

**FIFTH JUDICIAL DISTRICT
DOCKET MANAGEMENT SYSTEM
CRIMINAL SUPERIOR COURT
NEW HANOVER COUNTY
(AS AMENDED EFFECTIVE JANUARY 1, 2005)**

RULE 1: GENERAL PROVISIONS

1.0 This docket management plan shall be administered and criminal calendars shall be prepared under the supervision of the District Attorney. The District Attorney may appoint one or more calendar advisory committees which shall include trial attorneys to give advice and suggestions on a continuing basis.

1.1 The purpose of these rules is to institute a docket management system that will provide for the orderly, prompt and just disposition of felony criminal matters. The matters addressed pursuant to this system will be resolved in a fashion to protect the interests of this District and the victims of crime, as well as insure that the rights of the defendants are preserved.

1.2 The calendar for the disposition of criminal cases in the New Hanover County shall be prepared and maintained by the District Attorney in accordance with these rules. The District Attorney shall 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. The term "District Attorney" shall include the elected District Attorney for the Fifth Prosecutorial District and his designees.

1.3 These rules shall, at all times, be construed in such a manner as to avoid technical delay.

1.4 It is recognized that these rules are not complete in every detail and will not cover every situation which may arise. In the event that these rules do not cover a specific matter, the District Attorney is authorized to act in his discretion, subject to consultation with the Senior Resident Superior Court Judge or the Presiding Judge.

1.5 These rules and all amendments hereto shall be filed in the Office of the Clerk of Court in New Hanover County and may be cited accordingly.

1.6 The District Attorney's Office for the Fifth Judicial District shall distribute a copy of these rules to each member of the New Hanover County Bar. The District Attorney shall maintain a supply of printed rules to be provided to attorneys upon request.

1.7 The Clerk of Superior Court shall provide a file number for each case. 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 New Hanover County Superior Court criminal cases.

1.9 Special rules shall apply to cases designated as "**Exceptional**" by the District Attorney and the Senior Resident Superior Court Judge. Cases which may be designated as "Exceptional" include, but are not limited to, all class D felonies or above; multiple-defendant or numerous victim crimes regardless of class; complicated white-collar crimes; and those requiring extraordinary scientific investigation. Cases designated as exceptional shall receive specialized scheduling orders for the purpose of facilitating timely disposition.

RULE 2: PERFORMANCE STANDARDS AND GOALS

2.1 Absent exigent circumstances, all non-exceptional cases should be tried or disposed of no more than twelve (12) months from the date of indictment, information or appeal.

2.2 If a defendant is charged with **joinable offenses**, the more serious offense shall control the remainder regarding the disposition goal.

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, even if no formal request for discovery under 15A-902(a) has been made. Provision of Discovery by the State acts as an automatic request of reciprocal discovery from the defendant. The Court may, after motion by the opposing party or on its own motion impose sanctions for failure to provide discovery, reciprocal discovery, or continuing discovery as provided by law or anticipated by these rules.

3.2 Preferably in District Court, but no later than three weeks after indictment, the District Attorney will provide photocopies of discovery in each file, as indicated on the Discovery Certificate, to the attorney of record entering a general appearance in that case. Said photocopies shall be provided one time to the current attorney of record. When an attorney is retained or appointed, the attorney shall notify the District Attorney's Office so that discovery may be provided.

3.3 Should a change in defense counsel occur, it is the joint responsibility of both new and previous counsel of record to insure that the photocopied discovery material is transferred from previous counsel of record to new counsel of record. The motion allowing counsel to withdraw from a case will certify that counsel has or has not received discovery from the State. If counsel has received discovery, counsel will certify that discovery has been or will be transferred to the

new counsel of record within 3 business days. Photocopies shall not be distributed to defense counsel entering only a limited appearance.

3.4 **The** Assistant District Attorney assigned to each case shall be responsible for completing a Discovery Certificate for that case. A sample Discovery Certificate is attached hereto as Exhibit "A". A completed and signed Discovery Certificate shall accompany the photocopied discovery, shall specify the number of pages included excluding the criminal history, and shall be served upon the defense attorney of record in one of the following ways: personal delivery, U.S. Mail, delivery to the office of the defense attorney of record, or by attorney mailbox located in the office of the District Attorney.

3.5 **Any** discovery motions filed by defense counsel shall contain one of the following certification provisions and shall be signed by the movant:

I, the undersigned attorney of record, do hereby certify to the Court that prior to the filing of this motion I have thoroughly reviewed the discovery material supplied to me in this case by the office of the District Attorney.

Signature of Movant Date

OR

I, the undersigned attorney of record, do hereby certify to the Court that as of this date more than three weeks have passed from the date of indictment and the District Attorney has provided me with no discovery material in this case.

Signature of Movant Date

RULE 4: PLEA OFFERS

4.1 **In** every case not designated as "Exceptional" the Assistant District Attorney responsible for such case shall extend a written plea offer to defense counsel of record no later than one calendar week before the second setting.

4.2 **Defense** counsel of record has a responsibility to promptly convey all plea offers to the defendant and consider it with him or her before the day of the next court appearance and be prepared to accept or reject the offer at the second setting.

4.3 **If** the Assistant District Attorney takes a dismissal outside of court, the Assistant District Attorney shall notify the defendant or his/her counsel, if represented, of such action.

RULE 5: SCHEDULE OF PLEAS

5.1 **During** each Administrative Week, the docket manager shall schedule the hearing of guilty pleas. Priority will be given to the scheduling of pleas for defendants in custody.

5.2 A time certain schedule for plea hearings shall be produced and maintained by the Office of the District Attorney.

5.3 A lawyer who schedules a plea is required to appear in Court on the date and at the time scheduled with all paperwork completed in advance of court appearance.

RULE 6: PLEA CONFERENCES

6.1 **During** each Administrative Week the docket manager shall schedule plea conferences.

6.2 A time-certain schedule of plea conferences shall be produced and distributed or posted by the Office of the District Attorney.

6.3 A plea conference with the Court is mandatory for all cases where the defendant is in custody.

6.4 **Where** the defendant is not in custody, the defendant must be in the courtroom during the plea conference.

RULE 7: CALENDARING PRIOR TO TRIAL

7.1 **Once** each month, to the extent possible, the District Attorney shall schedule a criminal session devoted to administration of the criminal calendar. This session shall be known as the "Administrative Week" and shall begin on the 2nd Monday of each calendar month.. The remaining criminal sessions will be reserved, to the extent reasonably possible, for the trial of cases.

7.2 **All** first administrative calendar settings (S1) and second administrative calendar settings (S2), are to be scheduled on the second Monday of each calendar month during "Administrative Week." Attorneys with last names beginning with "A-L" are to be present at 10:00 a.m., and attorneys with last names beginning with "M-Z" are to be present at 2:00 p.m., on the first day of the "Administrative Week."

All unrepresented defendants are to be present no later than 4:00 p.m. on the first day of the "Administrative Week" for their (S1) and (S2) settings.

7.3 **Each** case where the defendant is not in custody shall be calendared for two (2) specific Administrative Week settings following the date of indictment. The defendant and defense counsel shall be present at each such setting of court, except as provided for in Rule 7.7 below.

7.4 **Each** case where the defendant is in custody shall be calendared for only one (1) administrative setting. It shall appear on the Administrative Calendar only as a second setting.

7.5 **Each** misdemeanor shall be calendared for only one (1) administrative setting. It shall appear on the Administrative Calendar only as a second setting.

7.6 The first administrative calendar setting ("First Setting") shall occur no sooner than four weeks after indictment. The following matters shall be accomplished at the first setting:

- Determination of counsel and existence of conflicts;
- Confirmation of receipt of discovery;
- Status inquiry; including possible disposition by guilty plea;
- Pre-Arraignment motions.

7.7 The second administrative calendar setting ("second setting") shall occur at the next administrative calendar after the first setting, with the exception of misdemeanors and cases where the defendant is in custody which shall appear only as second settings. The following matters shall be accomplished at the second setting:

- Plea conference (if not held at first setting);
- Possible disposition by guilty plea;
- Arraignment;
- Entry of scheduling order (exceptional cases);
- Pre-trial motions;
- Scheduling for trial;
- For jail cases and misdemeanors, determination of counsel and existence of conflicts in representation;
- Rule 24 Hearing..

7.8 For cases involving defendants not in custody, where the primary offenses are drug related and no lab report has been provided to the defense attorney at least three (3) business days prior to the second setting, these defendants are excused from appearance at that second setting, provided that defense counsel has personally been in touch with his client and is able to verify that the defendant continues to be available to come to court.

RULE 8: MOTIONS

8.1 All pre-arraignment motions, as defined by statute, shall be filed no later than three (3) business days prior to the second setting.

8.2 All pre-trial motions shall be filed by and heard on dates established at the setting at which the defendant is arraigned. Motion hearing dates are firm hearing dates. Barring unusual circumstances, pre-trial motions shall be heard during the Administrative Week immediately preceding the established trial date.

8.3 Except for extreme circumstances, which could not have been reasonably foreseen, all motions, whether pre-arraignment or pre-trial, filed outside the established deadlines shall be subject to summary dismissal by the Presiding Judge. This provision does not apply to motions which are appropriately directed to the Judge presiding at trial.

RULE 9: TRIAL SETTINGS

9.1 At the arraignment, the district attorney shall propose a trial date after the defendant acknowledges that he understands that any and all plea agreements previously made are automatically withdrawn at the end of the administrative session. Defense counsel are responsible to inform the court of any scheduling conflicts. The Court shall set that date as the trial date unless the Court determines that the interests of justice require the setting of a different date. The trial shall occur no sooner than thirty (30) days after the final administrative setting, except by agreement of the state and the defendant.

9.2 The established trial date shall be a firm date. Continuances will be considered according to Rule 11 of these Rules.

9.3 Any request for a priority or preemptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed to the Judge at the arraignment.

9.4 Any case which is not reached for trial shall be rescheduled for trial by the District Attorney after consulting with the defendant or defendants' attorney.

9.5 When a case has not been scheduled for trial within one hundred twenty (120) days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant the Judge may hold a hearing to establish a trial date for the defendant.

RULE 10: PRINTED CALENDARS

10.1 Not less than ten (10) working days prior to each Administrative Session, the District Attorney shall publish a calendar of case settings as described in Rule 7 above. first settings shall be calendared for Tuesday, second settings shall be calendared for Monday. The calendar shall designate whether the case is for first setting, second setting, or motion.

10.2 The order of cases within each administrative calendar section shall be based upon the defense counsel of record. Cases shall be grouped alphabetically by the defense counsel's last name.

10.3 Not less than ten (10) working days prior to every jury session of court, the District Attorney shall publish a calendar of cases set for trial. The trial calendar shall not contain cases that are not ready for trial.

10.4 The District Attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the Court the order in which the District Attorney intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge. A case may be continued from the trial calendar according to Rule 11 of these Rules.

10.5 A defendant shall be required to appear at the initial calling of the calendar during a trial session of court, and remain in court if his case is within the next three cases for jury trial.

10.6 A calendar is published and filed in compliance with the General Statutes of North Carolina and these local rules if it is produced on paper and filed with the Clerk of Court or placed on the Internet by either the Clerk of Court, Administrative Office of the Courts, or the docket manager in such a way that it may be retrieved by the public with the use of a computer. If the calendar is published on the Internet, the publishing source must only provide a paper copy to the Clerk of Court and a copy to the presiding judge.

RULE 11: MOTIONS FOR CONTINUANCE

11.1 All continuance motions for cases set by Rule 1.9, must be in writing, filed, and delivered to opposing counsel and to the judge, as soon as practical. The Senior Resident superior court judge, his designee, or the judge presiding at the trial must approve the continuance of all exceptional cases.

11.2 **Except** as noted in 11.1, if the defense consents to a motion to continue made by the state, the motion is granted. Where opposing counsel objects to the continuance, the written motion shall be presented to the Senior Resident superior court judge, his designee, or to the judge presiding at the trial.

11.3 **Except** as noted in 11.1, if the Defense Attorney moves for a continuance, if the District Attorney consents to that motion, it is granted. If the District Attorney does not consent to the motion, the written motion shall be presented to the Senior Resident superior court judge, his designee, or to the judge presiding at the trial.

11.4 All continuance motions shall be on state form [AOC-CR-410](#), attached as "Exhibit B". The completed form, granted or denied, shall be filed in the clerk's office.

RULE 12: MOTIONS FOR APPROPRIATE RELIEF

12.1 **Motions** seeking appropriate relief (MAR) shall be filed with the Clerk of Superior Court. The Clerk shall inform the Senior Resident and the docket manager of these pending motions. The docket manager shall create a calendar of all pending MAR. The judge reviews each MAR for merit. If a MAR merits a hearing the judge shall direct the scheduling of the MAR for a date that is reasonably convenient to the parties involved.

12.2 **The** District Attorney may set hearing dates for motions for appropriate relief, only when justice demands a hearing earlier than is provided for under the terms of this section. The Clerk shall notify the docket manager of dispositions of motions for appropriate relief.

RULE 13: VICTIM RIGHTS

13.1 **Nothing** contained herein shall be used in such a way as to as to deprive any victim of any right provided by law.

RULE 14: DEFENDANTS RIGHTS

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

RULE 15: FAST TRACK

15.1 The District Attorney may apply to the Senior Resident superior court judge to allow jail cases to be fast tracked. A case may be fast tracked if the District Attorney, in consultation with the Senior Resident superior court judge, determines that a sufficient emergency exists to deviate from the normal rules. If cases are fast tracked, the District Attorney may place any number of fast tracked cases on a trial calendar after the first setting. Fast tracked cases that are not reached on one calendar will be carried over to the next calendar for the assigned Assistant District Attorney unless the Defense has an objection.

RULE 16: SUPERSESSION

16.1 These rules supersede any other local rules previously in effect governing the management of criminal cases that are inconsistent with these rules. If these Rules conflict with the NC General Statutes, the NC Constitution, or the US Constitution, the conflicts are inadvertent and the local rules are superseded.

Amended this 20th day of October, 2003.
Effective January 1, 2004.

Ernest B. Fullwood,
Senior Resident Superior Court Judge

I consent to the terms of this order.

John E. Carriker, District Attorney

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