

STATE OF NORTH CAROLINA
24th JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ADMINISTRATIVE ORDER 21-1

SUPERIOR COURTROOM PROCEEDINGS DURING THE COVID-19 HEALTH CRISIS

BEGINNING JANUARY 14, 2021

NOW COMES the undersigned Senior Resident Superior Court Judge and enters this Administrative Order concerning Superior Court operations beginning January 14, 2021.

WHEREAS, by Order of the Chief Justice of the North Carolina Supreme Court entered this date several emergency directives have expired and several have been continued, and each Judicial District has been granted substantial decision making authority over when and how to conduct jury trials and other in-person proceedings as well as the appropriate safety precautions to be taken to ensure the health and safety of courthouse personnel, courtroom participants and the public.

WHEREAS, As noted in the Chief Justice's order, catastrophic conditions resulting from the COVID-19 outbreak continue to exist in all counties throughout the State.

WHEREAS currently four of the five counties in the 24th Judicial District are classified at a critical RED stage by the North Carolina Department of Health and Human Services and the fifth is currently in the substantial ORANGE stage with indications that it will soon be in the critical RED stage.

WHEREAS, following consultations with the 24th Judicial Executive Committee comprised of the Chief District Court Judge, the District Attorney, and all five Clerks of Courts; the Health Directors for all five counties; and members of the 24th Judicial District Bar, it has been determined that all jury trials and grand jury proceedings in the 24th Judicial District will be suspended through and including February 28, 2021.

Court offices in the 24th Judicial District will remain open for the transaction of business. However, attorneys and other persons who do not have business in a courthouse should not enter a courthouse. Unless you are required to appear in person to conduct your courthouse business, attorneys and members of the public are strongly encouraged to use email and the telephone to communicate with courthouse staff. Those who do have business in a courthouse requiring a personal appearance should not prolong their visit once their business has concluded and must wear masks unless specifically exempt. Attorneys are strongly encouraged to submit filings by mail rather than in person.

During this pandemic several counties have had to close county offices and buildings, including courthouses, to the public in an effort to control the transmission of COVID-19. In addition, offices of the Clerk of Superior Court and the District Attorney in our counties have often had to rotate staff to ensure a safe working environment for all concerned. Therefore, although remaining open, you may be required to make an appointment to obtain access to the courthouse and to meet with the appropriate official, should an in-person meeting be required. Court office staff will be available to respond to attorney and citizen requests via email, telephone, or by appointment where in-person access is necessary.

Online Court services continue to be available for handling some court business, including citation services, paying your ticket, court payments, and signing up for court date notifications and reminders.

THIS ORDER IS ENTERED in accordance with the January 14, 2021 Order of the Chief Justice of the Supreme Court, which order, and directives are incorporated herein by reference as if fully set out and shall remain in full force and effect until amended or revoked.

ALL PRIOR ADMINISTRATIVE ORDERS shall remain in full force and effect except as modified herein.

COURTROOM AND WAITING ROOM SEATING AND CAPACITY RESTRICTIONS

1. The courtroom and meeting room seating restrictions imposed by this Court's Administrative Order 4 are incorporated herein by reference as if fully set out.
2. Court sessions shall recess for lunch from 12:30 until 2:00 to allow for the cleaning of the facilities and all high touch areas. Administrative Order 20-3 is incorporated herein by reference as if fully set out.
3. In addition to the required luncheon recess, the court shall conduct a morning and afternoon recess of enough length, but in any event no less than 20 minutes, to allow courtroom personnel to leave the confines of the courtroom in order to comply with public health guidelines relative to sitting or standing in a confined area for extended periods of time.
4. No session of superior court shall be scheduled or shall continue to proceed 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.

CRIMINAL COURTROOM PROCEEDINGS DURING THE COVID-19 HEALTH CRISIS

BEGINNING JANUARY 14, 2021

The following procedures will be implemented for all in-person criminal court proceedings in Superior Court in the 24th Judicial District beginning January 14, 2021. These procedures shall remain in full force and effect until amended or revoked.

1. There shall not be any criminal jury trials through February 28, 2021 in the 24th judicial district. This restriction on jury trials shall cease on that date unless otherwise ordered by the Senior Resident Superior Court Judge. Once jury trials are deemed to be able to resume safely, jury trials shall be conducted in accordance with the Jury Trial Resumption Plan set forth in Administrative Order 20-8 which is incorporated herein by reference.
2. Superior Court Judges shall continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances. These remote hearings shall be conducted in accordance with the Chief Justice's Emergency Directive 3, which directive is incorporated herein by reference as if fully set out.
3. The setting of cases for in-person disposition (pleas, probation hearings and essential motions) shall be scheduled at 40 minute intervals unless shorter time periods are agreed to by the presiding judge in consultation with the COVID Coordinator. If an attorney has multiple clients, the time period will be modified to allow the attorney enough time to complete his matters.

4. Although court will be open, and the public can attend, courtroom access shall be very limited. Entrance and exit of courtrooms shall be through designated doors only. Courtroom seating and capacity shall be designated and limited as provided in Administrative Order 4 and will be strictly enforced. Defendants and witnesses shall be given priority in Courtroom and designated waiting area seating.
5. All attorneys, non-custody defendants, spectators and witnesses will enter and exit only through doorways so marked. They shall only enter when notified by the bailiff (the bailiff that is at the main courtroom entrance) or otherwise. Upon conclusion of the plea or hearing the non-custody defendant and his attorney shall sanitize and exit through the exit door only.
6. **All individuals, including attorneys,** entering the courtroom shall be required to sanitize before entering and exiting the courtroom and all individuals shall be required to wear a mask or facial covering, unless a verified health condition prevents the individual from wearing the same. A face shield may be used in addition to, but not as a substitute for a face covering. Counsel for the defendant shall be responsible for notifying the client and any witnesses or spectators for the defendant that they will be required to sanitize and wear a mask or facial covering while in the courthouse, courtroom, jury assembly room or court authorized meeting room. It shall be the responsibility of the attorney to ensure that their client(s), any witnesses and any spectators associated with the client's case have the appropriate mask or face covering. The court will not be providing masks or facial coverings. Emergency Directive 21 is incorporated herein by reference as if fully set out.
7. Attorneys shall be given time slots and shall not enter the courtroom until the scheduled time slot and when advised to enter the courtroom by a bailiff or otherwise. Attorneys will be responsible for advising client(s), witnesses and any spectators associated with the case of the time period that the matter is scheduled to be heard.
8. All spectators and witnesses shall sit in designated seats only. Each defendant will use a pen provided by their attorney. The court will not provide pens to counsel or the defendant.
9. There shall be no more than 10 people in front of the bar in the courtroom at any one time unless otherwise authorized by the presiding judge. Those individuals are as follows:
 - a. Judge
 - b. Courtroom Clerk (one or two if they can seat 6 feet apart.)
 - c. Court Reporter
 - d. Assistant District Attorney
 - e. Defense Attorney
 - f. Defendant
 - g. Two (2) bailiffs. One to monitor the defendant and one to monitor the courtroom to ensure that all persons who enter the courtroom are wearing a mask or facial covering, sanitize and sit in designated seating.
 - h. A Probation Officer.
10. All other non-custody defendants and their attorneys shall wait in the court designated waiting area in the county (e.g. jury assembly room, grand jury room, jury room or other court designated place) or in their vehicles and shall remain six feet apart while in the rooms and shall switch out between cases. Attorneys and their clients shall not mill about in the common areas of the courthouse. The number of non-custody defendants shall be scheduled for court in such numbers as to comply with occupancy requirements in the courtroom and the court approved waiting room.

11. The number of custody defendants will be scheduled to comply with transportation, holding cell occupancy requirements, and courtroom restrictions on seating and capacity. The number of defendants that can be transported at one time and the number that can occupy a holding cell shall be determined by the Sheriff. It shall be the responsibility of the Sheriff to ensure that such transportation and holding cell occupancy complies with public health guidelines.
12. Custody Defendant cases shall be given priority in dealing with the disposition of their cases. All custody defendants shall be required to wear face masks or face coverings while in the courtroom. It shall be the responsibility of the Sheriff to supply face masks or face coverings for these in custody defendants.
13. Only the scheduled attorney and their client will be allowed inside the bar. All others shall wait in the designated waiting area, their vehicle or in designated seating in the courtroom, if applicable.
14. No one will be allowed to approach the bench, the clerk or the court reporter without prior permission from the court. No one will be able to approach the bar without prior permission from the court.
15. All documents (i.e. finalized negotiated plea transcripts, prior record level worksheets, motions, briefs and exhibits intended to be offered) shall be forwarded by email to opposing counsel, the clerk and the presiding judge no later than noon of the Friday before the first day of Criminal Court. All Exhibits shall be numbered.
16. Social distancing of a minimum of 6 feet shall be strictly enforced at counsel tables.
17. The district attorney's staff will forward any plea offers to attorneys in advance of the court date, no later than the Wednesday prior to the first day of Criminal Court.
18. **The court date and time is not the time to negotiate nor is it the time to meet with the defendant to review the plea transcript or prepare for a hearing. All negotiations and hearing preparations must take place in advance of the court date.** Failure to do so will result in the loss of the time slot and the attorney will need to reschedule the matter with the District Attorney's office. In addition, continued failure to abide by the time restrictions for submission of documents or preparation for hearing will result in the assigned attorney being removed from a case or cases. However, if for some unforeseen reason, counsel must confer with opposing counsel or court personal, the court in its discretion may allow the same subject to all COVID protocols.
19. Any testimony will be taken from a location that complies with all administrative orders and all health and safety protocols whether it be the jury box or the witness chair.
20. All oaths shall be by affirmation.
21. As there will not be any trials during the months of January or February, all criminal trials set for those terms shall be continued from term to term until jury trials resume.
22. There shall not be a calendar call at any Criminal or Criminal Administrative term of Superior Court until otherwise ordered by the Senior Resident Superior Court Judge. If by agreement between the District Attorney's office and defense council cases, including probation violations, are to be continued the defendant and his counsel will not need to appear in court for the continuance. However, no later than noon on the Friday prior to the court date, defense counsel shall email to the presiding judge and the clerk a signed Consent Scheduling Order reflecting the new court date. A copy of the Consent Scheduling Order is attached hereto as Exhibit A.
23. At the conclusion of the plea, or other hearing, all original completed documents (and any numbered exhibits offered and received into evidence) shall be presented to the clerk.

24. At the conclusion of a probation hearing, the probation officer shall prepare the appropriate order and present it to the Clerk for presentation to the presiding judge.
25. Those that handle documents must sanitize before handling documents and/or be gloved up.
26. **CRIMINAL BACK UP CALENDARS.** The scheduling of attorney times on criminal back up calendars for civil priority terms shall be coordinated with the Superior Court Trial Coordinator in conjunction with the Clerk of Superior Court and the presiding judge to avoid confusion, time schedule conflicts, and issues with social distancing requirements and staffing.

CIVIL COURTROOM PROCEEDINGS DURING THE COVID-19 HEALTH CRISIS

BEGINNING January 14, 2021

The following procedures will be implemented for civil court proceedings in Superior Court for Watauga County beginning January 14, 2021. These procedures shall remain in full force and effect until amended or revoked.

27. There shall not be any civil jury trials through February 28, 2021 in the 24th judicial district. This restriction on jury trials shall cease on that date unless otherwise ordered by the Senior Resident Superior Court Judge. Once jury trials are deemed to be able to resume safely, jury trials shall be conducted in accordance with the Jury Trial Resumption Plan set forth in Administrative Order 20-8 which is incorporated herein by reference.
28. Although the court may conduct in person hearings, Superior Court Judges should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances. Remote technology hearings may be done without the consent of the parties in accordance with the Chief Justice's Emergency Directive 3 and in accordance with Rule 6 of the General Rules of Practice. The Chief Justice's Emergency Directive 3 is incorporated herein by reference as if fully set out.
29. The setting of cases for in person hearing shall be scheduled by the Trial Court Coordinator in consultation with the presiding judge. Hearings shall be scheduled at time intervals as so to maintain appropriate social distancing and comply with courtroom and waiting area occupancy restrictions.
30. Bench trials may be scheduled in the discretion of the presiding judge after providing appropriate notice and consultation with the Trial Court Coordinator.
31. Attorneys shall be given time slots and shall not enter the courtroom until the scheduled time slot and when advised to enter the courtroom by a bailiff or otherwise. Attorneys will be responsible for advising client(s), witnesses and any spectators associated with the case of the time period that the matter is scheduled to be heard.
32. Although court will be open, and the public can attend, courtroom access shall be very limited. Entrance and exit of courtrooms shall be through designated doors only. Courtroom seating and capacity shall be designated and limited as provided above and will be strictly enforced. Courtroom seating priority seating will be given to parties and witnesses.
33. All attorneys, parties, spectators and witnesses will enter through the main entrance only. They shall only enter when notified by the bailiff (the bailiff that is at the main entrance) or otherwise. Upon conclusion of the hearing, the attorneys, parties and witnesses, shall sanitize and exit through the exit door. All such individuals shall maintain 6 foot social distancing as they enter and exit.

34. **All individuals, including attorneys,** entering the courtroom shall be required to sanitize before entering and exiting the courtroom and all individuals shall be required to wear a mask or facial covering, unless a verified health condition prevents the individual from wearing the same. A face shield may be used in addition to, but not as a substitute for a face covering. Counsel for each party shall be responsible for notifying their client(s) and any witnesses or spectators for the party that they will be required to sanitize and wear a mask or facial covering while in the courtroom and jury assembly room. It shall be the responsibility of the attorney to ensure that their client(s), any witnesses and any spectators associated with the client's case have the appropriate mask or face covering. The court will not be providing masks or facial coverings. Emergency Directive 21 is incorporated herein by reference as if fully set out.
35. All parties will use pens provided by their attorney. The court will not provide pens to counsel or the parties.
36. The number of people inside the bar shall be limited to 10 people at any one time unless otherwise authorized by the presiding judge. Those individuals are as follows:
- a. Judge
 - b. Courtroom Clerk (one or two if they can seat 6 feet apart.)
 - c. Court Reporter
 - d. Counsel for the Plaintiff(s)
 - e. Plaintiff(s)
 - f. Counsel for the Defendant(s)
 - g. Defendant(s))
 - h. Two (2) bailiffs. One to monitor the defendant and one to monitor the courtroom to ensure that all individuals entering the courtroom sanitize, are wearing face masks or a face covering and are seated no less than 6 feet apart from everyone.
 - i. Trial Court Coordinator (if desired)
37. Social distancing of a minimum of 6 feet shall be strictly enforced at counsel tables.
38. All other parties and their attorneys shall wait in the designated waiting area room or in their vehicles and shall remain six feet apart while in the designated waiting area and shall switch out between cases. The number of individuals in the designated waiting area shall comply with occupancy requirements
39. Only the scheduled attorneys and their client(s) will be allowed inside the bar. All others shall wait in the designated waiting area, their vehicle or in designated seating in the courtroom, if applicable.
40. No one will be allowed to approach the bench, the clerk or the court reporter without prior permission from the court.
41. All documents and exhibits (labeled in advance) shall be forwarded by email to opposing counsel, the clerk, the court reporter and the presiding judge no later than noon on the Wednesday prior to the beginning of the Civil term.
42. The court date and time is not the time to negotiate. All negotiations should take place in advance of the court date. However, if for some unforeseen reason, counsel must confer with opposing counsel or court personal, the court in its discretion may allow the same subject to all COVID protocols.
43. Any testimony will be taken from a location that complies with all administrative orders and all health and safety protocols whether it be the jury box or the witness chair.
44. All oaths shall be by affirmation.

45. As there will not be any jury trials during the months of January or February, all civil jury trials set for those terms will be continued from term to term unless counsel for the parties submit a revised scheduling order ten (10) days prior to the scheduled trial date or 10 days prior to the next scheduled administrative session whichever occurs first.
46. There shall not be a calendar call at any Civil or Civil Administrative term of Superior Court until it is determined that they can be resumed safely by the Senior Resident Superior Court Judge.
47. At the conclusion of any hearing or bench trial, all exhibits offered and received into evidence shall be submitted to the courtroom clerk.
48. Those that handle documents must sanitize before handling documents and/or be gloved up.

This the 14th day of January 2021.

S/ Gary M. Gavenus

Gary M. Gavenus

Senior Resident Superior Court Judge

24th Judicial District

EXHIBIT A

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____

SUPERIOR COURT DIVISION

FILE NO(s): _____

STATE OF NORTH CAROLINA

) CONSENT SCHEDULING ORDER

) AND FINDINGS RE: DISCOVERY

VS.

) AND PLEA OFFER

_____,

)

Defendant

THIS MATTER being scheduled for the _____ Superior Court Calendar for _____ County, or otherwise entered by consent out of term and session; and the State of North Carolina and the Defendant, by and through counsel of record, represent to the court that the parties waive a formal hearing and consent to the following scheduling order and findings regarding the status of the matter, status discovery and plea negotiations; the parties further consent that this Order may be signed by the Court out of term, out of session and out of county.

The parties, by and through counsel stipulate and consent to the following Findings of Fact:

1. That the defendant:
() was indicted on _____.
() has not been indicted.
() was served with a probation violation on _____.
2. That this is the _____ time that this matter has appeared on a Superior Court Administrative Calendar or other Superior Court calendar. **[NOTE: Matters that have appeared on a Trial Calendar, shall be set on trial dates and shall not be given another administrative setting absent a showing of good cause.]**
3. That the () Defendant, State () has requested a continuance of the probation violation hearing or that the () State and the Defendant consent to the continuation of the probation violation hearing.
4. That
() the State and the Defendant stipulate that good cause exists for the continuation of the probation violation hearing
Or
() the Court finds that good cause exists for the continuation of the probation violation hearing.
5. That the State and the Defendant by and through counsel stipulate and advise the Court :
() that discovery has been completed in its entirety.
() that discovery has been completed except for the results of any chemical analysis.

() that discovery has not been completed as of this date. **[NOTE: Mark this block if there is any outstanding discovery other than the results of any chemical analysis.]**

6. That the State:

() has not extended a plea offer as of this date.

() has extended a plea offer to the defendant with an expiration date of

_____, 20_____.

() has elected to not make a plea offer in this matter

() and the Defendant has by separate document waived arraignment and entered plea(s) of NOT GUILTY and the Defendant desires a jury trial. **[If this block is checked it must be accompanied by a properly executed Waiver of Arraignment form]**

[NOTE: Pursuant to Article 51 of Chapter 15A, absent a written request for arraignment, the only county in the 24th Judicial District requiring the calendaring of arraignment is Watauga County. It must be specifically noted that the provisions of N.C.G.S. 15A-943 do not apply to Avery, Mitchell, Yancey and Madison Counties.]

Based upon the foregoing Findings of Fact, the parties stipulate and agree and the Court Concludes as a Matter of Law that the court has jurisdiction over the parties and the subject matter and that this order is entered by and with the consent of the parties and shall be enforceable by the court.

NOW THEREFORE BY AND WITH THE CONSENT OF THE STATE AND THE DEFENDANT, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the State shall complete discovery on or before _____, 20____
absent a showing of good cause.
2. () That if the State intends to extend a plea offer, the State shall extend a plea offer in this matter on or before _____, 20_____.
3. That the probation violation hearing is continued to _____, 20_____.
4. That the () parties stipulate and/or () the court finds that good cause exists for the continuation of the probation violation hearing.
5. That this matter be set for the _____, 20____
() Administrative Calendar
() Trial Calendar and shall be continued from trial term to trial term until jury trials are resumed.

[NOTE: Once placed on a trial calendar the matter shall not be placed on another administrative calendar except upon a showing of good cause.]

DATE: _____

DATE: _____

ATTORNEY FOR THE STATE

ATTORNEY FOR THE DEFENDANT

Accepted and entered by consent this the _____ day of _____, 20_____.

Superior Court Judge Presiding