

# In the Supreme Court of the State of Idaho

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

Whereas, at its Oral Conference on July 26, 2018, the Court reviewed the Misdemeanor Caseflow Management Plans developed by each of the Seven Judicial Districts in accordance with the Court's Amended Order dated December 7, 2015, and approved each of the submitted plans:

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Court approves the Misdemeanor Caseflow Management Plan submitted by Fourth Judicial District, and

IT IS FURTHER ORDERED that the local rules of the Fourth Judicial District are hereby amended to include the approved Misdemeanor 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 Fourth Judicial District shall become effective immediately.

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

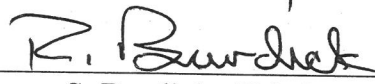
IT IS FURTHER ORDERED, that the Fourth Judicial District is hereby authorized to submit the amendments to the editors of *The Advocate* for publication and inclusion in the *Idaho State Bar Desk Book*.

Dated this 15 day of August, 2018.

ATTEST:

  
Clerk

By Order of the Supreme Court

  
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

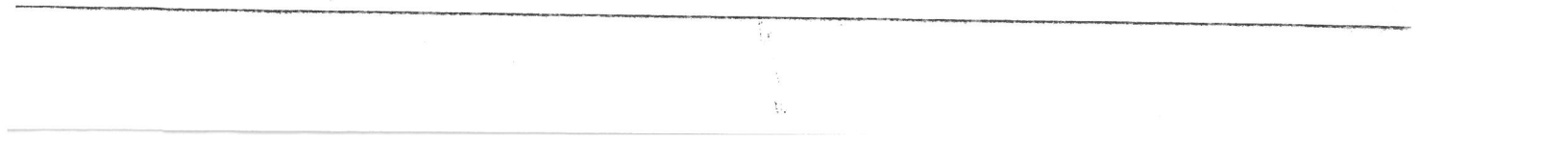
Clerk

By:  Chief Deputy



**Misdemeanor Caseflow Management Plans**

**4<sup>th</sup> District Plan**



# **Misdemeanor Criminal Caseflow Management Plan for Idaho's Fourth Judicial 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 Fourth Judicial District by:

1. Preventing unnecessary delay in case processing.<sup>1</sup>
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 Fourth Judicial District**

The administrative district judge in each judicial district is responsible for the overall assignment of judges and caseloads to ensure effective caseflow management. Each 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.

All magistrate judges are assigned matters specified in Idaho Code § 1-2208 and Chapter 23, Title 1, Idaho Code. Magistrate judges handle the "on call" requests for search warrants, 24 hours a day, 7 days a week. At any given time, one magistrate judge is on call. If that judge is not available, the prosecutor may elect to call any other magistrate judge. If the prosecutor is required to call a backup magistrate judge and that judge does not have the capability to record the proceeding, the law enforcement officer is then responsible for recording the proceeding. The on-call rotation changes every seven days in Ada County. A single magistrate judge presides over On-Call duty in Boise and Valley Counties. Two magistrate judges share On-Call duty in Elmore County.

In Ada County, one magistrate judge presides over a Problem Solving court for misdemeanor DUI offenses. Two judges equally share presiding over Domestic Violence Court every other week.

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<sup>1</sup> 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."

Additional matters may be assigned by the administrative district judge pursuant to Idaho Code § 1-907. In addition, the Idaho Supreme Court may, by rule, specify additional categories to magistrate judges pursuant to Idaho Code § 1-2210.

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

**Misdemeanors:** 90 days from first appearance

**The revised time standards that have been approved by the Idaho Supreme Court for piloting to begin sometime in 2015 are:**

**Misdemeanors:** 75% within 90 days  
90% within 120 days  
98% within 150 days  
Measured from the filing of the complaint 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 put in place case assignment processes that ensure the public that the assignment of cases to judges within the Fourth Judicial District is not susceptible to control or manipulation by parties or attorneys.

The new Tyler Odyssey case management system defines a "criminal case" as follows: 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.

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

The following cases involving the same criminal defendant may be assigned or reassigned to a single magistrate and to a single district judge as provided in Local Rule 11.2 of the Local Rules of the District Court and Magistrate Division of the Fourth Judicial District:<sup>2</sup>

1. Felony and probation violation charges arising out of the same incident.
2. Felony, misdemeanor, infraction, and probation violation charges arising out of the same incident that are filed at the same time and prosecuted by the same entity.
3. Felony, misdemeanor, infraction, 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.
4. Felony charges added to a misdemeanor/infraction/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.
5. Felony charges (and their associated misdemeanor/infraction/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.
6. Felony charges (and their associated misdemeanor/infraction/probation violation charges) filed subsequent to a pending felony charge (and its associated misdemeanor/infraction/probation violation charges) out of a different incident but committed in different counties within the same district pursuant to I.C.R. 20 or 21.
7. Felony charges (and their associated misdemeanor/infraction/probation violation charges) filed subsequent to a pending felony charge (and its associated misdemeanor/infraction/probation violation charges) out of a different incident but committed in different counties and different districts in Idaho pursuant to I.C.R. 20 or 21.
8. Misdemeanor criminal cases are randomly assigned to the presiding magistrate by Odyssey. After assignment the following protocol applies:
  - a). Once a case has been assigned to a judge for pre-trial/jury trial, it will remain on that judges' calendar if it becomes a court trial.
  - b). If a defendant who has a case set for court trial requests a jury trial, the jury trial will be set on the calendar of the judge who was assigned the court trial.
  - c). If a defendant on a walk-in sentencing calendar requests a jury trial, the pre-trial/jury trial will be set from the master calendar.
  - d). When consolidations are granted, cases will be consolidated to the case having the lowest case number.
  - e). For the purposes of subsequent motions for contempt, probation violations, and other post-sentencing issues, the judge to whom the case was assigned will be considered the

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<sup>2</sup> Local Rule 11.2. provides: **11.2 Criminal Cases.** Motions to consolidate pending criminal actions shall be presented to and ruled upon by the judge to whom the lowest numbered case or first filed case has been assigned among those matters sought to be consolidated. Notice shall be given to all parties in each action involved and a copy filed in each case involved. If a motion to consolidate is granted, all further action with regard to the consolidated cases shall be heard by the judge assigned to the lowest numbered case or first filed case involved.

sentencing judge regardless of who actually conducted the sentencing hearing. The in-court clerk will make sure the file is marked with the assigned judge's name and the clerk's office will assign subsequent hearings to that judge.

f). Voluntary appearances on outstanding warrants will be set on the calendar of the judge who granted the voluntary appearance.

g). When setting preliminary hearings at arraignment cases should be balanced between the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> days.

h). In Ada County, the master calendar should only be used to set cases on a defendant's initial appearance.

The Fourth Judicial 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. Plan B judges and senior judges are regularly employed to preside over jury trials. This use of Plan B and senior judges is critical to ensuring that trials can go forward as scheduled.

In the Ada County Magistrate Division, nine judges are assigned to hear criminal cases and two judges each handle half of a full-time criminal assignment resulting in a single criminal magistrate position between those two judges. Each full-time criminal magistrate judge (with the exception of one who handles the DUI Problem solving Court) has a "jury trial" week once every three weeks. The remaining two weeks include pre-trial conferences, bond arguments, preliminary hearings, motion hearings, arraignments, court trials, court trial conferences, sentencing hearings, and other miscellaneous matters. On Monday mornings, a single judge handles over flow sentencings and probation violation hearings, and hears probable cause on felony cases in the afternoon. Each judge has flexibility in scheduling his/her hearings; however, they must be scheduled on the days designated for these matters by the trial court administrator's office and the clerk's office. The criminal calendar is managed by the trial court administrator's office and in coordination with the clerk's office staff responsible for calendaring.

In Ada County a single judge also presides over a misdemeanor DUI Problem Solving Court. The Boise City Attorney's office assists with this court in an effort to give individualized attention and detail to high-risk offenders charged with driving under the influence. Ada County residents charged with excessive or second offense DUI, who do not have a felony history of violent crimes, and are not required to register as sex offenders, may be accepted into the program. Boise City screens excessive and second offense DUI cases to ensure they meet the proceeding criteria and notifies defense counsel of qualified candidates. Qualified parties opt in to DUI court by stipulation to plead guilty, participate with treatment and probation, comply with all program requirements, and attend regular judicial review hearings. Cases entering DUI court are transferred to a designated judge who presides over the DUI court. The DUI court judge accepts the guilty plea, sentences those entering DUI court, and presides over review hearings. Qualified parties who do not opt in to DUI court may also be sentenced to participate in DUI court.

Two judges equally share presiding over the Ada County Domestic Violence Court. The Ada County Prosecuting Attorney's Office screens cases on a case-by-case basis into the Ada County Domestic Violence Court which include, but are not limited to, charges of: misdemeanor domestic battery, misdemeanor violation of a protection order, misdemeanor violation of a no-contact order, and misdemeanor stalking. For Boise City cases, prosecutors screen all cases before arraignment. High risk, high lethality domestic violence cases may be selected for transfer to the Domestic Violence Court. The transfer typically occurs at the time of arraignment. On occasion cases may be transferred into DVC via stipulation or as part of a global resolution. Due to the expedited nature of the DVC docket, the first pretrial conference in DVC is within a week from the time of arraignment. Monday morning and afternoon dockets are blocked for Boise City DVC cases and may include, motion hearings, review hearings, pre-trials, sentencing, and probation violation hearings. Boise City has designated priority settings for jury trials every Thursday. There is no cap on the number of cases Boise City can transfer into DVC.

In the Valley County Magistrate Division, the resident magistrate judge is assigned to hear criminal cases.

In the Elmore County Magistrate Division, the two resident magistrate judges are assigned to hear criminal cases.

In the Boise County Magistrate Division, the resident magistrate judge is assigned to hear criminal cases.

### **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, as needed, for purposes of resolving the case fairly and efficiently;
3. Management of discovery and motion practice;
4. Realistic setting of firm trial dates and time limits for discovery;
5. Court control of continuances for the prompt and fair resolution of the case.

Ongoing review of cases is necessary to ensure that a future action or review date has been set by the court in every case. Each month, the Idaho Supreme Court sends out an electronic status report for each judge. This status report lists the judge's assigned cases by case name, case number, the most recent event in this case, and any scheduled future hearing. Judges review the status report to ensure that each case is operating on schedule. In this way, judges can ensure that scheduling complies with the time standards adopted by the Idaho Supreme Court.



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

### **Early and Continuous Assessment**

The amount of court time and resources devoted to a case and the pace at which a case progresses depends on the 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.

When determining the most appropriate plan for a criminal case, the court considers at least the following (not 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;
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 other counties
12. Whether mental health or other evaluations of the defendant might be needed
13. Whether a problem-solving court might be an option for the defendant

The Fourth District magistrate court follows these practices in developing case management plans for individual misdemeanor cases:

- 1 All misdemeanor cases are set for pre-trial conference approximately three weeks prior to trial with the goal of early resolution.
- 2 At the pre-trial conference the attorneys will advise the court of issues that may make the case more complex, require additional discovery, require motion hearings, witness issues, etc.
- 3 At the pre-trial conference defendants are screened for possible participation in problem solving courts.
- 4 An in-custody defendant who wishes to plead guilty prior to the pre-trial conference may request to have their case moved up to an earlier date.

### **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 can aid in the efficient resolution of cases.

The following have been identified as key interim case events in criminal cases <sup>3</sup> that will be tracked in the case management system and monitored for informational and case management purposes:

<b>Magistrate Misdemeanor</b>
Initiating event: Filing of complaint
Arraignment
Pre-trial
Entry of Plea
Start of trial
Ending event: Entry of judgment

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.
4. Requests for continuances are considered pursuant to Section 2.10 of this plan.

The Fourth District also follows these additional practices to ensure that all scheduled events are meaningful:

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<sup>3</sup> Another key interim event in any criminal case not listed among those set forth in the current caseflow management plan is an evaluation of a defendant's mental condition pursuant to I.C. § 18-211 when there is reason to doubt his/her fitness to proceed. If the defendant is subsequently committed to the custody of the director of the department of health and welfare for a period of time pursuant to I.C. § 18-212, the resultant suspension of the criminal case could result in a potential lengthy delay in the proceedings without explanation.

- 1 It is expected that discovery will have been requested and completed prior to the pre-trial conference, and that pre-trial motions will have been filed.
- 2 The Defendant is required to be present at the pre-trial conference unless excused by the court prior to the conference. If the defendant is excused the defense attorney is expected to have authority to settle the case.

Every judge needs to hold attorneys accountable for not being prepared for scheduled hearings. While continuances can be unavoidable because of circumstances outside of the control of the parties, judges are responsible for holding to firm trial dates and discouraging unnecessary delay. Judges are expected to confer with each other to discuss system problems that create unnecessary delay. Depending on the problem to be addressed, judges are expected – under the guidance of the ADJ - to develop a realistic plan to address the problem.

### Calendar Setting

For judges presiding over an individual calendar, counsel contacts the clerk of the presiding judge to calendar a matter for a time certain. In jurisdictions using alternative calendars, 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 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.

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

1. Scheduling conflicts for counsel and witnesses are resolved at the pre-trial conference. Prosecutors are expected to have officer and witness schedules and defense counsel to have witness schedules.
2. Identifying defendant's who require an interpreter is a priority beginning with a defendant's first appearance before the clerk or initial appearance before the court. If a witness requires an interpreter it is the responsibility of counsel to notify the TCA Office of the need the need.
3. It has long been the practice of the Fourth District to simultaneously set and notice both a pre-trial conference date and a jury trial date at the time of the entry of a not guilty plea. With the Odyssey program pre-trial conferences and trial dates are set and noticed as separate events, rather than simultaneously prior to Odyssey.

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

1. In Ada County, at the preliminary hearing stage, the court conducts a morning calendar call at 9:00 a.m. to determine which cases have resolved or do not otherwise require a hearing. If the defendant has agreed to waive his/her preliminary hearing, the paperwork is filed to

transfer the case to the district court. If a case does require a preliminary hearing, it is set over the same day to 1:30 p.m. for the preliminary hearing. Between the end of the morning calendar call and the 1:30 p.m. preliminary hearing, witnesses are able to call the prosecutor's office to find out if they are required to appear. By weeding out those cases in which witnesses will not be required to appear, this system saves all witnesses valuable time.

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

1. The use of a Trial Status Memorandum entered at the pre-trial conference when a case is left on for trial. The memorandum certifies that the case is ready for trial, that pre-trial motions have been heard, the discovery has been completed, and that witness issues have been addressed.
2. Trial continuances are granted only on a showing of good cause.
3. At least two judges have jury trials scheduled on a given day. If one judge's trial goes down that judge is available to hear a trial from another judge's calendar.

### **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. § 19-851(4), ICR 5 and 10 and IMCR 6 and should be appointed as described in I.C. §§19-852 and 19-854.

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

1. Oral or written request for appointment of counsel is completed as early in the case as possible. The Ada County jail has forms for defendants to fill out to request the appointment of counsel. In this manner, a defendant accused of a felony crime may request the appointment of counsel before even seeing his/her magistrate judge for the first time.
2. Appointed counsel promptly requests discovery from the prosecuting attorney to prepare for trial as scheduled and to insure that any potential pre-trial motions are timely addressed.
3. Each magistrate judge in Ada County is assigned a criminal defense "team," generally consisting of two attorneys who rotate on a yearly basis. These two public defenders and the respective prosecuting agencies appear before the same judge week after week.
4. In those cases where a defendant requests a continuance to retain private counsel, the court may grant a reasonable period of time so the defendant may retain and meet with counsel before the next scheduled hearing. However, barring exceptional circumstances, any continuance to retain private counsel will not change the scheduled trial date. In addition, if private counsel does appear for defendant or files a notice of substitution, s/he is expected to be prepared to move forward with the case at the first scheduled hearing.

### **Section 2.6: Motion Practice**

The substance and need for motions varies 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. 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 permits 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 account for this and require such filings to occur early enough to give the court sufficient time to carefully consider the same without impacting the trial date.
2. Clerks are given careful guidelines in the scheduling of motions. Parties do not control the hearing schedule, and hearings are set so as to allow for meaningful review but timely resolution.
3. Courts diligently consider and rule on motions, in compliance with the requirements of the Idaho Constitution and the Idaho Criminal Rules to prevent unreasonable delay.
4. Telephone conferences are a tool for addressing non-dispositive motions.

In criminal cases:

1. Motions are generally governed by ICR 12, which sets forth the timing requirements for filing and hearing pretrial motions. The court adheres to these requirements to avoid delay.
2. Because motions to suppress can be dispositive, and have substantial potential for causing delay, courts may specifically address such motions in the scheduling/trial order, with the expectation that they will be filed and ruled on in a timely manner. Often, defense counsel are aware by the time of the Defendant's first appearance in district court that the case is appropriate for a suppression motion. In that event, the judge may use the arraignment date to schedule a suppression hearing, and deadlines for filing any briefs.

Each judge sends out a scheduling order that contains the procedures and deadlines for filing and arguing dispositive motions. These scheduling orders may be modified or supplemented by oral rulings in court as needed.

### **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. In Ada County, in misdemeanor cases, all discovery within the possession of the prosecutor is provided to defense counsel – at the latest – at the pre-trial conference. Some files, such as audio recordings and reports by law enforcement, are provided to the public defender's office electronically. For private defense counsel, the audio recordings are provided by the prosecutor's office either electronically or by CD. Some discovery is not available at the time of the preliminary hearing, such as fingerprint analysis, DNA, and other laboratory analysis. The prosecuting attorney supplements this discovery as soon as it is available to the prosecutor.
2. Discovery in criminal cases is generally governed by ICR 16. Appropriate discovery deadlines may be reflected in scheduling/trial orders for automatic disclosures, including I.R.E. 404(b) evidence. Deadlines may 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.
3. Compliance with the response times set forth in ICR 16(f) is expected and the imposition of sanctions allowed by this rule is used to curb abuses of the discovery process.

### **Section 2.8: Early Case Resolution Processes**

Idaho Criminal Rule 18.1 allows mediation in criminal cases. The parties are afforded an opportunity to mediate the case, if timely requested. 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.

Any 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 on a case-by-case basis 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 court and attorneys in the Fourth Judicial District adhere to the following practices to obtain the earliest possible resolution of criminal cases:

1. At the time of a scheduled status conference, the parties and the court will review any requests for mediation, if an application has been received.

Administrative district judges are encouraged to use alternative judge panels pursuant to Idaho Criminal Rule 25 (a)(6) to prevent delays associated with judge-shopping. In the Fourth Judicial District, a list of alternate judges who may be assigned to preside at the trial of a criminal case is included in the scheduling order.

## **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 any other issues or concerns unique to each case.

### **Misdemeanor Criminal cases in Ada County:**

1. Pretrial conferences are usually set at least 14 days before a trial.
2. All pretrial motions should be filed in a timely manner and pretrial motions should be 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 should be filed according to the scheduling order. Each criminal scheduling order is crafted to accommodate the needs of the Court, the witnesses, the parties, and any victim. Dates for disclosing witnesses, exhibits, and for requesting jury instructions may vary according to the individual case.

### **Misdemeanor Criminal cases in Elmore County:**

1. Defendants are required to appear at all hearings or be available by telephone at the time of the hearing in order for his/her attorney to communicate with them.
2. The two resident magistrate judges and the district judge assigned to Elmore County all coordinate calendars to avoid competing settings with both the prosecuting attorneys and public defenders.
3. Pretrial conferences and jury trials are set at the initial appearance or the not guilty plea. Jury trials are set no more than 60 days out from initial appearance and pretrial conferences, with defendant present, are set no more than one week before trial.
4. Judges participate directly in all pretrial conferences to encourage/assist in the exchange of offers to settle the cases.

### **Misdemeanor Criminal cases in Boise and Valley County:**

1. In both counties, the judge will generally allow the parties time to discuss their cases before the judge actually takes the bench. Once the judge takes the bench the parties put on the record whether the case has resolved, needs to go to trial, or whether additional time is necessary to take care of unresolved issues. In both counties, the judge will normally make themselves available in chambers to discuss specific issues that may have a bearing on resolution.
2. In both counties, if there are issues that may take more time to discuss than what is typically available on normal pre-trial conference days, the prosecutor will reach out to defense counsel prior to the scheduled pre-trial conference date.
3. In Boise County, because most cases have the public defender appointed, the prosecutor and public defender will meet on a weekly basis and discuss all of the pending cases.

### Checking the Status of Pending Case Matters

Judges understand that decisions must issue promptly, pursuant to Article V, section 17 of the Idaho Constitution. In light of this goal:

- 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.
- If the judge takes a matter under advisement at the conclusion of oral argument, the judge clearly states the same on the record.
- In criminal cases, judges will often issue oral rulings on the record, as opposed to written decisions. Judges do this because almost all criminal cases are on a quick trial schedule and the parties need to know the Court's evidentiary rulings (including decisions on motions to suppress) to prepare for trial. Using this approach, the parties are not hindered in preparing for trial by waiting for a written ruling.
- If a judge does need to take a criminal matter under advisement, a proper notation of that fact is entered in the court's case management system. The judge and/or the judges' in-court clerk can assist in keeping track of the cases under advisement at any given time, to include the date on which the case was taken under advisement.

When parties to a case inquire about the status the in-court clerks advise the parties that the matter is still pending, the scheduled timing of future events, or that the decision has been issued.

### **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. Compliance with the Victim's Rights Act.
13. The defendant's constitutional right to a speedy trial.
14. Whether the defendant is in custody.

Taking all of the above factors – and any case-specific factors – into account, Fourth Judicial District judges determine whether to grant or deny a continuance. Judges recognize that continuances are not favored and require a showing of, *at least*, good cause before granting a continuance. Whether a particular judge requires a showing of more than good cause will vary, depending on the circumstances.

### **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 Fourth Judicial District adhere to practices to minimize trial duration and inconvenience to jurors and witnesses. Judges are aware of the costs associated with jury trials, including, but not limited to: the costs of sheriff's deputies, transport staff, attorney time, juror costs (including any meals and per diem), and use of courtroom resources. Judges seek to reduce these costs where possible, but nevertheless prioritize both parties' right to a fair trial, victims' constitutional rights and due process of law. These practices further those goals:

- All judges decide pre-trial motions before trial begins.
- In the event that a judge has two criminal trials set to begin on the same day, the judge's in-court clerk contacts the Trial Court Administrator, who requests the assistance of a plan B or senior judge to preside over one of the jury trials. This is done at least several days before trial, and usually a week before trial. The judge and/or the judge's in-court clerk will advise the parties in advance of trial which criminal trial the sitting judge will handle, and which criminal trial will be handled by the plan B or senior judge.

### **Section 2.12: Post Plea or Verdict Case Management**

A reasonable period of time is required after a defendant enters a plea of guilty or is found guilty at trial in order to acquire, for example, court ordered drug and alcohol evaluations, domestic violence evaluations and psychosexual evaluations prior to sentencing. Idaho courts work with their justice system partners to minimize the delays associated with acquiring such reports. The court timely prepares all judgments.

### **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 Fourth Judicial District takes the following steps to ensure the fair and timely resolution of post-conviction proceedings:

1. Post-conviction cases are, where possible, assigned to the judge who handled the original criminal case.
2. The appointment of post-conviction counsel, when requested, is governed by the provisions of the Uniform Post-Conviction Procedure Act, I.C. § 19-4901, *et seq.*, and applicable case law.

#### **Section 2.14: Probation Revocation Proceedings**

The Fourth District takes the following steps to maximize the effective use of the resources of the courts, prosecution, defense and misdemeanor probation in resolving probation violation matters:

- Probation officers make recommendations to the Court in their reports of claimed probation violations. Probation officers recommend continuing probation, enrollment in additional treatment, or revoking probation and imposing the underlying sentence.
- An evidentiary hearing can occur on the first set hearing on the State's motion for probation violation. Additionally, on the first set hearing the prosecution and defense confer in advance of the status hearing and, at the status conference advise the Court if the matter can be resolved without an evidentiary hearing.
- If the parties agree on the appropriate disposition, and the agreed-upon disposition appears appropriate to the judge, the judge has the ability to proceed to disposition on the same day the Court takes the admissions to the probation violation. When employed, this option may reduce a Defendant's time in custody and the associated costs.

#### **Section 2.15: Effective and Consistent Monitoring of Case Management Reports**

Case flow 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 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 case flow 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 systematic delay, and changes in overall caseloads and inequities that may be developing in caseload distributions that may require changes 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.

## **Section 2.16: Special Considerations for District Plans**

### **Language Access Services**

Federal and state law requires 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 Fourth Judicial District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources:

1. The Interpreter Coordinator provides oversight and coordination of available interpreters to ensure their availability as needed.
2. The Interpreter Coordinator works on-site in the Ada County Courthouse and facilitates interpreters' appearances in court. The Interpreter Coordinator also coordinates appearances of interpreters by phone; for example, when the target language is relatively rare and no interpreters are available locally.
3. The Interpreter Coordinator coordinates with in-court clerks and the jury commissioner's office to ensure that interpreters appear on schedule in court.
4. Whenever possible, judges call cases assigned to an interpreter before any other case on the calendar. By prioritizing cases assigned to an interpreters, judges are aware that they save money, as well as the interpreter's time (who may be needed in another courtroom).

### **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 Fourth Judicial 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 Fourth Judicial District recognizes that it could not function without the jurors who appear to serve; thus, many of its policies are directed to ensuring that jury service is as pleasant and

convenient as possible. Toward that end, the Fourth Judicial District adheres to the following practices:

1. Where appropriate, the Jury Commissioner provides oversight and coordination over those called to jury duty to ensure their availability as needed.
2. The Jury Commissioner is in constant communication with judges' in-court clerks, to ensure that cases are proceeding to jury trial and that the Jury Commissioner is not unnecessarily requiring a jury panel.
3. If a case settles at the last minute on the morning of trial, after a jury panel has been summoned from the community, the Jury Commissioner will often invite the presiding judge to speak to the members of the jury panel, to explain what happened. Judges are aware that this open line of communication with the jurors is important to ensure continued confidence in the court process.
4. The Jury Commissioner contacts non-appearing jurors, and, if appropriate, the Jury Commissioner may even use law enforcement to track down a non-reporting juror.
5. Jurors in the Fourth District have the option of donating their per diem funds to a general juror account. The Jury Commissioner oversees this account and uses it to assist jurors who may have special needs as a result of their service, including, but not limited to child care, elder care, pet or animal care, bus passes, taxi fares and counseling services.

#### 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 Fourth District Adheres to the following additional practices to ensure that criminal proceedings in which defendants waive their right to counsel proceed in the most fair and efficient manner possible:

1. When a misdemeanor defendant enters a plea of not guilty before the clerk and is not represented by counsel, the case is set for an expedited arraignment before a judge. The defendant is advised of his/her rights and given the opportunity to apply for a public defender. If the defendant maintains his/her not guilty plea and declines counsel the judge confirms the defendant understands his/her rights and is advised of the dangers of self-representation in a criminal case. Stand-by counsel may be appointed at trial.
2. When a misdemeanor defendant who is not represented by counsel indicates to the clerk a desire to enter a plea of guilty the case is set for a sentencing hearing before a judge. At that hearing a judge advises the defendant of his rights and confirms the defendant is waiving the right to counsel. The judge insures that the plea is knowing, intelligent, and voluntary.

### Media Relations

The Idaho courts have a manual for judges on media relations and the handling of notorious cases. 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.

Each judge in the Fourth Judicial District follows these standard procedures in dealing with requests for video coverage of criminal matters including, in some instances, referral of media requests to the administrative district judge or office of the trial court administrator.

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 deadline present 24 hours 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 Fourth 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 in-court clerk or legal assistance to make the necessary arrangements.

### Section 2.17: Maintaining the Fourth Judicial District Case Management Plan

Once the Statewide and District case flow 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 Fourth Judicial District will maintain the misdemeanor criminal caseflow management plan by, among other things, having periodic meetings of the plan management team to address any changes or improvements to the plan as they are brought to the attention of any team member. In addition, the caseflow management plan can be a topic of ongoing discussion at bench/bar luncheons.

