

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

COUNTY OF BURKE

2021 AUG 18 A 9:46

SUPERIOR COURT DIVISION

21-R-259

BURKE CO., C.S.C.

BY KR

IN THE MATTER OF THE OPERATION OF

THE SUPERIOR COURT DIVISION OF

THE GENERAL COURT OF JUSTICE IN

BURKE COUNTY

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF CALDWELL

SUPERIOR COURT DIVISION

21-R-476

IN THE MATTER OF THE OPERATION OF

THE SUPERIOR COURT DIVISION OF

THE GENERAL COURT OF JUSTICE IN

CALDWELL COUNTY

ADMINISTRATIVE ORDER

This matter came on before Robert C. Ervin, Senior Resident Superior Court Judge, in the exercise of the Court's in chambers jurisdiction in response to the on-going health emergency posed by the COVID-19 pandemic.

FILED
2021 AUG 18 A 10:17
CALDWELL CO., N.C.
BY _____

LEGAL AUTHORIZATION FOR THE ENTRY OF THIS ORDER.

A court's inherent power is essential to the existence of the court and the orderly and efficient exercise of the administration of justice. Beard v. North Carolina State Bar, 320 N. C. 126, 357 S. E. 2d 694 (1987).

Through its inherent power, a court has the authority to do all things that are reasonably necessary for the proper administration of justice. Beard, 320 N. C. at 129.

It is the duty of the trial judge, in the exercise of his or her discretion, to regulate the conduct and course of business during a trial. *State v. Tolley*, 290 N. C. 349, 226 S. E. 2d 353 (1976); *State v. Spaulding*, 288 N. C. 397, 219 S. E. 2d 178 (1975).

It is not only proper, but the judge's duty to take precautions for the safety of the prisoner and the protection of the court. *State v. Mansell*, 192 N. C. 20, 133 S. E. 190 (1926).

A trial court is authorized to control the conduct of spectators in the courtroom. *State v. Braxton*, 344 N. C. 702, 427 S. E. 2d 172 (1996).

A judge may remove any person other than a defendant from the courtroom when that person's conduct disrupts the conduct of the trial. *State v. Dean*, 196 N. C. App. 180, 674 S. E. 2d 453 (2009).

The presiding judge may impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of the proceedings or the safety of the persons present. *State v. Murray*, 154 N. C. App. 631, 572 S. E. 2d 845 (2002).

The health of participants in court proceedings can affect the functioning of the court. Numerous appellate decisions reflect this reality. A trial judge in cases less than capital may, in the exercise of sound discretion, order a mistrial before verdict, without the consent of the defendant, for physical necessity such as the incapacitating illness of a judge, juror, attorney or a material witness, and for the necessity of doing justice. *State v. Battle*, 267 N. C. 513, 148 S. E. 2d 599 (1966) (illness of attorney); *State v. Pfeifer*, 266 N. C. 790, 147 S. E. 2d 190 (1966) (illness of a juror); *State v. Boykin*, 255 N. C. 432, 121 S. E. 2d 863 (1961) (judge suffered a heart attack); *State v. Ledbetter*, 4 N. C. App. 303, 167 S. E. 2d 68 (1969) (illness of juror caused mistrial).

In District Court and in non-jury matters in Superior Court, illnesses may not necessitate a mistrial. However, illnesses can delay and disrupt the orderly and efficient resolution of matters before the court.

RECENT DEVELOPMENTS

COVID issues have affected the operations of local courts in this and nearby judicial districts in recent weeks.

The undersigned Senior Resident Superior Court Judge declared a mistrial in a civil trial that was beginning its second week when a total of three jurors were reported to have contracted COVID.

The Mecklenburg County Courts recently suspended operations due to a significant COVID outbreak in the office of the Clerk of Superior Court.

In Burke County, immediately after the conclusion of a jury trial, the Court was advised that a law enforcement officer, who had participated in the trial, had tested positive for COVID. Although the trial was not disrupted, other operations were delayed due to the need to advise court personnel, attorneys, and jurors of their potential exposure.

Local judicial officials have also been advised of a COVID outbreak at the Caldwell County jail. More than twenty-five jail inmates and staff members have tested positive for COVID.

Current cases of COVID in Burke and Caldwell Counties have risen to levels not reported since the height of the pandemic.

The positivity rate for testing in both counties is more than double the target rate of 5%.

The vaccination rates for individuals in both counties are below 40%. This rate creates a reality that 60% of the individuals coming to the courthouse are unvaccinated.

The Center for Disease Control has reported that even individuals who have been fully vaccinated can still transmit COVID to others.

The Center for Disease Control now recommends that even vaccinated people should wear face coverings in indoor public settings to help curb the transmission of COVID.

SOCIAL DISTANCING REQUIREMENTS IN SUPERIOR COURT

Each courtroom used for Superior Court proceedings shall have intervals of at least six feet in every direction marked with tape or other visible markers in all areas where the public is expected to be seated or to wait in line.

The maximum allowable occupancy for each courtroom has been established such that all persons who must sit or stand in the courtroom may observe social distancing of at least six feet in every direction. For Courtroom #1 at the Burke County courthouse, the maximum allowable occupancy is 20 persons. For Courtroom #5 at the Caldwell County courthouse, the maximum allowable occupancy is 36 persons. For Courtroom #6 at the Caldwell County courthouse, the maximum allowable occupancy is 24 persons.

No session of Superior Court should be conducted if doing so would result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidelines for social distancing.

SOCIAL DISTANCING REQUIREMENTS IN DISTRICT COURT

This order does not impose any social distancing requirements for proceedings in the District Court Division. Any such requirements are left to the sound discretion of Chief District Court Judge Burford A. Cherry.

COURT SCHEDULING FOR CIVIL CASES

The Trial Court Coordinator will schedule all hearings for civil motions so that social distancing can be maintained during the hearing of such motions. The parties are encouraged to utilize technological options to conduct hearings remotely when possible.

A subsequent order will be entered to facilitate the handling of civil jury trials.

COURT SCHEDULING FOR CRIMINAL CASES

No calendar calls will be conducted to avoid exceeding the applicable maximum allowable occupancies of the courtrooms utilized for Superior Court criminal matters.

The District Attorney's office shall schedule each matter to be heard at a designated time slot to allow for the maintenance of these social distancing requirements.

At the outset of each session of criminal Superior Court, the District Attorney's office will first schedule cases in which a determination of counsel is necessary. Once those matters are addressed, then the remaining business of the court should be scheduled in time slots to permit the maintenance of social distancing requirements.

As a general rule of thumb, no more than eight to ten criminal cases should be scheduled for any one hour time slot during a Trial or Administrative Court session.

As a general rule of thumb, no more than six probation hearings or motions should be scheduled during a hour half time slot of Probation court.

The use of remote technology to handle cases involving inmates at local jails is encouraged when feasible.

A subsequent order will be entered to facilitate the scheduling of criminal jury trials.

This order becomes effective immediately.

This the 8th day of August, 2021.

A handwritten signature in black ink, appearing to read 'R. Ervin', with a long horizontal line extending to the right.

Robert C. Ervin

Senior Resident Superior Court Judge