

STATE OF NORTH CAROLINA
24TH JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ADMINISTRATIVE ORDER 21-2
SUPERIOR COURT PROCEEDINGS
BEGINNING JUNE 21, 2021

NOW COMES the undersigned Senior Resident Superior Court Judge and enters this Administrative Order concerning Superior Court operations beginning June 21, 2021.

WHEREAS, recent orders of the Chief Justice of the North Carolina Supreme Court have allowed several emergency directives to expire;

WHEREAS, the Chief Justice has recognized the Senior Resident's authority to set forth procedures to protect courthouse personnel and the public while providing for the prompt administration of justice;

WHEREAS, the undersigned has broad inherent authority to see that the superior courts in the 24th Judicial District are run efficiently and properly for the proper administration of justice;

NOW THEREFORE, IT IS ORDERED ADJUDGED AND DECREED:

1. That as they relate to Superior Court proceedings all Covid Administrative Orders 20-1 through 20-9 and 21-1 are hereby revoked and terminated and shall be of no force and effect.
2. Any person desiring to wear a mask or face covering due to health concerns shall be allowed to wear a mask and face covering while in the courthouse or courtroom. Provided, however, witnesses shall be required to remove their mask while testifying.
3. Except as may be agreed to by the Senior Resident Superior Court Judge, the Chief District Court Judge and the Clerk of Superior Court of the county, all existing plexiglass shall remain in place unless the plexiglass interferes with the jury's vision from the jury box or interferes with counsel's view of the jury in the jury box.
4. The CDC's "Choosing Safer Activities" notice attached hereto as Exhibit "F" shall be placed at each courthouse entrance and each courtroom entrance.
5. Nothing herein shall be deemed to negate any existing directives of the Chief Justice as set forth in the Chief Justice's order of June 4, 2021 or any directives that may be entered subsequent to the date of this administrative order. If any of the provisions of this order shall be in conflict therewith, the directives of the Chief Justice shall control.

CRIMINAL COURT PROCEEDINGS BEGINNING JUNE 21, 2021

1. Superior Court Judges shall make use of remote hearing technology to the greatest extent possible to limit unnecessary in-person appearances. These hearings shall be conducted in accordance with any existing Chief Justice's directives and in accordance with law.
2. The setting of cases for in-person disposition (pleas, probation hearings, rejection of plea offers that need to be placed on the record and essential motions) shall be scheduled in time slots to avoid the unnecessary over-crowding of the courtroom. If an attorney has multiple clients, the time period shall be of such length as can reasonably be determined to allow the attorney enough time to complete his matters.
3. Probation matters shall be scheduled for hearing in accordance with paragraph 2 above on a specific day of any term so that probation officers are not required to clear their calendar for the week.
4. As provided in paragraph 2 above, attorneys will be given time slots and shall be responsible for advising their clients, witnesses and any spectators associated with the case of the time period that the matter is to be heard.
5. The number of custody defendants will be scheduled to comply with transportation issues and holding cell limitations. Where custody defendants appear pursuant to a writ and the accompanied officers have been ordered or requested to wait on the disposition of the matter, every effort shall be made in the scheduling of these matters to avoid an unnecessary delay in the calling of the matter for hearing or disposition.
6. The district attorney's office will forward any plea offers to attorneys on or before 10 days prior to the term of court that the matter appears on. Defense counsel shall notify the State of the acceptance or rejection of the plea offer by Tuesday at 5:00 p.m. of the week preceding the term of court and shall submit via email executed paper work of all accepted plea offers to the district attorney's office, the clerk's office and the presiding judge by Wednesday at 5:00 p.m. of the week preceding the term of court that the matter appears on. This paper work shall include but not be limited to: the transcript of plea, the prior record level worksheet, any informations involved in the plea, any proposed conditional discharge paperwork and any other relevant information that the court may need relative to the plea.
7. There shall not be a formal calendar call at any Criminal or Criminal Administrative term of Superior Court whereby all matters appearing on the calendar are called. If by agreement between the district attorney's office and defense counsel, matters are to be continued then defense counsel shall no later than Wednesday at 5:00 p.m. of the week preceding the term of court email to the presiding judge and the clerk, a signed consent scheduling order reflecting the new court date agreed upon. The consent scheduling order form for pending charges is attached hereto as Exhibit "A" and the consent scheduling order for probation matters is attached hereto as Exhibit "B". Unless notified by the presiding judge, a defendant will not need to appear in court for the continuance of a matter when there is an executed consent scheduling order. If all the attorney's cases are being continued by consent, the attorney will not be required to appear in court unless notified by the presiding judge.

8. **The court date and scheduled time slot is not the time to negotiate nor is it the time to meet with the client to review documents or prepare for hearing. All negotiations and hearing preparations must take place in advance of the court date.**

9. Failure of an attorney to comply with the provisions of paragraphs 6, 7 and 8 above shall result in the loss of the attorney's time slot and the attorney will need to reschedule the matter with the District Attorney's office. The order of continuance shall indicate that the reason for the continuance was the failure of counsel to comply with this administrative order. 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 and subject the attorney to being removed from the court appointed lists for superior court in the district. However, if for some unforeseen reason, counsel must confer with opposing counsel or the court, the court in its discretion may allow time for the same.

10. Pursuant to the undersigned's Administrative Order of 14 September, 2017, It is the responsibility of counsel for the defendant as an integral part of his or her legal representation, to advise and certify to the court any and all pre-trial confinement credit that is due a defendant at the time of sentencing and at all probation violation hearings. This is not the responsibility of the Clerk or the Bailiff. Counsel for the defendant shall be prepared, as a result of counsel's thorough investigation of the court record and jail records, to present to the court a Certification of Pre-trial Credit form attached hereto as Exhibit "C" setting out all pre-trial credit to which the defendant is entitled. Only completion of the Certification form shall constitute compliance with this provision.

11. **Continued Representation on Conditional Discharges, Deferral Agreements and Probation Violations.** The terms and conditions of this court's Administrative Order of 14 March 2019 attached hereto as Exhibit "D", are incorporated herein by reference as if fully set out.

12. In order to maximize available time for trials, Grand Jury proceedings shall be conducted on the morning of the first day of civil priority terms.

13. **CRIMINAL BACK UP CALENDARS.** In an effort to deal with the current criminal case backlog, criminal back up calendars shall be prepared by the district attorney's office for each civil priority term when staffing of the District Attorney's office and the Clerk's office allows and only for so long as a backlog exists. The scheduling of criminal matters on civil priority terms shall be coordinated with the Superior Court Trial Coordinator in conjunction with the Clerk of Court and the presiding judge.

CIVIL COURT PROCEEDINGS BEGINNING JUNE 21, 2021

1. Superior Court Judges shall make use of remote hearing technology to the greatest extent possible to limit unnecessary in-person appearances. These hearings shall be conducted in accordance with any existing Chief Justice's directives and in accordance with law.

2. Upon making an appearance in a case, the attorney is responsible for ensuring the Trial Court Coordinator, the Clerk, and opposing counsel have all contact information for the attorney, including email, phone, facsimile, and mailing address. Communication from the Trial Court Coordinator shall be via email, unless the attorney notifies the Trial Court Coordinator that another method is

necessary. Attorneys are under a continuing obligation, to keep the Trial Court Coordinator, Clerk and opposing counsel informed of all contact information, including a current email address.

3. There shall not be a formal calendar call at any Civil or Civil Administrative term of Superior Court. At administrative terms where matters are on for scheduling orders, counsel will not need to appear provided that they have submitted the appropriate scheduling order no later than Wednesday at 5:00 p.m. preceding the scheduled term in Avery, Mitchell, Yancey and Madison Counties and no later than Monday at 5:00 p.m. of the week of the scheduled term in Watauga. At Administrative terms where orders are due, counsel will not need to appear provided that they have submitted the appropriate order no later than Wednesday at 5:00 p.m. preceding the scheduled term in Avery, Mitchell, Yancey, and Madison Counties and no later than Monday at 5:00 p.m. of the week of the scheduled term in Watauga County.

4. The setting of matters for in-person hearings, upon proper notice, shall be scheduled by the Trial Court Coordinator in consultation with the presiding judge. Hearings shall be scheduled at time intervals so as to minimize waiting periods for attorneys and to avoid the unnecessary over-crowding of the courtroom. To have motions heard counsel must contact the Trial Court Administration Office by telephone or email to secure a hearing date and set the motion on a calendar for hearing. Requesting party shall provide the following 1) the case file number, 2) type of motion to be heard, 3) the estimated length of time needed for the motion to be heard, and 4) the date and time of the motions session requested. Motions may not be calendared for Administrative Sessions in Watauga County unless approved by the Senior Resident Superior Court Judge.

5. Copies of all motions, briefs, 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. Nothing herein shall be interpreted to shorten the time limits or amend the requirements imposed by the North Carolina Rules of Civil Procedure for proper notice and service.

6. In all bench and jury trials, counsel shall submit to the presiding judge no later than 5:00 p.m. on the Wednesday preceding the scheduled trial week a Pre-Trial order as set forth on Exhibit "E" hereto.

7. Except as may specifically be amended herein, counsel shall abide by the terms and provisions of the Case Management Plan for the 24th Judicial District.

This the 18th day of June 2021.

s/Gary M. Gavenus

Honorable Gary M. Gavenus

Senior Resident Superior Court Judge

Twenty-fourth Judicial District

Exhibit A

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
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 Administrative 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 administrative hearing and consent to the following scheduling order and findings regarding the status of 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 _____. **(A date must be provided)**
 - () has not been indicted.
2. That this is the _____ time that this matter has appeared on a Superior Court Administrative 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 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 with the exception of 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.]**
4. 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____. **(A date must be provided)**

() 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.

[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. **(If paragraph is applicable a date must be provided.)**
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____. **(If paragraph is applicable a date must be provided.)**
3. That this matter be set for the _____, 20____ **(A date must be provided)**
() Administrative Calendar
() Trial Calendar and shall be continued from trial term to trial term until the matter is tried.

[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

Exhibit B

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(S) _____

STATE OF NORTH CAROLINA

VS.

CONSENT ORDER ON PROBATION VIOLATION
HEARING

Defendant.

THIS MATTER being scheduled for the _____ Superior Court Administrative 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 administrative hearing and consent to the following scheduling order and findings; 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 has been served with a notice of probation violation which matter was noticed on for or continued to the _____ (current court date) term of court;
2. () That at least one basis for the alleged violation is commission of a new criminal offense, and that said offense has been charged criminally and remains pending;
3. () That the defendant is in custody outside of the jurisdiction of this Court;
4. () _____)

(other grounds)

5. That good cause exists to continue the hearing of the alleged violations to
() the next administrative term of court.
() a court date of _____.

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, that good cause exists for the continuation of the hearing, 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 THAT THIS MATTER BE SET FOR THE _____ , 2021 TERM OF COURT. (A date must be provided)

DATE: _____

DATE: _____

ATTORNEY FOR THE STATE

ATTORNEY FOR THE DEFENDANT

Accepted and entered by consent this the _____ day of _____, 2021.

Superior Court Judge Presiding

Exhibit C

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(S)._____

STATE OF NORTH CAROLINA)
)
VS.)
)
)
)
)
_____,)
Defendant

) CERTIFICATION OF DEFENDANT’S
) PRETRIAL CONFINEMENT CREDIT

UPON INVESTIGATION, the undersigned counsel for the above named Defendant, hereby certifies to the Court that the Defendant is entitled to _____ days of credit in the above-captioned matter(s) in accordance with the provisions of N.C.G. S. § 15-196.1 and § 15-196.2.

This the _____ day of _____, 20_____.

Signature of Attorney for the Defendant

Printed Name of Attorney for Defendant

N.C. Gen. Stat. § 15-196.1. Credits allowed (2017)

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution **as a result of the charge that culminated in the sentence or the incident from which the charge arose.** The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that a defendant has spent in custody as a result of a pending charge while serving a sentence imposed for another offense.

N.C. Gen. Stat. § 15-196.2. Allowance in cases of multiple sentences (2017)

In the event time creditable under this section shall have been spent in custody as the result of more than one pending charge, resulting in imprisonment for more than one offense, credit shall be allowed as herein provided. Consecutive sentences shall be considered as one sentence for the purpose of providing credit, and the creditable time shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned. Each concurrent sentence shall be credited with so much of the time as was spent in custody due to the offense or incident resulting in the sentence. When both concurrent and consecutive sentences are imposed, both of the above rules shall obtain to the applicable extent.

Upon revocation of two or more consecutive sentences as a result of a probation violation, credit for time served credit for confinements in response to violation under G.S. 15A-1344(d2) shall be credited to only one sentence.

Exhibit D

ADMINISTRATIVE ORDER

TWENTY-FOURTH JUDICIAL DISTRICT

CLARIFICATION OF CONTINUED REPRESENTATION OF COUNSEL

1. REPRESENTATION CONDITIONAL DISCHARGE OR DEFERRAL AGREEMENTS

When Counsel represents a defendant on a conditional discharge or a deferral agreement, whether court appointed or retained, such representation shall continue through the discharge and dismissal stage where there have not been any probation violation reports filed in the matter.

When Counsel has been appointed to represent a defendant on a conditional discharge or deferral agreement, there shall not be any need for re-appointment of court appointed counsel upon the filing of probation violation reports associated with the defendant's terms of probation under the conditional discharge or deferral agreement. The initial appointment of counsel shall be deemed to continue and include representation on any and all violation reports and addendums associated with the conditional discharge or deferral agreement and any sentencing hearing associated with an adjudication of guilt upon the court's finding of a willful violation of the terms and conditions of the defendant's probation.

In those instances where counsel has been retained, counsel shall be deemed counsel of record upon the filing of any and all probation violation reports associated with the conditional discharge or deferral agreement, unless both of the following exist and occur:

- 1) There exists a clear and unequivocal agreement between the defendant and counsel to the contrary.

And

- 2) Counsel at his initial appearance has filed with the court a clearly defined limited appearance, signed by both counsel and the defendant, specifically excluding such representation.

Absent compliance with both conditions, retained counsel's representation shall be deemed to continue and include representation on any and all probation violation reports and addendums associated with the conditional discharge or deferral agreement and any sentencing hearing associated with a adjudication of guilt upon the court's finding of a willful violation of the terms and conditions of the defendant's probation.

2. PROBATION VIOLATIONS

When Counsel has been appointed to represent a defendant on a probation violation such representation shall continue and shall include representation on any and all subsequent addendums filed prior to the probation violation hearing. There shall not be any need for re-appointment of court appointed counsel upon the filing of subsequent addendum violation reports in court appointed cases.

In those instances where counsel has been retained on a probation violation counsel shall be deemed counsel of record upon the filing of any and all subsequent addendums filed prior to the probation violation hearing unless both of the following exist and occur:

1) There exists a clear and unequivocal agreement between the defendant and counsel to the contrary.

And

2) Counsel at his initial appearance has filed with the court a clearly defined limited appearance, signed by both counsel and the defendant, specifically excluding such representation.

Absent compliance with both conditions, retained counsel's representation shall be deemed to include representation on any and all subsequent addendums filed prior to the probation violation hearing.

3. NO ABROGATION OF RIGHTS OF THE DEFENDANT

Should a defendant waive his right to counsel on a conditional discharge or deferral agreement, this initial waiver shall not constitute a waiver of counsel on any probation violations associated with the conditional discharge or deferral agreement.

Should a defendant waive his right to counsel on a probation violation, this initial waiver shall not constitute a waiver of counsel on a subsequent addendum to the probation violation.

Nothing herein shall be construed to abrogate the defendant's right to counsel and specifically his right to retain counsel or his right to represent himself. Further, nothing contained herein shall be construed to abrogate the defendant's right to be personally served with any and all notices, probation violation reports or addendums thereto, nor does it abrogate the State's obligation to personally serve the defendant with copies of any and all notices, violation reports and addendums thereto.

The defendant shall be personally served with any and all notices, probation violation reports and any and all addendums thereto. Copies of the notices, violation reports and addendums thereto which are subject to this administrative order shall be served upon defendant's counsel after the defendant has been personally served.

This the 14th day of March, 2019.

Honorable Ted W. McEntire

Chief District Court Judge

Twenty-fourth Judicial District

Honorable Gary M. Gavenus

Senior Resident Superior Court Judge

Twenty-fourth Judicial District.

Exhibit E

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF _____

FILE NO:

Plaintiff

vs.

PRETRIAL ORDER

Defendants.

Pursuant to the provisions of Rule 16 of the Rules of Civil Procedure, and Rule 7, General Rules of Practice, a final pre-trial conference was held in this cause on the _____ day of _____, 20____. _____ appeared as counsel for the plaintiff, and _____ appeared as counsel for the defendants.

1. It is stipulated that all parties are properly before the court, and that the court has jurisdiction of the parties and of the subject matter.

2. It is stipulated that all parties have been correctly designated, and there is not a question as to misjoinder or nonjoinder of parties.

3. In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts (set out all undisputed facts):

A.

B.

....

4. The following is a list of all known exhibits the plaintiffs may offer at the trial:

A.

B.

....

5. It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the plaintiffs.

6. It is stipulated and agreed that each of the exhibits identified by the plaintiffs is

genuine and, if relevant and material, may be received in evidence without further identification or proof.

7. The following is a list of all known exhibits the defendant(s) may offer at the trial:

A.

B.....

8. It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the defendants.

9. It is stipulated and agreed that each of the exhibits identified by the defendants is genuine, and, if relevant and material, may be received in evidence without further identification or proof.

10. The following is a list of the names and addresses of all known witnesses the plaintiff(s) may offer at the trial:

A.

....

11. The following is a list of the names and addresses of all known witnesses the defendant(s) may offer at the trial:

A.

....

12. Counsel shall immediately notify opposing counsel if the names of additional witnesses are discovered after the preparation of this order.

13. There are no pending motions, and neither party desires further amendments to the pleadings.

14. Additional consideration has been given to a separation of the triable issues, and counsel for the parties are of the opinion that a separation of issues in this particular case would

not be feasible (or list issues that are agreed upon as not triable).

15. The plaintiffs contend that the contested issues to be tried are as follows:

A.

....

16. Defendants contend that the contested issues to be tried are as follows:

A.

....

17. Counsel for the parties represent that all witnesses are available and the case is in all respects ready for trial. The probable length of the trial is estimated to be _____ () days.

18. Counsel for the parties represent to the court that, in advance of the preparation of this order, there was a full and frank discussion of settlement possibilities.

19. The parties stipulate and agree to a unanimous verdict of _____ or more.

Yes _____ No _____


























This the _____ day of _____, 20____.

Counsel for Plaintiff

Counsel for Defendant

Superior Court Judge Presiding

Exhibit “F”

	Unvaccinated People	Examples of Activities	Fully Vaccinated People
		Outdoor	
Safest		Walk, run, wheelchair roll, or bike outdoors with members of your household	
		Attend a small, outdoor gathering with fully vaccinated family and friends	
		Attend a small, outdoor gathering with fully vaccinated and unvaccinated people, particularly in areas of substantial to high transmission	
Less Safe		Dine at an outdoor restaurant with friends from multiple households	
Least Safe		Attend a crowded, outdoor event, like a live performance, parade, or sports event	
		Indoor	
Less Safe		Visit a barber or hair salon	
		Go to an uncrowded, indoor shopping center or museum	
		Attend a small, indoor gathering of fully vaccinated and unvaccinated people from multiple households	
Least Safe		Go to an indoor movie theater	
		Attend a full-capacity worship service	
		Sing in an indoor chorus	
		Eat at an indoor restaurant or bar	
		Participate in an indoor, high intensity exercise class	