

Office of the State Public Defender  
**MISDEMEANOR CRIMINAL CASE**  
**CHECKLIST**  
12/15/2010

**INITIAL CLIENT CONTACT**

- **Be aware that the Standards require you to make personal contact with an incarcerated client within three working days of being appointed to the case**
- Ascertain whether a conflict or apparent conflict of interest exists which would prevent you from ethically representing the client
- Identify yourself by name and affiliation
- Inform the client of his/her legal rights
- Explain the charges to the client including possible penalties, registration requirements and enhancements
- Identify all parties to the criminal proceeding
- Determine if the client has a history of any issues which could impair attorney-client communications
  - Language, literacy, chemicals, mental health, medications
- Make an initial determination regarding the client's mental competency
- Determine citizenship and identify relevant federal criminal law or immigration consequences
  - **You must advise your client regarding federal or immigration consequences associated with state criminal law proceedings**
- Right to remain silent
  - Explain the right to remain silent
    - ❖ Warn client regarding recorded calls, correspondence, visitors, jailers, other inmates, etc.
  - Explain the attorney-client privilege
  - Determine if the client has made any written or oral statements to anyone concerning the offense
    - ❖ If the client has made such statements, get details, names, etc.
- Identify all relevant witnesses
- Obtain as complete a history from the client as possible, including criminal history
- Explain the bail process and identify how a meaningful bail argument can be made
- If your court employs the practice, explain "trial in absentia"

**PRETRIAL**

- Obtain and carefully review the charging documents
- Develop a theory of the case with your client's input
- Conduct a meaningful investigation
- Identify affirmative defenses and file appropriate notice with the court
- Research all issues that may produce viable motions
- Assess – and explain to client – de novo trial process
- Explain the escalating consequences of future PFMA or DUI convictions
- Prepare and file witness lists as soon as you determine that the witness will testify
- **The following decisions belong exclusively to the client:**
  - Decision to plead guilty or not guilty
  - Decision whether or not to testify at any point in the case
  - Decision whether to waive a jury
    - ❖ Explain relevant deadlines and consequences in your court for demanding a jury, including liability for jury costs
  - Decision whether to file an appeal if convicted

## **FOR CASES RESULTING IN GUILTY PLEA**

- Advocate for dismissal of as many charges as possible
- Advocate for reduction of charges
- Make sure disposition agreement is reduced to writing
- Make sure client is fully informed about all aspects of the plea and any plea agreement, and that the client understands the consequences of pleading guilty
  - Difference between binding vs. nonbinding
  - Role of prosecutor, judge, probation officer, and victim in sentencing process
- Determine whether grounds can be presented to secure release of client pending sentencing hearing

## **FOR CASES RESULTING IN A JUDGE/JURY TRIAL**

- **Re: PFMA cases:** Be alert to the difference between causing injury and causing apprehension of injury
  - This distinction may have significant consequences for your client's post conviction rights
- File Motions in Limine in advance of trial (per local court rule or practice)
- Brief and request oral argument for any viable legal motions
- Develop a witness list and keep it up to date
  - Make sure it is filed with court in advance of trial (per local court rules)
- Carefully review all prosecution trial material
  - Make sure you have ALL statements (including written statements and audio-video statements) which your client has provided to law enforcement or anyone else
  - Interview all prosecution witnesses, even if it's on the day of trial
  - Inspect all physical evidence prior to trial
  - Obtain prosecution expert reports and interview experts in advance of trial
  - Demand discovery update immediately prior to trial
- Make sure you have provided the prosecution with your expert's report in advance of trial
- Prepare demonstrative exhibits prior to trial
- Voir dire
  - Elicit attitudes of jurors
  - Convey legal principles critical to case
  - Preview damaging information
  - Present client in favorable and appropriate light
  - Establish a positive relationship with jury
- Outline opening and closing statements in advance of trial
- Maintain a trial notebook with statutes, evidence rules, case law regarding anticipated issues
- Jury instructions
  - Be creative!!

## **SENTENCING**

- Ensure client is fully informed about likely and possible outcomes
- Ensure court has all relevant sentencing information (witness letters, etc.)
- Inform client of the right to speak at sentencing, including effects of testimony on appeal, retrial, etc.
- Inform client of right to appeal