

STATE OF NORTH CAROLINA  
LENOIR COUNTY

22 R 179  
IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILED

2022 DEC -2 P 12:12

LENOIR CO., N.C.

BY AC

**ADMINISTRATIVE ORDER**  
**CASE BACKLOG REDUCTION PLAN**  
**and**  
**CRIMINAL CASE CONTINUANCE POLICY**

Now comes the undersigned Senior Resident Superior Court Judge and enters this Administrative Order to encourage prompt disposition of criminal cases and backlog reduction.

**GENERAL POLICIES**

1. It is the intent of this court that plea discussions between the District Attorney, defense counsel and defendant occur prior to administrative terms of court so that court time is used efficiently. Defense counsel shall communicate with their clients regarding plea offers prior to the scheduled administrative court date and the Assistant District Attorneys shall communicate with their victims and/or witnesses prior to the scheduled administrative court date. Plea transcripts and related documents shall be completed and signed prior to the scheduled administrative court date.
2. Superior Court Judges presiding in this district shall remain available throughout the entire week of assignment and shall consistently enforce the orders contained herein in order to encourage the prompt disposition of criminal cases.
3. Nothing in this administrative order shall supersede the authority, duties and responsibilities of the District Attorney pursuant to the North Carolina Constitution, Article I, Section 37, Rights of Victims of Crimes; N.C.G.S. 15A, Article 46, Crime Victims' Rights Act; and N.C.G.S. 7A-49.4, Superior Court Criminal Case Docketing.

**LENOIR COUNTY PLAN**

1. **UTILIZATION OF CIVIL TERMS.** Civil terms in the district have been historically underutilized. Civil motions are customarily heard on Monday with trials beginning

on Monday afternoon or Tuesday. It is not unusual for all civil cases appearing on the trial calendar to be resolved prior to trial, leaving only the motions to be heard.

Whenever a civil term is scheduled for the week immediately following a criminal trial term, the civil term shall be utilized for the trial of criminal cases not reached the previous week, in the event that there are no civil cases to be tried. The Court Manager shall immediately notify the District Attorney when she learns that there will be no civil cases for trial. When there are only civil motions they will be heard on Monday and the criminal calendar will continue Tuesday.

The trial list published by the District Attorney shall contain a notice to defense counsel that any cases not reached for trial during the criminal term are subject to be called for trial the following week.

The jurors summoned for the civil term shall not be released without the knowledge and consent of the Senior Resident Superior Court Judge (and the Court Manager) or the presiding judge.

<b>2023 Sessions During Which This Policy and Procedure Shall Apply</b>	
<b>Criminal Trial Session</b>	<b>"Companion" Civil Trial Session</b>
February 13	February 20 (criminal trial already scheduled to begin following civil motions)
March 13	March 20
May 29	June 5
August 7	August 14
October 2	October 9
November 27	December 4

- 2. APPEARANCE OF DEFENDANTS ON TRIAL CALENDARS.** Unless excused by the District Attorney all defendants appearing on the trial calendar, regardless of whether they appear on the trial list, and their attorneys, are required to attend calendar call at 10 a.m. on the first day of the criminal trial term. After calendar call the court will take guilty pleas and hear motions. Pleas and motions not reached on the first day shall be scheduled for later in the term, as time permits.

Trials will begin on Monday of the criminal terms of court at 2:00 P.M. unless otherwise announced by the District Attorney with the consent of the presiding judge and due notice to the Court Manager.

3. **Jail Case Review Calendar.** The Court shall call a Jail Case Review calendar periodically during certain criminal administrative terms at 2:00 P.M. on Thursday of the designated term. These dates will be announced in a similar fashion as the homicide status conference dates. On Friday (14 days prior to the criminal administrative term) the Sheriff or his designee shall email to the Clerk, District Attorney and counsel for the defendant a list of all defendants who have been held in the Lenoir County Jail for six months or more. This list shall include the names of indicted and unindicted defendants who have been charged with felony offenses. *(This list shall not include defendants who are being held for homicide offenses as these matters are addressed at the quarterly administrative homicide status conferences).* The Clerk shall prepare and publish the Jail Case Review calendar at the same time she publishes the administrative calendar. All Assistant District Attorneys prosecuting persons on the Jail Case Review Calendar are required to be present at the calendar call. Defense counsel for all defendants appearing on the Jail Case Review calendar are required to be present. Presence of the defendant is not required.

During this calendar review the Court shall make inquiry of counsel sufficient to determine whether discovery has been completed, whether the parties are awaiting law enforcement files or State Crime Lab reports, whether the parties are awaiting reports from experts, why the case has not been previously resolved, and to ensure that defense counsel has had recent contact with his/her client. The Court shall assist the parties in determining a peremptory trial date or whether it is necessary to seek approval from the Administrative Office of the Courts for special terms of court for trial of the cases.

If the Assistant District Attorneys and defense counsel know before the scheduled calendar review that a special session, whether multi-week or not, will be needed, they shall send a request for the special session as soon as possible to the Court Manager. It should be noted that not all requests may be able to be granted as there are both space and personnel limitations to be considered when obtaining special sessions.

2023 Jail Case Review Dates
March 30, 2023
May 25, 2023
June 29, 2023
August 3, 2023
September 28, 2023
November 16, 2023

4. **Indicted House Arrest / Pre-Trial Release Review Calendar.** The court shall call an "Indicted House Arrest / Pre-Trial Release" Review Calendar at 10:00 A.M. on the first day of each criminal administrative term. Each Friday (14 days prior to the administrative term of court) the Sheriff or his designee and the District Attorney shall confer and cause to be emailed to the Clerk a list of all defendants who have been placed in the pre-trial release electronic monitoring program administered by the Sheriff. The Clerk shall prepare and publish an "Indicted House Arrest / Pre-Trial Release" calendar at the same time that she publishes the administrative calendar. All Assistant District Attorneys prosecuting persons on this calendar are required to be present for this calendar call. Defense counsel for all defendants appearing on this calendar are required to be present. All defendants who appear on this calendar are required to be present.

All Assistant District Attorneys prosecuting individuals who appear on this calendar should be prepared to provide the Court with up-to-date information regarding each defendant's compliance with the conditions of his/her pre-trial release conditions. It is the intent of this Court to discuss with counsel the status of the "Indicted House Arrest / Pre-Trial Release" cases with the goal of expediting resolution of the cases by way of plea or a preemptory setting of the cases for trial.

5. **Indicted Juvenile Transfer Case Review Calendar.** The Court shall call an "Indicted Juvenile Transfer Case Review" calendar at 2:00 P.M. on the first day of each criminal administrative term. The District Attorney shall email the Clerk a list of all indicted cases that have been transferred from Juvenile Court and are pending in the Superior Court at least 14 days prior to the administrative setting. The Clerk shall prepare and publish a calendar with these cases listed at the same time the administrative calendar is prepared and published. All Assistant District Attorneys prosecuting individuals on this calendar are required to be present at the 2 P.M. case reviews. Defense counsel for all defendants appearing on this calendar are required to be present at the 2 P.M. case reviews. The defendants listed on this calendar are required to be present at the 2 P.M. case reviews. It is the intent of this court to discuss with counsel the status of the Indicted Juvenile Transfer Cases with the goal of an expediated resolution of the cases by way of plea or a preemptory setting of the case for trial.

All Assistant District Attorneys prosecuting individuals who appear on this calendar should be prepared to provide the court with up-to-date information regarding each defendant's compliance with conditions of his/her pre-trial release conditions.

## CRIMINAL CASE CONTINUANCE POLICY

It is the policy of this Court to provide justice for citizens without unnecessary delay and without undue waste of time and other resources of the Court, the litigants and other case participants. For all case types and dockets and in all courtrooms, the Court looks with strong disfavor on motions or requests to continue court events without just cause. In order to protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored.


Now therefore, IT IS HEREBY ORDERED that:

1. Except in unusual circumstances, any motion to continue a trial date or motion of counsel to withdraw from a case on the trial list shall be in writing and filed not later than 5 days before the court event for which rescheduling is requested. Whenever possible, continuance motions or requests shall be made using the appropriate forms issued by the North Carolina Administrative Office of the Courts, which includes AOC-CR-410 ("Motion and Order for Continuance (Criminal Superior Court Cases)"), a copy of which is attached hereto as Exhibit A.
2. Any attorney or party requesting a continuance shall state the reasons for the request. Failure of a client to fully retain his lawyer shall not be a valid reason to withdraw from a case on the trial list or to continue the trial when a general appearance has been filed. Other than for extraordinary cause and with the consent of the Court, all appearances by counsel for matters on the trial list shall be deemed a general appearance.
3. Continuances by agreement of counsel or the parties shall not be automatically granted.
4. The Court shall grant a continuance only for good cause shown unless otherwise provided by law.
5. Continuances of cases on the criminal administrative calendar that have been previously continued more than 3 times are specifically disfavored and shall be granted only in unusual circumstances.
6. Any grant of a continuance motion or request shall be made on the record with an indication of who requested it and the reasons for granting it.
7. Whenever possible, the Court shall hold the rescheduled court event no later than 60 days after the date from which it was continued.

8. Information about the source of each continuance motion and the reason for any continuance granted by the Court shall be noted in the Court's file. The document attached as Exhibit B2 ("Administrative Continuance Order") shall be used to document the moving party and reason for continuance. This document shall be retained in the Court's file.
9. To the extent that this order conflicts with any statutory provision applicable to a particular continuance motion or request, the statutory provision will control.
10. At least semiannually, the Senior Resident Superior Court Judge shall generate and review a report of pending cases and any data that the Administrative Office of the Courts can make available regarding the number of court dates previously assigned to each case. To promote the consistent application of this continuance policy, these reports should be reviewed and discussed with all other judges in the district, bar representatives and other court-related agencies to seek resolution of any organizational or systemic problems that cause unnecessary delay in the timely resolution of all cases.
11. This order shall be published on the Administrative Office of the Court's Local Rules website for Lenoir County.

This order shall be effective as of the 1<sup>st</sup> day of February, 2023.

Signed this the 2<sup>nd</sup> day of December, 2022.

  
Imelda J. Pate  
Senior Resident Superior Court Judge  
Judicial District 8A

**EXHIBIT A**

<b>STATE OF NORTH CAROLINA</b>	File No.
_____ County	Additional File No.(s)
In The General Court Of Justice Superior Court Division	

<b>STATE VERSUS</b>	<b>MOTION AND ORDER FOR CONTINUANCE (CRIMINAL SUPERIOR COURT CASES)</b>
Name Of Defendant	
Name Of Co-Defendant(s), If Any	

Offense(s)

**NOTE:** This form is designed for use in districts which have adopted the model continuance policy. The **MOVING PARTY** must complete all the information required below. A copy of the completed form must be distributed to all counsel of record and unrepresented parties before presenting it to the appropriate judicial official. Before opening of court for the session at which this case is calendared, the appropriate judicial official is the Senior Resident Superior Court Judge or designee. Following the opening of court, the appropriate judicial official is the presiding judge. Distribution may be made by U.S. mail, fax, hand delivery or placement in a distribution box maintained in the courthouse facility. Upon receipt, the **OPPOSING PARTY** must immediately communicate any objections to the appropriate judicial official.

Date Of Indictment Or Appeal From District Court	No. Of Previous Continuances	No. Of Times Designated For Trial And Not Reached
Calendared Trial Date	Requested Rescheduled Date	Pretrial Detention Status Of Defendant <input type="checkbox"/> Incarcerated <input type="checkbox"/> Released

**MOTION**

Pursuant to the local rules for motions for continuance in effect in this superior court district, the party named below moves that the above criminal case be continued from the calendared date shown above to the requested rescheduled date shown above, for the following compelling reasons which would affect the fundamental fairness of the trial process or because the continuance is clearly in the interest of justice in that: *(State facts constituting compelling reasons or interest of justice.)*

I have distributed a copy of this Motion to all counsel of record and unrepresented parties by U.S. mail, facsimile transmission, hand delivery or placement in a distribution box maintained in the courthouse facility.

This Motion has been considered by another judge (name judge) \_\_\_\_\_ on the same grounds.

This Motion has not been considered by another judge on the same grounds.

Date	Signature
Name Of Moving Party (type or print)	<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense Attorney <input type="checkbox"/> Defendant

**CERTIFICATE OF SERVICE BY MOVING PARTY**

I certify that a copy of this Motion was served by:

delivering a copy personally to the  
 defendant's attorney.     prosecutor.     defendant.

depositing a copy, enclosed in a postpaid properly addressed envelope, in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the  
 defendant's attorney.     prosecutor.     defendant.

leaving a copy at the office of the  
 defendant's attorney with an associate or employee.     prosecutor with an associate or employee.

Name And Title Of Person With Whom Copy Left

Service accepted by:  
 defendant's attorney.     prosecutor.     defendant.

Signature Of Person Accepting Service	Date Served
Signature Of Person Serving	Title

**CONSENT TO CONTINUANCE**

The consenting party named below consents to the above requested continuance.

Date	Signature
Name Of Party (type or print)	<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense Attorney <input type="checkbox"/> Defendant

**OTHER FACTORS**

**NOTE:** Designee of Senior Resident Superior Court Judge should complete this portion before the motion is presented to the appropriate court official.

Date Motion Received	Objections Received <input type="checkbox"/> No <input type="checkbox"/> Yes (attach)	Case Age <input type="checkbox"/> Less Than 12 Months <input type="checkbox"/> 12 To 18 Months <input type="checkbox"/> More Than 18 Months
Date Case Set On This Trial Calendar	Attorney Input Into This Setting <input type="checkbox"/> No <input type="checkbox"/> Yes	
Total No. Of Cases On Trial Calendar	Current Ranking Of This Case On Trial Calendar	Priority Designation <input type="checkbox"/> No <input type="checkbox"/> Yes

**ORDER**

- 1. Upon the motion of the defendant and the consent of the district attorney, it is **ORDERED** that the above motion is allowed and the case is continued and shall be held on the rescheduled date set forth below.
- 2. Upon consideration of the Motion For Continuance on the reverse side and the Other Factors set forth above, the Court: (select one option)
  - a. finds that there are compelling reasons for a continuance which would affect the fundamental fairness of the trial process.
  - b. finds that the requested continuance is clearly in the interest of justice.
  - c. does not find that there are compelling reasons for a continuance which would affect the fundamental fairness of the trial process and does not find that the requested continuance is clearly in the interest of justice.

It is **ORDERED** that: (select one option)

- 1. The motion is allowed and the case is continued and shall be held on the rescheduled date shown below.
- 2. The motion is denied and the case shall be held on the rescheduled date shown below.

Court Rescheduled Date, If Different	Date Of Order
	Signature
Name (type or print)	<input type="checkbox"/> Senior Resident Superior Court Judge <input type="checkbox"/> Designee Of Senior Resident Superior Court Judge <input type="checkbox"/> Presiding Judge



EXHIBIT B

STATE OF NORTH CAROLINA  
COUNTY OF LENOIR

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE # \_\_\_\_\_

STATE OF NORTH CAROLINA

ADMINISTRATIVE  
CONTINUANCE ORDER

VS.

Number of prior continuances: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT

This case is hereby continued to \_\_\_\_\_, for the (State) (Defendant) (Court) over the objection of (State) (Defendant). In support thereof, the Court finds as fact(s):

- 1. That there is an absence or unavailability of the (Officer) (witness) \_\_\_\_\_.
- 2. That the Defendant is in ( \_\_\_\_\_ County Jail) (DAC) and a writ to transport him/her to court needs to be issued.
- 3. Discovery is not complete.
- 4. Defendant received discovery from State on \_\_\_\_\_ and needs time to prepare.
- 5. Preservation of Defendant's right to be represented by an attorney:
  - Court-appointed attorney requested granted.
  - Defendant to hire own attorney and waives the right to appointments.
  - Court appointed counsel denied.
- 6. Defendant needs time to:
  - raise money for \_\_\_\_\_.
  - prepare for court.
  - (other) \_\_\_\_\_.
- 7. Defendant's attorney is in (District) (Superior) Court in \_\_\_\_\_ County in (trial) (plea) (other court proceeding) or unavailable due to \_\_\_\_\_.
- 8. Lab report is not back.
- 9. Due to heavy caseload, case is unable to be reached.
- 10. Last continuance for the (Defendant) (State).
- 11. Attorney's appearance is limited to this motion to continue only.
- 12. Other reason for continuance: \_\_\_\_\_.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Defense Attorney

\_\_\_\_\_  
District Attorney

\_\_\_\_\_  
Judge