

Trial Court Authority to Issue Orders ‘In Chambers’¹

March 2020

****This outline discusses the law relating to hearing matters in chambers; that is, the authority of a judge to hear matters when the judge is not acting in a regularly scheduled session of court. It does not address the law relating to a judge’s authority to hear matters *ex parte*. The authority to hear a matter in chambers does not necessarily mean the court has authority to hear the matter *ex parte*.**

Superior Court

- a. **In Chambers Statute, G.S. 7A-47.1.** A superior court judge’s authority to hear matters outside a regular courtroom session is described in G.S. 7A-47.1. The statute defines the judge’s jurisdiction to hear matters “in vacation”—that is, when there is no session of court scheduled—also referred to as “in chambers” jurisdiction. Generally any nonjury matter arising in the district may be heard in vacation, and it may be heard by either the superior court judge currently assigned to the district, a resident judge of the district, or a special superior court judge who resides in the district. *Scott v. Scott*, 259 N.C. 642, 646 (1963); *Patterson v. Patterson*, 230 N.C. 481, 484 (1949).
 - i. *But see* **Rule 6, General Rules of Practice for the Superior and District Court.** “Motions may be heard and determined either at a pre-trial conference or on motion calendar as directed by the presiding judge.”
- b. **Resident Judge Need Not Be Assigned.** The resident judge, or a special judge who resides in the district, need not be currently assigned to the district to exercise in chambers jurisdiction.
- c. The general “vacation” or “in chambers” jurisdiction of a regular judge arises out of his general authority. Usually it may be exercised anywhere in the district and is never dependent upon and does not arise out of the fact that he is at the time presiding over a designated term of court or in a particular county. *Baker v. Varser*, 239 N.C. 180, 188 (1954) (quoting *Shepard v. Leonard*, 223 N.C. 110 (1943)).

¹ The section of this outline about Superior Court was written primarily by Michael Crowell, former faculty member of the UNC School of Government, as part of a longer outline titled Out of Session, Out of Term, Out of County (July 2015), <https://www.sog.unc.edu/resources/microsites/judicial-authority-and-administration>. The District Court section was written by Cheryl Howell, faculty member of the UNC School of Government.

- d. **Parties' Consent Not Needed.** A judge's exercise of in chambers jurisdiction does not require the parties' consent. *E.B. Grain Co. v. Denton*, 73 N.C. App. 14, 24 (1985); *Towne v. Cope*, 32 N.C. App. 660, 665-66 (1977).
- e. **Where The Hearing May Be Held.** It appears that a superior court judge hearing an in chambers matter in a criminal case must be in the county in which the matter arose, unless the parties agree to being heard outside the county. A civil in chambers matter, on the other hand, may be heard in any county within the district.

- i. Although *Baker v. Varsa, supra*, seems to say that in chambers jurisdiction does not depend on the judge being in the county, the court of appeals later said in *House of Style Furniture Corporation v. Scronce*, 33 N.C. App. 365 (1977):

Even as to regular judges, "it is the uniform holding in this jurisdiction that, except by consent, or unless authorized by statute, a judge of the Superior Court even in his own district, has no authority to hear a cause or to make an order substantially affecting the rights of the parties, outside the county in which the action is pending."

33 N.C. App. at 369 (quoting *Shepard v. Leonard*, 223 N.C. 110, 114 (1943)).

- ii. Subsequent to the decision in *House of Style Furniture*, the General Assembly enacted Rule 7(b)(4) of the Rules of Civil Procedure providing that a motion in a civil case may be heard in any county in the district with the permission of the senior resident superior court judge or that judge's designee. See G.S. 1A-1, Rule 7(b)(4) (A motion in a civil action in a county that is part of a multicounty judicial district may be heard in another county which is part of that same judicial district with the permission of the senior resident superior court judge of that district or of that judge's designee. Except for emergencies as determined by the senior resident superior court judge or that judge's designee, a motion in a civil action to be heard outside the county in which the case is filed shall be heard at a civil session of court.)
- iii. Because there is no comparable rule or statute for criminal cases, however, it seems that *House of Style Furniture* continues to apply to criminal cases, requiring an in chambers

motion in a criminal case to be heard in the county in which the case arose, unless the parties agree otherwise.

- iv. If the hearing was held in the correct county, it does not matter that the judge is sitting in another county when the order is entered. *State v. Collins*, 234 N.C. App. 398, 761 S.E.2d 914 (2014).

District Court

a. District Court Always Open.

- a. **G.S. 7A-190.** “The district courts shall be deemed always open for the disposition of matters properly cognizable by them. But all trials on the merits shall be conducted at trial sessions regularly scheduled as provided in this Chapter.”
- b. Sessions are scheduled by the Chief District Court Judges and the Chief Judges assign individual judges to preside over scheduled sessions. G.S 7A-146(1) and (7).

b. In Chambers Jurisdiction

- a. **G.S. 7A-191.** “All trials on the merits and all hearings on infractions conducted pursuant to Article 66 of Chapter 15A shall be conducted in open court and so far as convenient in a regular courtroom. All other proceedings, hearings, and acts may be done or conducted by a judge in chambers in the absence of the clerk or other court officials and at any place within the district; but no hearing may be held, nor order entered, in any cause outside the district in which it is pending without the consent of all parties affected thereby.”
- b. **Rule 6, General Rules of Practice for the Superior and District Court.** “Motions may be heard and determined either at a pre-trial conference or on motion calendar as directed by the presiding judge.”
- c. *See also G.S. 1A-1, Rule 7(b)(4)*(A motion in a civil action in a county that is part of a multicounty judicial district may be heard in another county which is part of that same judicial district with the permission of the senior resident superior court judge of that district or of that judge's designee. Except for emergencies as determined by the senior resident superior court judge or that judge's designee, a motion in a civil action to be heard outside the county in which the case is filed shall be heard at a civil session of court.”)

c. Only Designated Judges Are Authorized to Hear Matters In Chambers (‘in chambers’ means when the judge is not acting in a session scheduled by the Chief Judge).

- a. **G.S. 7A-192.** “Any district judge may hear motions and enter

interlocutory orders in causes regularly calendared for trial or for the disposition of motions, at any session to which the district judge has been assigned to preside. The chief district judge and any district judge designated by written order or rule of the chief district judge, may in chambers hear motions and enter interlocutory orders in all causes pending in the district courts of the district, including causes transferred from the superior court to the district court under the provisions of this Chapter. The designation is effective from the time filed in the office of the clerk of superior court of each county of the district until revoked or amended by written order of the chief district judge.”

d. Examples of Matters Held to Fall Within In Chambers Jurisdiction

- a. *Stoupe v. Stoupe*, 301 NC 656, 273 SE2d 434(1981): An order directing the payment of attorney fees was an interlocutory order that could be heard in chambers but was void because district court judge entering the order had not been designated by chief judge as a judge authorized to hear in chambers matters.
- b. *Austin v. Austin*, 12 NC App 286, 183 SE2d 286 (1971)(motion in the cause for temporary custody and support “comes within the purview of ‘all other proceedings, hearings, and acts’ referenced in GS 7A-191” as allowed to be heard in chambers. However, order was void because heard by judge not authorized for in chambers matters.)
- c. *But see* Rule 6, General Rules of Practice for the Superior and District Court. “Motions may be heard and determined either at a pre-trial conference or on motion calendar as directed by the presiding judge.”
- d. *Boston v. Freeman*, 6 NC App 736, 171 SE2d 206 (1969)(request for a TRO was an interlocutory matter allowed to be heard in chambers).

e. Matters That Must be Recorded

- a. **The issue of whether a matter can be heard ‘in chambers’ – meaning when a judge is not acting in a regularly scheduled session of court – is distinct from the issue of whether the matter must be recorded.**

b. G.S. 7A-198:

“(a) Court-reporting personnel shall be utilized, if available, for the reporting of civil trials in the district court. If court reporters are not available in any county, electronic or other mechanical devices shall be provided by the Administrative Office of the Courts upon request of the chief district judge. ...

(d) Reporting of any trial may be waived by consent of the parties.

(e) Reporting will not be provided in ex parte or emergency hearings before a judge pursuant to Chapter 50B or 50C of the General Statutes, trials before

magistrates, or in hearings to adjudicate and dispose of infractions in the district court.”

- c. Examples of proceedings found to be “civil trials” that must be recorded:
 - i. Motion to modify custody. *Miller v. Miller*, 92 NC App 351, 374 SE2d 467 (1988).
 - ii. Rule 60 request to set aside judgment. *Coppley v. Coppley*, 128 NC App 658, 496 SE2d 611 (1998).
 - iii. Matters that require evidence to support findings of fact. *See Stancil v. Stancil*, 773 S.E.2d 890(2015)(matters allowed to be decided on verified pleading or affidavit do not need to be recorded). *See also Coppley v. Coppley*, 128 NC App 658, 496 SE2d 611 (1998)(5-minute hearing to approve consent order was not a “civil trial required to be recorded), and *Howell v. Howell*, 19 NC App 260, 198 SE2d 462 (1973)(hearing on request for alimony pendente lite was not required to be recorded because it was heard on affidavit and verified pleading).
 - iv. **Note that specific holding in *Stancil* that *ex parte* requests for a DVPO must be recorded was superseded by amendment to GS 7A-198 adding section (e) set out above.

- d. Examples of other statutes that require recording of District Court proceedings
 - i. **§ 7B-806. Record of proceedings. (Abuse, Neglect and Dependency)**
 “All adjudicatory and dispositional hearings shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The court may order that other hearings be recorded.”

 - ii. **§ 7B-2410. Record of proceedings. (Delinquency)**
 “All adjudicatory and dispositional hearings and hearings on probable cause and transfer to superior court shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The court may order that other hearings be recorded. “

 - iii. **§ 7A-191.1. Recording of proceeding in which defendant pleads guilty or no contest to felony in district court.**
 “The trial judge shall require that a true, complete, and accurate record be made of the proceeding in which a defendant pleads guilty or no contest to a Class H or I felony pursuant to G.S. 7A-272.”