

27.1 Note-Taking by the Jury

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Jurors may make notes and take them into the jury room unless the trial judge, on his or her own motion or the motion of any party, directs otherwise. G.S. 15A-1228. Whether jurors are allowed to take notes is within the trial judge's discretion, and that decision will not be reversed absent an abuse of that discretion. *State v. Crawford*, 163 N.C. App. 122 (2004) (after noting that G.S. 15A-1228 no longer contained the mandatory requirement that the trial judge instruct jurors not to take notes if a party objected, court found no abuse of discretion in the denial of the parties' request to prohibit the jury from taking notes during closing arguments); accord *United States v. Maclean*, 578 F.2d 64 (3rd Cir. 1978) (setting out arguments for and against note-taking by jurors before holding that the decision whether to allow jurors to take notes was within trial judge's discretion); *State v. Jumpp*, 619 A.2d 602, 607 (N.J. Super. Ct. App. Div. 1993) (collecting cases and adopting the position that the majority of jurisdictions have taken "accord[ing] general approval to the practice of juror note-taking in criminal cases and vest[ing] the trial court with discretion to permit the same").

Trial judges may also be faced with determining whether to allow jurors to use electronic devices to take notes instead of pen and paper. See *State v. Pace*, 240 N.C. App. 63 (2015) (finding no plain error in trial judge's failure to specifically instruct the jury concerning the appropriate use of tablet computers that he had authorized for note-taking where the judge had previously instructed jurors not to look up topics on Internet or visit any social media site); see also *In re Korfmann*, ___ N.C. App. ___, 786 S.E.2d 768, 770 (2016) (juror who recorded notes on a cell phone was found to be in direct contempt because trial judge felt that he had "made it crystal clear that the jury is to rely on their recollection, not their notes, not a cell phone, but their recollection"). Whether to authorize the use of iPads or tablet computers appears to be a decision that is within the trial judge's discretion. See *Pace*, 240 N.C. App. at 67 (citing *State v. Rhodes*, 290 N.C. 16, 23 (1976), for the proposition that, in the absence of a controlling statute or rule, matters relating to the orderly conduct of trial or to the proper administration of justice in the court are within trial judge's discretion).

Practice note: If the trial judge allows the jury to take notes during the trial, either on paper or electronically, counsel may request an instruction in accordance with N.C. Pattern Jury Instruction—Crim. 100.30 (June 2008), which directs the jurors to use their notes to help refresh their recollection but not give them undue significance. If the jurors are permitted to take notes on electronic devices, counsel may want to request that the jury be specifically admonished not to use the devices for any improper purpose such as accessing the Internet to obtain or disclose information about the case or to supplement the trial judge's instructions in the case by consulting an online dictionary or website. It may also be advisable to request that the instructions on note-taking be repeated

immediately before jury deliberations. *See accord United States v. Maclean*, 578 F.2d 64, 67 (3rd Cir. 1978).
