



CIRCUIT COURT OF THE STATE OF OREGON
TWENTY THIRD JUDICIAL DISTRICT
LINN COUNTY

Linn County Criminal Case Flow Management Plan – 2016

Adopted: November 10, 2015

Effective: January 1, 2016

Purpose and Principles

The purpose of a sound case flow management system is to provide quality and timely dispute resolution. The case flow management principles that guide this plan are:

1. Each case should receive individual attention proportionate to its need. The aim of case flow management is to insure that each case gets the time it needs without infringing on the needs of other cases.
2. Judges control and manage the process.
3. Unnecessary delay in case processing is to be prevented.
4. From beginning of litigation to resolution whether by trial or settlement any elapsed time other than reasonably required for pleadings, discovery and court events is unacceptable and should be eliminated. ABA Standard 2.50.
5. Cases should be resolved as soon in the process as possible. The only cases set for trial should be those cases that go to trial. Trial dates should be firm.

Differential Case Management

Differential Case Management, known as DCM, is based on the premise that the less complex a case is the less time required to resolve it; the more complex it is the more time needed. All cases should not be managed alike. Cases should be managed according to their complexity and needs.

To this end this court adopts and implements the Oregon Time Standards with a few adjustments. Those adjustments are made in light of changes in criminal practice that has occurred since 1990 when the standards were adopted.

1990 Time Standards for Criminal Cases (Oregon):

| Type of Charges: | 1990 Oregon Standards |
|------------------|--|
| Felony | 90% within 120 days 98% within 180 days 100% within 365 days |
| Misdemeanor | 90% within 90 days 98% within 180 days 100% within 365 days |

The Linn County Circuit Court adopted these 1990 standards in 2001 when we last revised the case flow management plan for criminal cases. The court is mindful however of changes that have occurred since 1990:

- **Measure 11 and other forms of Determinate Sentencing:** the designation of a Measure 11 case alone does not necessarily indicate it will take longer to resolve; rather it is a combination of the weight of the evidence and the sentencing options that may determine the length of pre trial preparation.
- **Drug Courts:** by their nature drug courts require significant additional time to resolve a case – usually in the 18-36 month range.
- **DV Court:** our policy is now to resolve domestic violence allegation cases within 45 days if at all possible. This is recognition that many such cases do not get to trial if they are not brought to trial promptly.
- **More DNA evidence requiring laboratory testing:** in out of custody cases can take four to six months to get DNA test results; in an in-custody case it can easily take 30 days.
- **More and longer duration audio/video media as evidence:** attorneys indicate this can be the largest impediment to timely case resolution. The quantity and duration of media recordings (audio and video) is increasing significantly. It can take hours to review this evidence and then, if necessary, to edit it and prepare it for trial.
- **More motions to have defendants evaluated for aid and assist problems:** this is a motion that just a few years ago we rarely saw. Today these motions are filed frequently. If the defendant is found competent this process usually adds about 30 - 60 days to the process; if found incompetent an additional 180 days can easily be added to the process.

In light of these changes the following time standards are adopted:

2014 Time Standards Adopted by Linn County with Modifications

| Track: | Charges: | 1990 Oregon Standards Modified |
|--------|---|--------------------------------|
| 1 | Stand Alone PV | 30 days |
| 2 | In Custody Misd or Felony: Defendant has not waived 60/90 day deadline | 60 days |
| 3 | In or Out of Custody Domestic Violence Case | 45 days |
| 4 | Out of Custody Misd and Felony | 8 months |
| 5 | Drug Court and Murder | 18 months |

These time standards will be used by the court to set presumptive court dates and to monitor the progress of the case to insure it is progressing properly. All resolution case orders will state the applicable track. If a case has charges that would fall in more than one track the track allowing the most time will apply.

It is understood that there can be good cause for a case to take longer than indicated in the table above. Typical good cause reasons for delay in case resolution include but are not limited to:

1. Attorney or key witness unavailability for health problems.
2. Delays in lab results for fingerprints, DNA, drug tests, etc.
3. Motions for Fitness to Proceed, evaluations and rehabilitation periods.
4. Cases with large amounts of video needing to be reviewed and edited.

When the parties ask that a case take longer than the standards above indicate the court must find good and sufficient cause for the delay and specify that good cause finding in a resolution conference order.

There are also reasons why cases may need to be expedited, including but not limited to:

1. Key witness, defendant or victim seriously ill and may die.
2. Child victim/witness for whom delay may deteriorate evidence or prolong suffering.

To comply with these time standards the following Case Progress Standards are adopted: (it is assumed that the assignment to judge occurs 45 days after charge for out of custody defendants; no more than 21 days for in custody defendants)

Track 1: no ERC; trial set within 14 days for in custody and 30 days for out of custody.

Track 2: ERC set within 14 days after assignment to judge; trial set not more than 60 days after filing.

Track 3: ERC set within 14 days after assignment to judge; trial set not more than 45 days after filing.

Track 4: ERC set within 30 days after assignment to judge; trial set not more than 8 months after filing.

Track 5: Case to be resolved not more than 18 months after filing.

Freeing Up the Calendar

The calendar and judicial resources for Linn County are ample to handle the current case load. The problem is that too many cases have too many appearances in court that are not productive and too many cases are set for trial and do not go to trial. Only when we have resolved these two problems will we be able to consistently meet the standards above.

This goal is achieved by a joint commitment to do this and to do so in the following ways:

1. Cases should move along on the calendar as quickly as possible. No delay should be allowed unless for good cause.
2. In every case unless the court finds good cause to proceed otherwise once the case is assigned to a judge an Early Resolution Conference (ERC) will be scheduled. Following the ERC a Final Resolution Conference (FRC) will be scheduled. If appropriate a settlement conference will be set. In most cases, barring good cause to the contrary, there will be no more than three appearances prior to trial after a case is assigned to a judge: ERC, FRC and possibly a settlement conference. Where needed a hearing will be set on pretrial motions.
3. By the Early Resolution Conference (ERC) before the assigned judge all discovery should be completed except for DNA lab evidence and certain other laboratory evidence. Completed discovery should include all photographs, audio files and video files that the state may use. The requirement for discovery is equally required of the state and the defense.
 - a. The parties shall exchange witness lists no less than ten days before trial. A witness not listed may not be allowed to testify.
4. Counsel should have had at least preliminary discussions on resolution of the case by the ERC. Even if the case cannot be settled by the ERC as many issues as possible should be settled at that time.
5. At every resolution conference the court will prepare an RC order setting out deadlines and next court date(s).
6. **Early Resolution Conference (ERC)** –
 - a. At the ERC the court will make inquiries of counsel and counsel will be expected to have investigated sufficiently to provide reliable answers to these questions:

- b. When will discovery be complete? If not what is a reasonable deadline to complete discovery?
 - c. Are there any pretrial motions anticipated? If so what is a reasonable deadline to file them? What is a reasonable deadline to respond to them?
 - d. Do counsel anticipate anything to substantially delay the resolution of the case such as a competency hearing or forensic lab reports or obtaining an indictment not likely to be available or completed within the next 30 days.
 - e. Will there be a need for a determination in this case for aid and assist? If there will how long will that take?
 - f. Do counsel anticipate any unusual circumstances or problems in this case that would prevent it from being resolve in the ordinary course?
 - g. Do counsel prefer a settlement conference at this time or a Final Resolution Conference? If an FRC it should be set at a time when parties are ready to set the matter for trial.
 - h. The FRC will then be set at a time when counsel have assured the court that all pre trial matters listed above are completed and the parties are ready to set for trial. This is the final plea date; if the defendant does not plead on this date and trial is set no negotiated plea will be allowed after this date unless the court finds good cause to make exeption.
 - i. Have there been settlement discussions? If not why not?
 - j. When will the parties be ready for a Final Resolution Conference? It is understood that before the FRC the indictment shall have been filed unless the parties have notified the court that a waiver and plea is anticipated. All discovery shall be completed, all investigations shall be completed, all pre trial motions shall have been filed and ruled on; the case shall be ready for plea or trial.
 - k. Counsel shall be expected to know the answers to these questions at the ERC.
7. Based on the questions above the court will set deadlines to complete all pretrial discovery, motions and other activities. The court will allow counsel to participate in the setting of the deadlines unless the court finds that counsel's proposed deadlines are not reasonable. Once the deadlines are set the court will enforce them.
8. **In Custody Cases:** when an in-custody case appears on the Duty Docket and counsel advise they want to set the matter for trial it will be assigned to a judge;

- a. Duty Court Staff will have a list of dates available for each judge for an ERC. The matter will be set on the assigned judge's docket using one of the provided dates and times.
- b. Attorneys will be required to submit a Trial Setting Checklist to the judge promptly after assignment to assist in setting trial (See Appendix B). The assigned judge will then set the trial date and send counsel a Criminal Resolution Conference Order (See Appendix A). The setting of trial in these cases will be done at the ERC. This rule applies only to in custody cases (prison or jail) and will not apply if the defendant waives his 60 days or fails to assert his 90 days.
- c. Nothing herein prevents defense counsel from emailing the court's calendar staff and ask for assignment of a judge and an accelerated ERC setting; in such a case the next Duty Court date will be cancelled, the case will be assigned to a judge and the calendar staff will then email the judge and JA and ask for a quick ERC set.

9. Settlement Conference

- a. Counsel will inform the court at the ERC if they object to the trial judge being the settlement judge.
- b. If the case does not settle the case will be referred back to the assigned judge to schedule the Final Resolution Conference.

10. Final Resolution Conference (FRC)

- a. At the FRC either defendant will plead (whether or not pursuant to a plea negotiation) or the matter will be set for trial.
- b. Defendant will be advised by the court that if the matter is set for trial there will be no negotiated pleas allowed.

11. Understanding the Case Flow Funnel

- a. As cases enter the court system they pass through a series of steps which include filings and appearances. As the cases resolve the total number of cases for a given period of time reduce. This is called the case flow funnel.
- b. When focus is not placed on resolving cases as early in the process as possible the funnel gets choked up with too many pending cases and too many pending court appearance dates. This requires more administrative work for all involved and clutters the court calendar with appearances that are not necessary.
- c. For most cases the more quickly they are resolved the less work per case demanded of each participant in the system. This leaves time and dates

on the court calendar to address those cases that cannot be resolved without trial.

- d. To facilitate the earliest possible resolution of cases counsel for both sides must:
 - i. Review and where necessary investigate the case as early as possible to be prepared to resolve some or all issues at the first court appearance;
 - ii. Provide and reciprocate with discovery at the beginning of the case;
 - iii. Be aware of how long impiments to resolution will take to resolve including mental health examinations and forensic testing;
 - iv. Begin settlement discussions at the earliest possible time and continue them up to the setting of trial.

12. Continuances

- a. Continuances further delay case resolution and clog the docket. They should be denied except when genuine good cause exists to allow them.
- b. All motions for continuances shall be submitted with an affidavit setting forth the good cause for the continuance, counsel's efforts to avoid the continuance, why the interests of justice require the continuance and what the other side's position is. Motions that do not set forth this information will be denied immediately.
- c. Motions to continue will not be allowed when the cause for the motion is based on counsel's failure to adequately investigate and prepare for the case or hearing.

13. Measurement

- a. The court will work to develop Odyssey reports that will provide information to us on how well we are adhering to our tracks and deadlines. The report results will be made public for counsel to see and review.
- b. Where necessary the Criminal Case Flow Advisory Committee may be called to meet and consider modification of the tracks or time limits.

Linn County Case Flow Management Advisory Committee

Jim Belshe, Trial Court Administrator
Tyler Reid, attorney
Doug Marteeny, district attorney

Paul Kuebrich, attorney
Trisha Kenyon, DOC
Terry Johnson, Court Records
Evelyn Raymond, Court Operations Manager
Leah Olson, Judicial Assistant
Daniel R. Murphy, Circuit Judge

Appendix A – Criminal Pre Trial Order

In the Circuit Court of the State of Oregon For Linn County

State of Oregon,
Plaintiff,

v.

Defendant.

Case Number:

Criminal Pre-trial Order

ERC FRC Settlement Conference
 Pre-Trial Conference

Assigned Judge: Daniel R. Murphy

This matter came before the court on the date set forth below.

Attorney for State:

Attorney for Defense:

| | |
|--|--|
| Date Filed: | Deadline to resolve case: |
| Case Flow Management Track # 1 PV only: 30 days 2 In Custody: 60 days 3 All DV cases – 45 days | 4 Out of Custody Default – 8 months 8 Drug Court / Murder – 18 months <input type="checkbox"/> Court finds good cause to continue case beyond CFM Deadline: |
| <input type="checkbox"/> Defendant failed to appear; bench warrant issued – no bail. | <input type="checkbox"/> Plea(s) entered, sentencing set over to: ▶ |
| State's Motions: | Defense Motions: |
| <input type="checkbox"/> Discovery Deadline: | |
| Deadline to file motions: Deadline for defendant's response: Indictment Returned <input type="checkbox"/> Yes <input type="checkbox"/> No | Deadline to file motions: Deadline for State's response: |
| <input type="checkbox"/> In custody <input type="checkbox"/> 60 day waiver filed 60 day deadline ▶ | <input type="checkbox"/> 90 day State Custody Deadline applies 90 Day Deadline ▶ |
| <input type="checkbox"/> Domestic Violence Allegation | Deadline for exchange of witness lists: <input checked="" type="checkbox"/> 21 days prior to trial. <input type="checkbox"/> Other: |
| <input checked="" type="checkbox"/> All evidentiary pre trial motions must be filed prior to the time this matter is set for trial. Motions filed or made subsequent to trial setting may be denied as untimely. | |
| Hearing Type: | |
| Date: | |
| Time: | |
| Length: | |
| Courtroom | 1 |
| Priority Setting: | P |
| Other: | |

It is so ordered this: ▶

Daniel R. Murphy

CIRCUIT JUDGE

Criminal RC Order / DRM / Rev 11.10.15

Make sure "Design Mode" is turned on in your Developer Tab in Word to make checkboxes and fill in boxes work. This should be sent as an email attachment to Daniel.r.murphy@ojd.state.or.us and should be filed with Oregon eCourt File and Serve efile.