

31.6 Impossibility of Proceeding in Conformity with the Law

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31.6 Impossibility of Proceeding in Conformity with the Law

Sometimes misconduct, disruptive events, or improprieties occur during trial that prohibit the trial from being fair and impartial and make it necessary for the judge to declare a mistrial. In that event, the mistrial may be granted at either party's request or on the judge's own motion.

A. Statutory Authority

G.S. 15A-1063(1) provides that “[u]pon motion of a party or upon his own motion, a judge may declare a mistrial if . . . [i]t is impossible for the trial to proceed in conformity with law.” This statute “was intended to continue the North Carolina practice of allowing a mistrial when it becomes physically necessary to do so.” *State v. Cooley*, 47 N.C. App. 376, 382 (1980).

The statute also allows a judge, even over a defendant's objection, to declare a mistrial for the necessity of doing justice and where he or she could reasonably conclude that the trial will not be fair and impartial. *Id.* (State's motion for mistrial pursuant to G.S. 15A-1063 was properly granted where the judge had reasonable grounds to believe that jury tampering had occurred); *see also State v. Malone*, 65 N.C. App. 782 (1984) (trial judge properly granted a mistrial on his own motion where one of the defendant's attorneys testified for the State).

B. Physical Impossibility

According to the Official Commentary, one of the reasons that G.S. 15A-1063(1) was enacted was to cover situations “in which it becomes physically impossible for the trial to proceed—such as may be caused by fire, flood, or other catastrophe.” *Compare State v. Shoff*, 128 N.C. App. 432 (1998) (no abuse of discretion by trial judge in granting mistrial due to adverse weather conditions—three to six inches of snow—and the effect that these conditions had on both the jurors' and defense counsel's ability to physically get to court for the second day of trial), *with Whaley v. White Consol. Indus., Inc.*, 144 N.C. App. 88, 97 (2001) (trial judge did not abuse his discretion by refusing to declare a mistrial after the trial was interrupted by Hurricane Floyd flooding where record showed that the judge made inquiry as to the effect of the delay and reached a reasoned decision that the trial could continue based on the jurors' responses).

C. Physical Necessity

Death or disability of a juror. The Official Commentary to G.S. 15A-1063(1) states that one of the reasons the statute was enacted was to “cover[] the case in which a juror dies or becomes disabled to continue, and there is no alternate or else deliberations have already begun.” *See also State v. Crocker*, 239 N.C. 446, 452 (1954) (a trial judge may order a mistrial if, during trial, a juror “is so incapacitated by reason of intoxicants or otherwise as to be incapable, physically or mentally, of functioning as a competent, qualified juror”); *State v. Beal*, 199 N.C. 278 (1930) (mistrial properly granted where juror became insane during trial); *State v. Ledbetter*, 4 N.C. App. 303 (1969) (no abuse of discretion by trial judge in granting a mistrial where a juror suddenly became ill and was taken to the hospital in serious condition).

If there is an alternate juror and deliberations have not yet begun when the original juror dies or becomes disabled, incapacitated, or disqualified, the trial judge is free to substitute the alternate and a mistrial would not be necessary. *See* G.S. 15A-1215(a) (substitution of alternate juror during trial); G.S. 15A-2000(a)(2) (substitution of alternate juror during a capital sentencing hearing).

Death or disability of the trial judge. If a trial judge becomes sick or disabled during a trial and is unable to continue presiding “without the necessity of a continuance,” he or she may exercise discretion and order a mistrial. G.S. 15A-1224(a); *see also State v. Boykin*, 255 N.C. 432 (1961) (trial judge’s declaration of mistrial from hospital bed was justified where the judge suffered a heart attack at the courthouse, kept the jury on call for three days hoping to return, and upon medical examination, it was determined he could not return).

If, during trial, a judge becomes unable to perform his or her duties “by reason of absence, death, sickness, or other disability” and the judge has not ordered a mistrial, any other judge assigned to the court may perform those duties. G.S. 15A-1224(b); *see also State v. Holly*, 228 N.C. App. 568 (2013) (unpublished) (holding that subsequent trial judge could properly perform his duties in presiding over the State’s closing argument even though he had not heard the evidence or the defendant’s closing argument). G.S. 15A-1224(b) does not require the original judge to be fully debilitated for the rest of the trial in order for a subsequent judge to step in and perform judicial duties during a portion of the trial. *See Holly*, 228 N.C. App. 568 (finding no error where original judge became ill, another judge heard prosecutor’s closing argument, and then original judge returned that afternoon to preside over the remainder of the trial). If, however, a subsequent judge assigned to the case because of the absence of the initial trial judge “is satisfied that he cannot perform those duties because he did not preside at an earlier stage of the proceedings or for any other reason, he must order a mistrial.” G.S. 15A-1224(b).

Death or disability of defense counsel. If the defense attorney suddenly dies or becomes ill during trial, a judge may grant a mistrial if it is “for ‘necessity of doing justice.’” *See State v. Battle*, 267 N.C. 513, 518 (1966) (citation omitted) (trial judge properly granted a

mistrial on his own motion in a noncapital case, over the four defendants' objections, where an attorney for one of the defendants suddenly became ill at the noon recess of the first day of trial).