

In the Supreme Court of the State of Idaho

IN RE: ORDER AMENDING LOCAL RULES)
OF THE THIRD JUDICIAL DISTRICT) ORDER

The Administrative Judge of the Third Judicial District, having submitted a proposal to amend the local rules pursuant to Rule 2(c) of the Idaho Criminal Rules to include the Felony Criminal Caseflow Management Plan that was previously approved by this Court on April 5, 2016, and the Court having approved that proposal;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the local rules of the Third Judicial District be amended to include the approved Felony Criminal Caseflow Management Plan, attached to this order, and the amended local rules are hereby approved and adopted.

IT IS FURTHER ORDERED, that the amended local rules of the Third Judicial District shall become effective immediately.

IT IS FURTHER ORDERED, that said amendments to the local rules of the Third Judicial District of the state of Idaho shall be sent to the trial court administrator of the Third Judicial District for publication and dissemination.

IT IS FURTHER ORDERED, that the Third Judicial District is hereby authorized to submit the amendments to the editors of *The Advocate* for publication and inclusion in the *Idaho State Bar Desk Book*.

Dated this 15 day of August, 2018.

ATTEST:

Clerk

By Order of the Supreme Court

R. Burdick
Roger S. Burdick, Chief Justice

I, Karel A. Lehrman, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
certify that the above is a true and correct copy of
the Order

entered in the above entitled cause and now on
record in my office.

WITNESS my hand and the Seal of this Court 8-15-18

KAREL A. LEHRMAN

Clerk

By: Michael J. Ryan Chief Deputy

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO**

IN RE: AMENDMENT OF THE LOCAL)
RULES OF THE THIRD JUDICIAL)
DISTRICT TO ADOPT A FELONY)
CRIMINAL CASEFLOW)
MANAGEMENT PLAN)

ORDER

WHEREAS the existing Local Rules for the Third Judicial District require amendment to establish a Felony Criminal Caseflow Management Plan: and

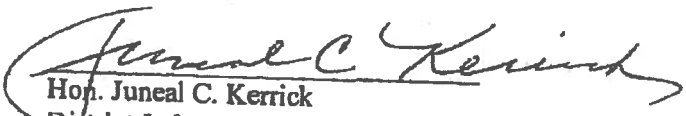
WHEREAS the District Judges of the Third Judicial District have approved a Felony Criminal Caseflow Management Plan, now, therefore,

Pursuant to the authority granted by I.C.R. 2(c), the District Court Judges of the Third Judicial District hereby amend the "District Court Rules" for the Third Judicial District by adding the attached "Felony Criminal Caseflow Management Plan for Idaho's Third District."

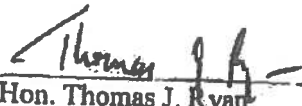
This Order amends and revokes any existing inconsistent order or orders dealing with the same subject matter, shall govern all felony criminal matters in the District Court of the Third Judicial District, to the extent not directly in conflict with any express provision of the Idaho Criminal Rules, and shall be effective upon approval and publication by the Idaho Supreme Court, as provided in I.C.R. 2(c). This Order shall be posted in a conspicuous place in the Clerk's Office of each county in the Third Judicial District, shall be published in the Idaho State Bar Desk Book, and shall be posted on the Third Judicial Court website located at:
<http://www.the3rdjudicialdistrict.com>.


IT IS SO ORDERED:

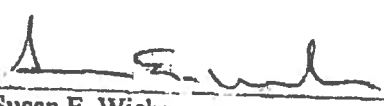

Hon. Bradley S. Ford
Administrative District Judge


Hon. Juneal C. Kerrick
District Judge


Hon. Christopher S. Nye
District Judge


Hon. Thomas J. Ryan
District Judge


Hon. George A. Southworth
District Judge


Hon. Susan E. Wiebe
District Judge


Hon. Davis VanderVelde
District Judge

Dated this 11th day of May, 2016.

Felony Criminal Caseflow Management Plan for Idaho's Third District

Statement of Purpose

This caseflow management plan will be administered consistently with Idaho's Statewide Caseflow Management Plan.

The purposes of this plan are to ensure fair, just, and timely case resolution in the courts of the Third District by:

1. Preventing unnecessary delay in case processing.¹
2. Ensuring that each case receives individual attention proportional to need in order to ensure a just result in each case.
3. Promoting judicial leadership and instituting continuous court oversight over the progression of cases from filing to disposition.
4. Creating consistency and predictability for users of the court system.
5. Setting reasonable and mutually understood clear expectations for judges, litigants, the Bar, and the public.
6. Ensuring that judges, court clerks, and trial court administrators have consistent, meaningful case management information to inform their efforts.

Section 1: Assignment of Judges in the Third District

The administrative district judge in each judicial district is responsible for the overall assignment of judges and caseloads to ensure effective caseflow management. The administrative district judge considers carefully the number and types of judges available within the district, as well as the availability of senior judges. Other considerations include population density, distribution and mix of caseloads, number of counties, geography and driving distances, the feasibility and desirability of specialization of caseloads, and societal and workload trends. The administrative district judge and trial court administrator continually monitor the assignment of judges and the effective use of existing resources.

Backup judge coverage may be provided in instances of scheduling conflicts, judicial conferences, vacations, illness, etc., by assignment to both senior and sitting judges, as available.

All district judges in the Third Judicial District are assigned felony cases. Canyon County felony cases are assigned randomly to the judges chambered in Canyon County. The district judge chambered in Payette County is assigned all Payette County and Washington County felony cases. Felony cases originating in Adams County, Gem County, and Owyhee County are assigned among the Third Judicial District Judges by order of the Administrative District Judge.

¹ According to Article I, Section 18 of the Idaho Constitution, "...justice shall be administered without...delay." According to the American Bar Association's *Standards Relating to Court Delay Reduction*, delay is "any elapsed time other than reasonably required for pleadings, discovery, and court events."

Section 2: Management of Criminal Cases

Section 2.1: Idaho Time Standards for Processing Criminal Cases

Idaho Court Administrative Rule 57 establishes time standards for case processing for individual case types. Per the rule, the time standards “are adopted as guidelines for judges, trial court administrators, lawyers, and litigants to assist them in determining the length of time it should take to conclude a case in the trial courts.” Time standards establish reasonable, mutual expectations for the courts, attorneys, and the public and can be an effective way of boosting public confidence in the Idaho courts.

When monitored regularly, time standards serve as a tool to assist courts with managing caseloads, preventing backlog, and assessing progress towards case processing goals. In short, they are a tool for ensuring that Idaho Courts are meeting their goal to provide timely case resolution as reflected in the Mission Statement of the Idaho Judiciary and as mandated in the Idaho Constitution. The identification and monitoring of processing times for key interim case events for each case type is an additional tool to assist with case management efforts, allowing for the identification of specific areas of delay in the case process.

Judges, clerical staff, and trial court administrators consistently monitor time standard reports each month and use the information to take action in particular cases and to adjust processes and reallocate resources to meet case processing goals.

Pursuant to ICAR 57, the time standards applicable to criminal cases are:

Felonies:

Magistrate Division 30 days from first appearance to order holding the defendant to answer in the district court or discharging the defendant.

District Court 150 days from first appearance in district court.

Felonies:

Magistrate Division 50% within 21 days
75% within 45 days
90% within 60 days
Measured from filing of complaint to order holding the defendant to answer in the district court or discharging the defendant.

District Court 75% within 90 days
90% within 150 days
98% within 365 days
Measured from date of order holding the defendant to answer in district court to entry of judgment.

Section 2.2: Assignment of Cases

The purposes of a case assignment policy are 1) to establish for the district the process by which cases will be assigned (individual case assignment or an alternative calendar system); 2) to identify cases in which continuity of judicial attention is important; 3) to designate the instances in which cases involving the same defendant will be assigned or consolidated for adjudication by the same judge; and 4) to implement case assignment processes that ensure the public that the assignment of cases to judges within the Third District is not susceptible to control or manipulation by parties or attorneys.

The Third District employs the following case assignment process for criminal cases:

Cases involving the same criminal defendant are assigned or reassigned to a single district judge in the following manner:

1. Felony and probation violation charges arising out of the same incident: At the district court arraignment, the prosecuting attorney makes an oral motion to transfer the new felony case and accompanying probation violations to the judge assigned to the case or cases related to the probation violation(s). If the prosecuting attorney fails to make the motion, it is the responsibility of the public defender covering the arraignment calendar to make that motion.
2. Felony, misdemeanor, and probation violation charges arising out of the same incident that are filed at the same time and prosecuted by the same entity: In addition to the criteria set forth in #1, both the prosecuting attorney and the court clerk at the initial appearance in magistrate court make certain that any misdemeanor charges are taken up with the felony case. Misdemeanor citations that arrive after the defendant's initial appearance are taken up with the felony case by motion of the public defender at the preliminary hearing.

Note the definition of a "criminal case" adopted for use with the new Tyler Odyssey case management system:

The defendant and all misdemeanor and felony charges resulting from a single incident are counted as a single case. Infractions must be filed separately, but may be consolidated [See IIR 3(d)]. If multiple citations or complaints arise from a single incident, involving a single defendant, filed at the same time, misdemeanor and felonies associated with that incident are included in a single case. If the charging document contains multiple defendants involved in a single incident, a separate case will be created for each defendant, so that each defendant is counted as a single case. Idaho Criminal Rules and Misdemeanor Criminal Rules provide some exceptions:

- (a) Two or more defendants can be joined in a single case pursuant to I.C.R. 8(b).
- (b) Offenses based on two or more acts or transactions connected together or constituting a common scheme or plan may be consolidated pursuant to M.C.R. 3(e).

3. Felony, misdemeanor, and probation violation charges arising out of the same incident in

the same county that are filed at the same time but prosecuted by different entities: The criteria listed in #2 apply in this instance, with the agency prosecuting the felony case having responsibility for all consolidated cases.

4. Felony charges added to a misdemeanor/probation violation charge, or a group of misdemeanor/infraction/probation violation charges, at a time after the filing of the original misdemeanor/infraction/probation violation charges: Misdemeanors/probation violations are consolidated with the new felony case. Infraction matters are separated and not consolidated with the criminal cases since infractions follow a different case processing path. There is no right to court-appointed counsel or to a jury trial in infraction cases.
5. Felony charges (and their associated misdemeanor/probation violation charges) filed subsequent to a pending felony charge (and its associated misdemeanor/probation violation charges) arising out of a different incident but committed within the same county: New felony charges and any associated misdemeanor or probation violation charges are assigned to the judge who is handling any previous pending felony case or cases involving the same defendant.

Other cases are assigned to judges using the following procedure: New criminal cases at the time of filing are randomly assigned among the pool of available judges for a particular county by use of the automated random assignment system in ISTARs. However, the ADJ and/or Trial Court Administrator will monitor case assignments and, in certain cases, may reassign on a basis other than random assignment.

The Third District adheres to the provisions of ICR 25 in responding to recusals, disqualifications, and the need for additional judges to handle lengthy trials by assigning cases to other sitting judges or senior judges assigned to the district. The Third District routinely assigns senior judges to handle a sitting judge's calendar when that sitting judge is involved in a lengthy trial or proceeding.

Section 2.3: Proactive Case Management

All cases and calendars are set in such a way to prevent unnecessary delay in case processing, while balancing the effective use of the time of parties, victims, judges, attorneys, and court personnel. The presiding judge adopts a scheduling policy that accomplishes this and reduces the likelihood of scheduling conflicts requiring rescheduling of events. The judge maintains early and continuous control of all cases from initiation through post-disposition proceedings by the use of:

1. Appropriate case assessment;
2. Scheduling orders and conferences for purposes of achieving date certainty;
3. Management of discovery and motion practice;
4. Realistic setting of trial dates and time limits;
5. Court control of continuances for purposes of fostering timely and resolution of most cases and achieving trial date certainty for those cases that proceed to trial.

Ongoing review of cases is necessary to ensure that a future action or review date has been set by the court in every case, and that scheduling complies with the time standards adopted by the Idaho Supreme Court.

Each judge presiding over an individual calendar controls and sets his or her own calendar. In jurisdictions using alternative calendar systems, the calendar is managed and coordinated between the judges and trial court administrator's office or clerk's office responsible for calendaring.

Section 2.4: Early and Continuous Assessment, Scheduling of Events, Calendar Management, and Calendar Setting

Early and Continuous Assessment

Idaho judges continuously assess cases to ensure that every case receives individual attention and that the amount of individual attention is proportional to need. The amount of court time and resources devoted to a case and the pace at which a case progresses depends on the complexity and individual needs of that case. Some cases can be resolved quickly with little court involvement, while other cases require more time, court appearances, and judicial oversight to reach resolution. Through an early and ongoing assessment process, the judge manages the progress of a case in a manner that will result in the most timely and just resolution possible, given the individual circumstances of that case.

When determining the most appropriate plan for a criminal case, the court considers at least the following factors (not listed in order of importance):

1. Nature of the charge(s)/number of counts.
2. Custody status of defendant(s).
3. Number of co-defendants.
4. The potential penalty.
5. Anticipated pretrial motions.
6. Need for expert witnesses and how financed; need for independent resource judge.
7. Consideration of victims' rights.
8. Need for forensic testing.
9. Complexity of factual and legal issues.
10. Likelihood of case going to trial/estimated length of trial.
11. Whether the defendant has cases pending in the same or other counties.
12. Whether a problem-solving court might be an option for the defendant.

The Third District follows these practices in developing case management plans for individual criminal cases:

- The public defender's most experienced attorneys are assigned to felony cases at the outset so that the same attorney handles the case from the preliminary hearing to the ultimate disposition of the case. This assists in the early assessment and possible resolution of cases.
- District judges are encouraged to review files prior to arraignment to determine which

cases will remain with the sitting judge for trial and which cases will go to a senior judge for trial. Sitting judges will generally keep the cases involving the most serious criminal charges and high profile cases.

- If the case is "significant," the judge sets a scheduling conference with the attorneys.
- Prior to the pre-trial conference and approximately two weeks after arraignment, the court meets with the prosecuting attorney and public defender to review new cases informally. The judge will determine in advance which of the recently-assigned cases to bring to the meeting. The same case may be informally reviewed multiple times at the discretion of the presiding judge.
- At pretrial conferences, cases are assigned to an appropriate case processing track. Cases placed on a fast track that have plea agreements are scheduled for a change of plea with a senior judge on a change of plea calendar.
- Arraignment calendars are scheduled every Friday morning. If no agreement has reached, cases are scheduled for both a pretrial conference and a jury trial at the time of arraignment. The arraignment judge scheduled will have a change of plea calendar in the afternoon in order to expedite cases where a plea agreement has been reached. In the event that the arraignment judge does not have time to take all changes of plea, the case is set over to the next week for entry of guilty plea before a senior judge.

Scheduling of Events

All scheduled case events are meaningful events, defined as events that (a) move a case toward disposition and (b) prompt the attorneys and parties to take necessary action. Monitoring the effectiveness and timeliness of interim case events between filing and disposition helps to prevent unnecessary delay. The following guidelines are used to ensure that case events are meaningful.

The following have been identified as key interim case events in criminal cases that will be tracked in the case management system and monitored for informational and case management purposes:

| District Criminal | Mag. Felony | Mag. Misdemeanor |
|-------------------|-------------|------------------|
|-------------------|-------------|------------------|

| | | |
|---|--|--|
| Initiating event: Order binding case over to district court Filing of Information Arraignment Pre-trial conference Order for ADR/Mediation Entry of plea Start of trial Filing of pre-sentence investigation report Ending event: entry of Judgment | Initiating event: Filing of complaint Initial appearance Arraignment Entry of Plea Ending event: Order binding case over to district court | |
|---|--|--|

In criminal cases:

1. Hearings and trials are scheduled in a manner that minimizes delay and reduces the potential need for continuances.
2. Every event (including the arraignment) is a meaningful opportunity for disposition.
3. Future action dates (based on interim case events) are always assigned and deadlines for those dates are enforced with the understanding that continuances can serve a meaningful purpose within the court's discretion.
4. Requests for continuances are considered pursuant to Section 2.10 of this plan.

The Third District follows these practices to ensure that all scheduled events are meaningful:

- Attorneys are held accountable for not being prepared for scheduled hearings.
- The prosecuting attorney will meet with law enforcement agency administrators to educate, problem-solve, and advise them of possible sanctions resulting from the late disclosure of evidence.
- The court will be prepared to impose meaningful sanctions for law enforcement to provide the information in a timely manner.
- The court may issue a subpoena duces tecum (SDT) to law enforcement for all reports/audios/ etc. to be produced at pre-trial conference.
- Pre-trial forms - Attorneys and defendants sign the form so that the court can use the forms to issue sanctions when appropriate.

Calendar Setting

For judges presiding over an individual calendar, counsel contacts the clerk or secretary of the presiding judge to calendar a matter for a time certain. In jurisdictions using alternative calendar systems, matters are scheduled by the clerk's office or at the direction of the presiding judge, as necessary. All calendar settings are made within the applicable time standards. Settings outside of an applicable time standard are made only upon a showing of good cause and upon an order of the presiding judge.

Criminal cases are set for trial at the time of entry of plea unless otherwise ordered by the court, consistent with a defendant's right to a speedy trial and within applicable time standards as set out in Section 2.10.

The Third District follows these practices to avoid scheduling conflicts for counsel, interpreters, and witnesses in criminal cases:

- The clerk flags the case in ISTARs at the in-custody arraignment proceeding if an interpreter is required for the case.
- Scheduling issues will be addressed at the previously described informal meeting with the judge and counsel prior to the pre-trial conference.

The Third District follows these additional practices to maximize the efficient use of the time of judges, court staff, attorneys, victims, witnesses, law enforcement officers, and criminal defendants and their families:

- The time needed to receive presentence investigation reports has been a negative factor in getting cases to final disposition. The courts are providing instant electronic notification of presentence orders to the probation and parole office. Full PSI packets will be made available in courtrooms to initiate the process. Defendants are handed orders in the courtroom to report for their PSI. Probation and parole will have a PSI investigator present at their weekly orientation sessions so that interview appointments and appointments for GAIN assessments can be scheduled at that time.

The Third District maximizes the certainty that a trial will commence on the date set by:

- The court may utilize status conferences in the week before trial to ensure that all parties are ready to start trial, and that cases scheduled for trial will actually proceed to trial.
- Another judge may volunteer to try a case that may not be assigned to him/her. This is subject to courtroom availability.

Section 2.5: Appointment of counsel

Early appointment of counsel is important not only to protect the legal rights of the accused but also to facilitate the earliest resolution of criminal charges.

Appointed counsel is available in Idaho pursuant to I.C. Section 19-851(4), ICR 5 and 10 and IMCR 6 and should be appointed as described in I.C. Sections 19-852 & 19-854.

The process for appointing counsel in the Third District is as follows:

- The prosecuting attorney runs a check on every case to determine if any potential conflict exists with the office prosecuting the case. If there is a conflict, the PA files a motion for a Special Prosecutor and ensures that any order goes to the public defender.
- The public defender also runs a check to discover possible conflicts (although most defense conflicts are discovered at the preliminary hearing).
- The court appoints counsel after an indigency determination at the initial court appearance in magistrate court unless the defendant indicates he/she will hire private

counsel. Felony matters proceeding to preliminary hearing with the anticipated appearance of private counsel are set for a continued arraignment within one week.

Appointed counsel are expected to have met with their clients and to have reviewed all available discovery in preparing for court appearances.

When an accused requests continuances to obtain private counsel, the court should inquire whether any private lawyer has actually been contacted and, if so, what financial arrangements have been made to retain private counsel. Unless the court is convinced that the accused is acting in good faith, appointed counsel will be ordered to remain on the case, unless otherwise ordered by the court.

Section 2.6: Motion Practice

The substance and need for motions vary widely. Motions are generally classified as dispositive or non-dispositive. Because motions can significantly impact the time and expense necessary in any case, management of motions is an essential component of an effective and efficient case management plan. This management is best done in an early scheduling/trial order. Requiring compliance with the motion deadlines eliminates a significant potential for unreasonable delay. Courts do not allow the parties to modify discovery deadlines set forth in the scheduling order by stipulation without authorization of the court. The court may permit modifications of the scheduling order as necessary to advance justice and, if possible, without disturbing firm trial dates.

The court should adhere to the following general guidelines when creating scheduling orders:

1. Motions which affect the introduction of evidence at trial, i.e., motions in limine, motions to strike witnesses or exhibits, etc., are often filed late in the process. Scheduling orders need to account for this and require such filings to occur early enough to give the court sufficient time to consider the same without impacting the trial date.
2. Clerks/secretaries are given guidelines in the scheduling of motions. The parties do not control the hearing schedule, and hearings are set so as to allow for meaningful review but timely resolution.
3. The courts diligently consider and rule on motions, in compliance with the requirements of the Idaho Constitution, and to prevent unreasonable delay.
4. Informal methods should be adopted for consideration and resolution of motions, such as conducting hearings of non-dispositive motions by teleconferencing.

In criminal cases:

1. Motions are generally governed by ICR 12, which sets forth the time requirements for filing and hearing pretrial motions [see ICR 12(d)]. The court adheres to these requirements to avoid delay.
2. Because motions to suppress can be dispositive, and have substantial potential for causing delay, the courts specifically address such motions in the scheduling/trial order, with the expectation that they will be filed and ruled on in a timely manner.

Special procedures for filing, hearing, and disposition of motions in the Third District:

- Pre-trial motions to suppress must be filed in conformity with ICR Rule 12 unless otherwise ordered by the court and should contain sufficient definition to assist the court in identifying issues.
- Any pre-trial motions and motions in limine will be heard by the initially assigned district judge.
- All motions will include appropriate briefing and citation to authority, in conformance with applicable court rules.
- A local CLE program presentation by local judges will be aimed at instruction in the proper briefing and presentation of motions to dismiss and suppression motions.

Section 2.7: Discovery Practice

Discovery is a significant portion of the litigation time and expense in both civil and criminal cases. Therefore, management of discovery is also an essential component of an effective and efficient case management plan. This management is done in an early scheduling order. Such orders manage the nature and scope of discovery according to the needs of each case, consistent with applicable rules. The scheduling order manages the time and expense devoted to discovery, while promoting just dispositions at the earliest possible time.

In criminal cases:

1. Discovery in criminal cases is generally governed by ICR 16. Appropriate discovery deadlines are firmly set in scheduling/trial orders for automatic disclosures, including I.R.E. 404(b) evidence, required by ICR 16(a). Deadlines are also set for the submission of written discovery requests outlined by ICR 16(b) and (c). The parties and the court adhere to all deadlines. Courts do not allow the parties to modify discovery deadlines by stipulation without authorization of the court. Courts permit modification when necessary and preferably without disturbing firm trial dates.
2. Compliance with the response times set forth in ICR 16(f) is expected and the imposition of sanctions allowed by this rule are used to curb abuses of the discovery process.
3. The district court judges require the prosecuting attorney and the defense attorney to include CVs of all expert witnesses disclosed in discovery to be included with the filing with the court.

The Third District follows these procedures to facilitate the exchange of discovery materials in criminal cases:

- Discovery for felony cases is provided by the prosecuting attorney by a CD containing all discovery materials attached to the Order of Appointment of defense counsel at the time of the initial court appearance.
- The informal conferences discussed in section 2.4 provide an opportunity to ensure that discovery is complete.

Section 2.8: Early case resolution processes

All structured settlement processes conform to the governing court rule or statute applicable to a specific case. The parties and court review applications for mediation as early as practical in every case to govern the appropriateness of mediation and settlement in order to foster efficiency, early resolution, and effective case management.

IRE 507, as administered by the authorizing court, governs the confidential nature of mediations to foster settlement in all such cases as deemed appropriate.

Early resolution of criminal cases benefits the courts, the parties, victims, witnesses, and the public. It reduces the costs of pretrial confinement. Judges and attorneys use every court appearance as an opportunity to settle criminal cases.

The parties are afforded an opportunity to mediate the case, if timely requested. Idaho Criminal Rule 18.1 allows mediation in criminal cases. The participation of the state and defense in mediation in criminal cases is governed by these rules, subject to the oversight of the authorizing court.

The court and attorneys in the Third District adhere to the following practices to obtain the earliest possible resolution of criminal cases:

- Use of criminal mediation in appropriate cases.
- Training more judges to conduct mediations and to identify which cases are appropriate for mediation.
- Informal meeting with prosecuting attorney and defense lawyer prior to pretrial conference within 14 days following the arraignment to identify cases that can be fast-tracked as opposed to cases that will take more time.

The Third Judicial District uses alternative judge panels pursuant to Idaho Criminal Rule 25 (a) (6) to prevent delays associated with judge-shopping.

Section 2.9: Pretrial Case Management

Implementation of standard pretrial management practices, such as holding meaningful pretrial conferences, is the most effective mechanism for (a) promptly resolving cases before trial and (b) ensuring that cases going to trial are adjudicated without unnecessary delay. Successful pretrial management of cases requires both the court and counsel to attend the pretrial conference prepared to discuss the matters identified in the court's scheduling order, ICR 18, and/or any other issues or concerns unique to each case.

In criminal cases:

1. Pretrial conferences are set at least 14 days before a trial.
2. All pretrial motions are filed in a timely manner, and in felony cases, pretrial motions are heard on or before the date of the pretrial conference. This requirement is subject to constitutional considerations that may require some flexibility.
3. A list of witnesses, exhibits and requested jury instructions are filed at least seven days before trial in felony cases.

4. Scheduling orders reference ICR 18 and inform attorneys they are to be prepared to discuss such matters at the pretrial conference. The judge has a checklist of topics ready to discuss with counsel at the pretrial conference.
5. If a case is not settled by the pretrial conference and a misdemeanor is consolidated with a felony case, the misdemeanors are to be included in an amended information.

Checking the Status of Pending Case Matters

Judges understand that decisions are to be issued in a timely way, pursuant to Art. V, Section 17 of the Idaho Constitution. Therefore, judges willingly accommodate requests by attorneys and/or parties seeking the status of matters under advisement or other pending case matters, without negative consequence to those seeking that status report. To assist the attorneys and/or parties in this regard, judges follow these practices:

- When additional briefing or materials are necessary before the judge considers the matter under advisement, the judge sets clear deadlines for submission of the briefing or materials to the attorneys and/or parties.
- If the judge considers the matter under advisement at the conclusion of oral argument, the judge clearly states the same on the record.
- If a matter is under advisement a proper notation of that fact is entered in the court's case management system.
- Attorneys and/or parties are advised that they are free to contact the court's clerk/secretary to inquire about the status of any case, proceeding, or pending decision 30 days after the matter is under advisement, without consequence.
- Clerks/secretaries are trained to accept willingly requests for the status of a case, proceeding or pending decision, although their report should necessarily disclose only that the matter is still pending, the scheduled timing of future events, or that the decision has been issued.

The Third District follows these procedures as part of its management of the pretrial stage of criminal cases:

- The court will issue a scheduling/pretrial order following arraignment that will set forth what needs to be accomplished before and at the pretrial conference hearing.
- A pretrial order will be developed to document issues at the pretrial conference and expectations.
- If a case remains unresolved and ready to proceed to trial following the pretrial conference, the court will prioritize cases set for trial on the same date and time and so inform the prosecuting attorney and defense counsel. It will be expected that when one case settles, the case next in line of priority will proceed to trial. It is not good cause for a continuance that the attorneys assumed their case was going to be bumped by another case with higher priority.

Section 2.10: Continuances

A continuance, for the purposes of this section, is when a party requests the postponement of a scheduled hearing or trial date. Courts exercise discretion in determining whether to grant or deny a requested continuance. While courts employ the legal standards to reduce

unnecessary delay, they remain mindful that some delays are necessary and warranted to effectuate justice or to facilitate effective resolution of cases.

A joint or stipulated motion for a continuance is not binding on the court (See ICR 27).

The factors the court considers in determining whether to grant a motion to continue include but are not limited to:

1. The reason for the request and when the reason arose.
2. Whether the reason for the request was within the control of counsel or was otherwise reasonably foreseeable.
3. Whether granting or denying the motion would unfairly prejudice either party.
4. The number of continuances previously granted.
5. The age of the case.
6. The days remaining before the trial date.
7. Whether all of the named parties agree to the continuance.
8. The length of the postponement that would be required if the motion were granted.
9. Whether there has been a substitution of counsel.
10. Difficulties associated with obtaining forensic evidence.
11. Whether the defendant has applied for acceptance into a problem-solving court.
12. The defendant's constitutional right to a speedy trial.
13. Whether the defendant remains in custody.

The judges of the Third District have adopted the following policy to implement the statewide policy on continuances in criminal cases:

- The district judge may conduct an informal meeting with the prosecuting attorney and defense counsel prior to the pretrial conference to discuss issues with discovery, client contact and other pertinent matters in an effort to avoid unnecessary continuances of pretrial conferences and trial dates.
- Emphasis will be placed on streamlining and speeding up the screening process for problem-solving courts.
- Continuances will not be favored and there must be a showing of good cause and substantial justice before a continuance is granted.

Section 2.11: Management of Trials

Whenever possible, criminal trials are always scheduled to proceed on consecutive days from commencement to conclusion, whether the trial will be conducted to a jury or to the bench. Trials are conducted so as to make the most effective use of the time of jurors, victims, witnesses, interpreters, judges, attorneys, and court staff. Jury deliberations should adhere to the provisions of ICAR 65(b).

The judges of the Third District adhere to the following practices to minimize the amount of time and resources required to conduct criminal trials, and to minimize the inconvenience to jurors and witnesses, consistent with constitutional principles of fairness and due process of law:

- Pretrial orders will mandate that motions be timely filed and heard before the day of trial.
- By 3:00 p.m. on the preceding Tuesday the court will be responsible for establishing a priority of cases to be tried on the following Tuesday trial date. Notification of case priority and the availability of judges and courtrooms will be given to the prosecuting attorney and defense counsel.

Section 2.12: Post plea or verdict case management

A considerable portion of the time required to resolve a criminal case occurs after a defendant enters a plea of guilty or is found guilty at trial. Idaho courts work with their justice system partners (particularly the Idaho Department of Correction) to minimize the delays associated with presentence reports. Presentence investigations are governed by ICR 32 and I.C. Section 19-2524. Court clerks transmit PSI orders to IDOC district offices immediately after they are entered, initiating the PSI process.

The Third District takes the following additional steps to streamline the process of preparing presentence reports:

- Notification of PSI orders to probation and parole is accomplished electronically and is done immediately.
- PSI orders with clear instructions about reporting to probation and parole are handed to each defendant in court.
- Full PSI packets are made available in court for defendants to take to their first visit at the probation and parole office.
- A PSI investigator is present at the weekly orientation for defendants so that interview and GAIN assessment appointments can be scheduled while the defendant is personally present.

The Third District takes the following steps to reduce the time between sentencing and the entry of an order of judgment and commitment embodying the court's sentencing decision:

- The court timely prepares the Judgment and Commitment Orders.
- Some judges are presently having their in-court clerk prepare the Judgment in court as the sentence is pronounced, with copies provided to all parties at the time of sentencing. The Third District is working toward a policy that all district judges will do so.
- Probation and parole promptly notifies the court when a defendant fails to report to the presentence investigator or to the substance abuse or mental health evaluators. Warrants are generally issued upon receipt of notice by affidavit.

Application packets for all problem-solving courts are available in all courtrooms. Referral forms for problem-solving courts are filled out in the courtroom.

Section 2.13: Post-conviction proceedings

A petition filed pursuant to the Uniform Post-Conviction Procedure Act is civil in nature, is governed by the Rules of Civil Procedure and is entirely distinct from the underlying criminal action. However, the claims in the petition arise from the underlying criminal case, thus requiring a simultaneous review of both the civil and criminal case filings.

The Third District takes the following steps to ensure the fair and timely resolution of post-conviction proceedings:

- One district judge with specialized experience in post-conviction relief matters is assigned to all post-conviction cases for the District.
- That district judge will model problem-solving courts in the processing of post-conviction proceedings by, including but not limited to:
 - (a) Periodically providing training seminars for attorneys assigned to handle the post-conviction relief cases.
 - (b) Requesting a specific prosecuting attorney and a specific public defender be assigned to all post-conviction cases.
 - (c) Scheduling all post-conviction cases on a "post-conviction case docket" so that all post-conviction cases are heard on a frequent and regular basis at a time different than the regularly-scheduled civil motion day.
 - (d) Defining a timeline for relevant deadlines in the case processing.

When a petition is filed, the Clerk shall make 2 copies of the petition and keep one copy in the file for the defense attorney and one copy for the prosecutor. The copy for the prosecutor will be delivered to the prosecutor when the petition is filed. The copy for the defense attorney will be provided upon appointment of the attorney. The assigned district court judge will have the discretion to appoint counsel in accordance with applicable statutes and other relevant standards as established by the Idaho Supreme Court. Because a petitioner is not entitled to be present at every hearing (I.C. 19-4907(b)), hearings will be held at the Canyon County Courthouse and counsel for the petitioner will provide transport orders for those circumstances in which the presence of the petitioner is necessary. The assigned district court judge will determine whether the presence of the petitioner is necessary and issue transport orders accordingly.

Because this process for handling post-conviction petitions is new, the assigned district court judge has established the following timelines for the processing of post-conviction cases:

- 30 days after filing of petition: review for appointment of counsel and issue Order Appointing Counsel if appropriate.
- 60 days after appointment of counsel: amended petition due.
- 60 days after amended petition: State to file an answer and/or motion for summary dismissal; Court to review petition for Notice of Intent to Dismiss. If Notice of Intent to Dismiss is filed, the Petitioner has 30 days to respond to the Notice. If nothing is filed, Dismissal is entered.
- 60 days after motions: Case set for evidentiary hearing or Court issues order granting summary dismissal.
- 30 days after evidentiary hearing: Court issues Order Granting/Denying the Petition.

This timeline is under review to determine whether it is realistic in light of the workload of the attorneys, and whether it adequately addresses the practical difficulties in arranging client contact and handling cases from counties other than Canyon County.

To prevent the duplicative costs of transcripts, the prosecutor and the defense attorney are to check with the Office of the Attorney General and the Office of the State Appellate Public Defender, respectively, to determine what transcripts, if any, have already been created. The parties are required to obtain copies of those transcripts, rather than order additional copies. In compliance with I.C. § 19-4906(b), when the Petitioner has not attached relevant documents, the State is required to provide copies of the relevant documents and /or the underlying criminal case file in electronic format for both the petitioner's attorney and the court.

Section 2.14: Probation revocation proceedings²

Substantial time of the court, the prosecution, the defense, and IDOC personnel is devoted to the filing, processing, and resolution of probation revocation proceedings. Management of offenders sentenced to probation is an important part of achieving the goals of sentencing: punishment; treatment and rehabilitation; a message of deterrence; and protection of the community. The processing of probation revocations can be complicated by concurrent prosecution of the probationer for additional criminal conduct that sometimes is the basis of the revocation petition, in whole or in part.

The Third District takes the following steps to maximize the effective use of the resources of the courts, prosecution, defense, and IDOC in resolving probation revocation matters:

Probation Officers will make specific recommendations in their revocation reports.

- Four (4) options to be included in the report:
 - Recommend revocation or reinstatement of probation.
 - Recommend retained jurisdiction.
 - Recommend imposition of prison sentence.
 - Recommend to a problem-solving court.
- Prosecuting attorney will email an offer for settlement to defense counsel prior to the evidentiary hearing and at the earliest possible date.
- Defense counsel will notify the prosecuting attorney regarding settlement at least one week prior to the evidentiary hearing.

Section 2.15: Effective and Consistent Monitoring of Case Management Reports

Caseflow management necessitates the regular production of case management information from an automated system. Case management reports provide a means of identifying and preventing delay in the processing of individual cases and the buildup of a case backlog that

² Significant policy changes pertaining to felony probation are being implemented per SB1357 and monitored per SB1393 (Justice Reinvestment Initiative), passed by the Idaho Legislature in 2014. Modification to this section of the case district caseflow management plan will be necessary to accommodate future policy and/or procedural changes.

can result in an overall delay in the processing of all cases. They also provide information about potential sources of delay.

The production of case management information is not sufficient in and of itself, however, to ensure effective caseload management. Equally important is the utilization of this information, as follows:

1. Judges consistently and effectively monitor their case management reports and take appropriate action to ensure that meaningful events are set for all cases, that case processing goals are being met, and that potential sources of unnecessary delay are identified so that they may be addressed through case management.
2. Administrative district judges and trial court administrators closely monitor reports for their districts to identify cases that are nearing or exceeding applicable time standards, areas where backlog may be developing, potential sources of systemic delay, and changes in overall caseloads and inequities that may develop in caseload distributions and that may require adjustments in judicial assignments.

It is the responsibility of individual courts to ensure that data entry practices are consistent with statewide uniform business practices, thus resulting in accurate and reliable case management information.

The Third District uses these procedures to ensure effective use of data reports for monitoring the progress of criminal cases:

- Trial Court Administrator monthly audit of case management reports from the Idaho Supreme Court.
- PA's office use of *Justware* to track the cases as they come into the office. As a secondary source, the PA uses ISTARS to verify the numbers.
- PD's office gathers the data required by I.C. § 19-864 to monitor caseload.
- In the future, Odyssey will provide enriched reporting and tracking capability for trial courts to monitor case activity.

Section 2.16: Special Considerations for District Plans

Language Access Services

Federal and state laws require judges to ensure parties, witnesses, and other interested individuals have meaningful access to the courts. Language access services are provided in all civil and criminal cases pursuant to Idaho Code 9-205. Professional court interpreters are appointed pursuant to ICAR 52. Determining the need for services is done in a number of ways, including the following:

- For spoken languages, self-identification by the non-English speaker (or companion). For the deaf or hard of hearing, through an ADA request for accommodation.
- A judge finds there is a need for language access services.
- Court personnel may receive notice directly from the public, attorneys, guardians, probation officers, law enforcement and other participants.

- Outside agencies, such as social workers, law enforcement or correctional facilities, notify the court about a LEP individual's need for auxiliary services for an upcoming event.

The Third District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources: A certified court interpreter is employed by the court as the district's court interpreter coordinator. The primary function of that position is to schedule interpreters for court proceedings and to handle all language access issues in the courts of the District.

It is the responsibility of the handling attorneys to inform the court that their case involves witnesses who need an interpreter. Also, it is the responsibility of the attorneys to notify the court when special equipment might be needed.

Jury Operations

Jury service is an important civic and community duty. The justice system cannot work fairly unless jurors perform their duties properly. Obtaining juror compliance with summonses, qualification questionnaires, court schedules, and other court requirements is important for the integrity of the jury process. In the Third District, the administrative district judge or the presiding judge in each case follows I.C. § 2-217 and I.C.A.R. 62 and 63 in excusing or postponing jury service, managing instances where a juror fails to respond to a proper jury summons, and using discretion to encourage appropriate jury service.

The Third District adheres to the following practices to ensure jury operations are efficient and effective:

- District personnel performing jury functions attend yearly training specific to jury issues offered at the Idaho Supreme Court's annual Idaho Institute for Court Management for district court personnel.
- Jury commission personnel immediately attempt to contact non-appearing jurors by telephone. For those instances where voice contact is not made with the potential juror, a letter is sent that directs the individual to appear on a date certain in the jury commission office to discuss the jury service obligation.
- Periodically, a judge is assigned to conduct show cause hearings for citizens who repeatedly fail to appear for service despite extra efforts made to contact and work with them to serve.

Self-Represented Litigants

The Idaho Judiciary is committed to ensuring access to justice for self-represented litigants (SRLs). Consistency and predictability are vital to meeting this goal. Self-represented litigants may lack the expertise to manage their cases effectively. There are key points in a case where SRLs can unintentionally stall the progress of a case. The Judiciary's commitment to ensure fair and timely case resolution requires that these and other SRL concerns be addressed. All solutions will look toward effective practices that will not become obstacles to SRLs, but will instead facilitate proper notification and access to information for SRLs so that they can more effectively navigate the court system.

The Third District adheres to the following practices to ensure that criminal proceedings in which defendants waive their right to counsel proceed in the most fair and efficient manner possible:

It is rare that there are self-represented litigants in felony criminal matters. When that happens, the courts are careful to advise the defendant of his/her right to counsel and his/her ability to get court-appointed counsel. Often appointment of "standby" counsel is employed to ensure that the self-represented litigant is adequately advised.

Media relations

The Idaho courts have a manual for judges on media relations. These issues are addressed in ICAR 45 and 46. In addition, ICAR 32 addresses public requests for court records, which includes media requests.

Administrative district judges establish effective relations between the court and the media by scheduling forums or other opportunities for discussion with the media, and by providing general information to the media about the courts, the law, and court procedures and practices, to the extent permitted by the Idaho Code of Judicial Conduct.

In the Third District, judges follow these standard procedures in dealing with requests for video coverage of criminal matters: Media representatives requesting video coverage are instructed to submit the standard application form as contained in Court Administrative Rule 45 to the presiding judge's secretary or clerk at least 24 hours in advance of the proceeding, unless court scheduling deadlines prevent 24 hours of advance notice.

Telephonic and other remote appearances

IRCP 7(b)(4) and ICR 43.1 authorize the use of telephone conferencing to conduct hearings. Allowing parties, witnesses, interpreters, probation officers and attorneys to make court appearances without appearing personally in court can result in significant efficiencies and are allowed when they do not compromise the rights of a party. Stipulating to remote appearances by forensic testing personnel can reduce backlog in forensic testing requests.

In the Third District, remote appearances are allowed at the discretion of the presiding judge and are routinely granted.

The procedures for arranging a remote appearance are to file a motion to the court or to simply contact the court's clerk or secretary and make the necessary arrangements.

Section 2.17: Maintaining the District Case Management Plan

Once the Statewide and District caseload management plans are established, keeping the plans relevant will be a priority. Therefore, outreach and collaboration will be ongoing. Both at the state and at the individual judicial district levels, collaborative planning procedures will be maintained to promote regular and ongoing communication, problem-

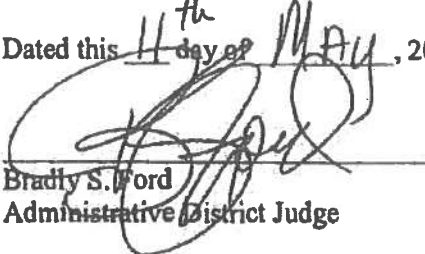
solving, and adaptation of caseflow management processes to the ever-changing needs of the justice system and the communities it serves.

Major sources of future changes will be the deliberations and conclusions of the Advancing Justice Committee's work group on uniform business processes and the Judges Associations' efforts to develop uniform forms for all Idaho case types.

The Third District maintains the felony case management plan through the following process(es):

- Monthly District Judge meetings.
- Periodic meetings among the administrative district judge, trial court administrator, prosecuting attorney and public defender.
- Monthly Criminal Justice Planning Council meetings.

Dated this 11th day of May, 2016



Bradley S. Ford
Administrative District Judge