



THE SUPREME COURT OF BERMUDA
PRACTICE DIRECTION

ISSUED BY THE CHIEF JUSTICE

Notice 6/4/9

Ref. A/50

CIRCULAR NO. 7 OF 2008

WRITTEN INSTRUCTIONS IN CRIMINAL CASES

Counsel are reminded that where it is decided that the defendant will not give evidence, this should be recorded in writing, along with a brief summary of the reasons for that decision. Wherever possible, the record should be endorsed by the defendant. This statement of principle is taken from the judgment of the Privy Council in Ebanks v R [2006] UKPC 16, at [18].

Indeed, defending counsel should as a matter of course make and preserve a written record of all the instructions he receives, including a witness statement: Ibid. [17], quoting and applying Bethel v The State (1998) 55 WIR 394, at 398.

These principles are of universal application and are not limited to capital cases or to England & Wales: Ebanks v R (*supra*) at [17].

The practice has recently been reinforced by several cases in the Bermuda Court of Appeal, and should now be well understood by the profession. In view of that, in future Counsel who fail to comply may be subject to disciplinary proceedings.

Dated this 27th day of May 2008

Richard W. Ground OBE QC
Chief Justice

cc. Deputy Governor
Attorney General's Chambers
Department of Public Prosecutions
Hamilton Police Station
Commissioner of Police
Commissioner of Corrections
Magistrates' Court
Legal Aid Office