

## MEMO

To: Criminal Bar and Court Staff  
From: Judge Murphy  
Date: November 5, 2010  
Re: **Criminal Cases: FIRM TRIAL SET RULE**

### THE RULE:

Once a criminal case has been set for trial the court will only accept pleas of guilty or no contest to all charges or dismissal of all charges. A negotiated plea will not be received absent good and compelling cause.

A continuance of a trial will not be allowed unless there is good cause shown.

Counsel for the defense has the responsibility for insuring that their clients completely understand this rule. Counsel for the state has the responsibility for insuring that they are ready to try all counts pending at the time that the trial is set.

Both counsel have the responsibility for insuring that they are ready for trial when it is set.

This rule applies in Criminal Cases only. This rule does not apply in DV Court.

### THE EXCEPTIONS:

#### Good Cause to Permit Further Negotiations:

Examples of Good and Compelling Cause justifying an exception to this rule for no further negotiations:

1. The state has filed new charges against the defendant since the trial date was set and the defense did not have notice that such charges would be filed.
2. A critical witness has died or otherwise become unavailable to either side. Each side has a duty to make a reasonable effort to assure the availability of witnesses.
  - a. Each side will be required to ascertain the availability of its witnesses not more than ten days after the trial was set and file any motion promptly

thereafter if its essential witnesses are not available. This request to reset a trial based on witness unavailability may be done by email request in lieu of motion if done by an attorney and if done within ten days. Pro se litigants must file motion in paper form.

3. New evidence has come to light which neither side had or should have had access to when negotiations ended. Note: if a police officer or the defendant knows of this evidence and does not tell their attorney this does not constitute good cause.)
4. The law has changed since the negotiations ended making the outcome different than could have been anticipated during negotiations.
5. Such other good and compelling cause as a judge determines.
6. If the state finds it lacks sufficient evidence to prove a count the court will not grant a motion to strike or dismiss that count prior to trial; the count will be read to the Trier of Fact, and if the state fails to prove the count the court will grant a motion for acquittal on that count made by the defense at the end of the state's case.
7. This rule does not prohibit the defendant from entering pleas of guilty or no contest to some counts on the morning of trial and proceeding to trial on the remaining counts.
8. This rule does not prohibit a defendant from waiving jury prior the jury being impaneled.

**Examples that do not constitute good cause to permit further negotiations after trial is set:**

1. The defendant has changed his mind.
2. The state has changed their mind.
3. An attorney is not prepared unless there is genuine good cause for not being prepared.
4. A witness does not want to testify.
5. The case was previously continued.
6. Defendant now wants to waive jury. (He may waive, but not renegotiate)
7. Co-defendants have been treated differently and counsel failed to discuss this during negotiations.

**Good Cause for Continuance of Trial:**

1. An essential witness, a party or an attorney for either side has become severely ill or otherwise incapacitated or has a personal obligation that cannot be changed. The incapacitation must be for a substantial period of time. Personal obligations include but are not limited to:

- a. Non elective surgery
- b. Other medical emergency requiring treatment or hospitalization
- c. Having been summoned or subpoenaed into federal court
- d. Death in immediate family
- e. Birth in immediate family
- f. Without transportation to get to courthouse in hazardous weather
- g. There has been a change of assigned deputy district attorneys less than 14 days previous.
- h. There has been a change of defense attorneys less than 14 days previous.

(See section 2(a) above for how requests for continuance can be made by email not more than 10 days after trial is set; thereafter by paper motion and affidavit.)

2. Such other good cause as the court shall find sufficient. It must be determined that counsel, exercising due diligence, could not have prevented the need for a continuance.

#### **Who Rules:**

The presiding judge shall rule on all requests for negotiated settlement after trial is set. If the presiding judge is not available the judge assigned to the trial will decide. If it is not assigned for trial and the P. J. is not available the first available judge shall rule.

Continuances will be ruled upon by the presiding judge until the morning of trial. On the morning of trial a continuance may be ruled upon by the assigned judge or the presiding judge as circumstances permit. Continuances under §2(a) sought by email by counsel not more than ten days after trial is set shall be made by the Court Operations Supervisor or her designate in consultation with the Presiding Judge.

Visiting judges will not be asked to make these rulings.

#### **Method of Seeking Continuances and Exceptions from Rule:**

**Motions to Continue** any evidentiary hearing or trial must be in the form of a motion and supporting affidavit filed with the court. Faxed submissions are not accepted. Emailed submissions are not accepted. (Note exception in §2(a) above)

**Requests to Continue** non evidentiary appearances (Early Resolution Conferences, Final Resolution Conferences, and Settlement Conferences) may be made by email to the Calendaring Staff.

Requests to settle a case after trial has been set may be made by email or in person to the presiding judge. Good cause must be provided or the request will be denied.

## **Name of Rule**

In the distant past a variation of this rule was named the 10 day rule. There is no 10 day rule in Linn County and has not been for some time. This is called THE FIRM TRIAL SET RULE which reflects the goal here – that trials are set firmly and the parties and public have a reasonable expectation to rely upon that.

## **Reason for the Rule – Sound Case Flow Management**

It is critical, especially in these times of more limited revenues for state government, that our court and other governmental resources be used in the most efficient way possible while still insuring the proper administration of justice.

To conserve the resources of the Courts, the District Attorney's Office, public defenders, and to insure the speediest possible trial opportunities for the accused our dockets must be well managed. Good docket management requires that cases be actively managed and resolved at the earliest possible time in the process. The longer a case remains in the system the more it costs and the more it causes delay in justice.

The most effective way yet found to resolve most of the cases early is to focus effort and energy to the "front end of the case", that is, the part of the case that occurs before trial is set. During this period counsel for both sides must fully evaluate and investigate the case and make every possible attempt at settlement.

When the attorneys advise the court that a matter is ready to set for trial they must have exhausted all reasonable opportunities to settle and must be fully prepared for trial. The only further delay required before the day of trial should be the time reasonably necessary to subpoena witnesses.

The longer a case is in the system the more work there is for both attorneys and clerical staff in the prosecutor's office, the defense attorney's office and the court. The more work there is to do the slower and less efficient the system will be. The less efficient it will be the more it will cost.

When we permit negotiations to continue until the day of trial parties and attorneys naturally feel no need to be serious about evaluating their cases and seriously negotiating until the day of trial. The result is a glut of cases on the docket which will never go to trial, but which cause dockets to become delayed – the defendant's right to a speedy trial becomes endangered.

Victims have both state constitutional and statutory rights in criminal cases. Those rights may be denied in whole or in part by repeated and unnecessary delay in cases.

These phantom trials also tie up police officers and other witnesses and often require them to come to the courthouse only to be advised that the trial has been continued or

settled and this costs police agencies, other professional witnesses and the general public a lot of money.

It is not necessary.

If everyone will do their job correctly and timely and move cases through the system with a focus on resolving them as early as possible the savings in time, money and efficiency are significant.

Finally, phantom trial settings make all trial settings suspect. When people have no certainty that a trial will actually go, they are less inclined to prepare adequately. Trial settings should be firm – a trial date is not an academic exercise – the public has the right to rely upon it.

The court will continue to make judicially supervised available settlement conference available to the parties and they are encouraged to make full use of them if they are needed to help facilitate settlement.

The Court will not sacrifice justice for expediency. While we are dedicated to making this process as efficient as possible and ensuring a smooth docket with as little delay and inconvenience to the public as possible the Court will allow flexibility where justice requires.