

## 10. First appearance

### 10.1 General

A defendant, on first appearance, will be present:

- after arrest and in police custody,
- after arrest and on police bail or notice, or
- on summons.

At the first hearing, you will be concerned with some or all of the following:

- the integrity of the charge (if not already considered)
- non-appearance, therefore summons and warrant,
- legal representation,
- plea, including fitness to plead,
- election,
- remands in custody,
- bail,
- adjournments.

It is your duty to explain the proceedings to the defendant and explain his or her rights to legal representation, prior to putting the charge. Where there is a need to obtain reports, then it is also incumbent upon you to explain the same to the defendant.

It is also incumbent to ask the defendant whether they wish to have legal representation. See the Fijian case of [Naceva v State \[2001\] FLCA 8; AAU0014.1998 \(24 May 2001\)](#).

Usually this appearance is fairly quick and informal. There is a need to make the defendant feel at ease, but not to the extent that he or she displays over-familiarity. A firm and steady directive should be the rule for Magistrates at this initial proceeding.

Urge an unrepresented defendant to see a lawyer. This will save time and ensure that he or she understands the charges, knows the penalties, and is aware of his or her rights. It will also help to identify if there is a need to order any relevant reports to assist you in your deliberations of the case.

If legal aid is sought, adjourn the matter to allow the defendant to liaise with the Office of the Public Legal Defender. However, the prosecution should disclose first phase documents to the defendant at this stage in order to assist the Defender's counsel to assess the defendant's application for assistance.

## 10.2 Non-appearance by the defendant

If the defendant does not appear, either in response to a summons, police bail or police notice, ask the prosecutor to provide you with evidence of service or bail bond. Note that an affidavit of service purporting to be made before a magistrate or Commissioner for Oaths that a summons has been served shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved: s [60](#) CPA.

If service has been effected, you may:

- dispense with the attendance of the defendant in certain cases;
- issue a bench warrant to arrest the defendant; or
- ask the prosecution whether they are in a position to formally prove their case.

## 10.3 Power to dispense with personal attendance of defendant

s [61](#) CPA

Where a magistrate issues a summons, you may dispense with the personal attendance of the defendant if:

- the offence in the charge is not a felony; and
- you see reason to do so or the maximum punishment of the offence is a fine or imprisonment of three months or both; and
- and the defendant pleaded guilty in writing or appeared by advocate: s [61](#) CPA.

Every such summons should include a notice stating that any fine which may be imposed by the court will be paid within eight days of the date appointed in the summons for attendance. There should also be a warning that the defendant will not receive notification from the court as to any such fine but that it is his or her duty to make inquiry from the court.

If the defendant fails to pay the fine within that time or to apply within that time to the court for an extension of that time, he or she will be liable to be committed to prison: s [61\(1\)](#) CPA. The court may issue a warrant for the arrest of the defendant and committal to prison to serve that sentence: s [61\(4\)](#) CPA.

Where the District Court considers that it would be just to order disqualification of a defendant (not present in person before the court) under the provisions of the [Motor Traffic Act 2014](#), it should order a summons to be served upon the defendant calling upon him or her to show cause why such disqualification should not be imposed. If the defendant does not attend upon the return of the summons or fails to show good cause why the disqualification should not be imposed, the court may order disqualification: s [61\(5\)](#) CPA.

### 10.3.1 Warrants for arrest

Where a defendant, after proper service of a summons, does not attend at the time and place appointed in and by the summons, and his or her personal attendance has not been dispensed with under Section 61, the District Court may issue a warrant to arrest him or her and cause him or her to be brought before it: s [63](#) CPA.

The warrant of arrest should be signed by the magistrate issuing it and bear the seal of the District Court. It should state shortly the offence, and name or otherwise describe the defendant: s [64](#) CPA. It should normally be directed generally to all police officers but the District Court may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons and such person or persons shall execute it. Where a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them: s [66](#) CPA. Every such warrant remains in force until it is either executed or cancelled by the District Court: s [64](#) CPA.

When issuing a warrant for the arrest of a person in respect of any offence other than murder or treason, the magistrate may direct by endorsement on the warrant that, if that person executes a bond with sufficient sureties for his or her attendance before the court at a specified time, the person to whom the warrant is directed shall take such security and release that person from custody: s [65\(1\)](#) CPA. The endorsement should state:

- the number of sureties,
- the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and
- the time at which he or she is to attend before the District Court: s [65\(2\)](#) CPA.

Wherever security is taken, the person to whom the warrant is directed must forward the bond to the District Court: s [65\(3\)](#) CPA.

## 10.4 Unrepresented defendant

See the chapter on "[Management of Proceedings](#)"

If possible, all defendants in need charged with criminal offences, should see the public legal defender (s [50C](#) CPA). This may require an adjournment to another date for a plea to be taken.

Where the defendant insists on representing him or herself, be careful that you comply with Art [5](#) of the Constitution. This outlines the rights of defendants charged with criminal offences.

It is your duty to see that the hearing is fair.

### 10.4.1 Office of the Public Legal Defender

The Office of the Public Legal Defender was established in 2016 under the [Criminal Procedure Act 1972](#). The Office aims to provide free legal representation to enable all Nauruans to have access to justice.

The Office of the Public Legal Defender is supervised by the Director of the Office of the Public Legal Defender (Director). The importance of the Office is reflected by the fact that the Director is appointed by His Excellency the President of the Republic of Nauru. The Office establishment consists of the Director, five barristers and solicitors and two pleaders. This comprises the team of legal practitioners in the Office. The administrative support is provided by one paralegal officer.

The functions, responsibilities and duties of the Office are to provide legal aid, advice and assistance to people:

- who may be charged or have been charged with a criminal offence;
- who need aid, advice and assistance in respect of legal proceedings under any other Act; or
- where the Nauru Court of Appeal, Supreme Court of Nauru or District Court requests or is required under a written law to assign a legal representative to represent a person in a court proceeding.

The Director, after consultation with the Secretary for Justice, has issued [guidelines](#) setting out eligibility criteria for receiving legal aid, advice or assistance.

## 10.5 Putting the charge to the defendant

### 10.5.1 Identifying the defendant

When a defendant is brought before you, you must first ascertain who he or she is. Ask for his or her:

- full name,
- occupation, and
- age

This is very important. More than one person may share the same name. The defendant might be a juvenile and you would need to treat a juvenile defendant differently to adults.

### 10.5.2 Explaining the charge to the defendant

You must clearly explain the nature of the offence to the defendant. This involves explaining the elements.

Unless the defendant clearly understands the nature of the offence with which he or she is charged, he or she will not be able to work out if he or she has a defence. This will affect his or her ability to enter a plea.

### 10.5.3 Check for understanding

Check whether the defendant understands the charge. When you are sure he or she understands the full nature of the offence charged, then asks how he or she pleads to the charge. Never take for granted that the defendant might have understood your explanation without his or her confirmation.

## 10.6 Reconciliation

S [123](#) CPA

A court may promote reconciliation and encourage and facilitate settlement in an amicable way, on terms of payment of compensation or other terms approved by it.

This applies for all proceedings for common assault or for any other offence of a personal or private nature for which a fine or sentence of imprisonment for a term not exceeding one year may be imposed. The court may then order the proceedings to be stayed or terminated.

The complainant/victim must agree – you cannot impose this on parties. You may only encourage and facilitate reconciliation.

It is a good idea to adjourn the proceedings to give the defendant time to carry out the terms of the settlement. When you are satisfied that the terms have been satisfied, you may order that the proceedings be stayed or terminated.

## 10.7 Pleas

### 10.7.1 Pleas generally

A defendant can either plead “guilty” or “not guilty” to a charge: s [190](#) CPA

The defendant may, with leave of the court, change a not guilty plea to guilty at any time.

The defendant may also, with leave of the court, change a guilty plea to not guilty at any time, but before sentencing.

For pleas generally, see [Deidenang v Republic \[1971\] NRSC 3; \[1969-1982\] NLR \(D\) 1 \(19 February 1971\)](#), [Daragouw v Republic \[1972\] NRSC 7; \[1969-1982\] NLR \(D\) 10 \(11 September 1972\)](#), [Republic v Debaio \[2021\] NRSC 30; Criminal Appeal 12 of 2020 \(24 August 2021\)](#), [Mwaradaga v Republic \[1977\] NRSC 7; \[1969-1982\] NLR \(D\) 58 \(29 September 1977\)](#) – plea of a juvenile.

### 10.7.2 Taking the plea

After you are sure that the defendant understands the charge, take a plea. See s [190](#) CPA.

Ask the defendant whether the charge is true or not. If the defendant says it is true:

- ask the prosecution to read a brief summary of the facts,
- tell the defendant to listen very carefully to this. Explain that he or she will be asked at the end whether the facts are true,
- after the prosecution has read the facts, ask the defendant whether they are true or not.

If the defendant admits the truth of the facts, this will suffice as a plea of guilty. You then:

- record his or her admission as nearly as possible in the words used by him or her,

- convict him or her, and
- pass sentence or make an order against him or her (either immediately or at a later date).

If the defendant admits the truth of the charge, but makes some remarks or comments, listen carefully because sometimes those remarks or comments indicate a possible defence. You need to be particularly alert to this if the defendant is unrepresented.

If the defendant disputes any of the facts read out by the prosecution, consider whether the disputed facts are relevant to the elements of the offence. Note that a plea of guilty is a plea to the elements of the charge, not necessarily acceptance of the Police summary of facts. If the facts in dispute are not relevant to the elements, enter a plea of guilty.

If the disputed facts are relevant to any of the elements, or where any remarks or comments made by the defendant may amount to a defence, you must enter a plea of not guilty for the defendant. For example, on a charge of malicious damage, one of the elements is actual damage to property. If the defendant pleads guilty but disputes the amount of damage (eg: the prosecution alleges 10 glasses were damaged and the defendant says only three were damaged), then the element of damage is not disputed, just the amount. That is relevant to sentence, not guilt, and you should enter a plea of guilty.

On a charge of drunk and disorderly, one of the elements is that the behaviour must be in a public place. If the defendant admits to being drunk and disorderly, but says it was in his friend's backyard, that is relevant and you should enter a plea of not guilty for the defendant. It is then up to the prosecution to prove he was in a public place.

Where the defendant refuses to plead, a plea of not guilty should be entered: s [190\(6\)](#) CPA.

Where the defendant is represented, a plea by counsel is acceptable.

### 10.7.3 Fitness to plead

You will need to be conscious in particular cases whether the defendant is fit to plead. A defendant is under a disability if he or she cannot:

- plead,
- understand the nature of proceedings, or
- instruct counsel.

In these situations, it would be better to ascertain the nature of the problem first than to allow proceedings to continue. Relevant reports may have to be ordered, if necessary, and the matter may have to be adjourned to another date.

A finding of disability can result in:

- the defendant's detention in a hospital or psychiatric facility, or
- the defendant's immediate release.

#### 10.7.4 Guilty plea

If the defendant admits the truth of the charge, record the admission, convict the defendant and pass sentence or make an order against him or her: s [190\(3\)](#) and [\(4\)](#) CPA.

Where there is an unequivocal plea, you should ask the following, “Has any person in authority, Police or otherwise, given you any inducement or made any offer or promise of any benefit to you to persuade you to enter a plea of guilty to these charges?” See *Vilikesa Balecala v State Crim App No. HAA0062 of 1996*.

#### Entering conviction

The defendant’s admission of the truth of the charge should be recorded as nearly as possible in the words used by him or her: s [190\(2\)](#) CPA.

You should never sentence a person without convicting him or her first.

You may:

- sentence immediately,
- stand down the matter to consider the appropriate sentence, or
- adjourn the matter to allow for relevant reports to be compiled, and remand the defendant.

If you are adjourning, consider bail/remand.

#### Sentencing

If there is a dispute as to facts, the prosecution should be offered the opportunity to prove them. If the prosecution elects to forfeit this chance, the defendant’s version must be accepted for sentencing.

If the defendant disputes the list of previous convictions, the onus is on the prosecution to prove it. If the list is unchallenged, you should note the list accordingly.

Where a person is charged with any offence and can lawfully be convicted on such charge of some other offence not included in the charge, he or she may plead not guilty of the offence charged, but guilty of the other offence: s [194](#) CPA.

See the chapter on “[Sentencing](#)”.

#### 10.7.5 Not guilty plea

If the defendant denies the charge, ie: pleads not guilty, or if you enter a plea of not guilty for him or her, then:

- proceed with the trial if all parties are ready and the matter can be dealt with quickly, or
- ascertain the number of witness the parties intended to call at the trial, so as to know the probable duration of the trial, and set a date for the trial,
- deal with bail/remand in custody, and summonses for witnesses if necessary, and

- adjourn the matter.

### Immediate hearing

If all parties are ready to proceed with a defended hearing (including witnesses), proceed to hear the matter immediately or adjourn the case to later in the day to hear it. See chapter on "[Defended Hearings](#)".

### Hearing at a later date

You should fix a suitable hearing date after all disclosures have been served and the parties have ample time to summon and get their witnesses to court.

### Remands / bail after plea

If a plea of not guilty is entered you may:

- remand the defendant and obtain an estimate of hearing time (ascertained from the prosecutor, the defendant's counsel and your court diary), or
- release the defendant on bail on such condition or conditions that he or she attends trial at the date and time scheduled, and
- record all of the above.

If bail is granted, the terms, if any, should be noted carefully on the Evidence Sheet.

Reasons must be given for refusing bail. See the chapter on "[Bail](#)".

Ensure all warrants of commitment (remands in custody) are completed before you leave the court for the day.

Any instructions to the prison should be recorded on the warrant. For example, the defendant is to be kept apart from adult prisoners, a need for medication or risk of self-harm.

### Disclosure

Check whether the prosecution is ready to serve any disclosures.

### Warrants/summons for witnesses to attend

On your own motion or on the application of a party, you may issue a summons for any person to appear as a witness, or to appear and produce any material evidence: s [100](#) CPA.

If you are satisfied by evidence on oath that a person will not attend unless compelled to, you may issue a warrant to ensure their attendance: see Part [8](#) of the District Court Act 2018 "Witnesses".