


NORTH CAROLINA
23rd Judicial District
34th Prosecutorial District

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
Criminal Section

FILED
2020 MAY 15 P 2:13

WILKES, YADKIN, ASHE AND
ALLEGHANY COUNTIES

WILKES CO., C.S.C.
BY 

ADMINISTRATIVE ORDER ESTABLISHING
REMOTE CRIMINAL/INFRACTIONS PLEA COURT

The undersigned Chief District Court Judge establishes for the 23rd Judicial District and the 34th Prosecutorial District a Criminal Plea Disposition Court in the District Court Division of the General Court of Justice as follows:

IT IS HEREBY ORDERED:

1. Each County of the 23rd Judicial District and the 34th Prosecutorial District shall conduct Remote Criminal/Infraction Plea Disposition Court sessions one day per week to begin the week of May 18, 2020. Thereafter, sessions shall continue to be held in each county one day per week preferably on the same day of each week until further notice. At least until the end of May 2020, the sessions for Wilkes, Yadkin, and Ashe Counties will be held on Thursdays. The sessions in Alleghany County will be held on Fridays.

2. Each session, and the hearings conducted therein, will be remote through use of the WebEx platform and shall comply with the Administrative Office of the Courts' requirements for remote hearings, said requirements including that all parties shall be able to see, hear and communicate with every other party at the same time.

3. The "sessions" shall be initiated by the Clerk of Superior Court with an invitation sent to the presiding Judge, the District Attorney, the Defendants and Defendant's Counsel at each person's contact point with the WebEx platform.

4. Defendants, if attending remotely with Counsel, must be able to and shall be allowed to communicate privately with Counsel during any hearing/plea.

5. The District Attorney and Defendant's counsel (or pro se defendant) shall agree upon the cases to be heard in these sessions. Attorneys may supply lists of matters that are ready for plea to the District Attorney's office.

6. The Clerk of Court shall be responsible for pulling files for the hearings as agreed upon by the District Attorney and Defendant's counsel or Defendant if pro se. From that list, the Clerk shall

prepare a “list of cases” to be heard during each court session. To that end, the District Attorney will provide to the Clerks a time-slot schedule by Attorney of cases to be heard during any particular court session. The Clerks shall be provided the cases and Attorneys names at least 2 days prior to the preferred session in order for cases to be included on said court date.

7. All Defendants shall execute a “Waiver of Personal Appearance and Consent to Audio-video Proceeding” prior to each proceeding. Attached hereto is the form waiver to be used in any hearings conducted under these guidelines. Once the waiver form is executed by the Defendant, a copy shall be promptly served upon the District Attorney’s office in the county where the case is pending. The District Attorney’s office will not present the case to the Clerk for calendaring until the form is served on the District Attorney’s office. Any executed waiver shall be submitted for filing to the Clerk of Court of the appropriate county before the hearing if practical, or, said waiver shall be submitted for filing promptly after the hearing is conducted if, and prior to any hearing, the Defendant or Defendant’s Counsel shows the signed waiver to be submitted over the WebEx feed to the Court and other interested parties. Any waiver may be filed by electronic mail pursuant to Justice Beasley’s Rule 5 Emergency Directive to the Clerk of Superior Court in the respective county to be placed in the file. **Any cases that do not have a signed waiver allowing for a remote hearing shall not be addressed.**

8. After receiving the required information, the Clerks shall create a docket that indicates this is a “WebEx Session” of Criminal District Court and said docket will include the WebEx access code and password for the public. The Clerks shall cause this docket to be posted on the North Carolina Courts website at www.nccourts.org to satisfy public notice requirements. The Clerks of Court shall also post the dockets in the courthouse at the usual place of posting.

9. Once a docket is created the Clerks will set up a WebEx hearing “room” and will send an invitation to all attorneys/defendants represented on the docket. A copy of the docket including Attorney/Defendant time slots shall be provided along with the invitation. The Attorneys/Defendants will access the hearing “room” from their computers, smart phones or other WebEx contact points that allow for audio and visual transmission and receipt. (NOTE: The app for a smartphone is Cisco WebEx and no account is needed to join a meeting room).

10. Only cases for plea that are not contested will be heard during these sessions and any plea must be agreed upon by the District Attorney and the Defendant, by and through his/her attorney, if applicable.

11. No cases where incarceration could result will be heard. Nothing prevents the State and the Defendant from agreeing to a plea to an offense that could result in incarceration with the understanding that a suspended sentence will be imposed if the plea is accepted by the Court.

12. The Court shall go over the Defendant’s waiver of appearance and its specific provisions with the Defendant to the extent the Court is satisfied that the waiver is knowingly, willingly and voluntarily made.

13. Defendants shall appear remotely in all cases for which a conviction of a non-waivable offense is contemplated. Defendants having Attorneys will not need to appear remotely if the Plea or outcome will not result in a conviction for a non-waivable offense.

14. If it is anticipated that a supervised probationary sentence will be imposed in a case, the District Attorney shall notify the local probation office prior to any hearing of such a case to allow for probation officers to monitor and/or remotely attend any such hearing. This requirement is intended to allow for probation intake to be conducted on the day of Court. In addition, and as soon as practical after a session is complete, the Clerk of Court shall provide all pertinent information about the terms of any Defendant's supervised probation to probation officials and to Defendants placed on **supervised probation**.

15. District Attorneys and Defense Counsel/Defendants are strongly encouraged to communicate regularly in hopes of working out as many plea agreements as possible.

16. Notwithstanding anything contained herein to the contrary, no provision of this Order shall interfere with, supersede or infringe upon the provisions of the Crime Victim's Rights Act. To that end, if a victim wishes to be present for her/his case, the District Attorney's Office shall not be required to consent to such a case being calendared.

17. This Order shall remain in effect until the Chief Justice's current Order suspending regular court operations, or any extension thereof, expires. It is possible that remote pleas may continue to be taken after June 1, 2020 if permitted by the then existing directives of the Chief Justice.

18. Nothing in this Order shall be interpreted to prohibit cases from being disposed under the provisions of NCGS 15A-1011(a)(3), pursuant to which any misdemeanor case may be heard without the presence of the defendant, either in open court or by remote means, if there is a written waiver of appearance submitted with the approval of the presiding judge.

19. The undersigned retains jurisdiction regarding the matters addressed in this Order for such further action(s) as necessary.

ENTERED, this the 15th day of May, 2020.



David V. Byrd, Chief District Court Judge
23rd Judicial District

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

NOTE: Use this form for a criminal or infraction proceeding being conducted by audio and video transmission pursuant to Emergency Directive 3 in the Order of April 2, 2020, by the Chief Justice. This form need not be used for a proceeding in a noncapital case for which the General Statutes expressly authorize audio and video transmission: initial appearances, G.S. 15A-511; bail hearings, G.S. 15A-532 (unless defendant objects); first appearances, G.S. 15A-601; and arraignments, G.S. 15A-941 (for "not guilty" pleas).

STATE VERSUS

Defendant Name

WAIVER OF PERSONAL APPEARANCE AND CONSENT TO AUDIO-VIDEO PROCEEDING

Order of the Chief Justice of the Supreme Court of North Carolina
2 April 2020

Additional File No.(s) And/Or Offense(s)

Date Of Proceeding Location Of Defendant Nature Of Proceeding (e.g., motion hearing, probable cause hearing, plea, sentencing hearing)

Attorney For State Location Of State's Attorney Attorney for Defendant (if represented) Location Of Attorney (if represented)

NOTE TO CUSTODIAN/COUNSEL: Complete all fields above for the case(s) for which this remote audio-video proceeding is conducted before the defendant's execution of the waiver below. Sign the waiver as witness below after defendant has executed the waiver. Upon completion of the proceeding, deliver this waiver along with any other documents resulting from the audio-video proceeding to the clerk's office for execution by the presiding official.

ACKNOWLEDGMENT OF RIGHTS AND WAIVER

As the undersigned defendant in this action, I freely and voluntarily declare that:

- I have been advised of my right to appear in a courtroom and be personally present for the proceeding described above;
- I have been advised that I am not required to waive my right to be present, and if I do not waive that right, my case will not be unreasonably delayed;
- I have been advised that I have the right to appear in court for the purpose of confronting and cross-examining any witnesses who may testify in this proceeding;
- if represented by an attorney, I have been afforded the ability to consult privately with my attorney and understand that I will be able to consult with my attorney privately during this proceeding;
- if represented by an attorney, I have had the opportunity to discuss this right to personal appearance with my attorney; and
- I fully understand and appreciate the consequences of my decision to waive the right to appear personally in court for the proceeding described above.

I therefore freely, voluntarily, and knowingly waive my right to be present in the courtroom for this proceeding, including for the purpose of confronting and cross-examining any witnesses who may testify, and I consent to participate in this proceeding by audio and video transmission.

Date Signature Of Defendant

Name of Witness Signature of Witness Counsel for Defendant Other (specify)

CERTIFICATE OF JUDICIAL OFFICIAL

I certify that the above named defendant was advised on the Date Of Proceeding above of the right to appear in a courtroom and be personally present for the proceeding described above; that he/she was advised that his/her case would not be unreasonably delayed if that right was not waived; that he/she was advised of the right to appear in court for the purpose of confronting and cross-examining any witnesses who may testify; that he/she understands and appreciates the consequences of his/her decision to waive the right to personal appearance; and that the defendant voluntarily, knowingly and intelligently waived the right to personal appearance and consented to conduct the proceeding described above by audio and video transmission.

Location Of Judicial Official During Proceeding Described Above

Date Name Of Judicial Official (type or print) Signature of Judicial Official District Court Judge Superior Court Judge

NOTE TO PRESIDING OFFICIAL: Upon verification of the information above that identifies the case(s) and proceeding conducted by audio and video transmission, complete this signature section and file with the clerk of superior court for the county in which the case(s) is pending.