

F.M.

First Draft



CASE MANAGEMENT PLAN

CHAPTER ONE

STATEMENT OF PURPOSE AND DEFINITIONS

SECTION 1.01 TITLE

The following Case Management Plan (hereinafter referred to as the "plan") is developed by the United States District Court for the District of Oregon. The plan is not intended to be a codification of all case management practices throughout the district, rather it is intended to supplement the court's Case Assignment Plan and the Local Rules of Civil Practice (amended and republished on January 1, 1991).

SECTION 1.02 STATEMENT OF PURPOSE

The case management procedures described in this plan, the Case Assignment Plan and the Local Rules of Civil Practice, are designed to *facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.*¹

¹ 28 U.S.C. § 471.

SECTION 1.03 OBJECTIVES

The guidelines and procedures already operating within the District of Oregon include the following principles and guidelines of litigation management and cost and delay reduction:

- Differentiated case management of civil cases based upon complexity, pretrial management requirements and available judicial resources.²
- Early and ongoing judicial intervention of the pretrial process.³
- Setting early and firm trial dates.⁴
- Control of the discovery process.⁵
- Controlling the motion practice.⁶
- Establishing and promoting alternative means of dispute resolution, including settlement.⁷
- Establishing final pretrial conference procedures.

SECTION 1.04 APPLICATION

Although consistency and uniformity in the management and administration of civil and criminal cases throughout the District is the desired goal, nothing in this plan should be construed to limit or abrogate a judicial officer's authority to tailor pretrial and trial procedures in any case pending before that judicial officer.

² 28 U.S.C. § 473(a)(1).

³ 28 U.S.C. § 473(a)(2)(A).

⁴ 28 U.S.C. § 473(a)(2)(B).

⁵ 28 U.S.C. § 473(a)(2)-(5).

⁶ 28 U.S.C. § 473(a)(2)(D), (3)(D).

⁷ 28 U.S.C. § 473(a)(3)(A), (a)(6).

CHAPTER TWO

CASE MANAGEMENT

SECTION 2.01 CASE MANAGEMENT--Generally

As noted in previous chapters, "consistency and uniformity in the management of civil and criminal cases is the desired goal. . ."¹. Notwithstanding this goal, it is neither possible nor desirable to force all cases into a single "case management model". In point of fact, differential management of individual civil and criminal cases has always been the hallmark of case management within this court.

Within the District of Oregon, cases are managed from filing through disposition with minimal judicial intervention, **except** for the early implementation and regulation of firm discovery schedules and trial dates. Experience has shown that the establishment of realistic and firm discovery schedules and trial dates has proven to be the single most successful elements of an effective case management system. Experience has also demonstrated that this approach optimizes limited judicial resources by permitting the court to focus on *real problem cases* rather than spreading available judge time over all of the cases.

Finally, Oregon's case management system is designed to recognize the unique case management styles of each district and magistrate judge. Notwithstanding differences in "style", fundamental case management principles are uniformly applied by the district and magistrate judges of the Court.

¹ Section 1.04.

SECTION 2.02 CASE MANAGEMENT PROCEDURES

It is the ultimate goal of the court to afford every civil litigant a trial within one year from the date of filing. To accomplish this goal, the court recognizes the need for effective case management procedures, to include the following:

- Initial Case Assignments:** All new cases are directly assigned to a district or magistrate judge at the time of filing in accordance with the Case Assignment Plan (SEE Appendix [A]).

COMMENTS ON THE CIVIL JUSTICE REFORM ACT OF 1990

Although essentially a "random draw" case assignment system, many of the principles of *differential case management* are initially fulfilled by the procedures set forth in the Case Assignment Plan.

Various "direct assignment" and "re-assignment" procedures of the plan are intended to help "make an early assessment of each case filed in terms of the nature and extent of judicial and other resources required for preparation and disposition of the cases." Implementation of the Civil Justice Reform Act of 1990, Federal Judicial Center (January 16, 1991), p. 13.

- Early Judicial Intervention Through the Establishment of Pretrial and Discovery Deadlines:** Firm pretrial and discovery deadlines are established for all cases immediately at the time of filing (SEE Chapter Three).

- **Soliciting Consents to Magistrate Judges:** Magistrate judge consent forms are issued at the time of filing and the consent issue is discussed at subsequent status conferences and the final pretrial conference. It is important to note that as felony criminal caseloads increase for the district judges (magistrate judges cannot handle felony cases), less time is available for Article III judges to conduct civil trials.
- **Early Judicial Review and Conference:** Once a case is filed and docketed, the assigned district or magistrate judge reviews the case to ascertain whether the case has (or has the potential to have) complex factual or legal issues, or whether it involves "numerous parties". As a result of that early review process, if the case appears to warrant "early judicial intervention" beyond the normal scheduling order, the assigned judge will consider one of the following options:

Option (1) *Entry of an order preventing default judgement and ordering plaintiff's attorney to advise the court when all defendants have either filed an appearance, or have indicated their intent to appear. As soon as that information is obtained, the judge should order a status conference.*

Option (2) *Order a status conference within 30 days of filing.*

Option (3) *At any such status conference, entry of a "full" scheduling order for the case including discovery deadlines, motion deadlines, pretrial order lodging dates, pretrial conference and trial dates at any status conference.*

Option (4) *Entry of any special orders deemed necessary for the specific case.*

Option (5) *Coordinate the option to permit the attorneys to proceed without court guidance until the filing of the pretrial order, at which time a status conference will be held to set a pretrial conference and trial date. Failure to lodge a pretrial order at the directed time will result in an order to show cause why the case should not be dismissed.*

Telephone Conferences to Regulate and Maintain Pretrial Deadlines and

Schedules: The assigned judge should arrange for an immediate telephone conference whenever any of the events listed below occur.

- Any application or stipulation for extension of time to complete discovery.
- Evidence of repeated discovery squabbles.
- Suggestion of an overly active motions practice.
- Any motion to extend the pretrial order lodging date.

At the conclusion of the telephone conference, the judge should set a "full" schedule for the remainder of the case to include any revised discovery deadlines, motions deadlines, pretrial order lodging date, pretrial conference date, and most importantly, a firm trial date.

- **Availability of Alternate Dispute Resolution:** Throughout the pretrial process, the judge should apprise counsel of alternate dispute resolution options, e.g. possibility of a settlement judge (L.R. 240-1); use of the court's voluntary mediation program (L.R. 240-2); or the use of other local mediation or settlement services.

- **Status Conferences:** The court will should schedule status conferences as often as may be needed to expedite cases and assist in case management. Attorneys have an affirmative duty to ask for scheduling conferences and conferences to help resolve disputes (including discovery disputes) after conscientious efforts have been made by all parties to resolve such disputes. Attorneys will be expected to respond to calls for telephone status conferences on short notice including such conferences before and after office hours, as well as during the lunch hour.

- **Establish and Maintain a Firm Trial Date for Each Case:** Firm trial dates will be set. Counsel and the court must expect to set and keep trial dates and although emergencies do arise (including potential delays of trials by cases determined by Congress to be priorities), the court will do everything in its power to find another active, senior or visiting district or magistrate judge to try the case as scheduled. In order to maintain these firm trial dates, attorneys, parties and witnesses should be prepared for extended trials days. Counsel are advised to have witnesses on standby and readily available each trial day.

- **Clerk's Office Responsibility:** The Clerk's Office shall supply such support as is needed to assure the expeditious handling of cases including statistical data advising the judges of the status of their cases.

CHAPTER THREE

CONTROLLING DISCOVERY AND PRETRIAL ACTIVITIES

SECTION 3.01 CONTROLLING DISCOVERY

(a) **Scheduling Order:** Except as provided in paragraph (b) below, the clerk shall issue a Discovery and Pretrial Scheduling Order at the time of filing of each new civil action (SEE Appendix [B])¹. The order shall fix the time for filing all pleadings and motions; join all parties and claims; complete all discovery²; and lodge a joint pretrial order.

(b) **Differential Management of Discovery and Pretrial in Selected Cases:** The court finds that *systematic and differential treatment*³ of the following categories of cases is appropriate:

- Social security cases (SEE Section 3.02[a] below)
- Habeas corpus cases (SEE Section 3.02[b]-[d] below)
- Bankruptcy appeals or withdrawals (SEE Section 3.02[e] below)
- Asbestosis personal injury (SEE Section 3.02[f] below)
- Government collection cases (SEE Section 3.02[g] below)
- IRS summons enforcement cases (SEE Section 3.02[h])

¹ Fed.R.Civ.P. 16(b).

² For the purposes of this order, "completion of discovery" is defined in L.R. 205(b).

³ 28 U.S.C. § 473(a)(1).

**COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990**

SECTIONS 3.02(A) AND (B)

Use of the Discovery and Pretrial Scheduling Order, coupled with the differential treatment of selected classes of cases, accomplishes many of the management principles set forth in the Civil Justice Reform Act of 1990, including:

Differential Case Management

- Establishes an events oriented case management system which monitors "key" events or schedules in every case.
- Incorporates methods for supervising and controlling case management intervals to make them more predictable and adaptable for every case.

Early and Ongoing Judicial Intervention

- Creates a "management by exception" philosophy which balances the requirement for early judicial intervention with the reality of finite judicial resources. Under the Oregon model, a judicial officer need only become involved in the early phase of litigation when a case falls "outside of the time limits" established by the order.
- Establishes firm cutoff dates for amendments to pleadings, filing of all motions, joinder of parties, and completion of discovery.

Control of Discovery

- In conjunction with L.R. Rules 120-4, 220, 230 and 235, the order establishes the time framed for initiation and completion of discovery.
- Discovery and litigation management deadlines are established at the commencement of every case. These deadlines have been refined over time to fit the vast majority of civil cases, placing the burden upon counsel to show "good cause" why additional time should be granted.

SECTION 3.02 DIFFERENTIAL MANAGEMENT OF SELECTED CASES

(a) Social Security Cases: Section 2.03(j) of the Case Assignment Plan provides for the direct assignment and centralized management of all social security case to a senior district judge. Upon filing, the clerk is directed to issue the Procedural Order for Social Security Review Cases⁴ in lieu of the scheduling order referenced in Section 3.01(a).

**COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990
SOCIAL SECURITY CASES**

The current system of direct assignment and management of social security cases accomplishes the following goals contemplated by the Act:

Economy of Limited Judicial Resources

- At present, a senior district judge has agreed to accept direct assignment of all social security cases. This arrangement optimizes the use of all judicial resources throughout the court, however, the services of this senior district judge may not always be available, at which time the court will reconsider the appropriateness of "centralizing" these time consuming cases to a single judicial officer. For the present, however, the direct assignment and management of these cases by a single judicial officer has proven to be the most efficient and economical approach to managing these cases.
- Centralizing the administration of these cases permits a single judge (and his law clerk) to become the "local expert" on re-occurring issues inherent in this specialized area of the law.

Differential Case Management

- The use of a modified scheduling order recognizes the fundamental differences between these and other civil cases. The system incorporates an "events oriented" briefing schedule and precludes discovery.

⁴ SEE Appendix (C).

(b) **Habeas Corpus Cases Filed Pursuant to 28 U.S.C. § 2241:** Typically, these cases are filed by federal pro se prisoners incarcerated at the Sheridan Federal Correctional Institution. To assist these petitioners in framing the issues, the clerk is directed to require that all such actions be presented on the form petition approved by the court.⁵ Thereafter, the clerk is directed to issue the **28 U.S.C. § 2241 Scheduling Order**⁹ in lieu of the scheduling order referenced in Section 3.01(a).

(c) **Habeas Corpus Cases Filed Pursuant to 28 U.S.C. § 2255:** Typically, these cases are filed by federal pro se prisoners who challenge various aspects of their sentence. To assist these petitioners in framing the issues, the clerk is directed to require that all such actions be presented on the form petition approved by the court.⁷ Thereafter, the case will be directly assigned to the original sentencing judge for scheduling and disposition.

(d) **Habeas Corpus Cases Filed Pursuant to 28 U.S.C. § 2254:** Typically, these cases are filed by state pro se prisoners incarcerated at various state correctional institutions. To assist these petitioners in framing the issues, the clerk is directed to require that all such actions be presented on the form petition approved by the court.⁸ Thereafter, the clerk is directed to issue the **28 U.S.C. § 2254 Scheduling Order**⁹ in lieu of the scheduling order referenced in Section 3.01(a).

⁵ *SEE Appendix (D).*

⁶ *SEE Appendix (E).*

⁷ *SEE Appendix (F).*

⁸ *SEE Appendix (G).*

⁹ *SEE Appendix (H).*

COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990

§§ 2241, 2255 AND 2254 HABEAS CORPUS CASES

Use of pre-printed and pre-approved petition forms has helped to accomplish the following goals contemplated by the Act:

Economy of Limited Judicial Resources

Standardized petition forms have streamlined the entire habeas corpus process. Petitioners are now able to more clearly articulate their cause of action, thus reducing the substantial amounts of time previously required of judicial officers in reviewing and helping the petitioner frame the issues.

Control of Discovery

Standardized petition forms also recognize the more liberal pleading standards which apply to pro se prisoner litigants. The forms have been designed to focus each claim, which in turn helps to narrow the scope of ultimate discovery.

Judicial Economy

At present, only 42 U.S.C. § 1983 prisoner civil rights actions and a very few § 2254 habeas corpus cases are being referred to the court's pro se law clerk in Eugene. Although we need an additional pro se law clerk to administer the § 2241 and § 2255 cases arising from the Sheridan Federal Correctional Institution, the current Judicial Conference pro se law clerk "staffing formula" does not provide for more than this single law clerk to handle these specialized cases.

Experience has demonstrated that these cases are most effectively administered by a single law clerk working for the entire court. The problem here is that Sheridan is less than two years old, and the growth in federal prisoner litigation is only now being felt in the Portland division. Because of the labor intensive nature of these cases, it is clear that the court needs to secure the appointment of a second full-time pro se law clerk to handle the Sheridan cases. However, until that happens, the press of civil and criminal business in Portland precludes the centralized administration of these cases before any district or magistrate judge.

(e) **Bankruptcy Appeals and Withdrawals:** Cases appealed from the bankruptcy court (28 U.S.C. § 158), or motions to withdraw the reference to the bankruptcy court (28 U.S.C. § 157), shall be assigned, scheduled, and administered in accordance with the provision of Section 2.05 of the Case Assignment Plan.

**COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990**

BANKRUPTCY APPEALS AND MOTIONS TO WITHDRAW REFERENCE

These cases are fundamentally different from most other civil cases. On the one hand, appeals from final orders of the bankruptcy court involve cases that have already been adjudicated, thus no discovery scheduling order is required in this court.

Motions to withdraw reference of a bankruptcy case, on the other hand, involve "preliminary considerations" by this court. If the motion is granted, the case will be transferred to this court, at which time the assigned judge will set all required discovery schedules. If the motion is denied, the case is returned to the bankruptcy court for adjudication.

(f) **Asbestosis Personal Injury Cases:** Until otherwise directed by the Calendar Management Committee, Section 2.03(a) provides for the direct assignment and administration of all such cases to a single judicial officer.

**COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990
ASBESTOSIS PERSONAL INJURY CASES**

- Direct assignment for "centralized" administration and management is appropriate because of the complexities and similarities involved in the discovery process.
- Consolidating these cases under one judge permits that court to more effectively monitor "re-occurring issues"; standardize discovery across sub-classes of cases; coordinate the calendars of a limited number of lawyers involved in these cases; and facilitate settlement and/or disposition of cases.

(g) **Government Collection Cases:** Section 2.03(b) and (e) of the Case Assignment Plan provides for the direct assignment of all government collection cases (including forfeiture actions, VA overpayment claims, student loan cases, etc.) to a senior district judge.

COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990
GOVERNMENT COLLECTION CASES

- Direct assignment of all student loan, VA overpayment, and other government forfeiture/collection cases is appropriate because they typically involve little or no discovery and very little judicial management in order to reach a timely disposition.
- Consolidating these cases under one judge permits the court to more effectively monitor "re-occurring issues"; standardize discovery across classes of cases; coordinate the calendars of a limited number of lawyers involved in these cases; and facilitate settlement and/or disposition of cases.

(h) **IRS Summons Enforcement Action:** Sections 2.03(c) and 2.04(b) provide for the assignment and disposition of these cases, and because these cases are usually decided upon the initial papers and motion, the clerk is directed not to issue the scheduling order contemplated in Section 3.01(a).

COMMENTS ON THE
CIVIL JUSTICE REFORM ACT OF 1990
IRS SUMMONS ENFORCEMENT ACTIONS

These cases are typically decided on the initial papers and motion. They are usually short lived in duration and virtually no discovery is required. Therefore, it is inappropriate for the clerk to issue the standard discovery order at the commencement of the action.

CHAPTER FOUR
CALENDARING RESPONSIBILITIES AND PRIORITIES

SECTION 4.01 CALENDARING RESPONSIBILITIES

(a) **Motions Practice:** Unless otherwise allowed by the assigned judge, civil and criminal motions practice shall be governed by the provisions of L.R. 220.

(b) **Pretrial Conference and Trial Setting:** Unless provided for by the assigned judge, the conduct of the any required pretrial conference, and the establishment of a firm trial date, shall be governed by the provisions of L.R. 235.

(c) **Policy Regarding Stipulations for Continuance:** Limitations on stipulations for extensions of time and/or continuances shall be governed by L.R. 230-4.

SECTION 4.02 MEDIATION AND SETTLEMENT CONFERENCES

(a) **Mediation:** Unless stipulated to by the parties, or as otherwise directed by the assigned judge, the mediation process in any particular case shall be governed by the provisions of L.R. 240-2.

(b) **Settlement Conferences:** Unless stipulated to by the parties, or as otherwise directed by the assigned judge, scheduling of a settlement conference before a judicial officer in any particular case shall be governed by the provisions of L.R. 240-1. As a matter of policy, given the press of other calendar related matters, parties will be encouraged to first pursue mediation as a first approach to settlement and, if that fails, the parties will be permitted to re-apply for the appointment of a settlement judge.

SECTION 4.03 TRIAL SETTING PRIORITIES

As a matter of law, the court is required to afford first priority in trial settings to criminal cases facing "speedy-trial problems". Nonetheless, the court is committed to establishing firm and realistic trial dates for all cases, civil as well as criminal.

To accomplish this goal, the court encourages all civil litigants to file written "consents" to Magistrate Judges pursuant to Fed.R.Civ.P. 73(b). In the event that parties will not consent to a Magistrate Judge conducting the trial, most judges employ a "trailing calendar" concept in which cases are set to a "day certain", but in the event of trial conflicts with criminal cases, civil litigants will often be informed to "be available" later in the day or week to begin their trial.

APPENDIX (A)



Note:
Question whether
included? is:
inward policy.

UNITED STATES DISTRICT COURT
THE DISTRICT OF OREGON

CASE ASSIGNMENT PLAN

CHAPTER ONE

GENERAL ASSIGNMENT POLICIES

SECTION 1.01: APPLICATION

Unless otherwise directed by the Calendar Management Committee, the following case assignment procedures apply to all civil, criminal, and miscellaneous cases filed in the United States District Court for the District of Oregon.

SECTION 1.02: OBJECTIVES

The case assignment procedures outlined in this Plan are designed to ensure that:

- All cases are assigned on an impartial basis, free from actual or potential influence or manipulation by any litigant, counsel, or member of the court family.*
- All full-time United States magistrate judges in the District of Oregon are incorporated into the civil case assignment system on a co-equal basis with the district judges.*
- The judicial business of the District of Oregon is equitably allocated among the judicial officers of the court.*

SECTION 1.03: CASE ASSIGNMENT DIVISIONS

For purposes of implementing the provisions of this Plan, the District of Oregon shall be divided into the Northern and Southern Divisions pursuant to L.R. 105-2.

SECTION 1.04: AMENDMENTS

Changes, amendments, or modifications to the Case Assignment Plan shall be made only with the approval of the court.

CHAPTER TWO
CIVIL CASE ASSIGNMENTS

SECTION 2.01: TIME OF ASSIGNMENT

In accordance with the provisions of this Chapter, the clerk shall assign all civil cases at the time of the filing of the initial complaint or indictment.

SECTION 2.02: RANDOM CASE ASSIGNMENTS

Unless otherwise provided in this Plan, civil cases will be randomly assigned to the pool of district and magistrate judges indicated below:

(a) **Northern Division Assignments:** Civil cases filed in the Northern Division shall be assigned to the active district judge and magistrate judges then resident at the United States Courthouse in Portland.

(b) **Southern Division Assignments:** Civil cases filed in the Southern Division shall be assigned to the active district and magistrate judge then resident at the United States Courthouse in Eugene.

SECTION 2.03 DIRECT ASSIGNMENT--Northern Division Cases

Until otherwise ordered by the Calendar Management Committee, the following classes of cases shall be directly assigned as indicated below:

(a) **Asbestosis Personal Injury Cases:** Asbestosis personal injury cases shall be directly assigned to Judge Panner.

(b) **Government Collection or Forfeiture Cases:** All government collection or forfeiture cases shall be directly assigned to Judge Belloni.

(c) **IRS Summons Enforcement Proceedings:** IRS summons enforcement actions shall be assigned a miscellaneous case number and referred to the Civil Duty Judge for initial proceedings.

Special Instruction: At the point in time that the Civil Duty Judge determines that the matter rises to the status of a "contested proceeding," the duty judge shall notify the clerk of this changed status and the clerk shall randomly assign the case.

(d) **Pendleton Cases:** Upon approval of a motion for trial or other proceedings in Pendleton (L.R. 105-2[d]), the clerk shall reassign the case to Judge Panner.

(e) **Southern Division Cases:** Upon approval of a motion for trial or other proceedings in Eugene, Klamath Falls, Medford or Coquille (L.R. 105-2[d]), the clerk shall transfer the case to the Eugene Division for random assignment.

(f) **Related Cases:**

(1) **Contemporaneous Filing of Related Cases:** If obviously related cases are tendered for filing at the same time, the clerk shall randomly assign the first case; and if the others are "obviously related" at the time filing, directly assign the other related cases to judge assigned the first case.

(2) **Subsequent Filing of Related Cases:** If a related case is filed at a later time, the clerk shall not directly assign the subsequent related case to the judge previously assigned the low numbered case; instead, the clerk shall randomly assign the case and bring the matter to the attention of the assigned judges and the Calendar Management Committee.

(i) **Remanded Proceedings:** Remanded cases shall be returned to the judicial officer who entered the final judgment or order from which the appeal was taken.

(j) **Social Security Review Cases:** Social security review cases shall be directly assigned to Judge Belloni; except that motions to re-open a social security case shall be referred to the judicial officer responsible for entry of the remand order.

(k) **Temporary Restraining Orders (TRO's) and/or Preliminary Injunctions:** If a motion for temporary restraining order or motion for preliminary injunction is filed in any case initially assigned to a magistrate judge, and if consents to trial by a magistrate judge have not been filed, the clerk shall reassign the case to a district judge.

(l) **Trial Ready Cases Without Magistrate judge Consent:** Whenever a magistrate judge determines that a previously assigned case is ready for trial and that full consent will not be obtained, the magistrate judge will notify the clerk who will reassign the case to a district judge for final disposition.

(m) **Unavailability of Previously Assigned Judicial Officer:** When directed to do so by the Calendar Management Committee, the clerk shall randomly reassign the case.

SECTION 2.04 DIRECT ASSIGNMENT--Southern Division Cases

Unless otherwise provided below, direct case assignments shall be made without going through the random draw procedures set forth in Appendix (B).

(a) **Pendleton Cases:** Upon approval of a motion for trial or other proceedings in Pendleton pursuant to L.R. 105-2(d), the clerk shall transfer the case from the presiding judicial officer to the Northern Division (SEE Section 2.03[d]).

(b) **Petitions to Enforce IRS Summons:** Petitions to enforce an IRS summons shall be assigned to the Southern Division district judge.

(c) **Trial Ready Cases Without Magistrate judge Consent:** Whenever a magistrate judge determines that a previously assigned case is ready for trial and that full consent will not be obtained, the magistrate judge shall notify the clerk who shall reassign the case to the Southern Division district judge.

SECTION 2.05 BANKRUPTCY MATTERS

(a) **Appeals from Final Orders/Judgments of the Bankruptcy Court:** When a notice of appeal from a bankruptcy final judgment or order is filed, the bankruptcy court shall establish a briefing schedule; assemble the record on appeal; and when all the necessary briefs have been filed, transmit the record to this court for random assignment to a district judge.

(b) **Motion for Leave to Appeal:** When a motion for leave to appeal a preliminary matter is filed, the bankruptcy court shall promptly transmit the motion and relevant portions of the bankruptcy record to this court. Upon receipt, the clerk shall refer the motion to the Civil Duty Judge for resolution.

(c) **Motion to Dismiss a Pending Bankruptcy Appeal:** If a motion to dismiss an appeal is filed in the bankruptcy court (prior to the completion of the briefing schedule and transfer of the record on appeal to the district court), the clerk of the bankruptcy court shall promptly transmit the motion and relevant papers to this court. Upon receipt, the clerk shall refer the motion and papers to the Civil Duty Judge for disposition.

(d) **Motion for Withdrawal of Reference:** If a motion for withdrawal of reference is filed, the bankruptcy court shall transmit copies of the motion and supporting documents to this court and the clerk shall refer the papers to the Civil Duty Judge for resolution. If the motion for withdrawal of reference is approved, the clerk shall randomly assign the case to a district judge.

(f) **Jury Trials in Bankruptcy Cases:** When a bankruptcy case or proceeding is transferred to this court for jury trial, the clerk shall randomly assign the case to a district judge.

SECTION 2.06 CIVIL DUTY JUDGE

(a) **Duty Judge--Northern Division:** With the exception of the Chief Judge, the active district judges resident in the United States Courthouse in Portland shall serve on a one-month rotating basis as the Civil Duty Judge.

(b) **Duty Judge--Southern Division:** The active district judge resident in the United States Courthouse in Eugene shall serve as the Civil Duty Judge. Whenever a matter requiring the attention of the Civil Duty Judge is presented for filing, and the clerk determines that the Civil Duty Judge is unavailable, the clerk shall refer the matter to the Southern Division magistrate judge. In the event that the Southern Division magistrate judge is unable to dispose of the matter, or is otherwise unavailable, then the clerk shall refer the matter to the Northern Division's Civil Duty Judge for disposition.

(c) **Responsibilities of the Civil Duty Judge:** In addition to other matters referred to the Civil Duty Judge, the Civil Duty Judge shall also be responsible for handling *ex parte* applications and/or proceedings that require expedited judicial attention.

(d) **Motions For Disqualification:** When a motion for disqualification of a judge or magistrate judge is filed, the clerk shall refer the motion to the other resident judicial officer in Eugene, who shall review the motion and rule upon the sufficiency of the affidavit pursuant to 28 U.S.C. § 144. If the affidavit is found to be insufficient, the motion will be denied and the matter referred back to the accused judge for determination pursuant to 28 U.S.C. § 455. If the reviewing judicial officer finds that the affidavit meets the statutory grounds, he shall proceed to make a factual determination as to whether or not the motion should be allowed.

SECTION 2.08 PREJUDGMENT ARRESTS, ATTACHMENTS AND SEIZURES IN *in rem*
ACTIONS

All applications for arrest, attachment, or seizure pursuant to the Supplemental Rules of Certain Admiralty and Maritime Claims, or as otherwise provided for by law or statute, shall be referred to any available magistrate judge for review. In the event that a magistrate judge is unavailable, the matter shall be referred to the Civil Duty Judge.

CHAPTER THREE
CRIMINAL CASE ASSIGNMENTS

SECTION 3.01 FELONY CRIMINAL CASE ASSIGNMENTS--Northern Division

(a) **Type of Cases Assigned:** Unless otherwise directed by the Calendar Management Committee, the following categories of criminal cases will be assigned to the active district judges then resident in the United States Courthouse in Portland:

- (1) Felony cases initiated by either indictment or information.
- (2) Misdemeanor and/or petty offense cases in which no consent to trial by a magistrate judge is obtained.
- (3) Appeals from convictions imposed by a magistrate judge in misdemeanor and/or petty offense cases.

(b) **Criminal Case Assignment Lists:** The clerk shall maintain a continuing list of the active district judges then resident in the United States Courthouse in Portland, ranked in seniority order [See Appendix (E)] and shall assign each case identified in paragraph (a) above in sequential order from this list. Cases shall be assigned in the order that they are presented for filing.

(c) **Limitations on the Disclosure of the Name of the Assigned Judge:** The name of the assigned district judge shall be publicly announced during the proceeding at which the defendant enters a plea. Prior to that time, the clerk's office shall disclose the name of the assigned judge only to counsel for the government and the defendant.

(d) **Fugitive Defendants:** Fugitive defendants need not be reported on the assigned judge's list of pending cases and, absent direction from the Calendar Management Committee, no adjustments need be made to the sequential criminal case assignment procedures set forth in paragraph (b) above.

(e) **Related Case Assignments:** The clerk shall assign all criminal cases in accordance with the sequential case assignment system described in paragraph (b) above.

(f) **Remanded Proceedings:** Cases remanded to this court shall be returned to the judicial officer who entered the final judgment or order from which the appeal was taken.

SECTION 3.02 FELONY CRIMINAL CASE ASSIGNMENTS--Southern Division

(a) **Type of Cases Assigned:** Unless otherwise provided for in this Plan or by the Calendar Management Committee, the following categories of criminal cases will be assigned to the active district judge then resident in the United States Courthouse in Eugene:

- (1) Felony cases initiated by either indictment or information.
- (2) Misdemeanor and/or petty offense cases in which no consent to trial by a magistrate judge is obtained.
- (3) Appeals from convictions imposed by a magistrate judge in misdemeanor and/or petty offense cases.

(b) **Remanded Proceedings:** Cases remanded to this court shall be returned to the judicial officer who entered the final judgment or order from which the appeal was taken, and if that judge is unavailable, the case shall be reassigned to the district judge then resident in the Eugene office.

SECTION 3.03 CRIMINAL DUTY JUDGE RESPONSIBILITIES

(a) **Duty Judge Roster--Northern Division:** Except for the Chief Judge, the active district judges resident in the United States Courthouse in Portland shall serve on a one-month rotating basis as the Criminal Duty Judge.

(b) **Duty Judge--Southern Division:** The active district judge resident in the United States Courthouse in Eugene shall serve as the Criminal Duty Judge. When a matter requiring the attention of the Criminal Duty Judge is filed and the clerk determines that the Criminal Duty Judge is unavailable, the clerk shall refer the matter to the Southern Division magistrate judge. In the event the magistrate judge is unable to dispose of the matter, or is otherwise unavailable, the clerk shall refer the matter to the Northern Division's Criminal Duty Judge for disposition.

- (1) Guilty pleas and sentences when the assigned judge is unavailable.
- (2) Grand jury matters, e.g. grants of immunity, recalcitrant witnesses, etc.
- (3) Proceedings pursuant to Fed. R. Crim. P. 20.
- (4) Waivers of indictment.

SECTION 3.04 CRIMINAL MOTIONS PRACTICE

(a) **Pretrial and Discovery Motions:** As a general rule, pretrial and discovery motions are calendared and decided by the assigned judge. Notwithstanding the general rule, the assigned judge may refer any motion to a magistrate judge for appropriate action or disposition.

(b) **Motions Filed Pursuant to 28 U.S.C. § 2255:** Motions filed pursuant to 28 U.S.C. § 2255 will be automatically referred to the district judge who sentenced the defendant. When the previously assigned judge is unavailable, the clerk shall refer the motion to the Calendar Management Committee for reassignment.

APPENDIX (B)

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

PLAINTIFF(S),

v.

Civil Case No: _____

DEFENDANT(S).

DISCOVERY AND PRETRIAL SCHEDULING ORDER

In order to facilitate and expedite discovery in the instant action, the Court has ordered that:

(a) **Plaintiff's Responsibilities:** Concurrent with service of the summons and complaint, Plaintiff shall serve a copy of this Order and the following documents upon all parties:

- *Notice to Counsel Regarding Assignment of Presiding Judicial Officer.*
- *Consent to a Magistrate Judge and Designation of Normal Appeal Route*
- *The Role of a United States Magistrate Judge in the Administration of Civil Cases in the District of Oregon.*

(b) **Pretrial and Discovery Deadlines:** Not later than 120 days from the date of this Order, counsel for all parties shall:

- File all pleadings (Fed.R.Civ.P. 7[a] and 15).
- Join all claims, remedies and parties (Fed.R.Civ.P. 18 and 19).
- File all pretrial, discovery and dispositive motions.
- Complete all discovery.

(c) **Pretrial Order Filing Deadline:** Pursuant to L.R. 235-2, the parties shall file a joint pretrial order not later than 150 days from the date of this Order.

(d) **Stipulations for Extension of Time Not Allowed:** L.R. 230-4 prohibits the parties from stipulating to extend or continue any of the deadlines established above without expressed written authorization from the assigned judge

DATED this _____ day of _____, 19_____.

Deputy Clerk

APPENDIX (C)

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Plaintiff

v.

Civil Case No: _____

LOUIS W. SULLIVAN, Secretary of Health and Human Services

PROCEDURAL ORDER FOR SECURITY REVIEW CASES

The instant action seeks review of a decision by the Secretary denying plaintiff social security disability benefits. The Court's jurisdiction is limited to reviewing the administrative record to determine whether the decision is supported by substantial evidence in the record. Notwithstanding any other rule governing the procedures in civil cases,

IT IS ORDERED that:

(a) Defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record no later than _____.

(b) Plaintiff shall serve and file a memorandum supporting plaintiff's petition for review no later than _____ or within thirty (30) days of service of defendant's answer.

(c) Defendant shall serve and file an opposition brief no later than _____.

(d) Plaintiff may serve and file a reply to defendant's opposition brief within ten (10) days after service of defendant's opposition brief.

~~(e) The matter shall be deemed submitted, without hearing, fifteen (15) days after the filing of defendant's opposition, unless otherwise ordered by the Court.~~

(f) No extensions of time will be permitted without order of the Court.

(g) Upon judgment favorable to the plaintiff, attorney's fees will be awarded by the Court regardless of whether a final determination has been made by the Secretary. A fee petition and affidavit which itemized the representation in each forum should be filed with the Court within thirty (30) days of judgment, pursuant to L.R. 265-4. In no case will fees exceeding 25% of the award be granted.

DATED this _____ day of _____, 19_____.

DONALD M. CINNAMOND, CLERK

Deputy Clerk

cc: Counsel of Record

APPENDIX (D)

(Typed or Printed Name of Plaintiff)

Federal Register Number: _____
Federal Corrections Institution (FCI) Sheridan
PO Box 5000
Sheridan, Oregon 97378-5000

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

Petitioner,

v.

Civil Case No: _____

Respondent(s).

**CONSENT TO TRIAL AND ENTRY OF FINAL JUDGMENT
AND DESIGNATION OF NORMAL APPEAL ROUTE**

(a) **Consent to Entry of Final Judgment:** In accordance with Fed.R.Civ.P. 73(b), plaintiff, consents to trial and entry of final judgment by a United States Magistrate.

(b) **Confirmation of Normal Appeal Route:** In accordance with Fed.R.Civ.P. 73(c), plaintiff also confirms that any appeal from a judgment or final order entered by a United States Magistrate shall lie directly with the United States Court of Appeals for the Ninth Circuit, rather than a *de novo* review by a United States District Judge.

DATED this _____ day of _____, 19_____.

(Signature of Plaintiff)

**INSTRUCTIONS FOR FILING A PETITION
FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
USDC, DISTRICT OF OREGON**

- (1) **Legibility and Pleading Requirements:** The petition must be typed or legibly handwritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction of perjury. Unless otherwise provided for in a particular question:
- (a) Answers to questions shall be concisely stated in the space provided on the form.
 - (b) All accompanying briefs or legal memoranda shall be separately filed and shall comply with the format requirements of the Local Rules of court.
 - (c) Additional papers or documents are not permitted to be filed.
- (2) **Filing Fee:** Payment of a \$ 5.00 filing is required at the time of filing. As an alternative, you may submit a properly executed Request for Withdrawal of Inmate's Personal Funds (BP-199[46]) as confirmation of payment of the filing fee.

If, however, you believe that you are unable to pay the filing fee, you may request permission to proceed *in forma pauperis*, in which case you must execute the required financial disclosure statements available from the Federal Correctional Institution Library. If you wish to apply for permission to proceed *in forma pauperis* you must have an authorized staff member (Case Manager or Counselor) at the institution complete the certificate as to the amount of money and securities on deposit to your credit in your commissary account during the past two months, or the bank in which you have a savings account. As a general rule, if the balance in your personal account exceeds \$10.00, you must pay the filing fee.

- (3) **Service Copy Requirements:** You must also file one additional copy of the petition, as well as all legal briefs, memoranda or exhibits, for the U.S. Attorney and one for each named Respondent. Failure to provide the required service copies at the time of filing will result in the petition being returned to you without action.
- (4) **Filing Instructions:** When you have completed the petition and assembled the service copies required by paragraph (3) above, mail the entire packet of materials to the office indicated below:

Office of the Clerk
503 U.S. Courthouse
620 S.W. Main
Portland, Oregon 97205-3090

(Type or Print Your Full Name)

Federal Register Number: _____
Federal Corrections Institution (FCI) Sheridan
P.O. Box 5000
Sheridan, Oregon 97378-5000

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

PETITIONER,

v.

Civil Case No: _____

RESPONDENT(S).

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Pursuant to 28 U.S.C. § 2241, Petitioner applies for the issuance of a writ of habeas corpus. In support of this petition, Petitioner states as follows:

- (a) **JURISDICTION:** Petitioner is imprisoned and deprived of his liberty at the Federal Corrections Institution (FCI) at Sheridan, Oregon, in violation of the laws and the Constitution of the United States. Petitioner further asserts that FCI is within the District of Oregon and the jurisdiction of this Court.

(b) **SUMMARY OF UNDERLYING CONVICTION:**

(1) **Sentencing United States District Court:** Petitioner was convicted in the United States District Court for _____

(2) **Sentencing U.S. District Judge:** _____

(3) **Date Sentence was Imposed¹:** _____

(4) **Scheduled Release Date:** The Bureau of Prisons has established my release date as:

(c) **SUMMARY OF CONCURRENT AND/OR PREVIOUS LITIGATION:** The claims or issues set forth in this petition have already been litigated, or are currently pending before the following Courts *(List all previously litigated or currently pending cases involving the same claim(s) for relief set forth in this petition. Be sure to list the name of the court, case number, assigned judge and the status or disposition for each such case. If the claim(s) or issue(s) are being presented for the first time in this petition, indicate "NONE" in the section below):*

¹ Attach a copy of the Judgment and Probation/Commitment Order from the sentencing court.

(d) **STATEMENT OF THE FACTS:** *(Explain concisely your claim for relief in this section, e.g. explain what is wrong with the conditions of your confinement; why your rights are being violated by the Respondent. You may attach additional pages if necessary, however, be sure to consecutively number each page as Page (3)(a), (3)(b), etc.):* _____

(e) **STATEMENT OF YOUR LEGAL CLAIM FOR RELIEF:** *(As it applies to you, state what legal right or guarantee you allege has been violated as a result of Respondent's actions):* _____

(f) **EXHAUSTION OF ADMINISTRATIVE REMEDIES:** *(Explain what you have done to resolve the claims through the exhaustion of the administrative grievance remedies provided at FCI and by the Bureau of Prisons². Attach copies of each final decision of each step in the Bureau of Prisons' administrative grievance procedures):*

- (1) **BP-9 (Blue copy) was denied on:** _____
- (2) **BP-10 (Yellow Copy) was denied on:** _____
- (3) **BP-11 (Pink Copy) was denied on:** _____

Comments: _____

(g) **REQUESTED RELIEF:** Petitioner requests this Court issue a writ of habeas corpus requiring the Respondent to: _____

² *As a general rule, you must exhaust the administrative remedies at FCI and the Bureau of Prisons before seeking redress in the Courts; or you must show that exhaustion of such remedies would be futile or that you would suffer irreparable harm as a result of the delays associated with these administrative remedies.*

Petitioner also requests that this Court grant such other relief as may be appropriate.

DATED this _____ day of _____, 19 _____.

(Signature of Petitioner)
PETITIONER, Pro Se

VERIFICATION OF THE PETITION

I, _____, declare under penalty of perjury, that:

(a) I am the Petitioner in the action.

(b) I have read the petition and that the information contained herein is true to the best of my knowledge and belief.

DATED this _____ day of _____, 19 _____.

(Signature of Petitioner)
PETITIONER, Pro Se

APPENDIX (E)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

^C,

PETITIONER,

v.

Civil No: ^C

^C,

RESPONDENT(S).

SCHEDULING ORDER

IT IS ORDERED THAT:

(a) **Service of the Petition and Answer:** The Clerk shall serve a copy of this Order and the petition on the U.S. Attorney for the District of Oregon. Thereafter, Respondent shall have twenty (20) days from receipt of this Order to show cause why the relief prayed for should not be granted. Any such response shall also state the cause of petitioner's detention and whether Petitioner has exhausted all available in the courts of the United States.

(b) **Supplemental Pleadings:** Not later than sixty (60) days following the filing of Respondent's answer or dispositive motion, Petitioner may file additional papers, legal arguments or legal authorities either in support of the petition or in opposition to a dispositive motion. Absent Court approval, no other documentation shall be filed.

(c) **Calendaring:** Unless other application is made by the parties for expedited consideration, the Court will calendar this case on the *not for oral argument calendar* not later than seventy-five (75) days after the filing of Respondent's answer or dispositive motion. All other motions will be set for the *not for oral argument calendar* as directed by the Court.

DATED this _____ day of _____, 1990.

UNITED STATES MAGISTRATE

cc: Petitioner
Mr. Bauman, Assistant U.S. Attorney

APPENDIX (F)

**MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

Explanation and Instructions—Read Carefully

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- (7) When the motion is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is
- (8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District _____	
	Name of Movant _____	Prisoner No. _____ Case No. _____

Place of Confinement _____

UNITED STATES OF AMERICA V. _____
(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack _____
2. Date of judgment of conviction _____
3. Length of sentence _____
4. Nature of offense involved (all counts) _____

5. What was your plea? (Check one)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury
- (b) Judge only

7. Did you testify at the trial?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)

Signature of Movant

APPENDIX (G)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions—Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$_____, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District _____
-------------------------------------	----------------

Name _____	Prisoner No. _____	Case No. _____
------------	--------------------	----------------

Place of Confinement _____

Name of Petitioner (include name under which convicted) _____	Name of Respondent (authorized person having custody of petitioner) _____
v.	

The Attorney General of the State of: _____

PETITION

1. Name and location of court which entered the judgment of conviction under attack _____

2. Date of judgment of conviction _____

3. Length of sentence _____

4. Nature of offense involved (all counts) _____

5. What was your plea? (Check one)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury
- (b) Judge only

7. Did you testify at the trial?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes No
(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)

Signature of Petitioner

APPENDIX (H)

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

Petitioner,

v.

Civil Case No: _____

Respondent(s).

28 U.S.C. § 2254 SCHEDULING ORDER

In accordance with the Rules Governing Section 2254 Cases in the United States District Courts,

IT IS ORDERED THAT:

(a) **Service of the Petition:** The clerk shall serve a copy of this Order and the petition on the Attorney General for the State of Oregon, who shall be the Respondent in this action.

(b) **Respondent's Answer:** Not later than sixty (60) days from receipt of this Order, Respondent shall file and serve upon the Petitioner, an answer that complies with the requirements of Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, including:

- (1) A statement as to whether Petitioner has exhausted all available state remedies, including any post-conviction remedies available to him under the statutes or procedural rules of the State, including also his right of appeal from the judgment of conviction and from any adverse judgment or order in any post-conviction proceeding.
- (2) A statement of what transcripts from pretrial, trial, sentencing and post-conviction proceedings are available, when they can be furnished, and also what proceedings have been recorded but not transcribed.

(3) The transcript from all proceedings upon which Petitioner's claim is based.

(c) **Subsequent Provisions Applicable to Petitioner:** Not later than sixty (60) days following the filing of Respondent's answer and/or written motion for dismissal or summary judgment, Petitioner shall file any additional papers, either in support of the petition, or in opposition to answer or motion. Petitioner's response may include, but is not limited to, further allegations, legal arguments, or authorities either in support of the underlying petition, or in opposition to any motion filed by Respondent. **Absent prior written approval or direction from the Court, no other documentation shall be filed.**

(d) **Calendaring the Petition:** Unless otherwise ordered by the Court, the clerk shall calendar the petition, answer, and any reply, on the *not for oral argument calendar*, seventy-five (75) days after the filing of Respondent's answer or other dispositive motions. All other motions will be set on the *not for oral argument calendar* as directed by the Court.

Notwithstanding these time schedules, Petitioner may, after the filing of Respondent's answer or dispositive motion, file a written request to place the case on the Court's *not for oral argument calendar* not later than two (2) weeks following Respondent's filings.

DATED this _____ day of _____, 19 _____.

Magistrate Judge

cc: Petitioner
Respondent
Courtroom Deputy Clerk