

05-CR-C

JUDGE'S CHAMBERS
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
FEDERAL BUILDING
240 WEST THIRD STREET - SUITE 320
WILLIAMSPORT, PA 17701-6466

JUDGE JAMES F. McCLURE, JR.

December 14, 2004

(570) 323-9772

DEC 16 2004

The Honorable Harvey Bartle, III
United States District Judge
Eastern District of Pennsylvania
United States Courthouse, Room 16614
Independence Mall West
601 Market Street
Philadelphia, PA 19106

Dear Harvey:

You will recall at the meeting at the Four Seasons I suggested that your Advisory Committee on Criminal Rules consider an amendment to the rules which would permit a waiver of arraignment. I indicated that we had been doing that for years in Union and Snyder Counties.

Accordingly, I obtained a copy of the Waiver of Arraignment form being used currently in Union County and the same is attached.

I have had a look at Pennsylvania Rule of Criminal Procedure 571 pertaining to arraignment and in subsection (D), the language fairly well tracks Fed.R.Crim.P. 10(b) in that it indicates a defendant may waive appearance at arraignment if certain requirements are met. It does not speak to waiver of arraignment. I have not taken the trouble to track all the amendments to these rules, but I am certain that when we started utilizing the waiver of arraignment it was permitted under the rules implicitly if not explicitly.

No doubt, Union County has simply continued to use the same form it has used since I was there, without paying a whole lot of attention to the nicety of the current rule.

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I understand Jack Bissell's concerns with regard to matters usually reviewed with counsel at arraignment such as a deadline for pretrial motions, a date for jury selection, discovery and the like. I regularly handle all of that in a standard pre-trial practice order. However, my suggestion would only be that a waiver of arraignment be allowed if the judge agreed, as is now the case under Fed.R.Crim.P. 10(b)(3).

We have had a frequent practice recently in the Middle District of the government's filing of superseding indictments, particularly in multi-defendant criminal cases such as those charging conspiracy to distribute cocaine. Currently, I have one seven-defendant case and another ten-defendant case. In the ten-defendant case, a second superseding indictment was filed for the sole purpose of adding the last three defendants. Nevertheless, it necessitated a third arraignment for the first seven defendants. Moreover, the first superseding indictment added a forfeiture count which only applied to two of the initial seven defendants. Therefore, attorneys for all of the first seven defendants were required to appear at three separate arraignments to go through the exercise of entering not guilty pleas, although some of the defendants had waived their own appearances. It has been my experience that all defendants enter not guilty pleas at arraignment unless there has been an early agreement to plead to an information.

It is this kind of wastefulness of our resources to which my recommendation is addressed. We are not only imposing upon the valuable time of the prosecutors, public defenders and the CJA attorneys, as well as the court staff and the probation office, but are adding to the CJA payments for both attorney's fees and expenses in most of these cases. I suspect that there could be a considerable savings of costs nationwide if individual judges were permitted to approve not only waiver of attendance at arraignments but a waiver of attendance by counsel.

This recommendation would, of course, not affect the basic requirement that a defendant make an initial personal appearance under Fed.R.Crim.P. 5.

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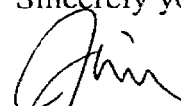
I am aware that the following paragraph appears in the Advisory Committee Notes for the 2002 Amendments to Fed.R.Crim.P. 10:

It is important to note that the amendment does not permit the defendant to waive the arraignment itself, which may be a triggering mechanism for other rules.

It would be necessary, of course, to do a careful cross-check to see if the arraignment date carries further significance, as indicated, and make such revisions as may be required. It should not affect the Speedy Trial Act, as the 70-day period runs from the filing date of the information or indictment or the defendant's initial appearance, whichever is later. 18 U.S.C. § 3161(c)(1).

Kindest personal regards and best wishes for the holidays!

Sincerely yours.



James F. McClure, Jr.
United States District Judge

JFM:llw
Enclosure
cc w/ enclosure:

The Honorable Anthony J. Scirica, Chief Judge
The Honorable Thomas I. Vanaskie, Chief Judge

IN THE COURT OF COMMON PLEAS, 17th JUDICIAL DISTRICT
UNION COUNTY BRANCH - CRIMINAL

No.

COMMONWEALTH OF PENNSYLVANIA
VS.

**WAIVER OF
ARRAIGNMENT**

Defendant

1. I, _____, hereby acknowledge that I have received a "NOTICE TO APPEAR" for Arraignment and copies of the Information stating the charges filed against me by the District Attorney.

2. I am aware that I have a right to have the charges against me, as contained in the information read to me, word for word, in open court after which I will be asked to state whether I plead "guilty" or "not guilty".

3. I am further aware that by my own choice, I may bypass the arraignment procedures, by waiving it, that is, giving up my right to be formally arraigned. In the event I choose to do so, a plea of "not guilty" will automatically be entered on my behalf.

4. I have been advised in accordance with the Rules of Court as to my rights as follows:

- (a) I have a right to be represented by a lawyer of my own choice, or I may represent myself. I am further aware that if I believe that I cannot afford a lawyer to represent me, I may immediately make application for representation by the Union County Public Defender.
- (b) I have a right to file a "Request for a Bill of Particulars" within seven (7) days following that date of my arraignment and ordinarily not later than that.
- (c) I have a right to file a "Motion for Pre-Trial Discovery and Inspection" within fourteen (14) days following the date of my arraignment and ordinarily not later than that.
- (d) I have a right to file various other motions, and any such other motions I may wish to file must ordinarily be filed within thirty (30) days following the date of my arraignment and are to be filed in one document titled "Omnibus Pre-Trial Motion".

5. I further understand that if I do not file these motions in accordance with the Rules of Criminal Procedure as outlined above, I may jeopardize my right to file them at a later date.

6. I acknowledge that I have read and I do understand the foregoing, I now request that the Court take the following action on my behalf:

- _____ I desire to waive a formal arraignment and wish the Court to enter a plea of "not guilty" on my behalf.
- _____ I desire to be formally arraigned by the Court.
- _____ I desire to enter a plea of "guilty" to the charges filed against me at this time.

Date

Signature of Defendant

The foregoing document has been executed by the Defendant after conferring with me in my capacity as defense attorney.

Date

Attorney for Defendant

ORDER

- _____ The waiver of arraignment and entry of a plea of "not guilty" is hereby accepted.
- _____ At the request of the Defendant, a formal arraignment on charges filed by the District Attorney was held this date.
- _____ The guilty plea is accepted.

BY THE COURT

Date

J.