

Practice Standards

December, 2012

Section XI, Representation Standards for Postconviction Proceedings

3. HANDLING THE CASE

A. As soon as feasible after appointment, counsel should confer personally with the client to discuss the case. Counsel should explain the scope of and procedures applicable to the postconviction process.

B. Counsel shall promptly request all transcripts and case records. Counsel shall request appropriate releases from the client and promptly request complete attorney files. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel as well as appellate counsel and conduct other appropriate investigation into matters that are not of record.

D. After reviewing the record and conducting the appropriate investigation, counsel should confer with the client and discuss, whether in his or her professional judgment there is the need for filing an amended petition for postconviction relief, including a petition for DNA testing, and probable results of pursuing this avenue. Counsel should explain the advantages and disadvantages of pursuing postconviction relief, as provided by these Standards.

E. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, counsel should pursue relief for the client on that ground.

F. In preparing an amended petition, and after exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

G. Counsel shall be diligent in expediting the timely submission of an amended petition for postconviction relief, keeping in mind the corresponding federal requirements for *habeas corpus* relief, and shall comply with all applicable rules regarding conduct, pleadings, submission of supporting evidence, deadlines, and citations to authority.

H. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

I. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion and shall prepare appropriately for hearings, including interviewing and subpoenaing witnesses and locating, obtaining, and preparing to present the appropriate evidence.

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J. Counsel shall appear with the client at the client's hearing for postconviction relief and/or DNA testing. Counsel shall present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in relief for the client.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies and the scope of further representation. This information, with particular emphasis on subsequent deadlines, should be memorialized in a letter to the client. Counsel has a continuing duty to represent the client on appeal.

M. Counsel shall apply professional judgment when determining whether to file an appeal, a petition for *habeas corpus* relief in federal court, or a petition for *certiorari* to the United States Supreme Court. Any decision shall be reviewed by the Chief Appellate Defender.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.