

Practice Memorandum No. 7

Resolution Conferences - Criminal Trials

Introduction

1. Resolution conferences in criminal cases provide an opportunity to obtain judicial input and assistance for counsel's efforts at resolution. Conferences are intended to facilitate the disposition of cases in a timely and fair manner other than by trial. To be effective counsel must be conversant with the issues that will likely arise in a trial, understand the context in which the issues will arise and the possible outcomes of the trial. Therefore, it is mandatory that counsel attending the resolution conference:
 - (a) be the person scheduled to conduct the trial;
 - (b) be fully prepared;
 - (c) have adequate instructions to deal with all issues likely to arise in a conference.

The accused person should be available in the courthouse or otherwise readily accessible to provide instructions.

Scheduling Resolution Conferences

2. At the first crownside appearance by an accused person with counsel, the presiding judge will inquire as to whether both the crown and defence want to participate in a resolution conference. If so, a resolution conference date may be set at that initial crownside appearance, for a date that is as soon as is practicable, and preferably within two months from the date of the crownside appearance. The court may also adjourn the setting of the trial date to allow for the scheduling of a resolution conference.
3. The parties may at any time request the scheduling office to set a date for a resolution conference, even if one has been held under paragraph 2.
4. A joint request be made to the scheduling office for setting down a resolution conference. The parties may, if they choose, submit a list of three judges from which the resolution conference judge will be chosen, if practical.
5. All resolution conferences in a case should, wherever possible, be attended by the same judge.

Material for Resolution Conferences

6. At least fourteen days before the resolution conference, the crown will provide the following material to the judge and to other counsel who are to attend the resolution conference:
 - (a) a statement containing the crown's allegations of facts, identifying any facts on which there is agreement and those allegations of fact that remain in issue;
 - (b) a statement of any material differences in the expected trial evidence from that adduced at the preliminary inquiry;
 - (c) a list of the issues for the resolution conference;
 - (d) the accused's criminal record, if any;
 - (e) expert reports, if any;
 - (f) the crown's position on resolution;
 - (g) a brief that may be in letter form containing an analysis of the law in support of the crown's position, a list of legal authorities and the pertinent excerpts from those authorities.
7. At least seven days before the resolution conference, defence counsel will provide the following material to the judge, the crown, and any other counsel attending the resolution conference:
 - (a) expert reports, if any;
 - (b) a brief that may be in letter form containing an analysis of the law in support of the defence position, a list of legal authorities and the pertinent excerpts from those authorities.
8. Notwithstanding the provisions of paragraphs 6 and 7 above, counsel may, in extraordinary circumstances, request a resolution conference at any time prior to trial, in which case the assigned resolution conference judge will specify the materials to be filed and the times for filing.
9. The judge who attends the resolution conference may review all material on file, including the preliminary transcript and exhibits.

Counsel's Efforts at Resolution

10. Before the resolution conference, crown and defence counsel shall:

- (a) satisfy themselves that disclosure is complete;
- (b) discuss the information and materials exchanged and attempt to reach resolution;

At the start of the resolution conference, counsel shall inform the judge concerning progress achieved toward resolution.

Conduct at Resolution Conferences

11. Every effort will be made during the resolution conference to resolve the case or at least as many issues as can reasonably be resolved.
12. Victim impact statements and evidence concerning any victim must be considered before determination of sentence.
13. If the parties reach a resolution, by joint recommendation on either a specific sentence or range of sentence, the plea may be entered in open court immediately following the conference unless the exigencies of the case require the plea or sentencing to be set over to another day. The delay should be the least possible. If a resolution is achieved, it is non-binding until the matter is heard in open court and the case is determined. Where resolution is tentatively achieved, the presiding judge will arrange for the matter to be heard in open court as soon as possible and that judge will preside at the hearing. At any time before the hearing, either party may advise the judge that they are no longer willing to be bound by the resolution and the matter will proceed as if no resolution had been achieved.
14. If complete resolution is not achieved but agreement has been reached on process or as to some of the issues, it shall be considered non-binding until the agreements are placed on record in open court. In such a case, the judge will determine the most practicable method to record the agreements reached.
15. The judge who attends the resolution conference must not be the trial judge or hear any contested proceedings in the case.
16. A resolution conference is private. All communications within it are confidential and must be treated in the same fashion as without prejudice communications. Any material resulting from a resolution conference shall not be placed in the court file, unless it becomes material which is part of the final disposition of the matter which is presented in open court.

Adopted by the court on February 25, 2012.

Deborah K. Smith
Associate Chief Justice of the
Supreme Court of Nova Scotia