

STATE OF NORTH CAROLINA
24TH JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

**LOCAL RULES FOR
CRIMINAL SUPERIOR COURT PROCEEDINGS
BEGINNING JULY 1, 2023**

NOW COMES the undersigned Senior Resident Superior Court Judge and enters these LOCAL RULES concerning Superior Court Criminal Court operations beginning July 1, 2023.

WHEREAS, the North Carolina Constitution specifically provides that justice shall be administered without favor, denial or delay.

WHEREAS, it is the policy of this Court to provide justice for citizens without unnecessary delay and without undue waste of the time and other resources of the Court, the litigants, and other case participants.

WHEREAS, many of the operation procedures adopted by the Court during the Covid pandemic have proven useful in the proper and prompt administration of justice while protecting courthouse personnel and the public;

WHEREAS, the undersigned has broad inherent authority to see that the Superior Courts in the 24th Judicial District are run efficiently and properly for the proper administration of justice.

NOW THEREFORE, IT IS ORDERED ADJUDGED AND DECREED:

1. That Administrative Order 22-1 is hereby revoked and terminated and superseded by these Local Rules.
2. Any person desiring to wear a mask or face covering due to health concerns shall be allowed to wear a mask and face covering while in the courthouse or courtroom. Provided, however, witnesses shall be required to remove their mask while testifying.
3. Nothing herein shall be deemed to negate any existing directives of the Chief Justice or any directives that may be entered after the effective date of these Local Rules. If any of the provisions of these shall be in conflict therewith, the directives of the Chief Justice shall control.
4. *These local rules are to be read in conjunction with, and supplemental to, the General Rules of Superior and District Courts adopted by the North Carolina Supreme Court, the Constitution of the United States, the Constitution and Statues of North Carolina and all 24th Judicial District Superior Court Administrative Orders in effect. If this plan conflicts with the General Rules of Superior and District Courts or the North Carolina Criminal Procedure Act, the General Rules of Superior and District Courts and the North Carolina Criminal Procedure Act shall apply.*

LOCAL RULES OF CRIMINAL PROCEDURE FOR THE SUPERIOR COURT

1. Rule 1. Definitions, Purpose, Policy, and Standards.

1.1 Definitions:

- 1.1.1 “CM” shall mean Court Manager II.
- 1.1.2 “N.C.C.P.A.” means the North Carolina Criminal Procedure Act.
- 1.1.3 “Rules of Practice” means the General Rules of Practice for the Superior and District Courts.
- 1.1.4 District Attorney: the term District Attorney shall include the elected District Attorney for the 35th Prosecutorial District and his designees.
- 1.1.5 C.C.D.P. means the criminal case docketing plan developed by the District Attorney in accordance with the provisions of N.C.G.S. 7A-49.4.

1.2 **Policy:** It is the policy of the Superior Courts of the 24th Judicial District to promote and provide justice for citizens without unnecessary appearances, expense, or delay and without undue waste of time and other resources of the Court, the litigants, and other case participants. For all its case types and dockets, and in all its courtrooms, the Superior Court looks with strong disfavor on motions or requests to continue court events. To protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored.

1.3 **Purpose and Construction:** These rules are to implement the above policy, provide for the orderly, just and prompt disposition of the matters to be heard in the Superior Courts of the 24th Judicial District. They shall be at all times construed and enforced in such a manner as to avoid unnecessary delay and to permit just and prompt consideration and determination of all the business before the Court.

1.4 **Modification:** The Senior Resident Superior Court Judge reserves the right to make such modifications or additions to these Local Criminal Rules, or application to special cases or circumstances, as he or she deems will promote the efficient administration of the Criminal Superior calendar and caseload.

1.5 **Administration:** The Senior Resident Superior Court Judge and all Superior Court Judges presiding over Criminal Superior Court in the 24th Judicial District are responsible for the administration of these rules.

1.6 **Citation:** These local criminal rules are to be cited as “24 L.CR.R. ____.” Local Criminal Rule.

1.7 **Compliance:** It shall be the obligation of all attorneys, defense or prosecutors, practicing in the 24th Judicial District to know and comply with these Rules, including any future modifications as well as all current Administrative Orders and Criminal Case Docketing Plans associated with Criminal Superior Court Proceedings.

1.8 **Duty upon Appearance:** Upon making an appearance or appointment in a case on behalf of a defendant, the attorney is responsible for ensuring the Clerk, CM, and the District Attorney’s Office have all contact information for the attorney, including email, phone, facsimile, and mailing address.

1.9 **Preferred method of communication:** Communication to and from the Senior Resident Superior Court Judge and/or CM is preferred to be via email, unless the attorney notifies the CM that another method is necessary.

1.10 **Duty to Keep Current:** Attorneys are under a continuing obligation, when practicing in Judicial District 24, to keep the District Attorney, Clerk and CM informed of all contact information, including a current email address.

1.11 **Filing and Publication of Rules:** These rules and all amendments thereto shall be filed with the Clerk of Superior Court for Avery, Madison, Mitchell, Watauga, and Yancey Counties and published on the North Carolina Courts website (www.nccourts.org).

1.12 **Copies of Rules and Forms:** The Clerks of Superior Court and the CM shall maintain a supply of the printed rules and a supply of the required associated forms and furnish same to attorneys, judges and pro se parties upon request.

1.13 **Rules may be incomplete:** 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 Senior Resident Judge or Presiding Judge shall act in his or her discretion.

2. Rule 2. Administrative Calendars.

2.1 **Maintenance of Administrative Settings:** Felony Criminal Cases (and related misdemeanors) in Superior Court shall be calendared by the district attorney for administrative settings pursuant to a criminal case docketing plan developed by the District Attorney in accordance with the provisions of N.C.G.S. 7A-49.4. In any event, however, each felony case shall be calendared no later than 60 days of the date of indictment. Misdemeanor appeals, with the exception of *pro se* defendants, shall not be entitled to an administrative setting and shall be set for trial as provided in Rule 4 below.

2.2 **Setting of Case Management/Administrative Sessions of Superior Court:** For Watauga County, at least once every other month, in intervals of no greater than nine weeks, the Senior Resident Superior Court Judge shall attempt to schedule a criminal session primarily devoted to administration of the criminal case load and the hearing of Probation Violations or other non-jury matters. For Avery, Mitchell, Yancey and Madison Counties, at least every three months, in intervals of no greater than 12 weeks the Senior Resident Superior Court Judge shall attempt to schedule a criminal session primarily devoted to administration of the criminal caseload and the hearing of Probation Violations or other non-jury matters. These sessions shall be known as the “Case Management/Administrative Session (CMAS).” All remaining criminal sessions, not deemed as “Case Management/Administrative Session,” will be reserved, to the fullest extent reasonably possible, for the trial of cases. Unless prevented by circumstances created by the rotation of Superior Court Judges or illness or vacation, each Case Management/Administrative Session shall be held before the Senior Resident Superior Court Judge, and shall begin at 9:30 a.m.

2.3 **No Calendar call, Initial Superior Court Appearance and Inquires:** There **shall not** be a formal calendar call at any Case Management/Administrative Sessions or Criminal Administrative Calendar of Superior Court whereby all matters appearing on the calendar are called. At a defendant's initial appearance in Superior Court, and at each administrative court date, an inquiry will be made regarding defendant's attorney status, the status of discovery, the status of a plea offer and deadlines for discovery and a plea offer if a plea offer is to be made by the State. When a case is not continued by consent pursuant to Rule 2.4 below, the Court shall use the form "Scheduling Order and Findings Re: Discovery, Arraignment and Plea Offer" attached on the Form Appendix in making findings as to the status of discovery, the status of the plea offer, the setting of deadlines, arraignment or waiver of arraignment and findings with regard to rejections of plea offers. Whenever a defendant elects to represent himself/herself the Court shall have the defendant and the Court complete the form "Waiver of Counsel" attached on the Form Appendix.

Except as provided in Rule 2.4 below, all attorneys and their clients will appear at the opening of court at 9:30 a.m. on the first day of the County's Case Management/Administrative Session. Upon request of defense counsel, however, a scheduled time for counsel's cases may be granted in the discretion of the district attorney or the presiding judge.

The court date is not an appropriate time to negotiate nor is it the time to meet with the client to review documents or prepare for hearing. All negotiations and hearing preparations must take place in advance of the court date. However, if for some unforeseen reason, counsel must confer with opposing counsel, the defendant or the court, the court in its discretion may allow time for the same.

2.4 **Consent Continuances at Administrative Calendars:** If by agreement between the district attorney's office and defense counsel, matters are to be continued then defense counsel shall no later than Wednesday at 5:00 p.m. of the week preceding the term of court email to the presiding judge and the clerk, a signed consent scheduling order reflecting the new court date agreed upon. The form "Consent Scheduling Order and Findings Re: Discovery, Arraignment and Plea offer" on the attached Form Appendix shall be used for pending felony charges and related misdemeanors. The form "Consent Order on Probation Violation Hearing" on the attached Form Appendix shall be used for all probation matters. Unless counsel is notified otherwise by the presiding judge or the district attorney, the attorney's client will not need to appear in court for the continuance of a matter when there is an executed consent scheduling order. If all the attorney's cases are being continued by consent, the attorney will not be required to appear in court unless notified by the presiding judge or the district attorney.

2.5 **Plea Offers, Notice of Acceptance and distribution of paperwork:** The district attorney's office will forward any plea offers the State intends to make to attorneys on or before 10 days prior to any session of court that the matter is scheduled. The plea offer documents shall include a prior record level worksheet as well as any informations associated with the plea offer. Defense counsel shall notify the State of the acceptance or rejection of the plea offer by Tuesday at 5:00 p.m. of the week preceding the term of court and shall submit via email executed paperwork of all accepted plea offers to the district attorney's office, the clerk's office, and the presiding judge by Wednesday at 5:00 p.m. of the week preceding the term of court that the matter appears on. This paperwork shall include but not be limited to: the transcript of plea, the prior record level worksheet, any informations involved in the plea, any proposed conditional discharge paperwork, jail credit certifications and any other relevant information that the court may need relative to the plea. The district attorney's office shall submit via email all paperwork associated with out

of State convictions used to establish a prior record level to counsel for the defendant and the presiding judge by Wednesday at 5:00 p.m. of the week preceding the term of court that the matter is scheduled.

2.6 **Limit on the number of Administrative Settings:** With the exception of homicide cases, sexual assault cases and other extraordinary cases or circumstances, felony cases may be calendared for only for two administrative settings. Thereafter the matter shall be placed on a trial calendar and continued from trial term to trial term until it is tried or disposed of. Notwithstanding the above, nothing herein shall prevent the parties and the presiding judge from consenting to and granting an additional administrative setting in the interest of justice.

2.7 **Probation Violations:** All probation violations shall be heard in a timely manner at Superior Court Administrative Sessions, absent exigent circumstances. Probation Officers shall make every effort to see that probation violations are filed in a timely manner and that probationers are brought before a judicial official for advisement of right to counsel prior to their Superior Court hearing date. All parties shall be prepared to hear the violation, absent good cause, at the first scheduled Administrative Session.

Where good cause exists for the continuation of the hearing and all parties (probation officer, assistant district attorney, attorney for the defendant and defendant) consent to the continuation of the hearing, the State and counsel for the defendant or a pro-se defendant shall execute form "Consent Order on Probation Violation Hearing" on the attached Form Appendix.

2.8 **Waiver of Arraignment and Rejection of Plea Offers.** All rejections of plea offers by a defendant at any session of court shall occur on the record and shall be documented by the Court using either the form "Scheduling Order and Findings Re: Discovery, Arraignment and Plea Offer" or the form "Consent Scheduling Order and Findings Re: Discovery, Arraignment and Plea offer" attached on the Form Appendix. All waivers of arraignment shall be made on AOC form AOC-CR-216(form available on www.nccourts.org), which shall be completed by counsel for the defendant and the defendant in its entirety.

2.9 **Rules to apply to Administrative calendars set on Trial Terms.** Each of the above rules shall apply to any and all administrative calendars set by the District Attorney on Trial Calendar dates.

3. **Rule 3. Trial Calendars.**

3.1 **Maintenance and timing of Trial Calendar:** The District Attorney in Judicial District 24, Prosecutorial District 35, shall establish and maintain the trial calendar. No later than 10 working days before a trial session, the District Attorney shall publish the trial calendar listing the cases for trial. In accordance with N.C.G.S. 7A-49.4(e) the calendar shall be published in the order in which the district attorney anticipates the cases will be called for trial. Placing the calendar on the internet shall constitute publication of the calendar for purposes of these rules.

3.2 **No Formal Calendar call, Trial Order and Authority of the Court. :** There shall not be a formal calendar call of the Criminal Trial calendar whereby all matters appearing on the calendar are called. Unless excused by the District Attorney or the Presiding Judge all attorneys and defendants with cases appearing on a Trial Calendar shall appear in court no later than 9:30 a.m. on the first day of the Criminal Trial Session. Counsel for each defendant appearing on the calendar shall notify the District Attorney that the defendant is present and whether the matter is for plea, trial or other disposition. Thereafter, upon the opening of court at 10:00 a.m., the District Attorney shall announce to the court the order in which the District Attorney intends to call for trial the cases on the calendar. Criminal Trial Sessions shall begin at

10:00 a.m. on the first day of the term of court. The District Attorney's office shall call as many trials or other matters as possible until the adjournment of the term of court. Nothing in this rule shall be construed to affect the authority of the court in the call of cases calendared for trial as provided by N.C.G.S. 7A-49.4(h).

3.3 Motions to Continue Trial Cases: Once a matter has been placed upon a trial calendar, continuances will not be granted, even if all parties agree, unless for a crucial cause that could not have been reasonably foreseen, and/or the fair administration of justice requires a continuance, or the term expired before the matter could be reached.

Except in extraordinary circumstances, all motions for a continuance of trial matters must be in writing, filed and delivered to the Office of the Senior Resident Superior Court Judge and opposing counsel not later than seven (7) days preceding the session in which the trial is calendared. Each continuance motion or request shall state reasons and be signed by the attorney/ party making the request and be submitted to the Senior Resident Superior Court Judge on AOC form AOC-CR-410(form available on www.nccourts.org). If counsel for the defendant is making the motion for a continuance or is consenting to the motion, counsel for the defendant shall submit his motion or consent together with the form "Acknowledgment of Support/Consent of Motion to Continue" attached on the Form Appendix.

Oral motions or motions filed out of time must show good cause for the failure to file the same in writing and in a timely manner, or they will be summarily denied.

Every continuance motion, whether initiated by the State or the defendant, must state the following:

- (a) the age of the case;
- (b) whether the defendant is incarcerated;
- (c) whether the defendant has co-defendants and the names of any co-defendants;
- (d) the number of times the case has previously appeared on a trial calendar;
- (e) whether opposing counsel has been consulted regarding the continuance;
- (f) whether opposing counsel consents to the continuance; and
- (g) the moving party's proposed date for trial if the case is continued.
- (h) the date the case was set on the current trial calendar.
- (i) the current ranking of the case on the trial calendar.
- (j) the number of cases on the trial calendar.

Opposition to the motion to continue shall be in writing and delivered to the Office of the Senior Resident Superior Court Judge and opposing counsel not later than noon on the Wednesday preceding the session in which the trial is calendared, or two days after service of the motion whichever occurs first. Any hearing thereon shall be conducted remotely if possible and in accordance with law, or shall be heard by the presiding judge in circumstances as set out below.

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, the interest of justice, and the number and type of other trial matters present on the trial calendar for the session and all other factors set forth in N.C.G.S. 15A-952(g). In the event the Senior Resident Superior

Court Judge is unavailable, a judge designated by the Senior Resident Superior Court Judge may rule on continuance motions. Oral motions or motions filed out of time which are not summarily denied by the Senior Resident or his/her designee, or contested motions not heard remotely, will be ruled upon by the presiding judge in consideration of the reason for the continuance request, the age of the case, the pre-trial detention status of the defendant, the interest of justice, and the number and type of other trial matters present on the trial calendar for the session and all other factors set forth in N.C.G.S. 15A-952(g).

No case shall be continued from a trial date without setting a trial date certain except in a case of extreme or unusual circumstance.

3.4 **Semi-Annual Review.** Information about the source of each continuance motion or request in a case, and the reason for any continuance granted by the Court, shall be entered for that case in the Court's computerized case management information system. At least semi-annually, the Senior Resident Superior Court Judge, or designee, shall promote the consistent application of this continuance policy by reviewing and discussing a report of criminal superior cases pending, and the number of continuances requested and granted during the previous period, especially as they relate to the incidence and duration of trial-date continuances.

4. Rule 4. Misdemeanor Appeals.

4.1 **Limited Administrative Settings.** Provided the defendant is represented by counsel, misdemeanor appeals shall not be entitled to an administrative setting. *Pro se* defendants or unrepresented defendants shall receive one administrative setting for the purpose of addressing counsel issues. Pro Se or unrepresented defendant matters shall be placed on the first available calendar, whether Administrative, Criminal Priority or Civil Priority, after the appeal solely for the purpose of addressing the advisement of right to counsel. Whenever a defendant elects to represent himself/herself the Court shall have the defendant and the Court complete the form "Waiver of Counsel" attached on the Form Appendix.

4.2 **Trial Setting of Misdemeanor Appeals.** In the case of represented defendants and defendants who have waived counsel and elected to proceed *pro se*, misdemeanor appeals shall be placed on the next trial calendar. In an effort to timely dispose of misdemeanor appeals, it is the intent to make use of each mixed session of Civil Superior Court for the trial of these cases when staffing of the District Attorney's office and the Clerk's office allows. The scheduling of misdemeanor appeals and other criminal matters on civil priority terms shall be coordinated with the Court Manager in conjunction with the Clerk of Court and the presiding judge. The form "Consent Misdemeanor Appeal Scheduling Order" on the Form Appendix shall be used when the trial date is set by consent.

5. Rule 5. Grand Jury Proceedings.

In accordance with N.C.G.S. 15A-622 new grand jurors shall be selected at the first Civil Priority Superior term of Court in each county after January 1st, and after July 1st of each year. (e.g., If the first Civil Priority term is in February and not January then nine shall be selected in February, if the first Civil Priority is in August and not July, nine shall be selected in August.) No consideration is given to the number of terms served by the grand jury in determining the selection date. Once Grand Jurors are selected, they shall serve until their successors are chosen.

6. Rule 6. Pretrial Motions other than Motions to Continue.

6.1 **Motions to be in Writing, Required Contents, Service.** Unless made during a hearing or trial,

all motions shall be in writing, shall state the grounds for the motion, and set forth the relief requested and be accompanied by any documentation required by the North Carolina Criminal Procedure Act. The motions shall be served upon opposing counsel or upon a *pro se* defendant pursuant to N.C.G.S. 1A-1 Rule 5 and filed with the court.

6.2 Motions to Withdraw. Unless made during an unrelated hearing or during a trial, all motions to withdraw shall be in writing, shall state the specific facts and grounds for the motion and be accompanied by any documentation supporting the facts or grounds. In those limited circumstances where counsel cannot reveal the facts supporting the grounds pursuant to the Rules of Professional Conduct, the attorney's motion shall simply state that the Rules of Professional Conduct require termination of representation. A hearing on the Motion to Withdraw shall be held in open court, on the record, with the defendant present. Following the hearing, the Court shall enter an order making appropriate findings of fact in allowing or denying the motion to withdraw.

In all cases where a defendant seeks to "fire" an attorney and the Court determines that the conduct is dilatory, the Court shall warn the defendant that the consequences of the conduct by the defendant may be that the defendant proceeds *pro se*, and the Court shall advise the defendant of the consequences of doing so. The order shall reflect whether the defendant elected to proceed with the "firing" after being advised of the possible consequences.

Wherever the Court, following a hearing and review of the court file, determines that the defendant has forfeited his right to counsel, the order of forfeiture of counsel shall contain findings of flagrant or extended delaying tactics, including the repeated firing of attorneys, any offensive or abusive behavior, any refusal to acknowledge the Court's jurisdiction or refusal to participate in the proceedings, or the insistence on nonsensical and nonexistent legal "rights."

6.3 Timely filing and hearing of Motions: Any defense, objection or request which is capable of being determined without the trial of the general issue should be raised before trial by written motion and heard at a Case Management/Administrative Session to avoid unnecessary use of trial sessions for the hearing of motions. Motions are to be filed within the time limits set forth in N.C.G.S. 15A-952 and 15A-976.

6.4 Withdrawal of Motion: When a filed motion no longer requires a hearing, the party that filed the motion shall file a notice of withdrawal of the motion with the court and serve it upon the opposing party.

7. Rule 7. Trial Issues.

7.1 Copies of Exhibits: If counsel intends to submit exhibits to the jury, sufficient copies must be made to provide the Court, the court reporter and each juror and alternate juror with a copy of the exhibit.

7.2 Audio/Visual: If counsel intend to use audio/visual tools and equipment in the presentation of the case, counsel must make certain that all such tools and equipment are working properly before being offered.

8. Rule 8. Scheduling Conflicts.

Scheduling conflicts shall be resolved in accordance with **Rule 3.1** of the General Rules of Practice. It is the responsibility of counsel to notify the Senior Resident or presiding judge of the conflict as soon as counsel is aware.

9. Rule 9. Secured Leave.

9.1 Designation and Notice: Pursuant to Rules of Practice, **Rule 26**, attorneys may designate periods of secured leave in writing. Attorneys appearing in cases pending before the Criminal Superior Court in the 24th Judicial District shall submit their Notice of Secure Leave to the Clerk of Superior Court of the respective county, to the District Attorney's Office and to the CM. Service to the CM shall constitute service to the office of the Senior Resident Superior Court Judge under the rule. Service upon the Senior Resident or at his or her personal address is strongly disfavored and contrary to this rule and **Rule 26**.

9.2 Designations not Filed: Secured leave designations are not filed in court files. The Clerk and the CM shall enter and maintain a database used to track periods of secure leave.

9.3 Waiver of Time limitations: In extraordinary circumstances, the time limitations for notification of designated weeks may be waived by the Senior Resident Judge when attorneys have been faced with particular or unusual situations.

10. Rule 10. Pre-trial Confinement. Pursuant to this Court's Administrative Order of 14 September 2017, it is the responsibility of counsel for the defendant as an integral part of his or her legal representation, to advise and certify to the court all pre-trial confinement credit that is due a defendant at the time of sentencing and at all probation violation hearings. This is not the responsibility of the Clerk or the Bailiff. Counsel for the defendant shall be prepared, as a result of counsel's thorough investigation of the court record and jail records, to present to the court a "Certification of Defendant's Pretrial Confinement Credit on the Form Appendix setting out all pre-trial credit to which the defendant is entitled. Only completion of the Certification form shall constitute compliance with this provision.

11. Rule 11. Continued Representation on Conditional Discharges, Deferral Agreements and Probation Violations. The terms and conditions of this Court's Administrative Order of 14 March 2019 attached on the Form Appendix, are incorporated herein by reference as if fully set out.

12. Rule 12. Remands from Appellate Courts. Upon remand of a case from an appellate court, the matter will be set on the next administrative calendar for scheduling.

13. Rule 13. Motions for Appropriate Relief. Upon receipt of a Motion for Appropriate Relief, the Clerk of Superior Court shall file the same in the file and provide a copy of the MAR, together with any judgments, indictments, informations, and plea transcript in the file, to the Senior Resident Superior Court Judge by both email and mail, or delivery to CM. The Superior Court Judge shall conduct the review required by N.C.G.S. 15A-1420(b1) (3), and/or make an assignment under N.C.G.S. 15A-1415 if deemed appropriate. Thereafter, the assigned Judge shall enter such administrative orders and hold such hearings as the Court deems appropriate.

14. Rule 14. Petitions for Writ of Habeas Corpus. Upon receipt of a Petition for Writ of Habeas Corpus, the Clerk of Superior Court shall file the same and immediately provide the judge addressed on the petition, or if none is named, the Senior Resident Superior Court Judge, with a copy by both email and mail, or delivery to CM.

15. Rule 15. Sanctions. Should counsel or a pro se litigant fail to comply in good faith with any provision of these Local rules, or the General Rules of Practice for the Superior and District Courts, the Senior Resident Judge or Presiding Judge may, in his or her discretion, impose appropriate sanctions. Failure to abide by the time restrictions for submission of documents or preparation for hearing will result in the assigned attorney being removed from a case or cases and subject the attorney to being removed from the court appointed lists in the district.

16. Rule 16. Effective Date: These Rules shall be effective as of July 1, 2023 and shall be applied and interpreted to meet the policy and purpose provisions of these rules.

This the 30th day of June 2023.



Gary M. Gavenus
Senior Resident Superior Court Judge
Twenty-Fourth Judicial District

**FORM APPENDIX TO LOCAL RULES OF CRIMINAL PROCEDURE FOR THE SUPERIOR COURT
TWENTY-FOURTH JUDICIAL DISTRICT**

The following Forms shall be used in all Criminal Superior Court cases in the 24th Judicial District.

1. Court entered Scheduling and Findings Form, **24 L.CR.R.2.3 and 2.8**(attached form to be used)
2. Consent Scheduling and Findings Order Form, **24 L.CR.R.2.4 and 2.8**(attached form to be used)
3. Probation Consent Scheduling and Findings Order Form, **24 L.CR.R.2.4 and 2.7**(attached form to be used)
4. Waiver of Arraignment Form, **24 L.CR.R 2.8**, AOC form AOC-CR-216(form available on www.nccourts.org)
5. Misdemeanor Consent Scheduling Order Form, **24 L.CR.R.2.4 and 4.2**(attached form to be used)
6. Waiver of Counsel (**self-Representation**) Form, **24 L.CR.R. 2.3 and 4.1**(attached form to be used)
7. Motion to Continue, **24 L.CR.R. 3.3**
 - a. AOC-CR-410 Motion and Order of Continuance (form available on www.nccourts.org)
 - b. Acknowledgment/Support of Motion to Continue **24 L.CR.R.3.3** (attached form to be used)
8. Certification of Pretrial Credit form, **24 L.CR.R. 10** (attached form to be used)
9. Administrative Order dated March 14, 2019 titled "Clarification of Continued Representation of Counsel." **24 L.CR.R. 11**

24 L.C.R.R.2.3 and 2.8

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(s): _____

STATE OF NORTH CAROLINA

)

)

SCHEDULING ORDER AND FINDINGS

VS.

)

RE: DISCOVERY, ARRAIGNMENT

)

AND PLEA OFFER

)

Defendant

THIS MATTER coming on to be heard before the undersigned presiding over the _____, term of Superior Court for the above named County, the State of North Carolina and the Defendant, both personally and by and through counsel of record, appeared before the court and the Court after hearing from the parties and after examining the court record the court makes the following Findings of Fact:

1. That the defendant:
 - () was indicted on _____. **(A date must be provided)**
 - () has not been indicted.
2. That this is the _____ time that this matter has appeared on a Superior Court Administrative Calendar. **[NOTE: Matters that have appeared on a Trial Calendar, shall be set on trial dates and shall not be given another administrative setting absent a showing of good cause.]**
3. That the State and the Defendant by and through counsel advised the court:
 - () that all currently known discovery has been completed in its entirety.
 - () that discovery has been completed with the exception of the results of any chemical analysis.
 - () that discovery has not been completed as of this date. (list outstanding discovery _____)

[NOTE: Mark this block if there is any outstanding discovery other than the results of any chemical analysis.]

4. That the State:
 - () has not extended a plea offer as of this date.
 - () has extended a plea offer to the defendant with an expiration date of _____, 20_____.
 - () has elected to not make a plea offer in this matter and the Defendant desires a jury trial.

OR

5. () That the State and the Defendant have attempted to resolve this matter by plea agreement and are unable to do so.

24 L.CR.R.2.3 and 2.8

- 6. () That the Defendant in open court with his attorney present acknowledged that the Defendant had discussed the plea offer with his/her lawyer, understood the terms and conditions of the plea offer, and freely, voluntarily and knowingly rejected the plea offer, and the plea offer has been withdrawn by the State.
- 7. The Defendant has been:
 - () Arraigned on the above case charge(s) and enters a plea of NOT GUILTY
 - OR**
 - () Waived arraignment and the Court entered a plea of NOT GUILTY on behalf of the defendant pursuant to the provisions of N.C.G.S. 15A-941(d). **[NOTE: Pursuant to Article 51 of Chapter 15A, absent a written request for arraignment, the only county in the 24th Judicial District requiring the calendaring of arraignment is Watauga County. It must be specifically noted that the provisions of N.C.G.S. 15A-943 do not apply to Avery, Mitchell, Yancey and Madison Counties.](Form AOC-CR-216 must be used to waive arraignment)**

Based upon the foregoing Findings of Fact, the Court Concludes as a Matter of Law that the court has jurisdiction over the parties and the subject matter.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

- 1. That the State shall complete discovery on or before _____, 20____ absent a showing of good cause.
- 2. () That if the State intends to extend a plea offer, the State shall extend a plea offer in this matter on or before _____, 20____.

OR

() That the defendant has willfully, understandingly and knowingly rejected the plea offer and the same has been withdrawn by the State.

OR

() waived arraignment and plea of NOT GUILTY was entered.

- 1. That this matter be set for the _____, 20____. **(A date must be provided and the appropriate block(s) must be marked)**
- 2. () Administrative Calendar
 - () That this will be the last Administrative setting for this matter.
 - () Trial Calendar. **[NOTE: Once placed on a trial calendar the matter shall not be placed on another administrative calendar except upon a showing of good cause.]**

This the _____ day of _____, 20____.

Superior Court Judge Presiding

24 L.C.R.R.2.4 and 2.8

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(s): _____

STATE OF NORTH CAROLINA

)

CONSENT SCHEDULING ORDER

)

AND FINDINGS RE: DISCOVERY

VS.

)

AND PLEA OFFER

_____)

Defendant

THIS MATTER being scheduled for the _____ Superior Court Administrative Calendar for the above referenced County, or otherwise entered by consent out of term and session; and the State of North Carolina and the Defendant, by and through counsel of record, represent to the court that the parties waive a formal administrative hearing and consent to the following scheduling order and findings regarding the status of discovery and plea negotiations; the parties further consent that this Order may be signed by the Court out of term, out of session and out of county.

The parties, by and through counsel stipulate and consent to the following Findings of Fact:

1. That the defendant:
 - () was indicted on _____. **(A date must be provided)**
 - () has not been indicted.
2. That this is the _____ **(fill in #)** time that this matter has appeared on a Superior Court Administrative Calendar. **[NOTE: Matters that have appeared on a Trial Calendar, shall be set on trial dates and shall not be given another administrative setting absent a showing of good cause.]**
3. **That counsel for the defendant has advised the defendant of the contents of this order and enters this order with the consent of the defendant.**
4. That the State and the Defendant by and through counsel stipulate and advise the Court **(appropriate block must be marked)**
 - () that all currently known discovery has been completed in its entirety.
 - () that discovery has been completed with the exception of the results of any chemical analysis.
 - () that discovery has not been completed as of this date. (list outstanding)_____

[NOTE: Mark this block if there is any outstanding discovery other than the results of any chemical analysis.]

5. That the State: **(appropriate block must be marked)**
 - () has not extended a plea offer as of this date.
 - () has extended a plea offer to the defendant with an expiration date of _____, 20____. **(A date must be provided)**
 - () has elected to not make a plea offer in this matter.

24 L.CR.R.2.4 and 2.8

() the defendant in open court with his attorney present freely, voluntarily and knowingly rejected the plea offer of the State.

Or

() the Defendant has by separate document waived arraignment and entered plea(s) of NOT GUILTY and the Defendant desires a jury trial

[NOTE: Pursuant to Article 51 of Chapter 15A, absent a written request for arraignment, the only county in the 24th Judicial District requiring the calendaring of arraignment is Watauga County. It must be specifically noted that the provisions of N.C.G.S. 15A-943 do not apply to Avery, Mitchell, Yancey and Madison Counties.]

Based upon the foregoing Findings of Fact, the parties stipulate and agree and the Court Concludes as a Matter of Law that the court has jurisdiction over the parties and the subject matter and that this order is entered by and with the consent of the parties and shall be enforceable by the court.

NOW THEREFORE BY AND WITH THE CONSENT OF THE STATE AND THE DEFENDANT, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the State shall complete discovery on or before _____, 20__ absent a showing of good cause. **(If paragraph is applicable a date must be provided.)**
 2. () That if the State intends to extend a plea offer, the State shall extend a plea offer in this matter on or before _____, 20__. **(If paragraph is applicable a date must be provided.)**
 3. () That the defendant in open court with his attorney present freely, voluntarily and knowingly rejected the plea offer.
 4. () That the Defendant has by separate document waived arraignment and entered plea(s) of NOT GUILTY and the Defendant desires a jury trial
 5. That this matter be set for the _____, 20__ **(A date must be provided and the appropriate block(s) must be marked)**
 - () Administrative Calendar
 - () That this will be the last Administrative setting for this matter.
 - () Trial Calendar and shall be continued from trial term to trial term until the matter is tried.
- [NOTE: Once placed on a trial calendar the matter shall not be placed on another administrative calendar except upon a showing of good cause.]**

DATE: _____

DATE: _____

ATTORNEY FOR THE STATE

ATTORNEY FOR THE DEFENDANT

Accepted and entered by consent this the _____ day of _____, 20__.

Superior Court Judge Presiding

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(S) _____

STATE OF NORTH CAROLINA

VS.

CONSENT ORDER ON PROBATION VIOLATION
HEARING

Defendant.

THIS MATTER being scheduled for the _____ Superior Court Administrative Calendar for the above referenced County, or otherwise entered by consent out of term and session; and the State of North Carolina and the Defendant, by and through counsel of record, represent to the court that the parties waive a formal hearing and consent to the following scheduling order and findings; the parties further consent that this Order may be signed by the Court out of term, out of session and out of county.

The parties, by and through counsel, stipulate and consent to the following Findings of Fact:

1. That the defendant has been served with a notice of probation violation which matter was noticed on for or continued to this _____ (PLACE CURRENT COURT DATE HERE) term of court;
2. () That at least one basis for the alleged violation is commission of a new criminal offense, and that said offense has been charged criminally and remains pending;
3. () That the defendant is in custody outside of the jurisdiction of this Court;
4. () _____

(set forth other good cause grounds)

5. That as set out above good cause exists to continue the hearing of the alleged violations to
() the next administrative term of court _____.(A date must be provided)
() a court date of _____.(A date must be provided)
6. **That counsel for the defendant represents to the court that counsel has advised the defendant of the contents of this order and enters this order with the consent of the defendant.**

Based upon the foregoing Findings of Fact, the parties stipulate and agree and the Court Concludes as a Matter of Law that the court has jurisdiction over the parties and the subject matter, that good cause exists for the continuation of the hearing, and that this order is entered by and with the consent of the parties and shall be enforceable by the court.

NOW THEREFORE BY AND WITH THE CONSENT OF THE STATE AND THE DEFENDANT, IT IS ORDERED, ADJUDGED AND DECREED THAT THIS MATTER BE SET FOR THE _____, 20____ TERM OF COURT. (A date must be provided)

DATE: _____

DATE: _____

ATTORNEY FOR THE STATE

ATTORNEY FOR THE DEFENDANT

Accepted and entered by consent this the _____ day of _____, 20____.

Superior Court Judge Presiding

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

WAIVER/CERTIFICATION
OF ARRAIGNMENT

Name Of Defendant

G.S. 15A-945

File No.(s)

Offense(s) (type or print)

WAIVER OF ARRAIGNMENT

In accordance with G.S. 15A-945, the undersigned defendant waives arraignment in Superior Court and enters a plea of not guilty to the charges contained in the case(s) referenced above.

The undersigned defendant and his/her attorney represent that:

- 1. there are no pending pretrial motions.
- 2. the only pretrial motions pending are those listed below which are in writing and have been filed with the Clerk of Superior Court.

List Motions:

Date	Name Of Attorney	Signature Of Attorney
Date	Signature Of Defendant	

CERTIFICATION OF ARRAIGNMENT

I certify that the defendant was arraigned on the case(s) referenced above on the date shown below and entered a plea of not guilty.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	-----------	--

24 L.C.R.2.4 and 4.2

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(s): _____

STATE OF NORTH CAROLINA) CONSENT MISDEMEANOR
VS.) APPEAL SCHEDULING ORDER
_____,))

THIS MATTER coming on to be heard before the undersigned presiding over the _____ **(A date must be provided)**, administrative term/calendar of Superior Court for the above named county; or otherwise entered by consent out of term and session; and the State of North Carolina and the Defendant, by and through counsel of record, represent to the court that the parties waive a formal hearing and consent to the following scheduling order and findings; the parties further consent that this Order may be signed by the Court out of term, out of session and out of county.

The parties, by and through counsel, stipulate and consent to the following Findings of Fact:

1. That the defendant gave notice of appeal for trial de novo on _____. **(A date must be provided)**
2. That this is the _____ time that this matter has appeared on a Superior Court Calendar. **[NOTE: Misdemeanor appeals are not entitled to an administrative setting and can be placed directly on a regularly scheduled criminal session trial calendar or directly on a backup criminal trial calendar on regularly scheduled civil sessions. Matters that have appeared on a Trial Calendar, shall be set on trial dates, and shall not be given another administrative setting absent a showing of good cause.]**
3. **That counsel for the defendant represents to the court that counsel has advised the defendant of the contents of this order and enters this order with the consent of the defendant.**

Based upon the foregoing Findings of Fact, the parties stipulate and agree and the Court Concludes as a Matter of Law that the court has jurisdiction over the parties and the subject matter and that this order is entered by and with the consent of the parties and shall be enforceable by the court.

NOW THEREFORE IT IS ORDERED ADJUDGED and DECREED:

1. That this matter be set for the _____, 20____, **(A date must be provided.)**
 [] Administrative calendar and this shall be the last Administrative setting for this case. **(Misdemeanor appeals are not entitled to an administrative setting and should only be set on an additional administrative calendar for good cause. They can be placed directly on a scheduled criminal trial calendar or directly on a backup criminal trial calendar on regularly scheduled civil sessions)**

24 L.C.R.R.2.4 and 4.2

[] Criminal Trial calendar

[] backup Trial calendar on this civil term.

(Once placed on a trial calendar or backup trial calendar, the matter shall not be placed on another administrative calendar except upon the showing of good cause.)

DATE: _____

DATE: _____

ATTORNEY FOR THE STATE

ATTORNEY FOR THE DEFENDANT

Accepted and entered by consent this the _____ day of _____, 20____.

Superior Court Judge Presiding

24 L.CR.R. 2.3 and 4.1

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. _____

STATE OF NORTH CAROLINA

VS.

WAIVER OF COUNSEL
(Self Representation)

_____,
Defendant

- 1. Are you able to hear and understand me? _____
- 2. Are you know under the influence of alcohol beverages, drugs, narcotics, medicines, pills or any such substance? _____
- 3. How old are you? _____
- 4. Have you completed high school? College? If not, what is the last grade you completed? _____
- 5. Do you know how to read? _____
Write? _____
- 6. Do you suffer from any mental handicap? _____
Physical Handicap? _____
- 7. Do you understand that you have the right to be represented by a lawyer? _____
- 8. Do you understand that you may request that a lawyer be appointed for you if you are unable to hire a lawyer, and one will be appointed if you cannot afford to pay for one? _____
- 9. Do you understand, that if you decide to represent yourself, you must follow the same rules of evidence and procedure that a lawyer appearing in this court must follow? _____
- 10. Do you understand that, if you decide to represent yourself, the court will not give you legal advice concerning any legal issues that may arise: [select all that apply]
 in the entry of your plea pursuant to a transcript of plea?
 at a hearing on your probation violation(s)?
 concerning defenses, jury instructions, or other legal issues that may be raised in your trial? _____
- 11. Do you understand that I, or any other presiding judge must act as an impartial judge in your case, that I or any other presiding judge will not be able to offer you any legal advice, and that I or the presiding judge must treat you just as we would treat a lawyer? _____
- 12. Do you understand that you are charged with _____

(state crimes charged with) and that if you are convicted of this [these] charge(s), you could be imprisoned for a maximum of _____ months [(if applicable) and a mandatory minimum

24 L.C.R.R. 2.3 and 4.1

sentence of _____ months and [(add fine or restitution if applicable) _____]? _____

13. With all these things in mind, do you now wish to ask me any questions about what I have just said to you? _____

14. With all these things in mind, do you now waive your right to assistance of a lawyer, and voluntarily and intelligently decide to represent yourself in this case? _____

As the undersigned party in this action, I freely and voluntarily declare that I have been informed of the charges against me, the nature of and the statutory punishment for each charge, and the nature of the proceedings against me; that I have been advised of my right to have counsel assigned to assist me and my right to have the assistance of counsel in defending against these charges or in handling these proceedings, and that I fully understand and appreciate the consequences of my decision to waive the right to assigned counsel and the right to assistance of counsel.

I freely, voluntarily and knowingly declare that: I waive my right to all assistance of counsel which includes my right to assigned counsel and my right to the assistance of counsel. In all respects, I desire to appear in my own behalf, which I understand I have the right to do.

SWORN AND SUBSCRIBED
TO BEFORE ME

Date: _____

Date: _____

Signature of the Defendant

Deputy/Assistant/Clerk of Superior Court

CERTIFICATE OF JUDGE

I certify that the above named defendant has been fully informed in open court of the charges against him/her, the nature of and the statutory punishment of each charge, and the nature of the proceeding against the defendant and his/her right to have counsel assigned by the court and his/her right to have the assistance of counsel to represent him/her in this action; that the defendant comprehends the nature of the charges and proceedings and the range of punishments; that he/she understands and appreciates the consequences of his/her decision to represent his/her self and that the defendant has voluntarily, knowingly and intelligently elected in open court to be tried in this action without the assistance of counsel, which includes the right to assigned counsel and the right to assistance of counsel.

This the ____ day of _____, 20 ____.

Signature of Judge

Name of Judge (Type or Print)

STATE OF NORTH CAROLINA

_____ County

File No.

Additional File No.(s)

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Name Of Co-Defendant(s), If Any

MOTION AND ORDER FOR CONTINUANCE (CRIMINAL SUPERIOR COURT CASES)

Offense(s)

NOTE: This form is designed for use in districts which have adopted the model continuance policy. The **MOVING PARTY** must complete all the information required below. A copy of the completed form must be distributed to all counsel of record and unrepresented parties before presenting it to the appropriate judicial official. Before opening of court for the session at which this case is calendared, the appropriate judicial official is the **Senior Resident Superior Court Judge or designee**. Following the opening of court, the appropriate judicial official is the presiding judge. Distribution may be made by U.S. mail, fax, hand delivery or placement in a distribution box maintained in the courthouse facility. Upon receipt, the **OPPOSING PARTY** must immediately communicate any objections to the **appropriate judicial official**.

Date Of Indictment Or Appeal From District Court	No. Of Previous Continuances	No. Of Times Designated For Trial And Not Reached
Calendared Trial Date	Requested Rescheduled Date	Pretrial Detention Status Of Defendant <input type="checkbox"/> Incarcerated <input type="checkbox"/> Released

MOTION

Pursuant to the local rules for motions for continuance in effect in this superior court district, the party named below moves that the above criminal case be continued from the calendared date shown above to the requested rescheduled date shown above, for the following compelling reasons which would affect the fundamental fairness of the trial process or because the continuance is clearly in the interest of justice in that: *(State facts constituting compelling reasons or interest of justice.)*

I have distributed a copy of this Motion to all counsel of record and unrepresented parties by U.S. mail, facsimile transmission, hand delivery or placement in a distribution box maintained in the courthouse facility.

- This Motion has been considered by another judge *(name judge)* _____ on the same grounds.
- This Motion has not been considered by another judge on the same grounds.

Date	Signature
Name Of Moving Party (type or print)	<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense Attorney <input type="checkbox"/> Defendant

CERTIFICATE OF SERVICE BY MOVING PARTY

I certify that a copy of this Motion was served by:

- delivering a copy personally to the
 defendant's attorney. prosecutor. defendant.
- depositing a copy, enclosed in a postpaid properly addressed envelope, in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the
 defendant's attorney. prosecutor. defendant.
- leaving a copy at the office of the
 defendant's attorney with an associate or employee. prosecutor with an associate or employee.

Name And Title Of Person With Whom Copy Left

Service accepted by:

- defendant's attorney. prosecutor. defendant.

Signature Of Person Accepting Service	Date Served
Signature Of Person Serving	Title

CONSENT TO CONTINUANCE

The consenting party named below consents to the above requested continuance.

Date	Signature
Name Of Party (type or print)	<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense Attorney <input type="checkbox"/> Defendant

OTHER FACTORS

NOTE: Designee of Senior Resident Superior Court Judge should complete this portion before the motion is presented to the appropriate court official.

Date Motion Received	Objections Received <input type="checkbox"/> No <input type="checkbox"/> Yes (attach)	Case Age <input type="checkbox"/> Less Than 12 Months <input type="checkbox"/> 12 To 18 Months <input type="checkbox"/> More Than 18 Months
Date Case Set On This Trial Calendar	Attorney Input Into This Setting <input type="checkbox"/> No <input type="checkbox"/> Yes	
Total No. Of Cases On Trial Calendar	Current Ranking Of This Case On Trial Calendar	Priority Designation <input type="checkbox"/> No <input type="checkbox"/> Yes

ORDER

1. Upon the motion of the defendant and the consent of the district attorney, it is **ORDERED** that the above motion is allowed and the case is continued and shall be held on the rescheduled date set forth below.
2. Upon consideration of the Motion For Continuance on the reverse side and the Other Factors set forth above, the Court: (select one option)
- a. finds that there are compelling reasons for a continuance which would affect the fundamental fairness of the trial process.
 - b. finds that the requested continuance is clearly in the interest of justice.
 - c. does not find that there are compelling reasons for a continuance which would affect the fundamental fairness of the trial process and does not find that the requested continuance is clearly in the interest of justice.

It is ORDERED that: (select one option)

- 1. The motion is allowed and the case is continued and shall be held on the rescheduled date shown below.
- 2. The motion is denied and the case shall be held on the rescheduled date shown below.

Court Rescheduled Date, If Different	Date Of Order
	Signature
Name (type or print)	<input type="checkbox"/> Senior Resident Superior Court Judge <input type="checkbox"/> Designee Of Senior Resident Superior Court Judge <input type="checkbox"/> Presiding Judge

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

STATE OF NORTH CAROLINA,

vs.

ACKNOWLEDGEMENT OF
SUPPORT/CONSENT OF MOTION TO
CONTINUE

_____,
Defendant,

I _____, the Defendant in the above titled case do hereby state and represent to the court: I have been advised that my attorney or the State is seeking a continuance in my case. I am aware that my case is on the trial calendar for the _____ session (**a date must be provided**). I have also been advised that my case will most likely be reached at the scheduled session. I agree and consent that the continuance should be requested and/or granted. I understand that there is no guarantee that my case will be continued from the scheduled session but am aware that if the continuance is granted a new trial date will be set for _____ (**a date must be provided**).

This the _____ day of _____, 20_____.

Signature of Defendant

24 L.CR.R.10

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(S)._____

STATE OF NORTH CAROLINA

)
)
)
)
)
)

VS.

CERTIFICATION OF DEFENDANT'S
PRETRIAL CONFINEMENT CREDIT

_____,
Defendant

UPON INVESTIGATION, the undersigned counsel for the above named Defendant, hereby certifies to the Court that the Defendant is entitled to _____ days of credit in the above-captioned matter(s) in accordance with the provisions of N.C.G. S. § 15-196.1 and § 15-196.2.

This the _____ day of _____, 20_____.

Signature of Attorney for the Defendant

Printed Name of Attorney for Defendant

N.C. Gen. Stat. § 15-196.1. Credits allowed (2017)

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution **as a result of the charge that culminated in the sentence or the incident from which the charge arose.** The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that a defendant has spent in custody as a result of a pending charge while serving a sentence imposed for another offense.

N.C. Gen. Stat. § 15-196.2. Allowance in cases of multiple sentences (2017)

In the event time creditable under this section shall have been spent in custody as the result of more than one pending charge, resulting in imprisonment for more than one offense, credit shall be allowed as herein provided. Consecutive sentences shall be considered as one sentence for the purpose of providing credit, and the creditable time shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned. Each concurrent sentence shall be credited with so much of the time as was spent in custody due to the offense or incident resulting in the sentence. When both concurrent and consecutive sentences are imposed, both of the above rules shall obtain to the applicable extent.

Upon revocation of two or more consecutive sentences as a result of a probation violation, credit for time served credit for confinements in response to violation under G.S. 15A-1344(d2) shall be credited to only one sentence.

CLARIFICATION OF CONTINUED REPRESENTATION OF COUNSEL

1. REPRESENTATION CONDITIONAL DISCHARGE OR DEFERRAL AGREEMENTS

When Counsel represents a defendant on a conditional discharge or a deferral agreement, whether court appointed or retained, such representation shall continue through the discharge and dismissal stage where there have not been any probation violation reports filed in the matter.

When Counsel has been appointed to represent a defendant on a conditional discharge or deferral agreement, there shall not be any need for re-appointment of court appointed counsel upon the filing of probation violation reports associated with the defendant's terms of probation under the conditional discharge or deferral agreement. The initial appointment of counsel shall be deemed to continue and include representation on any and all violation reports and addendums associated with the conditional discharge or deferral agreement and any sentencing hearing associated with an adjudication of guilt upon the court's finding of a willful violation of the terms and conditions of the defendant's probation.

In those instances where counsel has been retained, counsel shall be deemed counsel of record upon the filing of any and all probation violation reports associated with the conditional discharge or deferral agreement, unless both of the following exist and occur:

1) There exists a clear and unequivocal agreement between the defendant and counsel to the contrary.

And

2) Counsel at his initial appearance has filed with the court a clearly defined limited appearance, signed by both counsel and the defendant, specifically excluding such representation.

Absent compliance with both conditions, retained counsel's representation shall be deemed to continue and include representation on any and all probation violation reports and addendums associated with the conditional discharge or deferral agreement and any sentencing hearing associated with a adjudication of guilt upon the court's finding of a willful violation of the terms and conditions of the defendant's probation.

2. PROBATION VIOLATIONS

When Counsel has been appointed to represent a defendant on a probation violation such representation shall continue and shall include representation on any and all subsequent addendums filed prior to the probation violation hearing. There shall not be any need for re-appointment of court appointed counsel upon the filing of subsequent addendum violation reports in court appointed cases.

In those instances where counsel has been retained on a probation violation counsel shall be deemed counsel of record upon the filing of any and all subsequent addendums filed prior to the probation violation hearing unless both of the following exist and occur:

1) There exists a clear and unequivocal agreement between the defendant and counsel to the contrary.

And

2) Counsel at his initial appearance has filed with the court a clearly defined limited appearance, signed by both counsel and the defendant, specifically excluding such representation.

Absent compliance with both conditions, retained counsel's representation shall be deemed to include representation on any and all subsequent addendums filed prior to the probation violation hearing.

Should a defendant waive his right to counsel on a conditional discharge or deferral agreement, this initial waiver shall not constitute a waiver of counsel on any probation violations associated with the conditional discharge or deferral agreement.

Should a defendant waive his right to counsel on a probation violation, this initial waiver shall not constitute a waiver of counsel on a subsequent addendum to the probation violation.

Nothing herein shall be construed to abrogate the defendant's right to counsel and specifically his right to retain counsel or his right to represent himself. Further, nothing contained herein shall be construed to abrogate the defendant's right to be personally served with any and all notices, probation violation reports or addendums thereto, nor does it abrogate the State's obligation to personally serve the defendant with copies of any and all notices, violation reports and addendums thereto.

The defendant shall be personally served with any and all notices, probation violation reports and any and all addendums thereto. Copies of the notices, violation reports and addendums thereto which are subject to this administrative order shall be served upon defendant's counsel after the defendant has been personally served.

This the 14th day of March, 2019.

Honorable Ted W. McEntire
Chief District Court Judge
Twenty-fourth Judicial District

Honorable Gary M. Gavenus
Senior Resident Superior Court Judge
Twenty-fourth Judicial District.