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SUPREME COURT REVISES CASE MANAGEMENT ORDER IN BERNALILLO COUNTY

SANTA FE – The state Supreme Court has adopted amendments to the case management order that governs the handling of criminal cases in the 2nd Judicial District Court in Bernalillo Court.

The changes were approved after the court received comments and proposals from the district court, district attorney and prosecutors, Law Office of the Public Defender and other defense counsel and law enforcement. The parties have been working on proposed changes during meetings of the Bernalillo County Criminal Justice Coordinating Council over the last several months.

Among the changes are adjustments to deadlines for disclosing evidence and scheduling pretrial witness interviews.

“The amended case management order provides for the timely resolution of criminal cases in a fair and just manner. The work of the parties to reach consensus on most of these changes is greatly appreciated,” said Artie Pepin, the council chair and director of the Administrative Office of the Courts. “Their dedication has resulted in elimination of the substantial backlog of criminal cases in Albuquerque and progress to date allows the rule changes now adopted.”

The changes go into effect January 15, 2018, and will apply to pending cases that have been assigned to one of the procedural tracks that determine how quickly a case must go to trial.

Among the rule changes:

- An extra five days for the initial disclosure of evidence when a defendant is in custody.

- An additional five days for prosecutors to arraign a defendant who is not in custody. Arraignment triggers case deadlines including a discovery requirement for the initial disclosure of evidence. At arraignment, a defendant is told of the charges and enters a plea.
- More time for cases to go to trial upon a showing of good cause. A trial date can be extended by up to 60 days in the most complex cases and up to 45 days in cases of medium complexity. Previously, only 30-day extensions were allowed.
- Requirements and notices for the requesting and scheduling of witness interviews
- No sanctions on prosecutors, such as a case dismissal, if the failure of a defendant to be transported to court is not the fault of the prosecutor.
- The highest priority for scheduling a trial is given to cases in which the defendant is detained while awaiting trial.
- Prosecutors can refile the same charges without the need for a new probable cause determination when a case was dismissed without prejudice by the court or charges were voluntarily dropped by the prosecution.
- Elimination of the district court's "special calendar," which was established to handle more than 3,000 cases that were older than 18 months. The case backlog was eliminated by the beginning of 2017, and all judges are now assigned to the regular calendar for handling criminal cases.

The case management order was implemented in February 2015 to resolve criminal cases without undue delay and reduce a case backlog. The rule establishes varying deadlines for procedural steps leading to a trial. The simplest cases must go to trial within seven months and a trial is to be held within 15 months for the most complex cases, which potentially could include murder cases. The case management order applies only in the Second Judicial District Court in Bernalillo County.

Click [here](#) to view the amended case management order, including a version in markup format with additions underlined and deletions bracketed and in strikethrough. The Supreme Court issued an order Monday approving the rule amendments.

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1 **LR2-308. Case management pilot program for criminal cases.**

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

12 ~~[B. Assignment of cases to case management calendars; special calendar;
13 new calendar.~~

14 ~~—————(1) *Special calendar and new calendar judges.* Criminal cases filed
15 before July 1, 2014, will be assigned and scheduled as provided for “special calendar” judges
16 under Paragraph M of this rule, except that, where appropriate, the chief judge may
17 designate cases coming off warrant status to be placed in the new calendar. Criminal cases
18 filed on or after July 1, 2014, shall be assigned or reassigned to a “new calendar” judge. The
19 district court judges assigned as new calendar judges shall be determined by separate order
20 of the chief judge, who is authorized to reassign any district judge to be a new calendar
21 judge. Time limits and rules for disposition of cases assigned or reassigned to new calendar
22 judges shall be governed by this rule.~~

1 ~~—————(2)——~~ *Assignment of cases to new calendar judges.* For cases filed between
2 July 1, 2014, and the effective date of this rule, a new calendar judge will continue to be
3 assigned to any case previously assigned to that judge. Cases filed on or after July 1, 2014,
4 that were previously assigned to a special calendar judge, shall be reassigned to a new
5 calendar judge. Cases that require reassignment shall be reassigned by order of the chief
6 judge of the district court in the manner best designed to foster expeditious resolution of the
7 cases. Notwithstanding the reassignments provided in this rule, the chief judge of the district
8 court may continue the assignment of a case to the original judge in the interest of
9 expeditious resolution of the case.

10 ~~—————(3)——~~ *Deadline for initial scheduling hearing by new calendar judges in*
11 *pending cases.* Beginning on the effective date of this rule, new calendar judges assigned
12 to cases filed before the effective date of the rule shall hold a scheduling hearing within sixty
13 (60) days of the effective date of this rule. The scheduling hearing for pending cases shall
14 comply with Paragraph G of this rule and shall result in assignment of all pending cases to
15 the appropriate track. Thereafter the provisions of this rule shall apply, except that the time
16 limits for disclosures and the commencement of trial in Paragraph G shall start from the
17 effective date of this rule.

18 ~~—————(4)——~~ *Reassignment to new calendar judges, peremptory excusals.* Upon
19 reassignment of a pending case to a new calendar judge, any party who has not previously
20 exercised a peremptory excusal of a district judge under Rule 5-106 NMRA may exercise
21 a peremptory excusal within ten (10) days in the manner provided in Paragraph F of this
22 rule.

1 ~~—————(5)——~~ ~~*Rule governs case administration.*~~ For cases assigned to a new
2 calendar judge after the effective date of this rule, the provisions of this rule govern case
3 administration until this rule is withdrawn or amended.

4 ~~—————~~ ~~C]B.~~ **Arraignment.**

5 (1) *Deadline for arraignment.* The defendant shall be arraigned on the
6 information or indictment within ~~[ten (10)]~~ fifteen (15) days after the date of the filing of the
7 bind-over order, indictment, or the date of the arrest, whichever is later, ~~[if the defendant is~~
8 ~~not in custody and not later than seven (7) days if the defendant is in custody]~~ except that
9 the arraignment of a defendant in custody at the Bernalillo Metropolitan Detention Center
10 on the case to be arraigned shall be held not later than seven (7) days after the filing of the
11 bind-over order, indictment, or date of arrest, whichever is later.

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

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

18 (b) the court will have sufficient information upon which to rely
19 in assigning a case to an appropriate track at the status hearing provided for in Paragraph
20 ~~[G]E;~~

21 (c) all discovery in the possession of the state or relied upon in the
22 investigation leading to the bind-over order, indictment or information ~~[has been provided~~

1 ~~to the defendant]~~ will be provided in accordance with Subparagraph (C)(2) of this rule; and

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

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

7 [D]C. ~~[Discovery; disclosure]~~ ***Disclosure by the state; requirement to provide***
8 ***contact information; continuing duty; failure to comply.***

9 ~~[(1) ***Initial disclosures; deadline.*** The state shall disclose or make~~
10 ~~available to the defendant all information described in Rule 5-501(A)(1)-(6) NMRA at the~~
11 ~~arraignment or within five (5) days of when a written waiver of arraignment is filed under~~
12 ~~Rule 5-303(J) NMRA. In addition to the disclosures required in Rule 5-501(A) NMRA, at~~
13 ~~the same time the state shall provide addresses, and also phone numbers and email addresses~~
14 ~~if available, for its witnesses that are current as of the date of disclosure, copies of~~
15 ~~documentary evidence, and audio, video, and audio-video recordings made by law~~
16 ~~enforcement officers or otherwise in possession of the state, and a "speed letter" authorizing~~
17 ~~the defendant to examine physical evidence in the possession of the state.]~~

18 (1) ***Scope of disclosure by the state.*** The scope of the state's discovery
19 disclosure obligation shall be governed by Rule 5-501(A)(1)-(6) NMRA. In addition to
20 producing a "speed letter" authorizing the defendant to examine physical evidence in
21 possession of the state. the state shall provide the defendant with physical copies of any
22 documentary evidence and audio, video, and audio-video recordings made by law

1 enforcement officers or otherwise in possession of the state at the time of the disclosure. As
2 part of its production obligation under Rule 5-501(A)(5) NMRA, the state shall provide
3 contact information for its witnesses that is current as of the date of disclosure, including,
4 to the extent available, witness addresses, phone numbers, and email addresses.

5 (2) ***Deadline for disclosure by the state.*** If the case is a ten (10)-day case
6 as described by Rule 5-302(A)(1) NMRA, the state shall make its discovery disclosures to
7 the defendant within five (5) days after arraignment or the filing of a waiver of arraignment
8 under Rule 5-303(J) NMRA. If the case is a sixty (60)-day case as described by Rule
9 5-302(A)(1) NMRA, the state shall make its initial discovery disclosures to the defendant
10 at arraignment or within five (5) days of when a written waiver of arraignment is filed under
11 Rule 5-303(J) NMRA.

12 ([2]3) ***Motion to withhold contact information for safety reasons.*** A party
13 may seek relief from the court by motion, for good cause shown, to withhold specific contact
14 information if necessary to protect a victim or a witness. If the address of a witness is not
15 disclosed pursuant to court order, the party seeking the order shall arrange for a witness
16 interview or accept at its business offices a subpoena for purposes of deposition under Rule
17 5-503 NMRA.

18 ([3]4) ***Continuing duty.*** The state shall have a continuing duty to disclose
19 additional information to the defendant, including the names and contact information for
20 newly-discovered witnesses and updated contact information for witnesses already disclosed,
21 within [~~five (5)~~] seven (7) days of receipt of such information, including current contact
22 information for witnesses.

1 (~~4~~5) *Evidence deemed in the possession of the state.* Evidence is deemed
2 to be in possession of the state for purposes of this rule and Rule 5-501(A) NMRA if such
3 evidence is in the possession or control of any person or entity who has participated in the
4 investigation or evaluation of the case.

5 (~~5~~6) *Providing copies; electronic or paper; e-mail addresses for district*
6 *attorney and public defender required.* Notwithstanding Rule 5-501(B) NMRA or any
7 other rule, the state shall provide to the defendant electronic or printed copies of electronic
8 or printed information subject to disclosure by the state. The Second Judicial District
9 Attorney's Office and the Law Offices of the Public Defender shall provide to each other a
10 single e-mail address for delivery of discovery electronically. In addition to delivering
11 discovery to the given general address for the Law Offices of the Public Defender, the state
12 shall copy such delivery to any attorney for the Law Offices of the Public Defender who has
13 entered an appearance in the case at the time discovery is sent electronically.

14 (~~6~~7) *Service of subsequent pleadings.* Service of pleadings and papers
15 between the parties shall be made to the attorney, or to the party if not represented by
16 counsel, by emailing an electronic scan of the file-endorsed pleading or paper, attachments
17 included, to the attorney or party. If the attachments are too voluminous for emailing, or
18 otherwise cannot be sent by email, the email to the attorney or party will recite this
19 circumstance and certify that the attachments have been mailed or delivered to the attorney's
20 or party's last known address. Service by email is complete upon transmission and, in case
21 of attachments that cannot be emailed, upon mailing or delivery.

22 [E]D. **Disclosure by defendant; notice of alibi; entrapment defense; failure to**

1 **comply.**

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

8 (2) ***Deadline for notice of alibi and entrapment defense.***
9 Notwithstanding Rule 5-508 NMRA or any other rule, not less than ninety (90) days before
10 the date scheduled for commencement of trial as provided in Paragraph [G]E, the defendant
11 shall serve upon the state a notice in writing of the defendant's intention to offer evidence
12 of an alibi or entrapment as a defense.

13 (3) ***Continuing duty.*** The defendant shall have a continuing duty to
14 disclose additional information to the state, including the names and contact information for
15 newly-discovered witnesses and updated contact information for witnesses already disclosed,
16 within [~~five (5)~~] seven (7) days of receipt of such information.

17 (4) ***Providing copies required; electronic or paper.*** Notwithstanding
18 Rule 5-502(B) NMRA or any other rule, the defendant shall provide to the state electronic
19 or printed copies of electronic or printed information subject to disclosure by the defendant.
20 The Second Judicial District Attorney's Office and the Law Offices of the Public Defender
21 shall provide to each other a single e-mail address for delivery of discovery electronically.
22 In addition to delivering discovery to the given general address for the Second Judicial

1 District Attorney's Office, the defendant shall copy such delivery to any attorney for the
2 Second Judicial District Attorney's Office who has entered an appearance in the case at the
3 time discovery is sent electronically.

4 (5) *Service of subsequent pleadings.* Service of pleadings and papers
5 between the parties shall be made to the attorney, or to the party if not represented by
6 counsel, by emailing an electronic scan of the file-endorsed pleading or paper, attachments
7 included, to the attorney or party. If the attachments are too voluminous for emailing, or
8 otherwise cannot be sent by email, the email to the attorney or party will recite this
9 circumstance and certify that the attachments have been mailed or delivered to the attorney's
10 or party's last known address. Service by email is complete upon transmission and, in case
11 of attachments that cannot be emailed, upon mailing or delivery.

12 [F]E. **Peremptory excusal of a district judge; limits on excusals; time limits;
13 reassignment.** A party on either side may file one (1) peremptory excusal of any judge in
14 the Second Judicial District Court, regardless of which judge is currently assigned to the
15 case, within ten (10) days of the arraignment or the filing of a waiver of arraignment. If
16 necessary, the case may later be reassigned by the chief judge to any judge in the Second
17 Judicial District Court not excused within ten (10) days of the arraignment or the filing of
18 a waiver of arraignment of the defendant. The chief judge may also reassign the case to a
19 judge pro tempore previously approved to preside over such matters by order of the Chief
20 Justice, who shall not be subject to peremptory excusal.

21 [G]E. **Status hearing; witness disclosure; case track determination; scheduling
22 order.**

1 (1) ***Witness list disclosure requirements.*** Within twenty-five (25) days
2 after arraignment or waiver of arraignment each party shall, subject to Rule 5-501(F) NMRA
3 and Rule 5-502(C) NMRA, file a list of names and contact information for known witnesses
4 the party intends to call at trial and that the party has verified is current as of the date of
5 disclosure required under this subparagraph, including a brief statement of the expected
6 testimony for each witness, to assist the court in assigning the case to a track as provided in
7 this rule. The continuing duty to make such disclosure to the other party continues at all
8 times prior to trial, requiring such disclosure within five (5) days of when a party determines
9 or should reasonably have determined the witness will be expected to testify at trial.

10 (2) ***Status hearing; factors for case track assignment.*** A status hearing,
11 at which the defendant shall be present, shall be commenced within thirty (30) days of
12 arraignment or the filing of a waiver of arraignment.

13 (3) ***Case track assignment required; factors.*** At the status hearing, the
14 court shall determine the appropriate assignment of the case to one of three tracks. Written
15 findings are required to place a case on track 3 and such findings shall be entered by the
16 court within five (5) days of assignment to track 3. Any track assignment under this rule only
17 shall be made after considering the following factors:

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

20 (b) the number of witnesses, time needed reasonably to address
21 any evidence issues, and other factors the court finds appropriate to distinguish track 1, track
22 2, and track 3 cases.

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

3 (~~4~~5) *Scheduling order required.* After hearing argument and weighing the
4 above factors, the court shall, before the conclusion of the status hearing, issue a scheduling
5 order that assigns the case to one of three tracks and identifies the dates when events
6 required by that track shall be scheduled, which are as follows for tracks 1, 2, and 3:

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

13 (i) Track 1 - deadline for plea agreement. A plea
14 agreement entered into between the defendant and the state shall be submitted to the court
15 substantially in the form approved by the Supreme Court not later than ten (10) days before
16 the trial date. A request for the court to approve a plea agreement less than ten (10) days
17 before the trial date shall not be accepted by the court except upon a written finding by the
18 assigned district judge of extraordinary circumstances. A defendant may plead guilty, the
19 state may dismiss charges, and the parties may recommend a sentence but the court shall not
20 agree to comply with a plea agreement in this circumstance absent a written finding of
21 extraordinary circumstances;

22 (ii) Track 1 - deadline for pretrial conference. The final

1 pretrial conference, including any hearing on any remaining pretrial motions if needed, shall
2 be scheduled fifteen (15) days before the trial date. Each party shall file their final trial
3 witness list on or before this date. The defendant shall be present for the final pretrial
4 conference;

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

8 (iv) Track 1 - deadline for pretrial motions hearing. A
9 hearing for resolution of pretrial motions shall be set not less than thirty-five (35) days
10 before the trial date;

11 (v) Track 1 - deadline for pretrial motions. Pretrial motions
12 shall be filed not less than fifty (50) days before the trial date;

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

18 (vii) Track 1 - ~~[deadline]~~ deadlines for requesting and
19 completion of witness interviews. Witness interviews shall be completed not less than sixty
20 (60) days before the trial date. Absent agreement by the parties or order of the court the state
21 shall be responsible for scheduling pretrial witness interviews of the state's witnesses, and
22 the defendant shall be responsible for scheduling pretrial witness interviews of the

1 defendant's witnesses. A party wishing to interview witnesses of the other party's initial
2 witness list shall request those interviews no later than fourteen (14) days after the issuance
3 of the scheduling order. The requesting party shall give dates of availability for witness
4 interviews during the thirty (30) days following the request and the party receiving the
5 request shall make reasonable efforts to schedule the requested interviews during that thirty
6 (30)-day period. If a party files a new witness list adding new witnesses, any requests to
7 interview those new witnesses shall be made no later than seven (7) days after the new
8 witness list is served upon the requesting party. At all times the parties shall act diligently
9 and in good faith in requesting, scheduling, and, as necessary, rescheduling witness
10 interviews. The court shall not consider failure to conduct pretrial interviews of witnesses
11 as the basis of any sanction unless the party moving for sanctions followed the requirements
12 of this subparagraph in requesting those interviews; and

13 (viii) Track 1 - deadline for disclosure of scientific evidence.

14 All parties shall produce the results of any scientific evidence, if not already produced, not
15 less than one hundred twenty (120) days before the trial date. In a case where justified by
16 good cause, the court may but is not required to provide for production of scientific evidence
17 less than one hundred twenty (120) days before the trial date. In no case shall the order
18 provide for production of scientific evidence less than ninety (90) days before the trial date;

19 (b) *Track 2; deadlines for commencement of trial and other*
20 *events.* For track 2 cases, the scheduling order shall have trial commence within three
21 hundred (300) days of arraignment, the filing of a waiver of arraignment, or other applicable
22 triggering event identified in Paragraph [H]G, whichever is the latest to occur. The

1 scheduling order shall also set dates for other events according to the following requirements
2 for track 2 cases:

3 (i) Track 2 - deadline for plea agreement. A plea
4 agreement entered into between the defendant and the state shall be submitted to the court
5 substantially in the form approved by the Supreme Court not later than ten (10) days before
6 the trial date. A request for the court to approve a plea agreement less than ten (10) days
7 before the trial date shall not be accepted by the court except upon a written finding by the
8 assigned district judge of extraordinary circumstances. A defendant may plead guilty, the
9 state may dismiss charges, and the parties may recommend a sentence but the court shall not
10 agree to comply with a plea agreement in this circumstance absent a written finding of
11 extraordinary circumstances;

12 (ii) Track 2 - deadline for pretrial conference. The final
13 pretrial conference, including any hearing on any remaining pretrial motions if needed, shall
14 be scheduled fifteen (15) days before the trial date. Each party shall file their final trial
15 witness list on or before this date. The defendant shall be present for the final pretrial
16 conference;

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

20 (iv) Track 2 - deadline for pretrial motions hearing. A
21 hearing for resolution of pretrial motions shall be set not less than thirty-five (35) days
22 before the trial date;

1 (v) Track 2 - deadline for pretrial motions. Pretrial motions
2 shall be filed not less than sixty (60) days before the trial date;

3 (vi) Track 2 - deadline for responses to pretrial motions.
4 Written responses to any pretrial motions shall be filed within ten (10) days of the filing of
5 any pretrial motions and in any case not less than forty-five (45) days before the trial date.
6 Failure to file a written response shall be deemed, for purposes of deciding the motion, an
7 admission of the facts stated in the motion;

8 (vii) Track 2 - ~~[deadline]~~ deadlines for requesting and
9 completion of witness interviews. Witness interviews shall be completed not less than
10 seventy-five (75) days before the trial date. Absent agreement by the parties or order of the
11 court, the state shall be responsible for scheduling pretrial witness interviews of the state's
12 witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews
13 of the defendant's witnesses. A party wishing to interview witnesses of the other party's
14 initial witness list shall request those interviews no later than twenty-one (21) days after the
15 issuance of the scheduling order. The requesting party shall give dates of availability for
16 witness interviews during the forty-five (45) days following the request and the party
17 receiving the request shall make reasonable efforts to schedule the requested interviews
18 during that forty-five (45)-day period. If a party files a new witness list adding new
19 witnesses, any requests to interview those new witnesses shall be made no later than seven
20 (7) days after the new witness list is served upon the requesting party. At all times the
21 parties shall act diligently and in good faith in requesting, scheduling, and, as necessary,
22 rescheduling witness interviews. The court shall not consider failure to conduct pretrial

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

3 (viii) Track 2 - deadline for disclosure of scientific evidence.

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

10 (c) *Track 3; deadlines for commencement of trial and other*
11 *events.* For track 3 cases, the scheduling order shall have trial commence within four
12 hundred fifty-five (455) days of arraignment, the filing of a waiver of arraignment, or other
13 applicable triggering event identified in Paragraph [H]G, whichever is the latest to occur,
14 except that no case may be set past three hundred sixty-five (365) days where the defendant
15 is detained pending trial except upon consent by defense counsel or upon a finding of
16 exceptional circumstances beyond the control of the parties. The scheduling order shall also
17 set dates for other events according to the following requirements for track 3 cases:

18 (i) Track 3 - deadline for plea agreement. A plea
19 agreement entered into between the defendant and the state shall be submitted to the court
20 substantially in the form approved by the Supreme Court not later than ten (10) days before
21 the trial date. A request for the court to approve a plea agreement less than ten (10) days
22 before the trial date shall not be accepted by the court except upon a written finding by the

1 assigned district judge of extraordinary circumstances. A defendant may plead guilty, the
2 state may dismiss charges, and the parties may recommend a sentence but the court shall not
3 agree to comply with a plea agreement in this circumstance absent a written finding of
4 extraordinary circumstances;

5 (ii) Track 3 - deadline for pretrial conference. The final
6 pretrial conference, including any hearing on any remaining pretrial motions if needed, shall
7 be scheduled twenty (20) days before the trial date. Each party shall file their final trial
8 witness list on or before this date. The defendant shall be present for the final pretrial
9 conference;

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

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

16 (v) Track 3 - deadline for pretrial motions. Pretrial motions
17 shall be filed not less than seventy (70) days before the trial date;

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

1 (vii) Track 3 - ~~[deadline]~~ deadlines for requesting and
2 completion of witness interviews. Witness interviews shall be completed not less than one
3 hundred (100) days before the trial date. Absent agreement by the parties or order of the
4 court the state shall be responsible for scheduling pretrial witness interviews of the state's
5 witnesses, and the defendant shall be responsible for scheduling pretrial witness interviews
6 of the defendant's witnesses. A party wishing to interview witnesses of the other party's
7 initial witness list shall request those interviews no later than twenty (21) days after the
8 issuance of the scheduling order. The requesting party shall give dates of availability for
9 witness interviews during the sixty (60) days following the request and the party receiving
10 the request shall make reasonable efforts to schedule the requested interviews during that
11 sixty (60)-day period. If a party files a new witness list adding new witnesses, any requests
12 to interview those new witnesses shall be made no later than seven (7) days after the new
13 witness list is served upon the requesting party. At all times the parties shall act diligently
14 and in good faith in requesting, scheduling, and, as necessary, rescheduling witness
15 interviews. The court shall not consider failure to conduct pretrial interviews of witnesses
16 as the basis of any sanction unless the party moving for sanctions followed the requirements
17 of this subparagraph in requesting those interviews; and

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

1 production of scientific evidence less than one hundred twenty (120) days before the trial
2 date.

3 ~~([5]6)~~ *Form of scheduling order; additional requirements and shorter*
4 *deadlines allowed.* The court may adopt upon order of the chief judge of the district court
5 a form to be used to implement the time requirements of this rule. Additional requirements
6 may be included in the scheduling order at the discretion of the assigned judge and the judge
7 may alter any of the deadlines described in Subparagraph ~~[(G)(4)](F)(5)~~ of this rule to allow
8 for the case to come to trial sooner.

9 ~~([6]7)~~ *Extensions of time; cumulative limit.* In the scheduling order the
10 court may shorten the deadlines for the parties to request pretrial interviews set forth in
11 Subparagraphs (F)(5)(a)(vii), (F)(5)(b)(vii), and (F)(5)(c)(vii) of this rule. The court may,
12 for good cause, grant any party an extension of the time requirements imposed by an order
13 entered in compliance with Paragraph ~~[G]F~~ of this rule. In no case shall a party be given time
14 extensions that in total exceed thirty (30) days for track 1 cases, sixty (60) days for track 2
15 cases, and ninety (90) days for track 3 cases. Unless required by good cause, such extensions
16 of time ~~[for up to a total of thirty (30) days to any party]~~ shall not result in delay of the date
17 scheduled for commencement of trial. Substitution of counsel alone ordinarily shall not
18 constitute good cause for an extension of time. A stipulated request for extension of time
19 in order to consolidate and resolve multiple cases against the same defendant under one plea
20 agreement shall ordinarily be considered good cause for an extension of time.

21 ~~[H]G.~~ **Time limits for commencement of trial.** The court may enter an amended
22 scheduling order whenever one of the following triggering events occurs to extend the time

1 limits for commencement of trial consistent with the deadlines in Paragraph [G]E as deemed
2 necessary by the court:

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

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

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

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

11 (5) if the defendant is arrested [~~for failure to appear~~] on any valid warrant
12 in the case or surrenders in this state [~~for failure to appear~~] on any valid warrant in the case,
13 the date of the arrest or surrender of the defendant;

14 (6) if the defendant is arrested [~~for failure to appear~~] or surrenders in
15 another state or country [~~for failure to appear~~], the date the defendant is returned to this state;

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

20 (8) if the defendant's case is severed from a case to which it was
21 previously joined, the date from which the cases are severed, except that the non-moving
22 defendant or at least one of the non-moving defendants shall continue on the same basis as

1 previously established under these rules for track assignment and otherwise;

2 (9) if a defendant's case is severed into multiple trials, the date from
3 which the case is severed into multiple trials, except that [~~at least one of the trials shall~~
4 ~~continue on the same basis as previously established under this rule for track assignment and~~
5 ~~otherwise~~] the court shall continue at least one of the previously-joined defendants on the
6 original track assignment, which defendant shall be determined by the court upon
7 consideration of the complexity of the now-severed cases;

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

11 (11) if the court grants a change of venue and the court determines the
12 change in venue reasonably requires additional time to bring the case to trial; or

13 (12) if the court grants a motion to withdraw defendant's plea.

14 **[F]H. Failure to comply.**

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

19 (2) In considering the sanction to be applied the court shall not accept
20 negligence or the usual press of business as sufficient excuse for failure to comply. If the
21 case has been re-filed following an earlier dismissal, dismissal with prejudice is the
22 presumptive outcome for a repeated failure to comply with this rule, subject to the provisions

1 in Subparagraph [~~4~~](6) of this paragraph.

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

6 ([3]4) The sanctions the court may impose under this paragraph include, but
7 are not limited to, the following:

8 (a) a reprimand by the judge;

9 (b) prohibiting a party from calling a witness or introducing
10 evidence;

11 (c) a monetary fine imposed upon a party's attorney or that
12 attorney's employing office with appropriate notice to the office and an opportunity to be
13 heard;

14 (d) civil or criminal contempt; and

15 (e) dismissal of the case with or without prejudice, subject to the
16 provisions in Subparagraph [~~4~~](6) of this paragraph.

17 (5) The court shall not impose any sanction against the State for violation
18 of this rule if an in-custody defendant was not at a court setting as a result or a failure to
19 transport, except that the court may impose a sanction if the failure to transport was
20 attributable to the prosecutor's failure to properly prepare and serve a transportation order
21 if so required.

22 ([4]6) The sanction of dismissal, with or without prejudice, shall not be

1 imposed under the following circumstances:

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

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

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

9 [F]I. **Certification of readiness prior to pretrial conference or docket call.**

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

20 [~~K~~]J. **Extension of time for trial; reassignment; dismissal with prejudice;**
21 **sanctions.**

22 (1) *Extending date for trial; good cause or exceptional circumstances;*

1 *reassignment to available judge for trial permitted; sanctions.* The court may extend the
2 trial date for a total of up to thirty (30) days for a track 1 case, forty-five (45) days for a track
3 2 case, and sixty (60) days for a track 3 case, upon showing of good cause which is beyond
4 the control of the parties or the court. To grant such an extension [~~of up to thirty (30) days~~]
5 the court shall enter written findings of good cause. If on the date the case is set or re-set for
6 trial the court is unable to hear a case for any reason, including a trailing docket, the case
7 may be reassigned for immediate trial to any available judge or judge pro tempore, in the
8 manner provided in Paragraph [~~E~~]K of this rule. If the court is unable to proceed to trial and
9 must grant an extension [~~for up to thirty (30) days~~] for reasons the court does not find meet
10 the requirement of good cause, the court shall impose sanctions as provided in Paragraph
11 [~~F~~]H of this rule, which may include dismissal of the case with prejudice subject to the
12 provisions in Subparagraph [~~(F)(4)~~](H)(6). Without regard to which party requests any
13 extension of the trial date, the court shall not extend the trial date more than [~~thirty (30)~~]
14 sixty (60) days beyond the original date scheduled for commencement of trial without a
15 written finding of exceptional circumstances approved in writing by the chief judge or a
16 judge, including a judge pro tempore previously approved to preside over such matters by
17 order of the Chief Justice, that the chief judge designates.

18 (2) *Requirements for extension of trial date for exceptional*
19 *circumstances.* When the chief judge or the chief judge's designee accepts the finding by
20 the trial judge of exceptional circumstances, the chief judge shall approve rescheduling of
21 the trial to a date certain. The order granting an extension to a date certain for extraordinary
22 circumstances may reassign the case to a different judge for trial or include any other relief

1 necessary to bring the case to prompt resolution.

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

6 (4) ***Rejecting extension request for exceptional circumstances; dismissal***
7 ***required.*** In the event the chief judge or designee rejects the trial judge's request for an
8 extension based on exceptional circumstances, the case shall be tried within the previously
9 ordered time limit or shall be dismissed with prejudice if it is not, subject to the provisions
10 in Subparagraph ~~{(F)(4)}~~(H)(6).

11 ~~[E]K. Assignment calendar for cases~~[new calendar cases; assignments and~~~~
12 ~~reassignments to new calendar judges].~~

13 (1) ***Scheduling by event categories; trailing docket; functional overlap***
14 ***among [new calendar] judges.*** The presiding judge of the criminal division shall establish
15 an assignment calendar for all [new calendar] judges. The assignment calendar shall identify
16 the weeks or other time periods when each [new calendar] judge will schedule events in the
17 following categories: trials; motions and sentencing; arraignments, pleas and miscellaneous
18 matters. Each [new calendar] judge may schedule an event in the week or other time period
19 set aside for that event category, on a trailing docket. The assignment calendar shall include
20 functional overlap so that more than one judge is always scheduled to hear matters in each
21 event category on any given day. In the scheduled weeks or other time periods, the [new
22 calendar] judges shall schedule events within the time requirements of Paragraph ~~[G]E~~ of

1 this rule. [~~The presiding judge of the criminal division may organize the new calendar judges~~
2 ~~into teams of three (3) and four (4) judges or other appropriate groups to most efficiently~~
3 ~~accomplish case disposition within the requirements of this rule.~~]

4 (2) ***Reassignments permitted.*** If on or before the date of a scheduled
5 event the assigned [~~new calendar~~] judge is or will be unable to preside over the scheduled
6 event for any reason, including a trailing docket, vacation, or illness, the case may be
7 reassigned by order of the presiding judge of the criminal division to another judge on the
8 assignment calendar who is scheduled that day to hear that category of scheduled event and
9 who is not subject to a previously exercised peremptory excusal, except that a judge who
10 presided at trial shall conduct the sentencing. The court may adopt a form of order to
11 expedite such reassignments.

12 (3) ***Reassignment for scheduled event; case returns to original judge.***
13 If another judge scheduled on the assignment calendar for the type of scheduled event is not
14 available to immediately preside over the scheduled event, the assigned judge may designate
15 any other new calendar judge, or a judge pro tempore previously approved by order of the
16 Chief Justice and designated by the chief judge for this purpose, to preside over the
17 scheduled hearing, trial, or other scheduled event. Upon conclusion of the hearing, trial, or
18 other scheduled event, the case shall again be assigned to the original [~~new calendar~~] judge
19 without requirement of further order, except when the reassignment was for trial in which
20 case the judge who presided over the trial shall also preside over sentencing.

21 **L. A probable cause determination need not be repeated for refiled charges.**
22 **If a probable cause determination has been made by preliminary hearing or grand jury and**

1 a nolle prosequi or dismissal without prejudice is filed in the case, the same charges may be
2 refiled by information without requiring a new probable cause determination.

3 ~~[M. **Special calendar; assignments and procedures; master calendar judge.**~~

4 ~~All criminal cases filed on or before June 30, 2014, shall by order of the chief judge be~~
5 ~~assigned or reassigned to a special calendar. District court judges shall be assigned as special~~
6 ~~calendar judges by separate order of the chief judge, who is authorized to reassign any~~
7 ~~district judge to be a special calendar judge. Among the special calendar judges, the chief~~
8 ~~judge shall designate a “master calendar” special calendar judge. Time limits and rules for~~
9 ~~disposition of cases assigned or reassigned to special calendar judges shall be governed by~~
10 ~~the following:~~

11 ~~————— (1) ——— The master calendar judge shall request that the Second Judicial~~
12 ~~District Attorney’s Office and Law Offices of the Public Defender assign attorneys to only~~
13 ~~special calendar cases until the special calendar is concluded and any remaining special~~
14 ~~calendar cases are absorbed into the new calendar. The master calendar judge shall request~~
15 ~~that attorneys assigned by the Second Judicial District Attorney’s Office and Law Offices~~
16 ~~of the Public Defender to the special calendar have authority to negotiate binding resolution~~
17 ~~of the special calendar cases assigned to them;~~

18 ~~————— (2) ——— In consultation with the special calendar judges, the master calendar~~
19 ~~judge shall assign all cases filed on or before June 30, 2014, among the special calendar~~
20 ~~judges as follows:~~

21 ~~————— (a) ——— After assignment of a case to a special calendar judge, the~~
22 ~~judge shall hold a status hearing as provided in Paragraph G of this rule. Before conclusion~~

1 ~~of the status hearing, the special calendar judge shall enter an order establishing dates by~~
2 ~~which events shall occur leading to resolution of the case. This order may, but is not required~~
3 ~~to, assign the case to track 1, 2, or 3 as provided in Paragraph G of this rule; and~~

4 ~~————— (b) — No party shall acquire any right of preemptory excusal for~~
5 ~~cases assigned to a special calendar judge. Unless a special calendar judge was excused prior~~
6 ~~to the effective date of this rule, any special calendar judge may act in any case on the~~
7 ~~special calendar; and~~

8 ~~————— (3) — The master calendar judge may establish, upon written approval of~~
9 ~~the chief judge, any process for case assignment or reassignment that will result in the~~
10 ~~efficient administration of cases on the special calendar. This may follow the process or a~~
11 ~~modification of the process provided for in Paragraph G of this rule, may be a process~~
12 ~~similar to that proposed to the Bernalillo County Criminal Justice Review Commission by~~
13 ~~the Law Offices of the Public Defender, or may be otherwise. The process shall be~~
14 ~~established in writing and approved by the chief judge as follows:~~

15 ~~————— (a) — The court shall provide reasonable notice of at least thirty (30)~~
16 ~~days to special calendar case parties of assignment of the parties' case to the special calendar~~
17 ~~and of the process to be applied to special calendar cases; and~~

18 ~~————— (b) — The chief judge shall monitor progress of special calendar~~
19 ~~cases to resolution. When in the determination of the chief judge there has been sufficient~~
20 ~~progress toward disposition of a sufficient number of cases assigned to the special calendar,~~
21 ~~the chief judge shall notify the Supreme Court and request modification of this rule.~~
22 ~~Modification shall include reassignment of special calendar judges to the new calendar~~

1 ~~schedule, and may include any changes to the new calendar process deemed appropriate~~
2 ~~based on the outcome of case processing under the new calendar and special calendar~~
3 ~~processes.]~~

4 ~~[N]M. **Data reporting to the Supreme Court required.** [Until this paragraph is~~
5 ~~amended or withdrawn, the] The chief judge, district attorney, and public defender shall~~
6 ~~[cause a monthly] provide statistical [report to be provided] reports to the Supreme Court[;~~
7 ~~in a form approved by the Supreme Court, for cases on the new and special calendars~~
8 ~~containing data] as directed[by the Supreme Court].~~

9 [Adopted by Supreme Court Order No. 14-8300-025, effective for all cases pending or filed
10 on or after February 2, 2015; as amended by Supreme Court Order No. 16-8300-001,
11 effective for new cases filed and for pending cases in which a track assignment is made on
12 or after February 2, 2016; LR2-400 recompiled and amended as LR2-308 by Supreme Court
13 Order No. 16-8300-015, effective for all cases pending or filed on or after December 31,
14 2016; as amended by Supreme Court Order 17-8300-031, effective for all cases pending or
15 filed on or after January 15, 2018.]