

# JUDICIAL DISTRICT 11A

## DOCKET MANAGEMENT PLAN FOR CRIMINAL SUPERIOR COURT

### **SECTION 1. General Provisions**

**1.1** This Docket Management System (DMS) is intended to provide for the orderly, prompt and just disposition of criminal matters in Judicial District 11-A. It is intended that matters addressed pursuant to this system be resolved in a fashion so as to protect the interests of this District and the victims of crime as well as to ensure that the rights of criminal defendants are preserved.

**1.2** The calendar for the disposition of criminal cases in the Superior Courts of Judicial District 11-A shall be set and maintained by the District Attorney in accordance with this DMS. The District Attorney shall establish and maintain a case tracking system to monitor the number, age, type, and procedural status of all pending cases. (As used in these rules, the term "District Attorney" shall include the elected District Attorney for the Eleventh Prosecutorial District and his designees.)

**1.3** It is recognized that this DMS is not complete in every detail and will not cover every situation which may arise. In the event this Docket Management system does not address a specific matter or issue, the District Attorney is authorized to act in his discretion, subject to the laws and Constitutions of North Carolina and the United States and after consultation with the Senior Resident Superior Court Judge. If the Senior Resident Superior Court Judge is unavailable, then the District Attorney may consult with the Superior Court Judge presiding in this judicial district

**1.4.** The provisions of this DMS shall be filed in the office of the Clerks of Harnett and Lee Counties and may be cited accordingly.

**1.5** The District Attorney shall distribute a copy of this DMS to each member of the Bar of Judicial District 11-A. The District Attorney shall maintain a supply of this document to be provided to attorneys upon request.

**1.6** The provisions of this DMS shall apply to all Superior Court felony cases with indictments filed on or after January 1, 2000 and all misdemeanor cases appealed from the District Court Division on or after January 1, 2000.

**1.7** The scheduling provisions of this DMS shall not apply to cases designated as "Complex" by the District Attorney, a Resident Superior Court Judge, or by agreement of the parties. Cases which may be designated "Complex" include, but are not limited to, capital cases, complicated drug conspiracies, cases including multiple defendants or victims, complicated

white-collar crimes, those cases requiring extraordinary scientific investigation, and those cases involving complicated evidentiary or legal issues.

## **SECTION 2: Definitions**

**2.1.** In a felony case, “Initiation Date” is defined as the date of the return of service of an indictment (or notice of return of indictment to represented defendants) or the date of appointment of counsel, whichever occurs last. In a misdemeanor case, “Initiation Date” refers to the date of appeal to the Superior Court division.

**2.2** Cases designated as “Complex” may receive specialized scheduling orders for the purpose of facilitating their timely disposition. (See Section 10.1 below.)

## **SECTION 3: Definitions**

**3.1** Once counsel has appeared or been appointed in a case, it shall be presumed that counsel is seeking those items discoverable under the applicable statutes of North Carolina and federal case law. No formal request for discovery under N.C.G.S. 15A-902 need be made.

**3.2** No later than four weeks from the initiation date of a case, photocopies of discovery in each file shall be provided by the District Attorney to the attorney of record entering a general appearance in a case. Discovery can be provided to the then-current attorney of record.

**3.3** The State expects a newly retained or appointed attorney immediately to notify the State and the court of the fact of representation of a defendant. Should a change in defense counsel occur, it should be 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. Upon the request of new counsel, the State shall assist new counsel in confirming that he has received complete discovery from previous counsel.

**3.4** Photocopies of discovery material will not be distributed by the State to counseling entering only a limited appearance through district court.

**3.6** The prosecutor assigned to a case shall be responsible for completing a “Discovery Disclosure Certificate (DDC)” for that case. (See the sample DCC attached as Exhibit A.) A completed and signed Discovery Disclosure Certificate shall accompany the photocopies of discovery and shall be served upon the defense attorney of record in one of the following ways: (a) personal delivery, (b) U.S. postal delivery, (c) delivery to the office of the defense attorney of record, or (d) by depositing the discovery material into the attorney’s mailbox located in the office of the Clerk of Superior Court. The prosecutor also shall file a completed and signed DDC with the Clerk of Superior Court for placement in the court file.

## **SECTION 4. Calendaring Prior to Trial**

**4.1** The District Attorney shall ask the Senior Resident superior Court Judge to schedule an adequate number of non-jury criminal sessions of superior court devoted to the administration of the criminal calendar to comply with the requirements of NCGS 7A-49.4. These sessions of court shall be known as "Docket Management Session." The remaining criminal court time will be reserved, to the extent reasonably possible, for the trial of cases.

**4.2** All probation violation hearings and probation matters shall be calendared for the date certain during the Docket Management Sessions. Probation hearings and related matters shall have priority for hearing on that day. No "add-on" probation cases shall be heard except in exigent circumstances or with the consent of the District Attorney, the presiding judge, and defendant's counsel if he is represented.

**4.3** Unless disposed of earlier, each case shall be calendared for at least one case management setting following the initiation date. This administrative calendar setting shall occur within 60 days after initiation.

**4.4** The following matters shall be accomplished at the administrative calendar setting:

- a) The court shall determine the status of the defendant's representation of counsel;
- b) After hearing from the parties, the court shall set deadlines for the delivery of discovery, if not already provided by the parties to each other;
- c) Arraignment, if defendant has filed a request for arraignment pursuant to NCGS 15A-941;
- d) The court shall inquire as to the status of plea negotiations between counsel. If the District Attorney has made a determination regarding a plea agreement and has not previously communicated that determination to defense counsel, the District Attorney shall inform the defendant as to whether a plea agreement will be offered and the terms of any proposed plea agreement;
- e) The court may order a plea conference, if, in the opinion of the court, such a conference is supported by the interest of justice;
- f) A case may be disposed of by negotiated plea at the administrative calendar setting, provided that no guilty plea shall be adjudicated at this setting if the victim of the crime is not present and that victim has communicated to the State his desire to be present or heard at the time of the disposition of the case;
- g) The scheduling of a trial date pursuant to Section 7 below.

**4.5** The court may schedule more than one administrative calendar setting if requested by the parties or if it is found by the court to be necessary to promote the fair administration of justice in a timely manner.

**4.6** Whenever practical, administrative settings shall be conducted by a superior court judge residing within the district, but may otherwise be held by any superior court judge.

**4.7** The defendant and defense counsel shall be present at each administrative setting held in the county where the case originated.

## **SECTION 5. Motions (Felony Cases)**

**5.1** Defendant shall not be required to file any pre-trial motions until after the State has provided discovery under the provisions of this DMS.

**5.2** All pre-arraignment motions, as defined by statute or case law, should be filed no later than five days prior to the administrative calendar setting and, with the consent of the court, will be heard at the setting.

**5.3** All other pre-trial motions, excluding motions in limine, should be filed and heard no later than on the dates established at the administrative calendar setting. Hearing dates for these pre-trial motions are firm hearing dates. Pre-trial motions which, in the opinion of the District Attorney, will require lengthy evidentiary hearings or will be dispositive of the case shall be scheduled, if possible, for a time certain which precedes by at least five days the scheduled trial date.

## **SECTION 6. Negotiated Plea Offers**

**6.1** Unless the State decides not to make a negotiated plea offer in a case, the State shall extend a *written* plea offer to defense counsel of record no later than four weeks after the initiation date of a case.

**6.2** Defense counsel of record should convey all negotiated plea offers to the defendant as soon as reasonably possible.

**6.3** Except in these cases in which the defendant is in the custody of the Department of Correction or of another county or state, defense counsel should respond to the State's negotiated plea offer no later than ten working days from the time it is received. If defense counsel fails to respond to a negotiated plea offer, the plea offer shall be deemed withdrawn.

**6.4** The State may deem the defendant's failure to appear timely for the adjudication of a negotiated plea agreement as repudiation of the agreement by the defendant.

**6.5** With the consent of the court, the parties may confer with the court regarding the terms of a negotiated plea offer.

**6.6** If either party discovers that it is unable to fulfill an understanding previously agreed upon in plea negotiations, that party should give prompt notice to the court and to the other party. The State shall cooperate in securing leave of the court for the defendant to withdraw any guilty plea tendered to, but not adjudicated by, the court, and counsel for both parties should take such other steps as may be appropriate to restore the parties to the positions they were in before the understanding or negotiated plea agreement was reached.

## **SECTION 7. Trial Settings**

**7.1** If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative calendar setting, the District Attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the District Attorney shall set another tentative trial date during the final administrative setting.

**7.2** Counsel for the State and the defendant should have their personal calendars available at all administrative calendar settings in order to inform the court of any personal or professional conflicts.

**7.3** The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

**7.4** When a case has not been otherwise scheduled for trial within 120 days of indictment or of service of notice of indictment as required by law, then upon motion of the defendant at any time thereafter, the Senior Resident Superior Court Judge, or a superior court judge designated by the Senior Resident Superior Court Judge may hold a hearing for the purpose of establishing a trial date for the defendant.

**7.5** Any request for a priority or preemptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed to the court at the final administrative setting.

**7.6** Any case not reached for trial during the scheduled session of court shall be rescheduled by the District Attorney after conferring with opposing counsel.

**7.7** When scheduling for trial, priority should be given to cases according to the offense charged as follows:

- a) Capital cases;
- b) Non-capital homicides;

- c) Sexual offenses committed against minors and felony child abuse
- d) Rapes and other sexual offenses;
- e) Burglaries, robberies and kidnappings;
- f) Drug trafficking;
- g) Felony assaults;
- h) Felony breaking and enterings and other felony larcenies;
- i) Felony DWI's and misdemeanor DWI appeals;
- j) Other felonies; and
- k) Other misdemeanor appeals.

**7.8** When scheduling for trial, case priority should be determined by consideration of the following factors, regardless of the offense charged:

- a) Whether the defendant is in pre-trial custody;
- b) Whether the defendant constitutes a significant threat of violent injury to others;
- c) Whether the victim is a child or related to the defendant;
- d) Whether the defendant is a recidivist;
- e) Whether the defendant is a public official;
- f) The age of the case;
- g) Whether the defendant has filed a written request for a speedy trial;
- h) Any significant problems or interests associated with the case of a particular concern to the community.

## **SECTION 8. Printed Calendars**

**8.1** Not less than ten working days prior to each non-jury administrative session of court, the State shall prepare and publish a calendar of case settings as described in Section 4. The non-jury administrative calendar shall be separated into administrative settings, pre-trial motions (post administrative setting motions), and probation violations hearings.

**8.2** The State shall attempt to schedule all cases of a particular defense attorney within each administrative calendar section in consecutive order.

**8.3** Not less than ten working days prior to each jury session of court, the State shall prepare and publish a calendar of cases for trial. The District Attorney shall list the order of cases for trial in his discretion giving consideration to those factors set forth in Section 7 above. The trial calendar shall not contain cases that the District Attorney does not reasonably expect to be called for trial.

**8.4** Once published and distributed, cases contained on the calendar for jury sessions shall be tried in the order listed. Deviations from the listed order require approval by the presiding judge if the defendant whose case is called for trial objects. The defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding judge or by consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or Resident Superior Court Judge for good cause shown.

**8.5** A defendant shall be required to appear at the initial calling of the calendar during a jury session of court. After the call of the calendar, the court, in its discretion and upon agreement of the parties announced in open court, may place a defendant on standby.

**8.6** Nothing in this DMS shall be construed to affect the authority of the court in the call of cases calendared for trial.

## **SECTION 9. Motions for Continuances**

**9.1** All motions for continuances should be writing, filed and delivered to the office of the Senior Resident Superior Court Judge and to opposing counsel not later than noon on Wednesday preceding the session in which a trial is calendared. Oral motions or motions filed out of time should show good cause for the failure to file a timely written motion.

**9.2** The State shall ask the Senior Resident Superior Court Judge to issue a ruling on any motion to continue as soon as reasonably possible after consideration of the reasons for the continuance request, the age of the case, the pre-trial detention status of the defendant, and the number and type of other trial matters present on the trial calendar for the session. In the event the Senior Resident Superior Court Judge is unavailable due to rotation, sickness, or vacation, the State shall ask any other judge designated by the Senior Resident Superior Court Judge to rule on continuance motions.

**9.3** If a case is ordered continued, it shall be rescheduled for trial as soon as reasonably possible by the District Attorney after conferring with opposing counsel.

## **SECTION 10. Miscellaneous Provisions**

**10.1** Cases designated as Complex under this DMS shall be subject to such scheduling orders as deemed appropriate and just by the Senior Resident Superior Court Judge. Otherwise, this Docket Management System shall apply to complex cases.

**10.2** Venue for administrative settings may be in any county within the district when necessary to comply with the terms of this DMS. The presence of the defendant is only required for administrative settings held in the county where the case originated.

**10.3** Motions for appropriate relief shall be governed by Article 89 of Chapter 15A of the General Statutes of North Carolina.

**10.4** No provision of this DMS should be interpreted by any party or by the court in such a way as to deprive any defendant of any right provided by the General Statutes of North Carolina or by the state or federal constitutions.

**10.5** No provision of this DMS should be interpreted by any party or by the court in such a way as to deprive any victim of a crime of any right provided by the General Statutes of North Carolina or by the Constitution of North Carolina.

**10.6** The provisions of this DMS may be amended from time to time by the District Attorney after conferring with the Senior Resident Superior Court Judge and with the other members of the committee which proposed this Docket Management System.

**10.7** This DMS shall remain in effect for a period of one year, and thereafter shall continue in effect from year to year unless revoked in writing by the District Attorney or unless expressly abrogated by the General Assembly of North Carolina or by the Supreme Court of North Carolina.

Enacted this 10<sup>th</sup> day of March, 2000.

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THOMAS H. LOCK  
District Attorney  
Eleventh (11<sup>th</sup>) Prosecutorial District

(EXHIBIT "A")

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE # \_\_\_\_\_

STATE OF NORTH CAROLINA )  
 )  
 )  
 vs. )  
 )  
 )  
 \_\_\_\_\_ )

DISCOVERY DISCLOSURE CERTIFICATE  
(DDC)

The undersigned Prosecutor certified that the State provided discovery to the defendant in the following manner:

- \_\_\_\_\_ A. By providing defense counsel with a copy of the State’s investigative reports, reports of evidence examinations, and the criminal history of the defendant as received by this office;
- \_\_\_\_\_ B. By providing formal discovery pursuant to the terms of N.C.G.S. 15A-903.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ .

\_\_\_\_\_  
(Assistant) District Attorney

**CERTIFICATE OF SERVICE**

I certify that I served a copy of this Discovery Disclosure Certificate and the accompany discovery by:

- \_\_\_\_\_ Delivering a copy personally to \_\_\_\_\_ attorney for defendant:
- \_\_\_\_\_ By placing a copy in the United States First Class Mail to \_\_\_\_\_ attorney for defendant:
- \_\_\_\_\_ Leaving a copy with the receptionist at the office of the attorney for defendant; or
- \_\_\_\_\_ Placing a copy in the mailbox of defense counsel located in the office of the Clerk of Superior Court.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ .

\_\_\_\_\_  
(Assistant) District Attorney