

## **APPELLATE AND POST-CONVICTION REPRESENTATION**

### **Standard 1: Role of Appellate Defense Counsel**

The paramount obligation of appellate criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the appellate process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court. Trial counsel must advise the client of his or her right to appeal and any limits on that right. If the client chooses to proceed with an appeal, even if the attorney believes that the appeal is without merit or is not cognizable, trial counsel will assure that a Notice of Appeal is filed. If the client wishes to proceed with the appeal, against the advice of counsel, counsel should present the case, so long as such advocacy does not involve deception of the court.

### **Standard 2: Identification of issues on appeal**

In selecting issues to be presented on appeal, counsel should:

- (a) conduct a thorough review of the trial transcript, the pleadings, and docket entries in the case;
- (b) investigate potentially meritorious claims of error not reflected in the trial record when he or she is informed or has reason to believe that facts in support of such claims exist;
- (c) assert claims of error that are supported by facts of record that will benefit the defendant if successful, that possess arguable legal merit, and that should be recognizable by a practitioner familiar with criminal law and procedure who engages in diligent legal research;
- (d) not hesitate to assert claims that may be complex, unique, or controversial in nature, such as issues of first impression or arguments for change in the existing law;
- (e) inform the client when counsel has decided not to raise issues that the client desires to be raised and the reasons why the issues were not raised; and
- (f) consider whether there are federal constitutional claims that, in the event that relief is denied in the state appellate court, would form the basis for a

writ of habeas corpus in federal district court. Such claims should raise and argue the federal constitutional claims, unless counsel concludes that there is a tactical basis for not including such claims and the client assents.

### **Standard 3: Diligence and Accuracy**

In presenting the appeal, counsel should:

- (a) be diligent in perfecting appeals and expediting prompt submission to the appellate court;
- (b) be accurate in referring to the record and the authorities upon which counsel relies in the presentation to the court of briefs and oral argument; and
- (c) not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

### **Standard 4: Duty to Meet With Trial Lawyers**

In preparing the appeal, counsel should consult trial counsel in order to assist appellate counsel in understanding and presenting the client's issues on appeal.

### **Standard 5: Duty to Confer and Communicate With Client**

In preparing and processing the appeal, counsel should:

- (a) assure that the client is able to contact appellate counsel telephonically during the pendency of the appeal including arrangements for the acceptance of collect telephone calls. Promptly after appointment or assignment to the appeal, counsel shall provide advice to the client, in writing, as to the method(s) which the client can employ to discuss the appeal with counsel;
- (b) discuss the merits, strategy, and ramifications of the proposed appeal with each client prior to the perfection and completion thereof. When possible, appellate counsel should meet in person with the client, and in all instances, counsel should provide a written summary of the merits and strategy to be

- employed in the appeal along with a statement of the reasons certain issues will not be raised, if any. It is the obligation of the appellate counsel to provide the client with his or her best professional judgment as to whether the appeal should be pursued in view of the possible consequences and strategic considerations;
- (c) inform the client of the status of the case at each step in the appellate process, explain any delays, and provide general information to the client regarding the process and procedures that will be taken in the matter, and the anticipated timeframe for such processing;
  - (d) provide the client with a copy of each substantive document filed in the case by both the prosecution and defense;
  - (e) respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval; and
  - (f) promptly and accurately inform the client of the courses of action that may be pursued as a result of any disposition of the appeal and the scope of any further representation counsel will provide.

**Standard 6: Duty to Seek Release during Appeal**

Appellate counsel should file appropriate motions seeking release pending appeal when the granting of such motions is reasonably possible.

**Standard 7: Responsibilities in “Fast Track” Appeals**

If the conviction qualifies for “fast track” treatment under NRAP 3C, counsel shall fulfill the responsibilities set forth in the rule. In preparing the “fast track” statement, counsel should:

- (a) order a rough draft of those portions of the transcript provided for in NRAP 3C(d) in all cases in which trial counsel is not handling the appeal and in all other cases in which information from the proceedings is necessary for a fair determination of the issues to be raised on appeal;

- (b) thoroughly research the issues in the case and shall set forth all viable issues in the “fast track” statement provided for by NRAP 3C(e); and
- (c) consult with the client as to which issues should be presented in the statement.

**Standard 8: Post-Decision Responsibilities**

If the decision of the appellate court is adverse to the client, appellate counsel should:

- (a) promptly inform the client of the decision and confer with the client with regard to the availability of rehearing or en banc reconsideration and the benefits or disadvantages of filing such a motion;
- (b) file a Motion for Rehearing and/or Request for en banc reconsideration if grounds for such a motion and/or request exist;
- (c) advise the client whether a petition for writ of certiorari to the United States Supreme Court is warranted and determine whether such a petition will be filed;
- (d) promptly advise the client of any remedies that are available in state or federal court for post-conviction review and shall advise the client of the applicable statute of limitations for filing for such relief;
- (e) advise the client of any claims such as ineffective assistance of counsel that may be available to the client but that will not be pursued by appellate counsel;
- (f) provide the client with any available forms for post-conviction relief and appointment of counsel; and
- (g) cooperate with the client and with post-conviction counsel in securing the trial and appellate record and investigation of potential claims for post-conviction relief.

**Standard 9: Post-Conviction Representation**

Counsel appointed to represent a defendant in post-conviction proceedings should:

- (a) assure that the client is able to contact post-conviction counsel telephonically during the pendency of the appeal including arrangements for the acceptance of collect telephone calls. Promptly after appointment or assignment to the post-conviction case, counsel shall provide advice to the client, in writing, as to the method(s) that the client can employ to discuss the post-conviction proceeding with counsel;
- (b) consult with trial/appellate counsel and secure the entire trial and appeal file;
- (c) seek to litigate all issues, whether or not previously presented, that are arguably meritorious;
- (d) maintain close contact with the client and consult with the client on all decisions with regard to the content of any pleadings seeking collateral or post-conviction relief prior to the filing of any petition for post-conviction relief. When possible, post-conviction counsel should meet in person with the client and in all instances, counsel should provide a written summary of the merits and strategy to be employed in the post-conviction proceeding along with a statement of the reasons certain issues will not be raised, if any;
- (e) investigate all potentially meritorious claims that require factual support;
- (f) secure the services of investigators or experts where necessary to develop claims to be raised in the post-conviction petition;
- (g) raise all federal constitutional claims, along with appropriate citations, that are arguably meritorious; and
- (h) advise the client of remedies that may be available should post-conviction relief not be granted, including appeal from the denial and federal habeas corpus along with any applicable time limits for seeking such relief. Post-conviction counsel shall advise the client in writing if counsel will not be representing the client in any subsequent proceedings and shall provide advice on the steps that must be taken and the time limits that are applicable to appeals or the seeking of relief in the federal courts.

## **FELONY AND MISDEMEANOR TRIAL CASES**

### **Standard 1: Role of Defense Counsel**

The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court.

### **Standard 2: Education, Training, and Experience of Defense Counsel**

- (a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the courts of Nevada. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be informed of the practice of the specific judge before whom a case is pending.
- (b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation and should move to be relieved as counsel should determine at a later point that he or she does not possess sufficient experience or training to handle the case assigned.

### **Standard 3: Adequate Time and Resources**

Counsel has an obligation to make available sufficient time, resources, knowledge, and experience to afford competent representation of a client in a particular matter before agreeing to act as counsel or accepting appointment. Counsel must maintain an appropriate, professional office in which to consult with clients and witnesses, and must maintain a system for receiving collect telephone calls from incarcerated clients.

#### **Standard 4: Initial Client Interview**

- (a) Preparing for Initial Interview: Prior to conducting the initial interview, the attorney should:
1. be familiar with the elements of each offense charged and the potential punishment;
  2. obtain copies of relevant documents that are available, including copies of any charging documents, recommendations, and reports made by agencies concerning pretrial release, and law enforcement reports;
  3. be familiar with legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
  4. be familiar with the different types of pretrial release conditions the court may set; and
  5. be familiar with any procedures available for reviewing the judge's setting of bail.
- (b) Timing of the Initial Interview: Counsel should conduct the initial interview with the client as soon as practicable and sufficiently before any court proceeding so as to be prepared for that proceeding. When the client is in custody, counsel should attempt to conduct the interview within 48 hours of appointment to the case. The initial interview should be conducted in a confidential setting.
- (c) Contents of the Initial Interview: The purpose of the initial interview is both to inform the client of the charges/penalties and to acquire information from the client concerning pretrial release. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy are overcome. Information that counsel should consider acquiring from the client includes, but is not limited to:
1. the client's ties to the community, including the length of time in the community, family relationships, immigration status, and employment record and history;
  2. the client's physical and mental health, education, and armed services record;

3. the client's immediate medical needs;
  4. the client's criminal history and a determination of whether the client has other pending charges or is on supervision;
  5. the ability of the client to meet any financial conditions of release; and
  6. sources of verification (counsel should obtain permission from the client before contacting such sources).
- (d) The following information should be provided to the client in the initial interview:
1. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
  2. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and an explanation that the client should not make any statements regarding the offense;
  3. an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;
  4. the charges and the potential penalties;
  5. a general procedural overview of the progression of the case;
  6. how and when counsel can be reached;
  7. when counsel will see the client next;
  8. realistic answers, where possible, to the client's most urgent questions; and
  9. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs, e.g., medical or mental health attention, contact with family or employers.

#### **Standard 5: Pretrial Release Proceedings**

When a client is in custody, counsel should explore with the client the pretrial release of the client under the conditions most favorable to the client and attempt to secure that release. Counsel should:



- (a) present to the appropriate judicial officer information about the client's circumstances and the legal criteria supporting release. Where appropriate, counsel should make a proposal concerning conditions of release that are least restrictive with regard to the client. Counsel should arrange for contact with or the appearance of parents, spouse, relatives, or other persons who may take custody of the client or provide third-party surety;
- (b) consider pursuing modification of the conditions of release under available procedures when the client is not able to obtain release under the conditions set by the court; and
- (c) explain to the client and any third party the available options, procedures, and risks in posting security if the court sets conditions of release.

**Standard 6: Preliminary Hearings/Grand Jury Representation**

- (a) Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted timely unless there are strategic reasons for not doing so.
- (b) In preparing for the preliminary hearing, the attorney should consider:
  1. the elements of each offense charged;
  2. the law for establishing probable cause;
  3. the factual information that is available concerning probable cause;
  4. the tactics of calling witnesses or calling the defendant as a witness and the potential for later use of the testimony; and
  5. the tactics of proceeding without full discovery.
- (c) Counsel should meet with the client prior to the preliminary hearing. The client has the sole right to waive a preliminary hearing. Counsel must evaluate and advise the client regarding the consequences of such waiver and the tactics of full or partial cross-examination.
- (d) Where counsel becomes aware that his or her client is the subject of a grand jury investigation, appointed counsel should consult with the client to discuss the grand jury process, including the advisability and ramifications of the client testifying. Counsel should examine the facts in the case and determine whether the prosecution has fulfilled its obligation under Nevada law to

present exculpatory evidence and should make an appropriate record in that regard. Upon return of an indictment, counsel should determine if proper notice of the proceedings was provided and should obtain the record of the proceeding to determine if procedural irregularities or errors occurred that might warrant a challenge to the proceedings such as a writ of habeas corpus or a motion to quash the indictment.

**Standard 7: Case Preparation and Investigation**

- (a) Counsel should conduct, or secure the resources to conduct, a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.
- (b) Counsel should:
1. obtain and examine all charging documents, pleadings, and discovery;
  2. research and review the relevant statutes and caselaw to identify elements of the charged offense(s); defects in the prosecution such as statute of limitations or double jeopardy; and available defenses and required notices of those defenses;
  3. conduct an in-depth interview of the client to assist in shaping the investigation;
  4. attempt to locate all potential witnesses and have them interviewed. (If counsel conducts a witness interview, counsel should do so in the presence of a third person who can be called as a witness);
  5. request and secure discovery including exculpatory/impeaching information; names and addresses of prosecution witnesses and their prior statements and criminal records; the prior statements of the client and his or her criminal history; all papers, tapes, or electronic recordings relevant to the case; expert reports and data upon which they are based, statements of co-defendants, an inspection of physical evidence, all documents relevant to any searches conducted, 911 tapes

- and dispatch reports, mental health, drug treatment, or other records of the client, victim, or witnesses and records of police officers as appropriate;
6. inspect the scene of the offense as appropriate; and
  7. obtain the assistance of such experts as are appropriate to the facts of the case.

**Standard 8: Pretrial Motions and Writs**

- (a) Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief, which the court has discretion to grant.
- (b) The decision to file pretrial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of the case. Among the issues that counsel should consider addressing in a pretrial motion are:
  1. the pretrial custody of the client;
  2. the constitutionality of the implicated statute(s);
  3. any defects in the charging process or the charging document;
  4. severance of charges or defendants;
  5. discovery issues;
  6. suppression of evidence or statements;
  7. speedy trial issues; and
  8. evidentiary issues.
- (c) Counsel should determine whether a pretrial writ should be filed challenging the determination that probable cause exists. The decision whether to file a pretrial writ should be made based upon an examination of the preliminary hearing or grand jury transcripts. If transcripts are not available at the time of arraignment, appropriate steps should be taken to secure an extension of time to prepare the writ after the transcripts are received pursuant to NRS 34.700. Counsel shall advise the client as to the effect of filing a pretrial writ on his speedy trial rights and provide an evaluation of the likelihood of

success to assist in the decision, which rests with the client, after consultation with counsel.

- (d) Counsel should only withdraw or decide not to file a motion after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights against later claims of waiver or procedural default.
- (e) Motions should be filed in a timely manner and with an awareness of the effect of filing the motion on the defendant's speedy trial rights. When an evidentiary hearing is scheduled on a motion, counsel's preparation for the hearing should include:
  - 1. investigation, discovery, and research relevant to the claim advanced;
  - 2. subpoenaing of all helpful evidence and witnesses; and
  - 3. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.
- (f) Requests or agreements to continue a trial date shall not be made without consultation with the client.
- (g) Motions and writs should include citation to applicable state and federal law in order to protect the record for collateral review in federal courts.

**Standard 9: Plea Negotiations**

- (a) Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.
- (b) Counsel should:
  - 1. with the consent of the client explore diversion and other informal and formal admission or disposition agreements with regard to the allegations;
  - 2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
  - 3. keep the client fully informed of the progress of the negotiations;

4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers;
  5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and
  6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.
- (c) In developing a negotiation strategy, counsel must be completely familiar with:
1. Concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to: not to proceed to trial on the merits of the charges; to decline from asserting or litigating any particular pretrial motions; an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity.
  2. Benefits the client might obtain from a negotiated settlement, including, but not limited to, an agreement: that the prosecution will not oppose the client's release on bail pending sentencing or appeal; that the defendant may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of the conviction; to dismiss or reduce one or more of the charged offenses either immediately or upon completion of a deferred prosecution agreement; that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct; that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range; that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the Division of Parole and Probation, a specified position with respect to the sanction to be imposed on the client by the court; and that the defendant will receive, or the prosecution will recommend, specific

benefits concerning the accused's place and/or manner of confinement and/or release on parole.

- (d) In the decision-making process, counsel should:
1. inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain advantages, disadvantages, and potential consequences of the agreement; and
  2. not attempt to unduly influence the decision, as the decision to enter a plea of guilty rests solely with the client. Where counsel reasonably believes that acceptance of a plea offer is in the best interest of the client, counsel should advise the client of the benefits of this course of action.
- (e) Prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:
1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary, and intelligent;
  2. make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences the client will be exposed to by entering the plea; and
  3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense.
- (f) After entry of the plea, counsel should:
1. be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for the client's release on bail pending sentencing; and

2. make every effort to review and explain the plea proceedings with the client and to respond to any client questions and concerns.

**Standard 10: Trial Preparation**

- (a) The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.
- (b) Where appropriate, counsel should have the following materials available at the time of trial:
  1. copies of all relevant documents filed in the case;
  2. relevant documents prepared by investigators;
  3. voir dire questions;
  4. outline or draft of opening statement;
  5. cross-examination plans for all prospective prosecution witnesses;
  6. direct examination plans for all prospective defense witnesses;
  7. copies of defense subpoenas;
  8. prior statements of all prosecution witnesses (e.g., preliminary hearing/grand jury transcripts, police reports/statements);
  9. prior statements of all defense witnesses;
  10. reports from all experts;
  11. a list and copies or originals of defense and prosecution exhibits;
  12. proposed jury instructions with supporting authority;
  13. copies of all relevant statutes or cases; and
  14. outline or draft of closing argument.
- (c) Counsel should be fully informed as to the rules of evidence and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.
- (d) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., admissibility of evidence, use of prior convictions of defendant) and, where appropriate, counsel should prepare motions and memoranda in support of the defendant's position.

- (e) Throughout the trial process, counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all discussions and rulings be made on the record.
- (f) Counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated or is not able to secure appropriate clothing for trial, counsel shall arrange for the provision of appropriate clothing for the client to wear in the courtroom.
- (g) Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek an order to facilitate conferences with the client.
- (h) If, during the trial, it appears to counsel that concessions to facts or offenses are strategically indicated, such concessions may only be made in consultation with, and with the consent of, the client.
- (i) Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

#### **Standard 11: Voir Dire and Jury Selection**

In preparing for and conducting jury selection, counsel should:

- (a) be familiar with the law governing selection of the jury venire. Counsel should also be alert to any potential legal challenges to the composition or selection of the venire;
- (b) be familiar with the local practices and the individual trial judge's procedures for selecting a jury and should be alert to any potential legal challenges to these procedures;
- (c) seek access to any jury questionnaires that have been completed by jurors and should petition the court to use a special questionnaire when appropriate due to unique issues in the case;
- (d) should seek attorney-conducted voir dire and should develop, support, and file written voir dire questions if the court restricts attorney-conducted voir dire;



- (e) consider whether additional peremptory challenges should be requested due to the circumstances present in the case;
- (f) consider whether sensitive or unusual facts or circumstances of the case support sequestered voir dire of jurors;
- (g) consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client; and
- (h) object to and preserve all issues relating to the unconstitutional exclusion of jurors by the prosecutor.

**Standard 12: Defense Strategy**

Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

**Standard 13: Trial**

- (a) Counsel should anticipate weaknesses in the prosecution's proof and consider appropriate motions for judgment of acquittal at all appropriate stages of the litigation.
- (b) Counsel should consider the strategic advantages and disadvantages of entering into any stipulations.
- (c) In preparing for cross-examination, counsel should:
  1. be prepared to question witnesses as to the existence of prior statements that they may have made or adopted;
  2. consider the need to integrate cross-examination, theory, and theme of the defense;
  3. avoid asking unnecessary questions that may hurt the defense case;
  4. anticipate witnesses that the prosecution may call in its case-in-chief and on rebuttal;

5. create a cross-examination plan for all anticipated witnesses;
6. review all prior statements and testimony of the witnesses in order to be aware of all inconsistencies or variances;
7. review relevant statutes, regulations, and policies applicable to police witnesses; and
8. consider a pretrial motion or voir dire examination of prosecution experts to determine qualifications of the expert or reliability of the anticipated opinion.

**Standard 14: Presenting the Defendant's Case**

- (a) Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.
- (b) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.
- (c) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.
- (d) In preparing for presentation of a defense case, counsel should, where appropriate, do the following:
  1. develop a plan for direct examination of each potential defense witness;
  2. determine the implications that the order of witnesses may have on the defense case;
  3. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
  4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
  6. review all documentary evidence that must be presented; and,
  7. review all tangible evidence that must be presented.
- (e) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.
- (f) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.
- (g) Counsel should conduct redirect examination as appropriate.
- (h) At the close of the defense case, counsel should seek an advisory instruction directing the jury to acquit when appropriate.

**Standard 15: Jury Instructions**

- (a) Counsel should be familiar with the appropriate rules of the court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of instructions typically given, and preserving objections to the instructions.
- (b) Counsel should always submit proposed jury instructions in writing.
- (c) Where appropriate, counsel should submit modifications to instructions proposed by the State or the court in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser-included offense. Counsel should provide citations to appropriate law in support of the proposed instructions.
- (d) Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.
- (e) If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of proposed instructions is included in the record along with counsel's objection.

- (f) During delivery of the charge, counsel should be alert to any deviations from the judge's planned instruction, object to deviations unfavorable to the client, and if necessary, request additional or curative instructions.
- (g) If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

**Standard 16: Obligations of Counsel in Final Sentencing Hearings**

Among counsel's obligations in the sentencing process are:

- (a) To correct inaccurate information that is potentially detrimental to the client and to object to information that is not properly before the Court in determining sentence. Counsel should further correct or move to strike any improper and harmful information from the text of the presentence report.
- (b) To present to the court all known and reasonably available mitigating and favorable information, including relevant expert testimony or reports.
- (c) To develop a plan that seeks to achieve the least restrictive and burdensome sentencing alternative that is most favorable to the client and that can reasonably be obtained based on the facts and circumstances of the offense, the client's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision.

**Standard 17: Preparation for Sentencing**

In preparing for sentencing, counsel shall:

- (a) inform the client of the applicable sentencing requirements, options, alternatives, and the discretionary nature of sentencing guidelines including the rules concerning parole eligibility;
- (b) maintain contact with the client prior to the sentencing hearing and inform the client of the steps being taken in preparation for sentencing;

- (c) obtain from the client relevant information concerning his or her background and personal history, prior criminal record, employment history, skills, education, medical history and condition, and financial status and obtain from the client sources that can corroborate the information provided by the client;
- (d) request any necessary and appropriate client evaluations, including those for mental health and substance abuse;
- (e) ensure the client has an opportunity to examine the presentence report;
- (f) inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to deliver to the court;
- (g) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, or other judicial proceedings, such as forfeiture or restitution proceedings;
- (h) inform the client of the sentence or range of sentences counsel will ask the court to consider;
- (i) where appropriate, collect affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence;
- (j) prepare to address victim participation either through the victim impact statements or by direct testimony at sentencing; and
- (k) advise the client of the difference between testimony and allocution. If the client elects to testify, counsel should prepare the client for possible cross-examination by the prosecution where applicable.

**Standard 18: Official Presentence Report**

- (a) Counsel should prepare the client for the interview with the official preparing the presentence report.
- (b) Counsel has a duty to become familiar with the procedures concerning the preparation, submission, and verification of the presentence investigation report. In addition, counsel shall:

1. determine whether a presentence report will be prepared and submitted to the court prior to sentencing; where preparation of the report is optional, counsel should consider the strategic implications of waiving the report;
2. provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the client's version of the offense;
3. attend any interview of the client by an agency presentence investigator where appropriate;
4. review the completed report prior to sentencing;
5. take appropriate steps to ensure that erroneous or misleading information that may harm the client is deleted from the report;
6. take appropriate steps to preserve and protect the client's interests where the defense challenges information in the presentence report as being erroneous or misleading; and
7. make sure that, if there is a significant change in the information contained in the report by the judge at the sentencing hearing, counsel takes reasonable steps to ensure that a corrected copy is sent to corrections officials.

**Standard 19: Sentencing Hearing**

- (a) At the sentencing proceeding, counsel shall take steps necessary to advocate fully for the requested sentence and to protect the client's interest.
- (b) Counsel shall endeavor to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the client.
- (c) Where appropriate, counsel shall request specific orders or recommendations from the court concerning alternative sentences and forms of incarceration.
- (d) Counsel should obtain a copy of the judgment and review it promptly to determine that it is accurate or to take steps to correct any errors.

## **Standard 20: Post-Disposition Responsibilities**

Counsel should be familiar with the procedures available to the client after disposition. Counsel should:

- (a) be familiar with the procedures to request a new trial, including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised;
- (b) inform the client of his or her right to appeal a conviction after trial, after a conditional plea or after a guilty plea that was not entered in a knowing, intelligent, and voluntary manner. Counsel should also advise the client of the legal effect of filing or waiving an appeal, and counsel should document the client's decision. If the client wishes to appeal after consultation with counsel, even if counsel believes that an appeal will not be successful or is not cognizable, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal;
- (c) fulfill the responsibilities set forth in NRAP 3C if the conviction qualifies for "fast track" treatment under the rule. Counsel shall order a rough draft of those portions of the transcript provided for in NRAP 3C(d) in all cases in which trial counsel is not handling the appeal and in all other cases in which information from the proceedings is necessary for a fair determination of the issues to be raised on appeal. Counsel shall thoroughly research the issues in the case and shall set forth all viable issues in the "fast track" statement provided for by NRAP 3C(e);
- (d) timely respond to requests from appellate counsel for information about or documents from the case, when appellate counsel was not trial counsel;
- (e) inform the client of any right that may exist to be released pending disposition of the appeal;
- (f) consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement, if a custodial sentence is imposed;
- (g) include in the advice to the client an explanation of the limited nature of the relief available on direct appeal and, where appropriate, an explanation of the remedies available to him or her in post-conviction proceedings. Counsel

- should provide a pro se habeas packet to any client who needs assistance in preparing his or her pro se habeas corpus petition. Counsel should advise the client of the relevant time frames for filing state and federal habeas corpus petitions and provide information and advice necessary to protect a client's right to post-conviction relief; and
- (h)** inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.