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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MECKLENBURG CO., C.S.C.
ADMINISTRATIVE ORDER

BY _____
IN RE: LOCAL POLICES AND PROCEDURES FOR
ADULT PROBATION PROCEEDINGS IN COURTROOM 5350
26TH JUDICIAL DISTRICT
CRIMINAL DIVISION

The following policies and procedures shall apply with respect to all Adult Probation Proceedings docketed for hearing in Courtroom 5350 effective September 31, 2020.

INTRODUCTION AND STATEMENT OF INTENT

These local rules have been developed through the cooperation of a number of agencies in the criminal justice system in Mecklenburg County, including the Superior Court Judge’s office, the District Attorney’s office, the Public Defender’s office, Community Corrections (Probation), and the Clerk’s Office. They are designed to establish a process for handling felony probation violations and felony probation probable cause and bond hearings. **Nothing in these rules removes the statutory powers given to each of the parties to the agreement.**

These rules have been designed to establish a procedure for the orderly handling of felony probation cases. They are not intended to be rigid but are meant to be open to modification as needs arise. These rules are to be applied with the overarching and guiding purpose of avoiding unnecessary delay, keeping in mind that justice is the primary goal. Reasonableness and common sense shall govern while working within this larger framework. In all instances, matters shall be addressed in a manner that protects the interests of the community and the victims of crime while also ensuring that the rights of defendants are preserved.

The procedures described herein are the best effort of individuals to plan ahead and outline a workable system. There will be problems, and details will appear that had not been anticipated. We must all work together to solve problems that arise, remain open to constructive comments, and be prepared to change parts of the process that do not work well.

Rule 1- PROBATION VIOLATION PROCEDURE

- 1.1 The Probation Officer (hereinafter “PPO”) identifies non-compliance as to the probationer’s conditions of probation.
- 1.2 The PPO reviews the judgment to confirm all regular conditions of probation as well as any special conditions of probation. The PPO will then confirm all violations. Probation will identify the appropriate response to the specific violation using their non-compliance grid and utilizing the probationer’s supervision level.
 - (A) If appropriate for the violations and type of supervision, Probation will utilize Delegated Authority. Probation will confirm the eligibility for Delegated Authority and then staff the case with a Chief Probation Officer (hereinafter “CPPO”). The PPO will prepare and serve the Delegated Authority Violation Report. The Clerk of Court in the originating county will be provided with the original report and copies will be placed in the court file as well as served on the probationer.
 - (B) If Delegated Authority is not the appropriate response, the PPO will initiate the formal violation process.
 - (i) The PPO will staff the case with CPPO and make recommendations to CPPO regarding the appropriate sanctions being sought. The PPO will then prepare a violation report outlining all violations. This violation report will be submitted to the CPPO for review and approval. Following approval, the PPO will swear to the violation report in front of a Notary Public.
 - (ii) The PPO and CPPO will consider risk and threats to the public safety of the community and either:
 - (1) citeback the probationer for non-public safety concerns or
 - (2) arrest the probationer for public safety risk/threat to the community.
 - (a) If the violation requires an arrest the PPO will first serve the probationer with the violation and probationer will be taken to arrest processing along with the violation report and authority to arrest. The paperwork will be completed and delivered to the Processing Agent who will provide a copy to the PPO for the case file. Arrest Processing shall deliver a copy of all paperwork to the Clerk of Court at which time, the Clerk of Court will set the date for the Probable Cause/Bond Hearing. The Clerk shall send copies to the PPO and the Public Defender’s Office.

- (b) The probationer will make their first appearance in front of a Magistrate who will set the bond amount. The PPO is very rarely in attendance for this first appearance.

1.3 During all court sessions in Courtroom 5350, Probation will continue to follow their procedures to maintain accountability among the PPO.

Rule 2 – DOCKET CALL

- 2.1 On Probation Violation Probable Cause (hereinafter “PVPC”) days, the PVPC docket will be called first. Then, the regular probation docket shall be called.
- 2.2 On Thursday of each week, Probation prepares the Probable Cause docket and includes the Defendants who have been recently arrested on Probation Violation matters. This docket is sent electronically to Probation Chiefs, the Public Defender’s Office, the District Attorney’s Office, and the Clerk of Court.
- 2.3 Probable Cause Dockets are heard on Mondays (unless holidays or court calendars dictate otherwise) in Courtroom 5350.
- 2.4 Presumptively, the ADA will call the Probable Cause Docket first where both Probable Cause and Probation Violation Hearing Dockets are scheduled to be heard on the same day.
- 2.5 To make the ADA aware of the identity of counsel for the Probable Cause Docket for each defendant in advance of the Probable Cause docket call, one of the Assistant Public Defenders (hereinafter “APD”) assigned shall advise the ADA of the names of counsel for the Defendants on the docket.
 - (A) Most of the Defendants will be represented by the Public Defender’s Office. However, some Defendants will have private appointed counsel due to conflicts of interest within the Public Defender’s Office.
- 2.6 The Probation Hearing Docket for each day is prepared and monitored by the Clerk. The Clerk verifies case numbers on Wednesday or Thursday of the week preceding and prints out the docket for the upcoming week the day before court. The docket is sent to the Public Defender’s Office by Friday of the week prior. The docket is distributed to the Judge and Deputies in court and is posted outside of the courtroom for private counsel and Pro-Se Litigants. The last known attorney on record will appear on the Probation Hearing docket.
- 2.7 When the Docket is called by the Assistant District Attorney, Defense Counsel and the Probation Officer assigned should answer for the client. If a party to the matter is requesting a continuance which is unopposed, the request should be made at docket call with the agreed upon date. The Clerk will write the date on the Clerk’s docket. When granted, the Defendant should be advised of the new date and may be released pending

any further instructions by their Probation Officer. If the requested continuance is opposed, the matter should be held open for hearing on the request later in the session.

(A) Continuances shall be moved to a date which would allow for a reasonable opportunity for the basis for the continuance (i.e. resolution of pending charges or compliance) to be accomplished and resolved so that further continuances will be limited.

2.8 During docket call, should any Defendant be called and fails to appear and answer, the Defendant's name will be placed on a call-out list. Should the Defendant arrive late, Defense Counsel shall advise the ADA and the Court of the late arrival and request that the Defendant's name be removed from the call-out list. If the parties believe there may be circumstances which warrant the Defendant not being called out and an Order for Arrest entered, they may advise the Court and make requests for re-calendaring as necessary.

Rule 3— CITE BACKS

3.1 Citebacks are defined as probation violation matters where the probationer is formally served with a violation but not arrested by their Probation Officer. The Probation Officer will provide the probationer with an Affidavit of Indigency as needed. Citebacks are read out by the Assistant District Attorney as they are not on the printed docket.

3.2 The Probation Officer selects and records the court date in Courtroom 5350 on the violation report. The court date selected will either be (1) the first available date or (2) a later date if one of the following conditions are met: (a) pending charges (non-public safety threat only) or (b) allow probationer more time to comply (120 Day Audit triggered).

3.3 The assigned Probation Officer on the matter will provide the ADA with the Probation Violation Report and the Affidavit of Indigency prior to docket call.

3.4 The citeback packet including the Affidavit of Indigency and Probation Violation Report are paperclipped together and shall be handed to the presiding Judge at the conclusion of docket call. The presiding judge will call each matter and the probationer and his/her probation officer will come forward. The probationer will be brought before the judge to address counsel. If the probationer does not have counsel and qualifies for court-appointed counsel, the judge will appoint counsel. The probationer has the ability to waive counsel if they either (1) want an opportunity to hire private counsel or (2) choose to represent themselves. Following this appointment, the Clerk swears the Defendant to the Affidavit of Indigency or waiver of counsel. These matters will then be given a date by the Court Clerk based upon a list of available court dates in open court. A notice providing information regarding the Public Defender's Office will be provided to those appointed counsel. Those who waive counsel will be provided with a notice of their next court date. In rare instances, these cases may be heard before the presiding Judge.

(A) Those probationers against whom violations have been alleged and cited back to court solely to address monetary matters shall be given the opportunity to submit an affidavit of indigency and request counsel on the cite back date or to waive counsel. If appointment of counsel is requested and ordered, the APD(s) in court shall be provided a copy of the violation report and undertake to discuss with the probationer the possible outcomes of a violation hearing and the opportunity to proceed the same day to resolve the monetary violation. If, after discussion with the probationer, the APD determines it to be in the best interest of the probationer to calendar the matter for a regular hearing date, a new date shall be confirmed and set. Notice of the next court date and contact information for the Public Defender's office shall be provided to the probationer.

3.5 Following the conclusion of the court session, the Clerk will bring the citeback paperwork to the 2nd Floor for processing as well as place a copy of all paperwork in the Public Defender's mailbox.

3.6 For out of county cases, Probation will supply a true and certified copy of the judgment to the Mecklenburg County Clerk's Office. The Clerk's Office will issue a Mecklenburg County case number on these matters.

Rule 4— PROBATION PROBABLE CAUSE/BOND HEARINGS

4.1 All probable cause/bond hearings must be heard within 7 days of the probationer's arrest. Defendants who have been held in custody for more than 7 business days following arrest without a Probable Cause Hearing on the violation shall be released on unsecured bond and assigned a new court date pursuant to N.C. Gen. Statute § 15A-1345(c). If the probationer is arrested Thursday through Wednesday at noon, then the case will be docketed for the upcoming Monday. If the probationer is arrested after Wednesday at noon, then the case will be docketed for the 2nd Monday.

4.2 The Probation Office will send the Probation Probable Cause Docket to Pretrial Services. Pretrial Services will gather the most recent Public Safety Assessment (hereafter "PSA") for all Defendants on the Probable Cause docket and send those PSAs via email to the District Attorney's office, the Public Defender's Office and the Felony Probation Clerk. The Probation Clerk will print out the PSAs and place them on the judge's bench and defense table before Probation Probable Cause Court begins.

4.3 In the event that a PPO is sick or unavailable, another PPO or the CPPO can testify as to the probation violation report. The PPO shall have the case file for the probationer available.

4.4 If a probationer is arrested on a probation violation and remains in custody on Monday, they will appear for their Probable Cause Hearing. At their appearance, the Court may address issues regarding modifications in bond amounts.

(A) Defense Counsel for probationers in custody will generally waive the Probable Cause Hearing and request to be heard on modifications of bond. Following these

requests, the Clerk will provide counsel with the next court date. Available dates shall be sent to the Probation Office on Thursday prior to court. The court date selected will be as agreed by the parties and approved by the court. All waivers of Probable Cause are prepared and signed in Court and submitted to the Court for filing and notation of any bond changes by the presiding Judge.

(i) At the bond hearing, the APD will address the Court with the arguments for Defendant in support of a bond reduction. The PPO and ADA will respond and may provide any additional information they believe to be necessary for the Court to consider. The Court will then make a determination as to any changes in the bond amount and conditions. If any changes are ordered, they will be noted on the Probable Cause waiver form and elsewhere according to procedures set by the Mecklenburg County Sheriff's Office. A court date for the Probation Violation Hearing will then be set in open court. Defense Counsel will be responsible for providing the Defendant with notice as to the next court date.

(B) In the event Defense Counsel for probationers do not waive the Probable Cause Hearing, Defense Counsel will be heard regarding any motions relevant to Probable Cause.

4.5 If a probationer is no longer in custody, they are not required to appear in court on the Probable Cause date but will be required to appear on the court date provided by the Clerk of Court at the conclusion of the Probation Cause Hearing in open court. Defense Counsel assigned to the matter will be responsible for informing their client of the next court date. Available dates shall be sent to the Probation Office on the Thursday prior to court. The court date selected will be as agreed by the parties and approved by the court.

4.6 The Clerk shall be responsible for preparing orders as dictated by the presiding Judge when probation is revoked. If the Defendant is in custody or is ordered into custody, the Clerk shall write the sentence ordered on the jail card or disposition slip. Additionally, the Clerk shall note orders relative to bond conditions on the records sent with the inmates in custody. All probation modification orders shall be prepared by PPO as further dictated in Rule 8.1.

Rule 5— PROBATION VIOLATION HEARINGS

5.1 Probation Violation Hearings are scheduled on Monday through Thursday on alternating weeks in Courtroom 5350. The Courtroom shall be opened at least 30 minutes prior to the Judge taking the bench. The number of cases scheduled on each day shall be presumptively capped at:

MONDAY	20 DEFENDANTS
TUESDAY	40 DEFENDANTS
WEDNESDAY	40 DEFENDANTS
THURSDAY	40 DEFENDANTS

- 5.2 Prior to docket call, the PPO will attempt to meet with the Defense Counsel and discuss violations and potential recommendations.
- 5.3 Following docket call, each probation violation matter will be called up before the Court at which time, the ADA will arraign the Defendant as to the allegations of the violation report and advise the Court of any allegations on which the ADA is not proceeding. Defense Counsel or Defendant (if pro-se) will respond as to the allegations presented.
- (A) If there is an agreed upon disposition, Defense Counsel shall advise the Court of the agreement which is subject to the approval and adoption by the Court.
- (B) If there is not an agreed upon disposition when the violations are admitted the ADA through the PPO shall describe the actions which are alleged as violations followed by Defense Counsel's proffer of explanation and request for disposition.
- 5.4 Prior to the case being called, the APD or other Defense Counsel shall notify the ADA if the allegations of a violation will be denied and require a hearing so that the ADA has adequate time to prepare. Hearings for violations that will be denied are usually held after the other matters for the Court are heard unless both parties agree to proceed earlier.
- (A) When the allegations are denied, the Clerk shall swear in the witnesses. The ADA shall call the PPO as a witness and normal procedure for submission of evidence shall be followed (direct examination, cross examination, and submission of exhibits). The North Carolina Rules of Evidence do not apply to probation hearings; all that is required is ". . . sufficient evidence to reasonably satisfy the judge that the Defendant had, without lawful excuse, violated a valid condition of probation." *State v. Pratt*, 21 N.C. App. 538 (1974). The probationer may agree to testify. After hearing from all witnesses, the Court may hear recommendations as to disposition from the ADA, PPO and Defense Counsel.

Rule 6— ADD-ONS/CALENDAR CHANGES/ORDER FOR ARREST ("OFA") STRIKES

- 6.1 OFA Strike requests and other requests for add-on cases should only be added onto dockets for days in which Probation Violation matters are being heard in Courtroom 5350. Unless there is special approval received by the ADA and Judge, at no time should a probation matter be calendared for any date reserved for misdemeanor appeals matters or any other non-probation docket in Courtroom 5350.
- 6.2 To request an add-on to the regular docket or to move a case previously set, the party requesting the add-on shall notify the opposing party and the assigned probation officer and copy the request to the Clerk in Courtroom 5350 and to the DA's Office.
- (A) This request must be in the form of an email communication and must include the following: (1) the name of the Defendant, (2) the Mecklenburg County file number(s) and (3) the date requested. The parties should acknowledge the request upon receipt and note if there are any objections. If there are no objections, the

Clerk shall confirm the requested date via email communication to all the parties involved in the matter.

- 6.3 If the add-on being requested is for an OFA Strike, the party requesting the add-on shall notify the opposing party, the Chief of the Probation Unit, the assigned probation officer and copy the request to the Clerk in Courtroom 5350 and to the DA's Office.
- (A) This request must be in the form of an email communication and must include the following: (1) the name of the Defendant, (2) the Mecklenburg County file number(s), (3) the date requested and (4) request for consent from Probation Officer and re-calendaring dates desired. The parties should acknowledge the request upon receipt and note if there are any objections. If the strike is unopposed, Counsel requesting the agreed upon strike shall follow up with the Probation Officer to confirm that the strike was completed, and the requested date assigned. If the strike is opposed, the Probation Officer shall appear to present their opposition.
- 6.4 Upon approval of add-on by all parties involved, the Clerk will print an add-on docket for the parties and will provide a copy to the Mecklenburg County Sheriff's Office Deputy.
- 6.5 The Clerk shall follow the directives of the presiding Judge in issuing an Order to Arrest Strike. The Clerk will indicate on the docket that an Order for Arrest Strike was issued and shall submit the Order for Arrest Strike in the computer. The Clerk shall provide a copy to the presiding Judge for signature and upon signature will place a copy of the Order for Arrest Strike in the court file.

Rule 7—ORDER FOR ARREST (“OFA”)

- 7.1 If the Defendant fails to appear by the end of the session, the Judge will instruct the Courtroom Deputy to call out the Defendant and bond conditions will be established by the presiding Judge.
- 7.2 The Clerk shall follow the directives of the presiding Judge in issuing an Order to Arrest. The Clerk will indicate on the docket that an Order for Arrest was issued and shall submit the Order for Arrest in the computer. Upon submission, a copy of the Order for Arrest will be forwarded to the Mecklenburg County Sheriff's Office. A copy of the Order for Arrest will be placed in the court file.

Rule 8—MODIFICATION/TERMINATION OF PROBATION

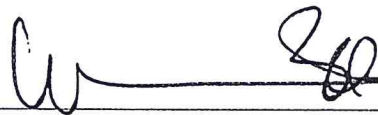
- 8.1 The Clerk shall record the ruling/judgment of the Court where appropriate in their records. If the probation is terminated or modified, the PPO shall prepare a modification order and present it to the presiding Judge for signature. Following this signature, the PPO shall sign the modification order and deliver the originals and copies to the Clerk's Office for processing.

- (A) Should the modification order not be available for signature during the court session, the PPO shall prepare the modification order within 24 hours and shall place the modification order in the baskets on the 9th Floor. The modifications orders shall be given to the Judicial Assistant with a cover sheet that fully explains the matter. These modifications orders will then be distributed by the Judicial Assistant in the following order:
- (i) If the hearing Judge is available, the modification order shall be placed in their basket for signature;
 - (ii) If the hearing Judge is not available or not applicable, the modification order shall be placed in the basket of a Resident Superior Court Judge as assigned by the Senior Resident Superior Court Judge for signature;
 - (iii) If (i) and (ii) are not viable options, the Judicial Assistant shall place the modification order in the basket of the Senior Resident Superior Court Judge for signature.

8.2 If probation is revoked, the Clerk shall prepare a revocation order. This revocation order shall be placed in the probation court file.

This Order adopts the Local Rules and Procedures of Adult Probation Proceedings for the 26th Judicial District.

IT IS SO ORDERED, this 23 day of September, 2020.



The Honorable W. Robert Bell
Senior Resident Superior Court Judge