

22 R 358

STATE OF NORTH CAROLINA  
TWENTY-SEVEN A JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILED  
2022 AUG 15 P 2:05

GASTON CO., C.S.C.

IN Re:

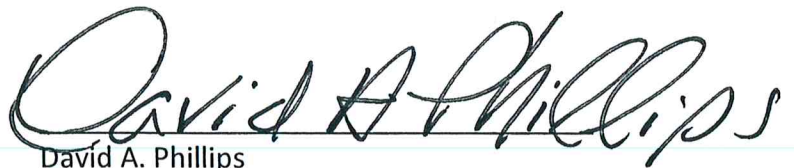
BY                     ms                    )

ORDER

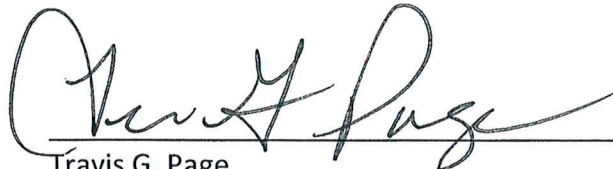
CRIMINAL CASE MANAGEMENT PLAN )  
TWENTY – SEVEN A JUDICIAL DISTRICT )  
SUPERIOR COURT DIVISION )

In accordance with N.C.G.S 7A-49.4, the undersigned Senior Resident Superior Court Judge and District Attorney do hereby promulgate the Superior Court Criminal Case Management Plan for the Twenty-Seven A Judicial District. The Criminal Case Management Plan is hereby adopted effective August 15<sup>th</sup>, 2022 and shall apply to all actions filed on or after that date and insofar as practical to all pending cases.

Adopted this 15 day of August, 2022



David A. Phillips  
Senior Resident Superior Court Judge



Travis G. Page  
District Attorney

## TWENTY-SEVEN A JUDICIAL DISTRICT

### Criminal Case Docket Management Plan for Criminal Superior Court

#### Rule 1: General Provisions

1.1 The purpose of these rules is to institute a Criminal Case Docket Management Plan that will provide orderly, prompt and just disposition of criminal matters in the Twenty-Seven A Judicial District. This plan is intended to resolve criminal cases in a manner that protects the interest of this District, the State, and the victims of crime, as well as to ensure that the rights of criminal defendants are preserved.

1.2 The calendar for the disposition of criminal cases in the Twenty-Seven A District, Superior Court division, shall be set and maintained by the District Attorney in accordance with these rules. The District Attorney shall establish and maintain a case tracking system to monitor the number, age, type, and procedural status of all pending cases. (As used in these rules, the term "District Attorney" shall include the elected District Attorney for the Thirty-eighth Prosecutorial District and his designees.)

---

1.3 These rules shall, at all times, be construed in such a manner as to avoid technical delay.

1.4 These rules shall be filed in the Office of the Clerk of Court of Gaston County and may be cited accordingly.

1.5 The District Attorney shall distribute a copy of these rules to each member of the Bar of the Twenty-Seven A Judicial District. The District Attorney shall maintain a supply of printed rules to be provided upon request.

1.6 The Clerk of Superior Court shall provide a file number for each case at the time of indictment. The file number shall be designated on all subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel, parties or court personnel. All pleadings, all motions, and other documents needed to comply with these rules shall be filed with the Clerk.

1.7 The provisions of these rules shall apply to all Superior Court cases with indictment or appeal dates beginning on or after January 1, 2000. Such cases shall be termed "Docket Management Plan cases". Superior Court filings pending prior to January 1, 2000. May be integrated into the Docket Management Plan in the discretion of the District Attorney upon consultation with the Senior Resident Superior Court Judge or the Presiding Judge.

1.8 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 which may be designated as "Exceptional" include, but are not limited to, capital cases, complicated drug conspiracies, cases including multiple defendants or victims, complicated white-collar crimes, and those cases requiring scientific investigation or testing. After notification by the District Attorney of the State's intention to designate a case as "exceptional", any defendant objecting to such a designation may file an objection to be heard at the Administrative setting, at which the Court will determine if the case is designated "Exceptional".



## Rule 2: Discovery

2.1 Once Counsel has appeared or been appointed in a case, it shall be presumed that Counsel is seeking those items discoverable under the applicable statutes of North Carolina and federal case law. No formal request for discovery under N.C.G.S. 15A-902 need to be made; the provisions of this rule regarding discovery shall be deemed an order of the Court in each case. Provision of discovery by the State acts as an automatic request for reciprocal discovery from the defendant. The court, after motion by the State or Defendant or on its own motion, may act as the interests of justice require to remedy a failure to provide discovery, reciprocal discovery, or continuing discovery as provided by law or anticipated by these rules.

2.2 No later than four weeks after indictment, photocopies of discovery in each file shall be provided by the District Attorney to the attorney of record entering a general appearance in a case. Discovery shall be provided to the then-current attorney of record.

2.3 Reciprocal discovery shall be provided by defense counsel to the State within three weeks of the State providing defense counsel with discovery as provided in Rule 2.2.

2.4 It shall be the responsibility of a newly retained or appointed attorney immediately to notify the State of the fact of representation of the defendant. 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 of record. Upon request of new counsel, the State shall assist new counsel in confirming that he / she has received complete discovery from previous defense

counsel. Any discovery material provided to a previous counsel of record is presumed by these rules to have been provided to any new or subsequent attorney of record.

2.5 The prosecutor assigned to 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 and shall 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 the discovery material into the attorney’s mailbox located in the office of the Clerk of Superior Court. A completed and signed DDC also shall be filed with the Clerk of Superior Court for placement in the Court file.

2.6 All discovery motions filed by the defense counsel shall contain one of the following certification provisions and shall be signed by the Movant:

I, the undersigned attorney of record, do hereby certify to the court that prior to the filing of this motion I have thoroughly reviewed the discovery material supplied to me in this case by the office of the District Attorney. The discovery material requested has not previously been provided to a counsel of record in this case.

---

Signature of Movant

---

Date

OR

I, the undersigned attorney of record, do hereby certify to the court that, as of this date more than four weeks have passed from the date of Indictment in this case and that the District Attorney's Office has not provided any discovery material in this case, as required by Rule 2.2, Criminal Case Docket management plan for Criminal Superior Court.

\_\_\_\_\_  
Signature of Movant

\_\_\_\_\_  
Date

2.7 All discovery motions filed by the District Attorney shall contain one of the following certification provisions and shall be signed by the Movant:

I, the undersigned Prosecutor of record, do hereby certify to the court that prior to filing of this motion I have thoroughly reviewed the discovery material supplied to me in this case by the defense counsel. The discovery material requested has not previously been provided to the State in this case.

\_\_\_\_\_  
Signature of Movant

\_\_\_\_\_  
Date

OR

I, the undersigned Prosecutor do hereby certify to the Court, that as of this date more than three weeks have passed from the date that the State provided discovery to the defendant in this case, and that defense counsel has failed to provide the State with any discovery material in this case.

\_\_\_\_\_  
Signature of Movant

\_\_\_\_\_  
Date

### Rule 3: Calendaring Prior to Trial

3.1 At least once each calendar month, the Senior Resident Superior Court Judge, in consultation with the District Attorney shall schedule a non-jury administrative criminal session. This session shall be known as the "Administrative Week". Additional Administrative calendars may be scheduled in the discretion of the District Attorney. The remaining criminal sessions will be reserved, to the extent reasonably possible, for trial cases.

3.2 Whenever practical, "Administrative Week" settings shall be held by a Resident Superior Court Judge but may otherwise be held by any Superior Court Judge.

3.3 An Administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly scheduled session of Superior Court if later than 60 days from indictment or service if required.



3.4 The defendant and defense counsel shall be present at each Administrative setting.

3.5 At an Administrative setting:

a) the Court shall determine the status of the defendant's representation by counsel – whether counsel has been retained, appointed, or expressly waived in writing;

b) the Court shall determine the identification of possible conflicts of interest;

c) after hearing from the parties, the Court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions:

d) if the District Attorney has made a determination regarding a plea arrangement, the District Attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the Court may conduct a plea conference if supported by the interest of justice;

---

e) the Court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case;

f) the Court shall conduct hearings required under Rule 24 of the Rules of Court for capital cases;



g) the Court may make specialized scheduling orders, for the purpose of facilitating timely disposition, in cases designated as as “exceptional”.

h) the defendant may dispose of the charges by guilty plea;

i) the parties shall schedule a trial date pursuant to Rule 5;

j) the Court may schedule more than one Administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner.

3.6 Nothing precludes the disposition of a criminal case by plea, deferred prosecution, or dismissal prior to an Administrative setting.

#### Rule 4: Plea Offers

4.1 Prior to the Administrative setting the State shall send a written plea letter to defense counsel of record in every case. This written plea letter will contain one of the following: a negotiated plea offer, a notice that no negotiated plea offer will be made in a particular case, or a notice that the State designates a particular case as “exceptional”.

4.2 Prosecutors are encouraged to include within plea offers whether the defendant’s punishment should be “active”, “intermediate”, or “community” when options exist. It is also certainly permissible for the prosecutor to specify within the plea agreement whether probation is recommended. The Court will also consider offers which specify even more details of the punishment.

4.3 Defense counsel of record has a responsibility to promptly convey all plea offers to the defendant and consider it with him or her before the day of the next court appearance. The District Attorney's office is open to receiving information from defense counsel that could reasonably affect the plea offer or the ultimate decision as to whether to prosecute and encourages the communication of such information at the earliest possible stage of the proceeding.

4.4 Except in these cases in which the defendant is in the custody of the Department of Correction or of another county or state, defense counsel shall respond to the State's negotiated plea offer no later than two weeks from the time it is received. If defense counsel fails to respond to a negotiated plea offer, the plea offer shall be deemed withdrawn.

4.5 With the consent of the court, the parties may confer with the court regarding the terms of a negotiated plea offer.

4.6 If either party discovers that it is unable to fulfill an understanding previously agreed upon in plea negotiations, that party shall give prompt notice to the Court and to the other party and shall take such other steps as may be appropriate to restore the parties to the positions they were in before the understanding or negotiated plea agreement was reached.

4.7 If the District Attorney takes a dismissal outside of Court, the District Attorney shall notify the defendant or his/her counsel, if represented, of such action.

4.8 The only persons allowed in the Superior court holding cells are Gaston County Deputy Sheriffs.

#### Rule 5: Trial Settings

5.1 At the final Administrative setting, both parties may agree upon a trial date.

5.2 If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final Administrative setting, the District Attorney shall announce a proposed trial date. The Court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the Court determines that the interests of justice require the setting of a different date. In the event, the District Attorney shall set another tentative trial date during the final Agreement setting.

5.3 The trial shall occur no sooner than 30 days after the final Administrative setting, except by agreement of the State and the Defendant.

5.4 Counsel for the State and defendant are responsible for having their personal calendars available at the final Administrative setting in order to inform the Court of any personal or professional conflicts.

5.5 Any request for a priority or peremptory setting based upon out-of-town witnesses, expert witnesses, or other scheduling concerns should be addressed to the Court at the time the trial is scheduled.

5.6 At the final Administrative setting, the Court shall enter a Scheduling Order in each non-exceptional case setting 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.

5.7 When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, 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 for the defendant.

#### Rule 6: Printed calendars

6.1 No less than ten (10) working days prior to such non-jury "Administrative Week: session of Court, the District Attorney shall prepare and publish a calendar of case settings as described in Rule 3 above.

6.2 No less than ten (10) working days before cases are calendared for trial, the District Attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the District Attorney anticipates they will be called for trial and should not contain cases that the District Attorney does not reasonably expect to be called for trial.



6.3 When multiple sessions of court are being held, the District Attorney may publish a trial calendar for each session of Court.

6.4 During a trial session of Court, the District Attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the Court the order in which the District Attorney intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by presiding Judge if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding Judge or by consent of the State and the defendant.

6.5 In the discretion of the presiding Judge, the order of cases for trial may be varied to accommodate such factors as available court time and witness schedules.

6.6 In the event that previously scheduled court time in Civil Court becomes available for the trial cases, all parties are on notice that trials may be scheduled in this civil courtroom without following the announced trial order.

6.7 A defendant and defense counsel shall be required to appear upon initial calling of the calendar during a jury session of Court. After the call of the calendar, the Court, in its discretion, upon motion by the defendant in open Court may place a defendant on stand-by.

6.8 The District Attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of Court.

6.9 Nothing in these rules shall be construed to affect the authority of the Court in the call of cases calendared for trial.

### Rule 7: Continuances

7.1 A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding Judge or Resident Superior Court Judge for good cause shown.

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

---

7.3 If the State and the defendant both consent to the continuance and such consent is indicated by the signature of the District Attorney and defense counsel on a continuance form, the continuance is allowed, and the continuance form shall be filed in the court file.

7.4 When either the State or the defendant opposes a continuance, the Senior Resident Superior Court Judge will issue a ruling on the motion for continuance after consideration of the reason for the continuance request, the number of previous continuances, 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 presiding over court in the County may rule on continuance motions. Opposing parties must be given an opportunity to be heard before the court rules on a motion to continue if circumstances permit.

7.5 No case shall be continued without rescheduling the trial to a date certain, except in a case of extreme and unusual circumstances.

#### Rule 8: Miscellaneous Provisions

8.1 Motions for appropriate relief shall be governed by those rules previously established by Senior Resident Superior Court Judge for the Twenty-Seven A Judicial District.

8.2 In order to meet the statutory requirement (NCGS Section 15A-1345) of providing a preliminary hearing within seven (7) days of an arrest order accompanying an allegation of a probation violation, such hearings will be scheduled each Monday morning in Courtroom 4C. It will not be necessary for the probation officer assigned to the specific case to be present at that hearing since the formal rules of evidence do not apply. Therefore, it will be sufficient for there to be a probation officer present with the probation file who can attest to the identity of probation offenders and to identify probation documents.



8.3 Probation revocation hearings will be scheduled in Courtroom 4C pursuant to a schedule prepared by the District Attorney and the Probation Department. It will be the responsibility of the Probation Department to set cases for hearing and to coordinate the setting new cases with the Clerk's Office so that the total numbers of cases set does not exceed the number agreed upon in the schedule for this courtroom. It is understood that it is difficult to estimate in advance how many cases will adequately use the court time available, especially since neither cases nor Judges are exactly alike, but it is essential that all agencies involved in this process work together to determine the optimum number of cases to be set in this courtroom.

8.4 Bond forfeiture matters will be scheduled in Courtroom 4C on a schedule determined by the Senior Resident court Judge and the Clerk of Superior Court.

8.5 No provision of these rules shall be interpreted by any party or by the court in such a way as to deprive any defendant of any right provided by the General Statutes of North Carolina or by the state and federal constitutions.

8.6 No provision of these rules shall be interpreted by any party or by the court in such a way as to deprive any victim of a crime of any right provided by the General Statutes, of North Carolina (Article 46 of Chapter 15A) or by the Constitution of North Carolina (Article I, Section 37).