

4-2007

The Supreme Court of South Carolina

ORDER

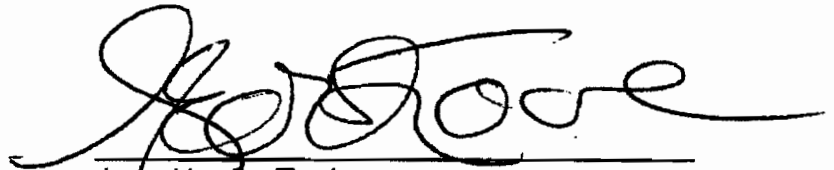
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WRIGHT, CLERK

2007 OCT 16 P 4:12

The Honorable John C. Few, Chief Judge for Administrative Purposes for the Thirteenth Judicial Circuit (Criminal) for the period of July 1, 2007 through January 5, 2008 has submitted for approval the attached administrative orders establishing certain local rules for the processing of criminal cases in Greenville and Pickens Counties. Therefore,

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

IT IS SO ORDERED.



Jean Hofer Toal
Chief Justice

October 12, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

GREENVILLE COUNTY
CASE MANAGEMENT
ADMINISTRATIVE ORDER

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. BROWN

2007 OCT 16 P 4: 12

Pursuant to the authority vested in this Court by and pursuant to the Consent entered between the Solicitors of the sixteen judicial circuits and the Honorable Chief Justice Jean Toal of the South Carolina Supreme Court, the following Administrative Order is hereby adopted by this Court for Greenville County for all cases under the jurisdiction of the Court of General Sessions.

Pursuant to this Order all General Sessions cases in which an arrest is made after September 1, 2007 shall be processed under the principles of the herein-described Case Management System and in accordance with all existing statutes, court rules and orders relevant thereto. The provisions of the Greenville County Case Management Administrative Order are as follows:

A. Bond, Representation, and other Initial Matters

1. **TRANSMISSION OF WARRANTS:** Magistrates and Municipal Judges must transmit warrants to the Greenville County Clerk of Court within 15 days as required by Rule 3 (a) of the South Carolina Rules of Criminal Procedure. Bond orders shall also be transmitted to the Clerk of Court promptly.
2. **CLERK OF COURT:**
 - a. The Clerk of Court shall enter the warrant into the statewide case management system promptly upon receipt. Upon such entry, the case shall be deemed "filed".
 - b. The Clerk of Court shall promptly scan all warrants, orders, motions and other documents relating to a criminal matter into the existing computer case management system, to be available for viewing by all authorized users.
 - c. The Clerk of Court or his/her designee shall attend and provide appropriate staffing for all scheduled General Sessions proceedings with the exception of probation violations and bond hearings unless specifically requested to attend by the Solicitor or his designee.

- d. At the conclusion of the matter, the Clerk of Court shall promptly and accurately enter all information relating to the disposition of each case into the computer case management system, to include entering and scanning information from the following: sentence sheets, dismissals, bench warrants and all documents relating to the disposition of a case. This shall be accomplished immediately or as soon as possible thereafter.

3. REPRESENTATION: The Greenville County Office of Indigent Defense shall screen all incarcerated defendants for appointment of a lawyer.

- a. In the event a defendant is released from jail prior to screening, The Office of Indigent Defense shall contact all such Defendants within 30 days of their release from incarceration and notify them of their right to apply for appointed counsel with the Office of Indigent Defense.
- b. Defendants released from incarceration who do not intend to represent themselves shall, as a condition of bond issued by all Magistrates, Municipal Judges and General Sessions Judges, either retain a lawyer or report to the Office of Indigent Defense within thirty (30) days of release to be screened for appointed counsel.
- c. If a defendant has neither retained a lawyer nor received appointed counsel within 60 days of his date of arrest, the Solicitor's Office may summons such defendant before a General Sessions Judge for the issuance of an Order notifying the defendant 1) of his right to counsel, and 2) that the State will be permitted to set the defendant's case for trial after sixty (60) additional days whether the defendant has legal representation or not.
- d. Upon notification by the Solicitor's Office that an incarcerated defendant has remained in jail for 60 days or more without obtaining either retained or appointed counsel, the Office of Indigent Defense shall again promptly contact such defendant to determine if he/she requests and is eligible for appointment of counsel.
- e. Defense lawyers shall notify the Solicitor's Office in writing of their representation of defendants with General Sessions charges. They shall specify, using warrant numbers, what charges the representation is limited to as well as any other limitations such as for bond hearing or preliminary hearing only. Defense lawyers may be relieved of representation only by Order of a Circuit Judge,

with notice provided to the Solicitor's Office before the matter is brought before the Court, or pursuant to section 3h.

- f. Defendants incarcerated within the South Carolina Department of Corrections are presumed qualified for the services of appointed counsel for representation on pending matters in the Court of General Sessions, and the Office of Indigent Defense shall so appoint, subject to the provision in paragraph g regarding rescreening.
 - g. If a defendant has been qualified to receive appointed counsel, counsel shall continue with the representation until the conclusion of the case, even if the defendant has been released from incarceration. However, appointed counsel may report specific information to the Office of Indigent Defense which suggests the need for screening on a case-by-case basis. Upon receipt of this information, the Office of Indigent Defense may screen the defendant (at the discretion of the Office) with proper notice to the defendant. The presumption is that once a defendant qualifies, he/she is entitled to receive the services of appointed counsel unless removed by the Office of Indigent Defense for specific and good cause shown, and with proper notice to the defendant, or removed as provided in Section 3,h. If a defendant is re-screened and found not to qualify, the Office of Indigent Defense shall promptly notify the Solicitor in writing.
 - h. Upon discovery that the appointed counsel has a conflict of interest in representing a defendant to whom he/she has been appointed, the appointed counsel shall immediately notify the Office of Indigent Defense in writing. The Office of Indigent Defense shall promptly re-assign the case and notify the defendant, the new attorney and the Solicitor in writing.
4. **BOND HEARINGS:** All bond hearings shall be conducted via video conferencing absent unique and unusual circumstances, pursuant to previous Order of the Chief Justice. The Solicitor shall designate a specific person on his staff who shall be the contact person for all bond matters subject to this section.
- A. Initial bond hearing or reconsideration
 - i. Incarcerated defendants who want to appear before the General Sessions Court for an initial bond hearing, or for reconsideration of a bond set by magistrate or municipal judge must file a written motion with the Clerk of Court and serve a

copy upon the Solicitor's Office pursuant to the following procedure. For the defendant's first request for a reduction or reconsideration of a bond initially set by a magistrate or municipal judge, no allegation of change in circumstance shall be required.

- ii. Motions for Bond (in the case of initial consideration) and Motions for reduction or reconsideration of bond set initially by magistrate or municipal judge shall be filed with the Clerk of Court and thereafter served upon the Solicitor's Office.
- iii. If the parties are able to reach an agreement, all Consent Orders for Reduction of Bond shall be presented for signing to either the Administrative Judge for General Sessions or to any Presiding Judge for this Circuit.
- iv. Failure of the parties to reach an agreement on the motion shall result in the Solicitor's Office scheduling a hearing before a Presiding Judge. Hearings for Motions filed and served before Tuesday by 5:00 p.m. shall be heard on the Friday of that week unless an alternate day is required by court request or the court schedule, assuming 1) there is a term of General Sessions Court scheduled or a Circuit Judge is available to preside, and 2) there has been sufficient time for compliance with the Victim's Rights Act.
- v. If circumstances occur which prevent the motion from being scheduled in this manner, or if the motion is filed and served after 5:00 p.m. Tuesday, the Solicitor shall set the hearing at the next available bond hearing date as outlined herein.
- vi. A defendant who has been heard on a Motion for reduction or reconsideration of bond set initially by magistrate or municipal judge may file a subsequent reconsideration motion only upon certification, contained in the body of the motion, that there has been a material change of circumstances affecting the conditions of the existing bond or the status of the charges against the defendant. This certification shall enumerate the facts and circumstances relied upon in claiming any material change of circumstances. Any Bond Motion shall be served upon the Solicitor, and delivered to the Chief Administrative Judge for General Sessions. The Chief Administrative Judge for General Sessions shall determine whether the alleged change of circumstances merits a subsequent hearing. If the Judge finds that a subsequent hearing is warranted, he shall notify the Solicitor's Office who shall then schedule a hearing

on the next available date, providing proper notice as indicated above.

B. Motion To Be Relieved On Bond

- i. A surety desiring to be relieved on a bond shall file with the Clerk of Court an Affidavit and Motion To Be Relieved On Bond (Court Administration form SCCA/635 or its successor). At the same time, the surety shall also file with the court an Affidavit which sets forth the specific factual conduct that violates the terms and conditions of the bond.
- ii. Once filed, the surety shall immediately serve a copy of the Motion and attachments, upon the defendant and his/her attorney, if any.
- iii. If the defendant has been surrendered to a detention facility by the surety, the surety must file the Affidavit and Motion To Be Relieved on Bond within twelve (12) hours of the surety's surrendering of the defendant, and the surety must serve the completed package per item ii above within twenty-four (24) hours, excluding weekends. These deadlines also apply if the surety places a hold on a previously incarcerated defendant for purposes of this motion.
- iv. The Clerk of Court shall prepare a docket for such hearings, scheduled on regular bond hearing dates, which shall contain the name of the defendant, the warrant number(s) associated with the subject bond, the name of the surety and name of the defendant's attorney, if any. The Clerk of Court shall forward this docket to the Solicitor's Office at least two (2) working days prior to the scheduled hearing. The Clerk of Court shall also notify the surety of the date and time of the hearing. The surety shall notify the defendant and his/her attorney of the scheduled hearing as soon as possible. Prior to the commencement of the hearing, the surety shall present proof of service of the Affidavit and Motion on the defendant and the defense attorney, if any, as well as proof to the court that the defendant and the defense attorney, if any, were properly notified of the hearing date and time.
- v. In a Motion To Be Relieved On Bond, the surety is the moving party, and as such, has the burden of proof. If the surety is a corporation, the surety must be represented by an attorney at the motion hearing. The Solicitor's designee shall call the cases on the scheduled hearing date.

5. **CASE FILES:** All Law Enforcement agencies operating within Greenville County shall provide their case reports, including all witness statements and other documentation included in the law enforcement case file, to the Solicitor's Office within 45 days of the arrest of the Defendant. An extension may be granted by the Solicitor or his designee on an individual case basis upon good cause shown.
6. **DISCOVERY:** Discovery packets shall be prepared and provided by the Solicitor's Office to the defense as is prescribed by the South Carolina Rules of Criminal Procedure upon proper motion.

B. Disposition of Cases

1. **CASE TRACKING SYSTEM:** Upon receipt of a warrant from the Clerk's Office, the Solicitor's Office will assign the case to an Assistant Solicitor, and assign a case dispositional track of 9, 10, 11, or 12 months, depending upon the nature of the charge and the expected time needed to dispose of that particular type of charge. The begin date for the track is the "filing date" of the warrant (See Section A.2. above).
 - a. The case dispositional track will set deadlines for the
 - 1) written plea offer by the State to defendant;
 - 2) entry of guilty plea and
 - 3) scheduling of jury trial/disposition.
 - b. These deadlines will be specific to the assigned dispositional track as follows. All deadlines are calculated from the filing date of the warrant in the case management system (See Section A.2. above).
 - i) 9 month track - Written plea offer due in 120 days
Guilty plea must be entered in 210 days
Jury trial scheduled on or after 270 days
 - ii) 10 month track - Written plea offer due in 150 days
Guilty plea must be entered in 240 days
Jury trial scheduled on or after 300 days
 - iii) 11 month track - Written plea offer due in 180 days
Guilty plea must be entered in 270 days
Jury trial scheduled on or after 330 days
 - iv) 12 month track - Written plea offer due in 210 days
Guilty plea must be entered in 300 days
Jury trial scheduled on or after 365 days

2. PLEA OFFERS: The Solicitor's Office shall extend a written proposal for disposition to the defense attorney, or the *pro se* defendant, within the specified time period as it relates to the assigned disposition track. The written plea offer shall contain the specified deadline in which the plea must be entered.
 - a. Defense attorneys shall submit a written response (to include fax or e-mail) to the plea offer no later than 30 days prior to the plea offer deadline.
 - b. In the event of a written response of intent to accept the plea offer, the Solicitor's Office shall provide to the defense attorney or the *pro se* defendant within 10 days after receipt of intent to accept a plea offer, the sentencing sheets, restitution orders, and other necessary paperwork to conclude the plea.

3. DISPOSITION: A defendant who accepts a plea offer shall enter the guilty plea pursuant to the deadlines established in the plea offer letter. Failure to do so will result in the offer being withdrawn at the discretion of the Solicitor or his designee, and the matter being set for jury trial.
 - a. If the defendant, or his/her attorney, submits complete and properly executed plea documents at least 3 business days in advance of the scheduled guilty plea date, the Solicitor's Office shall make every effort to give priority to the defendant's case on the assigned plea day. Priority scheduling may include placing the defendant's case in the opening business of the work day or placing an incarcerated defendant on priority transport from the jail so his/her case may be called early in the day.
 - b. If the Defendant's plea is not reached during the scheduled plea date through no fault of the defendant or his lawyer, the Defendant shall have the opportunity to plead guilty pursuant to the terms of the plea agreement until the expiration date of the plea deadline, or the following term of Court if the offer has expired.
 - c. However, if a defendant's case is not disposed of in plea court due to some faulty action or inaction of the defendant or his attorney, the defendant shall receive one (1) strike. The guilty plea shall be rescheduled with proper notice to the defendant and defense attorney.
 - d. If the defendant's case is not disposed of on the subsequent date due to some faulty action or inaction of the defendant or his attorney, the defendant shall receive the second strike. At that time, at the



discretion of the Solicitor or his designee, the plea offer will be revoked and the case placed on the trial docket upon expiration of the plea deadline regardless of whether the defendant has accepted the plea offer and/or signed the plea paperwork. Examples of faulty action or inaction include, but are not limited to, when:

- i. The defendant does not appear in court,
 - ii. The defendant or his attorney chooses to postpone the plea for any reason, including anticipation of pleading guilty at a later term of Court,
 - iii. The defendant or his attorney arrives in the plea courtroom after 9:00 a.m., leaves before court is adjourned for the day, or fails to attend court on his or her assigned plea day.
- e. It is anticipated that matters not resolved by guilty plea herein may be set for jury trial within sixty (60) to ninety (90) days of the expiration of the guilty plea deadline.
- f. Nothing in this Administrative Order shall be construed as prohibiting the Solicitor's Office from setting cases for trial prior to the expiration of the plea deadline established in the tracking system for any reason including, but not limited to, when a defendant or his lawyer have indicated the case will be a trial, the defendant is in jail, or to accommodate witness schedules.
4. **DEVIATION:** The assignment of the tracks will be done at the sole discretion of the Solicitor's Office and deviation from the specifications of the tracking system may be granted by the Solicitor or Deputy Solicitor upon written application and proper showing. If applicable, such shall also extend the response time provided therein for the defendant and defense attorney.

C. General Sessions Court Practice

1. **PLEA COURT:** All contract attorneys and public defenders, as well as private defense attorneys who so request, will be assigned one day per term of court to attend and participate in plea court. Defense counsel has an affirmative obligation to insure that conflicts in scheduling do not occur which interfere with their assigned plea day. The Solicitor shall also avoid setting a jury trial on an assigned attorney's plea day unless it is necessary.
 - a. The Solicitor's Office shall send notices at least 5 days in advance alerting defendants to attend court. Defendants shall appear at the time specified in the notice, and remain until excused. Bench

warrants may be issued for the arrest of defendants who do not appear in court after proper notification has been sent for two court terms, or defendants who do not remain in court on their court date until excused.

- b. The Solicitor's Office shall provide necessary personnel and paperwork in the plea courtroom by 8:45 a.m. to handle a guilty plea for all defendants who are sent notices to appear in plea court, or address other business as required.
 - c. In consideration of the limited court time and the need to use it efficiently, defense attorneys are expected to attend plea court for the entire day on which they are assigned, and to make every effort to avoid scheduling conflicts with other courts. Pursuant to this Order, defense attorneys are "called to appear" in General Sessions on each of their assigned plea days, so that they may not be excused to attend any other court except those with priority over General Sessions as provided in Rule 601, SCACR. Unless excused by the Chief Judge for Administrative Purposes or the Presiding Judge, defense attorneys should arrive on their assigned plea day by 8:45 a.m. and shall remain until their business is complete, until court adjourns for the day, or until they are excused.
 - d. If a contract attorney or public defender is unable to attend plea court on his or her assigned day, the attorney shall choose another day to attend plea court that term. Defense attorneys shall notify the Solicitor's Office as soon as they become aware of an unanticipated or unavoidable conflict with their plea day or, in the case of illness or other sudden emergency, as soon as is reasonably practicable. If there is insufficient time to send proper notification to defendants for the upcoming term, the defense attorney shall attend plea court 2 days the following term of court.
2. TRIAL COURT: The Solicitor's Office shall prepare and publish a docket of all cases that will be called for trial during a term of court.
- a. The Solicitor's Office will publish the trial docket on its website at least 14 days prior to the term of court and will also distribute it by facsimile transmission or US Mail to those attorneys listed upon it.
 - b. It will be the responsibility of all defense attorneys who have clients on the trial docket to notify their clients to be present. The Solicitor's Office will also send notice to the defendant at the address listed on the bond form, and to the last address known to the Solicitor's Office if different.

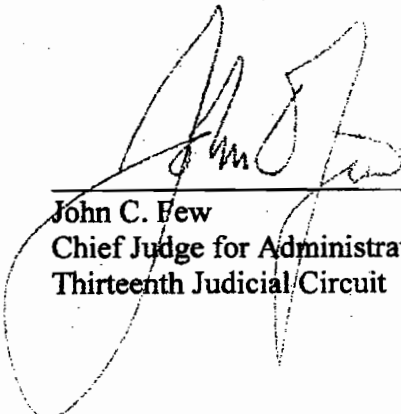


- c. On the day their cases are set, all defense attorneys and prosecutors shall appear in trial court at 9:00 a.m. and shall remain in court until their case is disposed of or they are excused by the trial court coordinator of the Solicitor's Office or the presiding trial court judge.
- d. Defendants on the trial docket who choose to plead guilty must do so before the trial judge and may not invoke a previous plea offer or receive a favorable recommendation from the State absent the consent of the Solicitor or Deputy Solicitor. However, just as a defendant and his attorney have the right to petition a sentencing court for leniency, the State, law enforcement, and/or victims shall likewise have the right to argue for a sentence that does not reflect the benefit the defendant would receive for taking responsibility for his/her actions prior to setting the case for trial.

D. Intention of the Order

1. This Order is designed to facilitate the supervision of the administration of the Courts of General Sessions in Greenville County and the orderly disposition of cases therein, and may be amended by supplemental Order as necessary.
2. As this Order is intended to be administrative in nature, nothing contained herein shall be construed by this Court or any other Court as a reason for a case to be judicially dismissed.

IT IS SO ORDERED.



John C. Few
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

September 24, 2007

Greenville, S.C.