

# **Ninth Judicial/Prosecutorial District**

## **Case Management System for Criminal Superior Court**

### **RULE 1: GENERAL PROVISION**

- 1.1** The purpose of these rules is to institute a Case Management System (CMS) that will provide for the orderly, prompt and just disposition of criminal matters in the Ninth Judicial/Prosecutorial District. It is intended that matters addressed pursuant to this system be resolved in a fashion to protect the interests of this district and the victims of crime, as well as insure that the rights of the defendants are preserved.
- 1.2** The calendar for the disposition of criminal cases in the Ninth Judicial /Prosecutorial District, Superior Court Division, shall be set 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 of same. (As used in these rules, the term “District Attorney” for the Ninth District shall include the elected District Attorney for the Ninth Prosecutorial District and his designees.)
- 1.3** These rules shall be construed in such a way as to avoid technical delay.
- 1.4** It is recognized that these rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the District Attorney is authorized to act in his discretion, subject to the laws of North Carolina and the United States. The District Attorney shall consult with the Senior Resident Superior Court Judge or a Resident Superior Court Judge regarding resolution of the issue raised. If no resident judge is available, then the District Attorney should consult with the Presiding Judge.
- 1.5** These rules shall be filed in the offices of the Clerks of Court in each of the counties composing the Ninth Judicial District and may be cited accordingly.
- 1.6** The District Attorney shall distribute a copy of these rules to each member of the Bar of the Ninth Judicial District. The District Attorney shall maintain a supply of printed rules to be provided to attorneys upon request.
- 1.7** The Clerks of Court shall provide a file number for each case at the time of indictment. That file number shall be designated on all subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel, parties and court personnel. All pleadings in a case, all motions and any document needed to comply with these rules shall be filed with the Clerk.
- 1.8** The provisions of these rules shall apply to all Superior Court cases with indictments docketed during the month of July, 1998, and thereafter. Such cases shall be termed **“Case Management System (CMS) Cases.”** Superior Court filings prior to July, 1998, **“Pre-Case Management System (Pre-CMS) Cases,”** may be integrated into the Case

Management System at the discretion of the District Attorney upon consultation of the Senior Resident Superior Court Judge or the Presiding Judge.

- 1.9** These rules shall not apply to cases designated as **“Exceptional”** by the District Attorney, a Resident Superior Court Judge, or by agreement of the parties. Cases that may be designated as Exceptional include, but are not limited to: complicated homicides, multiple-defendant or numerous victim crimes, complicated white-collar crimes and those requiring extraordinary scientific investigation.

## **RULE 2: TIME STANDARD GOALS**

- 2.1** Absent exigent circumstances, each case not designated as “Exceptional” should be tried or disposed of no more than eighteen months after its **“Initiation Date”**. Initiation Date is defined as the date of the return of service of an indictment (notice to represented clients), or appointment of counsel, whichever occurs last. It is the goal of this CMS that ninety percent of the non-exceptional cases reach disposition within twelve months of Initiation Date.
- 2.2** Cases designated as Exceptional shall receive specialized scheduling orders for the purpose of facilitating timely disposition.

## **RULE 3: DISCOVERY**

- 3.1** Once counsel has appeared or been appointed in a case, it shall be presumptively assumed that counsel is seeking those items discoverable under North Carolina law, and the laws of the United States. No formal request for discovery under 15A-902(a) needs to be made. Provision of Discovery by the State acts as an automatic request for reciprocal discovery from the Defendant. The Court may, after motion by the opposing party or on its own motion, impose sanctions for failure to provide discovery, reciprocal discovery, or continuing discovery as provided by law or anticipated by these rules.
- 3.2** No later than four weeks from the Initiation Date of a case, photocopies of discovery in each file shall be provided to the then-current attorney of record. Should a change in defense counsel occur, it is 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. Photocopies shall not be distributed to counsel entering only a limited appearance.
- 3.3** The District Attorney or the Assistant District Attorney assigned to a case shall be responsible for completing a **“Discovery Disclosure Certificate” (DDC)** for that case. (See sample DDC that is attached as Exhibit A.) A completed and signed DDC shall accompany the photocopied 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;
  - d) by depositing into the attorney mailbox located in the office of the Clerk of the Superior Court of the county where venue lies.

A completed and signed DDC shall also be filed with the Clerk of Superior Court for placement in the court file.

**3.4** All discovery motions filed by defense counsel shall contain one of the following certification provisions and shall be signed by the movant:

**I, the undersigned attorney of record, do hereby certify to the Court that prior to the filing of this motion I have thoroughly reviewed the discovery material supplied to me in this case by the office of the District Attorney.**

\_\_\_\_\_  
**Signature of Movant**

\_\_\_\_\_  
**Date**

**OR**

**I, the undersigned attorney of record, do hereby certify to the Court that as of this date more than four weeks have passed from the Initiation date of this case, and the District Attorney has failed to provide me with any discovery material in this case.**

\_\_\_\_\_  
**Signature of Movant**

\_\_\_\_\_  
**Date**

#### **RULE 4: CALENDARING PRIOR TO TRIAL**

- 4.1** The Resident Superior Court Judge shall schedule a non-jury criminal session devoted to administration of the criminal calendar. This session shall be known as the Case Management Session. The remaining criminal sessions will be reserved, to the extent reasonably possible, for trial of cases. Unless prevented by circumstances created by the rotation of judges, each Case Management Session should be held before a Resident Superior Court Judge.
- 4.2** Each case, except misdemeanor appeals and show cause hearings, shall be calendared for three specific Case Management Session settings following the Initiation Date. The defendant and defense counsel shall be present at each such setting of court unless a continuance is agreed to by the parties or is authorized by written order of the Court.
- 4.3** The first Case Management calendar setting (“First Setting”) shall occur during the Case Management Session which is scheduled at least two weeks after the Initiation Date. The following matters shall be accomplished at the First Setting:
- a) Determination of counsel;
  - b) Identification of possible conflicts;
  - c) Status inquiry, including possible disposition by guilty plea;
  - d) Confirmation of filing of Disclosure Certificate; and
  - e) Pre-trial discussions between counsel.

Misdemeanor appeals and show cause hearings will be considered at the First Setting and any trial scheduled if necessary at such setting.

**4.4** The second Case Management calendar setting (“Second Setting”) shall occur during the next Case Management Session following the First Setting. It is expected that the Second Setting shall be no later than twelve weeks from the Initiation Date. The following matters shall be accomplished at the Second Setting:

- a) Hearing of pre-arraignment motions pursuant to N.C.G.S. 15A-952;
- b) Pre-trial discussions between counsel;
- c) Pre-trial conference with Judge (if requested);
- d) Status inquiry, including possible disposition by guilty plea;
- e) A determination, if not made earlier, as to whether a case will be declared Exceptional;
- f) Scheduling of deadline for filing pre-trial motions that are not appropriately directed to the judge presiding at trial;
- g) Calendaring of pre-trial motion hearing date for cases which are not appropriately directed to the judge presiding at trial; and
- h) Hearings required under Rule 24 of Rules of Court for capital cases.

**4.5** The third Case Management calendar setting (“Third Setting”) shall occur during the next Case Management Session following the Second Setting. It is expected that the Third Setting shall be no later than sixteen weeks from Initiation. The following matters shall be accomplished at the Third Setting:

- a) Pre-trial conference if not held at Second Setting;
- b) Possible disposition by guilty plea, or, Arraignment and entry of not-guilty plea;
- c) Scheduling of deadline for filing pre-trial motions that are appropriately directed to the judge presiding at trial;
- d) Calendaring of pre-trial motion hearing date for motions which are appropriately directed to the judge presiding at trial; and
- e) Calendaring of trial date; or,
- f) Entry of scheduling order for Exceptional Case.

**4.6** In the event a defendant is called and failed an order for arrest shall be issued for not appearing in court as required by these Rules. The defendant shall forfeit his prior status in the case management system and be automatically advanced to the next Setting or to trial status upon his re-entry into the system.

**4.7** In order to have the case of a called and failed defendant considered by the Court, counsel for said defendant shall execute the Motion and Order Striking Called and Failed form attached hereto as Exhibit B, then file a copy with the Clerk of Superior Court and serve a copy upon the District Attorney by delivering same to the Criminal Docket Management Coordinator in the District Attorney’s office.

## **RULE 5: MOTIONS**

- 5.1** All pre-arraignment motions, pursuant to N.C.G.S. 15A-952, shall be filed, with notice to the opposing party, no later than seven days prior to the Second Setting and will be heard at the Second Setting.
- 5.2** All pre-trial motions, other than those pursuant to N.C.G.S. 15A-952 and motions which are more appropriately directed to the judge presiding at trial, shall be filed, with notice to the opposing party, no later than seven days prior to the Third Setting and will be heard at the Third Setting.
- 5.3** All pre-trial motions more appropriately directed to the judge presiding at trial, as defined by Statute or law, shall be filed and heard no later than on dates established at the Third Setting. Hearing dates for motions are firm hearing dates. Each attorney should bring his/her personal calendar to the Third Setting so that existing conflicts may be considered.
- 5.4** Except for extreme circumstances, which could not have been reasonably foreseen, all motions filed outside the established deadlines shall be subject to summary dismissal by the Presiding Judge. This provision does not apply to motions which are appropriately directed to the judge presiding at trial.

## **RULE 6: PLEA OFFERS**

- 6.1** In every case the District Attorney or the Assistant District Attorney for a case, the Responsible Prosecutor (RP), shall extend a written plea offer to defense counsel of record no later than six weeks after Initiation of a case. The RP should make every effort to extend a written plea offer to defense counsel of record before the First Setting of a case.
- 6.2** Prior to extending such plea offer, the RP shall completely review the case file and make a plea offer based upon consultation with opposing counsel and any judge presiding over a session of Criminal Superior Court during the period between indictment of the case and the First Setting.
- 6.3** Defense counsel of record has a responsibility to convey all plea offers to the defendant. Defense counsel shall file an executed Acknowledgement of Rejection and Withdrawal of Plea (See Exhibit C) no later than the Third Setting.
- 6.4** Prior to offering a plea the RP should make a good faith offer based on their evaluation of the case.
- 6.5** If the RP takes a dismissal outside of court, the RP shall notify the defendant or his counsel, if represented, of such action by the end of the next business day following such dismissal. The clerk of court (upon notice of incarceration and request of the RP, the defendant or his counsel) shall promptly notify the official in charge of the custody of any defendant of a dismissal of charges for which the defendant is being held, whether the defendant is confined in a state or local facility.

**6.6** If the RP discovers the prosecution is unable to fulfill an understanding previously agreed upon in plea negotiations, the RP shall give prompt notice to the Court and counsel for defendant. The RP shall cooperate in securing leave of the Court for the defendant to withdraw any plea and take such other steps as would be appropriate to restore the defendant and the prosecution to the position they were in before the understanding was reached or plea made.

**6.7** The RP shall always be vigilant for any case where the accused may be innocent of the offense charged. In any such case the RP shall strive to insure that innocent accused shall not be treated unfairly.

**6.8** Prior to offering a plea, the RP should consider the following factors:

- a) The nature of the offense;
- b) The degree of the offense(s) charged;
- c) Any possible mitigating circumstances;
- d) The age, background, and criminal history of defendant;
- e) The attitude and mental state of the defendant at the time of the crime, the time of the arrest, and the time of the plea discussions;
- f) Sufficiency of admissible evidence to support a verdict;
- g) Undue hardship caused to the defendant;
- h) Possible deterrent value of prosecution;
- i) Aid to other prosecution goals through non-prosecution;
- j) A history of non-enforcement of the statute violated;
- k) The age of the case;
- l) Likelihood of prosecution in another jurisdiction;
- m) Any provisions for restitution;
- n) The willingness of the defendant, when permitted by law and after consultation with Counsel, to waive his right to appeal;
- o) The willingness of the defendant to waive (release) his right to pursue civil causes of action against the victim, witnesses, law enforcement agencies, or personnel of the prosecutor or his staff or agents, when such causes of action arise from his arrest; but only where such willingness is concurred in and recommended by the defendant's counsel.

With respect to witnesses, the prosecution should consider the following:

- a) The availability and willingness to testify;
- b) Any physical or mental impairment;
- c) Certainty of identification;
- d) Credibility of witness;
- e) The witness's relationship with the defendant;
- f) Any possible improper motive of the witness;
- g) The age of the witness;
- h) Undue hardship of the witness caused by testifying.

With respect to victims, the prosecution should consider those factors identified above and the following:

- a) The existence and extent of physical injury and emotional trauma suffered by the victim; and
- b) Economic loss suffered by the victim.

**6.9** The prosecution should be certain that all cases are determined individually and on their own unique facts and circumstances, and not solely on the basis of a policy pertaining to the offense or the offender.

**6.10** Prior to issuing a plea offer the RP should examine and consider the circumstances of the arrest and the attitude of the arresting officer.

### **RULE 7: SCHEDULING OF PLEA**

**7.1** During each Case Management Session the Presiding Judge shall schedule the hearing of guilty pleas if requested and time allows.

**7.2** A time-certain schedule for plea hearings shall be produced and distributed by the District Attorney.

### **RULE 8: PRE-TRIAL CONFERENCE**

**8.1** During each Case Management Session the District Attorney, with approval of the Senior Resident Court Judge, shall schedule pre-trial conferences as allowed or required under these rules.

**8.2** A time-certain schedule of pre-trial conferences shall be produced and distributed by the District Attorney.

### **RULE 9: TRIAL SETTINGS**

**9.1.** The District Attorney shall propose to the Case Management Judge a trial date in each case reaching the trial phase. Before doing so the District Attorney shall take into consideration the schedules of victims and witnesses, how the case fits into the priorities in prosecution and the status of the preparation of the case. The Case Management Judge shall establish trial dates in conference with both counsel at the Third Setting. The District Attorney shall produce and maintain a six-month schedule of the weeks during which Assistant District Attorneys are scheduled for Superior Court. Defense counsels are responsible for having personal calendars available at the Third Setting in order to inform the Court of any personal or professional scheduling conflicts.

**9.2** The established trial date shall be a firm date. Continuances will not be granted, even if all parties agree, unless for a crucial cause that could not have been reasonably foreseen, and the fair administration of justice requires a continuance.

**9.3** At the Third setting, the Court shall enter a Scheduling Order in all cases except Exceptional Cases. The Scheduling Order shall set forth the deadline for the filing of pre-trial motions, the date for the hearing of pre-trial motions and the trial date. A sample Scheduling Order is attached to these rules as Exhibit D. Scheduling Orders for

Exceptional Cases may contain deadlines for additional case events as necessary and appropriate.

**9.4** Any request for a priority or peremptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed to the Judge at the Third Setting.

**9.5** Any case, which is not reached during the scheduled session of trial court, shall be rescheduled for trial by the Senior Resident Superior Court Judge or the Presiding Judge, upon conferring with counsel.

**9.6** When scheduling for trial, priority should be given to the case as follows:

- a) Capital cases;
- b) Non-Capital homicides;
- c) Sexual offenses against minors and felony child abuse;
- d) Rapes and sexual offenses;
- e) Felony assaults and domestic violence offenses;
- f) Burglaries, robberies and kidnapping;
- g) Felony B&E's and other felony property crimes;
- h) Drug trafficking;
- i) Drug sales to persons under the age of 20;
- j) DWI Appeals and felony DWI's;
- k) Other felonies;
- l) Other misdemeanor appeals.

**9.7** 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 family member;
- d) Whether the defendant is a recidivist;
- e) Whether the defendant is a public official;
- f) The age of the case;
- g) Any significant problem or interests of particular concern to the community.

## **RULE 10: PRINTED CALENDARS**

**10.1** Not less than ten days prior to each non-jury Case Management Session of Court, the District Attorney shall prepare and publish a calendar of case setting as described in Rule 4. The non-jury case management calendar shall be separated into First Settings, Second Settings and Third Settings.

**10.2** The order of cases within each case management calendar section shall be based upon the defense counsel of record.

**10.3** Not less than ten days prior to every jury session of court, the District Attorney shall prepare and publish a calendar of cases for trial. The District Attorney may



list the order of cases for trial in his discretion, giving consideration to factors such as pre-trial jail detention of the defendant and case age.

- 10.4** Once published and distributed the trial of cases listed on the calendar shall be subject to the provisions of General Statute 7A-49.3 not inconsistent with the terms of this order. In the discretion of the presiding judge, the order of cases for trial may be varied to accommodate such factors as availability of court time and the schedules of witnesses.
- 10.5** A defendant who is not represented by counsel shall be required to appear upon the initial calling of the calendar during a session of court. All defendants who have attorneys of record need only report at their assigned time slot and not at the initial calendar call. 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.

### **RULE 11: MOTIONS FOR CONTINUANCES**

- 11.1** All motions for continuances must be in writing, filed and delivered to the office of the Senior Resident Superior Court Judge and opposing counsel not later than noon on Wednesday, preceding the session in which the trial is calendared. Oral motions or motions filed out of time must show good cause for failure to file a timely written motion.
- 11.2** Every motion must state the following:
- a) the age of the case;
  - b) whether the defendant is in jail;
  - c) whether the defendant has co-defendants and the names of any co-defendants;
  - d) the number of times the case has previously appeared on a trial calendar;
  - e) that opposing counsel has been consulted regarding the continuance;
  - f) whether the opposing counsel consents; and
  - g) the moving party's position on when the trial should be rescheduled if continued.
- 11.3** The Senior Resident Superior Court Judge will issue a ruling on the motion after consideration of the reason 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 travel, a Resident Superior Court Judge or any other judge designated by the Senior Resident Superior Court Judge may rule on continuance motions.
- 11.4** No case shall be continued without rescheduling the trial date certain, except in a case of extreme and unusual circumstances.

**RULE 12: SANCTIONS**

- 12.1** Failure to comply with any section of these rules shall subject counsel to all sanctions allowed by law and deemed appropriate in the discretion of the Presiding Judge.
- 12.2** Failure of a defendant or witness to appear as required shall subject that person, at the discretion of the judge, to any sanctions provided by law.

**RULE 13: MISCELLANEOUS PROVISIONS**

- 13.1** Motions filed seeking appropriate relief shall be forwarded by the clerk of court to the office of the Senior Resident Superior Court Judge for review pursuant to N.C.G.S. 15A-1420©(1)-(7). Upon review, the Senior Resident Superior Court Judge shall within thirty days of receipt of the motion for appropriate relief take one of the following actions:
  - a) Dismiss the motion without evidentiary hearing;
  - b) Allow an evidentiary hearing, appoint counsel if necessary and notify the District Attorney to file an answer to the motion;
  - c) Schedule a hearing date at a future Case Management Session in the county where the motion was filed.
- 13.2** The District Attorney shall make reasonable efforts to ensure that the victims of crimes are made aware of hearing dates for those cases in which a victim is involved. The District Attorney shall further have for each scheduled case to be heard at each Case Management session of court, victim impact information available to him at the time of the session. Nothing contained herein shall prevent the hearing of a case at the session of court for which the matter is calendared.
- 13.3** Nothing contained herein shall be used in such a way as to deprive any defendant any right provided by law.

ENACTED THIS DATE DECEMBER \_\_\_\_, 2000.

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Robert H. Hobgood  
Senior Resident Superior Court Judge

I consent to the terms of this order.

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David R. Waters  
District Attorney