NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

LOCAL RULES OF CRIMINAL PROCEDURE FOR THE SUPERIOR COURTS AND FOR CASES WITHIN THE ORIGINAL JURISDICTION OF THE SUPERIOR COURTS OF JUDICIAL DISTRICT 16B

Rule 1. Name.

These rules shall be officially known as the "Local Rules of Criminal Procedure for the Superior Courts and for Cases within the Original Jurisdiction of the Superior Courts of Judicial District 16B." When clear from the context the rules may be referred to as the "Local Rules of Criminal Procedure" or the "Local Rules."

Rule 2. Authority.

a) Caseflow Management Plan. These rules are adopted pursuant to the directive contained within and the authority granted by the Caseflow Management Plan adopted on 1 May 1996 by the North Carolina Supreme Court (hereinafter "Caseflow Management Plan").

b) Judicial. These rules are further adopted pursuant to the express, implied and inherent powers of the office of Senior Resident Superior Court Judge (herein "Senior Resident Judge"). These rules are further adopted pursuant to the express, implied and inherent powers of the office of Chief District Court Judge(herein "Chief District Judge").

Rule 3. General Considerations.

a) Terminology. When the text uses "shall" or "shall not" the terms are used in the imperative. When the text uses "should" or "should not" the terms are used to indicate local policy which should be followed by judges and which shall be followed by others. When "may" is used, it denotes permissible discretion.

b) Comments. When a Comment accompanies any Rule its language is intended to explain and illustrate the meaning and purpose of the Rule. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

c) Fundamental Policies. The fundamental policies of these rules are to protect the rights of victims and the innocent; to punish the guilty; and to do it right the first time.

d) Local Policy and Visiting Judges. Visiting judges presiding in this judicial district are guests and shall be accorded the respect due their position and status. By the same token, just as these judges expect other judges presiding in their home districts to observe their local rules and policies, visiting judges are expected to respect and observe this district's local rules and policies. It is certainly easier for one person to adjust than it is for a judicial district to temporarily change.

e) Assignment of Judges to Courtrooms. The Senior Resident Judge shall assign the presiding judges to particular courtrooms. Ordinarily resident judges should preside in Courtroom 2A and visiting judges should preside in the other courtrooms. Ordinarily the Senior Resident Judge should preside in Courtroom 2A when he or she is assigned to Robeson even if other resident judges are also presiding locally.

f) Individual Responsibility. The Rules assign responsibilities to individuals rather than to offices. The rules specify "persons responsible for managing the flow of cases and how they will be held accountable." See S.L. 1995, c. 333, s.2. Individuals can not shift such responsibility to another person. See Rules 5.1, 5.2 & 5.3, Revised Rules of Professional Conduct.

g) Amendments. These Local Rules may be amended through the entry of subsequent orders describing the amendments without the necessity of incorporating such amendments into the text of the rules and entry of an order regarding the Rules as revised. The original Local Rules of Criminal Procedure were adopted on 31 August 1998 and were effective on 1 September 1998. See File No. 98 R 191, Office of the Clerk of Superior Court. Any such orders of amendment shall be numbered and shall refer to the effective date of the revision of the Rules being amended.

Rule 4. Policy.

a) General. These rules were adopted to achieve the goals of timely dispositions, enhanced quality of the court process, equal treatment of all litigants, and public confidence in the courts. Caseflow Management Plan at p.2. The goals of caseflow management are designed to expedite the disposition of cases in a manner consistent with fairness to all parties, to enhance the quality of litigation, to assure equal access to the adjudicative process for all litigants, and minimize the uncertainties associated with processing cases. A critical factor in caseflow management is the assumption of judicial responsibility for the control of the court's caseflow. Delay devalues judgments, creates anxiety in litigants and the public, and uncertainty for lawyers. It wastes court resources, needlessly increases

costs of litigation, and creates confusion and conflict in the allocation of court resources. Id. at p.6. These local rules are designed to avoid delay and unnecessary appearances and to increase efficiency in the handling of cases in the local criminal superior courts. S.L. 1995, c. 333.

b) Specific. The rules specifically: (1) Place responsibility for managing the flow of cases on specific persons; (2) Adopts case processing standards and goals; (3) Addresses the problem of delay; (4) Avoids unnecessary appearances in court by victims, witnesses, parties, and attorneys; (5) Provides mechanisms for keeping continuous control of cases; (6) Establishes definite deadlines throughout the process; (7) Includes a limited continuance policy; (8) Considers the interests of victims and witnesses; (9) Sets out accountability mechanisms; and (10) Provides for training of those persons responsible for managing the case flow. Id.

c) Principles of Effective Caseflow Management.

1) General. Caseflow management practices affect case processing time. An effective case management program generally includes early and continuous control of each case, firm continuance policies, firm dates for the completion of specified tasks, including trial if needed, time standards and close case monitoring, and adequate court time and facilities. Caseflow Management Plan at p. 2.

2) Prosecutorial Screening. Early prosecutorial screening and charging decisions are essential. While it is clear that a magistrate may issue an arrest warrant when the essential elements of an offense are met, it does not necessarily follow that the evidence which is available justifies the substantial investment of time and taxpayers' money in the prosecution of a case. Unfortunately, the weakness of a criminal case is often discovered after reputations are destroyed and large sums of money are spent, and no amount of explaining ever fully satisfies the alleged victim and his/her family or the defendant and his/her family . Id. at p. 4.

3) Appointment of Counsel. Early appointment of counsel, if such is required, so that the cases can be disposed of at the earliest possible time. Id. at p.4.

4) Discovery. Early and open discovery so that the counsel for defendant can know how serious the case is from an evidentiary standpoint, and similar reciprocity by the defendant such as the nature of the defense. Id. at p.4

5) Judicial Involvement. Early and consistent involvement by a Superior Court Judge, working in cooperation with the District Attorney, in the management process. Id. at p.5.

6) Scheduling. Systematic scheduling so that the case is on track for disposition at the earliest possible time. Id. at p.5.

7) Trial. Once a case is calendared, proceed to trial unless just reason requires otherwise. Id. at p.3. When a case must be continued, it shall be continued to a specific date. Id. at p. 4.

8) Calendar Integrity. The quality of the cases calendar must be determined so that more cases are not calendared than can be disposed of during the session ("calendar integrity"). Id. at p.3.

9) Minimize Court Appearances. The key to improving access and convenience to those persons whose attendance is required (victims, defendants, witnesses, law enforcement personnel, and attorneys) is to reduce the times that they are required to attend court through better case management and preparation, and strict continuance policies. Id. at p.6.

10) Calendar History. Judges must be informed on a regular basis of past continuance history, including who granted the continuance, and the percentage of the calendar continued or not called for trial. Id. at p. 3.

Rule 5. Construction.

a) Statutes and Rules. These rules shall be construed so as to render them consistent with the General Statutes of North Carolina (herein "General Statutes") and the General Rules of Practice for the Superior and District Courts (herein "Rules of Practice"), and other applicable rules, including all local rules.

b) General. These rules shall be construed and enforced in such a manner as to avoid technical delay and to permit just and prompt consideration and determination of the cases before the court. Rule 1, General Rules of Practice.

Rule 6. Definitions.

a) Capital Offense. A criminal offense for which the death penalty is an authorized form of punishment. Such an offense is capital regardless whether the District Attorney is seeking the death penalty in the particular case. See G.S. 15A-533(b)&(c).

b) Clerk. The clerk of superior court, acting clerk, or assistant or deputy clerk. G.S. 15A-101(2).

c) Defendant. A person charged with a criminal offense under the laws of the State of North Carolina.

d) Entry of Judgment. Judgment is entered when sentence is pronounced. Prayer for judgment continued upon payment of costs, without more, does not constitute entry of judgment.

e) Judicial Official. A magistrate, clerk, district court judge and superior court judge. G.S. 15A-101(5).

f) Prosecutor. District Attorney, assistant district attorney, attorney general, assistant or deputy attorney general or someone prosecuting criminal cases pursuant to applicable law.

Rule 7. Criminal Process(Article 17).

a) General. Criminal process includes the citation, criminal summons, warrant for arrest, and order for arrest. They serve the function of requiring a person to appear in court. See Official Commentary, Article 17; see also G.S. §15A-301.

b) Citation. A citation is a directive, issued by a law enforcement officer or authorized official, that a person appear in court to answer a misdemeanor or infraction charge. G.S. 15A-302. It is utilized where the "officer lacks authority or deems it inappropriate to make an arrest and take the defendant into custody." See Official Commentary, Id.

c) Criminal Summons. A criminal summons is an order to appear in court, issued by any official authorized to issue warrants for arrest, and answer the crime (misdemeanor or felony) or infraction charged. G.S. 15A-303. It should be utilized in any case "in which it appears that it is not necessary to arrest the defendant and take him (or her) into custody to ensure (their) appearance in court." It is placed first to "encourage" its use. See Official Commentary, Id.

d) Warrant for Arrest. A warrant for arrest is an order directing that a person accused of a crime (misdemeanor or felony) be arrested and held to answer the charge. G.S. 15A-304. The warrant for arrest should be issued by a judicial official, instead of a criminal summons, only "when it appears... that the person (accused) should be taken into custody." G.S. §15A-304(b); see also Official Commentary, Id.

e) Order for Arrest. An order for arrest "may" be issued by a judicial officer, subsequent to the original criminal process or indictment, directing that a defendant be taken into custody, usually because the defendant failed to appear as required. An order for arrest "may" also be issued, but need not be, when a grand jury has returned a true bill of indictment against a defendant who is not already on pretrial release. G.S. 15A-305.

Rule 8. Securing Appearance of Persons Before the Court.

a) Subpoena.

1) Witness. The appearance of a person as a witness prior to or at trial may be obtained by subpoena. G.S. §15A-801.

2) Procedure. The subpoena must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure. Id.

b) Subpoena Duces Tecum.

1) Production. The production of records, books, papers, documents or tangible things prior to or at trial may be obtained by subpoena duces tecum. G. S. §15A-802.

2) Procedure. The subpoena duces tecum must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure. Id.

c) Material Witness Orders.

1) Authorization. A superior court judge may issue such an order at any time after the initiation of criminal proceedings upon a showing that there are reasonable grounds to believe that the person whom the State or the defense desires to call as a witness prior to or at trial possesses material information and may not be amenable or responsive to a subpoena at the time when their appearance will be sought. G.S. §15A-803(a) & (b).

2) Procedure. The motion seeking the order must be supported by affidavit. The witness must be given reasonable notice, opportunity to be heard, and the right to be represented by counsel, including appointed counsel if the witness is indigent. G.S. §15A-803(d).

3) Securing Appearance of Witness. The appearance of the witness at the hearing may be secured by subpoena, or if the court considers it necessary, by order for arrest. G.S. §15A-803(g).

4) Order. An order which provides for incarceration of the material witness shall not be effective for longer than 20 days, but upon review a superior court judge has discretionary power to renew the order for additional time periods not to exceed 5 days each. The order may direct release of the material witness in the same manner that a defendant may be released under G.S. §15A-534. The order may be modified or vacated by a superior court judge upon a showing of new or changed facts or circumstances. G.S. §15A-803(c) & (e) & (f) &(g).

d) Habeas Corpus Ad Testificandum. Upon motion of the State or the defense demonstrating good cause, the court must enter an order requiring that any person confined in an institution in this State, including county jails, be produced and compelled to appear as a witness prior to or at the trial. G.S. §15A-805. See AOC Form AOC-G-112(Rev. 10/96).

e) Witnesses from Another State. See G.S. §15A-813.

f) Prisoners from Another State. See G.S. §15A-822.

g) Federal Prisoners. See G.S. §15A-823.

Rule 9. Official Court Files.

a) Custody. The official court files for all criminal proceedings are in the custody of the Clerk of Superior Court.

b) Supervision. The Senior Resident Superior Court Judge supervises the clerk in the discharge of the clerical functions of the superior court. See G.S. 7A-146(3).

c) Filing Pleadings or Documents.

1) Authorized Filings. The clerk shall accept for filing from a party or counsel any pleading or document which is authorized to be filed by any applicable statute or rule, including any local rule.

2) Signature Required. Every pleading, motion, document and other paper of a party, including the State, represented by an attorney shall be personally signed by at least one attorney of record in his/her individual name, whose address shall be stated. For purposes of this rule, the State is represented by the District Attorney, Assistant District Attorney, or other prosecutor. A party who is not represented by an attorney shall sign his/her pleading, motion, document or other paper and state his/her address. A party or counsel shall not file or attempt to file, and the clerk shall not accept for filing, any pleading, motion, document or other paper in violation of this rule.

3) Unauthorized Filings.

i) General. A party or counsel shall not file or attempt to file, and the clerk shall not accept for filing, any pleading or document the filing of which is prohibited by applicable law or rule.

ii) Prejudicial Information. A party or counsel shall not file or attempt to file any pleading or document for the purpose of making public any information or materials described in Rule 3.6(b) of the Rules of Professional Conduct.

iii) Plea Negotiations. A party or counsel shall not file or attempt to file, and the clerk shall not accept for filing, any pleading or document indicating the possibility of a plea of guilty by the defendant. See Rule 3.6(b), Rules of Professional Conduct; G.S. 15A-1025; Rule 410, Rules of Evidence.

Rule 10. Initial Appearance in District Court(Article 24):

a) Appearance before Magistrate: A law-enforcement officer making an arrest--with or without a warrant--must take the arrested person without unnecessary delay before a magistrate. G.S. 15A-511(a)(1).

b) Advisement of the Arrestee. The magistrate must inform the arrestee of: (1) The charges against him/her; (2)The right to communicate with counsel and friends; and

(3) The general circumstances under which he/she may secure release under the provisions of Article 26(Bail). G.S. 15A-511(b).

c) Arrest without a Warrant. If the person has been arrested, without a warrant, the magistrate must determine whether there is probable cause to believe that a crime has been committed and the person arrested committed it. If the magistrate determines that there is no probable cause the person must be released. If the magistrate determines that there is probable cause, he/she must issue an appropriate order. G.S. 15A-511(c).

d) Commitment or Bail. If a person is arrested pursuant to a warrant or if the magistrate determines there is probable cause to believe that a person arrested without a warrant committed a crime, the magistrate must release him/her in accordance with Article 26(Bail) or commit the person to an appropriate detention facility pursuant to Article 25(Commitment). G.S. 15A-511(e).

e) Other Officials May Conduct Proceedings. Any judge, justice, or clerk may also conduct an initial appearance. G.S. 15A-511(f).

Rule 11. First Appearances in District Court(Article 29).

a) Appearance Before a District Court Judge. A First Appearance must be held before a district court judge within 96 hours after a defendant has been charged in a magistrate's order or served with criminal process under Article 17 (Criminal Process) with a crime in the original jurisdiction of the superior court. G.S. 15A-601(a) & (c).

b) Consolidation with Initial Appearance. When a district court judge conducts an Initial Appearance, he/she may consolidate those proceedings with these proceedings for a First Appearance. G.S. 15A-601(b).

c) Continuance. Upon motion of the defendant, the First Appearance may be continued to a time certain. G.S. 15A-601(d).

d) Waiver. The defendant may not waive the First Appearance. If represented by counsel at the proceeding, the defendant need not appear personally. Id.

e) Right Against self-incrimination. Unless accompanied by counsel, the judge must inform the defendant of his/her right to remain silent and that anything he/she says may be used against him/her. G.S. 15A-602.

f) Assuring Defendant's Right Counsel.

1) Determining if Defendant is Represented. The judge must determine if the defendant is represented by counsel--whether retained or assigned. G.S. 15A-603(a).

2) Advising Underrepresented Defendants of Rights. If the defendant is not represented by counsel, the judge must inform the defendant that: (a) He/she has important legal rights which may be waived unless asserted in a timely and proper manner and that counsel may be of assistance to the defendant in advising him/her and acting in his/her behalf; (b) He/she has the right to be represented by counsel and that he/she will be furnished counsel if he/she is indigent; (c) If he/she is convicted and placed on probation, payment of the expense of assigned counsel may be made a condition of probation; and (d) If he/she is acquitted, he/she will have no obligation to pay the expense of such assigned counsel. G.S. 15A-603(b).

3) Application for Assigned Counsel. If the defendant asserts that he/she is indigent and desires counsel, the judge must proceed in accordance with provisions of Article 36 of Chapter 7A. G.S. 15A-603(c).

4) Seeking Retained Counsel. If the defendant is determined not to be indigent and desires counsel or if the defendant wishes to retain counsel, the judge must inform him/her that he/she should obtain counsel promptly and afford him/her the opportunity to so obtain counsel. G.S. 15A-603(d).

5) Waiver. If the defendant desires to waive representation by counsel, the waiver must be in writing in accordance with the provisions of Article 36 of Chapter 7A. G.S. 15A-603(e).

g) Procedure. The judge must: (1) Inform the defendant of the charges against him/her; (2) Determine if the defendant or his/her counsel has been furnished with a copy of the Indictment; and (3) Determine or review the defendant's eligibility for pretrial release. G.S. 15A-605.

h) Determine Sufficiency of Charge.

1) The judge must examine the process or magistrate's order and determine whether each charge charges a criminal offense within the original jurisdiction of the superior court. G.S. 15A-604(a).

2) If the judge determines that the process or order fails to so charge such a criminal offense, he/she must notify the prosecutor, and take further appropriate action, including one or more of the following: (a) Dismiss the charge; (b) Permit the prosecution to amend the statement of the crime in the process or order; (c) Continue the proceedings, for not more than 24 hours, to permit the prosecution to initiate new charges; or (d) With the consent of the prosecutor, set the case for trial in the district court if the charge is determined to be within its original jurisdiction. G.S. 15A-604(b).

i) Scheduling Probable Cause Hearing.

1) Scheduling. The judge must schedule a probable cause hearing not later than 15 working days following the Initial Appearance. The hearing may not be scheduled sooner than 5 working days following the Initial Appearance without the consent of the defendant and the prosecutor. G.S. 15A-606(a) & (d).

2) Unrepresented Non-Indigent Defendants. If an unrepresented non-indigent defendant indicates his/her desire to be represented by counsel, the judge must inform him/her that he/she has a choice of appearing without counsel or of securing counsel to represent him/her at the hearing. The judge must also inform him/her that the hearing will not be continued due to the absence of counsel except for extraordinary cause. G.S. 15A-606(e).

3) Waiver. A defendant may not waive his/her right to a probable cause hearing before the date of the scheduled hearing except by written waiver signed by the defendant and his/her counsel if the defendant desires representation. After the First Appearance, a defendant may waive his/her right to a probable cause hearing in a writing filed with the court signed by the defendant and his/her counsel. pon proper waiver the judge must bind the defendant over to the superior court for further proceedings. G.S. 15A-606(a) & (g) & (c).

4) Continuances. Upon a showing of good cause, a scheduled hearing may be continued to a date certain by the district court upon timely motion of the defendant or the prosecution. A scheduled hearing shall never be continued without first scheduling a new hearing date. A motion is not timely unless made at least 48 hours prior to the time set for the hearing, except for extraordinary cause. G.S. 15A-606(f).

j) Clerk May Conduct First Appearance. If a district court judge is not available in the county within 96 hours after the defendant is taken into custody, the clerk may conduct such a First Appearance in District Court in the same manner as such a judge.

Rule 12. Attorneys.

a) Appointment.

1) Arrests. If a person, upon being taken into custody, states that he/she is indigent and desires counsel, the authority having custody shall immediately so inform the Public Defender. G.S. 7A-453(c). Any local law enforcement agency having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the Public Defender. G.S. 7A-453. The Public Defender may tentatively assign himself/herself to represent a defendant who apparently qualifies for his/her services subject to subsequent approval by the court. G.S. 7A-452(a).

2) Court Proceedings. In any first appearance before a district or superior court judge such judge should address the defendant regarding his/her right to

counsel. See G.S. 15A-603. If the defendant appears at arraignment without counsel the court must address the defendant regarding his/her right to counsel. G.S. 15A-942.

3) Assignment by Public Defender. The Public Defender may assign a consenting member of the bar to represent an indigent defendant. G.S. 7A-467(b). Members of the bar so assigned by the Public Defender are compensated in the same manner as counsel assigned by the court. G.S. 7A-467(c).

4) Capital Cases. In capital cases where the defendant is represented by the Public Defender the court should appoint a member of the private bar as the required second counsel. G.S. 7A-450(b1).

5) Waiver of Counsel. An indigent person who has been informed of his/her right to counsel may execute a written waiver of that right if the court finds that such indigent person does so with full awareness of his/her rights and the consequences of the waiver. G.S. 7A-457(a). Even if a person has previously waived appointed counsel, if the person appears without counsel for trial seeking appointed counsel, the court shall appoint counsel if the person qualifies for such counsel. State v. McCrowre, 312 N.C. 478(1984); State v. Graham, 76 N.C. App. 470(1985). A person may proceed to trial without counsel only if the court through inquiry is satisfied that the person has been clearly advised of his/her right to counsel, including his/her right to appointed counsel if indigent; understands the consequences of his/her decision; and comprehends the nature of the charges, proceedings and the range of permissible punishments. G.S. 15A-1242; see also State v. McCrowre, supra, and State v. Graham, supra; see also State v. Hyatt, ___N.C.App.____(filed 6 April 1999)(The defendant told the court that he would represent himself if he could not hire an attorney. He signed a waiver. Later he was granted another continuance to hire an attorney. The defendant again appeared without an attorney and the case was called for trial. The Court of Appeals ordered a new trial due to the court failing to inform the defendant of the rights set out in G.S. §15A-1242. The defendant's prior waiver of counsel was insufficient.) When a person elects to proceed without the assistance of counsel the court may appoint standby counsel to assist the person when called upon and to bring favorable matters concerning the person to the attention of the court. G.S. 15A-1243.

6) Counsel Fees. Counsel fees for appointed counsel must be determined by the judge who heard the case. G.S. 7A-458.If the case is never heard the appointed counsel may submit his fee application to a resident or presiding judge. Id.

b) Appearance. An attorney makes either a general or limited appearance in an action as provided in Article 4 of Chapter 15A of the General Statutes. In order to make a limited appearance an attorney must strictly comply with the requirements of G.S. 15A-141(3). Unless properly appearing for a limited purpose an attorney undertakes

to represent the defendant at all subsequent stages of the case until entry of final judgment at the trial stage. G.S. §15A-143. An attorney shall file a notice of appearance with the clerk and serve the same upon the District Attorney within ten (10) days after being retained by the client.

c) Withdrawal. The court may allow an attorney making a general appearance to withdraw from a criminal proceeding upon a showing of good cause. G.S. §15A-144. Ordinarily, such good cause may not be demonstrated by showing that the client disagrees with the attorney about tactics and plea negotiations. Upon withdrawal, the withdrawing attorney shall take steps to protect the former client's interests, including conferring with new counsel about the case and surrendering papers and property to which the former client is entitled. See Rule 1.16(d), Revised Rules of Professional Conduct.

d) Duties of Defense Counsel.

1) Client Directs Case. Whether counsel is appointed or retained, the case belongs to the client rather than the attorney. The attorney has a duty to keep the client informed about the case. The case is the client's and he or she is the final authority on any decisions involving the case. Normally, the responsibility for tactical decisions rests ultimately with defense counsel. However, when counsel and a fully informed criminal defendant client reach an absolute impasse as to tactical decisions, the client's wishes must control. State v. White, 349 N.C. 535, 567(1998); see Rule 1.2(a), Revised Rules of Professional Conduct; see also ABA Standards for Criminal Justice: Prosecution Function and Defense Function §4-5.2(3rd ed. 1993).

2) Duty to Inform Client. The attorney has a duty to keep the client informed about his or her case and to promptly comply with reasonable requests for information. See Rule 1.4(a), Revised Rules of Professional Conduct. In order to satisfy this obligation, the attorney should consider forwarding to the client every pleading, document or other paper generated on behalf of the client unless there is a substantial reason for not so forwarding such materials. The attorney should also consult with the client prior to making substantial decisions on his or her behalf. See Rule 1.4(b), Revised Rules of Professional Conduct; see also ABA Standards for Criminal Justice: Prosecution Function and Defense Function §4-3.8(3rd ed. 1993).

3) Retained Versus Appointed Counsel. The obligations of appointed counsel are the same as those of retained counsel, however, appointed counsel shall not file a limited appearance. G.S. §7A-450(b); see also §4-1.2(h), Id. In particular, appointed counsel shall handle bail and pretrial release matters, including forfeitures, on behalf of indigent criminal defendants. Id.

4) Request/Motion for Discovery. In every felony case, as soon as feasible, an attorney shall file a request/motion that the prosecution provide the defense with all discovery that the defense is entitled to under all applicable statutes, case law, ethical provisions, and rules of court.

5) Motions to Reduce Bail. In every felony case, as soon as feasible, an attorney shall file a motion for a bail reduction. If the motion is denied and the defendant's case is not disposed of promptly, if desired by the defendant, an attorney should file subsequent such motions.

6) Motions for Speedy Trial. If desired by the defendant after discussions with counsel, an attorney shall file a motion for a speedy trial asking the court to schedule the case for trial if the case has not been disposed of within a reasonable time. If the motion is denied and the defendant's case is not disposed of promptly, if desired by the defendant, an attorney should file subsequent such motions.

7) Request for Trial by Inmate. An inmate who is confined in this state pursuant to a judgment and commitment and who has other criminal charges pending may require the District Attorney to try the charges within six months of the request for trial. G.S. §15A-711(c). An attorney must inform a qualifying client of this right. If desired by the client, the attorney shall file and serve the appropriate request for trial. See J.R. Van Camp, North Carolina Criminal Procedure Forms §36.1(3rd ed. 1989).

8) Plea Negotiations. If desired by the client, an attorney shall actively engage in plea negotiations with the prosecution. If the prosecution submits a plea offer to counsel, an attorney is obligated to discuss the offer with the client. The decision to accept or reject a plea offer belongs solely to the client. If a defendant rejects a plea offer and wants a trial, an attorney is obligated to accept his or her client's decision regardless as to the attorney's personal opinion or feelings concerning the matter. See Rule 1.2(a)(1), Revised Rules of Professional Conduct; see also §4.52(a), Id.

9) Competence and Diligence. An attorney has a duty to be competent and diligent in representing the client. See Rules 1.1&1.3, Revised Rules of Professional Conduct. This includes preparation adequate under the circumstances and the filing of appropriate motions. The duty includes seeking, when appropriate, expert assistance, including private investigators. G.S. §7A-450(b). Even if counsel is privately retained, the client may qualify for court-appointed experts. State v. Boyd, 332 N.C. 101(1992).

   i) Library. An attorney should maintain a personal library sufficient to allow the attorney to adequately represent his or her clients.

   ii) Professional Associations. An attorney should maintain memberships in professional associations sufficient to allow the attorney to adequately represent his or her clients. These professional associations are valuable resources for an attorney since they provide publications, advice, model pleadings, research briefs, seminars and other services.

10) Mistrials. A motion for dismissal for insufficiency of the evidence to sustain a conviction may be made after discharge of the jury without a verdict and before the end of the session. G.S. §15A-1227(a)(4). Failure to make the motion at the close of the State's evidence or after all of the evidence is not a

bar to making the motion at a later time. G.S. §15A-1227(b). The prosecution has no right to appeal from the trial court's order granting defendant's motion to dismiss made after the court had granted a mistrial because of a deadlocked jury. State v. Ausley, 78 N.C. App. 791(1986). Attorneys should consider making a motion for dismissal immediately after the court declares a mistrial due to a deadlocked jury.

Rule 13. Probable-Cause Hearings in District Court (Article 30).

a) Procedure. The prosecution must show that there is probable cause to believe that the offense charged has been committed, and that there is probable cause to believe that the defendant committed it. G.S. 15A-611.

b) Counsel. If a defendant appears without counsel, the court must determine if counsel has been waived. If so, the defendant may proceed without counsel. If not and the defendant is indigent, the court must take appropriate action to secure the defendant's right to counsel. .S. 15A-611(c). If the unrepresentated defendant is not indigent, the court need not continue the hearing to afford such defendant additional time to retain counsel except for extraordinary cause. G.S. 15A-606(e).

c) Disposition. At the conclusion of a probable cause hearing, the court must take one of the following actions:

1)qIf determined that the defendant probably committed the offense charged, or a lesser included offense within the original jurisdiction of the superior court, the defendant must be bound over to superior court. G.S. §15A-612(a)(1).

2) If determined no probable cause exists as to the original charge but probable cause exists with respect to a lesser included offense within the original jurisdiction of the district court, the defendant's case may be set for trial in the district court. G.S. §15A-612(a)(2).

3) If no probable cause is determined as to any charge, the court must dismiss the proceedings. G.S. 15A-612(a)(3).

d) Grand Jury. If he or she disagrees with the decision of the District Court Judge, the District Attorney has the option of submitting a bill of indictment to the grand jury. G.S. 15A-612(b).

e) Review of Bail. If the proceedings are not so dismissed, the court must again review the eligibility of the defendant for pretrial release. G.S. 15A-614.

f) Testing for Sexually Transmitted Diseases. After a finding of probable cause or after indictment for an offense involving specified sexual contact, the victim or his/her qualified representative may request that the defendant be defendant be tested for certain sexually transmitted infections. Upon a finding that there is

probable cause to believe that the alleged sexual contact would pose a significant risk of transmission of specified sexually transmitted infections, the court shall order the defendant to submit to appropriate testing for these infections. G.S. 15A-615.

Rule 14. Grand Jury.

a) Submission of Bill of Indictment.

1)qDefendants Bound Over from District Court. When a defendant has been bound over by a District Court Judge for trial in the superior court upon any charge in the original jurisdiction of such court, the prosecutor, unless he or she dismisses the charge pursuant to Article 50 of Chapter 15A, or proceeds upon a bill of information, must promptly submit a bill of indictment charging the offense to the grand jury for its consideration, and, in any event, not later than 30 days from the date that the case was so bound over from district court. See G.S. 15A-627(a).

2) General. A prosecutor may submit a bill of indictment to the grand jury charging an offense within the original jurisdiction of the superior court. G.S. 15A-627(b). The address of the defendant shall be on the bill of indictment or separately supplied to the clerk.

b) Notice of True Bill of Indictment. Upon the return of a bill of indictment as a true bill the presiding judge, acting through the clerk, must immediately cause notice of the indictment to be mailed or otherwise given to the defendant unless he/or she is represented by counsel of record. The notice must inform the defendant of the time limitations upon their right to discovery under Article 48 and a copy of the indictment must be attached to the notice. G.S. 15A-630.

Rule 15. First Appearance in Superior Court.

a) Appearance.

1) Defendants from Superior Court. If the prosecutor goes directly to the Grand Jury by submitting a bill of indictment, pursuant to G.S. 15A-627(b), charging an offense within the original jurisdiction of the superior court and a true bill is returned, the clerk shall schedule a First Appearance in Superior Court on the charges in the Indictment on the first available administrative calendar.

2) Defendants from District Court. The clerk shall schedule a First Appearance for Superior Court for unrepresented defendants bound over from District Court.

b) Continuance. Upon motion of the defendant, the First Appearance in Superior Court may be continued to a time certain.

c) Waiver. The defendant may not waive such a First Appearance in Superior Court. If represented by counsel at the proceeding, the defendant need not appear personally.

d) Assuring Defendant's Right to Counsel.

1) Determining if Defendant is Represented. The judge must determine if the defendant is represented by counsel--whether retained or assigned.

2) Advising Unrepresented Defendants of Rights. If the defendant is not represented by counsel, the judge must inform the defendant that: (a) He/she has important legal rights which may be waived unless asserted in a timely and proper manner and that counsel may be of assistance to the defendant in advising him/her and acting in his/her behalf; (b) He/she has the right to be represented by counsel and that he/she will be furnished counsel if he/she is indigent; (c) If he/she is convicted and placed on probation, payment of the expense of assigned counsel may be made a condition of probation; and (d) If he/she is acquitted, he/she will have no obligation to pay the expense of such assigned counsel.

3) Application for Assigned Counsel. If the defendant asserts that he/she is indigent and desires counsel, the judge must proceed in accordance with provisions of Article 36 of Chapter 7A.

4) Seeking Retained Counsel. If the defendant is determined not to be indigent and desires counsel or if the defendant wishes to retain counsel, the judge must inform him/her that he/she should obtain counsel promptly and afford him/her the opportunity to so obtain counsel by continuing the First Appearance until a time certain.

5) Waiver. If the defendant desires to waive representation by counsel, the waiver must be in writing in accordance with the provisions of Article 36 of Chapter 7A. Such waivers should not be sought nor obtained until the second or subsequent setting of the First Appearance so as to afford the defendant ample opportunity to consider seeking assigned or retained counsel.

e) Procedure. The judge must: (1) Inform the defendant of the charges against him/her; (2) Determine if the defendant or his/her counsel has been furnished with a copy of the indictment; and (3) Determine or review the defendant's eligibility for pretrial release.

f) Determine Sufficiency of Charge.

1) The judge must examine the indictment and determine whether each charge charges a criminal offense within the original jurisdiction of the superior court.
2) If the judge or clerk determines that the indictment fails to so charge such a criminal offense then the charges must be dismissed.

g) Clerk May Conduct First Appearance. The clerk is authorized to conduct such a First Appearance in Superior Court in the same manner as a Superior Court Judge.

Rule 16. Discovery Between the State and Defense.

a) Policy. Discovery procedures prior to trial should: (1) promote a fair and expeditious resolution of the charges; (2) provide the defendant with sufficient information to make an informed plea; (3) permit adequate preparation for trial and minimize surprise at trial; (4) reduce interruptions and complications during trial and avoid unnecessary and repetitious trials; (5) minimize the procedural and substantive inequities among similarly situated defendants; (6) effect economies in time, money, judicial resources, and professional skills by minimizing paperwork, avoiding repetitious assertions of issues, and reducing the number of hearings; and (7) minimize the burden upon victims and witnesses. See Standard 11-1.1, ABA Standards for Criminal Justice: Discovery and Trial by Jury(3rd ed. 1996).

b) General. Except as otherwise provided in these local rules or applicable law, discovery shall be governed by Article 48 of Chapter 15A of the General Statutes. Article 48 applies to cases--felonies and misdemeanors--within the original jurisdiction of the superior court. G.S. §15A-901.

c) Revised Rules of Professional Conduct(herein"Rules of Professional Conduct").

1) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. See Rule 3.1.

2) A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. See Rule 3.2.

3) A lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. See Rule 3.4(a).

4) A lawyer shall not make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party. See Rule 3.4(d).

5) A lawyer shall not request that a person not a client to refrain from voluntarily giving relevant information to another party. See Rule 3.4(f).

6) A prosecutor shall make timely disclosure to the defense of all evidence or information that tends to negate the guilt of the accused or mitigates the offense, and disclose to the defense and to the tribunal all unprivileged mitigating information relevant to sentencing. See Rule 3.8(d).

d) Defense Counsel.

1) Seeking Discovery. Within two weeks of appointment or appearance an attorney shall file and serve a written request that the prosecution voluntarily provide all discovery that the defense is entitled to under all applicable statutes, case law, and rules of court.

2) Responding to Discovery. The defendant or defense counsel shall promptly comply with any obligation to provide discovery to the prosecution as required by applicable law. See G.S. § 15A-905.

e) Prosecution.

1) Responding to Discovery. Upon receipt of such a request for voluntary discovery, the prosecution shall have 30 days to provide the requested discovery. Prior to responding to the request, the prosecution shall confer with others acting on the state's behalf in the case in order to learn of discoverable information or material, including law enforcement officers. See Kyles v. Whitley, 514 U.S. 419(1995) (The individual prosecutor has a duty to learn of any favorable evidence known to others acting on the State's behalf in the case, including the police.)

2) Seeking Discovery. When appropriate, the prosecution may seek discovery from the defendant pursuant to applicable law.

f) Law Enforcement. As soon as feasible law enforcement shall provide to the prosecution all information and material that is favorable to the defendant. Law enforcement shall likewise reduce to writing and so provide all statements attributed to the defendant.

g) Certificates of Disclosure.

1) Prosecution. Upon compliance with the defense's request for voluntary discovery, the prosecution shall file and serve a certificate signed by a prosecutor attesting that he/she personally complied with these rules in furnishing to the defendant all information and materials that should be so provided pursuant to all applicable statutes, case law, and rules of court. The certificate shall further acknowledge the prosecutor's continuing duty to supplement his/her prior disclosures.

2) Defense. When the defense has an obligation to provide discovery to the prosecution, upon compliance with such obligation defense counsel, or the defendant if unrepresented, shall file and serve a certificate signed by the person satisfying the obligation attesting that he/she personally complied with the obligation by furnishing to the prosecution all information and materials that should be so provided. The certificate shall further acknowledge any continuing duty to supplement his/her prior disclosures.

h) Continuing Duty of Disclosure. The prosecution and law enforcement are under a continuing duty to disclose as soon as feasible all appropriate information and

materials learned or obtained by either. When appropriate, the defense is likewise under a continuing duty to disclose.

i) Orders of Discovery .

1) Defense. After filing and serving a request for voluntary discovery, upon a motion praying for such an order, the defense is entitled to an Order of Discovery requiring the prosecution to (i) permit the defense to view, examine, photograph and/or copy all physical evidence in the possession, custody or control of the State, including the prosecution and all law enforcement agencies involved in the investigation of the charges against the defendant; (ii) provide to the defense all information and materials discoverable pursuant to all applicable law, including statutes, caselaw, ethical provisions, and rules; and (iii) acknowledge the prosecution's continuing duty to provide such discovery.

2) Prosecution. Under appropriate circumstances, the prosecution may obtain an Order of Discovery as authorized by law. See G.S. §15A-905.

j) Open File Policy. The defense may not rely on so-called "open file" policies of the prosecution. A defendant is not entitled to discovery of materials or information in the State's possession unless the defense moves for an order of discovery. State v. Reeves, 343 N.C. 111,113(1996); State v. Abbott, 320 N.C. 475, 482(1987).

Rule 17. Discovery from a Non-party.

a) Possession, custody or control. If the material is not within the "possession, custody, or control" of the prosecution, the defense may not obtain access pursuant to G.S. §15A-903. State v. Crews, 296 N.C. 607,616(1979). Within the "possession, custody, or control" of the State, as used in the statute, means within the possession, custody or control of the prosecutor or those working in conjunction with him/her and his/her office. Id.

b) Subpoena Duces Tecum. A subpoena duces tecum is the process whereby the court requires that specified materials be brought before the court. Vaughan v. Broadfoot, 267 N.C. 691(1966). The subpoena must specify, with fair and feasible precision, the particular materials sought. Id.

c) Motions to Quash. A subpoena duces tecum may be challenged through a motion to quash the subpoena. When the propriety of a subpoena duces tecum is challenged, the decision thereon is in the discretion of the court. Id.

d) Returnable Pretrial or at Trial. The subpoena duces tecum may be returnable before a pretrial judge, Love v. Johnson, 57 F.3d 1305(4th Cir. 1995) or before the trial judge, State v. Kelly, 118 N.C. App. 589(1995).

e) In Camera Review. Under appropriate circumstances, the court should review the subpoenaed materials in camera in order to determine the propriety of disclosure to the party seeking discovery. Defendant need only make a minimal plausible showing that the material might contain evidence material and favorable to his/her defense. See Pennsylvania v. Ritchie, 480 U.S. 39(1987); Love v. Johnson, supra; State v. Hardy, 293 N.C. 105(1977); State v. Jones, 85 N.C. App. 56(1987). Any materials not so disclosed should be sealed for appellate review. Id.

Rule 18. Pretrial Motions.

a) Policy. Motions ordinarily should be heard and resolved prior to calling cases for trial so as not to delay such trials. Under the prior practice of not dealing with pending motions until a case was called for trial such trials were often delayed and prolonged even though trial sessions of court were routinely adjourned early and visiting judges sent home without hearing any such motions.

b) Presence of Particular Prosecutor. When the defense notices motions for hearing, the District Attorney shall have a prosecutor present to represent the state at the hearing. The hearing should not be continued due to the absence of a particular prosecutor, including a prosecutor to whom the case has been assigned for trial. This is especially so for motions to reduce bail, discovery motions, and motions not requiring fact witnesses.

c) Procedure.

1) Usual. Parties are encouraged to resolve matters of controversy by agreements reduced to writing in the form of orders entered by the court. After a good faith effort to so resolve such matters any party may file an appropriate motion and notice the matter for hearing on the next administrative calendar. If received in time to do so the clerk shall place such motions on the administrative calendar. If not so timely received the motions should be brought to the attention of the presiding judge by the clerk or the movant. In either case, the clerk shall carry the appropriate files for all such motions, timely and otherwise, to the courtroom for calendar call. After calling the administrative calendar, the presiding judge should consider such motions and make appropriate rulings, including postponing hearings to a specified time or reserving appropriate motions for the trial judge. See G.S. 15A-952(a) &(f).

2) Emergency. Under emergency or unusual conditions, the movant may approach a resident or presiding judge, ex parte, for the limited purpose of obtaining an order scheduling a hearing on the motion. See State v. Robbie Dexter Locklear, 349 N.C. 118, 135(1998) (A “defendant does not have a right to be present when the State makes a routine communication with the court...concerning a scheduling matter.”)

3) General. Motions practice shall otherwise be governed by Article 52 of Chapter 15A of the General Statutes.

Rule 19. Preparation of Orders.

a) Policy. The court should rule on every pretrial motion and enter a typewritten order signed by the presiding judge. The court should not have to resort to the record in order to determine the ruling of an earlier presiding judge.

b) Procedure. As soon as possible after the conclusion of the hearing on a motion, the presiding judge should designate an attorney or party to prepare a proposed order for the judge's consideration. Prior to submission to the judge the designated drafter shall submit the proposed order to the opposing counsel or party giving them an opportunity to comment upon or object as to form. If unable to agree after a good faith effort the objecting counsel or party shall submit an alternative proposed order.

c) Delinquent Orders. The proposed order of the designated counsel or party shall be considered delinquent if not received by the judge within 15 business days after such designation unless otherwise directed by such judge. An alternative proposed order shall likewise be considered untimely and need not be considered. The drafter of a delinquent order shall be subject to sanction as determined by such judge.

d) Court Reporters. Ordinarily the presiding judge should not order or allow the court reporter to prepare a transcript of the hearing solely to assist the drafter in preparing such proposed orders. Court reporters have much more important and pressing matters requiring their attention. Counsel and parties are advised to take notes during the hearing or to record the proceedings electronically rather than depending on the court reporter.

Rule 20. Speedy Trial

a) Policy. The court and the public is concerned when persons accused of crimes who are entitled to the presumption of innocence are unable to get their cases tried within a reasonable time. This is especially so when the defendants are unable to post bail and, therefore, languish in jail long periods of time, often for several years, even though criminal trial sessions of court routinely break-down and judges are sent home early because there is nothing for them to do.

b) Procedure. Defendants who want their cases to be calendared for trial, placed on a trial list, and tried should move the court seeking such relief. After evaluating all the circumstances presented at a hearing on the motion, the court should enter an appropriate order. The court may also act on its own motion and schedule a case for trial. See Simeon v. Hardin, 339 N.C. 358(1994).

Rule 21. In Chambers Jurisdiction.

a) Authority. Whether or not assigned to this judicial district for a six-month term or a session a resident superior court judge of this district possesses in chambers jurisdiction to consider non-jury matters at any time regardless whether the county courthouse is open for conducting ordinary business and regardless of the presence or absence of visiting judges presiding in the district. N.C. Const. art. IV §9(2); G.S. 7A-47.1.

b) Procedure. An attorney may approach such a resident judge, ex parte, in person or by telephone, for limited purpose of scheduling a hearing on any such non-jury matters. See State v. Robbie Dexter Locklear, 349 N.C. 118, 135(1998)(A "defendant does not have a right to be present when the State makes a routine communication with the court...concerning a scheduling matter.") The resident judge, in his or her discretion, may agree to hear any such non-jury matter and schedule a hearing thereon at such time and place deemed most convenient. The resident judge shall direct the requesting attorney to give such notice and service of such notice deemed adequate and appropriate under the circumstances.

c) Conference Telephone Calls. The resident judge, in his or her discretion, may conduct such hearings by conference telephone call. Such conference telephone calls shall be arranged by the requesting party or counsel.

Rule 22. Ex Parte Communication with the Court.

a) General. A lawyer shall not communicate ex parte with a judge about the merits of a cause, except as specifically authorized by law, including a local rule of court. See Rule 3.5(a)(3), Rules of Professional Conduct; RPC 237.

b) Prosecutors. A prosecutor may obtain an ex parte order for a person or organization to release records as a part of a criminal investigation before any formal charges have been filed. See In re Superior Court Order, 315 N.C. 378(1986). Once formal criminal charges have been brought, however, a prosecutor should not approach the court ex parte. See State v. Rhome, 120 N.C. App. 278(1995).

c) Defendants. An indigent defendant is entitled to an ex parte hearing on a request for a psychologist or psychiatrist. State v. Bates, 333 N.C. 523(1993). It is within the court's discretion to grant an ex parte hearing on such a defendant's request for other types of experts. State v. Phipps, 331 N.C. 427(1992).

Rule 23. Exceptional Cases.

a) Motions. Upon motion of any party or upon the court's own motion, the Senior Resident Judge or presiding judge may recommend to the Chief Justice that a case or cases be designated as exceptional.

b) Procedure. The procedure for such motions shall be as prescribed by Rule 2.1 of the General Rules of Practice.

Rule 24. Arraignments.

a) Policy. A defendant should not be arraigned until the case is ready for trial in all respects. After the completion of discovery and the conclusion of motions practice the parties are in the best position to evaluate the strengths and weaknesses of their cases and to make informed and intelligent decisions regarding plea negotiations, entry of an appropriate plea, and proceeding to trial. See Rule 4.5, Case Management System, 12th Judicial District (24 March 1995)(Arraignment occurs at the "Third Setting.")

b) Requests for Arraignment. A defendant will be calendared for arraignment if the defendant files a written request with the clerk not later than 21 days after service of the bill of indictment. If the bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request should be filed not later than 21 days from the date of the return of the indictment as a true bill. G.S. 15A-941(d). The court, in its discretion, may waive these time limitations.

c) Calendar. The District Attorney shall prepare and submit to the Clerk a list of those defendants requesting arraignment for inclusion in the administrative calendar each month. See G.S. 15A-943(a). No such case shall be so listed or so calendared for arraignment until the District Attorney files the required certificate of disclosure that the accused has been provided with all appropriate discovery materials. See Rule 4.3, Id.("Confirmation of filing of Disclosure Certificate " at the "First Setting.") No such case shall be placed on a trial calendar until the accused has been arraigned pursuant to these rules. The administrative calendar shall be prepared by the Clerk and shall be called by the judge assigned to Courtroom 2A.

d) Procedure.

1) Local. Prior to arraignment the prosecution and defense may engage in plea negotiations. The judge may participate in further such discussions or proceed with arraignment upon a determination that the case is ready for trial. In order to make such a determination the judge may hear any pending pretrial motions or take any other appropriate action. See Rule 4.5, Id.

2) General. Arraignments shall otherwise be governed by Article 51 of Chapter 15A of the General Statutes.

e) Right to Counsel.

1) Request for Arraignment. If the defendant appears at the arraignment without counsel, the court must inform the defendant of his or her right to counsel, must accord the defendant the opportunity to exercise that right, and must take any action necessary to effectuate the right, including continuing the arraignment in order to afford the defendant ample opportunity to retain counsel. G.S. 15A-942.

2) No Request for Arraignment. If the defendant does not file a written request for arraignment, the court--in addition to entering a not guilty plea on behalf of the defendant--shall also verify that the defendant is aware of the right to counsel, that the defendant has been given an opportunity to exercise that right, and must take any action necessary to effectuate that right on behalf of the defendant. Id. If not represented by counsel, this shall be accomplished by the clerk scheduling and noticing the defendant for a First Appearance in Superior Court.

f) No Trial the Week of Arraignment. When a defendant pleads not guilty at an arraignment, he or she shall not be tried without his or her consent during the week in which he or she was arraigned. See G.S. §15A-943(b).

g) Waiver of Arraignment. A defendant who is represented by counsel and who wishes to plead not guilty may waive arraignment prior to the day for which arraignment is calendared by filing a written plea, signed by the defendant and his or her counsel. G.S. 15A-945.

Rule 25. Pleas.

a) General. Pleas and the procedures upon such pleas shall be as provided herein and in Article 57 and Article 58 of Chapter 15A of the General Statutes.

b) Communication of Plea Offers to Defendants. Upon receipt of a plea offer from the prosecution, defense counsel shall communicate the plea offer, without unnecessary delay, to the defendant. The final decision to accept or reject such a plea offer shall be made by the defendant. The decision of the defendant to reject such a plea offer, against the advice of counsel, shall not be the basis of a motion by defense counsel to withdraw from representation of the defendant.

c) Disclosure of Material Terms of Plea Agreement. The prosecutor and the defense attorney must disclose on the Transcript of Plea all material terms of a negotiated plea. The agreement by the prosecution to proceed on a lesser included offense; to dismiss any pending charges; to not oppose or argue against a particular sentence; or to leave sentencing in the discretion of the court, is deemed material as a matter of law. See RPC 152; see also 92 DHC 18 (Assistant district attorney disciplined for failure to reveal to the court certain aspects of a plea agreement.)

d) Victims. The prosecutor shall state on the record whether or not the victims have been afforded an opportunity to be present; they consent to the terms of any plea agreement; and the provisions of Local Rule 38 regarding victims rights have been complied with.

e) Law Enforcement. The prosecution shall state on the record whether or not representatives of the appropriate law enforcement agency have been afforded an opportunity to be present; and whether or not such representatives approve of the terms of any plea agreement.

Rule 26. Administrative Calendar and Sessions.

a) Policy. The Administrative Calendar is for general non-jury matters, including motions and arraignments. Its function is to facilitate motions practice and to put cases in a trial posture as soon as possible. There shall be an administrative calendar and session for the first criminal priority mixed session each month.

b) Preparation. The Administrative Calendar shall be prepared by the clerk.

c) Motions. The Administrative Calendar should contain motions filed by any party--the prosecution or the defense--including motions relating to pretrial release, venue, special venires, dismissal, pleadings, discovery, suppression, and determining whether a case is a capital or non-capital.

d) Hearings. The Administrative Calendar should also contain cases scheduled by the court for hearing, including hearings on motions for appropriate relief and pretrial conferences in capital cases.

e) Call of Administrative Calendar. The Administrative Calendar should be called by the judge assigned to Courtroom 2A. All calendar matters relating to the cases listed thereon should be addressed to such judge. All of the cases shall be assigned by such judge to a particular presiding judge, including himself or herself.

f) Attendance of Attorneys. All involved attorneys--prosecutors and defense attorneys--shall be present for the call of the administrative calendar unless they have been excused by the court from such attendance.

Rule 27. Trial Calendar.

a) Sessions of Court. All regularly-scheduled sessions of superior court in Robeson county are mixed with either criminal or civil cases being designated as having priority.

b) Format. There shall be only one criminal Trial Calendar for each mixed session of court where criminal cases are designated as having priority. See G.S. §7A-49.3(The District Attorney "shall file ...a calendar of the cases...for trial at that session."); see also G.S. §7A-49.3(a1)(The District Attorney...shall announce...the order...for trial the cases remaining on the calendar.") This calendar shall be separate, distinct, and not attached to a trial calendar for any other session. An administrative calendar, however, may be attached to a trial calendar for the same session. Trial calendars prepared for this judicial district shall no longer contain language to the effect as that within quotation marks as follows:

1) "All cases on this calendar, in which the defendant is in jail, are subject to be called at anytime without regards to the arrangement of the Calendar." All cases must be called according to the Trial List or as allowed by the court. Any other procedure violates applicable law. The fact that the defendant is in jail may be considered in preparing the Trial Calendar and the Trial List. In fact, at mixed sessions, criminal cases in which the defendant is in jail must have absolute priority. See Rule 3, General Rules of Practice.

2) "All cases on this calendar are subject to be transferred from one courtroom to another at the direction of the district attorney's office." This procedure violates applicable law. All such transfers shall take place pursuant to the terms of these rules.

3)q"All cases not reached during the session for which the cases were calendared shall be continued over to the next session." Cases shall not be so continued. Unless otherwise agreed by the parties or ordered by the court, any cases not reached during a session must be re-calendared for a subsequent session that begins no sooner than two weeks after the week that such case was calendared for trial. Each session of court is separate and distinct.

c) Prohibited Calendaring Practices. In preparing trial calendars, the prosecution shall observe the following rules:

1) Double Calendering. If there are consecutive sessions of court requiring the preparation of criminal trial calendars, such as a regular session followed by a special session, the prosecution shall not schedule any case for trial on more than one such calendar. If the prosecution violates this prohibition then the defense may select which session of court during which the case shall be tried and the case shall automatically be continued from the other session. The selection shall be accomplished by filing and serving a notice upon the prosecution promptly upon receiving the trial calendar that creates a violation

of this rule. If the defense does not so select then both calendarings shall be considered valid.

2) Excessive Trials for Attorneys. The prosecution shall not calendar for trial at any session of court more than 3 defendants represented by the same attorney without the prior express written consent of defense counsel and each individual defendant so affected. If the prosecution violates this prohibition then the defense may select for trial the cases of up to any 3 of the defendants and the cases of the other defendants shall be continued. The selection shall be accomplished by filing and serving a notice upon the prosecution promptly upon receiving the trial calendar. The defendants not so selected may be excused by the defense from court for the session and the defense need not prepare these cases for trial. If the defense does not so select any cases then all of the cases are so continued. See Simeon v. Hardin, 339 N.C. 358, 378(1994)(The District Attorney may not place a "large number" of an attorney's cases on the trial calendar thereby "impairing" the defense's ability to prepare for trial.)

3) Joinder of Offenses and Defendants. If there is a pending motion for joinder, all cases and defendants that could be affected by the motion shall be calendared for the same session. If the prosecution violates this rule, the motion to join should be denied unless the motion is unopposed.

d) Preparation. It is the duty of the District Attorney to prepare the "trial dockets." G.S. 7A-61. The trial calendar for any session must be filed with the Clerk of Superior Court at least one week before the beginning of the session. G. S. 7A-49.3(a). Failure to timely file such a calendar may constitute good cause for a defense motion to continue the trial of any case listed thereon.

e) Supplementation. No case may be added to the trial calendar without the approval of the court. See G.S. 7A-49.3(c). After disposing of the cases on the Trial List, the court should freely allow cases to be added to the non-jury calendar if both parties consent, especially if the defendant is in custody.

f) Call of Trial Calendar. The Trial Calendar should be called by the prosecutor assigned to Courtroom 2A. Except as otherwise provided, all calendar matters should be addressed to the presiding judge therein. Motions for a continuance may be made during calendar call. Requests to place clients and witnesses on standby may also be made at this time. All cases will be assigned by such judge to a particular presiding judge, including himself or herself. The trial calendar should only be called once. After calling the calendar and approving the Trial List, the court should proceed to dispose of the cases in the order listed on the Trial List.

g) Attendance of Attorneys.

1) Trial Calendar. All involved attorneys--prosecutors and defense attorneys--are expected to be present for the calling of the Trial Calendar unless they have been excused from such attendance by the court.

2) Notice Prior to Calling Case for Trial. Once the Trial Calendar and the Trial List have been reviewed and approved by the court the prosecutors and defense attorneys shall be excused unless their presence is immediately required by the court. It shall be the responsibility of the prosecution, acting through the administrative staff or prosecutors, to keep the defense attorneys, with cases on the Trial List, advised as to the status of the proceedings--trial or otherwise--listed on such Trial List. The notice to the defense attorneys should be appropriate to the circumstances, including the location of the attorney's case on the Trial List. Failure of the prosecution to provide adequate notice, under the circumstances, shall entitle the defense to a postponement or continuance of the trial.

h) Trial Lists. The prosecution shall prepare the Initial Trial List(s) which shall be posted and served as provided below. After calling the Trial Calendar and disposing of any pleas in the cases on the Initial Trial List(s), the prosecution shall announce to the judge presiding in Courtroom 2A the order in which the prosecutors intend to call for trial the cases listed on the Trial Calendar for the session. Only cases that are, in fact, for trial shall be placed on a Trial List. The Trial List must be approved by such judge. Any deviations from the Trial List must be approved by such judge.

1) Notice. No Class A-F felony shall be called for trial unless and until the defense has been afforded notice according to these rules providing for at least three (3) full business days to prepare for trial. For Class G-I felonies only two (2) such days required notice shall be necessary. For misdemeanors only one (1) such days required notice shall be necessary. The prosecution shall strictly comply with the notice requirements of these rules, including posting and service, before a case may be called for trial.

2) Posting of Initial Trial List(s). The Initial Trial List(s) shall be posted on the Right Door (looking towards the courtroom from the public hallway) of Courtroom 2A prior to 5:00 p.m. the day before the beginning of the required notice period prior to calendar call.

3) Service of Initial Trial List(s). The Initial Trial List(s) shall be served on the Public Defender and the first five (5) private defense attorneys whose names appear thereon prior to 5:00 p.m. the day before the beginning of the required notice period prior to calendar call. Service may be accomplished by personal delivery to the attorney or placing a copy of the Initial Trial List(s) in the attorney's courthouse mail box for those attorneys maintaining an office in the City of Lumberton. Service may be accomplished by personal delivery to the attorney or facsimile transmission for those attorneys maintaining an office outside the City of Lumberton.

4) Proof of Service. Before approval by the presiding judge, the prosecution shall file the Trial Lists with the court together with a Certificate of Service bearing the names and signatures of the persons who posted and served same with the time, date and manner of posting and service. The Trial Lists and Certificate of Service so filed may be made a part of the clerk's minutes. If any attorney contests the

Certificate of Service then the court should summons the individuals listed thereon to hear their testimony.

5) Posting of Trial List. After approval by the presiding judge, the prosecution shall immediately post the Trial List on the same door on which was posted the Initial Trial List(s). The prosecution shall also so post the Trial List on the outside surface of the right door (looking towards the courtroom from the private hallway) of Courtroom 2A.

Rule 28. Calling and Failing Defendants.

a) Administrative Calendar. Unless the defendant is required to be present by court order or applicable law, the defendant is not required to be present if s/he is represented by counsel. If required to be present, the defendant may be called and failed unless the absence is excused by the court.

b) Trial Calendar. Unless excused by the court, the defendant is required to be present for the calling of the Trial Calendar. An absent defendant may be called and failed unless such absence is excused by the court. The Trial Calendar should only be called once.

c) Trial List. If a defendant is listed on a Trial List, published timely pursuant to these rules, upon request of the prosecutor, an absent defendant may be called and failed unless such absence is excused by the court.

Rule 29. Judicial Review of Trial Calendar and Trial List.

a) Policy. It is the responsibility of the court to ensure the right of each accused to a fair trial. In order to ensure and protect this right the court has the duty to review the Trial Calendar and Trial List prepared by the District Attorney to prevent abuse.

b) Procedure. The judge presiding in Courtroom 2A shall conduct such a review of the Trial Calendar and the Trial List. In conducting the review, the court shall do the following:

1) Local Rules. Enforce these rules against all parties.

2) Prohibited Prosecution Tactics. Not allow the prosecution to engage in any prohibited tactics.

3) Calendar Integrity. Determine the quality of the cases calendared so more cases are not calendared than can be disposed of during the session. See Caseflow Management Plan, p.3.

4) Trial. Once a case is calendared, proceed to trial unless reason requires otherwise. Id.

5) Defendants in Custody. Priority should be accorded to those cases where the defendant is in custody. Rule 3, General Rules of Practice; Rule 28(b), Local Rules of Bail and Pretrial Release.

6) Review of Bail. If the case of a defendant in custody is not tried, the conditions of pretrial release should be reviewed. Rule 6(g), Local Rules of Bail and Pretrial Release.

7) Convenience of Parties and Witnesses. Not require parties and witnesses to unnecessarily sit in court. Such persons should be placed on telephone standby, overnight standby, or released.

8) Cases Not on Trial List. Cases not listed on the Trial List shall be continued and the parties and witnesses released for the session unless otherwise requested by the defense.

9) Avoiding Certain Defense Attorneys. The Trial List should fairly include the cases of all attorneys. The prosecutor should not be allowed to calendar cases for trial and then discriminate against certain attorneys by not placing their cases on the Trial List.

c) List of Prisoners. The clerk shall provide to each judge presiding over a mixed or criminal session, at the beginning of the session, a report listing the name, reason for confinement, period of confinement, charge or charges, and the amount of bail and conditions of release of each person confined in the Robeson County Detention Center. G.S. 7A-109.1. The administrator of the Detention Center shall furnish to the clerk a report listing such information as necessary to enable the clerk to prepare the required report. G.S. 153A-225.1. The report shall be used by the judge presiding in Courtroom 2A to conduct the review required by this rule.

Rule 30. LOCAL RULE ON CONTINUANCES IN SUPERIOR COURT

a) Appropriate Judicial Official.

1) Prior to Opening of Court. Prior to the opening of court for the session in which the case is calendared for motion or trial, all motions for continuance--whether by the prosecution or the defense--shall be directed to the Senior Resident Judge. If the Senior Resident Judge is unavailable, such motions may be directed to the Resident Judge. If the Resident Judge is unavailable, such motions may be directed to the Trial Court Coordinator.

2) After the Opening of Court. Following the opening of court for such session, such motions shall be directed to the presiding judge calling the calendar on which the case appears.

b) Form of Motion. All motions for a continuance shall be made on state form AOC-CR-410. The moving attorney shall complete the "Other Factors" section with the exception of the block entitled "Date Motion Received. Motions not in proper form may be denied or not considered.

c) Notification of Motion. A copy of the motion must be served on all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Service of the motion may be by US mail, facsimile transmission, hand delivery, or placing same in an attorney mail box maintained in the county courthouse.

d) Objections. Any attorney or party--whether the prosecution or the defense-- objecting to the motion for a continuance shall immediately notify the moving party of the objection and the grounds for such objection. The objecting attorney or party shall then likewise immediately notify the Trial Court Coordinator. In the absence of the Trial Court Coordinator, the appropriate judicial official shall be so notified. Objections not so raised are deemed waived.

e) Presentation of Motion to Appropriate Judicial Official. Prior to presenting the motion to an appropriate judicial official the movant or counsel--whether the prosecution or the defense--if feasible shall attempt to get the consent of the opposing party or counsel. Upon such presentation, the movant or counsel shall advise such judicial official of any objections to the motion.

f) Evaluation of Motions. When compelling reasons are presented which would affect the fundamental fairness of the trial or when clearly in the interests of justice, or for good cause shown, a continuance may be granted in the exercise of judicial discretion.

g) Factors to Consider. The appropriate judicial official shall consider the following factors when deciding whether to grant or deny the motion: (1) The age of the case; (2) The pre-trial detention status of the defendant; (3) The status of the trial or motion calendar for the session; (4) The order in which the case is designated for trial, including any priority designation; (5) The number of previous continuances; (6) The number of times the case has been designated for trial but not reached; (7) The extent to which counsel or the party had input into scheduling the case for trial or the motion for hearing; (8) Due diligence of counsel or the party in filing the motion for continuance; (9) Whether the reason for the motion is a short-lived event which could be resolved prior to the scheduled trial date; (10) The length of the requested continuance; (11) The position of the opposing party or counsel; (12) Whether the defendant consents to his or her counsel's motion; (13) Whether the motion has been considered on the same grounds by another judicial official; (14) The present or future inconvenience or unavailability of witnesses or parties; (15) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice, G.S. 15A-952(g); (16) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation, Id.; (17) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-

being of the child, Id. (18) When a party, witness or counsel has an obligation of service to the State of North Carolina, including service as a member of the General Assembly, Id.; and (19) Any other factor that promotes the interests of justice.

h) Factors not to Consider. The appropriate judicial official shall not consider the following factors when deciding whether to grant or deny the motion: (1) The first time that the case has been scheduled for trial; (2) Potentially conflicting scheduling of other trials in other courts; and (3) Whether counsel of record has received payment for his or her services.

Rule 31. Trials.

a) General. Trials shall be conducted as provided in Articles 71, 72&73 of Chapter 15A of the General Statutes.

b) Discovery.

1) Inherent Authority of Court. The trial court possesses inherent authority to compel discovery in certain instances in the interest of justice when no statute has placed a limitation on the trial court's authority. State v. Warren, 347 N.C. 309,325(1997). ven when statutes limit the court's authority to compel pretrial discovery, the trial court may retain inherent authority to compel discovery of the same material at a later stage of the proceedings. Id.

2) Open File Discovery. Even if the prosecution has an open file discovery policy, a defendant is not entitled to discovery of materials--including oral statements of the defendant--in the possession of the prosecution unless the defense makes a motion to compel discovery and obtains an order granting same. State v. Reeves, 343 N.C. 111,113(1996); State v. Abbott, 320 N.C. 475,482(1987).

3)qIn Camera Review for Brady Material. Upon a specific request by the defense for disclosure of relevant evidence in the possession of the prosecution favorable to the defendant, pursuant to Brady v. Maryland, 373 U.S. 83,87(1963), the trial judge must, at a minimum, order an in camera inspection and make appropriate findings of fact. If the judge rules against the defense, the material withheld should be sealed and placed in the record for appellate review. State v. Hardy, 293 N.C. 105,127-128(1977); State v. Waters, 308 N.C. 348, 351-52(1983); see also Pennsylvania v. Ritchie, 480 U.S. 39(1987) (The duty on the part of the prosecution to disclose such exculpatory information is ongoing as the evidence may become material as the trial progresses.) A refusal by the trial judge to conduct such an in camera review may entitle the defendant to a federal writ of habeas corpus vacating the conviction. ee Love v. Johnson, 57 F3d. 1305 (4th Cir. 1995).

4) Capital Cases. In the case of a defendant who has been convicted of a capital offense and sentenced to death, the prosecution must disclose to defense counsel preparing a motion for appropriate relief the "complete files of all law

enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant." (emphasis supplied). G.S. 15A-1415(f); State v. Bates, 348 N.C. 29(1998). Failure of the prosecutor to disclose to defense counsel prior to trial information that he/she was required to disclose pursuant to applicable law can have serious consequences for the administration of justice and the individual prosecutor. The defendant may be entitled to a new trial, pursuant to G.S. 15A-1417(a)(1), which is expensive and burdensome. The offending prosecutor is subject to discipline by the court and the State Bar. See Rules 3.4(a), 3.4.(d) and 3.8(d), Rules of Professional Conduct. Given the gravity of the issues, perhaps defense counsel--in light of Bates--should request greater discovery rights at trial or that such files be submitted to the trial court for appropriate review and sealed for appellate review or for purposes of a later motion for appropriate relief. See Henderson Hill, Recent Developments in Capital Post-Conviction Litigation (Paper presented to the North Carolina Conference of Superior Court Judges on 19 June 1998); State v. Warren, supra; State v. Hardy, supra; Pennsylvania v. Ritchie, supra; Love v. Johnson, supra.

Rule 32. Capital Punishment.

a) Pretrial Conferences. No later than 10 days after the superior court obtains jurisdiction in a case in which the defendant stands charged with a crime punishable by death, the District Attorney shall apply to the court for an order directing the prosecution and defense counsel to appear before the court within 45 days thereafter for a pretrial conference. This rule is mandatory. See State v. Rorie, 348 N.C. 266(1998).

1) Presence of the Defendant. Although the defendant does not have the right to be present, State v. Chapman, 342 N.C. 330(1995), his/her presence is required by this rule.

2) Continuances. Upon the request of either party the court may, for good cause shown, continue the pretrial conference for a reasonable time.

3) Procedure. At the pretrial conference, the court and the parties shall consider:

i) simplification and formulation of the issues, including but not limited to, the nature of the charges against the defendant, and the existence of evidence of aggravating factors.

ii) timely appointment of assistant counsel when the prosecution is seeking the death penalty. Such assistant counsel may, however, be appointed prior to the pretrial conference.

iii) such other matters as may aid in the disposition of the action, including the regulation of discovery between the parties.

4) Order on Conference. The court shall enter an order that recites that the pretrial conference took place, and any other actions taken at the conference.

i) Arraignment. The order entered on any such pretrial conference shall include a provision requiring that the defendant be arraigned pursuant to the Local Rules of Criminal Procedure.

ii) In Camera Review. The order entered on any such pretrial conference shall include the following provision:

> The prosecutor shall submit to the trial judge for in camera review the complete files of all prosecutorial agencies involved in the prosecution of the defendant. See State v. Warren, 347 N.C. 309, 325(1997); State v. Hardy, 293 N.C. 105, 127-28(1977); State v. Kelly, 118 N.C. App. 589(1995); see also G.S. 15A-1415(f). (The policy considerations post-trial also apply at trial.) The trial judge should so review the files and disclose to defense counsel all information or materials that should be so disclosed pursuant to applicable law. Any portions of the files not so disclosed should be sealed for appellate review.

b) Arraignments. Defense counsel shall request an arraignment in every case in which the defendant stands charged with a crime punishable by death.

c) Sentencing. Proceedings to determine a sentence of death or life imprisonment for capital felonies shall be conducted as provided in Article 100 of Chapter 15A of the General Statutes.

Rule 33. Sentencing in Non-capital Cases.

a) General. The sentencing of defendants in non-capital cases shall be as provided in Articles 78,80,81,81A,82, 83&84 of Chapter 15A of the General Statutes.

b) Local.

1) Suggested Special Conditions of Probation for Incorporation into Appropriate Judgments Suspending Sentences.

i) The Defendant, within thirty(30) days from the date hereof, shall forward to each victim of his or her crimes a written apology for the subject criminal actions of the Defendant.

ii) The Defendant within thirty(30) days from the date hereof, pursuant to rule 68.1 of the North Carolina Rules of Civil Procedure, shall file a Confession of Judgment acknowledging liability to each victim in the amount of the restitution's, as determined by the court, due that victim. An approved form is attached hereto and incorporated herein by reference.

iii) The Defendant, in fulfilling his or her community service obligation, shall spend at least ___hours removing litter from the public roads, streets or highways of Robeson County. In order to satisfy this obligation the Defendant may be assigned to an organization or person

participating in the Adopt-A-Highway Program of the North Carolina Department of Transportation.

iv) The Defendant, within a reasonable time to be determined by his or her Probation Officer, shall enroll with the Adopt-A-Highway Program of the North Carolina Department of Transportation by adopting a specified portion of a public highway. Thereafter the Defendant shall fulfill all obligations regarding the removal of litter from such public highway.

v) The Defendant shall be available to speak to students attending the public schools and to community or civic organizations about the adverse consequences of criminal actions.

vi) The Defendant, within thirty(30) days from the date hereof, shall make contact with a senior citizen (person 65 years of age or older) making himself or herself available to assist the senior citizen with various tasks that have become more difficult to accomplish by reason of age or infirmity. Any such senior citizen may be a relative of the Defendant. Thereafter the Defendant shall assist the senior citizen for at least ___ hours per_____. The Defendant shall file a written report monthly with his or her Probation Officer containing the name and address of the senior citizen; the nature of the assistance rendered; and the dates and times the assistance was rendered.

Rule 34. Appropriate Relief.

a) General. Motions for appropriate relief and other post-trial relief shall be as provided in Article 89 of Chapter 15A of the General Statutes.

b) Procedure. Upon receipt of a motion, the clerk shall promptly bring same to the attention of a presiding or resident judge. In noncapital cases, the judge shall enter an order whether the defendant should be allowed to proceed with payment of costs, with respect to appointment of counsel, and directing the State, if necessary, to file an answer. In capital cases, the order shall direct the State to file an answer within 60 days of the date of the order.

c) Calendering of Hearings. If the court determines that a hearing on the motion is necessary, the court shall calendar the case for hearing without unnecessary delay. G.S. 15A-1420(b1). The District Attorney has no authority to schedule such hearings. Id.

d) Hearing Not Required. When a motion for appropriate relief presents only questions of law, including questions of federal constitutional law, the court must determine the motion without an evidentiary hearing. G.S. 15A-1420 (c)(3). If the court can determine from the motion and any supporting or opposing information presented that the motion is "without merit," it may deny the motion without any

hearing either on questions of fact or questions of law, including constitutional questions. G.S. 15A-1420(c)(1). Where the facts are in dispute but the court can determine that the defendant is entitled to no relief even upon the facts as asserted in the motion, the court may determine that the motion is "without merit" and deny it without a hearing. State v. McHone, 348 N.C. 254 (1998).

e) Hearing Required. If the court cannot rule on the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence and must make appropriate findings of fact. G.S. 15A-1420(c)(1) &(4); State v. McHone, supra. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. G.S. 15A-1420(c)(4).

f) Conclusions and Reasoning. Summary denial without conclusions and a statement of the court's reasoning is not proper where the defendant bases the motion upon an asserted violation of his or her constitutional rights. G.S. 15A-1420(c)(7); State v. McHone, supra.

g) Court's Own Motion. If a defendant would be entitled to relief by motion for appropriate relief, the court, after appropriate notice to the parties, may grant such relief upon its own motion. See G.S. §15A-1420(d).

h) Capital Cases.

1) General. When considering motions for appropriate relief in capital cases, the procedures specified in Rule 25 of the Rules of Practice should be used.

i) All appointments of defense counsel should be made by the Senior Resident Judge or his/her designee. Id.

ii) All requests for experts, ex parte matters, interim attorney fee awards, and similar matters arising prior to the filing of the motion should be ruled on by the Senior Resident Judge or his/her designee. Id.

iii) When filed, the motions should be referred to the Senior Resident Judge or his/her designee for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate action. Id.

2) Discovery.

i) Disclosure. The defendant's prior trial or appellate counsel shall make available to the capital defendant's counsel their complete files relating to the case of the defendant. G.S. 15A-1415(f). The prosecution shall make available to the capital defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. Id.; State v. Bates, 348 N.C. 29(1998).

ii) Requests Not to Disclose. If the prosecution has a reasonable belief that applicable law prohibits the disclosure of certain information contained

within such files or that allowing inspection of any portion of such files by defense counsel would not be in the interest of justice, the prosecution must submit such information or portions for inspection by the court. If upon examination of such information the court determines that disclosure is prohibited by law, the court may deny defense counsel access to such information. If upon examination of such portions, the court finds that the files could not assist defense counsel in investigating, preparing, or presenting a motion for appropriate relief, the court, in its discretion, may allow the prosecution to withhold that portion of the files. G.S. 15A-1415(f).

Rule 35. Time Standards.

a) Deadlines for Significant Events. Indictment should occur within 90 days of arrest. Arraignment should occur within 90 days of indictment. With the exception of capital cases and other exceptional cases, trial should occur within 180 days of arraignment. isdemeanor appeals should be tried within 180 days of the transfer of the case to superior court. See Caseflow Management Plan.

b) Case Processing Standards and Goals for Felonies.

1) 50% disposed within 120 days of indictment.
2) 75% disposed within 180 days of indictment.
3) 90% disposed within 365 days of indictment.
4) 100% disposed within 545 days of indictment.

Id.

Rule 36. Victims and Witnesses.

a) Fair Treatment for Certain Victims and Witnesses (Article 45).

1) General. A "victim" is defined as a person against whom there is probable cause to believe a crime has been committed. G.S. 15A-824(3). A "crime" is defined as a felony or serious misdemeanor as determined in the sole discretion of the district attorney, except those included in Article 45A, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony or serious misdemeanor. G.S. 15A-824(1). To the extent reasonably possible and subject to available resources, law enforcement agencies, the prosecution, the judicial system and the correctional system, should make reasonable efforts to assure that victims and witnesses receive the specified services and treatment. G.S. 15A-825.

2) Victim and Witness Assistants. The district attorney's personnel are responsible for coordinating efforts within the law enforcement and judicial

systems to assure that victims and witnesses are afforded their rights. G.S. 15-A826.

3) Pretrial Release. Upon written request, a victim should be notified of any hearing at which the release from custody of the accused is to be considered for Class G or more serious felonies. G.S. 15A-825(11).

4) Plea Bargaining. Early on victims should be provided with information about plea bargaining in general and for his or her case in particular. G.S. 15A-825(9a).

5) Victim Impact Statement. A victim impact statement should be prepared for the court's consideration. G.S. 15A-825(9).

6) Final Disposition. Upon request, victims should be given the opportunity to be present during the final disposition of the case. G.S. 15A-825(7).

b) Crime Victims' Rights Act (Article 45A).

1) Victim. A "victim" is as defined in G.S. 15A-830(a)(7). See the exhibit entitled "Felonies and Misdemeanors Subject to Crime Victims' Rights Act," from Administration of Justice Bulletin No. 98/05 (December 1998).

2) Responsibilities of District Attorney.

i) Information Pamphlet. The victim shall be provided a pamphlet explaining his or her rights and containing other required information, including the name and telephone number of a victim and witness assistant. G.S. 15A-832(a).

ii) Notice of Proceedings. The victim shall be notified of all proceedings of the type the victim has elected to receive notice. .S. §15A-832(c).

iii) Consultation with Prosecutor. The victim shall be offered the opportunity to consult with the prosecutor concerning the victim's views about any disposition of the case, including dismissal, plea negotiations and sentencing. G.S. 15A-832(f).

iv) Victim Identifying Information. At sentencing, the prosecutor shall submit to the court a form with identifying information about any victim electing to receive further notices. G.S. 15A-832(g).

v) Notice of Disposition. Within 30 days of any disposition by trial, plea or dismissal, the victim shall be notified of the disposition. The notice shall include the crimes, if any, of which the defendant was convicted and the defendant's right, if any, to appeal. G.S. §15A-835(a).

3) Victim Impact Evidence. A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. G.S. 15A-833.

c) Restitution. Article 81C of Chapter 15A of the General Statutes.

d) Crime Victims Compensation Act. Chapter 15B of the General Statutes.

Rule 37. Probation Violations, Changing the Conditions of Probation, and Noncompliance.

a) Arrest of Probationer. A probationer may be arrested for violation of his conditions of probation by a law enforcement officer or probation officer upon an order for arrest. G.S. 15A-1345(a). Upon such an arrest the probationer must be taken without unnecessary delay before a judicial official to determine conditions of release on bail. G.S. 15A-1345(b).

b) Preliminary Hearing. Unless waived by the probationer, a preliminary hearing on the violation must be held by a judge within seven working days of such arrest to determine if there is probable cause to believe that the probationer violated a condition of probation, or the probationer must be released to continue on probation pending a hearing. G.S. 15A-1345(c). If probable cause is found the probationer shall be held, subject to release on bail, pending the revocation hearing. G.S. 15A-1345(d).

c) Revocation Hearings.

1) Right to Counsel. The probationer is entitled to be represented by counsel at the revocation hearing and, if indigent, to have counsel appointed. G.S. 15A-1345(e). If the probationer is in custody ordinarily counsel should be appointed at the preliminary hearing.

2) Scheduling. A calendar for revocation hearings shall be prepared once each month. For each month that there is a civil priority session, the revocation hearings shall be scheduled for the second day of the first such session. For any month that there is not a civil priority session, the revocation hearings shall be scheduled for the first day of the first criminal priority session. Revocation hearings shall not be scheduled for a civil administrative session. The calendar shall be prepared for Courtroom 2A and all revocation hearings shall be heard by the judge presiding therein unless otherwise ordered by such judge.

3) Negotiation between Parties. Probation officers are encouraged to resolve their cases by consent, if possible, prior to such cases being called for hearing. All such consent matters should be disposed of before calling any cases for hearing.

4) Order of Hearings. All cases--whether the probation is in custody or on bail--should be grouped for hearing and heard according to the probation officers involved so as to minimize the inconvenience to such probation officers. The prosecutor assigned to such revocation hearings shall be individually responsible for making the necessary arrangements with the Detention Center to see that the appropriate probationers are available so that their cases may be heard as prescribed by these rules.

5) Continuances. The hearings may be continued only by the court. Anyone desiring such a continuance--including the prosecution, defense or probation officer--shall apply to the court. Once a case is so continued, the probation officers are released from any further responsibility for such case for the session.

d) Changing the Conditions of Probation. The District Attorney must be given reasonable notice of any hearing to substantially affect probation. G.S. 15A-1344(a). After notice and hearing and for good cause shown the court may modify the conditions of probation. G.S. 15A-1344(d). Probation officers seeking such modifications should first seek to obtain the consent of the probationer and the District Attorney. Failing such consent the probation officer should file a motion and notify such probationer and District Attorney of a hearing set for the day the court is to consider probation violations. If the probation officer refuses to seek such a modification or refuses to file such a motion, the probationer may file the motion and notify the probation officer and the District Attorney of a hearing on such date. The probationer shall not communicate ex parte with the court concerning any such request or motion.

e) Noncompliance. Hearings on alleged noncompliance with court orders should be set on the same calendar as hearings on alleged probation violations.

Rule 38. Professional Courtesy.

a) Policy. The criminal justice system operates more efficiently when counsel and judges conduct themselves with dignity, propriety and courtesy.

b) Rules.

1) North Carolina Bar Association. The Principles of Professional Courtesy, including the Preamble, adopted and published by the North Carolina Bar Association, are hereby incorporated herein by reference. See also Resolution of the Board of Governors of the North Carolina Bar Association, dated 19 June 1997 (Urging trial judges to zealously require attorneys to comply with Rule 12 “Courtroom decorum” of the Rules of Practice). A copy of the Resolution is attached hereto and incorporated herein by reference.

2) American Bar Association. The Litigation Guidelines--as modified by the court so as to apply only to criminal proceedings--adopted by the ABA Section of Litigation, a copy of which as modified is attached hereto, are hereby incorporated herein by reference. See Aspen, Let Us be ‘Officers of the Court’, ABA Journal (July 1997).

Rule 39. Conduct of Counsel.

a) Policy. The criminal justice system operates more efficiently when counsel respect and follow all local rules of court and the Rules of Professional Conduct, including but not limited to Rule 1.1(Diligence), Rule 2.1(Advisor), Rule 3.1(Meritorious claims and contentions), Rule 3.2(Expediting litigation), Rule 3.3(Candor toward the tribunal), Rule 3.4(Fairness to opposing party and counsel), Rule 3.5(Impartiality and decorum of the tribunal), Rule 3.6(Trial publicity), Rule 3.8(Special responsibilities of a prosecutor), Rule 4.1(Truthfulness in statements to others), Rule 4.2(Communication with a person represented by counsel), Rule 4.3(Dealing with unrepresented person), Rule 5.1(Responsibilities of a partner or supervisory lawyer), Rule 5.3(Responsibilities regarding nonlawyer assistants), Rule 8.2(Judges and other adjudicatory officers), Rule 8.3(Reporting professional misconduct), and Rule 8.4(Misconduct).

b) Courtroom Decorum. All counsel shall be familiar with and observe Rule 12 of the Rules of Practice. See also Rule 3.5(a)(4), Rules of Professional Conduct.

c) Statements to Media. An attorney should demonstrate respect for the legal system and for those who serve it, including judges, other attorneys, and public officials. Attorneys should be mindful of the history of some members of the media for bias, distortion, sensationalism, and furtherance of individual political agendas. When speaking to the media counsel should be ever mindful of the Rules of Professional Conduct, in particular Rules 3.6 and 8.2.

d) Rulings of the Court. Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. Counsel should at all times promote respect for the court. Rule 12, Rules of Practice; Rule 0.1, Rules of Professional Conduct.

e) Unjust Criticism of Judges. Generally, it is improper or undesirable for a judge to answer criticism of his or her own actions appearing in the news media. See Unjust Criticism of Judges, American Bar Association (1986). Judges, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. A lawyer should come to the defense of a member of the judiciary who the lawyer knows is being unjustly attacked. See Comment, Rule 8.2, Rules of Professional Conduct; see also Ruth Bader Ginsburg, Reflections on judicial independence, Trial(May 1999); William S. Sessions, Professional Obligations: A Former Federal Judge and FBI Director Points Out that Every Lawyer Has a Duty to Help Improve and Perfect the Justice System, ABA Journal (August 1998); and Sonnett, Defending the Independence of the Judiciary, The Champion (July 1990).

Rule 40. Prohibited Prosecution Tactics.

The following tactics are illegal and may not be employed by the District Attorney in the prosecution of criminal cases.

a) Media Arrests. A prosecutor shall not encourage or assist law enforcement officers and agencies to exercise their custodial authority over an accused individual in a manner that is likely to result in either: (i) the deliberate exposure of a person in custody for the purpose of photographing or televising by representatives of the news media; or (ii) the interviewing by representatives of the news media of a person in custody, except upon request or consent by that person to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview. See ABA Standards for Criminal Justice: Fair Trial and Free Press §8-2.1(b)(3rd ed. 1992).

b) Failure to Calendar. Not calendaring a case for trial for the purpose of keeping an accused in jail or pressuring such accused into entering a guilty plea. Simeon v. Hardin, supra; see Rule 3.2, Revised Rules of Professional Conduct; see also RPC 243.

c) Failure to Call for Trial. Calendaring but not calling a case for trial for the purpose of harassing an accused or causing such accused to suffer lost income or incur unnecessary expense. Simeon v Hardin, supra; see also Rule 3.2, Revised Rules of Professional Conduct.

d) Calendar Integrity. Calendaring so many cases for trial that an accused has virtually no notice that his/her case will actually be called for trial or that the defense cannot adequately prepare the cases for trial thereby impairing the ability of such accused to prepare his/her defense. Id.

e) Inadequate Notice of Trial. Calling a case for trial without affording the accused adequate advance notice sufficient for the accused to prepare an appropriate defense. Id.

f) Judge Shopping. Choosing a particular judge to preside over a particular criminal case. Id. at 376.

g) Criticism of Jury Verdicts. A prosecutor shall not make public comments critical of a jury verdict. See ABA Standards for Criminal Justice: Prosecution Function and Defense Function §3-5.10(3rd ed. 1993).

Rule 41. Court Reporters.

a) Policy. The local court reporters are overworked. The court, as well as counsel, should make every effort to minimize the amount of typing required of such court reporters.

b) Requests to Court Reporters. Any directions, instructions or requests to a court reporter by counsel or a party shall be routed through the court. See Rule 12, General Rules of Practice.

c) Assignment to Courtrooms. The Senior Resident Judge or his/her designee shall assign resident and visiting court reporters to particular courtrooms. In the absence of such judge anyone seeking to affect such assignments shall contact the Judicial Assistant who shall consult with the Resident Judge if available.

Rule 42. News Media.

a) General. Journalists should be generally familiar with the operation and procedures of the criminal system of justice. In particular, journalists should be familiar with Rule 12 (Courtroom decorum.) and Rule 15 (Electronic media and still photography coverage of public judicial proceedings.) of the Rules of Practice as well as Rule 3.3. (Candor toward the tribunal.), Rule 3.4 (Fairness to opposing party and counsel.), Rule 3.5 (Impartiality and decorum of the tribunal.) and Rule 3.6 (Trial Publicity.) of the Rules of Professional Conduct.

b) Ethics. Journalists should observe generally recognized professional standards, such as the code, adopted on 23 October 1975, by the American Society of Newspaper Editors entitled "A Statement of Principles, a copy of which is attached hereto and the provisions thereof are incorporated herein by reference.

1) If a journalist has interviewed the prosecution or law enforcement then before reporting on a case defense counsel should also be interviewed.

2) If a journalist has interviewed the alleged victim or members of his or her family then before reporting on a case defense counsel or members of the defendant's family should also be interviewed.

3) If a newspaper publishes letters-to-the-editor concerning a case then the newspaper should not refuse to publish other such letters simply because of the viewpoint of the writers. A newspaper should not refuse to publish a letter-to-the-editor simply because the writer disagrees with the newspaper's coverage or opinions about a criminal matter.

4) If individuals are quoted in the media then such quotes should fairly represent what the person actually said.

c) Trial Publicity.

1) Prohibited Statements in General. A lawyer shall not make an extrajudicial statement likely to be disseminated by means of public communication if the statement is likely to materially prejudice an adjudicative proceeding in the mater. See Rule 3.6(a), Rules of Professional Conduct.

2) Prohibited Statements in Particular. Such statements include statements relating to:

i) the character, credibility, or reputation of a party, suspect or witness, or the identity of a witness, or the expected testimony of a party or witness;

ii) the possibility of a plea of guilty or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal to make a statement;

iii) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the nature or identity of any physical evidence expected to be presented;

iv) any opinion as to the guilt or innocence of a defendant or suspect; and

v) information likely to be inadmissible as evidence in a hearing or trial. Rule 3.6(b), Id.

3) Prohibited Statements by Prosecutors. A prosecutor shall not make extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused. Rule 3.8(g), Id.

d) Sensationalism.

1) Right to Fair Trial. Sensationalism by journalists may jeopardize the right of an accused to a fair trial.

2) Sam Sheppard Case. After a nine-week trial and five days of jury deliberations, on 21 December 1954, Dr. Sam Sheppard was convicted of murdering his wife Marilyn. After more than ten years of appeals, the U.S. Supreme Court overturned the conviction due to the "carnival-like atmosphere" created by hostile media coverage. Dr. Sheppard was acquitted in a new trial. Years later scientific techniques not available at the earlier trials demonstrated his innocence.

3) Proper Role of Media. The court must protect the right of an individual and the public to a fair trial. Sensationalism by journalists may require the court to take certain steps that may affect the methods used by the media to cover criminal proceedings. This would be unfortunate because The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism. Sheppard v. Maxwell, 384 U.S. 333(1966).

4) Public Confidence in Media. When a journalist loses sight of the proper role of the news media he or she also loses the confidence of an increasingly aware and sophisticated public. According to a survey conducted by the National Center for State Courts, "53 percent (of the people surveyed) disagreed with the statement: 'The media's portrayal of courts is mostly accurate.'" See Richard Carelli, "Blacks lack confidence in courts," The News & Observer (16 May 1999).

e) Obtaining Copies of Media Reports.

1) General. Counsel representing a party to a criminal action should obtain copies of all media reports or materials concerning the litigation, including newspaper articles, photographs, and tapes or transcripts of any radio or television broadcasts.

2) Preventing Prejudice. The documentation so obtained will materially assist counsel in protecting the interests of their client and serve to prevent media abuse by the adverse party.

3) Aid to Discovery. Careful review of media reports may reveal the existence of information or material in the possession of the adverse party which should be disclosed under applicable discovery requirements. See State v. James Alan Gell (Capital trial in Bertie County which began on 2 February 1998) (In the Gell case, defense counsel used a newspaper account to convince the trial judge to conduct an in camera review of the prosecution's files over the vehement objection of the prosecutors. After such review, the judge ordered the prosecutors to provide the defense with statements from 10 witnesses which, if true, exonerated the defendant.)

Rule 43. Inherent Authority of the Court.

a) General. The court has the inherent authority to do all things that are reasonably necessary for the proper administration of justice. In re Alamance County Court Facilities, 329 N.C. 84, 94(1991); Mallard, Inherent Power of the Courts of North Carolina, 10 W.F.L. Rev. 1(1974); F. Stumpf, Inherent Powers of the Courts: Sword and Shield of the Judiciary, The National Judicial College (1994).

b) Policy. Inherent powers are necessary and critical to the court's autonomy and ability to function. The courts are constantly facing problems for which there is scant guidance in the statutes and reported decisions. The court must be able to do anything reasonably necessary for the proper administration of justice in these peculiar situations.

Rule 44. One Superior Court Judge Cannot Overrule Another.

a) General. One superior court judge may not modify, overrule, or change the judgment of another superior court judge previously made in the same case, on the same issue. Able Outdoor, Inc. v. Harrelson, 341 N.C. 167,169(1995).

b) Practice. An attorney seeking relief from an order, without taking an appeal, should first consider asking the judge to reconsider his or her own ruling. See State v. Adcock, 310 N.C. 1,14(1984). Before asking another judge to overrule his or her brother or sister on the bench a prudent attorney will do the necessary research. See Thomas L. Fowler, One Superior Court Judge Cannot Overrule Another: The Rule and the Exceptions, Administrative Office of the Courts(1996).

Rule 45. Sanctions.

a) General. A violation of any of these rules shall subject the offending attorney and/or party to any lawful sanction.

b) Discipline. A violation of these rules may subject the offending attorney to discipline by the court. See State v. Rorie, 348 N.C. 266(1998). A violation of these rules that constitutes a violation of the Rules of Professional Conduct shall subject the offending attorney to discipline by the court or the North Carolina State Bar. In re Burton, 257 N.C. 534(1962).

c) Contempt. These rules may also be enforced through the contempt power of the court. See State v. Rorie, 348 N.C. 266(1998).

Rule 46. Discipline of Attorneys.

a) Jurisdiction. The court has inherent authority over attorneys to prevent or punish acts prejudicial to the administration of justice. In re Burton, 257 N.C. 534(1962). This authority extends to misconduct which does not occur in the context of litigation pending before the disciplining court. See Id. at p.544. The North Carolina State Bar's disciplinary authority over attorneys was granted by the North Carolina General Assembly. See Chapter 84 of the General Statutes. The State Bar has concurrent authority with the court to discipline attorneys for unethical conduct. In re Burton, supra. Neither can act to usurp or supersede the jurisdiction of the other. N.C. State Bar v. Randolph, 325 N.C. 699(1989). In fact, an attorney can be disciplined separately by the State Bar and the courts for the same conduct. Id. As the State Bar possesses only those powers granted to it by the General Assembly, the State Bar cannot sanction for conduct which does not violate the Rules of Professional Conduct. The court's inherent authority to discipline attorneys, however, appears to be broader than that of the State Bar.

b) Policy. For conduct arising out of pending or contemplated litigation, the court is usually in the best position to conduct an appropriate inquiry into possible unethical acts by attorneys.

Rule 47. Approved Forms.

a) General. The forms identified below and attached hereto are approved for use in this judicial district. The forms, or a substantial equivalent, shall be used in the particular circumstances addressed by the form.

b) Forms.

1) Order on First Appearance in Superior Court.

2) Order Scheduling Hearing.

3) Application and Order to Produce Defendant.

4) Order Recalling Arrest Order/Striking Forfeiture.

5) Certificate of Disclosure of Prosecution.

6) Certificate of Disclosure of Defense.

7) Order of Discovery.

8) Motion and Order for Continuance.

9) Order Scheduling Pretrial Conference in First Degree Murder Case.

10) Order on Pretrial Conference in Capital Case.

11) Order Allowing Motion to Recuse.

12) Confession of Judgment.

13) Superior Court Disposition Report for Robeson County.

Rule 48. Severe Weather Conditions.

a) General. Severe weather conditions may make it appropriate to close the Robeson County Courthouse. When the courthouse is so closed, all court proceedings are canceled during such closure and postponed until the courthouse is re-opened.

b) Decision. The decision to close the courthouse should be made by the County Manager after consultation with the Emergency Services Director.

c) Public Service Announcements of Closure. Upon making such a decision to close the courthouse, the County Manager or his/her designee should request that appropriate news media organizations make public service announcements of such closings and the canceling of court proceedings during such closure and their postponement until the courthouse is re-opened.

d) Notice to Court Officials. Upon making such a decision to close the courthouse, the County Manager or his/her designee should so notify the Senior Resident Superior Court Judge, Chief District Court Judge, Clerk of Superior Court, District Attorney and Public Defender as soon as possible by the most feasible means available.

e) Excused Absence. Any person hearing such a public service announcement shall be excused from any court appearance during the announced closure period.

Rule 49. Enforcement.

a) Local Judicial Officials. These rules shall be observed and enforced by all local judicial officials.

b) Visiting Judges. In order to insure uniformity, all judges assigned to hold court in the judicial district shall observe and enforce these local rules. The Judicial Assistant shall provide a copy of these rules to each such judge at or before the commencement of such judge's assignment. Rule 22, Rules of Practice.

Rule 50. Criminal Superior Court Committee.

a) Composition. There shall be a Criminal Superior Court Committee comprised as follows: (1) The Senior Resident Judge; (2) Resident Superior Court Judge; (3)Sheriff; (4) Clerk of Superior Court; (5) District Attorney; (6) Public Defender; (7) Chairperson of the Criminal Defense Section of the Robeson County Bar Association; (8) Three senior members of the criminal defense bar appointed by the Senior Resident Judge; and (9) The County Supervisor of Adult Probation/Parole. The senior members of the criminal defense bar so appointed shall serve at the pleasure of the Senior Resident Judge.

b) Officers. The Chairperson of the committee shall be the Senior Resident Judge. The Vice-Chairperson shall be the Resident Superior Court Judge. The Clerk of Superior Court shall be the Secretary.

c) Purpose. The purpose of the committee shall be as follows: (1) To monitor the efficiency of the local criminal superior courts; (2) To recommend amendments to these rules; (3) To draft forms to be utilized by counsel and parties in criminal superior court actions; (4) To conduct training sessions for everyone connected with the use of these rules; and (5) To promote the improvement of the local criminal superior court system.

Rule 51. Effective Date. These rules shall be effective on 1 June 1999.

NORTH CAROLINA ROBESON COUNTY		IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
STATE OF NORTH CAROLINA	}	
	}	PROSECUTION
VS	}	CERTIFICATE OF DISCLOSURE
JOHN Q. PUBLIC	}	
_____	}	

The undersigned prosecutor does hereby certify to the court and to the defense as follows:

1. This case has been assigned to me to prosecute.
2. I have requested every law enforcement and prosecutorial agency involved in the investigation of the crimes committed or the prosecution of the defendant to forward to me their complete files relating to the case of the defendant. I have further requested that each such agency reduce to writing and forward to me all statements attributed to the defendant. I have received from each such agency what has been represented to be their complete such files by an authorized official. I have notified each such agency of its continuing duty to forward to me as soon as feasible all further such information and materials learned or obtained by such agency.
3. I have personally reviewed all such files so forwarded to me by such agencies.
4. I am aware of my individual duty to learn of any evidence favorable to the defendant on the issues of guilt or punishment known to others acting on the State's behalf in the case. Kyles v. Whitley, 514 U.S. 419(1995).
5. I have provided discovery to the defense of all matters, materials or information required under applicable law, including the Local Rules of Criminal Procedure.
6. The defense was afforded the opportunity to review and examine all physical evidence in the control of the State--the prosecution and all law enforcement agencies involved in the investigation of the charges against the defendant--and that the review and examination took place on the _____ day of _____ , 2_____.
7. I recognize my continuing duty to supplement my discovery response and will do so, as soon as feasible, after receiving further materials or information which should be provided to the defense. I further recognize my continuing duty to learn of any such materials or information known to others acting on the State's behalf in the case.
8. I am aware of my ethical duties as follows:
   a) Not to unlawfully obstruct the defense's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. See Rule 3.4(a), Revised Rules of Professional Conduct.
   b) Not to request that a person refrain from voluntarily giving relevant information to the defense. See Rule 3.4(f), Id.
   c) To make timely (as soon as feasible) disclosure to the defense of all evidence or information that tends to negate the guilt of the accused or mitigates the offense, and to disclose to the defense all unprivileged mitigating information relevant to sentencing. See Rule 3.8(d), Id.

This the _____day of _____ , 2_____.

_____
(Assistant) District Attorney

CERTIFICATE OF SERVICE

I certify that I served a copy of this Certificate of Disclosure as follows:

- ☐ delivering a copy personally to defense counsel,
- ☐ mailing a copy by first class mail to defense counsel,
- ☐ placing a copy in the courthouse mail box of defense counsel.

This the _____day of _____ , 2_____.

_____

(Assistant) District Attorney