

## Standard Letter to Client in Revocation Case

Dear Client:

I am writing to review the status of the revocation proceeding in which I was appointed to represent you. After your revocation hearing, the administrative law judge ordered revocation of your supervision. At your request, I submitted an administrative appeal to Brian Hayes, Administrator of Hearings and Appeals. Unfortunately, that appeal was denied. Having represented you in both the revocation hearing and the administrative appeal, I have completed my work for you in this matter.

There is a legal procedure, called a petition for writ of certiorari, that allows a circuit court to review a revocation proceeding. However, because the scope of review is very limited, this type of petition rarely results in the court setting aside a revocation order. From my work in your case, I do not see any compelling issues that would justify the filing of a writ of certiorari. Also, there is no constitutional right to have an appointed attorney in a certiorari proceeding. Therefore, I will not prepare this petition on your behalf.

For your information, I will provide you with a brief description of a certiorari proceeding to assist you in deciding whether to seek relief in this type of proceeding. The most important thing to note is that you must show that the revocation decision was not merely wrong but was arbitrary and capricious.

A writ of certiorari seeks review of a final order of judgment of a lower court or an administrative body, see *State ex rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 178 N.W.2d (1970). Certiorari is confined to a review of the record. The standard of review is whether there is substantial evidence to support the decision. The scope of review is limited, confined to review of the record. Certiorari review is not available when there is no error apparent in the record.

In reviewing the merits of a probation or parole revocation, the certiorari court defers to the hearing examiner's decision. See *Von Arx v. Schwarz*, 185 Wis. 2d 645, 517 N.W.2d 54 (Ct. App. 1994). Further, the probationer has the burden of proving that the revocation decision was arbitrary and capricious.

Appellate review of probation revocation by the department is limited to four (4) inquiries: (1) whether the Department acted within the bounds of its jurisdiction; (2) whether it acted according to law; (3) whether its actions were arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was sufficient that the Department might reasonably make the determination that it did.

Please note that a petition for writ of certiorari must be filed within 45 days of your revocation order. To comply with filing requirements, there are also several technical details that must be handled correctly, including either the payment of a filing fee or submission of documents requesting filing without payment of fees. See generally secs. 801.02(7)(a) & 814.29(1m), Stats. Therefore, if you decide to file a petition, you should ensure that your petition is filed within this time limit and in proper form.

If I can be of further assistance, please contact me. But please remember any further challenges to your revocation must follow the procedures outlined above.

Sincerely,

Attorney