

INHERENT AUTHORITY

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- I. **Introduction.** Judges have broad inherent authority to see that courts are run efficiently and properly and that litigants are treated fairly. “Through its inherent power the court has authority to do all things that are reasonably necessary for the proper administration of justice.” *Beard v. North Carolina State Bar*, 320 N.C. 126, 129 (1987). Despite such sweeping statements, inherent authority is limited. While it may be used by a judge to fill in gaps not addressed by the statutes or rules, inherent authority does not empower a court to override legislative decisions.

- II. **Source of Inherent Authority.**
 - A. **Separation of Powers.** Sometimes inherent judicial authority is said to derive from the separation of powers. The North Carolina Constitution specifies that “The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.” N.C. Const., Art. I, § 6. It also says that “The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government” *Id.*, Art. IV, § 1. “A court’s inherent power is that belonging to it by virtue of being one of three separate, coordinate branches of the government.” *In re Alamance County Court Facilities*, 329 N.C. 84, 93 (1991).
 - B. **Derived From the Nature of a Court.** Sometimes the source of inherent authority is stated differently; it is described as power that is derived from the nature of a court, power that is essential to function as a court. “It is a power not derived from any statute but arising from necessity; implied, because it is necessary to the exercise of all other powers. It is indispensable to the proper transaction of business.” *Ex parte McCown*, 139 N.C. 95, 103 (1905) (quoting *Cooper’s Case*, 32 Vt. 257 (1859)). “Inherent power is essential to the existence of the court and the orderly and efficient exercise of the administration of justice.” *Beard*, at 129.

- III. **Limitations on Inherent Authority.**
 - A. **Control over Judicial Matters Given to the Legislature by the Constitution.** The North Carolina Constitution itself gives the General Assembly considerable control over the courts. Various provisions of Article IV provide for the legislature to establish the administrative office of the courts; decide where sessions of the supreme court will be held; determine the size and organization and jurisdiction of the court of appeals; set trial court districts; set the rules of procedure for trial courts; set the rotation of superior court judges; and so forth.
 - B. **Separation of Powers.** In exercising its inherent power, the judiciary must not unduly interfere with the proper authority of the other branches. “Just as the inherent power of the judiciary is plenary within its branch, it is curtailed by the constitutional definition of the judicial branch and the other branches of government.” *In re Alamance County Court Facilities*, 329 N.C. 84, 94 (1991). In the Alamance County case the supreme court

recognized the inherent authority of the trial court to address inadequate court facilities but also held that the court overstepped its bounds in trying to dictate the specific fixes to be made rather than giving the county commissioners (the local legislative body) the opportunity to determine how to best meet the court's needs.

The court could not order the state to create an adolescent sex offender treatment program; that was a decision for the legislature. *In re Swindell*, 326 N.C. 473, 475 (1990).

- C. **Legislative Control over Finances.** The constitution reserves to the legislature the authority to draw money from the treasury (Art. V, § 7) and the power to tax (Art. V, § 2). "These constitutional provisions do not curtail the inherent authority of the judiciary, plenary within its branch, but serve to delineate the boundary between the branches, beyond which each is powerless to act." *In re Alamance County Court Facilities*, at 95.

A judge could not order the state to pay a lawyer even though the court had inherent authority to order the lawyer to represent an indigent defendant. *State v. Davis*, 270 N.C. 1, 13-14 (1967).

- D. **Due Process.** The exercise of inherent authority, of course, is limited by due process. Thus a judge may discipline a lawyer, even disbar the lawyer, but not without providing proper notice and an opportunity to be heard. *In re Burton*, 257 N.C. 534, 543-44 (1962).

- E. **The Legislature Already has Acted.** When the legislature has addressed a subject, the court does not have inherent authority to act just because the court concludes that the legislative act is inadequate.

The court could not order probation officers to supervise a defendant found incompetent to stand trial, even though no other good alternative existed, since the legislature had limited probation officers to supervision to defendants convicted of crimes. *State v. Gravette*, 327 N.C. 114, 124 (1990).

A district judge could not order a county to develop a new program for juveniles just because the alternatives approved by the General Assembly were inadequate. *In re Wharton*, 305 N.C. 565, 573 (1982).

Although the court may have inherent authority to order pretrial discovery when the issue is not addressed by legislation, the court did not have authority to order discovery of a witness' statement in a criminal case when disclosure was specifically prohibited by statute. *State v. Hardy*, 293 N.C. 105, 125 (1977).

- IV. **The Court Must Have Jurisdiction in Order to Exercise Inherent Authority.** The court must have jurisdiction over a matter before it can exercise any authority, including inherent authority. The court may not create jurisdiction on its own motion, and may not adjudicate a controversy on its own motion. Thus a district court did not have authority on its own, with no pending case, to order a sheriff to transport juveniles. *In re Transportation of Juveniles*, 102 N.C. App. 806, 808 (1991). And thus a court could not order delivery of town personnel files to the court when no

proceeding had been commenced and there was no pending action before the court. *In re Kill Devil Hills Police Department*, ___ N.C. App. ___, 733 S.E.2d 582, 586 (2012).

V. In Some Extraordinary Circumstances, However, a Court May Assume jurisdiction and Act Upon a Motion Even Though There is No Statute or Rule Providing for Such a Procedure.

A. Determining Application of Attorney/Client Privilege after Client's Death, on Petition of DA. Although no statute authorized such a procedure, the court could exercise its inherent authority to hear a petition from the district attorney to decide whether the attorney/client privilege still existed after the client's death. *In re Miller*, 357 N.C. 316 (2003). "This flexibility [of the common law], as a virtual rule of necessity, will permit the superior court to assume jurisdiction in proceedings of an extraordinary nature that do not fit neatly into statutory parameters." *Id.* at 322.

B. Determining Whether Bank Should Release Customer's Records, on Petition of DA. The superior court has inherent authority, when requested by the district attorney, to order a bank to disclose to the DA a customer's bank account records, but the DA's petition must present by affidavit or other evidence sufficient facts to show reasonable grounds to believe a crime has been committed and that the records bear on investigation of the crime. *In re Superior Court Order Dated April 8, 1983*, 315 N.C. 378, 380-82 (1986) (the DA's petition did not provide an adequate basis for the court order).

C. Determining Release of Personnel Records, on Petition of DA. When a statute allowed release of personnel records by court order but did not set a procedure for doing so, the court could exercise its inherent authority to decide such a petition from the district attorney. *In re Brooks*, 143 N.C. App. 601, 608-10 (2001) (but the petition was inadequate).

D. Determining Whether Mental Health Officials Have Knowledge of Homicide, on Petition of DA. The superior court had inherent authority, as requested by the district attorney, to order mental health officials to appear for an *in camera* examination to determine whether they had knowledge of a homicide and whether a physician/patient privilege allowed disclosure of their information, even though no criminal proceeding had been initiated and the DA did not know the name of the alleged victim or alleged perpetrator nor know when and where the alleged homicide occurred. *In re Albemarle Mental Health Center*, 42 N.C. App. 292, 298-99 (1979).

"Within the guidelines of our Constitution, the legislature is charged with the responsibility of providing the necessary procedures for the proper commencement of a matter before the courts. Occasionally, however, the proscribed procedures of a statutory scheme fail to embrace the unanticipated and extraordinary proceeding such as that disclosed by the record before us. In similar situations, it has long been held that courts have the inherent power to assume jurisdiction and issue necessary process in order to fulfill their assigned mission of administering justice efficiently and promptly." *Id.* at 296.

VI. Inherent Authority to Correct Court Records. A court has inherent authority to correct its records, at any time, to assure that they accurately reflect the court's actions. *State v. Cannon*, 244 N.C. 399, 406 (1956).

“It is universally recognized that a court of record has the inherent power and duty to make its records speak the truth. It has the power to amend its records, correct the mistakes of its clerk or other officers of the court, or to supply defects or omissions in the record, and no lapse of time will debar the court of the power to discharge this duty.” *State v. Old*, 271 N.C. 341, 343 (1967) (quoting 14 Am. Jur., Courts, §§ 141, 142, 143).

This power is to be exercised with great caution and may not be used to correct judicial errors. *Shaver v. Shaver*, 248 N.C. 113, 119 (1958) (court could not reopen ten-year old divorce judgment on its own to vacate judgment because of fraud); *State v. Stafford*, 166 N.C. App. 118, 121-23 (2004) (court could not amend sentences after entry of final judgment to correct court's error in application of structured sentencing).

VII. Authority to Discipline Lawyers.

A. Recognition of Authority. A court's authority to discipline lawyers is one of the most well established inherent powers of a court. “This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, and punish them for, acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice.” *In re Northwestern Bonding Co.*, 16 N.C. App. 272, 275 (1972).

B. Not Superseded or Limited by State Bar's Disciplinary Authority. G.S. 84-36 declares: “Nothing contained in this Article [North Carolina State Bar] shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys.” Although questions of propriety and ethics ordinarily should be referred to the State Bar, because it was created by the legislature for that purpose, “nevertheless the power to regulate the conduct of attorneys is held concurrently by the Bar and the court.” *Gardner v. North Carolina State Bar*, 316 N.C. 285, 288 (1986). It appears that the State Bar and court could both discipline a lawyer for the same conduct. By § .0102 of its Discipline and Disability Rules the State Bar stays its own proceedings pending completion of the court's action.

C. Discipline not Limited to Violations of Rules of Professional Conduct. The grounds on which a court may impose discipline are not limited to violations of the State Bar's Rules of Professional Conduct. *Sisk v. Transylvania Community Hospital, Inc.*, 364 N.C. 172, 182 (2010) (“[T]his authority is not limited by the rules of the State Bar.”).

D. Court may not Dismiss State Bar Proceeding. Because the State Bar and the court have concurrent jurisdiction over discipline of lawyers the court does not have authority to order that a grievance filed with the State Bar be dismissed. *North Carolina State Bar v. Randolph*, 325 N.C. 699, 701-02 (1989).

- E. Procedural Requirements for Court Discipline.** When the lawyer's misconduct occurs in a matter then pending before the court and the material facts are not in dispute, the court may act summarily. *In re Hunoval*, 294 N.C. 740, 744 (1970). When the misconduct occurs otherwise, due process requires that the disciplinary proceeding be initiated by a sworn written complaint; that the court issue an order advising the lawyer of the charges and directing the lawyer to show cause why discipline should not be imposed; that the lawyer be given a reasonable time to respond; and that the lawyer be allowed to have counsel. *In re Burton*, 257 N.C. 534, 544 (1962). No written complaint is required when the judge initiating the proceeding is acting on records from the judge's own court. *In re Robinson*, 37 N.C. App. 671, 677 (1978). The show cause order or notice should not be written in conclusory terms that may indicate bias on the part of the judge. *Id.* (order that said "you have negligently and willfully failed to perfect the appeal" suggested that the judge had mind made up and should have disqualified self). The judge may designate the DA or another lawyer to prosecute the discipline case. *Id.*
- F. Proceeding may be Initiated by Complaint.** Although a disciplinary proceeding usually is initiated by the court itself, it may be triggered by a complaint from a party. *In re Northwestern Bonding Co., supra*. Or the State Bar may request the court to commence a disciplinary proceeding. *In re Delk*, 336 N.C. 543, 546 (1994).
- G. Appointment of Committee to Investigate.** When the factual issues are in dispute the court may appoint a committee of lawyers to investigate. *In re Burton*, 257 N.C. at 544. And the court may ask a committee to review the lawyer's conduct and recommend whether disbarment is warranted. *Brummitt v. Winburn*, 206 N.C. 923 (1934).
- H. No Right to Jury Trial.** There is no right to a jury trial in a court proceeding for discipline of a lawyer. *In re Northwestern Bonding Co.*, 16 N.C. App. at 278.
- I. Standard of Proof.** The standard of proof for disbarment by the court, and presumably for other discipline, is clear and convincing evidence. *In re Palmer*, 296 N.C. 638, 648 (1979).
- J. Court Does not Need Pending Case to Impose Discipline.** The court's authority to impose discipline applies to any lawyer practicing before the court, even if the case which gives rise to the discipline is not currently pending. Thus the trial court may sanction of lawyer even though the case creating the disciplinary issue has been appealed and no longer is before the court. *In re Robinson*, 37 N.C. App. at 677.
- K. Action may be Taken at any Session of Court.** Disciplinary action may be taken against a lawyer at any session of court, it does not matter whether it is a civil or criminal session. *Id.* at 678.
- L. Sanctions.** A court using its inherent authority to discipline lawyers is not limited to the sanctions that the State Bar might impose. "Sanctions available include citations for contempt, censure, informing the North Carolina State Bar of the misconduct, imposition of costs, suspension for a limited time of the right to practice before the court, suspension for a limited time of the right to practice law in the State, and

disbarment.” *Id.* at 676. The court may order the misbehaving lawyer to pay the other side’s attorney’s fees. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 667 (2001). The court also may order the lawyer to pay a fine. *In re Small*, 201 N.C. App. 390, 395 (2009). And the court may suspend the lawyer’s right to represent indigents. *In re Hunoval*, 294 N.C. at 745.

- M. Discipline of Attorneys Admitted Pro Hac Vice.** By statute a judge may revoke an out-of-state lawyer’s *pro hac vice* admission to practice in North Carolina summarily and on the court’s own motion. G.S. 84-4.2. The statute applies even if the admission was granted by a different judge. *Smith v. Beaufort County Hosp. Ass’n, Inc.*, 141 N.C. App. 203, 210 (2000). Disciplinary action against a *pro hac vice* lawyer may include removal from other cases in North Carolina, requiring the lawyer to report the disciplinary action to other state bars, and requiring the lawyer to attend continuing education classes in North Carolina before seeking to represent clients here. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. at 662.
- N. Appeal.** The standard of review for the appellate court is abuse of discretion. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. at 662-63. Unlike the State Bar, the trial court is not required to make findings concerning the potential harm of the lawyer’s misconduct and a demonstrable need to protect the public. *In re Key*, 182 N.C. App. 714, 720 (2007). The State may use certiorari to appeal the trial court’s failure to discipline. *In re Palmer*, 296 N.C. at 646.

VIII. Authority to Require Lawyers to Represent Indigents. A court has authority to require lawyers admitted to practice before it to represent indigents and, if necessary, to do so without being paid. It is an obligation lawyers accept as part of the privilege of practicing law.

“The majority of jurisdictions hold that an attorney is an officer of the court with many rights and privileges, and must accept his office *cum onere*. One of the burdens incident to the office, recognized by custom of the courts for many years, is the duty of the attorney to render his services gratuitously to indigent defendants at the suggestion of the court.” *State v. Davis*, 270 N.C. 1, 10 (1967) (quoting *Ruckenbrod v. Mullins*, 133 P.2d 325 (Utah 1943)).

The court, however, may not order that the lawyer be paid from state funds unless authorized by statute. The legislature has exclusive control over expenditure of funds from the state treasury. *Id.* at 13-14. The absence of payment, though, does not relieve the lawyer of the obligation:

“That there was no provision for Mr. Hunoval to be compensated for filing the application for the writ in no way relieved him of his duty to file it, nor does it mitigate his failure to perform his duty. ‘[A]n attorney appointed by the court to defend cannot recover compensation from the public for his services in the absence of an enabling statute. The reason is that the attorney, being an officer of the Court . . . takes his office *Cum onere*, and one of the burdens of office which custom has recognized is the gratuitous service rendered to a poor person at the suggestion of the court.’” *In re Hunoval*, 294 N.C. 740, 743 (1977)

(citing *State v. Davis, supra*, which in turn was quoting 7 Am.Jur.2d, Attorneys at Law, § 207).

Discipline of a lawyer by the court may include removal of the lawyer from the approved list for representation of indigents for a specified period of time. *Hunoval*, 294 at 745; *In re Robinson*, 39 N.C. App. 345, 349 (1979).

IX. Authority to Control Courtroom Behavior, Dress.

A. Inherent Authority to Control Courtroom. Courts rarely have relied on their inherent authority to maintain order since the enactment by the legislature in the 1970s of statutes, discussed below, on maintenance of order in criminal cases. Consequently there is little case law on the court's inherent authority in this area. Nevertheless this authority clearly exists, as noted nearly 200 years ago by the United States Supreme Court:

“[C]ourts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.” *Anderson v. Dunn*, 19 U.S. 204, 227 (1821).

The North Carolina Supreme Court recognized the same concept before the authority to maintain order was codified:

“It is the duty of the trial judge, in the exercise of his discretion, to regulate the conduct and the course of business during trial. [citation omitted] Thus it is within the judge's discretion, when necessary, to order armed guards stationed in and about the courtroom and courthouse to preserve order and for the protection of the defendant and other participants in the trial. [citations omitted] Similarly, the trial judge, having the responsibility of preserving proper decorum and appropriate atmosphere in the courtroom during a trial, has the inherent power to take whatever legitimate steps are necessary to deal with an unruly, disruptive or contemptuous defendant. [citations omitted]”. *State v. Tolley*, 290 N.C. 349, 363 (1976).

Two other cases recognizing the court's inherent authority to maintain order, and predating the statutes on that subject, are *State v. Spaulding*, 288 N.C. 397, 415 (1975), *vacated on other grounds*, 428 U.S. 904 (1976) (use of armed guards in courthouse and in presence of the jury in murder trial) and *State v. Grant*, 19 N.C. App. 401, 414 (1973) (requiring spectators to submit to search for weapons and prohibiting picketing and parading around courthouse).

B. Codification of Authority to Maintain Order in Criminal Trials. Several statutes recognize the court's authority to maintain order in the courtroom in criminal cases in addition to the inherent authority of the court to do so in all proceedings. The statutes addressing control in criminal cases are summarized below. Because this paper is about

inherent authority it will not discuss the case law based on those statutes. The statutes are:

G.S. 15A-1031 — The trial judge may order restraint of a defendant or witness when necessary to maintain order, prevent escape or provide for safety. The reasons for restraint are to be entered in the record outside the jury's presence; the person being restrained is to be given an opportunity to object; and the jury is to be instructed that restraint of a defendant is not to be considered in deciding the case.

G.S. 15A-1032 — The trial judge may remove a disruptive defendant after a warning. The warning and reasons for removal are to be given outside the jury's presence, if possible, and entered on the record. The jury is to be instructed not to consider the removal in deciding the case.

G.S. 15A-1033 — The court may order the removal of any person other than the defendant when the person's conduct disrupts the trial.

G.S. 15A-1034 — The court may limit access to the courtroom to assure orderliness and safety. The court may also order searches for weapons or devices that could be used to disrupt the proceedings. The order must be entered on the record.

G.S. 15A-1035 — In addition to the statutes above the court may use its contempt power and inherent authority to maintain order.

- C. Contempt.** A common means of dealing with disruptive defendants, lawyers and spectators is contempt. Contempt long has been viewed as an inherent authority of the court and necessary for maintaining order and respect. "It is a power not derived from any statute but arising from necessity: implied, because it is necessary to the exercise of all other powers. It is indispensable to the proper transaction of business." *Ex Parte McCown*, 139 N.C. 95, 103 (1905) (quoting *Cooper's case*, 32 Vt. 257 (1859)). The contempt authority has been codified in G.S. Chapter 5A. The statutes specify that direct criminal contempt includes disruption of court, disrespect to the court, failing to comply with court schedules, and disobedience of court orders. Because this is a paper about inherent authority, it will not review the case law concerning those contempt statutes.
- D. Control of Dress.** Rule 12 of the General Rules of Practice for Superior and District Courts provides: "Business attire shall be appropriate dress for counsel while in the courtroom." There does not appear to be any case law in North Carolina concerning that rule nor the court's inherent authority to impose standards of dress and appearance on parties, witnesses and spectators. There is considerable case law from other jurisdictions, however, and it clearly recognizes such authority. The standards should be reasonable and not rigid and not based on the judge's own taste; the standards must be communicated clearly before any discipline may be imposed for failing to comply; the court should recognize that society's standards change over time; and accommodation should be made for religious garb.

Note that G.S. 5A-12(b) specifies that a person may not be held in criminal contempt until the person's act is willfully contemptuous or has been preceded by a warning from the court that the conduct is improper. Given the varying standards of dress acceptable in today's world, the court should give a warning and a chance to comply before anyone is held in contempt based on their appearance.

Here is a sampling of cases from other jurisdictions concerning regulation of courtroom dress, in no particular order: *Sandstrom v. State*, 309 So.2d 17 (Fla. Dist. Ct. App. 1975); *Friedman v. District Court*, 611 P.2d 77 (Alaska 1980); *Bly v. Henry*, 624 P.2d 717 (Wash. 1981); *Peck v. Stone*, 32 A.D.2d 506 (NY App. Div. 1969); *Kersevich v. Jeffrey Dist. Court*, 330 A.2d 446 (N.H. 1974); *Doyle v. Aison*, 216 A.D.2d 634 (NY App. Div. 1995). There also are numerous cases from other jurisdictions on religious symbols and garb; for a useful article see Samuel J. Levine, *Religious Symbols and Religious Garb in the Courtroom: Personal Values and Public Judgments*, 66 Fordham L. Rev. 1505 (1998).

X. Authority to Control the Course of the Trial.

A. Recognition of Authority. Case law consistently has recognized the authority, and responsibility, of the court to control the course of the trial or other proceeding to see that justice is administered fairly and efficiently and without undue burden on witnesses and jurors. In doing so, the court is to follow the procedures enacted by the General Assembly, to the extent applicable. A court may not ignore or act contrary to those statutes just because the court considers them inappropriate, but there will be any number of circumstances which the legislative enactments do not address. General statements of the court's authority include:

"The presiding judge is something more than an umpire. It is his duty to see that each side has a fair and impartial trial. It is within his discretion to take any action to this end within the law and so long as he does not impinge upon the restrictions contained in [the statute]." *Miller v. Greenwood*, 218 N.C. 146, 150 (1940).

"At trial the major concern is the 'search for truth' as it is revealed through the presentation and development of all relevant facts. To ensure that truth is ascertained and justice served, the judiciary must have the power to compel disclosure of relevant facts, not otherwise privileged, within the framework of the rules of evidence." *State v. Hardy*, 293 N.C. 105, 125 (1977).

"This Court has all the power inherent in courts to regulate the practical methods of conducting their business and hearing cases, after they come within its jurisdiction and control." *Rencher v. Anderson*, 93 N.C. 105, 107 (1885).

"The judge conducting a jury trial is the governor of the trial for the purpose of assuring its proper conduct and it is his right and duty, *Inter alia*, to control the course of the trial to the end that the court's time be conserved and the witnesses be protected from over-prolonged examination." *State v. Arnold*, 284 N.C. 41, 47 (1973).

“[T]he power of the trial judge to maintain absolute control of his courtroom is essential to the maintenance of proper decorum and the effective administration of justice.” *Roberson v. Roberson*, 40 N.C. App. 193, 194 (1979).

“It is impractical and would be almost impossible to have legislation or rules governing all questions that may arise on the trial of a case. Unexpected developments, especially in the field of procedure, frequently occur. When there is no statutory provision or well recognized rule applicable, the presiding judge is empowered to exercise his discretion in the interest of efficiency, practicality and justice.” *Shute v. Fisher*, 270 N.C. 247, 253 (1967).

B. Specific Kinds of Control. Examples of control exercised pursuant to the inherent authority of the court include:

Reopening the case, allowing additional testimony — A judge may reopen a case and admit additional testimony after the conclusion of evidence and argument of counsel, when necessary to assure justice. *Miller v. Greenwood, supra*.

Instructing lawyers to speed up — Part of the judge’s duty is to conserve the court’s time and protect witnesses and jurors from undue delays. *State v. Arnold, supra*.

When a party is represented by multiple lawyers, allow only one to object — *State v. Smith*, 320 N.C. 404, 415-16 (1987).

Appoint a referee to conduct an accounting — *Shute v. Fisher, supra*.

Deny a lawyer a chance to argue — There is no right of a lawyer to argue in a civil non-jury trial, it is a privilege and may be denied by the judge. *Roberson v. Roberson, supra*.

Stop defendant from handling weapon — A trial judge may prohibit a defendant in a murder trial from using the murder weapon to demonstrate his testimony, because of safety concerns. *State v. Ford*, 323 N.C. 466, 469-70 (1988).

Order bank to disclose records — The court has authority to order a bank to disclose a customer’s records to the district attorney when there is no applicable statutory provision but the disclosure is in the best interest of justice. The order must describe the circumstances fully and state the reason for its issuance. *In re Superior Court Order*, 315 N.C. 378 (1986).

Impose a lesser sanction for failure to comply with order — The court has the authority to impose a lesser sanction of payment of costs, including attorney’s fees, as an alternative to the authority in Rule 41(b) of the Rules of Civil Procedure to dismiss an action for failure to comply with a court order. *Daniels v. Montgomery Mutual Insurance Company*, 320 N.C. 669, 674-75 (1987).

Sanction party for failure to execute agreed settlement — The court may strike defendants' answer as a sanction for failure to file a consent judgment as required by a local rule. *Lomax v. Shaw*, 101 N.C. App. 560, 563 (1991).

Order discovery — The court has inherent authority to order discovery in motions for appropriate relief. *State v. Taylor*, 327 N.C. 147, 154 (1990) (“our judiciary also must and does have the inherent power to compel disclosure of relevant facts regarding a post-trial motion and may order such disclosure prior to a hearing on such motion”). The passage of G.S. 15A-1415(e) concerning discovery related to motions for appropriate relief, enacted after the *Taylor* decision, does not limit the court’s authority to decide on its own the extent of discovery in MARs. *State v. Buckner*, 351 N.C. 401, 410 (2000) (“Determining the extent of discovery is ultimately for the court to decide pursuant to its inherent power.”).

Although the court may have inherent authority to order pretrial discovery in a criminal case in the absence of a statute prohibiting discovery, it does not have such authority when a statute specifically bars such discovery. *State v. Hardy, supra*.

Even when the statutes restrict the trial court’s authority to require pretrial discovery the court retains its inherent authority to compel discovery of the same documents later in the proceeding. *State v. Warren*, 347 N.C. 309, 325 (1997).

[Note that in recent years the General Assembly has significantly altered the statutes on discovery in criminal cases; any case law on inherent authority should be read with those changes in mind.]

Order sanctions for discovery abuses — The court has authority to order sanctions for discovery abuses in addition to those listed in Rule 37 of the Rules of Civil Procedure. The court may order a party to pay the cost of a deposition based on the lawyer’s disruption of the deposition and refusal to allow the client to answer questions. *Cloer v. Smith*, 132 N.C. App. 569, 573-74 (1999).

Order physician to disclose information about possible homicide — A court has authority to order physicians and psychologists to appear and be examined about a possible homicide and whether their information is privileged, even though there is no pending criminal proceeding nor certainty that a homicide occurred. *In re Albemarle Mental Health Center*, 42 N.C. App. 292, 298-99 (1979).

Order disclosure of lawyer’s conversation with physician — The court may order a lawyer to disclose the substance of a private conversation with the physician for the other party, upon finding that the conversation was improper and that the disclosure is needed to enable the other party to prepare for evidence likely to be offered as a result of the *ex parte* discovery. *Crist v. Moffatt*, 326 N.C. 326, 337 (1990).

Dismiss habitual offender petition — The court has inherent authority to dismiss a prosecutor’s petition to have the defendant declared an habitual offender under the

motor vehicle law when the prosecutor failed to bring the petition “forthwith” as required by the statute. *State v. Ward*, 31 N.C. App. 104 (1976).

- XI. Authority to Issue Gatekeeper Orders.** A pre-filing injunction (also known as a gatekeeper order) prohibits a person from filing complaints or other documents without prior approval of the court. It is used as a last resort against someone who has engaged in protracted frivolous and vexatious litigation. Although there are no North Carolina decisions explicitly authorizing the issuance of gatekeeper orders or discussing the procedure and requirements for such orders, court actions based on gatekeeper orders have been upheld in several appellate cases, thus implicitly acknowledging the trial court’s authority. The appellate courts themselves sometimes issue such orders. One reason for such little appellate law is that the gatekeeper orders typically are issued against self-represented litigants who are no more adept at filing proper appeals than they are at following the rules in the trial court. Consequently, the appeals are dismissed on procedural grounds and the appellate court does not address the substantive issues concerning such orders.

Some cases that recognize trial court gatekeeper orders include *Dalenko v. Wake Cnty. Dep’t of Human Servs.*, 157 N.C. App. 49, 53 (2003); *Estate of Dalenko v. Monroe*, 197 N.C. App. 231, *2 (2009) (unpublished); *Smith v. Noble*, 155 N.C. App. 649, 650 (2002); *Lee v. O’Brien*, 151 N.C. App. 748, *4 (2002) (unpublished); *Wendt v. Tolson*, 172 N.C. App. 594, *1 (2005) (unpublished); *State v. Rowe*, 175 N.C. App. 249, *2 (2005) (unpublished).

- XII. Authority to Require Adequate Facilities.** By statute counties are required to provide adequate facilities for the courts. When a county fails to do so the court has inherent authority to direct local officials to perform that duty. Such authority is necessary to safeguard the constitutional and statutory rights of parties. *In re Alamance County Court Facilities*, 329 N.C. 84 (1991).

In exercising its authority to assure that it has adequate facilities the court must recognize the constitutional limitations on the spending and taxing authority and not encroach on legislative and executive authority in those areas. Thus, a court should avoid *ex parte* orders and specific directives as to the improvements to be made and instead should offer the responsible officials an opportunity to correct the problem on their own:

“A more reasonable, less intrusive procedure would have been for the court, in the exercise of its inherent power, to summon the commissioners under an order to show cause why a writ of mandamus should not issue, which order would call attention to their statutory duty and their apparent failure to perform that duty. If after hearing it was determined that the commissioners had indeed failed to perform their duty, as the court determined in the case before us, the court could order the commissioners to respond with a plan — perhaps in consultation with such judicial personnel as the senior resident superior court judge, the chief district judge, the district attorney, the clerk, or other judicial officials with administrative authority — to submit to the court within a reasonable time. Such a directive would be a judicious use of the court’s inherent power without either seizing the unexercised discretion of a political subdivision of the legislative branch or obtruding into the constitutional hegemony of that branch.” *In re Alamance County*, 329 N.C. at 106-107.

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