

ADMINISTRATIVE POLICY SECOND JUDICIAL DISTRICT

THE FOLLOWING RULES APPLY TO THE HANDLING OF FAILURES TO APPEAR IN THE CRIMINAL DISTRICT COURTS IN BEAUFORT, HYDE, MARTIN, TYRRELL AND WASHINGTON COUNTIES.

1. In order to promote appropriate transparency, **ALL** motions to recalendar, waive a twenty-day failure to appear (FTA) fee, or recall a warrant or order for arrest (OFA) shall be made in writing upon the form attached with all designated information provided. It is not the responsibility of any court clerk to contact any judge or prosecutor on behalf of the defendant.
2. Twenty-day Failures to Appear.
 - (A.) Statutory Process. In all cases where only a twenty-day FTA has been directed by the presiding judge, that event is entered by the clerk on the record but no process is actually entered. If the defendant was actually present on the date in question or was properly excused, then the record is corrected by the clerk making that correction in the record and noting the error. There is thus no process that can be stricken when the defendant in fact did not appear without being properly excused and therefore the common usage of the phrase “Strike the Failure-To-Appear” is arguably inappropriate in such cases. Pursuant to GS 7A-304 (a) (6), if the case is recalendar within the twenty-day period, the FTA is automatically removed from the record. If not recalendar within the twenty-day period, the FTA Fee applies and becomes a part of the court costs. The only statutory relief from the FTA Fee is a waiver of the fee ordered by the court under the conditions provided in the statute; that is, when the defendant failed to appear because of an error or omission of a judicial official, a prosecutor or a law enforcement officer.
 - (B.) Motions to Recalendar. Upon the filing of a motion to recalendar after a FTA has been entered, if the case has not previously been continued and the motion is filed within the twenty-day period, the clerk shall recalendar the case without the permission of the District Attorney’s Office or the Court. If upon the filing of such motion there has been a previous continuance or the twenty-day period has expired and there has been no previous failure to appear, the Office of the District Attorney may direct the recalendar of the case without the permission of the Court. If upon the filing of such motion there has been a previous failure to appear or the District Attorney’s Office objects to the recalendar, the case is to be placed on a Motion Calendar and scheduled for the next regular session of District Criminal Court in that county. However, at the request of the defendant the motion may be scheduled on a later date.
3. Motions to Waive FTA Fee.

It should first be noted that the FTA fee applies to every criminal case in the superior or district court, not only to so called twenty-day failures. The FTA Fee may only be waived

by a judge and only for the reasons stated in GS§ 7A-304 (a) (6). All motions to waive the FTA Fee shall be made on the form attached with the qualifying basis for a waiver stated therein. If the case has not been previously disposed of, the motion shall be placed on a Motion Calendar and scheduled on the date when the case itself is scheduled to be heard. If the case has been previously disposed of by waiver or otherwise, the motion shall be scheduled on the next regular session of District Criminal Court in that county. If the defendant is represented by an attorney who has filed with the clerk an appropriate waiver of appearance signed by the defendant, and the attorney wishes to dispose of the case by a waiver executed on behalf of the defendant prior to the scheduled court date, the motion may be presented by the attorney to the Chief District Court Judge in chambers.

4. Motions to Recall a Warrant or Order For Arrest.

- (A.) Good Cause Required to Recall. Warrants and orders for arrest due to the nonappearance of a defendant should not be recalled except for good cause shown. No cases should be placed on a trial calendar when a warrant or order for arrest has not been either served or recalled.
- (B.) To whom Motions Addressed. Motions to recall shall ordinarily be placed on a Motion Calendar and set on the next regular session of District Criminal Court in that county. However, upon issuing a warrant or order for arrest, a Judge may direct that any Motion to Recall be addressed before him or her. In such cases, motions to recall will be calendared at that Judge's next regularly scheduled session of District Criminal Court in that county, unless the Judge is no longer available in the district. In the event such a case is not scheduled before the appropriate judge, or the motion does not allege new evidence that was not considered by the Presiding Judge at the time the warrant or order for arrest was issued, in lieu of recalendaring to be heard by the appropriate Judge, the sitting Judge may contact the appropriate Judge by phone or otherwise and if the issuing Judge consents then the sitting Judge may rule on the motion documenting the contact in the record.
- (C.) District Attorney's Consent to Calendar. Since the motions to recall set on a Motion Calendar are initially scheduled without the consent of the District Attorney's Office, no such motions shall be heard and determined over the objection of the assigned prosecutor at that initial scheduling. In such instances a continuance date will be set by the court.
- (D.) Defendant Incarcerated on the Nonappearance Date. If within 5 business days of the issuance of the order or warrant for arrest, a clerk determines based on satisfactory information that (1) the defendant was incarcerated on the date he/she failed to appear, (2) that such fact was not known by the Judge issuing the warrant or order for arrest, and (3) that on that date a bail bond had not been posted in the case in question securing the defendant's appearance in court, the clerk may recall the warrant or order for arrest. The issuing Judge and the District Attorney's Office shall be notified of such action in writing or by electronic email with a copy of the notification retained for the record. When such facts are determined by a clerk based on satisfactory information, the recall may be done without the filing of a motion and the clerk should set a new court date. It is not the responsibility of a clerk to investigate or seek the evidence he or she may deem necessary to make such determination.

5. Orders of Forfeiture When an OFA is recalled.

Whenever, pursuant to good cause shown, an order or warrant for arrest is recalled under the procedure set out in paragraph 4 above, and the defendant's appearance was secured by a bail bond, the court may simultaneously enter an order setting aside any forfeiture of that bail bond, except as set out below. As a general policy the order of forfeiture should be set aside because otherwise there will be nothing to secure the defendant's future appearance. However, pursuant to NCGS § 15A-544.5(f) no forfeiture of a bail bond may be set aside for any reason in any case in which the surety or the bail agent had actual notice (as defined in that section) before executing the bail bond that the defendant had already failed to appear on two or more prior occasions in that case. In such instances it shall be the policy of this district court that the order or warrant for arrest itself will not be recalled.

NOTE: The above procedure notwithstanding, the attached form may not be used to request that a forfeiture of a bail bond be set aside. The **only** form to be used to request the setting aside of a bail bond forfeiture is AOC-CR-213.

Signed this ____ day of March, 2010.

Samuel G. Grimes
Chief District Court Judge