

# **Ninth Judicial/Prosecutorial District**

## **Case Management System for Criminal Superior Court (REVISED 12/01/2016)**

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

- 1.1** The purpose of these rules is to provide a Case Management System (CMS) that will allow 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 forward an electronic copy of these rules 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** These amended rules shall apply to all Superior Court cases with indictments docketed during the month of December 2016, and thereafter. Such cases shall be termed “**Case Management System (CMS) Cases.**”

**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, it is the aspirational goal that 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 aspirational 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 presumed that counsel seeks those items discoverable under North Carolina law, and the laws of the United States. No formal request for discovery under 15A-902(a) is required. Provision of Discovery by the State serves as a demand for reciprocal discovery from the Defendant. The Court may, after motion by the opposing party or on its own motion, may 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 two weeks from the Initiation Date of a case, discovery in each file shall be provided to the then-current attorney of record via the Discovery Automation System “DAS”. Should a change in defense counsel occur, it is the joint responsibility of both new and previous counsel to ensure that the discovery material is transferred from previous counsel of record to the new counsel of record.

**3.3** To avoid delays, it is the responsibility of Defense Counsel to timely request access to the Discovery Automation System through the Administrative Office of the Courts.

**3.4** The District Attorney or the Assistant District Attorney assigned to a case shall be responsible for completing a “**Discovery Disclosure Certificate**” (**DDC**) for any evidence that cannot be provided via DAS (**See Exhibit A**). A completed and signed DDC shall accompany the non-automated 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.

#### **RULE 4: CMS CALENDARING**

**4.1** The Senior Resident Superior Court Judge shall schedule non-jury criminal sessions devoted to the administration of the criminal calendar. These sessions shall be known as Case Management Sessions. The remaining criminal sessions will be reserved, to the extent reasonably possible, for trial of cases.

**4.2** Each case, except misdemeanor appeals which shall receive one specific Case Management session, may be calendared for three specific Case Management sessions 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** Prior to the first Case Management calendar setting, the District Attorney shall schedule time that attorneys and assistant district attorneys can meet to discuss cases. Further, attorneys and assistant district attorneys may meet at additional times as scheduling allows. All parties should make an attempt to be familiar with the law and facts to make their assessment about the strengths and weaknesses of the state's case. The following matters should occur prior to the First Setting:

- a) delivery of discovery and a plea offer, including factors related to sentencing;
- b) discussions between counsel and the assigned assistant district attorney, particularly when the defendant is in custody;
- c) communication of a plea offer to a defendant or victim as appropriate;
- d) preparation of necessary paperwork such as plea transcripts and prior record level worksheets.

**4.4** The first Case Management calendar setting ("First Setting") shall occur during the Case Management Session which is scheduled at least three 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) confirmation of receipt of discovery;
- d) status inquiry, including possible disposition by guilty plea.

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

**4.5** 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 60 days from the “First Setting”. The following matters shall be accomplished at the “Second Setting”:

- a) status inquiry, including possible disposition by guilty plea;
- b) pre-trial conference with judge (*if requested*);
- c) scheduling of deadline for filing pre-trial motions that are not appropriately directed to the judge presiding at trial;
- d) calendaring of pre-trial motion hearing date for cases which are not appropriately directed to the judge presiding at trial;

**4.6** The third Case Management calendar setting (“Third Setting”) shall occur during the next Case Management setting following the Second Setting. The following matters shall be accomplished at the “Third Setting” or at the conclusion of all of the Case Management if it is necessary to continue the case:

- a) status inquiry, including possible disposition by guilty plea;
- b) pre-trial conference with judge (*if requested*);
- c) scheduling of deadline for filing pre-trial motions that are not appropriately directed to the judge presiding at trial;
- d) calendaring of pre-trial motions hearing date for cases which are not appropriately directed to the judge presiding at trial;
- e) notice of defenses, designation of defense experts, and the State’s request for reciprocal discovery;
- f) arraignment and entry of not-guilty plea;
- g) scheduling of tentative trial dates.

**4.7** A time-certain schedule for defendants by attorneys shall be produced and distributed by the District Attorney.

**4.8** During any Case Management session the Court may schedule additional times for pleas, pretrial conferences, and motion hearings as needed.

**4.9** In the event a defendant is called and failed an order for arrest may 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.

## **RULE 5: MOTIONS**

- 5.1** All pre-arraignment motions, pursuant to N.C.G.S. 15A-952, shall be filed in writing, with notice to the opposing party, no later than five days prior to the Third or final Setting and will be heard at the Third or final Setting.
- 5.2** All other pre-trial motions, shall be filed in writing, with notice to the opposing party, no later than ten days prior to the Third or final Setting and will be scheduled for hearing at the next setting.
- 5.3** Except for exigent circumstances, all motions filed outside the established deadlines may 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.
- 5.4** Issues of law or fact left unresolved which impede settlement shall be heard before a case is transferred to the Trial Setting when possible.

## **RULE 6: PLEA OFFERS**

- 6.1** In every case the Responsible Prosecutor (RP) shall extend a written plea offer to defense counsel no less than 7 days before the First Setting.
- 6.2** Defense counsel of record shall convey all plea offers to the defendant within a reasonable time.
- 6.3** After inquiry by the presiding Court, the RP, Defense Counsel, and the Defendant shall execute an Acknowledgment of Rejection of Plea (**See Exhibit B**), at the conclusion of the Case Management Settings and the same shall be filed with the Clerk of Superior Court.
- 6.4** 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.
- 6.5** Plea offers made during CMS shall be revoked at the conclusion of the Case Management Settings. However, the RP, Defense Counsel, and Defendant may continue plea negotiations as to charge and sentence through the time the case is calendared on the Motions section of the Trial calendar. Such further negotiations should be undertaken in consideration of delays caused by forensic testing, witness availability, or new discovery not previously available.
- 6.6** It should be presumed by the RP, the defense counsel, and the defendant, that once a matter is continued past the motions section and calendared for trial, any further negotiations would be as to charge only.

## **RULE 7: TRIAL SETTINGS**

- 7.1.** The District Attorney shall propose to the Case Management Judge a tentative trial date in each case reaching the trial phase (**See Exhibit C**). Before doing so the District Attorney shall take into consideration the schedules of victims and witnesses, how the case fits into other priorities in prosecution and whether the defendant is incarcerated. The Case Management Judge shall establish tentative dates in conference with both counsel at the conclusion of the Case Management settings.
- 7.2** Any request by either party for a priority or peremptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed to the Judge presiding at the time a trial date is established.

## **RULE 8: PRINTED CALENDARS**

- 8.1** 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.
- 8.2** The order of cases within each case management calendar section shall be based upon the defense counsel of record.
- 8.3** Defense counsel should communicate, via writing or email, any scheduling conflicts to the Criminal Docket Management Coordinator prior to the calendar being published so scheduling conflicts can be resolved.
- 8.4** 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 written 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 9: MOTIONS FOR CONTINUANCES**

- 9.1** Any attorney that has properly filed and served a Secure Leave Notification pursuant to Rule 26 of the North Carolina General Rules of Practice shall not have his or her matters calendared for the duration of the secure leave period. If cases are inadvertently calendared no appearance is required.
- 9.2** All Secure Leave Notifications shall be filed with the Clerk of Court in each county that the attorney practices and served on the Superior Court Trial Court Coordinator and opposing counsel.

**9.3** A form adopted by the Senior Resident Superior Court Judge is attached hereto (**see Exhibit D**) and shall be deemed sufficient when completed, filed with the Clerk of Superior Court and served on the necessary parties.

**9.4** All other 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 three working days, preceding the session in which the CMS hearing is calendared. Oral motions or motions filed out of time must show good cause for failure to file a timely written motion.

Submitted, this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Michael D. Waters  
District Attorney  
North Carolina's Ninth Prosecutorial District

**APPROVAL AND ORDER**

The undersigned Senior Resident Superior Court Judge approves the foregoing Criminal Case Management Plan, revised \_\_\_\_\_, for the Ninth Judicial/Prosecutorial District and adopts the same as an Order.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Hon. Robert H. Hobgood  
Senior Resident Superior Court Judge  
North Carolina's Ninth Judicial District

**EXHIBIT A**

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO(S): \_\_\_\_\_

STATE OF NORTH CAROLINA )  
 )  
VS. )  
 )  
\_\_\_\_\_ )

DISCOVERY DISCLOSURE CERTIFICATE  
(DDC)

I am the prosecutor assigned to prosecute the above-captioned case.

I certify that I provided discovery in the following manner to the defendant of matters required under N.C.G.S. 15A-903 et seq.

- \_\_\_\_\_ A. By providing the attorney for the defendant with a copy of the State’s investigative file, reports of evidence examinations and the criminal history of the defendant as received by this office.
- \_\_\_\_\_ B. By providing the attorney for the defendant with a partial copy of the State’s investigative file, reports or evidence examination and the criminal history of the defendant as received by this office.
- \_\_\_\_\_ C. By providing formal discovery of matters pursuant to N.C.G.S. 15A-903 et seq.

In addition to this disclosure, I recognize my continuing duty of disclosure. I will make good faith efforts to disclose to the defendant any and all exculpatory materials available to the State.

This the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Responsible Prosecutor

**CERTIFICATE OF SERVICE**

I certify that I served a copy of this Discovery Disclosure Certificate and the accompanying discovery by:

- \_\_\_\_\_ uploading a digital copy to the Discovery Automation System, or by
- \_\_\_\_\_ delivering a copy personally to \_\_\_\_\_, attorney for defendant, or by
- \_\_\_\_\_ placing a copy in the mail to \_\_\_\_\_, attorney for defendant, or by
- \_\_\_\_\_ leaving a copy with the receptionist at the office of the attorney for the defendant, or by
- \_\_\_\_\_ placing a copy in the mailbox of \_\_\_\_\_, maintained by the District Attorney.

\_\_\_\_\_  
Responsible Prosecutor





**EXHIBIT C**

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\_\_\_\_\_ COUNTY

FILE NO. \_\_\_\_\_

STATE OF NORTH CAROLINA, )

VS. )

**SCHEDULING ORDER**

\_\_\_\_\_, )

IT APPEARING to the undersigned Superior Court Judge that the following is the administrative history of this case:

The first setting for the above captioned matter was held in open court during the Criminal Superior Case Management session beginning on \_\_\_\_\_. At that setting the Court found that Defense Counsel had entered a general appearance, and the State had provided discovery as set forth on the Discovery Disclosure Certificate filed in this matter.

The second setting was held during the Criminal Superior Case Management session beginning on \_\_\_\_\_. At that setting the Court determined that a plea offer had been communicated to defense counsel and all pre-arraignment motions pursuant to N.C.G.S. 15A-952 were heard and ruled upon. (See CMS rule 5.1).

The third setting for this case was held during the Criminal Superior Case Management session beginning on \_\_\_\_\_. All pre-trial motions other than those more appropriately directed to the judge presiding at trial were heard and ruled upon. (See CMS rule 5.1). During that session of court the defendant entered a plea of not guilty to the charges in this matter.

THEREFORE, THE COURT SETS THE FOLLOWING TENTATIVE SCHEDULING DATES FOR THIS CASE:

- (1) All pretrial motions more appropriately directed to the judge presiding at trial shall be filed with the Clerk of Superior Court and served upon opposing counsel on or before \_\_\_\_\_. (See CMS rule 5.1).
- (2) Any filed pretrial motions shall be heard on \_\_\_\_\_.
- (3) Trial of this case is tentatively scheduled for \_\_\_\_\_.
- (4) That forensic testing of evidence remains outstanding and this matter will be scheduled after the results are made available.

This the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
SUPERIOR COURT JUDGE PRESIDING

**EXHIBIT D**

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE

\_\_\_\_\_  
Attorney Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
State Bar Number

**SECURE LEAVE NOTIFICATION**  
Rule 26 of the North Carolina General Rules of Practice

Notice: Secure Leave shall consist of one or more calendared weeks, but in any event shall not consist of more than three (3) calendared weeks during any calendar year.

**Statement of Attorney**

I hereby certify that the secure leave period designated below is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding.

I further certify that no action or proceeding in which I have entered an appearance has been scheduled, peremptorily set or noticed for trial hearing, deposition or other proceeding during the designated leave period.

**Designated Secure Leave Dates**

Indicate the dates you are noticing as Secure Leave Dates.

**Monday, Beginning Date:** \_\_\_\_\_ **Friday, Ending Date:** \_\_\_\_\_

Indicate any previously designated Secure Leave periods during the current calendar year that have previously been designated pursuant to Rule 26 of the North Carolina General Rules of Practice:

**Beginning Date:** \_\_\_\_\_ **Ending Date:** \_\_\_\_\_

**Beginning Date:** \_\_\_\_\_ **Ending Date:** \_\_\_\_\_

This Secure Leave Notification must be filed not later than ninety (90) days before the beginning of the secured leave period and before any trial, hearing deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney Signature

**This form is required** to be filed in each of the following offices if the attorney has entered an appearance of record as follows:

- District Attorney
- Clerk of Superior Court
- District Court Trial Court Coordinator
- Superior Court Trial Court Coordinator
- Please see Certificate of Service

**NOTICE TO ATTORNEY:** Should any matter be set during your Secure Leave Period, you are required to serve notice on the official responsible for calendaring the matter, and the parties of record to the matter. This notice shall contain the following: (1) A copy of this form (2) The case number and name of case (3) A certificate of service.

**CERTIFICATE OF SERVICE**

I certify that a copy of the above Secure Leave Notification was served on the following parties:

Ella S. Wrenn  
Superior Court, Trial Court Coordinator  
102 S. Main Street  
Louisburg, NC 27549

Ruth B. Roberts  
District Court, Trial Court Coordinator  
145 Williamsboro Street  
Oxford, NC 27565

Michael D. Waters, District Attorney

c/o Gina L. Phillips                      and  
Administrative Assistant II  
101 Main Street  
Oxford, NC 27565

c/o Kathryn W. Pendergrass  
Criminal Docket Management Coordinator  
156 Church Street, Suite 001  
Henderson, NC 27536

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_