

Character references in criminal proceedings

What is a character reference?

A character reference is a written statement from a 'person of good reputation' about the character and circumstances of another person. It is provided in the form of a letter addressed "To the Presiding Magistrate" (in the Local Court) or "To the Presiding Judge" (in the District and Supreme Courts).

A 'person of good reputation' is a person who does not have a criminal record, and is not known to have a bad reputation.

Character references can be obtained from friends, family, employers and fellow members of clubs and organisations. Avoid getting a character reference from someone under the age of 18.

Generally, a reference from someone who is not a relative will carry more weight than a reference from a family member.

Why would I need a character reference?

If you have been charged with a criminal offence, providing the court with character references will help the court to understand your circumstances and to take them into account appropriately when making a decision on sentence.

The court is required to take into account certain mitigating factors like youth, lack of prior criminal record, whether you are a person of good character, and whether it is likely that you will reoffend.

Also...

Ask for more character references than you think you will need. Even with the best of intentions, some people will not provide a reference in time.

Bring the original plus three copies of the reference with you to court – one for you, one for the prosecution, and give the original to the court. Keep a spare copy for yourself.

SOMEONE HAS ASKED ME TO PROVIDE A CHARACTER REFERENCE.

How should I format it?

The character reference should be typed, dated, and signed with your name, address and occupation.

Ideally, the reference should be no longer than a page.

If the reference is being written in an official capacity, such as by an employer, it should be on letterhead.

What should I include?

Keep in mind that the reference must stand by itself. The court will not contact you for clarification and you will not be speaking in court.

The reference must show that you are aware of the specific charge that the defendant is facing, for example 'I am aware that [name] has been charged with drug possession'.

You should explain the length and circumstances of your relationship with the defendant, and your opinion of the defendant (such as whether they are responsible, hardworking, or honest).

Keep in mind that the court sees many character references and generalised positive statements will have little impact. Paint a realistic picture of the defendant's character with relevant examples and stories, such as a story illustrating their honesty if they have been charged with a dishonesty offence like larceny or fraud.

If you are aware of personal circumstances that have contributed to the defendant's actions, you should refer to these. However, make sure that in covering these circumstances you do not pass blame onto other people or imply that the defendant is not responsible for their actions.

If you are the defendant's employer, and conviction will affect either their ability to do their job or their ability to continue in employment, state this clearly.

What shouldn't I include?

Do not include something that is not true. It is an offence to mislead the court. Ask the defendant whether they have any prior criminal record.

Do not include your opinion of the merits of the law, or of the victim. Neither opinion is of interest to the court.

Do not make submissions, or suggest the penalty that should be imposed by the court.

This information is current to 16 October 2018 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.