

CRIMINAL RULES

RULE CR 1. Orders of Release

A. Orders of Release - Criminal Bond Index

A Criminal and Traffic Bond Index has been prepared and will be periodically reviewed under the direction of the Presiding Judge. This listing of bonds shall be for the purpose of expediting releases from the Tulsa County Jail and as a guide for judges to follow in order to provide consistency in bond settings. It shall not, however, affect the discretion of a Judge initially to set a higher or lower bond without a hearing or to raise or lower the bond initially set in a case, provided a proper hearing is held with all parties present.

The bond amount for Fugitive From Justice charges shall be taken from the bond reflected on the fugitive warrant. If no bond is shown on the fugitive warrant, the bond shall be set according to the Tulsa County Bond Index.

B. Initial Arraignment Court Dates

When a defendant is booked into the Tulsa County Jail/David L. Moss Criminal Justice Center, a probable cause determination will be made as soon as is reasonably feasible, but in no event later than 48 hours after arrest. The initial appearance before a Magistrate for arraignment shall be as soon as is reasonably feasible, but in no event later than six (6) days from the date of booking.

Dates for return after the initial arraignment is held shall be determined by the Arraignment Judges.

In determining the initial arraignment court dates, the first (or current) day shall be excluded and the last day shall be included. Days on which the Courthouse will be closed for business should be counted when figuring the time. If the court date falls on a day the Courthouse is scheduled to be closed, the date should be set for the next day the Courthouse is scheduled to be open.

Defendants booked into custody on any charge shall be scheduled for the next available arraignment before a Magistrate for bond setting. If the defendant's arrest occurs after regular hours and just before a weekend or a day on which the Courthouse will be closed, the defendant's bond setting shall be referred to the Magistrate who has been assigned to the Judicial Reviews of Affidavits of Arrest on those days. The Magistrate shall set bail for the defendant and shall set the initial arraignment six (6) days away.

C. Orders of Release - Tulsa County Pretrial Release Program

Qualifying defendants may be released on their own recognizance through the Tulsa County Pretrial Release Program subject to the Court's approval.

D. Failure to Appear or Pay

No person being held for failure to appear will be released from the City-County Jail without approval of a Judge or posting an appearance bond. No person shall be released in the case of failure to pay without approval of a Judge, payment in full, or under the authority granted the Tulsa County Court Cost Administration as set out in the Tulsa County Court Cost Administration consensus, effective August 1, 1995.

Under the authority of 22 O.S. § 1105 effective July 1, 1995, the Order of Release of any prisoner in the Tulsa County Jail may be issued by the Sheriff of Tulsa County or the Court Clerk of Tulsa County subject to the following conditions:

1. The terms "Court Clerk" and "Sheriff" shall include their authorized deputies.
2. The Court Clerk on the verbal or written order of a Judge shall immediately execute an Order of Release and promptly deliver it to the Tulsa County Sheriff who shall without undue delay release the person from custody according to the terms contained in the Order of Release.
3. The Sheriff on the verbal or written order of a Judge shall immediately issue an Order of Release and promptly release the person from custody.

The Sheriff shall issue an Order of Release under the conditions set forth above and also shall take immediate action to effect the release of the person detained upon receipt of the Order of Release.

4. The Order of Release shall contain the following information:
 - a. that it is in the District Court of Tulsa County, Oklahoma
 - b. the defendant's name
 - c. case number(s), if any,
 - d. other information which may be readily available to the officer or deputy executing it, and
 - e. sufficient information to give the Sheriff unmistakable knowledge and direction as to the intended disposition of each case and/or counts within a case.

5. When a good and sufficient bond is posted by or on behalf of a person in custody in an amount approved by a Judge, the Court Clerk or the Sheriff is authorized and ordered to execute an Order of Release to the Sheriff of Tulsa County.

RULE CR 2. Initial Arraignments

All initial arraignments, except felony traffic offenses, shall be held at the times established by the Presiding Judge and judges assigned to the Criminal Division.

When the Courthouse is closed to public business, judicial reviews of Affidavits of Arrest will be conducted by a Magistrate between the hours of 7:30 a.m. and 1:30 p.m. A list of Magistrates assigned to this duty will be provided by the Presiding Judge.

RULE CR 3. Assignment of Felony Cases

Assignment of felony cases shall be made by random computer function.

1. On the first working day of each year, the Presiding Judge or designee shall prepare a list giving each felony trial judge an assigned number. The assignment number shall be randomly selected and revealed only to the Assignment Judge calling the arraignment docket. A control copy will be retained by the Presiding Judge.

2. Before a felony arraignment, the Minute Clerk shall have the Court file with assignment number stamped on it for presentation to the arraignment Judge. When a felony case is called for initial arraignment, the arraignment Judge shall announce in open Court the name of the assigned Judge matching the assignment number on the Court file and place that name on the court file. The Minute Clerk shall include the name of the assigned Judge in the arraignment minute. The Court Clerk shall enter the name of the assigned Judge on the appearance docket and computer records.

RULE CR 4. Consolidation of Felony Cases

If there is more than one pending felony case against a defendant, the Arraignment Judge shall assign any subsequent felony cases to the District Judge with the lowest pending felony case number. If a subsequent felony case charges multiple defendants, one or more of whom have pending felony cases, the subsequent felony case shall be assigned randomly.

The Clerk shall prepare an Order of Reassignment to be signed by the directing Judge for each case reassigned in this manner. The Order of Reassignment

is to be filed in its respective case with a copy provided to the District Judge to whom the case was reassigned.

For purposes of this rule, the term 'pending felony case' is defined as:

1. a felony offense with an undisposed felony arrest warrant;
2. a felony offense with an undisposed felony bench warrant for failure to appear;
3. a felony offense with a suspended or deferred sentence which has not expired;
4. a felony offense with a future pending court date.

The term 'pending felony case' shall not refer to any pending misdemeanor offense (even if that offense bears a felony case number) unless the offense was disposed of by a District Judge.

The term 'pending felony case' shall not refer to any pending court cost proceeding in a previously numbered felony matter.

RULE CR 5. Reassignment of Felony Cases

If a Judge recuses or is disqualified or a case needs to be reassigned for any reason not set out in these rules, the case shall be referred to the Presiding Judge for reassignment or other action in conformity with the laws of the State of Oklahoma. A Judge shall be assigned one case for each case transferred by that Judge. A case which is dismissed and refiled should be assigned to the original Judge.

A separate record of all reassignments shall be furnished to the Court Clerk who shall show the name of the reassigned Judge on the court file, the appearance docket, and computer records. A copy of each reassignment shall be furnished to each Judge affected by it.

RULE CR 6. Preliminary Hearings

A. The Preliminary Magistrate calling this docket shall assign the cases ready for hearing to the other Preliminary Judges.

B. Requests to pass Preliminary Hearings by either party will be granted only for good cause shown. This provision will be strictly construed by the Criminal Division Special Judges.

C. If a defendant is ordered to stand trial, the Judge shall direct the defendant and his/her counsel when to appear before the assigned Trial Judge for the trial arraignment.

D. At the end of each day, the clerk of the Magistrate calling the preliminary hearing docket shall prepare for each Trial Judge a record of the preliminary hearings held that day. The report shall include those cases set for trial arraignment, the date of the trial arraignment, and the assigned Judge. The Trial Judge shall prepare his/her arraignment docket from these records.

RULE CR 7. Appeal from Magistrate

All applications to appeal from an adverse ruling or order of a Magistrate shall be handled in accordance with 22 O.S. § 1089.1 *et seq.*

RULE CR 8. Trial Arraignments

- A. Trial arraignments shall be held on the day and time set by each Judge.
- B. Counsel shall be prepared at the time of trial arraignment to assist the Court in setting a trial date to avoid conflicts with counsel's prior commitments.
- C. Requests for continuance to secure transcripts of preliminary hearings shall be accompanied by the appropriate Court Reporter's Certificate estimating time of completion.

Upon full payment of the estimated cost of the transcript, the Court Reporter shall furnish to counsel a Certificate stating the transcript's earliest available date, not to exceed 18 days. If the transcript's length dictates a completion time greater than 18 days, the Court Reporter shall arrange personally with the Trial Judge for a longer completion time.

RULE CR 9. Presentation of Orders in Felony Cases

Every case shall continue to be handled by the assigned District Judge, and all orders should be presented to that Judge.

If the assigned District Judge is unavailable, and there is no specially assigned Judge presiding in his/her place, then the Chief Judge-Criminal may enter any order in a case pending before the assigned Judge; however, entering such an order does not cause a transfer of the case from one Judge to another.

RULE CR 10. Conflict of Interest-Reassignment of Case

- 1. If the Court determines that a conflict of interest exists at the trial level between a defendant and a County Indigent Defender, the case may be reassigned by the assigned District Judge to a private attorney who represents indigents pursuant to contract or a private attorney who has agreed to accept such appointments.

In addition, in every case where the defendant is subject to the death penalty and a conflict of interest exists at the trial level between the defendant and the County Indigent Defender, the assigned District Judge may appoint the Indigent Defense System to represent the defendant or may appoint a private attorney who represents indigents pursuant to contract or a private attorney who has agreed to accept such appointment. However, in every case where more than one defendant is subject to the death penalty and a conflict of interest exists at the trial level between one or more of the defendants who are subject to the death penalty and the County Indigent Defender, the assigned District Judge may appoint the Indigent Defense System to represent not more than one of the defendants in the case and may appoint a private attorney who represents indigents pursuant to contract or a private attorney who has agreed to accept such appointments to any other defendant(s) in the case.

2. Total compensation shall not exceed five hundred dollars (\$500) in the following cases:

- a. juvenile cases
- b. mental health cases
- c. grand jury cases
- d. traffic cases
- e. misdemeanor cases
- f. guardianship cases
- g. contempt proceedings
- h. child abuse cases pursuant to 10 O.S. § 7112
- i. felony cases, except murder cases.

3. Total compensation shall not exceed one thousand five-hundred dollars (\$1,500) in non-capital murder cases.

4. Total compensation shall not exceed three thousand dollars (\$3,000) in capital cases.

5. An attorney's fee and expenses in excess of the above amounts may be compensated upon application to and approval by the Trial Judge, subject to the approval of the Presiding Judge.

6. Any attorney providing services pursuant to this rule shall continue to provide representation until the trial court loses jurisdiction, unless the court allows an attorney to withdraw upon proper application.

7. When the trial court loses jurisdiction, an attorney providing services pursuant to this rule shall submit an application for compensation with an affidavit detailing the hours spent on the case and the services rendered. The application

shall also state if any amount awarded by the court shall be the sole source of compensation for the services provided. If other sources of compensation are used, the other sources and amounts shall be specified in the application.

RULE CR 10.5 Failure to Retain Counsel - Assessment for Appointment of Counsel

When a defendant appears without counsel, the Court shall advise the defendant concerning his/her 6th Amendment right to counsel. The Court shall then determine if the defendant wishes to waive his/her right to counsel. If the defendant does not wish to waive his/her right to counsel, the Court shall determine the defendant's indigency status, under oath, by Pauper's Affidavit and/or oral examination, pursuant to the procedures and applying the standards established by 20 O.S. § 55 and Ct.Crim.App.Rule 1.14. The ability to make bond may be considered as a factor by the Court in determining indigency but shall not be the sole determining factor. All District and Special Judges are authorized to determine the indigency status of all persons who appear before them. (Ct.Crim.App.Rule 1.14) If the defendant is indigent, the Court will appoint counsel. When a defendant does not qualify as an indigent, the Court shall pass the defendant's case(s) for a reasonably sufficient time to allow the defendant to retain counsel. Before excusing the defendant, the Court shall give clear warning that causing further delay by willfully appearing without counsel is impermissible and may be punished as contempt. Bond shall not be revoked or raised because the defendant has failed to retain counsel.

If the defendant returns without counsel, his/her indigency status has not changed, the defendant does not wish to waive his/her right to counsel, and the parties involved are at an impasse, the Court shall inform the defendant of the Court's intention to institute direct contempt proceedings. Before imposing punishment, the Court shall give the defendant notice of the contempt charge, place the defendant in custody, set bond and set a date for a show cause hearing to give the defendant a summary opportunity to adduce evidence and/or argument relevant to guilt and/or punishment. At the discretion of the Court, the defendant may be advised that if an attorney is obtained for the criminal case prior to the hearing, the contempt charge will be dismissed. If the defendant is found in contempt, he/she may be punished with up to a \$500 fine and/or up to six months in the county jail. 21 O.S. § 566(A). At the discretion of the Court, the defendant may be advised that the balance of the jail term and/or the imposed fine will be suspended upon retention of counsel.

At the conclusion of every case where the county indigent defender or a conflict indigent defender has been appointed, the Court shall consider whether an assessment should be paid by the defendant for the representation pursuant to 19 O.S. § 138.10.

RULE CR 11. Withdrawal of Counsel

No withdrawal of counsel will be allowed between arraignment and preliminary hearing unless for good cause shown in writing submitted no later than twenty (20) days before preliminary hearing. The application should include the information outlined in CV 27.

No application to withdraw as counsel for a defendant will be considered unless presented to the Court at least ten (10) days before the date on which the case is set for trial.

RULE CR 12. Notification of Entry of Appearance of Private Counsel

If counsel accepts employment to represent a client who is or was represented by another attorney, including the County Indigent Defender's Office, written notice of such entry of appearance shall be given immediately to the Court, the Court Clerk and the other attorney.

RULE CR 13. Compensation - Expert Witnesses

When an indigent defendant charged with a criminal offense demonstrates to the trial judge that his/her sanity at the same time of the offense is to be a significant factor at trial and/or that the defendant will be prejudiced by a lack of expert assistance, the trial court shall authorize counsel to obtain expert services reasonably necessary to permit the indigent defendant to adequately prepare and present his/her defense at trial. [Ake v. Oklahoma, 105 S. Ct. 1087 (1985) and Rogers v. State, 890 P.2d 959 (Okl. Cr. 1995)]

Compensation for such expert shall be paid from the court fund in a sum not to exceed seven hundred fifty dollars (\$750.00) per indigent defendant, the specific amount to be determined by the trial judge, subject to the approval of the Presiding Judge. An expert's fee and expenses in excess of seven hundred fifty dollars (\$750.00) per indigent defendant may be compensated upon application to and approval by the trial judge, subject to the approval of the Presiding Judge, prior to the retention of the expert.

When the trial court loses jurisdiction, an application for compensation must include an itemized statement of the services provided and shall be accompanied by an affidavit of the expert who provided the services stating whether the amount awarded by the trial court shall be the sole source of compensation. If other sources of compensation are used, the other sources of compensation and amounts shall be specified in the application.

upon a written order of a District or Associate District Judge.

All previous administrative orders concerning the expunging of records in criminal cases are hereby revoked.

Other criminal cases ordered expunged according to the provisions of 22 O.S. §§ 18 and 19 shall be filed in the Criminal Division under the MI case designation.

RULE CR 17. Indigent Defender - Report

Each month the County Indigent Defender shall examine into the causes for confinement of all persons confined in the Tulsa County Jail, except persons held under federal process, and report briefly the facts of such examination to the Presiding Judge and Sheriff, in writing, on or before the 15th day of each month. An original of this report shall be filed in the Office of the County Indigent Defender for reference by any properly authorized person as an official record.