

## Practice Standards

December, 2012

### Section VI, Qualifications and Duties of Counsel

#### 3. Counsel's Interview with Client

- A. Preparing for the Interview. After being assigned to a case and prior to conducting the initial interview, the attorney should, where possible, do the following:
- a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and,
  - b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available. In addition, where the client is incarcerated, the attorney should:
    - i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
    - ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and,
    - iii. be familiar with any procedures available for reviewing the bail determination.
- B. Conducting the Interview. The attorney should, where possible, do the following:
- a. The purpose of the initial interview is to acquire information from the client concerning the case, the client, and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, disability, or different cultural backgrounds, can be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, and prison records, or other records as may be pertinent.
  - b. Counsel shall complete the interview form provided by the Office of the State Public Defender for use at the initial interview. Information that should be acquired from the client includes, but is not limited to, the following:
    - i. The client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and, if so, whether a statement given; client's physical and mental status at the time any statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or bodily fluids;
    - ii. The names and custodial status of all co-defendants and the name of counsel for co-defendants, if counsel has been appointed or retained;
    - iii. The names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the State, which counsel should take steps to insure is preserved;

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- iv. The client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status if applicable, employment record and history, and social security number;
  - v. The client's physical and mental health, educational, vocational and armed services history;
  - vi. The client's immediate medical needs including the need for medication, detoxification programs and/or substance abuse treatment;
  - vii. The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation or parole and the client's past or present performance under supervision;
  - viii. The names of individuals or other sources that counsel can contact to verify the information provided by the client; counsel should obtain the permission of the client before contacting these individuals;
  - ix. For clients who are incarcerated, the ability of the client to meet any financial conditions of release;
  - x. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records of treatment or testing for mental health or developmental disability; and
  - xi. The client's citizenship status.
- C. Information to be provided to the client includes, but is not limited to, the following:
- a. a general overview of the procedural progression of the case, where possible;
  - b. an explanation of the charges and the potential penalties;
  - c. an explanation of the attorney-client privilege and instructions not to talk to anyone, including prisoners, about the facts of the case without first consulting with the attorney;
  - d. the names of any other persons who may be contacting the client on behalf of counsel;
  - e. any potential impact of Federal prosecution;
  - f. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
  - g. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;
  - h. a warning of the dangers with regard to the search of a client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

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D. Counsel must be alert to potential issues concerning the client's incompetency, mental illness or developmental disability. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or developmental disability, and should become familiar with the procedures related to the evaluation and to subsequent proceedings. Also:

- a. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals information that presents genuine issues of competency;
- b. Where appropriate, counsel should advise the client of the potential consequences of raising questions of competency, as well as the defense of mental disease and defect, both as it relates to guilt and to sentencing. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client. Counsel should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. Counsel has an issue to raise legitimate issues of competency even over the objection of the client.

E. If special conditions of release have been imposed, such as random drug screening, or other orders restricting the client's conduct have been entered, such as a no contact order, the client should be advised of the legal consequences of failure to comply with such conditions. In the event the court orders routine contact with the attorney is a condition of release, the attorney shall not waive attorney-client privilege as to contact with the client.

F. If counsel is meeting with the client before his assignment to the case pursuant to these Standards, counsel should only obtain information necessary to advise the client concerning the initial hearing and advise the client not to discuss confidential information concerning the merits of the case.