

# In the Supreme Court of the State of Idaho

IN RE: ORDER AMENDING LOCAL RULES )  
OF THE SIXTH 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 the Sixth Judicial District, and

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

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

IT IS FURTHER ORDERED, that the Sixth 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.

By Order of the Supreme Court

R. Burdick  
Roger S. Burdick, Chief Justice

ATTEST:

Karel A. Lehrman  
Clerk

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: [Signature] Chief Deputy



**Misdemeanor Caseflow Management Plans**

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



# Misdemeanor Criminal Caseflow Management Plan for Idaho's Sixth Judicial District<sup>1</sup>

## Statement of Purpose

This misdemeanor 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 for misdemeanor offenses in the courts of the Sixth District by:

1. Preventing unnecessary delay in case processing.<sup>2</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 Sixth 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 in each judicial district is responsible for the overall assignment of judges and caseloads to ensure effective case flow management. The administrative district judge considers carefully the number and types of judges available within the district, as well as the availability of senior judges. Other considerations include population density, distribution and mix of caseloads, number of counties, geography and driving distances, the feasibility and desirability of specialization of caseloads, and societal and workload trends. The administrative district judge and trial court administrator continually monitor the assignment of judges and the effective use of existing resources.

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<sup>1</sup> If any provision is marked with a \*\* it is an indication that additional matters, such as rule changes and the like may need to be considered.

<sup>2</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."

Judicial assignments for the hearing of criminal cases in the Sixth District are set forth in the Idaho State Bar Desk Book and in the Sixth District local rules and are modified from time to time.

## **Section 2: Management of Criminal Cases**

### **Section 2.1: Idaho Time Standards for Processing Criminal Cases**

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

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

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

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

**Misdemeanors:** 90 days from first appearance

The revised time standards for misdemeanors that have been approved by the Idaho Supreme Court for piloting to begin 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<sup>3</sup>

### **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) identifying 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

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<sup>3</sup> It is recommended that the time begin to run at the date of remand when a felony case is reduced to a misdemeanor and is remanded from the district court.

cases to judges within the Sixth District is not susceptible to control or manipulation by parties or attorneys.

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

*[NOTE the definition of a "criminal case" adopted for use with the new Tyler Odyssey case management system, as modified to apply to misdemeanors only:*

*The defendant and all misdemeanor 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, misdemeanors associated with that incident are included in a single case. If the charging document contains multiple defendants involved in a single incident, a separate case will be created for each defendant, so that each defendant is counted as a single case. Idaho Criminal Rules and Misdemeanor Criminal Rules provide some exceptions:<sup>4</sup>*

*(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).]*

To the extent possible, the Sixth District will follow the standard listed above.

Cases involving the same criminal defendant are, to the extent possible, assigned or reassigned to a single magistrate judge in the following manner:

1. One or more misdemeanors and misdemeanor probation violation charges arising out of the same incident, whether prosecuted by the same entity or different entities are processed as follows: All the misdemeanors arising out of the same incident are included in the same file, but cooperative agreements between different entities shall be obtained to allow one attorney to appear on all charges. If the new charges also result in a misdemeanor probation violation, both the new charges and the probation violation will be assigned to the judge who presides over the probation violation. These exceptions apply:
  - a) If a new misdemeanor case includes a domestic violence related charge, then the entire case will be assigned to the domestic violence magistrate in Bannock County.
  - b) In Bannock County, if a felony charge is ultimately reduced to a misdemeanor, the entire case will be remanded to the Magistrate Division judge who originally presided over the preliminary hearing on the new felony. \*\*However, to expedite the sentencing and if the parties agree, the District Court can immediately impose sentence on the misdemeanor but remand the case to the magistrate division for supervision/oversight of probation and any further proceedings, including future probation violations.<sup>5</sup>
  - c) Misdemeanor probation violation charges shall be assigned to the judge who placed the Defendant on probation with the exception of probation from the pretrial process in Bannock County. Those cases, if they are a records check probation, will be sent randomly to a

<sup>4</sup> The 6<sup>th</sup> District felony caseflow management plan provides that misdemeanors and felonies arising out of the same circumstances should be included in the same case and assigned to the District Judge presiding over the felony. This plan applies only to misdemeanors so that provision is not included here.

<sup>5</sup> This may require a rule change.

sitting Magistrate Judge in Bannock County If the misdemeanor probation violation is the result of new charges and other violations of probation, resolution of the probation violation need not be dependent upon the outcome of the new charges.

- d) If new misdemeanor charges are filed while a misdemeanor probation violation charge is pending that does not relate to the new misdemeanor charge, regardless of whether the misdemeanor probation violation filing is by the same entity that filed the new misdemeanor charge, the new misdemeanor charges will be assigned to the same judge who has the pending probation violation case if possible so they can be resolved together. If not reasonably possible, those two matters will proceed independent of each other with the directive that the misdemeanor probation violation charges shall proceed in a timely manner without regard to the progress of the new misdemeanor charges.
  - e) Misdemeanor probation departments shall not file misdemeanor probation violations where the only violation is a new felony charge, to avoid the inherent delay such a filing will require in processing the misdemeanor probation violation.
2. New misdemeanor charges, arising out of a different incident but occurring in the same county, and at a time after the filing of the original misdemeanor/infraction/probation violation charges shall be assigned to the same judge who had the original misdemeanor/infraction/probation violation unless this results in an excessive assignment of cases to one judge.
  3. Misdemeanor charges (and any associated infraction/probation violation charges) filed subsequent to a pending misdemeanor charge (and any associated infraction/probation violation charges), and arising out of a different incident but committed in different counties within the same district shall be assigned to a magistrate judge in the county where the new charges arise even though that may mean that different judges will preside over the two pending misdemeanor charges. This practice is consistent with the wide spread geographical nature of the Sixth Judicial District which would increase rather than minimize delay if both cases were assigned to the same judge, but the two magistrate judges shall, to the maximum extent possible, coordinate with each other to simplify and streamline the resolution of the cases in different counties.
  4. Misdemeanor charges (and any associated infraction/probation violation charges) filed subsequent to a pending misdemeanor charge (and any associated infraction/probation violation charges) and arising out of a different incident but committed in different counties and different districts shall be coordinated between the two magistrate judges in each district. The same practices are followed for pending misdemeanor probation violations in two different cases in different districts. In both instances referred to herein, and to insure that both courts are made aware of pending cases in other counties, the prosecutors will review available computer systems and advise the court in each case of the pending charges elsewhere.
  5. Misdemeanor charges (and any associated infraction/probation violation charges) and parole revocation proceedings arising out of the same incident are rare. Misdemeanor judges may not be aware of a pending parole violation related to the misdemeanor charge. If the judge is aware of the parole violation, the new misdemeanor charges shall be processed in the normal fashion, but with due consideration of the timing of the parole revocation proceedings.
  6. Misdemeanor charges that are the basis for a new felony probation violation shall proceed independent of the felony probation violation and as expeditiously as possible, so as to prevent



delay in the processing of the felony probation violation. However, felony probation officers are encouraged not to file felony probation violations where the only violation is a new misdemeanor charge, until that misdemeanor charge is resolved.

7. New misdemeanor charges for a defendant who is participating in a problem-solving court shall be resolved as soon as possible with input from the problem-solving court, particularly as to whether that new charge is likely to result in termination from the problem-solving court.

All of the preceding provisions in this section apply to cases involving a single defendant. In cases involving multiple defendants that arise out of the same set of circumstances, although each defendant will be charged in a separate case, all of those cases will be assigned to the same magistrate judge to promote efficiency, consistency of sentence and convenience of parties, witnesses, etc.<sup>6</sup>

The Sixth 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, under the direction of the Administrative District Judge and the Trial Court Administrator.<sup>7</sup> The initial preference is to reassign cases to actively sitting judges whenever possible.

### **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 complies with the time standards adopted by the Idaho Supreme court.

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

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

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<sup>6</sup> Currently, there is not a process to accomplish this goal but efforts are underway to do so in the larger counties.

<sup>7</sup> See fn. 4.

### 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-defendants
4. The potential penalty
5. Anticipated pretrial motions
6. Need for expert witnesses and how financed; need for independent resource judge
7. Consideration of victims' rights
8. Need for forensic testing
9. Complexity of factual and legal issues
10. Likelihood of case going to trial/estimated length of trial
11. Whether the defendant has cases pending in other counties
12. Whether a problem-solving court might be an option for the defendant
13. The potential for mediation

Note: not listed in order of importance

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

1. All misdemeanor cases shall proceed to a pretrial conference to seek early resolution.
2. At the misdemeanor pretrial conference the attorneys will advise the court of issues that may make the case more complex, require additional discovery, motions, witnesses, etc.
3. Sensitive issues can be raised privately with the court by the attorneys in an informal conference with the Court as needed.
4. A screening process for evaluating the potential of participation in a problem-solving court for each misdemeanor defendant, early after the charging process shall be developed and implemented.
5. Any changes in bond status will be immediately communicated to the jail so that families are assisted in making timely bond arrangements. A standard one page form to assist in this process will be approved throughout the district.

### 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 misdemeanor criminal cases that will be tracked in the case management system and monitored for informational and case management purposes:

<b>Mag. Misdemeanor</b>
Initiating event: Filing of complaint/citation
Arraignment/Entry of Plea <sup>8</sup>
Pre-trial(s)
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 Sixth District follows these additional practices to ensure that all scheduled events are meaningful:

1. Attorneys shall notify the Court of any pending probation violations on a previous felony or misdemeanor at the time of the pretrial conference for a new misdemeanor.
2. Attorneys will advise the court and obtain a stipulation from opposing counsel at least one working day before a hearing (e.g., Friday if the hearing is Monday), if a hearing needs to be vacated.

#### 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. 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.

Misdemeanor criminal cases are set for trial at the time of entry of a not guilty plea unless otherwise ordered by the court, consistent with a defendant's right to a speedy trial, except as follows: In Bannock County misdemeanor criminal cases are set for trial at the first pretrial conference,

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<sup>8</sup> This item was modified from the Statewide Caseload Management plan.

pursuant to Bannock County's current and unique pretrial process, unless otherwise ordered by the court, consistent with a defendant's right to a speedy trial. Also, in Bannock County, pretrial conferences are set within 21 days of the arraignment.

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

1. Court clerks make arrangements for interpreters w/ assistance of TCA as needed, and give interpreters sufficient advance notice of the need for interpretation.
2. The potential need for an interpreter will be determined at arraignment or first appearance on a charge.

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

1. On law and motion hearing days where multiple misdemeanor probation officers may appear, those officers will advise the court of the case they are appearing on so that case may be taken sooner in the calendar if possible.
2. On law and motion days, prosecutors will advise the court of cases where victims are required to testify or make statements and shall be taken sooner in the process, if possible.

The Sixth District maximizes the certainty that a trial will commence on the date set by following the procedures and policies outlined in this case management plan, particularly as it applies to continuances.

### **Section 2.5: Appointment of counsel**

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

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

The process for appointing counsel in the Sixth District is as follows: Applications for public defender are processed and approved by the court at magistrate arraignment. When there is a conflict with the county public defender that office files a timely motion with the magistrate to have conflict public defender appointed and the appointment is handled by the TCA.

1. In the absence of the presiding magistrate, the on-call judge should process those motions to avoid delay.
2. The public defender's office will implement practices to promptly identify potential conflicts that would require a conflict public defender. \*\*[Potential rule change to require substitution of counsel rule in criminal cases, see fn 13.]
3. If a conflict PD is already assigned to a particular defendant, that attorney can be reassigned if the same defendant gets a new charge, with the cooperation of the county public defender.
4. Whenever possible, if the same defendant has multiple charges but two public defenders, the cases will be reassigned to one public defender.
5. If the case is resolved the attorney of record must file a motion to withdraw with a proposed order, or continues as attorney of record through future proceedings, including probation violations.

Such motion is not filed sooner than 42 days after entry of judgment and/or decision on ICR 35 Motions, whichever is later. <sup>9</sup>\*\*[Local rule may be required]

6. Judges do not allow repeated continuances to seek retained counsel.

7. Judges also do not allow repeated requests for the removal and replacement of appointed counsel without sufficient good cause.

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

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.

The substance and need for motions varies widely. Motions are generally classified as dispositive or non-dispositive. 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. 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 managing motions:

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. Trial setting 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.

The Sixth District follows these procedures for filing, hearing, and disposition of motions:

1. Except for good cause shown, courts will hold a pretrial conference not more than 21 days after arraignment to insure that any needed motions are identified, filed and scheduled for hearing.
2. Attorneys will identify possible suppression issues at the time of the pretrial conference if possible, so that the matter can proceed in a more timely way.
3. Courts will generally dismiss untimely motions.

### **Section 2.7: Discovery Practice**

Discovery is a significant portion of the litigation time and expense in both civil and criminal cases. Therefore, management of discovery is also an essential component of an effective and efficient case management plan.

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<sup>9</sup> It is proposed that a criminal rule be implemented which mirrors the provisions of IRCP 11(b).

In criminal cases:

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

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

1. Require meet and confer conferences between attorneys before motions to compel discovery are filed. **\*\*[Rule change needed]**
2. **\*\*Either by rule or in the trial setting order, there will be a mandatory disclosure by the parties of those matters of discovery which are routine, primarily those items listed in ICR 16(b) and (c), to avoid the wasted time and effort for standard discovery requests, except as otherwise stipulated to and approved by the Court<sup>10</sup>**

### **Section 2.8: Early case resolution processes**

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

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

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

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

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<sup>10</sup> There may be limited circumstances where automatic disclosures are unnecessary and both time consuming and costly, such as when discussions early in the process are likely to lead to a plea agreement without discovery. **\*\*The Sixth District also proposes a modification of ICR 16(a)(7) concerning the disclosure of expert witnesses, to be consistent with recent modifications of expert witness disclosures in IRCP 26(b)(4)(A). **\*\*It is also proposed that discovery by electronic means be authorized, by rule.****

Courts and attorneys in the Sixth District follow these practices to obtain the earliest possible resolution of criminal cases:

1. Encourage the use of mediation when appropriate, at the pretrial conference.
2. Prosecutors and defense attorneys have regular informal meetings to resolve cases.
3. Use of status conferences after arraignment may be used to encourage early resolution.
4. Judges will be willing to consider Rule 11 agreements and "Alford" pleas.
5. All criminal trial orders shall include alternative judge panels pursuant to Idaho Criminal Rule 25 (a)(6) to prevent delays associated with judge-shopping. The district policy is to have an active sitting judge preside over a conflict case if possible

### **Section 2.9: Pretrial Case Management**

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

Courts and attorneys in the Sixth District also follow these practices:

1. Jury pretrial conferences are set at least four (4) days before a trial.
2. All pretrial motions are filed in a timely manner, and in misdemeanor 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 three (3) days before trial in misdemeanor cases.
4. Scheduling orders reference ICR 18 and inform attorneys they are to be prepared to discuss such matters at the pretrial conference. The judge has a checklist of topics ready to discuss with counsel at the pretrial conference.

### **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:

1. When additional briefing or materials are necessary before the judge considers the matter under advisement, the judge sets deadlines for submission of the briefing or materials clear to the attorneys and/or parties.
2. If the judge considers the matter under advisement at the conclusion of oral argument, the judge clearly states the same on the record.
3. If a matter is under advisement a proper notation of that fact is entered in the court's case management system.
4. Every written decision contains a statement as to when the court considered the matter under advisement.

5. 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.
6. 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 Sixth District follows these additional procedures as part of its management of the pretrial stage of criminal cases:

1. Jury instructions, witness lists, exhibit lists will be provided to the court and opposing attorneys at least three (3) days prior to a misdemeanor jury trial.
2. Jury commissioners will provide properly numbered jury lists and questionnaires to the court and counsel for both parties at least three (3) days prior to a misdemeanor jury trial.

### **Section 2.10: Continuances**

A continuance, for the purposes of this section, is when a party requests the postponement of a scheduled hearing or trial date. Courts exercise discretion in determining whether to grant or deny a requested continuance. While courts employ the legal standards to reduce unnecessary delay, they remain mindful that some delays are necessary and warranted to effectuate justice or to facilitate effective resolution of cases. A joint or stipulated motion for a continuance is not binding on the court (See ICR 27).

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

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

The judges of the Sixth District have adopted the following policy to implement the statewide policy on continuances in criminal cases: Motions to continue joined in or filed by the defendant shall include a signed waiver of speedy trial by the defendant.

### **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 adhere to the provisions of ICAR 65(b).

The judges of the Sixth 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:

1. Motions in limine must be filed in compliance with the trial order to resolve evidentiary issues prior to trial if possible. Motions in limine that are not made until after the trial begins and which could have been made in advance of trial will, except in compelling circumstances, be denied.
2. If possible misdemeanor cases are resolved at least two (2) days before trial for the convenience of witnesses.
3. Delays during trial for bench conferences, hearings outside the presence of the jury, and the like are minimized to the maximum extent possible.
4. Judges should submit proposed pre-proof and post-proof instructions to the attorneys on the first morning of trial and prior to jury selection.

#### **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 to minimize the delays associated with presentence assessments. The court timely prepares the judgment and commitment orders.

The Sixth District takes the following additional steps to streamline the process of sentencing:

1. Whenever possible, misdemeanor probation officers are in court at the time of sentencing to quickly initiate the beginning of probation if ordered.
2. Plea orders shall contain the directive that the defendant appear for sentencing and that failure to do so shall result in the issuance of an arrest warrant.
3. An assessment or an evaluation from another case can be used in a subsequent case if the defendant agrees and less than a year has passed since its preparation.
4. When a case is reduced from a felony to a misdemeanor the sentencing date will be scheduled at the time of the change of plea in the district court, and will be as soon as possible on the calendar of the magistrate who initially conducting the preliminary hearing (or waiver thereof) on the felony case, preferably no longer than seven (7) days after the plea if the defendant is in custody.

The Sixth 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:

1. Judgments shall be transmitted to the jail and the attorneys as soon as possible after the sentencing.
2. Electronic signatures shall be used to facilitate the early availability of judgments as technologically possible.

3. If judgments cannot be made immediately available, the court shall use temporary custody orders, transmitted to the jails, to facilitate the transfer of the defendant to the custody of the Sheriff, if ordered in the judgment.<sup>11</sup>
4. Entry and disbursement of judgments shall be prioritized if the defendant is in custody.

### **Section 2.13: Probation violation proceedings**

A substantial part of the time of the court, the prosecution, the defense, and probation department personnel in an ordinary criminal case is devoted to the filing, processing, and resolution of probation violation motions. Management of probation sentences both by the misdemeanor probation department 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 violation proceedings are complicated by concurrent prosecution of the probationer for subsequent criminal conduct which forms in whole or in part the basis of the violation petition.

To the maximum extent possible, the Sixth District takes the position that timely movement of the probation violation proceedings shall not be impeded by the presence of additional charges.

### **Section 2.14: 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, 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.
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 Sixth District has no more specific considerations in this area.

### **Section 2.15: Special Considerations for District Plans**

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<sup>11</sup> Sample temporary custody order is attached to this plan.

### 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 Sixth District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources:

1. Court clerks are responsible for arranging for needed interpreters.
2. Efforts will be undertaken, in conjunction with the State, to provide for an electronic method of interpretation that provides for simultaneous interpretation.

### 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 Sixth 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 Sixth District has no further special considerations in this area.

### 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 Sixth District has no further special considerations in this area.

### 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.

In the Sixth District, judges follow these standard procedures in dealing with requests for video coverage of criminal matters: No audio recordings of court proceedings shall be permitted except for good cause shown.

#### 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 Sixth District, remote appearances are allowed as provided for by rule, by technology and/or by stipulation.

#### **Section 2.16: Maintaining the Sixth District Misdemeanor Caseflow 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 Judges Associations' efforts to develop uniform forms for all Idaho case types.

The Sixth District maintains the case management plan by regular semi-annual meetings of appropriate Advancing Justice committees and additional persons as needed, including the solicitation of input by the criminal bar in the district through regular bench/bar meetings.