

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

COUNTY OF BURKE

2021 MAY 19 A 11: 21

DISTRICT and SUPERIOR COURT DIVISIONS

BURKE CO., C.S.C.

20-R-154

IN THE MATTER OF THE OPERATION OF

THE GENERAL COURT OF JUSTICE IN

ADMINISTRATIVE ORDER

BURKE COUNTY

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

DISTRICT and SUPERIOR COURT DIVISIONS

COUNTY OF CALDWELL

20-R-324

IN THE MATTER OF THE OPERATION OF

THE GENERAL COURT OF JUSTICE IN

ADMINISTRATIVE ORDER

CALDWELL COUNTY

This matter came on before Burford A. Cherry, Chief District Court Judge, and Robert C. Ervin, Senior Resident Superior Court Judge, in the exercise of the Court's in chambers jurisdiction in light of the on-going health emergency posed by the COVID-19 pandemic.

ORDERS OF CHIEF JUSTICE PAUL NEWBY ISSUED ON MAY 7, 2021 AND MAY 14, 2021.

Chief Justice Newby issued an order on May 7, 2021 extending and revising Emergency Directives 2, 3, 5, 11, 14, 15 and 21. The Chief Justice's May 7, 2021 order allowed previous Emergency Directives 8 and 12 to expire.

Chief Justice Newby asked that "local judicial officials and employees conduct trials and other proceedings and perform other courthouse functions with due regard for the COVID-19 situation in their respective judicial districts." Newby further indicated that "local judicial officials should exercise their substantial decision-making authority over when and how to conduct jury trials and other in-person proceedings while recognizing that the risks posed by COVID-19 continue to be serious."

On May 14, 2021 Chief Justice Newby entered another order eliminating Emergency Directive 21 which required face coverings in courthouses. The modified order left "that decision to the informed discretion of local court officials."

#### FURTHER 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 delay and disrupt the orderly and efficient resolution of matters before the court.

The need to restrict the spread of COVID-19 requires the implementation of certain public health protocols in order to facilitate the efficient operation of the local courts and to reduce the risks posed to participants in court proceedings.

Based on the foregoing observations, it is hereby ordered that:



## COMPLIANCE WITH PUBLIC HEALTH GUIDANCE.

The Chief District Court Judge and the Senior Resident Superior Court judge will take steps to ensure that each session of District Court and Superior Court to be held during the pendency of this order will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current health guidance.

## NOTICES

A notice will be posted at the entrance to every court facility directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For the purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. is experiencing fever, cough, shortness of breath, or loss of smell or taste;
- b. is under a direction to quarantine, isolate or self-monitor;
- c. has been exposed to a person who tested positive for COVID-19 within the last fourteen (14) days;
- d. has been diagnosed with COVID-19 within the last fourteen (14) days; or
- e. resides with or has been in close contact with any person in the above-mentioned categories.

## FACE COVERINGS

Since the CDC and the Governor of North Carolina are no longer requiring face coverings in public places, face coverings will not be required at the Burke and Caldwell County courthouses. Anyone who wishes to wear a face covering in the building or in a courtroom is welcome to do so.

## SOCIAL DISTANCING REQUIRED.

Anyone participating in a proceeding in District Court and Superior Court shall be required to maintain social distancing during the proceedings.

No session of District Court or Superior Court may 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 guidance. Each presiding District Court and Superior Court judge is authorized to enforce this order.

The courthouse has 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 congregate or wait in line.

The maximum allowable occupancy of each District Court and Superior Court room and meeting space has been established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction.

The established maximum occupancy is posted at the entrance of each District Court and Superior Court room.

Court sessions for the next several weeks have already been planned to accommodate social distancing. It is anticipated that this requirement will phase out in the next few months. The County of Burke has advised the undersigned judges that the Foothills Center and COMMA will no longer be available beginning in July 2021. The loss of access to those facilities will make it impractical to continue these social distancing requirements. It is anticipated that courts in Caldwell County will phase out social distancing on a similar time frame.

#### UNNECESSARY VISITS AND STAYS PROHIBITED

Attorneys and other persons who do not have business in the courthouse should not enter the courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail or in outside drop boxes rather than in person.

This the 19<sup>th</sup> day of May, 2021.



Burford A. Cherry

Chief District Court Judge



Robert C. Ervin

Senior Resident Superior Court Judge