

Handing the Case off to Appellate Counsel



SPD Madison Appellate
(608) 266-3440

SPD Milwaukee Appellate
(414) 227-4805



- Intro to SPD
Appellate Division
- Preserving issues in
your cases
- Initiating the direct
appeal
- Ethical obligations

Introduction to the Appellate Division

- Two offices:
 - Madison (608-266-3440)
 - Madison handles all Appeal Intake
 - Milwaukee (414-227-4805)
- Types of cases:
 - Direct appeals (§ 809.30)
 - Discretionary appointments
- Conflicts and overflow cases go to private bar



Preserving Issues for Appeal in Your Cases

- *Use objections, motions, and offers of proof*
 - issues must be raised contemporaneously and with specificity
 - raise all grounds (e.g., statutory *and* constitutional)
 - boilerplate motion may not suffice
 - ensure all necessary evidence gets in the record: use offer of proof where needed
- *Guilty plea waiver rule*
 - includes constitutional issues and as-applied challenges to the constitutionality of a statute
 - suppression motion exception (§ 971.31(10))
 - consider stipulated-fact bench trial to preserve issues that would otherwise be waived with a plea

Advising Your Client About Whether to Appeal

If your client wants to appeal, you *must* file a notice of intent

- Even if you don't think there is merit to an appeal?
 - Yep**
 - but be mindful of the guilty plea waiver rule
- Even if you think an appeal is too risky?
 - Yep**
 - the appellate attorney will counsel the client about risk
- Should you give advice about the appeal?
 - there's no need to, and be cautious if you do
 - feel free to give a preview of the process, which will help set reasonable expectations about the time frame

Initiating Your Client's Direct Appeal

- File Notice of Intent to Pursue Postconviction or Postdisposition Relief (CA-110) in circuit court
 - **NOI is *not* the Notice of Right Form (CR-233)** that you and your client sign and file at the conclusion of sentencing
 - **Must file NOI within 20 days** of sentencing or disposition [809.30(2)(b)]
 - **Except for TPRs: then must file NOI within 30 days** after TPR order entered [809.107(2)(bm)]
 - Email copy to: madisonappintake@opd.wi.gov
- See [Perfecting Appeals](#) sheet for unusual cases in which NOI is not the correct document

What if the NOI Deadline is Blown?

- COA may extend NOI deadline for “good cause”
 - What might COA consider “good cause”?
 - ✓ “obstacles to communication”
 - ✓ “a more thorough discussion occurred”
 - NOT: “client changed his mind”
- Mechanics of an Extension Motion
 - Extension motions get filed in the COA (not the circuit court) (§ 809.82)
 - Original + 4 copies for felonies
 - Original + 2 copies for chs. 51, 55, 48, 938, misdemeanors (§ 809.81(2))
 - Mail to: Sheila Reiff, Clerk, Court of Appeals
P.O. Box 1688, Madison, WI 53701-1688
 - Or fax to COA at 608-267-0640

What Happens Next? See § 809.30(2)(c) – (h)

- Clerk sends materials to SPD (5 days)
- SPD appoints counsel & requests transcript/court record (30 or 50 days)
- Court reporters prepare & file transcripts and clerk files court record (60 days)
- Appellate attorney files postconviction motion or notice of appeal (60 days)



What You Need to Provide to Appellate Counsel

- Trial Attorney Questionnaire
 - Include current contact info for client
 - Issues you've identified and/or why clients wants to appeal
- Your [the client's*] File
 - ✓ Discovery
 - ✓ Correspondence
 - ✓ Investigation memoranda
 - ✓ Notes
 - ✓ Research



*It is the *client's* file (SCR:1.16(d); Agency Policy; Wisconsin Ethics Opinion EF-16-03)

Duties of Trial Counsel – Even After Sentencing

- Sentence credit
 - if an appellate attorney has been appointed by the time the sentence credit issue comes up, loop him/her in they know what's going on
- Restitution
 - If the State files a restitution request and you don't contest it, this can be viewed as a constructive stipulation to a restitution order.
 - *State v. Leighton*, 2000 WI App 156
- Bail/Stay Pending Appeal
 - §809.31 - release pending appeal
 - §808.07 – court may “stay execution or enforcement of a judgment or order”

Ineffective Assistance of Counsel Claims

- Unpreserved issues generally must be raised as IAC
 - Plain error has been eviscerated by appellate courts - courts typically won't address issues if there was no objection
 - Appellate counsel generally must file a postconviction motion if there's factual dispute between client & counsel about what occurred - credibility disputes are for the court, not appellate counsel, to resolve.



***Machner* Hearings**

- What are they?
 - “Strategic reason”
- Duty of loyalty to client remains
 - SCR 20:1.9(c)
- Attorney-client privilege
 - Not waived until the hearing so you can’t talk to the D.A. in advance
 - Waived only to extent necessary to address issue raised in motion
 - Do not provide your file to the D.A.

Interlocutory/Permissive Appeals

- These should be rare situations: COA seldom grants
- Criteria for review governed by § 809.50
 - Immediate review will:
 - Materially advance the termination of the litigation; or clarify further proceedings
 - Protect a party from substantial or irreparable injury; or
 - Clarify an issue of general importance in the administration of justice
 - Procedural requirements (14 days; written order)
 - Guidance available on SPD website: wispsd.org
- Trial attorney files petition
 - If COA grants petition, advise Appellate right away and we will take over appeal

We're on the Same Team!



- Same client, different stage
- Same duty to advocate on behalf of our client
- Same duty to help client make informed decisions (SCR 20:1.4(b))
- Same duty to abide by a client's decisions concerning the objectives of representation (SCR 20:1.2)



We look forward
to working with
you!