

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

24. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

- a. any minimum sentences and any exceptions;
- b. deferred sentences, suspended sentences, and diversionary programs;
- c. the effect of confidential criminal justice information;
- d. probation or suspension of sentence and permissible conditions of probation;
- e. the potential of recidivist sentencing;
- f. fines, associated fees, court costs;
- g. victim restitution;
- h. reimbursement of attorneys' fees;
- i. imprisonment including any mandatory minimum requirements;
- j. the effects of mental disease or defect, or the implication of MCA §46-14-311,312, "Guilty But Developmentally Disabled"; and,
- k. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

- a. credit for pre-trial detention and credit against fines imposed;
- b. parole eligibility and applicable parole release ranges;
- c. place of confinement, level of security, and classification criteria used by Department of Corrections;
- d. eligibility for correctional and educational programs;
- e. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
- f. deportation and other immigration consequences;
- g. loss of civil rights;
- h. impact of a fine or restitution and any resulting civil liability;
- i. possible revocation of probation or possible revocation of parole status if client is subject to a prior sentence;
- j. suspension of a motor vehicle operator's permit;
- k. prohibition of carrying a firearm;
- l. other consequences of conviction including, but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender and/or violent offender, loss of public housing, and the loss of the right to hold public office; and,
- m. potential federal consequences.

C. Counsel should be familiar with the sentencing procedures, including:

- a. the effect that plea negotiations may have upon the sentencing discretion of the court;

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- b. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
 - c. the use of “Victim Impact” evidence at any sentencing hearing;
 - d. the right of the defendant to speak prior to being sentenced;
 - e. any discovery rules and reciprocal discovery rules that apply to sentencing hearings;
 - f. the use of any minimum sentences;
 - g. any restrictions that may be placed on parole or other early release; and,
 - h. the possibility of any increases in sentencing due to a persistent felony offender notice and any possible challenges to such notice.
- D. Where the Court uses a pre-sentence report, counsel should be familiar with:
- a. the practices of the officials who prepare the pre-sentence report and the defendant’s rights in that process;
 - b. the access to the pre-sentence report by counsel and the defendant;
 - c. the prosecution’s practice in preparing a memorandum on punishment; and,
 - d. the use of a sentencing memorandum by the defense.
- E. Counsel shall, where appropriate, attend any interview with the client, review any pre-sentencing homework, and review the pre-sentence investigation report with the client.