IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN THE MATTER OF AMENDED SPEEDY TRIAL ACT PLAN	**PUBLIC** **ADMINISTRATIVE ORDER** No. 08-AO-10-P

The court **ADOPTS** the attached Amended Speedy Trial Act Plan after receiving approval from the Eighth Circuit Judicial Council. The Clerk of Court is directed to remove Administrative Order No. 800 from the court's website.

IT IS SO ORDERED.

DATED this 1st day of August, 2008.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

SPEEDY TRIAL PLAN

(Amending AO 800, filed July 1, 1980)

Effective: July 1, 2008

Pursuant to the requirements of the Speedy Trial Act of 1974, Pub. L. No. 93-619, and the Speedy Trial Amendments Act of 1979, Pub. L. No. 96-43, 93 Stat. 327 (codified as amended at 18 U.S.C. § 3161 *et seq.*); the Juvenile and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (codified as amended at 18 U.S.C. § 5031 *et seq.*) ("JDPA"); and Federal Rule of Criminal Procedure 50, the United States District Court for the Northern District of Iowa adopts the following plan to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings.

I. Applicability

(A) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this court, including cases triable by United States Magistrate Judges, except for petty offenses as defined in 18 U.S.C. § 19. They are not applicable to proceedings under the JDPA, except as specifically provided.

(B) Persons. The time limits are applicable to accused persons who have been arrested or served with a summons but not indicted, as well as those who have been indicted or informed against, and the word "defendant" includes such persons unless the context indicates otherwise.

II. Priorities in Scheduling Criminal Cases

Preference will be given to criminal proceedings as far as practicable, as required by Rule 50. The trial of defendants in custody solely because they are awaiting trial will be given preference over other criminal cases.

III. Time Within Which an Indictment or Information Must be Filed

(A) Time Limits. If an individual is arrested or served with a summons and the complaint charges a federal offense to be prosecuted in this court, any indictment or information subsequently filed in connection with such charge must be filed within 30 days of the arrest or service of summons. 18 U.S.C. § 3161(b).

(B) Grand Jury Not in Session. If a defendant is charged with a felony to be prosecuted in this district, and no grand jury has been in session during the 30-day period prescribed in subsection (a), such period will be extended an additional 30 days. 18 U.S.C. § 3161(b).

(C) Measurement of Time Periods.

(1) If a person has not been arrested or served with a summons on a federal charge, an arrest on a federal charge will be deemed to have been made at the earliest of such time as the person (i) is held in custody solely for the purpose of responding to a federal charge; (ii) is delivered to the custody of a federal official in connection with a federal charge; or (iii) appears before a judicial officer in response to a federal charge.

(2) At the time of the earliest appearance of a person who has been arrested for an offense not charged in an indictment or information, the federal judicial officer before whom such appearance is made must establish for the record the date on which the arrest took place.

(3) In the absence of a showing to the contrary, a warrant or summons will be considered to have been served on the date of service shown on the return.

IV. Pre-Indictment Rulings on Excludable Time and Continuances

(A) In the event the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in Section III of this Plan, the United States Attorney may file a written

motion under 18 U.S.C. § 3161(h) requesting additional time. The motion must state (i) the period of time proposed for exclusion, (ii) the basis of the proposed exclusion, and (iii) whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered *ex parte* and *in camera*.

(B) The court may grant a continuance of the time limit for filing an information or indictment under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the court will require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court will require one or both parties to file periodic reports bearing on the continued existence of such circumstances.

V. Time Within Which Pretrial Motions Must be Filed

All pretrial motions must be filed in accordance with the Standing Order issued by the court following the arraignment.

VI. Time Within Which Trial Must Commence

(A) Time Limits. The trial of a defendant must commence not later than 70 days after the last to occur of the following dates:

(1) The date on which an indictment or information is filed in this district;

(2) The date on which a sealed indictment or information is made available to the public; or

(3) The date of the defendant's first appearance before a judicial officer of this district.

(B) Retrial and Trial After Reinstatement of an Indictment or Information. The retrial of a defendant must commence within 70

days from the date the order occasioning the retrial becomes final. The trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal must commence within 70 days from the date the mandate is filed. If the retrial or trial follows an appeal or collateral attack, the court may extend the period, if unavailability of witnesses or other factors resulting from the passage of time make trial within 70 days impractical. The extended period must not exceed 180 days. 18 U.S.C. § 3161(d)(2), (e).

(C) Withdrawal of Plea. If a defendant enters a plea of guilty or *nolo contendere* to any or all charges in an indictment or information and subsequently is permitted to withdraw the plea, the time limit will be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final.

(D) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(1) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit must be determined without regard to the existence of the original charge.

(2) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial must commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges must be excluded from the computation. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge.

(3) If the original indictment or information is pending at the time the subsequent charge is filed, the trial must commence within the time limit for commencement of trial on the original indictment or information unless the court grants a motion for continuance.

(4) If the subsequent charge is by complaint, the formal time limit within which an indictment or information must be obtained on the charge will be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(E) Measurement of Time Periods. For the purposes of this section:

(1) If a defendant consents to be tried before a magistrate judge and no indictment or information charging the offense has been filed, the time limit must run from the date of such consent. Said consent must be in writing.

(2) In the event of a transfer to this district under Fed. R. Crim. P. 20, the indictment or information will be deemed filed in this district when the papers in the proceeding or certified copies thereof are filed by the clerk.

(3) A trial in a jury case will be deemed to commence at the beginning of voir dire.

(4) A trial in a non-jury case will be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(F) Meeting the Scheduled Trial Date.

(1) In General. Individual calendars will be managed so that it will be reasonably anticipated that every criminal case set for trial will commence on the date of original

setting. A conflict in schedules of trial counsel may be grounds for a continuance when a timely motion is filed with, and approved by, the court.

(2) Transfer of Cases for Trial. If it appears that compliance with the time limit before the judge to whom the case is assigned will not be possible, the assigned judge may make arrangement for transfer of the case to another member of the court for purposes of trial.

VII. Minimum Period for Defense Preparation

Unless the defendant consents in writing to the contrary, the trial must not commence earlier than 30 days from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed *pro se*. 18 U.S.C. § 3161(c)(2). In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to Section VI (D) of this Plan, the 30-day minimum period will also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of guilty plea, a new 30-day minimum period will not begin to run. In all cases, the court will schedule trials so as to permit defense counsel adequate preparation time in light of all the circumstances.

VIII. Special Time Limits Applicable to Juvenile Proceedings

(A) Time Within Which Adjudication Must Commence. An alleged delinquent who is in detention pending adjudication must be adjudicated within 30 days of the date on which such detention began or was commenced, as provided in 18 U.S.C. § 5036.

(B) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing must be held no later than 20 court days after adjudication, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(a) and (e).

IX. Time Within Which Defendant Should be Sentenced

(A) Time Limit. Sentencing will be held no earlier than 70 days and, ordinarily, no later than 90 days after the date of conviction. Unless otherwise ordered by the court or waived by defendant, the probation office must disclose the presentence investigation report (PSI) to counsel for the government and counsel for the defendant at least 35 days before sentencing. Any objections to the information contained in the PSI must be made in writing within 14 days after receiving the report. The final revised PSI and addendum must be submitted to the sentencing judge and parties at least 7 days prior to the scheduled sentencing hearing. A presentence investigation may be commenced prior to a plea of guilty or *nolo contendere* or a conviction, upon written consent of the defendant and counsel.

X. Exclusion of Time from Computations in General; Continuances

(A) Applicability. In computing any time limit applicable to calculating the time in which pretrial motions must be filed (Section V), time limits applicable to juvenile proceedings (Section VIII), or time in which a defendant must be sentenced (Section IX), the periods of delay set forth in 18 U.S.C. 3161(h) must be excluded. Such periods of delay will not be excluded in computing the minimum period for commencement of trial under Section VII of this Plan.

(B) Records of Excludable Time. The Clerk of Court must enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant.

(C) Continuances.

(1) Findings. If it is determined that a continuance is justified, the court will set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. § 3161(h)(8), the court will also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a

speedy trial.

(2) Length. The court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government.

(3) Reports from the Parties. If the continuance is to a date not certain, the court will require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist.

XI. Monitoring Compliance With Time Limits

(A) Responsibilities of the Clerk of Court. The Clerk of Court must:

(1) Maintain and compile such statistical data as is required to be maintained by statute and by the Administrative Office of the United States Courts.

(2) Monitor, on a continuing basis, the progress of each defendant toward trial and review the status of each defendant so as to anticipate problems which may be developing and make recommendations to the court for reassignment of cases for trial.

(B) Responsibility of the United States Marshal. The Marshal must promptly notify the court of the arrest of a defendant upon a warrant issued by another district.

(C) Responsibility of the United States Attorney. The United States Attorney must notify the court at the earliest practicable time of the date of the beginning of custody of a defendant held in custody solely for the purpose of awaiting trial.

XII. Persons Serving Terms of Imprisonment

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, the United States Attorney must promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed in accordance with 18 U.S.C. § 3161(j).

XIII. Sanctions

(A) Dismissal or Release from Custody. Failure to comply with the Speedy Trial Act may result in dismissal of the charges or release of the defendant from pretrial custody. 18 U.S.C. § 3162. Nothing in this Plan may be construed to require that a case be dismissed or a defendant be released from custody beyond the circumstances set forth in 18 U.S.C. §§ 3162 and 3164. The court retains the power to dismiss a case for unnecessary delay pursuant to Federal Rule of Criminal Procedure 48(b) or pursuant to the Interstate Agreement on Detainers, 18 U.S.C. App'x 2, Pub. L. No. 91-538, 84 Stat. 1397.

(B) Discipline of Attorneys. In a case in which counsel (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (2) files a motion solely for the purpose of delay which counsel knows is frivolous and without merit, (3) makes a statement for the purpose of obtaining a continuance which counsel knows to be false and which is material to the granting of the continuance, or (4) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161, the court may punish such counsel as provided in 18 U.S.C. § 3162(b) and (c).

(C) Alleged Juvenile Delinquents. An alleged delinquent in custody whose adjudication has not commenced within the time limit set forth in 18 U.S.C. § 5036 will be entitled to dismissal of the case pursuant to that section unless the government shows that the delay was consented to or caused by the juvenile or defense counsel, or would be in the interest of justice in the particular case.

XIV. Statistical Reporting

Information and statistics concerning the administration of criminal justice in the district are dynamic in nature and can be captured at any instant most effectively using the reporting function of the district's case management/electronic case filing system. The clerk shall provide upon request all statistics concerning the administration of criminal justice as set forth in 18 U.S.C. § 3166(c).

XV. Improvements in Administration of Justice

If the district identifies rules changes, statutory amendments, or appropriations needed to effectuate further improvements in the administration of justice under this Plan, the district will file a report listing said recommendations with the Eighth Circuit Judicial Council. 18 U.S.C. § 3166(d). If the district identifies reporting forms, procedures, or time requirements needed to effectuate further improvements in the administration of justice under this Plan, the district will file a report listing said recommendations with the Administrative Office of the United States Courts. 18 U.S.C. § 3166(e).

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

MARK W. BENNETT
JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

EDWARD J. McMANUS
SENIOR JUDGE, U.S. DISTRICT COURT

DONALD E. O'BRIEN
SENIOR JUDGE, U.S. DISTRICT COURT

JON S. SCOLES
MAGISTRATE JUDGE
U.S. DISTRICT COURT

PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
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