 Edition

In May 1998 we released the first edition of the North Carolina Public Defender Manual, with five chapters completed and many more planned. With this current release, we are up to ten chapters and have five more nearing completion. At this juncture, we feel it is appropriate to rename the manual, both to reflect changes in its purpose and our aspirations for future editions.

First, the manual is now intended to reach a broader audience. Originally supported by an appropriation from the North Carolina Administrative Office of the Courts, the manual was intended primarily for full-time public and appellate defenders. We were happy to provide the manual to appointed counsel who happened across it but did not view them as necessarily part of our primary audience. This changed with the creation of the Office of Indigent Defense Services (“IDS”) in 2000, whose mission includes providing support and assistance to all attorneys who represent indigent defendants. To that end IDS has continued to provide funding for this project. In recognition of this broader purpose, we have renamed the manual the “North Carolina Defender Manual.” We hope it will serve both the needs of full-time defenders, who continue to be a core part of the state’s indigent defense program, as well as the needs of appointed counsel. The manual will be posted on the IDS web site (address to be determined but accessible through the AOC’s web site, <http://www.nccourts.org/>) so that it will be available to all who need it. Readers may make a copy of the web version of the manual for their personal use but may not sell or use it for commercial purposes. The manual may also be purchased from the Institute of Government by contacting the publications sales office (telephone: 919-966-4119; e-mail: sales@iogmail.iog.unc.edu).

Second, we are now able to glimpse the end of the first phase of this project, which has focused on pretrial procedure. We plan next to turn to a volume on trial procedure. To signify what the first volume has evolved into, and perhaps to solidify our resolve to create subsequent volumes, we have added “Volume 1, Pretrial” to the manual’s title.

This manual would not have been possible without the help of Thomasin Hughes, who initially assisted in researching and writing the manual. Her earlier work underlies the latest chapters. We also want to thank Seth Blum, Elaine Gordon, Fred Lind, Daniel Pollitt, Ken Richardson, Susan Seahorn, and Marc Towler, all public defenders or former public defenders who generously agreed to review and comment on the latest chapters. Thanks also go to Katrina Hunt, Robby Poore, and Angela Williams in the Institute’s publications department, who helped produce the manual.

Comments and suggestions are welcome and may be sent by e-mail to John Rubin at rubin@iogmail.iog.unc.edu or Janine Fodor at jfodor@froggernet.com.

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