

## **Calendaring for Trial Advanced Trial Preparation Panel**

**I. Computing Time Periods and Deadlines,** *See* Utah Rules of Crim. P. Rule 2 and remember:

1. *Do not include the day the clock starts.*
2. *Include the last day of the period, unless it is a Saturday, a Sunday, or a legal holiday.*
3. *When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation.*
4. *Have a calendar listing all Court holidays.*

**Consider:**

- *What kind of case is it?*
- *What interests are there? Defendant, community, victim, etc.*

**Any defense, objection or request, including request for rulings on *Admissibility of Evidence* must be raised:**

- At least **5 DAYS** before trial (Utah Rules of Crim. Pro. R. 12-Motions (c)(1)
  1. **defenses and objections based on defects in the indictment or information;**
  2. **Motion to suppress evidence, 12(c)(1)(B)**
  3. **requests for discovery where allowed;**
  4. **requests for severance of charges or defendants;**
  5. **motions to dismiss on the ground of double jeopardy; or**
  6. **motions challenging jurisdiction,** unless good cause is shown why the issue could not have been raised at least five days prior to trial.

### **II. Alibi Notice**

- Defendant must file and serve evidence of alibi to prosecutor at least **10 DAYS** before trial. Utah Code Ann. § 77-14-2.
- The prosecutor must provide defendant with the addresses of any witnesses the State proposes to contradict or impeach the alibi, not more than **5 DAYS** after receipt of the list provided herein. Utah Code Ann. § 77-14-2.

### **III. Jury Trial**

- Utah R. Crim. P. 17 In a non-felony case, the Defendant must make a written demand to be tried by jury at least **10 DAYS** prior to trial

### **IV. Interlocutory Appeal**

- Stay of trial is not automatic. Either need to stipulate or petition for a stay.

### **V. Expert Witness Notice**

- U.C.A. §77-17-13(1)(a), must give notice at least **30 DAYS** before trial or **10 DAYS** before a hearing.
- How many experts?
- Rebuttal experts

- The type of expert can significantly increase trial time
- Need to consider the expert witness's calendar

#### **VI. Any Concern's for Defendant's Mental State?**

- If either party intends to call any expert to testify the mental state of the defendant or another, the party intending to call the expert shall give notice at least **30 DAYS** before trial or **10 DAYS** before any hearing at which the testimony is offered. Utah Code Ann. § 77-14-3.
- Usually at least **60 DAY** delay.

#### **VII. Speedy Trial/Continuances**

- Utah Constitution, Art. I, Section 12.
- To be admitted to bail in accordance with provisions of law, or be entitled to a trial within **30 DAYS** after arraignment if unable to post bail and if the business of the court permits. Utah Code Ann. § 77-1-6(1)(f) and (h) (1982).
- *State v. Trafny* advocates that we use a "totality of the circumstances" test when determining a defendant's right to a speedy trial. 799 P.2d 704, 709 (1990). Also the length of delay is the "triggering mechanism" in speedy trial rights. *Id.* at p.706
- *Barker v. Wingo*, 407 U.S. 514, 530(1972) gives a balancing test of factors for right to a speedy trial
  1. Length of delay
  2. Reason for delay
  3. Defendant's assertion of his right
  4. Prejudice to the defendant

#### **VII. Interstate Agreement on Detainers (IAD) U.C.A. 77-29-5**

- *Is the Defendant in another state prison or federal prison?* If yes → use IAD.
- In *Alabama v. Bozeman*, the IAD seeks to minimize the interruption of prisoner's ongoing prisoner term, if returned to original place of imprisonment before trial, the charges shall be dismissed. (533 U.S. 146, 121 (2001)).
- **180 DAYS**-prisoner has right to demand a trial within 180 days
- State must try the prisoner within **120 DAYS** of his arrival, Article IV(c).

#### **IX. Does the Defendant have Multiple Cases?**

- Which one(s) do you want to try and is there a point to try all or some of the cases? Ex) With an Agg. Murder will you try an auto theft case as well?
- Look to Utah R. Crim. P. 17(b), and try in the following order:
  1. misdemeanor cases when defendant is in custody;
  2. felony cases when defendant is in custody;
  3. felony cases when defendant is on bail or recognizance; and
  4. misdemeanor cases when defendant is on bail or recognizance.

#### **X. Are there Co-Defendants?**

*Co-defendant cases routinely take longer.*  
*Coordinating several attorneys Calendars.*

#### A. IF SEVERANCE

1. Any request or motion to sever charges or defendants must be made at least **5 DAYS** prior to trial; Utah R. Crim. P. 12(c)(1)(D)
2. **U.C.A. 77-8a-1(2)(d) (d)** Co-defendants will be tried jointly unless separate trials are consistent with the interests of justice.
3. **Utah Code Ann. § 77-8a-1 (4)(a)** If the court finds a defendant or the prosecution is prejudiced by a joinder of offenses or defendants in an indictment or information or by a joinder for trial together, the court shall order an election of separate trials of separate counts, grant a severance of defendants, or provide other relief as justice requires.
4. Bruton Rule prohibits the introduction of a confession of non-testifying co-defendant during a joint trial. *Bruton v. United States*, 391 U.S. 123 (1968). It also prohibits redacted confessions, unless the prosecutor wants separate trials *Gray v. Maryland* 523 U.S. 185 (1998)
5. When co-defendants are severed, proceed with trial as if they were indicted separately and not jointly, even if severed defendant is not ready for trial. *Coe v. State*, 174 Ark. 1103, 298 S.W. 356, 356 (1927).

#### B. WILL THERE BE SEVERANCE OF ALL OR SOME CO-DEFENDANTS?

#### C. TRIAL SEQUENCE-Who are you going to try first?

1. Co-defendants may not demand the best designed sequence for their acquittal, *Hennon v. Cooper*, 109 F.3d 330, 332 (7<sup>th</sup> Cir.), *cert. denied*, 522 U.S. 819 (1997). Unless the defendant can establish he would suffer “compelling prejudice” by trial order. *U.S. v. Broussard*, 80 F.3d 1025, 1038 (5<sup>th</sup> Cir.).
2. The Utah Severance statute does not address the trial order. Rather, the trial court has ‘considerable discretion to determine the order of trials’ *State v. Rhinehart*, 2006 UT App 517, 153 P.3d 830, 836.
3. How long will you need to get a transcript of each trial for next trial in line?

### XI. Witness Considerations

- Victims Interests & Availability
  1. Bill of Rights, U.C.A. Title 77, Chapters 37 and 38, and 77-27-9.5,
  2. Know which victims of crimes and their representatives must be notified of hearings and have a right to attend
- Evaluate trial dates with witnesses and their availability. Try to know which dates they are **NOT AVAILABLE**.
- Witness cooperation—material witness warrant.
- Transient nature of witness
- If witness is in jail
- Witness out of state
- Any health concerns, surgery dates, etc. of victims and witnesses.
- Plan enough time for witness preparation and to talk to everyone.
- Give priority involving possible loss of witnesses. *People v. Garnes*, 134 Misc.2d 39, 510 N.Y.S.2d 409, 412 (1986).

