



**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS**

Tuesday, March 7, 2023

NOTICE TO THE BAR

TRIAL DIVISION – CRIMINAL

**FELONY WAIVER PROGRAM
POLICIES AND PROCEDURES**

Effective March 7, 2023, the attached document outlines the established policies and procedures for the Felony Waiver Program (Courtrooms 604,704,804 and 904).

Honorable Lisette Shirdan-Harris
Administrative Judge, Trial Division

Honorable Lucretia C. Clemons
Supervising Judge, Trial Division-Criminal



The following policies and procedures for the Felony Waiver Program (Courtrooms 604, 704, 804, and 904) will become effective on March 7, 2023.

1. GENERAL UPDATES

- a. First Listings: First listings in a waiver room shall be status conferences to determine trial readiness, including with respect to the completion of discovery. Counsel should also be prepared to inform the Court at the first listing if the case will require the use of an interpreter.
- b. Discovery: As a general matter, all discovery should be provided to opposing counsel prior to the case's first listing in a Felony Waiver courtroom. Counsel should exercise due diligence to resolve any outstanding discovery issues promptly. At the first listing, counsel should be prepared to describe in detail any missing discovery materials. Generally, the Court will direct the Commonwealth to provide any discovery materials that remain outstanding by a date certain.
- c. Courtroom vs. Zoom: Generally, non-substantive matters (e.g., status hearings, pretrial conferences) may be conducted over Zoom. Substantive proceedings (e.g., trials, evidentiary hearings, sentencings) will proceed in person in the courtroom.
- d. Safety Procedures: Counsel, defendants, witnesses, and all others who are physically present in courtrooms must continue to abide by the FJD's most recently issued COVID-19 safety procedures and requirements, including with respect to masking, social distancing, and other safety measures.

2. PRETRIAL CONFERENCES

- a. Timing: Generally, all cases listed for trial will be scheduled for a pretrial conference one week prior to the trial date. Pretrial conferences should normally take place on the same day of the week as the trial (e.g., if a trial is scheduled for a Tuesday, the pretrial conference should generally be held on the Tuesday of the prior week).
- b. Preparation for Pretrial Conferences: Counsel are expected to take all necessary steps to confirm their readiness for trial prior to the pretrial conference, including by confirming in advance the availability of all necessary witnesses for trial. Attorneys for the Commonwealth should exercise due diligence to confirm that all necessary officers and complainants will be present to testify on the trial date. Defense counsel should confer with the defendant prior to the pretrial conference to re-confirm that the defendant wishes to proceed with a waiver trial (as opposed to a jury trial or non-trial disposition).
 - Discovery Issues: By no later than two weeks prior to the pretrial conference, counsel are expected to have completed a review of their files, to have taken all necessary steps to obtain and provide any outstanding discovery materials, and to have communicated with each other regarding any missing items. At the pretrial conference, counsel should be prepared to provide detailed information to the Court about efforts made to complete discovery, including

when such efforts were made. If the Court concludes that counsel did not exercise due diligence, the Court will consider appropriate remedies, including the granting of a continuance, the preclusion of evidence, and/or other sanctions.

- c. Readiness: At the pretrial conference, counsel will be asked to confirm their readiness for trial. Cases involving bail defendants will be deemed ready for trial only if either (1) the defendant has been served with a subpoena for trial, or (2) counsel for the defense accepts service on behalf of the defendant at the pretrial conference. The Commonwealth should be ready to confirm that all witnesses, including necessary officers and complainants, are available to testify on the scheduled trial date.
- d. Continuances Involving Trailing Cases: When the defense seeks a continuance of a waiver trial date due to the pendency of a separate case involving more serious charges in another Common Pleas courtroom (such as when the defendant intends to enter a global plea to all charges), the case normally will be marked as a “trailing case” and will be reassigned to the courtroom where the Common Pleas case with the more serious charges is pending
- e. Trial Information: If a case is ready for trial, counsel should be prepared to provide the following information to the Court at the pretrial conference:
 - i. estimated trial length;
 - ii. number of witnesses;
 - iii. whether any pretrial motions need be addressed; and
 - iv. re-confirm any need for an interpreter (NOTE: As indicated above, requests for an interpreter should be made at the case’s first listing, given that one week is insufficient notice to secure the services of an interpreter.)

3. DATE OF TRIAL

- a. Timing of Trial: During the call of the morning list on the date of trial, trial counsel generally will be provided with anticipated trial start times, which are subject to change. Counsel should provide the courtroom crier with a cell phone number so that changes in trial start times can be communicated. All counsel, witnesses, and defendants scheduled for trial on a given trial date are to remain on call and ready for trial on that date throughout the day.
- b. Exhibits: Counsel should bring at least four copy sets of marked exhibits to trial, including copies for the judge, opposing counsel, and witnesses. The Commonwealth’s exhibits should be provided to defense counsel prior to the start of trial.
- c. Continuance Requests on the Date of Trial: As indicated above, after a case has been confirmed as “ready” at the pretrial conference and has been given a trial slot, continuances will be granted only in rare circumstances. Any continuance request made on the date of trial should include detailed information about counsel’s efforts and due diligence to ensure the presence of all necessary witnesses, as well as detailed information regarding the circumstances of a necessary witness’ failure to appear. Absent compelling justification for a continuance on the date of trial, it is within the sound discretion of the trial judge to deny the continuance request.