Comments on Rules Proposed by the Court

Prosecuting Attorney's Office

SCLCrR 3.3(f)(1) and (2)

While we agree that we need to do more to push cases along, this rule will have the effect of bogging down our criminal calendars with little to no benefit. For the most part the attorneys are doing their best to move their cases forward. This rule is not contemplating the multiple reasons why cases are being continued or why there is a delay in getting a matter to trial, e.g.: A new charge has been joined with an older charge, or even if not joined a new charge often changes the plea offer process; the defendant has been on bench warrant status; the defendant has been going through competency proceedings; there have been multiple defense attorneys; experts need to be sought; interviews need to be had.

Some other thoughts: Six months is likely too short of a time period for a case to be "old"; Twelve months is likely too short for serious offenses such as murder and sex assault; types of cases are not being properly considered in determining what is an "old" case (D.V. comes to mind – multiple C-felony DV offenses will often be more complicated than a first degree burglary); there is not leeway for the court to allow for an "old" case to go back to "off-record" continuances even if the court recognizes that significant further work needs to be done. Furthermore, this rule does not contemplate when people come off of BW status. As proposed, if a defendant has a BW, gets picked up and released, the 6 or 12 month clock continues to run. Same if a defense attorney is conflicted or otherwise removed from a case, the time continues to run. An alternative or additional solution to requiring an "old" matter be put on the calendar for continuance request, is to require that the defendant be required to appear in person in court when a case is deemed "old." Requiring such an appearance forces the defendant to meet with their attorney and engage in on-the-spot case discussion as used to occur when defendants were required to appear.

Even if the court were to create "carve-outs" for, say, defendants in competency proceedings, or bench warrant, or the court has recognized the need for extensive work still to be done, any such carve-out, or court permission to go back to off-record continuances would lead to extensive tracking difficulties for everybody in terms of tracking whether a case is supposed to be called on the record or not.

While the need for or purpose behind this rule is clear, this rule puts the Court in a position to micromanage all of the attorneys for both the State and defense without having

much knowledge of what the parties are doing to work on the case. The parties could be diligently working on a case, but have to call the case on the record every month to justify what is normal or reasonable work being conducted. Since the Court is not involved in the "day-to-day" on cases, including investigation, negotiation, etc., the Court will have to inquire into such matters in order to determine whether this delay is appropriate, instead of relying on the word of counsel as officers of the court.

There are also scenarios where continued delay in a case is beneficial both to the State and defense, but the reasons for the agreed delay are of a sensitive nature that the parties do not wish to put on the record. This rule puts the parties in a difficult position between justifying the delay to the Court and recognizing or honoring the sensitive nature or the agreed continuances.

There is no doubt that there are cases which delay far longer than they should in the court system, however, that is not true of every case. As proposed, the rule is too narrow to be practically implemented. It does not leave any exceptions for complex cases, cases having gone on warrant, cases with competency issues, etc. Even if such exceptions existed, it would be near impossible for the Clerk, Court and parties to track which cases the court is and is not requiring be called on the record on such a large scale. Furthermore, the time frames proposed are too short for certain types of cases. The need for moving cases through the system should not come at the expense of the parties' ability to investigate and negotiate cases. Finally, with such short time frames on cases, it is expected that the Court will ultimately grant the vast majority of the requested continuances. This would ultimately mean forcing numerous cases to be called on the record, on already congested calendars, when the continuance will ultimately be granted anyway.

SCLCrR 3.3(f)(3)

This proposed rule prohibits the Clerk from striking a case absent a continuance signed by a judge or being stricken on the record. Practically speaking, most continuance orders that are sent between the State and defense occur in the day or two prior to the hearing (sometimes the day of). Under this proposed rule, almost no case could be stricken ex parte because the order would not make it to the judge for signature, then to the Clerk by the time the calendar occurs. Furthermore, the parties would have no way of knowing which cases have or have not been stricken by the time the calendar occurs. The parties may send an agreed order through, but would have no knowledge if the court did

not sign off on it. The parties would not know which cases are or are not on any given calendar.

Additionally, although this rule is under the "Time for Trial" rule, it is not clear whether the prohibition on any strikes applies only to circumstances of continuances. What about striking other matters such as status of bond? Status of pre-arraignment prints?

SCLCrR Instructions and Argument

As proposed the court would potentially approve a questionnaire not in open court. A determination on a contested questionnaire should be made in open court. As long as that determination is made by noon 2 court days prior to trial, then the party making copies could comply with the requirement that copies be provided by noon one court day prior to trial.

SCLCrR 8.2(a)(1)

Suggest this addition:

(1) Motion(s) to Quash Bench Warrant by Out-of-Custody Defendant. A note for calendar shall be filed and served by noon two (2) court days before the requested hearing. If the note is filed less than 72 hours before the hearing, an add-on email must be sent to the #criminalcalendar email group. If the note is filed with fewer than four (4) days before the hearing, a judge's copy of the note and any briefing shall be delivered to Superior Court Administration.

SCLCrR 8.2(d)(iii)

Under proposed rule SCLCrR 8.2(d)(iii), it is unclear whether a 3.5 and/or a 3.6 ruling is considered a trial ruling or a regular motion calendar ruling. It also is unclear if this changes for the 14 days vs. the 30 days depending on if the case is pre-assigned or not. If a case is special set, but not pre-assigned, it is also unclear if at that point the presentation hearing should be set at 14 days or 30 days.

SCLCrR 8.4

This rule sets forth a 24 hour requirement, versus a court day requirement. As such, under the rule, if somebody has a warrant issued on a Friday afternoon or right before a holiday, notice must be given almost immediately. However, such might not be inputted by the Clerk's Office until after the weekend or holiday and hence, lead to a potential violation. This could fall in the cracks at times. Instead of 24 hours, changing it to "within one court day of the order being signed" would help ensure that things are still done timely, while contemplating weekends and holidays.