

**COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT FOR SUFFOLK COUNTY, CRIMINAL BUSINESS**

GUIDELINES FOR THE OPERATION OF PRE-TRIAL SESSIONS

Suffolk Superior Court holds four daily sessions devoted to the business of tracking our criminal docket through the pre-trial stages. Each of these sessions seeks to provide service to all of our constituencies by assisting in moving criminal business in Suffolk County. The success of the Suffolk County criminal pre-trial process depends upon cooperation, communication and coordination among the sitting Judges and Clerk-Magistrate, the Clerk's Office staff, and the attorneys representing the Commonwealth and criminal defendants. Any problems or issues arising with the operation of these sessions should be brought promptly to the attention of the sitting Judge or Magistrate, the Clerk for Suffolk County Criminal Business, or the Regional Administrative Justice for Criminal Business in Suffolk County.

Clerk-Magistrate's Session

The Clerk-Magistrate's Session operates throughout the day. Matters are scheduled on a specific date and time, but the Clerk-Magistrate has flexibility to make reasonable accommodations for attorneys' schedules.

In accordance with the provisions of G.L. c. 221, §§ 62B and 62C and Mass. R. Crim. P. 47, a Clerk Magistrate and alternate Clerk Magistrate(s) from the Office of the Clerk for Suffolk County Criminal Business (Clerk), shall be designated Special Magistrates by the Clerk, subject to the specific approval of the Chief Justice of the Superior Court. The Special Magistrates shall

be under the immediate supervision of the Clerk and under the direction of the Regional Administrative Justice for Criminal Business in Suffolk County (RAJ) or his/her designee.

Subject to the supervision of the RAJ, the Special Magistrates shall have the powers, duties and authority as set forth in the Uniform Magistrate Rules, G.L. c. 221, § 62C and Mass.

R. Crim. P. 47 and, more specifically, are empowered and authorized as follows:

1. To preside at and conduct arraignments.
2. To enter Tracking Orders for all key events in the case, including setting presumptive trial dates. Presumptive trial dates shall be set no later than one month prior to the disposition deadline for the track in that case. With the exception of homicide cases, the Clerk-Magistrate Session shall also assign cases to trial sessions with the Tracking Order.
3. To set bail by agreement of the parties without prejudice.
4. To set bail after hearing without prejudice, provided the defendant is represented by counsel, and provided that the prosecutor or the defendant may seek immediate review of a Special Magistrate's bail order by the First Session Judge, or by the RAJ or his/her designee if the First Session Judge is unavailable. The Special Magistrate shall schedule the review not later than the next court business day, unless the parties otherwise agree to a later date. The Special Magistrate may, in his/her discretion, decline to consider bail and refer the matter directly to the First Session Judge or to the RAJ or his/her designee if the First Session Judge is unavailable for a bail hearing.
5. To assign or appoint counsel for defendants determined to be indigent or indigent but able to contribute.
6. To schedule pre-trial motions for hearing.
7. To conduct pre-trial conferences.
8. To schedule and conduct preliminary hearings for the purpose of determining whether there is probable cause to believe that a probationer has violated the terms of his/her probation in the Superior Court.
9. To issue writs for the appearance of defendants before the Court.
10. To enter defaults, authorize the issuance of arrest warrants, and place cases on file pending the arrest of a defendant where a default has entered.

11. To recall arrest warrants, remove defaults, and set bail subject to the foregoing provision for review of bail.
12. To order psychiatric examinations pursuant to G.L. c. 123, § 15(a). The Special Magistrate shall appoint in-court, clinical psychiatrists to examine defendants for criminal responsibility and/or competency to stand trial. After the examination, the psychiatrist shall give a report in writing/orally to the First Session Judge or other judge designated by the RAJ if the First Session Judge is not available.
13. To decide non-evidentiary motions that are assented to or specifically stated to be uncontested, provided that the defendant is represented by counsel.
14. To rule on motions for approval of funds not to exceed \$2,500.00 for indigent defendants for the services of investigators, interpreters, experts and transcripts.
15. To order the forfeiture of cash bail, after giving notice to surety, when a surety has failed to surrender the defaulted principal as required and to order the reinstatement of cash bail previously ordered forfeited by the Special Magistrate.
16. To perform such other duties as may be specifically authorized by an order or directive of the Chief Justice of the Superior Court relative to the administration of justice and the efficient management of criminal cases.

First Criminal Session

The First Criminal Session also operates throughout the day. The first call of the list of First Session matters for the day is read promptly at 9:30 a.m. Matters may also be heard earlier than 9:30 a.m., at the joint request of counsel for the parties or by order of the First Session Judge. Petitions for review of bail orders by the Boston Municipal and Chelsea District Courts are generally heard beginning at 2:00 p.m. each day, via video stream from the jail. The First Session Judge also reviews bails set by the Juvenile Court.

Without express or implied limitation of the RAJ's authority to exercise the inherent power of the Court, the matters reserved to the First Session Judge for hearing and/or disposition generally include the following:

1. Review of all bail orders set without prejudice by the Special Magistrate, petitions for review of bail set in the Boston Municipal Court, Chelsea District Court, and Juvenile Court, and motions to modify, revoke and/or to increase bail.
2. All matters relating to motions for pre-trial detention pursuant to G.L. c. 276, § 58A, including waivers of hearings and motions to continue a hearing required by G.L. c. 276, § 58A, except that uncontested matters pursuant to this statute may be handled by the Special Magistrate.
3. Contested non-evidentiary motions.
4. Motions brought pursuant to *Commonwealth v. Dwyer*, 448 Mass. 122 (2006).
5. Motions for leave to withdraw as counsel, or for the discharge of appointed counsel, provided the Final Pre-Trial Conference date before the Trial Judge is not imminent, in which case such motions shall be heard by the Trial Judge.
6. Motions for approval of funds for indigent defendants, except that routine motions for funds in amounts of \$2500.00 or less may be handled by the Special Magistrate.
7. Evidentiary and dispositive motions not referred to the Motion Session.
8. "Mid-point" Pre-Trial Hearings pursuant to Superior Court Standing Order 2-86 and the January 6, 2014, Procedural Order Regarding Discovery in Criminal Cases.
9. Motions to continue trial dates, provided the Final Pre-Trial Conference date before the Trial Session Judge is not imminent, in which case such motions shall be heard by the Trial Judge.
10. Motions related to competency and criminal responsibility, provided the Final Pre-Trial Conference date before the Trial Judge is not imminent, in which case such motions shall be heard by the Trial Judge.
11. Case disposition conferences and changes of plea prior to the Final Pre-Trial date before the Trial Judge, or at the discretion of the Trial Judge.

12. Final probation surrender hearings and other matters related to the administration of probation.
13. Matters which are disputed and/or require findings by the Court, provided the Final Pre-Trial Conference date before the Trial Judge is not imminent, in which case such motions shall be heard by the Trial Judge.
14. Matters relating to the grand jury, including returns of indictments, discharge of the grand jury, motions to extend the term of the grand jury, and matters of witnesses or other material requested by subpoena.
15. Review of search warrant applications.
16. Next dates provided for each case heard in the Session.

Homicide Session

Suffolk County holds a separate session dedicated to moving our substantial homicide docket through the pre-trial stages. All homicide cases are transferred to the Homicide Session for pre-trial management following arraignment and the entering of a tracking order in the Magistrate Session. The Homicide Session and its sitting Judge, generally but not always the RAJ, performs all of the above-listed functions of the First Session as they relate to homicide cases. The RAJ assigns homicide cases to the trial sessions in her/his discretion once s/he determines the case trial ready. Thereafter all pre-trial matters are handled by the Trial Judge.

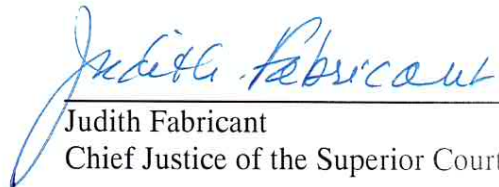
Motion Session

The daily Motion Session is dedicated to hearing and deciding on a timely basis any motions to suppress evidence, or evidentiary motions to dismiss, filed prior to the scheduled Final Pre-Trial Conference date before the Trial Session Judge. The Trial Session Judge may also in his or her discretion refer a late-filed motion back to the Motion Session. No date for hearing an evidentiary motion in the Motion Session may be scheduled until that motion is actually filed, usually in the Clerk-Magistrate's Session. The Clerk-Magistrate, First and

Homicide Sessions have access to a running daily list of the Motion Session's scheduled availability, and any of those sessions may give the parties a hearing date based on the Motion Session's schedule.

For any case that is properly scheduled for a motion hearing in the Motion Session, the Motion Session Judge may be available for case disposition conferences and changes of plea. Counsel are accordingly encouraged to consider and discuss the potential for change of plea prior to the motion hearing date.

Time permitting, and at the discretion of the First Session and Motion Session Judges, the Motion Session may also be available for overflow work from the First Session, including final probation surrender hearings and review of search warrants. The Motion Session Judge may assign next event dates to matters requiring them at the close of any Motion Session proceeding.


Judith Fabricant
Chief Justice of the Superior Court

Dated: *June 27, 2016*