

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN RE: POLICY, TIME STANDARDS, )  
AND PROCEDURES RELATING TO )  
CRIMINAL CASE DISPOSITION )

CRIMINAL ADMINISTRATIVE ORDER

This 16th day of January, 1991.

To promote the just, speedy, and efficient determination of criminal actions in the Superior Court of the State of Delaware.

IT IS ORDERED:

§ 1. Statement of Policy

From the commencement of a criminal prosecution to its conclusion by adjudication or otherwise, any elapsed time other than reasonably required for pleadings, discovery, and court events is unacceptable and must be eliminated. To enable just and efficient resolution of cases, the Superior Court, not counsel or the litigants, shall control the pace of litigation. Counsel for the State and the defendant have a responsibility as officers of the Court to eliminate unnecessary delay consistent with their ethical obligations to their clients.

§ 2. Applicability

The procedures provided hereafter shall apply to all criminal cases in which trial is available in the Superior Court of Delaware.

§ 3. Time Standards for Criminal Case Disposition

The time standards of the Superior Court of the State of Delaware relating to criminal case disposition shall be that 90% of all criminal cases shall be adjudicated or otherwise concluded within 120 days from the date of arrest, 98% within 180 days of arrest, and 100% within one year of arrest, consistent with Administrative Directive Number Eighty-Two of the Chief Justice.

§ 4. Establishment of Team Calendar System by Criminal Divisions; Bar Advisory Committees

(a) *Team Calendar System.* To achieve the stated goals, multi-judge case-processing teams are established. The criminal caseload of the Superior Court in New Castle County shall be divided between two general criminal divisions which are designated as Criminal Division I and Criminal Division II. There shall be one division in Kent County and one division in Sussex County. Cases shall be assigned whenever possible so that the same counsel appear before one case-processing team.

Each criminal division shall be directed by a Division Chief. Assignments of the Division Chiefs and the Judges for each division shall be made by the President Judge on a rotating basis.

(b) *Advisory Committees.* Each Division Chief shall appoint an Advisory Committee consisting of at least one judge of the Division and members of the Delaware Bar who practice criminal law before the Division. Trial counsel from the offices of the Attorney General, Public Defender, Contract Attorney Program, and the private bar shall be represented. The Advisory Committee, as officers of the Court, will serve as liaisons for the Delaware Bar and will assist the Court in identifying and eliminating causes of unnecessary delay within each Division so that timely dispositions consistent with the time standards stated in section 3 and the circumstances of each individual case may be assured. The New Castle County Advisory Committees shall meet in joint session at least quarterly.

## **§ 5. Time for Filing Indictment of Information; Reports on Unindicted Defendants; Sanctions for Unnecessary Delay**

(a) *Time for Filing an Indictment or Information.* If an individual is arrested on a complaint charging an offense to be prosecuted before this Court, any indictment or information should be filed within 30 days from the date of arrest. For appeals *de novo*, the information should be filed within 10 days of notice to the Attorney General of the lodging of the appeal.

(b) *Unindicted Defendants Report.* As of the 5th of each month, the Court Administrator's Office shall prepare a report identifying all unindicted defendants then held to answer in Superior Court pursuant to Superior Court Criminal Rules 5 and 5.1 or pursuant to an appeal *de novo* or transfer. The report shall include the elapsed time from the date of arrest, whether each defendant is held in custody, the total amount of any secured bail, and the names of counsel. The report shall highlight each case that has been pending indictment or information for more than 30 days from the date of arrest. Appeals *de novo* and transfer cases shall be listed separately. Copies of the report shall be available for inspection in the Case Scheduling Office and shall be provided to the Court and to the Offices of the Attorney General and Public Defender.

(c) *Sanctions for Indictment Delay.* When a case is pending indictment for more than 45 days after arrest, the Court may impose any of the sanctions as provided in section 18 of this Criminal Administrative Order. For appeals *de novo*, sanctions may be imposed in each case pending the filing of an information for more than 10 days after notice to the Attorney General of the lodging of the appeal.

## **§ 6. Grand Jury**

The Grand Jury shall meet in New Castle County on the first workday of each week at least twice per month on a schedule to be established by the senior Division Chief. In Kent and Sussex Counties, the Grand Jury shall meet on the first workday of the week at least once per month on a schedule to be established by each Division Chief. Additional sessions of the Grand Jury may be ordered by a Division Chief.

## **§ 7. Arraignment**

Unless otherwise ordered by the Division Chief, arraignments shall be scheduled for incarcerated defendants in Kent and Sussex Counties on the first Friday after indictments are returned or an information is filed. Video arraignments for incarcerated defendants in New Castle County shall be scheduled for the second Wednesday after indictments are returned or an information is filed. For defendants released on bond, arraignments shall be scheduled on the second Friday after indictments are returned or an information is filed. Additional or alternative arraignment dates may be ordered by a Division Chief. Division I and II arraignments in New Castle County may be consolidated in the discretion of the Division Chiefs.

## **§ 8. Attorney General Intake Hearings; Assignment of Counsel; Pretrial Discovery and Inspection**

(a) *Attorney General Intake Hearings.* Attorney General intake hearings with the arresting officer should occur within five days of arrest.

(b) *Assignment of Counsel.* Counsel for the State and a Public Defender for an eligible defendant should be assigned within 5 days of arrest. For appeals *de novo* and transfer cases, said counsel should be assigned within 5 days of the notice of the lodging of the appeal or transfer. Any conflict of interest involving representation by the Public Defender should be identified promptly in order that representation may be referred to contract counsel without delay.

(c) *Pretrial Discovery and Inspection.* As soon as practical after the date of arrest, defense counsel should request discovery from the assigned prosecutor. Agreements regarding discovery may include, with the consent of the defendant, a provision for waiver of preliminary hearing and indictment and for arraignment pursuant to Superior Court Criminal Rule 10(b) or (c). In the event discovery is not requested by the date of arraignment, counsel for the defendant shall confer in person or by telephone with the assigned prosecutor no later than 5 days after arraignment; and at such conference ("counsel conference"), upon request of the defendant, the State shall comply or, if compliance is then impossible, agree to comply as soon as possible with any requested disclosures pursuant to Superior Court Criminal Rule 16(a)(1) through (3).

(d) *Disclosure of Evidence by the Defendant.* At the counsel conference, if the defendant requests disclosure under subparagraph (a)(2) of Superior Court Criminal Rule 16, the State may request discovery pursuant to Superior Court Criminal Rule 16(c).

(e) *Regulation of Discovery.*

(i) Requests and response relating to discovery shall not be filed with the Prothonotary except pursuant to Superior Court Criminal Rule 16(g).

(ii) If, in the judgment of the attorney for either party, the requested discovery is beyond the scope of Superior Court Criminal Rule 16 or if the attorney has reasonable grounds to believe that a protective order should be entered regarding such a discovery request, disclosure may be declined. A declination of any requested disclosure shall be in writing, directed to opposing counsel, and shall specify the types of disclosure that are declined and the reasons therefor.

(iii) If a party desires to contest such declination, its attorney shall promptly confer with opposing counsel with a view to satisfying these requests in a cooperative atmosphere without recourse to the Court.

(iv) In the event that the conference prescribed by section 8(e)(iii) of this Order does not resolve the dispute concerning discovery, the party seeking disclosure may file a motion to compel discovery. The motion papers shall contain:

(A) The statement that the prescribed conference was held; and

(B) The date of said conference;

(C) The name of opposing counsel with whom the conference was held;

(D) The statement that agreement could not be reached concerning the discovery or inspection that is the subject of the motion; and

(E) A request for a hearing to resolve the dispute; or a waiver of argument and a suggestion that the Court rule by reference to the motion papers alone; or a request that the party be permitted to make its showing, in whole or in part, in the form of a written statement to be inspected by the Judge alone. The answer to any motion under this subparagraph may contain a request for a hearing, or a waiver of argument and a suggestion that the Court rule by reference to the motion papers along, or a statement of that party's opposition to any request for an *ex parte* showing.

(f) *Discovery Completion Date.* Unless extended by order of the Court for good cause shown, all discovery shall be completed within 25 days of arraignment.

**§ 9. Pretrial Motion Practice**

(a) *Time Limits.* Unless otherwise ordered by the Court, the following motions shall be filed within 10 days of arraignment;

(i) Motions under Superior Court Criminal Rule 7(f) for a bill of particulars;

(ii) Motions under Superior Court Criminal Rule 12(b) raising defenses or objections based on defects in the institution of the prosecution or in the indictment or information other than it fails to show jurisdiction in the Court or to charge an offense;

(iii) Motions under Superior Court Criminal Rule 14 for relief from prejudicial joinder;

(iv) Motions under Superior Court Criminal Rule 15 for permission to take a deposition;

(v) Motions under Superior Court Criminal Rule 21 for change of venue;

(vi) Motions for a special scheduling order pursuant to section 14 of this Criminal Administrative Order.

Unless otherwise ordered by the Court, motions under Superior Court Criminal Rule 16 to compel discovery shall be filed within 5 days of the discovery completion date, and motions under Superior Court Criminal Rule 41 to suppress evidence shall be filed within 10 days of the discovery completion date.

(b) *Criminal Motion Days.* Criminal motions will be heard every Friday except that motions to suppress evidence will be heard on the date of trial, unless otherwise ordered by the Court. Additional motion days may be scheduled by a Division Chief.

(c) *Waiver.* Failure by a party to make discovery requests or to make motions within the time limits provided in sections 5,8, and 9 of this Administrative Order shall constitute waiver thereof, but the Court may grant relief from the waiver if it determines that:

(i) Opportunity to make the motion or request did not theretofore exist;

(ii) Neither the defendant nor his counsel was aware of the grounds for such motion within the time permitted for its filing; or

(iii) Under all the circumstances, justice otherwise requires.

#### **§ 10. Case Review**

(a) *General.* Case review shall be scheduled within each Division for no later than 40 days after arraignment. Case review may be scheduled on the Court's own initiative or upon application of a party either before or after an indictment or information is filed. Only for good cause shown to the Court may an individual case be exempt from the case review process.

(b) *Duties of Counsel.* Prior to case review, the prosecuting attorney shall, if reasonably possible, notify and discuss any proposed plea agreement with the victim pursuant to 11 *Del. C* § 5106. Any plea agreement offer by the State should be communicated to defense counsel in advance of case review, and defense counsel should discuss the offer with the client prior to case review. At case review, prosecuting and defense attorneys assigned to try each case shall be present unless excused by the Court. If an assigned attorney is excused, counsel handling case review should be familiar with the case and have decision-making authority. Upon the request of the defendant, the Court will permit a change of plea.

(c) *Procedure for Cases Unresolved by Change of Plea.* For cases not resolved by a change of plea, the Court on its own initiative or upon the request of a party may ascertain compliance with the time standards of this Order and make rulings on discovery or other requests then pending. Counsel shall be prepared to discuss any matter necessary to ensure that the case is adjudicated or otherwise concluded within the time standards of this Order. A case not resolved by a change of plea at case review shall be set for trial unless a special scheduling order is entered pursuant to section 14.

#### **§ 11. Trial Dates**

(a) *Trial Dates.* Unless otherwise ordered by the Court, the Case Scheduling Office shall schedule a trial date for within 70 days of the date of indictment or information for each criminal case. Except by consent of the parties or where the Court makes a specific finding on the record that discovery is unnecessary or can be abbreviated and no other substantial pretrial action is necessary, a case shall not be set for trial earlier than 40 days from the date of indictment or information.

The following factors will be considered in setting a trial date consistent with the policy and goals provided in section 3:

(i) The time reasonably necessary to complete discovery;

(ii) The time reasonably necessary to hear and dispose of pretrial motions;

(iii) The availability of witnesses and other sources of evidence;

(iv) Commitments of counsel; and

(v) Other factors that bear on the ability of the Court to offer speedy justice consistent with the protection of the rights and interests of the parties.

#### **§ 12. Triable Cases Report; Management Information Reports**

(a) *Triable Cases Report.* The Court Administrator's Office shall prepare as of the last day of each month a Triable Cases Report for each Criminal Division. The report shall highlight each case that has not been adjudicated or otherwise concluded within 80 days of indictment or 120 days of arrest. The report shall include the elapsed time from the date of arrest, whether the defendant

is held in custody, the amount of secured bail, and the names of counsel. Copies of the report shall be available for inspection in the Case Scheduling Office and shall be provided to the President Judge, the Division Chief, and to the Offices of the Attorney General and Public Defender. A continuing review of cases highlighted on the report shall occur, and they shall receive priority status for trial.

(b) *Additional Management Information Reports.* The Court Administrator's Office may prepare such additional management information reports as appropriate to assist each Division in assessing performance, identifying problem areas, predicting trends, and eliminating causes of unnecessary delay.

### **§ 13. Criminal Trial Calendar Conference**

A criminal trial calendar conference shall be conducted on the Friday before each criminal trial week wherein the Division Chief or a judge designated by him will review the trial calendar for the following week with trial counsel. Attendance at this conference by trial counsel is mandatory for cases which are unresolved by plea agreement. Counsel assigned to try a case shall be prepared to discuss any matter necessary to ensure that the case is adjudicated or otherwise concluded on the scheduled trial date. Any remaining potential for resolution of a case pursuant to a plea agreement should be pursued and exhausted by the parties prior to this conference to eliminate unnecessary summoning of jurors and witnesses to the Court House. The Court will establish the priorities of the cases scheduled for trial each day.

### **§ 14. Differentiated Case Management; Special Scheduling Order**

Upon motion of the parties, or upon the Court's own motion, the Court may enter a written special scheduling order in any case which shall supersede any conflicting time periods within this Criminal Administrative Order and which shall govern the course of the proceeding unless modified to prevent manifest injustice. Unless otherwise provided in the scheduling order, all other terms of this Criminal Administrative Order shall apply to such case.

### **§ 15. Sentencing Procedures**

(a) *Presentence Investigation - Criminal History Format.* The Presentence Office shall prepare and provide the Court with a written presentence investigation of criminal history for each defendant scheduled for case review and/or trial.

(b) *Immediate Sentencing.* Upon any adjudication of guilt by verdict or plea, the defendant shall be sentenced immediately unless good cause is shown for a comprehensive presentence investigation or a deferred sentencing date. Any prior presentence report shall be made available by the Presentence Office to counsel for review.

(c) *Duties of Counsel at Immediate Sentencing.* At immediate sentencing, counsel shall provide the Court with information on the nature of the offense, any restitution due, the defendant's character, propensity, and criminal history, any aggravating and/or mitigating factors under SENTAC, the applicable SENTAC guidelines, and such other appropriate information to enable the Court to impose a just sentence.

(d) *Presentence Investigations - Comprehensive Format.* In the event a comprehensive presentence investigation and report are ordered, the Presentence Office shall complete its report to the Court and schedule a sentencing date which falls within 60 days of the verdict or guilty plea unless the Court orders otherwise. The presentence report shall be completed and available for review by the Court and counsel at least one week prior to sentencing.

(e) *Notice of Recommendation Outside SENTAC Guidelines.* In the event a comprehensive presentence investigation is ordered and counsel for the State of the defendant intends to recommend a sentence outside the applicable SENTAC guidelines, said counsel shall deliver a letter to the sentencing judge (or to the Presentence Officer, if no judge is assigned) at least 3 days prior to the scheduled sentencing date indicating that a sentence outside the guidelines will be requested on the day of sentencing. The letter should include any attachments justifying the sentence that will be requested. A copy of the letter shall be sent to opposing counsel.

### **§ 16. Continuances**

(a) *General.* Any event scheduled by the Court may be continued only upon a showing of good cause. An event may not be continued solely by agreement of the parties, nor may an event be continued solely upon the internal reassignment of a case within the offices of the Attorney General or defense counsel unless justice otherwise requires. Motions for continuance on the date of an event are not favored, and any such motion must be accompanied by counsel's certification on the record that neither the parties nor counsel were aware of the grounds for such motion prior to the date of the event.

(b) *Form of Request.* Except for good cause shown to the Division Chief or a judge designated by him, all requests for continuance must be made in writing and filed with the Case Scheduling Office. The written request shall contain;

(i) A statement of the date of the defendant's arrest;

(ii) The position of opposing counsel or the *pro se* defendant on the request;

(iii) The number of times that the event has been scheduled previously;

(iv) The reason(s) why the request is being made;

(v) Should the reason involve a conflict with an event scheduled in another court, the name of the other court and the name of the case must be recited, along with the date that the event was scheduled in the other court and the name of the judge assigned to the case in the other court, if known; and

(vi) A proposed new date for the event which has been established after consultation with opposing counsel and the Case Scheduling Officer.

(c) *Copies of Request.* Copies of continuance requests shall be delivered to opposing counsel (or *pro se* defendants).

(d) *Notice of Trial Date.* Attorneys are responsible for notifying their clients and witnesses of the new date if a continuance is granted.

(e) *Continuance Request Monitoring.* Requests for continuances and their disposition shall be recorded in the file of the case. The Court Administrator's Office shall cross-reference all requests for continuances of trial by the name of the lawyer requesting them. Lawyers who persistently request continuances shall be subject to being summoned before the Court to be warned of the possibility of sanctions and to be encouraged to make necessary adjustment in the management of his or her practice. Where such measures fail, restrictions may be imposed on the number of cases in which the lawyer may participate at any one time.

#### **§ 17. Computation of Time Limits**

Time limits prescribed or allowed by this Administrative Order shall be computed as provided in Superior Court Civil Rule 6.

#### **§ 18. Sanctions**

To ensure the orderly, fair, and efficient administration of justice in matters before this Court, sanctions may be imposed as follows:

(a) The Court may treat any failure to obey its order or to appear for an event as a civil contempt of Court by a party or his attorney and impose a penalty for such contempt.

(b) For unnecessary delay in presenting a charge to the Grand Jury, filing an information, providing discovery, or bringing a defendant to trial, the Court may dismiss the indictment, information, or complaint pursuant to Superior Court Criminal Rule 48(b). A dismissal may be with or without prejudice as justice requires.

These sanctions shall be supplemental to and shall not supersede those otherwise provided in the Superior Court Rules of Criminal Procedure.

#### **§ 19. Effective Date**

This Criminal Administrative Order shall be effective April 1, 1991.

#### **§ 20. Publication**

(a) The Court Administrator shall provide a copy of this Criminal Administrative Order to the Offices of the Attorney General and the Public Defender and the Delaware State Bar Association Newsletter for publication.

(b) A copy of this Order shall be posted in the Office of the Prothonotary in each county and shall be available for inspection in the Law Library of each county.

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Henry duPont Ridgely, President Judge

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