



NADA
network of alcohol & other drugs agencies

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Foundation for Alcohol
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Legal Aid
NEW SOUTH WALES



Turning Point
Alcohol & Drug Centre

Supporting your client in Court

Tips for drug and alcohol workers

Legal Aid NSW

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Prepared for NADA Networking for Court Support: Collaboration, Confidence, Court Support and Case Notes
Forum Presentation: Building confidence and capacity for Court – providing Court Reports, Letters of Support,
Supporting your client in the Court room

Contents

Writing Reports for Court – A Guide for Drug and Alcohol Workers	3
What is the purpose of the report?	3
Before preparing a report.....	3
How to set out the report.....	3
What to include in the report	4
Confidentiality and other Considerations	4
Letters of support	5
Character references.....	5
Supporting your client in Court	6
Hearing Date	6
Getting Legal Advice	6
How long will be my client be at Court.....	6
Court Etiquette – Dos and don'ts of the Court Room:.....	6
Being a witness in Court – tips for Drug and Alcohol Workers.....	7
Oath or affirmation	7
Examination	7
Further information about going to Court.....	8
Other sources of Legal information	8

Writing Reports for Court – A Guide for Drug and Alcohol Workers

What is the purpose of the report?

Court reports can be requested to support a person in either an application for bail or at sentencing. It is important to find out what purpose your client or their Solicitor plan to use the report for. This may affect the content that you chose to include in your report.

For example, if the client is applying for bail the Court may want to know: what accommodation options your service provides; how long the treatment will be; what restrictions will be placed on the client when they are undergoing your treatment program.

Before preparing a report

Find out the following information from your client or their Solicitor prior to preparing the report:

- What are the charges that are currently before the Court?
- Was your client affected by a drug or alcohol at the time of the offence?
- Is your client on bail or in custody?
- Is your client applying for bail or appearing on sentence?
- Are any other agencies writing a report (e.g. psychiatric report or Probation and Parole report)?
- When is the next Court date? (see [Support your client in Court: Hearing Date](#))
- When does the report need to be prepared by? (*In some cases you may be requested to provide a report with little time to prepare it. In this case advise the solicitor when you will be able to supply the report by, they may be able to request a short adjournment.*)
- Who does the report need to be addressed to?
- Where do you send the report? (*Note: You may need to address the report to the Magistrate however your clients' solicitor may be the person you provide the report to.*)

How to set out the report

- Address the report to "The Presiding Magistrate" in the Local or Children's Court ("The Presiding Judge" in the District Court).
- Put your name, your organisations name, address and contact details on the top right corner of the report.
- Use your organisation's letterhead.
- Type the report.
- Always date the report.
- Remember to put your signature on the report and generally put your job title or qualifications under your signature.
- Keep the report short, no more than 2 pages – unless asked specifically to do a more detailed report. If the report is long provide an executive summary.
- Use dot points or headings.

What to include in the report

- The service you provide to the client (e.g. full time residential rehabilitation, methadone treatment, drug and alcohol counselling etc).
- The nature of your client's drug or alcohol problem – the length of time that they have had the problem.
- How long the person has been a client of your service – if there has been a break in contact with the client explain when this was and why.
- How often the client is in contact with your service.
- Who referred the client to your service (self referral, referral from a Doctor).
- Previous drug and alcohol treatment programs your client participated in that you are aware of.
- If your client is currently undergoing urinalysis – what are the results.
- Your client's current attitude to treatment – have they missed appointments or shown commitment to the program.
- What the timeframe is for the treatment program that your service provides – what is the plan after the client finishes treatment.
- If you are aware of why the client is at Court state this in the report.
- Don't try and suggest penalties to the Magistrate.

Confidentiality and other Considerations

Confidentiality:

There may be certain matters which you may be aware of that your client does not want discussed in the report. Remember that once the report is tendered in open Court it becomes part of the public record and other agencies might have access to it – such as the NSW Police.

Some matters that your client may not want discussed in the report are:

- The client's HIV status.¹
- Whether your client is undergoing treatment for Hepatitis C or other communicable diseases.
- That your client is undergoing sexual assault or other counselling.

Before you discuss personal information about the client in the report it is important to get the client's prior consent. If they don't consent, don't include it in the report.

First hand information:

Remember only include information in the report of which you have first hand information. Information which you hear from a third party which you do not have direct knowledge of is considered **hearsay**. If it is revealed that this information is false it may affect your credibility and the credibility of the report.

Relevance:

Only include information in the report that is relevant to the Court proceedings. When you are writing the report consider whether the information in the report relates to the Court proceedings and whether this information is something that the Magistrate needs to know. Everything that you put in the report will be read by the Court and may be taken into account in Court proceedings.

Objectionable material:

¹ See the *Public Health Act* NSW – s.17 regarding disclosure of HIV status.

Material that suggests that your client has committed a criminal act for which they haven't been charged (or they have been charged and subsequently acquitted of) may be objected to by a defence Solicitor. It is suggested that caution should be used in deciding whether to include this in your report.

If there is any material objected to in the report you may be called as a witness and cross examined about its' inclusion in the report.

Plea traversal:

If your client is appearing on sentence they may have entered a plea of guilty for a number of reasons. Your client may tell you that they are not guilty of the offence and only pleaded guilty 'to get it out of the way'. Caution also has to be used when discussing the offence with your client. If statements like this are included in the report it may appear to the Magistrate that your client is traversing their plea.

Letters of support

For less complex matters in the Local Court your client or their Solicitor may only require a letter of support as proof that your client has engaged with your service.

A letter of support will usually include information about:

- When the client engaged with your service.
- How often you see the client.
- The type of treatment offered.
- The proposed length of treatment.
- Whether a bed is available at your service (if full time residential rehabilitation) or when one is likely to be available.

Character references

You may be asked by your client to provide a 'character reference' if they are appearing before the Court on sentence.

Character references are provided by people in the community who are of 'good reputation' who have known the person appearing before the Court for a period of time.

Generally, you would only write a character reference if you believe that the offence is out of character for that person. If you don't think the offence is out of character you should consider whether or not you are able to provide a character reference.

Information to be included in a character reference:

- Address the reference to "The Presiding Magistrate".
- Neatly written or typed.
- Signed with your name printed underneath with your address and occupation.
- Dated.
- A statement that you are aware of the charges before the court.
- How long you have known the person.
- How you know the person.
- Your opinion of their character.

- Anything which might help the court concerning their charges (e.g. general honesty, if it is a stealing charge; general driving ability, if it is a drink driving charge).

Supporting your client in Court

You may be asked by your client to accompany them to Court as a support person. Here are a number of tips to assist you and your client in navigating the Local Court.

Hearing Date

Check the time and date that your client is due to appear in Court. This will appear on the front page of the Court Attendance Notice (CAN) if they do not have this their bail slip will have their next Court date on it.

If you are still unsure about the Court date check the lawlink website at (www.lawlink.nsw.gov.au) under the tab "Courts and Tribunals" and then "Local Court" this will give you access the Court lists for the next week and also contact details of the Local Courts. If you are still unsure ring the Local Court itself and the staff can look it up on their computer system.

If your client has missed their Court date there may be some serious consequences such as being convicted in their absence or having a bench warrant issued. If this has happened to your client refer to the pamphlet "Reviewing Local Court decisions: Application for Annulment (or what to do if you missed court)" produced by Legal Aid NSW.

Getting Legal Advice

Your client may not have received Legal advice prior to their Court date. Legal Aid provides a duty Solicitor service at most Local Courts in NSW. However, Legal Aid may not always pick up the client's matter on the day of Court and each office has its' own practices. Ring your nearest Legal Aid office prior to the Court date to inquire about their practices (contact details available at www.legalaid.nsw.gov.au).

How long will be my client be at Court

Most Court Attendance Notices require the defendant to be at Court at 9.15 am. This does not mean that the matter will be heard at this time. In the Local Court there is generally no specific time allocated to a person's case (unless the Magistrate has given a specific marking). Remember you could be at Court from any time between 9am and 4pm.

Court Etiquette – Dos and don'ts of the Court Room:

Do:

- Bow when you enter the Court Room.
- Stand up when the Magistrate enters the Court room or when you are speaking to the Magistrate (unless you are in the witness box).

- Wear neat attire, the way you dress reflects on you. Work uniforms are OK as it may help to identify who you are.
- Call the Magistrate "Your Honour".
- Be polite, no swearing or overly familiar manner.
- Sit quietly in Court – if you have to speak to someone when you are waiting in Court whisper.

Don't:

- Talk on the phone – remember to turn it off before you enter the Court room.
- Wear a hat or sunglasses on your head.
- Cross your arms, yawn, eat or chew gum.
- Try to speak to the Solicitor when they are standing at the Bar table – especially if they are involved in another matter wait until they are outside.

Being a witness in Court – tips for Drug and Alcohol Workers

Generally all the information that the Court requires about your client will be in the Court report. If there is something in dispute contained in the report you have written you may be called to give evidence as a witness.

Oath or affirmation

When you are called to give evidence you will be directed to the witness stand by the Court Officer. You will then be asked if you wish to take an oath or affirmation.

An oath: Is when a person swears on the bible that they will tell the truth.

An affirmation: Is when a person affirms that they will tell the truth.

It is up to you depending on your own personal beliefs whether you make an oath or affirmation. Everyone must be quiet and stop what they are doing in Court when this occurs.

Examination

Examination in chief:

- The person who calls the witness in their case then has the opportunity to ask their witness questions first.
- If it is the defence that has called you this will be the defence Solicitor.
- The rules of evidence state that **leading questions** cannot be used in examination in chief.
- This means that the Solicitor can only ask open ended questions.
- A Solicitor will generally talk to you prior to you giving evidence so that they have an idea of the answers you will give.
- It may seem unusual that the Solicitor is asking you these questions again – but your answers are for the benefit of the Court (the Magistrate) not the Solicitor.
- Only refer to file notes if you have been given permission by the Magistrate to do so.

Cross examination:

- The other Solicitor (or Police Prosecutor) will then have the opportunity to test your evidence by asking you questions in cross examination.
- Be polite to them and answer truthfully – they are not the enemy.
- If you don't know the answer, say so. If you can't remember, say so.
- The other party may choose not to cross examine you.
- Sometimes the Magistrate may also ask you questions.

Re-examination:

- The Solicitor that called you as a witness then has the opportunity to ask you further questions to clarify evidence given in cross examination.

When you are finished giving evidence the Magistrate will say "**You are excused**" you are then free to leave the Court room or take a seat in the back of the Court.

Further information about going to Court

Legal Aid NSW publishes a number of brochures that explain the Court process in more detail. These can be ordered by going onto the Legal Aid NSW website www.legalaid.nsw.gov.au and following the link titled "publications". You can order these brochures in a number of community languages.

Some useful brochures available are:

- Going to Court; a guide to the Local Court for defendants.
- Who's who in the Local Court (poster).
- Understanding bail.
- Applying for Supreme Court bail
- Reviewing Local Court decisions.
- Appealing to the District Court.
- Character references.
- Drugs, driving and you.
- Drink driving charges and you.

The Community Restorative Centre NSW also produced a range of information on supporting clients in contact with the Criminal Justice System. Access the Court Support Information Booklet on the NADA website: www.nada.org.au/resources/nadapublications also visit www.crcnsw.org.au and view the **Going to Court** segment of the Justice Maze DVD.

Other sources of Legal information

Law Access:

Free telephone advice in areas of Criminal, Civil and Family Law

Open Monday – Friday 9 am to 5pm.

www.lawaccess.nsw.gov.au

Ph.: 1300 888 529

Legal Aid Youth Hotline:

Telephone advice for young people aged 10 to 17 who require criminal law advice. This Open Monday – Thursday: 9 am to midnight and Weekends – 9am Friday to midnight Sunday.

Ph: 1800 10 18 10

Law Society NSW:

Community Referrals Service.

Ph: (02) 9926 0355 or 9926 0364.

Community Legal Centres (CLCs):

Independent, non-profit organisations which provide free legal advice, assistance, referral and information to those who are deemed eligible.

Ph: 9212 7333 for information about your nearest CLC.

Aboriginal Legal Service (ALS):

Located in both metropolitan and regional NSW.

Ph: 8303 6699 or 8303 6600 for information about your nearest ALS office.

Wirringa Baiya (Aboriginal Women's Legal Service):

Ph. 1800 686 587 or 9569 3847.

Lawlink:

www.lawlink.nsw.gov.au

Website of the Department of Attorney General and Justice is great source of information about NSW Courts and their locations.

Legal Aid NSW

www.legalaid.nsw.gov.au