**Rule 248 – Alternate Proposed Revision**

**Version 5-1-2019**

**[REDLINE VERSION]**

**Rule 248. Dismissal**

…

**(b) By the Court.**

(1) If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than ~~91~~ 182 days (~~13~~26 weeks) after the ~~arraignment~~ entry of a plea of not guilty by the defendant, ~~or unless the delay is occasioned by the action or request of the defendant~~, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except if ~~on the day of trial set within the last 7 days of the above time limit a necessity for a continuance arises which~~ the court, in the exercise of sound judicial discretion, determines ~~would warrant an additional delay, then one continuance, not exceeding 28 days, may be allowed, after which the dismissal shall be entered as above provided if trial is not held within the additional time allowed~~ good cause exists to warrant ~~an~~ additional delay up to 182 days. The court may not dismiss the case on these grounds if the delay is occasioned by the action or request of the defendant.

(2) In computing the time within which a defendant shall be brought to trial as provided in this Rule, the following periods of time shall be excluded:

(I) The period of delay caused by an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial;

(II) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance;

(III) The period or delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained, or he resists being returned to the municipality for trial;

(IV) The period of delay caused at the instance of the defendant.

(3) If trial results in a conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the district or appellate court.

(4) If a trial results in a mistrial, any new trial must be commenced within 182 days after the date of the mistrial.

(5) If a trial date has been fixed by the court, and thereafter the defendant requests and is granted a continuance for trial, the period within which the trial shall be had is extended for an additional 182 days from the date upon which the continuance was granted.

(6) If a trial date has been fixed by the court and the defendant fails to appear to any court date after the plea of not guilty, the period in which the trial shall be had is extended for an additional 91 days from the date of the defendant's next appearance in court.

(7) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (b)(1) of this Rule, unless the defendant in person or by his counsel in open court of record expressly agrees to the continuance. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.

(8) To be entitled to a dismissal under this Rule, the defendant must move for dismissal prior to the commencement of his trial or the entry of a plea of guilty to the charge or an included offense. Failure so to move is a waiver of the defendant's rights under this Rule.

(9) If a trial date is offered by the court and the defendant nor his or her counsel expressly objects to the offered date as beyond the time within which the trial shall be had pursuant to this rule, then the period within which the trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provision of this Rule.

**[CLEAN VERSION]**

**Rule 248. Dismissal**

…

**(b) By the Court.**

(1) If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 182 days (26 weeks) after the entry of a plea of not guilty by the defendant, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except if the court, in the exercise of sound judicial discretion, determines good cause exists to warrant additional delay up to 182 days. The court may not dismiss the case on these grounds if the delay is occasioned by the action or request of the defendant.

(2) In computing the time within which a defendant shall be brought to trial as provided in this Rule, the following periods of time shall be excluded:

(I) The period of delay caused by an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial;

(II) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance;

(III) The period or delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained, or he resists being returned to the municipality for trial;

(IV) The period of delay caused at the instance of the defendant.

(3) If trial results in a conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the district or appellate court.

(4) If a trial results in a mistrial, any new trial must be commenced within 182 days after the date of the mistrial.

(5) If a trial date has been fixed by the court, and thereafter the defendant requests and is granted a continuance for trial, the period within which the trial shall be had is extended for an additional 182 days from the date upon which the continuance was granted.

(6) If a trial date has been fixed by the court and the defendant fails to appear to any court date after the plea of not guilty, the period in which the trial shall be had is extended for an additional 182 days from the date of the defendant's next appearance in court.

(7) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (b)(1) of this Rule, unless the defendant in person or by his counsel in open court of record expressly agrees to the continuance. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.

(8) To be entitled to a dismissal under this Rule, the defendant must move for dismissal prior to the commencement of his trial or the entry of a plea of guilty to the charge or an included offense. Failure so to move is a waiver of the defendant's rights under this Rule.

(9) If a trial date is offered by the court and the defendant nor his or her counsel expressly objects to the offered date as beyond the time within which the trial shall be had pursuant to this rule, then the period within which the trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provision of this Rule.

**[CURRENT LANGUAGE]**

**Rule 248. Dismissal**

**…**

**(b) By the Court.** If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 91 days (13 weeks) after the arraignment of the defendant, or unless the delay is occasioned by the action or request of the defendant, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except that if on the day of a trial set within the last 7 days of the above time limit a necessity for a continuance arises which the court in the exercise of sound judicial discretion determines would warrant an additional delay, then one continuance, not exceeding 28 days, may be allowed, after which the dismissal shall be entered as above provided if trial is not held within the additional time allowed.