

## **EMERGENCY PROTOCOL FOR NEGOTIATED PLEAS AND REVOCATIONS FOR BRJC SUPERIOR COURT**

This protocol shall apply to negotiated pleas or revocations. Non-negotiated matters, including revocations where a defendant admits to a violation **BUT** wants to argue disposition, will **NOT** be scheduled using this process and will need to be scheduled with the assigned judge. The purpose of this protocol is to expedite the resolution of matters that will result in the release of defendants from custody and to adopt a procedure to process paperwork with as little hand-on contact as possible during the current judicial state of emergency.

**SCHEDULING:** Negotiated pleas or revocations of probation that result in a defendant being released from custody will be scheduled as soon as practicable, but no sooner than 24 hours from notifying the calendar clerk and submitting all required documents. Currently the Superior Court Judges will have a Presiding Judge calendar on Tuesdays and Thursdays at 1:30 until further notice. Contested matters must be scheduled through the assigned judges' calendar clerk and office (see below).

**NO CASES WILL BE SCHEDULED WITHOUT ALL COMPLETED DOCUMENTS.**

**Plea Documents** shall include: **1. Petition to Enter Plea of Guilty. 2. Notice of Post-Conviction Remedies and Rights. 3. Waiver of Fourth Amendment Rights. 4. Possible Effects of my Conviction. 5. Waiver of Physical Presence. 6. Motion to Accept Negotiated Plea. 7. Plea of Guilty. These documents may be obtained by email request to the Indigent Defense Office, or can be downloaded at the Court Administrator website. <https://www.cherokeega.com/Court-Administrators-Office/>**

**NOTE:** The following are **NEW REQUIREMENTS: Waiver of Physical Appearance** form, a **Plea of Guilty** and a **Motion to Accept Negotiated Plea**. The **Notice of Postconviction Remedies and Rights** has been implemented recently and should be used instead of the former Habeas Corpus Rights form.

**For revocations, a Waiver of Probation Revocation signed by the attorney must be submitted; the defendant's signature is not required for scheduling.**

Defense attorneys shall schedule **iWeb** with their clients at the jail through the current procedure. Prior to scheduling a hearing with the calendar clerks, attorneys shall go over all necessary documents with clients via **iWeb video conference** and the attorney will initial and sign **ALL documents**.

Attorneys shall email **ALL** of the paperwork signed and initialed by the defense attorney to the calendar clerk for the assigned judge for the case and request a plea date from the calendar clerks.

The calendar clerks, upon scheduling the case for a hearing, shall notify the jail liaison and shall forward the executed documents via email to the jail liaison and the Clerk of Court.

**HEARING:** Pursuant to Uniform Superior Court Rule 9.2, as modified by the Order of Chief Justice Melton dated March 27, 2020, all parties, including attorneys, courtroom clerks, the judges, probation officers, and the court reporter, shall appear remotely. The Court Administrator has provided ZOOM as the platform for conducting the hearings. **The implementation of ZOOM conferencing shall be made by separate Order of the Court.**

Defendants will be present in the courtroom at the Cherokee County Adult Detention center. At the beginning of the hearing, the defendant shall be given a printed or electronic document of any document previously submitted by his or her attorney.

The Court shall conduct the hearing as if open Court. If the Court accepts any plea and all waivers as being freely, knowingly and voluntarily given, the defendant shall be directed to sign the necessary documents while witnessed by the court and all hearing participants via video conference.

If at any point the defendant wishes to speak with counsel privately, the Court shall recess the hearing and allow such consultation via the video conferencing equipment at the jail with the attorney at the secure video kiosk maintained by indigent defense. After the private consultation, the Court shall resume the hearing on Zoom and as if in open court.

**SERVICE AND FILING OF SENTENCE AND OTHER DOCUMENTS:** Electronic documents will be transmitted to the clerk for filing. If paper documents are used, the clerk shall be allowed to accept a scanned copies of plea document on a temporary basis until the signed original is accepted.

Upon sentence being signed by the court and filed with the clerk, the jail liaison or designee shall print out a copy of the sentence from the clerks system with a file stamp and shall serve on the defendant a copy of their sentence along with an instruction sheet to report to probation within 48 hours. The jail liaison shall file transmit the service document to the clerk.

The Department of Community Supervision, or in the case of misdemeanors, Georgia Probation Management, shall go over the terms and conditions of the sentence with the defendant at their first meeting within 48 hours of the defendant's release, The appropriate probation agency shall review the terms and conditions of the sentence, provide a copy of the sentence to the defendant, and shall file an acknowledgement of service signed by the defendant with the clerk of court.

**FOR CONTESTED MATTERS INCLUDING MOTIONS:** you must send a request for a hearing and a copy of the motion by email to the calendar clerk and the administrative assistant of the assigned judge and copy the ADA assigned the case. You will need to inform the court the estimated time needed for the hearing and if witnesses will be necessary and if they are going to appear remotely and if physical evidence is going to be offered. The ADA will be given a reasonable time to respond as to the time needed for the hearing as well as evidentiary and witness issues as well as the necessity of victim notification. The assigned judge will schedule a hearing or conduct a scheduling conference.

**EFFECTIVE DATE OF PROTOCOL:** The procedures herein will be used beginning **Monday, April 6, 2020**, and shall be in effect throughout the current Judicial Emergency as declared by Chief Justice Melton, and during any extension thereof.

Chief Judge Ellen McElyea  
Judge David L. Cannon, Jr.  
Judge M. Anthony Baker  
Superior Court of Cherokee County