

Spotlight On: Sheila Robertson Deming



Please tell us about your background, where you practice, and how long you have been a criminal defense lawyer.

I was hired as a law student researcher at the State Appellate Defender Office in January 1977, and “retired” as the Lansing Deputy Defender of SADO in 2004. I then joined my husband, John Deming, and his partner, John Maurer, in private practice in Grand Ledge. At SADO I specialized in guilty plea and sentencing appeals (once known as the “Guilty Plea Queen”) and the bulk of my private practice is still in that area.

Early on I realized that sentencing was the most important focus of the vast majority of our clients – more than 98% of charged defendants plead guilty to something – and it became my passion. At that time we did not have even judicial sentencing guidelines nor any appellate review of sentencing. “Killebrew” and “Cobbs” were not part of the legal lexicon – I was appellate defense counsel in both. I served as the sole defense attorney on the Sentencing Commission that developed the statutory guidelines; that led to my training the judges and probation agents (as well as defense attorneys) on the “new” sentencing guidelines. I believe I lectured on sentencing at every CDAM conference from 1984 until my retirement from SADO in 2004. I was invited by the University of Detroit Mercy to develop a class on sentencing – the first Michigan law school to offer a semester on sentencing law. I taught there for 10 years – what a great opportunity for mentoring.

Along the way I developed an interest – more like an “attitude” -- about local politics, and was elected to City Council and then three terms as Mayor of Grand Ledge.

I have recently become very interested and involved in representing parents in abuse/neglect cases because I soon learned that parents have less due process rights than criminal defendants in these “prosecutions”. I found that my criminal defense background was a natural segue to these cases – I won my first TPR (termination of parental rights) appeal because of a lack of “notice”. There is no requirement that parents be advised they have a right to appeal from a removal order or a disposition order, no such advice of rights form, and no Claim of Appeal form. I have submitted proposed amendments to the court rules that I hope will be given serious consideration so that parents at least

know they have such a right along with a right to appointed counsel if indigent.

You recently had success with an expungement petition; please tell us something about it.

In 2011, the Legislature amended the expungement statute to allow expungement of a felony even if the defendant had no more than two prior minor misdemeanors committed before age 21 and carrying no more than a 90-day penalty. My client had given me a retainer in 2005 (in my IOLTA account) waiting for the day this might happen – he had 1 felony and 1 misdemeanor at age 20. I filed after the 2011 amendment and there were two “hiccups”: the initial Attorney General’s response opposed expungement because the AG did not realize the statute had been amended and argued my client also had a misdemeanor conviction; and the local prosecutor argued that although the misdemeanor had been a 90-day misdemeanor in 1991, it was now in 2012 a 93-day misdemeanor. Both the AG and the local prosecutor withdrew their objections prior to the hearing after I provided legal research. The expungement was granted. In addition to the form application for expungement, I submitted a memorandum in support outlining what my client had done with his life since being convicted.

What are some important points lawyers should keep in mind or know when seeking to set aside convictions on behalf of their clients?

It is important to thoroughly understand the amended statute to make sure what convictions may be expunged and whether a prior misdemeanor fits the new exception. Many current 93-day misdemeanors used to be 90-day misdemeanors, and defense counsel needs to look closely at what the penalty was at the time of the prior misdemeanor conviction. In my recent case I not only gave the prosecution the version of the statute from 1991, but a copy of the Judgment of Sentence and plea and sentencing transcript reflecting the 90-day maximum.

In terms of persuasive support – be thorough. I came to the hearing prepared with documentary support of my client’s subsequent life history, including college transcripts and tax returns, in case I was challenged. Although it may have made no difference, I of course mentioned that my client had

graduated from the U of M (and I knew the judge was a Michigan alum as well).

What specific trends do you see in the criminal law in Michigan?

We are already seeing more and more use of computer technology in the investigation and presentation of cases by the prosecution: from GPS tracking and forensic examinations, through power-point presentations accompanying closing arguments, to “day in the life” videos of victims for sentencing. The defense bar needs to be better educated – up to speed – in understanding and using computer technology to both counter the prosecution and present an effective defense. This presents a growing challenge for the defense, and particularly the indigent defense bar (my home county pays \$40 an hour).

What advice do you have for other criminal defense lawyers?

You must be the best prepared and must be honest with the court. I not only read the case summaries on-line every day, but I read the slip

opinions as they come out (both free services). I then save significant cases in topical folders for future reference. I just had a client call faced with a probation violation charge but his probation term had expired. In the back of my mind I knew there was a fairly recent case [*People v. Glass*, 288 Mich. App. 399 (2010)] and cranked out a motion to dismiss in a half-hour. Staying abreast of the law assists not only with quicker research but helps trigger issue identification.

My last words are an encouragement to mentor younger lawyers. I am serving my fourth term on the Executive Committee of the Institute for Continuing Legal Education, and we have heard emphatically from new lawyers of their need and desire for mentoring. I was fortunate to have great mentors in my first years as a lawyer; we all need to “pass it along”.

*by Neil Leithauser
Associate Editor*

Utah Ethics Opinion on Attorney Gifts to Client

The Utah Ethics Advisory Committee was asked to issue an opinion to answer the question of whether an attorney is permitted to provide a charitable gift to an indigent client upon the client’s request. In the particular case at issue, the attorney represented a death row inmate in a state habeas matter, and the client asked the attorney to contribute a regular sum each month to his prison account for his personal use. The committee noted that Utah Rules of Professional Conduct permit “minor expenses reasonably connected to the litigation.” However, conceding to the request in this case would be akin to paying all of the clients living

expenses, and would therefore be forbidden. Also, approving the agreement obligating the attorney to regular payments to the client would violate the principal of avoiding conflicts of interest. The Committee concluded that small and occasional charitable gifts by attorneys who are not seeking reimbursement and which would not influence the client to retain or remain with that attorney should be permitted under Utah Rule 1.8(e).

*by Neil Leithauser
Associate Editor*

Training Events

The **State Appellate Defender Office (SADO)**, will present its “**Michigan Felony Sentencing Seminar**”, **June 1, 2012** in Marquette Michigan. This seminar will focus on Sentence Law Updates and Diversion/Alternatives to Conviction /Prison. Check SADO’s website for more information and registration details.

The **National Association of Criminal Defense Lawyers (NACDL)**, will present its 2nd

annual “**West Coast White Collar Crime Conference**,” **June 7-8, 2012**, at the Hyatt Regency Lake Tahoe Resort in Lake Tahoe, Nevada. To register for this conference and for more information please visit www.nacdl/meetings.

The **Criminal Defense Attorneys of Michigan (CDAM)**, will present its “**2012 Trial Skills Track and Advanced Action Methods Case and Trial Preparation Trial College**”,