



JPPF Registry Resources: Minute Taking - Components of a Court hearing

Introduction:

In any court system, keeping court records and recording evidence is an integral part of the role of a court-taker, whether minutes are taken by hand or recorded electronically.

Understanding the components of a court hearing will help you identify the key elements from each section and what is important to be recorded.

This resource can be given to new staff to allow them to become familiar with court procedures and to assist them to determine what needs to be recorded even before they go into courtroom.

The components covered here are:

- Court trials
- Case called
- Opening and closing address
- Evidence of witness
- Summing up
- Findings and verdicts
- Judgements and orders
- Sentencing
- List hearings
- Chambers hearings

with an explanation in each section about what the minute taker needs to record.

Court trials:

A court trial is necessary when an application or claim is opposed, or a charge is denied. Conduct for a court trial can be broken down into the following components:

- Case called
- Opening and closing address
- Evidence of witness
- Summing up
- Findings and verdicts
- Judgements and orders
- Sentencing

What follows is a list that explains each of these terms, what needs to be recorded and why it is important to do so.

Not all cases will have the same or all these components and it will depend on whether the case is defended or opposed, the jurisdiction and the procedure that the case will follow.

There are many other types of court hearings and the reasons for these hearings may differ from what happens in your court.

As a general rule, you will record all evidence and everything that the judicial officer orders, imposes or directs.

Whether taking minutes or recording the case, you have a responsibility to preserve the court record. Keeping accurate records of the evidence given and judicial decisions ensures that the justice system is transparent and supports and helps maintain its integrity.

We will separately try to identify strategies to help you keep up to speed, keep full and accurate records and hope that knowing what to look for and what is not necessary to record will help make the task easier.

What is case called?

This is when the matter is officially put before the court and your judicial officer. This can be for an application, a claim between parties or for a charge laid against a person.

What is important to record?

The court record should identify the specific case by number and name and record all the parties, lawyers and who they represent, prosecutors, registry staff and the judicial officer. For electronic recording, don't forget to record your name as the court or minute taker.

Get into the habit of recording these details and don't rely on memory. The court record needs to endure even when you are no longer there.

Sometimes, court cases can have multiple hearings, so it is also useful to record the reason, the type of hearing or application that is being heard in court that day.

This information will help to create a clear record of what happened in court and was determined. It will also allow you to quickly locate the correct records if needed later.

Since you know what your court schedule for the day will involve, you should be able to set up your minutes with all these details in advance before court starts to help you save time.

What are opening and closing addresses?

In a trial, all parties are allowed to make an opening address. This is a preview of how they are going to present their case with an outline of the anticipated testimony and evidence, or what they think the issues will be.

Closing addresses occur after all the evidence has been presented at a trial, and it provides an opportunity for prosecutors or lawyers to argue whether the evidence did or did not establish the underlying claims.

What is important to record?

Opening and closing addresses are opinions and not considered to be evidence, so as a minute taker, you do not need to record what they say in the address.

You only need to record the procedure, that the parties made an opening or closing address, or declined to do so. This satisfies the need to show that due process was followed, and a procedurally fair hearing conducted.

What is evidence?

Evidence is the testimony given by a witness who tells the court their side of the story, what happened or what they saw. An expert witness will provide their opinion. Any witness will give evidence by being sworn or making a declaration and are asked questions by the parties.

The party who has the burden to prove the claim, application or charge goes first and calls all their witnesses first.

Witnesses are asked questions first by that party, usually the prosecutor or applicant. What they say in response to those questions is called their evidence in chief. Sometimes, it is permitted for this evidence to be pre-prepared and presented to the court in writing.

During the witness evidence in chief, the witness may be called upon to present and produce documents or items to the court to support what they are saying – these are referred to as exhibits.

Only after all questions have been put to the witness, will the other party have opportunity to question the witness in order to challenge or extend what the witness has already said. This is called cross-examination.

Re-examination is the final part of questioning of a witness that follows their cross-examination. It enables the party who first called them to ask further questions to clarify their answers.

All witnesses follow this process. During the questioning of the witness, at any time they may also be asked questions by the judicial officer.

-  Witness called and sworn in or makes an affirmation
-  Provides evidence in chief
-  Cross examined by other party
-  Re-examination

All the questions and their answers form the testimony and evidence of a witness.

Once all the witnesses for the applicant/claimant/prosecutor have given their evidence, the other parties to the proceedings will call their witnesses and the process will be repeated until all evidence from all witnesses has been heard.

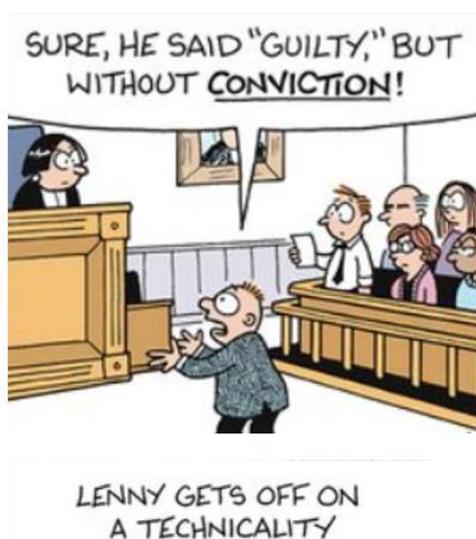
What is important to record?

The evidence of all the witnesses is considered and weighed up by the judicial officer to make a finding on the application, claim or charge. Hearing the evidence helps the judicial officer make their decision.

Making a decision or finding that is supported by evidence is part of the judicial decision-making process, that is often the subject of review or appeal. Recording the evidence serves both as the independent court record and to later assist any appeal court to assess and substantiate those decisions

It is therefore vitally important that all the evidence that was presented and considered by the judicial officer, is accurately and fully recorded. This transparency supports a fair and just process for decisions to be made on substantiated grounds.

As a minute taker, this means you must record all the questions put to a witness and all their answers in response. Missing out even small words can make a big difference to the meaning and later interpretation of what was said.



Consider the difference between a witness response of "no" or "no, not really." Both contain a denial or refusal, but the intent of the first response is

definite and unambiguous. The second response however of “no, not really” leaves room for other possibilities and explanations.

The questions and responses should always be recorded in full so that any-one reading the evidence afterwards gets as clear a picture as possible of what was said in court.

If a case is later subject to a review or an appeal, the higher appeal court will rely on the evidence you have recorded to determine for themselves whether the original finding in your court was well founded.

If parties present a written statement as evidence in chief for any witness, instead of having to recording all their evidence, you only need record that their written statement was provided to the court.

It is also important to record who produced exhibits and show what exhibits have passed into the custody of the court.

Recording and tracking exhibits maintains the chain of custody and helps keep the integrity of a piece of evidence. A paper trail is maintained so that the persons who had charge of the evidence at any given time can quickly be identified and questioned if required.

If exhibits aren't recorded and logged into the minutes, they may be lost or inappropriately disposed without being able to be traced and any finding based on the exhibits will be put at jeopardy.

What is Summing up?

At the end of a trial the judicial officer will provide a summary of the evidence, the matters in dispute and give direction to the jury regarding points on law before the jury retire to consider their verdict.

What is important to record?

The jury will take direction from the judicial officer on the points to consider and application of the law. Because this could impact on the jury's deliberation, what the judicial officer says can be the subject of an appeal, so everything in the summing up needs to be recorded.

What are Findings?

In a trial the jury will make their decision as to guilt or innocence of a defendant in a criminal trial or liability in a civil trial – this is a type of finding.

A criminal jury will deliver their finding as a verdict of guilty or not guilty.

A judicial officer may deliver several interlocutory findings during the course of hearing any case (e.g. bail applications, modes and admissibility of evidence). Sometimes these are also referred to as rulings or judgments.

Where a defended case or trial is presided over by only a judge or magistrate, they will make the findings as to guilt or innocence, or liability and determine whether any application or claim has been made out to their satisfaction.

Once the findings have been determined, the judicial officer will then move on to decide the final outcomes for the case charge or applications e.g.:

- if a defendant is found guilty the judicial officer will decide whether to convict and sentence them.
- If a defendant is found not guilty the judicial officer may discharge them.

When a defendant pleads guilty, no finding by the judicial officer is required only a judgment as to the penalties.

What needs to be recorded?

A ruling, decision, direction or judgment is what the judicial officer says. You must record what the judicial officer says in full. They may provide the reasoning on how and why they reached their finding, what evidence they preferred and relied on and what they discounted. All of it should be recorded.

What are submissions?

Submissions are made by parties to the proceedings and are like opening and closing addresses. They are arguments usually made through counsel or the parties themselves if unrepresented. Submissions are intended to persuade the court to find in their favour.

What needs to be recorded?

Just like opening and closing addresses, they are opinions and do not need to be recorded in full, rather record the fact that they gave submissions.

In decision making training, judicial officers are taught to recount arguments made instead as a part of the judgments they deliver.

What is an Oral Judgment?

An oral judgment is what the judicial officer says, delivered in court after the findings have been made and can be given either immediately or after an adjournment.

An oral judgment may include the reasons for the findings again, any persuasive arguments but will also include the outcomes and details of any orders.

What needs to be recorded?

All the details of any oral judgment or order should be recorded in full with every detail. These details will form the terms of any post court paperwork that needs to be completed.

What is Sentencing

Sentencing is a criminal outcome for a defendant who either pleaded guilty to an offence or was found guilty and convicted of an offence.

Sentencing is a criminal form of an oral judgment and serves the same purpose, to explain to the parties what the outcomes are and set out the details of any penalties to be imposed.

Penalties can also be imposed in the Family court for a breach of a protection order.

What needs to be recorded?

These details from part of the court record so should be an accurate reflection of what the judicial officer said. They will be used to compile a history of the defendant's offending and form part of their permanent record.

Like oral judgments, they should be recorded with full and complete detail and accurately reflect what the judicial officer said.

What is a list hearing?

Cases are placed into lists to be called in open court before judicial officers to check on their progress and used to help manage cases. Parties are expected to attend and provide an update and may ask for directions and orders that will advance the case.

It is usual to have several cases listed for call.

Cases may be dealt with immediately if everything is ready and don't require a great deal of time e.g. a defendant has legal representation and wants to enter a plea.

What needs to be recorded?

For a list court, record in the heading the date, the court, jurisdiction and place, judicial officer and names of court officials and their roles in court. This can be prepared and noted in advance of the court starting.

For each case called in the list, record the case number and the names of the parties and legal representation.

It is helpful to record the reason why the case was before the court e.g. first appearance, bail application, application for directions.

Record any response from the defendant or respondent e.g. plea, election or opposition to any application.

Record all directions or judgements given by the judicial officer.

You do not need to record any submissions or arguments made by the parties and it is unlikely that you will have any witness give evidence in a list hearing.

Since there are a number of cases in a list hearing court, mark off between the cases so you can tell when one case finishes and another starts.

Some courts do this by ruling off in red pen, but you will follow the practice established in your court.

What is a chambers hearing?

Chambers hearings are less informal than a list hearing even though they may follow the same process. The chambers hearing may be held in the chambers of a judicial officer or in a courtroom.

The types of matters that can be heard in a chambers hearing are determined by legislation and are generally used for interlocutory and case management matters that will not result in any final determinations e.g. judicial conferences.

What needs to be recorded?

There is no evidence given in chambers, and you don't need to record any submissions or arguments. You should already have noted the parties in attendance, the date and case details and the reason for the chambers hearing. Record any new oral applications or motions e.g. application to adjourn proceedings, transfer, that are made while in chambers and you must record any outcome or directions given by the judicial officer.