

INITIAL APPEARANCES

DUTIES AS DEFENSE COUNSEL

- Interview client
 - Advise client of charges and penalties
 - Explain court process to client
 - Advise of Right to Substitution
 - Determine whether competency is an issue
- Prepare for Court
- Appear in Court

INITIAL CLIENT INTERVIEW

- GOAL: Obtain bail information to show stability in the community and no reason to flee the jurisdiction while the case is pending
 - Typical Bail information includes:
 - Age
 - Marital status
 - Whether Client has Children
 - Friends / family in community
 - Education
 - Employment
 - Whether client has drivers license
 - Consider arguing for conditions of bond in lieu of cash
 - Your jurisdiction may or may not have monitoring services available
 - Ex: Intensive supervision program or electronic monitoring as conditions of bond? Varies by county

Advising client of charges and penalties:

- Read complaint to client including charges and probable cause section.
 - Be sensitive to clients who are illiterate!
- Advise clients of their legal rights (miranda rights, right to counsel, etc)

Obtaining a brief synopsis of the case:

- People want to tell their side of the story. Your goal is to try to calm them down, obtain the necessary information, and keep them on track

Explaining court process to the client:

- Purpose of the initial appearance is to advise them of the charges and penalties
- Defense will enter a 'not guilty' plea and bond will be set by the Judge
- After this hearing, case usually set for a pretrial conference.

Advising client of right to substitution of judge:

- Wis. Stat. sec. 971.20:
 - Only one substitution allowed
 - Must be in writing
 - Must be entered BEFORE the plea is entered or waived

IMPORTANCE OF KNOWING YOUR JUDGE

- What Judge am I likely to get if I substitute? May be foreseeable in rural counties.
- How does this Judge typically sentence on this type of case?
- Ex: Does this Judge hate drunk drivers or domestic abuse cases?

Competency: Is it an issue?

- Wis. Stat. sec. 971.13: You must raise competency if you have reason to doubt.
- Not competent if: "lacks substantial mental capacity to understand the proceedings or assist in his or her defense..."
- If you raise the issue, Court will enter a probable cause finding first on the complaint, and then order a competency evaluation by a licensed psych professional
- Exam can be inpatient or outpatient:
 - Inpatient: Dr. Report required within 15 days
 - Outpatient : Dr. Report required within 30 days.

Prepare your client for what they can expect with these evaluations.

PREPARING FOR COURT

- Review the Complaint, look for possible motions to dismiss

- Motions to dismiss for lack of probable cause
- Motions to dismiss penalty enhancers
- Check for any holds
 - Violations of probation or parole
 - Municipal or Child Support commitments
 - Out of county warrants
- Check for pending cases
 - Check CCAP
 - Do they have already have an attorney on other charges
- Prepare a written substitution of Judge if appropriate

APPEARING IN COURT

- GOAL: Get the client released from custody if possible
- Be sure to raise motions to dismiss the complaint
- Raise competency if necessary
- Raise substitution if necessary (before entering plea)
- Enter a 'not guilty' plea
- Argue Bail
 - Wis. Stat. sec 969.01(1): Purpose of bond is to ensure return to court, protect the community and prevent the intimidation of witnesses
 - Presumption of release: Judge must first consider the likelihood of the defendant returning on his own recognizance
 - Judge has discretion to impose bond if there is a reasonable basis to believe necessary to ensure defendant's future court appearances
 - Judge should consider a variety of factors
- Factors for arguing bail:
 - Ability of the defendant to post bail
 - Nature, number and gravity of the offenses and potential penalties
 - Violent vs. non-violent nature of crime
 - Prior record of your client
 - Character, health, and reputation of defendant
 - Strength of evidence presented to court
 - Failed to appear for court in the past?
 - State's policy against unnecessary detention pending trial