

The Supreme Court of South Carolina

ORDER

The Honorable Michael G. Nettles, Chief Judge for Administrative Purposes for the Twelfth Judicial Circuit for the period of July 6, 2008 through January 3, 2009 has submitted for approval the attached administrative orders amending certain local rules for the processing of criminal cases in Florence County previously approved by Order dated September 10, 2008 and in Marion County previously approved by Order dated September 14, 2008. Now, therefore,

Pursuant to the provisions of S.C. CONST. Art. V, §4, the Administrative Orders are hereby approved for use in Florence and Marion Counties.



Jean Hofer Toal
Chief Justice

November 10, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF MARION) COOPERATIVE CASE MANAGEMENT
)
) ADMINISTRATIVE ORDER

Pursuant to the authority vested in this Court by the attached Administrative Order (Attachment A") signed by the Honorable Chief Justice Jean Toal of the South Carolina Supreme Court, the following Administrative Order is hereby adopted by this Court of the County of Marion.

This Court hereby declares and orders that all General Sessions cases arising after October 15, 2007 will be processed through the Court under the principles of the system known as Cooperative Case Management. In accordance with the requirements of this system the following rules are hereby adopted.

The Court hereby directs that in each General Sessions case arising before the various Magistrate's and Municipal Courts of the County, the following will be done:

BOND HEARING

1. Magistrates and Municipal Judges are required to transmit warrants to the Clerk of Court within 15 days as required by Rule 3(a) of the South Carolina Rules of Criminal Procedure and the Clerk of Court shall transmit a copy of all the warrants to the Solicitor within 2 business days from the date of receipt pursuant to Rule 3(b) of South Carolina Rules of Criminal Procedure.
2. At the time of their bond hearing all defendants shall be screened by the Magistrate or Municipal Judge to determine if they qualify for appointment of counsel. Such screening will be done in a manner as prescribed by the Clerk of Court with all appropriate forms completed and transmitted to the Clerk of Court along with the warrants and bond paperwork.
3. The defendant shall be served with Notices of Initial Appearance and Docket Appearance at the time of the bond hearing. The Defendant's attendance at the Initial Appearance and Docket Appearance shall be made a condition of the defendant's bond by noting such in Section III of a Personal Recognizance Bond Form or Section D of a Surety Bond Form. At the time of the setting of the Initial Appearance date the Magistrate or Municipal Judge shall inform the defendant in writing and orally of his right to a Preliminary Hearing. Should a hearing be desired, it will be scheduled at the Initial Appearance or within 10 days thereafter.

The date of the Initial Appearance shall be assigned in accordance with the schedule prepared and disseminated by the Solicitor's Office.

4. Summary Court Judges shall make a determination on bond on all charges Except those precluded by S.C. Code of Laws S 22-5-510(A).

II. INITIAL APPEARANCE

1. The Initial Appearance will be held at the Marion County Courthouse. Roll call will be conducted as necessary to ensure attendance. The Clerk is authorized to issue a bench warrant for those defendants who fail to appear and have not been excused by the Solicitor.
2. There shall be no continuances of Initial Appearances and the Initial Appearance is mandatory unless an Initial Appearance Attendance Waiver form has been executed by counsel for both the State and the Defense, approved by the judge and filed with the Clerk of Court. Execution and filing of the Initial Appearance Waiver form shall constitute satisfaction of the Initial Appearance condition of the Defendant's bond. A copy of the Initial Appearance Waiver form is attached hereto and incorporated herein by reference as Attachment B.
3. A preliminary hearing, if desired, must be requested in writing on, or within 5 days after, the initial appearance date.
4. The issue of legal representation shall be addressed at the Initial Appearance.
 - a. If a defendant qualifies for Court appointed counsel and has not retained private counsel the Public Defender shall continue to represent the defendant.
 - b. If a defendant qualifies for a Public Defender but retained private counsel prior to the Initial Appearance date then that attorney must file a general notice of representation with the Clerk of Court and serve a copy on the Solicitor. The Public Defender shall be relieved of representation at that time.
 - c. If a defendant did not qualify for a Public Defender, and a private attorney has been retained, then a letter of representation must be filed with the Clerk of Court and served on the Solicitor prior to the initial appearance.

- d. Unrepresented defendants may apply for a Public Defender at the Initial Appearance. Applications will be taken by the Clerk and if approved, will be assigned that day.
 - e. Defendants who remain unrepresented after the Initial Appearance must appear on their Docket Appearance date and remain in Court throughout that term until excused by the Court. These defendants must appear for each successive term of Court as required until their case is disposed.
5. In all cases where the defendant is represented by the Public Defender the Public Defender shall assess the case at the Initial Appearance for possible conflicts of interest and resolve those conflicts readily identifiable on that date. The Clerk shall, upon Affidavit of Conflict, appoint the next attorney from the conflict list and advise the defendant as to the identity of their attorney. The newly appointed counsel shall also be notified on that date and a preliminary hearing automatically scheduled for the defendant.
6. Issues of competency shall be addressed at the Initial Appearance. When appropriate, defense counsel shall move for a competency evaluation, and the State may consent to a competency evaluation of the subject defendant at the Initial Appearance. In the alternative, the State and defense may schedule a hearing to determine if a competency evaluation is necessary.
7. In all cases where it is feasible to do so, the defendant and the State shall enter into negotiations concerning pleas and dispositional tracking. All offers tendered at the Initial Appearance must be accepted or rejected by the defendant's Docket Appearance date.
8. By the Initial Appearance the Solicitor shall provide discovery in all cases where the appropriate motions have been filed with the Clerk of Court and served on the Solicitor.
9. DISCOVERY is ordered to be handled pursuant to the following guidelines.
- A. All law enforcement agencies shall provide copies of General Sessions case reports, together with all witness statements, video and audio tapes, photographs and diagrams, and any other material included in the law enforcement case file, to the Solicitor's Office within thirty (30) days of the arrest of the defendant. If the case file remains incomplete fifty-five (55) days after arrest, law enforcement shall provide the Solicitor's Office that portion of the report that is complete, together with a listing of those items for which law enforcement is

waiting. Failure to do so may necessitate an appearance before the Administrative Judge to explain non-compliance.

- B. The Solicitor's Office shall prepare defense discovery
 - C. packets on all General Sessions cases. Defense discovery packets shall be provided on or before, the Initial Appearance date to all attorneys who have filed a general letter of representation along with the appropriate discovery requests with the Solicitor's Office.
 - D. The Solicitor's Office shall prepare a written plea offer for all General Sessions cases. Plea offers shall be communicated on the Initial Appearance Date to all attorneys who have filed a general letter of representation with the Solicitor's Office.
10. In order to be prepared to respond to the State's plea offer in a timely manner, all counsel should meet in person with their clients prior to the Docket Appearance date for the purpose of discussing the State's plea offer and all other matters relating to the defendant's case
11. At the Initial Appearance the case, will be assigned to one of two dispositional tracks. These tracks will be 270, and 365 days long, respectively. As a general rule all misdemeanors and class F felonies shall be on the 270 day track, all class A, B, C, D, and E felonies on the 365 day track. Assignment of cases to a track will be the responsibility of the Solicitor's Office. The tracking decision of the Solicitor is subject to review by the Circuit Court upon motion of the defendant filed prior to the defendant's Docket Appearance date, and at other times for good cause shown by motion in open court. Homicide, CSC, and CSC with minor cases will not fall within the guidelines of any track. The length of the track in which a case is placed determines the deadline by which a case must be moved. The disposition date is calculated from the Initial Appearance date or Docket Appearance date, whichever is earlier. Should the deadline fall in a non-court week, it will be extended until the end of the next term of Court. It is the objective of all parties to have every case concluded on or before its disposition date.
12. A status conference shall automatically be scheduled on a date at the halfway point of the assigned track for each case with the assigned or retained attorney and solicitor and presiding judge. This status conference shall not be waived unless the administrative judge finds that the case is on track for disposition and the status conference is unnecessary.

III. **PRELIMINARY HEARINGS**

1. Preliminary hearings shall be held at a sight assigned by the Chief Magistrate. The Presiding magistrate shall be appointed by the Chief Magistrate.
2. The Solicitor's Office shall represent the State at all centralized preliminary hearings for A,B, and C class felonies. Other preliminary hearings shall be conducted pursuant to previous guidelines with the Summary Court notifying all victims and witnesses of the date of said hearings.
3. Continuance of preliminary hearings may not be granted for any reason unless good cause is shown to the Chief Administrative Judge for General Sessions.
4. The defendant or their attorney must be present to be given a preliminary hearing. If one has been requested in a case involving an individual affiant then the failure of the affiant to appear and give testimony will result in the dismissal of the warrant if the defendant and his attorney are present and make the appropriate motion.
5. This section of the administrative order (Section III) shall remain in effect as long as law enforcement resources continue to allow the provisions contained herein to be carried out. Should it become impractical to conduct preliminary hearings in the manner outlined in this section the Solicitor may void the requirements of this section of the order by applying to one of the resident judges for a modification to this order. Such action, if approved, would only void this section of the order.

IV. **INDICTMENTS**

1. All General Sessions cases to be presented for indictment shall be presented to the Marion County Grand Jury within (90) days in accordance with Rule 3 of the South Carolina Rules of Criminal Procedure. This Court recognizes that due to their nature or type, certain cases may not be prepared to go to the Grand Jury within ninety days and grants an extension in those instances. All cases will be indicted prior to the Docket Appearance date.

V. **DOCKET APPEARANCE**

- A. The Docket Appearance will be held along with roll call in the General Sessions courtroom, or such other place so designated, at the Marion County Courthouse on Thursdays at 9:30 A.M. as set forth in the schedule prepared and supplied by the Solicitor's Office. Roll call will be conducted as necessary to ensure attendance. The Clerk of Court is authorized to issue bench warrants for those defendants who fail to appear and have not been excused by the Solicitor's Office or the Chief Administrative Judge of General Sessions Court. Defense counsel is required to be present with the defendant at the Docket Appearance.
- B. All parties shall, during this appearance, engage in final plea negotiations. In those cases where a plea agreement is reached, the parties shall prepare the necessary paperwork, obtain the necessary signatures, and schedule the plea.
- C. Plea offers shall expire at the end of the business day on the Docket Appearance date and will not be extended unless the defendant can demonstrate a material change in circumstances or some other exceptional situation .
- D. The presiding General Sessions Court Judge will hold Docket Appearance status conferences on cases that remain unresolved beginning at 9:00 A.M. on the Monday following the Docket Appearance date to assist the parties in resolving their cases. The Chief Administrative Judge for General Sessions Court shall assign a Circuit Court Judge to preside over the Docket Appearance status conferences. If the case remains unresolved at the status conference the case will be scheduled for trial before one of the presiding General Sessions judges.
- E. Defendants who remain unrepresented on their Docket Appearance Date must be present in Court throughout the following term. These defendants must appear for each successive term of Court required by their bond until their case is disposed.
- F. Cases may be resolved at any time prior to the specified guidelines

VI.

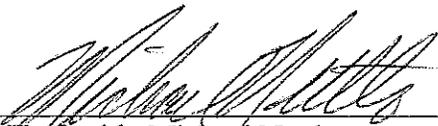
GENERAL SESSIONS COURT PRACTICE

- A. A trial roster and roll call roster shall be prepared for each term of General Sessions Court. For consecutive terms, the rosters may cover two terms of court. The rosters shall be prepared and published at least ten (10) business days prior to the term of Court and will be posted in the Courthouse, provided to the Chief Public Defender for Marion County, to the Chief Administrative Judge for General Sessions Court, and to all private counsel listed by U.S. Mail, e-mail, facsimile and/or hand delivery. It is the responsibility of all attorneys who have clients on this docket to notify their clients that their case is scheduled for disposition.

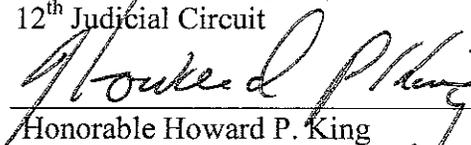
- B. The Solicitor's office shall set the order of trials, and a representative of The Solicitor's Office shall meet with the Chief Administrative Judge for General Sessions Court and a representative of the Public Defender's Office no later than the Monday morning a week before the term of court begins to review the order of trials, as well as, the Court's plea, bond, and probation revocation schedule. This may be done by teleconference at the Judge's discretion.
- C. All motions for continuance and requests for orders of protection shall be submitted to the presiding Judge and Solicitor's Office no later than seven (7) days prior to the commencement of the Court term. The Court will endeavor to hear and rule on the motions for continuance and requests for orders of protection before the commencement of the term of Court.
- D. During a term of General Sessions Court all assigned Solicitor's and Public Defenders shall be present in the designated courtroom no later than 9:15 am for the morning session of court and 2:15 pm for the afternoon session of court, unless excused by the Presiding Judge.
- E. Nothing in this order shall be construed by this Court or any other Court as a reason for a case to be judicially dismissed. This order is intended to be strictly administrative in nature.

IT IS SO ORDERED.

Date 9-16-08


Honorable Michael Nettles
Administrative Judge 2008
12th Judicial Circuit

Date 9/26/08


Honorable Howard P. King
Administrative Judge 2009
12th Judicial Circuit