

DRUG DOCKET/CALL PROCEDURES
(Drug and Property Unit Cases)

I. General Procedures

- A. Drug call (drug and property unit cases) shall commence at 1:30 in the courtroom of the Criminal Procedure Court (CPC) judge.
- B. Parties shall negotiate in the jury room(s) beginning at 1 p.m.
- C. A defense attorney who must leave the courtroom to confer with client(s) in jail, or for an appearance in another courtroom, before all of his or her cases are addressed on the drug docket, shall first advise the clerk of where he/she will be prior to leaving the courtroom.
- D. When ready to report on a case, defense counsel shall write the case name, attorney name, page number from the docket, and the property or drug unit designation on the blackboard under the appropriate heading: 'plea' (only upon completion of signed petition), 'jsc' (judicial settlement conference), 'trial' or 'other'. (Note: some judges may prefer to call the cases from the docket.)
- E. Pleas shall be assigned to an available judge on the drug docket (or other available judge) on the same afternoon as call.
- F. Motions and trials shall be assigned to an available judge to begin the following morning.
- G. *All* motions for substitutions of attorney on cases appearing on the drug docket shall be heard by the drug docket/CPC judge. Motions for substitution of attorney shall be scheduled through the docket clerk (currently Donna O'Brien 503-988-5090 x28756) prior to 10 a.m. on the day of call if defendant is out of custody and by 2 p.m. the day before if defendant is in custody. Substitutions shall be scheduled daily in CPC at 3 p.m. or at a time designated by the CPC judge. (Such motions shall not be heard contemporaneously with the "readiness" report at call unless allowed by the judge in a given case.)

II. Reporting at Call Orally Advise CPC Judge of the Following:

- A. ___Pleas:

- Factors making plea particularly time consuming
- Interpreter required
- Sentencing to be set over
- Have other matter scheduled the same afternoon before a specific judge (plea may be sent to that judge or will need to work around other appearance)

B. Trials:

- Age of case
- Custody status
(If in custody, include status of 60 day waiver/holds/sanctions being served)
- Codefendants
- Jury or court trial (if known)
- Length of trial (including nature of any motions and anticipated number of witnesses on either side)
- Any scheduling complications
- Motions for Change of Judge

C. Other:

- Bench warrants
- Dismissals
- Motions for setovers

III. Motions for Setovers:

A. Defense and State Motions for Setovers

1. Unit A and B cases shall appear for call for the first trial setting on the 1:30 p.m. drug court call docket.
2. First setover request at drug call: a three week setover shall be granted upon *the oral* request of either party if good cause is shown - a date beyond three weeks is within the discretion of the court.
 - a. A setover request by defense counsel which places the date of trial of an 'in custody' defendant more than 49 days from the date of arrest will not be granted *unless* a 60 day waiver of release has been filed, or the court makes a 'good cause' finding under ORS 136.295 to extend the period within which the defendant may be held in custody beyond 60 days from the date of arrest prior to the trial commencing.

b. Note: The calculation of the 60 day time period under ORS 136.290 is exclusive of any time period(s) which either postponed or tolled the application of the statutory period.

3. Second and subsequent setover requests at drug call shall state with specificity the reason. The CPC judge shall determine if good cause has been shown warranting a further setover, (e.g., witness unavailable due to viable conflict, disability, required officer training, expert evaluations pending, emergency medical or family matters, vacation/unavailability of attorney etc.). The statement 'needs further investigation' is an insufficient basis unless new evidence, additional witnesses or a new indictment necessitates the request, or if the CPC judge determines there is a compelling basis. The judge shall select the next trial date based upon the reason for the setover request, the attorneys' availability and the age of the case.
4. In keeping with the mandate from the State Supreme Court for timely disposition of cases, the CPC judge shall set trial dates within 120 days of the date of arraignment on the indictment (or reindictment). The CPC judge shall have the discretion in those instances where a compelling reason exists warranting a good cause finding to exceed the 120 day limit, (e.g., recent substitution of counsel, defendant pending G.E.I. or aid and assist evaluation, treatment at OSH, etc.).
5. A setover request for a trial date which is a hundred (100) days or more from the date of arraignment shall be *in writing* on the form provided in CPC.

(Note: The party who initiates the setover request shall be required to make the request in writing. If the party's initial setover request creates a trial date conflict for the opposing party, resulting in the first mutually available date being beyond a hundred days from the date of arraignment, the setover shall be charged to the party initially requesting the setover.)

6. The CPC judge shall use his or her discretion in declaring a trial setting as a 'date certain' for the state or defense, or both, based on the age and history of the case, and the prior setover requests.

B. Court Setovers

1. The CPC judge shall grant a setover and charge it as a court setover when no judges are available for trial on the trial date and the court finds the parties are not available for trial within the two days following. (The CPC judge has the discretion to charge a court setover in other situations where

it would be unfair to charge either the state or defense with the setover.)

2. Further Proceedings

The CPC judge may set cases over for further proceedings for status checks, or on other grounds, where it would serve no purpose for witnesses to be subpoenaed for trial, (e.g., defendant is in federal custody and has committed to a non trial resolution of the federal case; defendant committed to state hospital, etc.)

IV. Bench Warrant Rescinds

A. Within five (5) court days of the defendant's non appearance at a scheduled court hearing, defense counsel, after having made contact with the client, may call to schedule a hearing for the recall of the bench warrant if there have been no prior failures to appear in the same case. The hearing shall be scheduled within one week. The warrant recall and any pretrial release conditions are within the judge's discretion. If counsel (or the defendant if pro se) has not contacted the court within the five day period, the defendant shall turn self in to the jail at the Justice Center.

1. Only if there is a compelling reason (e.g., hospitalization, family emergency, etc.) explaining the defendant's non appearance and the defendant's inability to contact counsel or the court within the allotted time period, may counsel call to docket a motion for recall of the warrant on the drug court docket after the five court days have elapsed.
2. If the warrant is recalled, the CPC judge, after consulting with counsel, shall set pretrial and trial dates which allow sufficient time for counsel to adequately prepare. This trial setting shall be a date certain.

B. A warrant rescind request requires defense counsel to contact the docket clerk (currently Donna O'Brien at 503-988-5090 x28756) prior to 10:00 am in order to place the defendant's case on the drug call docket for the same day. State and defense should be prepared at the time of the recall motion to advise the CPC judge of witness availability (to the extent possible within the limited time period) to assist the judge in the setting of new trial dates.

V. Assignment of Trial Date Following Defendant's Return from FTA/Abscond Status

A. If the defendant's trial date was cancelled due to defendant's failure to appear at a

scheduled court matter, the CPC judge shall, once the defendant's case has been reactivated by his/her appearance, set call and trial dates as follows:

1. If the period of abscond is three weeks or less, and the attorney remains the same, call and trial dates shall be set within 28 days of defendant's appearance in court following the failure to appear (FTA).
 2. If the period of abscond is greater than three weeks, and the attorney remains the same, call and trial dates shall be set within 35 days of defendant's appearance in court following the FTA.
 3. If new counsel is appointed, call and trial dates shall be set within 42 days of defendant's appearance in court following the FTA.
- B. The defendant's failure to appear and subsequent abscond status shall be a basis upon which good cause may be found by the CPC judge to exceed the 120 day time period from the date of the arraignment on the indictment during which drug and property unit cases are to be resolved.

VI. Substitution of Attorney

- A. All motions for substitution of attorney other than actual conflicts shall be heard by the CPC judge.
- B. Motions for substitution of attorney based on an actual conflict shall be heard by the CPC judge if it has been 21 days or more since arraignment on the indictment; cases which are less than 21 days shall be heard at the Justice Center.
- C. If a motion for substitution is granted, the current counsel shall provide a copy of the materials (exclusive of log notes and confidential entries) if the defendant has so authorized on the record, by transferring the materials ('sub packet') at the substitution hearing to the newly appointed attorney.
- D. The judge overseeing the substitution shall either leave the next call and trial dates as scheduled or, after consulting with the parties, may reset the call and trial dates within 42 days of the date of the substitution. (The judge shall make findings, where appropriate, under ORS 136.295, if the defendant is in custody, a 60 day waiver has not been signed and filed, and the proposed trial date is more than 60 days from the date of arrest.)

VII. Cases Involving Defendants with Pending Federal Court Charges

- A. If the federal charges arise out of the same alleged criminal episode, or a related

event, the CPC judge shall grant a setover in the state court case pending resolution of the federal charges, including sentencing, for a period of time which is reasonable within the judge's discretion.

- B. If the defendant has either entered into or is negotiating a cooperation agreement with the federal authorities which will affect the disposition of the state charge(s), the CPC judge shall grant a setover in the state court case for a period of time which is reasonable within the judge's discretion. It is required that either documentation to this effect, or representation by counsel after having made contact with federal court counsel, be presented at the time the extended setover is requested in order for the CPC judge to consider the such request.
- C. Requests for setovers for the sole purpose of postponing resolution until after disposition of federal charges which do not fall within the exceptions outlined under (A) or (B) shall be subject to the general policy regarding setovers articulated in this procedural document.

VIII. Motions to Suppress

- A. Motions to suppress shall be filed at the call prior to the actual assignment for hearing and/or trial on the next judicial day.
- B. Suppression motions and accompanying memoranda shall comply with UTCR 4.060.

IX. Motions for Change of Judge

- A. An attorney, on behalf of his/her client, who moves for change of the judge assigned at drug call must *immediately* advise the CPC judge at the time the case is called. The judge shall then assign a different judge if one is available. ORS 14.270; SLR 7.04 (1).
- B. The attorney shall submit the motion, supporting affidavit and order for change of judge to the clerk or the judicial assistant in the courtroom of the CPC judge by 5 p.m. on the day of call (or by 10:00 a.m. of the next judicial day with the CPC judge's consent). The attorney shall provide a copy (unsigned) of the motion, affidavit and order to the judge the attorney is seeking to change. The attorney shall also serve a copy on opposing counsel.
- C. The matter shall remain with the original judge if counsel fails to comply with the statutory procedure.

Revised 5/04 per Chief Criminal Court Judge Julie E. Frantz