

## **Practice Standards**

December, 2012

### **Section VI, Qualifications and Duties of Counsel**

#### **6. Duty of Counsel to Conduct Investigation:**

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, ensure that the charges and disposition are factually and legally correct and that the client is aware of potential defenses to the charges.

B. Sources of investigative information and relevant procedures may include the following:

- a. Arrest warrant, accusation, complaint and/or information, along with any supporting documents used to establish probable cause, should be obtained and examined to determine the specific charges that have been brought against the accused;
- b. The relevant criminal statutes and case law precedents should be examined to identify:
  - i. the elements of the offense(s) with which the accused is charged;
  - ii. the defenses, ordinary and affirmative, that may be available;
  - iii. any lesser included offenses that may be available; and,
  - iv. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.
- c. Interviewing witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview.
- d. The police and prosecution reports and documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain CJIN (NCIC or criminal history records from other states) records for the client and for the prosecution witnesses.
- e. Physical evidence. Where appropriate, counsel should make a prompt request for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.
- f. The scene of the incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident, including the same weather, time of day, and lighting conditions.
- g. Securing the assistance of experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:
  - i. the preparation of the defense;
  - ii. adequate understanding of the prosecution's case; or

Montana Public Defender Commission

# **Practice Standards**

December, 2012

## **Section VI, Qualifications and Duties of Counsel**

iii. rebut the prosecution's case.