

GUIDELINES ON INDIGENT DEFENSE

Alternate Defense Counsel of the State of Colorado

PURPOSE:

These guidelines are intended to encourage the lawyers accepting appointments on behalf of the Alternate Defense Counsel of the State of Colorado (ADC) to perform to a high standard of representation and to promote professionalism in the representation of clients. These guidelines are intended to be used as a guide for the representation of clients. However, the obligations due a client are not limited by the guidelines articulated here; attorneys are also expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from the guidelines, the attorney should be aware of and be able to articulate the reasons that a departure from the guidelines is in the client's best interests.

Attorneys in evaluating and improving should use these guidelines their own performance. However, these guidelines are not intended to be used as criteria for the judicial evaluation of performance or alleged misconduct of defense counsel to determine the validity of a conviction.

PART I. GENERAL GUIDELINES

GUIDELINE 1.1. ROLE OF DEFENSE COUNSEL.

- (a) Counsel should zealously represent and advocate for each client and render effective assistance of counsel.
- (b) To ensure the preservation, protection and promotion of the client's rights and interests, counsel should:
 - (1) *be proficient in the applicable substantive and procedural law;*
 - (2) *acquire and maintain appropriate experience, skills and training;*
 - (3) *devote adequate time and resources to the case;*
 - (4) *engage in the preparation necessary for quality representation;*
 - (5) *endeavor to establish and maintain a relationship of trust and open communication with the client;*
 - (6) *keep the client informed and seek the lawful objectives of the client; and*
 - (7) *make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.*
- (c) Counsel should adhere to the Rules of Professional Conduct and other guidelines of professional conduct stated in statutes, rules, court decisions, codes or canons.
- (d) Counsel should act with reasonable diligence and promptness in representing clients.
- (e) All counsel should abide by the policies adopted by the ADC in regard to the representation of a client.

GUIDELINE 1.2. ROLE OF DEFENSE COUNSEL IN JUVENILE MATTERS.

- (a) Counsel should abide by the guidelines enumerated in Guideline 1.1.
- (b) The duty to keep the client informed may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of client confidentiality.
- (c) Counsel in juvenile matters often has occasion to counsel the client and, in some cases, the client's family with respect to related non-legal matters (e.g. education, family, therapy, etc.), which should be discharged to the best of counsel's training and ability or with appropriate assistance of other professions by referral.
- (d) Whenever the nature and circumstances of the case permit, counsel should explore the possibility of an early diversion from the formal juvenile court process through other community resources. Participation in nonjudicial stages of the juvenile court process may well be critical to such diversion, as well as to protection of the client's rights.
- (e) Counsel should be prepared to assist in securing appropriate legal or other services for the client in matters arising from or related to the juvenile proceedings.
- (f) Counsel should be familiar with dispositional alternatives and services, should investigate the client's social educational and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.
- (g) In any case in which a judicial detention hearing will be held regarding a juvenile client, counsel should be prepared to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or placement in detention. Counsel should also be prepared to present evidence with regard to the necessity for detention and, to the extent possible, a plan for pretrial release of the juvenile client.
- (h) In the dispositional phase of a delinquency proceeding, counsel should take appropriate steps to evaluate and augment the recommendations of the state so that the ultimate disposition is tailored to the client's individual needs.
- (i) Counsel should explain the nature of the disposition hearing, the issues involved, and the alternatives available to the court. Counsel should also explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the clients responsibilities under the proposed dispositional plan. Counsel should not make or agree to a specific dispositional recommendation without a clients consent.
- (j) Counsel should exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or the history or condition of the client's parents. In general, counsel should not disclose information or conclusions contained in such reports to the extent that, in counsel's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.
- (k) When a dispositional decision has been reached by the court, it is counsel's duty to explain the nature, obligations, and consequences of the disposition to the client and his or her family, and to urge upon the client the need for accepting and cooperating with the dispositional order.

PART II. TRAINING

GUIDELINE 2.1. TRAINING AND EXPERIENCE.

- (a) Counsel should be familiar with substantive criminal law, criminal procedural law, the Colorado Rules of Practice and the prevailing customs or practices of the court in which he/she practices.
- (b) Counsel has a continuing obligation to stay abreast of changes and developments in criminal law and criminal procedure.
- (c) Counsel has a continuing obligation to continue his/her legal training, professional development and education. Counsel should participate in public defender, bar and professional association, regional, or national training events and seminars, [as well as training] and taped or multimedia programs.
- (d) Prior to undertaking the defense of one accused of a crime, counsel should have sufficient training or experience to provide competent representation for that case. Where appropriate, counsel should consult with more experienced attorneys to acquire knowledge and familiarity with all facets of criminal representation.

PART III. LAWYER-CLIENT RELATIONSHIP

GUIDELINE 3.1. ESTABLISHMENT OF RELATIONSHIP.

- (a) Counsel should seek to establish a relationship of trust and confidence with the client.
- (b) As soon as practicable after being appointed, counselor counsel's representative should contact the client and conduct an initial client interview.
- (c) Counsel should schedule confidential legal visits with the incarcerated client when necessary to provide effective representation and maintain effective communication with the client by mail or telephone.
- (d) Counsel should preserve client confidences and should not knowingly disclose confidential information obtained during the course of representation, unless authorized to do so by the client or the court or as otherwise permitted by law or the Rules of Professional Responsibility.
- (e) Counsel should ensure that barriers to communication with the clients, such as differences in language or literacy, are overcome. Counsel should make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.

GUIDELINE 3.2. DUTY TO KEEP CLIENT INFORMED

- (a) Counsel should keep the client informed of any developments in the case and the progress of the preparation of the defense, and provide sufficient information to permit intelligent participation in decision making by the client.
- (b) Counsel should comply with reasonable requests for information from the client and reply to client correspondence and telephone calls.
- (c) Counsel should inform and explain to the client that he/she has the constitutional right to plead not guilty; to be tried by a judge or a jury; to the assistance of counsel; to confront and cross-examine witnesses against him/her; to testify and, to not be compelled to incriminate him/herself.
- (d) Counsel should explain to the client the court procedures.

- (e) Counsel should explain the attorney-client privilege to the client and explain to the client that he/she is not required to speak to anyone regarding the case without counsel present.

GUIDELINE 3.3. PROTECTING CONFIDENTIALITY.

- (a) Counsel should ensure that confidential communications between defense counsel and the client are conducted in privacy, including reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

GUIDELINE 3.4. INITIAL CLIENT INTERVIEWS

- (a) Counsel should conduct a client interview as soon as practicable after being appointed by the court, in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings. Counsel should conduct the initial interview with the client sufficiently before any court proceeding so as to be prepared for that proceeding.
- (b) To the extent possible, counsel should prepare for an initial interview with the client by reviewing petitions and/or charging documents, police and other investigative agency reports, and the reports of pretrial detention agencies, where applicable.
- (c) To the extent possible, counsel should obtain the following types of information from the client at the initial interview:
 - (1) *the facts surrounding the allegations against or affecting the client;*
 - (2) *any possible witnesses who should be located;*
 - (3) *any evidence of improper conduct by police or other investigative agencies; juvenile or mental health departments or the prosecution that may affect the client's rights;*
 - (4) *any evidence that should be preserved, and*
 - (5) *evidence of the client's competence to stand trial and/or mental state at the time of the offense.*
- (d) As applicable, counsel should convey the following types of information to the client:
 - (1) *the nature of the allegations, what the state must prove, and maximum potential sentence;*
 - (2) *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;*
 - (3) *a general procedural overview of the likely progression of the case;*
 - (4) *the procedures that will be followed in setting the conditions of pretrial release, if applicable to the type of proceeding and the particular client;*
 - (5) *an explanation of the type of information that will likely be requested in any interview that may be conducted by pretrial release, family services personnel, or others what information the client should and should not provide;*
 - (6) *the importance of maintaining contact with counsel and the need to notify counsel of any change of address;*
 - (7) *the names and contact information regarding counsel and staff assisting with the case;*
 - (8) *when counsel will see the client next;*
 - (9) *realistic answers, where possible, to the client's questions, and*

(10) any arrangements that will be made or attempted for the satisfaction of the client's needs, including medical or mental health attention and contact with family or employers.

GUIDELINE 3.5. CONTROL AND DIRECTION OF THE CASE.

- (a) Counsel should advise the client of those decisions that are ultimately for the client, which are:
 - (1) what pleas to enter;*
 - (2) whether to accept a plea agreement;*
 - (3) whether to waive a jury trial;*
 - (4) whether to testify in his/her own behalf;*
 - (5) whether to appeal;*
 - (6) whether to apply for sentence review.*
- (b) Counsel should also advise the client of the client's right to assert certain defenses that include extreme emotional disturbance or insanity, when applicable.
- (c) Counsel should advise the client of the existence of any lesser-included offense.
- (d) Counsel should advise the client that counsel will make strategic and tactical decisions.
- (e) Counsel should discuss a client's decision whether to testify at trial.
- (f) Counsel should fully advise the client of the advantages and disadvantages of either a court trial or a jury trial.

PART IV. CONFLICTS OF INTEREST GUIDELINE 4.1. CONFLICTS.

- (a) Counsel should adhere to the Rules of Professional Conduct regarding conflicts of interest.
- (b) Counsel should be cognizant of the existence of any potential and actual conflicts of interest which would impair counsel's ability to represent a client, such as if the representation of one client's interests are materially adverse to those of a current or former client.
- (c) Except for preliminary matters such as arraignment or an initial hearing, counsel should not represent a client when a conflict of interest exists between co-defendants or multiple defendants such that the representation of one client will be directly adverse to the other client.
- (d) Counsel should not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another current or former client or to a third person, or by the lawyer's own interests, unless:
 - (1) The lawyer reasonably believes the representation will not be adversely affected; and*
 - (2) The client consents after consultation, which consent should be documented by counsel in counsel's file.*
- (e) Counsel who has formerly represented a client should not thereafter use information relating to the former representation to the disadvantage of a former client unless the information has become generally known or the ethical obligation of confidentiality otherwise does not apply.
- (f) Counsel should not withdraw solely on the basis of a personality conflict with the client or a difference of opinion as to how to proceed in the case, unless required by the Rules of Professional Conduct.
- (g) The filing or existence of a habeas corpus petition or grievance against counsel in regard to his/her quality of representation shall not create a conflict of interest per se. Withdrawal by counsel from the representation of a client under such circumstances should occur if ordered by the court upon motion by the client or if counsel is of the opinion that the filing or existence of

the habeas corpus petition or grievance will interfere with counsel's ability to adequately represent the client.

- (h) Counsel should withdraw upon the filing of a civil lawsuit against counsel by a client alleging malpractice, a finding of probable cause in connection with a grievance complaint, or if counsel has been scheduled to testify at a habeas corpus trial in which (1) counsel is the subject of the claim of ineffective assistance of counsel which has been raised in the petition; and (2) the pleadings have been closed.

PART V. PRETRIAL RELEASE

GUIDELINE 5.1. PRETRIAL RELEASE.

- (a) 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.
- (b) Counsel should obtain information regarding the client, including family and community ties, immigration status, school or employment history, physical and mental health, participation in community programs, past criminal and delinquency record; the ability of the client, relatives or third parties to meet any financial conditions of release, and the names of individuals or other sources that counsel can contact to verify the information provided by the client.
- (c) Where appropriate, counsel should make a proposal concerning conditions of release that are least restrictive with regard to the client. Counsel should assist the client in contacting parents, spouse, relatives or other persons who may assist the client or provide third party surety.
- (d) If the court sets conditions of release, counsel should explain to the client the conditions of release and potential consequences of violating such conditions. If the court sets as a condition of release that security be posted, counsel should explain to the client the available options and procedures for posting security.
- (e) Where the client is not able to obtain release under the conditions set by the court or where new information becomes available, counsel should consider pursuing modification of the conditions of release under available procedures. When appropriate, counsel should also pursue the client's right to review under applicable law.
- (f) Where client is unable to obtain pretrial release, counsel should inform the court and the jail or juvenile detention facility personnel about any medical, psychiatric, or security needs of the client.

PART VI PRETRIAL PREPARATION

GUIDELINE 6.1. PRELIMINARY PREPARATION.

- (a) Counsel should examine and seek copies of all pertinent and available court documents.
- (b) Counsel should research and review the relevant statutes and case law to identify:
 - (1) *the elements of the charged offense(s);*
 - (2) *any defects in the charging instrument, such as statute of limitations or double jeopardy;*
and
 - (3) *the available defenses, ordinary and affirmative, and whether notice of any defense is required and any specific timelines for giving such notice.*
- (c) Counsel should take advantage of any opportunity for the earliest possible discovery, including review of the files of the District Attorney and police reports or other documents in their possession.

- (d) Counsel should seek preservation and/or discovery of any evidence likely to become unavailable unless special measures are taken.

GUIDELINE 6.2. INVESTIGATION.

- (a) Counsel should conduct a thorough investigation prior to trial, including investigation of potential witnesses, physical evidence and the scene of the crime.
- (b) Where appropriate, counsel should obtain the assistance of experts and other professionals to provide consultation and testimony regarding issues in the case, evaluations of clients and others, and testing of physical evidence.
- (c) During investigation and trial preparation, counsel should develop and continually reassess a defense theory of the case

GUIDELINE 6.3. FORMAL DISCOVERY.

- (a) Counsel has a duty to pursue as soon as practicable discovery procedures provided by applicable law. In considering discovery requests; counsel should take into account that such requests may trigger reciprocal discovery obligations.
- (b) Counsel should consider seeking discovery of the following items:
 - (1) *potential exculpatory information;*
 - (2) *the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;*
 - (3) *all oral and/or written statements by the client and details of the circumstances under which the statements were made;*
 - (4) *the prior criminal and/or delinquency record of the client and any evidence of other misconduct that the prosecutor may intend to use against the client;*
 - (5) *all physical evidence, including books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;*
 - (6) *all results or reports of and underlying data regarding relevant physical or mental examinations, scientific tests, experiments and comparisons.*
 - (7) *statements of co-defendants;*
 - (8) *reports or notes of searches or seizures and the circumstances of any such searches or seizures.*

GUIDELINE 6.4. PRETRIAL MOTIONS.

- (a) Counsel should file pre-trial motions and memoranda and briefs in a timely fashion, as necessary to protect the client's rights after consideration of the statutes, case law and constitutional provisions.
- (b) Before filing a pretrial motion, counsel should consider any potential adverse effects that might result from the filing of the motion.
- (c) Counsel should file a motion for a bill of particulars prior to trial, except when tactical reasons exist for not doing so.

PART VII. PLEA NEGOTIATIONS.

GUIDELINE 7.1. DISCUSSIONS WITH THE CLIENT CONCERNING PLEA NEGOTIATIONS.

- (a) After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel should discuss with the client all alternatives, including the possible resolution of the case through a negotiated plea of guilty. Counsel should make it clear to the client that the ultimate decision to enter a plea of guilty has to be made by the client.
- (b) Counsel should advise the client with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.
- (c) Counsel should caution the client to avoid communication about the case with witnesses or other individuals, except with the approval of counsel.
- (d) Counsel should explain to the client the evidence that the state has and elicit from the client all relevant information in regard to the aspects of the case, including but not limited to, background information concerning the defendant, his/her prior convictions and the events surrounding the offenses charged.
- (e) Counsel should discuss with the client any ongoing plea negotiations and convey all offers to the client.
- (f) Counsel should discuss with the client the advantages and disadvantages of accepting a plea agreement.
- (g) Counsel should discuss with the client any rights that are waived by acceptance of a plea agreement.
- (h) Counsel should discuss with the client the nature of the charge to which he/she would be entering a plea, the possible maximum and/or mandatory sentences that the client is exposed to as a result of the plea and any other questions that the court may raise during the plea canvass.

GUIDELINE 7.2. CONDUCT OF PLEA NEGOTIATIONS.

- (a) Counsel should not accept or reject any plea agreement without the authorization of the client.
- (b) Counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the client's decision as to his/her plea.

GUIDELINE 7.3. PREREQUISITES FOR GUILTY PLEAS.

- (a) Before counsel advises the client to plead guilty, counsel should be satisfied as to the following:
 - (1) *That the client admits guilt, or believes that there is a substantial likelihood of conviction at trial, and believes that it is in his/her best interests to plead guilty under the plea agreement rather than risk the consequences of conviction after trial (North Carolina v. Alford);*
 - (2) *That the client understands all aspects of the plea agreement, and understands all consequences of a plea of guilty under the agreement;*
 - (3) *That the state would be able to prove the charge(s) against the client at trial;*
 - (4) *That a plea of guilty by the client is voluntary, and intelligent, with full understanding of the nature of the charge and the consequences of the plea.*
 - (5) *That the client understands the rights he/she is waiving, including the right to trial by jury, the right to assistance of counsel at trial, the right to compulsory process, the right*

to confrontation of witnesses, the right to testify and privilege against self-incrimination, and the state's burden of proof beyond a reasonable doubt;

(6) That the client understands the terms of the plea agreement and the consequences of conviction, including the maximum possible sentence faced by the client, any mandatory minimum sentence faced by the client.

(b) In addition, if applicable and to the extent possible, counsel should advise the client of:

(1) the potential liability faced by the client for enhanced punishment after a subsequent conviction, the client's probation and parole eligibility, and the likelihood of potential civil liabilities arising out of conviction for this particular offense;

(2) collateral consequences of conviction, e.g. deportation and civil disabilities.

PART VIII. TRIAL

GUIDELINE 8.1. TRIAL PREPARATION

- (a) Counsel should conduct a thorough independent investigation prior to trial, including investigation of potential witnesses, physical evidence and the scene of the alleged crime.
- (b) To the extent possible, counsel should obtain expert reports, witness statements, police and law enforcement reports and any other potential information relating to the offense.
- (c) Counsel has a duty to pursue as soon as practicable discovery procedures provided by the rules of the jurisdiction and to pursue such information through discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.
- (d) Counsel should consider seeking discovery of the following items:
- (i) potential exculpatory information;*
 - (ii) the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;*
 - (iii) all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made,*
 - (iv) the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;*
 - (v) all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;*
 - (vi) all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;*
 - (vii) statements of co-defendants.*
- (e) Counsel should obtain the assistance of experts where necessary.
- (f) During investigation and trial preparation, counsel should develop and continually reassess a defense theory of the case.
- (g) Counsel should file appropriate pre-trial motions and memoranda or briefs in a timely fashion, as necessary to protect the defendant's rights after consideration of the statutes, case law and constitutional provisions. Counsel should file a motion for a bill of particulars prior to trial, except when tactical reasons exist for not doing so.
- (h) Counsel should request a continuance if he/she determines that he/she is not prepared for trial.

- (i) Counsel should develop an overall defense strategy. In deciding on defense strategy, counsel should consider whether not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden best serves the client's interests.
- (j) Counsel should be familiar with and prepared to address legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

GUIDELINE 8.2. VOIR DIRE.

- (a) Counsel should be familiar with the voir dire process and the exercise of both challenges for cause and peremptory challenges and should conduct a thorough voir dire. Counsel should tailor voir dire questions to the issues of the case.
- (b) Counsel should be alert to any irregularities in the composition or selection of the venire and be prepared to raise proper challenges to those irregularities. Counsel should be alert to prosecutorial misuse of peremptory challenges and, where appropriate, should seek remedial measures from the court for such misuse.

GUIDELINE 8.3. OPENING STATEMENT.

- (a) The opening statement should be confined to a statement of the issues in the case and the evidence counsel believes in good faith will be available and admissible at trial. Other objectives may include providing an overview of the defense theory of the case, identifying weaknesses in the prosecution case, and emphasizing the prosecution's burden of proof

GUIDELINE 8.4. EVIDENCE.

- (a) Counsel should be prepared to cross-examine prospective witnesses for the State, be familiar with the applicable law and procedures concerning impeachment, and be alert to issues relating to witness credibility, including bias and motive for testifying.
- (b) Counsel should prepare all defense witnesses for direct and possible cross-examination.
- (c) Counsel should consider the advantages and disadvantages before entering into stipulations concerning the prosecution's case.
- (d) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify, and prepare the client for direct and cross-examination if he/she chooses to testify.
- (e) Counsel should advise the client of the client's right to assert certain defenses, if applicable, including extreme emotional disturbance or insanity, and should know the burden of proof or the burden of production the defense must bear.

GUIDELINE 8.5. CLOSING ARGUMENT .

- (a) Counsel should present closing argument and object to any improper argument by opposing counsel. Whenever the prosecution exceeds the scope of permissible argument, counsel should request a mistrial, or seek cautionary instructions unless tactical considerations suggest otherwise.

GUIDELINE 8.6 REQUESTS TO CHARGE/PRESERVATION FOR APPEAL

- (a) Counsel should submit instructions to the court and take appropriate steps to preserve the record when necessary. During delivery of the instructions, counsel should be alert to any deviations from the judge's planned instructions and, if necessary, request additional or curative instructions. If the court proposes giving supplemental instructions to the jury, counsel should

request that the judge state the proposed instructions to counsel before they are delivered to the jury.

- (b) Counsel should endeavor throughout the trial process to establish a proper record for appellate review and should request that all trial proceedings be recorded. Where appropriate, counsel should make an offer of proof as to evidence deemed by the trial court to be inadmissible. Counsel should request precise rulings from the court on all objections and make every effort to obtain for the record the reasons for the court's rulings.

PART IX. SENTENCING

GUIDELINE 9.1. SENTENCING.

- (a) Prior to sentencing, counsel should discuss with the client the maximum sentence that may be imposed which may include any period of probation, any special conditions of probation that may include treatment or restitution, and any fine that may be imposed.
- (b) Counsel should inform the client of the nature of the presentence investigation process and the client's right to waive the presentence investigation if appropriate.
- (c) Counsel or counsel's representative should be present during the Office of Probation's interview of the client in the presentence investigation process when requested by the client, or when, in counsel's opinion, counsel's presence is required to protect the interests of the client, or when otherwise appropriate.
- (d) With the client's consent, counsel should provide information and documents to the probation officer preparing the presentence report.
- (e) Counsel should review the presentence investigation report with the client and request that any necessary corrections are made to the presentence investigation report in writing.
- (f) Counsel should request a copy of the corrected report for his/her file and for the parole board.
- (g) Counsel should advocate the best possible disposition for sentencing on behalf of the client. In advocating his/her position, counsel should take whatever steps are necessary, including, where appropriate, the presentation of witnesses and other evidence.
- (h) Where appropriate, counsel should carefully prepare the client and/or witnesses to address the court.
- (i) Counsel should verify that the client understands the sentence, including any conditions of probation. Counsel should advise the client as to what is required in order to comply with the obligations that are imposed.

PART X. POST-CONVICTION

GUIDELINE 10.1. SENTENCE REVIEW.

- (a) At sentencing; counsel should insure that the court informs counsel's client of his /her right to sentence review.
- (b) Counsel should take all necessary steps to preserve the client's right to sentence review.

GUIDELINE 10.2. APPEAL.

- (a) Counsel should inform client of his/her right to appeal.
- (b) Counsel should take all necessary steps to preserve the client's appellate rights.

- (c) In any case involving conviction after trial and imposition of a sentence of incarceration or a suspended sentence of incarceration, there shall be a presumption that an appeal should be filed on behalf of a client. Under circumstances when a defendant deems it in his/her best interests not to appeal a conviction, the final decision not to appeal must be made by a defendant knowingly, intelligently, and after full consultation with counsel. In any case in which an accused wishes to waive his/her right to appeal, a waiver should be made before the court on the record or in writing signed by the defendant in whom he/she affirmatively states his/her desire not to appeal so as to ensure that the decision is voluntary.
- (d) Counsel should cooperate in providing information to appellate counsel in regard to the trial proceedings in accordance with the requirements and procedures of the ADC.