

Supreme Court of Victoria

Practice Note No. 5 of 2004

The Chief Justice has authorised the issue of the following Practice Note in substitution for the Practice Note at [1972] VR 44 which is hereby revoked.

Criminal Law – Bail Applications – Procedure – Form of Order

As from 1 January 2005, the procedure to be observed as to bail applications will be varied. The judge acting for the time being as the Principal Judge in the Criminal Division ('the PCD judge'), rather than the judge in the Practice Court, will assume the principal responsibility for dealing with bail applications. The intention is to have applications heard wherever practicable by judges in the Criminal Division. For the Practice Note published at [1972] VR 44 is now substituted:

1.
 - (a) Any application in respect of bail must be filed with the Prothonotary.
 - (b) When filed on behalf of an applicant by a legal representative the application must be accompanied by an affidavit setting out the facts to be relied upon in support of the application and a copy of the application and of the affidavit must be served on the Director of Public Prosecutions on the day they are filed with the Prothonotary.
 - (c) When filed on behalf of an applicant in person the application must set out the grounds of the application and the Prothonotary must promptly supply the Director of Public Prosecutions with a copy of the application and of the affidavit (if any) in support.
2. The application must not specify any date for the hearing.
3.
 - (a) On receipt of the documents the Director of Public Prosecutions should promptly prepare any material to be submitted on behalf of the Prosecution and forward that material to the Prothonotary.
 - (b) Where such material includes an affidavit a copy of the affidavit must be served on the applicant or his or her legal representative. Service should be effected on the day the affidavit is filed with the Prothonotary.
 - (c) Where it is possible to make known to the Prothonotary information which might affect the fixing of a hearing date, such as that the Prosecution consents to the application, or that certain hearing dates are particularly inconvenient to the informant or the applicant, that should be done as soon as practicable.
 - (d) If within a reasonable time, no more than five days after the filing of the application, the Prothonotary has not received the material to be submitted on behalf of the Prosecution, the Prothonotary may report the matter to the PCD judge who may then appoint a day for hearing.
4. At any time that the Prothonotary receives material relevant to an application, the Prothonotary must promptly forward such material to the associate to the PCD judge, or another associate nominated by the PCD judge.

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5.
 - (a) If the Prosecution has consented to the application and on the material before the PCD judge, which may include draft agreed bail conditions, the PCD judge considers it proper so to do, the PCD judge may then make an order admitting the applicant to bail without requiring the parties to attend before a judge.
 - (b) If the PCD judge considers that the application is frivolous, e.g. if previous applications have been refused and there has been no change of circumstances, the PCD judge may refuse the application without requiring the parties to attend before a judge, but only after giving the applicant the opportunity to be heard or make written submissions.
 - (c) In any other case, the PCD judge shall appoint a date and time for a hearing before the PCD judge or another judge.
6.
 - (a) If the PCD or hearing judge considers the applicant should be present, other than by videolink which shall be treated as the norm, that judge will so inform the Prothonotary.
 - (b) If the applicant is to be present the Prothonotary must prepare an order for signature by the PCD or hearing judge and forward the order when signed to the governor of the prison or the member of the police force for the time being in charge of the police gaol in which the applicant is held.
7. In cases where there are circumstances of urgency, or where the only judge available is the judge in the Practice Court, the Prothonotary, on receipt of the application, must consult with the PCD judge or with the judge in the Practice Court who may give directions to expedite or eliminate any of the above steps and to ensure that the matter is dealt with urgently.
8.
 - (a) When the PCD or hearing judge has made a decision the Prothonotary must promptly prepare an order for the signature of that judge and transmit the order when signed to the governor of the prison, or the member of the police force for the time being in charge of the police gaol in which the applicant is held.
 - (b) When the order contains conditions requiring the applicant to report to any police station, the Prothonotary must forthwith transmit a copy of the order to the Chief Commissioner of Police.
9. Unless in any case the circumstances otherwise require, the form of the order shall be: "It is ordered that the applicant be admitted to bail on his/her undertaking with one/ two sureties in the sum of \$ (thousand dollars) conditioned in the proper form for his/her appearance for trial at the Court at on as required bylaw and upon the following special conditions: (as set out)"

DATED this 17th day of December, 2004

Signed: Michele Rowland, Legal Associate to the Chief Justice