

LR3-303. Case management pilot program for criminal cases.

A. **Scope; application.** This is a special rule governing time limits for criminal proceedings in the Third Judicial District Court. This rule applies in all criminal proceedings in the Third Judicial District Court but does not apply to probation violations, which are heard as expedited matters separately from cases awaiting a determination of guilt, nor to any other special proceedings in Article 8 of the Rules of Criminal Procedure for the District Courts. The Rules of Criminal Procedure for the District Courts and existing case law on criminal procedure continue to apply to cases filed in the Third Judicial District Court, but only to the extent they do not conflict with this rule. The Third Judicial District Court may adopt forms to facilitate compliance with this rule, including the data tracking requirements in Paragraph [Y] Z of this rule.

B. **Trials for defendants in custody on a detention order.** All cases in which the defendant has been in custody more than six (6) months shall be a top priority for disposition with a definite setting. These cases will have a six (6)-month deadline with their own special docket. Cases may be vacated from the six (6)-month deadline docket only when competency is at issue or for exceptional circumstances. All cases on this docket will have track 1 deadlines [~~except that~~] but the deadline for trial will be no later than one hundred eighty-nine (189) days after the date of the detention order.

C. **Mandatory hearing pending preliminary examination for defendants not in custody.** The Third Judicial District Court recognizes that criminal cases for out-of-custody defendants are often resolved through a stipulated agreement, or other settlement agreement, including resolution through a diversionary program; that a mandatory hearing between the prosecuting authorities and the defendant and defense counsel [~~prior to~~] before the preliminary examination presents an earlier opportunity for the parties to resolve the case by a stipulated

agreement or settlement agreement; that earlier resolution of criminal cases will reduce the backlog of criminal cases on the preliminary examination docket, thereby promoting judicial economy; and that resolution of criminal cases weeks [~~prior to~~] before a scheduled preliminary examination will eliminate the need for witnesses, including law enforcement officers, to appear in court.

Where the defendant is not in custody pending a preliminary examination in the Third Judicial District Court, a mandatory status hearing with the state and the defendant appearing in person shall be held at any time between twenty-five (25) and forty-five (45) days [~~prior to~~] before the preliminary examination hearing date. The district court shall conduct the mandatory hearing in accordance with the following procedures:

(1) The mandatory status hearing shall be held in person, unless the chief judge orders otherwise.

(2) The state shall provide written discovery and any recordings to the defendant and shall file a certification with the court attesting that written discovery has been provided at least five (5) days [~~prior to~~] before the mandatory status hearing. If the state fails to comply with this requirement, the court may impose sanctions, including dismissal without prejudice.

(3) [~~Prior to~~] Before the mandatory status hearing, the state shall inform the defendant and defense counsel of all offers to resolve the case.

(4) The defendant shall appear in person at the mandatory status hearing. If a defendant fails to appear for the mandatory status hearing, a bench warrant may be issued. If a bench warrant is issued, the preliminary examination hearing shall be vacated.

(5) If the parties enter into a stipulated waiver, plea agreement, or other resolution that eliminates the need for a preliminary examination, the parties shall submit the

waiver, plea agreement, or other resolution for the district court's consideration at the status hearing. A waiver, plea agreement, or other resolution of the case will not be accepted on the day of the preliminary examination.

(6) If no agreement is reached to resolve the case, the preliminary examination hearing shall proceed on the originally scheduled date. Continuance of the status hearing shall be granted only in exceptional circumstances at the discretion of the judge presiding over the preliminary examination and after approval of the chief judge of the Third Judicial District Court.

D. Arraignment.

(1) ***Number of arraignments per day.*** The number of arraignments to be held on a single day is currently limited to forty (40). Any increase shall be in the discretion of the chief judge.

(2) ***Deadline for arraignment.*** The defendant shall be arraigned on the information or indictment within fifteen (15) days after the date of the filing of the bind-over order, indictment, or the date of the arrest, whichever is later, [~~except that~~] but the arraignment of a defendant in custody on the case to be arraigned shall be held no later than seven (7) days after the filing of the bind-over order, information, indictment, or date of arrest, whichever is later.

(3) ***Certification by prosecution required; matters certified.*** At or before arraignment or waiver of arraignment, or on the filing of a bind-over order, the state shall certify that before obtaining an indictment or filing an information, the case has been investigated sufficiently to be reasonably certain that

(a) the case will reach a timely disposition by plea or trial within the case processing time limits set forth in this rule;

(b) the court will have sufficient information on which to rely in assigning a case to an appropriate track at the status hearing provided for in Paragraph K of this rule;

(c) all discovery in the possession of the state and relied on in the investigation leading to the bind-over order, indictment, or information will be provided in accordance with Subparagraph (E)(3) of this rule; and

(d) the state understands that, absent extraordinary circumstances, the state's failure to comply with the case processing timelines set forth in this rule will result in sanctions as set forth in Paragraph [S] I of this rule.

(4) ***Certification form.*** The court may adopt a form and require use of the form to fulfill the certification and acknowledgment required by this paragraph.

E. Disclosure by the state; requirement to provide contact information; continuing duty; failure to comply.

(1) ***Deadline for the state to submit evidence to the State Forensic Laboratory.***
Within fifteen (15) days of arraignment or the filing of a waiver of arraignment, the state shall file a certification that it has exercised due diligence to ensure that all evidence that may require testing has been submitted to the State Forensic Laboratory.

(2) ***Scope of disclosure by the state.*** The scope of the state's discovery disclosure obligation shall be governed by Rule 5-501(A)(1)-(6) NMRA. In addition to producing a "speed letter" authorizing the defendant to examine physical evidence in possession of the state, the state shall provide the defendant with physical or digital copies of any documentary evidence and audio, video, and audio-video recordings made by law enforcement officers or otherwise in possession of the state at the time of the disclosure. As part of its production obligation under Rule

5-501(A)(5) NMRA, the state shall provide contact information for its witnesses that is current as of the date of disclosure, including, to the extent available, witnesses' addresses, phone numbers, and email addresses.

(3) ***Deadline for disclosure by the state.*** If the case is a ten (10)-day case as described by Rule 5-302(A)(l) NMRA, the state shall make its initial discovery disclosures to the defendant within five (5) days after the first appearance. If the case is a sixty (60)-day case as described by Rule 5-302(A)(1) NMRA, the state shall make its initial discovery disclosures to the defendant within fifteen (15) days after the first appearance.

(4) ***Motion to withhold contact information for safety reasons.*** A party may seek relief from the court by motion, for good cause shown, to withhold specific contact information if necessary to protect a victim or a witness. If the address of a witness is not disclosed under court order, the party seeking the order shall arrange for a witness interview or accept at its business offices a subpoena for purposes of a deposition under Rule 5-503 NMRA.

(5) ***Continuing duty.*** The state shall have a continuing duty to disclose additional information to the defendant, including the names and current contact information for newly-discovered witnesses and updated contact information for witnesses already disclosed, within seven (7) days of receipt of this information.

(6) ***Evidence deemed in the possession of the state.*** Evidence is deemed to be in the possession of the state for purposes of this rule and Rule 5-501(A) NMRA if this evidence is in the possession or control of any person or entity who has participated in the investigation or evaluation of the case.

F. **Disclosure by defendant; notice of alibi; entrapment defense; failure to comply.**

(1) ***Initial disclosures; deadline; witness contact information.*** Not less than five (5) days before the scheduled date of the status hearing described in Paragraph H of this rule, the defendant shall disclose or make available to the state all information described in Rule 5-502(A)(1)-(3) NMRA. At the same time, the defendant shall provide addresses, and phone numbers and email addresses if available, for the defendant's witnesses that are current as of the date of disclosure.

(2) ***Deadline for notice of alibi and entrapment defense.*** Notwithstanding Rule 5-508 NMRA or any other rule, not less than ninety (90) days before the date scheduled for commencement of trial as provided in Paragraph K, Paragraph L, and Paragraph M of this rule, the defendant shall serve on the state a notice in writing of the defendant's intention to offer evidence of an alibi or entrapment as a defense.

(3) ***Continuing duty.*** The defendant shall have a continuing duty to disclose additional information to the state, including the names and contact information for newly-discovered witnesses and updated contact information for witnesses already disclosed, within seven (7) days of receipt of this information.

G. **Witness disclosure.** Within twenty-five (25) days after arraignment or waiver of arraignment each party shall, subject to Rule 5-501(F) NMRA and Rule 5-502(C) NMRA, file a list of names and contact information for known witnesses the party intends to call at trial and that the party has verified is current as of the date of disclosure required under this subparagraph, including a brief statement of the expected testimony for each witness, to assist the court in assigning the case to a track as provided in this rule. The continuing duty to make the disclosure to the other party continues at all times before trial, requiring this disclosure within five (5) days

of when a party determines or should reasonably have determined the witness will be expected to testify at trial.

H. **Status hearing.** A status hearing, at which the defendant shall be present, shall be commenced within thirty (30) days of arraignment or the filing of a waiver of arraignment.

I. **Case track assignment.** At the status hearing, the court shall determine the appropriate assignment of the case to one (1) of three (3) tracks. When the defendant is detained pending trial, the case shall be given the highest priority for trial scheduling. Any track assignment under this rule only shall be made after considering the following factors:

(1) the complexity of the case, starting with the assumption that most cases will qualify for assignment to track 1; and

(2) the number of witnesses, time needed reasonably to address any evidence issues, and other factors the court finds appropriate to distinguish track 1, track 2, and track 3 cases.

J. **Scheduling order required.** At the conclusion of the status hearing, the court shall issue a scheduling order, which assigns the case to one (1) of three (3) tracks under Paragraph K, Paragraph L, or Paragraph M of this rule, and which identifies the dates when events required by that track shall be scheduled. Before issuing the scheduling order, the court shall make efforts to ensure that attorneys are not required to be in separate courtrooms at the same time.

(1) ***Form of scheduling order.*** The chief judge of the Third Judicial District Court shall adopt a uniform scheduling order to implement the time requirements of this rule. The scheduling order shall be applied in the same manner by all judges of the Third Judicial District Court and shall contain the same deadlines and procedures for the handling of exhibits to include a uniform procedure for the return of exhibits to the state if the case does not proceed to trial. The scheduling order shall not require that the trial witness list contain any information beyond what

is required under Rule 5-501(A)(5) NMRA and Rule 5-502 (A)(3). Additional requirements may be included in the scheduling order at the discretion of the assigned judge and the judge may alter any of the deadlines described in Paragraph K, Paragraph L, and Paragraph M of this rule to allow for the case to come to trial sooner, including the deadlines for the parties to conduct pretrial interviews set forth in Subparagraph (K)(1)(h), Subparagraph (L)(1)(h), and Subparagraph (M)(1)(h) of this rule.

K. Deadlines in track 1 cases.

(1) ***Track 1; deadlines for commencement of trial and other events.*** For track 1 cases, the scheduling order shall have the trial commence within two hundred ten (210) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph O of this rule, whichever is the latest to occur. The scheduling order shall also set dates for other events according to the following requirements for track 1 cases:

(a) ***Track 1 — deadline for submission of trial materials.*** The parties shall submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions no later than three (3) days before the trial date. Notwithstanding this requirement, if a case is set for jury trial on the trailing docket, and that case is not set in one (1) of the first four (4) positions on the trailing docket, the parties in that case are relieved of the obligation to submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions three (3) days ~~prior to~~ before the setting. Only parties to the first four (4) cases set for jury trial on a trailing docket will be held to the time requirements for submission of trial materials;

(b) ***Track 1 — deadline for plea agreement.*** A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial

date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances;

(c) *Track 1 — deadline for pretrial conference.* The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled not less than fourteen (14) days before the trial date. The defendant shall be present for the final pretrial conference;

(d) *Track 1 — deadline for notice of need for court interpreter.* All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(e) *Track 1 — deadline for pretrial motions hearing.* A hearing for resolution of pretrial motions shall be set not less than thirty (30) days before the trial date;

(f) *Track 1 — deadline for pretrial motions.* Pretrial motions shall be filed not less than fifty (50) days before the trial date. Concurrent with the filing of each pretrial motion, the movant shall file and directly submit to the trial court administrative assistant a request for hearing on the motion;

(g) *Track 1 — deadline for responses to pretrial motions.* Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than forty (40) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(h) *Track 1 — deadlines for completing witness interviews.* Witness interviews shall be completed not less than sixty (60) days before the trial date, and each party shall set witness interviews under the procedure of Rule 5-503 NMRA;

(i) *Track 1 — deadline for disclosure of scientific evidence.* The results of any scientific evidence, if not already produced, shall be produced by the parties no later than one hundred twenty (120) days after the date of arraignment. In a case when justified by good cause, the court may, but is not required to, extend the deadline for production of scientific evidence by up to thirty (30) days. In no case shall the order provide for production of scientific evidence more than one hundred fifty (150) days after the arraignment;

(j) *Track 1 — deadline for amending criminal information or indictment.* The state shall not file any amendment to the criminal information after ninety (90) days from the date of the arraignment, unless otherwise ordered by the court on good cause shown; and

(k) *Track 1 — deadline for submitting transport orders.* The state shall submit transport orders for any person(s) required to be present at any hearing and trial to the court not less than thirty (30) days before the scheduled date and time of the setting, ~~[except that]~~ but for expedited hearings set with fewer than thirty (30) days' notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing.

(2) **Sanctions.** If the state has requested to receive nonscientific evidence from law enforcement within thirty (30) days after the date of arraignment, and that evidence has not been provided to the state by law enforcement within ninety (90) days after the date of arraignment, the court may impose sanctions on the responsible law enforcement agency under ~~[Paragraph (S)(4)]~~ Subparagraph (T)(4) of this rule.

L. Deadlines in track 2 cases.

(1) *Track 2; deadlines for commencement of trial and other events.* For track 2 cases, the scheduling order shall have the trial commence within three hundred (300) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph O of this rule, whichever is the latest to occur. The scheduling order shall also set dates for other events according to the following requirements for track 2 cases:

(a) *Track 2 — deadline for submission of trial materials.* The parties shall submit trial witness lists, trial exhibits lists, exhibits, copies of exhibits, and proposed jury instructions no later than three (3) days before the trial date. Notwithstanding this requirement, if a case is set for jury trial on the trailing docket, and that case is not set in one (1) of the first four (4) positions on the trailing docket, the parties in that case are relieved of the obligation to submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions three (3) days ~~[prior to]~~ before the setting. Only parties to the first four (4) cases set for jury trial on a trailing docket will be held to the time requirements for submission of trial materials;

(b) *Track 2 — deadline for plea agreement.* A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances;

(c) *Track 2 — deadline for pretrial conference.* The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled not less than fourteen (14) days before the trial date. The defendant shall be present for the final pretrial conference;

(d) *Track 2 — deadline for notice of need for court interpreter.* All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(e) *Track 2 — deadline for pretrial motions hearing.* A hearing for resolution of pretrial motions shall be set not less than thirty (30) days before the trial date;

(f) *Track 2 — deadline for pretrial motions.* Pretrial motions shall be filed not less than sixty (60) days before the trial date. Concurrent with the filing of each pretrial motion, the movant shall file and directly submit to the trial court administrative assistant a request for hearing on the motion;

(g) *Track 2 — deadline for responses to pretrial motions.* Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than forty (40) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(h) *Track 2 — deadlines for completing witness interviews.* Witness interviews shall be completed not less than seventy-five (75) days before the trial date, and each party shall set witness interviews under the procedure of Rule 5-503 NMRA.

(i) *Track 2 — deadline for disclosure of scientific evidence.* The results of any scientific evidence, if not already produced, shall be produced by the parties no later than

one hundred eighty (180) days after the date of arraignment. In a case when justified by good cause, the court may, but is not required to, extend the deadline for production of scientific evidence by up to thirty (30) days. In no case shall the order provide for production of scientific evidence more than two hundred ten (210) days after the arraignment;

(j) *Track 2 — deadline for amending criminal information or indictment.* The state shall not file any amendment to the criminal information after one hundred twenty (120) days from the date of arraignment, unless otherwise ordered by the court on good cause shown; and

(k) *Track 2 — deadline for submitting transport orders.* The state shall submit transport orders for any person(s) required to be present at any hearing and trial to the court not less than thirty (30) days before the scheduled date and time of the setting, [~~except that~~] but for expedited hearings set with fewer than thirty (30) days' notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing;

(2) *Sanctions.* If the state has requested to receive nonscientific evidence from law enforcement within ninety (90) days after the date of arraignment, and that evidence has not been provided to the state by law enforcement within one hundred twenty (120) days after the date of arraignment, the court may impose sanctions on the responsible law enforcement agency under [~~Paragraph (S)(4)~~] Subparagraph (T)(4) of this rule.

M. **Deadlines in track 3 cases; written findings required.** Written findings are required to place a case on track 3 and any findings shall be entered by the court within five (5) days of assignment to track 3.

(1) *Track 3; deadlines for commencement of trial and other events.* For track 3 cases, the scheduling order shall have trial commence within four hundred fifty-five (455) days

of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph O of this rule, whichever is the latest to occur, [~~except that~~] but no case may be set more than three hundred sixty-five (365) days from when the defendant is detained pending trial except on consent by defense counsel or on a finding of exceptional circumstances beyond the control of the parties. The scheduling order shall also set dates for other events according to the following requirements for track 3 cases:

(a) *Track 3 — deadline for submission of trial materials.* The parties shall submit trial witness lists, trial exhibits lists, exhibits, copies of exhibits, and proposed jury instructions no later than three (3) days before the trial date. Notwithstanding this requirement, if a case is set for jury trial on the trailing docket, and that case is not set in one (1) of the first four (4) positions on the trailing docket, the parties in that case are relieved of the obligation to submit trial witness lists, trial exhibit lists, exhibits, copies of exhibits, and proposed jury instructions three (3) days [~~prior to~~] before the setting. Only parties to the first four (4) cases set for jury trial on a trailing docket will be held to the time requirements for submission of trial materials;

(b) *Track 3 — deadline for plea agreement.* A fully executed plea agreement entered into between the defendant and the state shall be submitted to the court substantially in the form approved by the Supreme Court no later than ten (10) days before the trial date. A request for the court to approve a plea agreement less than ten (10) days before the trial date shall not be accepted by the court except on a written finding by the assigned district judge of extraordinary circumstances. A defendant may plead guilty and the parties may recommend a sentence but the court shall not agree to comply with a plea agreement in this circumstance absent a written finding of extraordinary circumstances;

(c) *Track 3 — deadline for pretrial conference.* The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled not less than twenty (20) days before the trial date. The defendant shall be present for the final pretrial conference;

(d) *Track 3 — deadline for notice of need for court interpreter.* All parties shall identify by filing notice with the court any requirement for language access services at trial by a party or witness fifteen (15) days before the trial date;

(e) *Track 3 — deadline for pretrial motions hearing.* A hearing for resolution of pretrial motions shall be set not less than forty-five (45) days before the trial date;

(f) *Track 3 — deadline for pretrial motions.* Pretrial motions shall be filed not less than seventy (70) days before the trial date. Concurrent with the filing of each pretrial motion, the movant shall file and directly submit to the trial court administrative assistant a request for hearing on the motion;

(g) *Track 3 — deadline for responses to pretrial motions.* Written responses to any pretrial motions shall be filed within ten (10) days of the filing of any pretrial motions and in any case not less than fifty-five (55) days before the trial date. Failure to file a written response shall be deemed, for purposes of deciding the motion, an admission of the facts stated in the motion;

(h) *Track 3 — deadlines for completing witness interviews.* Witness interviews shall be completed not less than one hundred (100) days before the trial date, and each party shall set witness interviews under the procedure of Rule 5-503 NMRA.

(i) *Track 3 — deadline for disclosure of scientific evidence.* The results of any scientific evidence, if not already produced, shall be produced by the parties no later than

three hundred five (305) days after the date of arraignment. In a case when justified by good cause, the court may, but is not required to, extend the deadline for production of scientific evidence by up to thirty (30) days. In no case shall the order provide for production of scientific evidence more than three hundred thirty-five (335) days after the date of arraignment;

(j) *Track 3 — deadline for amending criminal information or indictment.* The state shall file any amendment to the criminal information not less than one hundred twenty (120) days before the trial date, unless otherwise ordered by the court on good cause shown; and

(k) *Track 3 — deadline for submitting transport orders.* The state shall submit transport orders for any person(s) required to be present at any hearing and trial to the court not less than thirty (30) days before the scheduled date and time of the setting, [~~except that~~] but for expedited hearings set with fewer than thirty (30) days' notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing.

(2) ***Sanctions.*** If the state has requested to receive nonscientific evidence from law enforcement within ninety (90) days after the date of arraignment, and that evidence has not been provided to the state by law enforcement within two hundred seventy-five (275) days after the date of arraignment, the court may impose sanctions on the responsible law enforcement agency under [~~Paragraph (S)(4)~~] Subparagraph (T)(4) of this rule.

N. **Extensions of time limits for good cause; cumulative limit.** The court may, for good cause, grant any party an extension of the time requirements imposed by an order entered in compliance with Paragraph J of this rule. Any extensions of time shall not result in delay of the date scheduled for commencement of trial unless the court finds good cause beyond the control of the parties or the court under Subparagraph (P)(1) of this rule. In no case shall a party be given

time extensions that, in total, exceed thirty (30) days for track 1 cases, sixty (60) days for track 2 cases, and ninety (90) days for track 3 cases.

O. **Extension of time limits for commencement of trial; triggering events.** As deemed necessary, the court may enter an amended scheduling order to extend the time limits for commencement of trial consistent with the deadlines in Paragraph K, Paragraph L, or Paragraph M of this rule [~~whenever~~] when one of the following triggering events occurs:

(1) if an evaluation of competency has been ordered, the date an order is filed in the court finding the defendant competent to stand trial;

(2) if a mistrial is declared by the district court, the date the order declaring a mistrial is filed in the court;

(3) in the event of a remand from an appeal, the date the mandate or order is filed in the court disposing of the appeal;

(4) if the defendant is arrested on any valid warrant in the case or surrenders in this state on any valid warrant in the case, the date of the arrest or surrender of the defendant, and the assigned judge determines that this circumstance reasonably requires additional time to bring the case to trial;

(5) if the defendant is arrested or surrenders in another state or country, the date the defendant is returned to this state;

(6) if the defendant has been referred to a preprosecution or court diversion program, the date a notice is filed in the court that the defendant has been deemed not eligible for, is terminated from, or is otherwise removed from the preprosecution or court diversion program;

(7) if the defendant's case is severed from a case to which it was previously joined, the date from which the cases are severed, [~~except that~~] but the nonmoving defendant or at

least one of the nonmoving defendants shall continue on the same basis as previously established under these rules for track assignment and otherwise;

(8) if a defendant's case is severed into multiple trials, the date from which the case is severed into multiple trials, ~~[except that]~~ but the court shall continue at least one (1) of the previously-joined defendants or counts on the original track assignment, which defendant or counts shall be determined by the court on consideration of the complexity of the now-severed cases or counts;

(9) if a judge enters a recusal and the newly-assigned judge determines the change in judge assignment reasonably requires additional time to bring the case to trial, the date the recusal is entered;

(10) if the court grants a change of venue and the court determines the change in venue reasonably requires additional time to bring the case to trial, the date of the court's order; or

(11) if the court grants a motion to withdraw the defendant's plea, the date of the court's order.

P. Extension of time for commencement of trial due to good cause or exceptional circumstances; sanctions.

(1) *Extension of trial date for good cause.* On a finding of good cause beyond the control of the parties or the court, the court may extend the trial date for a maximum of thirty (30) days for a track 1 case, forty-five (45) days for a track 2 case, and sixty (60) days for a track 3 case. To grant the extension, the court shall enter written findings of good cause.

(2) *Extension of trial date due to exceptional circumstances.* Without regard to which party requests any extension of the trial date, the court shall not extend the trial date more than sixty (60) days beyond the original date scheduled for commencement of trial without written

findings of exceptional circumstances approved in writing by the chief judge or a judge, including a judge pro tempore previously approved to preside over those matters by order of the Chief Justice, who is designated by the chief judge to approve the written findings. When the chief judge or the chief judge's designee accepts the finding by the district judge of exceptional circumstances, the chief judge shall approve rescheduling of the trial to a date certain. The order granting an extension to a date certain for extraordinary circumstances may reassign the case to a different judge for trial, so long as that judge has not been previously excused on the case, or include any other relief necessary to bring the case to prompt resolution.

(3) ***Requirements for multiple requests for extension of trial date.*** Any extension of the trial date sought beyond the date certain in a previously-granted extension will again require a finding by the district judge of exceptional circumstances approved in writing by the chief judge or designee with an extension to a date certain.

(4) ***Rejecting extension request for exceptional circumstances; dismissal required.*** In the event the chief judge or designee rejects the district judge's request for an extension based on exceptional circumstances, the case shall be tried within the previously-ordered time limit or shall be dismissed with prejudice if it is not, subject to the provisions in Subparagraph [(S)(6)] (T)(6) of this rule.

(5) ***Sanctions.*** If the court is unable to proceed to trial and must grant an extension for reasons the court does not find meet the requirement of good cause or exceptional circumstances, the court shall impose sanctions as provided in Paragraph [S] I of this rule, which may include dismissal of the case with prejudice subject to the provisions in Subparagraph [(S)(6)] (T)(6) of this rule.

Q. **A new probable cause determination is not required for recently refiled charges.** If a probable cause determination has been made by preliminary hearing or grand jury and the court dismisses the case without prejudice, the same charges may be refiled under the same case number by information within six (6) months of the dismissal without requiring a new probable cause determination.

~~[Q.]~~ **R.** **Reassignment.** If on the date the case is set or reset for trial the court is unable to hear a case for any reason, including a trailing docket, the case may be reassigned for immediate trial to any available judge or judge pro tempore, so long as

(1) that judge has not been previously excused and was not involved in plea negotiations in any capacity; and

(2) attorneys for the state and defense are not scheduled for hearings in another courtroom at the same time as the reassigned setting.

~~[R.]~~ **S.** **Certification of readiness before pretrial conference or docket call.** Both the prosecutor and defense counsel shall submit a certification of readiness form three (3) days before the final pretrial conference or docket call, indicating that they have been unable to reach a plea agreement, that both parties have contacted their witnesses and the witnesses are available and ready to testify at trial, and that both parties are ready to proceed to trial. This certification may be by stipulation. If either party is unable to proceed to trial, that party shall submit a written request for extension of the trial date as outlined in Paragraph O of this rule. If the state is unable to certify the case is ready to proceed to trial and does not meet the requirements for an extension in Paragraph O of this rule, it shall prepare and submit notice to the court that the state is not ready for trial and the court shall dismiss the case.

~~[S.]~~ **T.** **Failure to comply.**

(1) If a party fails to comply with any provision of this rule or the time limits imposed by a scheduling order entered under this rule, the court shall, on its own motion or on motion of a party, impose sanctions as the court may deem appropriate in the circumstances and taking into consideration the reasons for the failure to comply.

(2) In considering the sanction to be applied the court shall not accept negligence or the usual press of business as sufficient excuse for failure to comply. If the case has been refiled after an earlier dismissal, dismissal with prejudice is the presumptive outcome for a repeated failure to comply with this rule, subject to the provisions in Subparagraph [~~(S)(6)~~] (T)(6) of this rule.

(3) A motion for sanctions for failure to comply with this rule or any of the Rules of Criminal Procedure for the District Courts must be made in writing, [~~except that~~] but an oral motion may be made during a setting scheduled for another purpose if the basis of the motion was not and reasonably could not have been known before that setting.

(4) The sanctions the court may impose under this paragraph include, but are not limited to, the following:

- (a) a reprimand by the judge;
- (b) prohibiting a party from calling a witness or introducing evidence;
- (c) a monetary fine imposed on a party's attorney or that attorney's employing office with appropriate notice to the office and an opportunity to be heard;
- (d) civil or criminal contempt; and
- (e) dismissal of the case with or without prejudice, subject to the provisions in Subparagraph [~~(S)(6)~~] (T)(6) of this rule.

(5) The court shall not impose any sanction against the state for violation of this rule if an in-custody defendant was not at a court setting as a result of a failure to transport, [~~except that~~] but the court may impose a sanction if the failure to transport was attributable to the prosecutor's failure to properly prepare and serve a transportation order if required. If the court finds that the prosecutor prepared and timely filed the transport order, but the executing law enforcement agency failed to execute the transport order, the court may impose sanctions against the executing law enforcement agency under [~~Paragraph (S)(4)~~] Subparagraph (T)(4) of this rule.

(6) The sanction of dismissal, with or without prejudice, shall not be imposed under the following circumstances:

(a) the state proves by clear and convincing evidence that the defendant is a danger to the community; and

(b) the failure to comply with this rule is caused by extraordinary circumstances beyond the control of the parties.

Any court order of dismissal with or without prejudice or prohibiting a party from calling a witness or introducing evidence shall be in writing and include findings of fact about the moving party's proof of and the court's consideration of the above factors.

[~~T~~] U. Intake process. The district attorney's office will only accept felony intakes through email at 3rdfelonyintake@da.state.nm.us. Intakes for in-custody defendants must be received within twenty-four (24) hours of arrest. Intakes for out-of-custody defendants must be received within ten (10) days of the completion of the investigation.

[~~U~~] V. Grand jury. The grand jury will continue to sit one day per week when it is in session. The chief judge shall have discretion to expand the number of days the grand jury sits on

a showing by the state that additional grand jury days are needed to reduce the backlog of pending cases or to ensure the timely resolution of future cases.

~~[V.]~~ W. **Multiple indictments; judge assignment.** If multiple indictments are or have been returned for one defendant, all cases for that defendant shall be assigned to the judge presiding over the case with the lowest case number.

~~[W.]~~ X. **Peremptory excusal of a district judge; time limits; limits on excusal; reassignment.** A party on either side may file one (1) peremptory excusal of any district judge in the Third Judicial District Court, regardless of which judge is currently assigned to the case, within ten (10) days of the arraignment or the filing of a waiver of arraignment.

(1) **Reassignment.** If necessary, ~~[following]~~ after the exercise of peremptory excusal, the case may be reassigned by the chief judge to any judge in the Third Judicial District Court, so long as that judge has not been previously excused on the case. The chief judge may also reassign the case to a judge pro tempore previously approved to preside over these matters by order of the Chief Justice, who shall not be subject to peremptory excusal.

(2) **Limits on excusal.** Peremptory excusals shall not hinder, delay, or obstruct the administration of justice. If it appears that an attorney or group of attorneys may be using peremptory excusals for improper purposes or with any frequency by impeding the administration of justice, the chief judge of the district may take appropriate action to address any misuse, including issuance of an order providing that the attorney or attorneys or any party they represent may not file peremptory excusals for a specified period of time or until further order of the chief judge.

~~[X.]~~ Y. **Settlement conference.** A judge assigned to a criminal case shall have the authority to assign another judge or judge pro tempore (“settlement judge”) to participate in a settlement

conference to assist the parties in resolving the case in a manner that serves the interests of justice, ~~[provided that]~~ but any judge who presides over any phase of the criminal case shall not participate in plea discussions pertaining to that case.

(1) ***Settlement conference setting.*** The case may be referred to settlement conference at the request of either party, or on the court’s own motion. For those cases in which the defendant is in custody, a settlement conference shall be set when the court issues the scheduling order under Paragraph J of this rule.

(2) ***Discovery deadline.*** Before assigning the case to a settlement judge, the judge assigned to the case (“referring judge”) shall ensure that the parties have had a meaningful opportunity to engage in discovery. All written discovery and any recordings must be completed ten (10) days ~~[prior to]~~ before the scheduled settlement conference.

(3) ***Appearance of counsel.*** Counsel for the prosecution and defense shall appear at the settlement conference in person at the courthouse. Counsel for the prosecution and defense shall each have full authority to act in all matters pertaining to the settlement conference and shall be prepared to engage in negotiation.

(4) ***Appearance of defendant.*** The defendant shall be required to appear at the settlement conference, whether or not the defendant is in custody.

(5) ***Record of settlement conference.*** The settlement conference shall not be recorded.

(6) ***Plea offer not required.*** The prosecution is not required to make a plea offer and the defendant is not required to accept a plea offer. If the prosecution does not intend to offer a plea and has knowledge of this before the scheduled settlement conference, then the prosecution must notify the referring judge and opposing counsel in writing at least five (5) days before the

scheduled settlement conference. On notice that the prosecution does not intend to offer a plea, the referring judge shall vacate the settlement conference, set the case for trial, and issue a scheduling order in accordance with this rule.

(7) ***Communication.*** The settlement judge, parties, and attorneys shall not communicate any of the substance of the plea discussions to the referring judge or any judge who may preside over any phase of the case.

(8) ***Statements not admissible.*** No statement made by a participant in the settlement conference shall be admissible at the trial of a defendant in the case.

(9) ***Returning the case with a plea agreement.*** If plea discussions result in a tentative plea agreement, the settlement judge shall not take the plea, but shall return the case to the referring judge, or transfer the case to another designated judge to accept or reject the plea.

(10) ***Returning the case with no plea agreement.*** If plea discussions do not result in a plea agreement, the case shall be returned to the referring judge or transferred to another designated judge for further proceedings with a certificate of readiness.

~~[Y.]~~ **Z. Data reporting to the Supreme Court required.** The chief judge, district attorney, and public defender shall provide statistical reports to the Supreme Court as directed.

[Adopted by Supreme Court Order No. S-1-RCR-2023-00001, effective June 14, 2023; as amended by Supreme Court Order No. S-1-RCR-2024-00070, effective for all cases pending or filed on or after July 1, 2024.]