

7:

MANAGEMENT OF PROCEEDINGS

1 General Organisation for Court

Before you go to Court:

- make sure that both clerks are present and ready for Court to commence;
- if there is a need to have another Court interpreter, then ensure that the person is duly sworn and his or her role is explained before the proceedings start;
- ensure that you have a police orderly for your Court and that he or she is briefed about the order of proceedings;
- if there are chamber matters, they should not proceed beyond 9.30am.

When in Court:

- start Court on time and rise at the expected time. This is not only for your benefit but also for counsel, the prosecutors and Court staff. General rising times are:
 - ≡ morning break 11.30am - 11.45am
 - ≡ lunch 1.00pm - 2.15pm
 - ≡ afternoon break 3.30pm - 3.45pm
 - ≡ finish 4.30pm.

2 The Evidence Sheet

2.1 General

There will be an evidence sheet for each file against the defendant.

The file will have the reference number of the case at the top right hand corner.

The colour of the file may indicate the type of case contained in the file:

- blue for criminal cases;
- brown for civil matters;
- pink for traffic cases; and
- orange for appeal matters.

You must check that the information contained in the charge sheet is duly sworn and that the dates of the offence and appearance are correct.

2.2 Endorsing the Criminal Evidence Sheet

Remember that those who follow you need to know what you have done. You should endorse each evidence sheet with:

- the action you have taken in Court;
- the correct date;
- your signature, at the conclusion of the proceedings.

Do all of the above in Court if that is possible.

Neatness, precision and full information are essential.

Standard information in the evidence sheet includes:

- Election if applicable;
- Right to counsel;
- Plea;
- Name of counsel;
- All remands or adjournments and conditions of such;
- Bail and bail conditions;
- Any amendment to the charge, fresh plea and election;
- Consent to amendment by the defendant;
- Name and evidence suppression and details;
- Service of disclosures;
- Witness numbers and hearing times;
- Interlocutory applications and rulings;
- The final disposal of the case whether it be:
 - the conviction of the defendant;
 - dismissal of the charge;
 - dismissal for want of prosecution;
 - withdrawal of the charge by leave; or
 - acquittal of the defendant;
- The sentence and details;
- Any award of costs, the amount and by whom they are to be paid.

2.3 Common Abbreviations

RTC	Right to counsel
CREU	Charge read, explained and understood
RIC	Remand in custody
F/B	Fresh bail
B/E	Bail extended
F/P	Formal proof
PG	Plead guilty
PNG	Plead not guilty
F/S	Fresh service
N/S	Not served
N/A	No appearance
NPS	No proof of service
Adj	Adjourn
B/W	Bench warrant
BWE	Bench warrant extended
M	Mention
H	Hearing
R	Ruling
S	Sentencing
J	Judgment
S/D	Stood down

3 Order of Calling Cases

The following is a suggestion in the order of calling cases.

- Call through defended hearing cases to find out which are ready to proceed and stand down cases according to estimated time for hearing.
- Next, call cases where defendants are in custody to free up police and prison officers.
- Call adjourned cases and those that had defendants previously remanded.

- Deal with matters that counsel appear consecutively so they can get away.
- Deal with sentencing matters and judgments near the end of the list.
- Finally deal with the balance of the list, which may include closed-Court proceedings.

4 Disclosure

Defendants are entitled to know the evidence against them before they enter a plea to the charge. Counsel should know the evidence against their client before they advise them what to do: *s28(1)(c) Constitution*.

Early disclosure of the police evidence is essential for the proper working of the case-flow management in criminal proceedings.

5 Adjournments

The power to grant an adjournment is provided for under *s202 CPC*, as amended by *s6 Criminal Procedure Code (Amendment) Act 1998*.

During the hearing of the case, you must not normally allow an adjournment other than from day to day until the trial reaches its conclusion: *s202(1) CPC*.

The party seeking an adjournment must show “good cause” before an application for adjournment is considered. Good cause includes, but is not limited to, the reasonably excusable absence of a party or witness or of a party’s legal practitioner: *s202(1)(2) CPC*.

Additionally, counsel making the application for adjournment should be in a position to deal with the consequences if the application is refused: See *Sayed Ahmed Hussin v Resorts Management Ltd* 1990 36 FLR 8.

If a case is adjourned, you may not dismiss it for want of prosecution and must allow the prosecution to call its evidence or offer no evidence before adjudicating on the case: *s202(6) CPC*.

A case must not be adjourned to a date later than 12 months after the summons was served: *s202(7) CPC*.

See *DPP v Vikash Sharma* 40 FLR 234; HAA 0011d.94s; *Robert Tweedie McCahill v R* FCA Crim App No. 43 of 1980; *Rajesh Chand & Shailesh Kumar v State* FCA Crim App No. AAU0056 of 1999S; *State v Preet Singh Verma* FCA Crim App No. 1039 of 2001.

6 The Mentally Ill Defendant

The procedure in cases where the defendant is of unsound mind or otherwise incapacitated is provided for under the *Criminal Procedure Code*.

If at any time after a formal charge has been presented, you have reason to believe that the defendant may be of unsound mind so as to be incapable of making his or her defence, you may adjourn the case and make an order for a medical report or to make other enquiries as you deem necessary: *s148(1) CPC*.

Upon receipt of such medical evidence, if you are of the opinion that the defendant is of unsound mind that he or she is incapable of making a defence, postpone further proceedings and make a report of the case to the President: *s148(2) CPC*.

The President has the discretion to issue a committal warrant for the commitment of the defendant to a mental hospital or other suitable place of custody: *s148(4) CPC*.

Where there is a postponement of proceedings, you may resume proceedings if you consider that the defendant is capable of making his or her defence. A certificate from the medical officer of the mental hospital would be sufficient evidence to confirm the same: *ss151, 152 CPC*.

Where the defendant raises the defence of insanity at trial and the evidence before the Court supports such contention, make a special finding to the effect that the defendant was not guilty by reason of insanity, and report the case to the President for a committal order: *s150 CPC*.

7 Cultural Knowledge

Some knowledge about the different ethnic groups and their diverse cultures would be an added bonus for the Magistrate in his or her daily work. What may appear strange and weird for one set of group may be the acceptable norm in another.

Reconciliation as a means of resolving certain offences is a legislated provision under *s163 CPC*. However for the Fijian “bulubulu” system, a misconception is that every wrong or offence can be settled by such means. The bulubulu should be considered in its context, as a strong mitigating factor, and not a means to evade or escape criminal sanction.

In the unique case of *Reginam v Netani Lati & Ors*, Review No.1 of 1982, the High Court acknowledged a sentence of corporal punishment meted out by village elders. The basis of this decision was the view that the “elders were exercising customary law which though had no legal force ... are entitled, in a suitable case to recognition by the Courts in such manner as to uphold their sanctity and moral force within the Fijian society”.

In the Indo-Fijian custom, respect for the community is of such significance that informal relationships within a settlement are often considered more important than relationship by kin. It would therefore not be unusual to have a defendant naming “aunts” and “uncles” in Court though in reality there are no blood connections.

There are other minority groups that co-exist in Fiji whose cultures and traditions add diversity to the Court procedure. For example, the Asian migrant population have grown in number and regularly appear in Court. The Court structure has had to accommodate this new clientele without any additional resource. As a Magistrate, you may have to use your own initiative in utilising limited resources for this new challenge.

8 Victims

Victims of crime are usually the main prosecution witnesses. There is no specific legislation dealing with victims, but Magistrates are expected to treat them with courtesy and compassion.

In particular, you should restrain defence lawyers from humiliating victims of crime in Court.

Especially vulnerable witnesses, such as the very young, very old, or disabled, are entitled to special measures for the giving of evidence. Consider the use of screens, allowing people in wheelchairs to give evidence from the floor of the Court instead of the witness box and ensuring that a family member or friend can sit with a child victim or elderly victim while giving evidence.

8.1 Checklist

1. Identify the victim/s.
2. At all times treat the victim/s with courtesy and compassion.
3. At all times respect the victim/s privacy and dignity.
4. If the victim and offender both want a meeting, encourage that to occur.
5. Take into account the victim’s views on a bail application.

6. Before sentencing, consider:

- the impact on the victim;
- giving the victim the opportunity to speak to the Court;
- receiving a victim impact report.

8.2 Judicial Language and Comment

Ensure that you acknowledge any statements by the victim in your sentencing remarks. A brief summary is appropriate.

Be careful about “blaming” the victim, for example, she was drunk, unless the victim’s actions are clearly relevant to mitigate the offence and you are certain about the facts.

8.3 Victims of Sexual Offences

Three factors that make sexual offence trials particularly distressing for victims are:

- the nature of the crime;
- the role of consent, with its focus on the credibility of the victim; and
- the likelihood that the defendant and victim knew each other before the alleged offence took place.

Nature of the crime

The crime experienced by sexual offence victims is more than an assault. Due to the sexual nature of the acts and the physical invasion of the person, victims often experience feelings that are not present in other types of crimes.

The trial process adds to the difficulty that sexual offence victims experience because:

- they must face the defendant in open Court;
- they are usually required to recount the offence against them in explicit detail in order to establish the elements of the offence;
- they may be subject to cross-examination by the defendant if there is no defence counsel, which can be a very traumatic experience.

Focus on the victim’s credibility

The role of consent makes adult sexual offence trials different from most other criminal proceedings. Behaviour that is ordinarily legal (engaging in sexual activity with another adult) becomes illegal in the absence of consent.

When the alleged offence occurs in private, which is often the case, often the trial comes down to the word of the victim against the word of the defendant. Therefore, the trial often turns on whether the victim is a credible witness.

Due to the fact that the credibility of the victim is at issue, it is necessary for the defence to use cross-examination of the victim to try and discredit them. This may further victimise the victim. Overseas research shows that some victims find this to be like a second rape/sexual offence.

Relationship between the victim and defendant

Unlike some other types of crimes, it is often the case that the victim and defendant knew each other before the offence occurred. This can increase the distress and difficulty experienced by the victim because they have been betrayed by someone they trusted, and because family and other relationships usually mean on-going contact between the defendant and the victim.

Dealing with victims of sexual offences

In order to minimise the distress of victims of sexual offences, you should:

- conduct the trial and control the demeanour of those in the Courtroom in a manner that reflects the serious nature of the crime;
- ensure the safety of the victim in the Courtroom;
- ensure that Court staff understands the danger and trauma the victim may feel;
- consider allowing an advocate of the victim to sit with them during the trial to offer support;
- enforce motions that protect the victim during testifying, such as closing the Courtroom and providing a screen to block the victim's view of the defendant. This is especially important where the victim is a juvenile;
- know the evidentiary issues and rules that apply in sexual offence cases, such as corroboration, recent complaint and the inadmissibility of previous sexual history. This will enable you to rule on the admissibility of evidence and weigh its credibility;
- consider allowing a victim impact statement in sentencing.

9 Child Witnesses

The Constitution provides that arrangements be made if a child is to be called as a witness in a criminal proceeding: *s29(9) Constitution*. It is therefore important to use your discretion to protect the child witness:

- In cases of indecency, the Courtroom must be closed. This is a mandatory requirement of the *Juveniles Act*.

- You must also consider whether a screen should be used to screen the child witness from the defendant. The prosecution can be ordered to provide a screen. In the rural Courts, a mat may have to be used as a screen.
- If a screen is not available, you can ask the child to face you and not to look anywhere else during evidence-in-chief and cross-examination.

When cross-examination of the child is conducted, you are expected to be sensitive to the child's special vulnerability in deciding whether or not you should allow the questions to be asked, as under the *Convention on the Rights of the Child*, the judiciary must give primary consideration to the interests of children.

10 Unrepresented Defendants

Because of the expensive cost of hiring lawyers to conduct proceedings, a significant number of defendants appear in the Magistrate's Court on their own behalf. Most have little or no idea of Court procedures and what is involved and rely on the system to assist to some extent.

If at all possible, every defendant charged with an offence carrying imprisonment terms should be legally represented. However, if legal representation is not available, then you are to ensure that he or she understands:

- the charge(s);
- that the office of the Legal Aid is available to assist with legal representation; and
- that if found guilty, there is a probability of an imprisonment term.

To assist in the smooth running of any hearing, you should give an initial explanation outlining:

- the procedure;
- the obligation to put their case;
- the limitation of providing new evidence;
- the need to ask questions and not make statements; and
- any issues arising out of the evidence.

For an unrepresented defendant, before plea or election is entered:

- advise of the right to a lawyer;
- advise of the right to apply for legal aid;
- put each charge and ask for election/plea.

See *Akuila Kuoutawa & R Labasa* Crim Appeal No. 2/75: “in the case of an unrepresented defendant, any statutory defence should be brought to his attention”. See also *Alipate Karikai v State* Labasa Crim Appeal No. 110 of 1999, HC of Fiji.

11 Disruption and Misbehaviour

The defendant is entitled to be present in Court during the whole of his or her trial, unless he or she interrupts the proceedings. The defendant’s right is protected by the *Constitution: s28 (1) (h) & (2)*.

Where a defendant is required to appear in Court, but fails to do so, you may

- issue a warrant for his or her arrest: *s90 CPC*;
- adjourn the proceedings to such time and conditions as you think fit; or
- where the maximum penalty is only 6 months and a fine not exceeding \$100, proceed without the defendant: *s199 CPC*.

You have power to impose criminal sanctions for offences relating to judicial proceedings: *s136 Penal Code*. Offences under this provision include:

- failure to attend Court after being summoned: *s136(1)(b) PC*;
- refusal to give evidence after being sworn in: *s136(1)(c) PC*;
- refusal to answer question during trial: *s136(1)(d) PC*;
- obstructing or disturbing the proceedings: *s136(1)(g) PC*.

Where the above offences are committed in view of the Court, you may order that the defendant be detained in custody till the rising of the Court on the same day: *s136(2) Penal Code*.

Magistrates do not have inherent jurisdiction to cite anyone with contempt of Court. If you think that someone should be charged with one of the offences under *s136 Penal Code*, then refer the matter to the DPP for investigation and prosecution.

For further discussion of contempt of Court proceedings, see *Elizabeth Rice & Ors v S M Shah* [1999] FJCA 57; AAU0007U.97S, (High Court Criminal Action No. HAA002 of 1997).

If you think that someone should be summoned for contempt of Court, then refer the matter to the High Court through the Chief Registrar. Do not attempt to deal with it yourself.

12 Case Management

The American Bar Association expresses the following in relation to case-flow management:

“From the commencement of litigation to its resolution, any elapsed time other from reasonably required for pleadings, discovery and Court events is unacceptable and should be eliminated.”

On the question of who controls litigation and judicial involvement it says:

“To enable just and efficient resolution of cases, the Court, not the lawyers or litigants should control the pace of litigation. A strong judicial commitment is essential to reducing delay and once achieved, maintaining a current docket”.

To make any case management system work requires judicial commitment.

Goals

The goals of case management are:

- to ensure the just treatment of all litigants by the Court;
- to promote the prompt and economic disposal of cases;
- to improve the quality of the litigation process;
- to maintain public confidence in the Court; and
- to use efficiently the available judicial, legal and administrative resources.

The following quotes from the *1995 Report of the New Zealand Judiciary*, at page 14, provides a good description of case-flow management:

“It is essentially a management process and does not influence decisions on the substantive issues involved in a case. Case-flow management acknowledges that time and resources are not unlimited, and that unnecessary waste of either should be avoided”.

“The principles of case-flow management are based on the managing of cases through the Court system to ensure they are dealt with promptly and economically and that the sequence of events and their timing are more predictable. The progress of cases through the Courts is closely supervised to ensure agreed time standards are met, and the early disposition of cases that are not likely to go to trial is encouraged”.

Principles

The principles of case-flow management are:

- Unnecessary delay should be eliminated;
- It is the responsibility of the Court to supervise the progress of each case;
- The Court has a responsibility to ensure litigants and lawyers are aware of their obligations;
- The system should be orderly, reliable and predictable and ensure certainty;
- Early settlement of disputes is a major aim; and
- Procedures should be as simple and easily comprehensible as possible.

Standards

It will be the Fiji judiciary, in consultation with the Law Society and the Director of Public Prosecutions, to set the standard which it wishes to apply to disposition of criminal cases. Experience has shown that without the support of one these other parties, the judicial objective to efficiently manage its cases cannot be achieved.

Examples of standards and time for dispositions are as follows:

1 Magistrate's Court: Criminal Summary

The following case-flow standards might apply (from date of charge):

Where the case is defended:

- 3 weeks to plea
- A further 13 weeks to hearing
- A further 3 weeks to sentence (where applicable).

Where the case is undefended:

- 3 weeks to plea.
- A further 3 weeks to sentence (where applicable).