Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

October 14, 2015

Materials

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

This training event is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

MAACS Annual Orientation & Training
October 14-15, 2015

Wednesday, October 14, 2015 – Orientation Day

8:30 – 9:00 a.m. Registration

9:00 – 9:15 a.m. Opening Remarks and Welcome

9:15 – 10:45 a.m. Spotting the Appellate Issues in Trial Appeals
Peter Van Hoek, SADO

10:45 – 11:45 a.m. Spotting the Appellate Issues in Plea Appeals
Chris Smith, SADO

11:45 – 12:45 p.m. Lunch

12:45 – 1:45 p.m. Knowing Your Appellate Deadlines – Court Rules and Procedure
Marla McCowan, MIDC

1:45 – 2:30 p.m. www.SADO.org – Resources for Researching, Staying Informed and Connecting with the Community
Marilena David-Martin, SADO Criminal Defense Resource Center

2:30 – 2:45 p.m. Break

2:45 – 3:30 p.m. An Attorney's Guide to the Michigan Department of Corrections
Jessica Zimbelman, SADO

3:30 – 5:00 p.m. MAACS Practice: How to Get Things Done
Brad Hall, MAACS and Mitch Foster, MAACS Roster Attorney

Michigan Appellate Assigned Counsel System

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Spotting the Appellate Issues in Trial Appeals

Peter Van Hoek
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ISSUE SPOTTING

FOR

MICHIGAN CRIMINAL APPEALS

(Second Edition)

- 2000 -

Peter Jon Van Hoek

INTRODUCTION

This manual is designed to assist appellate attorneys in one of the most critical aspects of handling an appeal – identifying the potential issues in the case. This skill is the foundation upon which all of the other functions of appellate counsel must build, for surely without effective identification of the issues the appeal is doomed to failure from the start.

This manual is not intended to, and could not be, an all inclusive review of possible issues in a criminal appeal. The scope of possible issues is unlimited, given the infinite variety of fact situations occurring during criminal prosecutions, changes in the law produced by legislative action and court decisions, and the creativity of appellate attorneys. The manual will instead focus on the basics of issue spotting. The first sections will discuss generally the processes and strategies involved in searching for issues in a court record, particularly where appellate counsel did not handle the trial court proceedings. The manual will then review the different stages of a criminal prosecution, describe the issues common to each stage, and note the applicable case law, statutes, and court rules.

The manual is not meant to be the final word on issue identification. It is a guide to issue spotting skills and a reference to key or leading cases in each area. For the inexperienced practitioner, it provides a road map of the criminal process with warning signs for wrong turns, dangerous curves, new construction, and common bumps and potholes. For even the experienced criminal lawyer, it will provide a starting point for research focused on the particular situation of an individual case.

This manual should be seen as a companion to other MAACS manuals dealing with more specific topics, such as Felony Sentencing and Effective Assistance of counsel, plus other substantive manuals issued by separate training sources.

CHAPTER ONE

THE PROCESS OF ISSUE SPOTTING

I. THE FUNCTION OF APPELLATE COUNSEL

Before beginning a discussion of the processes by which issues are identified, some consideration must be given to a more basic topic – the function of appellate counsel. The role appellate counsel plays in the justice system is quite relevant to the subject of issue spotting, as understanding the purposes of the appeal forms the blueprint for the identification, preparation, and presentation of the issues. Any attorney who intends to handle a significant number of appeals should first fully appreciate the general goals and objectives of appellate practice.

Contrary to the role played by trial counsel, the appellate attorney is not primarily concerned with the guilt or innocence of the client, or more properly put the ability of the prosecution to prove the charges beyond a reasonable doubt. This is not to say that appellate counsel should not, whenever the opportunity presents itself, seek to persuade the appellate judges that the appellant is in fact innocent of the charges or guilty only of a lesser offense as a means of predisposing the bench to grant relief. However, the principal goal of the appeal is not to convince the court that the finder of fact was in error. Appellate judges do not sit as finders of fact, and will not, except in unusual circumstances, overrule the verdict itself. The primary function of the appellate attorney is to convince the appellate court that the client was not fairly treated in the lower courts, regardless of factual guilt. The task of issue spotting should not be undertaken without this function clearly in mind.

The appellate system acts as a check on the operations of the trial courts. Absent intensive review in the appellate courts, the rights of litigants as individuals, and the application of the law in general, would be protected on an ad hoc basis, depending solely upon the particular predilections of the trial judge. Effective issue identification is the groundwork upon which the system must depend. Counsel for the appellant lays that groundwork by focusing appellate review on specific areas of the trial court proceedings. Appellate counsel cannot rely upon the courts, which lack the personnel, the perspective, and the predisposition, on their own to raise or frame issues that the parties have not first identified and argued. Appellant's counsel holds the powerful position of setting the scope of appellate review. In order to adequately represent a client on appeal, the attorney must understand what an appeal is designed to accomplish, and master the techniques necessary to present the case to the reviewing courts in the most advantageous and complete posture possible given the factual record.

In identifying issues to be raised on appeal, appellant's counsel should not confine his or her inquiries to the existing law. The appellate courts are a primary vehicle for change in the law. Many of the legal propositions and procedures in criminal law that are now thought of as fundamental are the direct result of the creative inspiration of appellate counsel. While in general it is easier to be successful in a specific appeal where an argument is based on existing authority or precedent, counsel should never lose sight of the need to propose and argue innovative solutions to inequities, even where success in the particular case appears remote.

For example, a review of the Michigan Supreme Court decision in People v Aaron, 409 Mich 672 (1980), reveals strikingly how aggressive advocacy over the years culminated in a recognition of the inherent unfairness of the felony-murder doctrine in Michigan, even though there was no legislative change in the statute. Attorneys argued in numerous cases that the common-law felony-murder doctrine, which held that any killing occurring during the commission of one of the enumerated felonies constitutes a murder, was contrary to a basic theory of criminal jurisprudence that a person should be punished for his or her individual intent. This argument finally was accepted by the Court of Appeals in cases such as People v Fountain, 71 Mich App 491 (1976). The Supreme Court in Aaron then granted leave to appeal, and ruled the statute should be construed to require a finding that the accused had the requisite intent for murder before there could be a conviction for felony-murder.

Changes in the law such as Aaron do not normally come about in a single case. Courts must often be persuaded over time and over many cases that a particular practice does in fact result in injustices. Appellate counsel must be constantly vigilant, even in eras when the courts are hesitant to expand or retain protections for defendants, to look for not only what was done wrong in the past, but also what should be done differently in the future.

In Michigan, assigned appellate attorneys must meet the requirements of the Minimum Standards for Indigent Criminal Appellate Defense Services, which have been approved by the Michigan Supreme Court, Administrative Order No. 1981-7, 412 Mich xxxv et seq. Standards 9 and 10 concern the topic of issue spotting:

> "9. Counsel should assert claims of error which are supported by facts of record, which will benefit the defendant if successful, which possess arguable legal merit, and which should be recognizable by a practitioner familiar with criminal law and procedure who engages in diligent legal research."
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> * * *
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> "10. Counsel should not hesitate to assert claims which may be complex, unique, or controversial in nature, such as issues of first impression, challenges to the effectiveness of other defense counsel, or arguments for change in the existing law."

These standards do not require that every conceivable issue in a case be submitted to the reviewing court. The issues presented should be those reasonably capable of affording some actual relief to the client, without presenting risks of more severe punishment if successful. These requirements, however, mandate by implication that appellate counsel identify every possible appellate issue before a decision is made as to which will ultimately be submitted to the court.

A decision on the threshold question of arguable legal merit cannot be made without recognition of the potential issue, diligent research on the law, and careful consideration of the factual and legal consequences to the client if the issue is run. The fact that an attorney identifies one issue that appears to present compelling grounds for relief in the courts does not relieve the attorney from the obligation to identify and investigate all other possible errors in the case. The number and methods of presentation of the issues can always be pared down and refined after the legal research and strategic considerations are evaluated. Failure to recognize potential

issues initially, however, makes compliance with these standards, and adequate representation of the client, impossible.

II. GETTING AND READING THE RECORD

A. Obtaining the Record for Appeal

It should go without saying that before any attorney, and especially any appellate counsel who was not also trial counsel, can review a record for possible errors, the attorney must have adequate access to the raw material of the appeal – the record of the proceedings below. While this principle may appear to be beyond legitimate dispute, in fact the current state of Michigan law on the rights of appellate counsel to adequate access to the record is the result of years of fighting with often reluctant or recalcitrant courts and budgetary officials over the production of records and transcripts in indigent cases.

Attorneys may still run into problems getting transcripts, records, reports, and other documents or exhibits from officials unwilling to pay the costs of providing access. Assigned counsel do have the tools, as discussed below, to require compliance with requests for records, but should temper the use of these tools with the recognition that a fight over production of records is time-consuming, and a diversion from the real work of the appeal, where alternative methods of obtaining the materials are available. Maintaining good relations with court officials, while at the same time educating them if necessary on the right to obtain records, should minimize the administrative headaches that can often threaten to overshadow the substantive work.

The primary argument for assigned appellate counsel is that Due Process and Equal Protection guarantee a transcript on appeal. The United States Supreme Court has consistently held that an indigent defendant has the right to transcripts on appeal. Griffin v Illinois, 351 US 12; 76 S Ct 585; 100 L Ed 891 (1956); Mayer v Chicago, 404 US 189; 92 S Ct 410; 30 L Ed 2d 372 (1972). See People v Cross, 30 Mich App 326 (1971), affirmed 386 Mich 237 (1971). It has been held that an undue delay in the production of transcripts may result in a due process violation, or may at least entitle the defendant to release on appeal bond. Rivera v Conception, 469 F2d 17 (CA 1, 1972); Moore v Egeler, 390 F Supp 205 (ED Mich, 1975).

Under the current Michigan system, problems in receiving transcripts should be rare. Pursuant to MCR 6.425(F)(2), the order appointing counsel must include an order to prepare the trial, plea, sentencing, and "such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request", and must provide for payment of the court reporter's fees. Under MCR 7.210(B)(3), the reporter has strict time guidelines for the filing of transcripts. These rules normally will automatically provide the assigned appellate counsel with the major transcripts in each case. Therefore, counsel must be diligent in comparing the order for production to the court docket entries, and the recollections of trial counsel, to insure that all proceedings that were conducted on the record will result in transcripts. It is not uncommon that the initial order for production will omit evidentiary hearings, arguments on pre- or post-trial motions, arraignments, record waivers of jury trials, preliminary examinations, competency hearings, or other proceedings which could contain significant issues. Delayed discovery of missing transcripts causes substantial problems in timely filing of pleadings, and more importantly may prejudice the presentation of any issues discovered in the most recently received transcripts.

A copy of the docket entries is usually provided to assigned appellate counsel with the order of appointment. The Court of Appeals generally considers that any further transcript ordered by counsel within four weeks of the appointment is timely requested. The time for filing of the brief does not begin to run until after the filing of the last timely requested transcript. MCR 7.212(A)(1)(a)(iii). Where the court reporter is overdue in filing an ordered transcript, counsel should file a show cause motion in the Court of Appeals, in order to preserve the client's right to a timely filed brief, if direct contact with the reporter fails to resolve the problem.

Two problem areas should raise red flags for assigned appellate counsel. Where more than one court reporter was involved in a case, take particular care that each reporter is preparing all of the transcripts that reporter is responsible for, and has filed the required certificates. Second, while rarely seen, some courts may have a practice of not transcribing, or even not recording, particular portions of a proceeding, such as jury voir dire or the oral reading or playing in court of written or recorded statements. Attorneys should insist upon transcription of the entire record, or production of the documents or tape at issue for use as exhibits to the appellate courts.

Finally, while too involved for a detailed discussion in this manual, attorneys should be familiar with the requirements and procedures for settling a record if production of a transcript is impossible. See MCR 7.210(B)(2).

Minimum Standard 6 states that "Counsel shall promptly request and review all transcripts and lower court records". This Standard is not only a requirement for adequate representation, but can be used to support a request for production of records. The requirement that assigned counsel review the entire court record, including but not limited to the transcripts, carries with it an implicit obligation of the courts to provide reasonable access to that record.

While MCR 6.425 does not require the trial judge to sua sponte order production of a copy of the court file for the assigned appellate counsel, there is court rule support for a request for the file. MCR 6.433(A) provides that an indigent defendant may file a written request for specified court documents for use in an appeal as of right, and that the sentencing court must order the court clerk to provide the requested copies at the state's expense. The form order of appointment approved by the State Court Administrative Office contains language ordering the clerk to produce records. Similar provisions for production of records are set forth in the remainder of MCR 6.433 for appeals by leave and other post-conviction proceedings. In addition, MCR 6.425(C) specifically states that the appellate attorney has a right to a copy of the presentence report. See also MCL 771.14; MSA 28.1144. Counsel should ask for copies of psychological evaluations or sentence guidelines calculations in addition to the presentence report.

Where assigned counsel is physically able to view the court file without undue inconvenience or expense, it is the better practice to review the file first and then make a specific, written request for documents from the file that could lead to or contribute to issues. Alternatively, the trial court docket entries can be reviewed as the basis for a specific request for documents. As always, it is best to be over-inclusive when requesting documents, particularly since they are normally requested before the transcripts are reviewed. Where counsel, due to the distances or time factors involved, cannot realistically view the original file before making a request, the written request should be for the entire file, including but not limited to a listing of documents commonly found in criminal files. While again it is better to get too much information rather than too little, counsel should be sensitive to the budget and staffing limitations felt by most court clerk's offices,

and avoid requiring unnecessary work if at all possible. For example, if copies of file documents can be easily obtained from trial counsel, the client, or other sources for free, there is little sense in putting those costs on the clerk's office. Of course, no cost consideration can outweigh the obligation of counsel to review the entire file.

B. Reading the Record

Assuming the entire record is now available, including all transcripts, the next step is deciding how best to read that record with the goal of efficiently yet completely identifying the possible issues. Different appellate attorneys use different methods, and there is no objectively "correct" way to read a file. For attorneys just beginning to handle appeals, it may be best to experiment with several methods and decide upon a procedure that feels most comfortable. Whatever method is selected, it must have as its principle objective a thorough review of the entire file and spotting of all the potential issues.

The methods used by appellate attorneys to read files differ mainly in the order in which particular portions of the file are read. Some attorneys prefer to read closing arguments first, to get a flavor of the facts and disputed issues in the trial court. Some prefer to read the trial itself before reading the pre-trial or other proceedings. Some may read the sentencing first.

This author's preferred practice is to read through the court file itself first, in chronological order starting from the earliest documents up to the sentencing materials. In this method the charging documents are reviewed, along with all pre-trial motions, orders, and proceedings. Once there is a degree of familiarity with the written file documents, including the court's docket entry sheets, the transcripts are read, also in chronological order, starting with the District Court arraignment and preliminary examination. The final step is reading the sentencing transcripts and materials, including any post-trial motions or proceedings.

My reasons for using this chronological method are related to issue spotting. Many issues that first appear in a record grow or diminish in arguable merit as further events occur. Reading portions of the transcript out of order, such as closing arguments, may not reveal the significance of some issues absent a working knowledge of the preceding record. The initial reading of the record is not too early to begin the process of formulating how the issues will be structured and argued. The structuring decision can only be made with consideration of the totality of the case, in order to determine whether a harmless error analysis must be confronted. It is usually easier to get a handle on the totality of the case if the record is read in chronological order, so that the progression of the issue can be followed from the first indication of a potential error.

A second decision on methods of reading the record is to what extent notes are taken during the initial reading. Again, appellate attorneys use different approaches. Some take copious notes of the entire record upon the first reading. Others take minimal or no notes during the first reading, preferring to take extensive notes during a rereading. The method this author commonly uses is to take notes only as to potential issues, with citations to the portions of the record or transcript pages where events or testimony relevant to the issue appear and short statements as to the focus of the issue or any anticipated problems with the argument. As the rest of the record is read, additional notes can be added to each issue as warranted.

As with the different methods of reading a record, the different ways of taking notes present advantages and disadvantages. It is important, especially for newer attorneys, to experiment with different methods to find a system that is both comfortable and effective, and to be flexible enough to use different procedures where warranted. Note taking while reading a 1500 page trial transcript may be quite different than taking notes on a guilty plea or short bench trial record!

There are several advantages to taking comprehensive notes during the initial reading of the record. The most obvious is that once the notes are complete, the attorney has an organized and accessible reference guide to the record, which will be extremely useful during legal research and particularly when drafting the statement of facts. Unless the attorney is the exception to the rule and has a great deal of time available to work on the appeal to the exclusion of other cases, extensive notes will assist by eliminating or reducing the need to reread major portions of the record.

The disadvantages of taking extensive notes during a first reading increase with the length and complexity of the record. Taking contemporaneous notes while reading a substantial record is a very time consuming and draining endeavor. The increased time and energy needed to take extensive notes may lead the attorney to take less comprehensive, and thus less accurate, notes as the task progresses. The added time factor may also require that the attorney read the record in discrete intervals of time, separated by work on other cases. This may break up the flow or continuity of reading the file, which could cause issue identification to suffer.

One further, and potentially serious, disadvantage of taking extensive notes during a first reading is that the attorney may unconsciously pay more attention to producing full and accurate notes than to reading the substance of the record in a search for issues. An analogy to illustrate this problem is proofreading, where an emphasis on looking for misspellings, typographical errors, or correct citations can at times overshadow editing the substance of what is being written. Attorneys who use the comprehensive initial notes method should take care to remember that the primary goal is identification of issues, not the taking of notes.

The advantages of taking initial notes only on the issues spotted are that this method focuses the reader's attention on the tasks of looking for issues and following those issues along through the remainder of the record, the reading is done quicker and more likely in a continuous flow, and the reader is not distracted from the substance of what is being read by the process of taking the notes. A listing of potential issues will include most of the record references necessary to research and write the issues, and will aid the attorney in seeing the interconnections between the issues in the case.

The disadvantages of issue-related notes must also be recognized. The most important is the danger of relying on the initial listing of issues as the outside range of the substance of the appeal. Even the most experienced appellate counsel will not spot all of the issues in every case in a first reading. Attorneys should take care always to be on the lookout for additional issues through all stages of the appeal, and should never reject the possibility that an arguable issue exists solely because the issue does not appear on the initial listing. The initial notes are a starting point, not a limitation on the possible grounds for relief.

A second disadvantage of issue notes is that some degree of rereading is necessary in

order to prepare a comprehensive statement of facts. This disadvantage is mainly a time factor consideration. On the other hand, this disadvantage in time may often be turned into an advantage on substance. A rereading of all or major portions of the transcript at a later point in the preparation of the appeal may result in discovery of previously unrecognized factual support for an argument. Where the legal research, and possibly even the writing of the legal arguments, has already been done, a rereading of the record is a beneficial check on the context of the asserted errors.

A final word of caution applies to both methods of note-taking. Regardless of which method is used in a particular case, avoid reliance on the notes to the exclusion of the actual record. Attorneys tend subconsciously to interpret a record to their advantage while taking notes, especially when faced with the degree of disturbing and inflammatory evidence presented in many serious criminal prosecutions. No matter how carefully taken, notes are at most an aid to the attorney's work with the record, and not a substitute for that record. Remember, the Court which will decide the case will work from the actual record, not from your notes.

III. ISSUE IDENTIFICATION

As indicated above, issue spotting is the most critical aspect of handling an appeal. Without recognition of the potential arguments in the case, the most adept researcher, most persuasive writer, or most formidable courtroom advocate will have no framework upon which to exercise those skills. Development of good issue spotting skills is the major factor in successfully representing clients before appellate courts.

In relation to issue spotting, as with most other aspects of legal practice, there is no substitute for experience and knowledge of the law. While some potential issues may present themselves clearly to even a novice attorney or law student, many other issues are not so evident on the record. Development of new or innovative issues requires the legal background and breadth of information to recognize a problem area and formulate a solution. One purpose of this manual is to highlight particular areas of a record which may give rise to issues of arguable merit. On a more general basis, appellate counsel should strive to master the basics of good issue identification techniques.

Attorneys must develop the general background and depth of knowledge necessary to identify appellate issues. Many references are available to assist the practitioner. These include the Defender Trial Book, the various MAACS manuals, the Criminal Jury Instructions and annotations, and a large variety of criminal law casebooks and treatises. Counsel should become familiar with the Michigan penal code, the various statutes on criminal and trial procedure, the Michigan Court Rules, and the Michigan Sentencing Guidelines. Knowledge of how the criminal justice system is designed to work is the first step in recognizing when the system fails.

It is critical for appellate counsel to stay as current as possible on Michigan and United States Supreme Court law, and, as time permits, federal caselaw. Keeping current can involve actual reading of newly issued opinions, or regular reading of one or more of the publication that contain summaries of recent decisions – such as the Criminal Defense Newsletter, Lawyer's Weekly, the State Bar Criminal Law Section Newsletter, the Michigan Bar Journal, or other publications. In addition to case summaries, many of these periodicals have articles and pointers

on legal issues or advocacy skills.

Staying current with new decisions not only informs appellate counsel of the changes in substantive law, but also is a valuable guide to how other counsel raise and formulate issues, and how the courts make their decisions. Knowledge of "hot" areas of law, arising from new legislation or the interpretation of new court doctrines, puts appellate counsel on the alert to look for these issues in future cases. Keeping abreast of issues pending in the Michigan Supreme Court and the United States Supreme Court will allow counsel to preserve issues in the lower courts for potential retroactive application of new decisions.

Appellate counsel should try to develop a network of other attorneys for discussing ideas and getting input. Often a second or third opinion on a particular fact situation is very helpful in deciding how an issue can best be presented, or whether it should be presented at all. Attorneys with different outlooks and different experiences will come up with various approaches to obtaining relief. A key to appellate practice is obtaining information. Assigned counsel should take advantage of every source of information available to them, such as the Legal Resources Project at the State Appellate Defender Office, MAACS training programs, Criminal Defense Attorneys of Michigan (CDAM) training seminars, and presentations by local bar associations or defense counsel organizations.

IV. DEVELOPING A THEORY FOR THE CASE

In approaching a new file, appellate counsel should begin the process of developing a theory for the appeal. Just as an experienced trial attorney will work up a theme for the presentation of the case, appellate counsel should, where available based on the record, formulate a cohesive plan for presentation of the issues. Appellate courts that are resistant to granting relief in criminal cases will tend to deal with issues individually, picking them off one by one without express regard for any cumulative effect of the asserted errors. It is counsel's job to remind the court constantly that each issue cannot be fairly viewed in isolation from the remaining claims. The best way to accomplish this result is to look for a theory while initially spotting the issues.

Since the goal of issue spotting is to locate prejudicial errors, not just technical ones, it is most effective to concentrate the issue spotting on that evidence that most contributed to the client's conviction and/or sentence. The chances of getting substantive relief, rather than a finding of harmless error, are obviously increased where the error concerns evidence that can be argued to have had a significant impact on the finder of fact. To this end, counsel should always evaluate what the key pieces of prosecution evidence were, and whether efforts were made to keep that evidence out of the trial. If efforts were made, either by way of suppression motions, objections, or other methods, counsel should consider whether the trial attorney argued the best or the complete grounds for exclusion. If no efforts were made to exclude this evidence, counsel should evaluate whether, given knowledge of the rest of the record, grounds which had a reasonable chance of success should have been raised. Counsel should also consider if the evidence was admitted only for a special or limited purpose, and, if so, whether it was correctly presented to the jury for that purpose.

The same sort of analysis must be applied to the evidence which favored the defense in

the trial court. Counsel should carefully look to see if this evidence was improperly excluded, whether the evidence went to the jury in a correct fashion, and whether evidence existed which the trial attorney made no attempt to introduce.

By looking at the crucial evidence on both sides of the case, appellate counsel can focus on the key factual and legal issues which were resolved in the trial court. This focus can, in turn, lead to development of the theme for the appeal. For example, if the real factual dispute at the trial was the identity of the perpetrator, rather than whether the offense actually occurred, appellate counsel can tie together issues that impacted on the identification question (e.g. failure to suppress suggestive lineups, misstatement of alibi instruction, invalid search which led to discovery of evidence linking the accused to the crime). The overall theme of the appeal – that the likelihood of misidentification of the accused was increased by each of these claimed errors – can then be emphasized within the arguments on each issue, reinforcing the concept that the errors worked together to deny the client a fair trial.

Certainly not all records will present good opportunities for developing a general theme and tying several issues together to punctuate that theme. Where only one or a few issues are available, the issues may not deal with a common concern. In those situations, appellate counsel's responsibility is to put the issue(s) into the context of the entire case, and to explain why even a single or isolated error demands substantive relief.

V. PRESERVATION OF ISSUES

When seeking to identify issues, the appellate attorney must note not only the substance of the potential claim, but also whether the trial attorney adequately preserved the issue for appeal. Appellate counsel should note the type of preservation used (e.g. objection, pre-trial motion, motion in limine, motion for mistrial, request for instruction), and the timing of the trial counsel's action. Appellate courts are particularly alert to the question of preservation of issues. See MCR 7.212(C)(7), requiring statements in the argument portions of the brief identifying where the issues were preserved for review. An appellate court's main role is reviewing decisions made by trial judges. Where through inaction by the parties a particular issue is not raised before the trial court, and thus no decision is made by the trial judge in resolving the issue, appellate judges are naturally reluctant to find prejudicial error. Depending on the nature of the error alleged, appellate review may be completely barred if the issue was not preserved.

While recognizing the importance of timely preservation of issues for appeal, appellate counsel should never fall into the trap of only reading a record to look for objections or preserved issues. An assumption cannot be made that even the most experienced trial attorney adequately preserved all the potential issues. Trial attorneys in many instances will not place objections on the record for reasons of trial strategy, or may raise objections in chambers which are not later repeated for the record. In the stressful atmosphere of a criminal trial, events may not be recognized as constituting prejudicial error, even though they can be readily identified during the more contemplative process of appellate issue spotting. While certainly the existence of an objection or motion signals the potential of an appellate issue, the lack of an objection does not foreclose all possibility of appellate review. In addition, the grounds raised in the trial court in support of an objection or motion do not necessarily limit appellate counsel to arguing only those reasons for granting relief. Appellate counsel has a duty to the client to exercise independent

judgment on how best to present an issue to the reviewing court, even where that judgment diverges from the strategic or legal positions taken in the trial court.

If no timely preservation of an issue is evident on the record, appellate counsel must consider how the potential issue might be raised. Arguments can be made under a plain error theory, or by demonstrating from the record that due to specific circumstances an objection would have been useless. Appellate counsel must also consider the option of asserting ineffective assistance of trial counsel, particularly where a strong argument can be made that absent the failure to object, the client would be entitled to relief. See Minimum Standard 10, discussed above.

Appellate counsel must further consider the potential of making a motion in the trial court, under MCR 7.208(B), or a timely motion to remand in the Court of Appeals, pursuant to MCR 7.211(C)(1), to request an evidentiary hearing or an opportunity to obtain a trial court ruling in order to preserve an issue for full appellate review. In many instances such a motion is necessary if the particular issue was not adequately raised in the trial court. For example, see People v Ginther, 390 Mich 436 (1973) (ineffective assistance); People v Pearson, 404 Mich 698 (1979) (prosecutorial diligence in locating essential witnesses); People v Matthews, 53 Mich App 232 (1974) (verdict against great weight of the evidence); People v Mack, 112 Mich App 605 (1981) (newly discovered evidence); People v Talley, 410 Mich 378 (1981) (Fourth Amendment claims). See also Minimum Standard 8, which states that counsel "shall move for and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error not adequately supported by existing records which he or she believes to be meritorious."

VI. HARMLESS ERROR

While identifying issues appellate counsel must always evaluate whether an asserted error will realistically provide a chance of relief for the client. Along with a lack of objection, one of the appellate courts' most frequent bases for affirming is harmless error. The need to determine whether an error is prejudicial or harmless demands that the full record be carefully read and understood. Successful appellate practice is not a contest to see how many issues can be spotted and raised. Success in gaining relief for the client is the measure of representation that matters most. Attorneys rarely have the time or resources to spend on the research or development of issues that are manifestly harmless within the context of a particular case.

The term "harmless," of course, refers to a situation where, because no unfairness occurred on the particular facts of the case, the reviewing court will not grant relief even if the claim of legal error is upheld. See MCR 6.508(D)(3)(b); People v Mateo, 453 Mich 203 (1996). The standards for harmless error in Michigan have gone through significant changes in the past year. Although the Supreme Court established a harmless error standard for non-constitutional error in People v Gearns, 457 Mich 170 (1998), the Court overruled the Gearns opinion just a year later. In People v Lukity, 460 Mich 484 (1999), the Court held the standard for a preserved, non-constitutional error is that the appellant must demonstrate it is "more probable than not" the error was outcome determinative. The standard for preserved constitutional errors continues to be that stated in Mateo and Chapman v California, 386 US 18; 87 S Ct 824; 17 L Ed 2d 705 (1967), that such error demands reversal unless shown to be harmless beyond a reasonable doubt.

In People v Carines, 460 Mich 750 (1999), the Supreme Court held that non-preserved constitutional error is to be evaluated under the same standard as non-preserved non-constitutional error. See People v Grant, 445 Mich 535 (1994). That standard is the plain error test, which requires the appellant to demonstrate that the error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings. (Note: a chart of the harmless error standard for each type of error is included as an appendix to the Carines majority opinion).

The need to raise novel issues that may have only a minimal chance of success, as discussed previously, is not negated by a harmless error analysis. With those issues, the intent is to get the appellate court to accept a legal theory which, if accepted, will lead to relief.

The Minimum Standards require the attorney to raise all issues of "arguable merit" that might actually benefit the defendant. While attorneys should err on the side of raising the issue if the question of arguable merit is close, each potential issue should be subjected to a harmless error analysis before substantial time is invested in its research or writing. If it is likely that the prosecution will argue harmless error in response, counsel should write the issue explaining why the court should find the error to be prejudicial.

VII. SOURCES OF ISSUES OTHER THAN THE RECORD

While the majority of appellate issues are identified from the trial court record, counsel's responsibility for spotting issues is not limited to reading that record. Several other sources of issues must also be investigated. See Minimum Standard 7, which requires counsel to "investigate potentially meritorious claims of error not reflected in the trial record" whenever counsel has reason to believe such a claim may exist.

Minimum Standard 3 reads as follows:

> "Except in extraordinary circumstances, counsel shall interview the defendant in person on at least one occasion during the initial stages of representation."

The client interview, besides forming the basis for a successful attorney-client relationship, is a valuable source of potential issues. The attorney should ask the client if there were any off-the-record events which may lead to issues. Such events might include meetings with trial counsel in which potential witnesses or defense theories were discussed, disputes over trial strategies, knowledge as to particular jurors, and a host of other topics. Many issues which require requests for remand start off with information received from the client.

On the other hand, counsel should also inquire at the client interview about any potentially damaging or harmful information that could come out at an evidentiary hearing, or which could be used to the client's detriment at a resentencing (e.g. new charges or convictions, misconduct while incarcerated). Full knowledge of the facts is essential to an informed decision on whether a particular issue should be run, or whether it presents a significant risk to the client. Counsel should pay particular attention to Minimum Standard 4, which requires counsel to inform the client of the potential risks and foreseeable consequences of raising certain issues. In many cases,

particularly where the conviction was from a guilty plea, accurate advice on the risks from appealing is one of the most crucial obligations of appellate counsel.

In addition to inquiry into particular events, the client should be asked if there was anything about the case not already discussed that the client feels was not done fairly or correctly. Many clients have a strong innate sense of fair procedure. Others are well-versed in the law. Attorneys should not let their professional pride stand in the way of being shown a potential issue by the client that the attorney had not yet identified.

A corollary to client contact is communication with trial counsel. Off-the-record matters can be discussed, as well as insights from the trial attorney as to why the trial judge may have made particular rulings or why evidence was presented in a certain manner. Active cooperation from trial counsel can be quite beneficial to the appeal, for substantive input as well as access to documents, transcripts, and other materials. Appellate counsel should not hesitate to question trial counsel on why particular actions were or were not taken. What appears from the transcript to be an issue of ineffective assistance may change dramatically upon information received from the trial attorney.

In addition to the particular trial court record, appellate counsel has other written sources of potential issues. The attorney should read the relevant penal statutes involved, and go through the annotated cases in the statute books, especially if previously unfamiliar with the specific offense. This review will clarify whether there was sufficient evidence on the essential elements of the offense, and will reveal the types of issues other attorneys raise concerning this offense. In connection with a reading of the statute, the attorney may wish to read the Standard Criminal Jury Instructions for that offense, with the accompanying commentaries. A working knowledge of the basic jury instructions is a good background for issue spotting, both as to instructional error and as a guide to judicial rulings in the case. Finally, all appellate attorneys should be familiar with how the sentencing guidelines operate, and what information must be included in presentence reports. A good practice is to recalculate the guidelines scoring on your own, in order to reveal possible scoring errors that were not raised by the trial attorney.

At the most basic level, appellate counsel should not discount a gut feeling that something was done wrong. If a particular event or decision strikes the attorney as unfair, prejudicial, or illogical, the chances are good that a concrete issue can be developed. Issues of first impression are often the most interesting to work on and argue. In searching for issues, no limitations should be placed on innovation or creativity.

CHAPTER TWO

ISSUE SPOTTING IN A MICHIGAN CRIMINAL RECORD

I. OVERVIEW

The remainder of this manual will be devoted to a discussion of where commonly found issues under Michigan and Federal law appear in criminal records. The discussion will be supplemented with references to lead cases, court rules, statutes, and other authority. As indicated previously, this manual is not meant to be an all-inclusive listing of potential issues, or an exhaustive review of precedent. It is instead intended to give appellate counsel a broad checklist of areas in the record where particular issues arise, and a starting point for research. The discussion will follow the format of the chronological method of reading a record.

Although it is now ten years old, a study conducted by the National Center for State Courts provides some interesting background. Researchers looked at the pattern of dispositions of criminal appeals from appellate courts in California, Colorado, Illinois, Maryland, and Rhode Island. The survey found that the affirmance rates among the five courts were very similar, with an average of 79.4% affirmances. Reversals and dismissals accounted for only 1.9% of the cases, reversals and remands for new trials 6.6%, remands for resentencings 7.3%, and other relief (reversals of less than all convictions in a multi-count case, etc), occurred in 4.8% of the cases. Understanding Reversible Error in Criminal Appeals, National Center for State Courts, 1989.

The survey also looked at what substantive issues led to reversals (excluding sentencing issues), and the "success rate" of particular issues, measured by the frequency with which the issue was successful as compared to the number of times the issue was raised. The survey's findings are reproduced below:

Reversible Error by Issue

Issue	Percentage of all Error Associated with Issue	Success Rate
Admission/exclusion of evidence	20.6%	7.7%
Instructions	13.5	9.7
Procedural or discretionary ruling	13.1	7.8
Sufficiency of the evidence	12.0	5.8
Merger of offenses	10.5	51.9

Suppression of evidence, statements, or identification	10.5	8.4
Ineffective assistance/ waiver of counsel	6.0	12.9
Other constitutional claims (double jeopardy, speedy trial)	4.9	11.5
Jury selection or deliberation	3.4	8.8
Statutory interpretation or application	2.2	19.4
Plea	2.2	15.0
Prosecutorial misconduct	1.1	1.9

The survey concluded that most cases of reversible error occur in three broad categories. The first is where an issue is raised during the proceedings, such as where an objection is made to evidence during the examination of a witness and an immediate decision is made, as compared to decisions on pre-trial motions where the trial judge has more time to research and contemplate the question. The second is where new laws or procedures are interpreted in the trial courts. The third is where the error is based on the particular trial judge's failure to follow an established procedure or rule, as compared to a problem with the procedure or rule itself.

These findings should be kept in mind regarding both the general techniques of issue presentation, such as developing a theme for the appeal and concentrating on the key evidence in the case, and the specific areas of law to be discussed. While the overall affirmance rates are not encouraging (and are probably even higher today), the issue chart shows that effective identification and presentation of claims of error can result in relief being granted with some frequency.

II. CHARGING DOCUMENTS IN THE TRIAL COURT FILE

Meritorious issues are rarely found solely on the face of the charging documents, such as the complaint, warrant, return on the examination, and the information. Most of these documents are by now fairly standardized, and provide only the most basic information in a repetitive fashion. The documents are crucial, however, to several areas of potential error.

A. Timing of the Charges

Appellate counsel should always look at how long it took the prosecution to bring the

CHAPTER THREE

TOP TEN LIST OF NON-ISSUES

This manual has been designed to provide a framework for spotting and identifying issues of arguable merit in a criminal record. As a final point, it should be noted that much of appellate counsel's work in dealing directly with clients involves explaining why certain situations do not raise arguable issues. Such discussions can be time-consuming, aggravating, and disruptive of the attorney-client relationship. With these facts in mind, the author surveyed numerous experienced appellate attorneys for the most common areas about which clients make inquiries or harbor (mis)conceptions of the law that rarely, if ever, result in good issues. In hopes that this compilation will aid both attorneys and clients in resolving these questions with a minimal amount of stress and expenditure of time and research, the following is the top ten list of non-issues:

1. "The police did not read me my Miranda rights" (but no admission or confession was obtained or admitted): Contrary to popular belief, buttressed by years of television police and lawyer shows, there is no absolute duty on the police to read Miranda rights to all arrested suspects. Compliance with Miranda is only required for admission of a statement taken pursuant to custodial interrogation.

2. "The prosecution refused to give me/the complainant/the witness a polygraph test": Not only are polygraph results inadmissible at trial, no requirement exists under Michigan law for the police to test their witnesses or comply with a defense demand for a polygraph.

3. "My attorney didn't do a good job/was in a conspiracy with the prosecution to get me/etc": While ineffective assistance of counsel can be a good issue, it must be based on a specific error or omission, rather than only general dissatisfaction with the attorney or with the result. The fact that trial counsel was friendly with the prosecutor or judge does not prove a conspiracy existed. Similarly, the fact that the attorney was appointed by the court and paid by the State does not make trial counsel a coemployee of the prosecution.

4. "The prosecutor didn't offer me a good plea deal/my attorney didn't get me a good plea offer": There is no obligation on the prosecution to offer a plea agreement, either in terms of a charge reduction or sentence agreement. While the volume of cases generally calls for pleas in most situations, there is no right to plead guilty in exchange for some concession. Complaints against the trial attorney on this question are similar to #3 above – the attorney has no general power to demand a favorable offer. Plea negotiation is a difficult and critical skill, but not a matter of right.

5. "I just want a time cut": There is no authority in Michigan for a trial judge to reduce the term of a lawfully imposed prison sentence, even if the defendant has a good record and there are other equitable facts. The appellate counsel must find some legal grounds for a resentencing before the judge can impose a new or different sentence.

6. "There was no medical testimony that sexual intercourse occurred": There is no requirement under Michigan law that the testimony of a complainant in a CSC case be corroborated by any testimony, including medical testimony.

7. "All of the prosecution witnesses lied": The appellate courts do not sit as a new jury, redeciding questions of credibility. While it is the duty of appellate counsel to point out the weaknesses and contradictions in the prosecution's case, in order to argue for prejudicial error, straightforward attacks on the accuracy of the testimony without something else are a waste of time.

8. "The police planted the stolen property at my house/got my fingerprints from somewhere else and placed them on the property/etc": While it cannot be stated that no persons have ever been framed by the police, it is hard to conclude that it happens as often as clients insist and harder still to prove.

9. "There wasn't probable cause for my arrest" (but no evidence flowed from the arrest): As with the Miranda issue, there is only error where there is something to suppress. An illegal arrest per se does not divest the court of jurisdiction over the person. If no evidence was seized, identification procedures employed, or statements taken that can be argued are fruits of the illegal arrest, the lack of probable cause is by itself a non-issue.

10. "I didn't know you couldn't have a sawed-off shotgun/she looked like she was older than fourteen, etc": Ignorance of the law or facts is generally no excuse. This concept applies both to criminal defendants and to their attorneys.

Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

October 14, 2015

Spotting the Appellate Issues in Plea Appeals

Chris Smith

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

This training event is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

Spotting the Appellate Issues in Plea Appeals

Chris Smith, SADO

Plea Appeals: Overview

"[C]riminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas."

Lafler v Cooper,
132 S Ct 1376, 1388 (2012).

Plea Appeals: Overview

"A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment."

Boykin v Alabama,
395 US 238, 242 (1969).

Plea Appeals: Overview

A plea of guilty or nolo contendere requires the waiver of several constitutional rights:

Fifth: Right to remain silent

Sixth: Rights to…

- Trial by jury;
- Confrontation;
- Compulsory Process

Fourteenth: Right of equal access to State's appellate procedures.

Plea Appeals: Overview

A defendant who pleads guilty or *nolo contendere* "necessarily gives up all the rights and challenges associated with trial."

People v New, 427 Mich 482, 492 (1986).

Plea Appeals: Overview

"These rights, which essentially relate to the gathering and presentation of evidence, are lost even if a successful challenge [would lead to a dismissal or acquittal]."

People v New, 427 Mich 482, 492-493 (1986).

Plea Appeals: Overview

What issues survive a guilty plea?

Plea Appeals: Overview

"Only those rights and defenses which reach beyond the factual determination of defendant's guilt and implicate the very authority of the state to bring a defendant to trial[.]"

People v New,
427 Mich 482, 492 (1986).

Plea Appeals: Overview

Examples:

- Double Jeopardy
- Constitutionality of Statute Defining Charged Offense
- Charges Brought Under Inapplicable Statute
- Jurisdictional Defects

People v New,
427 Mich 482, 492 (1986).

Plea Appeals: Overview

Typical plea appeals involve…

I. The Plea Itself
   a) Specific Performance of the Plea Agreement
   b) Withdrawal from the Plea Agreement

and/or..

Plea Appeals: Overview

Typical plea appeals involve…

II. The Sentence Imposed
   a) Guidelines
   b) Habitual
   c) Credit for Time Served
   d) Fines, Costs, and Fees

I. Challenging the Plea

Plea Appeals: Challenging the Plea

Areas to Examine:

- Requirements of a Valid Plea
- Enforcing Terms of Plea Agreements
- Withdrawing a Guilty Plea

MCR 6.301: Available Pleas

Guilty Plea

- D must admit guilt
- No consent required

Nolo Contendere Plea

- D need not admit guilt, but must agree not to challenge the allegations against him/her.
- Consent of court required.
- Treated as a guilty plea for sentencing purposes.

TRANSPARENCY REQUIRED

A valid waiver will not be presumed from a silent record. Courts must make a record that sufficiently overcomes the presumption against the waiver of constitutional rights.

Boykin v Alabama, 395 US 238 (1969).

KNOWING, INTELLIGENT, & VOLUNTARY

"Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

Brady v U.S., 397 US 742 (1970).

KNOWING, INTELLIGENT, & VOLUNTARY

MCR 6.302(A):

"The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant under oath and personally carry out [MCR 6.302(B) through (E)]."

WHEN IS A PLEA "UNDERSTANDING"?

A plea is voluntary so long as the defendant is "fully aware of the direct consequences" of the plea.

Brady v US, 397 US 742 (1970):

WHEN IS A PLEA "UNDERSTANDING"?

Direct Consequences
versus
Collateral Consequences

WHEN IS A PLEA "UNDERSTANDING"?

Direct Consequences	Collateral Consequences
A defendant cannot enter a voluntary plea without receiving advice about its direct consequences.	A plea will still be valid even if the defendant is unaware of certain indirect consequences of his conviction.

Direct Consequences Include:

- Maximum Possible Prison Term
  - *People v Brown*, 492 Mich 684 (2012)
- Any Mandatory Minimum
  - *Id.*
- Lifetime Electronic Monitoring
  - *People v Cole*, 491 Mich 325 (2012).

Collateral Consequences Include:

- Loss of employment
- Loss of the right to vote
- Loss of the right to travel freely abroad
- Loss of the right to a driver's license
- Loss of the right to possess firearms
- Loss of good-time credit
- Loss of public benefits
- Loss of business or professional licensure
- A plea's possible enhancing effects on a subsequent sentence

Gray Areas:

- Immigration/Deportation
  - *Padilla v Kentucky*, 559 US 356 (2010).
- Sex Offender Registration
  - *People v Fonville*, 291 Mich App 363 (2011).
- Probation/Parole Consequences
  - *In re Guilty Plea Cases*, 395 Mich 96 (1975).

WHEN IS A PLEA "VOLUNTARY"?

No threats
No coercion
No off-record promises
No illusory consideration

WHEN IS A PLEA "VOLUNTARY"?

Illusory inducements:

*Threats of unauthorized punishment

*Offers of consideration outside plea process

WHEN IS A PLEA "VOLUNTARY"?

MCR 6.302(B)(4):

The defendant must disclose promises/threats at the plea proceeding or forever lose the right to challenge them.

WHEN IS A PLEA "ACCURATE"?

The record must demonstrate that the defendant is aware of the nature of the offense.

WHEN IS A PLEA "ACCURATE"?

Judge's Role: The judge must question the defendant to verify that there is a factual basis to support the plea.

Types of Plea Agreements

TYPES OF PLEA AGREEMENTS

- Pleas without Consideration
- Plea Bargains with the Prosecution
- Plea Evaluations by the Judge

Pleas Without Consideration

- Open Plea:
  - Defendant pleads guilty as charged
    - No charge reduction
    - No sentencing consideration

Pleas Without Consideration

- Open Plea:
  - Still constitutionally valid despite lack of consideration
  - (So long as plea is knowing, intelligent, and voluntary).

Pleas Without Consideration

- Keep in Mind:
  - Charging discretion rests with Prosecution
  - No right to favorable plea offer
  - BUT: Avoids "Jury Tax"

Bargains With Prosecution

- Charge Reductions
  - E.g., reducing first-degree murder charge to second-degree murder.
  - Reducing or dismissing sentencing enhancements
- Count Reductions
  - Dismissing some counts in exchange for a plea to others
- Sentencing Agreements (*P. v Killebrew*, 416 Mich 189 (1982)
  - Bind the judge
    - Sentencing Caps
    - Bargained-for Sentences
- Sentencing Recommendations
  - Do not bind the judge

Bargains With Prosecution

- Keep in Mind:
  - The Court is not obligated to accept the parties' agreement.
  - If the Court rejects a charge/count reduction, no plea will enter.
  - If the Court rejects a sentencing agreement, the defendant may withdraw plea.
  - If the Court ignores a sentencing recommendation, there is no breach and, therefore, no remedy.

Bargains With Prosecution

* Special Note Re: Bargained-for Sentences
  * "[A] defendant waives appellate review of a sentence that exceeds the guidelines by understandingly and voluntarily entering into a plea agreement to accept that specific sentence."
    * *People v Wiley*, 472 Mich 153 (2005)

Bargains With Prosecution

* Special Note Re: Bargained-for Sentences
* So…
  * If you bargain for a specific sentence,
  * And if you receive the benefit of that bargain,
  * You CANNOT complain about that sentence on appeal.
  * (Even if the sentence is outside the range or based on a guidelines error)

Bargains With Judge

Federal Courts	Michigan Courts
"[T]he court must not participate in [plea] discussions[.]" Fed R Crim Pro 11(h).	Courts may play a limited role. *People v Cobbs*, 443 Mich 276 (1993).

Bargains With Judge

Cobbs Evaluations

If (and only if) a party asks, the Court may conduct a preliminary evaluation of the case and announce the sentence it would impose based on the information before it.

Bargains With Judge

Cobbs Evaluations

If the defendant accepts that sentence, he or she must plead guilty as charged.

* Note:
  * Charging discretion rests with the prosecution.
  * The Court lacks authority to bargain away charges or enhancements.

Bargains With Judge

Cobbs Evaluations

At sentencing, the Court is not obligated to abide by its initial evaluation. (The Court may learn new information that changes its view of the appropriate sentence).

Bargains With Judge

Cobbs Evaluations

If the Court does not abide by its initial evaluation, the defendant has an ABSOLUTE RIGHT to withdraw the plea and go to trial.

Example: *People v Willis*, 482 Mich 1010 (2008). *But see* Amended MCR 6.310(B)(3) (eff. 2014).

Motions for Plea Withdrawal

When to Make Motion:

- Before plea is accepted
  - MCR 6.310(A).
- Before sentencing
  - MCR 6.310(B).
- Within six months of sentencing.
  - MCR 6.310(C).

Motions for Plea Withdrawal

Where to Make Motion: TRIAL COURT!

"A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal." MCR 6.310(D).

Motions for Plea Withdrawal

Where to Make Motion: TRIAL COURT!

If jurisdiction rests solely in the Court of Appeals, a possible work-around:

- File a Delayed Leave Application that requests plea withdrawal. (MCR 7.205).
- Concurrently File a Motion to Remand
  - MCR 7.211(c)(1)(a)(i): COA may remand if the issue "must be initially decided by the trial court."

Motions for Plea Withdrawal

Grounds for Plea Withdrawal

The Court MUST grant either specific performance or plea withdrawal if the terms of the agreement have not been fulfilled.

After acceptance but before sentencing, the Court MAY allow plea withdrawal if it does not prejudice prosecution or offend the interests of justice.

After sentencing, the defendant bears the burden of demonstrating a defect in the plea procedure.

Motions for Plea Withdrawal

Appellate Standard: "Substantial Compliance"

Strict compliance with MCR 6.302 is not required; rather, substantial compliance is sufficient.

After acceptance but before sentencing, the Court MAY allow plea withdrawal if it does not prejudice prosecution or offend the interests of justice.

After sentencing, the defendant bears the burden of demonstrating a defect in the plea procedure.

Motions for Plea Withdrawal

Automatic Reversal

II.
Challenging the Sentence

Sentencing Authority Resides with the Legislature

- "The ultimate authority to provide for the penalties for criminal offenses is constitutionally vested in the Legislature." *People v Hegwood*, 465 Mich 432, 436 (2001).
- Subject to Constitutional Restraints
  - Eighth Amendment to U.S. Constitution
  - Art. 1, Sec. 16 of Michigan Constitution

Sentencing Discretion Delegated to the Judiciary

- "The authority to impose sentences and to administer the sentencing statutes enacted by the Legislature lies with the judiciary." *People v Hegwood*, 465 Mich 432, 436-437 (2001).
- "It is, accordingly, the responsibility of a circuit judge to impose a sentence, but only within the limits set by the Legislature." *Id.* at 437 (emphasis removed).

Determinate versus Indeterminate Sentences

- Determinate: Flat Time
  - Most Common Example: Felony-Firearm (MCL 750.224f).
    - Flat two years for first FF conviction.
    - Flat five years for second FF conviction.
    - Flat ten years for third FF conviction.
    - No more; no less.
  - Non-prison sentences.

Determinate versus Indeterminate Sentences

- Indeterminate: Some Guesswork
  - Nearly all prison sentences.
  - Legislature sets maximum (subject to some exceptions).
  - Judiciary (specifically, the trial judge) sets minimum (subject to limits placed by Legislature).
  - Executive (specifically, the Parole Board) decides when to release prisoner between minimum and maximum outdates.

Indeterminate Sentences

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Indeterminate Sentences
Calculating Maximum

- Refer to statute defining offense
  - If silent, refer to MCL 750.503 thru 750.505

Indeterminate Sentences
Calculating Maximum

- Trial judge has no discretion over maximum sentence.
- Exceptions:
  - "Life or any term of years"
  - Habitual offenders

Indeterminate Sentences
Calculating Maximum

- Habitual Offenders: Trial judge enjoys the discretion to either keep the maximum set by statute OR increase it as follows:
  - *2d Offense:* Multiply by as much as 1.5
  - *3d Offense:* Multiply by as much as 2
  - *4th Offense*
    - If statutory max is five years or more, habitual max becomes life or any term of years.
    - If statutory max is less than five years, [illegible] max is not more than 15 years.

Indeterminate Sentences
Calculating Maximum

- Habitual Offenders—Always check:
  - That prosecution gave notice of its intent to seek habitual enhancement within 21 days of Information.
  - That prior convictions are felonies that satisfy the criteria of MCL 769.10 thru MCL 769.13.
  - That client was either represented by counsel or made a valid waiver of his right to counsel.

Indeterminate Sentences
Calculating Minimum

- The trial judge has the discretion to set minimum within the following limits:
  - *Tanner* rule
  - Legislative sentencing guidelines

Indeterminate Sentences
Calculating Minimum

- *People v Tanner*, 387 Mich 683 (1972).
  - 2/3 rule
  - Policy: Let Parole Board do its job.

Indeterminate Sentences
Calculating Minimum

- Legislative Sentencing Guidelines
  - First, judge scores the guidelines to arrive at minimum sentencing range
  - Then, judge exercises his/her to sentence within that range.
  - The guidelines limit judge's authority to depart from range.
  - (Note: Legislative guidelines apply only to offenses committed after January 1, 1999)

Analyzing Guidelines Scoring

- STEP ONE: Identify sentencing offense
  - Single conviction: Easy.
  - Multiple convictions:
    - Use the one in highest crime class.
      - Tie-breaker: Offense which will yield the highest minimum sentencing range.
    - If one sentence is to run consecutively to another, run guidelines for both.
- Do not score guidelines for offenses carrying determinate sentences (*e.g.*, felony-firearm) or life without possibility of parole (*e.g.*, first-degree murder)

Analyzing Guidelines Scoring

- STEP TWO: Identify Crime Class for Sentencing Offense
  - Classifications:
    - Second-Degree Murder
    - Classes A, B, C, D, E, F, G, and H
  - Classes trigger which grid is in play.
  - Great Resource: Guidelines Manual
    - Crimes listed alphabetically
    - Crimes listed by MCL number

Analyzing Guidelines Scoring

- STEP THREE: Identify Crime Grouping for Sentencing Offense
  - Groupings—Person, Property, Controlled Substance, Public Order, Public Safety, and Public Trust.
    - Trigger which OVs are in play.
  - Great Resource: Guidelines Manual
    - Crimes listed alphabetically
    - Crimes listed by MCL number

Analyzing Guidelines Scoring

- STEP FOUR: Apply Prior Record Variables (PRV-1 thru PRV-7).
  - All PRVs must be scored no matter which crime groupings.
  - Ten-year gap rule.

Analyzing Guidelines Scoring

- STEP FIVE: Apply Offense Variables (OVs)
  - Some OVs are inapplicable depending upon the sentencing offense's grime grouping.
  - *People v McGraw*, 484 Mich 120 (2009)

Analyzing Guidelines Scoring

- STEP SIX: Identify sentencing grid and insert PRV total and OV total to get minimum range.
  - Grid depends on crime class [MCL 777.61 thru MCL 777.69].
  - Range expands for habitual offenders. [MCL 777.21(3)]

Analyzing Guidelines Scoring

- Types of cells within grid:
  - Prison Cell: Judge must impose indeterminate prison term unless a downward departure is warranted.
    - Example: Range of 38-76 months
  - Intermediate Sanction: Judge must impose probation, determinate jail term, et cetera unless an upward departure is warranted.
    - Example: Range of 0-3 months
  - Straddle Cell: Discretion to do either.
    - Example: Range of 10-23 months

Analyzing Guidelines Scoring

- STEP SEVEN: Determine whether trial court imposed a minimum sentence within range.
  - Special rules for intermediate sanction cells.

Analyzing Guidelines Scoring

- STEP EIGHT: If a departure from range, identify rationale.
  - Substantial and compelling reasons
  - *People v Smith*, 482 Mich 292 (2008)
  - Almost always an issue to raise on appeal.

Ligating Guidelines Issues on Appeal

- Issue preservation
  - MCL 769.34(10)
  - *People v Kimble*, 470 Mich 305 (2004)
  - Availability of plain error review

Ligating Guidelines Issues on Appeal

- Harmless Error
  - You found a mis-scored variable. So what?
  - *People v Francisco*, 474 Mich 82 (2006)

WORKSHEET #1
JUDGMENT(S) OF SENTENCE

CLIENT: {CLIENT_NAME_LOWER}
CIRCUIT COURT DOCKET NO.: {LC_NO}

	Conviction(s)	MCL	HAB	G/L Range	Minimum	Maximum
1						
2						

Economic Penalties	Amount	Compare to Statutes
State Minimum Costs	$	MCL 769.1j ($68 per felony; $50 per misdemeanor)
Crime Victims' Rights	$	MCL 780.905 ($130 per docketed criminal case)
Restitution	$	MCL 780.766 (enumerates types of losses)
Attorney Fees	$	MCL 769.1k(1)(b)(iii)
Court Costs	$	MCL 769.1k(1)(b)(ii)
Other?	$	
20% Late Fee	Waived <or> Not Waived	MCL 600.4803(1)

Credit for Time Served	Compare to Facts
_ days	Date of Sentencing: Date of Arrest: Days Spent in Custody:

Additional Queries	Compare to Statutes
Concurrent or Consecutive	MCL 769.1h
Lifetime Electronic Monitoring	MCL 750.520n
Other Conditions	
Date of Judgment:	
Six-Month Deadline:	

Instructions

- *Examine the Judgment of Sentence, which can be found in the document labeled "Order of Appointment," which is saved to the "Lower Court" folder.*
- *If there are multiple judgments, analyze them separately using multiple tables.*
- *Nearly all of the information listed above will be found in the judgment. Exceptions include:*
  - Guidelines Range (check Presentence Report or Lower Court File)
  - Arrest Dates & Time Spent in Custody (check Presentence Report or Prelim transcript)
- *As you analyze the judgment(s), keep track of potential legal issues for inclusion in your Evaluation Memo*

WORKSHEET #2
PLEA CHECKLIST

An Understanding Plea [MCR 6.302(B)]:

Speaking directly to the defendant, the court must advise the defendant and determine that the defendant understands:

(1) the name of the offense (not required to explain elements or defenses)

_____ (2) the maximum possible prison sentence and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c

NOTE: The Supreme Court held that the court rule requires that the defendant be advised of the maximum possible sentence as enhanced by any applicable statute, e.g. the habitual offender statutes. People v Brown, ___ Mich ___ (08-16-12)(# 143733), overruling People v Boatman, 273 Mich App 405 (2006).

_____ (3) if the plea is accepted, there will be no trial of any kind, and the following rights are being given up:

_____ (a) to be tried by a jury

_____ (b) to be presumed innocent until proved guilty

_____ (c) to have the prosecutor prove guilt beyond a reasonable doubt

_____ (d) to have the witnesses against the defendant appear at a trial

_____ (e) to question the witnesses against the defendant

_____ (f) to have the court order any witnesses the defendant has for a defense to appear at the trial

_____ (g) to remain silent during the trial

_____ (h) to not have that silence used against the defendant

_____ (i) to testify at trial if the defendant wants to testify

NOTE: The requirements of MCR 6.302(B)(3) and (5) may be satisfied by advice in writing, provided that the court obtains from the defendant on the record an acknowledgement that the defendant read, understands and waives those rights. Mich Ct R 6.302(B).

_____ (4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of undisclosed promises or threats, or that it was not the defendant's choice to plead

_____ (5) any appeal will be by application for leave to appeal and not by right

A Voluntary Plea [MCR 6.302(C)]:

_____ (1) the court must ask the prosecutor and the defendant's lawyer whether they have made a plea agreement

_____ (2) if there is a plea agreement, the court must ask the prosecutor or defense lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant

_____ (3) if there is a plea agreement including a specific sentence disposition or a prosecutorial sentence recommendation, the court may:

_____ (a) reject the agreement; or

_____ (b) accept the agreement after having considered the presentence report in which event the court must impose the sentence agreed to or recommended by the prosecution; or

_____ (c) accept the agreement without having considered the presentence report; or

_____ (d) take the plea under advisement

NOTE: If the court accepts the agreement without having considered the presentence report or takes the plea under advisement, it must explain to the defendant that it is not bound by the sentence agreement or recommendation, and if the court chooses not to follow the agreement or recommendation, the defendant will be allowed to withdraw from the plea agreement.

_____ (4) the court must ask the defendant:

_____ (a) if there is no plea agreement, whether anyone has promised the defendant anything; or if there is an agreement, whether anyone has promised anything beyond what is in the plea agreement

_____ (b) whether anyone has threatened the defendant

_____ (c) whether it is the defendant's own choice to plead guilty

An Accurate Plea [MCR 6.302(D)]:

_____ (1) if the defendant pleads guilty, the court by questioning the defendant must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading

____ (2) if the defendant pleads nolo contendere, the court may not question the defendant about the offense. The court must:

_____ (a) state why a plea of nolo contendere is appropriate

_____ (b) hold a hearing unless there has been one, that establishes support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading

Additional Inquiries [MCR 6.302(E)]:

_____ (1) the court must ask the prosecutor and the defense lawyer whether either is aware of any promises, threats, or inducements other than those already disclosed on the record

_____ (2) the court must ask the prosecutor and the defense lawyer whether the court has complied with all the above rules

Nolo Contendere Plea [MCR 6.302(D)(2)]:

_____ (1) the court must consent to this plea. *See* Mich. Ct. R. 6.301(B).

_____ (2) the plea must have a valid reason

_____ (3) the plea's factual basis must be sufficient and must be established without questioning the defendant.

Guilty But Mentally Ill Plea [MCR 6.301(C) and 6.303]:

_____ (1) consent of court and prosecutor

_____ (2) defendant must have asserted an insanity defense and been examined for criminal responsibility as required by statute

_____ (3) court must examine psychiatric reports and hold a hearing that establishes support for a finding that the defendant was mentally ill at the time of the offense

Checklist for Statutory and/or Caselaw Compliance:

_____ (1) the defendant represented by counsel or the defendant validly waived counsel (including advice on dangers of self-representation)

_____ (2) review penal statute to determine if factual basis for all elements of offense *and* to determine if defendant advised of any mandatory minimum and correct statutory maximum

_____ (3) review sentence to determine if enhanced above advice of maximum sentence at plea

_____ (4) review terms of plea and/or sentence bargain to determine if illusory, and if applicable:

_____ (a) check for timely filing of habitual offender notice

_____ (b) ensure that prior listed convictions predated the date of the conviction offense; check for the existence and constitutional validity of prior convictions

_____ (c) review sentence transcript, presentence report, other documents, to ensure the defendant received the benefit of the bargain, if any

_____ (d) check for inflated or illusory benefit (such as incorrect habitual offender maximum, no authorization for consecutive sentencing)

Checklist for Statutory and/or Caselaw Compliance (continued):

_____ (5) review circuit court file and other records for hints of:

_____ (a) incompetency or insanity (i.e., forensic referral)

(b) pre-trial issues not waived by plea (double jeopardy, entrapment, etc.)

_____ (c) pre-trial issues "preserved" by conditional plea **None.**

_____ (d) dissatisfaction with counsel (motion to withdraw as counsel or to discharge counsel)

_____ (6) review circuit court file and other records for any pre or post-sentencing motions to withdraw plea

_____ (7) check for any unreasonable delay between offense and prosecution, or in prosecution itself

_____ (8) check for any gratuitous advice on record that was misleading, threatening, or constituted a promise of leniency

_____ (9) check on any significant collateral consequences of plea (deportation, probation/parole violation, etc.)

_____ (10) check for any possible interpretive problems (client non-English speaking, deaf/mute, developmentally disabled, etc.)

WORKSHEET #3
TERMS OF PLEA AGREEMENT

1. Identify the terms of the plea bargain (charge reduction, sentencing agreement, etc.):

2. Did the defendant receive the benefit of his/her bargain?

3. Does the bargain allow the defendant to seek a lesser sentence? (See *People v Wiley*, 472 Mich 153, 154; 693 NW2d 800 (2005)).

WORKSHEET #4
ANALYZING FACTUAL BASIS

1. *Identify all of the charges filed against the defendant, including any that were dismissed as a part of the plea agreement.*

2. *Identify the statute defining each of the offenses charged. (For example, the home invasion statute can be found at MCL 750.110a).*

3. *Identify the elements of each of the offenses charged.*

4. *Explain how the prosecution would have proven these elements if all of the charges had been tried. Who were the witnesses? What was the physical evidence? Did the defendant make any admissions before the plea?*
   - Include citations to the relevant portion of the record.
   - Hint: Refer to the transcripts, the Agent's Summary within the presentence report, and any police reports in the file.

5. *Is there a factual basis for each of the defendant's convictions?*

6. *Is there a factual basis for each of the dismissed charges? If not, is the plea agreement illusory?*

WORKSHEET #5
ANALYZING HABITUAL ENHANCEMENT NOTICE

The Habitual Offender Act (MCL 769.10 through MCL 769.13) gives trial judges the discretion to enhance the minimum and maximum sentences of repeat offenders. If the prosecutor intends to seek such an enhancement, he or she must file a written notice within 21 days of the arraignment in circuit court (or, if the arraignment is waived, within 21 days of the filing of the information in circuit court). The notice must include a list of the prior convictions to be used against the defendant. Note: Some misdemeanors are considered felonies for habitual offender purposes

Habitual enhancements are as follows:

- Second Habitual Offenders (One prior felony): Maximum sentence increases by 150%. (For example, a five-year statutory maximum would increase to seven and a half years with the enhancement).
- Third Habitual Offenders (Two prior felonies): Maximum sentence increases by 200%. (For example, a five-year statutory maximum would double to ten years with the enhancement).
- Fourth Habitual Offenders (Three or more prior felonies): Maximum sentences will increase depending on the severity of the instant sentencing offense:
    - *Statutory Maximum of Five Years or More*: The judge has the discretion to increase the maximum to life or any term of years with the enhancement.
    - *Statutory Maximum of Less Than Five Years*: The judge has the discretion to increase the maximum to 15 years.
    - Note: Some fourth habitual offenders will be subject to a mandatory minimum sentence of 25 years. (See Worksheet #6).

Answer the following questions about your case:

1. *Did the prosecution file a habitual enhancement notice in your case? If so, was it second, third, or fourth?*
    - The habitual enhancement notice will be found in the lower court file.
    - Most prosecutors will include the habitual enhancement notice in the Felony Information itself. Other prosecutors will file a separate notice.

2. *If so, was the habitual enhancement notice timely? (See above)*

3. *List the prior convictions identified by the prosecution.*

4. *Does Michigan's Penal Code classify these prior convictions as felonies?*

5. *Are there any out-of-state felonies? If so, do they correspond to a crime that Michigan defines as a felony?*

6. *Was the habitual enhancement reduced or dismissed as a part of a plea bargain?*

WORKSHEET #6
APPLICABILITY OF NEW MANDATORY MINIMUM FOR FOURTH HABITUAL OFFENDERS

Review the information below and then answer the following questions about your case:

1. *Did the defendant commit the charged offense(s) after the new mandatory minimum took effect on October 1, 2012?*
2. *Was the defendant charged as a fourth habitual offender?*
3. *Does the instant sentencing offense qualify for the new mandatory minimum?*
4. *Does the defendant have a qualifying prior conviction?*
5. *Is the defendant eligible for the new mandatory minimum in this case?*
6. *Will the defendant be eligible for the new mandatory minimum in future cases?*

Effective October 1, 2012, the habitual offender laws were amended to provide a mandatory minimum term of **twenty-five years** for a **fourth habitual offender** when the instant conviction is a serious listed crime, and one of the three prior felony convictions is a listed felony. 2012 PA 319, amending MCL 769.12.

The CURRENT CONVICTION must be:

Murder, second degree
Manslaughter
Assault with intent to commit murder
Assault with intent to do great bodily harm
Assault with intent to maim
Assault with intent to rob, unarmed
Assault with intent to rob, armed
Armed robbery
Carjacking
Kidnapping
Kidnapping, child under 15 years of age
Prisoner taking hostage
Mayhem
CSC first-degree
CSC second-degree
CSC third-degree
Assault with intent penetration (CSC 1st or 3rd)
Conspiracy to commit above offenses

One of the PRIOR CONVICTIONS must be:

Murder, second degree
Manslaughter
Death, firearm pointed without malice
Felonious assault
Assault with intent to murder
Assault with intent to do great bodily harm
Torture
Assault with intent to maim
Assault with intent to commit felony
Assault with intent to rob, unarmed
Assault with intent to rob, armed
Attempted murder
Solicitation to commit murder
Kidnapping
Kidnapping, child under 15 years
Prisoner taking hostage
Mayhem
Aggravated stalking
Felony stalking, victim under 18
Resisting and obstructing, death
Resisting and obstructing, serious impairment
CSC first-degree
CSC second-degree
CSC third-degree
Assault with intent CSC
Armed robbery
Unarmed robbery
Carjacking
Rioting in state correctional facility
Any drug offense punishable by more than four years
Home invasion first-degree
Home invasion second-degree
Child abuse first-degree
Child abuse second-degree
Vulnerable adult abuse first-degree
Vulnerable adult abuse second-degree
Assault of employee during escape
Fleeing and eluding first-degree (death)
Fleeing and eluding second-degree (injury)
Impaired driving causing death
Arson of dwelling
Carrying weapon unlawful intent
Carrying concealed weapon
Felony-firearm (second or subsequent offense)
Intentional discharge firearm at vehicle
Intentional discharge firearm at dwelling
Intentional discharge firearm at emergency or law enforcement vehicle
Attempt to commit the above offenses

Note: The three prior convictions must be based on offenses that did not occur during the same transaction. MCL 769.12(1)(a).

Note: Application of the 25-year mandatory minimum term to an offense committed before the effective date of the law would constitute an ex post facto violation. *See Lindsey v Washington*, 301 US 397 (1937) (application of revised statute that earlier provided for 15 year max and one year minimum to new penalty of mandatory 15 years violates ex post facto clause); *United States v Moon*, 926 F 2d 204, 210 (CA 2, 1991) (application of mandatory minimum term to offense that occurred before requirement of mandatory minimum term violates ex post facto clause).

WORKSHEET #7
CALCULATING THE GUIDELINES RANGE

INSTRUCTIONS
Refer to the instructions in the Sentencing Guidelines Manual and answer the following:

1. Identify the sentencing offense.
    - If there are multiple convictions, use the one in highest, most serious crime class. (For example, if the defendant pleads guilty to a Class A felony and a Class B felony, score the guidelines for the Class A felony).
    - If there are multiple convictions within the same crime class, use the one which will yield the highest minimum sentencing range.
    - If one sentence is to run consecutively to another, run guidelines for both.
    - Never score the guidelines for felony-firearm.

2. Identify the crime class for the sentencing offense. Classifications include:
    - Second-degree murder
    - Classes A, B, C, D, E, F, G and H

3. Identify the crime grouping for the sentencing offense. Groupings include:
    - Crimes against the person
    - Crimes against property
    - Crimes involving controlled substances
    - Crimes against public safety
    - Crimes against public trust
    - Crimes against public order

4. Complete Worksheet #8

5. Complete Worksheet #9. Please keep in mind that certain offense variables will not apply depending on the crime grouping of the sentencing offense.

6. Refer to the sentencing grid that corresponds to the crime class for the sentencing offense.
    - What is the guidelines range as scored by the trial court?
    - What is the guidelines range as scored by you?

7. Did the trial court impose a sentence within the guidelines range?

8. If not, did the trial court give reasons for going outside the range?

WORKSHEET #8
ANALYZING PRIOR RECORD VARIABLES

INSTRUCTIONS

Fill out the following tables using the prior convictions/adjudications listed in the Pre-Sentence Investigation Report. In the column marked "Classification/Notes," explain why the prior should be used to score PRV-1, PRV-2, PRV-3, PRV-4, PRV-5, PRV-7, or none of the above.

Additionally, be sure to identify the prior offense's crime class and crime grouping. For example, carjacking is considered a Class A felony and it is grouped among the Crimes Against the Person. An alphabetized list of all Michigan felonies and their corresponding classifications and groupings can be found near the back of the Sentencing Guidelines Manual.

PRIOR JUVENILE ADJUDICATIONS

No.	Conviction(s)	Date of Act	Discharge Date	Classification/Notes

PRIOR/CONCURRENT ADULT CONVICTIONS

No.	Conviction(s)	Date of Act	Discharge Date	Classification/Notes

CALCULATING PRIOR RECORD VARIABLES

No.	**Score Assigned By Trial Court**	**My Score**	**Analysis/Risk**
PRV-1			
PRV-2			
PRV-3			
PRV-4			
PRV-5			
PRV-6			
PRV-7			
TOTAL:			*(Refer to grid for the sentencing offense with the highest crime classification)*
LEVEL:			

WORKSHEET #9
ANALYZING OFFENSE VARIABLES

OV Assessment

OV	Score Assigned by Trial Court	My Score	Explanation
OV 1 – Aggravated Use of Weapon			
OV 2 – Lethal Potential of Weapon			
OV 3 - Physical Injury			
OV 4 – Psychological Injury			
OV 5 – Psychological Injury to V's family			
OV 6 – Intent to Kill or Injure			
OV 7 – Sadism, Torture, Brutality			
OV 8 – Asportation or Captivity			
OV 9 – Multiple Victims			
OV 10 – Exploitation of Vulnerability			
OV 11 – CSC Multiple Penetration			
OV 12 – Contemporaneous Acts			
OV 13 – Continuing pattern of criminal behavior			
OV 14 – Multiple offenders leader			
OV 15 – Aggravated Controlled Substances			
OV 16 – Property Damage			
OV 17 – Negligence			
OV 18 – Operating vehicle under the influence			
OV 19 – Threat to Security or Interference w admin of justice			
OV 20 – Terrorism			

OV	Score Assigned by Trial Court	My Score	Explanation
Total OV Points –			
Level			

WORKSHEET #10
SAI BOOT CAMP ELIGIBILITY

SAI with PRISON (MCL 791.234a):

Defendant is INELIGIBLE for any or all of the following 13 reasons:

1. Prosecutor filed a habitual offender notice and it has not and will not be dismissed.
2. Defendant previously served a prison sentence (unless defendant is still serving that first prison commitment).
3. Defendant previously *completed* SAI program (unless did not complete for medical or mental health reasons).
4. The minimum term is greater than 3 years (or greater than 2 years for home invasion or attempted home invasion).
5. Defendant is physically unable to participate in the program.
6. Defendant has a mental disability that prevents participation.
7. The judge at sentencing or post-sentencing prohibited participation.
8. The defendant has pending charges or a pending felony or immigration detainer (per policy directive, but eligible when detainer or charges resolved).
9. The defendant does not agree to placement in SAI.
10. **Defendant is convicted of any of the following crimes (including ATTEMPT, CONSPIRACY OR SOLICITATION** to commit these crimes; note Conspiracy and Solicitation added by policy directive):

MCL 257.625(4)&(5) (OWI death and serious injury, only for crimes committed on or after 1-1-92)
MCL 750.10a (sexually delinquent person, per policy directive)
MCL 750.11 (taking woman and compelling to marry, per policy directive)
MCL 750.49 (animal fighting)
MCL 750.72 (arson first degree)
MCL 750.73 (arson second degree)
MCL 750.75 (arson fourth degree)
MCL 750.80 (setting fire to mines)
MCL 750.83 (assault with intent murder)
MCL 750.86 (assault with intent maim)
MCL 750.89 (assault with intent rob armed)
MCL 750.91 (attempted murder)
MCL 750.112 (burglary with explosives)
MCL 750.136 (cruelty to children, per policy directive)
MCL 750.136b (1)(2)(3) or (4) (child abuse)
MCL 750.145a (accosting, enticing or soliciting child for immoral purposes, per policy directive)
MCL 750.145b (accosting, enticing or soliciting child for immoral purposes, per policy directive)
MCL 750.145c (child sexually abusive activity or material)
MCL 750.157b (solicitation murder)
MCL 750.158 (sodomy)
MCL 750.193 (breaking prison; escape)
MCL 750.195 (jail; escape)
MCL 750.207 (explosives, intent to terrorize)
MCL 750.213 (malicious threats to extort money)
MCL 750.260 (counterfeiting)
MCL 750.316 (first-degree murder)
MCL 750.317 (second-degree murder)
MCL 750.319 (death as result of fighting duel)
MCL 750.321 (manslaughter)
MCL 750.327 (death due to explosives)
MCL 750.328 (death due to explosives with intent destroy building or object)
MCL 750.329 (death, firearm pointed intentionally but without malice)
MCL 750.333 (incest, per policy directive)
MCL 750.335a (indecent exposure)

MCL 750.336 (indecent liberties with child, per policy directive)
MCL 750.338 (gross indecency, males)
MCL 750.338a (gross indecency, female)
MCL 750.338b (gross indecency, male and female)
MCL 750.339 (debauchery by females of males under 15, per policy directive)
MCL 750.340 (debauchery by males of males under 15, per policy directive)
MCL 750.341 (carnal knowledge of state ward, per policy directive)
MCL 750.342 (carnal knowledge of female state ward, per policy directive)
MCL 750.349 (kidnapping)
MCL 750.349a (prisoner taking hostage)
MCL 750.350 (kidnapping child under 14)
MCL 750.397 (mayhem)
MCL 750.422 (perjury in court)
MCL 750.436 (poisoning food or drink)
MCL 750.448 (soliciting and accosting, per policy directive)
MCL 750.455 (pandering, per policy directive)
MCL 750.511 (attempt to wreck train or endanger safety of passengers)
MCL 750.520 (rape, per policy directive)
MCL 750.520b (CSC first-degree)
MCL 750.520c (CSC second-degree)
MCL 750.520d (CSC third-degree)
MCL 750.520e (CSC fourth-degree, per policy directive)
MCL 750.520f (CSC, second or subsequent offense, per policy directive)
MCL 750.520g (CSC, assault with intent)
MCL 750.529 (armed robbery)
MCL 750.529a (carjacking)
MCL 750.531 (bank robbery)
MCL 750.544 (treason)
MCL 750.542 (incitement to riot)

Also: MCL 769.10, 11, 12 (**ALL HABITUAL OFFENDERS**).

11. Defendant was convicted of a drug crime under MCL 333.7401 or 7403, and was previously convicted of a drug crime under 7401 or 7403(2)(a),(b), or (c) (Ineligible until defendant
has served the mandatory minimum term).

12. Defendant has a prior or current conviction involving assaultive sexual behavior (Ineligible per policy directive, but MDOC does not count prior juvenile adjudications).

13. Defendant is serving a felony-firearm sentence (Ineligible during felony-firearm sentence, also ineligible if total minimum term exceeds 36 months including felony-firearm sentence, per policy directive).

SAI with PROBATION (MCL 771.3b)

See Ineligibility rules 2, 3, 5, 6, and 8 above, and:

Sentencing guidelines range must be at least 12 months for top number

or

Defendant is being sentenced for probation violation

and

Defendant is not sentenced for one of the following offenses (including **ATTEMPTS** to commit the following crimes):

MCL 750.72 (arson first-degree); MCL 750.73 (arson second-degree); MCL 750.75 (arson fourth degree); MCL 750.145c (child sexually abusive activity or material); MCL 750.520b (CSC first-degree); MCL 750.520c (CSC second-degree); MCL 750.520d (CSC third-degree); MCL 750.520g (CSC, assault with intent).

For further questions, contact SAI personnel at 734 475-1368.

Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

October 14, 2015

Knowing Your Appellate Deadlines – Court Rules and Procedure

Marla McCowan

Michigan Indigent Defense Commission
mmccowanidc@gmail.com

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

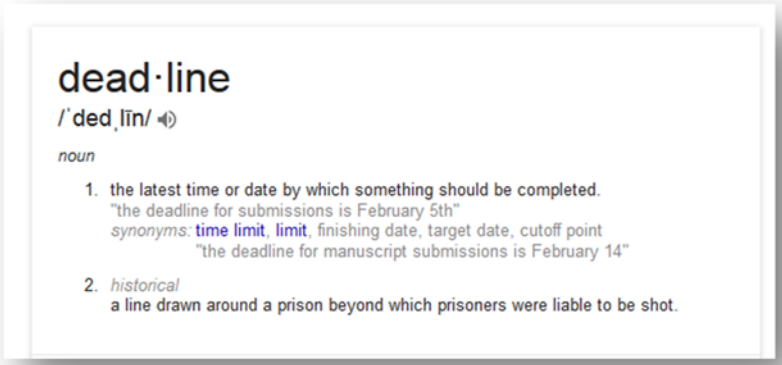
This training event is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

Knowing Your Appellate Deadlines

Court Rules and Procedures

Marla R. McCowan
Michigan Indigent Defense Commission
Fall 2015

1. What is a deadline?



2. How do I calculate a deadline [*any* deadline]?

a. Begin with your order/judgment or date on proof of service.

MCR 1.108 Computation of Time

In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:

(1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order.

(2) If a period is measured by a number of weeks, the last day of the period is the same day of the week as the day on which the period began.

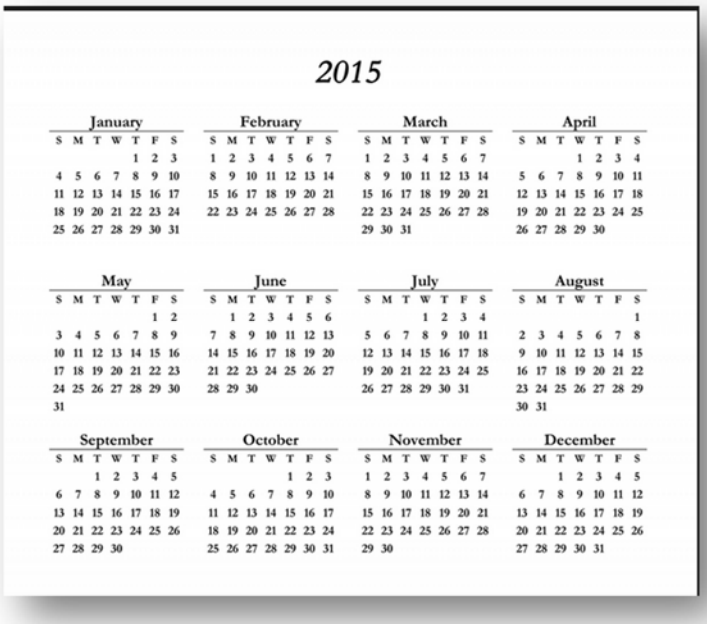
(3) If a period is measured by months or years, the last day of the period is the same day of the month as the day on which the period began. If what would otherwise be the final month does not include that day, the last day of the

period is the last day of that month. For example, "2 months" after January 31 is March 31, and "3 months" after January 31 is April 30.

b. You can also check the COA Internal Operating Procedures:
http://courts.mi.gov/Courts/COA/clerksoffice/Documents/COA%20Clerk%20IOPs.pdf

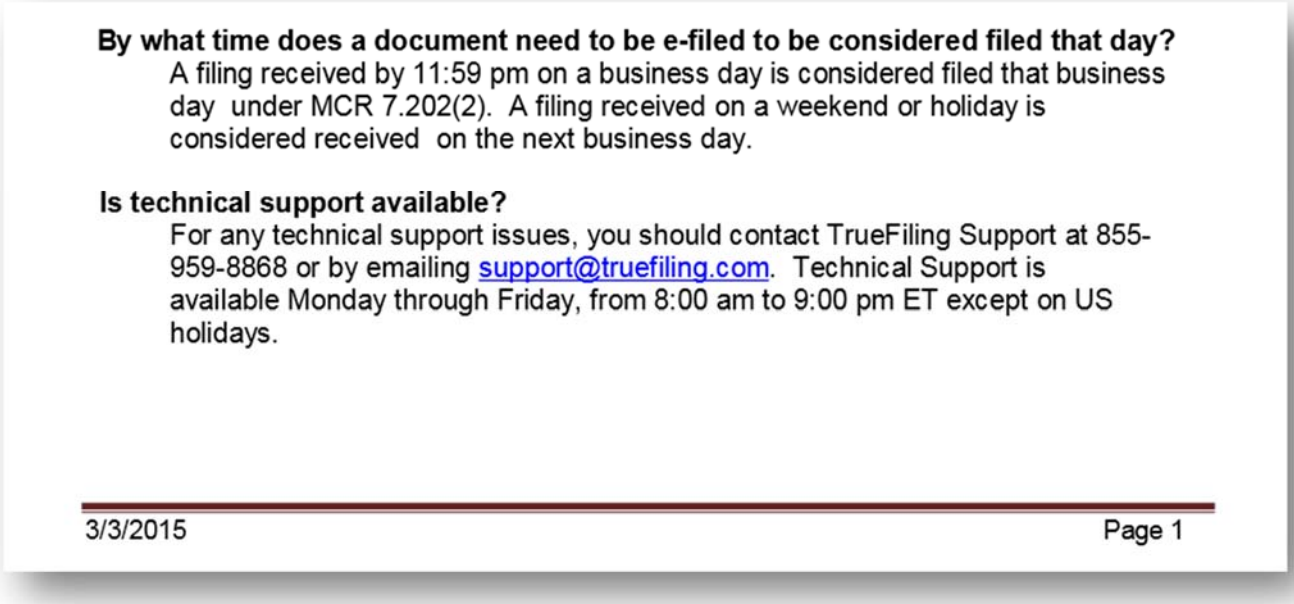
IOP 7.202-2 - Time Requirements
The time for filing any time-sensitive document is calculated pursuant to the dictates of MCR 1.108, Computation of Time. While the rule itself should be consulted by anyone making filings in the Court, it may be summarized by noting that (1) the first day of the pertinent time period is the day after the day of the act or event which triggers the time to begin running, and (2) the last day of the pertinent time period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the Court is closed pursuant to court order, in which case the time ends on the next day that the Court is open. Saturdays, Sundays, etc., that fall within the time period (e.g., not on the last day) are counted the same as any other day. Although Lincoln's Birthday (February 12) and Columbus Day (2nd Monday in October) are not "court holidays" under MCR 8.110(D)(2), any filings/papers due on those days will be considered timely if received the next business day. See MCR 1.108; MCL 435.101. (Revised 10/13.)

When the time for filing runs from the service of another filing, it is important to note that service by mail is complete at the time of mailing under MCR 2.107(C)(3). The clerk's office will use the date of mailing on the proof of service to calculate the due date for any responsive pleading. (Revised 9/03.)



Court of Appeals time calculator:
http://courts.mi.gov/courts/coa/pages/time-calculator.aspx

c. If you are e-filing, consult the most recent online materials:
http://courts.mi.gov/opinions_orders/e-filing/Documents/TrueFiling%20Frequently%20Asked%20Questions.pdf



By what time does a document need to be e-filed to be considered filed that day?

A filing received by 11:59 pm on a business day is considered filed that business day under MCR 7.202(2). A filing received on a weekend or holiday is considered received on the next business day.

Is technical support available?

For any technical support issues, you should contact TrueFiling Support at 855-959-8868 or by emailing support@truefiling.com. Technical Support is available Monday through Friday, from 8:00 am to 9:00 pm ET except on US holidays.

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3. Ok, but is it REALLY a deadline?

The short answer is, if it is circled in **RED** on the appellate timeline, yes.

If you are still not sure: "Ask dumb questions. Ask them again if necessary. If possible, ask them early."[1] There are some deadlines where you can ask for an extension of time, with the most common example being a brief on appeal in a claim case/appeal of right. *See* MCR 7.212(A). But in the Court of Appeals, many deadlines are "jurisdictional" in nature, meaning if you do not file by the required deadline, the ability to appeal is over. This is particularly true when seeking something *other than* an appeal of right. *See e.g.* MCR 7.205(G).

4. Why are deadlines on appeal so important to understand?

The constitution provides not only the right to counsel, but also entitles a criminal defendant to the effective assistance of counsel. *Powell v. Alabama*, 287 U.S. 45 (1932);

[1] "An appellate dictionary for non-appellate attorneys", *The Prosecutor*, Texas District & County Attorneys Association, The Prosecutor, May-June 2010, Volume 40, No. 3.

Strickland v. Washington, 466 U.S. 668, 685 (1984). The Sixth Amendment right to the effective assistance of counsel also includes the right to effective assistance of counsel on appeal. *Evitts v. Lucey*, 469 U.S. 387, 395-97 (1985); see also *Halbert v. Michigan*, 545 U.S. 605 (2005) (constitutional right to counsel in first tier appeal by leave). Counsel renders ineffective assistance by failing to file a brief on appeal or application for leave to appeal in a timely manner. See e.g. *Curry v. Stovall,* 2009 WL 1393397 (E.D. Mich. Docket No. 07-14695, May 18, 2009) (appeal of right); *Bridges v. Berghuis*, No. CIV.A. 06-CV-10566, 2009 WL 2488098 (E.D. Mich. Aug. 13, 2009) (appeal by leave). No showing of prejudice is required for such failures and the remedy is to reinstate the appeal. *Benoit v. Bock*, 237 F. Supp. 2d 804, 812 (E.D. Mich. 2003).

5. How do I figure out the deadline in *a particular* case?

Get out the **appellate timeline**, and ask yourself these questions:

Upon receiving notification of an appellate assignment:

Q Is it a guilty plea?
Or is it an appeal after a trial?
Or is it an interlocutory appeal?

Q Am I substitute counsel and/or has a deadline for filing passed?

<u>For trials:</u>

Q Is it an appeal of right?
Receiving file materials and calculating the due date
Q Did you get trial counsel's file?
Ordering late transcripts
MCR 7.208 – trial court motions
Brief on Appeal and/or Motion to Remand
Motion for extension of time for filing BOA
Extraordinary extensions of time

Q Or is it an appeal by leave?
6.428 Rule/Reinstatement possible?
If not, proceed on application (MCR 7.205).
If leave is granted, see MCR 7.211 and 7.212

<u>For guilty plea cases:</u>

Q What is the date on the judgment of sentence?

Q Do you need/want to go to the trial court first?

Q What is the deadline for filing in the COA if you are denied relief (in whole or in part) in the trial court?

For Interlocutory Appeals (appointed on appeal in prosecutor initiated appeal)

Q Do you *have to* respond to an application? What *should you* do? And when does the have/should question end?

Q Is leave granted? See MCR 7.212(A)(2)(a)(i).

6. What if the appellate deadline is blown...

a. and it isn't my fault?

MCR 6.428 Reissuance of Judgment.

If the defendant did not appeal within the time allowed by MCR 7.204(A)(2) and demonstrates that the attorney or attorneys retained or appointed to represent the defendant on direct appeal from the judgment either disregarded the defendant's instruction to perfect a timely appeal of right, or otherwise failed to provide effective assistance, and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right, the trial court shall issue an order restarting the time in which to file an appeal of right.

Note that this rule generally only applies in appeals of right. Depending upon the circumstances, you may be able to use in a leave case. Consult the MAACS Administrator for guidance.

b. and it IS my fault?

Consult the MAACS Administrator for guidance immediately. Be prepared to file the necessary motion in the trial court to have the judgment re-issued pursuant to MCR 6.428 if applicable. Be prepared to simultaneously seek to withdraw as counsel and have new counsel appointed for the defendant.

7. Is there always a deadline?

Motions to Remand – Pursuant to MCR 7.211(C)(1), a motion to remand is supposed to be filed within the time for filing appellant's brief. This is absolutely best practice, but sometimes evidence comes up after the brief is filed. Note that the Court of Appeals may order remand for an evidentiary hearing at any time. MCR 7.216(A)(5); *see also*

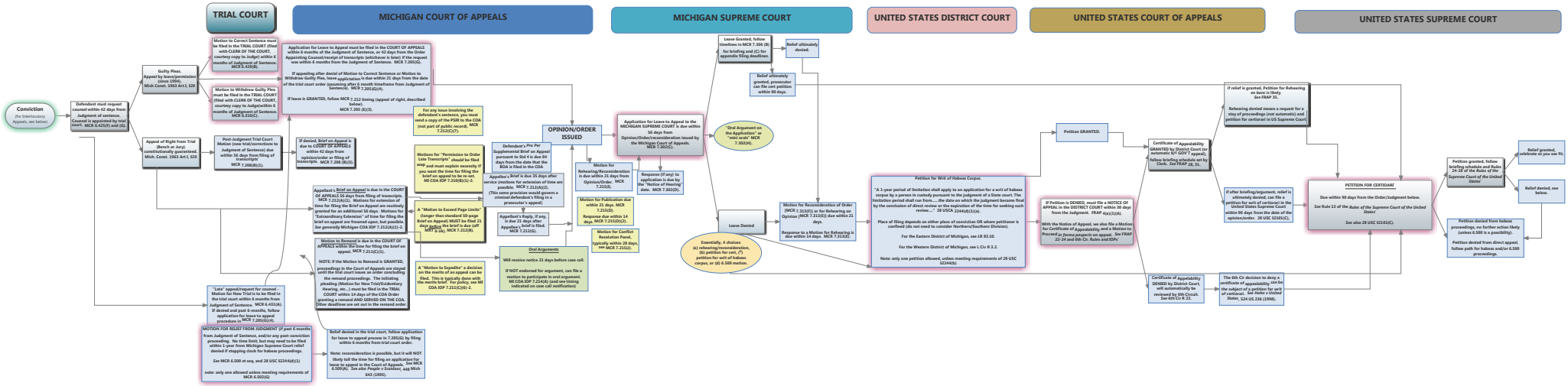
People v LaPlaunt, 217 Mich App 733 (1996); *People v James Edward Walker*, Docket No. 289323, Order of December 22, 2009; *People v Krogol*, 419 Mich 900 (1984); *People v Mayes*, 433 Mich 894 (1989).

8. Are there any deadlines to know that aren't exactly MY deadlines, but....?

MAACS Minimum Standards - Standard 4 in trial (and leave?) cases
Pro Per briefs
Minimum Standards for Indigent Criminal Appellate Defense Services, Admin. Order 2004-6, Standard 4.

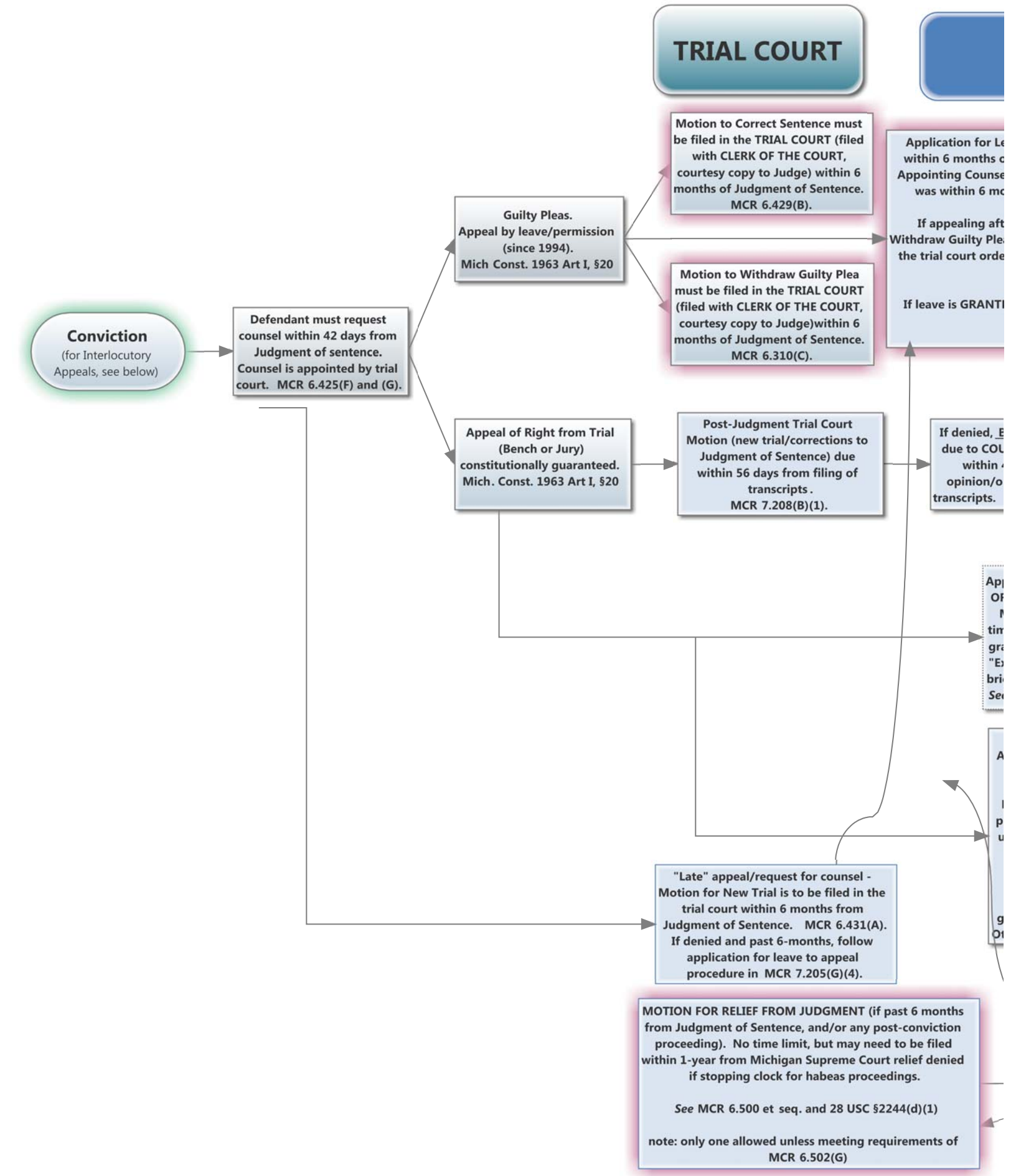
"When a defendant insists that a particular claim or claims be raised on appeal against the advice of counsel, counsel shall inform the defendant of the right to present the claim or claims in propria persona. Defendant's filing shall consist of one brief filed with or without an appropriate accompanying motion. Counsel shall also provide such procedural advice and clerical assistance as may be required to conform the defendant's filing for acceptability to the court. The defendant's filing *in propria persona* must be received by the Court of Appeals within **84 days after the appellant's brief** is filed by the attorney, but if the case is noticed for submission within that 84-day period, the filing must be received no later than 7 days before the date of submission, or within the 84-day period, whichever is earlier. The 84-day deadline may be extended only by the Court of Appeals on **counsel's motion**, upon a showing of good cause for the failure to file defendant's pleading within the 84-day deadline."

Prison Mailbox Rule
Houston v Lack, 487 US 266 (1988) (filed at moment of delivery to prison authorities)
MCR 7.204(A)(2)(e)
MCR 7.205(A) (3)
If an application for leave to appeal in a criminal case is received by the court after the expiration of the periods set forth above or the period set forth in MCR 7.205(G), and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to applications for leave to appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.



Interlocutory appeals are governed by leave rules, MCR 7.205, with 21 days to respond per 7.212(A)(2)(a)(ii),

Prepared by:
Marla McCowan, CDRC Manager
Jonathan Sacks, Deputy Director
Revised January 20, 2015
For reprint requests or questions/concerns:
(313) 256-9833



Interlocutory appeals are governed by leave rules, MCR 7.205, with 21 days to respond per 7.212(A)(2)(a)(i),

MICHIGAN COURT OF APPEALS

eave to Appeal must be filed in the COURT OF APPEALS
f the Judgment of Sentence, or 42 days from the Order
l/receipt of transcripts (whichever is later) if the request
nths from the Judgment of Sentence. MCR 7.205(G).

er denial of Motion to Correct Sentence or Motion to
a, leave application is due within 21 days from the date of
r (assuming after 6 month timeframe from Judgment of
Sentence). MCR 7.205(G)(4).

ED, follow MCR 7.212 timing (appeal of right, described
below).
MCR 7.205 (D)(3).

For any issue involving the defendant's sentence, you must send a copy of the PSIR to the COA (not part of public record). MCR 7.212(C)(7).

OPINION/ORDER ISSUED

Applicati
MICHIGAN
56 days fron
issued by th

rief on Appeal is
RT OF APPEALS
42 days from
rder or filing of
MCR 7.208 (B)(5).

Motions for "Permission to Order Late Transcripts" *should* be filed asap and must explain necessity if you want the time for filing the brief on appeal to be re-set. MI COA IOP 7.210(B)(1)-2.

Defendant's Pro Per Supplemental Brief on Appeal pursuant to Std 4 is due 84 days from the date that the BOA is filed in the COA

Motion for Rehearing/Reconsideration is due within 21 days from Opinion/Order. MCR 7.215(I).

Appellee's Brief is due 35 days after service (motions for extension of time are possible). MCR 7.212(A)(2). (This same provision would govern a criminal defendant's filing in a prosecutor's appeal)

pellant's Brief on Appeal is due in the COURT
APPEALS 56 days from filing of transcripts.
MCR 7.212(A)(1). Motions for extension of
e for filing the Brief on Appeal are routinely
anted for an additional 56 days. Motions for
xtraordinary Extension" of time for filing the
ef on appeal are frowned upon, but possible.
e generally Michigan COA IOP 7.212(A)(1)-2.

A "Motion to Exceed Page Limits" (longer than standard 50-page Brief on Appeal) MUST be filed 21 days *before* the brief is due (off MXT is ok). MCR 7.212(B).

Appellant's Reply, if any, is due 21 days after Appellee's brief is filed. MCR 7.212(G).

Motion for Publication due within 21 days. MCR 7.215(D). Response due within 14 days. MCR 7.215(D)(2).

Motion for Conflict Resolution Panel, typically within 28 days, see MCR 7.215(J).

Motion to Remand is due in the COURT OF
PPEALS within the time for filing the brief on
appeal. MCR 7.211(C)(1).

NOTE: if the Motion to Remand is GRANTED,
roceedings in the Court of Appeals are stayed
ntil the trial court issues an order concluding
the remand proceedings. The initiating
pleading (Motion for New Trial/Evidentiary
Hearing, etc...) must be filed in the TRIAL
COURT within 14 days of the COA Order
ranting a remand AND SERVED ON THE COA.
her deadlines are set out in the remand order.

A "Motion to Expedite" a decision on the merits of an appeal can be filed. This is typically done with the merits brief. For policy, see MI COA IOP 7.211(C)(6)-2.

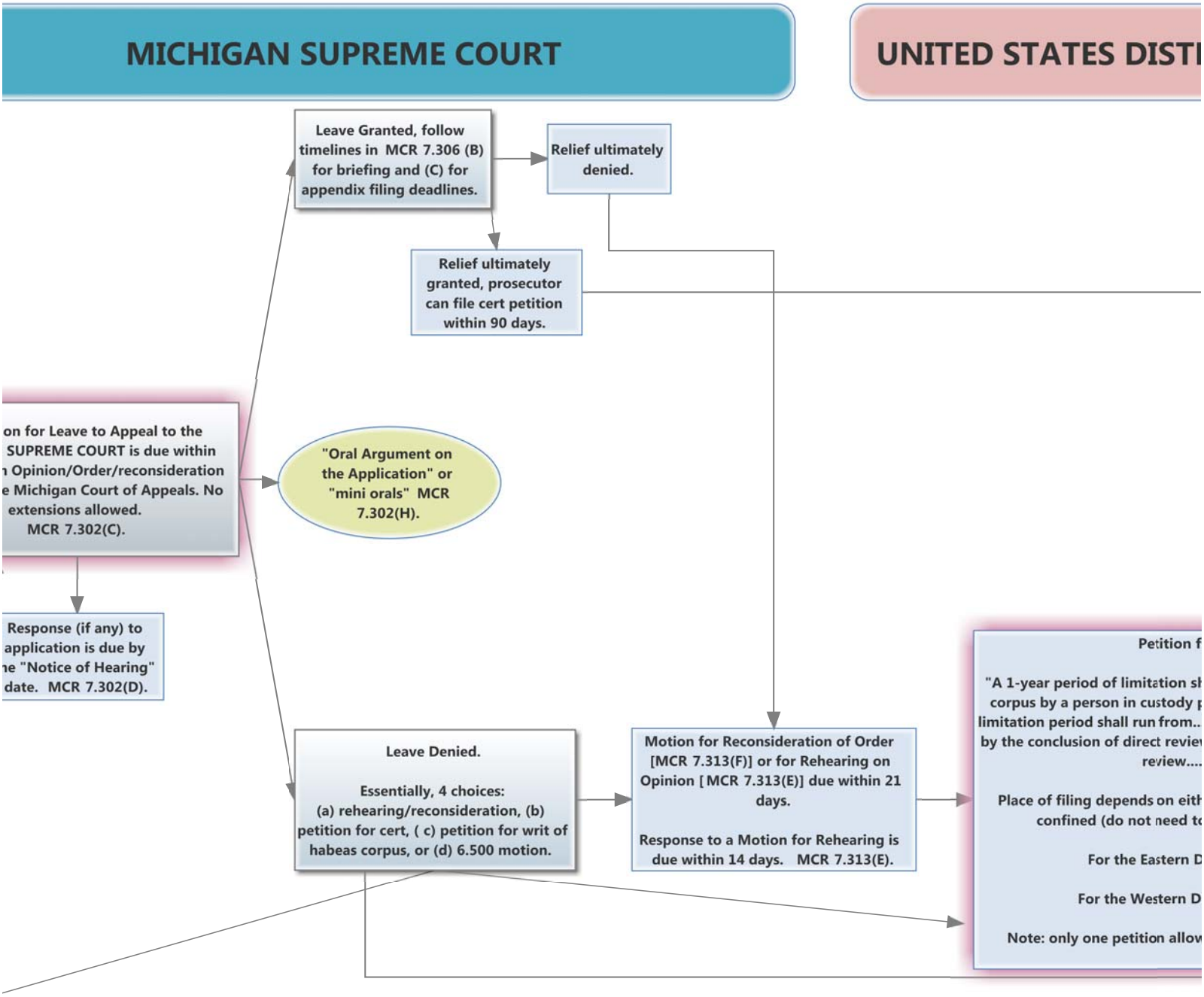
Oral Arguments

Will receive notice 21 days before case call.

If NOT endorsed for argument, can file a motion to participate in oral argument. MI COA IOP 7.214(A) (and see timing indicated on case call notification)

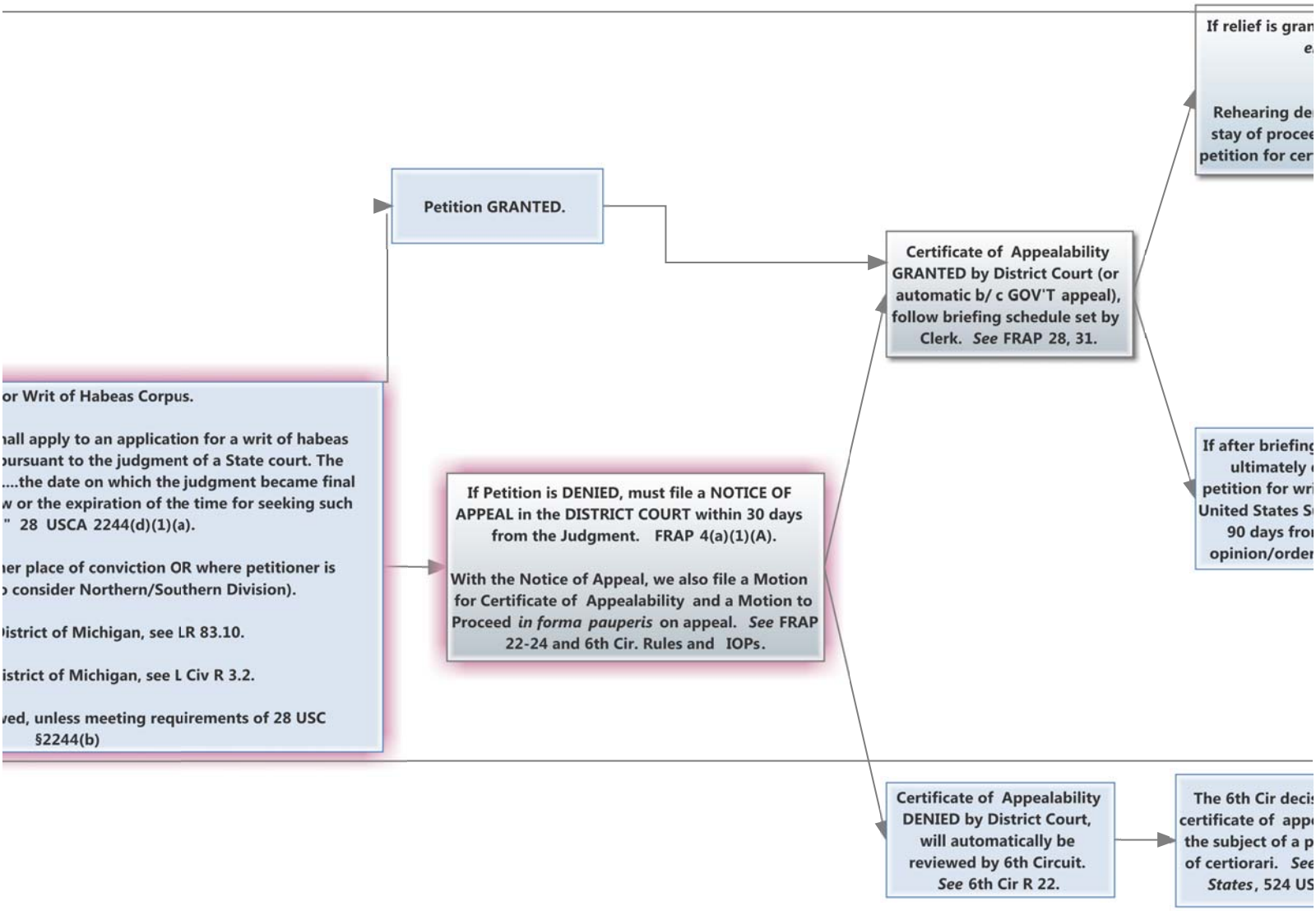
Relief denied in the trial court, follow application for leave to appeal process in 7.205(G) by filing within 6 months from trial court order.

Note: reconsideration is possible, but it will NOT likely toll the time for filing an application for leave to appeal in the Court of Appeals. See MCR 6.509(A). *See also People v Sconious*, 448 Mich 643 (1995).

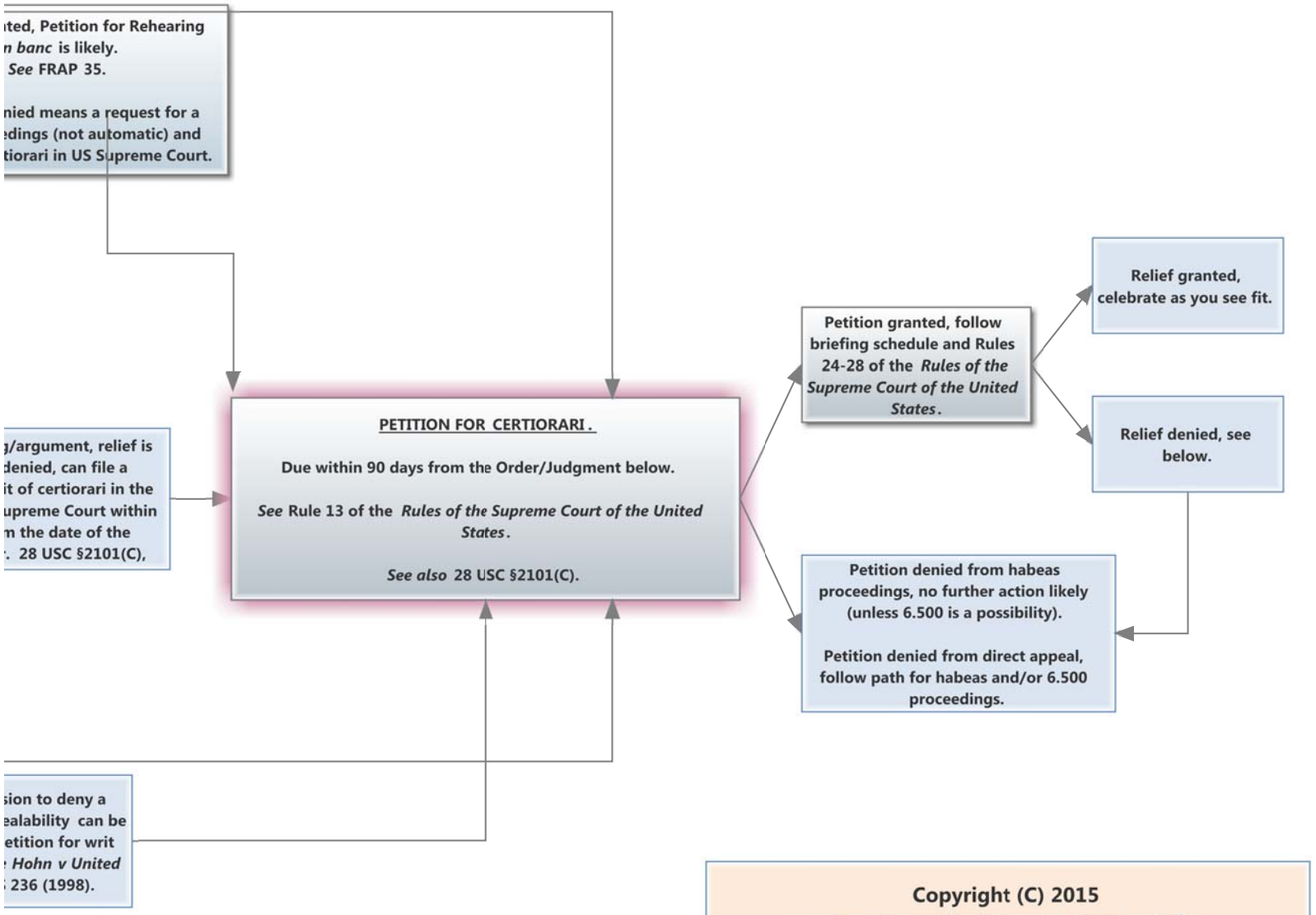

MICHIGAN SUPREME COURT
UNITED STATES DISTI
Leave Granted, follow timelines in MCR 7.306 (B) for briefing and (C) for appendix filing deadlines.
Relief ultimately denied.
Relief ultimately granted, prosecutor can file cert petition within 90 days.
on for Leave to Appeal to the SUPREME COURT is due within Opinion/Order/reconsideration e Michigan Court of Appeals. No extensions allowed. MCR 7.302(C).
"Oral Argument on the Application" or "mini orals" MCR 7.302(H).
Response (if any) to application is due by e "Notice of Hearing" date. MCR 7.302(D).
Leave Denied.
Essentially, 4 choices: (a) rehearing/reconsideration, (b) petition for cert, (c) petition for writ of habeas corpus, or (d) 6.500 motion.
Motion for Reconsideration of Order [MCR 7.313(F)] or for Rehearing on Opinion [MCR 7.313(E)] due within 21 days.
Response to a Motion for Rehearing is due within 14 days. MCR 7.313(E).
Petition f
"A 1-year period of limitation sh
corpus by a person in custody p
limitation period shall run from..
by the conclusion of direct revie
review....
Place of filing depends on eith
confined (do not need to
For the Eastern D
For the Western D
Note: only one petition allow

RICT COURT

UNITED STATES COURT OF APPEALS



UNITED STATES SUPREME COURT



Prepared by: Marla McCowan, former CDRC Administrator
& Jonathan Sacks, former SADO Deputy Director

Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

October 14, 2015

www.SADO.org – Resources for Researching, Staying Informed and Connecting with the Community

Marilena David-Martin

State Appellate Defender Office
mdavid@sado.org

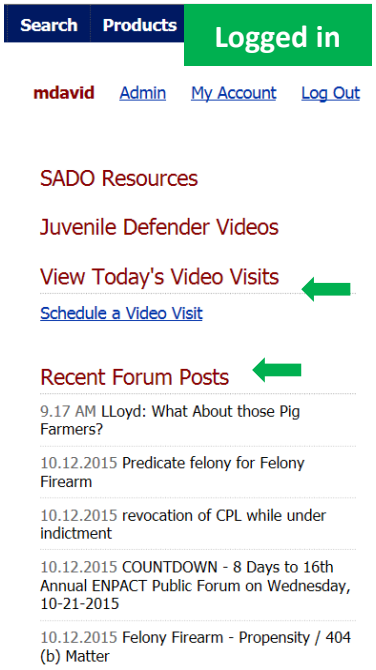
Michigan Appellate Assigned Counsel System (MAACS)
200 N. Washington Sq. Suite 250 Lansing, Michigan, 48933 (517) 334-1200

This training event is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

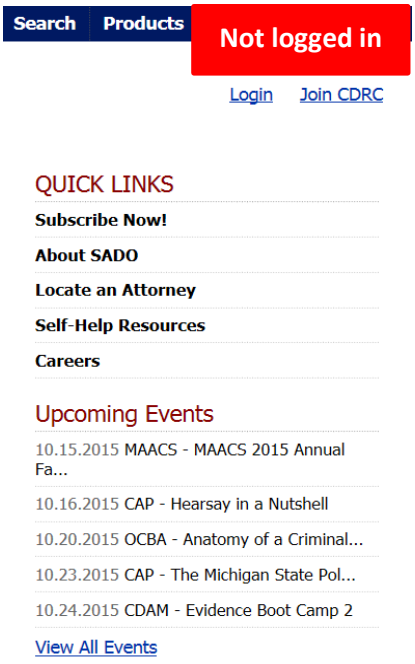
Visual Guide for Navigating www.SADO.org

By: Marilena David-Martin, State Appellate Defender Office
mdavid@sado.org | 313-256-9833 x 2926

Tip: Log into the website first. Some things are for subscribers only; you will see more and be able to do more if you are logged in.



Vs.



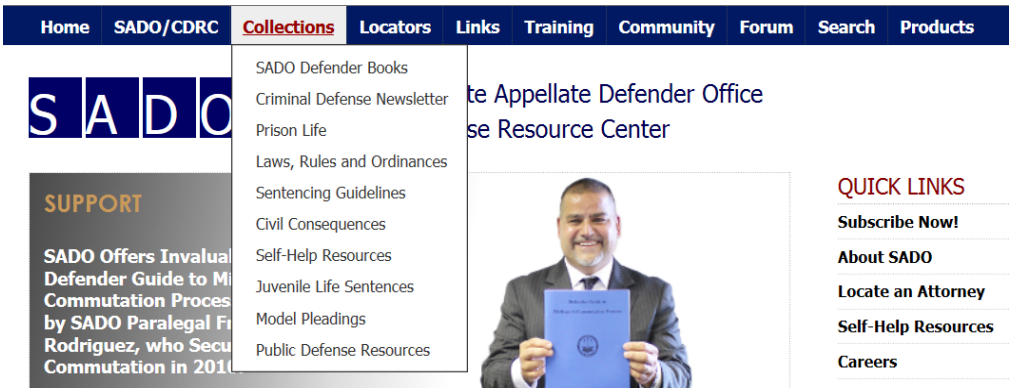
Manage your Account Settings by choosing "My Account" after logging in.

- Update contact information, add a resume, add a picture, manage Forum settings

What resources are available to subscribers on www.SADO.org?

Note: each image below is hyperlinked to take you directly to the referenced webpage.
Whenever you see Bill's face, that means the resource is complimentary for all; no subscription needed.

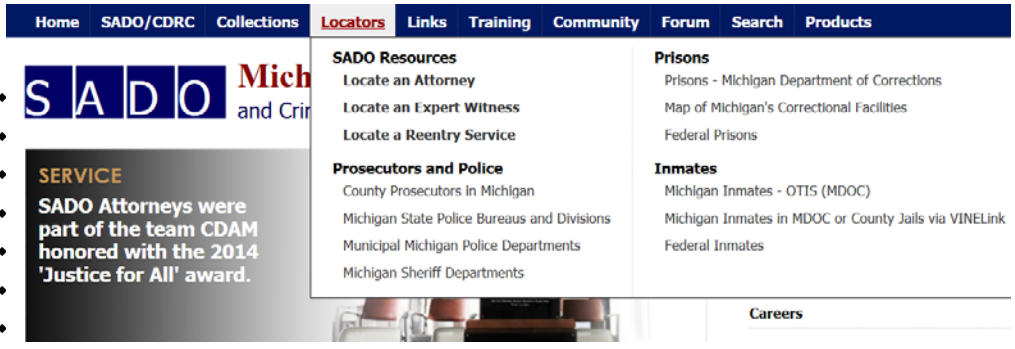
A. For research, staying informed, helping your clients, sample pleadings:



Collections:

- Defender Books
- Criminal Defense Newsletter
- "Prison Life" Resources for Prisoners and Families of Prisoners
  - Attorney Guide to the Michigan Department of Corrections
  - Information for Families and Friends of the Incarcerated
  - Child Support Packet for the Incarcerated
  - Defender Guide to Michigan's Commutation Process
- Civil Consequences of Conviction Resources
- Self-Help Resources for Defendants (including expungement information)
- Model (Sample) Pleadings
- And more

B. For finding attorneys, expert witnesses, re-entry services and more:



Locators: Re-Entry Service Database and more

C. To stay educated and knowledgeable:

Training: Events Calendar, and Video Archive of past CDRC trainings; (some are subscriber only, some are).

D. To connect with attorneys and to locate circuit specific resources:

Community: Contacts for courts, prosecutors, attorneys, and "scouting reports" sorted by circuit

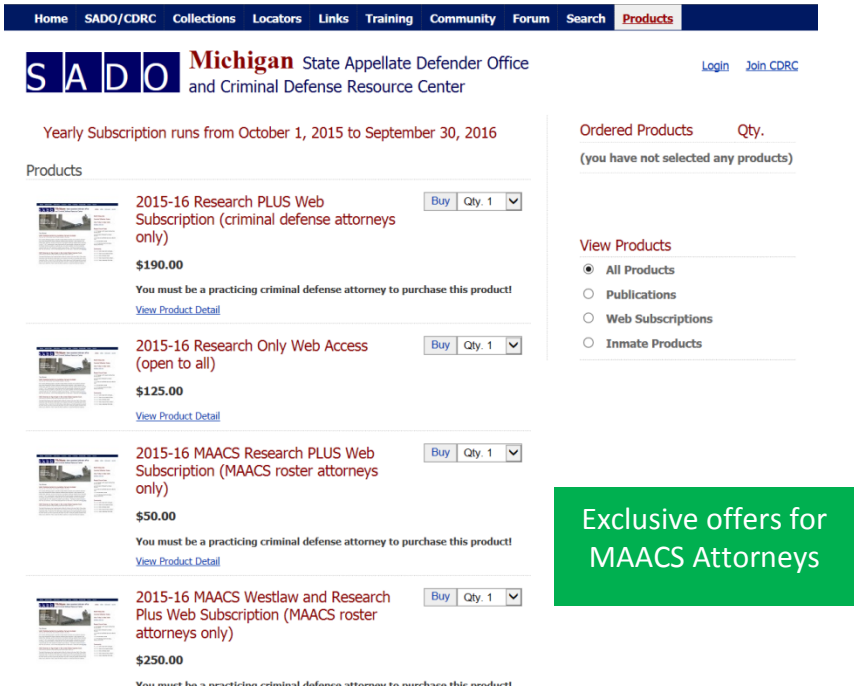
E. To bounce ideas off of experienced attorneys, get answers and stay connected:

Forum: Post questions to Forum, see Forum content, search u.F.O.R.U.M. for materials and pleadings uploaded by Forum users.

F. To research, find sample pleadings, expert witnesses, and research "bad cops":

Search: Brief Bank and Resources, searches: SADO-filed briefs, CDN, opinion summaries, and Defender Books, Expert Witness Database with transcripts and Misconduct Database with supporting documents.

G. To subscribe to SADO's resources:



Products: Allows for online ordering of your SADO.org subscription and all additional resources or products.

H. Phone a Friend:

If you're in court, need help framing a legal issue, can't find any issues in your case, need help navigating the website, want to make a request for training, whatever, call me! I can be reached at 313-256-9833 x 2926, or by email: mdavid@sado.org.

Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

October 14, 2015

An Attorney's Guide to the Michigan Department of Corrections

Jessica Zimbelman
State Appellate Defender Office
jzimbelman@sado.org

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

This training event is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

AN ATTORNEY'S GUIDE TO THE MDOC

OCTOBER 14, 2015

RECEPTION AND GUIDANCE CENTER

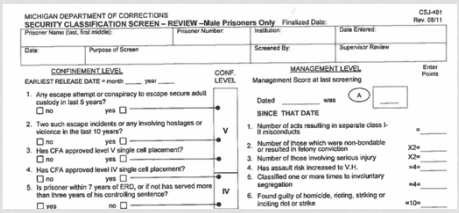
- "Quarantine"/"Intake"
- Screenings: PD 04.06.115
- No Visitors
- Time Computation
- SAI
- Classification Packet

PLACEMENT CONSIDERATIONS

- Health Care
- Programming Needs
- Youthful Offenders
- Re-Entry
- Security Threat Group (STG)
- Predatory Behavior
- Special Problem Offender Notices (SPON)
- Gender Identify Disorder
- Protective Custody
- Security Level

SECURITY CLASSIFICATION

- Levels: I, II, IV, V and Administrative Segregation
- PD 05.01.130
- **The Screen**


MICHIGAN DEPARTMENT OF CORRECTIONS
SECURITY CLASSIFICATION SCREEN – REVIEW –Male Prisoners Only
CSJ-401 Rev. 05/11

MENTAL HEALTH CARE OF PRISONERS

- **JUDGES CANNOT ORDER MDOC MENTAL HEALTH TREATMENT**
- **Available programs:**
  - Acute inpatient
  - Rehabilitation Treatment Services (RTS)
  - Crisis Stabilization Program (CSP)
  - Secure Status Residential Treatment Program (SSRTP)
  - Secure Status Outpatient Treatment Program (SSOPT)
  - Residential Treatment Program (RTP)
  - Adaptive Skills Residential Program (ASRP)
  - Outpatient Mental Health Treatment (OPT)
- **Forensic Center**

PRISONER FUNDS

- **50% over $50 per month**
- **Order of Removal (PD 04.02.105)**
  1. Administrative Correction
  2. Restitution
  3. Child support ordered by the court
  4. Fees/costs
  5. Fees for medical services $5 co-pay)
  6. All other institutional debts
- **Order to Remit**
  - *People v Jackson*, 483 Mich 271 (2009)
  - Trial Court Motion

MISCONDUCTS AND GRIEVANCES

- **Misconducts**
  - Class I, II or III
  - Class I Hearings
  - Available Sanctions
  - Appealing Guilty Findings

- **Grievances**
  - 3-Step Process
  - Time Requirements
  - Limitations

Legislative Corrections Ombudsman
http://council.legislature.mi.gov/lco.html

OTHER COMMON COMPLAINTS

- Harassment and Threats
- Placement
- Programming
- Food
- Jobs
- School
- Communication
- STG

VISITING

- Visiting schedule
- Call ahead
- No visits Tuesday/Wednesday, except . . .
- Any time on visiting days, except . . .
  - Carson City
  - Michigan Reformatory
  - Marquette Branch Prison
- Shake yourself down
- Attire

GETTING INFORMATION

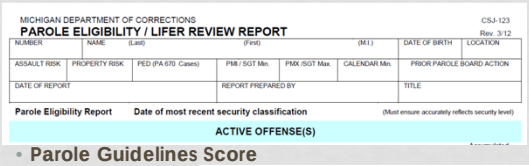
- MDOC File Request
- Quick ERD/Granted Parole
- Counselor
- Administrative Assistant
- TIME COMPUTATION

CHALLENGING THE PSIR CONTENTS

- **PD 06.01.140**
  - Provide the trial court and the MDOC with "relevant and accurate information relating to the offender and the offense."
  - Statements must be "clear, concise and accurate" and "all sources of information shall be documented in the report."
- **MCL 771.14(6)/MCR 6.425(E)(1)(b)**
  - A "party may challenge . . . The accuracy or relevancy of any information contained in the" PSIR.
- **Preponderance of the Evidence**
  - *People v Lloyd*, 284 Mich App 703 (2009)
- **Remedy**
  - MCL 771.14(6); MCR 6.425(E)(2)

PAROLE ASSESSMENTS

- **Parole Evaluation Report**



MICHIGAN DEPARTMENT OF CORRECTIONS — CSJ-123
PAROLE ELIGIBILITY / LIFER REVIEW REPORT — Rev. 3/12

NUMBER	NAME (Last)	(First)	(M.I.)	DATE OF BIRTH	LOCATION

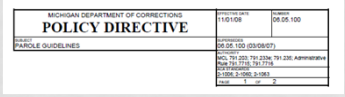
ASSAULT RISK	PROPERTY RISK	PED (PA 670 Cases)	PMI / SGT Min.	PMX /SGT Max.	CALENDAR Min.	PRIOR PAROLE BOARD ACTION

DATE OF REPORT	REPORT PREPARED BY	TITLE

Parole Eligibility Report **Date of most recent security classification** (Must ensure accurately reflects security level)

ACTIVE OFFENSE(S)

- **Parole Guidelines Score**



MICHIGAN DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE

EFFECTIVE DATE	NUMBER
11/01/08	06.05.100

AUTHORITY	
PAROLE GUIDELINES	06.05.100 (03/08/07)

MCL 791.233, 791.233e, 791.235; Administrative Rule 791.7715, 791.7716

SUPERSEDES
D-1004, D-1042, D-1063

PAGE 1 OF 2

PREPPING YOUR CLIENT FOR A PAROLE BOARD HEARING

- **Pre-Parole Board Hearing**
  - Stay busy with positive activities
  - GED
  - Work assignments
  - Document, document, document
  - Reduce security level
  - Avoid negative behavior
  - Reflect
  - Create a parole plan
- **The Parole Board Hearing**
- **Parole Decisions**
- **Special Parole Considerations for Lifers**
- **Parole Violation Hearings**

INFORMATION FOR FAMILIES

www.michiganpackages.com

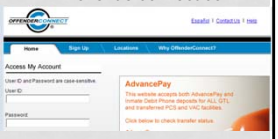
www.jpay.com

Visiting Application: www.michigan.gov/corrections

Visiting Checklist: www.sado.org; Self-Help Resources

Prisoner Mail: PD 05.03.118

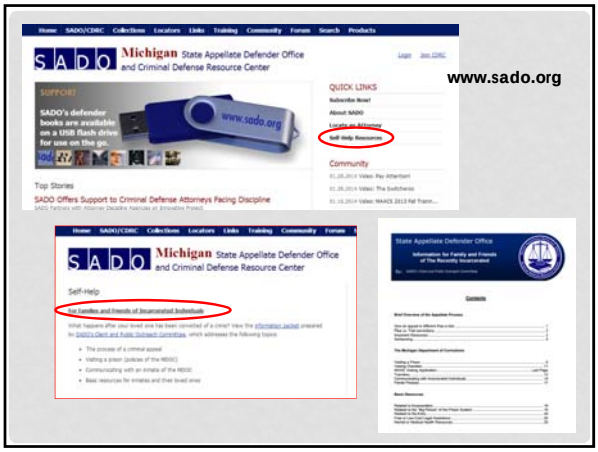
www.offenderconnect.com



www.michigan.gov/corrections

Family Information Packet

Policy Directives



www.sado.org

CONTACT INFORMATION

Jessica Zimbelman
jzimbelman@sado.org
(313) 256-9833
SADO Lansing
200 North Washington
Suite 250

FACILITY	LEVELS	DAYS	HOURS	HOLIDAY HOURS
Alger Correctional Facility	II	Monday Sunday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	⌘
	IV	Thu & Fri Saturday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	
	Segregation	Thursday - Sunday	8:30 am – 12:30 pm	
Baraga Correctional Facility	V	Thursday – Monday	10:30 am – 2:30 pm	★
	Segregation	Thursday – Monday	8:30 am – 10:30 am	
	I	Thursday – Monday	4:00 pm – 8:30 pm	
Bellamy Creek Correctional Facility	IV	Thursday Saturday	2:30 pm – 8:30 pm 11:30 am – 8:30 pm	✪
	II	Monday & Friday Sunday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	
	Protective Housing	Thursday Saturday	8:30 am – 1:30 pm 8:30 am – 10:30 am	
	Segregation	Monday & Friday	8:30 am – 1:30 pm	
IBC Dormitory	I	Mon, Thu & Fri Saturday & Sunday	3:30 pm – 8:30 pm 8:30 am – 8:30 pm	
Carson City Correctional Facility EAST (Boyer Rd.)	I	Mon, Thu & Fri Saturday & Sunday	3:30 pm - 9:30 pm 10:00 am - 8:00 pm	★
Carson City Correctional Facility WEST	IV	Thursday Saturday	3:30 pm -10:00 pm 8:30 am - 9:00 pm	❒
	II	Monday & Friday Sunday	3:30 pm -10:00 pm 8:30 am - 9:00 pm	
	Segregation	Friday	8:30 am - 1:30 pm	
	I	Mon, Thu & Fri Saturday & Sunday	3:30 pm - 10:00 pm 8:30 am - 9:00 pm	
Central Michigan Correctional Facility	I	Monday (odd & even) Thursday (even) Friday (odd) Saturday (even) Sunday (odd)	2:15 pm – 9:00 pm 2:15 pm – 9:00 pm 2:15 pm – 9:00 pm 9:00 am – 9:00 pm 9:00 am – 9:00 pm	◎
Charles Egeler Reception and Guidance Center (RGC) Newly committed prisoners confined to RGC are permitted attorney and clergy visits only.				
Chippewa Correctional Facility	IV	Mon, Fri Sunday	8:00 am – 1:00 pm 2:30 pm – 9:00 pm	⮜
	II	Mon, Thu & Fri Saturday Sunday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm 8:00 am – 1:00 pm	

FACILITY	LEVELS	DAYS	HOURS	HOLIDAY HOURS
	Segregation	Thursday	8:30 am – 1:30 pm	
	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	
Cooper Street Correctional Facility	I	Mon, Thu & Fri Saturday & Sunday (Even/Odd # Schedule)	3:30 pm - 8:30 pm 10:00 am - 8:00 pm	★
Detroit Reentry Center	Level II	Monday & Friday Saturday Sunday	2:30 pm – 8:30 pm 9:00 am – 1:00 pm 2:30 pm – 8:30 pm	◊
	Segregation	Thursday	8:30 am – 10:30 am & 11:30 am – 1:30 pm (by appointment only).	
	Parolees	Thursday Saturday Sunday	5:00 pm – 8:30 pm 2:30 pm – 8:30 pm 9:00 am – 1:00 pm	
Duane L. Waters Health Center	V	Thursday & Friday Saturday & Sunday	4:30 pm – 8:30 pm 10:00 am – 2:30 pm	●
RGC Detailed Workers	II	Thursday Saturday & Sunday	4:30 pm – 8:30 pm 10:30 am – 2:30 pm	
C-Unit	I	Monday & Friday Saturday & Sunday	4:30 pm – 8:30 pm 3:00 pm – 8:30 pm	
Earnest C. Brooks Correctional Facility	IV	Thursday Saturday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm	❄
	II	Monday & Friday Sunday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm	
	Segregation	Monday	8:30 am – 1:30 pm	
	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm	
G. Robert Cotton Correctional Facility	IV	Thu, Fri & Sat	8:30 am - 1:30 pm	○
	II	Sunday & Monday Thu, Fri & Sat	8:30 am - 1:30 pm 2:30 pm - 9:00 pm	
	Segregation	Thursday	8:30 am – 1:30 pm	
	Secure I	Sunday & Monday Thu, Fri & Sat	8:30 am – 1:30 pm 2:30 pm – 9:00 pm	

FACILITY	LEVELS	DAYS	HOURS	HOLIDAY HOURS
Gus Harrison Correctional Facility	IV	Thursday Saturday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm	▲
	II	Monday & Friday Sunday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm	
	Segregation	Saturday	8:30 am – 1:30 pm	
	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm – 8:30 pm 10:00 am – 8:00 pm	
	SSRTP	Thursday Saturday	2:30 pm – 9:00 pm 2:30 pm – 9:00 pm	
Ionia Correctional Facility	V	Monday Thursday Saturday	8:30 am – 2:30 pm 3:30 pm – 8:30 pm 8:30 am – 8:30 pm	●
	II	Monday & Friday Thursday Sunday	3:30 pm – 8:30 pm 8:30 am – 2:30 pm 8:30 am – 8:30 pm	
	Segregation	Thursday Friday	3:30 pm – 8:30 pm 8:30 am – 2:30 pm	
Kinross Correctional Facility	II	Mon, Thu & Fri Saturday & Sunday	3:30 pm – 8:30 pm 8:30 am – 8:30 pm	△
	I	Monday Saturday & Sunday	3:30 pm – 8:30 pm 8:00 am – 8:30 pm	
Lakeland Correctional Facility	II	Mon, Thu & Fri Saturday & Sunday	2:30 pm - 9:00 pm 9:00 am - 9:00 pm	◎
Macomb Correctional Facility	II	Mon, Fri & Sat Sunday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	✿
	IV	Thursday Saturday	2:30 pm – 8:30 pm 8:30 am – 12:30 pm	
	Segregation	Monday	8:30 am – 1:30 pm	
	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	
Marquette Branch Prison	V	Thursday – Monday	9:30 am – 1:30 pm	★
	Segregation	Thursday – Monday	8:30 am – 10:30 am	
	I	Thursday - Monday	5:30 pm – 8:30 pm	
Michigan Reformatory	IV	Thursday Saturday	2:30 pm – 9:00 pm 9:00 am – 9:00 pm	▣
	II	Monday & Friday Sunday	2:30 pm – 9:00 pm 9:00 am – 9:00 pm	

FACILITY	LEVELS	DAYS	HOURS	HOLIDAY HOURS
	Segregation	Monday	8:30 am – 1:30 pm	
Muskegon Correctional Facility	II Segregation	Mon, Thu & Fri Saturday & Sunday Monday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm 8:30 am to 1:30 pm	★
Newberry Correctional Facility	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm - 8:30 pm 10:00 am - 8:00 pm	★
Oaks Correctional Facility	II IV Protective Housing Segregation	Sunday Monday & Friday Thursday & Saturday Thursday & Saturday Monday & Friday	8:30 am – 8:30 pm 2:30 pm – 8:30 pm 2:30 pm – 8:30 pm 8:30 am – 1:30 pm 8:30 am – 1:30 pm	■
Ojibway Correctional Facility (Central Time Zone)	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm – 8:30 pm 9:00 am - 7:00 pm	★
Parnall Correctional Facility	I	Mon, Thu & Fri Saturday & Sunday (Even/Odd # Schedule)	2:30 pm - 8:30 pm 10:00 am - 8:00 pm	★
Pugsley Correctional Facility	I	Mon, Thu & Fri Saturday & Sunday	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	★
Richard A. Handlon Correctional Facility	II Segregation	Thursday - Monday Thursday	2:30 pm – 8:30 pm 2:30 – 8:30 pm	★
Saginaw Correctional Facility	IV II Segregation I	Thursday Saturday Monday & Friday Sunday Friday Monday & Friday Sunday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm 2:30 pm – 9:00 pm 8:30 am – 9:00 pm 8:30 am – 1:30 pm 2:30 pm – 9:00 pm 8:30 am – 9:00 pm	◘
St Louis Correctional Facility	IV Segregation	Mon, Thu & Fri Saturday & Sunday Mon, Thu & Fri	3:00 pm – 9:00 pm 9:00 am – 9:00 pm 8:30 am – 2:30 pm	◈
Thumb Correctional Facility	II Segregation BMU	Mon, Thu & Fri Saturday & Sunday Friday Monday & Thursday	2:30 pm – 9:00 pm 8:30 am – 9:00 pm 8:30 am – 1:30 pm 8:30 am – 1:30 pm	★

FACILITY	LEVELS	DAYS	HOURS	HOLIDAY HOURS
West Shoreline Correctional Facility	I	Mon, Thu & Fri Saturday & Sunday (Even/Odd # Schedule)	2:30 pm – 8:30 pm 8:30 am – 8:30 pm	♦
Women's Huron Valley Correctional Facility	IV I & II Acute Care & Infirmary Segregation Unit Emmett B GP & DBT	Monday Friday Saturday Sunday Monday Thursday Friday Saturday Monday Friday Saturday Monday Monday	2:30 pm – 8:30 pm 8:30 am – 1:30 pm 8:00 am – 10:30 am 8:00 am – 8:30 pm 2:30 pm – 8:30 pm 8:30 am – 8:30 pm 2:30 pm – 8:30 pm 12:00 Noon – 8:30 pm 9:00 am – 1:30 pm 8:30 am – 1:30 pm 8:00 am – 10:00 am 9:00 am – 1:30 pm 9:00 am – 1:30 pm	❖
Woodland Center Correctional Facility	IV (GP/AC&RTS) IV (CSP) I Infirmary (in unit)	Monday Friday & Saturday Saturday Sunday Monday Thursday Sunday	2:30 pm – 5:30 pm 2:30 pm – 8:30 pm 9:00 am – 12:00 pm 10:00 am – 8:00 pm 5:45 pm – 8:30 pm 2:30 pm – 8:30 pm 2:30 pm – 4:30 pm	☼

★	Visiting on state recognized holidays shall be the same as the regular hours for weekdays if the holiday falls on a weekday. If the state recognized holiday falls on a weekend, the visiting hours shall be the same as the regular hours for the weekend day.
▲	Visiting on state recognized holidays shall be the same as the regular hours for weekdays if the holiday falls on a weekday. If the state recognized holiday falls on a weekend, the visiting hours shall be the same as the regular hours for the weekend day; for segregation visiting hours will be 8:30 am -10:30 am.
⌘	Visiting on state recognized holidays shall be 8:30 am – 10:30 am for segregation, 11:00 am – 2:30 pm for Level IV and 3:30 pm – 8:30 pm for Level II.
◎	Visiting on state recognized holidays shall be 9:00 am – 9:00 pm.
▣	Visiting on state recognized holidays shall be 8:30 am – 10:30 am for segregation, 11:00 am – 3:00 pm for Level II and 3:30 pm – 9:00 pm for Level IV.
✪	Visiting on state recognized holidays will be at the following times: Segregation 8:30 am - 10:30 am; Level IV 10:45 am - 2:15 pm; Level II 2:45 pm - 5:45 pm; Protective Housing 6:45 pm - 8:45 pm; and for Level I prisoners visiting on state recognized holiday, visiting on a week day shall be 3:30 pm - 8:30 pm and on a weekend shall be 8:30 am – 8:30 pm.
◘	Visiting on state recognized holidays will be scheduled on the day of the week the holiday falls on at these times: Segregation 8:30 am - 10:30 am; Level IV general population 11:00 am - 2:00 pm; Level II 2:30 pm - 9:00 pm and for Level I prisoners 2:30 pm – 9:00 pm.
❐	Visiting on state recognized holidays will be scheduled on the day of the week the holiday falls on at these times: Segregation 8:30 am - 10:30 am; Level IV 11:00 am - 2:00 pm; Level II 3:30 pm -10:00 pm and for Level I prisoners 3:30 pm – 10:00 pm.
○	Visiting on state recognized holidays will be scheduled on the day of the week that the holiday falls on at the following times: administrative/punitive/temporary segregation 8:30 am - 10:30 am, Level IV general population 11:00 am - 1:30 pm, Levels II and Secure Level I 2:30 pm - 5:00 pm, and for Level I prisoners from 5:30 pm - 9:00 pm.
◈	Visiting on state recognized holidays will be scheduled on the day of the week the holiday falls on. If the state recognized holiday falls on a day where visiting is not scheduled, visiting shall be scheduled on that day for segregation units from 8:30 am – 2:30 pm and for Level IV general population from 3:00 pm to 9:00 pm.
△	For Level I & II prisoners visiting on state recognized holidays shall be the same as the regular hours for weekdays if the holiday falls on a weekday. If the state recognized holiday falls on a weekend, the visiting hours shall be the same as the regular hours for the weekend day.
■	Visiting on state recognized holidays will be at these times: Segregation 8:30 am – 10:30 am; Protective Housing 11:30 am – 1:30 pm; Level II 2:30 pm – 4:30 pm and Level IV 5:30 pm – 8:30 pm.
♦	Visiting on state recognized holidays will be 2:30 pm – 8:30 pm.
❄	Visiting on state recognized holidays will be at these times: Segregation 8:30 am - 10:30 am; Level IV general population 11:00 am - 2:00 pm; Level II 2:30 pm - 9:00 pm and for Level I prisoners visiting on state recognized holidays which fall on a week day shall be 2:30 pm – 9:00 pm.
●	Visiting on state recognized holidays will be at these times: Segregation 8:30 am – 2:30 pm; Level V 8:30 am – 2:30 pm and Level II 3:30 pm – 8:30 pm.

☼	Visiting on state recognized holidays will be at these times: Level IV (CPS) 10:00 am – 12:00 pm; Level IV (GP, AC & RTS) 12:15 pm – 3:15 pm; Level I 3:30 pm – 8:00 pm. Infirmary visits will occur during the same visiting time as their corresponding Inpatient Level of Care. The General Population Infirmary prisoners will have visits during the visiting time of Level IV GP. Any Infirmary prisoner deemed by medical staff to be unable to come to the visiting room will be allowed to visit in the Infirmary during the appropriate Level of Care/Security Level.
❖	Visiting on state recognized holidays will be at these times: Segregation, Infirmary & Acute Care 8:00 am – 10:30 am; Level IV 11:30 am – 2:30 pm and Level I & Level II 3:30 pm – 8:30 pm.
◭	Visiting on state recognized holidays will be scheduled on the day of the week the holiday falls on at these times: Segregation 8:30 am - 10:30 am; Level IV general population 8:30 am - 2:00 pm; Level II 2:30 pm - 9:00 pm and for Level I prisoners 2:30 pm – 9:00 pm.
●	Visiting on state recognized holidays shall be the same as the regular hours for the day of the week that the holiday falls on. If the state recognized holiday falls on a day where visiting is not scheduled; visits shall be 4:30 pm – 8:30 pm.
✿	Visiting on state recognized holidays will be scheduled on the day of the week the holiday falls on at these times: Segregation 8:30 am - 10:30 am; Level IV general population 11:00 am - 2:00 pm; Level II 2:30 pm – 8:30 pm and for Level I prisoners 2:30 pm – 8:30 pm.
◇	Visiting on state recognized holidays will be: Segregation – 8:00 am to 10:00 am; Level II Prisoners - 10:00 am to 1:00 pm and for Parolees – 2:30 pm to 8:30 pm.

STATE APPELLATE DEFENDER OFFICE

DAWN VAN HOEK
DIRECTOR

MICHAEL MITTLESTAT
DEPUTY DIRECTOR

www.sado.org
Client calls: 313.256.9822

PENOBSCOT BLDG., STE 3300
645 GRISWOLD
DETROIT, MI 48226-4281
Phone: 313.256.9833 • Fax: 313.965.0372

LANSING AREA:
Phone: 517.334.6069 • Fax: 517.334.6987

DATE

FOIA Officer
Michigan Reformatory
1342 West Main Street
Ionia, MI 48846
BY FAX TRANSMISSION TO:

RE: John Doe
MDOC No. 000000

Dear FOIA Officer:

Pursuant to the Michigan Freedom of Information Act, I am writing to request a copy of John Doe's **un-redacted** Record Office File (*which may include, but is not limited to COMPAS Narrative Summary, TAP, VASOR, Parole Guideline Score, Transcase Notes, Work and Program Reports and Certificates, and Misconduct Reports*) as well as the prisoner's Substance Abuse Related Records. Please treat this as our formal request that you provide the aforementioned records.

Should any information in the prisoner's file appear to be exempt from disclosure, I request a brief statement of exemption claim and to the extent that the material can be identified without breaching the exemption, a brief description of the same. Should the information appear subject to partial disclosure, I would request that a redacted copy of the same be provided to me with the notice that the same is redacted.

On {SADO_assigned}, the Honorable {t_judge_name_lower} appointed this office as appellate counsel in the {county_Lower} County Circuit Court No {LC_No}. Since John Doe is indigent and we are court-appointed to represent him, we typically do not pay costs.

If you have any questions, or I can be of any further assistance, please contact me at jzimbelman@sado.org or (313) 256-9833. Thank you for your attention to this matter.

Sincerely,

Jessica L. Zimbelman
Assistant Defender

MDOC SENTENCING SPECIALIST ASSIGNMENT

Kim Thelen & Connie Trevino are the Sentencing Specialists for CTCU. They are responsible for specifically-assigned facilities, as indicated below. They would be your primary contact for:

Unanticipated Release Processing
Missing Judgment of Sentences
Habeas Protocol Processing
Sentencing Issues

KIM THELEN **thelenk13@michigan.gov** **517-780-6575**	**CONNIE TREVINO** **trevinoc1@michigan.gov** **517-780-6576**
ARF – Gus Harrison Correctional	AMF - Baraga Maximum Correctional
DRF- Carson City Correctional	ECF – Oaks Correctional
IBC – Bellamy Creek Correctional	KCF – Kinross Correctional
ICF – Ionia Maximum Correctional	LMF – Alger Correctional
JCF – Robert Cotton Correctional	MBP – Marquette Branch Prison
JCS – Cooper Street Correctional	MPF – Pugsley Correctional
LCF – Lakeland Correctional	MRF – Macomb Correctional
LRF – Brooks Correctional	NCF – Newberry Correctional
MCF – Muskegon Correctional	OCF – Ojibway Correctional
MTF – West Shoreline Correctional	RRF – Ryan Correctional
MTU – Richard Handlon Correctional	SRF – Saginaw Correctional
RMI – Michigan Reformatory	TCF – Thumb Correctional ***
SLF – St. Louis Correctional	URF – Chippewa Correctional
SMT – Parnall Correctional	WCC – Woodland Center (Maxey)
STF – Central Michigan Correctional	WHV – Women's Huron Valley **
ZLI/IRM – SAI & IRM (MPRI) – Males	ZLW/IRF – SAI & IRF (MPRI) – Females

RGC – Charles Egeler Reception Center (shared by both Specialists)
As RGC is the male reception center and the volume is so great, any referrals for these prisoners are shared by both Specialists.

**** WHV** – is the female reception center, in addition to being the only female prison. Issues with regard to new intake are reviewed by either Specialist. All other referrals that occur on WHV prisoners (after the new commitment) should be forwarded to Connie.

***** TCF** - has a stable population but also has the "HYTA" prisoners assigned there. Any new HYTAs or Amended HYTAs that are received are reviewed by either Specialist. All other TCF issues for regular prisoners should be forwarded to Connie.

Updated 9/3/13

Getting through the Michigan Parole Process

A publication of the American Friends Service Committee's
Michigan Criminal Justice Program
and MI CURE

Contact:
Natalie Holbrook or Peter Martel
1414 Hill Street
Ann Arbor, MI 48104
734-761-8283 ext.5 or 2

Revised June 2012

I. FOREWORD

Penny Ryder and Kay Perry wrote the original version of this booklet to help individuals navigate their way through the parole process. These two women and the organizations they represent (AFSC and MI-CURE, respectively) have spent many years trying to improve the parole system in Michigan. In their shared experience of advocacy and policy work on parole, they found they could be most effective by teaching individuals how to fend for themselves instead of trying to advocate on each individual's behalf. This booklet explains the parole process, what individuals can do to position themselves for a positive parole board action, and what individuals should consider after the parole board's decision. It also includes a list of helpful resources for those who want to understand the process more fully or need additional help getting through the process.

Some things have changed since Kay and Penny wrote the third edition of this booklet in 2000, so we have updated it with current information and advice. We emphasize the significance of the Parole Eligibility Report (PER), the Parole Guideline Score Sheet Grid, public hearing proceedings, and most importantly, the best way to spend your time up to the parole date. While the policy directives and operating procedures are vital to the process, as is advice on how to present yourself during the interview, there is really no substitute for actually doing the right thing during your incarceration and developing your own solid character. Admittedly, there is no silver bullet to gaining a parole, yet there is one for staying out when we are released: spend your time doing what is right. Practice it over and over during the time you are incarcerated, until it becomes second nature. At that point, you will have made good on your time and reduced your chances of returning to doing what is wrong.

Natalie Holbrook, Marissa Hanna, and Peter J. Martel
Criminal Justice Program
American Friends Service Committee
Summer 2010
4th Edition

II. Leading up to the Parole Process
By Pete

Your institutional conduct is a large factor the parole board will consider while reviewing you for parole. With that in mind, the sooner you begin making your prison sentence a positive experience, the better your chances for parole and, ultimately, the better your chances for success upon release. Having served fourteen years (ten of it in the box), I can attest to the importance of making your sentence a positive experience. At some point in the future, you will look back upon the time you've spent in prison and you will either find it was a horrible waste of time or a productive experience. The choice is yours, and it is a choice you make every day.

I spent my time in the hole not only exercising and playing chess ("13 to 29"), but also reading a lot of those books that everybody tends to think we should read. In addition to the books that are listed in this booklet, I would highly recommend reading some of the classics (*To Kill a Mockingbird*, by Harper Lee; *Les Miserables*, by Victor Hugo; *Crime and Punishment*, by Fyodor Dostoevsky; *Anna Karenina*, by Leo Tolstoy; and *East of Eden*, by John Steinbeck come immediately to mind). These books aren't simply stories that entertain us while we read them, but works that can make us ask questions about our lives that we might not have contemplated before. If we think over ideas such as what we hope to accomplish with our lives, what principles are most important to us, and how (and *why*) we should go about living our lives, we cannot help but to grow intellectually and develop in terms of our own humanity. If you can find some others who are interested, I encourage you to start book clubs centered on the reading and interpretations of these books. Consider proposing a reading group to your special activities coordinator, in order to reserve a quiet place where you can keep the group focused on the topic.

Many self-help books seem to offer quick-fixes for problems that might not be that simple to fix, but in this genre I recommend Stephen Covey's book *The Seven Habits of Highly Effective People*. Covey discusses how people have become less concerned with "character" and more concerned with "personality." I feel as though many of you on the inside will understand that concept more readily than a lot of people out here, but to state it quickly, character is who you really are; personality is your presentation to other people. The first is being, while the other is acting. Covey attempts to re-focus his readers on character and encourages us to worry less about personality. It's pretty interesting material and should be available in your library.

Obviously, another thing you need to do is avoid misconducts. That doesn't mean quit getting caught; it means quit doing things that you could get in trouble for if you were caught. Think about things before you do them. Give yourself time to think and breathe before acting. Count to ten. Take a few deep breaths. Ask yourself, "If I get caught doing this, and end up in the hole, or with a misconduct on my record, will it have been worth it?" Stupid things cannot only cost you a parole, but also reinforce bad habits. The board wants to see that you've developed the habit of following rules and controlling your behavior. The best way to convince them of that is to actually develop that habit.

Another important factor is completing your R&GC recommendations (substance abuse, AOP, SOP, etc.). If you are not in your recommended programs, submit kites to the proper staff to be placed on a waiting list. You should keep copies of these kites, along with any responses you

receive. Once you are admitted into the program, it is important that you approach it with an open mind and engage the program with the intention of getting something out of it more than just the certificate. While certificates and positive reports are helpful to show that you have successfully completed these programs, it will be just as important to show that you actually learned the lessons that these programs have to offer and processed the materials that were discussed. These programs will offer you some tools that will help you improve yourself—it is important to appreciate the opportunity and make the most of it.

Many of you need to complete SOP, VPP, Cage your Rage, Thinking for Change, or AOP. We all know there are waiting lists for all of these classes. Unfortunately, it appears that for the most part individuals are not being allowed into these groups until after they reach their earliest release date. The department has compiled a list at central office that is arranged strictly by release date—the earlier your release date, the closer to the top of the list your name will be. How quickly you move up that list is not in your (or our) control—it's simply a matter of the department having enough psychs on staff to run enough of these groups. What you can control in this matter, however, is being in a low enough security level to be able to participate in the group when your name comes up on the list. Most of these groups are being held in level I and II facilities. If you're sitting up in a level V facility, you will probably not get in. If you're in an appropriate security level when your name comes up on the list, you should be transferred to the facility that is conducting the next group.

Work and school are also important. Not only do work or school opportunities offer chances to get a little schooling in and earn some money, they also result in reports submitted by the MDOC officials. These are the people who spend the most time with you (your teachers or work supervisors) during your incarceration and it helps if they have good things to say about you. It is important that you apply yourself earnestly in these endeavors and give them reason to say something good about you. If your work reports are not 37-39, you need to put more effort into your work.

If there are other programs available that are not R&GC recommendations, you should try to involve yourself in those as well. Participating in program is a better wat to spend your time than sitting around eating Little Debbies or playing dirty hearts all day.

All documentation from these activities needs to be organized in a file so you can locate them easily. It may be needed for completing your PER, for correcting your parole guideline score sheet, or for correcting information at your parole interview. Be sure to keep it all together, in a convenient place. If you have support in the free world, you may want to send copies of these documents to that person for safe-keeping and also to help your support network understand your progress, work ethic, and program completion.

III. Preparing for the Parole or Lifer Interview

In addition to your institutional conduct, other things you need to consider well before the process is initiated are things such as developing a realistic parole plan, tending to outstanding warrants, and lining up support services in the world.

Check Outstanding Warrants

If you suspect you have outstanding warrants, submit a kite to the Records Coordinator at your institution to confirm their status. Work with the Records Coordinator to resolve the charges as soon as possible. These warrants cannot be removed from your MDOC file without documentation from the originating court. You will not be paroled until they are cleared up.

Get Involved in Pre-Release Programming

Involve yourself in a pre-release program if one is available at your institution.

Save As Much Money As Possible

You will need it when you are paroled. This is especially important if you are planning on a commercial placement.

Own Your Shortcomings

Be honest about your weaknesses in your case – what recommendations have your therapists and supervisors given you? Have you had prior parole or probation experience? If so, and you failed, what steps can you take to avoid making the same mistakes in the future? In what ways might your transition to the free world be difficult? How will you address these difficulties?

Arrange for Treatment

If you have a history of **substance abuse**, make arrangements for programming in the free world. Arrangements should include written commitment to accept you into the program or to serve as your sponsor. Such programming might include any or all of the following: in-patient or out-patient treatment, Narcotics Anonymous, or Alcoholics Anonymous. If you need in-patient treatment in order to remain successful upon parole, it is totally okay to be honest with the parole board and your loved ones about this need. It will not count against you. It demonstrates that you are taking responsibility for yourself so you do not harm yourself or others.

If you are serving on a **sex offense**, make arrangements for programming in the free world. Arrangements should include a written commitment to accept you into the program or to serve as your sponsor. Programming might include the following: Individual and Group Therapy, Sex Addicts Anonymous, or Sex and Love Addicts Anonymous.

Sex offender therapy (SOP/SOT) may be one of your parole requirements and you may be have to attend MDOC-approved

therapy. We know of many released prisoners who have found this therapy helpful.

Get Offers in Writing

If you have a job offer, get it in writing. If you are planning to attend a vocational or educational program, ensure that you will be accepted into the program. Get the acceptance in writing.

Check Your Home Placement

If you have a home placement, be sure it is adequate. If you served on a sex offense where the victim was a minor, you should not plan on living in a household with children present. You will not be allowed to live there, so make other more realistic plans. Sex offenders may not be allowed to live in a home with internet access.

If your family background has been difficult, and you plan to live with a family member, be prepared to explain what will be different this time. Parole is very difficult. Finding a job and supporting yourself will be tough work. Do not overburden yourself with family responsibilities.

Stay Busy!

The pace in the free world can be hectic. The transition will be easier if you keep active. Stay mentally and physically active at least 8 hours per day. For example, read a book or write a letter during count time instead of napping.

If you know that you will be receiving Social Security Disability Insurance (**SSDI**) (very few prisoners are eligible), be prepared to explain how you will remain busy enough to avoid drugs, alcohol, or other problems that may have contributed to your criminal behavior.

Address Your Relapse Prevention Plan

If you have problems with substance abuse or are serving on an assaultive or sex offense, be certain that you have addressed all elements of your Relapse Prevention Plan.

IV. YOUR PER AND PAROLE GUIDELINE SCORE SHEET

The Parole Eligibility Report (PER) and Parole Guideline Score Sheet are vital documents in the parole process. Each has a policy directive written specifically about it and much of the review will center on the information in these documents. We cannot stress enough how important it is to understand the process for completing these documents and ensuring that the information included in them is correct.

The PER is used to complete the Parole Guideline Score Sheet, and the Parole Guideline Score Sheet determines whether you are high-, average-, or low-probability for parole. If you are high-probability for parole, there is a presumption parole will be granted. If the board denies you parole when you screen high-probability, they have to articulate "compelling and substantial reasons" for departing from the guidelines in writing. If you screen average-probability they must interview you during the decision-making process. They cannot deny you parole without conducting an interview. If you screen low-probability for parole, however, the board can flop you for 12, 18, or 24[1] months without interviewing you. Further, if you screen low-probability, you need to tighten up, quit catching tickets, and start doing what you're supposed to be doing – you're not a kid anymore.

We encourage you to read P.D. 06.05.103 Parole Eligibility/Lifer Review Reports. Within this policy is most of the instruction you need to make sure your PER has been completed correctly. This policy directs that your PER is completed seven months before your earliest (or next) release date. Before it is completed, however, you should receive a copy of "20 Questions of Parole" (a small booklet on the parole process) from your ARUS and he or she should review the parole process with you. Additionally, you are allowed to review your file (Paragraph J) and "present letters, offers of employment, and other information supporting parole to the PER preparer" (Paragraph K). Once your questions about the process have been answered and you have had the opportunity to review your file, correct errors in the PER, and submit letters of support and certificates you have earned, you sign the PER. Request a copy of the PER for your personal file.

The Parole Guideline Score Sheet Grid is completed by the Case Preparation Unit in the Office of the Parole Board. P.D. 06.05.100 governs the process for completing this document. While the policy states that you are to be provided a copy of this document, it does not provide a deadline by when you must receive it. If you do not receive your copy prior to your parole board interview, it is not something you want to argue about during the interview. Focus on the questions asked in the interview (see Part V, below) and worry about the guidelines when you do receive your copy. In the event that any of the information in the guidelines is inaccurate, you will need to contact the appropriate office or individual as follows:

[1] In some cases, the board can – and will – issue a 60-month flop. See P.D. 06.05.104, paragraph X.

Issue	Who to Contact
"Instant Offense"	This includes all offenses for which you are currently serving. Contact the Parole Board Case Preparation Unit
"Any Injury"	Means any force, injury or threat of force or injury (including threats to use a weapon). Contact the Parole Board Case Preparation Unit.
"Total time will have served"	This is calculated using the difference between the review date and the commitment date, excluding time spent on parole, escape, writ, or bond. Contact the Central Time Computation Unit.
"Age"	Contact the institutional record office.
"Program Performance"	Contact the Parole Board Case Preparation Unit.
"Mental Health Score"	Contact the Parole Board Case Preparation Unit.
"Errors in the Pre-Sentence Investigation Report"	Corrections must be ordered by the sentencing court.
"Errors in the PER"	Contact the administrator who prepared the PER.

If correcting errors in your guideline score sheet will not result in the improvement of your probability (changing you from "low" to "average" probability, or "average" to "high" probability), you shouldn't worry about having them corrected. If they will result in the improvement of your probability, you want to get it corrected.

V. Preparing for the Parole or Lifer Interview

The parole/lifer interview is very important. Do not treat it lightly. Do not assume that it does not matter, or that the decision has already been made. A good interview can result in parole. A bad interview can lead to a flop.

The reasons we often see for denying parole are "lacks remorse," "lacks empathy," "minimizes the crime," "fails to take responsibility," and "lacks insight into crime." While you're serving your sentence the board wants you to think about the crime and the victims often. Think about why you chose to commit the crime and what things you could've done differently to prevent the crime from happening. They don't like the "young and dumb" thing—we've heard them say that everybody goes through adolescence, but not everyone commits crimes, so they're looking for something more insightful.

Remember that most lifers and some non-lifers will be scheduled for an interview with very short notice. Therefore, it is very important to think about these issues even if you do not know exactly when you will be interviewed.

Organize the documents you plan to take to the interview. The following suggestions are based on an informal parole board memo dated September 22, 1994:

- If your PER or parole guideline score sheet is incomplete or inaccurate, bring documents that will fill in the gaps or correct mistakes.
- Take your latest psychological report if it was prepared recently and you are not certain that a copy has been placed in the Central Office file.
- Remember that the parole board considers criminal behavior, institutional adjustment, readiness for release, and personal history when making parole decisions. Any documents you take should relate to these factors and should not duplicate any material covered in the PER or guideline score sheet.
- Documents should offer concrete evidence. For example, a job offer is relevant. A letter from a relative saying you should be able to get a job easily is **not** relevant. A letter from a work supervisor commending your performance **may** be relevant if good work performance is not described in your PER. A letter from a friend saying you worked hard is **not** relevant.
- A few short, thoughtful personal letters of support are more effective than a lengthy petition. Request letters from staff when appropriate. (An example letter is included with the handouts that accompany this booklet.)
- Talk with other prisoners who have been interviewed by the parole board. Find out what questions were asked.
- If you had a previous interview, think about what questions were asked.
- If you were a parole board member responsible for the decision, what questions would you ask yourself?

- Practice answering questions. Ask a friend to play the role of a parole board member and practice interviewing. Ask your friend to critique your performance. Practice to improve your answers, your body language, your diction, etc. Keep practicing.
- Carefully consider whether to ask someone to represent you at the parole interview. It is not essential to have a representative. A well-chosen representative could help; a poorly chosen representative may hurt. If you decide to have a representative, select a person who knows you well, remains calm under stress, and does not deny your guilt or make excuses for you. The representative is there to offer support, not to carry the interview. Share your parole plan and your Relapse Prevention Plan with your representative.
- You are responsible for letting your representative know where and when your interview will be. Generally, interviews involving representatives are scheduled on the morning of the first day of interviews at your institution.
- Groom yourself. Get a haircut. Trim any facial hair so that it is not scruffy-looking.
- Exercise, eat well, and rest well the day before the interview.

VI. How Family and Friends Can Help

Your family and friends should not minimize the offense or make excuses for you. They should offer support and encourage you to participate in as much programming as possible while in prison. It can also be very helpful if they're able to send in self-help and educational materials (which must be purchased from and sent by approved vendors). Some other things that might be helpful include:

- Helping with parole planning by providing contacts in the free world. They should provide only the name and address—you should make the contact and arrangements after that.
- They may write a letter of support on your behalf, noting any positive changes they've seen take place. They should send the original (addressed "Dear Parole Board") to the Office of the Parole Board and one copy to you in advance of your interview.
- If they are willing to provide a home placement, job, financial support (for a limited period of time), or moral support, they should submit that offer in writing to the parole board prior to the interview.
- Being prepared to work on family issues. Be honest with yourself. If the circumstances of your crime are a reflection of family problems, try to work on those problems before being released. You and your family should continue working on things after you are released.

VII. Making the Most of the Interview

Nothing in the criminal justice process prepares you for the parole interview. From the time you were arrested until you were convicted, you were probably advised to say nothing about the offense. During your incarceration, there is little incentive to talk about your offense or the victim(s). The rules for parole interviews are just the opposite. It is important that you take responsibility for your actions. It is also appropriate to express concern for the harm done to the victim(s) as well as the victims' family, friends, and community.

Even though your preparation for the interview has been extensive, the actual interview will be short. Be brief, clear, and precise.

During the interview:

- Do not minimize the seriousness of your offense.
- Do not blame others for your offense, incarceration, or tickets.
- Work to remain clam. Do not react angrily to parole board members, regardless of their behavior or questioning.
- Listen carefully to the questions asked. Take your time to answer each question thoughtfully. Give complete answers, but do not ramble or give long-winded answers.
- Where possible, focus on your accomplishments and your plans to avoid future problems.
- Be honest and realistic. For example, do not say that your family needs you to support them when you never supported them prior to your incarceration. Do not state that you must get home to care for an ailing family member. The parole board may not look positively on too many burdens weighing you down.
- You will be given an opportunity, after questioning, to make a statement. Think about what you want to say. You may want to include comments such as:
    - How you feel about the crime and victims today.
    - What you have accomplished since going to prison.
    - How you have prepared for your release.
    - How you are different today.
    - Why you would be a good community member.
    - Do not say you have done enough time.
- Ask that letters of support and whatever other documents you have brought to the interview be added to your file. If the parole board member refuses to take any or all of the material, he or she should make a note in your file as to what was offered and refused.

VIII. PUBLIC HEARINGS FOR LIFERS AND COMMUTATIONS

By Natalie

Here's the deal: the public hearing matters. It matters big-time. We have heard former Chair Sampson talk in detail about what she (and the entire board) expects from people who make it this far in the process. You have probably already figured out for yourself what this section will address, but reminders are always helpful. Reminders and gentle guidance are especially helpful when you are approaching something so huge and you may have not had the time or energy, due to nervousness, anxiety, or intellectual fatigue, to take a step back and think about all of this from a more neutral perspective.

What to expect in the hearing room: You will be brought into a hearing room at either Cotton or MTU (or if you are really sick DWH). The board member/s will be sitting at a long table up near the front of the room. One board member will be running the whole thing. An Assistant Attorney General (AAG) will be sitting next to the PB member running the meeting. There may be another board member or two sitting with the PB member running the hearing. There will also be a court recorder at the table. He/she will be transcribing the proceedings on a laptop. Note: While a PB member is supposed to be running the hearing, it may seem as if the AAG is running the hearing by the amount of time he/she spends directing the questions at you and the fact that he/she may actually control the hearing.

You will be brought into the room in leg irons, hand-cuffs and belly chains. You will sit with your back to the audience and be placed directly in front of the panel of questioners. All of the "security" devices will be left on your body for the entire proceedings. The "audience" will be behind you. If your attorney is in attendance he/she will be sitting behind you, not next to you.

You will have a mini-microphone clipped to your blues for recording purposes.

The Players: You, one or two parole board members, the AAG, and the court recorder.

There may also be those in support of your release, such as your friends and family, your attorney, or other members of the public. Those who are opposed to your release, such as the prosecutor, the victim(s), friends and family members of the victim(s), and other members of the public may be there as well.

How it runs: The PB member running the hearing will introduce the process and the people sitting up at the table. This PB member will also swear you in. Then the AAG will go over the MCLs governing the hearing, followed by his or her questioning regarding the offense. You should know ahead of time that the current Attorney General (Bill Schuette) has ordered a blanket objection for all commutations and paroles that make it to public hearing, so don't take it personally when they object to your release. Please also note that some of the AAGs who might be questioning you can be harsh.

You need to know what kinds of questions to expect from the AAG. Questions will revolve around:

- All details of the crime, whether broad or minute.
- Your explanation of the crime.
- What you might have been thinking at the time of the crime.
- What you feel for the victim of the crime.
- Explanations of your entire institutional conduct. And by entire, we mean *entire*. You may even be asked about tickets from way back, like as far back as 1977.

The AAG may tend to ramble on and use flawed logic to try to trip you up. You might end up sitting there thinking, "what is wrong with him?" or "where is this coming from?" or "that's not how it went down at all; not at all. And, that is not what I said." It is critical that you keep your composure and don't lose your temper.

Remember, the work you've most likely done inside is unique to any self-reflective work that humans are capable of. You have been growing and changing and becoming the best person you can be amidst difficult circumstances that the AAG has not one iota of understanding about. You have grown as a person without easy access to higher education and good therapy. Some of you have done it with little or no support from people in the free world. Some of you have been down so long that your loved ones have passed on and you have lived through deep loss and lonely circumstances. Still you have worked on transforming yourself into a better person, different from the one that committed the offense for which you are serving.

In order to best prepare yourself for the line of questioning that will come at you from the AAG, make sure you study your Pre-Sentence Investigation report inside and out. If you have a co-defendant, make sure you have as much understanding of your co-defendant's version of events as possible.

The board expects you to admit full responsibility for the crime you were convicted of. They expect honesty and forthrightness, and they expect you to feel empathy for the victim(s). Please understand the definition of victim is not just the person you killed or injured. Everyone connected to that victim, the person's family, community, and friends, are all victims as well.

Once the AAG is done questioning you, the parole board member(s) will question you. This questioning may revolve more around your personal growth while in prison, your institutional record, your placement plans upon release, your program and work reports, and the crime. You should be well versed in your entire misconduct history and be ready to answer questions regarding your entire institutional record. We understand that officers sometimes write bogus tickets and prisoners are not believed and still get found guilty. However, if you sit before the public hearing panel and blame others for negative institutional conduct, it is not going to sound good.

Try to completely avoid blaming language within the context of the public hearing. Some people might be partly to blame for where you are now, but it does not serve you well to dwell on those events or people during the public hearing.

Once the board members are done questioning you, the public will have a turn to testify before the panel. The people in attendance who are there in opposition to your release will be able to testify first. If you have a highly publicized case the prosecuting attorney may show up and testify in opposition to your release. Family members of the victim/s may show up to testify. People may state terrible things about you, but please understand that while the board listens to the opposing testimonies, they are not the deal sealer. You were given a public hearing because the board is deeply interested in your case and potential release.

After the opposition speaks, people who are there in support of your release will be given a chance to testify on your behalf. It is critical that your loved ones do not minimize your involvement in the commission of the crime. Your support group should be able to clearly articulate your release plan and the kind of support network you will have once released to the community.

If you have an attorney, make sure the attorney is able to speak very clearly to the facts of the case. Your attorney can speak during the support of release time and can also clear up any of the misinformation the AAG may have created or articulated during the earlier questioning. You should strategize with your attorney before the hearing. It is really important that you and all of your supporters (attorney included) are on the same page. You should have discussed your ideas and speculations about the proceedings with your support group before the hearing.

Some other important things to focus on:

- The week before the hearing try to exercise daily (walks are good), eat a well balanced diet, and get plenty of sleep.
- Remember body language counts. Look the board members and AAG in the eyes. Hold your head high. Sit upright. Speak clearly. Speak with confidence.
- Understand that empathy goes a long way.
- Make sure you have said out loud many times before the hearing the details of the crime. Many people have never spoken out loud what they did that landed them in prison, it is really important that you are able to effectively articulate what happened. Being uncomfortable with talking about the crime can be interpreted as minimization, so prepare yourself well.
- Focus on telling them the story of the person you have become.
- The AAG or PB member may use language you are not very familiar with. Some examples: Please explain your ***relapse prevention plan***; or please describe your ***support system upon release.*** You may have not had access to the programs that help you develop a relapse prevention plan or your support system. We encourage you to work with a counselor in the prison to develop a relapse prevention plan and a support plan. You should spend time lining up work, education, living arrangements, and therapy in the free world. You should be able to articulate all of this to the panel.

Please note: AFSC staff and volunteers may be attending some public hearings throughout the next many months. So, if some strangers show up to the hearing, it may be us.

IX. If Parole is Approved

- Until your actual release, you will still be in prison. Respect the people around you who are not looking forward to a pending release. Staying quiet about your parole may be a wise decision.
- If you are going to a private home placement, notify the people who live there that a parole agent will be visiting.
- Remain ticket-free. Your parole can be revoked.
- Follow through on your post-release arrangements. Getting out is only the first step in making the transition to the free world. Work hard on your rehabilitation, training, and employment.
- Remember that parole is only a conditional release. You are responsible for following your parole conditions and reporting to your parole agent. A parole violation could get you sent back to prison.
- The board may require you to complete some sort of programming or placement in the world before you're freed on parole. Some of these programs may be frustrating or restrictive, but it is important that you participate and complete them—everything you've worked for rides in the balance.
- For more information, see our pamphlet, "Thoughts on Getting Out."

X. If Parole is Denied

Was the denial appropriate? Be honest with yourself. The continuance may be warranted under the following circumstances:

- If your parole guideline score is not in the high probability range, you must work to improve it. You can do this by avoiding misconduct tickets and improving your program and work performance.
- If you have not completed all R&GC recommendations, kite for services. We realize that many of you are waiting on SOP or AOP. While there is nothing we can do to help you jump places in the waiting list line, it is important that you remain misconduct-free and get to a level I or level II facility (where most of these groups are offered).
- If you have a history of substance abuse and/or sex offenses and your parole plan does not include any follow-up programming, work to locate such programming before your next interview.
- If your proposed home placement is not adequate, work to located an alternate placement, or request a commercial placement.

- If you have never been gainfully employed in your life, and you still do no have a GED and/or vocational training, get busy. Complete your GED and/or request placement in a vocational training program. Then work at it.
- If you did not complete your R&GC recommendations because the programming was not available:
    - Immediately request transfer to an institution where the programming you need is offered.
- If your parole was denied, yet all R&GC recommendations are complete, your parole guideline score is in the high probability range, all program reports are positive, *and* your parole plan is reasonable, write to us with the following documents:
    - Pre-Sentence Investigation Report
    - PER
    - Parole Guideline Score Sheet
    - Program Termination Reports
    - COMPAS test results
    - Parole Board decision
    - A summary of your parole plans
    - A summary of the parole board interview
- Stay busy. Focus on positive activities. Associate with positive people. Try to remain optimistic. Do not give up. Continue to take advantage of all available programming. Think about the parole interview. What went well and what might have been better? Decide how you might do a better job in the next interview.
- Please note that in cases where parole denial was unjustified or arbitrary, we know of very few instances where the above actions led to immediate success.
- Grievances: According to Policy Directive 06.05.100, *Decisions by the Parole Board, including the scoring weights and ranges utilized in developing parole guideline scores, are not grievable. However, a prisoner may challenge the calculation of his/her parole guideline score, including the accuracy of the information used in calculating the score, by filling a grievance pursuant to PD 03.02.130…"* See subsections Z and EE for more detail.

APPENDICES: IMPORTANT GENERAL INFORMATION

POLICIES, DOM'S, AND ADMINISTRATIVE RULES

We cannot stress enough how important it is for you to go to the library and read the relevant Policy Directives, Administrative Rules, and Director's Office Memoranda for the parole process. Listed below is a non-exhaustive list of those for 2010 (the DOM's will certainly change, others may be updated):

- Policy Directives 06.01.110 through 06.06.120 all relate to parole in some form or fashion, but you should especially make sure you review and understand PD's 06.05.100 (Parole Guidelines), 06.05.103 (PER/Lifer Reports), 06.05.104 (Parole Process), and 06.05.130 (Community Resources).
- The current DOM's that relate to parole are 2010-1, 2010-5, and 2010-11.
- Administrative Rules R 791.7715 and R 791.7716 are important.

HELPFUL ADDRESSES

Parole Board: Grandview Plaza, P.O. Box 30003, Lansing, MI 48909

State Senators and Representatives: State Capitol, Lansing, MI 48909

MDOC Director: Grandview Plaza, P.O. Box 30003, Lansing, MI 48909

Legislative Corrections Ombudsman: P.O. Box 30036, 124 W. Allegan, Lansing, MI 48909

American Friends Service Committee: 1414 Hill St., Ann Arbor, MI 48104

MI-CURE: P.O. Box 2736, Kalamazoo, MI 49003-2736

HELPFUL RESOURCES

Here are some booklets and pamphlets we have on hand that we'll send out upon request:

- **Thoughts On Getting Out** – A few things to consider if you are about to be released from prison, or if you love someone who is about to be released.
- **Advocating With the Incarcerated in Michigan** – A collection of lessons we've learned about advocating within the MDOC.
- **To the Imprisoned Sex Offender**
- **To the Family Member or Friend of a Sex Offender**
- **Advocating with the Incarcerated Sex Offender**

RECOMMENDED BOOKS

The following list of recommended books may be available in your library or on Inter-Library Loan (if your facility participates in the ILL).

Title	Author
Go Tell It on the Mountain	James Baldwin
The Courage to Heal: A Guide for Women Survivors of Child Sex Abuse	Ellen Bass & Laura Davis
How Can I Stop? (sex offenders)	Laren Bays & Robert Freeman-Longo
Co-Dependent No More: How to Stop Controlling Others and Start Caring for Yourself	Melody Beattie
Beyond Co-Dependency: And Getting Better All the Time	Melody Beattie
It Will Never Happen to Me (children of alcoholics)	Claudia Black
Broken Boys/Mending Men: Recovery from Childhood Sexual Abuse	Stephen Grubman-Black
Creating Love	John Bradshaw
Family Secrets: What You Don't Know Can Hurt You	John Bradshaw
Healing the Shame that Blinds You	John Bradshaw
Why I Love Black Women	Michael Eric Dyson
Obsessive Love: When It Hurts Too Much to Let Go	Susan Forward
Men Who Hate Women and the Women Who Love Them	Susan Forward
Toxic People: 10 Ways of Dealing with People Who Make Your Life Miserable	Lillian Glass
Getting the Love You Want: A Guide for Couples	Harville Hendrix
Keeping the Love You Find: A Guide for Singles	Harville Hendrix
Sisters of the Yam: Black Women and Self-Recovery	Bell Hooks
I'll Quit Tomorrow: A Practical Guide to Alcoholism Treatment	Vernon Johnson
Fire in the Belly: On Being a Man	Sam Keen
The Gendered Society	Michael Kimmel
The History of Masculinity	Michael Kimmel
How to Forgive When You Can't Forget	Charles Klein
Listening to Prozac (depression and medication)	Pete Kramer
The Dance of Anger: A Woman's Guide to Changing Patterns of Intimate Relationships	Harriet Lerner
The Dance of Intimacy: A Woman's Guide to Courageous Acts of Change	Harriet Lerner
The Dance of Deception: Pretending & Truth-Telling in Women's Lives	Harriet Lerner
When Anger Hurts (family issues)	Matthew & Judith McKay
Makes Me Wanna Holler	Eric Payne
The Road Less Traveled: Psychology of Love, Traditional Values, and Spiritual Growth	M. Scott Peck
Unfinished Business (Women & Depression)	Maggie Scarf
Intimate Partners: Patterns in Love & Marriage	Maggie Scarf

How to Prepare for a Parole Hearing

State Appellate Defender Office

- ☐ **#1 tip: Act as if you are parolable TODAY!**
- ☐ Stay busy with positive activities. Some options:
  - o Voluntary Programs Offered by the MDOC. These are not offered at every facility, so check with your counselor whether these, or others, are offered:
    - InsideOut Dad
    - Parenting Inside Out
    - Family Preservation
    - Faith and Character Prison
    - Substance Abuse Education
    - Alcoholics Anonymous
    - Narcotics Anonymous
  - o Referral-Based Programming. While most of these may not be available if intake did not recommend it, you should still ask whether you could take one, or more:
    - Thinking for Change
    - Moving On (WHV)
    - Voices (WHV)
    - Cage Your Rage
    - Seeking Safety (WHV)
    - Residential Substance Abuse Program (RSAT)
    - Substance Abuse Outpatient
    - Violence Prevention Program
    - Domestic Violence- BRIDGES
    - Domestic Violence- MERIDIANS (WHV/SAI)
    - Sex Offender Program
    - Pre-Release
  - o Community Volunteer Programming: Various institutions have volunteers from the community who offer classes and programs. Ask if any are available at your institution.
  - o Vocational Education: I.e., Food Tech, Woodworking, Computer Programming.
  - o Hobbycraft
  - o Exercise
  - o Religious services
  - o Self-Help books: Keep track of what you read and what you are learning.
- ☐ Education: If you do not have a GED/high school diploma, get into school to obtain your GED.
- ☐ Work Assignments:
  - o Take jobs and do well at them.
  - o Do not refuse any job assignment. Remember, if you refuse a job assignment, you could get 00 status, which will reflect poorly during any potential Board hearing.
  - o While on job assignments, do as you are told and if you feel you have a problem, follow the order, and then grieve it if you feel it still needs to be resolved.
  - o Ask your supervisor on the work assignment for a work report, if you are not getting them regularly.

- ☐ Block reports: If your facility still does block reports, and you have a good relationship with staff, ask for block reports on a regular basis.
- ☐ Document, document, document: Collect and keep safe all of your good and bad records from while you were in prison. Examples include:
    - Misconducts
    - Work/block reports
    - Pictures from visits
    - Certificates (program/vocational training completion)
    - Psychological counseling records
    - Security classifications (to Ad. Seg. and annual Screens)
- ☐ Get your security level down: If you are in Level IV or V for disciplinary reasons, it is past time for you to start working your way down to a lower security level. The Board, or a re-sentencing judge, can look at what you have done with your time inside. If you have a lot of misconducts, it is time to start turning things around and show the Board, or a judge, that you have made changes and can be trusted to be released.
- ☐ Avoid Negative Behavior:
    - Remember, you are going to be confronted with things throughout your prison experience that may put you in a conflicting position, and you should be learning how to deal with conflict in good and constructive ways.
    - Avoid sucker stores and gambling tables and other behaviors that could get you tickets.
- ☐ Reflect:
    - On the crime for which you are convicted, your role, its effect on the victims, etc.
    - The Board will want to hear why you will not commit any crime again. Statements of remorse and personal insight about who you were then compared with who you are now are good ways to discuss this.
    - Your prior criminal history, if any. How can you avoid that behavior/lifestyle if you were to be paroled?
    - If you have a substance abuse history, demonstrate insight as to why you were using, and how you can avoid using if released.
- ☐ Mentors: Contact people in the community who are leaders or have religious affiliations similar to yourselves or positive peer correspondence. Create positive appropriate mentor relationships with non-prisoners.
- ☐ Parole Plan: Start thinking and planning:
    - Who would you live with?
    - Do you have any potential job leads? School?
    - What skills have you developed while in prison?
    - What type of programming would you seek on the outside? AA? NA? Sex Offender programming? Anger Management?
- ☐ Bottom line: Do good time, and prove through your actions you can be trusted to parole.

Parole Board Interview Preparation

Be Prepared to Address the Following Topics and Questions:

State the crimes you are serving and your sentence

Admission Statement:
With reference to the offense behavior, what did you *physically* do to the victim(s).

Details of your Offenses:
Describe the circumstance of the crime with respect to what YOU did (this should be detailed and consistent with the facts as reported in your PSI and focus on YOUR OWN actions; not the victim's behavior during the time of the offenses).

Did you know what you were doing was wrong?

Insight: Explain "WHY" you committed the crimes?

Empathy: Describe how you *physically* and *emotionally* harmed the victim(s)?

How do you feel about your criminal conduct now? Write a statement of Remorse that includes your awareness of the harm caused to the victims, their family and others affected by the crime.

Insight: What aspect of your personality and experiences growing up do you believe contributed to your acting out behavior?

Rehabilitation: What have you learned during your confinement and how have you changed?

What were the emotions and feelings connected with the sexual conduct?

Recidivism: What are your internal and external risk factors and list the intervention skills will you will use to better manage your emotions and control any future distorted thinking?

Describe your parole plans and the programs you will participate in to address your identified needs. Provide a final statement of remorse.

RE-ENTRY CHECKLIST

GOALS	BEGUN	IN PROCESS	COMPLETED	NOTES	CONTACTS
Housing					
Mental Health Services __contact counselor __schedule appointment					
AA/NA/ Anonymous Services __contact sponsor __create meetings schedule					
Employment __ contact potential employers __ interview skills __ arrange transportation					
Health Care Benefits					
Health Care __ complete physical __ medications __ dental __vision					
Transportation __ bicycle maintenance __ bus tickets/schedules __ driver contacts					
Food/Clothing/Phone __ bridge card– *food stamps* __ safe link cell phone					
Income Support/Benefits					
Documents __ state ID __ driver license __ social security card __birth certificate					
Life Skills __ computer training					
Education __ PELL grants					
Career Goals __contact professionals __research career path __intern					
Money Management __ open bank account __ create budget __ investment/savings					
Community Service __ partner w/organization __ schedule volunteer times					

Employment Letters: The objective is to show the candidate has a meaningful opportunity for employment or opportunity for interview upon receiving a parole.

Outline for the Employment Letter

Note: Use company letterhead or prepare your own header using your name, address and contact numbers centered at the top of the letter.

Date

Tom Combs, Chairman
Office of the Parole Board
Grandview Plaza Building
206 E Michigan Avenue
Lansing, Michigan 48933

Re: Client
MDOC # xxxxxx

Dear Mr. Combs:

Paragraph 1: Describe who you are and your relationship to the candidate. Provide information about your company and the nature of your business. If appropriate you could indicate how long the company has been an established business and the type(s) of client(s) you service or the services you offer.

Paragraph 2: Clarify if you are offering a job or an opportunity for interview. Indicate the title of the position, whether it would be full-time or part-time and the hourly rate or salary. Indicate whether the position offers a career track or training, if applicable and when the job is available.

Closing Paragraph: Indicate that you understand [prisoner's name] will be required to report to authorities and that you will offer the support and cooperation necessary as an employer to verify work hours or schedule and to assist during the parole supervision period.

Complimentary Closing: Sincerely or Respectfully submitted,

Signature Line

For a review please E-mail the draft of your employment letter to attoney email or fax to attorney at fax #xxx.xxx.xxxx.

Template for a Letter in Support of Parole

Purpose: to show that a meaningful and pro-social network of family and friends exist in the community who are willing and able to offer assistance to the candidate during parole.

The suggested format for your letter is below:

Your Name
Address Line
City, State Zipcode
Telephone No:
Email address:

Date

Tom Combs, Chairman
Office of the Parole Board
Grandview Plaza Building
206 E Michigan Avenue
Lansing, Michigan 48933

Re: Client Name
MDOC # XXXXXX

Salutation: Dear Mr. Combs:

Paragraph 1: Describe who you are and your relationship to the candidate. Provide a brief statement about the support and/or resources that you are able to provide i.e., housing, family support, employment, spiritual support, financial help, transportation, friendship and mentoring. They want to know that the client is accountability to ther people if released.

Paragraph 2: Observations and Remarks – Indicate to what extent the candidate has maintained contact with you during incarceration and describe any positive change, progress and/or growth in maturity you have observed. If possible, provide examples which suggest growth in insight regarding the thinking and behavior that led to the criminal conduct, remorse, regret and acceptance of responsibility the crime.

[Please avoid statements about guilt, innocence, the prisoner's role in the crime, and whether enough time has been served.]

Closing Paragraph - Please consider my letter in support of a parole. Thank you for your time and consideration.

Sincerely,

YOUR NAME

STEP ONE: Send a draft of your letter to Attorney via email (Attorney@gmail.com) or fax it to (XXX-XXX-XXXX).

STEP TWO: ***Once the letter has been reviewed and finalized -- Sign three originals and then send one (1) letter to the parole board, send one (1) to the prisoner - include the MDOC # on the envelope and send one (1) to Attorney***

If you have any questions you can contact Attorney via email at email or fax at xxx-xxx-xxxx.

Michigan Appellate Assigned Counsel System

MAACS Annual Orientation

October 14, 2015

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

This training event is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

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)