

# SUPREME COURT (CRIMINAL CASE MANAGEMENT)(AMENDMENT) RULES, 2024

## Arrangement of Rules

---

### Rule

1.	Citation and commencement.....	2
2.	Revocation and replacement of rule 7 of the principal Rules.....	2
3.	Insertion of rules 7A, 7B, 7C and 7D into the principal Rules.....	3
4.	Amendment of the Schedule of the principal Rules.....	7
5.	Insertion of the Second Schedule to the principal Rules.....	7

## THE SUPREME COURT ACT

### (CHAPTER 53)

## SUPREME COURT (CRIMINAL CASE MANAGEMENT) (AMENDMENT) RULES, 2024

The Rules Committee, in exercise of the powers conferred by section 76 of the Supreme Court Act (*Ch. 53*) makes the following rules —

#### 1. Citation and commencement.

- (1) These Rules which amend the Supreme Court (Criminal Case Management) Rules (*S.I. 58 of 2012*), (hereinafter “the principal Rules”) may be cited as the Supreme Court (Criminal Case Management) (Amendment) Rules, 2024.
- (2) These Rules shall come into force on the 2<sup>nd</sup> day of January, 2025.

#### 2. Revocation and replacement of rule 7 of the principal Rules.

The principal Rules are amended by the revocation of rule 7 and the replacement of the following —

##### “7. Duty of court.

- (1) The court shall actively manage each case to ensure the case progresses efficiently, effectively, and fairly.
- (2) For the purposes of paragraph (1), the active management of a case by the court, includes —
  - (a) early identification of the material issues involved in the case, which includes —
    - (i) identification of all possible issues in the case;
    - (ii) identification of the nature of the case for the prosecution and the defence;
  - (b) appropriate directions as early as possible in the case, of specific actions required of the parties, and the time within which the court’s directions are to be complied with;
  - (c) early identification, and attention to the needs of witnesses, to ensure their attendance at trials, including

- special measures for the giving of their testimony including translation services;
- (d) monitoring the progress of the case and compliance with directions;
  - (e) ensuring that evidence whether disputed or not, is identified early;
  - (f) ensuring that evidence, whether disputed or not, is fairly presented at trial in the most efficient and effective manner;
  - (g) discouraging trial delay by dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
  - (h) encouraging cooperation among parties in progressing the case to trial;
  - (i) making use of available modern technology;
  - (j) in the case of a child or young person appearing before the court, ensuring that child or young person has legal representation as early as possible; and
  - (k) any other matter the court deems necessary.”.

### **3. Insertion of rules 7A, 7B, 7C and 7D into the principal Rules.**

The principal Rules are amended by the insertion of the following as rules 7A, 7B, 7C and 7D —

#### **“7A. Directions' hearings.**

- (1) In fulfilling its duty to actively manage cases, the court shall conduct directions hearings throughout the case.
- (2) Without prejudice to the generality of the Court’s power to make directions, directions shall include —
  - (a) the time for filing and serving of witness statements and reports of expert witnesses;
  - (b) that within sixty days of the prosecution disclosing evidence to the defence in accordance with the Criminal Procedure Code Act (Ch.91), the accused person is required to disclose the case to be advanced by the defence by way of a written statement (hereinafter “the Defence Statement”).
  - (c) that within sixty days of the receipt of the Defence Statement, the prosecution is required to serve its response which shall, with reference to any relevant statutory or other legal authority —

- (i) set out the prosecution’s stance on issues raised by the defence as to the admissibility of prosecution evidence;
  - (ii) identify any aspect of the case on which the accused person indicates reliance will be placed which the prosecution asserts is inadmissible.
- (2) Directions may include a requirement for a pre-trial evidentiary hearing, which shall be conducted after the accused person is committed for trial to the Supreme Court for a criminal offence and before the start of his trial.

#### **7B. Pre-trial evidentiary hearing.**

- (1) A pre-trial evidentiary hearing may relate to —
  - (a) the admissibility of confession statements, expert evidence, including forensic evidence, or other evidence on which the prosecution seeks to rely;
  - (b) the exclusion of any other evidence on which the prosecution seeks to rely;
  - (c) the admissibility of evidence on which the accused person indicates reliance will be placed;
  - (d) exclusion of any other evidence on which the accused person seeks to rely, subject to section 189 of the Criminal Procedure Code Act (*Ch.91*).
- (2) Where directions are given by the court for the holding of a pre-trial evidentiary hearing, it shall ensure that the parties have complied with the applicable requirements of rule 7A(2) (b) and (c) before the hearing.
- (3) Assertions in the course of argument in a pre-trial evidentiary hearing as to the factual basis of the parties’ cases shall be confined to that in the served prosecution evidence and in the defence case as set out in the Defence Statement.
- (4) Where the court rules after a pre-trial evidentiary hearing —
  - (a) on the admissibility, or exclusion of any disputed evidence, including confessions, forensic evidence, or other expert evidence; or
  - (b) on any other question of law arising in the case, that ruling has binding effect on all parties except the trial judge exercising his function under section 189 of the Criminal Procedure Code Act (*Ch.91*).

- (5) Notwithstanding paragraphs (6) and (8) and subject to section 189 of the Criminal Procedure Code Act (*Ch. 91*), a court (including the trial judge) may discharge or vary (or further vary) a ruling made in a pre-trial evidentiary hearing, but only where —
  - (a) there has been a material change of circumstances since the ruling was given; or
  - (b) it is in the interests of justice to do so.
- (6) Subject to paragraphs (4) and (8), a ruling made in a pre-trial evidentiary hearing has binding effect from the time it is made until the case against the accused person, or if there is more than one accused person, the case against each of them, is disposed of.
- (7) For the purposes of paragraph (6), the case against an accused person is disposed of, where—
  - (a) he is acquitted or convicted; or
  - (b) the prosecution decides not to proceed with the case against the accused person.
- (8) A court may discharge or vary a ruling made under this rule —
  - (a) on an application by a party to the case; or
  - (b) on the court's own motion.
- (9) No application may be made pursuant to paragraph 8(a), unless there has been a material change in circumstances since the ruling was made or, if a previous application has been made, since the application or last application was made.
- (10) The judge who discharges or varies a ruling, need not be the judge who made the ruling or, if the ruling has been varied, the judge, (or any of the judges) who varied it.

**7C. Defence Statement.**

- (1) In the Defence Statement the accused person shall —
  - (a) set out the nature of the accused person's defence, including any particular defences on which he intends to rely;
  - (b) indicate the facts on which he takes issue with the prosecution's case;
  - (c) set out, in the case of each such fact, why he takes issue with the prosecution;

- (d) set out particulars of the facts on which he intends to rely for the purposes of his defence;
  - (e) identify any point of law, including objection to the admissibility of evidence proposed to be led by the prosecution, which he intends to take, and any statutory or other legal authority on which he intends to rely for that purpose;
  - (f) identifies witnesses, if any, he proposes to call.
- (2) The accused person is required to sign the statement unless the accused person by reason of illiteracy or any other reason is unable to read and sign the document, in which case his counsel and/or attorney shall read the same to him and the accused person's counsel and/or attorney shall sign the statement confirming it has been read to the accused person and he has confirmed that it represents his position.
  - (3) If the Defence Statement has been signed by the accused person's counsel and/or attorney, the court shall confirm with the accused person at the next convenient court sitting that the contents are accurate by reading the Defence Statement to him in open court and the response of the accused person shall be reflected on the record.
  - (4) An accused person may in writing and in accordance with the procedure for making a Defence Statement, disclose an amended statement at any time
  - (5) The Defence Statement shall be in the form prescribed in the Second Schedule to these Rules

**7D. Sanctions.**

- (1) At trial, the court or any party to the criminal proceedings may ask such questions of the accused person (if he gives evidence) and make such comments as are appropriate and fair, and the court or jury may draw such inferences adverse to the accused person as appear proper in deciding whether the accused person is guilty of the offence, where —
  - (a) the defence advanced at trial is different to that set out in the Defence Statement (for example where the defence changes from non-participation to self defence;
  - (b) the factual basis of the defence advanced at trial is significantly different to that set out in the Defence Statement. Whether a defence is “significantly

- different” is a matter of fact and degree to be decided by the trial judge;
- (c) a positive defence is advanced at trial and no Defence Statement was served. A ‘positive defence’ is any defence that is more than asserting that on the basis of the prosecution’s unchallenged evidence the accused person is not guilty;
  - (d) a Defence Statement was served but beyond the sixty-day limit(or any extension granted by the court), and the late service may be relevant to credibility of the defence or adversely affected the prosecution’s ability to investigate the defence disclosed;
  - (e) the Defence Statement fails to satisfactorily identify the issues on which he relies.
- (2) A person shall not be convicted solely on any adverse inference referred to in paragraph (1).
  - (3) For the purpose of proving paragraphs (1)(a) to (e), the relevant parts of the Defence Statement shall be admitted in evidence, and where appropriate, the time the Defence Statement was disclosed.
  - (4) The expression “advanced at trial” includes both the evidence adduced by the defendant or adduced through defence witnesses and any case put to prosecution witnesses in cross-examination.”.

#### **4. Amendment of the Schedule of the principal Rules.**

The Schedule to the principal rules is amended by —

- (a) renaming it “First Schedule”
- (b) deleting that portion thereof which reads: “STATEMENT OF DEFENCE”.

#### **5. Insertion of the Second Schedule to the principal Rules.**

The principal Rules are amended by the insertion, immediately after the First Schedule of the following as the Second Schedule —

**“SECOND SCHEDULE**  
(Rules 7A, 7B, 7C and 7D)

The Defence Statement shall be in the following form and its contents shall comply with the requirements imposed by Rule 7C(1):

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
CRIMINAL DIVISION**

**BETWEEN:**

**THE KING**

**V**

**[Name of the accused person]**

---

**DEFENCE STATEMENT**

---

**NATURE OF THE ACCUSED PERSON'S DEFENCE**

1. The ...

**MATTERS OF FACT ON WHICH THE ACCUSED PERSON TAKES  
ISSUE AND WHY**

2. The defendant takes issue with the following:

(i) ...

**MATTERS OF FACT ON WHICH THE ACCUSED PERSON INTENDED  
TO RELY**

3. The defendant will rely on the following:

(i) ...

**MATTERS OF LAW (INCLUDING ISSUES AS TO THE  
ADMISSIBILITY / EXCLUSION OF EVIDENCE)**

4. ...

.....

[Signed by the accused and name printed]



Where Rule 7C(2) applies instead add “This Defence Statement has been read to the accused person [insert name] on the .... day of 20.. and the accused person has confirmed it accurately represents his instructions and position. Signed by Counsel and Attorney to the accused person.....”.

**Made this            day of    , 2024.**

**Chairman  
THE RULES COMMITTEE**