

Wisconsin State Public Defenders

Duties of Trial Counsel at and After Sentencing

As we all know, the duties of trial counsel are not complete when the judge sentences your client. A significant number of complaints to the Office of Lawyer Regulation (OLR) include complaints that trial counsel did not follow through on post-sentencing responsibilities. The following checklist should help the practitioner to make sure all their duties have been fulfilled and to avoid OLR grievances.

- ☐ Calculate and request sentence credit owed to your client. See Wis. Stat. § 973.155. (This should ordinarily be done at sentencing but may be done by motion after sentencing if necessary.)
- ☐ Resolve any dispute regarding restitution. See Wis. Stat. § 973.20. Advise your client of his/her right to appeal. See Wis. Stat. § 973.18(3).
- ☐ If your client has indicated a desire to appeal, file the Notice of Intent to Pursue Postconviction Relief within 20 days of sentencing, and forward the Notice and a completed Trial Attorney Questionnaire to SPD Appellate Intake. See Wis. Stat. § 809.30(2)(b).
- ☐ If the client asks you to file a Notice of Intent after the 20 days have passed, consider whether to assist him/her in filing a late notice, along with a motion to extend the time for filing the notice.
(Ordinarily, the attorney assists the client if the delay is due to miscommunication; is, in part, the attorney's fault; or if the deadline only recently passed. If the circumstances are such that you would not be able to assert "good cause" for an extension as Wis. Stat. §809.82 requires, you may send the client pro se forms explaining that the completed Notice of Intent form should be sent to the Circuit Court clerk and the completed Extension Motion form should be sent to the Court of Appeals clerk's office)
- ☐ Pursuant to Wis. Stat. § 809.107(2)(bm)(6), a notice of intent in a TPR case "shall include...the signature of the appellant on whose behalf the notice of intent is filed." The statute further states, Appellant's counsel, if any, shall also sign the notice, but may not sign in lieu of the appellant." The client signature requirement was created by 2017 WI Act 258, and applies to notices filed on or after the Act's effective date, which was April 6, 2018.

The SPD cannot process the appeal or appoint counsel until a NOI conforming to the requirements of Wis. Stat. § 809.107 is filed. If you are unable to secure the signature before the 30-day NOI deadline, you will have to seek an enlargement of time by filing a motion in the court of appeals.

- ☐ If there is a good faith basis for filing a motion for release (or motion for other relief) pending appeal, litigate such a motion in the trial court. See Wis. Stats. §§ 809.31, 969.01(2), 969.08 and 969.09.