

**ADMINISTRATIVE ORDER ESTABLISHING THE  
CRIMINAL CASE MANAGEMENT SYSTEM IN SUPERIOR COURT  
TWENTY-SIXTH JUDICIAL/PROSECUTORIAL DISTRICT  
MECKLENBURG COUNTY**

**RULE 1: GENERAL PROVISIONS**

The purpose of this Order is to institute a Criminal Case Management System (CCMS) that will provide for the orderly, prompt, and just disposition of criminal matters in the Superior Court of the Twenty-sixth Judicial/Prosecutorial District. It is intended that matters addressed pursuant to this system will be resolved in a fashion that protects the interests of this community and the victims of crime while also ensuring that the rights of defendants are preserved. The calendar for the disposition of criminal cases in the Twenty-Sixth Judicial/Prosecutorial District, Superior Court Division, shall be set and maintained by the District Attorney in accordance with these rules. The District Attorney will continue to attempt to establish and maintain a case tracking system to monitor the number, age, type, and procedural status of all pending cases, and to provide for printed calendars of the same to be printed by the office of the Clerk of Superior Court. It is anticipated that the Case Management System developed by the N.C. Administrative Office of the Courts will provide the mechanism to carry out these functions. (As used in these rules, the term "District Attorney" shall include the elected District Attorney for the Twenty-sixth Prosecutorial District and his designees.)

This system has been developed through the cooperation of a number of agencies in the criminal justice system. It was designed to establish a procedure for the orderly progression of cases to resolution through the use of clearly-defined steps and tasks to be completed at each step. The system is not intended to be rigid but is meant to be open to modification as needs arise. In keeping with that intent, these rules shall be construed in such a way as to avoid technical delay and will be interpreted with common sense in an effort to resolve cases in accordance with the goals of the system.

1.4 It is recognized that these rules are not complete in every detail and will not cover every situation which may arise. Therefore, the Senior Resident Superior Court Judge will continue to consult with representatives from the District Attorney's Office, Public Defender's Office, Defense Bar, Trial Court Administrator's Office, Clerk's Office, and others in order to make appropriate additions and changes.

1.5 These rules shall be filed in the offices of the Clerk of Superior Court for the Twenty-sixth Judicial/Prosecutorial District.

1.6 The District Attorney and Trial Court Administrator shall ensure that these rules are made available to members of the Bar who practice in the courts affected by this system.

1.7 The Clerk of Superior Court shall continue to provide a file number for each case at the time criminal charges are filed. That file number shall be designated

on all subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel, parties, or court personnel. All pleadings in a case, all motions, and any document needed to comply with these rules shall be filed with the Clerk.

1.8 The provisions of these rules shall apply to all Superior Court cases scheduled in the CCMS Courtroom (Courtroom 2201) on or after July 6, 1998 (subject to the phased approach outlined in the attachment to this order).

1.9 These rules shall not apply to cases designated as "Exceptional" by the Superior Court Judge presiding over the CCMS Administrative Court (Courtroom 2201). That designation may be made upon motion of either party or upon motion of the Presiding Judge. This category of cases is created because there will always be cases that do not fit into the time limitations of CCMS which is designed for the "norm", the majority of cases that are not especially complicated and lack special problems.

"Exceptional" cases may include, but are not limited to, complicated homicides; multiple- defendant or numerous victim crimes; complicated white-collar crimes; and those requiring extraordinary scientific investigation. It is understood that the District Attorney shall make every effort to ensure that the vast majority of cases follow the CCMS schedule and will establish an internal procedure within that office to review the merits of all requests to declare a case as "exceptional". The District Attorney shall provide a list of "exceptional" cases to the Senior Resident Superior Court Judge on a monthly basis so that the progress of those cases can be monitored.

## **RULE 2: TIME STANDARD GOALS**

2.1 It is the goal of CCMS that ninety percent (90%) of the non-exceptional cases reach disposition within twelve (12) months of indictment. Absent exigent circumstances, every case not designated as "exceptional" should be disposed of within eighteen (18) months of its first setting in Administrative Court.

2.2 Cases designated as "exceptional" shall receive specialized scheduling orders for the purpose of facilitating timely disposition. Such orders shall be prepared in consultation with the Senior Resident Superior Court Judge or the Judge assigned to the CCMS Administrative Court.

## **RULE 3: DISCOVERY**

3.1 Once counsel has appeared or been appointed in a case, it shall be presumptively assumed that counsel is seeking those items discoverable under North Carolina law and the laws of the United States. No formal request for discovery under 15A-902(a) need be made. The act of providing Discovery by the State acts as an automatic request for reciprocal discovery from the defendant. This rule does not affect the agreement between the District

Attorney and the Public Defender which is contained in a letter of June 10, 1993, which is attached and incorporated by reference.

The District Attorney is encouraged to provide open file discovery in the vast majority of cases because the full disclosure of that information facilitates informed decisions at the earliest possible stage of the proceedings. It is understood that decisions as to the extent of discovery beyond statutory requirements are in the discretion of the District Attorney and that open file discovery may not be appropriate in all cases, especially with regard to personal information about victims and witnesses.

3.2 The District Attorney shall provide information available as discovery to the attorney of record entering a general appearance in each case at least two weeks prior to the first setting of a case in CCMS Administrative Court. Discovery shall be provided to the then-current attorney of record. Should a change in defense counsel occur, it is the joint responsibility of both new and previous counsel to ensure that the photocopied discovery material is transferred from previous counsel of record to the new counsel of record.

#### **RULE 4: CALENDARING OF CASES IN ADMINISTRATIVE COURT**

4.1 The Senior Resident Superior Court Judge shall schedule a non-jury criminal session that will be devoted to the processing of cases each week pursuant to the CCMS pre-trial procedures. This court will be known as "Administrative Court". The remaining criminal sessions of criminal court will be reserved for other matters.

4.2 Each case shall be calendared for specific "Settings" in Administrative Court. Cases assigned to the District Attorney's Office Property and Drug Teams will be scheduled for two (2) settings while cases assigned to the Person's, Homicide, and Child Sex Abuse Teams will be scheduled for three (3) settings. Defendants who are out of custody shall be present at each Setting. Defense counsel shall be present for each setting of the case. Defendants who are in custody are not brought to court for the settings (calendar call), but will be brought to court at the time specified for entry of a plea or the hearing of a motion. Cases should not be calendared for first setting in Administrative Court unless the prosecutor is in a position to make a written plea offer and to provide substantial discovery. However, in order to ensure that such settings are not delayed indefinitely, it will be necessary to schedule a "review date" in the Administrative Court for any case which has been indicted, been bound over or has waived probable cause hearing and is not in a position to be calendared. That review date should be set no later than one hundred twenty (120) days from the last of these events. At the review date, the prosecutor will be responsible for informing the Court of the reasons for the delay. Cases which have previously been scheduled in Courtroom 2201 before the start of the CCMS should routinely be scheduled on a first setting day in order for the Court to determine what necessary steps have been accomplished and either "reset" the case for first setting or move it along to another setting closer to disposition. A "CCMS Checklist" will become part of each defendant's case file when set in Administrative Court. That CCMS Checklist will list the tasks to be completed at each setting, provide space for explanation of resettings, and will be used by the Court to determine whether the case is ready to move to the next setting.

4.3 The "First Setting" shall occur within six (6) weeks of the date of indictment unless delayed due to unavailability of discovery. The following matters shall be accomplished at the First Setting:

- Determination of counsel: general appearance, waiver of counsel, appointment
- Certification by counsel that conflicts do not exist
- Confirmation that discovery has been provided
- Confirmation that written plea offer has been provided to defense counsel
- Confirmation of Rule 24 filing, if appropriate, in homicide cases
- schedule conference for Rule 24 motion
- Status inquiry by the Court, including possible disposition by guilty plea
- schedule time slot for plea conference if requested
- schedule time slot for entry of plea if for guilty plea

Administrative court will be scheduled so that time slots for pleas and hearings will be available at times other than calendar call. Efforts Will be made to schedule a defense attorney's time slots for multiple cases as close together as possible. Pleas of "not guilty" cannot be entered until the last scheduled setting. CCMS is designed to accomplish specified tasks on a regularly scheduled basis which should allow for exchange of information and discussion of ways to resolve cases.

4.4 The second administrative setting ("Second Setting") should normally occur within six (6) weeks of the First Setting. The following matters shall be accomplished at the Second Setting:

- Inquiry by the Court as to whether plea offer communicated to defendant by defense counsel
- Determination, if not made earlier, as to whether case will be declared "Exceptional" Status inquiry by the Court, including possible disposition by guilty plea
- schedule time slot for plea conference if requested
- schedule time slot for entry of plea @ for guilty plea

If the case Is assigned to the Drug or Property Teams of the District Attorney's Office, the second setting is the final setting and would Include:

- Schedule hearings for pre-arraignment motions (which must have been filed no later than seven (7) days prior to the final setting and served upon opposing counsel). Pre- arraignment motions are set out in NCGS 15A-952(b), a copy of which is attached to this order.
- Inquiry by the Court as to whether defendant understands that any plea offer by the District Attorney is withdrawn upon the entry of a plea of "not guilty" and
- that no further plea negotiations will take place
- Arraignment and acceptance of plea of "not guilty"
- Set trial date

Each attorney is expected to bring his/her calendar to the final setting to facilitate scheduling of trial upon the entry of a plea of "not guilty". Upon a plea of "not guilty", the Court will assign a trial session for the case before the parties leave the courtroom. The Court will consult with the attorneys in order to determine when the prosecutor is scheduled for a trial session and whether the attorneys can agree upon a trial date. The Court should also consult with the Trial Court Administrator to determine the number of cases already set for trial during the proposed session. When the attorneys cannot agree upon a trial session, the Court should select a trial session from one of the prosecutors assigned sessions, attempting to balance the need for prompt trial settings with the professional and personal obligations of the participants. Should either the prosecutor or defense counsel discover that a material witness will be unavailable on their assigned trial date they must notify the opposing counsel, reset the case for a final setting within three (3) weeks, discuss the situation with opposing counsel in an attempt to agree upon an alternate date, and return to court to request that the Judge modify the trial date. Once a case has been set for trial and the three-week period to reset for modification has passed, there is a strong presumption that the case is for trial as scheduled and that no continuances will be granted for a reason that could have been reasonably foreseen.

4.5 The third administrative setting ("Third Setting") should normally occur within six (6) weeks of the second setting. Third Settings will be scheduled for cases prosecuted by the District Attorney's Homicide Team, Crimes Against Persons Team, and the Child Sex Abuse Team. The following matters shall be accomplished at the Third Setting:

- Status inquiry by the Court, including possible disposition by guilty plea
- schedule time slot for entry of plea if for guilty plea
- Entry of scheduling order for Exceptional Cases
- Schedule hearings for pre-arraignment motions (which must have been filed no later than seven (7) days prior to the final setting and served upon opposing counsel). Pre-arraignment motions are set out in NCGS 15A-952(b), a copy of which is attached to this order.
- Inquiry by the Court as to whether defendant understands plea offer and understands that any plea offer by the District Attorney is withdrawn upon the entry of a plea of "not guilty"
- Arraignment and acceptance of plea of "not guilty"
- Set trial date

Each attorney is expected to bring his/her calendar to the final setting to facilitate scheduling of trial upon the entry of a plea of "not guilty". Upon a plea of "not guilty", the Court will assign a trial session for the case before the parties leave the courtroom. The Court will consult with the attorneys in order to determine when the prosecutor is scheduled for a trial session and whether the attorneys can agree upon a trial date. The Court should also consult with the Trial Court Administrator to determine the number of cases already set for trial during the proposed session. When the attorneys cannot agree upon a trial session, the Court should select a trial session from one of the prosecutors assigned session, attempting to balance the need for prompt trial settings with the professional and personal obligations of the participants. Should either the prosecutor or defense counsel discover that a material witness will be unavailable on their assigned trial date they must notify the opposing counsel, reset the

case for a final setting within three (3) weeks, discuss the situation with opposing counsel in an attempt to agree upon an alternate date, and return to court to request that the Judge modify the trial date. Once a case has been set for trial and the three-week period to reset for modification has passed, there is a strong presumption that the case is for trial as scheduled and that no continuances will be granted for a reason that could have been reasonably foreseen.

4.6 Under CCMS, cases are no longer referred to as "continued" when it is necessary to reschedule a setting. The term under CCMS is that a case is "reset" for a particular setting if circumstances require. A case would normally be reset in instances such as these:

- Defendant wishes to retain private counsel for First Setting, counsel is present and reasonably believes that defendant can and will make such arrangements to
- allow counsel to make a general appearance at the reset date of the First Setting, and counsel represents this situation to the court
- Another case against the same defendant has just been submitted to the grand jury or will be submitted within three (3) weeks
- A co-defendant's case is being reset
- Defendant's attorney is unable to be present during the calendar call or later during the same administrative week
- The prosecutor knows of discovery material that has been unavailable but is likely to be available by the date on which the case is to be reset

Requests to have a case reset must be supported by an explanation as to why the resetting is necessary to the administration of justice and how it will help accomplish the tasks required to be completed at that Setting. The Judge presiding in Administrative Court will be reasonable and fair in evaluating these requests to reset, keeping in mind that a goal of this system is to ensure that cases progress in an orderly manner in an effort to resolve them fairly at the earliest possible stage of the proceedings. Counsel are expected to prepare for administrative court, to complete tasks required for each Setting in a timely manner, and to be open and honest with the Court as to the status of case- requests for resettings, and any other matter. Cases are not to move past a particular Setting in CCMS until all tasks required for that Se,- have been completed.

## **RULE 5: MOTIONS**

5.1 All pre-arraignment motions shall be filed and served no later than seven (7) days prior to the final setting and will be heard at a time scheduled at the final setting.

5.2 Other motions will normally be heard during the session at which the case is set for trial. Motions to suppress should be filed prior to the trial session pursuant to aforementioned June 10, 1993, letter of agreement between the District Attorney and Public Defender or, for the private bar, pursuant to NCGS 15A-976.

## **RULE 6: PLEA OFFERS AND CONFERENCES**

6.1 The District Attorney shall send a written plea letter to defense counsel of record in every case before the First Setting. The Resident Superior Court Judge understands that guidelines for the format and parameters of plea offers that will be acceptable to the Court provide consistent guidance for both prosecutors and defense attorneys as they work to resolve cases at the earliest point in the process. Prosecutors are urged to make plea offers that are as detailed as necessary to fairly address the circumstances of each case. The Court will carefully consider each offer and the facts of the case in determining whether to approve the agreement. If the agreement is not approved and no resolution can be reached, the Court will follow the provisions of NCGS 15A-1 023 in allowing the case to be reset for a different session. Prosecutors are encouraged to include within plea offers whether the defendant's punishment should be "active", "intermediate", or "communitarian" when options exist. It is also certainly permissible for the prosecutor to specify within the plea agreement whether probation is recommended. The Court will also consider offers which specify even more details of the punishment. That a written plea letter may sometimes consist of notice that no offer will be made in a particular case, but the District Attorney has agreed to make realistic plea offers based upon the capacity of the court system, the priorities established by his office, and the well-being of this community based upon current resources.

6.2 Defense counsel has a responsibility to convey all plea offers to the defendant. The District Attorney's Office is open to receiving information from defense counsel that could reasonably affect the plea offer or the ultimate decision as to whether to prosecute and encourages the communication of such information at the earliest possible stage of the proceeding.

6.3 The Judge presiding in Administrative Court encourages counsel to meet to discuss resolution of cases and to negotiate plea arrangements to be submitted to the Court for approval. The Court offers the opportunity for plea conferences for any case in Administrative Court but, due to the volume of cases, prefers to use those conferences for cases in which all efforts to agree on a plea arrangement have been exhausted and there is an issue involving the length of an active sentence. A plea conference is mandatory before the entry of a plea of "not guilty" in Administrative Court in order to make every effort to resolve cases at the earliest possible stage of the proceeding.

## **RULE 7: SCHEDULING OF CALENDAR CALLS AND PLEAS**

7.1 The District Attorney shall prepare and distribute a schedule for the setting of cases in the Administrative Court.

7.2 The Trial Court Administrator shall assign a person in the Administrative Court each day to maintain the records of the scheduling of plea and hearing slots and to work toward the development of a system that will provide the Court with information including when cases have been set previously, why cases have been reset, what tasks were to have been

accomplished for the current Setting, and any other relevant information that would assist in the orderly progress of cases toward disposition.

7.3 The Trial Court Administrator shall provide a mechanism for defense counsel to contact a person prior to the calendar call in order to schedule times for pleas during the week that a case is set in Administrative Court. That person will need to print a schedule for matters scheduled for time slots during the week, ensure that the Clerk receives a copy so that the appropriate court files are in court at the scheduled time, and make those schedules available to defense counsel, prosecutors, and courtroom deputies. It should be noted here and kept in mind throughout this process that the procedures described herein are the best efforts of individuals to plan ahead and outline a workable system. There will be problems and details will appear that had not been anticipated. In addition, the entire system is new and, at least in this county, experimental. We must all work together to solve problems that arise, remain open to constructive comments, and be prepared to change parts of the process that do not work well. The Senior Resident Superior Court Judge, District Attorney, Public Defender, and the Trial Court Administrator have committed to closely monitor the procedures and results and to make changes as necessary.

## **RULE 8: TRIAL SETTINGS**

8.1 The District Attorney shall propose a trial date to the Judge presiding in the Administrative Court at the time a defendant enters a "not guilty" plea at the final setting. The Presiding Judge shall then consult with defense counsel, refer to projections of the numbers and types of cases already set for trial during the session proposed as well as the number and type of cases individual attorneys have scheduled for trial during that session, and reach a decision as to the session during which the case will be scheduled for trial.

8.2 The established trial date shall be a firm date, subject to the procedure for requesting modification of trial date described above. Continuances will not be granted, even if all parties agree, unless for a crucial reason that could not have been reasonably foreseen and the fair administration of justice requires a continuance. The intention here is to ensure that all parties know when the trial is set as early as possible, that the trial date is certain, and that time is not wasted preparing for trials that do not occur due to continuances granted for reasons that should have been discovered earlier in the process. Neither the rights of defendants nor the rights of victims should be ignored in the process of ruling on motions to continue trials under this system; but all parties need to recognize that trial dates are serious, certain, and only subject to delay for the most serious of circumstances.

8.3 Any request for a priority or peremptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed to the Administrative Court Judge.

8.4 Any case which is not reached for trial during the scheduled session court can be rescheduled for trial by agreement of the attorneys who should first consult the list of trial schedules maintained by the Trial Court Administrator in Administrative Court. In the event

they agree on a new trial date, the attorneys must notify the Trial Court Administrator and the Clerk in Administrative Court so that the case information and new date can be recorded. If, however, the attorneys are unable to agree on a new trial date the case should be reset in Administrative Court on a calendar for final settings in order to set a new trial date. Any request for modification of this trial date shall be made by resetting the case in Administrative Court after notice to opposing counsel.

## **RULE 9: CALENDARS; CALENDAR CALL FOR TRIAL SESSIONS**

9.1 Not less than fourteen (14) days prior to each weekly session of the non-jury Administrative Court, the District Attorney shall prepare and publish a calendar of case settings in Administrative Court as described herein.

9.2 Every effort will be made to group cases on calendars by setting and by defense counsel.

9.3 Calendar call for all trial sessions will be held on Monday of the week preceding the trial session. This calendar call will take place at 9:30 A.M. in

Administrative Court (Courtroom 2201) and will be presided over by the Judge holding Administrative Court. (if Monday is a holiday, the calendar call will be held on Tuesday morning. If there is a holiday week preceding a trial session, the calendar call will be held on the Monday of the week before the holiday week.) Defense attorneys and their clients (if out of custody) are to be present at this calendar call. If a defendant does not appear an Order for Arrest will be issued. Any motions to strike such Orders for Arrest should be addressed to the Judge in Administrative Court after notice to the District Attorney responsible for the particular trial calendar. The District Attorney shall prepare an order of trials for each courtroom and make that order available to defense attorneys by noon on Wednesday of that same week. Cases of defendants who have not appeared by the time the District Attorney prepares a trial order will not be included in the trial order; however, should those defendants appear after that time, their cases are subject to being called at any point in the trial order upon application to the trial court Judge. There will be no need for a calendar call on the first day of a trial session of felony cases due to the early setting of a trial order based upon this calendar call held a week in advance of the trial court session.

9.4 Once prepared, the trial of cases listed on the trial order shall be subject to the provisions of General Statute 7A-49.3, not inconsistent with the terms of this order. In the discretion of the Presiding Judge, the order of cases for trial may be varied to accommodate such factors as availability of court time and schedules of witnesses and to include cases of defendants who did not appear at the calendar call.

## **RULE 10: MOTIONS FOR CONTINUANCES**

10.1 Motions for the continuance of trials may be made prior to the calendar call for the trial session by giving notice to opposing counsel and scheduling the motion to be heard in

Administrative Court at the earliest possible date so that all parties will know the status of the case and be prepared to proceed accordingly. Motions for continuance of trials must be in writing and, if not filed and served earlier, presented and filed at the Administrative Court calendar call for the session of trial court. Attorneys are encouraged to notify opposing counsel as soon as the decision is made to request a continuance. Any motions for continuance made at a later time must show good cause for the failure to file a timely motion.

10.2 Every continuance motion must state the following:

- age of the case
- whether the defendant is in jail and length of time in jail on the charges involved
- whether there are co-defendants and their names and case numbers
- number of times previously calendared for trial, when, and why not reached
- that opposing counsel has been notified of the motion and their response
- a proposed date for trial should the motion be granted

10.3 When compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the best interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice. In addition to other factors that the Court feels are appropriate, the Court shall consider the following when deciding whether to grant or deny a motion for continuance:

- the age of the case
- the pre-trial detention status of the defendant
- the status of the trial calendar for the week
- the order in which the case is designated for trial, including whether the case has a priority designation
- the number of previous continuances and who requested those continuances
- the number of times the cases has been designated for trial and not reached
- the extent to which counsel had input into the scheduling of the trial date
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable
- whether the reason for the continuance is a short lived event which could resolve prior to the scheduled trial date
- the length of the continuance requested
- the position of opposing counsel
- whether the motion has been considered by another Judge on the same grounds
- whether the parties themselves consent to the continuance
- present or future inconvenience or unavailability of witnesses or parties
- any other matter that promotes the ends of justice

10.4 No case shall be continued without rescheduling the trial to a date certain, except in a case of extreme and unusual circumstances. All parties should keep in mind that, under CCMS, there is a strong presumption that cases will be tried during the session at which

they are set for trial. No continuances should be granted for reasons that should have reasonably been foreseen. One of the primary goals of CCMS is to ensure that counsel and others do not waste time preparing for trials that do not take place as scheduled. Every effort is made under this system to resolve those cases early that do not need to be tried so that the cases to be tried can be set for trial with certainty that they can be reached when scheduled.

## **RULE 11: COURTROOM 3302: PROBATION HEARINGS, MOTIONS FOR APPROPRIATE RELIEF, and BOND FORFEITURES**

11.1 Probation matters will no longer be heard in Courtroom 2201 (the Administrative Court). Instead, Courtroom 3302 will be used for the disposition of probation matters. Probation revocation hearings will be scheduled in this Courtroom 3302 every other week throughout the year in order to accommodate the volume of such hearings. In order to meet the statutory requirement (NCGS Section 15A-1345) of providing a preliminary hearing within seven (7) days of arrest on an order accompanying an allegation of a probation violation, such hearings will be scheduled each Monday morning in Courtroom 3302. It will not be necessary for the probation officer assigned to the specific case to be present at that hearing since the formal rules of evidence do not apply. Therefore, it will be sufficient for there to be a probation officer present who can attest to the identity of probation officers and to identify probation documents. Probation revocation hearings will be scheduled in Courtroom 3302 pursuant to a schedule prepared by the District Attorney and submitted to the Senior Resident Superior Court Judge. It will be the responsibility of the Probation Department to set cases for hearing and to coordinate the setting of new cases with the Clerk's Office so that the total numbers of cases set does not exceed the number agreed upon in the schedule for this courtroom. It is understood that it is difficult to estimate in advance how many cases will adequately use the court time available, especially since neither cases nor Judges are all exactly alike, but it is essential that all agencies involved in this process work together to determine the optimum number of cases to be set in this courtroom.

11.2 Whenever the Senior Resident Superior Court Judge determines that a hearing should be held upon a motion for appropriate relief, the Judge will notify the District Attorney who will be responsible for calendaring that hearing in Courtroom 3302 on a Friday during a probation hearing week.

11.3 Bond forfeiture matters will be scheduled in Courtroom 3302 on a schedule determined by the Senior Resident Superior Court Judge and the Clerk of Superior Court.

## **RULE 12: BOND HEARINGS**

12.1 Bond hearings shall be set for hearing by contacting the Trial Court Administrator in Courtroom 2201 who will schedule those matters at 9:30 A.M. each Friday in that courtroom. Notice must be given by the defense attorney to the prosecutor assigned to defendant's cases before scheduling such hearings. The deadline for scheduling bond hearings will be 5 O'clock P.M. on Wednesday in order to set the case for the following Friday.

## **RULE 13: MISCELLANEOUS PROVISIONS**

13.1 The District Attorney shall make reasonable efforts to insure that the victims of crimes are made aware of hearing dates for those cases in which a victim is involved. The District Attorney shall have available all victim impact information for each scheduled case to be heard at each CCM session of court. Nothing contained herein shall prevent the hearing of a case at the session court for which the matter is calendared. The ability to schedule times for the entry of guilty pleas should facilitate the notification witnesses and allow them an opportunity to be present for a relatively short period of time rather than the uncertainty they face under the current system.

13.2 Matters concerning the Grand Jury will be directed to the Judge presiding in the Administrative Court (Courtroom 2201). Such matters include the selection and instruction of members of the Grand Jury as well as the return of indictments by that body.

13.3 Nothing contained herein shall be used in such a way as to deprive any defendant or victim any right provided by law.

13.4 Conduct of all participants in this system should be guided by these rules and the spirit of the system which attempts to provide a framework within which to fairly resolve cases as early in the process as possible while following a procedure that makes clear what steps are to be accomplished at each stage. Speed is not the primary goal of the system, but adherence to its procedures and the application of reason and common sense to the process should allow for the exchange of information, discussion of possible resolutions, and disposition of cases at the earliest stage possible. It should also result in trial calendars made up of cases which have been afforded every opportunity for resolution and are ready for trial.

ENACTED, THIS THE 1 ST DAY OF JULY, 1998.

## **PRETRIAL SETTINGS AND ARRAIGNMENT OF SUPERIOR COURT CASES**

### **I. MISDEMEANOR APPEALS GENERALLY**

Any defendant convicted in District Court before the judge may appeal to the Superior Court for trial de novo. See §7A-290, which governs Superior Court jurisdiction over District Court criminal cases. The state may also appeal from District Court in certain limited circumstances. See G.S. §15A-1432(a).

#### **Notice of Appeal**

Defendants must give notice of appeal either orally in open court, or to the Clerk in writing within 10 days of entry of judgment. See §7A-290. Filing requirements for the State are

governed by § 15A-1432(b). The original bail shall stand pending appeal, unless the judge orders bail denied, increased, or reduced. Appeals stay the execution of portions of the judgment relating to fines and costs, to probation, and also to confinement when the defendant has complied with conditions of pretrial release. See §15A-1431(f) and §15A-1451(a). Upon expiration of the 10-day period, when an appeal has been entered and not withdrawn, the Clerk will transfer the case to the Superior Court docket for formal arraignment. See §7A-290. For a comprehensive view of the entire jurisdiction of Superior Court, see §7A-271.

### **Arraignment — The First Appearance in Superior Court**

Once the Superior Court properly has jurisdiction, the case will first be set on a Superior Court arraignment calendar. The defendant received notice of his or her arraignment date upon entry of the appeal in District Court. Typically one or two weeks after notice was given in District Court, all arraignments are scheduled for a 2:00 Wednesday calendar in Courtroom 3302. The arraignment calendar runs on an alternating week schedule, with the alternate weeks devoted to trials. On the arraignment date when called, a defendant may:

1. enter a plea of either guilty or not guilty,
2. remand to District Court for immediate compliance with the District Court judgment,
3. ask the court to continue the case, or
4. (most commonly) have his or her attorney file a signed waiver of arraignment, an option that does not require the defendant's presence.

If the defendant is not represented by counsel, the presiding judge can screen the defendant for the availability for court-appointed counsel. If the defendant enters a not guilty plea or waives arraignment, the case is then set on a trial calendar. Barring unusual circumstances, defendants will not be informed of their trial date during the calling of the arraignment calendar, as the cases will be set by the District Attorney's office at a later time. Once formally set, the court dates will be published in The Mecklenburg Times well in advance of trial date.

### **Calendar Call & The Trial Calendar**

Misdemeanor appeals have trial weeks in Courtroom 3302 every other week, with every third trial calendar devoted exclusively to domestic violence cases. The trial week begins on Monday morning at 10:00AM. The State will call two dockets, the misdemeanor appeals trial calendar and the felony probation/probable cause calendar. The State will call the appeals calendar first and will determine whether the defendants have properly appeared and will hear from the attorneys as to their anticipated handling of the case (e.g., "For trial", or "For remand", or "For plea", "Defense's motion to continue", etc.) Attorneys must be present during the calendar call, though the defendants may be absent if their attorneys file with the clerk a properly executed Certificate in Lieu of Appearance on or before the calendar call. During the calendar call, the State will handle all motions to continue, and motions for remand, with the guilty pleas handled at a mutually convenient time. An attorney who enters a guilty plea must comply with the regular formalities of Superior Court, including completing a Plea Transcript. For a remand, the attorney must complete a Motion and Order to Remand the case. All the

necessary forms are available in the courtroom. At the conclusion of the calendar call, all defendants and attorneys are released, unless the Court instructs otherwise. The state will then proceed with the felony probation/probable cause calendar.

The State will post the trial lineup on the door of Courtroom 3302 by 9:30AM on Tuesday morning of the trial week. At that time, the State will call its first case for trial. For the remainder of the week, the Court will function in the same manner as any other Superior Court. Attorneys and defendants will be responsible for keeping track of their position on the trial calendar, though the District Attorney will make all reasonable efforts to inform them of their precise trial times. District Attorneys from other courtrooms have the freedom to pull cases off of the misdemeanor appeals calendar for trial, and will give defendants appropriate notice of the change in advance of calling cases in another courtroom.

### **The Standby Calendar**

The standby calendar functions much in the same way as the normal misdemeanor appeals calendar, with a few notable exceptions. The standby calendar is active only when misdemeanor appeals is not in trial in 3302. Cases picked for the standby calendar are primarily DWIs, selected from the misdemeanor appeals pool to insure they can quickly be called for trial without complication. Rather than a docket size of around forty defendants, which is typical in misdemeanor appeals, the standby docket typically contains a half-dozen defendants. Cases set on the standby calendar are published in The Mecklenburg Times like the standard appeals; however, unlike the misdemeanor appeals calendar, the calendar call is called a week in advance in Courtroom 2201 on Monday mornings at 9:30 a.m. The cases on the standby calendar are called for trial only when one of the felony trial calendars "go down", or have no active trials. As such it is imperative that attorneys remain in close contact with the associated District Attorneys. Cases called for trial will proceed as any other Superior Court trial.

## **II. FELONY CASES GENERALLY**

### **Initial Felony Bond Hearings in District Courtroom 1101**

Most defendants are set a bond by a magistrate after they are arrested. A Defendant's first opportunity to have a bond hearing will be in Courtroom 1101. Defendants charged with misdemeanors will have a bond set by the judge presiding over the morning session of 1101 in which they are scheduled. Defendants charged with felonies are given bond hearings in an afternoon session of 1101 within 5 working days of the defendant's first appearance.

Misdemeanor Bond hearings during the morning session of 1101 are often conducted via audio and video transmissions without the defendant actually being present, as provided for in G.S. 15A-532. The Assistant District Attorney will provide a brief description of the facts of the case and provide the judge with the defendant's criminal history if one is available. The defendant or his attorney has the opportunity to address the court about his bond after the Assistant District Attorney is finished.

Felony bond hearings in 1101 are more formal than those conducted in the morning sessions. Defendants are brought in person to the courtroom and have the opportunity to confer with counsel before the hearing. When the Assistant District Attorney calls a particular bond hearing, that defendant and his counsel should stand between the two tables in the courtroom while the A.D.A. provides the judge with the defendant's file (the "shuck") and gives a brief recitation of the facts in the case. Defense counsel then has the opportunity to address the facts of the case and factors relevant to the defendant's bond.

A felony defendant may also have a bond hearing once his case is in Superior Court. Bond hearings are set at the request of defense counsel and are scheduled on the last day of the weekly session in courtroom 2201. The procedure for superior court bond hearings is the same as that described for felonies in 1101.

### **Probable Cause Hearings in District Courtroom 1101B**

See North Carolina Criminal Law and Procedure, Chapter 15A, Criminal Procedure Act, Subchapter VI "Preliminary Procedures".

A defendant will be bound over to Superior Court if he waives his right to a probable-cause hearing at his "First Appearance" before a district court judge. If a defendant does not waive this right, the hearing must be set within fifteen working days. The hearing will be set in Courtroom 1101B. If after the "First Appearance" a represented defendant desires to waive this right, a written waiver signed by the defendant and his counsel must be filed with the court. (See Article 29, Section 15A-606).

If the grand jury indicts the defendant on or before the date set for the probable-cause hearing, the defendant becomes subject to the jurisdiction of the superior court and a probable-cause hearing will not be held.

On the day of the hearing in Courtroom 1101B, the State may decide to amend the charges to a misdemeanor and set them for trial in district court. The defendant and/or his attorney will be given the new district court date. Or, instead of setting a new date in district court, the ADA may allow the defendant to plead guilty to the amended misdemeanor in 1101B that day.

The State will generally request the defendant to waive probable cause. The defendant, whether in or out of custody, may execute a written waiver of probable cause and he will be bound over to superior court. If the defendant is in custody and executes a waiver, he remains subject to the same conditions for pretrial release even after he is indicted by the grand jury. If the defendant is out of custody on bond and waives probable cause, he will also remain free on his original bond and conditions when he is subsequently indicted by the grand jury.

The defendant may also refuse to waive the hearing. If a defendant who has bonded out refuses to waive probable cause, the State may hold a hearing (not likely-but if so, see below) or voluntarily dismiss the case to the grand jury. If the case is dismissed to the grand jury, the

defendant will subsequently be indicted and re-arrested and become subject to additional and completely different bonds. This is an undesirable result for a defendant for obvious reasons. An out of custody defendant has nothing to lose and everything to gain by waiving probable cause. If he waives and is indicted he still remains free on his bond. If he waives and is never indicted he also never has to go back to jail for this offense. Even if an out of custody defendant refuses to waive and a hearing is held, and even if the judge finds no probable cause and dismisses the case, the State can still send the case to the grand jury for indictment. Once indicted the defendant will be re-arrested and face the same problems.

If a defendant is in custody and refuses to waive probable cause, the State may hold a hearing (more likely when in custody-see below) or the State may also decide to voluntarily dismiss the case to the grand jury. If the case is dismissed to the grand jury, the defendant will be released (assuming he has no other charges pending and/or is not currently serving another sentence and/or wanted for extradition by another state). However, the defendant's freedom will be short lived as he too will be re-arrested and face new bonds and new conditions of pretrial release once he is indicted.

Some defense attorneys like to use the probable cause hearings as a type of "discovery" method. They want to see what the State has against their client and how good the evidence is against him. This can be a useful tool in some counties in North Carolina where a district attorney's office may not give you any information without a court order. However, in Mecklenburg County, a probable-cause hearing is not necessary for that purpose. Our office has an "open file" discovery policy. We give what is required by statute and usually much more than what is required. If you want to know about the case, talk to the assistant D.A. assigned to the case. In fact, under the "Fulton Plan", we do not even wait for a discovery request, but instead send discovery as a matter of course-requested or not. Also remember that only a minimum of evidence is required to satisfy probable cause. You will probably learn more about your case in a casual conversation with the appropriate ADA than you will ever discover in an adversarial preliminary hearing.

If a hearing is held, the State must prove there is probable cause to believe two things: 1) that the offense charged was committed, and 2) that the defendant committed it. Witnesses must testify under oath, are subject to cross-examination, and may be called by either side. The defendant may testify on his own behalf. Most of the usual evidentiary rules apply; however, there are types of hearsay evidence that the state may introduce even if it does not fall within any exception to the hearsay rules. Furthermore, the judge is not required to exclude evidence against the defendant even if it was obtained by unlawful means. (See Article 30, 15A-611).

At the conclusion of the hearing, the judge must take one of the following actions: 1) if the judge finds the defendant probably committed the offense charged, or a lesser included felony offense, then the defendant must be bound over to superior court; or 2) if the judge finds no probable cause as to the offenses charged but does find probable cause with respect to a lesser included offense within the jurisdiction of the district court, the judge may set the case on for trial in district court; or 3) if the judge finds no probable cause under 1 or 2, the judge must dismiss the proceeding. However, no finding by a judge at a probable-cause hearing

precludes the State from instituting a subsequent prosecution for the same offense. (See 15A-612).

## **THE GRAND JURY**

Prosecutions originating in the superior court must be upon a true bill of indictment as returned by the grand jury. The prosecutor submits the bill of indictment to the grand jury, and the grand jury must return a true bill if it finds from the evidence probable cause for the charge made. The lone exception to the requirement that superior court prosecutions be by a bill of indictment is that a non-capital defendant who is represented by counsel may waive his right to have the grand jury consider his case. In that case, the prosecution may proceed by a bill of information initiated by the prosecutor and signed by the defendant and his counsel.

Article 31 of Chapter 15A of the General Statutes of North Carolina governs the operation of the grand jury. The grand jury must consist of not less than 12 nor more than 18 persons. Every affirmative official action of the grand jury, including the finding of an indictment, requires the concurrence of at least 12 members. The typical term of service for the grand jury is 12 months. However, the senior resident superior court judge has the authority to fix the term length at 6 months. In Mecklenburg County, the term has been fixed at 6 months. In Mecklenburg County, the grand jury consists of 18 members. The members' terms are staggered so that every 3 months, 9 members complete their terms and 9 new members begin theirs. The senior resident superior court judge also has the authority to impanel a second grand jury to serve concurrently with the first. In Mecklenburg County, there are two grand juries. The grand juries in Mecklenburg County meet on alternate Mondays. That is, one grand jury meets on one Monday and the other grand jury meets the next Monday, year round. The presiding judge appoints one of the members of each grand jury to be the foreman, and the foreman presides over all grand jury proceedings. The proceedings of the grand jury are secret. The grand jury listens to the testimony of witnesses, asks the witnesses any questions they have, and then votes on the bills of indictment that same day. In Mecklenburg County, the witnesses are law enforcement officers. Defense attorneys, prosecutors, and defendants are not permitted in the grand jury's room\*. In Mecklenburg County, on the average Monday, the grand jury considers indictments on approximately 80 to 120 defendants and 200 to 300 criminal charges.

Once the grand jury finds a true bill of indictment, the case must be scheduled for a first setting in superior court. If the defendant must be served with the indictment (as in the case of an original indictment), the first setting date will be approximately two weeks after the defendant is served with the indictment. If the defendant need not be served with the indictment (as in the case of a defendant currently represented by counsel on the charge), the first setting date will be approximately three or four weeks after the grand jury finds a true bill of indictment.

## **DISCOVERY**

Discovery is required by law to be given to from the D.A.'s office to the defendant's attorney for notice and preparation of evidence to be presented in court. Other counties let

defense attorneys come to the office to review the evidence and copy those materials the D.A.'s office wants to provide. The Mecklenburg County D.A.'s office is one of the only offices that copies and provides discovery as a courtesy to the defendant's attorney to try to expedite the handling of cases. This office usually sends more in discovery than what is required by law. Discovery materials will include a plea letter with current court date information, police reports, police supplement reports, civilian witness or victim statements (with personal information redacted), written statements made by the defendant or any co-defendant, property sheets, lab results, photocopies of evidence a structured sentencing worksheet and the defendant's prior record.

Discovery is generally provided prior to the defendant's first setting in arraignment court. If not, a new first setting date will be scheduled in court to allow the D.A.'s office to send the discovery.

If you withdraw from a case after receiving discovery, it your responsibility to turn the discovery over to the new counsel of record or the public defender's office if they have been appointed to represent the defendant. If you enter into a case after discovery has been sent to another lawyer, please request the discovery from that lawyer. If the discovery is not turned over to you in a reasonable time, contact the D.A.'s office and another copy will be made for you.

## **PLEA OFFERS IN FELONY CASES**

Once the Grand Jury returns a bill of indictment in a criminal case, the assistant D.A. assigned to that case reviews the file and drafts a written plea offer addressed to defendant's attorney of record. This plea letter usually remains with the discovery materials until a few weeks before the case is scheduled for its first arraignment date, when a copy is mailed to counsel.

In the plea letter, the assistant D.A. typically lists the defendant's pending related charges and suggests a proposed resolution of the charges, which may involve a guilty plea to some or all charges and possibly dismissal of some charges. Often the plea letter will set out the State's position on consolidation of the charges, probation, restitution, proposed treatment, and other matters related to sentencing.

Under the existing system, defense counsel is required to schedule and attend a plea conference in chambers with the presiding Judge and the assistant D.A. This is so even in cases where the defendant steadfastly refuses to negotiate or to plead guilty. At the plea conference, the assistant D.A. informs the Court of the terms of the plea offer, then defense counsel is given a chance to be heard, then the Court makes a specific, binding sentencing recommendation.

Following the plea conference, an arraignment date is set. On that date, the defendant may choose to accept the Court's sentencing recommendation and plead guilty. If instead he announces an intention to plead not guilty, the court makes inquiry on the record to ensure that the defendant understands he will not be given another chance to accept the existing plea offer.

Once the defendant pleads not guilty, the plea offer is withdrawn and will not be re-extended. The case is placed on a trial calendar. If the defendant subsequently decides to plead guilty on the trial calendar, he must expect to do so without the benefit of a plea agreement, pleading "as charged, sentencing left to the court."

## **ARRAIGNMENT**

At arraignment a defendant is brought into open court, advised of the charges against him/her, and directed to plead.

When a defendant enters notice of appeal on a misdemeanor in district court, the clerk gives the defendant his/her arraignment date. Arraignments are held for misdemeanor appeals in courtroom 3302 every other Wednesday afternoon at 2:00 p.m. On the arraignment date a defendant can (1) have a public defender appointed to represent him/her (2) enter a not guilty plea after being formally arraigned (3) file a waiver of arraignment (4) enter a guilty plea (5) remand his/her case to district court. If a defendant has hired an attorney, the attorney can file a waiver of arraignment on behalf of his/her client and the defendant will not have to personally appear on the arraignment date. If a defendant enters a not guilty plea, his/her court date will be published in The Mecklenburg County Times or can be obtained by calling the Clerk of Courts. It is the defendant and/or defense attorney's responsibility to keep up with the trial date. The District Attorney's Office does not provide notice of a trial date to attorneys or defendants except by publishing it in The Mecklenburg County Times.

Arraignments for felonies are held in courtroom 2201. Once a case has gone through the administrative settings (first setting, second setting and plea conference dates), a plea slot is set. The defendant is formally arraigned at the time scheduled for the plea slot. If the defendant enters a not guilty plea, he/she will be given the trial date by the district attorney handling the case. If a defendant enters a guilty plea then the plea will be taken and the defendant will be sentenced at that time. All felony drug cases follow a similar procedure except those arraignments are held in courtroom 3303.

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

GENERAL COURT OF JUSTICE  
26TH JUDICIAL DISTRICT  
DISTRICT COURT DIVISION

**AMENDED**  
**ORDER CONCERNING CIVIL TRIAL SUBPOENAS TO**  
**LAW ENFORCEMENT OFFICERS**  
**(Superior Court General Order 12)**

Attorneys shall follow the requirements below concerning civil trial subpoenas to law enforcement officers:

- (a) Trial subpoenas to law enforcement officers to appear and testify only must be filed with the Sheriff no later than ten (10) days prior to the scheduled first date of appearance.
- (b) Trial subpoenas to law enforcement officers to appear and produce documents and things must be filed with the Sheriff no later than fifteen (15) days prior to the scheduled first date of appearance.
- (c) Where the law enforcement officer is being called to testify about a vehicular accident investigation, a copy of the police accident report must be attached to the subpoena.
- (d) Trial subpoenas to law enforcement officials shall be labeled "will call when needed" unless it is known exactly the time and date the witness is to begin his or her testimony.
- (e) The party at whose instance the witness is summoned by subpoena must notify the subpoenaed officer immediately upon determination that testimony will not be required due to continuance or settlement.
  - (f) If the trial is continued, notice of the rescheduled appearance date by the attached form shall be satisfactory notice of the continuance and a new subpoena to the witness will not be required.

This Order shall be effective on and after the 1st day of September, 1996.

This 18th day of July, 1996.

Chase B. Saunders  
Senior Resident  
Superior Court Judge  
26th Judicial District

## MEMORANDUM

To: All Mecklenburg County Bar Members  
From: Todd Nuccio, Trial Court Administrator  
Subject: "Short Notice" Cases  
Date: September 25, 1996

As you may be aware, there are certain weeks when trial calendar in Civil Superior Court is completed prior to the end of the week. When both sides consent, counsel may have their case heard prior to the scheduled date by placing it on a list of "short notice" cases maintained by the Trial Court Administrator. Counsel with cases on the "short notice" list will be contacted during weeks when the regular calendar is completed prior to the end of the session.

If you are interested in having your case placed on the "short notice" list, please contact Helen Stonestreet or me at 347-7802.

## **RULES AND PROCEDURES CONCERNING ELECTRONIC MEDIA COVERAGE**

These Rules supplement the North Carolina Supreme Court's Order concerning Electronic Media and Still Photography Coverage of Public Judicial Proceedings, which is contained in the Annotated Rules Volume of the North Carolina General Statutes.

### **APPLICATION PROCESS**

Application for the use of a camera in a trial courtroom must be made to the Trial Court Administrator (TCA). Such application must be in writing and must designate the trial to be covered.

Upon approval or denial of the trial judge, the TCA will notify the Applicant of the Judge's decision. In the event of multiple applications, the local media committee or the TCA will designate one representative to coordinate the operations. The trial judge, bailiff and courtroom clerk will be notified of this representative.

A copy of the formal application and court order (attached) must be submitted at least seventy-two (72) hours before the beginning of jury selection.

### **SUPPLEMENTAL RULES FOR THE 26TH JUDICIAL DISTRICT**

1. Cameras are allowed in the trial courts only.
2. No cameras are allowed in the Superior Court arraignment court (currently designated 2201).
3. Cameras will not be used in the corridors outside any courtroom or outside any jury room or jury pool area.
4. One camera (each) video or shutter will be allowed per courtroom.

The location of all microphones must be approved by the trial judge or TCA in advance of trial.

5. All cameras, both video and shutter, must be in a fixed location. Silence boxes must be used. All cameras must be silent. Any camera, being a distraction, must be removed.
6. The TCA or trial judge will be sole and final interpreter of these rules. Their decision is final.
7. There will be no panning or any other photographing of the jury or audience.
8. There will be no photographing of any witness under the age of sixteen (16) years.

9. Cameras will be operated ONLY:
  - a. During opening statement of counsel; and
  - b. During testimony from witnesses; and
  - c. During closing argument of counsel.
  - d. During jury charge and verdict.

Cameras will be shut off at all other times. The trial judge can modify this section, in writing, on a case- by-case basis.

This ORDER and Supplemental Rules for the 26th Judicial District will be reviewed from time to time.

Shirley L. Fulton  
Senior Resident  
Superior Court Judge

William G. Jones  
Chief District Court Judge

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG  
26TH JUDICIAL DISTRICT**

**GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION**

**AMENDED  
ORDER CONCERNING CRIMINAL TRIAL SUBPOENAS BY  
DEFENDANTS  
TO LAW ENFORCEMENT OFFICERS  
(Superior Court General Order 12 - Criminal)**

Attorneys shall follow the requirements below concerning criminal trial subpoenas to law enforcement officers:

- a. Trial subpoenas to law enforcement officers to appear and testify must be filed with the Sheriff no less than fourteen (14) days prior to the scheduled court appearance.
- b. Trial subpoenas to law enforcement officers to appear and produce documents, within their custody and control, must be filed with the Sheriff no less than fourteen (14) days prior to the scheduled court appearance.
- c. If the defendant or attorney for the defendant can demonstrate that the notification to him/her of the court date was given less than fourteen (14) days prior to the scheduled court hearing, diligent efforts will be made to accomplish service on the officer, notwithstanding the fourteen (14) day limit.
- d. Trial subpoenas to law enforcement officials shall be clearly labeled with the exact week, session and courtroom that the officer is to begin his/her testimony. Subpoenas shall list a contact person and telephone number.
- e. The defense attorney should notify the subpoenaed officer immediately upon determining that the officer's testimony will not be needed.
- f. This order applies to Criminal Superior Courts 3301, 3302, 3303, and 2201
- g. Subpoenas that are not in compliance with the guidelines established in this order will not be served and notification will be given to the issuing party.

This Order shall be effective on and after the 1st day of May, 1999.

This 3rd day of March, 1999.

Shirley L. Fulton, Senior Resident  
Superior Court Judge  
26th Judicial District

**NOTICE TO ATTORNEYS REPRESENTING INDIGENT  
DEFENDANTS**

1. Attorneys appointed to represent indigents, including members of the Public Defender's staff, should, when requesting fees, submit Form ACC-CR-225 to the appropriate judge.

2. Defendant's Social Security number must be included, or a statement that defendant refused to divulge it. N.C.G.S. 105A-3(C) requires the Administrative Office of the Courts to obtain this information whenever possible. Failure to include it may result in delay in payment of fees to appointed counsel.

3. Also, attorneys should include their telephone numbers beside their federal ID numbers if the form does not otherwise include a space for attorneys' telephone numbers.

This 2nd day of September, 1997.

Shirley L. Fulton  
Senior Resident Superior Court Judge

## MEMORANDUM

To: Members of Mecklenburg County Bar  
From: Senior Resident Superior Court Judge  
Re: Minor/Structured Settlement Procedures

The following procedures are followed by many Superior Court Judges in Mecklenburg County, and attorneys may wish to be acquainted with and follow them. In addition, attorneys may wish to review I.S.1 (approving unstructured minor settlements), 1.9. 1 (approving structured settlements), and 1. I 0. I (approving unstructured wrongful death settlements) in the North Carolina Trial Judges Bench Book, Superior Court Edition.

- A. Schedule court-approved settlements with the Office of the Trial Court Administrator. Nothing will be heard on a 'pop-in" basis.
- B. All settlements will be recorded, either by the court reporter or by cassette.
- C. Provide final medical reports from all doctors showing, for example, that the child has reached maximum improvement.
- D. If the settlement is "structured", provide an opinion from a tax lawyer or CPA indicating the settlement creates no tax liability to the child, An example of such a letter is at II-D-1 0-2 of the Mecklenburg Bar Handbook.
- E. Defendant's lawyer must state the total and complete amount of insurance coverage afforded to the defendant in the situation in question.
- F. Plaintiffs lawyer must make an independent inquiry and must be satisfied that the defendant has no other assets reasonably available, other than the insurance coverage.
- G. The child must be present at the settlement conference, without exception, Both parents must also be present, or an extraordinary reason for an absence must be provided.
- H. Parents are responsible for the medical expenses of their minor children. No money will be paid to the parent(s) out of the child's settlement -- not even to reimburse the parent(s) for miscellaneous expenses. The only money to be deducted from the minor's settlement is the attorney's fee. If the insurance company wants to settle the parent's claim for medical expenses, o.k. But ft will not come out of the money approved by the court as the minor's settlement.
- I. Plaintiff's attorney will bring a blank audio cassette to the settlement conference for the court's possible use and retention in the case file.
- J. File the action before the settlement conference so the "CVS" number can be used for the purpose of making a record of the proceeding

**SAMPLE OPINION LETTER FROM TAX ATTORNEY CONCERNING  
STRUCTURED SETTLEMENT**

Dear Judge\_\_\_\_\_

I have been asked by Attorney\_\_\_\_\_ , Attorney for the Plaintiff shown above, to respond to your request concerning the income tax implications of the structured settlement involved in this personal injury claim. Attorney\_\_\_\_\_ has presented to me a copy of the judgment with all relevant facts enumerated therein

I have performed the tax research necessary to form my opinion that all payments by the Defendant to the Plaintiff and to the minor child/children of the deceased qualify as tax free payments for personal injury damages and are fully excludable from the gross income of the recipients.

The Internal Revenue Code Section 104 specifically excludes from gross income the amount of any damages received on account of personal injuries. Further, the Periodic Payment Settlement Act of 1982 (P.L. 97-473) specifically addressed structured settlements involving periodic payments. This law confirmed the previous Internal Revenue Service position that periodic payments in the future for damages arising from personal injury are excludable from the gross income of the recipient. Please find enclosed copies of the Internal Revenue Code and the Commerce Clearing House explanations which are pertinent to the questions at hand.

It appears to me that the tax laws are clear on this point. If you have any questions, please contact me.

Sincerely,

## MEMORANDUM

To: Members of Mecklenburg County Bar  
From: Senior Resident Superior Court Judge  
Re: Procedure for Subpoena to be Issued in an Out-of-State Case

Pursuant to North Carolina Rules of Civil Procedure 28(d) and 45, N.C.G.S. §IA-1, these items must be included with the request for an order to issue a subpoena:

1. Order from Court of jurisdiction (i.e., jurisdiction where the action is pending.)
2. Certificate of service indicating notice of deposition and an order for out-of-state deposition subpoena.
3. A copy of the notice of deposition.
4. A prepared subpoena form. (AOC Form G-100).
5. An order prepared for judge's signature.

Proper documentation is illustrated by the attached sheets. Please follow these procedures when seeking a subpoena for an out-of-state cas