

STATE OF NORTH CAROLINA
FOURTEENTH JUDICIAL DISTRICT
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN RE:

LOCAL RULES AND PROCEDURE FOR THE
CALENDARING OF CRIMINAL CASES IN
THE FOURTEENTH JUDICIAL DISTRICT
SUPERIOR COURT DIVISION

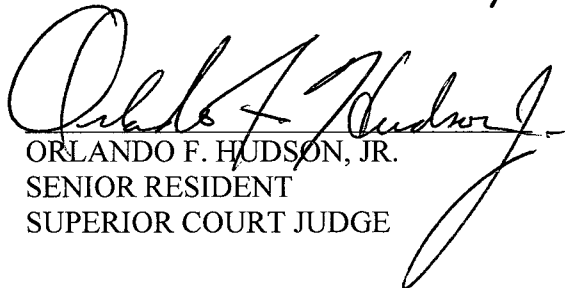
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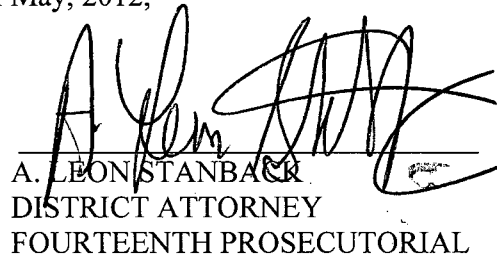
ORDER

Pursuant to the North Carolina Constitution, Article IV, Section 18 and North Carolina General Statutes §7A-61 and §7A-49.4, the attached Local Rules for the calendaring of felony Criminal cases in the Fourteenth Judicial District, Superior Court Division, are hereby adopted effective July 1, 2012, for all criminal cases indicted by all sessions of the Durham County Grand Jury.

The Rules adopted this date supersede all previously existing criminal calendar Rules of the Superior Court Division, Fourteenth Judicial District, and shall remain in effect until dissolved or modified by the District Attorney after consultation with the Chief Resident Superior Court Judge, and after opportunity for comment by members of the local bar.

IT IS SO ORDERED, this the 16th day of May, 2012,


ORLANDO F. HUDSON, JR.
SENIOR RESIDENT
SUPERIOR COURT JUDGE


A. LEON STANBACK
DISTRICT ATTORNEY
FOURTEENTH PROSECUTORIAL

**CASE MANAGEMENT SYSTEM
FOURTEENTH JUDICIAL DISTRICT
CRIMINAL SUPERIOR COURT**

RULE 1: GENERAL PROVISIONS

1.1 The purpose of the Rules of this Case Management System (hereinafter referred to as the **Rules**) is to provide for the orderly, prompt, and just disposition of criminal cases. It is intended that criminal matters addressed pursuant to this system be resolved in a fashion to protect the interests of this community and the victims of crime, and to insure that the rights of the defendant are preserved.

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

1.3 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 shall act in his discretion, and shall consult with the Senior Resident Superior Court Judge or the Presiding Judge regarding resolution of the issue raised.

1.4 The various calendars for the disposition of criminal cases in the Fourteenth District, Superior Court Division, shall be prepared, posted 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 as described by these Rules. (As used in these Rules, the term "District Attorney" is defined as the elected District Attorney of the Fourteenth Prosecutorial District and his designees.)

1.5 These Rules and all amendments hereto, shall be filed in the Office of the Clerk of Superior Court for the Fourteenth Judicial District and may be cited accordingly.

1.6 The District Attorney for the Fourteenth Prosecutorial District shall distribute a copy of these Rules and any subsequent amendments or modifications hereto to each member of the Fourteenth Judicial District Bar and the Office of the Public Defender for the Fourteenth Judicial District. The District Attorney shall maintain a supply of these printed Rules, as well as associated forms. These shall be provided to attorneys upon request.

1.7 The Clerk of Superior Court shall provide a file number for each case at the time of indictment, or earlier if practicable. All subsequent pleadings and papers filed with the Clerk of Superior Court and all subsequent communication to opposing counsel, parties or court personnel shall contain the file number.

1.8 All pleadings and papers, except exhibits, filed with the Clerk of Superior Court shall comply with the 8 1/2" x 11" standards as specified by Rule 5, General Rules of Practice for Superior and District Courts.

1.9 The provisions of these Rules shall apply to all felony Superior Court filings currently pending and subsequently indicted by the Grand Juries for the Fourteenth Prosecutorial District.

RULE 2: TIME STANDARD OBJECTIVE

2.1 Absent exigent circumstances, the disposition objective for cases under this management system shall be guided by the following after Superior Court acquisition of jurisdiction by indictment:

Class A 24 Months

Class B1, B2 and C 18 Months

All Other Categories 12 Months

If a defendant is charged with multiple joinable offenses, the more serious offense shall control regarding the above-described disposition objective.

2.2 Upon motion of the District Attorney or Counsel for the Defendant and following a hearing on the record, the Senior Resident Superior Court Judge (or his designee) may classify a case exceptional based upon such criteria as the complexity of the issues involved, any unusual delay in the forensic analysis of evidence or the number of co-defendants involved. Calendaring of cases designated as exceptional shall not be governed by these Rules, but shall be monitored by the Senior Resident Superior Court Judge (or his designee) and following a scheduling hearing may be set by scheduling order.

RULE 3: DISCOVERY

3.1 If a defendant requests discovery, such request shall be in writing and shall be made not later than the tenth working day after the Superior Court has assumed jurisdiction over the matter by whatever lawful means. The District Attorney shall then make available to the defendant or to counsel entering a general appearance on the defendant's behalf, within a reasonable time and manner, all discovery materials falling under the purview of N.C.G.S. 15A-903. Should a defendant obtain new counsel after discovery has been provided, it shall be the joint responsibility of new counsel for the defendant to obtain and of prior counsel for the defendant to transmit all the discovery materials previously furnished. Discovery material shall not be distributed to defense counsel entering only a limited appearance. Limited appearances are discouraged as they typically result in unnecessary delay.

3.2 If the State provides the discovery requested, or if the Court grants any relief sought by the defendant under N.C.G.S. 15A-903, then, upon written motion of the State, the defendant

shall then make available to the State, within a reasonable time and manner, all discovery materials falling under the purview of N.C.G.S. 15A-905.

RULE 4: ADMINISTRATIVE CALENDARING OF FELONIES PRIOR TO TRIAL, GENERALLY

4.1 Every month, the District Attorney shall schedule one or more non-jury criminal sessions devoted to the administration of the criminal calendar. Each such session shall be known as an "Administrative Week." Cases scheduled for administrative purposes shall be set upon an administrative calendar and called during that administrative session. The remaining criminal sessions shall be reserved, to the extent reasonably possible, for the trial of cases.

4.2 All felonies (except as provided in **Rule 4.4, *infra***) shall be calendared for three specific settings as described by Rule 4.3, *infra*, unless otherwise disposed of, or declared exceptional pursuant to the provisions of Rule 2.2, *supra*. The representative of the District Attorney, defense counsel and the defendant shall be present at each such setting of court except for those designated as pre-trial status conferences or calendaring hearings. If a defendant has Counsel of Record prior to the designated First Setting, the defendant's presence at that setting is not required..

4.3(a) The first calendar setting (hereinafter described as **First Setting**) shall occur during the first Administrative Week that occurs **after** four weeks have passed since an indictment has been returned as a true bill. The following matters shall be accomplished at the First Setting.

- Determination of counsel;
- Identification of the existence of conflicts of interests;
- Status inquiry, including potential disposition of case by guilty plea;
- Confirmation of filing request for discovery, and for compliance with N.C.G.S. 15A-903 and 15A-905 as currently compiled by the parties.
- Such other matters as the County may consider proper in the interests of justice.

Any bond hearing motions should be requested by the Friday before Administrative Week in order that scheduling may occur during the same administrative week, or during a subsequent week, if necessary, to enable any interested persons to attend. [This provision is intended to comply with the Victim's Rights Amendment to the North Carolina Constitution and the enabling legislation requiring notification to designated persons.]

4.3(b) The second calendar setting (hereinafter described as **Second Setting**) shall occur approximately four weeks following First Setting. The following matters shall be accomplished at the Second Setting.

- Filing of pre-trial motions not dealing with the suppression of evidence;
- Hearings for motions filed pursuant to N.C.G.S. §15A-952;
- Informal pre-trial status conference between opposing counsel (if requested by either party and not previously held); if either party does not appear or previously address the case for status conference the case shall move to Third Setting;

- Inquiry by the Presiding Judge, concerning potential disposition of case by guilty plea; and
- Such other matters as the Court may consider proper in the interests of justice.

Notification of any bond hearing request must be made to the District Attorney the Friday prior to the Administrative Week for scheduling of said hearing during the administrative week so that interested persons may attend. [This provision is intended to comply with the Victim's Rights Amendment to the North Carolina Constitution and the enabling legislation requiring notification to designated persons.]

4.3(c) The third calendar setting (hereinafter described as **Third Setting**) (shall occur approximately four weeks following Second Setting. The following matters shall be accomplished at the Third Setting.

- Entry of guilty plea disposing of case; or
- Arraignment if the case is not disposed by guilty plea and if the defendant has made a written request pursuant to N.C.G.S. §15A-941(d); and
- Such other matters as the Court may consider proper in the interests of justice.

If a case is not disposed by guilty plea, the Court shall conduct an inquiry to determine whether the defendant has knowledge of a plea offer. At that time, the Court shall execute the FINDINGS OF FACT REGARDING ARRAIGNMENT AND WITHDRAWAL OF PLEA OFFER form attached hereto as Attachment B.

If the parties cannot agree on trial dates; the date(s) shall be determined by the presiding judge

4.4 If at any point, a defendant's status is enhanced by indictment as a Habitual Felon or a Violent Habitual Felon, said status shall attach to the underlying felony whenever situated within the case management system without further regard for scheduling pursuant to these Rules.

4.5 In order to have the case of a called and failed defendant considered by the Court, counsel for said defendant shall execute the Motion and Order Striking Called and Failed form attached hereto as Attachment C, then file a copy with the Clerk of Superior Court and serve a copy upon the District Attorney by delivering same to the Administrative Assistant to the District Attorney.

RULE 5: MOTIONS

5.1 All motions of whatever type shall be filed pursuant to Articles 51, 52 and 53 of Chapter 15A of the North Carolina General Statutes, except as otherwise provided for by these Rules.

5.2 Except for exigent circumstances which could not have been reasonably foreseen, all motions filed outside deadlines established by these Rules, the Court, or the General Statutes shall be subject to summary dismissal by the Presiding Judge. Exigent circumstances may

include late discovery provided by the District Attorney that would affect whether the defendant receives a fair trial and is not a response to a late discovery request.

5.3 During each Administrative Week, the District Attorney, in consultation with the Presiding Judge, shall schedule the hearing of motions in a manner that, to the extent possible, fully utilizes available court time.

5.4 A schedule of motions shall be produced and posted by the District Attorney outside of Criminal Superior Courtroom #1 and on the internet at www.nccourts.org. When it is possible to do so, the District Attorney shall attempt to accommodate the schedule of members of the private bar who represent criminal defendants.

RULE 6: PLEA OFFERS

6.1 In every case deemed appropriate, the Assistant District Attorney responsible for such case is encouraged to extend a plea offer to defense counsel of record. Prior to extending any plea offer, each Assistant District Attorney shall fully evaluate the case. In every case deemed appropriate, the Assistant District Attorney responsible for such case shall make a good-faith offer based upon that evaluation.

6.2 Plea offers made shall be submitted to defense counsel on paper writing substantially similar to the Plea Offer form attached hereto as Exhibits "A1 and A2" or by the submission of a "draft" Transcript of Plea form (AOC-CR-300). Plea offers expire at Third Setting unless some other date has been set and communicated to the defendant or counsel of record.

6.3 It is intended that offers of plea to dispose of cases be accepted and entered at the earliest stage possible prior to a case being designated for trial.

RULE 7: SCHEDULING OF PLEAS

7.1 During each Administrative Week, the District Attorney, in consultation with the Presiding Judge, shall schedule the hearing of guilty pleas in a manner to fully utilize available court time to the extent possible.

7.2 A schedule for guilty plea hearings shall be produced and posted by the District Attorney outside of Criminal Superior Courtroom #1 and on the internet at www.nccourts.org. Generally, there shall be an attempt to accommodate the schedule of members of the private bar who represent criminal defendants.

RULE 8: INFORMAL PRE-TRIAL STATUS CONFERENCES

8.1 During each Administrative Week, the District Attorney shall schedule one informal pre-trial status conference with counsel for each defendant upon request of either party if not held at a previously scheduled administrative session of court. This schedule shall be set in a manner to fully utilize available court time to the extent possible. The defendant's presence is not required for this conference.

8.2 The schedule of informal pre-trial status conferences shall be produced and posted by the District Attorney outside of Criminal Superior Courtroom #1 and on the internet at www.nccourts.org. When it is possible to do so, the District Attorney shall attempt to accommodate the schedule of members of the private bar who represent criminal defendants.

RULE 9: TRIALS

9.1 The District Attorney, in consultation and cooperation with the Administrative Office of the Courts, shall establish and maintain a case tracking system for trial ready cases in accordance with these Rules and provide for the calendaring of same.

9.2 All trial ready cases shall be calendared and called in accordance with Rule 11.3 and North Carolina General Statutes §7A-49.4 and §7A-61.

9.3 The District Attorney shall publish the order of cases to be called for trial during that session. The cases published on the Trial Calendar shall be the order in which the cases will be called for trial for that session. The order of cases to be tried shall not deviate from the published order except for those cases in which there has been a disposition entered, a continuance granted by the Court, or the defendant has failed to appear. In the event that a defendant has failed to appear as directed, but is later that week arrested or appears in court, he may be inserted into the trial order at any point or at any position consistent with or after his original place in the order, in the discretion of the District Attorney.

9.4 Calendar production and distribution for trial ready cases shall be in accordance with North Carolina General Statutes §7A-49.4 and §7A-61.

9.5 In the event a case calendared for trial is not reached during the scheduled trial session, counsel for the parties shall appear before the presiding judge of Courtroom #1 at 10:00 a.m. on the first work day of the week following the affected session for the setting of a new trial date for said case.

RULE 10: MOTIONS TO CONTINUE FOR TRIAL READY CASES

All motions for continuance shall be made, to the extent practicable, before the Superior Court Judge assigned as the trial judge for the subject case. To the extent possible, these motions to continue shall be made at 9:30 a.m. on the Thursday prior to the affected session of Superior Court before the presiding judge in Criminal Superior Courtroom #1.

The Superior Court Judge will issue a ruling on the motion to continue after hearing from the State and the defendant, giving consideration to the reasons for the continuance request, the age of the case, the pre-trial detention status of the defendant, the number and type of other trial matters present on the trial calendar for that session, and any other consideration the Court deems appropriate and in the interest of justice.

RULE 11: PRINTED CALENDARS

11.1 Not less than ten (10) days prior to each non-jury administrative session of court, the District Attorney shall prepare and publish a calendar of case settings as described in Rule 4 above. These case setting calendars shall be called during said administrative court week.

11.2 The order of cases calendared within each administrative calendar section shall be set by the District Attorney, in consultation with the Senior Resident Superior Court Judge or his designee.

11.3 Not less than ten (10) days prior to every jury session of court, the District Attorney shall prepare and publish a calendar of cases for trial. Pursuant to North Carolina General Statutes §7A-49.4 and 7A-61, the District Attorney will list the order of cases for trial in his discretion; however, the cases shall be set in the order in which the District Attorney anticipates they will be called.

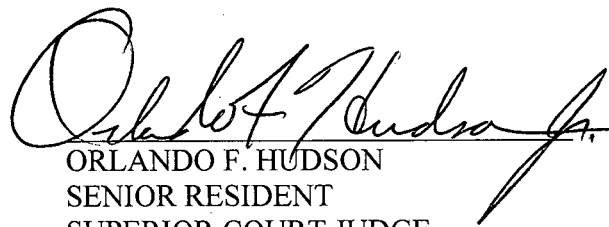
RULE 12: SANCTIONS

12.1 Failure to comply with any section of these Rules shall subject counsel to all sanctions allowed by law and deemed appropriate in the discretion of the Presiding Judge.

RULE 13: DISCRETION OF THE COURT

13.1 Nothing in these Rules is intended to alter or usurp the inherent authority of the Senior Resident Superior Court Judge or the Presiding Judge regarding the process to provide for the orderly, prompt and just disposition of criminal cases in this district.

AGREED UPON AND ENACTED THIS THE 16th DAY OF MAY, 2012.



ORLANDO F. HUDSON
SENIOR RESIDENT
SUPERIOR COURT JUDGE
FOURTEENTH JUDICIAL DISTRICT



A LEON STANBACK
DISTRICT ATTORNEY
FOURTEENTH PROSECUTORIAL
DISTRICT