

STATE OF NORTH CAROLINA  
\_\_\_\_\_ COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION



STATE OF NORTH CAROLINA

V.

**MOTION FOR RECORDATION OF  
DISTRICT COURT PROCEEDINGS**

\_\_\_\_\_  
DEFENDANT

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**NOW COMES** the defendant by and through his/her attorney, and moves that the court allow him/her to record the proceedings in district court. In support of said motion, the defendant argues as follows:

- 1) Canon 3 (A)(7) of the North Carolina Code of Judicial Conduct provides, "A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts."
- 2) It is clear that a defendant may contract for the transcription of his proceedings in criminal district court. The question is whether a defendant may record such proceedings himself.
- 3) The North Carolina Rules of Court General Rules of Practice for the Superior and District Court. Supplemental to the Rules of Civil Procedure, Rule 15, entitled "Electronic Media and Still Photography Coverage of Public Judicial Proceedings" provides that electronic media and still photography coverage of public judicial proceedings **shall be allowed in the appellate and trial courts of this state, subject to the conditions below.**"

- 4) Each North Carolina county may have its own local rules regarding applications for utilization of electronic equipment for recording purposes.
- 5) A district court defendant in some cases has the right to appeal a district court judgement against him and receive a de novo trial in superior court. N.C.G.S. § 15A-1431..
- 6) As the North Carolina Supreme Court has said:

The purpose of our de novo procedure is to provide all criminal defendants charged with misdemeanor violations the right to a 'speedy trial' in the District Court and to offer them an opportunity to learn about the State's case without revealing their own. In the latter sense, this procedure can be viewed as a method of 'free' criminal discovery.

State v. Brooks, 287 N.C. 392, 406 (1975)

- 7) A judge's duty is to make sure that justice is served. "A heavy obligation rests on trial judges to effectuate the fair trial guarantee of the Sixth Amendment. U.S. v. Columbia Broadcasting System, Inc., 497 F.2d 102, 104 (1974). In fact, a judge is not a passive bystander in the arena of justice or a spectator at a sporting event; rather he or she has the most pressing affirmative responsibility to see that justice is done in every case." U.S. v. McCord, 509 F.2d 334, 348 (1974).

- 8) In a misdemeanor case the Defendant has no right to discovery, as the district court hearing can serve as discovery if the defendant request a trial de novo in superior court. In order for that to work effectively, the defendant must be allowed to record the testimony in district court. Denying the defendant the right to record the hearing in district court is effectively the same as allowing the defendant to look at the officers notes, written statements, and other evidence against him in a felony case, but denying him the right to take a copy with him to analyze and use in preparation for a trial and during a trial.

- 9) In addition to the above reasoning, district court testimony may work as Brady

material in superior court. In order to rule that the testimony in district court is not Brady material, the court would have to review the testimony in advance, knowing the defendant's arguments, the State's position and arguments, and knowing what might effect both the trial and the sentencing of the defendant. Without prior review, which is not possible, the defendant must be allowed to record the district court hearing under the United States and North Carolina Constitutions, the Confrontation clause, the right to prepare a defense, and Brady.

**WHEREFORE, THE DEFENDANT PRAYS THAT THE COURT:**

1. Allow him to record the proceedings in district court, upon the Defendant's agreement that he will upon request provide a copy to the District Attorney.

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

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Superior and District Courts Rule 15

West's North Carolina General Statutes Annotated Currentness

North Carolina Rules of Court

Full text of all sections at this level General Rules of Practice for the Superior and District Courts  
Supplemental to the Rules of Civil Procedure

Current selection Rule 15. Electronic Media and Still Photography Coverage of Public Judicial Proceedings

(a) Definition. The terms “electronic media coverage” and “electronic coverage” are used in the generic sense to include coverage by television, motion picture and still photography cameras, broadcast microphones and recorders.

(b) Coverage Allowed. Electronic media and still photography coverage of public judicial proceedings shall be allowed in the appellate and trial courts of this state, subject to the conditions below.

(1) The presiding justice or judge shall at all times have authority to prohibit or terminate electronic media and still photography coverage of public judicial proceedings, in the courtroom or the corridors immediately adjacent thereto.

(2) Coverage of the following types of judicial proceedings is expressly prohibited: adoption proceedings, juvenile proceedings, proceedings held before clerks of court, proceedings held before magistrates, probable cause proceedings, child custody proceedings, divorce proceedings, temporary and permanent alimony proceedings, proceedings for the hearing of motions to suppress evidence, proceedings involving trade secrets, and in camera proceedings.

(3) Coverage of the following categories of witnesses is expressly prohibited: police informants, minors, undercover agents, relocated witnesses, and victims and families of victims of sex crimes.

(4) Coverage of jurors is prohibited expressly at any stage of a judicial proceeding, including that portion of a proceeding during which a jury is selected. The trial judge shall inform all potential jurors at the beginning of the jury selection process of the restrictions of this particular provision which is designated (b)(4).

(c) Location of Equipment and Personnel.

(1) The location of equipment and personnel necessary for electronic media and still photographic coverage of trial proceedings shall be at a place either inside or outside the courtroom in such a manner that equipment and personnel are completely obscured from view from within the courtroom and not heard by anyone inside the courtroom.

(i) If located within the courtroom, this area must be set apart by a booth or other partitioning device constructed therein at the expense of the media. Such construction must be in harmony

with the general architectural style and decor of the courtroom and must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.

(ii) If located outside the courtroom, any booth or other partitioning device must be built so that passage to and from the courtroom will not be obstructed. This arrangement must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.

(2) Appropriate openings to allow photographic coverage of the proceedings under these rules may be made in the booth or partitioning device, provided that no one in the courtroom will see or hear any photographic or audio equipment or the personnel operating such equipment. Those in the courtroom are not to know when or if any such equipment is in operation.

(3) The presiding judge may, however, exercise his or her discretion to permit the use of electronic media and still photography coverage without booths or other restrictions set out in Rule 15(c)(1) and (c)(2) if the use can be made without disruption of the proceedings and without distraction to the jurors and other participants. Such permission may be withdrawn at any time.

(4) Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom.

(5) Media personnel shall not exit or enter the booth area or courtroom once the proceedings are in session except during a court recess or adjournment.

(6) Electronic media equipment and still photography equipment shall not be taken into the courtroom or removed from the designated media area except at the following times:

(i) prior to the convening of proceedings;

(ii) during the luncheon recess;

(iii) during any court recess with the permission of the presiding justice or judge; and

(iv) after adjournment for the day of the proceedings.

(7) The Chief Justice of the Supreme Court, and the Chief Judge of the Court of Appeals, may waive the requirements of Rule 15(c)(1) and (2) with respect to judicial proceedings in the Supreme Court and in the Court of Appeals, respectively.

(d) Official Representatives of the Media.

(1) This Court hereby designates the North Carolina Association of Broadcasters, the Radio and Television News Directors Association of the Carolinas, and the North Carolina Press Association, as the official representatives of the news media. The governing boards of these

associations shall designate one person to represent the television media, one person to represent the radio broadcasters, and one person to represent still photographers in each county in which electronic media and still photographic coverage is desired. The names of the persons so designated shall be forwarded to the Senior Resident Superior Court Judge, the Director of the Administrative Office of the Courts, and the county manager or other official responsible for administrative matters in the county or municipality in which coverage is desired. Thereafter, these persons shall conduct all negotiations with the appropriate officials concerning the construction of the booths or partitioning devices referred to above. Such persons shall also be the only persons authorized to speak for the media to the presiding judge concerning the coverage of any judicial proceedings.

(2) It is the express intent and purpose of this rule to preclude judges and other officials from having to “negotiate” with various representatives of the news media. Since these rules require pooling of equipment and personnel, cooperation by the media is of the essence and the designation of three media representatives is expressly intended to prevent presiding judges from having to engage in discussion with others from the media.

(e) Equipment and Personnel.

(1) Not more than two television cameras shall be permitted in any trial or appellate court proceedings.

(2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in a trial or appellate court.

(3) Not more than one wired audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished with existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes may be installed and maintained at media expense. The microphones and wiring must be unobtrusive and shall be located in places designated in advance of any proceeding by the Senior Resident Superior Court Judge of the judicial district in which the court facility is located. Such modifications or additions must be approved by the governing body of the county or municipality which owns the facility. Provided, however, hand-held audio tape recorders may be used upon prior notification to, and with the approval of, the presiding judge; such approval may be withdrawn at any time.

(4) Any “pooling” arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(5) In no event shall the number of personnel in the designated area exceed the number necessary to operate the designated equipment or which can comfortably be secluded in the restricted area.

(f) Sound and Light Criteria.

(1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera.

(2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

(g) Courtroom Light Sources. With the concurrence of the Senior Resident Superior Court Judge of the judicial district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense and provided such modifications or additions are approved by the governing body of the county or municipality which owns the facility.

(h) Conferences of Counsel. To protect the attorney-client privilege and the right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge held at the bench.

(i) Impermissible Use of Media Material. None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

CREDIT(S)

[Former version of this rule suspended on an experimental basis effective October 18, 1982; amended June 13, 1990.]

Superior and District Courts Rule 15, NC R SUPER AND DIST CTS Rule 15

Current with amendments received through 5/15/13

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est's North Carolina General Statutes Annotated Currentness  
North Carolina Rules of Court  
Full text of all sections at this level North Carolina Rules of Appellate Procedure  
Full text of all sections at this level Article II. Appeals from Judgments and Orders of Superior  
Courts and District Courts  
Current selection Rule 7. Preparation of the Transcript; Court Reporter's Duties

(a) Ordering the Transcript.

(1) Civil Cases. Within fourteen days after filing the notice of appeal the appellant shall contract for the transcription of the proceedings or of such parts of the proceedings not already on file, as the appellant deems necessary, in accordance with these rules, and shall provide the following information in writing: a designation of the parts of the proceedings to be transcribed; the name and address of the court reporter or other neutral person designated to prepare the transcript; and, where portions of the proceedings have been designated to be transcribed, a statement of the issues the appellant intends to raise on appeal. The appellant shall file the written documentation of this transcript contract with the clerk of the trial tribunal, and serve a copy of it upon all other parties of record and upon the person designated to prepare the transcript. If the appellant intends to urge on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the appellant shall cite in the record on appeal the volume number, page number, and line number of all evidence relevant to such finding or conclusion. If an appellee deems a transcript of other parts of the proceedings to be necessary, the appellee, within fourteen days after the service of the written documentation of the appellant, shall contract for the transcription of any additional parts of the proceedings or such parts of the proceedings not already on file, in accordance with these rules. The appellee shall file with the clerk of the trial tribunal, and serve on all other parties of record, written documentation of the additional parts of the proceedings to be transcribed and the name and address of the court reporter or other neutral person designated to prepare the transcript.

In civil cases and special proceedings where there is an order establishing the indigency of a party entitled to appointed appellate counsel, the ordering of the transcript shall be as in criminal cases where there is an order establishing the indigency of the defendant as set forth in Rule 7(a)(2).

(2) Criminal Cases. In criminal cases where there is no order establishing the indigency of the defendant for the appeal, the defendant shall contract for the transcription of the proceedings as in civil cases.

When there is an order establishing the indigency of the defendant, unless the trial judge's appeal entries specify or the parties stipulate that parts of the proceedings need not be transcribed, the clerk of the trial tribunal shall order a transcript of the proceedings by serving the following documents upon either the court reporter(s) or neutral person designated to prepare the transcript: a copy of the appeal entries signed by the judge; a copy of the trial court's order establishing indigency for the appeal; and a statement setting out the name, address, telephone number and



e-mail address of appellant's counsel. The clerk shall make an entry of record reflecting the date these documents were served upon the court reporter(s) or transcriptionist.

(b) Production and Delivery of Transcript.

(1) Production. In civil cases: from the date the requesting party serves the written documentation of the transcript contract on the person designated to prepare the transcript, that person shall have sixty days to prepare and electronically deliver the transcript.

In criminal cases where there is no order establishing the indigency of the defendant for the appeal: from the date the requesting party serves the written documentation of the transcript contract upon the person designated to prepare the transcript, that person shall have sixty days to produce and electronically deliver the transcript in non-capital cases and one hundred twenty days to produce and electronically deliver the transcript in capitally tried cases.

In criminal cases where there is an order establishing the indigency of the defendant for the appeal: from the date listed on the appeal entries as the "Date order delivered to transcriptionist," that person shall have sixty-five days to produce and electronically deliver the transcript in non-capital cases and one hundred twenty-five days to produce and electronically deliver the transcript in capitally tried cases.

The transcript format shall comply with Appendix B of these rules.

Except in capitally tried criminal cases which result in the imposition of a sentence of death, the trial tribunal, in its discretion and for good cause shown by the appellant, may extend the time to produce the transcript for an additional thirty days. Any subsequent motions for additional time required to produce the transcript may only be made to the appellate court to which appeal has been taken. All motions for extension of time to produce the transcript in capitally tried cases resulting in the imposition of a sentence of death shall be made directly to the Supreme Court by the appellant.

(2) Delivery. The court reporter, or person designated to prepare the transcript, shall electronically deliver the completed transcript, with accompanying PDF disk to the parties including the district attorney and Attorney General of North Carolina in criminal cases, as ordered, within the time provided by this rule, unless an extension of time has been granted under Rule 7(b)(1) or Rule 27(c). The court reporter or transcriptionist shall certify to the clerk of the trial tribunal that the transcript has been so delivered and shall send a copy of such certification to the appellate court to which the appeal is taken. The appellant shall promptly notify the court reporter when the record on appeal has been filed. Once the court reporter, or person designated to prepare the transcript, has been notified by the appellant that the record on appeal has been filed with the appellate court to which the appeal has been taken, the court reporter must electronically file the transcript with that court using the docket number assigned by that court.

(3) Neutral Transcriptionist. The neutral person designated to prepare the transcript shall not be a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such

attorney or counsel, or be financially interested in the action unless the parties agree otherwise by stipulation.

#### CREDIT(S)

[Adopted: 13 June 1975. REPEALED: 1 July 1978. (See note following Rule 17.) Re-adopted: 8 December 1988--effective for all judgments of the trial tribunal entered on or after 1 July 1989. Amended: 8 June 1989--effective for all judgments of the trial tribunal entered on or after 1 July 1989; 26 July 1990--7(a)(1), (a)(2), and (b)(1)--effective 1 October 1990; 21 November 1997--effective 1 February 1998; 8 April 1999--7(b)(1), para. 5; 18 October 2001--7(b)(1), para. 4--effective 31 October 2001; 15 August 2002--7(a)(1), para. 2; 25 January 2007--7(b)(1), paras. 3, 5; 7(b)(2)--effective 1 March 2007 and applies to all cases appealed on or after that date. Reenacted and Amended: 2 July 2009--amended 7(a)(1) & (2), 7(b)(1) & (2) --effective 1 October 2009 and applies to all cases appealed on or after that date.]

#### HISTORICAL NOTES

Note to 1 July 1978 Amendment. Repeal of Rule 7 and limiting Rule 17's application to civil cases are to conform the Rules of Appellate Procedure to Chap. 711, 1977 Session Laws, particularly that portion of Chap. 711 codified as G.S. 15A-1449 which provides, "In criminal cases no security for costs is required upon appeal to the appellate division." Section 33 of Chap. 711 repealed, among other statutes, G.S. 15-180 and 15-181 upon which Rule 7 was based. Chap. 711 becomes effective 1 July 1978. While G.S. 15A-1449, strictly construed, does not apply to cost bonds in appeals from or petitions for further review of decisions of the Court of Appeals, the Supreme Court believes the legislature intended to eliminate the giving of security for costs in criminal cases on appeal or on petition to the Supreme Court from the Court of Appeals. The Court has, therefore, amended Rule 17 to comply with what it believes to be the legislative intent in this area.

Rules App. Proc., App. R. 7, NC R RAP App. R. 7

Current with amendments received through 5/15/13

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28 Jud. Dist. Sup. Civ. Rule 25

West's North Carolina General Statutes Annotated Currentness

North Carolina Rules of Court

Full text of all sections at this level Local Rules Buncombe County

Full text of all sections at this level Case Management Plan and Local Rules of Civil Procedure for the Superior Court 28th Judicial District

Current selection Rule 25. 28th Judicial District Local Rules Governing the Use of Still Photography, Audio or Video Electronic Recording Equipment in the Courthouse Facility Related to Official Business During Business Hours (Supplementing N. C. Supreme Court Order RE: Electronic Media/Still Photography Coverage of Public Judicial Proceedings, Rule 15 of the General Rules of Practice for Superior and District Courts, in pertinent part)

25.1. General Application Process for Utilization of Electronic Equipment for Recording or Presentation Purposes

- a. There is one local application form that can be submitted to allow the use of electronic equipment in the courthouse: Application to Utilize Still Photography or Electronic Equipment Within the Courthouse for Recording or Presentation Purposes
- b. Application for the use of still photography, audio or video recording equipment in a trial courtroom or other area of the courthouse must be made to the Presiding Trial Judge. Such application must be in writing and must designate the trial/office/area in which electronic equipment will be utilized.
- c. These rules apply to filming official business activities inside the courthouse during business hours. Filming non-business related activities after regular business hours and on weekends does not require any authorization.
- d. The Trial Judge will be sole and final interpreter of these rules. His/her decision is final.

25.2. Policies Pertaining to Media Representatives

- a. All media representatives must submit a copy of the formal application and court order (attached) at least seventy-two (72) hours before the beginning of jury selection and /or recording/filming event.
- b. Cameras are allowed in the trial courts only.
- c. Cameras will not be used in the corridors outside any courtroom or outside any jury pool area.
- d. One camera (each), video or shutter, will be allowed per courtroom.
- e. The location of all microphones must be approved by the trial judge in advance of trial.

- f. All cameras, both video and shutter, must be in a fixed location. Silence boxes must be used. All cameras must be silent. Any camera being a distraction must be removed.
- g. There will be no panning or other photographing of the jury or audience.
- h. There will be no photographing of any witness under the age of sixteen (16) years.
- i. Media Coverage, publication or identification of jurors is expressly prohibited at every state of a Judicial Proceeding including jury selection.
- j. Cameras will be operated Only:
  - 1. During opening statements of counsel;
  - 2. During testimony from witnesses;
  - 3. During closing argument of counsel; and
  - 4. During jury charge and verdict.
- k. Cameras will be shut off at all other times. The Trial Judge may modify this section, in writing, on a case-by-case basis.
- l. Only the Presiding Trial Judge can authorize photography, filming or audio recording within a particular courtroom while court is in session.
- m. In the event of multiple applications, the Presiding Trial Judge will coordinate operations.

### 25.3. Policies Pertaining to Jurors, the General Public, Attorneys and Court Employees

- a. Attorneys may bring in still photography cameras, video recording gear, audio recording devices, and other electronic equipment as long as proper and sufficient identification is shown at the security station. However, counsel must expressly gain permission from the Presiding Trial Judge at the time of the proceeding to utilize any of the above equipment.
- b. Absent the completion of the formal application and approved accompanying Court order, pro se parties, jurors and members of the public are prohibited from bringing still photography, audio and/or video electronic recording devices into the courthouse.
- c. Court employees may bring still photography, audio and/or video electronic recording equipment in to the courthouse for personal use.
- d. The filming of commercial advertisements for public or private organizations and/or individuals for television and/or websites is prohibited anywhere inside the courthouse without permission of the Senior Resident Superior Court Judge and the Chief District Court Judge.

25.4. Policies Pertaining to Utilization of Photography, Audio or Video Recording Equipment within the Clerk's Office.

a. Application may be submitted directly to the Clerk's Office. An agency representative will contact Applicant with the decision.

b. Applications to cover public hearings that are scheduled in a courtroom should be submitted to the Clerk's Office for approval.

25.5. Policies Pertaining to Utilization of Photography, Audio or Video Recording Equipment within the Courthouse. Applications should be made to the Clerk of Court to utilize still photography, audio or video recording equipment in general use areas of the courthouse and within courtrooms when court is not in session.

CREDIT(S)

[Adopted effective January 1, 2012.]

28 Jud. Dist. Superior Civil Rule 25, NC R BUNCOMBE SUPER CIV Rule 25

Current with amendments received through 9/1/2012

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S.Dist.Ct.Rules E.D.N.C., Crim Rule 53.1

North Carolina Federal Court Rules Currentness  
Local Rules of Practice and Procedure of the United States District Court for the Eastern District  
of North Carolina

Full text of all sections at this level II. Criminal Rules

Current selection Rule 53.1 Photographing and Reproducing Court Proceedings

The taking of photographs, broadcasting or recording of proceedings in any form in the courtroom, court offices or in the corridors immediately adjacent thereto, during judicial proceedings or during any recess of the court is prohibited except as set forth herein. The taking of photographs, broadcasting or recording of ceremonial proceedings, such as naturalization proceedings, the administration of oaths of office to officers of the court, presentation of portraits and other ceremonial occasions may be allowed with the permission of the presiding judge and under the supervision and control of the court.

CREDIT(S)

[Effective January 1, 2003. Amended effective December 1, 2009.]

U. S. Dist. Ct. Rules E.D.N.C., Crim Rule 53.1, NC R USDCTED Crim Rule 53.1

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