

11 R 871

**CRIMINAL CASE MANAGEMENT PLAN
(CCMP)**

AND

**ADMINISTRATIVE ORDER
ADOPTING CRIMINAL RULES**

**TWENTY-SIXTH PROSECUTORIAL/JUDICIAL DISTRICT
MECKLENBURG COUNTY**

FILED
2011 MAR 23 PM 4:52
MECKLENBURG CO., C.S.C.
BY _____

**STATEMENT OF INTENT AND
SUMMARY OF BASIC PROCESS**

PURPOSE

The purpose of these rules is to institute a caseflow management plan that will provide for the orderly, prompt, and just disposition of criminal matters in Superior Court. They are promulgated pursuant to 7A-49.4. In short, a series of administrative events have been established with a firm set of expectations to be met at each stage. These events allow for continuous monitoring and intervention by the Court to ensure cases are disposed at the earliest opportunity. This system has much in common with the Civil Rules for the 26th Judicial District in that it incorporates the same fundamental principles and best practices advocated in the field of caseflow management.

One administrative event under these rules known as a Scheduling Conference will occur outside the presence of a Judge and, instead, before the Trial Court Administrator (TCA) or his/her designee. The TCA or his/her designee will preside over this event and carry the necessary and appropriate derivative authority conveyed by the Senior Resident Superior Court Judge and District Attorney through this Order. In short, the TCA designee has the authority to conduct hearings, make administrative rulings, set schedules, and refer noncompliance matters to the Criminal Supervising Judge designated for the particular case type involved.

Within ninety (90) days of an indictment by the Grand Jury, every felony case will be set for the newly established Scheduling Conference. Immediately preceding the discussions with the TCA or his/her designee, the prosecutor and defense counsel will enter into independent plea negotiations. Upon the conclusion of these discussions, the prosecutor and defense counsel will meet with the TCA or his/her designee who will assess the status of the case and determine what needs to occur to move the case towards disposition. If there are no outstanding issues and a plea agreement has been reached, a scheduling order will be issued setting the date for Arraignment

and entry of a guilty plea. If a plea agreement has not been reached and outstanding issues make it unreasonable for a case to proceed to an arraignment, a scheduling order will be issued detailing the outstanding issues and setting forth deadlines for those matters to be addressed. The case will then be recalendared for a follow-up Scheduling Conference allowing sufficient time to resolve those issues. If there are no outstanding issues but some indication is given that the participation of a judge would be of benefit in further plea negotiations, a scheduling order will be issued setting the case for a Judicially Led Plea Conference. For good cause shown, a case may be scheduled for more than one follow-up scheduling conference. More than one follow-up conference, however, is discouraged and shall be offered sparingly. The more likely scenario will be for the TCA or his/her designee to identify the issue(s) and/or party responsible for the delay and to schedule a compliance hearing before the Criminal Supervising Judge assigned to the particular case type involved. In most instances, a case will simply move from the initial Scheduling Conference to an Arraignment date

Upon the entry of a “not guilty” plea, the case will progress to the next event in the process, which is a Pretrial Readiness Conference. At the Pretrial Readiness Conference, the presiding judge will review all prior activity in the case and ensure that no outstanding issues remain that would interfere with the establishment of a trial date. Assuming all issues have or will be resolved at this point, the case will be set for trial within approximately 90 days.

Nothing in these rules shall hinder or prevent a defendant from pleading guilty prior to the Scheduling Conference. Attorneys may schedule a case for a guilty plea by contacting the TCA or his/her designee for an Arraignment date.

These rules have been developed through the cooperation of a number of agencies in the criminal justice system. They are designed to establish a procedure for the orderly progression of cases through the use of clearly-defined tasks to be completed at each stage. ***The Plan is not intended to be rigid but is meant to be open to modification as needs arise. These rules are to be applied with the overarching and guiding purpose of avoiding all unnecessary delay, keeping in mind that justice is the primary goal. Reasonableness and common sense shall govern while working within this larger framework.*** In all instances, matters shall be addressed in a manner that protects the interests of the community and the victims of crime while also ensuring that the rights of defendants are preserved. Failure to set events within the established timeframes shall not be grounds for dismissal.

The procedures described herein are the best efforts of individuals to plan ahead and outline a workable system. There will be problems and details will appear that had not been anticipated. We must all work together to solve problems that arise, remain open to constructive comments, and be prepared to change parts of the process that do not work well. The Senior Resident Superior Court Judge, District Attorney, Public Defender, and the Trial Court Administrator have committed to closely monitor the procedures and results. Changes will be made as necessary.

BACKGROUND

Scheduling and processing large numbers of criminal cases in Superior Court are not simple tasks. Events must be scheduled well in advance, participants must make preparations for each appearance, and multiple parties have to converge at the appointed place and time for a scheduled

event to take place as planned. It is also clear that court time and other resources will allow for less than five (5) percent of felony cases to actually be tried before a jury. Therefore, a large number of cases must be resolved in some manner short of trial. We are convinced that there are better ways to operate this system than the ones we have been using.

Mecklenburg County has used an “administrative court” for arraignments for over twenty-five years. At times, this court has been very productive, resolving a high percentage of cases at an early stage of the process. The use of a separate courtroom for arraignment certainly contributed to the ability to focus on cases well before they appear on a trial calendar. Plea agreements between the prosecutor and defense counsel have been relied on in an effort to resolve cases at this stage of the process. Periodically, judges have held plea conferences in which they meet with both sides in order to hear the facts of the case, to learn of any record of the defendant, and to inform counsel of the sentence to be imposed should the defendant plead guilty.

The Criminal Caseflow Management Plan, modeled after the system in place in Fayetteville, NC, was instituted in 1998 in an effort to provide a logical framework and consistent approach to the processing of criminal cases in both administrative and trial courts. It is generally agreed that, as time has passed, the efficiency and effectiveness of this Plan have sharply declined.

Our current practices have resulted in these problems:

- uncertainty in the arraignment court process
- problems with delivery of discovery
- lack of attorney preparation for administrative court
- failure of some attorneys to appear in arraignment court
- long delays during administrative sessions to locate attorneys
- transcripts of plea not completed prior to court
- high percentage of cases postponed
- decreasing effectiveness in the productivity of arraignment court
- larger, less reliable trial calendars
- wasted time for users of the system
- long jail stays and long delays before cases are resolved

We are now revising the Criminal Case Management Plan in an effort to improve the way that we process criminal cases. The details of the new system are included in this Plan developed by the District Attorney in consultation with the Senior Resident Superior Court Judge and after opportunity for comment by the Public Defender and members of the local bar.

OBJECTIVES

Some of the objectives of the CCMP include:

- to follow fundamental caseflow management principles and best practices

- to establish logical, practical procedures for the processing of criminal cases
- to create a series of events with established tasks to be accomplished at each event
- to establish consistent expectations for participants in the court process
- to establish a system to hold participants accountable for non-compliance
- to resolve cases fairly at the earliest possible stage of the process
- to ensure cases calendared for trial are, in fact, for trial
- to bundle and resolve all cases related to a defendant or incident at one time whenever reasonable and appropriate.
- to give priority to in-custody defendants at each event in the process
- to request additional trial time from the AOC to meet the corresponding need

We intend to meet these objectives by following the procedures set out in this new CCMP by tempering them with common sense and fairness. It will be necessary to remain flexible enough to know when the procedures should be followed closely and when it makes more sense to create an exception or to consider changing the procedure in order to meet the needs of a particular type of situation. This system has to provide definite guidelines that should govern the vast majority of cases, but it must also allow enough discretion on the part of the Supervising Criminal Judge and the TCA or his/her designee to ensure that it does not produce unrealistic or needlessly harsh results.

For any system to work effectively, each integral party must constructively fulfill the responsibilities of their position. The District Attorney must make reasonable plea offers, defense counsel must weigh all factors and act in the best interest of his/her client, and the judge must give full consideration to any negotiated pleas and/or participate in plea conferences, where requested, to bring about resolution at the earliest stage in the proceedings.

DEFINITIONS

Criminal Supervising Judge – A Superior Court Judge designated by the Senior Resident to oversee the administration of the Criminal Case Management Plan for a particular case type(s) and to work with the TCA to ensure compliance by all parties.

Presiding Judge – A Superior Court Judge holding a term of Criminal court and in front of whom a case is currently set.

Exceptional Case – Cases where the facts and circumstances make clear that the normal time expectations will not be met due to complexity or other factors. These may include but are not limited to homicides, crimes involving multiple-defendants or victims, complicated white-collar crimes, and those requiring extraordinary scientific investigation. (Exceptional designations may be made at the Scheduling Conference or at any time thereafter by contacting the TCA or his/her designee who will review the information presented, ensure the position of the opposing counsel is considered and make a determination.)

Scheduling Order – The establishment of deadlines in which certain events and activities must occur. (Every order will be tailored to the individual circumstances of each case rather than category of case.)

Rule 1: General Rules

1.1 As amended, this Criminal Case Management Plan supersedes all previous Plans, Rules and Orders for the 26th Judicial District, Superior Court Division effective July 1, 2010.

1.2 These rules and all amendments hereafter shall be filed with the Clerk of Superior Court for Mecklenburg County, published in the Mecklenburg Bar Handbook (www.meckbar.org) and published on the State website, www.nccourts.org.

1.3 These rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the Trial Court Administrator is authorized to act in his/her discretion, in consultation with the District Attorney and the Criminal Supervising Judge for the particular case type involved. The Trial Court Administrator will also continue to consult with Public Defender's Office, Defense Bar, Clerk's Office, and others in order to make appropriate additions and/or changes to these Rules.

1.4 The calendar for the disposition of criminal cases in the 26th Judicial District, Superior Court Division, shall be set and maintained by the Trial Court Administrator through the derivative authority conveyed by the District Attorney with the signing of this document.

1.5 The Trial Court Administrator shall ensure that these rules are made available to members of the Bar who practice in the courts affected by this Plan.

Rule 2: Time Standards

2.1 The District Attorney shall make every effort to submit bills of indictment to the grand Jury within 90 days of Probable Cause being established or waived for out-of-custody defendants and within 21 days for in-custody defendants. Scheduling conferences will be set in accordance with Rule 3.2.

2.2 With the exception of Homicide cases all other criminal cases should be tried or disposed of within the following timeframes: 50% within 120 days, 75% within 180 days, 90% within 240 days and 100% within 365 days of indictment. These timeframes will be revisited on an annual basis and shortened where experience and resources allow.

Commentary: After one year of operating under this plan, we anticipate a 25% decrease in the median age of disposed cases to 204 days and the age of cases disposed at the 90th Percentile to 441 days.

2.3 Homicide cases shall receive specialized scheduling orders for the purpose of

facilitating timely disposition. Such orders shall be prepared in consultation with the Superior Court Judge assigned to monitor homicide cases.

Rule 3: Ready Cases

3.1 The Trial Court Administrator shall establish and maintain a case tracking system in accordance with these rules. This system shall be used to monitor all case information including, but not limited to, the number, age, type, custody status, and procedural status of all pending cases and to provide for the calendaring of the same.

3.2 A case shall be considered ready to move through the calendaring system upon the issuance of an indictment by the Grand Jury. The District Attorney's Office will set a Scheduling Conference immediately after indictment to be held before the TCA or his/her designee within 90-days of the indictment date. Cases will be calendared for a Scheduling Conference even if the prosecutor is not in a position to make a written plea offer and to provide substantial discovery.

3.3 The TCA or his/her designee shall prepare and publish a Scheduling Conference calendar not less than fourteen (14) days prior to said conference.

Rule 4: Discovery

4.1 Once counsel has appeared or been appointed in a case, it shall be presumptively assumed that counsel is seeking those items discoverable under North Carolina law and the laws of the United States. No formal request for discovery under 15A-902(a) need be made. The act of providing Discovery by the State acts as an automatic request for reciprocal discovery from the defendant. This rule does not affect the agreement between the District Attorney and the Public Defender that is contained in a letter of September 12, 2008, which is attached and incorporated by reference.

4.2 Law enforcement agencies shall provide to the District Attorney their *complete* file within 14 days of arrest because the full disclosure of that information facilitates informed decisions at the earliest possible stages of the proceedings. Nothing absolves law enforcement of the continuing obligation to disclose supplemental information obtained in compliance with 15A-901 et. seq.

4.3 The District Attorney shall make all reasonable efforts to provide information available as discovery to the attorney of record entering a general appearance in each case at least two weeks prior to the Scheduling Conference held before the TCA or his/her designee.

4.4 Discovery shall be provided to the then-current attorney of record. Should a change in defense counsel occur, it is the joint responsibility of both new and previous counsel to ensure that the photocopied discovery material is transferred from previous counsel of record to the new counsel of record. The presiding judge and TCA or his/her designee shall monitor that the transfer of discovery occurs in a timely fashion.

Rule 5: Scheduling Conferences

5.1 Cases appearing on the Scheduling Conference calendar will be grouped by case type (Drug, Property, or Person), and set at a date and time when the respective DA team is scheduled to appear in Administrative Court.

5.2 The TCA or his/her designee conducting the Scheduling Conference shall be reasonable and fair in deciding how to proceed, keeping in mind that a goal of this system is to ensure that cases progress in an orderly manner in an effort to resolve them fairly at the earliest possible stage of the proceedings.

5.3 The following matters shall be accomplished at the Scheduling Conference:

- A. Determination as to whether the defendant is in custody or out of custody
- B. Determination of counsel: general appearance, waiver of counsel, or appointment
- C. Inquiry of defense counsel as to whether the defendant has any other misdemeanor or felony cases within the jurisdiction of the Superior Court. ***When other cases are identified, they shall be bundled with the current case whenever reasonable and appropriate and the ADA shall indicate which DA team will take responsibility for prosecution of the lot. The TCA or his/her designee will then set the next event as provided in Rule 5.4 on a date and time when that respective DA team is scheduled to appear in Administrative Court.***
- D. Certification by counsel that conflicts do not exist
- E. Confirmation that all discovery has been provided
- F. Confirmation that written plea offer has been provided to defense counsel and a discussion between the defense counsel and the prosecutor has taken place.
- G. Determination as to whether case will be declared "Exceptional" as defined under the Definition Section above. Cases declared as exceptional will be placed on a list maintained by the TCA or his/her designee and regularly monitored to ensure fair and prompt resolution.
- H. Inquiry whether restitution or other special conditions upon which the plea offer is being predicated are being sought and how much time would be appropriate to accomplish such.
- I. Verify and record that the prosecutor has served upon defense counsel a bill of indictment alleging "habitual felon" status where applicable. In accordance with the standing administrative order, defendants are not to be arrested upon issuance of such an indictment.

5.4 Upon completion of a Scheduling Conference, a scheduling order will be prepared capturing the status of the above and directing that one of the following occur:

- A. ***Follow-up Scheduling Conference*** - All open issues identified be completed by the deadlines noted and that counsel reappear for a follow-up Scheduling

Conference (within approximately 30 days of the last conference) to ensure compliance with the newly established deadlines and to determine the appropriate next event;

- B. **Judicially Led Plea Conference** - Prosecution and defense counsel appear for a Plea Conference (with a judge) within approximately 30 days; or,
- C. **Arraignment** - Prosecution and defense counsel appear for an Arraignment hearing for the entry of a plea within approximately 30 days. The need for additional time should be brought to the attention of the TCA or his/her designee at the Scheduling Conference.

5.5 In addition to addressing open issues, a follow-up Scheduling Conference may be set to address instances such as the following:

- A. Private counsel is present and states that the defendant is seeking to retain him/her and counsel reasonably believes that the defendant can and will make such arrangements to allow a general appearance to be made at a follow-up Scheduling Conference.
- B. A co-defendant's case has been set for a follow-up Scheduling Conference.

5.6 A case will not move forward to an arraignment hearing when there are still outstanding issues to be addressed unless sufficient information has been provided to the TCA or his/her designee that the matter will be satisfactorily resolved by the time of the next event.

5.7 Copies of the original scheduling order and each subsequent scheduling order will be provided to the State, defense counsel and Clerk of Court to be placed in the court file. The Clerk will update the Criminal Information System (CIS) to reflect the date of the next scheduled event.

5.8 Defendants represented by counsel are NOT required to be present at the Scheduling Conference. Counsel is urged to maintain contact with their client throughout the pendency of the case. If, however, a Follow-up Scheduling Conference is set in Habitual Team cases because defense counsel was not able to meet with his or her client prior to the original Scheduling Conference, the defendant is required to be at the Follow-up Scheduling Conference. If the defendant appears at the Follow-up Scheduling Conference, it will be used as an opportunity for him or her to meet with defense counsel and the case will proceed to Arraignment barring any other problems. If the defendant does not appear, an Order for Arrest will be issued.

5.9 Defense counsel is required to be present at the Scheduling Conference. When an attorney has a conflict and cannot appear, the attorney must have a partner, associate, or another attorney present who is able to provide the required information to the TCA or his/her designee. If unable to have another attorney present, the attorney shall contact the TCA or his/her designee and provide any relevant information necessary for preparation of the scheduling order as set forth in 5.3.

5.10 Absent exigent circumstances, failure of defense counsel to abide by Rule 5.9 or to receive from the TCA an advance exemption from appearing will subject him or her to a compliance/sanction hearing before the Criminal Supervising Judge for that particular case type.

5.11 When the prosecutor and defense counsel agree all known discovery has been exchanged, the plea offer has been extended and discussed, and there are not any outstanding issues which would prevent the defendant from entering a plea during the Arraignment, the prosecutor and defense counsel may utilize the expedited scheduling conference option. Defense counsel and the prosecutor must sign the Expedited Scheduling Conference Order, (CRF-05) certifying all matters have been resolved and the case(s) is/are ready to proceed to Arraignment. Once the form has been signed, three copies must be made and the defense attorney must take the forms to the TCA or his/her designee located in courtroom 5310 during the assigned scheduling conference time in order to obtain an Arraignment date and time.

Under the same circumstances as described in the above paragraph, the defense attorney may email the Expedited Scheduling Conference Order (CRF-05), along with any conflicting dates, to the TCA or his/her designee and copy the assigned ADA in advance of the scheduling conference date and time. The TCA or his/her designee will assign a date and time for the Arraignment hearing and notify the defense counsel and ADA of the same. The defense counsel and ADA will not need to appear for the assigned scheduling conference time when this option is utilized. The Expedited Scheduling Conference Order (CRF-05) is available at: <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp?CountyID=60>

5.12 The prosecutor and defense counsel are expected to prepare for the Scheduling Conference, to enter into meaningful plea negotiations no later than the time immediately preceding the meeting with the TCA or his/her designee, to complete the tasks required by any follow-up deadlines established, and to be open and honest as to the status of cases, requests for postponements, and any other matter.

Rule 6: Plea Offers

6.1 The District Attorney shall send a written plea letter to defense counsel of record in every case before the Scheduling Conference. The prosecutor's plea letter shall set out the specific terms and conditions necessary to fairly address the circumstances of each case. In exceptional circumstances, a written plea letter may consist of notice that no offer will be made in a particular case. ***It is the practice of the District Attorney's Office to make the best offer possible in the plea letter rather than to make a high opening offer and expecting to negotiate down from that offer.***

6.2 Prosecutors shall include within plea offers whether the defendant's punishment should be "active", "intermediate", or "community" when options exist. Prosecutors shall also specify within the plea agreement definite lengths of sentences and the specific conditions of probation which are recommended.

6.3 The District Attorney's Office is open to receiving information from defense

counsel that could reasonably affect the plea offer or the ultimate decision as to whether to prosecute and encourages the communication of such information at the earliest possible stage. This should be done no later than the Plea Conference (without the judge).

6.4 Defense counsel has a responsibility to convey all plea offers to the defendant in a timely fashion.

Rule 7: Plea Conferences

7.1 There are two types of Plea Conferences: Independent Plea Conferences between the prosecutor and defense counsel and Judicially Led Plea Conferences. Independent Plea Conferences between the prosecutor and defense counsel shall occur outside the presence of a judge and preceding the meeting with the TCA or his/her designee at the time of the Scheduling Conference. The Judicially Led Plea Conference will be set at the time of the Scheduling Conference if it is determined that judicial participation may be of benefit in further plea negotiations. As with Scheduling Conferences, the Judicially Led Plea Conferences shall be scheduled for a date and time corresponding to the type of case and when the respective DA team is scheduled to appear in Administrative Court.

7.2 Defendants represented by counsel are NOT required to be present at the Judicially Led Plea Conference. Counsel is urged to maintain contact with their client throughout the pendency of the case.

7.3 A Plea Conference (with or without a Judge) must take place before an Arraignment hearing will be scheduled for the entry of a plea of "not guilty".

7.4 While the Court recognizes the benefit of Plea Conferences held with the involvement of a judge, the volume of cases which the Court must process dictates that judicially led Plea Conferences be reserved for cases in which all independent efforts to agree on a plea arrangement have been exhausted without an agreement. Independent Plea Conferences must take place before a Judicially Led Plea conference will be scheduled.

7.5 If there are no outstanding issues and a plea agreement has been reached through the Independent Plea Conference negotiations, a scheduling order will be issued setting the date for Arraignment, which shall normally occur within approximately 30 days of the Scheduling Conference. Additional time (normally 30 days) may be provided based on the nature of the charge, the complexity of the case and other circumstances when brought to the attention of the TCA or his/her designee at the Scheduling Conference. Copies will be provided to the State, defense counsel and Clerk of Court to be placed in the court file. The Clerk will update the Criminal Information System (CIS) to reflect the Arraignment date.

If a plea agreement has not been reached through the Independent Plea Conference negotiations and outstanding issues make it unreasonable for a case to proceed to an arraignment, a scheduling order will be issued detailing the outstanding issues and setting forth deadlines for those matters to be addressed. The case will then be recalendared for a follow-up Scheduling Conference allowing sufficient time to resolve those issues. Copies of the scheduling order will

be provided to the State, defense counsel and Clerk of Court to be placed in the court file. The Clerk will update the Criminal Information System (CIS) to reflect the new Scheduling Conference date.

If there are no outstanding issues identified at the Scheduling Conference but it is determined that the participation of a judge would be of benefit in further plea negotiations, a scheduling order will be issued setting the case for a Judicially Led Plea Conference which shall occur within approximately 30 days of the Scheduling Conference. Copies of the scheduling order will be provided to the State, defense counsel and Clerk of Court to be placed in the court file. The Clerk will update the Criminal Information System (CIS) to reflect the establishment of the Judicially Led Plea Conference date. Again, these conferences shall be scheduled for a date and time corresponding to the type of case and when the respective DA team is scheduled to appear in Administrative Court.

7.6 If a case has been scheduled for a Judicially Led Plea Conference, the physical presence of the prosecutor and defense counsel are required for a face-to-face meeting with the judge. Both parties are also required to meet with the judge and are not permitted to use this event as merely an opportunity for plea discussions between counsel or to generate delay in the processing of the case.

7.7 At the conclusion of the Judicially-Led Plea Conference, the TCA or his/her designee will schedule an Arraignment hearing, which shall normally occur within approximately 30 days of the Judicially-Led Plea Conference. Additional time (normally 30 days) may be provided based on the nature of the charge, the complexity of the case and other circumstances when brought to the attention of the judge. The scheduling order will be updated to reflect the Arraignment date. Copies will be provided to the State, defense counsel and Clerk of Court to be placed in the court file. The Clerk will update the Criminal Information System (CIS) to reflect the Arraignment date.

7.8 Defense counsel shall be present at the time set for all Plea Conferences or will notify the TCA or his/her designee or the prosecutor in the courtroom of their whereabouts and anticipated time of arrival. When an attorney is scheduled to appear for a Plea Conference and has a conflict, the attorney must have a partner, associate, or another attorney present or contact the TCA or his/her designee to advise as to when counsel of record will be available.

7.9 Absent exigent circumstances, failure of defense counsel to abide by Rule 7.8 or to receive from the TCA or Presiding Judge an advance exemption from appearing will subject him or her to a compliance/sanction hearing before the Criminal Supervising Judge for that particular case type.

7.10 The District Attorney and Public Defender's Office will have the unit supervisor or his/her designee available for all Independent Plea Conferences in order to facilitate the resolution of cases.

Rule 8: Arraignments

8.1 An Arraignment will be scheduled as the next step after the final Scheduling Conference, unless a Judicially-Led Plea Conference is requested. In those instances an Arraignment will be scheduled at the conclusion of the Judicially-Led Plea Conference.

8.2 Defense counsel shall complete plea transcripts in advance of the scheduled Arraignment hearing so that entry of pleas will not be delayed.

8.3 The prosecutor and defense counsel shall be present at the time set for Arraignment or will notify the TCA/Designee and the prosecutor in the courtroom of their whereabouts and anticipated time of arrival. When exigent circumstances arise and an attorney cannot appear, s/he must have a partner, associate, or another attorney present to answer in court. If alternative counsel and the client both agree that the client's interests will not be harmed by doing so, alternative counsel should be prepared to represent the client at the arraignment. If alternative counsel is not available or cannot fulfill the required role, defense counsel shall contact the TCA or his/her designee prior to the Arraignment date to identify the conflict and discuss possible alternative arrangements.

8.4 Absent exigent circumstances, failure of defense counsel to abide by Rule 8.3 or to receive from the TCA or Presiding Judge an advance exemption from appearing will subject him or her to a compliance/sanction hearing before the Presiding or Criminal Supervising Judge for that particular case type.

8.5 Defendants shall be present at the time specified for Arraignment hearing. If the defendant is pleading guilty, sentencing will occur at this time. If the defendant is pleading "not guilty," the arraignment will be conducted pursuant to Rule 8.7.

8.6 Where the defendant is pleading "guilty," the Court will carefully consider each offer and the facts of the case in determining whether to approve the agreement. If the agreement is not approved and no resolution can be reached, the Court will follow the provisions of NCGS 15A-1023 in allowing the case to be reset for a different session.

8.7 Where the defendant is pleading "not guilty", defense counsel shall submit to the Court the Judicial Inquiry Upon Plea of Not Guilty form (CRF-06). The Court shall then confirm that the plea offer has been communicated to the defendant, the defendant understands that any plea offer by the District Attorney is withdrawn upon the entry of a plea of "not guilty", that barring a significant change in circumstances no further plea negotiations will take place and that if found "guilty" the number of years (not months) to which the defendant may be sentenced. Upon receiving such confirmation, the Court shall inquire if the defendant needs a few minutes to again consider his or her plea. If the defendant still wishes to plead "not guilty" the Court shall arraign the defendant, accept the plea of "not guilty", make inquiry as to whether any pre-arraignment motions have been filed, schedule them in accordance with Rule 10 below (unless an extension to file has been granted) and set a Pretrial Readiness Conference.

The Judicial Inquiry Upon Not Guilty form (CRF-06) is available at:
<http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp?CountyID=60>.

8.8 The Clerk will update the Criminal Information System (CIS) to reflect the date of the Pretrial Readiness Conference.

8.9 The Date for the Pretrial Readiness Conference will be announced in open court and the defendant ordered to attend.

8.10 To ensure all necessary information is available to the presiding judge, the file is available in the courtroom, and any in-custody defendant is available at the time of hearing, requests to “add-on” a defendant to an existing arraignment calendar must be made no later than 48 hours prior to the desired hearing date. Opposing counsel must consent to the request prior to moving counsel contacting the TCA or his/her designee to have the case scheduled.

Rule 9: Pretrial Readiness Conference

9.1 The following individuals shall be present at the Pretrial Readiness Conference:

- A. Defendant
- B. The primary law enforcement officer involved in the case along with his/her case file.
- C. The designated prosecutor
- D. Defense counsel of record

When exigent circumstances arise and an attorney cannot appear, s/he shall contact the TCA or his/her designee to identify the conflict and discuss possible alternative arrangements.

9.2 A Pretrial Readiness Conference will be held in Administrative Court for all cases where a “not guilty” plea has been entered. This conference shall occur within 30 days of the Arraignment hearing and be scheduled for a date and time corresponding to the type of case and when the DA team handling this respective case type is scheduled to appear again in Administrative Court.

9.3 The prosecutor and defense counsel shall bring his/her calendar to the Pretrial Readiness Conference to facilitate the scheduling of a trial date. The prosecutor and defense counsel shall make reasonable efforts to confer with their material witnesses to determine their availability and/or scheduling conflicts

9.4 The primary law enforcement officer will certify in open court that all discovery pursuant to 15A-903 et. seq. has been provided to the prosecution and acknowledge their continuing duty to provide discoverable material. Failure by the primary law enforcement officer

to disclose discovery material or comply with their continuing duty could result in evidence being excluded at trial, dismissal of the charges and such other sanctions that the Court deems appropriate.

9.5 A final check for conflicts shall be made. If the attorney withdraws due to a conflict, the case shall be reset for another Pretrial Readiness Conference for new defense counsel to make an appearance.

9.6 Through consultation with the prosecutor, defense counsel and the TCA or his/her designee, the Court will make every effort to set a trial date that falls within 90 days of the Pretrial Readiness date. If a mutually acceptable trial date cannot be found, the Court should select a trial date from one of the prosecutor's assigned sessions, attempting to balance the need for prompt trial settings with the professional and personal obligations of the participants.

9.7 Any request for a peremptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be raised as part of the discussions in selecting a trial date. If the request is due to travel distance, the requesting party shall state the location from which the party/witness is traveling in order to attend the trial.

Peremptory settings will be granted in the discretion of the Presiding or Criminal Supervising Judge for that particular case type, but only for good and compelling reasons. Among the reasons which may warrant a peremptory setting are:

- (a) It is impossible or impractical for a witness to appear for the trial except by air travel. In cases where witnesses live reasonably close enough to Charlotte to travel by land to the trial, the Court will not ordinarily grant peremptory settings. It will, however, give counsel sufficient advance notice of the setting of the trial to allow those persons time to arrive, provided counsel makes timely request for such notice;
- (b) The case involves numerous expert witnesses;
- (c) Severe adverse economic consequences will result from delay of the trial;
- (d) The case has been repeatedly scheduled for trial without being reached;
- (e) The case is more than eighteen months of age;
- (f) Other extraordinary reasons requiring a prompt resolution of the case.

9.8 The scheduling order will be updated to reflect the Trial date. Copies will be provided to the State, defense counsel and Clerk of Court to be placed in the court file. The

Clerk will also update the Criminal Information System (CIS) to reflect the date of the Trial.

Rule 10: Motions

10.1 All pre-arraignment motions shall be filed prior to the Arraignment hearing unless an extension is granted at the time of the Arraignment. A date for the hearing will be set at the time of Arraignment for a date prior to the Pretrial Readiness Conference.

10.2 Pretrial motions related to the progression of the case that need to be heard prior to the trial date shall be calendared by contacting the TCA or his/her designee and will be set in the Administrative Court for a date and time corresponding to the type of case and when the DA team handling this respective case type is scheduled to appear again in Administrative Court. The requesting attorney shall email the TCA or his/her designee and copy the opposing counsel on any request to calendar. Counsel shall serve the opposing counsel with a Notice of Hearing.

10.3 Other pretrial motions will normally be heard during the session at which the case is set for trial. Motions to suppress should be filed prior to the trial session pursuant to the September 12, 2008, letter of agreement between the District Attorney and Public Defender or, for the private bar, pursuant to NCGS 15A-976.

10.4 Administrative motions such as motions to strike Orders for Arrest (OFAs), motions to address counsel, motions to determine competency, and other administrative motions that address issues arising outside of the normally scheduled court events, shall be calendared by contacting the TCA staff member handling the respective case type for hearing on the next date when both parties are available. The requesting attorney shall email the TCA or his/her designee and copy the opposing counsel on any request to calendar. The TCA will notify both counsel of the date and time assigned.

In order to make the file and any in-custody defendant available at the time of hearing, counsel shall contact the TCA staff member at least 48 hours prior to the desired hearing date.

10.5 Ex parte motions should be presented to the presiding Administrative Court Judge.

Rule 11: Trials

11.1 In accordance with 7A-49.4 (e), the TCA as delegated by the District Attorney shall publish a trial calendar for each term of Court for which cases are scheduled. Cases designated as preemptory shall appear at the top of each trial calendar. Cases that have previously been calendared or where the defendant is in custody should be given priority. In addition, all cases listed shall appear in the order which the District Attorney has indicated that he anticipates they will be called for trial.

11.2 Once the session begins, the order in which cases are called for trial shall be subject to the provisions of General Statute 7A-49.4 and these rules not inconsistent with the

statute. In the discretion of the Presiding Trial Judge, the order of cases for trial may be varied to accommodate such factors as availability of court time and schedules of witnesses and to include cases of defendants who did not appear at the calendar call.

11.3 The Assistant District Attorney will announce, at the calendar call, the dates for all cases that do not reach trial. If the prosecutor and/or defense counsel subsequently discover(s) a conflict that prevents him/her from being present for trial on that date, the prosecutor and/or defense attorney must explain to the TCA or his/her designee, within ten (10) days of the end of the trial week, why the date is not acceptable and request a new trial date. Barring requests that would constitute unreasonable delay, the TCA or his/her designee will work with all concerned to find a new mutually agreeable trial date. Upon the assignment of a new trial date, the TCA or his/her designee shall notify the Clerk in Administrative Court so that the court file and recordkeeping system can be updated.

11.4 The calendar call for trial sessions (except Drugs, Misdemeanor Appeals and Habitual Felons Team) will be held on Monday of the week preceding the trial session. This calendar call will take place at 10:00 A.M. in the courtroom designated on the published docket. (If Monday is a holiday, the calendar call will be held on Tuesday morning. If there is a holiday week preceding a trial session, the calendar call will be held on the Monday of the week before the holiday week.)

11.5 Defense attorneys and their clients (if out of custody) are to be present at this calendar call unless the defense attorney files and presents a Certificate in Lieu of Appearance (forms available in the administrative courts) that includes a certification by defense counsel that he/she has spoken with the defendant within the last seven (7) days. If a defendant does not appear (and no Certificate in Lieu of Appearance is filed) an Order for Arrest will be issued. Any motions to strike such Orders for Arrest should be addressed to the calendar call Judge after notice to the Assistant District Attorney responsible for the particular trial calendar.

11.6 The Assistant District Attorney shall prepare an updated order of trials for courtrooms and send it to the TCA by noon on Wednesday preceding the trial week. The TCA or his/her designee will then make that order available to defense attorneys via email and posting on the www.nccourts.org website. Cases of defendants who have not appeared by the time the Assistant District Attorney prepares a trial order will not be included in the trial order; however, should those defendants appear after that time, their cases are subject to being called at any point in the trial order upon application to the Trial Court Judge.

11.7 The posted trial order will indicate which defendants will need to be present in the courtroom at 10:00 AM on the first day of the trial week. Although the number required to appear is at the discretion of the Assistant District Attorney, the presumptive number will be 3-5 depending on the type of case.

11.8 Those defendants required to be present at 10:00 AM on the first day of the trial week must remain in court until the first trial begins. Once this trial begins, these defendants, as well as the remaining defendants on the calendar, are placed on a standby basis with the understanding that they must appear in court within two (2) hours should the case be called for

trial. Defense attorneys are responsible for staying in touch with the Court to determine the progress of trials and the status of their cases. Although the District Attorney is not required to contact defense attorneys, notification may be provided as a courtesy when defense counsel supplies contact information to the ADA.

Rule 12: Motions for Continuances

12.1 The trial date established at the Pretrial Readiness Conference shall be a firm date. Continuances will not be granted unless for a circumstance that could not have been reasonably foreseen and/or the fair administration of justice requires a continuance. Even where both parties agree, the circumstances warranting a continuance must be stated in any motion for continuance which will be considered and ruled upon by the Court or TCA where designated.

Commentary: Every effort is being made to ensure that all parties have input into and advance notice of the trial date so that time is not wasted preparing for trials that do not occur due to continuances granted for reasons that should have been discovered earlier in the process. Neither the rights of defendants nor the rights of victims will be ignored in the process of ruling on motions to continue trials under this system; but all parties need to recognize that trial dates are serious, certain, and only subject to delay for the most crucial circumstances.

12.2 In addition to other factors that the TCA or his/her designee and/or the Court feel are appropriate, the following will be considered when deciding whether to grant or deny a motion for continuance:

- the age of the case
- the custody status of the defendant
- the order in which the case is designated for trial, including whether the case has a priority designation
- the number of previous continuances and who requested those continuances
- the number of times the cases has been designated for trial and not reached
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable
- whether the reason for the continuance is a short lived event which could resolve prior to the scheduled trial date
- the length of the continuance requested
- the position of opposing counsel
- whether the motion has been previously considered by another Judge on the same grounds
- whether counsel initially followed the rules set forth herein when requesting a continuance
- present or future inconvenience or unavailability of witnesses or parties
- any other matter that promotes the ends of justice

In those instances where compelling reasons for continuance are presented which would

affect the fair administration of justice, a continuance shall be granted. No case shall be continued without rescheduling the trial to a date certain, except in a case of extreme and unusual circumstances.

12.3 While the elements listed in Rule 12.2 above will be considered and given the appropriate weight in reaching a decision, the following reasons in and of themselves are either deemed to be without merit or do not rise to the level of a circumstance that could not have been reasonably foreseen.

- The case has never before been continued
- The other side received a prior continuance
- Opposing counsel does not object
- Personal conflicts such as vacations where no secured leave has been obtained
- Continuing legal education opportunities

Witness unavailability, personal emergencies and outstanding discovery issues will be handled on a case-by-case basis. The timeliness of counsel in identifying and addressing each one of these issues, however, will be a major determinant in any ruling.

Commentary: Trial slots are a scarce resource. The Court and counsel have a responsibility to ensure that this resource is wisely managed.

12.4 Motions for continuance may be heard prior to the calendar call if submitted in writing on Form CRF-2 to the TCA or his/her designee prior to that date.

12.5 Attorneys seeking a continuance prior to the calendar call shall notify opposing counsel as soon as a decision is made to request a continuance. Opposing counsel shall be served with the motion for a continuance prior to or concurrently with the submission of the continuance to the TCA or his/her designee.

12.6 Upon receipt of the motion to continue, the TCA or his/her designee will schedule a time for counsel to be heard by conference call or in person. Any objections to the continuance motion should be delivered to the TCA or his/her designee on Form CRF-3 in advance of the conference call or in-person hearing and served on opposing counsel concurrently.

12.7 At the conclusion of the hearing, the TCA or his/her designee will announce his/her decision. If counsel wishes to appeal this decision, then s/he shall enter notice of appeal with the TCA or his/her designee. The TCA or his/her designee will then notify the Criminal Supervising Judge for the particular case type involved, who will schedule a time for counsel to be heard by conference call or in person and then make a final ruling upon the conclusion of the hearing.

Commentary: The TCA and or his/her designee and the Criminal Supervising Judge for the particular case type involved will be conscious of the urgency in rendering a ruling

when the motion to continue is filed in close proximity to the trial date.

12.8 Should the judge presiding over a session be different than the designated Criminal Supervising Judge for the particular case type involved, counsel shall advise the presiding judge of the previous ruling denying the motion to continue by the Criminal Supervising Judge upon any subsequent renewal of the motion. No motion to continue that is approved by a Criminal Supervising Judge may be appealed.

12.9 Motions for continuance submitted to the trial judge during the trial week will only be granted under the exceptional circumstances and where not allowing such would constitute a miscarriage of justice.

Rule 13: Probation Hearings Motions for Appropriate Relief, and Grand Jury

13.1 In order to meet the statutory requirement (NCGS Section 15A-1345) of providing a preliminary hearing within seven (7) days of arrest on an order accompanying an allegation of a probation violation, such hearings will be scheduled each Monday morning in Courtroom 5170. It will not be necessary for the probation officer assigned to the specific case to be present at that hearing since the formal rules of evidence do not apply. Therefore, it will be sufficient for there to be a probation officer present who can attest to the identity of probationer and to identify probation documents.

13.2 Superior Court probation revocation hearings will be calendared pursuant to a schedule developed by the TCA or his/her designee in consultation with the District Attorney. Based upon available session time and historical disposition rates, a limited number of slots will be designated. It will be the responsibility of the Division of Community Corrections to set cases for hearing and to coordinate the setting of new cases with the Clerk's Office so that the total number of cases set does not exceed the number of slots available. Since neither cases nor judges are all exactly alike, the number of slots made available will be periodically adjusted as experience and needs dictate. It is essential that all system agencies effectively communicate and work together to ensure the optimum number of slots are made available.

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

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

Rule 14: Bond Hearings

Bond hearings shall be set by contacting the TCA or his/her designee who will provide a date, time and location for the matter to be heard. The requesting attorney shall email the TCA

or his/her designee and copy the opposing counsel on any request to calendar. If a hearing is no longer needed, the requesting party shall again email the TCA or his/her designee and copy opposing counsel.

Rule 15: Bond Forfeiture

Bond forfeiture matters will be calendared in accordance with the schedule developed by the Senior Resident Superior Court Judge in consultation with the Clerk of Superior Court.

Rule 16: Sanctions

Failure to comply with any section of these rules shall subject counsel to any sanction allowed by law and deemed appropriate at the discretion of the Criminal Supervising Judge for the particular case type involved or the presiding judge should s/he be different than the designated Criminal Supervising Judge for that case type involved.

Rule 17: Homicide

TBA

Rule 18: Miscellaneous

18.1 Expungements: Forms are available in the SelfServe Center and Clerk of Court's office, Criminal Division.

18.2 Certificates of Credit for jail credit should be submitted at the time of sentencing. Where a request for credit is submitted anytime after the sentencing hearing, counsel shall specify, not only total number of days requested, but set forth the specific dates and place of incarceration used to determine the total number requested.

18.3 Procedures for filing of fee petitions: See *Twenty-Sixth Judicial District Policies and Procedures Concerning Court Appointed Counsel July, 2010*.

18.4 Subpoenas: TBA


18.5 Americans with Disabilities Act (ADA) issues: See *Twenty-Sixth Judicial District Policies and Procedures ADA Accommodations, August 2008*.

18.6 *Designation of Secured Leave filings shall be provided to the TCA's Office,*

Caseflow Management Division, in addition to the District Attorney's Office.

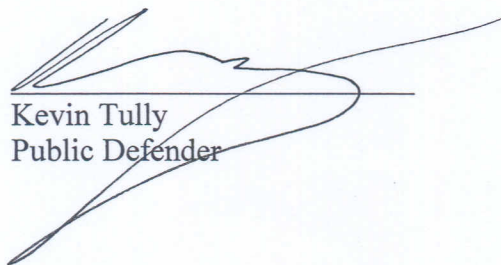
As amended, this Criminal Case Management Plan supersedes all previous Plans, Rules and Orders for the 26th Judicial District, Superior Court Division effective March 14, 2011.

THIS THE 11 DAY OF March 2011.

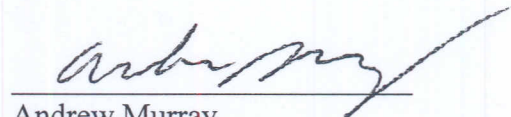


Richard Boner
Senior Resident Superior Court Judge

CONSENTED TO:



Kevin Tully
Public Defender



Andrew Murray
District Attorney