

# Thirteenth Judicial/Prosecutorial District Criminal Docket Management for Criminal Superior Court

## **RULE 1: General Provisions**

**1.1** The purpose of these rules is to institute a Criminal Docket Management (CDM) system that will provide for the orderly, prompt, and just disposition of criminal matters in the Thirteenth Judicial/Prosecutorial District in compliance with N.C.G.S. 7A-49.4 and 7A-61. It is intended that matters addressed pursuant to this system are resolved in a fashion to protect the victims of crime, while insuring that the rights of the Defendants are preserved.

**1.2** The calendar for the disposition of criminal cases in the Thirteenth Judicial/Prosecutorial District, Superior Court Division, shall be set and maintained by the District Attorney in accordance with these rules and N.C.G.S. 7A-49.4 and 7A-61. 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 for printed calendars of the same. (As used in these rules, the term “District Attorney” shall include the elected District Attorney for the Thirteenth Prosecutorial District and the designees of the elected District Attorney.)

**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 should, whenever practicable, consult with the Senior Resident Superior Court Judge or a Resident Superior Court Judge regarding resolution of the issue raised.

**1.5** These rules shall be filed in the offices of the Clerks of Court in each of the counties composing the Thirteenth Judicial District and may be cited accordingly.

**1.6** A copy of these rules shall be distributed to each member of the Bar of the Thirteenth Judicial District that regularly practices criminal law. The District Attorney shall maintain a supply of printed rules to be provided to attorneys upon request.

**1.7** The Clerks of Superior Court shall provide a file number for each case at the time of indictment or before, if appropriate. That file number should be used on all subsequent pleadings and papers filed with the Clerk; and all subsequent communications to opposing counsel, parties, or court personnel. A copy of all pleadings in a case, all motions, and any document needed to comply with these rules shall be filed with the Clerk in a timely fashion.

## **RULE 2: Applicability of Rules**

**2.1** The provisions of these rules shall apply to all cases within the original jurisdiction of Superior Court. Cases appealed to the Superior Court Division shall be subject to those special provisions that are designated as being applicable to district court appeals.

**2.2** Except as required by G.S. 7A-49.4, 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; crimes involving multiple-defendants or numerous victims; complicated white-collar crimes; and those requiring extraordinary scientific investigation.

**2.3** Whenever practical, matters appealed to Superior Court from District Court shall be scheduled for hearing at the first CDM Session following the date of appeal. If the matter is not resolved, then the

case may be scheduled for trial at the discretion of the District Attorney, subject to avoidance of any delay in providing the defendant with a timely resolution of the appeal. If an appeal is not calendared for trial within 120 days of the date of appeal, the Defendant may petition the court for a date certain for trial.

### **RULE 3: Time Standard Goals**

**3.1** Absent exigent circumstances, each case not declared to be “Exceptional” should be tried or disposed of no more than twelve (12) months after its “**Initiation.**” Initiation is defined as date of indictment or service of indictment, if required by law. Initiation date for a misdemeanor is the date an appeal from a District Court judgment is entered.

**3.2** Cases designated as “Exceptional” shall receive specialized scheduling orders for the purpose of facilitating timely disposition.

### **RULE 4: Criminal Docket Management Weeks**

**4.1** At least once each month, in intervals of no greater than six weeks, the Senior Resident Superior Court Judge shall cause to be scheduled a non-jury criminal session devoted to administration of the criminal calendar. This session shall be known as the “**Criminal Docket Management**” week” (CDM). The remaining criminal sessions will be reserved, to the extent reasonably possible, for the trial of cases.

**4.2** In order to promote the fair administration of justice in a timely manner, each case within the original jurisdiction of Superior Court may be calendared for review during each applicable Criminal Docket Management week following its Initiation. Defendant and defense counsel shall be present at each such setting of court unless excused by the court or applicable North Carolina law. The District Attorney or the Assistant District Attorney responsible for the case [the Responsible Prosecutor (RP)], or their designee shall represent the State.

### **RULE 5: First Setting**

**5.1** An administrative setting shall be calendared for each felony within sixty (60) days following “Initiation.” This setting shall be designated as the **First Setting**. A First Setting may be held during a regular session of criminal court, a mixed session of court, or a CDM week. With the consent of the presiding judge, a First Setting may be held during a civil priority mixed session. The District Attorney shall schedule First Setting conferences.

**5.2** The following matters shall be accomplished at First Setting:

- Determination of counsel, and appointment of counsel if necessary;
- Identification of possible conflicts;
- Status inquiry, including possible disposition by guilty plea;
- Setting an initial deadline for delivery of discovery; and
- Delivery of a plea offer if the District Attorney has made a determination regarding terms of such proposed arrangement.

**5.3** Following First Setting, unless the parties agree otherwise, the case shall be placed on the next Criminal Docket Management calendar for a Second Setting.

### **RULE 6: Second Setting**

**6.1** The **Second Setting** of a case shall occur, if possible, during the next Criminal Docket Management week following First Setting. It is expected that Second Setting shall be scheduled no later than ten (10) weeks from Initiation. The following shall be accomplished at, or prior to, Second Setting:

- Set a time for Arraignment, if required;
- Determination of whether any party is requesting the aid of the Sentencing Services program;
- Review of pre-trial discussions between counsel;

- CDM Negotiation conference with Judge, if requested by either party;
  - Presentation to the Defendant of any proposed plea arrangement;
  - Status inquiry, including possible disposition by guilty plea;
  - The setting of a disposition date if a plea is agreed upon;
  - Confirmation of the filing of a Disclosure Certificate;
  - A determination as to whether a case will be declared “Exceptional”;
  - Establishing a date for hearings required under Rule 24 of the Rules of Court for Capital cases;
- and
- Scheduling of deadlines for filing pre-trial motions.

**6.2** Following Second Setting, unless it has been determined that a trial will be necessary in the case, the District Attorney shall schedule a Final Setting for the case.

### **RULE 7: Final Setting**

**7.1** The following shall be accomplished at or prior to the Final Setting:

- Pre-trial discussion between counsel;
- Possible disposition by guilty plea;
- CDM negotiation conference with Judge, if requested by either party;
- Calendaring of pre-trial motion hearing date; and
- Calendaring of trial date; or
- Entry of scheduling order for Exceptional Case.

### **RULE 8: Discovery**

**8.1** Once counsel has appeared or been appointed in a case, it shall be presumed that counsel is seeking those items discoverable under North Carolina law, and the laws of the United States. No formal request for discovery under 15A-902(a) or other applicable law need be made. *The providing of Discovery by the State acts as an automatic request for reciprocal discovery from the Defendant.* The Court may impose sanctions for failure to provide discovery, reciprocal discovery, or continuing discovery as provided by law or anticipated by these rules.

**8.2** No later than thirty days after “Initiation” of a case, photocopies of then available discoverable items in each file should be provided by the District Attorney to the attorney of record, unless representation is limited. Discovery shall be provided to the then-current attorney of record. Nothing herein abrogates a party’s continuing duty to reveal discoverable items in a timely fashion.

**8.3** Should a change in defense counsel occur, it is the joint responsibility of both new and previous counsel to ensure that the photocopied discovery material is transferred from previous counsel of record to the new counsel. Photocopies shall not be distributed to counsel entering only a limited appearance.

**8.4** The RP of a case shall be responsible for completing a “Discovery Disclosure Certificate (DDC)” for that case. A completed and signed Discovery Disclosure Certificate shall accompany the photocopied discovery. Discovery should 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, or (d) by depositing into the attorney’s mailbox located in the office of the Clerk of 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 9: Motions**

**9.1** All pre-arraignment motions, or those which would have been designated as such prior to December 1, 1996 as defined by Statute or law, shall be filed no later than seven (7) days after Second Setting.

**9.2** All pre-trial motions shall be filed and heard no later than on dates established at Final Setting or otherwise by the Judge. Hearing dates for motions are firm hearing dates. Each attorney should bring his/her personal calendar to Final Setting so that existing conflicts may be considered when setting dates for the hearing of motion. Barring unusual circumstances or agreement by the parties to hear them later, pre-trial motions shall be heard no later than the Criminal Docket Management week which immediately precedes by at least five days the established trial date.

**9.3** Except for extreme circumstances which could not have been reasonably foreseen, all motions filed outside the established deadlines shall be subject to summary dismissal by the Presiding Judge. This provision does not apply to motions that are appropriately directed to the judge presiding at trial.

## **RULE 10: Plea Offers**

**10.1** In every case, the District Attorney or the Assistant District Attorney responsible for a case [the Responsible Prosecutor (RP)] shall extend a written plea offer to defense counsel of record no later than Second Setting of a case.

**10.2** Prior to extending such plea offer, the RP (Responsible Prosecutor) shall completely review the case file and make a plea offer based upon a full case evaluation. This plea offer may be based upon consultation with opposing counsel and any judge presiding over a session of Criminal Superior Court during the period between indictment of the case and Final Setting.

**10.3** Defense counsel of record has a responsibility to convey all plea offers to the Defendant.

**10.4** Prior to offering a plea, the RP (Responsible Prosecutor) should consider the following factors:

- a) The nature of the offense;
- b) The degree of the offense(s) charged;
- c) Any possible mitigating circumstances;
- d) The age, background, and criminal history of the defendant;
- e) The attitude and mental state of the defendant at the time of the crime, the time of the arrest, and the time of the plea discussions;
- f) Sufficiency of admissible evidence to support a verdict;
- g) Undue hardship caused to the defendant;
- h) Possible deterrent value of prosecution;
- i) Aid to other prosecution goals through non-prosecution;
- j) A history of non-enforcement of the statute violated;
- k) The age of the case;
- l) Likelihood of prosecution in another jurisdiction;
- m) Any provisions for restitution;
- n) The willingness of the Defendant, when permitted by law and after consultation with Counsel, to waive his right to appeal;
- o) With respect to witnesses, the prosecution should consider the following:
  - 1) The availability and willingness to testify;
  - 2) Any physical or mental impairment;
  - 3) Certainty of identification;
  - 4) Credibility of the witness;
  - 5) The witness's relationship with the Defendant;
  - 6) Any possible improper motive of the witness;
  - 7) The age of the witness;
  - 8) Undue hardship of the witness caused by testifying.
- q) With respect to victims, the prosecution should consider those factors identified above and the following:
  - 1) The existence and extent of physical injury and emotional trauma suffered by the victim; and
  - 2) Economic loss suffered by the victim.

**10.5** The prosecution should be certain that all cases are determined individually and on their own unique facts and circumstances, and not solely on the basis of a policy pertaining to the offense or the offender.

**10.6** Prior to issuing a plea offer the RP should examine and consider the circumstances of the arrest and the attitude of the arresting officer.

**10.7** The RP shall always be vigilant for any case where the accused may be innocent of the offense charged. In such case the RP shall strive to assure that such an accused be treated fairly without any unnecessary delay.

**10.8** 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.

**10.9** If the RP discovers the prosecution is unable to fulfill an understanding previously agreed upon in plea negotiations, the RP shall give prompt notice to the court and counsel for Defendant. The RP shall cooperate in securing leave of the court for the Defendant to withdraw any plea and take such other steps as would be appropriate to restore the Defendant and the Prosecution to the position they were in before the understanding was reached or plea made.

## **RULE 11: Scheduling of Plea**

**11.1** During each Criminal Docket Management Week, the hearing of guilty pleas shall be scheduled. Plea calendars may be prepared for each trial session of court.

**11.2** In the event a plea for a Defendant is scheduled at Final Setting and no Trial Setting is established based on the anticipated plea, the District Attorney may schedule that case for trial at his discretion if the plea is not accomplished.

## **RULE 12: CDM Conference**

**12.1** During each Criminal Docket Management Week the District Attorney, shall schedule conferences as allowed or required under these rules.

**12.2** A time-certain schedule of conferences shall be produced and distributed by the District Attorney.

**12.3** Venue for a CDM conference may be in any county within the district when necessary to comply with the terms of this plan. However, the presence of the defendant can only be required for administrative settings in the county that has venue for the case.

## **RULE 13: Trial Settings**

**13.1** The District Attorney shall be responsible for preparing and prosecuting the trial calendar. At Final Setting, the District Attorney shall notify the **Case Management Judge** of a proposed trial date in each case reaching the trial phase. Before doing so the District Attorney shall take into consideration the schedules of victims and witnesses; how the case fits into the priorities in prosecution; the availability of defense counsel, defendant, and witnesses for defendant; and the status of the preparation of the case. The **Case Management Judge** may inquire of the attorney for Defendant of possible conflicts with any such date and resolve such conflict in conference with both counsel. The trial shall not occur sooner than thirty (30) days after Final Setting, unless otherwise agreed upon by the parties. In the event no trial date is set at the Final Setting, the District Attorney will set the trial date.

**13.2** The established trial date shall be a firm date. Continuances will not be granted, except for a crucial cause that could not have been reasonably foreseen and the fair administration of justice requires a continuance. Agreement by the parties to continue a case is not just cause or a crucial cause for a continuance.

**13.3** At the Final Setting, the court should enter a scheduling order in all cases except Exceptional Cases. The scheduling order should set forth the deadline for the filing of pre-trial motions, the date for the hearing of pre-trial motions and the trial date. Scheduling orders for Exceptional Cases may contain deadlines for additional case events as necessary and appropriate in the discretion of the Case Management Judge. In the event no scheduling order is entered at the Final Setting, the District Attorney may nevertheless set the case for trial, with notice to the opposing party. The timely production of a trial calendar in accordance with the time limits set herein shall constitute notice.

**13.4** Any request for a priority or peremptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed no later than the Final Setting.

**13.5** Any case that is not reached for trial during its scheduled session of court shall be rescheduled for the next session of court, unless otherwise reset. In the event the case is not disposed of at that setting, the matter shall be reviewed at the next CDM week for the purpose of assuring prompt resolution of the case, unless resolved earlier.

**13.6** Any case may be set for trial in the discretion of the District Attorney with out further hearing if it has been scheduled for plea of guilty or no contest; but the plea was not entered when called because of Defendant's non-acceptance.

**13.7** When scheduling for trial, priority should be given to cases as follows:

- a) Capital cases;
- b) Non-Capital homicides;
- c) Drug trafficking;
- d) Drug sales to persons under the age of 20;
- e) Sexual offenses against minors and felony child abuse;
- f) Rapes and sexual offenses;
- g) Burglaries, robberies and kidnapping;
- h) Felony assaults and domestic violence offenses;
- i) DWI Appeals and felony DWIs;
- j) Felony B&E's and other felony property crimes
- k) Other felonies;
- l) Other misdemeanor appeals.

**13.8** When scheduling for trial, case priority should be determined by consideration of the following factors, regardless of the offense charged:

- a) Whether Defendant is in pre-trial custody;
- b) Whether Defendant constitutes a significant threat of violent injury to others;
- c) Whether the victim is a child or family member;
- d) Whether the Defendant is a recidivist;
- e) Whether the Defendant is a public official;
- f) The age of the case;
- g) Any significant problem or interests of particular concern to the community.

**13.9** When a case has not otherwise been scheduled for trial within 120 days from initiation, then upon motion by the defendant at any time thereafter, the senior resident superior court judge or a superior court judge designated by the senior resident superior court judge may hold a hearing for the purpose of establishing a trial date.

## **RULE 14: Printed Calendars**

**14.1** Not less than ten (10) days prior to each session of Criminal Docket Management court, the District Attorney shall prepare and publish a calendar of cases.

**14.2** The order of cases within each Criminal Docket Management calendar section shall be grouped and scheduled according to defense counsel of record.

**14.3** Not less than ten (10) working days prior to every jury session of court, the District Attorney shall prepare and publish a calendar of cases for trial. The District Attorney shall list the anticipated order of cases for trial; said order being in his discretion, but giving consideration to factors such as pre-trial jail detention of the defendant and case age.

**14.4** Once published and distributed, the trial of cases listed on the calendar shall be subject to the provisions of General Statute 7A-49.4(f). In the discretion of the presiding judge, the order of cases for trial may be varied to accommodate such factors as availability of court time and the schedules of witnesses.

## **RULE 15: Motions for Continuances**

**15.1** All motions for continuance must be in writing, filed and delivered to the office of the Senior Resident Superior Court Judge and opposing counsel not later than noon on Wednesday preceding the session in which the trial is calendared. Oral motions or motions filed out of time must show good cause for the failure to file a timely written motion.

**15.2** Every continuance motion must state the following:

- The age of the case;
- Whether the defendant is in jail;
- Whether the defendant has co-defendants and the names of any co-defendants;
- The number of times the case has previously appeared on a trial calendar;
- That opposing counsel has been consulted regarding the continuance;
- Whether opposing counsel consents; and
- The moving party's position on when the trial should be rescheduled if continued

**15.3** Continuances should not be granted, except for a crucial cause that could not have been reasonably foreseen; and the fair administration of justice requires a continuance. Agreement by the parties to continue a case is not just cause or a crucial cause for a continuance. Except in a case of extreme and unusual circumstances, no case should be continued without rescheduling the trial to a date certain.

**15.4** The Senior Resident Superior Court Judge will issue a ruling on the motion after consideration of the reason for the continuance request, the age of the case, the pre-trial detention status of the defendant, and the number and type of other trial matters present on the trial calendar for the session. In the event the Senior Resident Superior Court Judge is unavailable due to rotation travel, a Resident Superior Court Judge or any other judge designated by the Senior Resident Superior Court Judge may rule on continuance motions.

## **RULE 16: Sanctions**

**16.1** Failure to comply with any section of these rules by either the attorney for the State or Defendant shall subject the violating counsel to all sanctions allowed by law and deemed appropriate in the discretion of the Presiding Judge.

**16.2** Failure of a defendant or witness to appear as required shall subject that person, at the discretion of the judge, to any sanction provided by law.

## **RULE 17: Sentencing Services**

**17.1** Decisions relating to the use of “sentencing plans” provided by the Sentencing Service program shall be made in a timely fashion. Only in rare instances should a request for a sentencing plan be made subsequent to Second Setting.

**17.2** Delivery of a sentencing plan should be available in a timely fashion in order not to delay the efficient disposition of cases. It is anticipated that sentencing plans shall be available no later than Final Setting.

## **RULE 18: Victim Rights**

**18.1** The District Attorney shall make reasonable efforts to assure that the victims of crimes are made aware of hearing dates for those cases in which a victim is involved. A victim of a crime includes those parties as defined by enabling legislation implementing the North Carolina Victims Rights Amendment.

**18.2** The District Attorney shall have at each Case Management session victim impact information available to him at the time. Nothing contained herein shall prevent the hearing of a case at the session of court for which the matter is calendared.

## **RULE 19: Recordation**

**19.1** When recordation of court events encompassed by these rules is required, such recordation shall be as provided by statute; except that in non-contested matters—such as pleas, the hearing of uncontested motions, the determination of the presence of a party or defendant— recordation by a court reporter shall be deemed waived unless such is requested by a party prior to the court session.

**19.2** When the presence of a court reporter is not required, recordation may be by any suitable means available. If a transcript of the proceedings is subsequently required, the Court shall order the production of the same at the request of a party or upon its own motion.

## **RULE 20: Miscellaneous Provisions**

**20.1** Nothing contained herein shall be used in such a way as to deprive any defendant or victim of any right provided by law.

**20.2** Nothing contained herein is intended to alter or usurp the inherent authority of the Senior Resident Superior Court Judge to provide for the orderly, prompt, and just disposition of criminal cases within the district.

*ENACTED and adopted on January 12, 2000 with and by consent of Rex Gore, District Attorney for the Thirteenth Prosecutorial District at the time. These rules are applicable to all cases pending as of January 1, 2000 and to all cases subsequent to that date. These rules replace all prior local rules for Criminal Docket Management in this district.*