

**COUNTY OF FORSYTH )**  
**CRIMINAL CASE DOCKETING PLAN**  
**TWENTY-FIRST PROSECUTORIAL DISTRICT**  
**TWENTY-FIRST JUDICIAL DISTRICT**

(Effective January, 1, 2001)

This criminal case docketing plan for the Superior Court of the Twenty-First Judicial District is hereby adopted effective January 1, 2001, pursuant to the statutory authority of N.C.G.S. § 7A-49.4 vested in the district attorney to calendar cases according to a criminal case docketing plan. This plan continues into effect the substance of the plan adopted January 1, 1997, and has been adopted after consultation with the Resident Superior Court Judges and members of the local bar, with amendments to conform to N.C.G.S. Section 7A-49.4. Opportunity to comment has been provided after due notice, as required by N.C.G.S. 7A-49.4(a).

**1.0 CASE DOCKETING PLAN: ADMINISTRATION: ADVISORY COMMITTEE**

This case docketing plan shall be administered and criminal calendars shall be prepared under the supervision of the District Attorney. The District Attorney may appoint one or more calendar advisory committees which shall include trial attorneys to give advice and suggestions on a continuing basis.

**1.1 Purpose** The purpose of these rules is to provide for the orderly, just and prompt disposition of criminal cases in the Superior Court of Forsyth County. The rules shall at all times be construed in such a manner as to avoid technical delay, and to insure the prompt, orderly, and reasonable disposition of pending cases. All reasonable efforts will be encouraged to approach or attain the performance standards and goals established herein, but failure to do so shall not be per se grounds for dismissal or other relief from prosecution.

**1.2 Performance Standards and Goals** Felony cases are intended for disposition within the following times from the date of indictment or information after the effective date of January 1, 2001:

Felony Class	Disposition	Time Goal
Class A	24 months	
Classes B through E	12 months	
Classes F through I	9 months	

If a defendant is charged with joinable offenses, the more serious offense shall control the remainder regarding the disposition goal. The overall goal of this Criminal Case Management Plan is to dispose of ninety percent (90%) of felony cases within twelve (12) months of the date of indictment or information.

**1.3** It is recognized that these rules are not complete in every detail and will not cover every situation which may arise. In the event that these rules do not cover a specific matter, the District Attorney shall act in his discretion, and shall consult with the Senior Resident Superior Court Judge or a resident or presiding judge designated by him regarding resolution of the issue raised. "District Attorney" shall also mean the responsible assistant district attorney as it relates to particular cases.

**1.4** Calendars for criminal cases in Superior Court shall be prepared and maintained by the District Attorney in accordance with these rules. The District Attorney shall establish and maintain a case tracking system to monitor the number, age, type and procedural status of all pending cases, and to provide printed calendars as described by this plan.

**1.5** This case docketing plan and all amendments hereto, shall be filed in the Office of the Clerk of Superior Court of Forsyth County. The District Attorney shall maintain a supply of copies of the plan and provide a current copy to an attorney upon request. Further, this plan is available at the Forsyth County Trial Courts Web Site at

<http://www.aoc.state.nc.us/www/public/courts/forsyth.html>.

## **2.0 REPRESENTATION**

All defendants shall be encouraged to timely resolve all issues of representation by counsel at early stages of the proceedings on the criminal charge. District Court Judges are encouraged to facilitate the general appearance of counsel by retention or appointment, when appropriate, at the earliest stage practical. Limited appearances in Superior Court will be discouraged.

**2.1 Representation Calendar** The District Attorney will place upon the representation calendar the names of each defendant charged with one or more felonies in an indictment or information who does not already have appointed or retained counsel generally appearing of record and has not previously waived all assistance of counsel with the approval of the Superior Court, upon felony and any related charges.

**2.2** The representation calendar shall be presented by the District Attorney early in each week when one or more Criminal Sessions of Forsyth County Superior Court are held. The defendants named and attorneys making limited appearances for them shall appear for representation inquiry at its call each such week until a general appearance is made or all rights to assistance of counsel are waived. Defendants and such attorneys may be excused from appearance and inquiry at a particular week's representation calendar only by the Court.

**2.3 Expedited hearings** The presiding judge may and is encouraged by this plan to expedite the hearing of and hear at representation calendars matters normally heard later, including, but not limited to, matters heard at such stages as first and second settings, in order to fulfill the purpose of any limited appearance and proceed with determining finally defendant's representation through all other trial court proceedings.

**2.4** A defendant who cannot presently afford to retain counsel for a general appearance is entitled to, and may choose to be represented by a court-appointed attorney. A defendant who can afford an attorney to generally appear is deemed to need only two weeks after being advised by a District or Superior Court Judge of representation rights to secure such representation and a general appearance of record, absent extenuating circumstances. A defendant may also choose self-representation and waive all assistance of counsel. Each defendant shall promptly proceed with determining and obtaining the representation of his or her choice through Superior Court disposition after being so advised.

### **3.0 PLEA OFFERS AND DISCOVERY**

**3.1 Plea Offer** In felony cases (and related misdemeanors) the District Attorney shall, no later than two weeks after indictment or information, extend a plea offer in writing to a defense attorney who has made a general appearance, or to an unrepresented defendant who has waived all rights to assistance of counsel. The plea offer, if not previously extended to defendant or defense attorney, shall be extended to defendants without defense attorneys who had made a general appearance at the time of indictment or information no later than two weeks after the assistant district attorney becomes aware that a general appearance has been made by a defense attorney or that the defendant has waived all rights to assistance of counsel.

**3.2 Discovery** In felony cases (and related misdemeanors), even if a timely request for discovery from the State has not been made by the defendant pursuant to N.C.G.S. §15A-902, the District Attorney will waive any timelines objections for the first five business days after the date of the plea offer if the defendant consents in writing to reciprocal discovery without further request by the State pursuant to N.C.G.S. § 15A-902(e). At the time of the plea offer, the assistant district attorney will be prepared to allow defense discovery of all information subject to disclosure by the State then reasonably available to the District Attorney's Office.

**3.3 Defense Attorney to Inform Defendant** A defense attorney shall promptly inform the defendant of the plea offer and consider it with him or her before the day of the next court appearance.

### **4.0 CRIMINAL ADMINISTRATIVE SESSIONS**

One or more non-jury criminal sessions shall be scheduled monthly to be devoted to administration of felony criminal cases and disposition of non-jury matters. Other criminal

sessions shall be reserved as much as possible for jury trials after consideration of cases of defendants on the representation calendar.

**4.1 Representation Calendar** During a week when a criminal administrative session is held, the representation calendar shall be an early order of business at such session.

**4.2 First Setting** The first setting of a felony criminal case shall be within forty-five days after the date of indictment or information. The Court shall accomplish or consider the following at the first setting to the extent practical:

- Inquiry and determination of defendant's representation by counsel or waiver of all assistance of counsel;
- Identification of possible conflicts;
- Pretrial discussion between counsel;
- Pretrial conference in Class A felonies (capital cases);
- Confirmation of receipt of plea offers and request for discovery, disclosure of plea offer to the defendant, and difficulties with respect to discovery, if any;
- Status inquiry, including possible disposition by plea. A pretrial conference in non-Class A felonies may be requested by a party;
- Plea disposition if tendered by defendant and accepted by State;
- Determination if case should for good cause be administered in all or some ways outside this criminal case management plan; and
- Schedule second setting.

**4.3 Second Setting** The second setting of a felony criminal case shall normally be within eleven weeks after the date of indictment or information. The Court shall accomplish or consider the following at the second setting to the extent practical:

- Items listed in 4.2 not fully considered and accomplished at the first setting;
- Prearrest motion hearings;
- Status inquiry, including possible disposition by plea;
- Plea disposition if tendered by defendant and accepted by State;
- Arrestment if timely requested;
- Set deadline for filing pretrial motions;
- Schedule pretrial hearing of motions not more appropriately heard by presiding trial judge; and
- Set the trial date no sooner than 30 days after second setting (unless the parties consent to a shorter time).

**4.4** The District Attorney, defendant, and defense attorney, if any, shall be present at both the first and second settings.

**4.5 Prearrest Motions** All prearrest motions shall be timely filed and served upon opposing parties. These motions will be heard, if practical, at the second setting.

**4.6 Other Pretrial Motions** Pretrial hearing of motions not more appropriately heard by presiding trial judge shall normally be at an administrative calendar.

**4.7** Absent exigent circumstances which could not have been reasonably foreseen, all motions, prearrest or pretrial, filed outside established deadlines may be subject to summary dismissal by the presiding judge. Exigent circumstances may include such matters as late discovery provided by the District Attorney that would affect whether the defendant could receive a fair trial.

**4.8 Misdemeanors** Misdemeanor cases not joinable with a felony will be administratively set for trial by the District Attorney at sessions of court specifically set for the hearing of misdemeanor appeals.

## **5.0 CALENDARS**

**5.1 Administrative Calendars** Not less than 10 working days prior to each non-jury administrative session of court, the District Attorney shall prepare and publish a representation calendar, a calendar of cases previously calendared for trial but not reached or disposed, a calendar of first and second settings, a calendar of scheduled pretrial motions as described above, and a calendar of agreed upon dispositive pleas. The first settings shall normally begin after the completion of calendar calls, representation inquiries, and resetting cases previously on trial calendars at the beginning of the session; followed in order by second settings, pretrial motions, conferences, and dispositive pleas. Dispositive pleas agreed upon prior to calendar call shall be set for times certain later in the week during the calendar calls.

### **5.2 Trial Calendars**

- (a) Preparation Not less than 10 working days prior to each felony trial session of court, the District Attorney shall prepare and publish a representation calendar and a calendar of felony and joinable cases for trial. The District Attorney shall list the order of cases for trial in which the District Attorney anticipates they will be called for trial, giving consideration to the following factors as to the cases calendared:
- The age of the case from arrest;
  - Whether the defendant is in custody solely upon the charges for trial, and if so, how long;
  - Whether codefendants are in custody solely on joinable charges, and if so, how long;
  - The number of times the case has previously appeared on a trial calendar;
  - Particular problems with future availability of State and defense witnesses;
  - Any other known factor which may affect the ability of a party to receive a fair and impartial trial; and
  - Any significant problem or interests of particular concern to the community or to victims of the crime charged.

- (b) Once published and distributed, the order of cases listed on the calendar shall be the order in which cases are to be called for trial. In the discretion of the presiding judge pursuant to N.C.G.S. 7A-49.4(f), the order of cases for trial may be varied to accommodate such factors as available court time and witness schedules.
- (c) Calendar Call; Standby A defendant shall be required to appear upon the initial calling of the calendar during a session of court. After the call of the calendar, the Court, in its discretion, upon motion by the defendant in open court, may place a defendant on standby.
- (d) Trial Continuance Motions All motions to continue a case from a set trial session must be in writing, filed by the Clerk and delivered to the Trial Court Administrator. All such motions must be served upon opposing counsel as soon as reason for the continuance becomes known, but in any event not later than noon Wednesday prior to trial. Parties making oral motions or motions served later than set forth above must show good cause for failure to timely serve the motion. All motions to continue shall be in a form substantially similar to the Continuance Form attached hereto as Exhibit A, and should include:
- The reason for the continuance request;
  - The age of the case from arrest;
  - Whether the defendant is in custody solely on the charges for trial, and if so, how long;
  - Whether the defendant has codefendants and the names of any such codefendants;
  - Whether the codefendants are in custody solely on joinable charges, and if so, how long;
  - The number of times the cases has previously appeared on a trial calendar;
  - Whether opposing counsel (and codefendant's counsel, if any) has been consulted;
  - Whether other counsel and parties affected consent; and
  - The parties' positions to the extent ascertainable on when the trial should be rescheduled if a continuance is granted.
- (e) The established trial date shall be a firm date. Repeated continuances are not to be granted except for circumstances beyond the control of the parties which could not have been reasonably foreseen at the setting of the trial date and require a continuance for the fair administration of justice. If all joinable parties including the District Attorney agree, a single continuance from an original trial date to an agreed upon trial date certified in writing as acceptable to all parties and necessary witnesses will be allowed routinely.
- (f) The Senior Resident Superior Court Judge or a resident or presiding judge designated by him will issue a ruling on the motion after considering the reasons for the continuance requested, 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 that session. Opposing and joinable parties must be given an opportunity to be heard before any continuance is granted if circumstances permit.

- (g) Definite Trial Date The defendant may move for a definite trial date pursuant to N.C.G.S. 7A-49.4(c).

## **6.0 MISCELLANEOUS SUPERIOR COURT CONCLUSION MATTERS**

**6.1** If a case dismissal is filed outside of a proceeding in open court, the District Attorney shall notify the defendant or defense attorney, if any, of such dismissal by the end of the next business day. The clerk upon notice of incarceration and request of the district attorney, the defendant, or the defense attorney, shall promptly notify the custodian of the dismissal.

**6.2** Appointed attorneys shall submit all fee applications to the presiding judge the same week they receive notice of a fee set or the case's conclusion in Superior Court, or the next business day if impractical during the same week.

RE-ADOPTED this the \_\_\_\_\_ day of January, 2001, effective immediately.

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Thomas J. Keith  
District Attorney  
Twenty-First Prosecutorial District