

**CRIMINAL CASE DOCKETING PLAN**  
**(SUPERIOR COURT)**  
**Revised September 2004**  
**Judicial District 25A**  
**Burke County**  
**JAMES C. GAITHER, JR, DISTRICT ATTORNEY**  
**25TH DISTRICT**

**Pursuant to North Carolina General Statutes section 7A-49.4**

**I. Calendars for administrative settings and arraignment calendars:**

At least ten days before the date of the next scheduled administrative setting the District Attorney shall cause to be published a calendar of cases. Publishing a calendar of cases shall consist of the following acts:

- (1) The District Attorney shall consult with the Clerk and give direction as to cases, which shall appear on the calendar.
- (2) In that the Clerk of Court can post documents on the internet under the Administrative Office of the Courts website, the District Attorney shall request the Clerk in Burke County to enter the calendars. Compliance with this provision is discretionary with the Clerk.
- (3) The District Attorney shall cause the several magistrates of Burke County to be apprized of the next scheduled session for administrative settings for Burke County. In those cases when the case has been initiated by grand jury indictment, then the district attorney shall comply with the Resident Superior Court Judge's Calendaring Order.

**II. Dates for Administrative Settings.**

The District Attorney shall, in consultation with the Resident Superior Court Judge, designate one term of Criminal Superior Court every other month as an Administrative Term.

**III. Arraignment Calendars for Burke County**

Arraignments not effected at the Administrative Court Session shall occur the first Monday of every Trial Session in Superior Court.

#### **IV. Content of Calendar for Administrative Settings:**

(“N.C.G.S. 7 A-49.4 (d) requires the presence of defendants whose name appears on this calendar and who are charged with offenses that originated in this county.”)

The District Attorney shall calendar alphabetically at the administrative setting calendar:

- (1) All felonies where an indictment has been returned as a true bill;
- (2) All cases where, at an earlier administrative setting, the court directed the case to be calendared at the current administrative setting;
- (3) All cases, where by consent of the parties, this administrative setting was selected;
- (4) Murder cases where the State has requested a Superior Court Judge to set a Rule 24 Conference and the Judge has so ordered that the conference occur on the Administrative Setting Calendar; and
- (5) Any case in which motions are pending which in the discretion of the District Attorney can or should be determined prior to trial.

**The District Attorney will omit to calendar cases at Administrative Settings when there is appropriate cause. Attorneys are encouraged to make the District Attorney aware of situations which should require a case not being calendared at a particular Administrative Setting (such as the lawyer is on secured leave). At least two weeks notice from attorneys of their secured leave will be appreciated.**

#### **V. Matters to be dealt with at Administrative Setting Calendars**

##### **A. Pleas**

(1) The District Attorney contemplates that his most favorable plea offer will be offered early in the process. Each plea offer will be limited as to a time of duration. Plea offers will be in writing and shall always be written so that they expire on the date of the next Administrative setting.

(2) The District Attorney will designate an experienced assistant skilled in Superior Court work as screener whose duty it shall be to select those felony investigations which meet standards of this district for prosecution. At the time of determination that a case will be pursued by the District Attorney’s office, the screener shall make a plea offer if appropriate. In instances when the screener shall not deem any offer appropriate, then that shall be communicated to defendant’s attorney or to the defendant if the defendant has no attorney. The plea offer shall provide that it shall be void if not accepted at the next succeeding scheduled

Administrative Setting Calendar. The District Attorney recognizes that attorneys should have a full 30 days to give consideration to the offer. To that end, the District Attorney agrees to consent to a second Administrative Setting upon motion of the defendant in cases where the Defendant's attorney has not had knowledge of the plea offer for 30 days or when, by reasonable diligence, the attorney has not been able to receive all items of discovery. The date of the second setting shall then be the final date for acceptance of the plea offer unless the parties agree to a subsequent administrative setting or the court orders an additional Administrative setting.

(3) Subject to the requirements of the Crime Victims' Rights Act, the District Attorney will stand ready to receive guilty pleas in felony cases at administrative settings.

(4) Verbal plea offers can only be made during a term when the case is calendared. Those offers not accepted by entry of a plea during the term are withdrawn at the conclusion of the term. The District Attorney will not subsequently honor reputed verbal plea offers unless they have been reduced to writing by the Assistant District Attorney.

(5) Defendants who have been given a plea offer which is viewed as unsatisfactory are encouraged to discuss the offer with the particular Assistant District Attorney who made the offer. Assistants who did not make the offer are forbidden by this office from revising or departing from the offer made by another Assistant District Attorney.

(6) Defendants who do not respond to a plea offer prior to the time specified for expiration of the offer shall be deemed to have rejected the offer.

(7) Assistant district attorneys shall agree to a second or subsequent administrative setting rather than a trial date if discovery has not been completed or whenever there exists a reasonable expectation that a plea can be achieved without a trial date. However, it is contemplated that in most cases only one Administrative setting will occur.

(8) Whenever a plea offer has been rejected at its final administrative setting, the case will be calendared on a trial calendar, and thereafter the District Attorney will **not** entertain the original offer. Trial calendars will be construed as consisting of trial cases. In instances when plea negotiations seem productive when cases are on the trial calendar Assistant District Attorneys will be charged with securing additional concessions from defendants before accepting pleas unless compelling circumstances dictate otherwise.

## **B. Motions**

The District Attorney will ordinarily be prepared for pre-trial motions which do not require evidence. The State's witnesses will generally not be present for administrative settings. In instances where the District Attorney seeks to have heard a motion where evidence is required, the District Attorney will serve specific notice on counsel. Similar notice will be appreciated from counsel whenever counsel wishes to have heard a motion involving evidence. The District Attorney shall seek that the Court hear and determine all pretrial motions where time does permit at the administrative setting, and to accomplish this, the district attorney will give the notice provided above whenever he feels in advance of the setting that there should be time for motions (unless directed to do otherwise by the presiding judge). In instances when the court declines to hear pretrial motions at an administrative setting the District Attorney shall request that the court set the hearing for such motions as early as possible, and to accomplish this goal to set the motions for hearing at (1) civil priority terms which are not forecast to be fully utilized within the same county; (2) pursuant to the venue provisions of N.C.G.S. 15A-131(b), at criminal terms in Caldwell county when the case load there does not require a full session; (3) at a second or subsequent administrative setting or (4) on a date certain which shall be the final date of a criminal term where cases are tried. Some motions should properly be heard by the judge who presides over the trial since they relate to the admissibility of evidence or methods of selection of the jury or the conduct of the trial, and the District Attorney will resist the hearing of such motions at the administrative setting.

## **C. Rule 24 Conferences**

Whenever the Grand Jury has returned a true bill of indictment charging murder that does not show the offense to be second degree murder, the District Attorney will give notice to a Superior Court Judge and ask that the case be calendared on the Administrative setting calendar which follows the return of the indictment. Utilizing the screening policies of the District Attorney's office, it is expected that those cases which should be indicted only for second degree murder or such lesser offense as is appropriate will not be indicted for first degree murder. At the scheduled hearing when the prosecutor has not yet decided to prosecute the case for the death penalty, the Assistant District Attorney will so advise the defendant and seek by agreement a new setting for the Rule 24 Conference and will ask that such subsequent setting also occur during an administrative term.

## **D. Tentative Trial Calendars**

(1) The District Attorney shall in most ordinary circumstances create a tentative trial calendar for all felony cases on the calendar at the Administrative Setting. The tentative trial calendar will not be a written or published document, but shall consist of the case settings announced by agreement or order of the court. In most instances of felony settings, the District Attorney will seek agreement from the defense attorney as to the trial date. In instances where there is agreement, the District Attorney will announce the trial

date based on agreement. Where agreement has not been obtained, the District Attorney shall announce a proposed trial date based on his criteria for scheduling cases. In instances where the Judge determines that the interests of justice require a different setting, the District Attorney shall make a second proposal of a trial date provided there is an existing schedule of courts which sets a court term in that venue. In making announcements of proposed trial dates, the District Attorney shall consider the importance of the felony to the community compared with other pending felonies, the age of the felony, whether the defendant is in custody, and all relevant factors known to him. The District Attorney shall regulate the number of cases to be placed on a tentative calendar so that the calendar reflects realistically the work that can be done.

(2) Tentative Trial Calendars of felony cases which are created during the Administrative Court Setting shall become the basis of the actual trial calendar (except for appealed misdemeanors and probation and other matters not reached at the administrative setting) and no felony will be placed on a trial calendar other than as provided in this plan. During the week prior to a trial term the District Attorney shall publish a tentative priority list of at least five cases in the sequence in which they are expected to be called and not alphabetically. The District Attorney reserves the power on trial calendars pursuant to N.C.G.S. 7A-49.4(f) to make changes in the order of cases at the beginning of court and shall at that time announce the final priority of cases.

#### **E. Arraignments**

In instances where defendants have requested arraignment pursuant to N.C.G.S. 15A-941(d), arraignment shall occur at the final administrative setting. In all cases where defendants have made no request for arraignment, the District Attorney shall at the final administrative setting advise the defendant or his attorney that any plea offer previously made is withdrawn and shall request the presiding judge to enter a not guilty plea on behalf of the defendant.

#### **VI. Order of business at the administrative setting calendar**

The district attorney will schedule attorneys' appearance at designated times. To make this realistic, attorneys are encouraged to discuss with the Assistant District Attorney their caseloads and their expectation of the time necessary to deal with their matters.

#### **VII. Final Trial Calendar**

The trial calendar shall be published at least 10 working days before the date for the beginning of the session. It will consist of:

- (1) felonies scheduled at an administrative setting
- (2) felonies previously scheduled on a trial calendar but not reached at the prior session

- (3) appealed misdemeanors
- (4) probation matters and other matters not dealt with at an administrative setting

This trial calendar shall be distributed in the same manner and to the same extent as is provided for within this document for distribution of the administrative setting calendars. After a tentative trial calendar is made, but before the final trial calendar is published, counsel are invited to make the District Attorney aware of scheduling problems. Trial calendars shall reflect realistic goals of what the District Attorney hopes to achieve, but in some instances calendared cases will not be heard because of the press of other cases. Inevitably there will at times be some cases that are not reached which appear on the trial calendar. In such cases the District Attorney will first seek agreement as to a subsequent trial date. If an agreement cannot be obtained the case will be scheduled in the District Attorney's discretion on a subsequent trial calendar. Such cases will not be placed again on the administrative setting calendar.

This the \_\_\_\_\_ day of September, 2004.

---

James C. Gaither, Jr.  
District Attorney