

**CRIMINAL CASE DOCKETING PLAN
(SUPERIOR COURT)**

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24TH JUDICIAL DISTRICT

Pursuant to North Carolina General Statutes section 7A-49.4

Calendars for administrative settings:

At least twelve days before the date of the next scheduled administrative setting, the District Attorney shall publish a calendar of cases. Publishing a calendar of cases shall consist of the following acts:

(1) The District Attorney staff shall draft and copy a number of calendars which number shall at least equal the number of attorneys having cases which appear on the calendar together with additional numbers representing the number of defendants appearing without representation.

(2) The District Attorney staff shall, during the twelve days preceding the administrative setting, post on bulletin boards in the courthouses this calendar.

(3) In that the several Clerks of Court can post documents on the Internet under the Administrative Office of the Courts website, the District Attorney shall seek Clerks in the 24th district to enter the calendars. Compliance with this provision is discretionary with each Clerk.

(4) The several copies of the calendar which have been produced shall be placed in the office of the District Attorney for distribution during regular office hours except for Avery County, where no office exists. As to Avery County, the District Attorney shall seek to place said calendars with the Clerk for distribution in the Clerk's office.

(5) The staff of the District Attorney shall mail copies of the calendar to attorneys who make a specific request for same relative to each administrative setting. Note well, the staff of the District Attorney will not maintain a regularly recurring mailing list for distribution of administrative calendars for attorneys or unrepresented defendants.

(6) The staff of the District Attorney will be instructed to distribute to each unrepresented defendant in a misdemeanor case, at the time of appeal announced in open court in District Court, a document having this language on it; "Your case will be docketed for trial at an administrative setting of Superior Court based on the District Attorney's existing Criminal Case Docketing Plan. The date for your administrative setting is placed on this document if said date is known. If no date is shown on this document, it is your responsibility to discover said date. Your attendance at the administrative setting is mandatory."

(7) In instances, where the District Attorney shall schedule a case at an administrative setting in a county other than the county where the case originated, the District Attorney shall serve the opposing counsel or the unrepresented defendant with specific notice of the date and location of the administrative setting.

(8) If administrative settings are set up as regularly recurring events scheduled at specific intervals, then the District Attorney shall keep the several magistrates of the district apprized of the next scheduled session for that county and shall ask that the magistrates, on release orders issued in felony cases where defendant continues to be in custody and the district attorney has obtained a true bill of indictment designate the next administrative date on the release order. In those cases when the case has been initiated by grand jury indictment, then the district attorney shall inform the several magistrates of the next scheduled administrative setting.

Distribution of Dates for Administrative Settings

If dates for administrative settings are published on the schedule of courts published by the North Carolina Administrative Office of the Courts or if said dates are given publication among the bar by the Senior Resident Superior Judge, then the District Attorney will deem such notice to be sufficient. Otherwise the District Attorney shall seek to individually notify attorneys with a practice in the county where the administrative setting occurs of the date, time and place of the Administrative Setting.

Content of Calendar for Administrative Setting:

Calendars shall set forth the date and the venue for the Administrative Settings. Near the top of each calendar this language shall occur: "N.C.G.S. 7A-49.4(d) requires the presence of defendants whose name appears on this calendar and who are charged with offenses that originated in this county. Note well, the District Attorney will seek sanctions against any defendant and from the sureties as to any defendant who does not appear. At this setting, the District Attorney shall seek a tentative trial date for each case calendared where no plea arrangement is forthcoming."

The District Attorney shall calendar at the administrative setting:

- (1) All pending misdemeanor appeals pending in that venue.
- (2) All felonies where an indictment has been returned as a true bill in that venue (unless there has already occurred a calendaring in another county).
- (3) All felonies where an arrest has occurred in that venue in instances where the District Attorney has an expectation of submitting an indictment for grand jury consideration between the date of the initial publishing of the calendar and the actual date of the administrative setting.

(4) Felonies from another venue when the defendant is represented by an attorney and calendaring is deemed necessary by the District Attorney to comply with the time restraints set forth in N.C.G.S. 7A-49.4(b).

(5) Felonies from another venue when the defendant is not known by the District Attorney to be represented by an attorney when calendaring is deemed necessary to comply with N.C.G.S. 7A-49.4(b) and when the District Attorney has mailed to the defendant at his or her address of record notice of said calendaring or when the defendant is in custody.

(6) All infractions which have been appealed in that venue. Infractions are not criminal cases, and they cannot be construed to be within the phrase, "Criminal cases in superior court shall be calendared by the district attorney at administrative setting..." However, insofar as the statute authorizes the docketing plan to have additional provisions not within the statute, the District Attorney views this provision to be appropriate.

(7) All cases where, at an earlier administrative setting, the court directed the case to be calendared at the current administrative setting.

(8) All cases where by consent of the parties this administrative setting was selected.

If the venue's pending cases are of such number that there exists in the mind of the District Attorney no reasonable way to establish a tentative trial calendar for each case, then the District Attorney shall limit the number of cases on the calendar. In making this decision, the District Attorney will seek to discuss this subject with the Senior Resident Superior Court Judge. The District Attorney will reduce the size of the Administrative Setting Calendar by omitting to calendar misdemeanors first. Only in extraordinary circumstances will the District Attorney fail to calendar felony cases.

Plea Offers

The District Attorney contemplates that his most favorable plea offer will be offered early in the process. Each plea offer will be limited as to a time of duration. In instances where the plea offer has been rejected, then the District Attorney will announce at Administrative Setting, that the State will not entertain any lesser plea or any favorable recommendation.

The District Attorney will designate an experienced assistant skilled in Superior Court work as screener whose duties it shall be to select those felony investigators which meet standards of this district for prosecution. At the time of determination that a case will be pursued by the District Attorney's office, the screener shall make a plea offer if appropriate. That offer shall give the defendant at least 30 days after an attorney commences representation of the defendant or shall give the defendant who has no attorney at least 30 days to accept the plea offer. In that N.C.G.S. 7A-49.4(b)(3) provides that the court may conduct a plea conference at the administrative setting, the time for accepting the plea offer will be lengthened in all instances when necessary so that defendant can have a period of time that includes an administrative setting. The screener, in making a plea offer, shall calculate the time until a scheduled

administrative setting exists at least 30 days forward from the date of the offer, and shall set that date as the final date for acceptance of the plea offer. In the event some felony cases are calendared by the District Attorney for administrative setting before 30 days have passed since the date of the plea offer, then if defendant requests additional time, the District Attorney shall join with defendant and request the court schedule a second administrative setting. The date of the second setting shall then be the final date for acceptance of the plea offer.

Subject to the victim's rights legislation, the District Attorney will stand ready to receive guilty pleas in felony cases at administrative settings provided the Court will receive said pleas.

In misdemeanor appeals, it shall be the position of the District Attorney that plea negotiations should have occurred in District Court and it is not contemplated that the District Attorney shall reduce any charge at Administrative Settings.

Verbal plea offers not accepted and implemented during the setting are withdrawn at the conclusion of the term. Administrative settings are not arraignment dates. Counsel who seek arraignment should be guided by N.C.G.S. 15A-941(d) or related law.

Motions

The District Attorney will ordinarily be prepared for pre-trial motions which do not require evidence. The State's witnesses will generally not be present for administrative settings. In instances where the District Attorney seeks to have heard a motion where evidence is required, then in that event, the District Attorney will serve specific notice on counsel. Similar notice will be appreciated from counsel whenever counsel wishes to have heard a motion involving evidence. The District Attorney shall seek that the Court hear and determine all pretrial motions where time does permit at the administrative setting, and to accomplish this, the district attorney will give the notice provided above whenever he feels in advance of the setting that there should be time for motions unless directed to do otherwise by the presiding judge. In instances when the court declines to hear pretrial motions at administrative setting, then the district attorney shall seek that the court set the hearing for such motions so that they can be heard as early as possible when both sides are ready and to accomplish this goal to set the motions for hearing at (1) civil priority terms which are not forecast to be fully utilized within the same county; (2) pursuant to the venue provisions of N.C.G.S. 15A-131(b), at criminal terms in another county within the district when the case load there does not require a full session; (3) at a second or subsequent administrative setting or (4) on a date certain which shall be the final date of a criminal term where cases are tried.

Tentative Trial Calendars

The District Attorney shall in most ordinary circumstances announce a tentative trial calendar for all cases on the calendar at the Administrative Setting. To accomplish this in the most expeditious manner, the following procedure will be observed: Administrative setting calendars will be computer generated and will generally list cases sequentially according to their

case numbers; Significant space will be provided between each case; In most instances of felony settings, the District Attorney will seek agreement from the defense attorney as to the trial date; In instances where there is agreement, the District Attorney will announce the trial date based on agreement; Where agreement has not been obtained, the District Attorney shall announce a proposed trial date based on his criteria for scheduling cases; In instances where the Judge determines that the interests of justice require a different setting, the District Attorney shall make a second proposal of a trial date provided there is an existing schedule of courts which sets a court term in that venue; Utilizing the space on the computer printed administrative calendar; the District Attorney shall record his proposals and not any objections and rulings of the court until a case is set on the Tentative Calendar, at which time the District Attorney shall make announcement of the next sequential setting. In making announcements of proposed trial dates, the District Attorney shall consider the importance of the felony to the community compared with other pending felonies, the age of the felony, whether the defendant is in custody, and all relevant factors known to him. In making announcements of proposed trial dates for misdemeanors, the District Attorney recognizes that in the 24th District there have historically been a large number of appeals, and that there is a significant public purpose in getting resolutions of those appeals. To accomplish this purpose, the District Attorney shall generally propose the setting of trial dates for misdemeanors on all calendars.

Tentative Trial Calendars which are created during the Administrative Court Setting shall be maintained for distribution within the District Attorney's office in that venue (except for Avery County).

Second or Subsequent Administrative Setting

Cases shall be calendared for second or subsequent administrative settings when:

- (1) A judge has ordered a second or subsequent setting;
- (2) A judge has ruled on pretrial motions at a session which is neither an administrative setting or a trial session.

Final Trial Calendar

Within the time set forth in N.C.G.S. 7A-49.4(e) the District Attorney shall make a final trial calendar which shall usually be a reproduction of the Tentative Trial Calendar. The calendar shall be published at least 10 working days before the date for the beginning of the session, and it shall reflect the order of priority that the District Attorney then intends. The District Attorney reserves the right to make variance as is permitted by the statutes, but shall announce to the attorneys who may be affected any variance as soon as possible, but not later than after the call of the calendar as is provided in N.C.G.S. 7A-49.4(f). This trial calendar shall be distributed in the same manner and to the same extent as is provided for within this document for distribution of the administrative setting calendars. After a tentative trial calendar is made, but before the final trial calendar is published, counsel are invited to make the District Attorney aware of scheduling problems.