

Criminal Non-Jury Trials

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The citizens of North Carolina voted to amend Article I, Section 24 of the North Carolina Constitution to allow defendants to waive the right to jury trials. This amendment was codified in North Carolina General Statute §15A-1201. Although that statute became effective December 1, 2014 and applied to defendants arraigned on or after that date, Section 15A-1201 was again amended and this amendment became effective October 1, 2015 and is applicable to defendants waiving their right to trial by jury on or after this date.

North Carolina General Statute **§15A-1201** provides:

- (a) **Right to Jury Trial.** – In all criminal cases the defendant has the right to be tried by a jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a plea of not guilty must be tried before a jury, unless the defendant waives the right to a jury trial, as provided in subsection (b) of this section.
- (b) **Waiver of Right to Jury Trial.** – A defendant accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, knowingly and voluntarily, in writing or on the record in the court and with the consent of the trial judge, waive the right to trial by jury. When a defendant waives the right to trial by jury under this section, the jury is dispensed with as provided by law, and the whole matter of law and fact, to include all factors referred to in G.S. 20-179 and subsections (a1) and (a3) of G.S. 15A-1340.16, shall be heard and judgment given by the court. If a motion for joinder of co-defendants is allowed, there shall be a jury trial unless all defendants waive the right to trial by jury, or the court, in its discretion, severs the case.
- (c) A defendant seeking to waive the right to trial by jury under subsection (b) of this section shall give notice of intent to waive a jury trial by any of the following methods:
 - (1) Stipulation, which may be conditioned on each party's consent to the trial judge, signed by both the State and the defendant and served on the counsel for any co-defendants.
 - (2) Filing a written notice of intent to waive a jury trial with the court and serving on the State and counsel for any co-defendants within the earliest of (i) 10 working days after arraignment, (ii) 10 working days after service of a calendar setting under G.S. 7A-49.4(b), or (iii) 10 working days after the setting of a definite trial date under G.S. 7A-49.4(c).

(3) Giving notice of intent to waive a jury trial on the record in open court by the earlier of (i) the time of arraignment or (ii) the calling of the calendar under G.S. 7A-49.4(b) or G.S. 7A-49.4(c).

(d) **Judicial Consent to Jury Waiver.** – Upon notice of waiver by the defense pursuant to subsection (c) of this section, the State shall schedule the matter to be heard in open court to determine whether the judge agrees to hear the case without a jury. The decision to grant or deny the defendant's request for a bench trial shall be made by the judge who will actually preside over the trial. Before consenting to a defendant's waiver of the right to a trial by jury, the trial judge shall do all of the following:

(1) Address the defendant personally and determine whether the defendant fully understands and appreciates the consequences of the defendant's decision to waive the right to trial by jury.

(2) Determine whether the State objects to the waiver and, if so, why. Consider the arguments presented by both the State and the defendant regarding the defendant's waiver of a jury trial.

(e) **Revocation of Waiver.** – Once waiver of a jury trial has been made and consented to by the trial judge pursuant to subsection (d) of this section, the defendant may revoke the waiver one time as of right within 10 business days of the defendant's initial notice pursuant to subsection (c) of this section if the defendant does so in open court with the State present or in writing to both the State and the judge. In all other circumstances, the defendant may only revoke the waiver of trial by jury upon the trial judge finding the revocation would not cause unreasonable hardship or delay to the State. Once a revocation has been granted pursuant to this subsection, the decision is final and binding.

(f) **Suppression of Evidence.** – In the event that a defendant who has waived the right to trial by jury pursuant to this section makes a motion to suppress evidence under Article 53 of this Chapter, the court shall make written findings of fact and conclusions of law.

I. Pretrial Procedure to Waive Right to Jury Trial

A. Defendant's Notice of Intent to Waive

Before a defendant may waive his right to a jury trial, the defendant must first indicate his intent to waive by using any one of three methods.

Section 15A-1201(c) provides: A defendant who seeks to waive his right to a jury trial must do so by any one of the following methods:

(1) **Stipulation**, which may be conditioned on each party's consent to the trial judge, signed by both the State and the defendant and served on the counsel for any co-defendants.

(2) **Filing a written notice of intent to waive a jury trial with the court** and serving on the State and counsel for any co-defendants within the earliest of (i) 10 working days after arraignment, (ii) 10 working days after service of a calendar setting under G.S. 7A-49.4(b), or (iii) 10 working days after the setting of a definite trial date under G.S. 7A-49.4(c).

(3) **Giving notice of intent to waive a jury trial on the record in open court** by the earlier of (i) the time of arraignment or (ii) the calling of the calendar under G.S. 7A-49.4(b) or G.S. 7A-49.4(c).

B. Waiver of Right to Jury Trial

1. After the defendant indicates the intent to waive the right to a jury trial and the State schedules the matter to be heard in open court, the defendant should be advised of the following to ensure a knowing and voluntary waiver:

- charges against the defendant
- nature of and statutory punishment for each charge
- nature of the proceedings against the defendant
- the right to be tried by a jury of twelve of their peers
- the right to participate in the selection of the members of the jury
- that the jury verdict must be unanimous
- that the judge alone will decide their guilt or innocence
- that the judge alone will determine any aggravating sentencing factors in their case

(See Waiver of Jury Trial for more detailed colloquy)

2. After the defendant is properly advised of his rights, the defendant should execute **ACKNOWLEDGEMENT OF RIGHTS AND WAIVER**, documenting he is knowingly and voluntarily waiving his right to a jury trial. (See Form 405).

C. Acceptance of Waiver

After the defendant has noticed his intent to waive and has signed the waiver of jury trial, the trial judge must decide whether to grant or deny the defendant's request for a bench trial. In addition to assuring the defendant fully understands the consequences of his decision to waive his right to a jury trial, the trial judge must also consider the State's position as to the defendant's request to waive his right to a jury trial.

Section 15A-1201(d) provides: Before consenting to a defendant's waiver of the right to a trial by jury, the trial judge shall do all of the following:

(1) Address the defendant personally and determine whether the defendant fully understands and appreciates the consequences of the defendant's decision to waive the right to trial by jury. (See B. Waiver of Right to Jury Trial)

(2) Determine whether the State objects to the waiver and, if so, why. Consider the arguments presented by both the State and the defendant regarding the defendant's waiver of a jury trial.

II. Other Statutory Provisions

A. Motions to Suppress

If a defendant has waived the right to a jury trial, the court hearing the motion to suppress **shall** make written findings of fact and conclusions of law.

B. Defendants Joined for Trial

If co-defendants are joined for trial, there shall be a jury trial unless all defendants waive the right to trial by jury, or the court, in its discretion, severs the case.

C. Revocation of Waiver

1. The defendant may revoke the waiver, in open court, **one** time, as of right, **within 10 business days** of initial notice, with the State present.
2. In all other circumstances, the defendant may only revoke the waiver if the trial judge finds that there is no unreasonable hardship or delay to the State.

3. Once the revocation has been granted, the decision is final and binding.

III. Non-Jury Trial

A. Trial

The trial judge conducts all phases of the trial and determines whether the defendant is guilty beyond a reasonable doubt or not guilty, and if the defendant is found guilty, the trial judge sentences the defendant.

B. Aggravating Factors

As provided in NCGS §15A-1201(b), the trial judge also decides on the existence of aggravating factors, beyond a reasonable doubt.

IV. Practical Considerations

A. Announcing Verdict

When announcing the verdict, announce that you are finding “beyond a reasonable doubt that the defendant is guilty of the following offenses” or that you are finding “beyond a reasonable doubt the existence of aggravating factors”.

B. Defendant has no absolute right to non-jury trial

No absolute right to non-jury trial. *Singer v. United States*, 380 U.S. 24, 34-35, 13 L. Ed. 2d 630, 85 S. Ct. 783 (1965), and *Patton v. United States*, 281 U.S. 276, 312-13, 74 L. Ed. 854, 50 S. Ct. 253 (1930). *See also United States v. Clausell*, 389 F.2d 34, 35 (2d Cir. 1968). *U.S. v Clapps*, 732 F.2d 1148, 1151 (3d Cir. 1984) stated,

In *Singer*, also a mail fraud prosecution, the Supreme Court rejected the appellant's contention that he had an unrestricted right to waive a jury trial. Chief Justice Warren wrote: "We find no constitutional impediment to conditioning a waiver of this right on the consent of the prosecuting attorney and trial judge when, if either refuses to consent, the result is simply that the defendant is subject to an impartial trial by jury -- the very thing that the Constitution guarantees him." 380 U.S. at 36.