



# **BJA CRIMINAL COURTS TRAINING AND TA PROJECT**

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## ***TOWARD THE CREATION OF UNIFORM GOALS AND STANDARDS FOR CRIMINAL CASEFLOW MANAGEMENT IN THE SUPERIOR COURT OF NEW HAMPSHIRE***

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**National Center for State Courts**

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# **TOWARD THE CREATION OF UNIFORM GOALS AND STANDARDS FOR CRIMINAL CASEFLOW MANAGEMENT IN THE SUPERIOR COURT OF NEW HAMPSHIRE**

## **Introduction**

Under the 2013 version of the rural-urban classification scheme developed by the Economic Research Service of the US Department of Agriculture, New Hampshire has three counties in metropolitan areas (Hillsborough, Rockingham and Strafford). Its remaining seven counties are in non-metropolitan areas, all with small urban populations, and four of which are adjacent to a metropolitan area. As of the 2010 U.S. Census, it no longer has any counties designated as non-metropolitan “rural” areas.

The New Hampshire Superior Court has 18 judges statewide who are assigned full- or part-time to criminal dockets. About 25 court support staff members are dedicated to criminal case processing. In 2011, the Court had about 15,000 new criminal filings, as well as 7,000 probation violations. The Court sees very few gang-related cases each year.

## **Description of Technical Assistance Activity and Timeline**

On October 31, 2012, a request for technical assistance was submitted by Hon. Tina Nadeau, Chief Justice of the New Hampshire Superior Court. Chief Justice Nadeau asked that assistance begin with a meeting of consultants, judges and administrators in February 2013, to learn about felony best practices and discuss examples of actual New Hampshire criminal cases in which delay was unnecessary and would have been greatly improved by better caseflow management. Under the BJA program, NCSC provided facilitators for that meeting – David C. Steelman, NCSC Principal Court Management Consultant, Hon. Amy M. Davenport, Chief Administrative Judge of Vermont. (See Appendix A for a copy of the agenda for the meeting.)

The meeting in February was followed by meetings of a work group, leading to the development of a draft statewide Superior Court continuance policy. The draft policy was distributed for comment by members of the New Hampshire Bar Association in July 2013. Work is ongoing in the development of a pilot project site for the implementation of improved criminal caseflow management practices.

## **Description of Felony Case Processing in New Hampshire, December 2012**

The following is a brief description of the New Hampshire felony case process, as prepared by Chief Justice Nadeau. Generally, a complaint is first filed in the District Division of Circuit Court. The defendant is arraigned and bail is set. The next scheduled event is a probable cause

hearing which generally occurs 10 days after arraignment for incarcerated defendants and up to 30 days after arraignment for defendants released from jail pending adjudication. If probable cause is found, or if the probable cause hearing is waived, the case is “bound over” to Superior Court to await presentation to the grand jury and indictment. If a defendant is represented in the District Division, discovery is typically provided in exchange for a waiver of the probable cause hearing. If the defendant proceeds with the probable cause hearing, it can be 30 days or more for discovery to be produced. There is often litigation around pre-indictment discovery and many Superior Court judges have ordered it to be produced immediately.

Once a case is “bound over” nothing happens in Superior Court until the grand jury returns an indictment. (The only time a case would be heard in Superior Court before indictment is if a defendant appeals a District Division bail order, or if there was a direct indictment without first having an arrest and charge brought in the District Division.) Indictments are generally returned 30–60 days after the case is bound over, but it can be up to 90. Then, 3–4 weeks after indictment the defendant is arraigned in Superior Court and bail is again addressed. Approximately 5 weeks after arraignment, the Superior Court conducts a Criminal Structuring Conference (some counties call this a Dispositional Conference, others call it a Preliminary Pretrial Conference. We are in the process of having all counties use the term Criminal Structuring Conference.) Approximately 4 months thus pass from arraignment in District Division before there is any opportunity for the application of felony case flow principles in Superior Court.

Until recently, not all counties were scheduling Criminal Structuring Conferences, but instead were sending out a final pretrial date and trial date with the arraignment notice. The final pretrial generally occurs 10 days before trial. Now all counties schedule the structuring conferences and they are used with varying degrees of success. Ideally, the prosecution is ordered to have a reasonable, written plea offer to the defense at least two weeks before the conference and defense counsel is to respond sometime before the structuring conference. After some meaningful discussion with counsel, the judge determines whether: (1) the parties have worked out an agreement; plea is taken then or a plea is scheduled promptly; (2) the case will plead as there are few defenses, but no agreement as to the sentence is reached yet; plea is scheduled with enough time for counsel to resolve the case, a capped plea may be an option; (3) Case is a definite trial, parties given a trial date in the courtroom with their calendars (not all courts schedule trial dates in the courtroom); (4) there are some good defenses but the offer is reasonable, 50% chance of trial; parties are given a trial date.

At the structuring conference, the parties are also given motions deadlines. Our speedy trial standards require trial to be scheduled 180 days after indictment. After reviewing some time-

to-disposition statistics for 2011 it appears that many counties are resolving cases well beyond that time period.

New Hampshire's speedy trial policy essentially is that for incarcerated defendants, trial must occur within 4 months and for defendants granted pretrial release, trial must occur within nine months. For misdemeanor appeals, the time expectation is six months.

## **Main Issues and Expected Outcomes of Technical Assistance**

Chief Justice Nadeau reported that the New Hampshire Superior Court judges and managers have not discussed criminal caseload management for at least ten years. Her goals were (a) to provide a meeting for consideration of current best practices, and (b) the subsequent development of a uniform continuance policy and concrete caseload management practices that might improve Superior Court delivery of prompt justice.

## **Felony Caseload Meeting on February 15, 2013**

**Individual Participants.** Attendees at the February 15 meeting included 18 judges of the Superior Court, 9 Superior Court Clerks, 7 Superior Court Criminal Department staff members, and 3 court administrators. (See Appendix B for a list of individual meeting participants.) In addition to the facilitators who spoke about caseload management in the February 15 meeting, Attorney Meagan Reis (a former deputy county prosecutor) spoke about an early case resolution program in which she worked with public defenders in cases before the Superior Court in Strafford County.

**Background Information.** For the meeting on February 15, Mr. Steelman provided national-scope information for consideration by the attendees. This information included:

- Maureen Solomon, *Improving Criminal Caseload* (BJA-American University, 2008);
- David Steelman, "Elements of a Successful 'Plea Cutoff' Policy for Criminal Cases" (NCSC, 2008);
- David Steelman, "Model Continuance Policy" (NCSC, as revised 2009); and
- David Steelman, "Timely Justice and the Resource Needs of Courts, Prosecutors and Public Defenders" (NCSC, 2012).

Additional information was provided by Chief Justice Nadeau for consideration at the February meeting. At her request, Superior Court clerks from around the state provided brief summaries of specific examples of recent New Hampshire felony cases in which there was unnecessary delay. (See Appendix C for summaries of these 19 cases.)

**Discussion of Case Examples.** For discussion in the meeting, the Chief Justice assigned specific cases to small breakout groups, with the following instructions:

1. All of the examples you have been provided with are taken from actual superior court cases.
2. Read through each example.
3. Document by paragraph # on your flipchart, those places where the flow of the case was delayed.
4. For each of the issues you identify, discuss with your group what action the court could have taken to facilitate early resolution of the case or to move the case closer to trial. Was there a point in the process where the court should have taken a more active role?
5. Could defense counsel or the prosecutor done something differently?
6. Be specific and document your thoughts on your flipchart.
7. Be open to the ideas of your group members. (We may want to think about how to structure the groups. Should we keep people from the same court together or separate them?)
8. Be prepared to discuss your findings with the entire group after lunch.
9. Keep an open mind and think about all possibilities. Avoid thinking about why something won't work. Think big.

**Discussion Conclusions.** After the breakout group discussions, representatives of each group presented their conclusions to all participants in plenary session. On the basis of the plenary discussion, the Chief Justice and other meeting participants identified areas for priority attention. They included the following:

1. Short term goals
  - a. Uniform Continuance Policy
  - b. Uniform Scheduling Order (dispositional conference order)
  - c. Dispositional Guidelines
  - d. Data Collection (drill down dispositional reports
  - e. Amendment to Rule 98 regarding timelines
  - f. Probation violations w/new charges, go to felony docket
2. Long term goals
  - a. Early Case Resolution
  - b. Settlement Judge
  - c. Felonies Filed in Superior Court

## **Felony Caseflow Implementation Committee**

After the February meeting, the Chief Justice created a small felony caseflow implementation committee, which met in March and April 2013. The committee used further information provided by Mr. Steelman and Judge Davenport. Mr. Steelman provided examples of caseflow management plans from trial jurisdictions in four other states (Alaska, Georgia, North Carolina,

and Oregon. Judge Davenport provided a copy of the continuance policy she had developed while sitting as a trial judge in one Vermont court location, along with a copy of a form for entry of the court's order on a request for continuance. (See Appendix D.)

Based on the efforts of the Felony Implementation Committee, a draft Superior Court continuance policy has been prepared. (See Appendix E.) In the July 10 issue of the New Hampshire Bar Association "e-Bulletin," the Chief Justice announced that the Superior courts in Rockingham County (July 31, 2013) and Hillsborough County (North) (August 7, 2013) have scheduled brown bag lunch discussions about a proposed uniform continuance policy in the superior courts.

The draft continuance policy is one feature of a proposed caseload management plan that is still under consideration by the Felony Implementation Committee. (For an initial draft of that plan, which has not yet been disseminated for comment, see Appendix F.) The draft plan reflects an effort to address the issues identified for priority in the February 15 meeting.

## **Conclusion**

In coordination with the Chief Justice and the Felony Implementation Committee, the New Hampshire Bar Association published an article in the July 19 issue of *New Hampshire Bar News* that reported on the continuance policy as part of the larger effort to improve the processing of felony cases. (See Appendix G for a copy of the article.) Several other agencies will be affected by developments under this effort. They include the County Attorney's Offices, the statewide Public Defender's Office, private criminal defense lawyers, the executive-branch Probation Department, the State Corrections Department, and County Government officials.

## **Appendix A.**

# **Agenda for New Hampshire Superior Court Felony Caseflow Management Conference**

**Friday, February 15, 2013**



Tina L. Nadeau  
Chief Justice

## The State of New Hampshire Superior Court

Superior Court Center  
45 Chenell Drive, Suite 1  
Concord, N.H. 03301  
Tel. (603) 271-2030

### **Agenda** **Felony Caseflow Management Conference** **Friday, February 15, 2013, 9:00 am** **Administrative Office of the Courts**

9:00 – 9:15 – Welcome and Introductions, Expectations for the Conference, Chief Justice Nadeau

9:15 – 10:00 – David Steelman, National Center for State Courts  
*The Essential Elements of Successful Felony Case Flow Management*

10:00 – 10:30 – Vermont Chief Administrative Judge Amy Davenport  
*Changes in Vermont; the Judges' Role in Caseflow Management*

10:30 – 10:45 – Break

10:45 – 11:00 – Meagan Reis, Esq. – *Early Case Resolution Project in Strafford County*

11:00 – 12:00 – Group Breakout Sessions: *Review of Actual Examples of Felony Case Flow Delays, Assessment of what could change*

12:00 – 12:45 – Lunch

12:45 – 2:30 – Report from Groups on Ideas for change, facilitated by Judge Davenport

2:30 – 3:00 – Development of Action Plan for the Future

## **Appendix B.**

### **Participant List for New Hampshire Superior Court Felony Caseflow Management Conference**

**Friday, February 15, 2013**

## Individual Participants

## New Hampshire Superior Court Felony Caseflow Management Conference

# Friday, February 15, 2013

Superior Court Judges	Superior Court Criminal Department Staff Members	Superior Court Clerks (County)
Nadeau, Tina, Chief Justice	Banks, Jean	Buttrick, Marshall (Hillsborough South)
Abramson, Gillian	Cyr, Janet L.	Carlson, David P. (Coos & Grafton)
Bornstein, Peter	Frazier, Karen	Howard, Julie (Strafford)
Brown, Kenneth	Lesperance, Lana	Lenz, Patricia (Carroll)
Colburn, Jacalyn	Matthiau, Marne	McGraw, William )(Merrimack)
Delker, William	Scanlon, Michael	Peale, James (Sullivan & Cheshire)
Garfunkel, David	Tucker, Rose	Safford, John (Hillsborough North)
Houran, Steven		Taylor, Raymond (Rockingham)
Kissinger, John		Warren, James (Belknap)
Lewis, John		
McHugh, Kenneth		
McNamara, Richard		
Nicolosi, Diane		
O'Neill, James		
Smukler, Larry		
Tucker, Brian		
Vaughn, Timothy		
Wageling, Marguerite		

## **Appendix C.**

### **Examples of New Hampshire Superior Court Felony Cases with Unnecessary Delay**

**(Gathered for Discussion in New Hampshire Superior  
Court Felony Caseflow Management Conference on  
Friday, February 15, 2013)**

### Example 1

December 15, 2011 Indicted 3 counts of fraud

January 4, 2012 Arraignment (97 filed)

March 6, 2012 Prelim Pretrial Conference held – order simply reads: “schedule for plea and sentencing 6/8/12”

July 17, 2012 Defense Counsel motion to withdraw based on rules 1.16(b)(5) and (6) filed – granted 7/30/12

August 27, 2012 Financial Affidavit received; New Counsel appointed

August 30, 2012 Plea and Sentencing hearing scheduled for this date; parties agree to continue for 60 days. Not clear from file, but change probably accomplished informally

November 2, 2012 Plea and Sentencing hearing scheduled for this date - cancelled; note in hearing results by dep clerk that “30 more days to complete negotiations”. Hearing cancelled by deputy clerk “parties need more time”

December 11, 2012 Plea and Sentencing hearing scheduled for this date – Motion to continue w waiver of speedy trial filed November 20; granted November 26. Reason - defendant was sole provider of care for young daughter with health problems. Daughter was scheduled to undergo a medical procedure.

January 30, 2012 Plea and Sentencing hearing scheduled.

Example 2 Def. incarcerated

November 17, 2011 Indicted; Burglary and 3x assault

December 2, 2011 Arraignment (97 filed)

January 27, 2012 Preliminary Pretrial Conference scheduled for this date; motion to continue filed January 23, 2012, granted January 24, 2012 reason: defense counsel also scheduled to be in Hills. So. same date

March 14, 2012 Preliminary Pretrial Conference scheduled for this date; order: "offer made, response in 10 days; trial sched for 9/24/12) 4 day trial

May 1, 2012 NIP filed

July 3, 2012 P&S scheduled; state's motion to continue filed and granted 6/6/12 victim's family is out on vacation

August 29, 2012 P&S scheduled; motion to continue filed and granted 8/22/12 defense counsel had a medical emergency

January 22, 2013 P&S scheduled. Court re-sets to 1/16/13 file unclear on why – could be a judge was unavailable

January 16, 2013 P&S scheduled (capped plea)

### Example 3

September 27, 2011    Boundover

February 16, 2012    Indicted. 1 charge Drug case poss w intent > 1 ounce

February 29, 2012    Arraignment scheduled. 97 filed; no arraignment needed

April 12, 2012        Preliminary Pretrial Conference. Offer made, response within 10 days.  
Trial scheduled for October 29, 2012.

June 7, 2012         Motion to Suppress filed

June 20, 2012        State's motion for additional time to respond to motion to suppress  
granted

August 3, 2012        Suppression Hearing held but more time needed bec judge allows state  
rebuttal witnesses

September 19, 2012   Further Suppression hearing set – but rescheduled to 10/4. Unclear why

October 4, 2012       Further Suppression hearing set

October 29, 2012      Original trial date; continued state's motion to continue granted as  
prosecutor is trying another case same week

November 19, 2012    Order issued on Motion to Suppress

March 4, 2013        Trial set for this date

Example 4                      219-2011-CR-541

September 14, 2011	boundover
October 20, 2011	indicted TBUT x 2
November 3, 2011	arraignment
January 5, 2012	Prelim Pretrial scheduled. changed to P&S. rescheduled by court. File not clear.
February 7, 2012	P&S scheduled for this date. Counsel withdraws. Continued.
February 14, 2012	New counsel appointed
April 13, 2012	NIP filed
April 26, 2012	P&S scheduled for this date. Continued by agreement. Reason: parties considering drug court sentence and "additional time is necessary to arrange such a component"
July 16, 2012	Status conference set for this date. Cancelled by court (judge in jury trial)
August 3, 2012	P&S scheduled for this date. Cancelled. Drug court application not complete
November 5, 2012	P&S scheduled for this date. Cancelled by court (judge in jury trial)
December 7, 2012	Status conference scheduled for this date. Result: another status conference to occur at same time as probation violation.
February 25, 2012	further Status conference scheduled for this date. Duration: 1 hour

### Example 5

April 14, 2011	Indictment 5 charges unauth use of propelled vehicle
April 28, 2011	Failed to Appear at Arraignment; Warrant Issued
June 15, 2011	Warrant returned
July 27, 2011	Preliminary Pretrial Conference held; offer to be made within 30 days; response within 30 days. Plea status hearing set for September 30, 2011. Def detained by ICE
September 30, 2011	status conference. new fed charges filed. Trial set for December 19, 2011.
December 8, 2011	final pretrial held; case continued to April 30, 2012 due to federal charges.
December 19, 2011	original trial date
April 18, 2012	final pretrial held; assented to motion to continue trial granted. Due to federal charges
April 30, 2012	second trial date
August 29, 2012	final pretrial held; plea and sentencing hearing set for September 10, 2012
September 10, 2012	third trial date – turned into P&S date
September 10, 2012	plea and sentencing hearing scheduled this date. Continued rescheduled because habeas corpus needed
October 10, 2012	plea and sentencing hearing scheduled for this date. Continued unclear why
October 15, 2012	plea and sentencing hearing scheduled for this date. Continued “by agreement of the parties”
November 19, 2012	plea and sentencing hearing scheduled for this date. Court moved to 11/20
November 20, 2012	plea and sentencing hearing occurs.

#### Example No. 6

Defendant was **indicted** 8/13/09 for growing marijuana on his property. **Arraignment** was 8/24/09 and **Trial** was set for 12/16/09; defendant was not incarcerated.

Trial was **continued** by the Court for lack of Discovery, and reset for 3/29/10. **An Assented-to Motion to Continue** was filed by the defendant, with a **Waiver of Speedy Trial**, on 3/24/10, in which the defendant indicated he needed more time to "analyze" the discovery. The trial was continued to 7/19/10.

On 7/7/10, the defendant filed a **Motion to Continue** the 7/19 trial in order to allow counsel to arrange for a helicopter to fly over the property in an effort to challenge the search as unreasonable; the plants were discovered by a State Police helicopter flyover. The defendant also filed a **Waiver of Speedy Trial**. The judge continued the trial, and the defendant subsequently filed a Motion to Suppress the "flyover" evidence. Trial was reset for 1/3/11.

On 12/10/10 the defendant filed an **Assented-to Motion to Continue** the 1/3/11 trial stating that defense counsel had "a Specially Assigned Jury Trial" in Carroll County Superior Court on 1/3. A **Waiver of Speedy Trial** was filed 12/13, and the trial was continued. Trial was rescheduled to 5/23/11; it was **not reached** on that date, and rescheduled to 6/20/11.

An **Assented-to Motion to Continue** and a **Waiver of Speedy Trial** were filed 6/7/11 because of the defendant's employment, and trial was continued to 10/11/11. There is in the file a list of jurors drawn 10/11 upon which is the notation "**rescheduled;**" on 10/17 a Notice of Jury Trial was issued for 11/7/11.

A jury was drawn on 11/7/11 and trial commenced 11/16; a **Mistrial** ("manifest necessity,") was directed later that day. Trial was rescheduled to 5/21/12.

On 5/14/12 the State filed a **Motion to Continue** because a witness, a State trooper, "had been injured in a traffic stop and (was) unavailable for six weeks." The defendant objected (orally; no pleading filed), and a hearing was held 5/21 before jury selection; the judge granted the motion. Trial commenced on 9/11/12, and a verdict of "**not guilty**" was returned 9/13.

### Example No. 7

Defendant was **indicted** 7/1/10 for Criminal Threatening. **Arraignment** was 7/21/10 and **Trial** was scheduled for 1/3/11. The defendant was not incarcerated. First counsel withdrew on 10/22/10 ("ethical issue"), and new counsel was appointed.

At the 12/13/10 Final Pretrial, the Court allowed second counsel to withdraw due to "irreconcilable differences" with the defendant, and granted defendant's oral request for new counsel. The defendant filed a **Waiver of Speedy Trial**, and the Court **continued** the trial.

Third counsel was appointed and **trial** was set for 6/6/11.

An **Agreement to Continue** and a **Waiver of Speedy Trial** were filed on 5/24/11; the defendant had not received the transcripts of the trial of his brother and co-defendant, which the court had allowed to help the defendant prepare for his trial. Court granted the continuance.

**Trial** was rescheduled to 10/11/11. On the morning of jury selection, the parties again filed an **Agreement to Continue** and a **Waiver of Speedy Trial**, citing "scheduling" and "witness availability issues." Court granted the continuance, and trial was reset for 3/26/12.

By Notice of Jury Trial dated 3/22/12, trial was **rescheduled** to 6/18/12; the file and Odyssey are silent as to why. A jury was drawn 6/18 and trial commenced on 6/25. The jury deadlocked and a **mistrial** was declared on 6/28/12.

On 8/1/12 the defendant appeared and **pled guilty** and was sentenced (different judge).

#### Example No. 8

The defendant was **bound over** on 5/27/11; he was **incarcerated** at the time at the Merrimack County House of Correction. Bail of \$50,000.00 cash was transferred to Superior Court.

He was **indicted** 7/14/11 for First Degree Assault, Second Degree Assault and Felon in Possession, and **arraigned** on 7/28. A waiver of arraignment was filed, and the parties agreed to \$100,000.00 cash bail. **Trial** was scheduled for 1/23/12.

A jury was selected on 1/23/12, with trial to commence 2/6/12. On 2/6, the State filed a **Motion to Continue** the trial because a witness, the DNA criminalist for the State Police, was not available; the motion noted that the defendant did not assent. Following a hearing, the judge granted the continuance.

Trial was then set for 3/12/12. On 2/15/12, the defendant filed a **Motion to Continue** the 3/12 trial because counsel had been notified to report for jury duty on 3/12. The Motion stated that *"(a) Waiver of Speedy Trial will be filed under separate cover."* However, on 2/20/12 a pleading captioned "WAIVER OF SPEEDY TRIAL" was filed, modified by hand to state *"I do not waive my right to a speedy trial. I demand a speedy trial."*

Following a 2/27 Final Pretrial Hearing, the judge noting that the defendant rejected his counsel's request that he execute a Waiver of Speedy Trial, and further that the defendant was the alleged victim in a case scheduled for trial 3/12, ordered the trial be **rescheduled** to 5/7/12; the defendant was scheduled for trial that date in an unrelated matter. The Order further directed the State to elect within 14 days which of the two trials it would proceed with 5/7. The defendant was at the time incarcerated at the Hillsborough County House of Correction.

The State elected to proceed 5/7 with the trial previously scheduled, the defendant filed a Motion to Dismiss on 3/19/12 for lack of a speedy trial, and the Court on 4/18 denied the Motion, following a 4/16 hearing. The Order further directed that the other case would be tried first, and that this matter would be **rescheduled** on a priority basis; trial was set for 6/18/12.

A jury of 14 members was selected 6/18, with trial to commence on 6/20; at that time the defendant was serving a State Prison sentence. On the morning of 6/20, before trial began, a juror was excused from the panel. Defense counsel would not proceed with 13 jurors, so the trial was **"recessed"** to 7/9, when a 14th juror was to be selected.

On 7/2/12, the State filed a Motion for Status Conference on July 6th, which was granted. Following the 7/6 conference, the defendant **pled guilty** and was sentenced by a different judge.

Example No. 9

05/06/12	Indictment for Theft
06/15/12	Arraignment
08/27/12	Structuring Conference
	Structuring conference continued because defendant in jail in Mass.
09/17/12	Structuring Conference
	Case consolidated with other charges for plea.
	Status conference to be held in 90 days.
12/18/12	Status Conference Held. Plea scheduled for 1/24/13

### **Example No. 9**

- August, 2010 – case bound over. Charges are reckless conduct, false imprisonment, and possession of an infernal machine.
- September, 2010 – defendant indicted on all four charges.
- October, 2010 – defendant indicted on an additional two charges-endangering the welfare of a child.
- November, 2010 – dispositional conference held. Dispositional conference order states that an offer had been made by the State and a counter offer would be made by 12/15/10. A trial date of July, 2011 is assigned.
- No activity in this case until July, 2011. At the final pretrial on 7/7/11. Judge orders that a motion to sever be filed by 7/11/11. Plea deadline is extended to 7/8/11.
- Plea taken on 7/27/11.

### **Example No. 10**

- March, 2011 – defendant indicted on one theft by unauthorized taking charge.
- March, 2011 – waiver of indictment filed.
- May, 2011 – dispositional conference held. Dispositional conference order states that an offer was recently made by the State. No counter offer made by the time of the dispositional conference. Case scheduled for a further dispositional in 60 days (July, 2011). Notation on the dispositional conference form that defendant will obtain a handwriting expert.
- July 6, 2011. Assented to motion to continue the dispositional conference is filed. Defendant's counsel in trial. Motion granted. Waiver of speedy trial filed.
- July 20, 2011. At the further dispositional , it is noted on the dispositional conference order again that the defendant is to get a handwriting expert and that an offer and a counter offer is to be made after that.
- August, 2011 - Trial scheduled in January, 2012.
- December, 2011. Assented to motion to continue the trial. Defendant's wife having surgery. Motion granted. Waiver of speedy trial is filed. Trial continued to May, 2012.
- May, 2012 - Assented to motion to continue trial is filed. Reason given: parties working on negotiated disposition. Motion granted. Trial rescheduled to July, 2012.
- July 5, 2012 - Motion to continue filed. Objected to. Defendant will be in hospital until 7/7/11. (Jury selection is 7/16/11). Motion granted. Waiver of speedy trial filed.
- Trial rescheduled to October, 2012. At final pretrial on 10/5/12, it was noted on the final pretrial form that case may be nolle prossed.
- Case scheduled as back-up and not reached during the October, 2012 trial schedule.
- Trial rescheduled to November, 2012.
- Case remains pending at this time.

### **Example No. 11**

- Indicted November, 2011. Two aggravated assault charges.
- Dispositional conference held January, 2012. Dispositional conference form notes that there may be a possible suppression motion, and that plea discussions are on-going. A further dispositional conference to be scheduled in April, 2012. Trial dates to be assigned at the further dispositional.
- Further dispositional conference held April, 2012. Notation on form that plea discussions continue. September trial dates assigned. Further disposition at the call of the parties.
- June 25, 2012—motion to dismiss indictments filed.
- Motion to dismiss hearing scheduled for 8/2/12.
- Assented to motion to continue hearing on motion to dismiss filed and granted.
- Motion to dismiss heard at final pretrial conference on 8/29. Plea deadline extended to the date the order on the motion to dismiss is issued, plus an additional two business days.
- Indictments dismissed in September, 2012.

## Example No. 12

### SOME NEW INFORMATION HAS RECENTLY COME TO LIGHT

It's criminal final pretrial day in our one judge court. The cases on the docket vary from misdemeanor appeals to an aggravated felonious sexual assault case. As I call each of the cases one by one, the prosecutors and defense counsel approach the bench. The judge reviews the final pretrial form with the attorneys, asking a number of questions about each of the case, including whether or not a trial will be necessary to resolve this matter, how many witnesses are expected to be called, how many trial days they anticipate needing, and whether or not there are any outstanding issues that need to be resolved prior to jury selection. Several of the defendants are going to plead guilty, while the attorneys in several other cases indicate that they just need a little more time to come up with a plea agreement. Knowing that it has been a long standing rule in our court that the negotiated plea deadline is the final pretrial conference, the attorneys give their reasons for the extension. The extensions are always granted and these cases typically do, in fact, result in plea agreements. Even with the plea extensions, it becomes clear that there are many more cases ready for trial this month than we have trial days available.

After consultation with the judge, it becomes clear that the aggravated felonious sexual assault case with an incarcerated defendant will be given priority on our trial docket. Six trial days are blocked off, based on the estimates the attorneys gave at the final pretrial, to be immediately followed by several other trials. This case has been heavily litigated up to this point and is definitely going to trial. Hearing time is set aside prior to jury selection to resolve any outstanding motions in limine and other pretrial issues. The jury selection process is agonizingly slow. The local media has shown particular interest in this case since the defendant is alleged to have dragged a female jogger into some bushes and sexually assaulted her at knifepoint. Many jurors in our pool have heard about this case or have a personal connection to the witnesses involved. A jury is finally selected and the trial is scheduled to begin the following Monday morning at 10:00 AM.

The jurors arrive early on Monday morning and get settled into the jury room. Trial counsel arrive within minutes of the starting time of the trial and immediately approach me at the clerk's bench. They look upset as they tell me that they need to speak with the judge because "some new information has recently come to light." The new information is a tape recorded interview of the defendant that was conducted at the police station. The tape was never turned over to defense counsel. The issue is argued on the record in the courtroom. The jury waits. It is determined that a further evidentiary hearing will be needed where witnesses will be called. The jury is dismissed for the day and sent home. Some jurors travel over 80 miles

one way for their jury service. The other trials scheduled after this case are either pushed back to later days this same month or have to be rescheduled to a different month.

The occurrence of last minute discovery issues that have to be litigated the morning of trial is becoming an all too common theme in our county attorney's office. As a clerk, I wonder what, if anything our court can do to facilitate or encourage better trial preparation within our county attorney's office, without the clerk or judge appearing biased against them or overstepping the boundaries that must be maintained between our offices.

#### Example No. 14

Charges: Possession of a Controlled Drug With Intent to Sell (4 charges); Possession of a Controlled Drug (2 Charges); Driving Under the Influence of Drugs; Carrying Prohibited Weapon (2 Charges)

Defendant Arrested: January 2, 2011

Indictment: April 8, 2011

3/21/11	Defendant Motion for Bail Modification
3/23/11	State files objection, court schedules hearing for 3/29/11
3/28/11	Defendant files response to State's Objection
3/29/11	Bail hearing: Motion to Modify Denied
4/8/11	Defendant Indicted
4/20/11	Attorney No. 1 files appearance, entry of not guilty plea and waiver of arraignment.
5/18/11	Court issues Criminal Structuring Conference Order scheduling jury trial for 9/19/11 and final pretrial for 9/13/11
6/2/11	Attorney No. 1 files Motion to Suppress
6/6/11	Hearing on Motion to Suppress is scheduled for 8/15/11
6/13/11	State files Objection to Motion to Suppress
6/20/11	Attorney No. 1 files Assented to Motion to continue 8/15/11 Suppression Hearing stating counsel has two previously scheduled hearings in the Portsmouth Family Division and Dover District Court
6/20/11	Court grants Assented to Motion to Continue
6/22/11	Hearing on Motion to Suppress is scheduled for 8/31/11
6/23/11	Attorney No. 1 files motion to compel discovery
6/30/11	State files Objection to Motion to Compel Discovery and Assented-To-Motion to Continue 8/31/11 Suppression Hearing (pre-paid trip)
7/5/11	Court grants State's assented to motion to Continue

8/10/11	Hearing on Motion to Suppress is scheduled for 9/8/11
9/6/11	Attorney no. 1 files motion for leave to Withdraw citing "irreparable conflict of interest"
9/7/11	Court grants motion for leave to withdraw
9/14/11	Court issues order: "Defendant represents that his new counsel will be promptly filing appearances. The court schedules a status conference to occur on 9/21/11 at 9:00 am. The present trial is continued to be rescheduled."
9/21/11	Court issues order: "The Court continues the status conference to 10/3/11 at 9:00 am
9/22/11	Status Conference Scheduled for 10/3/11
9/29/11	Attorney No. 2 files an appearance for the defendant
10/3/11	Court issues order: "The court schedules the matter for another status conference to occur on 11/21/11 at 9:00 am. Attorney X shall file his pro hac vice papers within 7 days.
10/3/11	Attorney 2 files motion for admission pro hac vice
10/6/11	State files objection to motion for admission pro hac vice
10/7/11	Attorney 2 files second motion for admission pro hac vice
10/11/11	State files second objection to motion for admission pro hac vice
11/3/11	State files motion for extension of time to respond to motion to admit pro hac vice
11/14/11	Attorney No. 2, Files Motion to Admit pro hac vice
11/18/11	Court grants state's motion for extension of time
11/18/11	Status conference scheduled for 12/1/11
12/1/11	Court grants Defendant's motion to admit pro hac vice filed 11/14/11
12/1/11	Court issues order: "A hearing on the defendant's motion to suppress is scheduled for March 25, 2012 at 1:00 pm. The court allows 3 hours for the hearing. Trial scheduled for week of 6/25/12 with pretrial 6/14/12 at 9:00 a.m.

12/8/11	Attorney X files Defendant's substituted motion to suppress and dismiss
12/21/11	State files motion to continue 3/15/12 suppression hearing
2/3/12	Court grants state's motion to continue suppression hearing
2/6/12	Court reschedules suppression hearing for 4/11/12
4/6/12	Attorney X files an assented to motion to continue the suppression hearing
4/6/12	Court issues order: "Court requires the defendant waive speedy trial before it will grant the motion to continue."
4/9/12	Defendant files motion to waive speedy trial
4/16/12	Court grants motion to continue suppression hearing. Rescheduled for 5/29/12
5/4/12	Attorney X files assented to motion to continue suppression hearing and requests that 6/14/12 final pretrial conference be changed to a status conference only
5/4/12	Court grants assented to motion to continue suppression hearing
6/14/12	Court issues status conference order; "Notice of Intent to Plead" to be filed by 6/21/12
6/14/12	Plea and Sentencing hearing scheduled for 9/7/12
9/7/12	Court issues order "for reasons discussed on the record, this matter is rescheduled to Nov. 30, 2012 at 1 pm
9/27/12	Attorney X files motion to Withdraw (co-counsel, Atty No. 2, remains as counsel of record)
10/16/12	Court grants motion to withdraw.

### **Example 15**

12/18/2007	Indictment for Welfare Fraud
1/4/08	Arraignment Defendant failed to appear Warrant issued
2/7/08	Warrant vacated & Defendant arraigned
7/8/08	Jury trial date 6/27/08 State's motion to continue for 60 days due to Witness unavailability Granted
11/7/08	Jury trial date Oct Defense motion to continue due to surgery
3/16/09	Jury trial date 3/16/09 Case not reached
5/5/09	Jury trial date 5/4/09 Assented motion to continue due to competency
6/29/09	Competency hearing date 5/21/09 State's motion to extend time for comp eval Granted 60 day extension
8/17/09	Competency hearing date 6/23/09 State's motion for additional time to complete Evaluation. Dr. Comisky at a conference Evaluation date is September 29 <sup>th</sup>
11/2/09	Competency hearing date 10/6/ Assented motion to continue. Eval to be conducted October 27 <sup>th</sup> and not enough time for report 11/2/09 Defendant's eval set for 12/2/09
1/6/10	Competency hearing date 1/6/10 Assented motion to continue because Dr did not have All of the defendant's Community Council records 90 day continuance granted
2/18/10	Competency hearing date Continued as Dr. Petrou on vacation

3/4/10	Competency hearing date Continued Dr. Petrou in Belknap Superior Court
3/29/10	Hearing on Motion for second evaluation Defendant defaults Capias issued 4/1/10 Defendant arrested
4/26/10	Competency hearing date Assented motion to continue to allow second evaluation & review of records
6/28/10	Competency hearing date Assented motion to continue Dr Petrou on vacation
8/2/10	Competency hearing date Motion to continue as Dr Petrou will be out of state Court orders hearing on 8/9/10 a date that no judges Are assigned to this court.
8/17/10	Competency hearing date Motion to continue due to counsel's vacation
9/1/10	Competency hearing date Defendant found competent
11/1/10	Trial date set 10/27/10 Continued to allow for second competency exam Motion denied new counsel appointed. Motion reconsidered csl to remain pending report. Status Conference to be scheduled.
1/3/11	Status conf set
3/23/11	Competency hearing date 3/15/11 Assented motion to continue due to counsel's Schedule granted
5/4/11	Competency hearing date Motion to continue due to defendant's late arrival for evaluation, eval to be done on 5/4/11.
6/8/11	Competency hearing date State's motion to continue due to Dr. Comiskey's Unavailability granted

6/10/11	Competency hearing date State's motion to continue due to Dr. Comiskey's Schedule
8/29/11	Competency hearing date State's motion to continue Dr. Comiskey on vacation
9/12/11	Competency hearing date Defense motion to continue Dr Kinsler out of country
11/29/11	Competency hearing date Motion to continue to allow csl to provide copy of evaluation To opposing side's expert.
3/12/12	Competency hearing date Motion to continue granted due to defense counsel's Schedule
5/14/12	Competency hearing date Hearing held Order finding defendant competent is Issued August 3, 2012
1/7/2013	Jury trial date

### **Example 16**

7/21/11	Indictment for 7 charges if possession of child sex abuse images
8/19/11	Arraignment
10/17/11	Structuring conference Case to be scheduled for a February 2012 trial
2/6/12	Jury trial date 1/30/12 assented motion to continue granted. US Attorney's Office will be prosecuting the matter Waiver of speedy trial filed
7/9/12	Jury trial date 6/29/12 Agreement to continue due to potential federal Prosecution Waiver of speedy trial filed. Agreement for An October or November Trial date if federal case does not Go forward. Waiver of speedy trial filed
9/26/12	Status Conference Agreement to schedule anytime in January or thereafter
2/4/13	Jury trial date

### **Example 17**

11/22/11	Indictments for assault charges, crim threatening, etc.
12/22/11	Arraignment Competency issue raised
2/06/12	Structuring conference Further structuring conference ordered
3/22/12	Structuring conference Evaluation has not been completed Status conference To be held after 60 days
6/11/12	Competency hearing 4/11/12 Assented motion to continue granted due to Vacation of counsel.
7/17/12	Competency hearing Defendant found not competent to stand trial To be evaluated re dangerousness 90 days
10/15/12	Review hearing Continued for 60 days
12/17/12	Review hearing

### **Example 18**

02/22/12	Indictment for multiple AFSA charges
3/13/12	Arraignment
4/16/12	Structuring conference Competency issue raised
5/14/12	Competency hearing Motion to continue hearing because report will not be ready. Continued for two weeks
6/25/12	Competency hearing held. Defendant found incompetent. Court Orders that a hearing on restoration be held in eleven months.
9/20/12	A status hearing was held regarding the status of involuntary commitment. No involuntary commitment yet.  Case is on "tickler" for scheduling restoration hearing in April 2013.

### **Example 19**

05/06/12	Indictment for theft
6/15/12	Arraignment
8/27/12	Structuring conference Conference continued because defendant is in jail in Mass.
9/17/12	Structuring conference Case consolidated with other charges for a plea. Status Conference to be held in 90 days.
12/18/12	Status conference scheduled.

In this case the major delay was undoubtedly the lack of judicial resources to have a timely initial structuring conference.

## **Appendix D.**

### **Information Provided by BJA Consultants to New Hampshire Superior Court Felony Caseflow Implementation Committee**

# Examples of Criminal Caseflow Management Plans Provided by NCSC

1. Alaska: Hon. Philip R. Volland, Criminal Presiding Judge, "Anchorage Superior Court 'Phoenix Project' Policies for Felony Caseflow Management" (Draft, February 2009, from NCSC files of David C. Steelman. See <http://courts.alaska.gov/feldel/felonydelayreport.pdf>.)
2. Georgia: Superior Court of Forsyth County, Administrative Order 11-02, "Criminal Caseflow Management Plan" (August 12, 2011), [http://ninthdistrict.net/Bell\\_Forsyth/bfiop11-02.pdf](http://ninthdistrict.net/Bell_Forsyth/bfiop11-02.pdf).
3. North Carolina: Twenty-Sixth Prosecutorial/Judicial District, Mecklenburg County, "Criminal Caseflow Management Plan (CCMP) and Administrative Order Adopting Criminal Rules" (June 24, 2010), <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1168.pdf>.
4. Oregon: Linn County Circuit Court, "Criminal Case Flow Management" (Memorandum, November 6, 2010), [http://courts.oregon.gov/Linn/docs/court\\_records/caseflowmanagementmemo.pdf](http://courts.oregon.gov/Linn/docs/court_records/caseflowmanagementmemo.pdf).

# Example of Vermont Continuance Policy from Judge Amy Davenport

## CONTINUANCE POLICY – COSTELLO COURTHOUSE

Rulings on requests to continue hearings in either the Chittenden District Court or Chittenden Family Court will be evaluated based upon the criteria set forth below. The criteria will be applied by judicial officers, court managers and case flow managers in a uniform and strict fashion.

- A. Vacations and Religious and other Holidays on which the Courts are open:  
Requests for continuances will be accommodates if they are filed either:
  - 1)Two months in advance; or
  - 2)The request is received prior to the court mailing notice of hearing.
- B. Scheduling Conflicts due to Other Court Appearances:  
All conflicts created by simultaneous court appearances will be resolved  
By the court manager or the case flow manager from the scheduled courts  
(this includes courts outside of the Costello Courthouse). The conflict will be resolved according to the following criteria: 1) the first scheduled court appearance; 2) the complexity and length of the scheduled hearings; 3) the age of the cases involved; 4) the need for a timely hearing; 5) the difficulty of rescheduling. When court managers are unable to agree on an appropriate resolution, the matter will be referred to the Conflict Judge designated by Judge Davenport.
- C. All Other Scheduling Conflicts (e.g., witness/litigant unavailability, etc.)  
Requests to continue due to scheduling conflicts other than simultaneous court appearances will be accommodated in all cases in which the court receives the request at least two weeks in advance of the scheduled hearing. If the hearing is scheduled with less than two weeks notice to the litigants/attorneys, the request will be granted if the court receives the request within 3 business days of the notice of hearing.
- D. Exception for Serious Conflicts Not Reasonably Anticipated;  
If a request for continuance is not filed within the time frames set forth above, it will be evaluated and ruled upon according to the foregoing criteria: 1) the seriousness of the situation prompting the request; 2) the impact of a continuance on litigants, victims or witnesses; 3) the need for the hearing and the possibility that it could be handled by another attorney from the same office; 4) the number of prior continuances in the case; 5) whether a portion of the case can be heard during the scheduled time.

**Requests for continuance must be made in writing and must state whether there are any objection from the affected party(s). If the other party objects, this fact must be stated in the motion. Exceptions to this policy will be made for extreme emergencies which occur within 24 hours of the scheduled hearing. Where an oral request is made because of a medical emergency, the court in its discretion may require documentation for the request.**

# STATE OF VERMONT

SUPERIOR COURT

FAMILY DIVISION

Unit

Docket No.

Plaintiff

Defendant

Name		Name
	v.	

## ENTRY REGARDING MOTION TO CONTINUE

Motion to Continue

Date Filed: \_\_\_\_\_

Filed By:

- ☐ Plaintiff
- ☐ Defendant
- ☐ Other \_\_\_\_\_
- ☐ Motion opposed by other party
- ☐ Motion stipulated to by other party

It is hereby ORDERED:

- ☐ Motion to Continue DENIED. Hearing will take place as scheduled.

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- ☐ Motion to Continue GRANTED:

Reason:

- ☐ Scheduling conflict with another court.
- ☐ Other scheduling conflict
- ☐ Attorney or litigant illness
- ☐ Unavailability of witness
- ☐ Other: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Superior Court Judge/Magistrate

**Appendix E.**

**New Hampshire Superior Court Criminal  
Docket Continuance Policy**

**(Draft, July 2013)**

## SUPERIOR COURT CRIMINAL DOCKET CONTINUANCE POLICY

The policy of the New Hampshire Superior Court is to provide justice for all without unnecessary delay and undue waste of the time and resources of the Court, the litigants, and other case participants. To achieve this goal, the Court does not favor requests to continue court hearings.

These rules and policies shall apply equally to counsel as to pro se litigants. For purposes of this policy the term “hearing” is deemed to include any court event.

Counsel must be prepared at the Dispositional Conference to discuss his/her own calendar as well as potential scheduling conflicts for all material witnesses. At the Dispositional Conference, the expectation is that counsel<sup>1</sup> will be prepared to schedule a realistic trial date as well as discovery and motion deadlines and, thereafter, abide by the deadlines set by the Court.

Except for good cause shown as determined by the Court, all continuance requests for scheduled court hearings must be in writing and filed not later than 10 days from the date of the Court’s notice of the hearing. If the time between the Court’s notice and the scheduled court hearing is less than 15 days, the continuance request must be filed not later than 5 days before the court hearing for which rescheduling is requested. Each continuance request must state the reason(s) for the needed continuance. All requests filed by the defense must include a signed waiver of speedy trial, unless otherwise ordered by the Court. The Court will grant a continuance only for good cause shown. All requests to continue will be evaluated on a case-by-case basis in determining whether good cause exists.

As a guide to counsel, the following will generally not be considered sufficient grounds to grant a continuance:

- Counsel agree to a continuance
- The case has not been previously continued
- The case is likely to plead if continued
- A continuance is needed to finalize a global resolution
- Discovery is not complete, unless late disclosure unduly prejudices a party
- New counsel has entered an appearance or the defendant wants to retain new counsel
- A witness is unavailable, but the witness is not under subpoena
- Counsel is not prepared to try the case due to a failure of the Defendant to maintain necessary contact with counsel

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<sup>1</sup> All references to “counsel” apply as well to pro se litigants.

- Counsel has untimely filed a dispositive motion
- A material witness or counsel is unavailable due to training or vacation, unless such plans were made prior to the scheduling of the hearing and the continuance request is made within 10 days of the date of the Court's notice of the hearing

The following generally will be considered sufficient cause to grant a continuance:

- An unanticipated medical condition of the Defendant, counsel or a subpoenaed material witness
- Counsel or the Defendant did not receive notice of the scheduled hearing through no fault of counsel or the Defendant
- Newly discovered facts or circumstances which, in view of the Court, would likely cause undue hardship or possible miscarriage of justice if the scheduled court hearing is required to proceed as scheduled
- Family emergency of counsel

The Court's decision on a continuance request shall be made in writing. The written order of the Court shall be clear regarding who requested the continuance and the reason(s) for granting the request. A ruling of "granted" or "denied" on a written motion to continue, or a written notation with reasons on the final pretrial form shall be sufficient.

A record of the source of each continuance request and the Court's order on the request shall be maintained in the Court's case management system. The Chief Justice of the Superior Court shall promote the consistent application of the Court's Continuance Policy and periodically review statistical information to support adaptations to the policy, as needed.

**Appendix F.**

**New Hampshire Superior Court Criminal  
Caseflow Management Plan**

**(Preliminary Draft, March 2013)**

# **DRAFT**

## **FELONY CASEFLOW MANAGEMENT PLAN**

### **NEW HAMPSHIRE SUPERIOR COURT**

#### **Goals**

Active caseflow management results in less wasted time for the court, lawyers and litigants, and produces the same or better justice sooner in the process. The purpose of this plan is to ensure that all matters before the court will be responded to in a timely manner and that all hearings before the court will be meaningful to the parties and will be designed to move the case toward resolution. A successful case flow plan addresses prompt exchange of discovery, uniform continuance policy, meaningful deadlines and uniformity in case management practices, including early case resolution programs, meaningful dispositional conferences, and the implementation of judge conducted settlement conferences.

“Effective caseflow management emphasizes early case management to achieve early disposition in the great majority of cases that ultimately will reach a nontrial disposition. It seeks to create a system of expectations that encourages timely lawyer preparation and assures that events will occur as scheduled. . . . Considering that in most courts only 5 percent or less of dispositions require a trial, it should be clear that effective, early identification of cases less likely to require a trial can result in earlier disposition of most of the case load. As a result, both the court’s and attorneys’ time are freed for the remaining cases that require more time and attention for disposition.” Maureen Solomon, Improving Criminal Caseflow, BJA, October, 2008.

#### **Case Processing Time Standards**

The National Center for State Courts has established time standards that call for disposition of 75% of felony cases within 90 days of filing; 90% of felonies within 180 days of filing; and disposition of 98% of felonies within 365 days of filing. This Model Time standard runs from the filing of the complaint in the Circuit Court. Around the State it generally takes 3 – 4 months from filing in Circuit Court for the case to be indicted and scheduled for an arraignment in Superior Court. During this 3 – 4 month time period, no active caseflow management occurs.

#### **Current Time-to-Disposition Standards**

[Data to be provided.]

### **Uniform Continuance Policy**

To ensure the timely resolution of cases, judges must make every effort to implement uniform continuance practices. It is the policy of this Court to provide justice for defendants and victims without unnecessary delay and without undue waste of the time and other resources of the court, litigants, counsel and other case participants. (See Appendix E.)

### **Uniform Dispositional Conference Order and Practice**

Currently, the 11 Superior Court locations conduct conference approximately 4 - 5 weeks after arraignment in Superior Court at which time the court schedules the case for trial or for a plea. Depending on the county, the conferences are called Dispositional Conferences, Structuring Conferences or Preliminary Pretrial conferences. Judicial involvement in caseload management at these conferences also varies.

Our Implementation team has made the decision to label the conferences uniformly as Dispositional Conferences. As well, judges receive regular feedback from the Chief Justice on the value of the guidance they provide the parties at this conference; they are also encouraged to engage in meaningful conversation with the parties about the value of a case and to triage the cases according to the likelihood they will plead.

Judges must require the prosecution to provide meaningful written plea offers two weeks before the dispositional conference, and defense counsel to discuss the offer and respond before the dispositional conference. Only under these circumstances can the court provide meaningful input and assess the case and apply differentiated caseload management principles.

### **Amendment to Rule 98**

Currently Superior Court Rule 98, which governs the time for providing discovery, filing of motions etc., requires dispositive motions to be filed 45 days before trial. As a result, defendants may file a motion to suppress within the dictated timelines, but without sufficient time for a response, hearing and order before the scheduled trial date. To ensure effective caseload management, the Implementation team will recommend to the Supreme Court an amendment to Superior Court Rule 98 which will require the filing of dispositive motions 45 days after arraignment. In addition, the Implementation team will recommend a requirement that the prosecution provide a meaningful, written offer within 14 days of arraignment. Finally, the rule will include deadlines for the exchange of discovery.

### **Plea Deadline**

The Implementation committee believes that a firm deadline for pleas at the time of final pre-trial will enhance the credibility of trial dates and hearings. When a defendant understands that a negotiated plea will not be accepted after final pretrial, and the judges adhere to the policy, more meaningful plea discussions will ensue.

### **Early Case Resolution**

A successful early case resolution program has been implemented in Strafford County and the Statewide implementation plan will include a timetable for recommending the development of this plan in other counties. In Strafford County, criminal justice stakeholders were able to resolve 40% of the cases within 30 days of arrest. The goal of early case resolution is to expedite an early resolution of the criminal charges for appropriate defendants. The program should produce the “same justice sooner,” which allows the docket of the court and attorneys to flow more smoothly, gets defendants into programming sooner and provides victims with restitution and resolution sooner.

A successful early case resolution program requires that the same prosecutor and the same defense attorney resolve the early case resolution cases. And each attorney must be experienced and handling felonies and have the authority to resolve cases without following a burdensome approval process. Such an approach builds trust between the attorneys and builds credibility in the program.

### **Settlement Conference Judge**

If a case does not resolve by early case resolution, a settlement judge can be used to conduct criminal settlement conferences. The conferences shall occur 30 days after indictment and a senior active judge shall preside over the conferences, thus avoiding the appearance of a conflict if the case is returned to the trial docket before the trial judge.

The purpose of the settlement judge is to involve an experienced trial judge in the early assessment of cases and to provide the defendant and victims objective input about whether a case should resolve in a negotiated disposition.

In general, the settlement judge will conduct conferences in a more informal manner, and will provide information to the defendant and the victim about the facts of the case, the strengths and weaknesses of the case and the likely sentence the defendant would receive after trial. The settlement judge will also evaluate the plea offer with the parties and provide an objective assessment of the fairness of the plea offer.

The parties will provide the settlement judge with a case summary memorandum 10 days before the settlement conference and may provide the judge with any additional information such as criminal record of the defendant, treatment efforts of the defendant, transcripts of any statements the defendant made and input from the victims.

At the time of the settlement conference, the judges shall explain the purpose of the conference and shall inform the defendant that he/she has an absolute right to a trial, but that the conference is an opportunity to talk to a judge who has no stake in the case.

Ideally, the counsel involved should be the Early Case Resolution attorneys and should be attorneys who are experienced in resolving felony cases. The objective is to eliminate as much posturing and negotiating as possible.

### **Felonies Filed first in Superior Court**

In New Hampshire, a complaint is first filed in the District Division of Circuit Court by local law enforcement. The defendant is arraigned and bail is set. The next scheduled event is a probable cause hearing which generally occurs 10 days after arraignment for incarcerated defendants and up to 30 days after arraignment for unincarcerated defendants. If probable cause is found, or if the probable cause hearing is waived, the case is “bound over” to Superior Court to await presentation to the grand jury and indictment. If a defendant is represented in the District Division, discovery is typically provided in exchange for a waiver of the probable cause hearing. If the defendant proceeds with the probable cause hearing, it can be 30 days or more for discovery to be produced.

Once a case is “bound over” nothing happens in Superior Court until the grand jury returns an indictment. Indictments are generally returned 30 – 60 days after the case is bound over, but it can be up to 90. Then, 3 – 4 weeks after indictment the defendant is arraigned in Superior Court and bail is again addressed. Approximately 5 weeks after arraignment, the Superior Court conducts a Criminal Structuring Conference (soon to be called a Dispositional Conference.) As a result, approximately 4 months pass from arraignment in District Division before there is any opportunity for the application of felony case flow principles in Superior Court.

To eliminate the unnecessary delay caused by filing felonies in the District Division, a statewide committee will be convened to make recommendations for legislative changes needed to file felonies first in Superior Court. The committee will also seek

input from all stakeholders and attempt to address concerns raised by law enforcement, county attorneys, public defenders and the judicial branch.

**Continued Statistical Analysis**

The Chief Justice of the Superior Court shall continue to provide objective feedback to the judges, based on a review of monthly caseflow reports to provide the judges with information about the number and nature of continuances and time to disposition statistics.

## **Appendix G.**

### **New Hampshire Bar News Article, July 19, 2013, on Superior Court Exploration of Felony Caseflow Changes\***

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\* Source: <http://www.nhbar.org/publications/display-news-issue.asp?id=6916> (as downloaded on July 22, 2013). © New Hampshire Bar Association, 2 Pillsbury Street, Suite 300, Concord NH 03301.

***Bar News - July 19, 2013***

## **Court Exploring Big Changes to Felony Case Flow**

### **Continuance Policy Raises Some Concern**

**By Kristen Senz**

Does it make sense to file felony charges directly in superior court, skipping the circuit court process that is largely repeated post-indictment? Would a stricter continuance policy and uniform dispositional conferences help felony cases move along more swiftly, without compromising justice?

These and other major questions about felony case flow management in New Hampshire are being examined by a subcommittee made up of judges and court administrators, led by Superior Court Chief Justice Tina Nadeau. The initiative aims to shorten the average time from arrest to disposition for felonies across the state. Nadeau said she will be seeking input from attorneys while the subcommittee designs an overall felony case flow management plan over the next year.

A draft policy that would make continuances in superior court criminal cases much harder to obtain has been stirring concern among criminal law practitioners – both prosecutors and defense attorneys. Drafts of the policy have circulated in several jurisdictions and, in at least one case, the policy has been applied as if already adopted. The continuance policy is set for discussion at a series of lunch-hour meetings with judges, attorneys and clerks at superior courts, starting with Rockingham County and Hillsborough North on July 31 and Aug. 7, respectively.

NHBA President Jaye Rancourt said she wants to make sure the policy and other potential changes to the felony case flow are fully aired. “We are hopeful that the Court will continue to seek input from the members of the Bar and take their comments and concerns into consideration.”

The NHBA Committee on Cooperation with the Courts has discussed issues related to the continuance policy and felony case flow and may serve as a vehicle to channel input from the broader bar membership. Once the subcommittee completes its report, implementing the recommended changes may require court rules and policy changes, and potentially legislative changes, Nadeau said.

## **Duration of Cases**

The average number of days for a felony case to move from indictment to completion in New Hampshire exceeds the national standard set by the American Bar Association in most of the state's 10 counties, according to Nadeau.

The statewide average is 251 days, with Cheshire County at the high end with 299 days and Sullivan County the lowest at 121 days. The court's speedy trial policy requires a show-cause hearing after four months (about 120 days) of pre-trial confinement or nine months (about 270 days) after indictment for a defendant who is not incarcerated.

The ABA national standard for felony cases is 180 days from arrest to completion, according to Nadeau. The New Hampshire county statistics represent the number of days between indictment and completion. In some New Hampshire cases, Nadeau said, up to four months goes by between arrest and grand jury indictment in superior court.

"You really should take the 251 days and add four months, if you want to compare it to the ABA standards," she said.

This discrepancy between the ABA standard and the state average, along with a related daylong training seminar back in February, drove Nadeau's decision to form the subcommittee on felony case flow. Reducing the duration of felony cases would make the court process more efficient, Nadeau said, but streamlining should not happen at the expense of justice.

"We don't want to compromise justice; that's the bottom line," she said. "What we want is the same or better justice delivered sooner... It's overall just a better way of getting a case done."

## **Continuance Policy**

A draft uniform continuance policy began circulating among members of the bench and bar last month after, Nadeau says, she sent the draft to all of the judges for comment.

Grafton County Superior Court Judge Timothy Vaughn shared the draft policy with some of his lawyer colleagues, a move Nadeau called "totally reasonable," but Vaughn also reportedly attached a copy of it to a court order.

"I think what happened was that Grafton County was enthusiastic, and they got a little ahead of the game," Nadeau said. "There was no hidden agenda."

The proposed policy prohibits continuances for reasons such as "counsel agree to a continuance," "the case has not been previously continued," and "a case is likely to plead if continued." Under the proposed policy, continuances will be granted for sudden medical emergencies, hearing notices not received, newly discovered facts or circumstances, or

family emergency of counsel.

“I think the policy itself is overly restrictive,” Manchester defense attorney Michael Iacopino said, “and I think it could potentially cause more problems for the court than it solves.”

From Iacopino’s point of view, the policy is also unnecessary. “The prosecutor and the defense lawyer are the people who know the case best,” he said, “and most of us are not out looking for a delay for the sake of delay, and most of us are not out to use the trial calendar for an advantage.”

The tone of the policy and the way it came to light “certainly didn’t engender any confidence from the bar, because all of a sudden it’s out there and people are thinking this is the new policy, when I know that was not Justice Nadeau’s intent,” he continued.

The draft policy also states that, “Counsel must be prepared at the dispositional conference to discuss his/her own calendar as well as potential scheduling conflicts for all material witnesses.”

Grafton County Attorney Lara Saffo said she worried that meant the victim and witness department in her office would need to send out hundreds of letters to civilian witnesses in all cases, even those unlikely to proceed to trial, to find out about potential scheduling conflicts. She said the Grafton County Superior Court clerk told her that wasn’t necessary, because the policy had not yet been adopted.

Aside from that issue, Saffo said she thinks the policy is largely already observed by attorneys. “Certainly, I think the spirit of it – that we need to have a reason to have a continuance – makes perfect sense,” she said.

Nadeau said the policy is designed to keep all lawyers and judges, as well as pro se litigants, conscious of limited court resources and the need for timely resolutions to cases. Additionally, resolving cases sooner means fewer days of pretrial confinement, which saves county taxpayer dollars.

“I think we have a responsibility to the counties to make sure that we’re wisely managing our discretion, and it’s our job to manage the court docket,” Nadeau said.

### **Felony Jurisdiction**

With regard to the concept of filing felonies in superior court instead of circuit court, Nadeau said she recognizes there are significant logistical considerations, especially in the more rural counties, where local police would have to travel to county courthouses for contested probable cause hearings.

“Filing felonies in superior court is going to take a while,” Nadeau said, “and we’re probably going to create another group [to study the issue] that includes lawyers.”

Chris Keating, executive director of the New Hampshire Judicial Council, said an intern in his office is researching how felony jurisdiction and case flow are handled in other states. He said the research would be complete by Aug. 1 and the findings would be presented to the Judicial Council in September.

### **Other Areas of Study**

The court's subcommittee on felony case flow management is working to identify other areas of the felony case process where there is lag time or unused time, according to Chief Justice Nadeau.

Hillsborough County South Superior Court in Nashua is piloting a Settlement Judge program that seeks to identify cases that might settle with an early plea deal. In the completely voluntary program, Judge Kathleen McGuire meets with the parties and potentially the victim in an informal setting in which the issues in the case and possible impediments to settlement are discussed. If an agreement is reached,

McGuire can take the plea and finalize the case the same day, Nadeau said. McGuire has already handled two cases through the settlement judge pilot program, which is modeled on a similar program in Maricopa County in Arizona. (Bar News will cover this program in more detail in a future issue.)

Other counties are piloting early resolution and dispositional conferences designed to get law enforcement and attorneys working on and settling cases faster.

Additionally, the subcommittee on felony case flow management plans to explore potential changes to Criminal Rule 98 that would alter deadlines for disclosure of police reports. "We haven't even really delved into that one yet," Nadeau said, "but we need to look at whether the discovery deadlines make sense."

The subcommittee's work is timed so that the implementation of its felony case flow management plan, or certain aspects of it, can be integrated with New Hampshire's move toward a paperless court system.

Nadeau said she plans to seek lawyer involvement in all aspects of the plan and that despite the potential adoption of standardized rules and policies, the court will always consider cases individually.

"I just want to assure the lawyers; the judges always maintain discretion and they are going to do what's fair and just in every case," she said. "If we can be more consistent in our practices, and if we make some of these adjustments, my hope is that it will help the attorneys, too."