

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAN 8 1973

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY _____
Deputy Clerk

RE: PLAN FOR PROMPT DISPOSITION)
OF CRIMINAL CASES) GENERAL ORDER NO. 47
)

Pursuant to the requirement of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 1, 1972, the judges of the United States District Court for the Eastern District of California have adopted the following Plan to minimize undue delay and to further the prompt disposition of criminal cases.

1. Priorities in Scheduling Criminal Cases.

(a) Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure.

(b) The trial of defendants in custody and defendants whose pre-trial liberty is reasonably believed to present unusual risks should be given preference over other criminal cases by the judge to whom the trial has been assigned.

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached within two weeks of original setting.

2. Time Requirements.

Subject to the provisions of section 3 hereof, the

judges of this court will observe the following time limits, which are deemed to be maximum time limits:

(a) Arraignments. If a defendant is prosecuted on an information or an indictment he shall be arraigned and enter a plea within 20 days if in custody, or within 30 days if not in custody, calculated from the date of the filing of the information or the return of the indictment, or the date of defendant's apprehension, whichever is last.

(b) Trial. The trial shall commence within 90 days after a plea of not guilty, if the defendant is held in custody or within 120 days if he is not in custody.

(c) Sentencing. A defendant shall ordinarily be sentenced within 45 days of the date of his conviction or plea of guilty or nolo contendere.

(d) Where a defendant is apprehended outside of this district, the time set out above shall begin to run when the defendant is returned to this district.

3. Extension of Time Limits.

Any period of time prescribed by this rule may be extended by the Court. Among other reasons, the Court may take into consideration:

(a) A reasonable period of delay resulting from other proceedings concerning the defendant, including, but not limited to, proceedings for the determination of competency and the period during which he is incompetent to stand trial, extra-

ordinary pre-trial motions, stays, interlocutory appeals, trial of other charges, and the period during which such matters are under consideration.

(b) The period of delay resulting from continuances granted by the Court for persuasive reasons, on application of the defendant or the prosecution. See Note 1. The Court shall grant such continuances only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges and the interest of the defendant in a speedy trial.

Note 1.

It is recognized that it is difficult to include all specific reasons for continuances in a stated plan. Such reasons may include but need not be limited to:

(a) The period of delay resulting from a continuance granted by the Court at the request of, or with the consent of, the defendant or his counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the Court of his rights under these rules and the effect of his consent.

(b) The period of delay resulting from a continuance granted at the request of a prosecuting attorney if:

(1) the continuance is granted because of the

unavailability of evidence material to the government's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or

(2) the continuance is granted to allow the prosecuting attorney additional time to prepare the government's case and additional time is justified by the exceptional circumstances of the case.

(c) The period of delay resulting from the absence or unavailability of the defendant.

(d) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.

(e) The period of delay resulting from detention of the defendant in another jurisdiction, provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.

(f) The period during which the defendant is without counsel for reasons other than the failure of the Court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.

(g) Other periods of delay occasioned by exceptional circumstances.

4. Effect of Noncompliance with Time Limits.

Upon the expiration of a time limit, as prescribed by or extended under this rule, a defendant who is in custody shall be released from custody unless the Court finds that the defendant is responsible for the failure to comply with the time limits. Subject to the provisions of 18 U.S.C. § 3146, if the Court finds that a defendant who is not in custody is responsible for failure to comply with the time limits, such defendant may have his release revoked unless there is good cause shown for the failure to comply. Subject to the power of the Court to dismiss a case for unnecessary delay, the failure to conform with the time limits herein prescribed shall not require the dismissal of the prosecution.

5. Definition of "Custody".

As used in this Plan, "custody" means custody on the federal charge contained in the pertinent complaint, information or indictment.

6. Procedures Intended to Facilitate Prompt Disposition of Cases.

(a) All pre-trial hearings shall be conducted as soon after the arraignment as possible, consistent with the

priorities of other matters on the court's criminal docket.

(b) The Court or the Magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel his arraignment may be postponed not more than one week to permit him to obtain or to consult with counsel. When appropriate, the Court may cause a plea of not guilty to be entered for the defendant. The Court shall take adequate steps to ensure that defendants are represented by counsel.

(c) A trial date shall be set at the time of arraignment and plea or at the earliest practicable time thereafter.

(d) Except for good cause shown, the Court may not extend the time for motions under F.R.Crim.P. 12(b)(3) beyond 10 days after plea. Such motions will be heard and ruled upon promptly, so that the trial need not be delayed.

(e) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

7. Retrials.

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but

in any event not later than 90 days after the finality of such order unless extended for good cause.

8. Review of Defendants in Custody and Delinquent Cases.

(a) The United States Attorney shall within 5 days after the close of the reporting period furnish the Chief Judge with a copy of the biweekly DJ-130 report of persons in custody, on which shall be indicated the identity of the judge to whose court such person has been assigned if such an assignment has been made. A copy of such report shall be furnished each judge of the court.

(b) The United States Marshal shall every month furnish each judge of the court with a statement of persons in federal custody and the date of such custody according to his records.

(c) At not more than 6 month intervals the judges of the court shall confer either in person or via telephone to review the status of all persons in custody and all cases in which the maximum time limits set forth in section 2 have been exceeded. Cases shall be reassigned as appropriate in order to carry out the purpose of this Plan. The United States Attorney shall be informed of any case in which his office appears to be responsible for unnecessary delay.

9. Responsibility of United States Attorney.

(a) The judge to whom a case has been assigned has sole responsibility for setting and calling cases for trial. A conflict in schedules of Assistant United States Attorneys will

not be ground for a continuance or delayed setting except under unusual circumstances approved by the Court and called to the Court's attention at the earliest practicable time. Each judge will schedule criminal trials at such times as may be necessary to assure prompt disposition of criminal cases. The United States Attorney will familiarize himself with the scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be able to announce ready for trial.

(b) If the United States Attorney knows that a person charged in his district with a federal criminal offense is serving a term of imprisonment in a federal, state, or other institution or that of another jurisdiction, it is his duty promptly:

(1) to undertake to obtain the presence of the prisoner for plea and trial; or

(2) to cause a detainer to be filed with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this Plan.

10. Effective Date of Plan.

This Plan became effective the 3rd day of January, 1973, the date on which it was approved by the reviewing panel of the Ninth Circuit Judicial Council.

DATED: January 8, 1973.


Chief Judge


Judge


Judge