

In the Supreme Court of the State of Idaho

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

The Administrative Judge of the Fifth 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 Fifth 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 Fifth Judicial District shall become effective immediately.

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

IT IS FURTHER ORDERED, that the Fifth 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

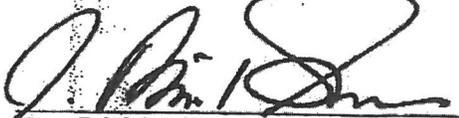
KAREL A. LEHRMAN

Clerk

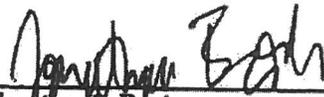
By Melissa G. ... Chief Deputy

District shall be published in the Idaho State Bar Desk Book, and shall be posted on the Fifth Judicial Court website located at: <http://www.5thjudicialdistrict.com/>.

IT IS SO ORDERED:



Hon. G. Richard Bevan
Administrative District Judge



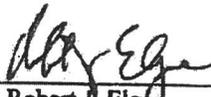
Hon. Jonathan F. Brody
District Judge



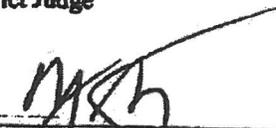
Hon. John K. Butler
District Judge



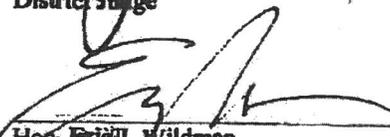
Hon. Michael R. Crabtree
District Judge



Hon. Robert J. Elger
District Judge



Hon. Randy J. Stohr
District Judge



Hon. Eric U. Wildman
District Judge

Felony Criminal Caseflow Management Plan for Idaho's Fifth 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 Fifth 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, clear, mutually understood 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 Fifth District

All magistrate judges are assigned matters specified in Idaho Code 1-2208 and Chapter 23, Title 1, Idaho Code. 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.

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.

The administrative district judge is responsible for the overall assignment of judges and caseloads to ensure effective caseflow management. The administrative district judge will consider 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.

Judicial assignments for the hearing of criminal cases in the Fifth District are set forth in the Idaho State Bar Desk Book and are modified from time to time. They are also included in local rules, which are available on district court websites or on the Idaho Supreme Court website at <http://www.isc.idaho.gov/district-courts>.

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 I.C.A.R. 57, the time standards² applicable to criminal cases are:

Felonies:

Magistrate Div.	30 days from first appearance to order holding the defendant to answer in the district court or discharging the defendant
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District Court	150 days from first appearance in district court
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Misdemeanors:	90 days from first appearance
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The revised time standards that have been approved by the Idaho Supreme Court for piloting to begin in 2015 are:

Felonies:

Magistrate Div.	50% within 21 days 75% within 45 days 90% within 60 days
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² The attorneys and judges in the Fifth Judicial District are uniformly opposed to the timelines set forth herein. Nevertheless, these timelines are required at this juncture as a matter of state-wide policy as established by the Idaho Supreme Court.

(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)

Misdemeanors:

75% within 90 days

90% within 120 days

98% within 150 days

(Measured from the filing of the complaint to entry of judgment)

- Cases that can be resolved upon the ability of a defendant to pay fines, costs, restitution, reinstatement fees or other monetary amounts shall not be included in the above listed percentages. This includes, but is not limited to, driving without privileges charges that will be reduced to failure to purchase a driver's license charges when the defendant is able to pay the amounts required to reinstate their driving privileges. This provision is intended to allow defendants, particularly indigent defendants, the time to raise funds that will ultimately result in the more efficient administration of cases.

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 Fifth District is not susceptible to control or manipulation by parties or attorneys.

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

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

1. Felony and probation violation charges arising out of the same incident:

The new felony will go to the judge with the older case. If the judge assigned to the older case is disqualified in the new case, then all the cases go to a new judge.

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:

The misdemeanor and felony counts will be combined at the outset if they come from the same incident in one charging document. Infractions will be handled independently.

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 by court rule, 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 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 part of a common scheme or plan may be consolidated pursuant to M.C.R. 3(e).

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:

The misdemeanor and felony counts will be combined in one charging document (filed no later than the first hearing date for the preliminary hearing) if they come from the same incident. Infractions will be handled independently. Absent agreement between the prosecuting entities, a prosecutor from each entity will handle their respective areas of responsibility in the combined cases. In the event of a probation violation in an adjudicated misdemeanor case, the case will be reassigned to the magistrate division for handling the probation violation. In the event a new misdemeanor forms the basis for a felony probation violation, prosecution of that aspect of the felony probation violation should be deferred until the new misdemeanor has been adjudicated in the magistrate division, unless adjudication of the entire probation violation will result in a more timely adjudication of the felony case.

4. Felony or misdemeanor charges filed after each other arising from the same incident.

Shall be consolidated with the felony and handled as provided in #2 and #3 above.

5. Felony charges and their associated misdemeanor charges filed subsequent to a pending felony charge and its associated misdemeanor charges arising out of a different incident but committed within the same county.

Cases will be handled as provided in #2 and #3 above.

6. Felony charges and related misdemeanor charges in the felony case filed subsequent to a pending felony charge out of a different incident but committed in different counties within the same district.

Cases will be handled on a case-by-case basis at this time, pending technological advances which would permit more expedient handling.

7. Felony charges and their related misdemeanor charges in the felony case filed subsequent to a pending felony charge arising out of a different incident but committed in different counties and different districts in Idaho.

Cases will be handled on a case-by-case basis at this time pending technological advances which would permit more expedient handling.

8. Felony charges (and their associated misdemeanor/infraction/probation violation charges) and parole revocation proceedings arising out of the same incident.

Not part of the case management plan.

9. Cities existing in more than one county will prosecute city cases in the county wherein the underlying incident occurred. The cases will otherwise be handled as provided herein.

Other cases are assigned to judges using the following procedure:

The Fifth District adheres to the provisions of I.C.R. 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. Problem solving court judges will not adjudicate termination issues or otherwise sentence and disposition defendants who have been in their problem solving court if they have received *ex parte* communication as to that defendant. Provided that if the problem solving judge has not received *ex parte* communication as to that the defendant, the judge may continue to preside over the defendant's case if the defendant consents to the problem solving court judge presiding over the termination, sentencing and/or disposition proceedings and the problem solving court judge was his original judge.

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 just voluntary resolution of most cases and achieving trial date certainty for those cases that are resolved by 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. Scheduling will comply 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 to make sure 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:

1. Nature of the charge(s)/number of counts
2. Custody status of defendant(s)
3. Number of co-defendant(s)
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 other counties
12. Whether a problem-solving court might be an option for the defendant
13. Victim with special needs
14. Experts in court

Note: not listed in order of importance

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

When appropriate, a case management hearing will be held 30 days post arraignment for any life sentence case and, if appropriate, mediation will be considered. Mediation should take place 45 to 30 days prior to the trial.

District judges will determine at arraignment whether the parties will agree to mediation.

Defendants seeking placement in a problem solving court will submit applications thereto at or before the time of plea.

Transcripts should be requested at arraignment or sufficiently in advance of hearing. The failure to have timely requested preparation of a transcript shall not automatically be a ground for a continuance of a hearing or trial.

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 or Indictment Arraignment Pre-trial conference Order for ADR/mediation Entry of plea Start of trial Filing of pre-sentence investigation 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	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 within the Court's discretion.
4. Requests for continuances are considered pursuant to Section 2.10 of this plan.

The Fifth District follows these practices to ensure that all scheduled events are meaningful: After some discussion, the district team was unable to identify any additional practices that would assist with criminal scheduling and advancing justice in a meaningful way.

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

Trials will be set at arraignment. Counsel shall advise the Court at that time of any attorney or witness scheduling issues. Failure to notify the Court of scheduling issues shall not be a ground for a continuance. Stipulations to continue or vacate hearings are not binding on the Court.

The Fifth 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:

Counsel shall strictly adhere to the Court's starting time for hearings and trials and shall be considerate of unnecessary waiting time for witnesses and others. Law enforcement and witnesses under subpoena must be within 15 minutes of courthouse, have a cell phone or otherwise be on call.

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

Requiring strict compliance with the foregoing rules and pretrial orders.

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), I.C.R. 5 and 10 and M.C.R. 6 and should be appointed as described in I.C. § 19-852-854.

The process regarding counsel in the Fifth District is as follows:

Counsel shall be prepared to try cases if they accept employment when cases are presently set. Judges must comply with *Faretta* and be familiar with standards for appointing conflict counsel. Each county will develop a protocol for appointment of conflict counsel.

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. 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 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 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 I.C.R. 12, which sets forth the timing requirements for filing and hearing pretrial motions (see I.C.R. 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, 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 Fifth District:

Motions to Suppress: A motion to suppress evidence shall:

- (a)(1) describe the evidence sought to be suppressed;
- (a)(2) set forth the standing of the movant to make the application; and

(a)(3) specify sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and to enable the court to determine what proceedings are appropriate to address them.

If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the evidentiary hearing, the court may provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

Special procedures for filing, hearing and disposition of motions. Before setting hearings, counsel will confer with opposing counsel to confirm availability and will schedule hearings through the Judge's clerk. Compliance with all time standards in the rules is expected.

1. When possible evidence by stipulation will be in writing. Judicial notice will be filed under separate cover with requested documents attached.
2. By local rule the 5th Judicial District requires that all supporting documentation filed regarding pending motions be submitted to the court no later than seven (7) calendar days before hearing. (Administrative Order 2015-05).

3. **EX PARTE POLICY:**

(a) All motions submitted for action by the Court without a hearing shall clearly identify the party filing the motion, and include the words "*ex parte*" in the title of both the motion and any proposed order. (e.g., "Defendant's *Ex Parte* Motion For Transport," "Plaintiff's *Ex Parte* Motion For Continuance," Order Granting State's *Ex Parte* Motion For No Contact Order," etc.)

(b) Except as expressly noted below, before submitting any *ex parte* motion or any order pertaining to such a motion, counsel filing the motion and/or submitting the order is required to contact opposing counsel and determine whether opposing counsel has any objection to the motion, or the form or substance of the proposed order. No proposed order which is submitted for entry on an *ex parte* basis shall be submitted unless and until counsel has confirmed that there is no objection to the motion and any proposed order. If there is an objection to the motion and/or order, the motion must be filed and scheduled for hearing in accordance with the applicable civil or criminal rule of procedure.

(c) Except as noted below, all *ex parte* motions shall either (a) be accompanied by a written stipulation signed by counsel for all parties; or (b) contain a certification of counsel which substantially conforms to the following: "The undersigned certifies that opposing counsel has been contacted, and has no objection to entry of the proposed order submitted herewith."

(d) Any *ex parte* motion which does not contain such a certification, or which is not accompanied by a signed stipulation will be summarily denied. In the event any certification is untrue or inaccurate, appropriate sanctions may be imposed.

(e) It is recognized that there are certain types of motions for temporary or extraordinary orders which are intended or permitted to be filed and submitted on an *ex parte* basis (e.g., applications for temporary restraining orders, motions for orders to show cause, etc.). However, in many cases, the rules authorizing such orders require that the moving party explain why the opposing party has not been notified or served with the motion. See, I.R.C.P. 65(b). In such cases, counsel submitting such a motion must clearly denominate it as one which is being prosecuted *ex parte* (e.g., "Plaintiff's *Ex Parte* Application For Issuance of Order To Show Cause," "Defendant's *Ex Parte* Application For Temporary Restraining Order," etc.). In such cases, the filing party need not submit the stipulation or make the representation concerning lack of objection, but must fully comply with the provisions of any applicable rule or statute which requires an explanation of why the motion was not served upon the opposing party, or specifically explain why the opposing party has not been served. In the event this procedure is not effective in reducing the number of problems, a more restrictive procedure will be adopted.

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 I.C.R. 16. Appropriate discovery deadlines are firmly set in scheduling/trial orders for automatic disclosures, including I.R.E. 404(b) evidence, required by I.C.R. 16(a). Deadlines are also set for the submission of written discovery requests outlined by I.C.R. 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 I.C.R. 16(f) is expected and the imposition of sanctions allowed by this rule are used to curb abuses of the discovery process.

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

All judges will develop and use a criminal trial and scheduling order which shall contain the following language regarding discovery issues:

1. **Motions in Limine and Other Evidentiary Based Motions.** Motions in Limine and Other Evidentiary Based Motions must be filed, noticed for hearing and heard by the Court **at least 14 days prior to trial**. Except under exceptional circumstances the court **will not** hear these motions between this cutoff date and trial.

2. **Pretrial Discovery.** All parties will comply with the discovery requirements of I.C.R. 16 and use good faith and reasonable diligence in timely complying with initial discovery and supplementation thereof. The Prosecuting Attorney must review the law enforcement agency's file prior to make sure all reports or evidence are disclosed to defense counsel as required by I.R.C. 16. Providing a release to defense counsel allowing them to obtain discovery from law enforcement does not sufficiently comply with this rule.
3. **Expert Testimony.** All medical or expert testimony witnesses must be disclosed at least 21 days prior to trial. The provisions of I.R.C. 16 regarding discovery of expert witnesses by both parties must be complied with prior to this cutoff.
4. **Witnesses and Exhibits.** Exhibit and Witness lists describing a party's intended exhibits and witnesses must be filed by 5 P.M. the Tuesday prior to the trial date. A copy of the witness list must be served on the court reporter. If a witness needs to be taken out of order for any reason, such matter will be discussed with opposing counsel and stipulated or ruled upon prior to opening statement in the case or 48 hours before the witness is to be called, whichever is later. The Court will rely on these witness lists in selecting the jury. In addition, Counsel shall meet with the clerk to mark and/or to stipulate to the admission of exhibits **at least one day before trial.** Failure to strictly comply with these requirements may result in the exclusion of witnesses, exhibits or other sanctions.
5. **Audio and Video Tapes or CDs.** If either party desires to introduce all or any portion of any audio or video recording at trial, the party desiring to utilize such recording shall give notice of their intent to offer it to both the Court and opposing counsel. If the offering party intends to offer less than the entire recording then such party shall provide the opposing party with a redacted copy of the recording intended to be offered. Unless the parties stipulate to the admission of such audio or video recording in their entirety, or as redacted, as the case may be, the offering party must file and notice an appropriate motion to resolve any remaining disputed issues not less than **10 days before trial.**
6. **Audio/Visual Equipment.** It is the responsibility of counsel to become familiar with the Court's audio-visual equipment PRIOR to trial and to ensure that all audio and video exhibits can be broadcast on the Court's equipment. Court's staff will not assist counsel in the operation of equipment during trial. The Court will not admit any audio or visual exhibit that cannot be viewed on the Court's equipment provided to the jury or on a "clean" computer brought by counsel which will be used in the jury room. The Court will not permit the jury to use counsel's equipment in the jury room to review admitted exhibits.

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.

I.R.E. 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. I.C.R. 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 Fifth District adhere to the following practices to obtain the earliest possible resolution of criminal cases:

The Court strongly encourages: 1) early communication of plea offers; 2) mediation in every case; and 3) counsel to recognize that continuances are not favored and that cases will either be settled or tried by the first trial date.

Administrative district judges are encouraged to use alternative judge panels pursuant to I.C.R. 25 (a)(6) to prevent delays associated with judge-shopping. The Fifth District will continue to use the alternative judge panels pursuant to Idaho Criminal Rule 25 (a)(6).

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, I.C.R. 18, and/or any other issues or concerns unique to each case.

Accordingly:

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 7 days before trial in felony cases and 48 hours before trial in misdemeanor cases. If amendment is required to such lists, such amendment(s) will be made no later than 24 hours before trial.
4. Scheduling orders reference ICR 18 and inform attorneys that they are to be prepared to discuss such matters at the pretrial conference. The judge will have a checklist of topics ready to discuss with counsel at the pretrial conference.

Checking the Status of Pending Case Matters

Judges understand that decisions are to be issued in a timely way, pursuant to Art. V, Sec. 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 makes deadlines for submission of the briefing or materials clear 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.
- Every written decision contains a statement as to when the court considered the matter under advisement.
- Attorneys and/or parties are advised that they are free to contact the court's clerk to inquire about the status of any case, proceeding, or pending decision 30 days after the matter is under advisement, without consequence. Districts should consider a local rule implementing this protocol.

Clerks are trained to willingly accept 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 Fifth District follows these procedures as part of its management of the pretrial state of criminal cases: Due to the variability of scheduling demands and the number of judges in the district it is impossible to state with specificity the dates of settings in criminal cases. However, the following principles shall apply: 1) from the time of the first court appearance (counter appearance, attorney appearance) every case will be set on the calendar to a date certain (status, pretrial, sentencing, trial, motion practice) and if continued for any reason reset to a calendar date certain. In custody defendants will receive trial priority over out of custody defendants. Older filed cases will have trial priority over newer cases. District Court trials will be set from the bench at arraignment. All judges will attempt to conclude cases consistent with recommended Supreme Court case time standards. Each judge or his/her clerk will review case management reports on a monthly basis to insure that all criminal cases are progressing towards conclusion.

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 I.C.R. 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.

The Judges of the Fifth District have adopted the following policy to implement the statewide policy on continuances in criminal cases: The above-noted considerations will be applied by the trial courts on a uniform, but case-by-case basis to insure the just determination of every criminal proceeding, while eliminating "unjustifiable expense and delay." (I.C.R. 2(a)).

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 I.C.A.R. 65(b).

The judges of the Fifth 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:

Trials will start promptly as scheduled. Cases should be negotiated well in advance to avoid last minute trial cancellations. Except in rare and unusual circumstances, issues that could have been resolved prior to trial will not be heard during trial. Counsel will be prepared to schedule and call witnesses so as to avoid delays in the trial. Audio/visual evidence must be formatted to be displayed on either the Court's standard equipment or such other equipment as approved by the presiding judge.

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. The court timely prepares the judgment and commitment orders. Presentence investigations are governed by I.C.R. 32 and I.C. § 19-2524. Court clerks transmit PSI orders to IDOC District Offices immediately after they are entered, initiating the PSI process.

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

- PSI to accommodate sentencing six weeks after plea or verdict for in custody cases.
- PSI eight weeks after plea or verdict for out-of-custody cases.
- Better communication for jailed defendants with their attorney and IDOC to obtain the needed information for PSI

The Fifth 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:

Judgments will be prepared within 24 hours of sentencing.

Section 2.13: Post-conviction Proceedings

Though technically civil cases, post-conviction (PCR) challenges to a conviction or judgment are, in reality, a continuation of the original criminal proceedings.

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

Upon becoming aware that a PCR has been filed, the Court will promptly address the issue of appointment of counsel and issue a scheduling order that establishes deadlines and conditionally sets an evidentiary hearing.

The Judge assigned to the PCR case will be determined by the presiding judge in the underlying criminal case. In Twin Falls County, the PCR will be assigned to a judge other than the judge who presided at trial and/or who pronounced sentence.

Section 2.14: Probation Revocation Proceedings³

A substantial part of the time of the court, the prosecution, the defense, and Idaho Department of Correction personnel in an ordinary criminal case is devoted to the filing, processing, and resolution of probation revocation motions. Management of probation sentences both by the IDOC and the courts is an important part of both the punishment of and the treatment and rehabilitation of persons convicted of crimes, and well as protection of the community from further wrongdoing. Probation revocation is complicated by concurrent prosecution of the probationer for subsequent criminal conduct which forms in whole or in part the basis of the revocation petition.

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

Probation Violation Protocol

³ 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 district caseflow management plan will be necessary to accommodate future policy and/or procedural changes.

All probation violations are initiated by the prosecutor's office. IDOC may file a progress report directly with the Court, but the prosecutor must file an actual motion to revoke probation. If a defendant is arrested on an agent's warrant, he/she must be arraigned before a magistrate as required by the Rules, and a Motion to Revoke Probation must be filed by the prosecutor within 72 hours of the arraignment or the defendant will be released on their own recognizance. The motion must specifically identify by paragraph each alleged violation.

Upon receipt of the Motion the clerk will set the matter for an Admit/Deny hearing on the judge's next available calendar. If there is an admission and a stipulation for disposition the Court may proceed immediately to disposition. If there is a denial, the case is set on the Court's evidentiary docket within thirty days. If there is an admission but no disposition the case will be set for disposition within 30 days. If the parties agree to extend these deadlines FOR CAUSE (other pending cases, need for evaluations, etc.) the Court will generally set hearings beyond these time periods. If there are new felony charges the Court will reassign the new felony case to the judge presiding over the probation violation case.

Probation violation A/D hearings are set on the same day as the Court's regular criminal docket. Evidentiary and disposition hearings are generally set once a month; if appropriate disposition hearings are set at the same time as sentencing of a new felony.

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 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 caseflow 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, which 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 be developing in caseload distributions that may require changes in judicial assignments.
3. Court clerks monitor case management reports regularly to ensure that all pending cases are scheduled for meaningful events through disposition.

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

Section 2.16: Special Considerations for District Plans

Language Access Services

Federal and state law requires judges to ensure that 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 I.C. § 9-205. Professional court interpreters are appointed pursuant to I.C.A.R. 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.
- Where a judge determines a need for language access services.
- Where court personnel receive notice directly from the public, attorneys, guardians, probation officers, law enforcement and other participants.
- Where 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 Fifth District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources:

I.C.A.R. 52 will be adhered to with special emphasis placed upon interpreter conflicts.

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 Fifth 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 Fifth District adheres to the following practices to ensure that jury operations are both efficient and effective:

- Jury Operations – We will strive for less required jury service time in each county.
- Judges are strongly encouraged to utilize pre-seating of the jury in order to save both counsel and the jurors' time.

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. SRLs 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 Fifth 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:

Follow the *Faretta* dialogue and have a prepared script in each Judge's bench book.

Media Relations

The Idaho courts have a manual for judges on media relations and the handling of notorious cases. These issues are addressed in I.C.A.R. 45 and 46. In addition, I.C.A.R. 32 addresses public requests for court records, including 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.

The Fifth District follows these standard procedures in dealing with requests for video coverage of criminal matters:

- Make Media Guidelines available and follow at all times.
- Hold annual meetings with the media.

Telephonic and Other Remote Appearances

I.R.C.P. 7(b)(4) and I.C.R. 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 Fifth District, remote appearances are allowed as follows:

Judges will encourage remote appearances by stipulation to avoid unnecessary and costly travel expenses to the parties.

The procedures for arranging a remote appearance are:

To be arranged through the judge's in-court clerk with notice of at least 5 business days. Such hearings shall be arranged at a specific time on the docket so as not to interfere with other cases. Phone interpretation shall be arranged through the Court's interpreter staff.

Other Circumstances Unique to the Fifth District: Administrative Order 2015-05, now adopted by local rule, requires that the parties submit substantive documentation no later than seven (7) calendar days before a dispositive hearing. This includes PSI'S and letters from family members or others relevant to sentencing hearings. Counsel and the courts are encouraged to be familiar with the local rule and abide by its requirements.

Section 2.17: Maintaining the Fifth District Case Management Plan

Once the Statewide and District caseflow 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 Judge's Associations' efforts to develop uniform forms for all Idaho case types.

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

- Annual review with notice to the bar association requesting input via email.
- The court will conduct regular bench/bar meetings to address and resolve caseflow management challenges.
- District-wide judge meetings will be held no less than yearly to maintain consistency in practices within the District.