

CRIMINAL CASE DOCKETING PLAN - TENTH JUDICIAL DISTRICT

JUDGE HENRY V. BARNETTE, JR.
Senior Resident Superior Court Judge

C. COLON WILLOUGHBY
District Attorney

RULE 1: General Provisions

1.1 The purpose of these rules is to provide for the orderly, prompt and just disposition of criminal matters. It is intended that matters addressed pursuant to this Criminal Case Docketing Plan be resolved in a fashion so as to protect the interests of this District and the victims of crime, as well as to ensure that the rights of criminal defendants are preserved. These rules are written to encourage the non-jury disposition of cases at the Administrative Setting where possible, and to minimize the number of cases being set on trial calendars and the number of times each party must prepare for trial.

1.2 The calendar for the disposition of criminal cases in the Tenth Judicial District, Superior Court Division, shall be set and maintained by the District Attorney in accordance with these rules.

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 which may arise. In the event these rules do not address a specific matter or issue, the

District Attorney is authorized to act in his or her discretion, subject to the laws and Constitutions of North Carolina and the United States.

1.5 These rules shall not apply to misdemeanor appeals for trial de novo or to cases designated “Exceptional” by the District Attorney, a Resident Superior Court Judge, or by agreement of the parties. Cases which may be designated “Exceptional” include but are not limited to capital cases, complicated drug conspiracies, cases including multiple defendants or victims, complicated white collar crime cases, cases assigned to the Dangerous Offenders’ Task Force and those cases involving extensive scientific investigation.

RULE 2: Discovery

2.1 No later than twenty-eight days after indictment, discovery shall be provided by the District Attorney’s Office to the attorney of record for the defendant. In the event that only partial discovery can be made at that time, the District Attorney’s Office shall so notify the attorney of record for the defendant and shall also provide a date by which the District Attorney’s Office believes complete discovery can and will be made. At the time the District Attorney’s Office provides discovery to the attorney of record for the defendant, the District Attorney’s Office shall also provide an Administrative Status Report which will include, among other things, a proposed trial date, and a written plea offer if one is to be made. In the event a written plea offer cannot be made at that time, the District Attorney’s Office shall provide to the attorney of record for the defendant with notice that a plea offer will not be made or a date by which a written plea offer will be made.

2.2 In cases where the defendant does not have an attorney or the District Attorney's Office is unable to determine if the defendant is represented by an attorney, the District Attorney's Office may serve discovery, plea offer and/or the Administrative Status Report upon the defendant him/herself at or before the Administrative Setting.

2.3 Should a change in representation of the defendant occur, it is the joint responsibility of the new and previous counsel of record to insure that the discovery material from the District Attorney's Office is transferred from previous counsel of record to new counsel of record in a timely manner. The motion allowing counsel to withdraw from a case will certify that counsel has transferred the discovery materials to the new counsel of record. Photocopied discovery shall not be provided to defense counsel entering only a limited appearance. The new counsel shall upon making a general appearance in the case notify the District Attorney's Office in writing that he or she is the new counsel of record.

RULE 3: Plea Offers

3.1 The District Attorney's Office shall provide a written plea offer, if one is to be made, to defense counsel of record prior to the Administrative Setting and no later than 28 days after indictment. If a plea offer is made it will remain in effect until the Administrative Setting unless it is withdrawn in writing by the District Attorney's Office prior to that time. After the Administrative Setting any plea offer will be presumed to have been withdrawn.

3.2 Defense counsel of record shall promptly convey all plea offers to the defendant and shall

discuss it with the defendant before the first Administrative Setting and shall certify to the court that such has been done.

3.3 If the District Attorney's office dismisses a case out of court, the District Attorney's Office shall notify the defendant or the defendant's counsel, if represented, of such action.

RULE 4: Motions

4.1 All pre-trial motions as defined by statute and case law, including Motion for Arraignment, shall be filed no later than 10 days after receipt of discovery materials from the District Attorney's Office unless the provisions of Chapter 15A of the North Carolina General Statutes requires an earlier filing.

4.2 Pre-trial motions which require evidentiary hearings or will be dispositive of the case shall be heard the week of the trial setting of the case unless the District Attorney's Office, in the interests of justice, determines that an earlier hearing is required in which case the defense attorney will be given a date for the hearing by the District Attorney's Office.

4.3 After indictment all motions for modification of pretrial release conditions shall be filed with the Senior Resident Superior Court Judge or his designee. The reviewing judge may deny the motion on its face or he may set the matter for hearing as appropriate.

RULE 5: Administrative Setting

- 5.1 The defendant can not waive his or her appearance at any Administrative Setting.
- 5.2 An Administrative Setting shall be calendared for each felony within 60 days of indictment of the defendant or service of notice of indictment to the defendant.
- 5.3 At or before the Administrative Setting the District Attorney's Office will provide to the Court a written Administrative Status Report showing compliance with G.S. 7A-49.4.
- 5.4 At the Administrative Setting counsel for the defendant shall advise the presiding judge and the District Attorney's office whether the defendant has other pending charges, and if so, who is counsel for those charges. The District Attorney's Office will use its best efforts to minimize the number of Administrative Settings for each defendant.

RULE 6: Trial Settings

- 6.1 The District Attorney shall propose to the Administrative Setting Judge a trial date in each case reaching the trial phase. The proposed trial date will be at least five (5) weeks from the date of the final administrative setting. The District Attorney shall produce and maintain a six months' schedule of the weeks during which Assistant District Attorneys are available for Superior Court. Defense counsels are responsible for having personal calendars available at the final administrative setting in order to inform the Court of any professional or personal conflicts.

6.2 If a case has not been scheduled for trial within 90 days of indictment or of service of the notice of indictment, upon motion of the defendant or counsel for defendant, the Senior Resident Superior Court Judge or a superior court judge designated by the Senior Resident Superior Court Judge may hold a hearing for the purpose of establishing a trial date for the defendant.

6.3 The trial date established at the final administrative setting shall be a firm trial date. Continuances will be granted for good cause that could not have been reasonably foreseen by the parties or if the Court determines that such continuance is required for the fair administration of justice. If both parties consent to a continuance of a case on the trial calendar the Court may grant or deny that continuance in its discretion. In no event will a case be continued off of the trial calendar without the filing of a written motion prepared by the movant and a written order of the Court.

6.4 The District Attorney shall publish at least ten (10) working days before the trial date a trial calendar which shall schedule the cases in the order in which the District Attorney anticipates they will be called for trial.

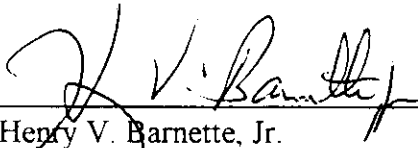
RULE 7: Miscellaneous provisions

7.1 No provision of these rules shall be construed to relieve any party of any statutory, ethical or other obligation under the North Carolina Criminal Procedure Act, the General Rules of Practice for the Superior Court of North Carolina, or Local Rules of Practice for Wake County Superior Court.

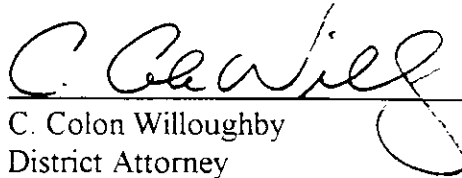
7.2 The Criminal Case Docketing Plan may be amended from time to time by the Senior Resident Superior Court Judge with the District Attorney and other members of the committee who proposed these rules.

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Adopted this the 13 day of December, 1999.



Henry V. Barnette, Jr.
Senior Resident Superior Court Judge



C. Colon Willoughby
District Attorney