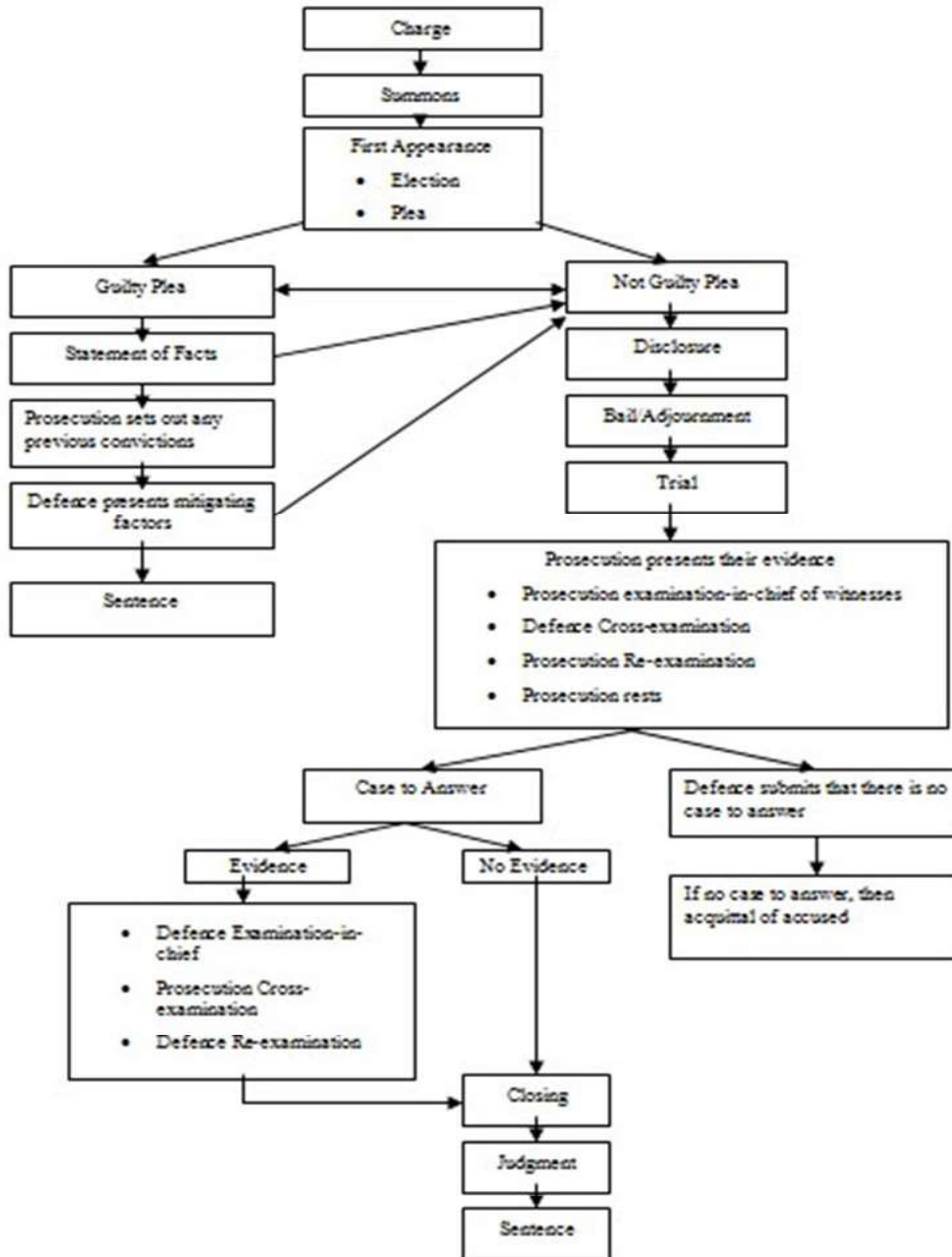


9. Pre-trial matters

9.1 The criminal process

The following diagram shows the general process of a criminal case from when it enters the Court:



Criminal proceedings may be instituted by either:

- making a complaint to the Magistrate, or
- bringing before the Magistrate a person believed to have committed an offence, who is under arrest without warrant: s [51\(1\)](#) CPA.

Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint or bring the person before the magistrate: s [51\(2\)](#) CPA.

A complaint may be made orally or in writing. If made orally, you should put it in writing. All complaints should be signed by the complainant and yourself: s [51\(3\)](#) CPA.

If not already done so, you should draw up or ask the clerk to draw up, a formal charge containing a statement of the offence with which the defendant is charged, and sign it: s [51\(4\)](#) CPA.

In most cases, the police will make the complaint, and they will present a signed formal charge, which is deemed to be a complaint: s [51\(5\)](#) CPA.

9.1.1 Initial steps

How the defendant is dealt with by the Police will determine the steps that are taken by the court. The defendant may be:

- issued with a Police Notice, under s [53](#) CPA,
- charged and released on Police bail, or
- in Police custody.

Police notice to attend court: s [53](#) CPA

A police officer may personally serve a notice upon any person, who is reasonably suspected of having committed an offence, requiring him or her to:

- attend court at a specified time and place (not being less than 7 days from the date of such service), or
- appear by a legal practitioner, or enter a written plea of guilty (s [61](#) CPA).

The notice shall be regarded as a summons. If the person served fails to comply with the requirements of the notice, you may issue a warrant of arrest: s [53\(2\)](#) CPA.

The copy of every notice issued should:

- be signed by the police officer issuing it,
- be directed to the person summoned, and
- be lodged with the Deputy Registrar within seven days of service of the notice: s [53\(3\)](#) CPA.

This section applies to all offences punishable by:

- fine,

- imprisonment, with or without a fine, for a term not exceeding three months, and
- disqualification from holding or obtaining a drivers' licence.

9.2 The charge

9.2.1 General requirements

A formal charge is an accusation of the commission of an offence.

Every charge must contain:

- a statement of the specific offence or offences with which the defendant is charged; and
- such particulars as may be necessary for giving reasonable information as to the nature of the offence charged: s [90](#) CPA.

For case law on the elements of a charge, see [Mohammed Sahid v State \[1997\] FJHC 154](#); (Fiji High Court, Labasa, Criminal Appeal 46/1997).

Generally, the charge should be set out in ordinary language and should avoid the use of technical terms, wherever possible.

The charge should include:

- a statement of offence. It is not necessary that all the essential elements of the offence be included,
- a reference to the section of the enactment creating the offence, and
- particulars of the offence, unless specifically not required by enactment.

Any offences may be charged together in the same charge or information if the offences charged:

- are founded on the same facts or form; or
- are part of, a series of offences of the same or similar character.

Where there is more than one offence charged, a description of each offence shall be set out in a separate paragraph of the charge called a count: s [91\(2\)](#) CPA.

At any time, before or during trial, you may direct that a count or counts be tried separately. This is particularly desirable if you are of the opinion that the defendant will be embarrassed in his or her defence by the counts being tried together: s [91\(3\)](#) CPA.

The following persons may be joined in one charge and maybe tried together:

- persons accused of the same offence committed in the course of the same transaction,
- persons accused of an offence and persons accused of abatement, or of an attempt to commit such offence,
- persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or similar character, and

- persons accused of different offences committed in the course of the same transaction: s [92](#) CPA.

The court may order separate trials where it is of the opinion that the interests of justice require that one or more of several accused included in the one charge be tried separately from the others. Separate trials should be held as ordered: s [92\(2\)](#) CPA.

9.2.2 Validity of the charge

Check that the charge sheet:

- is sworn,
- is within time, and
- sets out the offence, section and particulars of the offence sufficiently.

Ensure that the charge sheet is accurately completed before you sign it.

If the charge is defective:

- return it to the prosecution without directing a case file be opened; or
- raise it with the prosecution at the first appearance, for amendment or withdrawal.

9.2.3 Duplicity

Check that the charge does not improperly charge more than one offence for the same action (duplicity), unless put in the alternative. For example, separate counts for common assault and assault causing actual bodily harm arising from the same set of facts would have to be put in the alternative. If not, the charge will be defective for duplicity and will have to be amended at the first appearance.

Note the exception as regards continuous offences where the defendant may be charged for a series of similar offences committed over a period of time: see [Hodgetts v Chiltern District Council \[1983\] 2AC 120](#).

For a discussion on duplicity, see [Republic of Nauru v TT \[2023\] NRCA 6 \(Criminal Appeal 1 of 2021, 10 February 2023\)](#) and [Degia v Republic \[2021\] NRSC 48; Criminal Case 2 of 2021 \(19 November 2021\)](#).

For a discussion on procedure in alternative counts, see [Shell Fiji Ltd & Mobil Oil v State Lautoka](#) High Court Crim. App. No. HAA001/00L.

The charge need not go into any exceptions or exemptions to the offence.

Generally, people and property should be reasonably identified, although names need not be given where they are not known.

There is a time limit for laying a charge for certain summary offences in the District Court. Offences that carry a maximum penalty of 6 months imprisonment, or a fine of \$200, or both, cannot be tried unless the charge is laid within 6 months from the date the alleged offence was committed: s [159](#) CPA.

9.3 Processes to compel the appearance of defendants

9.3.1 Summons

Under s [54](#) CPA, every summons issued under the CPA must:

- be in writing,
- be in duplicate,
- be signed by the presiding officer of the court,
- be directed to the person summoned,
- state the place, time and date in which the defendant is required to appear and answer the charge, and
- state the nature of the alleged offence.

Every summons shall, if practicable, be served personally on the person summoned: s [55](#) CPA.

Where the person summoned cannot be found, the summons may be served by leaving a copy of it with:

- some adult member of his or her family,
- his or her servant or employee residing with him or her, or
- his or her employer: s [56](#) CPA.

Alternatively, the summons can also be served by affixing a copy of it on a conspicuous part of the house in which the person ordinarily resides: s [57](#) CPA.

Under s [61](#) CPA, whenever you issue a summons in respect of any offence, other than a felony, you may dispense with the personal attendance of the defendant, provided that the defendant:

- has pleaded guilty in writing, or
- appears by his or her counsel.

If a fine is imposed on a defendant whose personal attendance has been dispensed with, you may issue a summons to show cause, at the expiry of the prescribed time for payment. If the person disobeys the summons, you may then issue a warrant and commit the person to prison: s [61\(4\)](#) CPA.

Warrant of arrest

Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the defendant: s [62](#) CPA.

A warrant may be issued against a person who has disobeyed a summons from the court: s [63](#) CPA.

Under s [64](#) CPA, every warrant shall:

- be under the hand of the judge or magistrate,
- state the offence,

- name and describe the person the subject of the warrant,
- order the person or persons to whom it is directed to apprehend the person against whom it is issued, and
- be in force until it is executed or it is cancelled by the court which issued it.

You may direct that security be taken or the defendant executes a bond to ensure his or her attendance before the court at a specified time. Whenever security is taken, the officer to whom the warrant is directed shall forward the bond to the court: s [65](#) CPA.

A person arrested under warrant shall be brought before the court without delay: s [68](#) CPA.

Irregularities in the warrant either in substance or form shall not affect the validity of any subsequent proceedings unless it has deceived or misled the defendant: s [70](#) CPA.

Where the person, the subject of a warrant is in prison, you may issue an order to the officer in charge of such prison requiring him or her to produce the person named in the order before the court: s [73](#) CPA.

Defendant charged and released on bail and/or recognisance

The defendant may be released on his or her entering a recognisance, with or without sureties, for a reasonable amount to appear before the District Court at a time and place named in the recognisance where:

- a defendant is in custody without a warrant, and
- the alleged offence is not murder or treason, and
- the offence is not of a serious nature, and
- the person is prepared to give bail.

For a discussion of bail and bail procedures, see the chapter on [Bail](#).

A signed copy of the notice will be kept by the police and forwarded to the court on the date on which the offence is to be heard.

When the clerk receives the charge, he or she will forward it to you for your direction.

Defendant is in police custody

Any person who is arrested or detained, without an order or warrant, and not released, must be brought before the court without undue delay and no later than 24 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter: Art [5\(3\)](#) of the Constitution.

For an extensive description of the rights of arrested or detained persons, see Art [5](#) of the Constitution.

The police should have prepared a charge sheet. Wherever possible, this should be presented in advance to the clerk, and the clerk will open a file and register the case in the court record before putting it before you.

You should hear the matter at the earliest opportunity.

Occasionally, the charge will be put directly to you.

9.4 Transfer of charges and proceedings to the Supreme Court

Where any charge has been brought against a person of an offence not triable by the District Court or as to which the District Court is of the opinion that it ought to be tried by the Supreme Court, the District Court may transfer the charge and proceedings to the Supreme Court. An accused person may not be subject to a preliminary inquiry or to committal proceedings prior to the transfer of that person's case and proceedings to the Supreme Court: s [162](#) CPA.