

**CRIMINAL CASE DOCKETING PLAN
(SUPERIOR COURT)**

43rd Prosecutorial District

**ASHLEY H. WELCH, DISTRICT ATTORNEY
43RD DISTRICT**

Pursuant to North Carolina General Statutes section 7A-49.4

Purpose.

The purpose of this docketing plan is to provide for the orderly, efficient, and just disposition of criminal matters in the 43rd Prosecutorial District. The intent of this plan is to see that criminal matters are resolved in a manner to protect the interests of the 43rd District and the victims of crime, as well as to ensure that the rights of defendants are protected. This plan is adopted pursuant to N.C.G.A. 7A-49.4 and shall not be construed to abrogate, modify, or diminish the provisions of that statute.

I. Calendars for administrative settings:

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

- (1) The District Attorney's staff, in accordance with the AOC Master Calendar, shall schedule an administrative criminal session devoted to the administration of the criminal calendar in accordance with the administrative sessions as set by the Senior Resident Superior Court Judges of 30A and 30B.
- (2) In that the several Clerks of Court can post documents on the internet under the Administrative Office of the Courts' website; the District Attorney shall request that Clerks in the 43rd district post the calendars. Compliance with this provision is discretionary with each Clerk.
- (3) The District Attorney's staff will make available a printed calendar for attorneys and unrepresented defendants appearing on the docket ten days prior to the administrative court session.
- (4) The District Attorney shall keep the several magistrates of the district informed of the next scheduled session for administrative settings for their respective county. Magistrates shall be asked on release orders issued in felony cases where the defendant continues to be in custody and the district attorney has obtained a true bill of indictment, to designate the next administrative date on the release order. In those cases when the case has been initiated by grand jury indictment, then the

district attorney shall inform several magistrates of the next scheduled administrative setting.

II. Dates for administrative settings.

The Senior Resident Superior Court Judges of 30A and 30B shall, in consultation with the District Attorney, designate sufficient criminal sessions as administrative sessions to accomplish the goals set forth in this plan for administrative settings and to comply with the requirements of NCGS 7A-49.4. All remaining sessions shall be designated as trial sessions.

III. Content of calendar for administrative settings:

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 for another administrative setting;
- (3) All cases, whereby consent of the parties, this administrative setting was selected;
- (4) Probation violations; and
- (5) Murder cases where the State has requested the Senior Resident Superior Court Judge to set a Rule 24 hearing and the Judge has so ordered the hearing to occur on the administrative setting calendar.

IV. Matters to be dealt with at administrative settings

A. Pleas

- (1) In general, the District Attorney will make the most favorable plea offer early in the process. Each plea offer will include a final and definite date when the offer shall expire. Plea offers shall always be writing.
- (2) In that N.C.G.S. 7A-49.4 (b)(3) provides that the court may conduct a plea conference at the administrative setting, the time for accepting the plea offer will be lengthened in all instances when necessary, so that defendant can have a period of time that includes one 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 not accepted and implemented during the term are pursuant to this Docketing Plan, withdrawn at the conclusion of the term. The District Attorney will not subsequently honor verbal pleas rejected by the defendant during the administrative session in which the plea was offered unless they have been reduced to writing by the Assistant District Attorney.

(5) Defendants who do not give a response to a plea offer within the time for its acceptance are deemed to have rejected the offer.

(6) Assistant District Attorneys are charged to liberally 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.

(7) Whenever a plea offer has been rejected at its final administrative setting, the case will be calendared on an appropriate trial calendar, and thereafter the District Attorney will **not** entertain the original offer. Trial calendars will be construed as consisting of cases that require a jury trial (or bench trial if that has been arranged).

(8) No cases on a trial session shall be re-calendared to an administrative session.

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 defense counsel whenever counsel wishes to have heard a motion involving evidence.) The District Attorney shall seek to have the Court hear and determine all pretrial motions at an administrative setting, and to accomplish this, the District Attorney will give the notice provided above whenever it appears that there will be time for such motions, unless directed to do otherwise by the presiding judge. The proposed disposition of motions as delineated within this Docketing Plan remains subject to modification in the discretion of the presiding judge as deemed necessary and appropriate.

In instances when the court declines to hear pretrial motions at an administrative setting, the District Attorney shall seek to have the court set the hearing for such motions so that they can be heard as early as possible when both sides are ready, and to accomplish this goal, to have the motions set for hearing at civil priority terms which are not forecast to be fully utilized, at a second or subsequent administrative setting, or on a date certain, which shall be the final day of a criminal priority trial session. Some motions should properly be heard by the judge who presides over the trial since they relate to the admissibility of evidence, methods of selection of the jury, the conduct of the trial or

other factors which increase judicial efficiency. In instances when the District Attorney feels that certain motions should be left to the presiding judge, the District Attorney will resist the hearing of these specific motions at an administrative setting.

All pre-trial motions, as defined by N.C.G.S. 15A-952, and other motions including but not limited to motions to suppress, shall be filed in accordance with the requirements of N.C.G.S. 15A-952(c).

C. Rule 24 Hearings

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 the Senior Resident Superior Court Judge and ask that the case be timely calendared on an 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. If, at the time of the scheduled hearing the prosecutor has not yet decided to whether to seek the death penalty, the Assistant District Attorney will so advise the defendant and seek by agreement a new setting for the Rule 24 hearing and will ask that such subsequent setting also occur on an administrative setting. Absent such agreement, the District Attorney will move for additional time.

D. Calendaring of trial date

Cases that are not disposed of during an administrative session shall be placed on a trial session. Once a case is moved to a trial session, it cannot be moved back to an administrative session.

E. Probation violations

Probation officers shall schedule hearings on either administrative or trial sessions in their discretion. Preliminary Hearings on probation violations shall be calendared within 7 working days for the arrest of a probationer as required pursuant to N.C.G.A. 15A-1345(c).

V. Order of business at the administrative setting calendar

The district attorney will schedule designated times for each attorney. To ensure maximum efficiency, attorneys are encouraged to discuss with the Assistant District Attorney assigned to the administrative session their caseloads and their expectation of the time necessary to deal with their matters.

VI. Trial Calendar

A. Trial Calendar Composition

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 for trial at the administrative setting;
- (2) felonies previously scheduled on a trial calendar but not reached at the prior trial session;
- (3) appealed misdemeanors;
- (4) probation matters and other matters not dealt with at an administrative setting; and
- (5) new probation matters and mandatory preliminary hearings on probation violations as required within seven (7) working days pursuant to N.C.G.A. §15A-1345(c).

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 final administrative setting, but before the final trial calendar is published, counsels 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 during the trial session, but in some instances calendared cases will not be reached because of other cases and time constraints. 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.

B. Trial Order for Trial Session Cases

Pursuant to 7A-49.4(e) and (f), the District Attorney will include a proposed trial order announcing the order the prosecutor anticipates the cases to be called for trial. All cases on that appear on a trial calendar for a particular session shall be included within the trial order.

C. Continuances of Trial Session Cases

Under no circumstances shall any case scheduled for a trial session be calendared on an administrative session. Cases calendared for a trial session shall only be re-calendared on subsequent trial sessions.

This Criminal Case Docketing Plan may be amended in writing by the District Attorney as necessary to ensure the interests of justice, to improve judicial efficiency and economy and to protect and preserve the rights of all the citizens and residents of the 43rd Prosecutorial District.

This the 1st day of May, 2019.

Ashley H. Welch

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Honorable William H. Coward
Senior Resident Superior Court Judge, 30A

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Honorable Bradley B. Letts
Senior Resident Superior Court Judge, 30B