

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS

MARC STICHENS

2008 SEP 26 AM 10: 09

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY

**AMENDED ADMINISTRATIVE ORDER**

Pursuant to the authority vested in the 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 adopted by this Court for Spartanburg County.

The Administrative Order of Judge J. Mark Hayes dated October 29, 2004, which has managed General Sessions' charges moving through the system since January 1, 2005, is modified to address additional changes to the system. After September 15, 2008, the Solicitor will no longer determine the General Sessions Docket. This authority is voluntarily transferred by the Solicitor to the Chief Administrative Judge for General Sessions for an indefinite period of time as a pilot program in the Seventh Judicial Circuit.

This Court orders that all General Sessions cases in which an arrest is made after December 31, 2004, will be processed through the Court under the principles set forth in this order. In accordance with the requirements of this system the following rules are adopted.

The Court directs that in each General Sessions case arising before the various Magistrates and Municipal Courts of the county, the following procedure is to be followed:

**A. Bond Hearing**

1. Magistrates and Municipal Judges are required to transmit warrants to the Spartanburg County Clerk of Court within fifteen (15) days as required by Rule 3 (a) of the South Carolina Rules of Criminal Procedure.
2. All defendants will be screened by the Magistrate at their bond hearing to determine if they qualify for appointment of counsel. The screening will be conducted by the on-duty magistrate for all defendants, including those charged by other jurisdictions.
3. The defendant will be served with a Notice of Initial Appearance at his/her bond hearing. The date of the Initial Appearance will be assigned in accordance with the schedule prepared and distributed by the Chief Administrative Judge. The defendant's attendance at the initial appearance will be made a condition of that defendant's bond by noting this under Section III of a Personal Recognizance

Bond Form or Section D of a Surety Bond Form. At the time that the initial appearance is set, the Judge setting the defendant's bond will inform the defendant, orally and in writing, of his/her right to a Preliminary Hearing. Dates for any Preliminary Hearings will be scheduled at the defendant's initial appearance.

**B. Initial Appearance**

1. The initial appearance will be held at the Spartanburg County Judicial Center. Roll call will be conducted as necessary to ensure attendance. The Clerk of Court is authorized to issue a bench warrant for any defendant who fails to appear and has not been excused by the Administrative Judge.
2. There will be no continuances of the Initial Appearance.
3. A preliminary hearing, if desired, must be requested in writing on or before the Initial Appearance date.
4. The following issues will be addressed at the Initial Appearance:
  - a) If a defendant qualifies for Court appointed counsel and has not retained private counsel by his/her initial appearance, the Public Defender will continue to represent the defendant.
  - b) If a defendant qualifies for a Public Defender but has retained private counsel prior to the initial appearance date, that attorney must -file a general notice of representation with the Clerk of Court and serve a copy on the Solicitor's Office. The Public Defender will be relieved of representation at that time.
  - c) If a defendant did not qualify for a Public Defender, and private counsel has been retained, then a letter of representation must be filed with the Clerk of Court and served on the Solicitor's Office.
  - d) Unrepresented defendants may apply for a Public Defender at the Initial Appearance. The Public Defender's office will take applications and if approved, the Public Defender will be assigned that day.
  - e) Defendants who remain unrepresented at the Initial Appearance must appear on their Second Appearance. Returnable 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 by their bond until their case is disposed.

- f) Any mental health issues.
  - g) Any issues related to the analysis of drugs or other types of evidence.
  - h) Any other issue that may affect the timing of the disposition of the criminal case including issues related to conflicts of representation.
5. In all cases where the defendant is represented by the Public Defender, the Public Defender will assess the case at the Initial Appearance for possible conflicts of interest and resolve those conflicts readily identifiable on that date. The Clerk of Court will, upon Affidavit of Conflict, appoint the next attorney from the conflict list and advise the defendant of the identity of his/her attorney. The newly appointed counsel will also be notified on that date and a preliminary hearing will automatically scheduled for the defendant.
6. It is the intent of this Administrative Order that the Solicitor and defendants' attorneys exchange discovery as early in this process as possible. Accordingly, when feasible, defendants' attorneys and the State will enter into negotiations concerning pleas at the Initial Appearance. Any plea offer(s) must be communicated to defendant at least fourteen (14) days prior to defendant's Second Appearance and accepted or rejected prior to defendant's Second Appearance. Likewise, the decision not to negotiate or extend a plea offer shall be communicated to defendant by the Solicitor at least fourteen (14) days prior to defendant's Second Appearance.
7. By the Initial Appearance, the Solicitor will provide discovery to defendant(s) or defendant(s) attorney of record in all cases in which the appropriate motions have been filed with the Clerk of Court and served on the Solicitor's Office.
8. All law enforcement agencies are required to forward all existing case reports; investigative reports; and, incident reports, as well as other discovery, to the Solicitor's Office within thirty (30) days of a warrant being issued, but not later than fifteen (15) days prior to defendant's Initial Appearance, if the Initial Appearance is less than thirty (30) days from the date the warrant is issued.

If the law enforcement agency fails to provide discovery within this

deadline, the warrant(s) may be dismissed without prejudice by the Chief Administrative Judge for General Sessions or his designated judicial representative.

Notification will be provided to the defendant, or defendant's attorney of record, and defendant's bondsman that defendant is not required to appear at the Initial Appearance when the warrants are dismissed. Prior to the issuance of another warrant after dismissal without prejudice of the original warrant for failure to timely comply with discovery transmittal, the requesting law enforcement agency must establish good cause for its initial failure to timely transmit discovery to the Chief Administrative Judge for General Sessions or to another judicial representative to whom that authority has been delegated. Failure to present good cause will result in the refusal to issue the second warrant.

9. At the Initial Appearance the case will be assigned to a 180 day track. Murder cases, Criminal Sexual Conduct cases, and Criminal Sexual Conduct with Minor cases will not fall within the guidelines of this order except that they should be resolved within one year absent court approved deviation. In addition, the Chief Administrative Judge must approve any deviation from the 180 day track for other cases.
10. At the 2nd Appearance the court will inquire whether a matter is for plea or for trial. If the matter is a plea, the court will assign a date and time for the plea hearing to be held. All sentencing sheets and other paperwork must be completed by the parties prior to the day the matter is set for a plea hearing.
11. If the plea negotiations are unsuccessful at the Second Appearance the case will be scheduled for trial before one of the presiding General Sessions judges. Except for good cause shown to the Chief Administrative Judge, the Chief Administrative Judge must hear any plea taken after the case is scheduled for trial or such information will be provided to the court as may be required by the Chief Administrative Judge for General Sessions prior to the taking of the plea.
12. Cases may be resolved at any time prior to the specified guidelines.

#### C. Preliminary Hearing

1. Preliminary hearings will be held at the appropriate Court issuing the charge against the defendant.

2. The Solicitor's Office will represent the State at all preliminary hearings.
3. Continuances of preliminary hearings may be granted only in extreme circumstances.
4. The defendant or his/her attorney must be present to be given a preliminary hearing. If a hearing has been requested in a case that involves an individual affiant, the failure of that affiant to appear and give testimony will result in the dismissal of the warrant if the defendant and/or his lawyer appear and make the appropriate motion.

D. General Sessions Court Practice

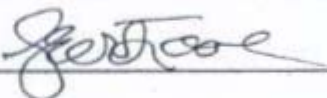
1. Presiding Judges will be available from 9:00-9:30AM on Tuesday through Friday of each General Sessions Court term to hold case status conferences with attorneys for the State and the defense. Either party may request conferences.
2. At least fourteen (14) days before each term of court, the Chief Administrative Judge of General Sessions will prepare and publish a docket of all cases that are subject to call during that court term. Making the docket available in the Clerk of Court's Office or placement on the Clerk's internet site shall effect publication. The General Sessions Court Coordinator will also distribute the docket to those attorneys listed upon it by either Fax, US Mail, hand delivery, or electronic 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. The Chief Administrative Judge will allow the Solicitor's Office ten percent (10%) of the trial docket slots for priority cases, defined as: those cases having a high profile; where the community is at risk regarding a particular defendant; or, interstate detainer act cases, etc.
3. To facilitate orderly handling of the existing pending cases prior to the implementation of this Administrative Order, there is created within the Clerk of Court's Office, the position of General Sessions Court Coordinator.

4. The Chief Administrative Judge for General Sessions will have the right to require status conferences on all cases that have passed the deadline for disposal on such forms as may be required by the Court.

AND IT IS SO ORDERED.


Dated:

Chief Justice South Carolina Supreme Court



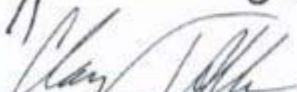
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We So Move and Consent:



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7th Circuit Solicitor



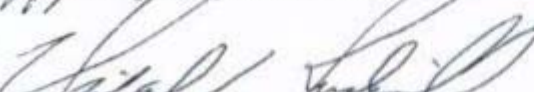
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7th Circuit Public Defender



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Spartanburg County Clerk of Court



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Spartanburg County Bar, General Sessions Representative

MARC KITCHENS

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