

STATE OF NORTH CAROLINA  
\_\_\_\_\_ COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

STATE OF NORTH CAROLINA

V.

**MOTION FOR RECORDATION OF  
DISTRICT COURT PROCEEDINGS**

\_\_\_\_\_,  
DEFENDANT

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**NOW COMES** the defendant by and through his/her attorney, and moves that the court allow him/her to record the proceedings in district court. In support of said motion, the defendant argues as follows:

- 1) Canon 3 (A)(7) of the North Carolina Code of Judicial Conduct provides, "A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts."
- 2) It is clear that a defendant may contract for the transcription of his proceedings in criminal district court. The question is whether a defendant may record such proceedings himself.
- 3) The North Carolina Rules of Court General Rules of Practice for the Superior and District Court. Supplemental to the Rules of Civil Procedure, Rule 15, entitled "Electronic Media and Still Photography Coverage of Public Judicial Proceedings" provides that electronic media and still photography coverage of public judicial proceedings **shall be allowed in the appellate and trial courts of this state, subject to the conditions below.**

- 4) Each North Carolina county may have its own local rules regarding applications for utilization of electronic equipment for recording purposes.
- 5) A district court defendant in some cases has the right to appeal a district court judgement against him and receive a de novo trial in superior court. N.C.G.S. § 15A-1431..

6) As the North Carolina Supreme Court has said:

The purpose of our de novo procedure is to provide all criminal defendants charged with misdemeanor violations the right to a 'speedy trial' in the District Court and to offer them an opportunity to learn about the State's case without revealing their own. In the latter sense, this procedure can be viewed as a method of 'free' criminal discovery.

State v. Brooks, 287 N.C. 392, 406 (1975)

7) A judge's duty is to make sure that justice is served. "A heavy obligation rests on trial judges to effectuate the fair trial guarantee of the Sixth Amendment. U.S. v. Columbia Broadcasting System, Inc., 497 F.2d 102, 104 (1974). In fact, a judge is not a passive bystander in the arena of justice or a spectator at a sporting event; rather he or she has the most pressing affirmative responsibility to see that justice is done in every case." U.S. v. McCord, 509 F.2d 334, 348 (1974).

8) In a misdemeanor case the Defendant has no right to discovery, as the district court hearing can serve as discovery if the defendant request a trial de novo in superior court. In order for that to work effectively, the defendant must be allowed to record the testimony in district court. Denying the defendant the right to record the hearing in district court is effectively the same as allowing the defendant to look at the officers notes, written statements, and other evidence against him in a felony case, but denying him the right to take a copy with him to analyze and use in preparation for a trial and during a trial.

9) In addition to the above reasoning, district court testimony may work as Brady

material in superior court. In order to rule that the testimony in district court is not Brady material, the court would have to review the testimony in advance, knowing the defendant's arguments, the State's position and arguments, and knowing what might effect both the trial and the sentencing of the defendant. Without prior review, which is not possible, the defendant must be allowed to record the district court hearing under the United States and North Carolina Constitutions, the Confrontation clause, the right to prepare a defense, and Brady.

**WHEREFORE, THE DEFENDANT PRAYS THAT THE COURT:**

1. Allow him to record the proceedings in district court, upon the Defendant's agreement that he will upon request provide a copy to the District Attorney.

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

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