

14.10: Criminal Trial: Without Counsel

Script

Call the Case	<p><i>Either the judge or the court clerk may call the case.</i></p> <p>“Court is now in session.”</p> <p>“The case of [City/Town/Village] of _____ [name of municipality] versus _____ [name of defendant], case number _____, is now before this court for trial.”</p>
Determine if All the Parties are Present Determine if All the Parties are Ready to Proceed	<p>“Are all the parties present?”</p> <p><i>The parties are the prosecution (usually the police officer who issued the citation or made the arrest) and the defendant.</i></p> <p><i>If the prosecution is absent, the court may dismiss the case or may continue the matter to determine whether the prosecution was absent with good cause.</i></p> <p><i>If the defendant is absent with good cause, the court may reschedule the trial.</i></p> <p><i>If the defendant is absent without good cause or for unknown reasons, the court issues a bench warrant for the defendant’s arrest. Use Criminal Form 9-212(A).</i></p> <p>“Are you ready to proceed?”</p> <p><i>If yes, proceed with the trial.</i></p> <p><i>If no, the court may:</i></p> <ol style="list-style-type: none"><i>1. Grant a continuance of the trial if there is good cause for a party being unprepared; or</i><i>2. Require the parties to proceed if there is no good cause for being unprepared; or</i><i>3. If a subpoenaed and essential witness for the defense has not appeared, issue a bench warrant to arrest the witness and grant a continuance of the trial; or</i>

	<p>4. <i>If a critical witness for the prosecution has not appeared, the court may dismiss the case (because of lack of evidence). Before dismissing, the court should consider the efforts made by the prosecution to secure the attendance of the witness.</i></p>
<p>Optional: Administer the Oath to all Witnesses</p>	<p><i>The court may choose to swear-in all of the witnesses at once. This is not required; each witness can be sworn-in at the beginning of his or her testimony. If the court decides to swear-in all of the witnesses at this point, have the witnesses stand and administer the following oath:</i></p> <p>“Please raise your right hand: Do you solemnly swear or affirm that the testimony you give is the truth, the whole truth, and nothing but the truth, under penalty of perjury?”</p>
<p>Exclude Witnesses</p>	<p>“Would the parties like to have the witnesses leave the courtroom until they testify?”</p> <p><i>If either party or the court invokes the rule to exclude witnesses, all of the witnesses - except the parties and any person whose presence is essential to presenting a party’s case, such as another officer - must leave the courtroom after the court instructs them as follows:</i></p> <p>“The rule excluding witnesses has been invoked. You must leave the courtroom and remain outside so you cannot hear the testimony of the other witnesses. You should not discuss your testimony with anyone, either before you testify or after you have testified, except that you may discuss your testimony with the prosecuting officer and the defendant - but you must not do so in the presence of any other witnesses.”</p>
<p>Opening Statements</p>	<p>“Would the [City/Town/Village] like to make an opening statement?”</p> <p><i>The prosecution may make a statement or waive its right to make an opening statement.</i></p> <p>“Would the defendant like to make an opening statement?”</p> <p><i>The defendant may make an opening statement now, may waive its opening statement, or may reserve its opening statement until the beginning of its own case.</i></p>

	Presentation of Evidence
<p><u>Prosecution</u></p> <p>Administer the Oath to Each Witness</p> <p>Direct Testimony</p> <p>Cross-Examination by Defendant</p> <p>Redirect Examination by Prosecution</p> <p>End of Prosecution’s Case</p>	<p><i>The prosecution (usually a police officer) presents the “prosecution’s case.”</i></p> <p><i>If the witnesses are not already sworn-in, administer the oath to each witness as he or she takes the stand:</i></p> <p>“Please raise your right hand: Do you solemnly swear or affirm that the testimony you give is the truth, the whole truth, and nothing but the truth, under penalty of perjury?”</p> <p><i>The police officer and any other witnesses for the prosecution take the stand and, typically, tell their stories in a narrative fashion (without questioning). The prosecution is entitled to ask questions of the witnesses, but usually does not do so.</i></p> <p><i>The defendant may cross-examine each prosecution witness. Cross-examination is limited to subjects raised on direct examination.</i></p> <p><i>Rule 8-111 permits the court, in its discretion, to allow pro se parties to ask questions of witnesses directly or through the court. By having the pro se defendant tell the court what questions he or she would like answered by the witness (rather than questioning the witness directly), the court can avoid unnecessary conflict.</i></p> <p><i>If the defendant cross-examines a prosecution witness, the prosecution may conduct redirect examination. Redirect is limited to subjects raised on cross-examination.</i></p> <p><i>After all of the prosecution witnesses testify, the prosecution “rests” its case.</i></p>
<p>Objections</p>	<p><i>Objections to the admission of evidence will occur throughout the trial—in both the prosecution’s case and the defendant’s case. When an objection is made to a question, the judge should ensure that the witness does not respond until told to do so. If necessary, the judge may say:</i></p> <p>“An objection has been made. Please do not answer the question until I tell you that you may do so. If I sustain the objection, you will not answer the question at all. I will tell you whether or not to answer.”</p>

	<p><i>In ruling on the objection, the judge should hear the full objection, hear a response from the non-objecting party, and then rule.</i></p> <p><i>If the court concludes that the objection is without merit (that is, the evidence is admissible), the court will “overrule” the objection and tell the witness to answer.</i></p> <p><i>If the court concludes that the objection is valid and that the evidence is inadmissible, the court will “sustain” the objection and tell the witness not to answer.</i></p> <p><i>Note: Witnesses cannot object to questions, but can assert their right not to testify if their testimony would be self-incriminating or if their testimony is otherwise privileged.</i></p> <p><i>In addition, in extreme circumstances, the court may curtail questioning that harasses the witness, questioning or testimony that is redundant, or testimony that is overly prejudicial (that is, its prejudicial impact significantly outweighs its probative value).</i></p>
<p>Physical and Documentary Evidence</p>	<p><i>Physical and documentary evidence must be offered into evidence by the party wishing the court to consider it. When offered, an exhibit is initially marked with a sticker for identification (for example, as “Village’s Exhibit 1” or “Defendant’s Exhibit A”). If the exhibit is admitted into evidence, the court will note on the sticker that the exhibit is admitted. If the evidence is not admitted, the court will return the exhibit to the offering party.</i></p> <p><i>As with objections to questions, parties may object to the admission of exhibits. When a party offers physical or documentary evidence for admission, he or she must show the evidence to the opposing party before offering it to the court. If the opposing party objects to its admission, the court should hear the objection as well as any argument from the party offering the exhibit. After hearing the arguments for and against admission, the court must either overrule or sustain the objection. The court should not see the exhibit until it has ruled on the objection and admitted the exhibit into evidence. If the court sustains the objection, the exhibit will not be admitted and the court will not consider it.</i></p>
<p>Oral Motions</p>	<p><i>Once the prosecution rests, the court entertains any oral motions presented by the parties, such as a defense motion to dismiss or motion for a directed verdict. The court must rule on a motion for a directed verdict at this time, but may defer ruling on a motion to dismiss until the defense rests its case.</i></p>

	<p><i>If the court grants either motion, the case ends and the defendant is acquitted. If the judge defers ruling or denies the motion for a directed verdict, the case proceeds to the defense.</i></p>
<u>Defense</u>	<p><i>The defendant serves as self-advocate, without a defense attorney, and presents the “defense’s case.”</i></p>
Opening Statement	<p><i>If the defendant did not make an opening statement at the beginning of the trial, he or she may make an opening statement now before calling the first witness.</i></p>
Administer the Oath to Each Witness	<p><i>If the witnesses are not already sworn-in, administer the oath as he or she takes the stand:</i></p> <p>“Please raise your right hand: Do you solemnly swear or affirm that the testimony you give is the truth, the whole truth, and nothing but the truth, under penalty of perjury?”</p>
Direct Testimony	<p><i>As with the prosecution’s case, the defendant (if he or she chooses to do so) and any other witnesses for the defense will take the stand and, typically, tell their stories in a narrative fashion (without questioning). The defendant is entitled to ask questions of the other witnesses. As noted above, the court may require the defendant to “funnel” his or her questions through the judge.</i></p>
Defendant’s Right Not to Testify	<p><i>The defendant has a constitutional right not to testify. The prosecution may not comment on the defendant’s choice not to testify and the court may not infer anything about the defendant’s guilt or innocence based on defendant’s decision not to testify. (If the defendant does testify, the defendant is subject to cross-examination just like any other witness.)</i></p>
Cross-Examination by Prosecution	<p><i>The prosecution may cross-examine each defense witness, including the defendant if the defendant chose to testify. Questions on cross-examination are limited to those subjects raised on direct examination. Here too, the judge may require the prosecution to conduct its cross-examination through the judge.</i></p>
Redirect Examination by Defendant	<p><i>If the prosecution cross-examines a witness, the defendant may conduct redirect examination on those subjects raised on cross-examination. The judge may require the defendant to conduct redirect through the judge, rather than directly questioning the witness.</i></p>
End of Defendant’s Case	<p><i>After the defense presents all of its witnesses, the defense “rests” its case.</i></p>

<p>Prosecution's Rebuttal</p>	<p><i>If the defendant called witnesses or otherwise presented evidence, the prosecution may recall its witnesses or call additional witnesses to rebut evidence introduced by the defendant. The defendant may cross-examine these rebuttal witnesses. The prosecution may conduct redirect examination.</i></p>
<p>Closing Arguments</p>	<p>“Would the [City/Town/Village] like to make a closing argument?”</p> <p>“Would the defendant like to make a closing argument?”</p> <p>“Would the prosecution like to rebut?”</p>
<p>Verdict</p>	<p><i>If the court deferred ruling on any motions, the court must rule on the motion before declaring its verdict.</i></p> <p><i>If the court dismisses the case (e.g., for lack of jurisdiction or for statute of limitations problems), the court writes “Dismissed” on the criminal complaint, then signs and dates the criminal complaint, but does not enter judgment.</i></p> <p><i>If the court does not dismiss the case, the court must declare its verdict orally and in writing:</i></p> <p>“It is the judgment of the court that the defendant, _____ [name of defendant], is [guilty] [not guilty] of _____ [name of offense].”</p> <p><i>If the court finds the defendant guilty, it must impose a sentence or set a sentencing hearing, complete the appropriate form, and inform the defendant of the right to appeal:</i></p> <p>“You have the right to a new trial in the district court. To appeal the court’s decision, you must file a notice of appeal in the district court within fifteen (15) days of entry of the judgment and sentence.”</p> <p><i>If the defendant is found guilty and jail time is imposed (or suspended), the court must complete the Judgment and Sentence form.</i></p> <p><i>If the defendant is found guilty and no jail time is imposed, the court completes the final order on the criminal complaint (not the Judgment and Sentence form).</i></p> <p><i>If the court finds the defendant not guilty, the court announces its decision and completes the final order on the criminal complaint.</i></p>