

**CRIMINAL SUPERIOR COURT CASE DOCKETING PLAN**  
**JUDICIAL DISTRICT 23**  
**ALLEGHENY, ASHE, WILKES AND YAKIN COUNTIES**  
**EFFECTIVE JANUARY 1, 2000**

**GENERAL PROVISIONS**

- The District Attorney for the 23<sup>rd</sup> Judicial District (Allegheny, Ashe, Yadkin and Wilkes counties) has developed this Superior Court Case Docketing Plan in consultation with the Resident Superior Court Judge and after opportunity for comment by members of the local bar.
- As used in this plan, the term “District Attorney” shall include the elected District Attorney for the 23<sup>rd</sup> Judicial District and his designees.
- The purpose for this criminal docketing plan is to institute a procedure for calendaring of Criminal Superior Court cases that are filed on or after January 1, 2000. The goal of this plan is to provide for the orderly, just, reasonable and prompt disposition of pending criminal cases in accordance with N.C.G.S 7A-49.4.
- It is intended that matters addressed pursuant to this plan be resolved in a fashion to protect the interests of this District and victims of crime, as well as to ensure the rights of criminal defendants are preserved.
- This plan shall be construed in no way to avoid technical delay.
- A copy of this plan shall be filed and maintained in the office of each Clerk of Superior Court located within the 23<sup>rd</sup> Judicial District and may be cited accordingly.

**ADMINISTRATIVE SETTINGS**

- An administrative setting shall be calendared for each felony at the next scheduled session of Criminal Superior Court following the Superior Court session in which a true bill of indictment was returned, or following the service of notice of indictment if required by law.
- The defendant and appropriate defense counsel shall be present at this and any subsequent administrative setting.
- Venue for Administrative Settings:

1. Venue for administrative settings may be in any of the four counties in this judicial district.
  2. The presence of the defendant is only required for administrative settings held in the county where the case originated.
- At the initial administrative setting matters set forth in N.C.G.S. 7A-49.4(b) will be addressed which include:
    1. A determination that counsel has been retained, appointed, or expressly waived in writing;
    2. The identification of possible conflicts of interest;
    3. The setting of deadlines for the delivery of discovery by the State and reciprocal discovery by the defense, arraignment (if necessary), and the filing of motions;
    4. If the District Attorney has made a determination regarding a plea arrangement, the District Attorney shall inform the defendant as to whether a plea arrangement will be offered by the State and the terms of any proposed plea arrangement;
      - If supported by the interest of justice, the Court may conduct a plea conference to determine the possibility of resolving the case by plea;
      - Upon the tendering of a plea offer, the defendant shall have two (2) weeks to respond to the State.
1. Hearing of pre-trial motions by the court, or the setting of such motions for hearing on a date certain, or the deferring of ruling on motions until trial of the case;
  2. Scheduling of more than one (1) administrative setting if requested by the parties or if necessary to promote the fair administration of justice in a timely manner; and
  3. Disposing of the case by negotiated plea with the consent of all parties.

## **PUBLISHING OF TRIAL CALENDAR**

- No less than ten (10) working days before cases are calendared for trial, the District Attorney shall publish the trial calendar.
- The trial calendar shall schedule cases in the order in which the District Attorney anticipates they will be called for trial and should not contain cases that the District Attorney does not reasonably expect to be called for trial.

## **ORDER OF TRIAL**

- The District Attorney, after calling the trial calendar and determining cases for plea and other disposition, shall announce to the Court the Order in which the District Attorney intends to call for trial the cases remaining on the calendar pursuant to N.C.G.S. 7A-49.4(f).
- Deviations from the announced order require approval by the Presiding Judge if the defendant whose case is called for trial objects; but 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.

LOCAL COURT RULES

JUDICIAL DISTRICT 23

ALLEGHENCY, ASHE, WILKES AND YAKIN COUNTIES

IN THE GENERAL COURT OF JUSTICE – SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA

EFFECTIVE JULY 1, 1998

**MOTIONS FOR CONTINUANCE**

Pursuant to Rule 3 of the General Rules of Practice for the Superior and District Courts and the directive of the Supreme Court of North Carolina, as contained in the Caseflow Management Plan submitted to the General Assembly of North Carolina on May 1, 1996, the following additional local rules are adopted:

**Rule 1. CIVIL CASES**

Civil cases are calendered for trial in the 23<sup>rd</sup> Judicial District after a pretrial calendar has been had three (3) to four (4) weeks prior to a term of Court. At the pretrial calendar, each attorney has a right to be heard concerning a trial date. The trial date is then set by the Senior Resident Judge after a full discussion. Therefore, there should be little need to move for a continuance of a case after it has been placed on the trial calendar.

**1.1 Appropriate Judicial Officials**

In the event an emergency does arise after the pretrial calendar call necessitating a motion for continuance and prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared, and the trial judge shall be guided by the same principles as set out in Rule 1.5 below.

**1.2 Form of Motion**

All applications for continuance shall be by written motion made on state form AOC-CV-220. A copy of such motion shall be delivered to the Judicial Assistant.

**1.3 Notification of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CV-220 must be distributed to all counsel of and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motions may be by U.S. mail, facsimile transmission or hand delivery.

#### **1.4 Objections to Motion for Continuance**

Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for continuance to the moving party and the office of the Senior Resident Superior Court Judge or his/her designee. Objections not raised within this time period are deemed waived.

#### **1.5 Evaluation of Motions for Continuances**

Since a case has been set for trial after a pretrial calendar call, continuances will be disfavored and generally denied except for those reasons arising after the printing of the trial calendar and for those reasons which the attorney or party did not know and could not have found out prior to the pretrial calendar call. However, when an emergency does arise, such as death or sickness of an attorney or witness, or for some unforeseen emergency that arises after the setting of the trial calendar, a continuance may be granted in the interests of justice.

Reasons that shall not be considered valid bases for allowing a continuance include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts (see Section 15 of Civil Calendaring rules for resolution of scheduling conflicts), whether counsel of record has received payment and whether the facts of the request could have been known by the parties or the attorneys by the use of due diligence prior to the pretrial calendar call.

#### **1.6 Case Rescheduling**

In the event the case is continued for some temporary reason, the case will be set for trial at the next term of court, and if not, at the next pretrial calendar call.

## **Rule 2 CRIMINAL CASES**

### **2.1 Appropriate Judicial Official**

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of the judicial district in which the case is filed or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

## 2.2 **Form of Motion**

All applications for continuance shall be by written motion made on state form AOC-CR-410. Normally such motions should be filed by 5:00 p.m. on Wednesday before the session when trial of the case begins.

## 2.2 **Notification of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CR-410 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by U.S. mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility. If the motion is filed by defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.

## 2.4 **Objections to Motion for Continuance**

The Senior Resident Superior Court Judge or his/her designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue.

If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no District Attorney's signature appears on the continuance form, the District Attorney's opposition to the motion is presumed.

## 2.5 **Evaluation of Motions for Continuance**

When compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance/

- the age of the case;
- the pretrial status of the defendant;
- the status of the trial calendar for the week;
- the order in which the case is designated for trial, including whether the case has a priority designation;
- the number of previous continuances;
- the number of times the case has been designated for trial and not reached;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;

- whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
- whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation;
- whether the case involves physical or sexual child abuse where a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child;
- whether the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or availability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment/

These amendments to Rule 3 of the General Rules of Practice for the Superior and District Courts shall be effective on or after July 1, 1998, and continue unless hereinafter modified by orders of this Court.

This the   1<sup>st</sup>   day of May, 1998.

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Julius A. Rousseau, Jr.  
Resident Superior Court Judge  
Twenty-Third Judicial District