

Linn County Circuit Court

Criminal Case Flow Management

November 6, 2010

The Firm Trial Set Rule set forth in the attached memo is effective immediately.

The rules and procedures set forth below shall be effective on Monday, December 6, 2010.

Guiding Principles of Criminal Case Flow Management (CFM):

1. All cases should receive the time and attention they genuinely deserve from the court and from counsel, no less and no more.
2. Cases should be resolved as quickly and efficiently as possible without denying anyone their fundamental legal rights and without any denial of justice.
3. Case preparation should be focused on the front end of the case. Effort at resolution of a case should be focused on the front end of a case. All essential case preparation and all efforts at case resolution must be completed before a case is set for trial.
4. Liberal use of settlement conferences is encouraged to facilitate just resolution of cases and to reinforce these principles of CFM.
5. Trial dates should be firm. Parties, attorneys, court staff, witnesses and victims should be able to reasonably rely upon a trial date. Cases should be resolved in as short a time as possible with a minimum number of delays, set-overs and continuances. The axiom that justice delayed is justice denied is a valid watchword for this system.
6. Every court appearance is for a purpose. Something of value aimed at the resolution of the case is accomplished at every court appearance. Everyone is fully prepared at every court appearance.
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The Pre Trial Process

We will return to the same pre trial process we implemented in 2001. The first appearance by the defendant in court is the arraignment. The first appearance with counsel after arraignment is the Early Resolution Conference (ERC).

Early Resolution Conference Expectations:

1. All discovery should be completed by the ERC. If it is not a deadline for providing discovery and exchanging witness lists shall be set. For defendants in custody a trial deadline shall also be set.
2. A deadline shall be set for filing all pre trial motions as well as deadlines to respond to them. If any such motions are anticipated the hearing for the motions will be set at the ERC.
3. A Final Resolution Conference or Settlement Conference shall be scheduled at the end of the ERC.

Final Resolution Conference Expectations:

1. All case resolution discussions should be complete. The case should be either ready for resolution or trial.
2. Each side shall be completely ready to set the matter for trial. Essential witnesses shall have been identified and lists exchanged. Each side should know what evidence the other side has.
3. The parties and counsel will be advised by the court that this is the last opportunity to resolve the case short of trial.
4. If a trial must be set counsel shall complete an application for trial and submit it to the court. A trial will not be set without a completed application.
5. Statistics shall be maintained concerning the compliance with these rules and shall be published.
6. For good cause the court will set a second FRC. Good cause includes but is not limited to: discovery of new evidence; delay in evidence processing by the crime lab; new charges filed against defendant; change in defendant's custody status; failure to settle at a Settlement Conference; etc.
7. A Settlement Conference may be requested and set at any time before trial is set.
8. Once trial is set the Firm Trial Set Rule applies.

History of Criminal Case Flow Management in Linn County and Explanation of CFM Reassessment for 2010

Ten years ago the criminal docket in Linn County was out of control. It was not unusual to have up to 6 or 7 criminal trials set in one courtroom on one day. They would settle by the score on the morning of trial or they would get bumped to another trial day often multiple times. Large numbers of witnesses, police officers and others involved in the system would sit in the hallway waiting to see what case would go. The cost for over time to police agencies was unknown but considerable. The inconvenience to the public, especially the victims of crime and the witnesses who come to testify was unjustifiable.

In response to this frustration with a broken system Linn County, along with Columbia and Yamhill Counties, participated in a training program sponsored by the Center for State Courts. Case Flow Management expert George Gish spent a month in Oregon carefully analyzing the criminal systems in all three counties. In June of 2001 each court sent a team of a dozen or more judges, court staff, and attorneys to Lake Oswego for a week long seminar where Mr. Gish taught all of us the sound principles of case flow management, what works, what does not work and how best to manage a docket in such a way to insure that people will have a trial set certain and reduce the number of continuances and delay to a minimum.

Linn County implemented that system in 2001 and has used some variant of it ever since. We saw a tremendous change in the way cases were processed. Case preparation became more focused on the front end of the case and the large multiple trial setting disappeared. The public was well served. Over time however things change. People lose sight of the focus of such a change as the daily grind of work turns into months and then years. Laws change which alter human behavior including the way attorneys negotiate cases. Many of the judges, attorneys and court staff who were trained in the "Gish model" of case flow management have retired or otherwise left us. Many new attorneys and staff did not have the benefit of the training.

Before the full case flow management system was settled upon Linn County adopted something called the Ten Day Rule. This rule, which only applied in criminal cases, provided that a criminal case could only be resolved through a negotiated plea up to ten days before trial. After that ten day limit either the defendant pleads to everything or the state dismissed everything – or the parties went to trial.

While this rule was an improvement over the old system of settling cases on the morning of trial it was not sufficient to solve the problem. It simply shifted serious case settlement discussions from the day of trial to ten days prior.

Based on the case flow management principles we learned from George Gish it was apparent that this rule had to be expanded to focus serious settlement discussions and efforts to a point prior to the setting of trial. This way trials were firm – they truly meant

that a trial would occur barring unforeseen or extraordinary circumstances. This rule was then implemented although no one ever really changed the name. It was still referred to as the ten day rule even though there was no ten days involved.

For most of 2010 I have interviewed attorneys on both sides of the bar as well as court staff and others involved in the system. I have reviewed the big thick notebook of notes and charts that Mr. Gish gave us in 2001. I have discussed this system and the problem with judges from all over the state of Oregon including a number of retired judges.

My conclusion after all this study and consideration is that the need to focus case resolution efforts to the earliest possible part of a criminal case remains valid and essential if we are to effectively manage the criminal docket. This was discussed at a Judge's Meeting in October and continuation of the rule and the methodology taught to us by Gish was approved.

Our decision then is to continue the **Firm Trial Set Rule**. It should no longer be mislabeled as a ten day rule; there are no ten days involved. The rule is effective immediately.

As the text of the rule and its commentary provide the court will make exceptions to the rule where there is genuine good cause. The rule must be administered within the limitations required by Constitutional and statutory provisions protecting the rights of the accused, the rights of victims, and the integrity of the adversarial system. That is what we elect judges to do – to manage a justice system in a way that minimizes waste, inefficiency and unnecessary delay while achieving the best possible outcome as dictated by our standards of justice.

In these more difficult fiscal times the courts must become even more efficient than they have been in the past. This is not an option – it is a necessity. This does not mean that we sacrifice justice to save money. It means we make sure we are delivering justice at the best possible price. A reassessment of our criminal docket and our methods of management has been necessary to improve our overall efficiency. Our objective is that at the same time we become more efficient we also serve the public in a better way.

In the coming weeks we will schedule a meeting for all interested court staff and all attorneys to attend. At that meeting we will have a short presentation of the case flow principles that we are following and an opportunity for questions and discussion.

Finally, over the years as a disciplined approach to the serious CFM has weakened the process on the Monday morning criminal docket has become unacceptably inefficient. Cases are churned unnecessarily. Appearances occur one after another with no apparent purpose other than to facilitate delay and ask for another date to appear. This must end. The public we serve has a reasonable expectation that we run a court system more professionally and competently than this.

The judges of Linn County ask for the cooperation of all court staff and attorneys to make this system work well. We are confident that this system, faithfully followed, will serve attorneys, clients, witnesses, and justice far better.

Daniel R. Murphy
Presiding Judge
Linn County Circuit Court