

**ADMINISTRATIVE ORDER**

**RE: District Court Local Rules of Criminal Procedure**

In order to ensure general uniformity throughout the 13<sup>th</sup> Judicial District, the fair and efficient administration of justice, and to provide justice for our citizens without unnecessary delay and without undue waste of time and other resources of the Court, the litigants, and other case participants, with respect to ALL criminal District Court matters, the attached and following District Court Local Rules of Criminal Procedure are hereby adopted and effective for ALL District Court criminal proceedings on or after the date of the signing of this order.

The rules adopted herein supersede all previous orders relating to the administration of District Criminal Court. Any prior administrative order that is not addressed in these Local Rules will remain in full force and effect unless contrary to these Local Rules, and for those orders they are null and void. Any prior administrative order that is addressed or referred to in these Rules, shall be read in conjunction with these Rules and are hereby incorporated as if fully set out.

**Rule 1 – General Rules**

- 1.1 These rules are applicable in the District Court Division of the General Court of Justice for the 13<sup>th</sup> Judicial District, Bladen, Brunswick and Columbus Counties. They shall, at all times, be construed and enforced in such a manner as to avoid technical delay and to permit the just and prompt consideration and determination of all business before the Court to ensure equal and efficient access to the District Court.

**Rule 2 – Definitions**

- 2.1 Clerk of Superior Court means the elected Clerk of Superior Court of any county in the 13<sup>th</sup> Judicial District or any deputy/assistant clerk appearing on the Clerk's behalf.
- 2.2 District Attorney means the elected District Attorney for the 15<sup>th</sup> Prosecutorial District or any assistant district attorney appearing on the District Attorney's behalf.
- 2.3 Chief District Court Judge means the appointed Chief District Court Judge and/or any designee appointed by the Chief District Court Judge.

**Rule 3 – Dress Code and Court Decorum**

- 3.1 Attorneys are required to appear in court during all sessions in appropriate business attire. Casual dress is prohibited. See *Rule 12 of the General Rules of Practice for the Superior and District Courts*.

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BY: ADW

- 3.2 Attorneys **SHALL** refrain from wearing or displaying any political or campaign buttons, lapel stickers, patches, pins or like displays of support for any political candidate, political party, or political organization while in any courtroom or while on the premises of the courthouse. Such items are inconsistent with the administration of justice and may demonstrate an appearance of impropriety and/or favoritism.
- 3.3 Attorneys are **NOT** allowed to bring food inside the courtroom and/or inside the Bar. Exceptions and extenuating circumstances are to be approved by the presiding judge.
- 3.4 Attorneys are required to maintain the highest level of professionalism while in the courthouse or courtrooms.
- 3.5 An attorney's North Carolina State Bar certified paralegal is hereby allowed inside the bar to assist an attorney in handling matters before the court, however, other non-certified office staff and non-certified legal assistants are **NOT** allowed inside the bar while the attorneys are waiting in court or conducting business in court. Any exception shall be approved by the presiding district court judge.
- 3.6 An attorney should discourage his/her clients from bringing cell phones into the courtroom and the use of cell phones by non-lawyers is strictly prohibited unless being used to present evidence with permission of the presiding judge. Attorneys should silence their cell phones and use their cell phones under limited circumstances while in court. Under no circumstances, should an attorney, video, audio record, take photographs, or use a cell phone for any unlawful purpose while in court. Any unauthorized use by an attorney or their client may be punishable by contempt. Any request to record a proceeding in Court, **MUST** be approved by the presiding district court judge pursuant to *Rule 15 of the General Rules of Practice for the Superior and District Courts*.
- 3.7 Court personnel and non-lawyer court officers (clerks, probation officers, state agents, mediators, etc.), are to be dressed in proper business attire that complies with their agency's directives and policies.
- 3.8 Private witnesses for the State and/or for the defendant, are **NOT** allowed to sit inside the bar prior to the calling of their case for trial. This may give the appearance of impropriety and appear to give one side an unfair advantage. This doesn't include court staff, court officers, law enforcement officers, probation officers etc. Any exception or accommodation **MUST** be approved by the presiding district court judge.
- 3.9 Shorts, flip flops, mini-skirts, baggie pants, tank tops and spaghetti strap tops are prohibited in the courtroom. Anyone that is inappropriately dressed will be ordered to leave the courtroom and their matter will **NOT** be addressed until they appear in appropriate attire. Attorneys should advise their clients of this dress code policy to avoid any unnecessary delay or potential criminal process.

- 4.1 All criminal district courts in the 13<sup>th</sup> Judicial District are created and scheduled by the Chief District Court Judge or his designee after consultation with the District Attorney. Should the need arise to add a session of district criminal court, the Chief District Court Judge, after consultation with the District Attorney will issue an administrative order creating and scheduling the court.
- 4.2 Criminal sessions of district court shall operate as designated by the Chief District Court Judge or his designee.
- 4.3 Criminal sessions of court **SHALL** begin at 9:30am and continue until the Court's business is concluded or until 5:00pm, whichever occurs first. In extenuating circumstances, should a need arise for a session of court to extend beyond 5:00pm, the presiding judge **SHALL** consult with the court staff/personnel effected to ensure that there will not be any undue hardship placed on court staff. If, due to time constraints, the presiding judge is involved in a trial at the time the courthouse closes, and the judge doesn't feel that the matter will be concluded in a reasonable amount of time, the presiding judge may, at his or her discretion, continue the matter to another criminal session of court to conclude the matter.
- 4.4 ALL persons charged with a felony, **SHALL** have a first appearance within 72 hours or at the next regular session of criminal court, whichever occurs first. If there is not a session of criminal court scheduled within 72 hours after the arrest, the Clerk of Superior Court, in conjunction with the Sheriff, **SHALL** ensure that the defendant(s) be taken before a district court judge presiding at any other session of District Court. In the event there is no District Court scheduled within 72 hours after the defendant's arrest, the Clerk of Superior Court shall conduct a first appearance for the defendant as allowed by *N.C.G.S. 15A-601 (e)*. In the event the courthouse is closed for a period of time greater than 72 hours, whether resulting from a natural disaster, pandemic, or holiday closure, first appearances **SHALL** be held within 96 hours after the defendant's arrest. Under no circumstances shall a first appearance be delayed for more than 96 hours. Any defendant charged with a felony, **SHALL** have a first appearance pursuant to *N.C.G.S. 15A-601 and N.C.G.S. 7A-453*, and the form attached to these local rules shall be used at all first appearances, whether conducted by a Judge or the Clerk of Superior Court. (See Order on First Appearance form attached).
- 4.5 All persons charged with a misdemeanor, who are unable to comply with the pretrial release conditions set by a judicial official, **AND** who have been in custody for a period of 72 hours, **SHALL** have a first appearance in front of a District Court Judge during the next available regular session of criminal court, as outlined above under 4.4. In the event the courthouse is closed for a period of time greater than 72 hours, whether resulting from a natural disaster, pandemic, or holiday closure, first appearances **SHALL** be held within 96 hours after the defendant's arrest. Under no circumstances shall a first appearance be delayed for more than 96 hours. It shall be the responsibility of the

Clerk of Superior Court and the Sheriff to ensure that ALL persons charged and in custody have a first appearance in compliance with *N.C.G.S. 15A-601 (Official Commentary) and N.C.G.S. 7A-453*. The presiding district court judge shall advise the defendant of the charges against him/her, address the appointment or waiver of counsel, set or review conditions of pretrial release, and notify the defendant of his/her next court date (which should already be set by the magistrate). With the consent of the defendant, District Attorney and the Court, a defendant may waive counsel and tender a plea of guilty or nolo contendere on certain misdemeanor offenses. Any defendant charged with a domestic violence offense, or any crime included in the Crime Victims' Rights Act (CVRA), shall not be allowed to plead guilty at this first appearance unless the District Attorney has had an opportunity to comply with the CVRA, and has in fact notified the victim, and the district attorney consents to the entry of the plea.

- 4.6 ALL persons arrested or cited for a probation violation, whether pending in district court or superior court, shall have their court date set on probation day (PROB) in the appropriate court. ALL persons arrested for a probation violation that have not been released from detention, MUST be brought before a district court judge for a preliminary probation violation hearing to determine if there is probable cause to believe that the defendant has violated a condition of probation, pursuant to *N.C.G.S. 15A-1345(c)*. If probable cause is found, then the presiding district court judge shall ensure that the matter is properly scheduled on a probation day in the appropriate court, and the presiding district court judge may revisit pre-trial release unless the pre-trial release conditions were set by a superior court judge. If the presiding district court judge does not find probable cause, then the probationer MUST be released pursuant to *N.C.G.S. 15A-1345(c)*.
- 4.7 The clerk's office and the detention facility SHALL ensure that there is a policy and procedure in place for the arrested probationer to have access to the court if the probationer has failed to meet the terms and conditions of pre-trial release.
- 4.8 Any court designated as a specific session of criminal court, including but not limited to, CDV, TR, PROB etc., shall only have those types of criminal matters scheduled. Magistrates SHALL ensure when setting court dates, they use the appropriate court date for the type of matter that is pending. Felony first appearances are an exception to this rule. Felony first appearances are to be set on a court date as outlined above. Misdemeanors are to be set on a court date approximately THIRTY (30) days in the future and are to be set on the appropriate court date.
- 4.9 Any defendant charged with criminal process that was initiated by a private citizen/individual (non-law enforcement or not an agent of the State) shall have their matter set on a court date set aside for the hearing of non-law enforcement matters, to include matters designated as crimes of domestic violence (which must be set on a CDV court day). A domestic violence matter that is initiated by a law enforcement officer shall be set on a CDV day and the law

enforcement officer is to provide a physical address of the complaining party/alleged victim to the magistrate to be entered on the criminal process (See below). When applicable, the parties shall be referred to mediation as required by *N.C.G.S. 7A-38.3D and 7A-38.5*.

- 4.10 Once court operations resume at the Tabor City courthouse, the following rules SHALL apply: ALL minor TRAFFIC matters arising within the territorial boundaries of Tabor City and Fair Bluff SHALL be set on a Tabor City criminal court date. ALL other criminal matters are to be set on the officer's court day in Whiteville. The Tabor courthouse is to be utilized for MINOR traffic offenses only. Should the need arise and at the conclusion of the business in Tabor City, the presiding judge will travel to Whiteville to conduct first appearances at the main courthouse. The presiding judge will consult with the bailiff's, clerks and assistant district attorney to coordinate a time to conduct first appearances. The Tabor City Courthouse SHALL NOT be used for in custody first appearances whether from the local detention facility or from a North Carolina State Prison facility. All in custody matters shall be handled at the main courthouse in Whiteville. It shall be a standing order, that the presiding judge scheduled in Tabor City, shall also preside over first appearances at the Columbus County courthouse at the conclusion of all business in Tabor City.
- 4.11 Magistrates are to ensure that ALL felonies and misdemeanors arising out of the SAME transaction and circumstances be set for first appearance on the same date. This will allow the district court judge presiding over the first appearance to advise the defendant on ALL related pending matters.

### Rule 5 – Case Calendaring

- 5.1 The Clerk of Superior Court shall prepare calendars for each district court criminal session as directed by the District Attorney and the Chief District Court Judge.
- 5.2 The Clerk of Superior Court shall ensure that cases are marked and designated properly and accurately so the Court can rely on the official minutes and shuck when making determinations regarding a criminal matter.
- 5.3 The Clerk of Superior Court shall ensure that all matters that occur in court are updated in the appropriate electronic criminal system repository so that the calendars reflect the proper and most recent information. For example, the calendar should reflect if an attorney has been appointed or retained, or if the defendant has signed a waiver.
- 5.4 The Clerk of Superior Court, in conjunction with the District Attorney, SHALL work with all law enforcement agencies to ensure equal balance of law enforcement officers on any given court date. It is the intent of this provision, that the District Attorney and the Clerk will work together to ensure efficiency and balance on any criminal docket for the fair and efficient administration of justice.
- 5.5 It SHALL be the responsibility of the District Attorney's office to ensure that ALL prosecuting witnesses have notice of court dates and

that subpoenas are issued in a timely manner to ensure cases can be disposed of without undue delay.

- 5.6 It **SHALL** be the responsibility of the District Attorney's office to issue an Application and Writ of Habeas Corpus Ad Prosequendum (Writ) for any defendant that is incarcerated in a county detention facility or a North Carolina Prison facility in a timely manner to ensure cases can be disposed of efficiently and without undue delay. A copy of said Writ shall be clocked in and placed in the court file as verification of the request.

### **Rule 6 – Appearances by Attorneys**

- 6.1 Attorneys should always identify themselves to the Court and any non-local attorney **MUST** provide the courtroom clerk with a business card ***and*** their North Carolina State Bar number.
- 6.2 An attorney making an appearance in **ANY** criminal/infracton proceeding in District Court, is considered to have made a ***general appearance*** unless the appearance is limited in writing pursuant to *N.C.G.S. 15A-141*. Attorneys who seek to withdraw **MUST** do so as soon as practicable to ensure new counsel can efficiently and effectively resolve the matter. Any conflict that arises between an attorney and his/her client should be addressed by the filing of a Motion to Withdraw pursuant to *N.C.G.S. 15A-144* and may be granted upon a showing of ***good cause***.
- 6.3 An attorney may make a general appearance, on any criminal matter, on the first setting in district court without the defendant being present.
- 6.4 Attorneys that have matters pending in more than one trial court, to include but not limited to, administrative hearings/courts, juvenile court, probate matters, small claims matters, hearings in front of the Clerk, superior court, federal court, or any appellate court on the state or federal level, ***are responsible for notifying*** the district attorney and/or the deputy/assistant clerk in district court of their conflict, before court starts, **AND** their anticipated arrival time to resolve their pending matters. Attorneys are encouraged to indicate whether their matter is for plea, trial, or motion to continue in order to promote efficiency and to properly utilize court time. Notice should be sent in writing, (fax or email), however, should the need arise and written notice is not practicable, due to time constraints or unforeseen circumstances, electronic communication (text) is acceptable, if it is a common form of communication with the district attorney and/or courtroom clerk. *This provision in no way requires anyone to use their personal cell phone for Court business.* All attorneys should be familiar with *Rule 3.1 of the General Rules of Practice for District and Superior Courts*, which outlines guidelines for resolving scheduling conflicts.
- 6.5 Attorneys appointed to represent indigent defendants will be provided notification of the appointment from the Clerk within 48 hours after the order is signed by the Presiding District Court Judge. Once appointed, attorneys are encouraged to make contact with their newly

appointed client as soon as practicable. If the defendant is in custody, the attorney **SHALL** make all reasonable efforts to meet and confer with their client, in person (or by video teleconference), at the facility in which they are incarcerated, within 72 hours of the appointment, pursuant to the *North Carolina Commission of Indigent Defense Services "Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level"*.

- 6.6 Any attorney appointed as interim counsel OR appointed by the capital defender's office to represent a defendant charged with First Degree Murder or an Undesignated Degree of Murder, **SHALL** immediately make contact with the defendant in the facility at which the defendant is incarcerated, AND advise the defendant of his/her rights.
- 6.7 The clerk is to ensure that the shuck accurately reflects the name of any attorney who makes a general appearance **OR** who has been court appointed to represent a criminal defendant. If an attorney is subsequently allowed to withdraw, the clerk shall strike the name of the withdrawing attorney and replace it with the new attorney's name if applicable.

#### **Rule 7 – Motion to Strike an Order for Arrest/FTA/Called and Failed/Forfeiture**

- 7.1 Motions must be made in writing on the local form. (See Motion and Order to Recall attached)
- 7.2 The Motion to Recall must be completely and properly filled out or risk having the Motion summarily denied. All documentation to support the Motion **MUST** be filed with the motion and presented to the district attorney and the appropriate judge. Motions will be granted for *good cause* only.
- 7.3 The district attorney's office must be presented with the motion and given an opportunity to be heard.
- 7.4 The Clerk **SHALL** not accept a faxed Motion/Order to Recall.
- 7.5 Request to Strike an OFA/FTA/CF/Forfeiture must be directed to the appropriate judicial official as follows:
- 7.5.1 Motions must be made to the district court judge who was the presiding judge in the courtroom on the day the defendant was called and failed; or to any district court judge with the permission of the presiding district court judge; **OR**
  - 7.5.2 If the motion is being made pursuant to *N.C.G.S. 15A-301 (g)(2)*, then any district court judge; **OR**
  - 7.5.3 The chief district court judge.
- 7.6 The Clerk's office has the authority to recall an order for arrest and strike an FTA, Bond Forfeiture etc, without judicial approval, **IF** the clerk becomes aware and has verification that the defendant was incarcerated on the date that the defendant failed to appear in court. The clerk **SHALL** issue a new court date and send a notice to the defendant at the last known address or issue a Writ to have the defendant transported to court on the next scheduled court date. The clerk is to make a notation in the file/shuck as to what actions have

been taken to recall the process. (This provision is to be read in conjunction with the prior administrative order entered on February 15, 2017).

- 7.7 Any district court judge has the authority to modify conditions of pre-trial release on any individual that has been arrested under the authority of an order for arrest (OFA), after having received information and verification that the defendant was incarcerated when the OFA was issued. (This provision is to be read in conjunction with the prior administrative order entered on April 4, 2017).
- 7.8 Once a criminal matter that was previously called and failed has been recalled and placed back on a district criminal court calendar, it shall be marked final and resolved on the next session of court unless extenuating circumstances would warrant a continuance. Extenuating circumstances would include the need for the State to issue subpoenas to victims and witnesses that were not notified that the criminal matter was placed back on a calendar. Under no circumstances shall a matter that has been recalled and placed back on a criminal calendar be continued for more than 60 days without the presiding judge making a notation on the back of the shuck noting the basis for the continuance.

#### **Rule 8 – Setting Bond in Domestic Violence Cases and other related issues**

- 8.1 Persons arrested pursuant to *N.C.G.S. 15A-534.1*, **SHALL** be brought before a District Court Judge at the very next available session of district court. If there is no court scheduled within 48 hours of the arrest, the magistrate **SHALL** set conditions of release and advise the defendant of the Domestic Violence no-contact provisions using the local form. (See Conditions of Release For Person Charged with a Crime of Domestic Violence form attached)
- 8.2 Magistrates are to set **ALL** misdemeanor domestic violence criminal matters on a CDV criminal date **ONLY**. Any law enforcement initiated domestic violence matter is to be set on a CDV criminal date **ONLY** and **NOT** the officer's court date. In all cases which are initiated by the general public, the magistrate shall issue a subpoena to the prosecuting witness, ordering him/her to appear in court on the scheduled court date. Exceptions to this provision would be if a misdemeanor and felony are charged at the same time. In the event a felony and misdemeanor domestic violence matter are charged at the same time, the felony provision above shall apply. The felony and misdemeanor shall be set on a first appearance date and the presiding district court judge will determine the appropriate court date.
- 8.3 Attorneys should refrain from making contact with a judge regarding setting domestic violence conditions of pretrial release, **unless** the attorney has made contact with the District Attorney and the District Attorney has had an opportunity to be heard regarding any conditions of pretrial release to include any domestic violence no-contact provisions. If the District Attorney consents to the setting of pretrial release conditions and any other provisions, the attorney and the

District Attorney will make contact with a judge to prevent any improper ex parte communications.

### **Rule 9 – Fee applications**

- 9.1 When a district court criminal matter is disposed of by trial or plea, an appointed attorney **MUST** orally state, in open court, the amount of hours to be submitted, to properly access cost/fines/fees. Attorneys should make *reasonable effort* to submit a written fee app at the conclusion of a criminal matter. Fee apps shall be filled out completely, legibly, signed, and submitted upon the conclusion of the case. Under no circumstances, will a fee application be approved by the presiding judge, if not submitted within 90 days of the ***disposition date*** for which payment is sought. Any fee application that is not presented to the presiding judge within 90 days, **MUST** be presented to the Chief District Court Judge for approval. The purpose of this requirement is to facilitate timely payment and to assure that, in all criminal cases in which the court intends to enter a civil judgment, the judgment can be entered promptly and accurately.
- 9.2 Attorneys should make every reasonable effort to include the defendant's social security number on the fee app.
- 9.3 A ***signed*** verified affidavit or ***signed*** timesheet **SHALL** be attached to any fee app that is submitted for FIVE (5) hours or more pursuant to the administrative order entered on February 2, 2017. A detailed time sheet under this provision, may be redacted to the extent necessary to preserve confidentiality between an attorney and client, and under no circumstances should an attorney divulge attorney/client privileged information without express permission from said client.

### **Rule 10 – Motions for Appropriate Relief (MAR'S)**

- 10.1 Motions for Appropriate Relief made pursuant to *N.C.G.S. 15A-1411*, shall be made in writing and filed with the Clerk of Superior Court as outlined in *N.C.G.S. 15A-1420*. The Motion shall be served on the District Attorney. The motion ***shall*** be calendared during a criminal session of court in front of the chief district court judge pursuant to *N.C.G.S. 15A-1413*. The movant is responsible for securing any necessary witnesses or documents in support of such motion. Motions for Appropriate Relief **SHALL** be set on a regular session of District Criminal Court and may, under extenuating circumstances or by consent of the District Attorney, be placed on an add-on calendar.
- 10.2 All MAR's filed in District Court are subject to dismissal by the Chief District Court Judge or the District Court Judge hearing the same, if the MAR lacks merit on its face or fails to comply with *N.C.G.S. 15A-951* and *15A-1411 thru 15A-1420*.

### **Rule 11 – Add-ons**

- 11.1 Once a final district court criminal calendar is published and made available to the general public, the scheduled presiding district court judge or the chief district court judge may allow an add-on with the consent of the District Attorney.
- 11.2 Cases that are in called and failed status, failure to comply status, or have a pending order for arrest, **MAY** be added on to a criminal docket. A recall form that has been denied, **MAY** be added to a criminal docket using the procedure established the Clerk's office.
- 11.3 The Clerk of Superior Court shall set up a procedure to ensure the efficient, reliable and equitable manner in which matters can be added to a criminal docket, to include, but not limited to, preparing additional (add-on) calendars for use by the presiding judge, assistant district attorney and the courtroom clerk. Once a matter has been approved to be added to a criminal session of court, the clerk will also ensure that the criminal file (shuck) will be brought to the courtroom for entry of judgment/disposition.
- 11.4 When adding a case onto the criminal docket, it shall be the responsibility of the defendant, or his/her attorney of record to request of the presiding judge, that any failure to appear (FTA) fees be stricken, and/or that the order for arrest (OFA) be recalled, and that all pending matters have been complied with. Failure to do so, **MAY** subject the defendant to future monetary obligations and/or incarceration.
- 11.5 Prior to the publishing of the criminal calendars, attorneys are allowed, and encouraged to, add on matters that are ready for disposition. Any matter can be resolved prior to the scheduled court date by simply adding it on criminal calendar. Any case that falls under the Crime Victims Rights Act can be resolved prior to the regular scheduled court date as long as the district attorney's office consents and has had an opportunity to notify the victim.

## Rule 12 – Continuances

- 12.1 Criminal cases should be disposed of at the earliest opportunity, including the first trial setting. However, when compelling reasons for a continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Whenever possible, continuance motions or request shall be made using appropriate forms.
- 12.2 Continuances on agreement between parties shall not be granted automatically.
- 12.3 Continuances of cases outside the parameters and directives of this order are specifically disfavored and shall be granted only in extraordinary circumstances.
- 12.4 Request for continuances shall be granted for good cause shown unless otherwise provided by law.
- 12.5 Once a criminal docket/calendar has been generated and published by the clerk's office, the authority to continue a criminal matter rests

solely with the presiding district court judge or the chief district court judge.

- 12.6 Minor Chapter 20 traffic matters (infractions and criminal traffic matters) that are set on a TR court date SHALL be resolved within 120 days of issuance of the original citation. A minor traffic matter that is continued beyond 60 days SHALL be set on the charging officer's court date and marked final for disposition. This does not include traffic matters that arise out of a more serious criminal violation such as a DWI. Once a traffic matter appears on the officer's court date, it shall remain on the officer's court date until disposition. Request to continue traffic matters, whether in writing or orally, are to be presented to the presiding district court judge. The presiding district court judge has the authority to deny or grant motions to continue.
- 12.7 ALL continuances will be granted freely when an attorney has properly requested secured leave pursuant to *Rule 26 of the General Rules of Practice for the Superior and District Courts*.
- 12.8 Attorneys aware of a conflict or their unavailability on a scheduled court date are to notify the District Attorney, the courtroom clerk, and the appropriate judge pursuant to *Rule 3.1 (b) of the General Rules of Practice for the Superior and District Courts* to give the opposing counsel an opportunity to properly prepare and/or to notify their witnesses. Notice is to be provided as outlined and explained above. Continuances are to be granted if an attorney is involved in another matter that has priority over district criminal court. Prior to a regularly scheduled court date, if an attorney becomes aware of a conflict, the attorney may file a written motion to continue a criminal matter, and upon the consent of the state, present an order to the chief district court judge granting the motion and continuing the matter.
- 12.9 A request by the State or defendant to continue a first setting probable cause hearing, **MUST** comply with *N.C.G.S. 15A-606 (f)*, if the non-moving party opposes the continuance. A request to continue a second or subsequent probable cause hearing will be granted in extreme situations and only after the Court has considered the following:
  - 12.9.1 The nature of the offense;
  - 12.9.2 The age of the case;
  - 12.9.3 Any new criminal offenses for which the defendant has either been charged or convicted;
  - 12.9.4 The current pre-trial release conditions;
  - 12.9.5 The length of time the defendant has been incarcerated awaiting a probable cause hearing;
  - 12.9.6 Availability of counsel for the defendant;
  - 12.9.7 The due diligence of counsel, to include the district attorney, in promptly making a motion for continuance as soon as possible and notifying the defendant and/or his attorney and any necessary witnesses, to prevent any undue hardship or delay;

- 12.9.8 Any other relevant information that the Court needs to determine whether a continuance would be in the interest of justice.
- 12.10 All felonies **SHALL** be disposed of in District Court within 120 days of the first setting for probable cause pursuant to the administrative order entered on May 8, 2017. Any defendant that has a felony or felonies dismissed, whether by the court or by the state, that is subsequently recharged for the same criminal offense or offenses, shall be required to post an unsecured bond, or written promise to appear, ***IF*** the defendant had previously posted a secured bond and had ***NOT*** been called and failed while the prior matter was pending. The purpose of this provision is to ensure that defendants who have felonies dismissed, through no fault of their own, are not required to post another secured bond to ensure their appearance in court. A district court judge or a superior court judge shall have the authority to set any bond authorized by Chapter 15A upon a showing of good cause.
- 12.11 Any criminal case that is not addressed by these rules **SHALL** be resolved within 180 days from the date of the offense. Under no circumstances shall a district court criminal case be continued beyond 180 days of issuance of the criminal process, without the presiding judge making a notation in the record **AND** on the back of the shuck outlining the extraordinary circumstances that warrant said continuance.
- 12.12 No case that has been marked “FINAL” or “LAST” will be continued except under extraordinary circumstances as set forth in these rules. This provision does not divest the presiding district court judge of discretion to continue a case marked “FINAL” if the presiding district court judge determines that the case should be continued in the interest of justice.
- 12.12.1 The clerk is to mark the shuck to reflect who the matter was continued for, such as”
- 12.12.1.1 “D” for defendant;
  - 12.12.1.2 “S” for state;
  - 12.12.1.3 “C” for court;
  - 12.12.1.4 “DF” for defendant final;
  - 12.12.1.5 “SF” for state final;
  - 12.12.1.6 “AF” for final for all parties.
  - 12.12.1.7 “J” for joint motion to  
continue.

### **Rule 13 – Notice of Appeal**

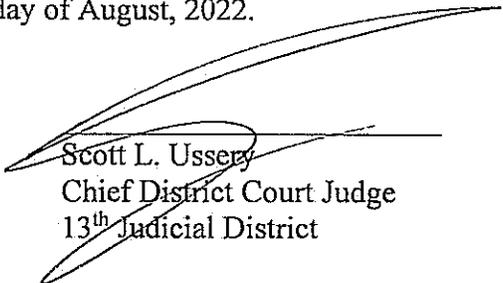
- 13.1 When notice of appeal is given in ***open court***, the clerk will duly note the Notice of Appeal and the presiding judge may review the conditions of release pursuant to *N.C.G.S. 15A-1431*. If the Defendant gives ***written*** notice of appeal subsequent to the sentencing date, but within the statutory time period, the Clerk shall duly note the appeal and immediately attempt to make contact with the defendant’s

attorney, the District Attorney and the sentencing judge for a determination as to whether conditions of release should be modified or whether conditions of pretrial release will remain the same. After due diligence, if the sentencing judge is unavailable, the Clerk shall make contact with the Chief District Court Judge for a determination as to whether conditions of release should be modified or whether they will remain the same. If the clerk is not able to make contact with the appropriate judicial official, the conditions of pretrial release shall remain the same as previously ordered. The purpose of this rule is to ensure that appropriate conditions of pre-trial release are entered promptly, without undue delay for any individual that properly gives notice of appeal.

**Rule 14 – Observation/Enforcement of Rules (Pursuant to Rule 22 of the General Rules of Practice for the Superior and District Courts)**

- 14.1 In order to ensure general uniformity throughout this judicial district, all trial judges shall observe and enforce these local rules.
- 14.2 At least quarterly, the Chief District Court Judge shall generate and review a report of pending district court criminal cases and any data the AOC can make available regarding the number of court dates each case had. To promote the consistent application of the above administrative order, these reports shall be reviewed and discussed with other judges in the district, bar representatives designated by the Chief District Court Judge, Elected clerks or his/her designee, the Elected District Attorney or his/her designee and other court-related agencies to seek resolution of any organizational or systemic problems that cause unnecessary delay in the timely resolution of ALL district court criminal matters.

Entered and effective as of this the 1<sup>st</sup> day of August, 2022.

  
Scott L. Ussery  
Chief District Court Judge  
13<sup>th</sup> Judicial District

STATE OF NORTH CAROLINA  
13<sup>th</sup> JUDICIAL DISTRICT  
 BLADEN COUNTY  
 BRUNSWICK COUNTY  
 COLUMBUS COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
 CR \_\_\_\_\_  
 CR \_\_\_\_\_  
 IF \_\_\_\_\_  
(List ALL file numbers associated with the OFA/FTA)

STATE OF N.C.  
  
VS.

**MOTION AND ORDER TO RECALL  
ORDER FOR ARREST (OFA);  
FAILURE TO APPEAR (FTA);  
STRIKE CALLED AND FAILED  
AND SET ASIDE BOND FORFEITURE (15A-544.5)**

\_\_\_\_\_  
DEFENDANT NAME

Defendant is charged with the following: (list ALL charges as they appear on the OFA)

\_\_\_\_\_  
\_\_\_\_\_

Now comes the Defendant, respectfully moving this Court to strike the Failure to Appear (FTA), Called and Failed, set aside/strike the Forfeiture of Bond and to recall the Order For Arrest (OFA), that occurred on \_\_\_\_\_ (date), with Judge \_\_\_\_\_, presiding, and further requests that this matter be rescheduled for Court. In support of this motion, the defendant shows unto the Court, the following:

1. That the Defendant has provided the Court with a copy of the front of the court file (shuck).
2.  This motion is being made by the defendant's attorney, who is making a  general appearance or a  limited appearance pursuant to G.S. 15A-141(2)&(3).
3. That the defendant failed to appear for the following compelling reason: (attach any supporting documents)

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
\_\_\_\_\_ Defendant \_\_\_\_\_ Attorney \_\_\_\_\_ (printed name)

**Notice to DA/ADA**

Now comes the District Attorney's Office, acknowledging that it has been notified of this Motion and request the following:

- Consent to the Motion and do not wish to be heard further.
- Opposes the Motion and do not request to be heard.
- Opposes the Motion and requests to be heard.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ (DA/ADA printed name)  
District Attorney/Assistant District Attorney

## ORDER OF THE COURT

For good cause shown and upon a hearing in open court, or if in chambers, upon the State's indication of its consent or wavier of its right to be heard, and based upon any arguments of the parties, the Court hereby ORDERS the following:

1.  The Motion is **DENIED**.
  
2.  The Motion is **GRANTED**, and it is hereby ordered that any Called and Failed, any OFA and any FTA, along with any FTA fee/costs or other administrative fee, are recalled/stricken. Pursuant to N.C.G.S. 15A-301(g), the Clerk of Superior Court is hereby ordered to notify the proper authorities that the OFA/FTA has been stricken/recalled AND to notify the North Carolina DMV that the OFA/FTA has been stricken and/or recalled. It is further Ordered, that any bond forfeiture entered as a result of the FTA, be set aside pursuant to N.C.G.S 15A-544.5. The Clerk of Superior Court shall calendar this matter on the appropriate criminal or traffic calendar;  AND set this matter **FINAL** for the Defendant on the next scheduled Court date.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Presiding District Court Judge on date Defendant failed to appear  
 District Court Judge hearing Motion  
 Chief District Court Judge

NEW COURT DATE: \_\_\_\_\_

\*\*\*It is the movants responsibility to attach a copy of the shuck to this Motion

\*\*\*Faxed recalls are not accepted. All signature lines must be original

\*\*\*The motion MUST be filled out entirely and completely or it will be denied

\*\*\*Any false or inaccurate information provided on this form will subject the movant to sanctions

FILE NO. \_\_\_\_\_

STATE OF NORTH CAROLINA ( )  
\*  
VS. )  
\*  
( )

ORDER ON FIRST APPEARANCE

THIS CAUSE coming on to be heard and being heard upon a first appearance before the undersigned District Court Judge as required by the provisions of Chapter 15A of the General Statutes of North Carolina and the Court finds facts as follows:

1. A felony as appears more fully in the warrant which is incorporated herein by reference.
2. That the defendant was advised by the Court that he had the right to remain silent and that anything he said could be used against him.
3. That he was advised that he had important legal rights which might be waived unless asserted in a timely and proper manner, and that counsel might be of assistance in advising him of his rights and acting in his behalf, and that he was entitled to have counsel appointed to represent him if he was indigent and unable to employ counsel and

That upon being so advised the defendant stated to the Court that he was unable to afford counsel and requested that counsel be appointed and that after due inquiry counsel was appointed to represent the defendant.

That upon a finding by the Court, which said finding is hereby incorporated by reference, the defendant was found not to be indigent and upon his indication that he desired to be represent by counsel, he was informed that he should obtain counsel promptly.

That the defendant stated in open court that he was able to afford to hire an attorney and that he was informed that he should obtain counsel promptly if he desired counsel.

That the defendant appeared at this hearing and was represented by his attorney \_\_\_\_\_.

That the defendant indicated that he did not wish to be represented by counsel and signed a waiver of the right to representation in accordance with the provisions of Article 36 of Chapter 7A of the General Statutes.

4. That the court has examined each criminal process or magistrate's order and finds:

That the charge against the defendant charges a criminal offense within the original jurisdiction of the Superior Court.

That the process fails to charge a criminal offense within the jurisdiction of the Superior court and the Court enters and order that,

the charge be and the same is hereby dismissed;

the State is hereby allowed to amend the statement of the crime in the process;

the matter is continued until 9:30 am on \_\_\_\_\_, 20\_\_

5. That the defendant has been informed of the charges against him, the nature thereof and the statutory punishment therefore;
6. The defendant acknowledges that a copy of the criminal process or order had been furnished to him and /or his attorney;
7. That the defendant has been informed that he has the right to a probable cause hearing and the nature of said hearing, and after being so informed he has elected to/not to have said hearing;
8. That the probable cause hearing requested by the defendant shall be held on \_\_\_\_\_, 20\_\_ at 9:30am
9. That the defendant and/or his attorney have been informed of the date of the probably cause hearing and that said hearing would be held as scheduled and would not be continued except for extraordinary cause unless a written motion is filed within 48 hours prior to the date on which the probable cause hearing is scheduled.
10. That the defendant was examined as to eligibility to be conditionally release under the provisions of Article 26 Chapter 15A, and the terms of conditional release are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
District Court Judge

## STATE OF NORTH CAROLINA

\_\_\_\_\_ County

 District  Superior Court Division

In The General Court Of Justice

STATE VERSUS

Name Of Defendant \_\_\_\_\_

CONDITIONS OF RELEASE FOR PERSON  
CHARGED WITH A CRIME  
OF DOMESTIC VIOLENCE

G.S. 15A-534.1

## FINDINGS

The undersigned judicial official finds that the defendant named above is charged with assault, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

The undersigned judicial official  has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney.  has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

## ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO a bond of \_\_\_\_\_:

1. The defendant shall participate in and comply with all terms, conditions and rules of the \_\_\_\_\_ County Sheriff's Office Electronic Offender Monitoring Program. The Defendant must first be approved for participation by the Sheriff's program staff. The defendant shall remain in the Sheriff's custody at the \_\_\_\_\_ County Detention Center until he/she is processed into the program. The Sheriff is granted the authority to impose restrictions on the defendant's movement outside the defendant's place of residence. If any law enforcement officer establishes reasonable grounds to believe that a term, condition or rule of the Electronic Offender Monitoring Program or this Order has been violated, any law enforcement officer may arrest and without unnecessary delay present the defendant to a \_\_\_\_\_ County magistrate. The Court recommends a new bond of \$\_\_\_\_\_. In lieu of EOMP and the bond set forth above, he/she may post bond of \$\_\_\_\_\_.
2. The defendant shall stay away from the home (except in the company of law enforcement to get his personal clothing, toiletries, and tools of the trade), school, business or place of employment of the alleged victim.
3. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.
4. The defendant shall refrain from removing, damaging or injuring the property listed below:
5. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
6. Other restrictions:
- a. The defendant shall have no contact with the alleged victim.
- b. The defendant shall comply with the terms of any valid domestic violence protective order in effect and these terms, whichever are more restrictive.
- c. The defendant shall not possess any firearms.
- d. The defendant shall not possess or consume any alcohol or other impairing substance unless prescribed by a physician.
- e. Other:
7. The Defendant shall carry a copy of this Bond Order and any later Modification of Bond Order on his/her person at all times when he/she is off his/her own premises. He/she must show the copy of such order(s) to any law enforcement upon request.
8. If you violate any of these conditions, this Bond will be revoked, an order for your arrest will be issued immediately, and you will be subject to contempt of court penalties under N.C.G.S. §5A for each violation. For any violation the Court recommends a new bond be set at \$\_\_\_\_\_ secured.

I acknowledge receipt of a copy of this Order. \_\_\_\_\_

(Defendant's Signature)

Date \_\_\_\_\_

Signature Of Judicial Official \_\_\_\_\_

- Magistrate  
 District Court Judge  
 Superior Court Judge

NOTE TO JUDICIAL OFFICIAL: The law enforcement officer or district attorney who provided the defendant's criminal history report shall dispose of the report in accordance with DC/regulations. The report shall NOT be placed in the case file.