

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

IN THE MATTER OF PROMULGATING OR }
AMENDING LOCAL RULES RELATING }
TO THE SUMMONING, EXCUSING AND }
MANAGEMENT OF JURORS IN }
JUDICIAL DISTRICT 16B }

ORDER

THIS CAUSE, coming on to be heard and being heard before the undersigned Senior Resident Superior Court Judge and Chief District Court Judge of Judicial District 16B. After careful consideration of the matter of promulgating or amending policies relating to the summoning, excusing and management of jurors in the local courts--pursuant to the authority granted by Chapter 9 of the North Carolina General Statutes; the Caseflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996; and the express, implied and inherent powers of our respective offices--the undersigned, acting separately and jointly, do hereby approve and enter this order.

IT IS NOW, THEREFORE, ORDERED:

1. The Local Rules for Jury Management in Judicial District 16B attached hereto, and incorporated herein by reference, are hereby adopted as the official rules or policies concerning the summoning, excusing and management of jurors and juries in the local superior and district courts.
2. These rules or policies supersede all prior such rules, policies and customs and shall be effective 1 May 2001.
3. The Superior Court Judicial Assistant or Trial Court Coordinator shall file this order, including the local rules, with the Clerk of Superior Court and thereafter shall file the same with the Administrative Office of the Courts.
4. The clerk shall serve copies of this order, including the local rules, upon each local judge, the sheriff, district attorney, public defender, legal services and each law firm and attorney maintaining a mail box in the county courthouse.

ENTERED in our respective chambers in the Robeson County Courthouse on the ____ day of April 2001.

THE HONORABLE DEXTER BROOKS
Senior Resident Superior Court Judge

THE HONORABLE GARY L. LOCKLEAR
Chief District Court Judge

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

**LOCAL RULES FOR JURY MANAGEMENT
IN JUDICIAL DISTRICT 16B**

Rule 1. Name.

These rules shall be known officially as the “Local Rules for Jury Management in Judicial District 16B.” When clear from the context the rules may be referred to as the “Local Jury Rules” or the “Local Rules.”

Rule 2. Authority.

a) **General Statutes.** These rules are adopted under the express authority conferred by Chapter 9 of the North Carolina General Statutes.

b) **Caseflow Management Plan.** These rules are further adopted under the authority of the Caseflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996.

c) **Judicial.** These rules are further adopted under the express, implied and inherent powers of the respective offices of Senior Resident Superior Court Judge (herein “Senior Resident Judge”) and Chief District Court Judge (herein “Chief District Judge”).

COMMENT

The General Assembly has expressly recognized that local jury rules can impact on jury selection in criminal cases:

In comparing notes, members of the Commission discovered that procedures for selecting jurors varied from district to district, and decided there would be a virtue in spelling out a uniform system. The Commission recognized that absolute uniformity would not be possible because of differences in size of caseloads, physical facilities, and the like. Some counties use a jury pool; others do not. For this reason the Commission deliberately refrained from attempting to draft any definition of the jury “panel.” Official Commentary, G.S. §15A-1214 (Selection of jurors; procedure). (emphasis supplied).

If such is true of criminal cases, then, by necessary implication, the same would be true of civil cases. The same policy factors apply in both types of cases.

Rule 3. General Considerations.

- a) **Terminology.** When the text uses “shall” or “shall not” the terms are used in the imperative. When the text uses “should” or “should not”, the terms are used to indicate local policy which should be followed by judges and which shall be followed by others. When “may” is used, it denotes permissible discretion.
- b) **Comments.** When a Comment accompanies any Rule its language is intended to explain and illustrate the meaning and purpose of the Rule. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.
- c) **Local Policy and Visiting Judges.** Visiting judges presiding in this judicial district are guests and shall be accorded the respect due their position and status. By the same token, just as these judges expect other judges presiding in their home districts to observe their local rules and policies, visiting judges are expected to respect and observe this district’s local rules and policies. It is certainly easier for one person to adjust than it is for a judicial district to temporarily change.
- d) **Amendments.** These Local Rules may be amended through the entry of subsequent orders describing the amendments without the necessity of incorporating such amendments into the text of the Rules and entry of an order regarding the Rules as revised as was done on 10 September 1998 for a revision effective on 15 September 1998. See File No. 98 R 200, Office of the Clerk of Superior Court. The original Local Jury Rules were adopted on 15 May 1998 and were effective on 1 July 1998. See File No. 98 R 80, Id. Any such orders of amendment shall be numbered and shall refer to the effective date of the revision of the Rules being amended.

Rule 4. Policy.

- a) **Uniformity.** These rules are adopted in order to make uniform the process of summoning, excusing, and management of jurors and juries in Judicial District 16B. Such uniformity will make such process less confusing and less burdensome for the court system as well as for the persons so summoned for jury service, particularly senior citizens and the infirm.
- b) **Efficiency.** These rules will reduce the amount of court time spent administering such process thereby increasing the amount of time available to dispose of cases by trial or otherwise. Such increased efficiency will also make the operation of the local courts less expensive.
- c) **Illegal Special Venires.** These rules shall end the practice of seeking and obtaining orders for special venires for particular cases requiring all persons summoned for such jury service to appear in open court in order to claim an exemption, disqualification or excuse from the presiding trial judge regardless whether the summons was issued prior to the convening of the court session for which such persons were summoned. Such orders are clearly in violation of

applicable law and constitute a burden upon the court system as well as the individuals so summoned.

d) **Management of Jurors.** The management of such process, including the individual jurors and juries, shall be vested in the clerk and judges. In particular, such officials shall determine when and to where jurors are to report. Anyone else seeking to affect such process must make an appropriate request for consideration by the clerk or judges.

COMMENT

Jury management and selection in criminal cases, including capital murder cases, is governed by Article 72(Selecting and Impaneling the Jury) of Chapter 15A of the General Statutes of North Carolina. In particular, G.S. §15A-1211(a) reads as follows:

The provisions of Chapter 9 of the General Statutes, Jurors, pertinent to criminal cases apply except when this chapter specifically provides a different procedure. (emphasis supplied).

The Official Commentary to Article 72 provides, in pertinent part, as follows:

Unless the context otherwise requires, the word “juror” in this Article refers to members of the jury panel generally, and not merely those selected as trial jurors or alternates. (emphasis supplied).

A review of the provisions of Article 72 demonstrates that in criminal cases there are no provisions superseding the provisions of Chapter 9. Therefore, a policy of uniformity between civil and criminal cases and district and superior court is observed.

Rule 5. Definitions.

a) **Clerk.** The clerk of superior court, acting clerk, or assistant or deputy clerk. See G.S. §15A-101(2).

b) **Senior Citizen.** Person 65 years of age or older. G.S. §9-6.1.

c) **Venire.** The persons summoned to serve as jurors for a particular session or sessions of court.

d) **General Venire.** The persons originally summoned serve as jurors for a particular session or sessions of court.

e) **Special Venire.** Additional persons summoned as jurors to supplement the general or original venire for a particular session or sessions of court.

COMMENT

In subsection(e) the language “or for a particular case” was deleted in order to make it clear that attorneys shall not seek, and judges should not designate, special venires solely for the trial of a particular case, except as expressly authorized by G.S. §9-12 where the special venire is summoned from another county. See former Local Jury Rule 4(e), effective 15 September 1998.

In subsections(c)(d)&(e), the language “or sessions” of court was added in order to make it clear that the definitions also apply to multiple sessions of court. Each superior court judge presides over a separate session of court.

The word “preside” means to “hold the position of authority” or to “possess authority or exercise authority or control.” The American Heritage College Dictionary at 1082(3rd ed.1997). The commissions issued by the Chief Justice designate the individual judges to “preside over this session.” The word “over” means in “a position to rule or control: preside over the meeting.” Id. at 972. The Chief Justice chose not to use the word “at” instead of the word “over.” The word “at” means “the duration of; during.” Therefore, it would seem that there are no multi-judge sessions of superior court at the present time.

Rule 6. General Venires (G.S.§ 9-5).

a) **Use of the Jury List.** At least 30 days prior to any session or sessions of superior or district court requiring a jury, the clerk--utilizing the procedure adopted by the Robeson County Jury Commission pursuant to G.S.§ 9-2.1--shall produce a list of names with addresses of persons equal to the number of jurors required for each week of the session or sessions. G.S. §9-5.

b) **Pooling of Jurors.** All jurors summoned from this Judicial District shall be available for service in both the superior courts and the district courts. Such jurors shall simply be summoned for jury service. Whether such jurors serve in either the superior court or the district court, or both, is purely an administrative matter for the clerk and judges. Id.

c) **District Court Jury Sessions.** The Chief District Judge has the authority to schedule district court jury sessions at any time. G.S. §7A-146. All jurors summoned from this district shall be available for use during such sessions. G.S. §9-5.

d) **Number of Jurors Summoned.** After consultation with the Chief District Judge and Clerk of Superior Court, the Senior Resident Judge shall specify the total number of jurors to be summons for each session of court. Id.

e) **Grand Jurors.** When grand jurors are needed, 9 additional jurors shall be summoned. Id.

COMMENT

Prospective jurors are summoned for jury service in district or superior court; for the trial of civil or criminal cases; and not for the trial of any particular case. Jurors are simply summoned for jury service. Jurors are fungible. This procedure is more efficient. Further, the number of jurors required to be summoned is minimized.

Rule 7. Excuses from Jury Service.

a) **Public Policy.** Jury service is the solemn obligation of all qualified citizens, and excuses from the discharge of this responsibility should be granted only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety. G.S. §9-6(a).

b) **Procedure for Excuse Before Session Convenes (G.S. §9-6(b)).**

- 1) **Responsible Official.** The Chief District Judge or any district judge designated by him or her, prior to the date that a jury session or sessions of superior or district court convenes, shall receive, hear, and pass on applications for excuses from jury duty. G.S. §9-6(b).
- 2) **Medical Excuses.** If a person summoned for jury service feels that they are not able to serve for medical reasons, they should secure a certificate from a qualified physician stating that in his or her opinion the person is unable to serve. If such a person is unable to personally appear to present such certificate, then a family member or responsible person may present the certificate at the designated time and place. Such a medical certificate stating that such person is unable to serve will guarantee such person's excuse or deferment from jury service.
- 3) **Pressing Family or Business Conflicts.** Persons having such conflicts must appear to explain the nature of their conflict to the district judge passing upon such applications. Ordinarily such persons will be re-assigned to another session of court if the court will be assured of having enough jurors available for service.
- 4) **Jury Service within the Past Two Years.** Persons who have served as jurors within the past two years of the date of the session need only contact the clerk for verification of such service. Such persons need not appear and may be excused by the clerk. G.S. §9-3.
- 5) **Senior Citizens.** Persons 65 years of age or older, may file their application in writing, stating the reason why they should be exempt from jury service, by using the form on the Jury Summons. If possible, such person's copy of such summons should be mailed to the clerk at the address given so that it will be received at least 5 days before the date upon which he or she is summoned to appear. If such persons have a telephone they should list the number on the summons mailed to the clerk. The clerk will notify such persons of the action taken on the application by telephone, letter or personally. G.S. § 9-6.1.

- 6) **Disqualified Persons.** A district judge hearing applications for excuses from jury duty shall excuse any person disqualified under G.S. §9-3. G.S. §9-6(d).
 - 7) **Deferments.** A prospective juror excused by such a district judge may be required by such judge to serve as a jury during a subsequent session of court. G.S. §9-6(c).
 - 8) **Notice to the Clerk.** The district judge considering such applications shall inform the clerk of all persons excused or deferred pursuant to this rule. G.S. §9-6(e).
- c) **Procedure for Excuse After Session Convenes.**
- 1) **Presiding Judge.** A presiding judge has discretionary authority to excuse a juror at the beginning of or during a session of court. G.S. §9-6(f).
 - 2) **Persons Summoned.** A person summoned for jury service after the session of court convenes for which they were summoned may appear as directed by the summons and apply to a presiding judge for an excuse or deferment from jury duty. *Id.*
 - 3) **Senior Citizens.** A person so summoned as above for jury service, who is 65 years or older, may seek to establish their exemption by either: (1) appearing as directed by the summons and applying to a presiding judge; or (2) without such appearance by applying to the chief district judge or the district judge designated by him or her by using the form on their summons to state the ground of their exemption and returning same to the person effecting service upon such senior citizen or by filing the completed form with the chief district court judge or such designated district judge. If the application of a non-appearing senior citizen is rejected, the prospective juror shall immediately be notified by the clerk using the quickest available means. G.S. §9-10(b); G.S. §9-6.1.
- d) **Excusal by Resident Superior Court Judges.** A resident superior court judge has discretionary authority to excuse or defer any juror at any time prior to or during the session of court for which such juror was summoned. As soon as feasible such resident judge shall notify the clerk of such excusal or deferment.

COMMENT

The excusal procedures are designed to minimize the number of prospective jurors appearing before a presiding judge to seek an excuse, deferment or exemption. Presiding judges, therefore, have more time available for the trial of cases.

In subsection(c)(1), G.S. §9-6(f) does not grant any authority, but rather the inherent authority of the presiding judge is “not affected” by the statute. The term “presiding judge” includes superior and district court judges.

Subsection(d) provides for in chambers excusal by resident superior court judges. In chambers jurisdiction is expressly provided for in the North Carolina Constitution. N.C. Const.

Art V, §9(2) (“The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury.”). Furthermore, in chambers jurisdiction is expressly recognized by several statutes. G.S. §7A-47.1 (Jurisdiction in vacation or in session) provides, in pertinent part, as follows:

...in all matters proceedings not requiring a jury...any regular resident superior court judge of the district...and any special superior court judge residing in the district...shall have concurrent jurisdiction...with the judge holding the courts of the district... and any such regular or special superior court judge, in the exercise of such concurrent jurisdiction., may hear and pass upon such matters and proceedings in vacation, out of session or during a session of court.

A jury is not required when a resident judge considers the “issues of fact” presented when a juror seeks an excuse from further jury service “during a session of court.” See N.C. Const. Art IV, §9(2); see also G.S. §7A-47.1. A resident judge has “concurrent jurisdiction” with the presiding judge to consider such requests for excuses. Id.

A number of other statutes address such in chambers jurisdiction:

A regular superior court judge, duly assigned to hold the courts of a county...shall have the same powers in the district...in open court and in chambers as the resident judge or any judge regularly assigned to hold the courts of the district...has, and his jurisdiction in chambers shall extend until the session is adjourned or the session expires by operation of law, whichever is later. G.S. §7A-47. (emphasis supplied).

The Comment to Local Rule 10, Special Venires from This Judicial District, demonstrates that resident judges may excuse jurors from a special venire before or during a court session. It would seem, therefore, that resident judges would have the inherent authority to excuse jurors from the general venire.

Rule 8. Summons to Jurors.

- a) **Form.**
 - 1) **Approved Form.** The form summons attached hereto, or a substantial equivalent, shall be used to summon persons from this judicial district for jury service, whether for a special or a general venire. See G.S. §9-10.
 - 2) **Reporting.** The summons shall direct the prospective juror to appear at a designated time and date, and to report to a designated room in the Robeson County Courthouse. G.S. §9-10(a).
 - 3) **Excuses.** The summons shall also contain information as to the time, place, and authority before whom applications for excuses from jury service may be heard. Id.
 - 4) **Senior Citizens.** The summons shall also inform the prospective juror that persons 65 years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for such person’s signature, and

shall state the mailing address of the clerk and the date by which such request for exemption must be received. G.S. §9-10(b).

b) **Service.** The summons shall be served personally, or by leaving a copy thereof at the place of residence of the juror, or by telephone or first-class mail, at least 15 days before the session or sessions of court for which the juror is summoned if feasible. Service by telephone, or by first-class mail if mailed to the correct current address of the juror on or before the fifteenth day before the day the court convenes, shall be valid and binding on the person served, and they shall be bound to appear in the same manner as if personally served. G.S. §9-10(a).

Rule 9. Failure to Appear for Jury Service as Summoned.

a) **Order to Show Cause.** If a person fails to appear for jury service as summoned--without being excused or deferred--the court shall issue an order directing the absent person to appear and show cause why they should not be punished for criminal contempt.

b) **Form of Order to Show Cause.** The form of the order to show cause shall be the approved form attached hereto or a substantial equivalent.

Rule 10. Special Venires from This Judicial District (G.S. §9-11).

a) **Without Using Jury List.** On motion of any party or on the court's own motion, during any session, a presiding or resident judge may order the sheriff to summon from day to day a specified number of additional jurors to supplement the original or general venire. If such judge finds it would not be appropriate for the sheriff to summon such jurors because of the sheriff's direct or indirect interest in the action to be tried, the judge may appoint some suitable person in place of the sheriff. Without using the jury list, the sheriff or person so appointed shall select, in his or her discretion, suitable persons to serve as such jurors. G.S. §9-11(a).

b) **Using Jury List.** On motion of any party or on the court's motion, a resident or presiding judge may, in his or her discretion, at any time, before or during a session, direct that supplemental jurors or a special venire be selected from the jury list in the same manner as provided for the selection of regular jurors or general venires. G.S. §9-11(b).

c) **Summons.** The form of the summons used to summon such additional jurors or special venires shall be the same as the summons used for general venires. See G.S. §9-10.

d) **Service.** The summons shall be served personally, or by leaving a copy at the place of residence of the juror, or by telephone, or by first-class mail; except that mail service is not authorized for jurors summoned under subsection (a) above. See G.S. §9-10.

e) **Excuses.** The excusal procedures of Rule 7 shall be used for such additional jurors or special venires. G.S. §9-6(b)&(f).

f) **Senior Citizens.** The exemption procedures of Rule 7 shall be used for such additional jurors or special venires. G.S. §§9-6.1& 9-10(b).

COMMENT

G.S. §9-11(b) reads as follows:

The presiding judge may, in his discretion, at any time before or during a session direct that supplemental jurors or a special venire be selected from the jury list in the same manner as is provided for the selection of regular jurors. Jurors summoned under this subsection may be discharged by the court at any time during the session and are subject to the same challenges as a regular jurors, and to no other challenges.

The General Assembly used the term “presiding judge” in the first sentence and the term “court” in the second sentence of G.S. §9-11(b), therefore, the legislature clearly intended that officials or judges other than the “presiding judge” could excuse such jurors. The word “discharge” is defined as “[t]he relieving of a witness, jurors, or jury from further responsibilities in a case.” See Black ‘s Law Dictionary at 475 (7th ed. 1999). The word “court” is defined as “[a] governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice” or “[t]he judge or judges who sit on such a governmental body < the court asked the parties to approach the bench>” emphasis supplied). See Id. at 356.

The court that summoned the jurors of the special venire is the Robeson County Superior Court. Resident judges are certainly judges of that court. Therefore, resident judges may excuse jurors summoned pursuant to G.S. §9-11(b) during the session of court. It follows then that resident judges may excuse such jurors prior to the session for, if not, such judges could simply ratify actions taken prior during the session.

The same analysis applies to G.S. §9-11(a). Resident judges similarly are included in the term “court.”

Rule 11. Special Venires from Other Counties (G.S. §9-12).

a) **Procedure.** On motion of any party or the State, or on his or her own motion, if any resident or presiding superior court judge is of the opinion that it is necessary in order to provide a fair trial in any case, and regardless of whether such judge will preside over the trial of that case, may order as many jurors as the judge deems necessary to be summoned from any county located in any adjoining judicial district. G.S. §9-12(a).

b) **Summons.** The summoning procedure of the judicial district in which the county is located from which the special venire is to be drawn shall be utilized by the appropriate officials of

that district to summon the number of jurors specified in the order providing for such a special venire. G.S. §9-10(a).

c) **Excuses.** The jury excusal procedures of that judicial district shall be utilized prior to the session by the appropriate officials of that district. G.S. §§9-10 & 9-6.1.

d) **Service as Jurors.** The jurors so summoned and not so excused shall be designated solely for the trial of the specified case. These jurors shall be subject to the same challenges as other jurors, except challenges for nonresidence in the county of trial. G.S. §9-12(a).

e) **Transportation.** Transportation may be furnished such jurors in lieu of mileage. G.S. §9-12(b).

COMMENT

G.S. §9-12 is the only statutory authority for summoning jurors who are designated for the trial of a particular case. In all other situations the summoned jurors are fungible and may be used in the trial of any case in district or superior court.

Rule 12. Juror Questionnaires.

a) **Standard Questionnaire.** A standard questionnaire, approved by the Senior Resident Judge in consultation with the Chief District Judge, shall be available for use in jury selection. The standard questionnaire so approved is attached hereto. The standard questionnaire shall not be served with the jury summons or distributed to the jurors after they report for jury service, unless otherwise ordered by the court.

b) **Special Questionnaires.** Upon motion of any party or upon the court's own motion, a resident or presiding superior judge or local district court judge may approve special questionnaires that supplement the standard questionnaire. The order approving such special questionnaires may provide that the questionnaires are to be served with the jury summons or distributed to the jurors after they report for jury service.

c) **Grand Jury Questionnaire.** In order to promote uniformity the attached Grand Jury Questionnaire has been approved for use by judges in selecting the foreperson of the Grand Jury. The presiding judge selecting such foreperson may, however, use any other questionnaire approved by such judge for such purpose.

COMMENT

The Rule authorizes any number of such special questionnaires to be approved. The completion of such a special questionnaire by a juror -- whether a member of a special or general venire -- does not, in and of itself, and cannot, designate such a juror for the trial of any particular case.

Rule 13. Capital Defendants have No Right to be Present During Jury Summoning and Excusal.

a) **Confusion.** The case of State v. Smith, 326 N.C. 792(1990), generated much confusion among the bench and bar concerning a capital defendant's unwaivable state constitutional right to be present at all stages of his or her trial. The confusion led to motions seeking and orders summoning the illegal special venires described in rule 4(c) above.

b) **Rule.** No defendant--whether charged with a capital or noncapital offense--has the right to be present during the jury summoning and excusal process conducted pursuant to these rules.

COMMENT

A defendant has an unwaivable state constitutional right to be present at all stages of his or her capital first-degree murder trial. State v. Buchanan, 330 N.C. 202(1991). The right does not arise until the case is formally called for trial. State v. Rannels, 333 N.C. 644(1993). The capital defendant does not have the right to be present during pretrial jury summoning and excusal matters even if a special venire was specifically summoned for the defendant's trial. State v. McCarver, 341 N.C. 364(1995).

It is fundamental that the right only applies to a stage of the trial. State v. Huff, 325 N.C. 1, 29(1989). The "essential characteristic" of the capital defendant's right to presence is just that, his or her "actual presence at trial." State v. Buchanan, 330 N.C. 202, 219(1991). A "trial" is a judicial examination and determination of issues between parties to an action. Black's Law Dictionary 1348(5th ed. 1979). The term "judicial" means belonging to the office of a judge. Id. at 759. Therefore, in order for the right to exist, the trial judge must be involved. See, e.g., State v. Smith, 326 N.C. 792(1990) (Trial judge excused prospective jurors as a result of private bench conferences with the jurors after case had been called for trial.); State v. Robinson, 330 N.C. 1(1991)(Trial judge conducted recorded bench conferences with counsel at which defendant was not present.); State v. Payne, 320 N.C. 138(1987)(Trial judge, during a recess, administered admonitions to the jury in the jury room in absence of defendant.); State v. Davis, 325 N.C. 607(1989)(Trial judge had a telephone conversation with a juror in absence of defendant where counsel was present.); and State v. Braswell, 312 N.C. 553(1985)(Trial judge conducted hearing in absence of defendant.) If the law were otherwise, then the capital defendant would have the right to be present when anything related to the trial occurred outside the courtroom during his or her trial, including the serving of subpoenas upon witnesses.

Under the local procedure, persons are summoned for jury service. The jurors are not summoned for service in a particular case, or even for service in a criminal case, or even for service in superior court. If a capital trial is in progress and jurors are needed for that particular trial, the jurors do not become designated to the case until the jurors are brought into the courtroom from the jury pool room. In the State v. McCarver situation--after a case has

been called for trial and another special venire is needed from another county--the summoning and excusal procedures of the other county would have to be utilized, as the county where the trial was being conducted could not process the new jurors. See G.S. §§9-10 &9-6.1. Since the summoning and excusal procedures of the other county must be utilized by that county's officials, the defendant cannot be present as the trial is ongoing in another county. The local procedure is similar to procedures being followed in several counties, including Cumberland.

If a trial judge were to become involved in the excusal process, then under State v. Smith, the capital defendant would have the right to participate in the excusing of prospective jurors. If a trial judge ordered a special venire of jurors from this county designated for a capital defendant's ongoing trial, then arguably the defendant would have the right to participate in the summoning and excusal processes. Such a procedure would unduly complicate and prolong the trial and invite reversible error.

The State Supreme Court in State v. McNeill, 349 N.C. 634(1998), filed on 31 December 1998, seems to have removed any lingering doubt on this point. The McNeill case was a capital murder trial in Wake County under a jury pooling process similar to the process used in Cumberland and Robeson.

In the instant case, the record reflects that prospective jurors were sworn in the jury pool room by a deputy clerk of superior court after a juror orientation by that clerk, but prior to the time the jurors were assigned to any particular courtroom for jury service. These jurors were subject to assignment in any one of the six superior courts in session as well as any number of district courts.

***Defendant has no right to be present where prospective jurors are preliminarily sworn in, oriented, and generally qualified for service by a deputy clerk in the jury assembly room. (emphasis supplied) Id. at 642-43.

Rule 14. Motions to Dismiss the Venire Due to Irregularities in the Summoning or Excusing of Jurors.

a) **Standard.** A party, including a defendant in a capital trial, is not entitled to dismiss the venire nor to a new trial for irregularities in the summoning or excusing of prospective jurors in the absence of proof of corrupt intent or discrimination on the part of the involved officials, or irregularities which affected the actions of the jurors actually drawn and summoned. State v. Murdock, 325 N.C. 522(1989).

b) **Burden of Proof.** The burden of proof is upon the complaining party, including a criminal defendant, to establish a sufficient violation of the above standard to warrant the granting of such a motion to dismiss the venire or a new trial. Id.

COMMENT

Subsection(a)'s standard was established in the Murdock case. In the Murdock case the defendant alleged the procedures followed by the district court judge in excusing jurors included

granting all requests regardless of the reason and authorizing his wife to grant excuses. The court held that even if the allegations were true, the showing was insufficient to entitle the defendant to a new trial. Id. at p.526.

Subsection(b)'s burden of proof was established in the Murdock case. In State v. Leary, 344 N.C. 109(1996), a defendant tried capitally argued unsuccessfully that previous cases unfairly shift the burden of proving corrupt intent and systematic discrimination to the defendant when no records are kept of the excusal process, the process occurs before the defendants trial begins, and defense counsel is not present to oversee the procedure. The Supreme Court re-affirmed its earlier rulings, which "place the burden on the defendant to come forward with evidence that the district court judge abused his (or her) discretion in the excusal process." Id. at p.118.

Rule 15. Grand Jury (G.S. 15A-621 et seq).

a) **Selection.** At the first session of superior court at which criminal cases are heard following January 1 and July 1 of each year, nine new grand jurors should be selected to replace the jurors whose terms have expired. The new grand jurors shall be selected from the general venire summoned for that session. G.S. §15A-622.

b) **Foreperson.** The presiding judge should appoint one of the grand jurors as foreperson and should appoint another as alternate foreperson to act as foreperson during any absence of the foreperson. The judge may utilize the approved Grand Jury Questionnaire to assist him/her in making these selections. G.S. §15A-622(e).

c) **Order of Appointment.** The judge should enter on the record an order with appropriate findings of fact and conclusions of law concerning the selection and appointment process. The order should direct the Clerk to seal the questionnaires as completed, to be preserved as a part of the minutes, and not to be opened without an order of the court. An approved form order is attached hereto which may be used by the judge.

d) **Oaths.** The clerk should administer an appropriate oath to the foreperson, alternate foreperson, grand jurors and grand jury officer.

e) **Instructions.** The judge should charge the Grand Jury regarding its duties as per the pattern jury instructions. The foreperson and alternate foreperson should be provided with a copy of the charge or instructions. G.S. §622(f).

f) **General Procedure.** The Grand Jury shall be selected and managed in accordance with the provisions of Article 31 of Chapter 15A of the North Carolina General Statutes.

Rule 16. Approved Forms.

a) **General.** The forms attached hereto are approved for use in this judicial district. The approved forms, or a substantial equivalent, should be used in the particular circumstances addressed by the forms.

b) **Forms.**

- 1) Order Summoning General Venire.
- 2) Order Summoning Special Venire from This Judicial District Without Using a Jury List.
- 3) Order Summoning Special Venire from This Judicial District Using Jury List.
- 4) Order Summoning Special Venire from Another County.
- 5) Juror Summons.
- 6) Order to Show Cause for Failure to Report for Jury Service.
- 7) Juror Questionnaire
- 8) Grand Jury Questionnaire.
- 9) Order Appointing Grand Jury Foreperson.
- 10) Order Excusing Individual Grand Juror for the Balance of Their Term.

Rule 17. Enforcement.

a) **Local Judicial Officials.** These rules shall be observed and enforced by all local judicial officials.

b) **Visiting Judges.** In order to insure uniformity, all judges assigned to hold court in this judicial district shall observe and enforce these local rules. The Superior Court Judicial Assistant or Trial Court Coordinator shall provide a copy of these rules to each such visiting superior court judge at or before the commencement of such judge's assignment. The District Court Judicial Assistant or Trial Court Coordinator shall provide a copy of these rules to each such visiting district court judge at or before the commencement of such judge's assignment.

Rule 22, Rules of Practice

Rule 18. Sanctions.

a) **General.** A violation of these rules shall subject the offending party and/or attorney to any lawful sanction, including those specified by Rule 37 of the North Carolina Rules of Civil Procedure.

b) **Discipline of Attorneys.** A violation of these rules that constitutes a violation of the Rules of Professional Conduct shall subject the offending attorney(s) to discipline by the court or the North Carolina State Bar.

c) **Contempt.** These rules may also be enforced through the contempt power of the court.

Rule 19. Effective Date.

These local rules shall be effective on the 1st day of July 2001.