

**PROCEDURES FOR RECALLING ORDERS FOR ARREST  
APPLICABLE TO THE SUPERIOR AND DISTRICT COURTS  
FOR THE 16B JUDICIAL DISTRICT**

**1. Motions to Recall Orders for Arrest**

(a) All requests to recall orders for arrest, strike entries of called and failed, and set aside bond forfeitures must be made in writing on the local form as attached hereto and must be signed by the attorney submitting the request or by the defendant if unrepresented by an attorney. All information on the local form must be completed in full and the original form placed in the court file.

(b) Any motion not presented in writing on the appropriate local form and signed by either the movant or the movant's attorney shall be summarily denied.

**2. Motions to Be Filed With the Clerk of Court**

(a) Requests to recall orders for arrest, strike entries of called and failed, and set aside bond forfeitures must be filed in the office of the Clerk of Court. A copy of the motion shall be furnished by the movant to the office of the District Attorney in all cases.

(b) The Clerk of Court shall not accept for filing any unsigned motion.

(c) For cases pending in the District Court, upon filing, the Clerk of Court shall cause the motion to be added to the supplemental court calendar for a regular criminal session of District Court in courtroom 3C so that any judge considering the motion shall have access to the court file, may review the history of the case and ensure that the State is afforded an opportunity to be heard on the motion.

(d) For cases pending in the District Court, motions filed by 1:00 PM on any business day shall be added to the supplemental calendar for the next regular criminal session of District Court except that no such motions shall be scheduled for any Monday session. Motions filed after 1:00 PM shall be added to the supplemental calendar for the regular criminal session on the second day following the filing of the motion, excluding Monday sessions.

(e) For cases pending in the Superior Court, upon filing, the District Attorney shall schedule the motion to be heard at the next regular criminal administrative session of Superior Court. However, if the Superior Court is then in session the District Attorney or the movant may request that a presiding judge hear the motion as soon as practicable.

**3. Motions to be Heard in Open Court**

(a) All motions to recall orders for arrest, strike entries of called and failed, and set aside bond forfeitures must be made and heard in open court except as otherwise provided in Section 7(b) below.

(b) The defendant must be present in court when the motion is heard or an attorney appearing for the defendant must provide written verification of the defendant's physical unavailability or infirmity, such as medical statements or military orders.

(c) Any motion heard in open court for which the defendant is not present or for which there is not credible, supporting written documentation of the defendant's physical unavailability or infirmity shall be summarily denied.

(d) A presiding judge has the inherent authority to determine the credibility of any written verification or other offered explanation tendered in support of a motion to recall.

(e) The defendant's presence in court may not be required if the defendant has properly executed a written waiver of appearance pursuant to G.S. 15A-1011 which designates legal counsel to appear on his behalf and the presiding judge allows the absence of the defendant

because of distance, infirmity or other good cause. Such written waiver must be placed in the court file.

(f) The District Court judge assigned to preside over the regular District Court criminal session in courtroom 3C shall hear all such motions that the Clerk has added to the supplemental calendar for a session of District Court per the scheduling rules set out above.

(g) Any resident Superior Court judge or Superior Court judge assigned for the term or assigned to preside over any particular criminal session of Superior Court may hear all such motions scheduled by the District Attorney or any unscheduled motions that such judge agrees to hear in open court.

#### **4. Position of Opposing Counsel**

(a) Opposing counsel must be afforded an opportunity in open court to be heard on the motion.

(b) Except as provided in Section 7(b) below, such motions shall not be heard or considered on an ex parte basis.

#### **5. Case Rescheduling**

(a) If such a motion is granted the defendant may enter a plea of guilty or a plea of not guilty.

(b) In the event the defendant enters a plea of guilty, the court may enter judgment immediately or may continue judgment to a later court session to subpoena officers and witnesses as needed, to comply with requirements that victims receive notification of the proceedings or for other compelling reasons.

(c) In District Court cases if judgment is not entered immediately the case shall be rescheduled for the charging law enforcement officer's next court date with a notation made on the court file to subpoena officers, witnesses and victims if needed or as required by law. If no law enforcement officer is involved in the case, the case shall be rescheduled to a specific date for hearing and a notation made on the court file to subpoena any necessary witnesses or notify victims as required by law.

(d) In Superior Court cases if judgment is not entered immediately the case shall be scheduled for the next criminal administrative session of Superior Court. For matters pending in the Superior Court the District Attorney shall be responsible for issuing notices to officers, witnesses, victims and any other persons entitled to such notices.

(f) If such a motion is denied the defendant may appear before a magistrate and submit to service of the order for arrest using the procedures available by means of NCAWARE. In such event, the magistrate would thereafter schedule the matter for an appropriate court date. In cases in which an order for arrest is outstanding, the presiding judge may direct that the defendant be taken into custody and presented before a magistrate for service of the order for arrest.

#### **6. Chapter 20 Motor Vehicle Offenses**

(a) As provided in G.S. 20-24.2 a person who has failed to appear on a scheduled court date to answer a charge arising under Chapter 20 may appear in court within 20 days after the scheduled appearance to answer the charge, or, if authorized by G.S. 7A-146, may dispose of the charge by admitting responsibility if an infraction, or pleading guilty to a waivable misdemeanor offense, in writing and paying the specified penalty and costs.

(b) In order to allow sufficient time for the Clerk and for the court to properly address such requests for a charge to be scheduled for court the person seeking to appear must comply with the provisions set out above.

#### **7. Uncontested Motions to Recall Orders for Arrest**

(a) A judge may enter an order to recall orders for arrest, strike entries of called and failed, and set aside bond forfeitures without requiring the filing of a written motion filed in advance with

the Clerk if the signature of the District Attorney or an Assistant District Attorney clearly and legibly appears on the order and expressly consents to the entry of the order. For all cases pending in the District Court such uncontested motions shall be presented in open court to the District Court judge presiding in the regular criminal session in courtroom 3C; such motions shall not be presented in other District Court sessions. In all cases the presiding judge may, in the discretion of the judge, require that the defendant be personally present and that the court file be made available prior to determining whether to enter the order or to decline to enter the order.

(b) A judge may, out of session and on an ex parte basis, enter an order to recall orders for arrest, strike entries of called and failed, and set aside bond forfeitures at the request of the District Attorney or an Assistant District Attorney to avoid a manifest injustice such as that involving an order for arrest for failure to appear entered when an individual was incarcerated at the time the order for arrest was entered.

#### **8. Effective Date**

(a) These rules shall be effective January 1, 2013.

**Entered** this 8<sup>th</sup> day of November 2012.

*/s/ Robert F. Floyd, Jr.*

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Hon. Robert F. Floyd, Jr.  
Senior Resident Superior Court Judge

*/s/ J. Stanley Carmical*

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Hon. J. Stanley Carmical  
Chief District Court Judge

<b>MOTION</b>		<b>RECALL ORDER FOR ARREST/ STRIKE CALLED &amp; FAILED/ SET ASIDE BOND FORFEITURE</b>	
Defendant Name:	File No(s):		
Charge(s):			
Reason(s) for motion:			
Signature of Movant:	<b>Defendant must be present in open court at time motion heard or written proof of unavailability must be attached.</b>		
[ ] ADA [ ] Defense Counsel [ ] Defendant			
Signature of Opposing Counsel:	New Court Date: _____, 201__		
[ ] Consents [ ] Opposes [ ] Requests Hearing	SUBPOENA [ ] Officer(s) [ ] Witness(es)		
<b>ORDER</b>		<b>RECALL ORDER FOR ARREST/ STRIKE CALLED &amp; FAILED/ SET ASIDE BOND FORFEITURE</b>	
<p>The motion set out above is hereby:      [ ] Granted      [ ] Denied</p> <p>If granted, the matter shall be scheduled for the new court date set out above and the Clerk shall subpoena any officers or witnesses as indicated above.</p>			
Date Order Entered:	Signature of Presiding Judge:		

**Movant must distribute as follows: Original – Clerk of Court Copy – DA’s Office**