Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

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MAACS Practice: How to Get Things Done

Mitch Foster
MAACS Roster Attorney

Michigan Appellate Assigned Counsel System (MAACS)
200 N. Washington Sq. Suite 250 Lansing, Michigan, 48933 (517) 334-1200

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ANATOMY OF A FELONY APPEAL ASSIGNMENT

1. **Receive assignment – accept or reject**
   - Look at date of sentencing – calculate your filing deadlines (6 months from sentencing for most motions – plea withdrawal and to correct an invalid sentence)
   - You only have 42 days from the order of appointment to file application for leave to appeal in COA if appointed after the first 6 months from sentencing (this includes trial cases not are not an appeal of right – late request for appointment of counsel)
     - If you are appointed on an application for a trial case – possibly consider motion to reissue judgment MCR 6.428 to restore appeal of right (new judgment converts case to claim of appeal)
   - Review initial documents to see if you can discern the complexity of the appeal
   - Do you have the time to do this before the deadlines?
   - Decide quickly – do not wait – return appeal ASAP to court if you cannot accept (within 14 days is reasonable) (or let MAACS known ASAP for pilot project cases)
   - Return all documents, transcripts, PSIR's, etc. to court – or substitute appellate counsel
   - If accept case – send client a brief introductory letter saying so
   - CAUTION – taking on too many cases at once could result in spreading yourself too thin and not properly communicating with clients and missing important filing deadlines (see Minimum Standard 5) – could lead to grievances and attorney discipline

2. **Document gathering (see Minimum Standard 1)**
   - Letter – request copy of the entire court file – say you are appointed so you don't get charged
   - Letter – requesting a copy of the PSIR (presentence investigation report) – letter to probation dept generally (often helpful to attach a copy of your order of appointment) – however many probation departments will not release PSIR to you without an order/phone call/email/or some authorization from the court – MCR 6.425(C) requires the *court* to "provide the PSIR and any attachments to it" to appellate counsel, not necessarily the probation department.
     - Make sure SIR (Sentencing Information Report) is included for most serious charge(s) – the SIR is the sentencing guidelines scoring sheet – attached usually at the end of the PSIR
       - Sometimes the most updated SIR will not be attached to the PSIR but will be in the court file (often includes the judge's corrections/notes/and signature)
     - If it's a probation violation appeal – make sure you request and get the probation violation updates
     - Usually probation departments willing to fax you PSIR if you need it quickly
   - Discovery – letter to prosecutor – many prosecutors will want you to try to get discovery from trial counsel first
   - Discovery – letter to trial counsel (VOP pleas – also to original attorney on underlying case)
   - No court rule authorizing appellate discovery – you still have a right to it
     - Some prosecutors will provide if you have first tried trial counsel and have failed
     - FOIA is a possibility – cost reimbursement issue

        - FOIA litigation if arresting police agency does not comply – can get discovery and recover attorney fees and punitive damages / or settlement (punitive damages are now $1,000)
    - MRPC 1.16(d) requires that, "Upon termination of representation, a lawyer shall take reasonable steps to protect a client's interests, …surrendering papers and property to which the client is entitled,…."
    - Motion to compel discovery in the trial court – last resort – but could be successful
    - Some prosecutors provide discovery – most do not
    - Some trial attorneys are helpful – some are not. MCR 6.005(H)(5) requires the trial attorney to "promptly making the defendant's file, including all discovery material obtained, **available for copying upon request** of that lawyer".
        - This, unfortunately does not mandate that lawyer makes the copies or mails it to you – so you may have to go to that attorney's office and make the copies yourself
    - Discovery can be helpful for guidelines arguments – sometimes there is a conflict in facts from PSIR and police report – (or good facts are not included in PSIR)
    - Provide email address – makes it easier to comply with your request – saves on copying costs
- Transcripts – plea, sentence, other hearings, prelim exam (usually with the court file)
    - Sometimes there are issues beyond transcripts of plea and sentence
    - PE transcript can be good support for a guidelines argument
    - Review register of actions to see if you want to order additional transcripts
    - Transcripts for plea cases are due within 28 days of order of appointment
        - Telephone call to court reporter
        - Follow up with court clerk
        - Motion for order to show cause (if necessary)
        - Have reporter email you transcripts if you need them quickly
    - Transcripts for trial cases are due within 91 days of order of appointment
        - Your responsibility to get transcripts filed and notice of filing sent to COA
            - 21 day involuntary dismissal letter sent to you ***not court reporter*** if transcripts are late (also there is a risk of $250 fine)
        - Motion to extend time for late filing of transcript (filed in COA)
            - Used if additional transcripts need to be ordered beyond original transcripts ordered
                - Mistake on claim of appeal/order of appointment
                - Late realization that additional transcripts not ordered are necessary
                - The sooner the better to discovery this!
            - Brief on appeal in COA not due until 56 days after last transcript filed

3. **Client Contact (see Minimum Standard 7)**
    - Intro letter – do as soon as you accept assignment
        - I like to send print out of OTIS for them – OTIS is on the MDOC website where you can locate a client and see details as to all prison and probation sentences – both active and inactive
        - Tell them what documents you will be sending them (the bare minimum should be plea and sentence transcripts and PSIR)
        - There is authority that you do not necessarily have to provide transcripts to clients – but I prefer to always send a copy of all transcripts to client (see *People v. Chester Gardner* – COA unpublished opinion #304449 – October 30, 2012)
            - Many courts will require you to certify that you have sent clients the transcripts before you can get paid
    - Follow up letters
        - When you receive transcripts
        - When you receive PSIR
        - When you receive court file
        - When you receive discovery
    - Response to letters from your client
        - Obsessive letter writer client
            - Acknowledge receipt of all the letters
            - Respond generally, and specifically as you think necessary
            - Be willing to review letters – legal research before you write your motions or briefs – without necessarily committing to client's issues and arguments
            - Don't be dismissive
            - Return originals of documents received from client and document what you are returning and the number of pages with as much detail as possible
            - 14 days from receipt is my rule of thumb for timeliness of a response letter
                - Same day or next day response (if you can) (gets it off your desk and eliminates possibility of forgetting to respond/losing or misfiling letter, etc.
            - If before you visit in person, assure client that you will review and discuss his issues in person
    - Poor communication is general cause for grievances
        - Make client understand that you care and are working for him or her and not the state
        - Return originals of client's important documents
        - A few letters will go a long way to having a satisfied client
    - Keep client informed at all stages as developments occur in the case – trial court motion hearings/decisions from the COA, etc. (see Minimum standard 7)
4. **Client visit (see Minimum standard 2)**

- In person visit not required but strongly recommended
    - Alternatives – visit via video
        - Difficult to establish rapport with client
        - Inability to review the sentence guidelines in detail – showing client guideline book and how it works
        - Inability to see any of client's documents that may be helpful
        - Client concern of people listening in
    - Alternatives – telephone call – better for follow up conference, rather than initial conference – good communication tool if you need to speak directly rather than mail
        - Prisons are amenable to a pre-arranged telephone conference in many cases
        - No guarantee that telephone calls are not monitored by MDOC
    - Alternatives – collect calls vs. prisoner prepaid debit call
        - I don't accept collect calls unless there is an emergency
        - I do accept prepaid debit calls if I am in the office

5. The Visit (see Minimum standard 2)

- Set up visit at least a day in advance with (usually warden's administrative assistant)
    - Some prisons have rigid rules for visitation – others are more flexible
    - If you tell prison that you have an urgent need to see the client because of an upcoming deadline – they can sometimes make an exception to their scheduled visitation days and times
    - If you are traveling a long way – sometimes they make an exception to accomodte your schedule
    - Being nice usually gets you better results with the administrative assistant
    - Check OTIS before you leave for visit to make sure client has not been moved or is out to court on a writ
- Same day visits – or visits without calling first are risky – but if you are nice and the Sgt or person in charge approves it you can often get in without a pre-approved appointment
- Some prisons do not schedule visits in advance – you just show up
- Prisons usually have shift change around 2PM so if you get there after 1:30, you may have to wait an hour or so before you can see your client
- Prisons have "count" time multiple times per day that could result in approx a 1 hour delay if you get there at the wrong time
    - If you are meeting your client during "count" time – you should be OK – client will be counted while you are meeting with him/her
- If running late for a visit – call the facility and give an estimate of when you'll be there – sometimes they will keep the client there longer for you rather than send him/her back to the cell block or back to the yard
- Good to do the visit as soon as you can, but ideally after you've at least received the PSIR, and the transcripts of plea and sentence and the lower court record (Minimum Standard 2)

- For trial cases I like to read all transcripts before the visit
    - This means you won't be able to see your client until possibly 4 or 5 months after his sentencing
    - Best to communicate and state why you are not seeing client right away (91 days to get transcripts plus 2 to 3 weeks or a month after receiving transcripts until you complete reading and review of transcript)
    - Clients often do not know that court reporters have 91 days to prepare trial transcripts and often use all of that time period and then some to get the transcripts to you
- Important to see before the filing deadline so you can timely file motions and briefs with client's input – you need to know what client wants before you file motions.
- Find out why client appealed – how were they treated by the system and their attorney?
- Explain the risks of a plea withdrawal
    - Undo a favorable plea bargain
    - Undo a favorable sentence agreement (Cobbs, Killebrew)
    - Risk of plea bargain/sentence agreement not being available for future negotiations
    - Risk of going to trial and losing and getting sentenced to more time
    - Document risks of plea withdrawal in follow up letter
    - If you really want to CYA, get (or try to get) client to sign an acknowledgement of the risk of a plea withdrawal
- Determine whether or not client wants to attempt to withdraw plea
    - Cannot do just because they want to or want a better deal
    - Must have a valid legal reason
- Time Cut
    - Most people in prison want some sort of a time cut
    - First thing to do is review the guidelines to see if properly scored
        - Review guidelines together with client – take as much time as necessary – try to make sure client is following along and understands how the guidelines work
        - Many clients have told me that this was the first time anyone has ever explained the guidelines to them
        - They almost always appreciate it
        - Some will then realize that the deal they got was a great deal
        - Others will be eager to challenge the guidelines and seek a time cut
        - Decide together (if you can agree) which guidelines you will challenge in a motion to correct an invalid sentence or in an application for leave to appeal/or in the brief on appeal (trial cases and appeal of right cases)
- Other issues
    - Restitution
    - Jail Credit – it's worth filing a motion even if it's only a matter of one day!
    - Corrections to PSIR – could be helpful when the time comes to see parole board

- Corrections to guidelines – without seeking a re-sentencing (parole board purposes)
- Lifetime monitoring
- Misc – other issues that come up
- Issues beyond the scope of appointment
    - Appeal of underlying conviction and sentence if VOP appeal
    - Appeal of underlying conviction and sentence if the appeal is from an appeal re-sentencing
    - 6.500 motions (after you've done direct appeal by filing necessary motions and application for leave to appeal – if necessary)
        - If client wants to pursue additional issues and you are beyond the 6 month filing deadline – advise client to file a 6.500 motion with the trial court and ask for appointment of appellate counsel to supplement the 6.500 motion (this is beyond the scope of your appointment – because it is not part of the direct appeal)
        - If you are appointed to represent the client after he/she has filed a 6.500 motion, then your appointment requires the filing of a supplemental brief and, if necessary – proceed to the COA by seeking application for leave to appeal
    - SADO resources
    - Medical care and treatment issues
    - MDOC Grievance System (but beware of retaliation from officers)
    - Misconducts
    - Abuse by Corrections Officers
    - Parole (refer to parole consultant)
    - Other legal work
    - 1983 actions
    - Appeal to MSC
        - Client can appeal "in pro per" to the MSC – there is a form pleading that you will be able to send to clients once the COA denies leave to appeal or once the COA affirms the conviction and/or sentence (if trial case or if leave to appeal had previously been granted)
        - I invite the client to file the COA brief that I filed in the COA in the MSC (attached to the pro per form)
        - The application for leave to appeal to the MSC is not within the scope of your appointment – but the MSC may direct the trial court to appoint counsel if they grant leave to appeal from the client's pro per appeal
    - Federal Habeas appeals in the U.S. District Court, U.S. Court of Appeals, and SCOTUS
    - Petition to the U.S. Supreme Court for writ of certiorari (after MSC appeal)

        - Divorce
        - Bankruptcy
        - AG accessing their retirement accounts/savings/cost of incarceration
- Develop a game plan and write it down in detail
    - ID all issues that you would like to raise
    - Decide whether or not seek to w/d plea
    - If challenge guidelines – identify which specific guidelines
    - Decide if motions likely need to be filed – or if issue preserved go directly to COA
    - Estimate when you will file motion and when hearing will be
    - If unsure of whether an issue has legal merit – commit to researching and reviewing it and then letting client know whether there is or is not legal merit – DON'T commit to filing a motion before you know whether or not there is legal merit – IF YOU DO make a commitment and realize later there is not a legal basis – then explain to client how you were previously mistaken and you now will not be filing this particular motion
- Send follow up letter after visit – confirming this game plan in writing – if you have supporting case law either supporting your game plan or explaining how there is no legal merit it may be persuasive to client to let the issue go if you cite a case or a court rule with a brief explanation

6. Trial Court motions

- Motion to correct an invalid sentence – MCR 6.429 (filing deadline 6 months from sentencing!)
- Motion to withdraw guilty or no contest plea – MCR 6.310 (filing deadline 6 months from sentencing!)
- Can file bare bones motion and supplement if close to 6 month filing deadline
- US Express mail if need to get there next day – if deadline is on a weekend or holiday, I like to overnight mail so it gets there the last business day before the weekend or holiday – one judge interpreted 6 months as deadline actually falling on the weekend and next business day was actually late – but see MCR 1.108 (if deadline falls on weekend/holiday/court ordered close date – deadline is next business day)
    - If you are late on your motion or appointed beyond first six month you can:
        - File your motion anyway and see what happens – some prosecutors and judges are not aware of 6 months deadline or are not concerned with the 6 months deadline – many judges prefer to address the issue anyway so they don't have to decide the issue on a remand from the Court of Appeals
        - File a motion in the trial court to allow the trial court to hear the motion
        - File a motion to remand in the COA with your application for leave to appeal asking for a remand to allow the trial court to hear motions
- Time and detail you put into trial court brief helps because:
    - Chance of success better with a better brief

    - Prosecution could concede your argument
    - Easier to persuade one trial court judge than a panel of 3 COA judges
    - Gives you a head start on the research and your application for leave if you prepare a good trial court brief
- Is client required to be there (know court preferences) – if so who does the writ? (if varies – sometimes you must prepare the writ and send it to the judge for signing and processing)
    - SCAO form for writ of habeas corpus – MC 203
- If travelling a long way confirm you're on the docket
- Get a date stamped copy when you file your motion (if possible – some courts don't date stamp your copy)
- Send a copy of Motion and Brief to MAACS (for all trial court motions) – see section 4(6)(c)
- Send a copy to the prosecution
- Send a judge's copy with stamped "Judge's Copy" on it
    - Some judges have offices in a different county if the circuit covers more than one county
    - If not sure – call judge's chambers and verify address to send judge's copy to
- Send a copy of motion to client – describe briefly time line and procedure so they know what's going on and when the judge will decide
- Review prosecution's response before oral argument
    - Prepare reply brief if necessary or if could be helpful
    - Send copy of prosecution's response to client
- Prepare for oral argument on your motion

7. Oral Argument – motion hearing

- Prepare proposed orders ahead of time – saves time – get order entered right away if possible
    - Order granting motion
    - Order denying motion
    - Blank Order – fill in based upon what happens in court – if partially granted – can hand write details of order – have prosecution sign off on it so it gets entered
- Waive client's presence for purposes of motion hearing, unless client demands to be present
    - Many clients don't want to go to court – disrupts their way of life at the prison sometimes
    - Some want to be there
    - Client does not have a right to be there if it's not a "critical stage" of the proceedings
    - Good use of the "poly com" video equipment so they can observe the motion hearing and speak to the judge – also can speak through video for private attorney client conference – before and/or after motion hearing
    - Some courts will want defendant there – if so find out who is responsible for "writting" client to court
- Waiver/Forfeiture Issues

- *People v. Greene*, 477 Mich 1129 (2007) – sample language to put in brief in support of trial court motion:
    - This court should address the scoring of OV 13, even though a challenge to OV 13 was not raised at sentencing. Although, *People v. Carter*, 462 Mich 206 (2000) could be argued to suggest that defense counsel at sentencing failed to preserve this guideline issue, there are times when the Supreme Court has reversed lower court decisions even after defense counsel expressed a proper waiver. *People v. Greene*, 477 Mich 1129 (2007). In that case, there was a clear error in the sentence guideline scoring of OV 1 and the Supreme Court granted relief. Similarly, in Mr. Defendant's case, scoring crimes against public safety for OV 13 is such a clear violation of the rule in *People v. Bonilla-Machado , supra*, that it must be corrected now. After *Bonilla-Machado*, there is no longer any grey area as to determine which offenses are crimes against a person or crimes against property. Crimes designated as crimes against public safety cannot and must not be scored for purposes of OV 13. *Greene, supra*, has set a precedent for Michigan appellate courts to grant relief (even when issues have not been properly preserved, or even when waived), where there is sentence guideline scoring that is clearly contrary to the law.
- Ineffective Assistance of Counsel – trial counsel ineffective for waiving, forfeiting, not objecting to guidelines scoring, where there are issues of merit to raise
- Ineffective Assistance of Counsel – trial counsel ineffective for failing to adequately raise issues that may relate to plea withdrawal

- Expanding the record (see Minimum standard 3)
    - If necessary, ask for evidentiary hearing to establish facts to support your guidelines arguments
    - Can ask for an evidentiary hearing or *Ginther* hearing to establish facts to support a motion for a plea withdrawal or for a motion for new trial (trial cases)
    - Best practice is to have affidavits and offers of proof to support your request for an evidentiary hearing
    - Many judges are reluctant to expand the record for plea appeals, but why not ask?
- Results – what can happen?
    - You win – re-sentencing granted – plea withdrawal granted – other relief granted
    - Adjourned
    - Evidentiary hearing granted
    - You lose – motion denied – does your client want to appeal to the COA?
        - Best to know before or shortly after the motion hearing because you only have 21 days to appeal to the COA after entry of order denying your motion
        - 7 day order procedure may buy you some additional time if you need it
- Enter order
    - Use an order you brought
    - Court sometimes prepares its own orders or written opinions
    - Prosecutor offers to – or is directed to by the court – prepare the order
    - Send stipulated order to judge

- Submit order under 7-day rule
- Follow up on order – prosecutor may not prepare order, judge may not make decision or written opinion right away, other delays
- If order entered – make sure that the relief ordered is in fact done! – if the relief is not done it's like you never even filed the motion
    - Make sure amended judgment of sentence is prepared and is sent to the MDOC
    - Can follow up with time computation unit of the MDOC to make sure that they have corrected the client's ERD (earliest release date)
    - You can use changedetection.com to see when a web page has changed – for example OTIS to be notified if the ERD has changed
- Send copy of all trial court orders entered to MAACS
    - Mail? Email? Fax? – MAACS may have a preference??

8. Plea Withdrawal Hearing – (Continuation of Motion Hearing)

- Client should affirmatively state on the record that he/she wants to have his/her plea withdrawn
- Most judges will want to have defendant there before granting a plea withdrawal
    - They want to weigh in on the risks to defendant if plea withdrawal granted
    - Once plea withdrawal granted and order is entered, your work is done
    - Many client's want a plea withdrawal just to get a better deal or a time cut and they must be made aware that they are not guaranteed the same deal they have – once there is a plea withdrawal – the prosecutor is not required to re-offer the deal that client is withdrawing from – and the judge is not required to abide by any Cobbs/sentencing agreement that has been made with the defendant

9. Re-Sentencing (Best Chance at a Time Cut)

- Writ client – or find out who is responsible for the writ
- Even at a re-sentencing there is a risk of a longer sentence
    - If client picks up misconducts while in prison
    - If client's current sentence is at low end of the guidelines
    - Any sentence within the guidelines is considered a valid sentence
    - Now sentences outside the guidelines may be valid if they are "reasonable" carefully review *People v. Lockridge* (MSC 7-29-2015) and follow the (to be determined) definition of "reasonableness" in future COA and MSC opinions
    - Guidelines favorably scored at the original sentencing (mistakes probation dept or prosecutor missed in the scoring)
    - New counsel can be appointed if client wishes to appeal a re-sentencing
        - Vindictiveness - on the part of the court and/or the prosecutor (if punished by a longer sentence after a successful appeal)

- Review *North Carolina v. Pearce,* 395 US 711 (1969) and other cases dealing with vindictiveness – (below is an excerpt from *Pearce*)

It can hardly be doubted that it would be a flagrant violation of the Fourteenth Amendment for a state trial court to follow an announced practice of imposing a heavier sentence upon every reconvicted defendant for the explicit purpose of punishing the defendant for his 724*724 having succeeded in getting his original conviction set aside. Where, as in each of the cases before us, the original conviction has been set aside because of a constitutional error, the imposition of such a punishment, "penalizing those who choose to exercise" constitutional rights, "would be patently unconstitutional." *United States* v. *Jackson,* 390 U. S. 570, 581. And the very threat inherent in the existence of such a punitive policy would, with respect to those still in prison, serve to "chill the exercise of basic constitutional rights." *Id.,* at 582. See also *Griffin* v. *California,* 380 U. S. 609; cf. *Johnson* v. *Avery,* 393 U. S. 483. But even if the first conviction has been set aside for nonconstitutional error, the imposition of a penalty upon the defendant for having successfully pursued a statutory right of appeal or collateral remedy would be no less a violation of due process of law.[19] "A new sentence, with enhanced punishment, based upon such a reason, would be a flagrant violation of the rights of the defendant." *Nichols* v. *United States,* 106 F. 672, 679. A court is "without right to . . . put a price on an appeal. A defendant's exercise of a right of appeal must be free and unfettered. . . . [I]t is unfair to use the great power given to the court to determine sentence to place a defendant in the dilemma of making an unfree choice." *Worcester* v. *Commissioner,* 370 F. 2d 713, 718. See *Short* v. *United States,* 120 U. S. App. D. C. 165, 167, 344 F. 2d 550, 552. "This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts. *Griffin* v. *Illinois,* 351 U. S. 12; *Douglas* v. *California,* 372 U. S. 725*725 353; *Lane* v. *Brown,* 372 U. S. 477; *Draper* v. *Washington,* 372 U. S. 487." *Rinaldi* v. *Yeager,* 384 U. S. 305, 310-311.

Due process of law, then, requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial. And since the fear of such vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction, due process also requires that a defendant be freed of apprehension of such a retaliatory motivation on the part of the sentencing judge.[20]

726*726 In order to assure the absence of such a motivation, we have concluded that whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. And the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal.

See Notes 19 and 20 below:

[19] See Van Alstyne, In Gideon's Wake: Harsher Penalties and the "Successful" Criminal Appellant, 74 Yale L. J. 606 (1965); Note, Unconstitutional Conditions, 73 Harv. L. Rev. 1595 (1960).

[20] The existence of a retaliatory motivation would, of course, be extremely difficult to prove in any individual case. But data have been collected to show that increased sentences on reconviction are far from rare. See Note, Constitutional Law: Increased Sentence and Denial of Credit on Retrial Sustained Under Traditional Waiver Theory, 1965 Duke L. J. 395. A touching bit of evidence showing the fear of such a vindictive policy was noted by the trial judge in *Patton* v. ***North Carolina***, 256 F. Supp. 225, who quoted a letter he had recently received from a prisoner:

"Dear Sir:

"I am in the Mecklenburg County jail. Mr. _____ chose to re-try me as I knew he would.

.....

"Sir the other defendant in this case was set free after serving 15 months of his sentence, I have served 34 months and now I am to be tried again and with all probility I will receive a heavier sentence then before as you know sir my sentence at the first trile was 20 to 30 years. I know it is usuelly the courts prosedure to give a larger sentence when a new trile is granted I guess this is to discourage Petitioners.

"Your Honor, I don't want a new trile I am afraid of more time . . . .

"Your Honor, I know you have tried to help me and God knows I apreceate this but please sir don't let the state re-try me if there is any way you can prevent it."

"Very truly yours"

Id., at 231, n. 7.

- Gather documents to present to judge for consideration
    - Work detail reports
    - AA/NA documentation
    - GED results
    - Block Reports
    - Counseling Records
    - Letters of support
    - Other relevant documents
- Calculate jail credit – make sure it's accurate on the PSI update
- Get PSIR – with updates from probation department before re-sentencing date
    - Usually will fax a copy to your office – may want a copy of your order of appointment
- Make sure guidelines are accurate
- Mitigate prison misconducts – if possible
- Other issues
    - Consecutive vs. Concurrent issues
    - Lifetime monitoring
    - Attorney fees

    - Costs
    - SORA
- Judgment of Sentence
    - Make sure you get the amended JOS and review it – correct any clerical errors or omissions – demand a hearing if necessary
    - If your judgment of sentence is not properly corrected, all of your work getting relief for your client is not reflected in the end result and is all for nothing – like it never happened
    - Make sure it accurately reflects the re-sentencing
    - Send a copy to your client
    - Your work is done once the client is re-sentenced and you have received the amended JOS showing the proper amendments as ordered by the court – and this amended JOS is sent to the MDOC by the court

10. (Delayed) Application for Leave to Appeal

- Make sure you have the following:
    - Docket entries – updated after all of the required orders are entered denying your motion
    - PSIR
    - Transcripts of plea, sentence, and any post-sentencing motion hearings
        - Usually you will have to file the transcript of the motion hearing after you file your application for leave to appeal because the court reporters have 28 days to prepare the transcript and your applic for lv is due 21 days after the motion hearing (actually 21 days after the order denying your motion)
        - Use your memory and notes to explain to the COA what took place at the motion hearing
        - Send copy of letter requesting transcript of motion hearing to the COA so they know that you have ordered transcript
    - Orders entered after motion hearings
    - Order of appointment
    - Petition for appointment of appellate counsel and affidavit of indigency
    - Judgment of sentence and all amended judgments of sentence
- Prepare your delayed application for leave to appeal
    - Due within 6 months of sentencing date or within 21 days of trial court order denying your motion(s) – if order is after the first 6 months from sentencing
- EFile if you can (it may be mandatory now??)
    - True Filing is the efling platform now – learn it!
    - Saves making multiple copies for COA
    - Saves making copy for prosecutor if you can e-serve
    - Saves driving to COA to meet a last minute deadline

    - Can file up to midnight on the due date and over the weekend or on a holiday
- Send copy of application for leave to appeal – with attachments – appendix, transcripts, and PSIR to client and prosecutor (regular mail to prosecutor if they're not a listed attorney on the specific e-filing case that you are working on)
- Send letter to client with application for leave – it usually takes at least 1 to 2 months until the COA makes its decision, but sometimes takes several months (up to 1 year or more) – prosecution has opportunity to respond to application for leave
- Send copy of prosecution's response to client
- Motion for leave to file pro per supplemental pleading (similar to Standard 4 brief for claim cases)
    - Obstacle – COA may rule on application before client completes and gets you his or her brief – best to have client send you brief ASAP so you can file it concurrently with your application for leave but as a separate filing

11. **Application for Leave Granted**
- Case proceeds as an appeal of right
- Prepare and timely file brief on appeal
    - Most of your arguments will be the same
    - Formatting changes will be required in the brief
    - Continue legal research to check for new case law updates
    - Expand on or re-write your arguments if you think the arguments need to be strengthened
- Send copy of brief to client and opposing counsel
- Always request oral argument (See Minimum standard 6)
- File supplemental authority with COA if new case law exists between the time you file your brief and the time oral arguments come around (usually it is close to 1 year between the time you file your brief and the day you appear for oral argument)
- If client wishes to raise additional issues, advise client of right to file a standard 4 brief within 84 days of the filing of the brief on appeal that you prepared and filed – (see Minimum standard 4)
- Appear at oral argument – or waive oral argument – only if defendant's rights will be adequately protected by submission of the appeal on the briefs alone (see Minimum standard 6)

12. Motions to Withdraw or Motion to Vacate Appointment of Appellate Counsel
- Do when Client does not wish to appeal any longer (motion to vacate)
    - Get client to sign affidavit if you can
- Do when Client wants to appeal but you don't have any issues of merit (motion to vacate)
    - Some courts require a defendant to sign off on appeal rights – but if client thinks he has issues of merit and you do not, then likely client will not sign

    - Client will probably want to sign a request for substitute counsel if you do not think there are issues and client does
    - Conflict between client wishes (substitute counsel), MAACS policy (motion to vacate only), and circuit court internal processes (varies by circuit)
    - Most courts will not grant substitute appellate counsel if first appellate counsel finds no issues of merit – some will appoint substitute appellate counsel once, but not beyond that if both appellate counsel determine no issues of merit
    - If no issue of merit – see *In re Withdrawal of Attorney – People v. Tooson*, 231 Mich App 504 (1998) - the law on withdrawal of appellate attorneys in assigned cases. Good practice to prepare a short brief with your motion to vacate when the client doesn't sign off on your motion
- Prepare motion (usually can do ex parte) and mail to the judge with proposed order to vacate your appointment and return postage paid envelope
    - Serve prosecutor if there are any pending motions before the trial court
- Send copy to client
- Some courts require affidavit from client (most just require defendant's signature without an affidavit)
- Some courts require POS that you served client with a copy of your motion.
- Most will not require a motion hearing, but some do
- Special circumstances – need client to appear in court either in person or with telephone call from prison
- Get order and send to MAACS and client
- If successor counsel is appointed, provide successor counsel with transcripts, PSIR, court file, discovery, and all other documents that you have that the defendant may need to pursue his/her appeal (see Minimum standard 8)

13. Voucher

- Track your time and expenses as you go – if you have your own billing/time keeping software - I use an excel spreadsheet and categorize the time I spend with categories that match up with the MAACS voucher (RR, A, M-C, M-W, AP, OR, R, CC, CV, etc.) – then I can sort by category to get a total time – for example 4.8 hours for motion to correct an invalid sentence – M-C)
    - This will make it easier to prepare your voucher and to give accurate details of time and expenses
    - You can attach the spreadsheet with detailed time and expenses to your petition for *reasonable* fees if you wish to file one (I no longer make my request a request for extraordinary fees – because the time that it takes to do the job is reasonable and not extraordinary – it may just happen to be more than the listed dollar amount cap on fees)
- Submit voucher when:

    - You have filed your motion to vacate or motion to withdraw
    - You have filed your application for leave to appeal (most courts will allow voucher at this time, but some may require a decision from COA on application before voucher)
    - You have appeared for client's re-sentencing
    - You have secured your client's withdrawal of guilty or no-contest plea
    - You have been granted other relief and there are no other pending issues
- Follow up on voucher (generally paid within 30 days of submission)
- Keep copies of voucher if you need to re-submit
- Keep records of hours and expenses in case you need to back up your MAACS voucher
- Expenses – each circuit (or each county within a circuit) has their own policy for reimbursing expenses – such as mileage, copies, telephone calls, travel expenses, etc.
- Mileage on a MapQuest to and from your office address to a prison, a court, or to the Court of Appeals for oral argument is a good way of keeping track of your mileage
- Submit a petition for extraordinary fees if you have done work over and above the county pay scale
- Read *In Re Mulkoff*, 176 Mich App 82 (1989) if court denies your request for fees for time and mileage to visit client in person at prison (or if denied fees and mileage for travel to circuit court, or to COA for oral argument)
    - *Mulkoff* allows court to set or limit fees, but does not allow denial of fees/expenses altogether for certain work and travel time/expense
    - Motion for reconsideration citing *Mulkoff* if denied fees and mileage
    - *Mulkoff* Appeal to COA if denied fees and mileage
- Read and understand *In Re Attorney Fees of John W. Ujlaky*, ___ Mich ___ (September 30, 2015) short order from MSC – full order is below:
    - "On order of the Court, the application for leave to appeal the October 23, 2014 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals as to Docket No. 316494, and we REMAND this case to the Kent Circuit Court for a determination of the reasonableness of the attorney fees requested. The trial court applied the county's fee schedule, which capped compensation for plea cases at $660, but did not address at all the reasonableness of the fee in relation to the actual services rendered, as itemized by the appellant. See *In re Recorder's Court Bar Ass'n*, 443 Mich 110, 131 (1993). Although the expenditure of any amount of time beyond that contemplated by the schedule for the typical case does not, *ipso facto,* warrant extra fees, spending a significant but reasonable number of hours beyond the norm may. On remand, the trial court shall either award the requested fees, or articulate on the record its basis for concluding that such fees are not reasonable. See, e.g., *In re Attorney Fees of Mullkoff,* 176 Mich App 82, 85-88 (1989), and *In re Attorney Fees of Jamnik,* 176 Mich App 827, 831 (1989)."
    - Utilize this order to request a reasonable fee when necessary

    - **Courts can no longer deny your reasonable fee requests without articulating on the record their basis for concluding such fees are not reasonable**
- Send IRS W-9 in with voucher (with your first voucher for each particular county)
- Independent contractor/worker comp form – many counties want you to prepare an independent contractor/workers comp form for their own purposes and audits – I always fill these out and attach a copy of my declarations sheet from my professional liability insurance – sometimes these are required to be filled out before you get paid! (they usually need these once per year)