

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

DISTRICT and SUPERIOR COURT DIVISIONS

COUNTY OF BURKE

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20-R-288 C.S.C.
BURKE CO.

CALDWELL CO., C.S.C.

BY

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-472

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 response to the on-going health emergency posed by the COVID-19 pandemic.

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 rates for testing in both counties are more than double the target rate of 5%.

The vaccination rate for individuals in both counties is 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.

POSTING OF NOTICES

The trial court coordinator shall post a notice 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 REQUIRED

All persons who are in the courthouse are required to wear a face covering while they are in the court rooms and common areas of the facility and when they are or may be within six feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

A "face-covering" means a covering of the nose and mouth that is secured to the head with ties, straps or loops over the ears or is simply wrapped around the lower face. A "face shield" means an item of protective equipment that consists of a plastic barrier, usually attached to a helmet or headband, that shields the wearer's face from splashes, coughs or sneezes.

The trial court coordinator shall post a notice of this requirement at the entrance to the courthouse in each county.

The face-covering requirement does not apply to persons who cannot wear a face covering due to health or safety reasons, who are actively eating or drinking, who are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible, who are temporarily removing their face covering to secure medical services or for identification purposes, who are complying with a directive from law enforcement, or who are under five years of age.

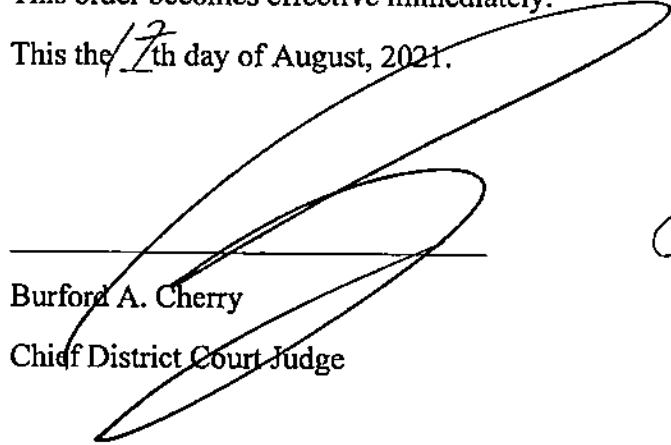
The Clerk of Superior Court of each county, the District Attorney and the Probation offices in each county may set their own policies with respect to the use of face coverings within the physical confines of their respective office spaces.

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 order becomes effective immediately.

This the 7th day of August, 2021.



Burford A. Cherry

Chief District Court Judge



Robert C. Ervin

Robert C. Ervin

Senior Resident Superior Court Judge