

LEGAL SEMINAR

THE DUTY COUNSEL

FROM ARREST TO FIRST APPEARANCE IN COURT

As Duty Counsel you may be called to attend and assist a Suspect, taken into custody by the Police. This call will involve you going to a Police Station that may be near or far from your immediate location. This call may be received at any time day or night, and at it's worst possible, late at night after a hard day's work and you have retired to bed.

Whenever you are called and wherever you have to go, and under any conditions, you must be well organized and professional in your report. As Duty Counsel you must have knowledge on the rules of the procedure and the rights of the arrested person. Before arrival, make it clear to police that the Suspect who is now your client should not be interrogated until you arrive.

Your first task on arrival at the police Station is to try and ascertain what the person is detained for and if he or she is charged, what is (are) the charge (s). This is best ascertained by talking with the arresting officer or a Senior Police Officer.

Your approach here must be very tactful, your approach must be one that will encourage a good relationship with the police, you want co-operation rather that confrontation. You must remember that at the Police Station the Police feels at home, and will if needed be willing to show that they are in charge and have the handle. Once you have some co-operation you can then get as much information from the Police about the alleged offence and the Suspect and also you can try and find out the Police attitude towards Bail.

You may want to keep your own diary of all events concerning the Suspect during his time in custody. A custody log may prove useful later if any issues arise during a trial between the Suspect and the police about his treatment.

If the Suspect is new to you, you should introduce yourself to him/her, and inform him/her of your function. You then interview the detainee and have recorded information such as the Suspect's name, address and occupation. With that information you only need to ascertain from the Suspect the main issues in the case and points of urgency, details can be had later. This should not be an intensive interview.

It is important that you try and establish if the Suspect admits or deny the charges, and the main points in his version of the facts. You must be careful not to elect replies that may be damaging to the Detainee.

ADVISING THE SUSPECT AT THE POLICE STATION

The Suspect may or may not have spoken to the Police. Counsel may have to decide whether to advise the Suspect to say nothing or say something to the Police. More than often Counsel advice in the former, that is to say nothing.

The advice here may depend on several factors, it is a Judgement that may or may not be helpful to the Suspect. There are situations when it is important for the accused to say what he knows if it is not damaging to him/her and there are times when the best option is to shut up and say nothing, particularly where the accused may say something that can be used against him.

There is no hard and fast rule to this effect; the police need to solve the crime and the subject's liberty may be in conflict. Cooperation may increase the possibility of

gathered more and vital information about the accused case. If however, you are compelled to make the bail application on the first occasion with limited information then you should put every effort into the second application, as it may be difficult (unless circumstances changed) to get a opportunity.

LEGAL AID

You should advise the client of his prospect of getting legal aid for the continuation of the case if the need arise you can also assist him/her in making the application to the relevant authority. If you want to continue representing the accused then you can indicate this to the Court or the relevant authority.

ADVISING AN THE PLEAS

With the exception of offences where a preliminary enquiry is required or matters in the Gun Court division of the High Court, the Accused may on the first occasion in Court be asked to the offence for which he is charged. The Accused does not have to plea on this first occasion and would only be required to plea just before the start of the trial.

There are however benefits to the Accused who plea guilty and even more benefit if he pleas guilty at an early stage of the proceedings. The Accused must be informed about these provisions.

Before you can advise on the plea, you must first receive all the information you can from the Accused. In some cased it is advisable that you that you wait for

statements from the prosecution witnesses to have a full understanding of the case against the Accused.

For most occasions a plea of guilty or not guilty is straight forward but there are times when the complexity of the case requires more careful considerations.

The plea is for the Accused he must do so personally, it is his decision, your job is only to advise, strongly where necessary, but no undue pressure must be put on the Accused.

If the Accused admits the offence he should plea guilty, but you should still examine the facts to see if there is technical legal guilt. You also need to examine the motive for admitting guilt. For example an Accused charged for wounding, may have been acting in self defense, but his plea was to get the matter over. The Accused should be advised in such a situation to plea not guilty to avoid having a criminal record.

If the accused insist on pleading guilty then you the lawyer cannot prevent him from doing so.

If the Accused is going to plea guilty, then your attention will now focus on mitigating factors. Once the Accused has pleaded guilty to an offence you should not in mitigation be telling the court that he did not do the act, or introduce factor to suggest that he was not guilty.

The Accused may deny some elements of an offence where this occur your advise should be to plea not guilty unless the admission is to a substantial portion of the offence and the prosecution case is very strong. In such situations you should give very clear advice about the realistic chances of being convicted. Always bear in mind that it is the ultimate decision of the Accused as to his plea.

bail; your advice may depend on the particular situation, the character of the Suspect and the attitude of the Police and the likelihood of charge.

ADVISE AS TO WHETHER GIVING A STATEMENT TO THE POLICE

If the Suspect has decided to give a statement, it is important that you be present, this is a right the Suspect cannot be refused. You should listen carefully to the questions asked by the Police and the answers given by the Detainee. If in your opinion the interview is unfair or battering to the Suspect or for any other good reason you can ask that the interview be stopped. During the interview you can advise the Suspect not to answer particular questions. You should also ensure that what is said in the interview is recorded accurately. Make your own notes of the questions answers and all other events at the questioning session.

ADVICE ON BAIL

There is a right to bail (subject to some exemption, be acquainted with the Bail Act). This is a long established principle of our Common law and Criminal Justice System. It therefore means that once charged, bail may be a major issue. The liberty of the *citizen* is of paramount importance. The Suspect may need to get on with his family life and occupation and liberty may be very important to the preparation of the case. The right to bail remains until conviction, if there is a conviction. Only in few cases is Bail totally out of the question. Even a person charged for murder can be granted bail provided there is no real risk of him absconding or committing further offence. (R v Vernege-1982 1WLR 293).

Before making the application for bail, you must investigate the circumstances of the Suspect, his family, occupation, health, financial situation, his associates and other relevant factors. You will also need to have information about possible sureties and financial standings, and if there have been any previous negative runnings with the law. Once you have this information you should be in possession to develop strong convincing arguments.

Bail may be granted at the police Station, the Senior Police Officer in charge must consider bail particularly where the accused cannot be brought before a magistrates Court within a short time, for example an arrest on Friday afternoon, you need to be aware of the general behavior of most of our Police officers' preference to take the accused person to Court for the issue of bail to be considered, rather than having to make the decision.

If the accused is not granted station bail, than the accused should be brought before the Court as soon as possible, when bail will be considered.

It is useful to discuss matters with the Investigating Officer out of Court if the opportunity arises. Generally, where the Police Officers do not oppose bail, bail is usually granted. Where the Police Officer or the Crown opposes bail then you need to develop positive arguments. Where conditions on bail are imposed you should inquire of the accused whether these conditions may cause difficulties, and make your submissions to this effect.

The tendency of most of our Magistrates/Judges is to listen to one bail application, there after the question will be asked if there has been any change in circumstances since the last application. A lot has changed since the first application; you now have more information about the offence and the Accused. In some cases it may be appropriate to defer the bail application to a further date when you would have

Where possible the Accused should also be advised of the possibility of pleading to a lesser offence where the occasion avail its self. For example, robbery with aggravation may have elements of simply larceny and a plea to simple larceny may be acceptable. There is no obligation on the Accused to plea guilty to a lesser offence, it is only an option and he should be so advised.

If there is a real chance of an acquittal on the prosecution's evidence, then it may be best to advise on a plea of not guilty, but if there is a real chance of a conviction it may be worth pleading guilty to a lesser offence, a lesser sentence is most likely.

If a plea to a lesser offence is considered it is important that you make contact with the prosecution before the hearing of trial. The prosecution will have to consider the public interest and decide whether the evidence justifies a plea to a lesser offence or to press for a conviction on the more serious charge, or whether they should save time and money by accepting the plea to the lesser offence.

A plea of guilty may also have the advantage where the Accused admits more than one offence, for example; the Accused admitting to several offences of simple larceny that would result in several trials. A plea to some of the offences may result in the prosecution not proceeding on the others as they would have secured a conviction. The sentence may be higher than what he would have received for any one single offence but it must be within the maximum for the offence charged.

Always remember than the Accused is your client irrespective of arrangement for payments and method of engagement your job is to represent him as you would with any other client.

Regard must always be given to Professional Ethics.

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