

SUPERIOR COURT

NEW CASTLE COUNTY

CRIMINAL CASE

MANAGEMENT PLAN

*The following Plan is adopted by
the Superior Court of the State of Delaware
in order to ensure the orderly and prompt
disposition of criminal cases in New Castle County.*

TABLE OF CONTENTS

A.	Indictment	4
B.	Initial Case Review	4
C.	Pretrial Motions	6
D.	Final Case Review	6
E.	Trial Scheduling Order	8
F.	Trial Calendar Call	9
G.	Trial	10
H.	Fast Track	11
I.	Sentencing	12
J.	Motions Calendar	12
K.	Diversion	12
L.	Pleas by Appointment	12
M.	Continuances and Rescheduling	12
N.	Special Assignment Cases	13
O.	Duties of the Office Judge	13
P.	Scheduling of Specially Assigned Civil and Criminal Cases	13
Q.	Courtroom Management	14

R. Scheduling Goals and Criteria 14

S. Goals 15

Exhibits

1. Criminal Case Flowchart
2. Fast Track and Diversion Flowchart
3. Violation of Probation Schedule

**New Castle County
Criminal Case Management Plan**

A. Indictment

Prior to receiving a case review date, the defendant will be required to have counsel of record established by the filing of a Rule 10(c) form or the entry of an appearance in open court or a determination of the defendant's *pro se* status. The Prothonotary shall provide a case review date to counsel to include on the 10(c) form. At present the time between indictment and arraignment is approximately ten days, and the initial case review is generally scheduled 21 days after arraignment.

When the 10(c) form is filed, the Prothonotary will provide to the individual filing the document the automatic discovery that has been filed with the Prothonotary's Office by the Attorney General (AG). Only counsel or their representatives may file a 10(c) form. The 10(c) form must be filed with the Prothonotary in the same manner as other pleadings.

If the 10(c) form is filed in open court or if counsel enters an appearance at arraignment or subsequent court proceeding, counsel will be required to obtain the automatic discovery documentation from the Prothonotary's Office immediately following that court appearance.

B. Initial Case Review

Every case will be scheduled for a minimum of two case reviews unless disposed of earlier. Case reviews will be scheduled on Mondays on six calendars, three at 9:15 a.m. and three at 2:00 p.m. There will be a general call for both the morning and afternoon sessions, at which time the defendants will be advised of the courtroom to which they are to report and the judge assigned to their case. The Prothonotary will attempt to group together cases assigned to a specific defense counsel.

Prior to the Initial Case Review (ICR), the State shall have provided all automatic discovery or to have responded to written Rule 16 requests made by the defendant. Within a reasonable time before the ICR, the State shall provide a substantive plea offer to defense counsel, who shall inform the defendant of the offer. The Court expects the ICR to be utilized by counsel to discuss the status of the case with the client and the plea offer that has been tendered by the Attorney General. The Court encourages the Public Defenders (PD) Office to use the videophone technology available in their office to accomplish this contact.

Providing timely, substantive and realistic plea agreements, and communicating these offers to defendants prior to a case review is critical to any effective case management effort. Compliance in this area will be inquired into routinely by the Court. It is recommended that appropriate management oversight and review systems be implemented in both the AG and PD offices to ensure compliance with the Court's expectations.

If the parties cannot agree to a plea, counsel for the parties are expected to set forth the circumstances pertaining to any plea offer made by the State and address the following:

- Status of discovery;
- Any particular or unique problems that may require judicial assistance;
- Any outstanding motions that need to be addressed.

Where necessary, the Case Review Judge will establish discovery deadlines and issue case management orders. When possible, written confirmation to counsel of the oral order should be prepared by the judge and filed with the Prothonotary. If significant problems exist, the case shall be referred to a "problem case" calendar handled by the Superior Court Masters, who, in consultation with the Criminal Administrative Judge, shall have the responsibility to monitor the case until the identified issue is resolved.

If requested by counsel, and with sufficient justification, the Case Review Judge may order that an additional ICR be scheduled prior to the Final Case Review (FCR.) Although, this practice is discouraged, it may be allowed if the Court is convinced that such action will assist resolving the case. Such case reviews typically will occur within 3 to 4 weeks, unless additional time is ordered by the Court.

If the matter is not resolved at the ICR, the defendant will be required to sign a notice to appear for a FCR, and will be advised to come to the FCR prepared to make final decisions about the case, since after the FCR significant limitations will be placed on what plea offers will be accepted by the Court. The FCR will occur in approximately 4 to 6 weeks. Counsel are expected to notify the Court at the ICR if there are any scheduling problems with the FCR date.

If a defendant has received two ICRs and problems still prevent moving the case to a FCR, the case will be assigned by the Case Review Judge to a "problem case" calendar handled by the Superior Court Masters in consultation with the Criminal Assignment Judge. Once resolved, an FCR date will be established by the Criminal Assignment Judge.

In cases where unavoidable extended delay is anticipated, upon application by either party to the Criminal Assignment Judge or his/her designee, a case may be removed from the pending list and placed in a "deferred" status. Such cases will require submission of written status reports every 30 days or as ordered by the Criminal Assignment Judge. Upon application of either party or *sua sponte* the Criminal Assignment Judge will hold an office conference to consider making the case "active." Absent exceptional circumstances, no cases involving incarcerated defendants will be placed on this list.

C. Pretrial Motions

All pretrial motions under Rules 12, 14, 16, and 41 of the Superior Court Criminal Rules must be filed within ten days following the ICR unless otherwise ordered by the Court. The motion must state with particularity the specific legal and factual grounds counsel in good faith believe support the motion, as well as any controlling legal authorities. Failure to comply with this requirement may result in the motion being denied without further hearing or argument. In addition, any applicable motion filed after the deadline must include a motion for leave to file out of time, which must specifically set forth the justification for the delay. The Court will make every effort to resolve all pre-trial motions before the FCR.

All routine criminal motions filed prior to close of business on Wednesday will be placed on the upcoming Monday's motion calendar. Those motions will be the responsibility of the Office Judge. Motions requiring a hearing will be scheduled for a hearing and decided by that judge.

D. Final Case Review

This is the final courtroom event prior to setting the case for trial. Before this proceeding, the Court expects counsel to have thoroughly reviewed with the client the plea offer extended by the Deputy Attorney General (DAG) and the consequences of accepting or rejecting that plea. Counsel for both sides shall have thoroughly discussed the case and have made a good faith effort to resolve the matter without the necessity of a trial.

At the FCR, counsel shall advise the Court of the following:

1. Details of the plea agreement that has been offered and rejected by the defendant. When possible, the assigned DAG will participate in this colloquy. Counsel are also encouraged to set forth on the record any specific reasons for the defendant's decision to reject the plea offer. A copy of the plea agreement will be filed with the Court reflecting the rejection by the defendant. When possible, the assigned DAG will participate in this colloquy.
2. The status of any outstanding motions or discovery disputes;
3. Any evidentiary problems that either side reasonably anticipates will arise during the trial;
4. The expected number of trial days and any anticipated witness problems;
5. That counsel have thoroughly reviewed with the client the plea offer that has been made by the State and have advised the client of the consequences of rejecting the offer;
6. That there are no conflicts regarding representation (including issues of single representation of multiple defendants) that may result in change of counsel prior to trial.

If the case is not resolved, the judge will personally address the defendant in open court and advise the following:

1. Absent exceptional and unforeseen circumstances, the plea offer that has been extended by the Attorney General is the best and final offer that will be made by the State.
2. Absent exceptional and unforeseen circumstances and for good cause shown, the Court will not accept a plea bargain after this date.
3. If the defendant desires to enter a plea on the day of trial, the Court will accept a plea only to all of the charges set forth in the indictment/information with no limitation placed upon the Court regarding sentencing.
4. The exact date of the trial will subsequently be provided to counsel (or to a *pro se* defendant) in a scheduling order, issued by the Criminal Assignment Judge. The defendant will receive notification from counsel of the exact date of the trial and will receive a subpoena. If the defendant fails to appear on the date as indicated by counsel or subpoena, a warrant will be issued for the defendant's arrest. Further, the defendant will be required to sign a document certifying his/her mailing address and phone number before leaving the FCR.

If counsel set forth reasonable justification to warrant additional time to attempt to resolve the case, the case review judge may order the scheduling of a second FCR. Any subsequent request for additional case reviews or a continuance, however, must be approved by the Criminal Assignment Judge or the Criminal Administrative Judge.

E. Trial Scheduling Order

Following the Final Case Review in each case, the Criminal Assignment Judge will issue a Trial Order setting forth the following information:

- Date and length of the trial
- Assigned Judge (if the case is a Category 1 case)
- A requirement that counsel take all necessary steps to notify and/or subpoena witnesses and the defendant of the trial date and to advise the assigned judge and Director of Case Scheduling within two weeks of the date of the order if there are any witness problems. Unless otherwise advised by the Court, notification of witness availability problems within this two week time frame will automatically result in the rescheduling of the trial. Failure to

notify the Court of any witness concerns during this time will be a factor that the Criminal Assignment Judge will consider in any subsequent requests for continuance and/or dismissal;

- That all counsel are required to be present at the call of the trial calendar on the Thursday prior to trial at 9:15 a.m.
- That the defendant and counsel must attend the calendar call on the day of trial at 9:00 a.m.
- That all motions filed in a Category 1 case should be directed to the Assigned Judge; and all motions filed in a Category 2 case should be directed to the Prothonotary and scheduled onto the Monday Motions calendar. Requests for continuance of the trial date, requests to permit a plea to be entered, or motions for suppression are specifically excluded from this provision.

In addition, the following rules govern trial scheduling:

- Any request to continue or reschedule the trial date or to allow a plea to be entered once the Trial Order has been issued must be directed in writing on the Court-approved form to the Criminal Assignment Judge or the Criminal Administrative Judge, with copies to counsel and to the Director of Case Scheduling. Only the Criminal Assignment Judge or the Criminal Administrative Judge may grant such requests.
- Counsel assigned to Category 2 cases are required to be prepared to proceed on the scheduled trial date and any subsequent date during that trial week (Tuesday thru Friday). If a Category 2 case is unable to proceed to trial on its assigned date on a Tuesday due to unavailability of Judges or courtrooms, the Criminal Assignment Judge will attempt to schedule the trial later that week and advise counsel and the defendant of the new date. It is anticipated that all trials scheduled that week will be tried or resolved that week.
- Counsel shall submit to the Assigned Judge in Category 1 cases at least three days before the trial any special *voir dire* they would like the Court to give regarding the matter.

- Scheduling of any individually assigned (specially assigned) criminal case must be coordinated with the Director of Case Scheduling to avoid conflicts. No two criminal cases requiring special jury panels shall be set in any one week. Jury selection in capital murder cases should be coordinated with the Director of Jury Services to start on either Tuesday afternoon or Wednesday morning.

F. Trial Calendar Call

At 9:00 a.m. on the Thursday before the next trial week, the Criminal Assignment Judge, Criminal Administrative Judge or his/her designee will hold a calendar call of all trials (both category 1 and category 2) scheduled for the following week. All counsel shall be present at the call unless previously excused by the Criminal Assignment Judge. The primary objective of the calendar call is to confirm that the trials scheduled are going forward, that appropriate contact has been made with witnesses, victims and the defendant, and to the extent that any problems exist, to attempt to resolve them. If a category 1 case is going to plead because of exceptional circumstances, or is otherwise resolved or unable to go forward, the judge will assign a specific category 2 case to a specific judge.

The Court will establish a trial priority list of all remaining category 2 cases which will be provided to counsel. It is expected that all category 2 cases scheduled for a given trial week will be tried or disposed of that week.

G. Trial

To minimize delaying jury selection, two category 1 cases will begin promptly at 9:30 a.m. These proceedings must begin on time so that the unselected jurors will be available at 10:00 a.m. for selection of the remaining two cases. It is expected that all assigned criminal cases will start by 11:00 a.m. on their assigned trial date. At that time, the priority cases will be notified of the assigned courtroom. Counsel are expected to be in the assigned courtroom at the designated time prepared to proceed with jury selection. If evidentiary or other matters need to be addressed before the trial begins, the jury will be selected first so that the remainder of the panel will be available for other trials. The courtroom assignments will also be posted on the scheduling board near the 10th Street entrance to the Courthouse.

Counsel must notify the Court about any issue that might delay jury selection. Failure to notify the Court as required may result in the Court's deciding that the issue has been waived. While awaiting jury selection, counsel must keep the bailiffs advised as to counsel's whereabouts.

For category 2 cases, counsel and the defendant must report to the courtroom assigned to the Criminal Assignment Judge for the 9:00 a.m. calendar call. They will be advised of the status of the assigned cases, and the defendant will be required to remain in the courtroom until excused by the Criminal Assignment Judge.

The only acceptable plea on the morning of the scheduled trial, absent exceptional and unforeseen circumstances, will be to all the charges set forth in the indictment or information with no limitation placed on the Court regarding sentencing. The Court expects cases that have reached this point to be ready for trial, and counsel should be prepared to proceed and should not expect a plea agreement to be accepted by the Court at this time. Should an indictment be *nolle prossed* by the DAG on the morning of trial, any new charges subsequently brought by information or indictment relating to the same incident will receive a first case review date.

If, on the morning of trial, counsel for both the State and defendant indicate the defendant has decided to plead guilty to all of the charges set forth in the indictment or information, the case will be transferred immediately to the Criminal Assignment Judge for the purpose of accepting the plea and sentencing, if appropriate. The Criminal Assignment Judge will decide if a presentence investigation is necessary.

If a category 1 case is resolved, the top priority category 2 case will proceed immediately before the available judge using the jury pool previously selected if appropriate. The Criminal Assignment Judge will be kept up to date by the Prothonotary case manager as to the trial status of the category 1 cases so that the Criminal Assignment Judge can notify counsel for those cases awaiting trial whether their cases will proceed.

After all assigned cases have proceeded to trial, the Criminal Assignment Judge will establish a tentative trial schedule for the remaining cases on the calendar.

If jury selection and trials proceed in a timely fashion, the Court will advise all counsel, parties and jurors regarding the status of all pending cases no later than 11:00 a.m.

The Criminal Assignment Judge shall ensure that all available resources are used to try all cases assigned for trial that week including available judges assigned to the Civil Division, Drug Court and the Criminal Assignment Judge handling trials in the afternoon, if necessary.

H. Fast Track

Offenders who are on probation to Superior Court and are arrested on new Superior Court charges will be placed on Superior Court's fast track calendar to attempt to resolve both the violation and new charges before the Fast Track judge. The fast track hearing will be

considered the ICR. If the new charges are not resolved by plea or otherwise at the fast track hearing, they will be scheduled for a contested violation of probation hearing and FCR on a Thursday or Friday afternoon calendar. The contested hearing date will also constitute an FCR for the case and it will be promptly assigned a trial date thereafter.

I. Sentencing

Two or three sentencing calendars will be scheduled on Friday of each week. Counsel should advise the sentencing judge if they are in trial with another judge so that their case can be given priority on the sentencing calendar. Any judge who has a sentencing calendar and who is also in trial will conduct the trial either on Friday morning or afternoon (whenever his/her sentencing calendar is not in session.)

J. Motions Calendar

A motions calendar will be handled on Mondays at 1:30 p.m. by the Office Judge. All miscellaneous motions will be addressed at that time. Motions without opposition as noted on the motion by both counsel will be sent directly to the Office Judge for signature without hearing. (Motions for continuances are not to be accepted under this procedure - see Section M below.)

K. Diversion

The Drug Court Diversion program will proceed under the specific guidelines and procedures previously adopted.

L. Pleas by Appointment

The Criminal Assignment Judge, Diversion Judge and Fast Track Judge will have periods of time set aside each week for pleas by appointment. Attorneys are encouraged to use these times to minimize the delay to their clients and themselves and assist in relieving court congestion. An appointment can be made by contacting the judge's secretary. All cases scheduled for disposition in this manner after FCR must be handled by the Criminal Administrative Judge or the Criminal Assignment Judge.

M. Continuances and Rescheduling

All requests for continuances of case reviews, diversions, fast tracks and sentencings must be set forth in writing using the Court's approved form. No letter requests will be

accepted. The forms are to be filed with the Director of Case Scheduling located in the Prothonotary's Office. The Criminal Assignment Judge or the Criminal Administrative Judge will rule on the request. When possible, counsel will be notified of the Court's decision using the state e-mail system, or in the case of requests from private counsel, decisions will be faxed to their offices. Trial continuances will be handled in accordance with the procedures set forth previously in Section E.

Counsel are required to notify the Director of Case Scheduling in writing of any periods of unavailability due to vacation, illness, training or other similar events. Continuances and reschedulings will not be routinely granted when such information is not timely communicated to the Court.

N. Special Assignment Cases

A request to specially assign a criminal case outside of the procedures established by this plan must be directed to the President Judge. The judge assigned to handle that matter will attempt to schedule the trial during the time he or she is scheduled to be trial judge in the rotation schedule in coordination with the Director of Case Scheduling. In addition, a specifically assigned judge shall notify the Criminal Administrative Judge and the Director of Case Scheduling of the trial dates so that judge's availability for regular trials can be considered in the scheduling of other matters.

O. Duties of the Office Judge

The Office Judge shall handle certain civil and criminal duties. Criminal duties include, but are not limited to:

1. Presiding, or finding coverage for, *capias* returns in the absence of the Commissioner.
2. Review of petitions for expungement of arrest records.
3. Review of material witness petitions.
4. Hearing applications for search warrants and reviewing search warrant returns.
5. Swearing in of new grand jurors and presiding over grand jury returns.
6. Review of *pro se* applications where applicant has not been sentenced.
7. Hearing the Monday criminal motions calendar.
8. Review of habeas corpus petitions where petitioner has not been sentenced by another Superior Court Judge.
9. Review of petitions for forfeiture.

P. Scheduling of Specially Assigned Civil and Criminal Cases

Trial Judges

- Each assigned a category 1 case for Tuesday and/or Thursday (if a two day trial);
- Assigned a category 2 case by the Criminal Assignment Judge as judges become available;
- Backup Trial Judge available to do category 2 case if courtroom is available

Violations of Probation

- Violations of probation will be scheduled so as not to conflict with trial; and, will not be scheduled on Mondays due to courtroom limitations and custodial facilities. Each judge will have a fixed weekly time slot to hear violations of probations. (See attached schedule.)

S. Goals

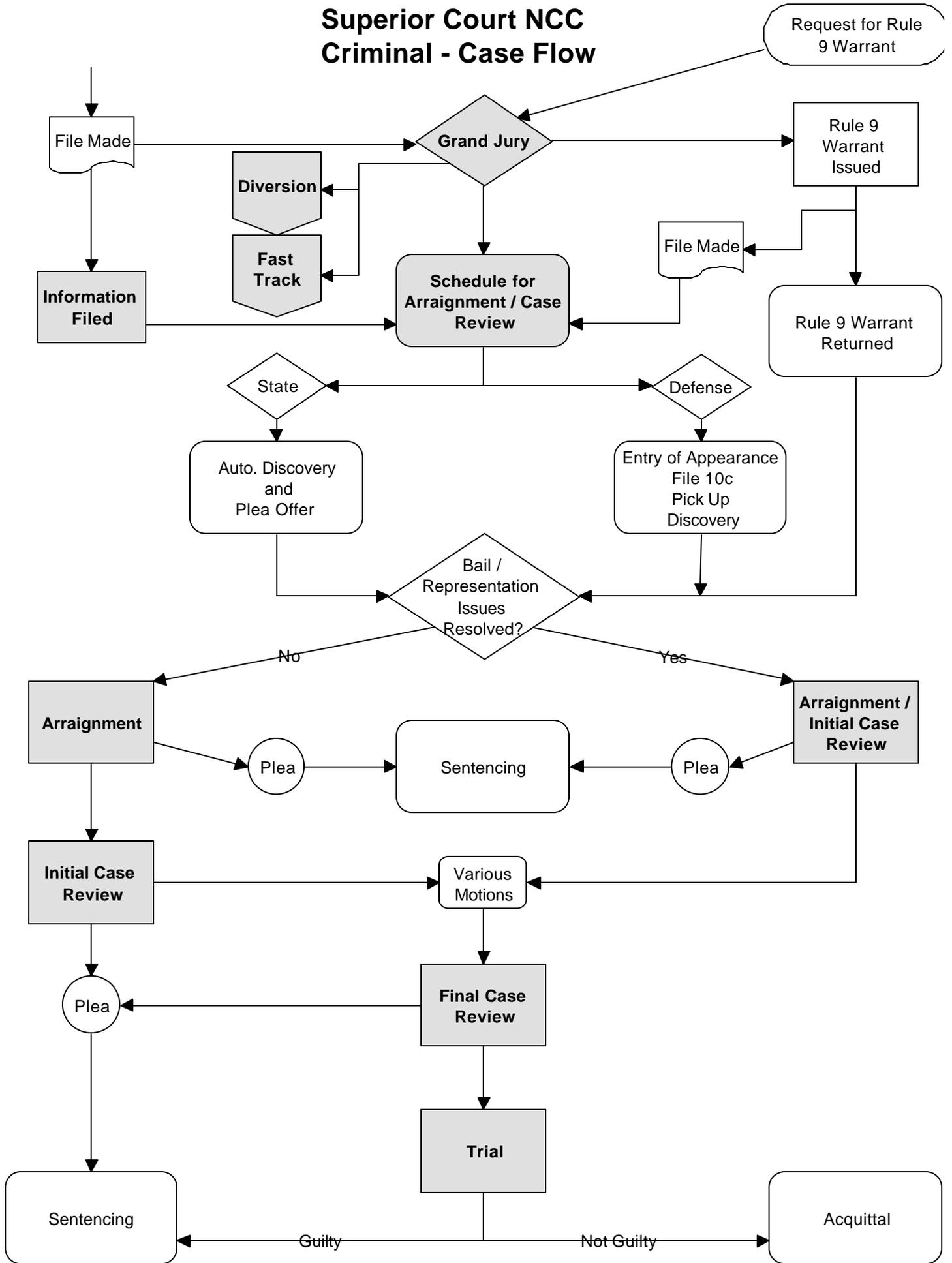
- Four trial judges to handle at least one trial per week;
- Six trials per week minimum;
- No plea better than the one offered at FCR (except for exceptional and unforeseen circumstances);
- No Rule 11(e)(1)(C) pleas accepted after FCR;
- At least two trials begin at 9:30 a.m. every day;
- All trials started by 11:00 a.m.;
- Judge and courtroom designations given to attorneys in advance;
- Assignment of all violent felonies and mandatory sentence drug cases after FCR to a specific judge with a firm trial date and courtroom assignment (Category 1 cases);
- Case review of 180 cases per week minimum (35 to 40 per judge for both the morning and afternoon sessions).

THE ABOVE PLAN IS HEREBY ADOPTED BY THE PRESIDENT JUDGE OF THE
SUPERIOR COURT OF THE STATE OF DELAWARE IN NEW CASTLE COUNTY THIS
____ DAY OF _____, _____ .

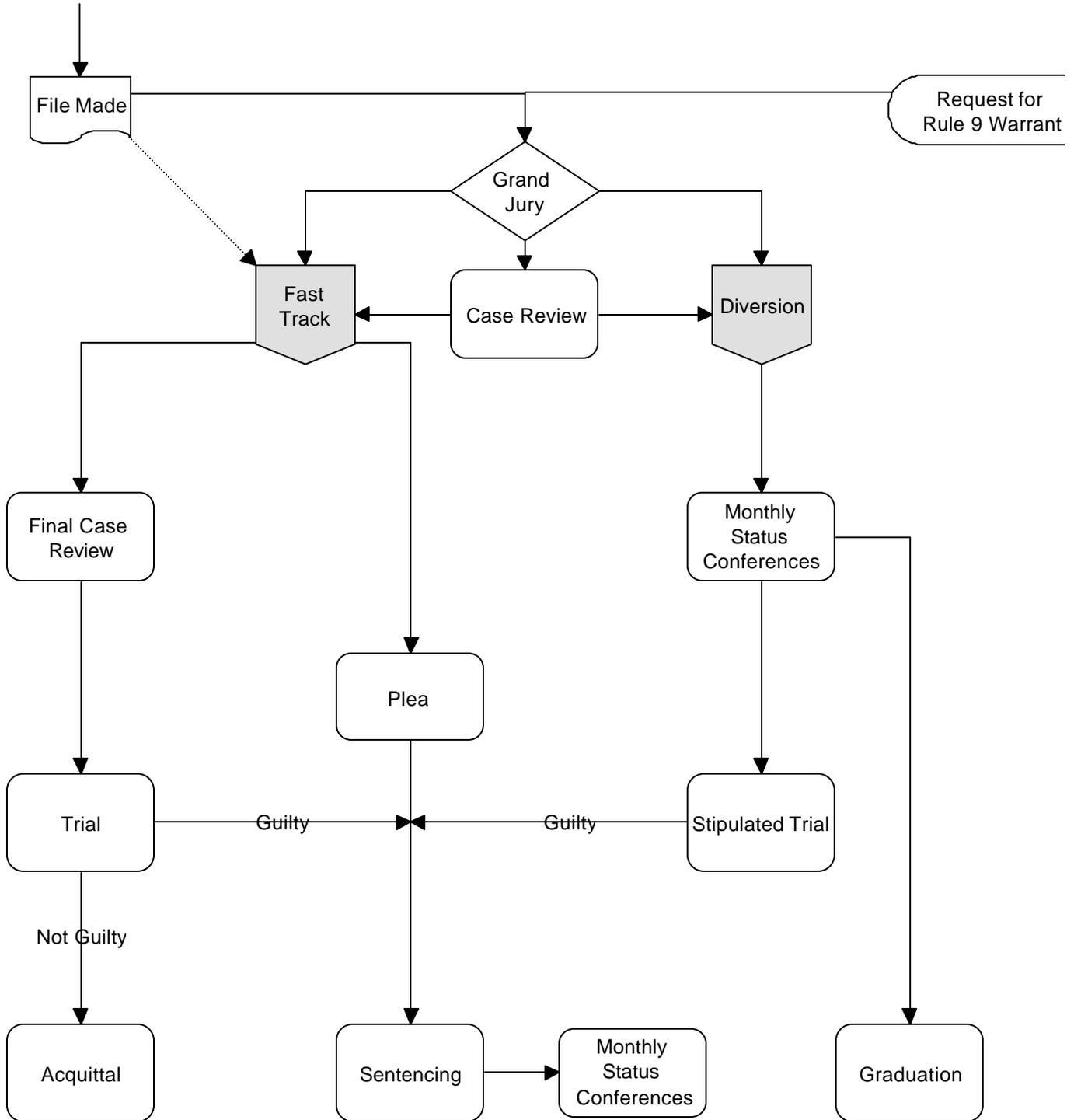
President Judge

Resident Judge

Superior Court NCC Criminal - Case Flow



Superior Court NCC Fast Track and Diversion



VOP SCHEDULE

DAY	JUDGE	VOP HEARINGS	TIME
MONDAYS			
TUESDAYS	Judge Bifferato Judge Gebelein Judge Alford Judge Carpenter Judge Gebelein	VOP Hearings VOP Hearings VOP Hearings VOP Hearings VOP Hearings	9:00 a.m. 9:00 a.m. 9:00 a.m. 9:00 a.m. 9:15 a.m.
WEDNESDAYS	Judge Goldstein Judge Toliver Judge Silverman Judge Gebelein	VOP Hearings VOP Hearings VOP Hearings VOP Hearings	9:00 a.m. 9:00 a.m. 9:00 a.m. 9:15 a.m.
THURSDAYS	Judge Barron Judge Cooch Judge Gebelein	VOP Hearings VOP Hearings VOP Hearings	9:00 a.m. 9:00 a.m. 9:15 a.m.
FRIDAYS	Judge Del Pesco Judge Goldstein Judge Gebelein Judge Quillen Judge Herlihy Judge Babiarz	VOP Hearings VOP Hearings VOP Hearings VOP Hearings VOP Hearings VOP Hearings	9:00 a.m. 9:00 a.m. 9:15 a.m. 12:00 p.m. 12:00 p.m. 2:00 p.m.