

32.2 Charge Conference

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Before closing arguments, a trial judge must conduct a conference to discuss proposed instructions out of the presence of the jury. G.S. 15A-1231(b); N.C. GEN. R. PRAC. SUPER. & DIST. CT. 21. Pursuant to G.S. 15A-1231(b), the charge conference must be recorded. “The purpose of the charge conference is to allow the parties to discuss the proposed jury instructions to insure that the legal issues are appropriately clarified in a manner that assists the jury in understanding the case and in reaching the correct verdict” as well as “to enable counsel to know what instructions will be given so that counsel will be in a position to argue the facts in light of the law to be charged to the jury.” *State v. Hill*, 235 N.C. App. 166, 170 (2014) (internal quotation marks and citations omitted). Since holding a charge conference is mandatory under G.S. 15A-1231(b), the failure to do so is reviewable on appeal even in the absence of an objection at trial. *Id.* at 171.

At the conference, the judge must inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he or she will charge the jury. The parties must also be informed what, if any, parts of requested instructions will be given. On request, the judge must inform the parties whether he or she intends to include other particular instructions in the jury charge. G.S. 15A-1231(b).

The provisions of G.S. 15A-1231(b) apply not only to the guilt/innocence phase of a trial, but also to the sentencing phase of capital and noncapital trials where the jury determines the existence of aggravating or mitigating factors. *See, e.g., State v. Bacon*, 326 N.C. 404 (1990) (no material prejudice shown where trial judge summarized unrecorded capital sentencing phase charge conference and gave defendant the opportunity to object); *Hill*, 235 N.C. App. 166 (rejecting State’s argument that G.S. 15A-1231(b) does not apply to separate sentencing hearings on aggravating factors in noncapital cases).

The trial judge’s failure to “comply fully” with the statutory provisions does not constitute grounds for appeal unless the judge’s failure to comply was not corrected before the end of trial and it materially prejudiced the defendant’s case. G.S. 15A-1231(b); *see also State v. Houser*, 239 N.C. App. 410 (2015) (no material prejudice shown by trial judge’s failure to fully comply with G.S. 15A-1231(b) where trial judge conferred with counsel regarding the specific aggravating factors on which he would charge, asked counsel if either wished to be heard before giving the charge, and asked defense counsel if there was any objection before allowing deliberations to begin); *State v. Brunson*, 120 N.C. App. 571 (1995) (defendant unable to show material prejudice where trial judge held an informal, unrecorded charge conference). However, if the trial judge fails to conduct any charge conference at all as mandated by G.S. 15A-1231(b), the defendant is entitled to a new trial. *See Hill*, 235 N.C. App. 166 (trial judge’s failure to hold a charge conference requires a new trial and defendant need not show prejudice);

State v. Clark, 71 N.C. App. 55 (1984), *disapproved of on other grounds by State v. Moore*, 327 N.C. 378 (1990) (although court disapproved *Clark* on a different issue, it granted a new trial for trial judge's failure to hold a charge conference requested by defendant [decided under prior version of G.S. 15A-1231(b)]).

Practice note: The charge conference is a significant stage of trial and counsel should prepare accordingly. Counsel should:

- file written requests for instructions as soon as possible so the trial judge will have time to read them before the charge conference;
 - be prepared to argue in support of his or her tendered instructions and against detrimental ones submitted by the State or suggested by the trial judge;
 - lodge specific objections to erroneous instructions at the charge conference;
 - lodge objections to the trial judge's failure to comply with the procedural requirements of G.S. 15A-1231(b);
 - carefully listen to the instructions given during the jury charge and ask for corrections, additions, or modifications as necessary; and
 - lodge or renew specific objections to erroneous instructions before the jury retires to deliberate.
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