

STANDARDS FOR MANDATED PAROLE REPRESENTATION

I-11. Parole Matters

Zealous, effective, and quality representation of clients on parole matters (rescission and revocation hearings, as well as administrative appeals) requires, at a minimum:

- a. Researching the functions of the Board of Parole and Department of Corrections and Community Supervision, including but not limited to (i) Executive Law § 259-i; (ii) 9 NYCRR 8000, et seq.; (iii) relevant provisions of the Corrections Law and Penal Law; and (iv) determining their application to the practice of parole;
- b. Researching and applying all applicable sentencing laws;
- c. Requesting and reviewing all records available in the parole file that are relied upon by DOCCS and/or by the Board of Parole;
- d. Investigating the facts concerning the basis for rescission or revocation, including: (i) interviewing the client; (ii) seeking discovery and disclosure of the evidence, exculpatory information, and impeaching material; (iii) obtaining relevant information from other sources; (iv) interviewing witnesses to the relevant events; and (v) obtaining corroborating evidence for any relevant defenses;
- e. Investigating all relevant defenses;
- f. Counseling the client at the earliest opportunity about their constitutional or statutory rights;
- g. Obtaining at the earliest possible time all available information concerning the client's background and circumstances for the purposes of (i) arguing for revoke and restore or for alternatives to incarceration; (ii) negotiating the most favorable pre-hearing disposition possible, if such disposition is in the client's best interests; (iii) presenting mitigating evidence at the hearing if appropriate; (iv) advocating for the lowest legally permissible sanction, if that becomes necessary; and (v) avoiding, if at all possible, collateral consequences including but not limited to deportation or eviction
- h. Considering using relevant experts, such as social workers, mitigation specialists, etc., to obtain the above-referenced information or to assist counsel in representing clients;
- i. Communicating and working with attorneys representing clients on other pending matters regarding the effect of the parole matter on other pending matters and vice versa;
- j. Negotiating with the Parole Commissioners, Offender Rehabilitation Coordinators, Parole Revocation Specialists, and Administrative Law Judges regarding available dispositions of the matter, including providing documentation of mitigating information, mental health diagnoses, or

medical diagnoses relevant to a potential disposition;

k. Advising the client about (i) alternatives to incarceration; (ii) new sentence minimum and maximum dates (where concurrent or consecutive sentences are at issue); (iii) time assessments and their impact on release dates; (iv) potential defenses and their viability; (v) the strengths and weaknesses in Parole's case; (vi) plea offers; (vii) collateral consequences; (viii) the potential outcomes of a final hearing; (ix) and any other information necessary to enable the client to make appropriate decisions;

l. Assessing the client's competency and requesting a competency examination, where appropriate;

m. Preserving the client's options at all stages of the proceedings, such as (i) to seek dismissal of the warrant; (ii) to raise a defense of incompetency (where appropriate); (iii) to proceed with a hearing; (iv) to testify in one's defense; (v) to seek preclusion or suppression of evidence; (vi) to seek discovery, exculpatory, or impeaching information; and (vii) to seek an appropriate disposition consistent with the client's best interests and instructions;

n. In the event of, and before a final hearing: (i) developing a legal and factual strategy; (ii) using whatever investigative and forensic resources are appropriate; (iii) preparing for cross examination of parole witnesses and direct examination of defense witnesses; (iv) developing a foundation for the introduction of defense evidence; and (v) formulate a closing argument;

o. In the event of, and during the course of a hearing and all related proceedings: (i) making specific and timely objections where appropriate and consistent with trial strategy; (ii) ensuring that such objections are made on the record and recorded; and (iii) identifying the particular element or elements for which the evidence is insufficient when moving to dismiss at the close of Parole's case or at the close of the hearing;

p. Following a disposition adverse to the client's interests: (i) advising the client of the right to appeal and the requirement to file a notice of appeal; (ii) advising the client of the advantages and disadvantages of an appeal; and (iii) cooperating fully with appellate counsel;

q. Following loss of an administrative appeal, advising the client whether to pursue additional proceedings, such as a CPLR Article 78 proceeding or CPL Article 440 proceeding;

r. Maintaining a workload that allows counsel to provide the necessary time and attention to each case in accordance with the standards developed by the New York State Office of Indigent Legal Services.

AMENDMENTS TO NYSBA STANDARDS
FOR PROVIDING MANDATED REPRESENTATION

Standard I-7. d. In the first sentence, replace “at all stages of” by “throughout”

Standard I-7. h. Replace by “During all proceedings: (i) make specific and timely objections where appropriate and consistent with defense strategy, including identifying the particular element or elements for which the evidence is insufficient when moving to dismiss; and (ii) ensure that such objections are on the record and recorded.”

Standard I-7. k.

Replace subsection (iii) to read as follows: “taking all available steps to keep in touch with the client until the time to file a notice of appeal passes or the prosecutor files a notice of appeal, whichever comes first; and”. Add a new subsection (iv) to read as follows: “advising the client if the time for the prosecutor to appeal has lapsed or if the prosecutor files a notice of appeal and, in the latter case, applying for the appointment of counsel if the counsel requests.”

Standard I-7. l. In the fourth line, replace “successor” by “appellate”

Standard I-10. j. Add, following the words “may actually be innocent,” the following: “or which otherwise suggests a credible claim pursuant to Article 440 of the criminal procedure law”