

CRIMINAL COURT
JUDGE RICHARD M. CAPPELLI
RULES and PRETRIAL ORDER

PROMPTNESS

The court list on Monday begins at 9:30 a.m. This means that the attorney should be in the courtroom with his or her client and ready to proceed. If you have an emergency or a conflict, you must notify my chambers in writing, if at all possible, at your earliest convenience. You must also communicate this to your client.

On Tuesday through Friday, cases will normally be scheduled to begin at 9:00 a.m.

No matter what time is assigned, counsel should be present at least ten minutes before and should inform court staff upon his or her arrival.

PRETRIAL CONFERENCE LISTING

If the case is listed for a pretrial conference, which is usually the first listing, a trial date will be issued. Both counsel and the client must be present. Counsel should have his or her calendar available.

PLEA OFFERS

If the Office of the District Attorney conveys an offer for a plea agreement, you must discuss this with your client prior to the trial listing. If your client is going to accept the offer, you need to review the Guilty Plea Statement and Statement of Post-Sentence Rights with your client and have him or her complete those **before** the trial listing. If the case involves a sex offender, the Addendum to the Guilty Plea Statement-Sexually Violent Offenders also needs to be completed.

If a plea agreement is reached, the ADA and counsel for the defendant should advise my chambers as soon as possible. The court is willing to adjudicate these cases before the next scheduled listing.

SENTENCE MEMORANDUM

Unless there is an agreement regarding a recommended sentence, both the Office of the District Attorney and counsel for the defendant **must** submit a sentencing memorandum at least ten (10) days before the sentencing date.

CRIMES OF VIOLENCE AND SEXUAL OFFENSES

If there is to be a plea agreement which includes a recommended sentence, the Assistant District Attorney must advise the victim and, if a minor is involved, the victim's family before presenting the recommendation to the court. The ADA must also advise the Court as to whether the victim and/or victim's family agrees or disagrees with the recommendation.

JURY OR BENCH TRIAL

At the pretrial listing the ADA and counsel for the defendant **must** advise the Court if the case is going to be trial by jury or a bench trial and the anticipated length of trial. If the case is going to proceed as a bench trial, the defendant must complete the "waiver of jury trial" form prior to the start of the trial.

TRIAL LISTING

At the time the trial listing is issued, counsel is advised that they should be prepared to proceed on one day's notice. Counsel should be aware that many pleas are entered at the last minute, which means another case will be called for trial. In the more serious cases, or at the request of counsel, the court will provide a date certain and will attach counsel.

DISCOVERY

Counsel for the defendant should request informal discovery immediately following the preliminary hearing. It is expected that all counsel will comply with Pa.R.Crim.P. 573. If there are discovery issues which will require the attention of the court, these should be brought to the court's attention by motion.

SUBPOENAS

Subpoenas for records should be served without delay. If subpoenas have been issued and, after a reasonable period of time there has been no response, counsel needs to promptly advise the court. The failure to do so will not be grounds for delay of the trial.

PRETRIAL ORDER

This is the order that is given at the initial trial listing. **Note** that if a continuance is granted, the order automatically advances to the new trial listing.

EMAIL ADDRESS and CELL PHONE NUMBER

Counsel should provide a current email address and cell phone number to the court at the pretrial conference. The court does communicate using email, particularly regarding trial list status and hearing dates and may need to contact counsel by telephone in an emergency.

ARD

If counsel believes his/her client is eligible for ARD, the application should be filed immediately after arraignment. Counsel must also communicate directly with the ADA assigned to the case. If ARD has been rejected and counsel is going to request reconsideration, this must be done without delay and must be processed through the ADA assigned to the case.

TRIAL EXHIBITS

Trial exhibits should be pre marked.

Counsel shall provide the court clerk with a written list of exhibits prior to resting.

If enlargements are not being utilized, counsel should make arrangements with the Delaware County Legal Audio/Visual Department to have the evidence presenter in Court. The trial will not be delayed to allow documents or photos that can be shown via the evidence presenter to be passed to the jurors one-by-one.

If an evidence presenter is needed, or if testimony by video is used, counsel must make arrangements in advance of trial with the Legal Audio/Visual Department.

The Court cannot store blow-ups or enlargements and cannot transmit these if there is an appeal. Therefore, counsel must have 8½ x 11 duplicate copies to be made part of the record.

If there are multiple photographs or documents being mounted or displayed on a single poster board, the poster board will be marked as Exhibit "1" and the individual documents or photos will then be listed as "A", "B", "C", etc. on the board. Copies of each document or photo shall be provided to the court clerk and will be correspondingly marked.

GAGNON II HEARINGS

For persons being detained in the Delaware County Prison, these are usually held starting at 9:30 a.m. on Tuesday mornings. For persons confined to any of the State Correctional Institutions, the date and time are determined by the DOC. Counsel should review the findings and the recommendations of the parole agent with the client prior to the hearing.

CRIMINAL FORMS ONLINE

The following criminal forms are available online and may be downloaded:

- Entry of Appearance
- Guilty Plea Statement
- Addendum Guilty Plea Statement-Sexually Violent Offenders
- Statement of Post Sentence Rights
- Waiver of Jury Trial-Defendant
- Sexually Violent Offenders Notification of Sentencing

If at all possible, please have these completed prior to appearing in court.

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA : **NO: CP-23-CR-**
vs. :
:

ORDER

AND NOW, to wit, this _____ day of _____, 20____, it is hereby ORDERED and DECREED that the above case is listed for Trial the week of _____. You must provide a Pretrial Statement with the following information to the Court no later than _____.

- A. Outstanding pretrial issues and motions in limine;
- B. List of all potential witnesses with full addresses and titles, including experts;
- C. Proposed points for charge and special voir dire questions;
- D. Commonwealth and Defendant must certify that all discoverable materials have been provided (Rule 573);
- E. Any mandatory sentences the Commonwealth will seek to have imposed;
- F. Whether an alibi or mental illness defense is being asserted (Rules 567 and 568);
- G. Estimated length of trial and whether jury or non-jury¹; and
- H. Stipulations of fact.

Failure to provide the Pretrial Statement or discovery may result in sanctions including the exclusion of evidence or witnesses. Trial will not be continued absent extremely exigent circumstances. All motions should be filed at least 30 days prior to trial to avoid unnecessary delay or granting a continuance. Counsel must also review the Delaware County website for this Court’s trial rules. Should the trial be continued, the Pretrial Statement is due three weeks before the next listing.

BY THE COURT:

RICHARD M. CAPPELLI, J.

¹ If an offer is going to be extended by the Office of the District Attorney, it is requested that it be done prior to the submitting of the Pretrial Statement. If this is to be a Bench Trial, do not set forth the terms of the offer.