

CHAPTER 2 – Some thoughts on Establishing a Positive Attorney Client Relationship at the outset of the CLJ Case

I. Montana Indigent Defender Practice Standards

Please refer to the Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act, which you can find online at: <http://www.publicdefender.mt.gov/resources.asp>

II. Conflicts of interest

Please pay particular and careful attention the standards which govern conflicts of interest between co-defendants, which you can find in the Standards (cited above) at pages 8-15.:

III. Bail:

The Montana Constitution (Art. II, Sec. 21) guarantees your client the right to seek bail. Therefore, be sure to discuss bail with your client at the earliest possible opportunity.

The right to a reasonable bail includes a right to appear before the CLJ judge at a hearing to argue for a bail reduction.

Furthermore, under MCA 46-9-111 your client has a right to request release on his/her own recognizance (OR).

If a CLJ determines that bail is appropriate the bail must be reasonable in amount and the amount must be as low as possible while still ensuring the presence of the defendant in all future proceedings and to assure compliance with any conditions that the court sets.

Additionally, make sure to argue that the amount of bail:

- Is not more than is sufficient to protect any person from bodily injury;
- Is not oppressive;
- Is commensurate with the nature of the offense charged;
- Is considerate of the financial ability of the accused;
- Is considerate of the defendant's prior record;
- Is considerate of the length of time the defendant has resided in the community and of his ties to the community;
- Is considerate of the defendant's family relationships and ties; and
- Is considerate of the defendant's employment status.

IV. Immigration issues

Please refer to the discussion of immigration consequences in Chapter A14 of the OPD Criminal Practice Manual and in Chapter 7 of this manual (below) dealing with PFMA practice.