10.8 Jurisdiction of Individual Judges

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Former School of Government faculty member Michael Crowell, who specialized in judicial administration, has written about the jurisdiction of individual superior and district court judges in *Out-of-Term, Out-of-Session, Out-of-County*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/05 (UNC School of Government, Nov. 2008) [hereinafter Crowell]. This discussion highlights the principal issues only. (Crowell released a later paper, applicable to superior court only on the same topic, *Out-of-Term, Out-of-Session, Out-of-County* (July 2015) [hereinafter Crowell II]. The Crowell II paper is cited below where it reflects later developments).

A. Limitations on Jurisdiction While Out of County, District, and Session

General rule. Generally, judges only have jurisdiction to hear matters and make rulings (i) during the session of court, (ii) in the county and district where the judge is assigned, and (iii) in the county and district where the matter arose. Except in certain instances, discussed below, an order entered out of county, district, and session is void ab initio—that is, void from its inception. Thus, once a visiting superior court judge rotates out of a district, he or she ordinarily loses jurisdiction over the matters in that district. *See State v. Trent*, 359 N.C. 583 (2005) (pretrial order denying suppression motion was void where rendered after session and term of court had expired and without defendant's consent); *State v. Boone*, 310 N.C. 284 (1984) (pretrial order denying suppression motion was nullity where entered out of session, out of county, and out of district where suppression motion was heard; thus, when defendant renewed his motion to suppress, new judge was obligated to conduct another hearing, and failure to do so was reversible error), *superseded by statute on other grounds as stated in State v. Oates*, 366 N.C. 264 (2012); *State v. Humphrey*, 186 N.C. 533 (1923) (stating rule); *see also State v. Sams*, 317 N.C. 230, 235 (1986) (order entered without jurisdiction is "a nullity and may be attacked either directly or collaterally, or may simply be ignored").

Effect of consent. Generally, the consent of the parties cannot confer jurisdiction on a judge to hear a matter that the judge does not have the authority to hear. Thus, the parties cannot give a judge authority to hear a matter arising in a county where the judge is neither assigned nor has resident authority (discussed in subsection C., below). *See Vance Constr. Co., Inc. v. Duane White Land Corp.*, 127 N.C. App. 493 (1997) (jurisdiction cannot be conferred on court by consent, waiver, or estoppel; thus, order void where entered by trial judge not assigned to hold court in district in which hearing was held); *see also State v. Earley*, 24 N.C. App. 387 (1975) (consent cannot confer jurisdiction).

As discussed in subsection E., below, however, consent of the parties most likely allows a judge, after hearing a matter over which the judge has jurisdiction, to issue his or her ruling while out of county, district, and session.

B. Session and Term: Length, Type, and Assignment

Length. Cases sometimes use the words "term" and "session" interchangeably, but they have distinct meanings. Under the rotation system for superior court judges in North Carolina, superior court judges are typically assigned based on six-month schedules, and that six-month assignment is a "term," while a superior court "session" refers to the typical one-week period for holding court within a term. District court judges do not travel and are not assigned to six-month schedules but are assigned to sessions, which typically last one day. *See* Crowell at 1 & cases cited therein; *see also generally* Alyson Grine, *District Court Is in Session . . . but for How Long?*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 20, 2009) (discussing multiday sessions in district court). The expiration of a "session" is marked by the expiration of the time set for the session or by the announcement in court that the court adjourned "sine die"—that is, without assigning a day for further hearing.

Civil and criminal sessions. A session of superior court may be designated as criminal, civil, or mixed. *See* G.S. 7A-49.2. Criminal matters may not be heard during a civil session of superior court. *See In re Renfrow*, 247 N.C. 55 (1957); *Whedbee v. Powell*, 41 N.C. App. 250 (1979); *cf. State v. Thomas*, 132 N.C. App. 515 (1999) (trial court assigned to hear civil cases had jurisdiction to conduct criminal trial where authorized by Chief Justice). However, a judge assigned to a civil session still would have in-chambers jurisdiction, discussed in subsection C., below, to hear criminal nonjury matters. *See* Crowell at 2 n.1.

Assignment. Superior court judges ordinarily rotate to different districts within their division every six months. The Chief Justice of the N.C. Supreme Court, acting through the Administrative Office of the Courts, assigns superior court judges and prepares calendars of trial sessions. N.C. CONST. art. IV, sec. 11; G.S. 7A-345. A rotating superior court judge does not have jurisdiction to hold court or rule on matters brought in a particular judicial district unless he or she has been assigned to hold court there. *See Vance Constr. Co. v. Duane White Land Corp.*, 127 N.C. App. 493 (1997). The N.C. appellate courts generally have been lenient regarding mere clerical errors confirming the assignment of a judge to a particular district or session of court. *See State v. Eley*, 326

N.C. 759 (1990) (special superior court judge had jurisdiction to preside over trial despite failure of administrative assistant to file proper documents with court); Crowell at 10. For a detailed discussion of judges' commissions, which generally are issued when a session is added to the master calendar or a judge's assignment changes from the master calendar, see Michael Crowell, *What Is a Judge's Commission?*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (June 20, 2012).

District court judges are permanently assigned to a particular district or county. G.S. 7A-130 through 7A-135. The chief district court judge arranges schedules and assigns district court judges for sessions of district court. G.S. 7A-146(1). A chief district court judge also may assign a specific case to a judge. *See Routh v. Weaver*, 67 N.C. App. 426 (1984).

C. Hearings Out of Session: Jurisdiction in Vacation or in Chambers

Definition. Jurisdiction in chambers in the sense used here means the court's authority to hear or rule on matters outside of a regular session of court. In-chambers jurisdiction in this sense is also referred to as jurisdiction "in vacation"—that is, when there is no session of court scheduled. *See* Crowell at 2 (explaining these terms). The discussion here focuses on a *hearing* held outside of a regular session as opposed to a *ruling* issued after a session for a hearing held during a session, which is discussed in subsection E., below.

Practice note: Defense counsel should invoke in-chambers jurisdiction cautiously. In-chambers proceedings generally are not recorded, and the defendant typically is not present. It is usually best not to allow proceedings to take place that may affect your client's legal interests without his or her participation and without any reviewable record. If you object to a matter being heard in chambers, you may invoke your client's right to be present under the Sixth Amendment to the United States Constitution as well as N.C. Const. art. I, section 18, which provides that "all courts shall be open." *See Weaver v. Massachusetts*, ___ U.S. ___, 137 S. Ct. 1899 (2017) (recognizing that a violation of the right to public trial is typically structural error); *State v. Callahan*, 102 N.C. App. 344 (1991) (noting defendant's and public's right under article I, section 18 to public trials); *In re Nowell*, 293 N.C. 235 (1977) (same). When events or rulings in chambers affect your client's rights, counsel should restate the event or ruling on the record with a court reporter or otherwise memorialize the in-chambers events for the record to ensure appellate review. Counsel may also consider requesting that the court reporter accompany the parties to any in-chambers conference as authorized by G.S. 15A-1241(b).

A situation in which in-chambers jurisdiction should be invoked by the defendant is to make ex parte requests in a noncapital case for funds for the appointment of an expert (in a capital case, counsel should apply to the Capital Defender). *See supra* § 5.5, Obtaining an Expert Ex Parte in Noncapital Cases (2d ed. 2013). Another situation in which in-chambers jurisdiction would be appropriate is to have the court sign orders where the State and defendant agree on the proposed relief, such as bond modification or continuance orders.

Authority of superior court judges. G.S. 7A-47.1 addresses the judge's jurisdiction to hear matters in vacation. The conditions are:

- The judge must be a judge currently assigned to the district, a resident judge of the district, or a special superior court judge who resides in the district.
- The hearing must concern a nonjury matter.
- In a criminal case, the hearing must be in the county in which the matter arose unless the parties agree to be heard outside the county.

See Crowell at 2–3 & cases and statutes cited therein; *see also* Crowell II (observing that if hearing was held in correct county, it does not matter that the judge is sitting in another county when the order is entered).

It does not appear that the parties must consent for a judge to exercise in-chambers jurisdiction. *See* Crowell at 2; *see also E-B Grain Co. v. Denton*, 73 N.C. App. 14 (1985) (finding that notwithstanding statement in G.S. 7A-47.1 that parties must "unite" to present matter to superior court in vacation, parties' consent is not required); *cf. In re Burton*, 257 N.C. 534, 542 (1962) (consent of all parties confers jurisdiction on court to hearing in chambers).

Authority of district court judges. The jurisdiction of district court judges to hear motions in chambers is governed by G.S. 7A-191 and G.S. 7A-192. Under G.S. 7A-191, all trials on the merits must be held in open court, but "[a]ll other proceedings" may be held in chambers (and also may be held outside the district with the consent of "all parties affected thereby"). *But see* G.S. 7A-191.1 (complete record required where a defendant pleads guilty to Class H or I felony in district court).

G.S. 7A-192 imposes limits on an individual district court judge's authority to hear matters in chambers. Under that statute, a district court judge may not hear motions or grant interlocutory orders in chambers unless the chief district court judge has granted him or her the authority to do so by written order or rule of court and has filed this authority with the clerk of court. An order entered without this authority is void. *See Stroupe v. Stroupe*, 301 N.C. 656 (1981); *Austin v. Austin*, 12 N.C. App. 286 (1971). Some chief district court judges have granted blanket authority to district court judges in their district to hear matters in chambers. Other chiefs may have granted this authority on a more limited basis. Before obtaining an in-chambers ruling from a district court judge, you should make sure that he or she has been granted the authority to enter one. *See generally* Crowell at 3.

D. Extending Session to Complete Trial

If a trial in *superior court* is not finished by the close of Friday that the session of court ends, the superior court judge presiding over the trial may extend that session of court to complete the trial. *See* G.S. 15-167; *State v. Locklear*, 174 N.C. App. 547 (2005) (although statute requires judge to enter order on the record to extend session, extension

will be upheld if judge announces it in open court and parties do not object); *see also State v. Hunt*, 198 N.C. App. 488 (2009) (citing *Locklear* with approval).

There is no specific statute authorizing the *district court* to extend a session in criminal cases to complete a trial. *See* Crowell at 3 (noting absence of specific statute but observing that "the authority of the judge to do so when necessary to complete a trial seems to be the accepted practice"). Nor is there a specific statute permitting a district court judge to continue a trial from one session to another to take additional evidence in a criminal case. *Cf.* G.S. 7B-2406 (allowing juvenile court to continue adjudicatory hearing in delinquency case to receive additional evidence). Most likely a district court may continue a session to complete a trial or continue a trial from one session to another, but double jeopardy concerns may arise in some circumstances.

A mid-trial continuance does not violate double jeopardy if the defendant is subjected to one trial only. *See State v. Carter*, 289 N.C. 35, 43 (1975) (so stating), *vacated in part on other grounds*, 428 U.S. 904 (1976); *see also People v. Valencia*, 169 P.3d 212 (Colo. Ct. App. 2007) (reviewing cases), *abrogration on other grounds recognized by People v. Scheffer*, 224 P.2d 279 (Colo. Ct. App. 2009). However, if the trial begins anew following a continuance, as when the defendant enters a new plea, the subsequent proceedings violate double jeopardy. *See State v. Coats*, 17 N.C. App. 407 (1973) (finding violation of double jeopardy where judge, after the trial had commenced and a witness had testified, continued trial for two weeks to allow the State to procure additional evidence, and the defendant reentered plea on second trial date). Likewise, subsequent proceedings before a different trier of fact (judge or jury) may violate double jeopardy. *See Carter*, 289 N.C. at 42 (distinguishing cases in which defendant was tried at a later date before a different jury); *In re Hunt*, 46 N.C. App. 732 (1980) (finding no double jeopardy violation in two juvenile delinquency cases by continuance of adjudicatory hearing and resumption before same judge nine days later in one case and a little more than a month later in the other case). A case from another jurisdiction has held that a mid-trial continuance may violate double jeopardy if its purpose is to allow the State to obtain additional evidence, the lack of evidence is the result of inexcusable prosecutorial neglect, and the continuance is an unreasonable break in the continuity of the trial. *See State v. O'Keefe*, 343 A.2d 509 (N.J. Super. Ct. Law Div. 1975) (two-week continuance was unreasonable). *But cf. Webb v. Hutto*, 720 F.2d 375 (4th Cir. 1983) (no speedy trial, due process, or double jeopardy violation where continuance was five days for prosecutor to obtain evidence necessary to prove State's case).

A mid-trial continuance also may implicate other constitutional rights. *See Carter*, 289 N.C. at 43 (finding no speedy trial violation by continuance of one week within same session of court); *In re Hunt*, 46 N.C. App. at 736 n.3 (suggesting that due process may be violated in some circumstances by continuances to allow the State to obtain additional evidence).

E. Orders Entered after In-Session Hearing

The general rule is that a trial court must enter its ruling during the session in which the matter is heard. *See State v. Trent*, 359 N.C. 583 (2005); *State v. Boone*, 310 N.C. 284 (1984), *superseded by statute on other grounds as stated in State v. Oates*, 366 N.C. 264 (2012). Two general exceptions to this rule are as follows:

- If a judge announces his or her ruling in open court, the judge may issue a written ruling later. *See* Crowell at 5 & cases cited therein; *see also State v. Palmer*, 334 N.C. 104, 108–09 (1993) (order entered 57 days after notice of appeal not invalid where trial court announced ruling in open court at end of motion hearing and order was contained in agreed record on appeal, which both parties stipulated to be correct); *State v. Smith*, 320 N.C. 404 (1987).
- Parties may consent to a judge taking a matter under advisement and issuing his or her ruling after session. *See Trent*, 359 N.C. at 586. The failure of a party in a criminal case to object to a judge taking a matter under advisement and ruling after session may not constitute consent, however. *See Boone*, 310 N.C. at 288.

If a judge has in-chambers jurisdiction to rule on a matter—for example, a superior court judge is still assigned for a six-month term to a district even though the session at which he or she heard the matter has expired—the judge also may have authority to issue a ruling after the session. *See* Crowell at 4 & n.4.

F. Imposing Sentence after Session in which Defendant Found Guilty

A trial court is authorized to continue a case to a later date for sentencing. *See State v. Degree*, 110 N.C. App. 638 (1993). This constitutes "an exception to the general rule that the court's jurisdiction expires with the expiration of the session of court in which the matter is adjudicated." *Id.* at 641; *see also State v. Williams*, 363 N.C. 689 (2009) (following the guilt phase in a capital case, the first judge declared a mistrial as to the penalty proceeding when defendant attacked his counsel and counsel withdrew; trial court does not lose subject matter jurisdiction if different judge presides over penalty phase and new jury is empaneled).

A continuance for sentencing, sometimes referred to as a prayer for judgment continued or "PJC," may be for a definite or indefinite period. *See* G.S. 15A-1334(a) (authorizing continuance for sentencing); *State v. Lea*, 156 N.C. App. 178 (2003) (so stating). The court loses jurisdiction, however, if the sentence is not entered within a reasonable time. *See* Crowell at 5–6 & cases cited therein; *State v. Craven*, 205 N.C. App. 393 (2010) (two year delay between judgment and sentencing not unreasonable where defendant never requested sentencing and thus consented to continuance of sentencing), *rev'd in part on other grounds*, 367 N.C. 51 (2013). Under G.S. 15A-1331.2, the court is prohibited from entering a PJC for more than 12 months on a class B1, B2, C, D, or E felony. However, a violation of this statute is not jurisdictional and does not deprive the court of its ability to sentence the defendant within a reasonable amount of time. *State v. Marino*, ___ N.C.

App. ___, 828 S.E.2d 689 (2019). *See also* Jamie Markham, *PJCs for Serious Felonies*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (May 30, 2019).

The court also loses jurisdiction if it imposes conditions along with the PJC that amount to punishment, which makes the PJC a final judgment and precludes imposition of a different sentence at a later date. *See State v. Brown*, 110 N.C. App. 658 (1993); *see also* Crowell at 6.

G. Modifying Judgment after Session

A court has the authority to modify its judgment during the original session of court. *See State v. Sammartino*, 120 N.C. App. 597 (1995) (during session of court, judgment is "in fieri"—not final—so court has the discretion to modify, amend, or set aside judgment). Within ten days of judgment, and on a motion for appropriate relief, the trial judge also has the authority to modify its judgment and sentence for the reasons stated in G.S. 15A-1414 (motion by defendant) or G.S. 15A-1416 (motion by State). *See State v. Morgan*, 108 N.C. App. 673 (1993) (applying G.S. 15A-1414); *see also* G.S. 15A-1413(b) (judge who presided at trial may hear motion for appropriate relief under G.S. 15A-1414 even if he or she is in another district and his or her commission has expired); G.S. 15A-1420(d) (court may grant relief on own motion for any reasons defendant could obtain relief). The trial court's authority to modify its judgment on its own motion with a ten-day MAR statute is limited to acts that benefit the defendant. *See State v. Oakley*, 75 N.C. App. 99 (1985) (trial court lacked authority to grant relief that only benefitted the State). *But see State v. Roberts*, 351 N.C. 325 (2000) (if defendant files MAR, trial court may correct any error, including a sentencing error advantageous to the defendant).

Given the ten-day window, a motion for appropriate relief (MAR) will often be made after the end of the session in which the judgment was entered. Thus, G.S. 15A-1414 authorizes the judge to enter an order after the session has ended.

After the period for filing a ten-day MAR has expired, a trial court may alter a sentence only if the sentence is unlawful or if necessary to correct a clerical error. *See State v. Roberts*, 351 N.C. 325 (2000) (interpreting G.S. 15A-1415 and G.S. 15A-1417); *State v. Petty*, 212 N.C. App. 368 (2011) (district court judge had authority, after conclusion of session, to correct an unlawful and invalid judgment); *State v. Jarman*, 140 N.C. App. 198 (2000) (court had authority out of term to correct clerical error in judgment); *see also generally* Jessica Smith, *Trial Judge's Authority to Sua Sponte Correct Errors after Entry of Judgment in a Criminal Case*, ADMINISTRATION OF JUSTICE BULLETIN No. 2003/02 (UNC School of Government, May 2003). For a further discussion of this topic, see 2 NORTH CAROLINA DEFENDER MANUAL § 35.6, Trial Judges' Authority to Correct, Modify, or Amend Judgments (2d ed. 2012).

H. Writ of Habeas Corpus

Any person imprisoned by the State of North Carolina who believes that he or she is imprisoned without proper authority may apply for a writ of habeas corpus under state

law. *See* N.C. CONST. art. I, sec. 21; G.S. 17-1. An application for a writ of habeas corpus may be made to any appellate or superior court judge in the state, either in or out of session. *See* G.S. 17-6. Thus, the statute authorizes a judge to act on a criminal case after a session has ended. If the judge to whom the application is made decides to hold a hearing on the issue of the lawfulness of the applicant's confinement, the judge may hear the matter himself or herself or assign the matter to another judge. *See In re Burton*, 257 N.C. 534, 540 (1962); *see also* N.C. GEN. R. PRAC. SUPER. & DIST. CT. 25(5) (requiring in capital cases in certain instances that an application for writ of habeas corpus be referred to the senior resident superior court judge or designee in the district where the defendant was sentenced).

For a further discussion of this topic, see 2 NORTH CAROLINA DEFENDER MANUAL § 35.4, State Habeas Corpus (2d ed. 2012).

I. Out-of-District and Out-of-County Orders

Generally, in the reported cases in which a judge has signed an order while out of county or out of district, the judge also has held the hearing or entered the ruling out of session. It was therefore not clear whether the signing of an order outside the county or district in which the matter was heard, standing alone, renders the order void. In his 2015 paper, Crowell indicates that the place of signing of the order is not critical as long as the hearing was held in the correct county. He nevertheless suggests that a judge either should sign the order in the county or district where the matter was heard or should have the parties consent to the signing at a different location. *See* Crowell II at 8–9.