

LR8-301. Case management pilot program for criminal cases

A. **Scope; application.** This is a special pilot rule governing time limits for criminal proceedings in the Eighth Judicial District Court. This rule applies in all criminal proceedings in the Eighth 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 Eighth Judicial District Court, but only to the extent they do not conflict with this pilot rule. The Eighth Judicial District Court may adopt forms to facilitate compliance with this rule, including the data tracking requirements in Paragraph L.

B. **Arraignment.**

(1) ***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 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. The state shall file and directly submit its arraignment request to the trial court administrative assistant concurrently with the filing of the bind-over order, information, indictment, or date of arrest, whichever is later.

(2) ***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 F;

(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 (C)(2) of this rule; and

(d) the state understands that, absent extraordinary circumstances, the state's failure to comply with the case processing time lines set forth in this rule will result in sanctions as set forth in Paragraph H.

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

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

(1) ***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 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, witness addresses, phone numbers, and email addresses.

(2) ***Deadline for disclosure by the state.*** If the case is a ten (10)-day case as described by Rule 5-302(A)(1) NMRA, the state shall make its 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 of the first appearance.

(3) ***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 deposition under Rule 5-503 NMRA.

(4) ***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.

(5) ***Evidence deemed in the possession of the state.*** Evidence is deemed to be in 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.

(6) ***Deadline for the state to submit evidence to the crime lab.*** 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 crime lab.

D. **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 F, 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 also phone numbers and email addresses if available, for its 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 F, 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.

E. **Peremptory excusal of a district judge; time limits; limits on excusal; reassignment.**

(1) ***Peremptory excusal.*** A party on either side may file one (1) peremptory excusal of any judge in the Eighth 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.

(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.

(3) **Reassignment.** If necessary, following the exercise of peremptory excusal, the case may later be reassigned by the chief judge to any judge in the Eighth 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 such matters by order of the Chief Justice, who shall not be subject to peremptory excusal.

F. **Status hearing; witness disclosure; case track determination; scheduling order.**

(1) **Witness list disclosure requirements.** 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.

(2) ***Status hearing; factors for case track assignment.*** 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.

(3) ***Case track assignment required; factors.*** At the status hearing, the court shall determine the appropriate assignment of the case to one of three tracks. 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. Any track assignment under this rule only shall be made after considering the following factors:

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

(b) 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.

(4) ***Defendants detained pending trial.*** When the defendant is detained pending trial, the case shall be given the highest priority for trial scheduling.

(5) ***Scheduling order required.*** After hearing argument and weighing the above factors, the court shall, on the conclusion of the status hearing, issue a scheduling order that assigns the case to one of three tracks and identifies the dates when events required by that track shall be scheduled, which are as follows for tracks 1, 2, and 3:

(a) ***Track 1; deadlines for commencement of trial and other events.*** For track 1 cases, the scheduling order shall have 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 G, 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:

(i) 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. Should the prosecutor dismiss counts from the criminal information within ten (10) business days before trial, along with the defendant intending to plead guilty to the remaining charges within ten (10) business days before trial or on the day of trial, the Court will not accept the guilty plea and will dismiss all the counts remaining in the criminal information with prejudice in the event the Court deems the prosecutor's and the defendant's conduct in this regard to be an effort to circumvent the plea agreement deadline.

(ii) Track 1 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled no less than fourteen (14) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) 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;

(iv) 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;

(v) 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.

(vi) 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;

(vii) Track 1 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than sixty (60) days before the trial date. Absent order of the court the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses on the other party's initial witness list shall request those interviews no later than fourteen (14) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the thirty (30) days after the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that thirty (30)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party. At all times the parties shall act diligently and in good faith in requesting,

scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews; and

(viii) Track 1 - deadline for disclosure of scientific evidence. All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred twenty (120) days before the trial date. In a case when justified by good cause, the court may but is not required to provide for production of scientific evidence less than one hundred twenty (120) days before the trial date. In no case shall the order provide for production of scientific evidence less than ninety (90) days before the trial date;

(ix) Track 1 – 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.

(x) 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 no less than ten (10) days before the scheduled date and time of the setting, unless for expedited hearings set with fewer than ten (10) days’ notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing.

(b) *Track 2; deadlines for commencement of trial and other events.* For track 2 cases, the scheduling order shall have trial commence within three hundred (300) days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event identified in Paragraph G, 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:

(i) 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. Should the prosecutor dismiss counts from the criminal information within ten (10) business days before trial, along with the defendant intending to plead guilty to the remaining charges within ten (10) business days before trial or on the day of trial, the court will not accept the guilty plea and will dismiss all the counts remaining in the criminal information with prejudice in the event the court deems the prosecutor's and the defendant's conduct in this regard to be an effort to circumvent the plea agreement deadline.

(ii) Track 2 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled no less than fourteen (14) days before the trial date. Each party shall file their final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) 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;

(iv) 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;

(v) 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.

(vi) 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;

(vii) Track 2 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than seventy-five (75) days before the trial date. Absent order of the court, the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses on the other party's initial witness list shall request those interviews no later than twenty-one (21) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the forty-five (45) days after the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that forty-five (45)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party. At all times the parties shall act diligently and in good faith in requesting, scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure

1 to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for
2 sanctions followed the requirements of this subparagraph in requesting those interviews; and

3 (viii) Track 2 - deadline for disclosure of scientific evidence. All
4 parties shall produce the results of any scientific evidence, if not already produced, not less than
5 one hundred twenty (120) days before the trial date. In a case when justified by good cause, the
6 court may but is not required to provide for production of scientific evidence less than one hundred
7 twenty (120) days before the trial date. In no case shall the order provide for production of
8 scientific evidence less than ninety (90) days before the trial date; and

9 (ix) Track 2 – deadline for amending criminal information or
10 indictment. The state shall file any amendment to the criminal information not less than one
11 hundred twenty (120) days before the trial date, unless otherwise ordered by the court on good
12 cause shown.

13 (x) Track 2 – deadline for submitting transport orders. The state
14 shall submit transport orders for any person(s) required to be present at any hearing and trial to the
15 Court no less than ten (10) days before the scheduled date and time of the setting, except that for
16 expedited hearings set with fewer than ten (10) days’ notice, the state shall submit transport orders
17 within one (1) business day of the filing of the notice of the expedited hearing.

18 (c) *Track 3; deadlines for commencement of trial and other events.* For
19 track 3 cases, the scheduling order shall have trial commence within four hundred fifty-five (455)
20 days of arraignment, the filing of a waiver of arraignment, or other applicable triggering event
21 identified in Paragraph G, whichever is the latest to occur, except that no case may be set past three
22 hundred sixty-five (365) days when the defendant is detained pending trial except on consent by
23 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:

(i) 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. Should the prosecutor dismiss counts from the criminal information within ten (10) business days before trial, along with the defendant intending to plead guilty to the remaining charges within ten (10) business days before trial or on the day of trial, the court will not accept the guilty plea and will dismiss all the counts remaining in the criminal information with prejudice in the event the court deems the prosecutor's and the defendant's conduct in this regard to be an effort to circumvent the plea agreement deadline.

(ii) Track 3 - deadline for pretrial conference. The final pretrial conference, including any hearing on any remaining pretrial motions if needed, shall be scheduled no less than twenty (20) days before the trial date. Each party shall file its final trial witness list on or before this date. The defendant shall be present for the final pretrial conference;

(iii) 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;

(iv) 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;

(v) 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.

(vi) 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;

(vii) Track 3 - deadlines for requesting and completing witness interviews. Witness interviews shall be completed not less than one hundred (100) days before the trial date. Absent order of the court the state shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews of the defendant's witnesses. A party wishing to interview witnesses on the other party's initial witness list shall request those interviews no later than twenty (21) days after the issuance of the scheduling order. The requesting party shall give dates of availability for witness interviews during the sixty (60) days after the request and the party receiving the request shall make reasonable efforts to schedule the requested interviews during that sixty (60)-day period. If a party files a new witness list adding new witnesses, any requests to interview those new witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party. At all times the parties shall act diligently and in good faith in requesting,

scheduling, and, as necessary, rescheduling witness interviews. The court shall not consider failure to conduct pretrial interviews of witnesses as the basis of any sanction unless the party moving for sanctions followed the requirements of this subparagraph in requesting those interviews; and

(viii) Track 3 - deadline for disclosure of scientific evidence. All parties shall produce the results of any scientific evidence, if not already produced, not less than one hundred fifty (150) days before the trial date. In a case when justified by good cause, the court may but is not required to provide for production of scientific evidence less than one hundred fifty (150) days before the trial date. In no case shall the order provide for production of scientific evidence less than one hundred twenty (120) days before the trial date.

(ix) 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.

(x) 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 no less than ten (10) days before the scheduled date and time of the setting, except that for expedited hearings set with fewer than ten (10) days’ notice, the state shall submit transport orders within one (1) business day of the filing of the notice of the expedited hearing.

(6) ***Form of scheduling order; additional requirements and shorter deadlines allowed.*** The court may adopt on order of the chief judge of the district court a form to be used to implement the time requirements of this rule. 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 Subparagraph (F)(5) of this rule to allow for the case to come to trial sooner.

(7) ***Extensions of time; cumulative limit.*** In the scheduling order the court may shorten the deadlines for the parties to request pretrial interviews set forth in Subparagraphs (F)(5)(a)(vii), (F)(5)(b)(vii), and (F)(5)(c)(vii) of this rule. The court may, for good cause, grant any party an extension of the time requirements imposed by an order entered in compliance with Paragraph F 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. Unless required by good cause, the extensions of time shall not result in delay of the date scheduled for commencement of trial. Substitution of counsel alone ordinarily shall not constitute good cause for an extension of time. A stipulated request for extension of time in order to consolidate and resolve multiple cases against the same defendant under one plea agreement shall ordinarily be considered good cause for an extension of time.

G. **Time limits for commencement of trial.** 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 F whenever one of the following triggering events occurs:

(1) the date of arraignment or the filing of a waiver of arraignment of the defendant;

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

(3) if a mistrial is declared by the trial court, the date this order is filed in the court;

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

(5) 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;

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

(7) 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;

(8) 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 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;

(9) if a defendant's case is severed into multiple trials, the date from which the case is severed into multiple trials, except that the court shall continue at least one 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;

(10) 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;

(11) 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

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

H. 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 (H)(6).

(3) A motion for sanctions for failure to comply with this rule or any of the Rules of Criminal Procedure must be made in writing, except that 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 (H)(6).

(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 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 so required.

(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.

I. 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 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, it shall submit a written request for extension of the trial date as outlined in Paragraph J 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

I 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.

J. Extension of time for trial; reassignment; dismissal with prejudice; sanctions.

(1) *Extending date for trial; good cause or exceptional circumstances; reassignment to available judge for trial permitted; sanctions.* The court may extend the trial date for a total of up to 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, on showing of good cause which is beyond the control of the parties or the court. To grant the extension the court shall enter written findings of good cause. 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 that judge has not been previously excused. 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, the court shall impose sanctions as provided in Paragraph H of this rule, which may include dismissal of the case with prejudice subject to the provisions in Subparagraph (H)(6). 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 a written finding 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, that the chief judge designates.

(2) *Requirements for extension of trial date for exceptional circumstances; reassignment.* When the chief judge or the chief judge's designee accepts the finding by the trial 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.*** Any extension sought beyond the date certain in a previously granted extension will again require a finding by the trial 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 trial 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 (H)(6).

K. **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.

L. **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 Nos. 22-8300-012 and 22-8300-014, effective September 12, 2022, as directed in Supreme Court Order No. 22-8500-032.]