14-R-406

FILED
2014 NOV -7 P 3:38
HARNETT CO., C.S.C.
BY

JUDICIAL DISTRICT ELEVEN-A
SUPERIOR COURT DIVISION

CRIMINAL CASE MANAGEMENT AND DOCKETING PLAN

Rule 1. General Provisions

1.1 The purpose of these Rules is to institute and operate a Case Management and Docketing Plan (CMDP) that will provide for the orderly, prompt and just disposition of criminal matters. Any case management plan (known by any name) previously adopted for Harnett and Lee Counties is hereby rescinded in its entirety.

1.2 The calendar for the disposition of criminal cases in District Eleven-A, Superior Court Division, 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 for printed calendars of the same. (As used in these rules, the terms "District Attorney" and "DA" shall include the elected District Attorney for District Eleven-A and his designees.)

1.3 It is recognized that these rules are not complete in every detail and will not cover every situation that might arise. In the event that these rules do not cover a specific matter, the DA is authorized to act in his discretion according to law. Nothing precludes the DA from consulting (within the Rules of Professional Responsibility) with the Senior Resident Superior Court Judge or presiding Judge, and interested parties (attorneys) prior to taking such action. This is particularly true for those matters which might be deemed exceptional; including capital cases, those with multiple defendants, those with extraordinary scientific investigation and complicated conspiracy matters.

1.4 These rules shall, at all times, be construed in such a manner as to avoid technical delay in the disposition of cases. They shall be construed so as not to conflict with any codified statutes or Rules of Court. The DA and defense counsel, in the interests of justice, cooperation and courtesy, should communicate about the cases to exchange information early in the proceedings and to resolve any disputes without court action.

1.5 These rules shall be filed in the Offices of the Clerks of Superior Court for District Eleven-A.

1.6 The DA's office shall distribute a copy of these rules to each member of the District Bar and shall maintain a supply of printed rules to be provided to attorneys upon request.

1.7 These rules shall apply to all cases with indictment dates beginning November 1, 2014 and to all cases with indictment dates prior to November 1, 2014 which can be integrated into this CMDP without substantial difficulty.

Rule 2. Time Standard Goals

2.1 It is the goal of the District Attorney's office to try or otherwise dispose of all non-exceptional cases within eighteen (18) months from the date of indictment.

2.2 The DA, upon consultation with the Senior Resident Superior Court Judge and attorney or attorneys for a particular defendant, may designate a case exceptional. Such case shall receive specialized scheduling for the purpose of facilitating timely disposition.

Rule 3. Designation of Counsel of Record

3.1 The DA recognizes that the appearance and withdrawal of counsel are governed by Article 4 of Chapter 15A and the General Rules of Practice, and applicable Rules of Professional Conduct. The DA intends to follow those procedures and will provide notices, discovery and other papers and filings only to those proper attorneys of record, if any.

3.2 Except as provided by law or in the discretion of the DA, discovery will only be provided one time to the attorney of record for the defendant at the time it is provided.

3.3 The DA will expect that attorneys of record shall appear at times designated herein, unless excused by the Court or by agreement with the DA.

Rule 4. Discovery

4.1 Once counsel has appeared or been appointed in a case, it shall be presumed that counsel is seeking those items discoverable under the laws of North Carolina and the United States. No formal request for discovery under N.C. Gen. Stat. 15A-902 need be made.

4.2 It is the goal of the DA to provide discovery materials to the defense counsel of record in a particular case no later than the first Administrative setting, or four weeks from indictment, whichever occurs last. Discovery shall be provided in any format readily accessible by defense counsel, including photocopies, digital and/or electronic formats. It shall be the responsibility of the DA and counsel for the defendant to consult and determine which format is appropriate. (Nothing herein requires, nor precludes the DA from providing discovery materials earlier than the indictment date or as required by statute.)

4.3 The prosecutor assigned to each case shall be responsible for completing a Discovery Disclosure Certificate (DDC) for that case each time discovery materials are provided to the defense. The DDC shall be a certification by the prosecutor which generally sets forth what materials are being provided, the format in which the material is provided, the manner in which the materials are served on counsel, and the date on which they are provided. Attached to the DDC shall be a certificate of service. The DDC and Certificate of Service shall contain the signature of the responsible prosecutor.

4.4 Each DDC completed and signed by the prosecutor shall be provided to the defense counsel of record and filed with the Clerk of Superior Court for placement in the appropriate court file.

4.5 The DA expects that every discovery motion shall be filed pursuant to applicable law and not for any improper purpose or because of the neglect of defense counsel in acknowledging and reviewing the discovery provided.

Rule 5. Calendaring Prior To Trial

5.1 The DA, in consultation with the Senior Resident Superior Court Judge, the Administrative Office of the Courts and other necessary parties, shall schedule non-jury criminal sessions of court at least once per month, or as near to that number of terms as the District Attorney determines he needs. These terms shall be designated as "Administrative Weeks" and shall be devoted to the administration of the criminal calendars to comply with N.C. Gen. Stat. 7A-49.4 and this CMDP. The remaining criminal sessions will be reserved, to the extent reasonably possible, for the trial of cases.

5.2 All probation matters shall be calendared initially for the first day of each Administrative Week, but may be continued to a later date during that Administrative Week or to another Administrative Week by consent of the parties and/or order of the court. Probation matters shall have priority on the first day of the Administrative Week.

5.3 Each case shall be calendared for the first Administrative Week after the date of indictment or within sixty days of indictment, whichever occurs first. This shall be known as the "First Setting." The following matters, at least, shall be accomplished at the First Setting:

a. Determination of the status of the defendant's representation by counsel;

b. Existence of any conflict.

c. Inquiry as to the status of discovery, the filing of any DDC, and whether orders for the provision of discovery (including deadlines therefor) need to be entered.

d. Arraignment if the defendant has filed a request pursuant to N.C. Gen. Stat. 15A-941.

e. Disposition of the case by plea or inquiry into the status of any plea offers and negotiations, including the need or request for a plea conference with the Presiding Judge. At the request of, or with the consent of, defense counsel, the Judge (if he deems it appropriate) may inquire of the defendant as to his understanding of the plea offer.

f. Hearing of any pre-arraignment motions or other motions requiring immediate attention by the court, or which are agreed to be heard by the parties.

g. The date of the next Administrative hearing.

5.4 Each case not disposed of during the First Setting shall be set for a second Administrative Week. This shall be known as the "Second Setting" and shall be held at the first scheduled Administrative Week which is no sooner than four weeks from the term in which the First Setting of that case was held. The following matters, at least, shall be accomplished at the Second Setting:

a. Hearing of any pre-arraignment motions, or other motions ready for hearing.

b. Arraignment, or waiver thereof.

c. Disposition of the case by plea or inquiry into the status of any plea offers and negotiations, including the need or request for a plea conference with the Presiding Judge. At the request of, or with the consent of, defense counsel, the Judge (if he deems it appropriate) may inquire of the defendant as to his understanding of the plea offer.

d. Status inquiry as to discovery and other preliminary matters.

5.5 Each case not disposed of during the Second Setting shall be set for a third Administrative Week. This shall be known as the "Third Setting" and shall be held at the first scheduled Administrative Week which is no sooner than four weeks from the term in which the Second Setting of that case was held. The following matters, at least, shall be accomplished at the Third Setting:

a. Hearing of any motions ready for hearing.

b. Arraignment, or waiver thereof, if not previously done.

c. Disposition of the case by plea or inquiry into the status of any plea offers and negotiations, including the need or request for a plea conference with the Presiding Judge. At the request of, or with the consent of, defense counsel, the Judge (if he deems it appropriate) may inquire of the defendant as to his understanding of the plea offer.

d. Resolution of any other matters deemed necessary or appropriate.

e. Entry of a Scheduling order by consent, or by the court if there is no consent, containing, at least:

1). A deadline for the filing and serving of pretrial motions.

2). A tentative trial date set by the DA, which shall not be set earlier than the next Administrative Week, except by consent. In the event the defendant objects to the trial date set by the DA, the presiding judge may order a different tentative date in the interests of justice and for good cause shown.

3). A term for the hearing of any pretrial motions not left to the trial judge. This term shall be the Administrative Week immediately prior to the tentative trial date, unless another date is established by consent. This setting shall be known as a "Motions Setting" and is not an "administrative setting" as defined in N.C. Gen. Stat. 7A-49.5(b).

5.6 The above scheduling rules do not apply to misdemeanor appeals. It is expected that misdemeanor appeals shall have one administrative setting prior to trial.

5.7 Nothing herein shall restrict the right of the judge to set further administrative settings if it is found to be necessary in order to promote the fair administration of justice in a timely manner.

5.8 All attorneys and defendant shall appear at each scheduled Administrative Setting and Motions Setting unless excused by the court.

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

Rule 6. Motions

6.1 The defendant shall not be required to file any pre-trial motions until after the State has provided discovery, unless required by law.

6.2 All motions shall be filed with the Clerk of Superior Court and served on the opposing party. Adequate notice of the hearing of those motions shall be given to the opposing party. (Filing and service by the deadlines set in any Scheduling Order shall be presumed to be adequate notice.) All papers so filed shall contain a Certificate of Service signed by the responsible attorney.

6.3 Pre-arraignment motions shall be filed and served no later than noon on the Wednesday prior to the Administrative term in which the Second Setting is calendared.

6.4 The dates set out in this CMDP for the filing and hearing of motions are firm dates and motions filed outside these dates are subject to summary dismissal by the court, as allowed by law and in its lawful discretion.

Rule 7. Plea Offers

7.1 Nothing herein requires the DA to extend a plea offer to any defendant, nor precludes the defendant from extending a plea offer to the prosecutor.

7.2 Pleas offers extended by either party and the negotiations leading thereto, shall not be expressed by either party to any judge for any purpose or at any time, except as provided for in this CMDP, and then only in the presence of opposing counsel.

7.3 Plea offers may contain a deadline for acceptance and may be withdrawn at any time as provided by law. The acceptance of a plea offer, or the withdrawal thereof, must be conveyed to opposing counsel as soon as practical.

Rule 8. Trial Settings

8.1 A tentative trial date shall be set by Scheduling Order entered at the Third Setting. Counsel for the State and defendant should have their personal calendars available at that Third Setting in order to facilitate the setting of a tentative trial date. If counsel for the defendant objects to the tentative date given by the DA, the presiding judge may order a different date in the interests of justice and for good cause shown.

8.2 When a case is not otherwise scheduled for trial within 120 days of indictment, then, upon motion of the defendant at any time thereafter, the Senior Resident Superior Court Judge, or a superior court judge designated by him, may hold a hearing for the purpose of establishing a trial date for the defendant.

8.3 In light of the fact that trial dates are tentative and that calendaring authority lies with the DA, there will be times that a case tentatively set for a particular trial week will not be placed on the printed calendar. In that event, the DA shall notify defense counsel of that fact as soon as practical. Any case tentatively set for trial by Scheduling Order but not placed on the printed calendar shall be set for the next Administrative Week in order to establish a new trial date. The provisions of this CMDP set forth above shall not reapply to these cases.

8.4 Any case not reached for trial during the scheduled trial session of court shall be rescheduled to the next Administrative Week in order to establish a new trial date. The provisions of this CMDP set forth above shall not reapply to these cases.

Rule 9. Printed Administrative Calendars

9.1 Not less than ten business days prior to each non-jury administrative session of court, the DA shall prepare, publish and distribute a calendar of case settings as described in the CMDP. These calendars shall be separated into the following categories: probation matters, unrepresented defendants, administrative matters (such as satellite based monitor hearings), matters set pursuant to this CMDP, cases not placed on the trial calendar, cases not reached during a trial term, and any other categories deemed appropriate by the DA.

9.2 The calendar shall be divided into days of the week and each day shall be divided into time blocks. Each defense attorney with matters set for that week shall be given a day and time block within which his/her cases shall be set. As soon as possible prior to the printing of the calendar, counsel for the defendants shall inform the DA of any conflicts he/she might have as to any particular time blocks. All cases for a particular defense attorney (except probation cases and such similar matters) shall be set for the same day and time block if possible. The State shall indicate on the calendar for each defendant the purpose of the administrative setting, i.e., First Setting, Second Setting, Entry of Scheduling Order, etc.

9.3 Nothing herein shall preclude the DA and defense counsel from agreeing to modify day and time blocks for that defense attorney after the printing of the calendar.

Rule 10. Printed Trial Calendars

10.1 No less than ten business days prior to a jury trial term of court the DA shall prepare, publish and distribute a calendar of cases for trial. The trial calendar shall schedule the cases in the order in which the DA anticipates they will be called for trial. If at some time after the calendar is printed, published and distributed, the anticipated order of cases changes, the DA shall take all reasonable steps to so inform all counsel with matters on that calendar.

10.2 During or after the calling of the calendar during the trial term, the DA shall announce to the court the order in which the DA intends to call for trial the cases on the calendar not otherwise disposed of, whether said order is or is not the same as the cases appear on the printed calendar.

10.3 Nothing in this section shall be construed to affect the authority of the court in the call of cases calendared for hearing as set out in N.C. Gen. Stat. 7A-49.4(h).

10.4 All defendants shall be required to appear at the calling of the calendar during a jury trial session of court. After the call of the matters for trial, the court, in its discretion and upon agreement of the parties may allow a defendant to be placed on standby status.

Rule 11. Motions for Continuance

11.1 All motions for continuances should be in writing, filed with the Clerk of Superior Court and delivered to the office of the Senior Resident Superior Court Judge and opposing counsel not later than noon on the Wednesday prior to the beginning of the jury trial term. Oral motions, and those filed out of time, shall contain a statement of good cause for the failure to file a timely motion. In the event the Resident Superior Court Judge is unavailable to rule on the motion,

he/she shall designate any other superior court judge to enter a ruling, including the expected trial judge. In the event the matter is continued, it shall be set on the next Administrative Week in order to establish a new trial date.

11.2 It is expected that the Judge shall rule on the Motion as soon as possible after reviewing the motion and contacting counsel as he/she deems fit. If the Motion to Continue is granted, the other defense counsel with cases still on the printed calendar shall be notified by the DA as soon as possible.

Rule 12. Miscellaneous Provisions

12.1 In the event a case is designated as "exceptional" it shall be subject to orders and schedules deemed appropriate and just by the Senior Resident Superior Court Judge. Those cases should still substantially comply with the provisions of this CMDP.

12.3 Venue for administrative settings may be in any county within the district when necessary to comply with the terms of the CMDP. The defendant's presence is only required for administrative settings held in the county where the case originated.

12.4 Motions for Appropriate Relief shall be governed by Article 89 of Chapter 15A of the North Carolina General Statutes.

12.5 Nothing herein shall be interpreted in such a way as to deprive any defendant of any right provided by the General Statutes, the Constitutions of the State of North Carolina or the United States, or by applicable federal law.

12.6 Nothing herein shall be interpreted in such a way as to deprive any victim of any right conferred upon him/her by law or to alleviate the DA of any obligation to said victim required by law.

12.7 The provision of this CMDP may be amended from time to time by the District Attorney after conferring with the Senior Resident Superior Court Judge and allowing the District Bar to make comment on the proposed changes.

Enacted this 3 day of Nov, 2014

Vern Stewart

Vernon K. Stewart, District Attorney
District Eleven-A