

**26TH JUDICIAL DISTRICT
DISTRICT COURT DIVISION
LOCAL RULES OF CRIMINAL PROCEDURE
January 1, 2013**

Rule 1 – General Rules

1.1 These rules supersede all previous criminal procedure rules of the District Court and are effective on the first day of January 2013 and thereafter. As used herein, "District Attorney" means the District Attorney for the 26th Judicial District or any Assistant District Attorneys appearing on the District Attorney's behalf.

Rule 2: Dress Code

2.1 Attorneys are required to appear in court during all sessions in appropriate business attire. Casual dress is prohibited and may subject the attorney to contempt proceedings.

2.2 Attorneys are prohibited from wearing or displaying any political or campaign buttons, lapel stickers, or patches, pins or like displays of support for political candidates, parties, organizations, or causes while in any of the various courtrooms. Such items are inconsistent with the administration of justice, demonstrate an appearance of impropriety and/or favoritism to the general public.

Rule 3 – Sessions of Criminal Court

3.1 Criminal court shall operate on a daily basis, with cases set in either the morning at 9:00 a.m. (the "A" session) or afternoon at 1:30 p.m. (the "B" session). Courtrooms assigned to handle criminal trials will be courtrooms 4130, 4150, 4170, 4310, 4330, & 8370. The morning session shall begin promptly at 9:00 a.m.; the afternoon session shall begin promptly at 1:30 p.m. All defendants shall be present at the call of the calendars at 9:00 a.m. in the morning, and/or 1:30 p.m. in the afternoon of their court dates as scheduled. In addition to, and not in limitation of additional sanctions, if neither the defendant and/or their attorney has appeared (or provided the Court or the District Attorney notification of their whereabouts) by the second docket call (assuming same is given), then, in that event, such case shall be subject to the issuance of Orders of Arrest or Failures to Appear, as the case may be.

3.2 For all persons arrested in custody with or without the setting of bond, a first appearance shall occur in Administrative Courtroom 1150 at 1:30 p.m. the following regular court day or within 96 hours or as soon as practicable after the arrest. For persons being held in custody on misdemeanor charges, bond will be set or reviewed; and, if appropriate, the Public Defender will be appointed, waivers of counsel may be reviewed, and a trial date set. With the consent of the Defendant, the District Attorney and the Court, a Defendant may waive counsel and tender a plea of guilty on certain misdemeanor offenses.

3.3. For persons being held in custody on felony charges, bond and probable cause hearings shall be scheduled in courtroom 1150 at 9:00 a.m. consistent with N.C.G.S § 15A-606.

3.4 With the exception of Domestic Violence probation violations, which will be heard in courtroom 4130 on Fridays, and unless exigent circumstances exist, all District Court probation violations will be heard in trial Courtroom 4330 on Fridays. District Court supervised probation violations will be heard beginning at 9:00 a.m., and may be carried over to the afternoon session. District Court unsupervised probation violations will be heard in the afternoon session beginning at 1:30 p.m. Priority on probation violations, both supervised and unsupervised, will be given to any defendant held in custody on those violations. In the event that courts are closed on a Friday, the Chief District Court Judge will schedule an alternative date when the probation violations will be heard.

3.5 Cases for persons charged with misdemeanors and infractions not being held in custody will be scheduled for a first appearance in Administrative Courtroom 1130 at both 9:00 a.m. and/or 1:30 p.m. The specific dates for appearances will be set by the citing police officer, magistrate, district attorney, or district court judge, as required. Attorneys may appear on the behalf of their clients, and may resolve the above mentioned cases, if the clients have authorized, in writing, the attorney's appearance, and the offenses are waivable offenses.

3.6 Regular sessions of Environmental Court will be held on the first Tuesday of the month in trial court 4330 beginning at 9:00 a.m. Defendants are required to be present.

3.7 Compulsory School Attendance Law Violations will be heard on Tuesdays in Courtroom 8370 at 1:30 pm. Criminal Child Abuse cases will be heard in Courtroom 8370 on Tuesdays at 1:30 p.m.

Rule 4 – Appearances by Attorneys

4.1 All attorneys who are representing persons charged with infractions, misdemeanors, and probation violations in any criminal trial courts (4130, 4150, 4170, 4310, 4330 and 8370) shall file a general appearance form (in substance as set forth on the "blue sheet" appended to these Rules) indicating that they will appear as counsel of record on all appearances in district court for the defendant. Continuances shall not be granted without the filing of a "blue sheet". Any attorney requesting that they be allowed to make a limited appearance in any of the trial courts, or request that they be allowed to withdraw as attorney of record, shall request same of the presiding judge, and such granting such requests will be within the discretion of the presiding judge.

4.2 All attorneys who are representing persons charged with felonies must file a general appearance forms in Administrative Courtroom 1150, indicating the extent of their representation. Any appearance is considered a general appearance unless limited in writing and approved by the Court.

4.3 All attorneys who are appearing in lieu of their client representing persons

charged with infractions and waivable misdemeanors must file a general appearance form as well as a written authorization to appear duly signed by their client indicating that they are appearing by written authorization of their client and are attorney of record in those matters.

4.4 Attorneys that have matters pending in more than one trial court or have matters to attend to in Superior or Federal Court during the same morning or afternoon sessions, are responsible for informing the District Attorney or the Court of their conflict, and the anticipated time of arrival back to that trial court to resolve their pending matter. Attorneys are encouraged to indicate, as well, whether their pending matter in each trial court is for plea, motion, or trial, in order to promote efficiency and to properly utilize court time.

4.5 Attorney's should review and be mindful of the rules of entry and withdrawal of Attorney in Criminal Cases as set forth in §15A-141, 142 & 143 of the General Statutes, which are incorporated by reference herein.

4.6 Attorneys who appear in the various criminal courts should always introduce themselves to the Court.

4.7 Attorneys appointed to represent individuals charged with criminal offenses must meet and confer with their clients as soon as possible after receipt of an appointment from the Public Defender's Office. If the person charged is not being held in custody, appointed counsel must make every reasonable effort to contact the person charged, and arrange a suitable location to fully discuss the facts of a case or cases, the need to subpoena witnesses, obtain required documents and proof, and all matters related to a proper defense. Appointed counsel is strongly discouraged from meeting a new client for the first time at the courtroom on the date of hearing. Attorneys and clients should make every effort to be prepared to handle the assigned cases on the first trial date, and should not expect a continuance of the case(s) in order to meet and prepare.

4.8 All attorneys appointed to represent individuals who are in custody in Mecklenburg County, shall make all reasonable efforts to confer with their clients, in person, at the facility in which they are incarcerated, within three (3) business days, after receiving notice of appointment.

Rule 5 – Defendants Arrested for Failing to Appear

5.1 Every Defendant arrested for failing to appear in Criminal court shall be scheduled for a first appearance in Courtroom 1150. Defendants processed by the magistrate Sunday through Thursday before midnight shall be scheduled for first appearance the next afternoon. Defendants processed Thursday after midnight through Sunday before midnight shall be scheduled for first appearance the following business day. In the event Courtroom 1150 is closed for holiday or other reason, such cases shall be set pursuant to the rules of the North Carolina General Statutes.

5.2 The magistrate shall inform defendants that they must appear in Courtroom 1150 at the scheduled time whether or not they satisfy conditions of pretrial release. The clerks shall include these Defendants on the Courtroom 1150 docket.

5.3 At the first appearance in Courtroom 1150, the presiding judge shall appoint counsel, reappoint previously appointed counsel or accept a waiver of the right to appointed counsel and/or any counsel. The Assistant District Attorney shall set the appropriate trial or hearing date. If the Public Defender is appointed in a case, the Public Defender's Office shall select counsel from the list of attorney's on the "appointed list" and notify them of the trial date, time and place or handle the case internally.

Rule 6 – Motion to Strike An Order For Arrest/Forfeiture

6.1 Motions to Strike an Order of Arrest or Order of Forfeiture ("OFA/Forfeiture") issued in courtroom 1130, 1150, 4130, 4150, 4170, 4310, 4330 or 8370 shall be in writing filed in the Court where such Order issued. The moving party shall attach any supporting documentation to the motion.

6.2 Unless there are exigent circumstances, no more than one Motion to Strike shall be granted regarding any Order of Arrest or Forfeiture.

6.3 The moving party shall add the case on in the Courtroom where the order for arrest or failure to appear was issued.

6.4 For Defendants who fail to appear in any of the district court treatment or therapeutic courts, the cases will be added on in Courtroom 4330 the Friday following the failure to appear to issue or withdraw an order for arrest.

6.5 The Defendant shall appear in court on the "add on" date.

6.6 In situations where a manifest injustice will likely result if an OFA/Forfeiture is not immediately stricken, and the judge assigned to that court is not available, the moving party may approach the Chief District Court Judge, or Acting Chief District Court Judge, with a motion to strike the OFA/Forfeiture. The District Attorney shall be served such motion prior to filing same with the Chief District Court Judge or Acting Chief District Court Judge and be notified of any hearing on same.

6.7 The Court shall strike the OFA/Forfeiture only if the movant satisfies the Court that on the date s/he failed to appear the Defendant was:

- (a) incarcerated;
- (b) hospitalized or other institutionalized;
- (c) provided with wrong court date/time;
- (d) ordered to be arrested because of court clerk error, or
- (e) if other extraordinary cause exists.

6.8 Absent extraordinary circumstances, and excepting actions by the clerk to correct clerical errors, a case must be placed on the docket before the Court will consider a Motion to Strike an Order for Arrest/Forfeiture.

6.9 Failure to Appear (FTA) Strikes – Failure to Appear or “FTA” strikes will be considered on a case by case basis. Absent extraordinary cause, a second FTA strike on any one charge or disposition will not be granted if there has been a previous FTA strike granted, and a second FTA has been issued for non-compliance.

Rule 7 – Setting Bond in Certain Domestic Violence Cases

7.1 Persons arrested pursuant to N.C.G.S. §15A-534.1 will be scheduled for a bond hearing on the “C” docket during the next available morning session in Courtroom 4130. Conditions of pretrial release will be established by the judge presiding in Courtroom 4130. The judge will have available for use in establishing conditions of pretrial release the case papering which includes the affidavit concerning the offense and the defendant’s criminal history. In the event that courtroom 4130 is closed for a holiday or any other reason, the Domestic Violence “C” docket will be held in courtroom 1150 during the next available morning session.

7.2 For persons processed by the magistrate after 4:01 a.m. on Friday through Saturday at 3:00 p.m., the magistrate shall act under the provisions of N.C.G.S. §15A-534.1.

7.3 Attorneys representing a client with an outstanding domestic violence warrant should surrender the client to the Sheriff and then schedule a bond hearing in Courtroom 4130. Magistrates will not contact a judge after business hours during the week or on weekends to set bonds.

7.4 The procedures set forth above are the exclusive procedures for setting initial bonds in domestic violence cases covered by N.C.G.S. §15A-534.1.

7.5 Attorneys should not speak with a judge about bond and should not request the magistrate to contact the judge except in open court and when the District Attorney is represented. Judges approached by an attorney about setting bonds should decline to hear any argument without the presence of the District Attorney.

7.6 "No Issue List"

(a) For persons who are arrested on warrants issued upon the complaints of an individual who is determined to be on the “No Issue List”, the magistrate shall have the authority to determine the conditions of release and may set an unsecured bond, or follow the bond policy set forth in Administrative Order 09-R-163.

(b) For persons who are involved in domestic litigation, and the judge assigned to the domestic case has initiated the process to have one or more of the parties placed on the “No Issue List”, but the Chief District Court Judge has not yet finalized the process, and the person sought to be placed on the “No Issue List” initiated the warrant resulting in the arrest, the presiding family court judge shall have the authority to direct the arrested person’s conditions of release.

7.7 Further instructions on the “No Issue List” are set forth in 09-R-163 which was made effective February 25, 2009, and said Administrative Order is available on the 9th floor at the judicial offices.

Rule 8 – Criminal Trial Subpoenas to Law Enforcement Officers

8.1 Trial subpoenas to law enforcement officers to appear and testify must be filed with the Sheriff no less than fourteen (14) days prior to the scheduled court appearance.

8.2 Trial subpoenas to law enforcement officers to appear and produce documents, within their custody and control, must be filed with the Sheriff no less than fourteen (14) days prior to the scheduled court appearance.

8.3 If the Defendant or attorney for the Defendant can demonstrate that the notification to him/her of the court date was given less than fourteen (14) days prior to the scheduled court hearing, diligent efforts will be made to accomplish service on the officer, notwithstanding the fourteen (14) day limit.

8.4 Trial subpoenas to law enforcement officials shall be clearly labeled with the exact date, time, session, and courtroom that the officer is to begin his/her testimony. Subpoenas shall list a contact person and telephone number.

8.5 The defense attorney should notify the subpoenaed officer immediately upon determining that the officer’s testimony will not be needed.

8.6 This order applies to Criminal District Courts 4130, 4150, 4170, 4310 and 4330. (It does not apply to Juvenile or Civil Domestic Violence hearings).

8.7 Subpoenas that are not in compliance with the guidelines established in this order will not be served and notification will be given to the issuing party.

Rule 9 – “Knoll Motions” in Driving While Impaired (“DWI”) Cases

9.1 Motions to dismiss based upon alleged violations of the provisions of N.C.G.S. §15-A-511, N.C.G.S. §15A-534.2 or applicable case law shall be made in writing, shall set forth with specificity the basis of the motion and be served upon the District Attorney assigned to the courtroom in which the case is calendared not later than fifteen (15) calendar days before the calendared date. The movant shall be responsible for issuing applicable subpoenas to secure evidence to support their motion.

9.2 The failure of defense counsel to prepare and serve the written motion to dismiss pursuant to this rule shall be grounds for the trial judge’s refusal to consider the motion.

Rule 10 – Fee Petitions

10.1. Barring exigent circumstances, Fee Petition forms shall be filled out completely and submitted immediately upon the conclusion of the case. The purpose of this requirement is

to facilitate timely payment and to assure that, in all criminal cases and in civil cases in which the court intends to enter a civil judgment, the defendant or respondent is given notice of the claimed hours and an opportunity to be heard.

10.2 An itemized listing of hours and work performed shall be attached to every Fee Petition form submitted by attorneys. Inasmuch as Fee Petitions are public records, counsel should exercise care not to disclose work product.

10.3 Fee Petitions must be submitted for payment within 120 days after the date of final disposition.

10.4 The only in-county travel time that is allowable to be charged on a Fee Petition is that for travel to and from Jail North to confer with a client or witness. Travel time to and from an attorney's office to the courthouse is not a billable item.

10.5 When a defendant fails to appear, assigned counsel/interpreter shall wait at least 45 days, but no more than 120 days, before submitting a fee petition.

10.6 For cases where interim fee petitions have been submitted, the total amount previously awarded shall be indicated on the final Fee Petition.

10.7 Fee applications shall be filled out legibly, completely and accurately before submission to a judge for approval. Every attempt should be made by counsel submitting a fee application to obtain a valid social security number from a client, and to record the same on the application.

10.8 Attorneys shall include with each attorney Fee Application an itemized billing record which provides sufficient details regarding counsel's services in the case to demonstrate that the claim for compensation is reasonable. At a minimum, the itemized billing record must reflect attorney time broken down according to date, description of services, and amount of time in hours and six minute (1/10th hour) increments.

10.9 Before accepting any appointed criminal cases, counsel should be familiar with the North Carolina Commission on Indigent Defense Services "Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level" adopted November 12, 2004.

Rule 11 – Motions for Appropriate Relief

11.1 Motions for Appropriate Relief made pursuant to G.S. §15A-1411 shall be made in writing and filed with the Clerk of Superior Court. The Motion shall be served on the District Attorney. Once the District Attorney is served the clerk shall forward a copy of the Motion to the Chief District Court Judge for further assignment. The movant is responsible for securing any necessary witnesses or documents in support of such motion. Motions for Appropriate Relief shall not be instituted by the "add on" process.

11.2 All motions for appropriate relief filed in district court shall, when filed, be referred to the Chief District Court Judge, who will assign the motion as provided by N.C.G.S. §15A-1413, for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of scheduling ordering for subsequent events in the case, or other appropriate actions.

11.3 All motions for appropriate relief filed in district court are subject to dismissal by the Chief District Court Judge or District Court Judge hearing same if the motion lacks merit on its face or fails to comply with G.S. §15A-951.

Rule 12 – Transfer of Cases

12.1 Upon the scheduling of a criminal case for trial or disposition for a particular day of court in a specified courtroom, that case may be moved out of a scheduled courtroom to be heard on that same day in a different courtroom if:

- (a) The presiding judges in both courtrooms agree to the transfer of the case(s); and
- (b) The move promotes efficient use of courtroom availability, personnel, and properly utilizes resources to avoid delay, continuances, or inconvenience to witnesses and other parties.

Rule 13 – Add-Ons

13.1 The District Attorney is responsible for the setting of the criminal dockets. Hence, attorneys requesting cases to be added on in a particular courtroom should request the District Attorney to sign the add-on slip.

Rule 14 - Continuances

14.1 Continuances of cases set on a trial calendar require the consent of the Court for such continuance. However, in the interest of court room efficiency, the District Attorney, with the consent of the defendant, may continue cases from a trial docket without the consent of the Court. If the parties cannot agree on such continuance, the Court shall resolve the issue. Cases not set on trial calendars are subject to settings as determined by the District Attorney's office. A case is "set on a trial calendar" when said calendar is published on the web site of the Administrative Office of the Courts.

Rule 15 - Notice of Appeal

15.1 When a notice of appeal is filed with the Clerk of Superior Court for a case in which an active sentence was imposed, the Clerk shall set such notice of appeal before the court from where the judgment was entered within three (3) business days of such notice. If the judge from where the appeal is taken is not available, such notice of appeal shall be set in the same court room from whence it issued. The defendant and the defendant's attorney, if applicable, shall appear on the scheduled court date to perfect such notice of appeal.

15.2 For cases in which no active sentence was imposed, the District Attorney may transfer such notices of appeal to court room 1130 if necessary for efficiency purposes. The defendant and/or the defendant's attorney shall appear on such scheduled date to perfect such notice of appeal.

Effective Date

These Rules shall become effective on the 1st day of January 2013 and shall supercede any prior rules of procedure.

This the _____ day of _____, 2012.

Lisa C. Bell
Chief District Court Judge