



In the Supreme Court of Bermuda

A/50

20 August 2021

CIRCULAR NO. 10 OF 2021

TO ALL ATTORNEYS

PRACTICE DIRECTION ISSUED BY THE CHIEF JUSTICE

RE: PROGRESSION OF CRIMINAL CASES

The Supreme Court is experiencing difficulties in disposing of its criminal list due in part to the following:

- (a) Defendants failing to appear on their scheduled court dates;
- (b) Failure by the relevant authorities to enforce arrests warrants issued by the Court;
- (c) Counsel failing to appear and/or arranging for other counsel to appear on their behalf at their scheduled court dates;
- (d) Counsel failing to give priority to the Supreme Court over the lower courts;
- (e) Counsel failing to comply with court orders and directions for the timely submissions of supporting document to advance pre-trial applications; and
- (f) Delays in the application process to obtain Legal Aid.

FIXTURES:

- (1) A fixture should be regarded as just that, and the parties should start to work towards trial the moment the date is set. A Supreme Court criminal fixture will take precedence over everything else, including civil fixtures, and the personal or business commitments of counsel or the defendant.

ADJOURNMENTS:

- (2) Should the need for an adjournment become apparent during preparation, the Court and the other side should be notified forthwith. In this respect attention is drawn to Rule 60 of the Barristers' Code of Professional Conduct 1981 ("the Code").

- (3) If the need to vacate a trial date becomes apparent, an application should be made to the Court forthwith by Notice of Motion in the proceedings¹. For all other fixtures (e.g. a Section 31 application), the same will apply unless there is an agreement between counsel on both sides for an adjournment. In which case, good and sufficient notice should be supplied to the Court.
- (4) No application for an adjournment will be entertained on the trial or other hearing date, unless it is due to some reason wholly unforeseeable before then, such as sudden illness.
- (5) In particular, Counsel should ensure that their fee arrangements are in place in good time. Counsel will not be allowed to withdraw on the day of trial, and in this respect their attention is drawn to Rule 72 of the Code. Nor should defendants be able to obtain an adjournment by failing to put their Counsel in funds: a defendant seeking an adjournment on the grounds of inability to pay will have to demonstrate that he/she has taken all reasonable steps to put his/her Counsel in funds or obtain Legal Aid.
- (6) The same principles apply to ‘warned’ dates. In particular, Counsel in a warned case should ensure that he/she is available and otherwise ready for trial on that date. If a fixture has to be adjourned at the last minute, and there are warned cases for that date, the jury should be released for only as long as is necessary to bring on the warned case.
- (7) In any event, a warned case should not be released until the trial of the preceding fixture trial has actually commenced.

PLEAS:

- (8) If a defendant is going to enter a guilty plea which is acceptable to the Crown, the Court should be notified forthwith, and any warned case for that date put on notice to proceed. Where a plea is possible but still under consideration, the Court should be put on notice, so that any warned cases can be kept on stand-by until a decision is made.

FAILURE TO APPEAR:

- (9) If a defendant fails to appear on the date fixed for trial, the jury should be stood over for one day, while every effort is made to locate the missing defendant or a warned case prepared to go in its stead. In all other cases, a bench warrant will be issued forthwith.

¹ Form 38 in Appendix A to the Rules of the Supreme Court 1985, or some similar form, headed with the title and number of the criminal case.

OVERSEAS COUNSEL:

- (10) The pool of available overseas counsel is very large. Overseas counsel should be chosen who are available for the fixture. Cases will not be adjourned for their convenience. In the case of overseas counsel becoming unavailable close to the date, another should be substituted. Save in an emergency, however, the application to admit overseas counsel should be made far enough in advance to allow for proper consideration by the Court, the Department of Immigration and by the Bar Council (in the performance of its duty to advise the Department of Immigration in relation to any application for a work permit).

CO-OPERATION:

- (11) Successful progression of criminal trials is a co-operative venture. The aim is to get the matter tried as soon as practicable. To this end, Counsel should return each other's calls, and answer each other's correspondence promptly. Above all, Counsel should return calls and answer correspondence from the Court without delay.
- (12) Where progression of criminal trials places a reliance on third party authorities, the Court anticipates their full cooperation with little delay.

Dated 20th August 2021



Narinder Hargun
CHIEF JUSTICE

CC: The Attorney-General's Chambers
Department of Public Prosecutions
Hamilton Police Station
Commissioner of Police
Commissioner of Corrections
Magistrates Court
Bermuda Bar Association
Legal Aid Office