

Driving While Under the Influence Materials

Judicial Conference on September 08, 2022

1. The case is submitted, the defendant is arraigned, and the case is set for a pretrial conference.
 - a. Defendant is entitled to hire his own attorney, have a public defender appointed or represent himself/herself after a signed waiver. Rule 6.
 - b. At the ptc you can either take a plea, dismiss the case on state motion, set to jury trial or bench trial with a waiver signed by all parties or continue the case for additional work.
2. If there is a plea agreement the parties would submit a signed plea agreement to either a guilty plea, a no contest plea or an Alford plea unless you are in West Virginia. Defendant can always plea guilty to the court on some or all the counts. A timeline can be especially important in resolving the case. New Arizona statute SB 1407 effective September 29, 2021, requires that defendant serve at least eight consecutive hours in jail to get credit for one day.
3. If there is no plea and the state is not going to dismiss the case, then the defense could file a motion to suppress or dismiss. Rule 16.2. This need to then be set to an oral argument or an evidentiary hearing. Usually even when labelled as a motion to dismiss you do not have the power to dismiss the case. You usually only have the power to suppress the evidence, but without the evidence the state will need to dismiss the case. If you suppress the evidence the state can then dismiss the case and/or appeal your decision. If you are upheld the case is over. If you are overruled and the defense does not take the case up, the state will refile the charges.
4. The case is not going to plea, be dismissed and the state has its evidence, the case will eventually be set to trial. Rule 18. The defendant is entitled to a jury trial by statute. The defendant and all the parties case always waive the jury and have a bench trial. For this is to happen all parties not just the defendant needs to sign a waiver of jury trial. That waive should be gone over on the record with you addressing the defendant. This almost never happens and do not make any threats or promises to get a waiver.
5. Time management for cases going to trial:
 - a. Your court must do jury trials or there is no reason to plea.
 - b. Set a timeline for how long cases are given to be set to jury trial.
 - c. Settlement conferences, Rule 17.4(a)(2).
 - d. Master calendar; and
 - e. Set several cases to jury trial on the same date and time.
6. Set the jury trial date. Rule 18 and 19. You will need at least six jurors for a limited court. On the jury date, settle all motion in limine, how long the trial will last, and the jury instructions. Pick the jury and swear them in and begin the trial. Almost never grant a mistrial on your own, or on the state's motion unless the defense agrees. If you do and it is not manifest injustice the case is over. After openings, the State presents its case, decide any Rule 20 motion and then if they wish Defense will present their case. The jury decides the case and you decide any non-jury charges. If the jury returns a not guilty verdict and there are no other charges that ends the case. Always remember to thank the jury. Do not complain about the verdict or the jury conduct unless you are required by law. If the jury returns a guilty verdict or you found the defendant guilty or responsible on other charges, thank the jury, release the jury, and then proceed to sentencing unless a party or you objects. If a party or you object you must set off sentencing

date. Sentencing and restitution hearing should be on the same date. Post-trial motions Rule 24.
Appeal/PCR Rule 31 and Rule 32.