



Paul C. Dawley
Chief Justice

**Trial Court of the Commonwealth
District Court Department**

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Last Transmittal No. to:

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MEMORANDUM

TO: District Court Judges, Clerk-Magistrates, and Chief Probation Officers
FROM: Hon. Paul C. Dawley, Chief Justice
DATE: January 8, 2015
SUBJECT: **1. New recommendations regarding jury waiver**
2. Promulgation of newly amended criminal Pretrial Conference Report form

1. New recommendations regarding jury waiver. On May 28, 2013, the Supreme Judicial Court Working Group regarding *Procedures for the Waiver of Trial by Jury in the Boston Municipal Court and District Court*, chaired by Appeals Court Justice Peter W. Agnes, Jr., issued a report offering recommendations to promote the uniform application of jury waiver procedures in both court departments. The report presents a comprehensive analysis of existing law and procedures regarding jury waiver and includes numerous recommendations to clarify and conform jury waiver procedures to the requirements of current law. On February 18, 2014, the Supreme Judicial Court requested that the recommendations in the report be implemented. A copy of the report is attached for your review.

Consistent with the implementation of the recommendations contained in the report, two forms are hereby promulgated: an amended criminal *Pretrial Conference Report* form and a *Motion for Relief from Trial Election of Jury or Jury-Waived Trial*.

Under the new recommendations, judges continue to have discretion in deciding whether to allow a waiver of a jury trial after assignment of the case to a jury session, but the burden is on the defendant to identify in a written motion appropriate reasons for such a request. In addition, the recommendations do not require a judge to make findings, written or otherwise.

In its report, after summarizing applicable law, the Working Group concluded: (1) until the court obtains the defendant's election of trial by jury or bench trial, as it is required to do at the pretrial hearing, at a subsequent compliance and election event, or at a trial assignment date, the defendant has the unilateral right to waive trial by jury, provided the waiver is in writing, the judge finds that the waiver was knowing, intelligent, and voluntary, and the certificate of counsel required by G.L. c. 218, § 26A, is filed; (2) once the court obtains the defendant's election of trial by jury or bench trial (or no specific election is made and thus as a matter of procedure the defendant has elected a jury trial), the defendant must request approval of the court to waive the right to trial by jury or to be relieved of an earlier waiver; and (3) in exercising its discretion, the court should hear from the Commonwealth as well as the defendant.

The Working Group made the following recommendations:

a. Guidelines for the exercise of judicial discretion

When a judge is asked to approve a change of election, the judge must consider all relevant factors including, in particular, whether the request is (1) timely, (2) based on a specific characteristic of the case or of the defendant, and (3) consistent with the need to maintain efficient caseload management.

b. Motion for Relief from Election of Jury or Jury-Waived Trial

The recommendations require that all requests to waive a jury trial after assignment to a jury session be submitted in writing by defendant's counsel and must include a statement of reasons for the waiver. Similarly, any request for a jury trial after a waiver of jury and assignment to a trial session must be in writing and include a statement of reasons. The SJC working group prepared a "Motion for Relief from Election of Jury or Jury-Waived Trial" form for use by counsel which is attached to this memo and which I am hereby promulgating for use in the District Court. The motion may be photocopied by clerks offices for use by the parties and will also be available in the forms section of the District Court internet web site at <http://www.mass.gov/courts/forms/dc/dc-forms-gen.html>.

c. Hearing on request for post-election waiver of the right to trial by jury

At a hearing on a request to change an election, the judge should hear from the defendant and the prosecutor. The recommendations anticipate that, when the court considers such a request, the judge will allow the prosecution to be heard on the post-election issue in order to report any prejudice that might result from allowance of a late motion.

2. Promulgation of newly amended criminal Pretrial Conference Report form. Attached to this memo is a newly-amended criminal *Pretrial Conference Report* form. All existing Pretrial Conference Report forms should be disposed of when the new forms are received by the court. The amended form will be available from our printer, Shamrock Companies, within the next two weeks, and will be posted on both the internet and intranet.

The amended form now reflects that the defendant is required to select a jury trial or bench trial, and that such election is binding. After the pretrial hearing, the defendant must request permission from the court to change the election. In Part III, the "Court Orders" section of the form includes lines for setting a deadline for the provision of outstanding discovery, a deadline for filing pretrial motions, a deadline for paying the legal counsel fee, a pretrial motion hearing date, a trial status date, and a trial date. It also provides that witness lists and motions to be heard on the trial date must be filed and served no later than four weeks before trial.

If you have any questions regarding the implementation of these recommendations, please do not hesitate to contact me.

PRETRIAL CONFERENCE REPORT

Mass.R.Crim.P. 11(a)(2)(A)

DOCKET NO(s).

CR

Trial Court of Massachusetts
District Court Department



Commonwealth vs. _____

NAME OF DEFENDANT

(To be completed and signed by both parties and submitted to the court at the Pretrial Hearing unless defendant tenders a plea or admission)

A pretrial conference between the parties was conducted on _____, 20 _____, with the following results:

I. DISCOVERY

1. **AUTOMATIC DISCOVERY FOR DEFENSE.** Pursuant to Mass.R.Crim.P. 14(a)(1)(A), the prosecution has disclosed to the defense and the defense has been permitted to discover, inspect, and copy:

- [Completed]** all items and information subject to automatic discovery.
- [Not Completed]** all items and information subject to automatic discovery, *except the following:*

2. **AUTOMATIC RECIPROCAL DISCOVERY FOR PROSECUTION.** Pursuant to Mass.R.Crim.P. 14(a)(1)(B), the defense has disclosed to the prosecution and the prosecution has been permitted to discover, inspect, and copy:

- [Completed]** all items and information subject to automatic reciprocal discovery.
- [Not Completed]** all items and information subject to automatic reciprocal discovery, *except the following:*

- Not yet applicable** because the prosecution has not yet completed all automatic or ordered discovery.

3. **UNRESOLVED DISCOVERY ISSUES.** With respect to any discovery to which the parties are or may be entitled, automatically or by court order, pursuant to Mass.R.Crim.P. 14 and which has not yet been provided:

- The parties agree as follows *(list items and agreed upon date of delivery, inspection, etc.):*

- The defense is filing herewith the following motion(s) to compel discovery:

- The prosecution is filing herewith the following motion(s) to compel discovery:

4. **CERTIFICATE OF COMPLIANCE.** The undersigned acknowledge that each party must file a Certificate of Compliance when the party has provided all discovery required by rule, agreement, or court order, pursuant to Mass.R.Crim.P. 14(a)(3).

5. **SUBSEQUENTLY DISCOVERED MATERIAL.** The undersigned acknowledge their continuing duties regarding discovery pursuant to Mass.R.Crim.P. 14(a)(4).

II. OTHER PRETRIAL MATTERS

6. **NON-DISCOVERY MOTIONS.** In addition to any discovery-related motions listed above, the following motions will be filed on matters upon which the parties have *not* reached an agreement:

7. **NOTICE OF ALIBI** (*Mass.R.Crim.P. 14[b][1]*). The Commonwealth hereby notifies the defendant that the time, date, and place of the alleged offense was as follows:

_____.

Defendant agrees, if an alibi defense will be offered, to notify the Commonwealth in writing on or before _____, 20 ____, of the place(s) at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the defendant's alibi witnesses, or may here so state:

_____.

The Commonwealth agrees to notify the defendant in writing within 7 days of service of the defendant's notice of alibi, of the names and addresses of witnesses on whom it intends to rely to establish defendant's presence at the scene of the alleged offense or to rebut any of the defendant's alibi witnesses. Both parties acknowledge their continuing duty under Mass.R.Crim.P. 14(b)(1)(C) to disclose additional alibi witnesses.

8. **NOTICE OF OTHER DEFENSES** (*Mass.R.Crim.P. 14[b][2], [3]*). If defendant intends to rely upon the defense of lack of criminal responsibility or upon a defense based upon a license, claim of authority or ownership, or exemption, defendant must notify the Commonwealth within 21 days of the assignment of a trial date, or may here so state:

9. **STIPULATIONS OF FACT:** _____

10. **CASE INFORMATION** (*not binding*):

No. of Witnesses: Prosecution _____ Defense _____ Estimated length of trial: _____

11. **CASE INFORMATION** (*binding*): With Jury. Jury Waived [Prepare jury waiver form for the Court].

12. **CERTIFICATION.** The undersigned certify that the information set forth above is accurate and complete as of the date of this Pretrial Conference Report. Pursuant to Mass. R. Crim. P. 11(a)(2)(A), any agreement between the parties set forth herein shall be binding and shall control the subsequent course of the proceedings.

 Assistant District Attorney

 Defense Counsel

 Pro Se Defendant

Defendant's Signature (*required if waiver of constitutional right or stipulation of material fact set forth herein*)

III. COURT ORDERS

(To be completed by Judge.) After hearing, the Court orders as follows:

Counsel report discovery is complete. All outstanding discovery must be provided to opposing counsel by _____

Pretrial motion hearing date: _____ Filing deadline: _____ Evidentiary Non-evidentiary

Motions to be heard on trial date and witness lists must be served on the opposing party and filed no later than four (4) weeks prior to trial.

The balance of the legal counsel fee must be paid by _____ Trial Status date: _____ Trial date: _____

Justice

Date

Motion Pursuant to Rule 19 (a) for Relief from Election of Jury or Jury-Waived Trial	DEPARTMENT	Commonwealth of Massachusetts Trial Court Department
	DIVISION	DOCKET NO.

Commonwealth
v.
_____, Defendant

I, _____, the Defendant, now respectfully request relief from my election of trial
 by jury by judge, and hereby move for trial: by jury by judge

My reasons for requesting relief from trial election are:

- I/my attorney have recently become aware of additional evidence that could not have been discovered earlier and that bears on my decision whether to proceed with a trial by jury or a bench trial. *(Specify below.)*
- Specific characteristics of this case have caused me to reconsider my original election. *(Specify below.)*
- Specific characteristics about myself, as the Defendant, have caused me to reconsider my original election. *(Specify below.)*
- I have retained new counsel.
- Other. *(Specify below.)*

On information and belief, my request for relief from trial election will not interfere with the orderly and efficient resolution of cases in this court.

DATE

DEFENDANT

COUNSEL FOR DEFENDANT

BBO NO. _____

(To be completed by the Judge)

Upon motion of the Defendant in the above-captioned case, and after colloquy with the Defendant at a hearing at which the Commonwealth and the Defendant, representing him/herself Defendant, represented by counsel, were present, the Motion Pursuant to Rule 19 (a) for Relief from the Trial Election is hereby GRANTED DENIED.

SO ORDERED.

DATE

JUSTICE