

Table of Contents

CHAPTER 1 CRIMINAL PROCEDURE OUTLINE AND CHECKLISTS

- I. Introduction [§ 1.1]**
- II. Criminal Procedure Outline [§ 1.2]**
 - A. Introduction [§ 1.3]
 - 1. In General [§ 1.4]
 - 2. Ethical Considerations [§ 1.5]
 - B. Initial Appearance [§ 1.6]
 - 1. Court’s Function [§ 1.7]
 - 2. Defense Motions and Demands [§ 1.8]
 - 3. Request for Substitution of Judge [§ 1.9]
 - C. Motions After Initial Appearance [§ 1.10]
 - 1. Motions Defined [§ 1.11]
 - 2. Motions in Misdemeanor Cases [§ 1.12]
 - 3. Motions in Felony Cases Before Preliminary Examination [§ 1.13]
 - D. Preliminary Examination [§ 1.14]
 - 1. Purpose [§ 1.15]
 - 2. Conduct of Preliminary Examination [§ 1.16]
 - 3. Defendant’s Rights at Preliminary Examination [§ 1.17]
 - 4. Dismissal at Preliminary Examination [§ 1.18]
 - E. Arraignment [§ 1.19]
 - 1. Main Purposes of Arraignment [§ 1.20]
 - 2. Substitution of Judge [§ 1.21]
 - 3. Prearraignment Motions [§ 1.22]
 - 4. Conduct of Arraignment [§ 1.23]
 - 5. Speedy Trial Rights [§ 1.24]
 - F. Pretrial Motions to Dismiss [§ 1.25]
 - 1. When Motions Must Be Brought [§ 1.26]
 - 2. Defects in Complaint or Information [§ 1.27]
 - 3. Unconstitutionality of Charged Statute [§ 1.28]
 - 4. Double Jeopardy [§ 1.29]
 - 5. Selective or Discriminatory Prosecution [§ 1.30]
 - 6. Vindictive or Retaliatory Prosecution [§ 1.31]
 - 7. Undue Precharging Delay [§ 1.32]
 - 8. Collateral Estoppel (Issue Preclusion) [§ 1.33]
 - 9. Statute of Limitation [§ 1.34]
 - 10. Immunity [§ 1.35]
 - 11. Improper Venue [§ 1.36]
 - 12. Outrageous Government Conduct [§ 1.37]
 - 13. Beyond Court’s Authority (e.g., Juvenile in Adult Court) [§ 1.38]
 - G. Other Pretrial Motions and Demands [§ 1.39]
 - 1. When Motions Must Be Brought [§ 1.40]
 - 2. Statutory Discovery and Disclosure [§ 1.41]
 - 3. Disclosure of Exculpatory Evidence [§ 1.42]

- 4. Suppression of Evidence [§ 1.43]
- 5. Severance of Crimes or Defendants [§ 1.44]
- 6. Motions in Limine [§ 1.45]
- H. Trial [§ 1.46]
 - 1. Jury Procedures [§ 1.47]
 - 2. Jury Instructions [§ 1.48]
 - 3. Jury Verdict [§ 1.49]
- I. Sentencing [§ 1.50]
 - 1. Counsel’s Obligations [§ 1.51]
 - 2. General Rules [§ 1.52]
 - 3. Credit for Time Served [§ 1.53]
 - 4. Stay of Execution [§ 1.54]
- J. Postconviction Motions/Appeals [§ 1.55]
 - 1. Attorney’s Obligations [§ 1.56]
 - 2. Notice of Intent to Pursue Postconviction Relief [§ 1.57]
 - 3. Motion to Modify Sentence [§ 1.58]
 - 4. Postconviction and Appeal Statutory Procedures [§ 1.59]
 - 5. Postconviction Modification of Bifurcated Sentences [§ 1.60]

III. Checklist of Time Limitations (CRM-0001) [§ 1.61]

IV. Checklist for the Initial Appearance (CRM-0002) [§ 1.62]

V. Checklist for the Preliminary Examination (CRM-0003) [§ 1.63]

VI. Checklist for Plea Negotiations and the Plea Decision (CRM-0004) [§ 1.64]

VII. Checklist for the Arraignment (CRM-0005) [§ 1.65]

VIII. Checklist for Trial (CRM-0006) [§ 1.66]

IX. Checklist for Sentencing (CRM-0007) [§ 1.67]

CHAPTER 2

ORGANIZING THE FILE

I. Introduction [§ 2.1]

II. To Be Done: Notes and Ideas [§ 2.2]

Form 2.2A To Be Done: Notes and Ideas (CRM-0008)

III. Case Log [§ 2.3]

Form 2.3A Case Log (CRM-0009)

Form 2.3B Sample Case Log (CRM-0214)

IV. Checklist of Time Limitations [§ 2.4]

Form 2.4A Checklist of Time Limitations (CRM-0010)

V. Confidential Witness List [§ 2.5]

Form 2.5A Confidential Witness List (CRM-0011)

**CHAPTER 3
CONDUCTING THE INITIAL INTERVIEW**

I. Introduction [§ 3.1]

II. Quick Reference Guide to the Initial Interview [§ 3.2]

- A. Preliminary Matters [§ 3.3]
 - 1. Introductions [§ 3.4]
 - 2. Attorney-Client Privilege [§ 3.5]
 - 3. Fee Agreement [§ 3.6]
- B. Client Information [§ 3.7]
 - 1. Personal Information [§ 3.8]
 - a. Name [§ 3.9]
 - b. Address [§ 3.10]
 - c. Telephone Number [§ 3.11]
 - d. Age and Date of Birth [§ 3.12]
 - e. Social Security Number (SSN) [§ 3.13]
 - f. Driver's License Number [§ 3.14]
 - g. Citizenship [§ 3.15]
 - h. Description [§ 3.16]
 - i. Occupation or Source of Income [§ 3.17]
 - j. Health Insurance [§ 3.18]
 - 2. Family, Friends, and References [§ 3.19]
 - a. Marital Status/Living Arrangements [§ 3.20]
 - b. Dependents [§ 3.21]
 - c. References [§ 3.22]
 - 3. Backup Contacts [§ 3.23]
 - a. Backup Address [§ 3.24]
 - b. Backup Telephone Number [§ 3.25]
 - c. Backup Contact [§ 3.26]
- C. Prior Record and Bail/Bond Information [§ 3.27]
 - 1. Prior Record [§ 3.28]
 - a. Juvenile [§ 3.29]
 - b. Adult [§ 3.30]
 - c. Traffic [§ 3.31]
 - d. Commitments or Hospitalizations [§ 3.32]
 - e. Pending Cases [§ 3.33]
 - 2. Supervision Status, Detainers [§ 3.34]
 - a. Charges and Agent [§ 3.35]
 - b. DOC Hold [§ 3.36]
 - c. Sentence [§ 3.37]
 - d. Statement to Agent [§ 3.38]
 - e. Detainers [§ 3.39]
 - 3. Court History [§ 3.40]
 - a. Record of Court Appearances [§ 3.41]
 - b. Previous Experiences When Released on Bond [§ 3.42]
 - c. Conditions of Release [§ 3.43]
 - d. History with, or Knowledge of, Assigned Judge [§ 3.44]
 - 4. Ties to the Community [§ 3.45]
 - a. Client's Residence [§ 3.46]
 - b. Work [§ 3.47]

- c. Family [§ 3.48]
 - d. Religious Affiliation [§ 3.49]
 - e. Financial Ties [§ 3.50]
 - f. Physical and Mental Condition [§ 3.51]
 - 5. Miscellaneous [§ 3.52]
 - a. Education [§ 3.53]
 - b. Military Service [§ 3.54]
 - c. Resources Available for Bail [§ 3.55]
- D. Facts of the Case [§ 3.56]
 - 1. Charges [§ 3.57]
 - 2. Penalties [§ 3.58]
 - 3. Client's Version [§ 3.59]
 - 4. Witnesses [§ 3.60]
 - 5. Arrest [§ 3.61]
 - a. In General [§ 3.62]
 - b. Date, Time, and Place of Arrest [§ 3.63]
 - c. Arresting Agency [§ 3.64]
 - d. Arresting Officers [§ 3.65]
 - e. Dates and Places of Custody [§ 3.66]
 - f. Witnesses [§ 3.67]
 - g. Other Persons Arrested [§ 3.68]
 - h. Grounds or Basis for Arrest [§ 3.69]
 - i. Arrest Warrant [§ 3.70]
 - j. Treatment [§ 3.71]
 - 6. Search [§ 3.72]
 - a. Circumstances of Search [§ 3.73]
 - b. Search Warrant [§ 3.74]
 - c. Consent to Search [§ 3.75]
 - d. Results of Search [§ 3.76]
 - e. Witnesses [§ 3.77]
 - f. Officers Conducting Search [§ 3.78]
 - 7. Statements and Interrogation [§ 3.79]
 - a. Constitutional Rights [§ 3.80]
 - b. Request for Attorney [§ 3.81]
 - c. Statements/Confessions [§ 3.82]
 - d. Interrogation [§ 3.83]
 - e. Evidence Against Client [§ 3.84]
 - f. Lie Detector Tests and Other Procedures [§ 3.85]
 - 8. Identification [§ 3.86]
 - a. Procedure [§ 3.87]
 - b. Witnesses [§ 3.88]
 - 9. Physical Testing and Sampling [§ 3.89]
 - a. Tests or Samples [§ 3.90]
 - b. Consent, Attorney, Results [§ 3.91]
- E. Conclusion of the Interview [§ 3.92]
 - 1. Assessment [§ 3.93]
 - a. The Case [§ 3.94]
 - b. Role of the Attorney [§ 3.95]
 - c. Substitution of Judge [§ 3.96]
 - 2. Legal Advice [§ 3.97]
 - a. Law-Enforcement Officers [§ 3.98]

- b. District Attorney [§ 3.99]
- c. Supervising Agent [§ 3.100]
- d. Right to Counsel Under Wis. Stat. § 946.75 [§ 3.101]
- e. Right to Counsel Under Wis. Stat. § 967.06 [§ 3.102]
- f. Invocation of Fifth Amendment Right to Counsel [§ 3.103]
- g. Discussion of Case [§ 3.104]
- h. Social Media [§ 3.105]
- i. If Not in Custody [§ 3.106]
- j. If in Custody [§ 3.107]
- k. Search [§ 3.108]
- l. Contact with Attorney [§ 3.109]
- m. Client's Letter of Representation [§ 3.110]

III. Master Information List [§ 3.111]

Form 3.111A Master Information List (CRM-0012)

IV. Release of Juvenile Court Records [§ 3.112]

Form 3.112A Authorization for Release of Juvenile Court Records (CRM-0013)

Form 3.112B Authorization for Release of Records (CRM-0014)

Form 3.112C Order Releasing Juvenile Court Records (CRM-0015)

Form 3.112D Order Releasing Law Enforcement Agency Records (CRM-0016)

V. Request for Driver Record Abstract [§ 3.113]

Form 3.113A Request for Driver Record Abstract (CRM-0017)

VI. Authorization for Release of Health-Care and Other Records [§ 3.114]

Form 3.114A Authorization for Release of Health-Care and Other Records (CRM-0018)

VII. Client's Letter of Representation [§ 3.115]

Form 3.115A Client's Letter of Representation (CRM-0019)

VIII. Invocation of Fifth Amendment Right to Counsel [§ 3.116]

Form 3.116A Invocation of Fifth Amendment Right to Counsel (CRM-0020)

IX. Authorization for Attorney to Appear and Act [§ 3.117]

Form 3.117A Authorization for Attorney to Appear and Act (CRM-0021)

Form 3.117B Order Approving Defendant's Authorization for Attorney to Appear and Act (CRM-0022)

X. Fee Agreements [§ 3.118]

Form 3.118A Fee Agreement Letter: Flat Fee Held in Trust (CRM-0023)

Form 3.118B Legal Representation Agreement: Hourly Fee Held in Trust (CRM-0024)

Form 3.118C Sample Fee Agreement: Hourly Fee Not Held in Trust (CRM-0025)

**CHAPTER 4
ANALYZING THE CASE**

- I. Introduction [§ 4.1]**
 - A. In General [§ 4.2]
 - B. Analysis of Charges [§ 4.3]
 - C. Theory of Defense [§ 4.4]
 - D. Burden of Proof [§ 4.5]
 - E. Goals [§ 4.6]

- II. Checklist of Possible Defenses (CRM-0026) [§ 4.7]**

- III. Case Analysis [§ 4.8]**
 - Form 4.8A Case Analysis (CRM-0027)

**CHAPTER 5
BRINGING PRETRIAL MOTIONS**

- I. Introduction [§ 5.1]**

- II. Quick Reference Guide to Motion Law and Practice [§ 5.2]**
 - A. Definition and Purpose of Motions [§ 5.3]
 - B. Types of Motions [§ 5.4]
 - 1. Evidentiary Motions [§ 5.5]
 - 2. Nonevidentiary Motions [§ 5.6]
 - C. Form and Content of Motions [§ 5.7]
 - D. Timing of Motions [§ 5.8]
 - 1. In General [§ 5.9]
 - 2. Motion to Transfer to Juvenile Court [§ 5.10]
 - a. Introduction [§ 5.11]
 - b. Felony Case, Motion After Preliminary Hearing [§ 5.12]
 - c. Misdemeanor Case, Motion Before Trial [§ 5.13]
 - d. Motion After Finding of Guilt of Lesser or Joined Offense [§ 5.14]
 - E. Practice Considerations [§ 5.15]

- III. Checklist of Pretrial Motions (CRM-0028) [§ 5.16]**

- IV. Motion: Basic Form [§ 5.17]**
 - Form 5.17A Motion: Basic Form (CRM-0029)

- V. Notice of Motion [§ 5.18]**
 - Form 5.18A Notice of Motion (A) (CRM-0030)
 - Form 5.18B Notice of Motion (B) (CRM-0031)

- VI. Proof of Service [§ 5.19]**
 - Form 5.19A Affidavit of Personal Service (CRM-0032)
 - Form 5.19B Affidavit of Service by Mail (CRM-0033)
 - Form 5.19C Admission of Personal Service (CRM-0034)

- VII. Substitution of Judge [§ 5.20]**
 Form 5.20A Defendant’s Request for Substitution of Judge (CRM-0035)
- VIII. Motion to Dismiss: Basic Form [§ 5.21]**
 Form 5.21A Motion to Dismiss: Basic Form (CRM-0036)
- IX. Motion to Dismiss: Precharging or Prearrest Delay [§ 5.22]**
 Form 5.22A Motion to Dismiss: Precharging or Prearrest Delay (CRM-0037)
- X. Motion to Dismiss: Defective Complaint [§ 5.23]**
 Form 5.23A Motion to Dismiss: Defective Complaint (CRM-0038)
- XI. Motion to Dismiss: Unconstitutional Statute [§ 5.24]**
 Form 5.24A Motion to Dismiss: Unconstitutional Statute (CRM-0039)
- XII. Motion to Dismiss: Double Jeopardy [§ 5.25]**
 Form 5.25A Motion to Dismiss: Double Jeopardy (CRM-0040)
- XIII. Motion to Dismiss: *Franks-Mann* Motion [§ 5.26]**
 Form 5.26A Motion to Dismiss: *Franks-Mann* Motion (CRM-0041)
 Form 5.26B Affidavit in Support of *Franks-Mann* Motion (CRM-0042)
- XIV. Motion to Dismiss: Multiplicity [§ 5.27]**
 Form 5.27A Motion to Dismiss: Multiplicity (CRM-0043)
- XV. Motion to Dismiss: Duplicity [§ 5.28]**
 Form 5.28A Motion to Dismiss: Duplicity (CRM-0044)
- XVI. Waiver of Preliminary Examination [§ 5.29]**
 Form 5.29A Waiver of Preliminary Examination (CRM-0045)
- XVII. Motions to Dismiss: Defective Preliminary Examination [§ 5.30]**
 Form 5.30A Motion to Dismiss: Untimely Preliminary Examination (CRM-0046)
 Form 5.30B Motion to Dismiss: Insufficient Preliminary Examination (CRM-0047)
- XVIII. Motion to Dismiss: Defective Information [§ 5.31]**
 Form 5.31A Motion to Dismiss: Untimely Information (CRM-0048)
 Form 5.31B Motion to Dismiss: Insufficient Evidence to Support the Information
 (CRM-0049)
- XIX. Motion to Dismiss: Vindictive or Retaliatory Prosecution [§ 5.32]**
 Form 5.32A Motion to Dismiss: Vindictive or Retaliatory Prosecution (CRM-0050)
- XX. Motion to Dismiss: Selective or Discriminatory Prosecution [§ 5.33]**
 Form 5.33A Motion to Dismiss: Selective or Discriminatory Prosecution
 (CRM-0051)
- XXI. Motion to Dismiss: Statute of Limitation [§ 5.34]**
 Form 5.34A Motion to Dismiss: Statute of Limitation (CRM-0052)

XXII. Motion for Competency Examination [§ 5.35]

- Form 5.35A Defendant's Motion for Competency Examination (CRM-0053)
- Form 5.35B Order for Competency Examination by DHS (CRM-0054)

XXIII. Discovery, Disclosure, and Inspection [§ 5.36]

- Form 5.36A Defendant's Demand for Discovery and Inspection (CRM-0055)
- Form 5.36B Defendant's Motion for Discovery and Inspection (CRM-0056)

XXIV. Motion for In Camera Inspection [§ 5.37]

- Form 5.37A Motion for In Camera Inspection (CRM-0057)

XXV. Motion for Psychological Examination of Complaining Witness [§ 5.38]

XXVI. Motion for Testing by State Crime Laboratory [§ 5.39]

- Form 5.39A Motion for Testing by State Crime Laboratory (CRM-0059)
- Form 5.39B Order for Testing by Crime Laboratory on Behalf of Defendant (CRM-0060)

XXVII. Disclosure of Witnesses and Response to State's Demand for Discovery [§ 5.40]

- Form 5.40A Defendant's Response to State's Discovery Demand (CRM-0061)
- Form 5.40B Letter Specifying Discovery Materials Provided to State (CRM-0062)

XXVIII. Motion Seeking Clarification or Specificity in Charging Documents [§ 5.41]

- Form 5.41A Motion for Bill of Particulars (CRM-0063)
- Form 5.41B Motion to Make More Definite and Certain (CRM-0064)

XXIX. Notice of Alibi [§ 5.42]

- Form 5.42A Notice of Alibi (CRM-0065)

XXX. Motion to Compel Disclosure of Confidential Informant [§ 5.43]

- Form 5.43A Motion to Compel Disclosure of Confidential Informant (CRM-0066)
- Form 5.43B Affidavit in Support of Motion to Compel Disclosure of Confidential Informant (CRM-0067)

XXXI. Motion to Suppress: Basic Form [§ 5.44]

- Form 5.44A Motion to Suppress: Basic Form (CRM-0068)

XXXII. Motions to Suppress Fruits of Illegal Search or Seizure [§ 5.45]

- Form 5.45A Motion to Suppress Fruits of Vehicle Search (CRM-0069)
- Form 5.45B Motion to Suppress Fruits of Search of Premises (CRM-0070)
- Form 5.45C Motion to Suppress Fruits of Illegal Detention (and Frisk) (CRM-0071)
- Form 5.45D Motion to Suppress Fruits of Illegal Arrest (CRM-0072)

XXXIII. Motion to Suppress Identification [§ 5.46]

- Form 5.46A Motion to Suppress Identification (CRM-0073)

XXXIV. Motion to Suppress Statements [§ 5.47]

- Form 5.47A Motion to Suppress Statements (CRM-0074)

XXXV. Motion to Dismiss for Destruction of Evidence [§ 5.48]

Form 5.48A Motion to Dismiss for Destruction of Evidence (CRM-0075)

XXXVI. Motion to Prohibit Consideration of Prior Conviction [§ 5.49]

Form 5.49A Motion to Prohibit Consideration of Prior Conviction (CRM-0076)

XXXVII. Bail Motions [§ 5.50]

Form 5.50A Motion for Grant or Reduction of Bail (CRM-0077)

Form 5.50B Motion for Release from Obligations of Bond (CRM-0078)

Form 5.50C Sample Affidavit of Equity (CRM-0079)

XXXVIII. Motion for Continuance [§ 5.51]

Form 5.51A Motion for Continuance (CRM-0080)

XXXIX. Demand for Speedy Trial [§ 5.52]

Form 5.52A Demand for Speedy Trial (CRM-0081)

XL. Motion for Change of Venue or Venire [§ 5.53]

Form 5.53A Motion for Change of Venue or Venire (CRM-0082)

Form 5.53B Sample Affidavit in Support of Motion for Change of Venue or Venire (CRM-0083)

XLI. Motions for Severance [§ 5.54]

Form 5.54A Motion to Sever Defendants (CRM-0084)

Form 5.54B Sample Affidavit in Support of Motion to Sever Defendants (CRM-0085)

Form 5.54C Motion to Sever Charges (CRM-0086)

Form 5.54D Sample Affidavit in Support of Motion to Sever Charges (CRM-0087)

XLII. Motion in Limine [§ 5.55]

Form 5.55A Motion in Limine (CRM-0088)

XLIII. Prisoners and Out-of-State Witnesses [§ 5.56]

Form 5.56A Defendant's Motion to Transport Prisoner (CRM-0089)

Form 5.56B Order to Produce or Transport Prisoner (CRM-0090)

Form 5.56C Defendant's Motion for Certificate Regarding Out-of-State Witness (CRM-0091)

Form 5.56D Certificate Under Uniform Act for the Extradition of Witnesses (CRM-0092)

XLIV. Motion to Withdraw as Counsel [§ 5.57]

Form 5.57A Motion to Withdraw as Counsel (CRM-0093)

**CHAPTER 6
NEGOTIATING A PLEA**

I. Introduction [§ 6.1]

II. The Law and Practice of Plea Negotiations [§ 6.2]

- A. In General [§ 6.3]
- B. The Parties [§ 6.4]
- C. The Court’s Role [§ 6.5]
- D. Breach of the Plea Bargain [§ 6.6]
 - 1. In General [§ 6.7]
 - 2. By the Accused [§ 6.8]
 - 3. By the Government [§ 6.9]
- E. Ethical Considerations [§ 6.10]
 - 1. Problem Areas [§ 6.11]
 - 2. The Law and Standards [§ 6.12]
 - 3. Immigration and Other Collateral Consequences: Scope of Representation [§ 6.13]
- F. Defense Strategies [§ 6.14]
- G. Bargaining Inducements [§ 6.15]
 - 1. By the Prosecution [§ 6.16]
 - a. Charge Reduction [§ 6.17]
 - b. “Read-In” [§ 6.18]
 - c. Charge Dismissal [§ 6.19]
 - d. Promise Not to Bring Additional Charges [§ 6.20]
 - e. Sentence Recommendations in General [§ 6.21]
 - f. Place and Nature of Confinement [§ 6.22]
 - g. Special Disposition [§ 6.23]
 - h. Deferred Prosecution or Diversion Programs Under Wis. Stat. §§ 971.37–.39 [§ 6.24]
 - i. “Hold-Open” [§ 6.25]
 - j. Deferred Adjudication [§ 6.26]
 - k. Community Service [§ 6.27]
 - l. “Ordinance Alternative” [§ 6.28]
 - 2. By the Defense [§ 6.29]
 - a. Restitution [§ 6.30]
 - b. Agreement Not to Appeal [§ 6.31]
 - c. Appeals to Justice, Fairness, and Equity [§ 6.32]
 - d. Other Considerations [§ 6.33]

III. Checklist of Factors Affecting the Plea Decision (CRM-0094) [§ 6.34]

IV. Checklist for Advising the Client on the Plea Decision (CRM-0095) [§ 6.35]

V. Letter of Agreement [§ 6.36]

Form 6.36A Letter of Agreement (CRM-0096)

VI. Deferred Prosecution and Deferred Judgment Agreements [§ 6.37]

Form 6.37A Deferred Prosecution Agreement (Version 1) (CRM-0097)

Form 6.37B Order for Deferred Prosecution (CRM-0098)

Form 6.37C Deferred Prosecution Agreement (Version 2) (CRM-0099)

- Form 6.37D Deferred Judgment Agreement (CRM-0100)
- Form 6.37E Order for Deferred Judgment (CRM-0101)

VII. Consolidations [§ 6.38]

- Form 6.38A Application for Consolidation (CRM-0102)
- Form 6.38B Consent to Consolidation (CRM-0103)

CHAPTER 7

PREPARING FOR TRIAL

I. Introduction [§ 7.1]

II. The Trial Notebook [§ 7.2]

- A. In General [§ 7.3]
- B. The Form of the File at Trial [§ 7.4]
- C. Trial Outline [§ 7.5]
- D. Jury Selection [§ 7.6]
- E. Opening Statements [§ 7.7]
- F. Defense and Prosecution Witnesses [§ 7.8]
- G. The Use of Technology at Trial [§ 7.9]
- H. Exhibits and Motions [§ 7.10]
- I. Demonstrative Evidence [§ 7.11]
- J. Rebuttal Witnesses [§ 7.12]
- K. Jury Instructions [§ 7.13]
- L. Closing Argument [§ 7.14]
- M. Trial Brief [§ 7.15]
- N. Sentencing [§ 7.16]
- O. Appeal Notes [§ 7.17]

III. Trial Motions Checklist (CRM-0104) [§ 7.18]

IV. Trial Checklists [§ 7.19]

- Form 7.19A Checklist of Things to Do at the Opening of Trial (CRM-0105)
- Form 7.19B Checklist of Things to Do During Trial (CRM-0106)

V. Trial Outline [§ 7.20]

- Form 7.20A Trial Outline (CRM-0107)

VI. Jury Selection [§ 7.21]

- Form 7.21A Jury Selection Code (CRM-0108)
- Form 7.21B Jury Selection Form (CRM-0109)

VII. Notes on Prosecutor's Opening/Closing [§ 7.22]

- Form 7.22A Notes on Prosecutor's Opening/Closing (CRM-0110)

VIII. Notes on Witnesses [§ 7.23]

- Form 7.23A Notes on Witnesses (CRM-0111)

IX. Instructions for Witnesses [§ 7.24]

- Form 7.24A Instructions for Witnesses (CRM-0112)
- Form 7.24B Additional Instructions for the Defendant (CRM-0113)

X. Subpoena and Certificate of Appearance with Cover Letter [§ 7.25]

- Form 7.25A Subpoena (CRM-0114)
- Form 7.25B Certificate of Appearance (Subpoena) (CRM-0115)
- Form 7.25C Subpoena Cover Letter (CRM-0116)

XI. Exhibits [§ 7.26]

- Form 7.26A Exhibits (CRM-0117)

XII. Trial Motions Chart [§ 7.27]

- Form 7.27A Trial Motions Chart (CRM-0118)

XIII. Appealable Issues [§ 7.28]

- Form 7.28A Appealable Issues (CRM-0119)

CHAPTER 8

PREPARING FOR SENTENCING

I. Introduction [§ 8.1]

II. Checklist of Sentencing Motions and Other Materials (CRM-0120) [§ 8.2]

III. Quick Reference Guide to Sentencing [§ 8.3]

- A. Introduction [§ 8.4]
- B. General Sentencing Principles [§ 8.5]
- C. Presentence Investigation and Report [§ 8.6]
- D. Sentence Terms [§ 8.7]
 - 1. In General [§ 8.8]
 - 2. Probation [§ 8.9]
 - 3. Concurrent and Consecutive Sentences [§ 8.10]
 - 4. Deferred Entry of Judgment; Stay of Execution [§ 8.11]
 - 5. Lifetime Supervision of Serious Sex Offenders [§ 8.12]
 - 6. Pardons and Other Forms of Executive Clemency [§ 8.13]
- E. Bifurcated Prison Sentences and Procedures to Modify Bifurcated Sentence [§ 8.14]
- F. ABA Standards Relating to Sentencing [§ 8.15]
 - 1. General Principles [§ 8.16]
 - 2. Severity of Sentencing [§ 8.17]
 - 3. Alternatives to Incarceration [§ 8.18]
 - 4. Consistency in Sentencing; Appellate Review [§ 8.19]
- G. Prior Convictions [§ 8.20]
 - 1. Persistent Repeater and Repeater [§ 8.21]
 - 2. Constitutional Issues [§ 8.22]
 - 3. Other Considerations [§ 8.23]
 - 4. Attacking the Use of Prior Convictions at Sentencing [§ 8.24]

- H. Sentence Credit [§ 8.25]
 - 1. Definitions [§ 8.26]
 - 2. Calculating Sentence Credit [§ 8.27]
 - 3. Application of Sentence Credit to Consecutive and Concurrent Sentences [§ 8.28]
 - a. Concurrent Sentences [§ 8.29]
 - b. Consecutive Sentences [§ 8.30]
 - 4. Credit on Jail Sentences for Good Time [§ 8.31]
- I. Court and Law-Enforcement Records [§ 8.32]
 - 1. Public Records in General [§ 8.33]
 - 2. Expungement of Conviction Record [§ 8.34]
 - 3. Expungement of Court Records After Dismissal or Acquittal [§ 8.35]
 - 4. Removal of Arrest Records [§ 8.36]
 - 5. Expungement of Delinquency Adjudication [§ 8.37]
- J. Other Special Dispositions [§ 8.38]
 - 1. Conditional Discharge for Possession or Attempted Possession as First Offense [§ 8.39]
 - 2. Juvenile Delinquency Adjudication and Disposition [§ 8.40]
- K. Fines [§ 8.41]
- L. Monetary Costs, Fees, and Surcharges [§ 8.42]
 - 1. Introduction [§ 8.43]
 - 2. Taxable Costs [§ 8.44]
 - 3. Fees and Surcharges as Part of Sentencing [§ 8.45]
 - 4. Additional Costs [§ 8.46]
- M. Restitution [§ 8.47]
 - 1. General Provisions [§ 8.48]
 - a. Introduction [§ 8.49]
 - b. Compensation for Victims in General [§ 8.50]
 - c. Property Crimes [§ 8.51]
 - d. Crimes Causing Bodily Injury or Death [§ 8.52]
 - 2. Scope of Restitution Orders [§ 8.53]
 - 3. Determination of Defendant’s Ability to Pay Restitution [§ 8.54]
 - 4. Procedures for Determining Amount of Restitution [§ 8.55]
 - 5. Practice Tips [§ 8.56]
- N. Work Release or Huber Law Privileges [§ 8.57]
- O. Other Sentencing Alternatives [§ 8.58]
 - 1. Community Service [§ 8.59]
 - 2. Electronic Monitoring [§ 8.60]
 - 3. Jail Sentence on Weekends [§ 8.61]
 - 4. Day Reporting Program [§ 8.62]
- P. Other Sentencing Provisions and Collateral Consequences [§ 8.63]
- Q. Sentencing Hearing [§ 8.64]
- R. Sentencing After Revocation of Supervision [§ 8.65]

IV. Checklist of Defense Strategies at Sentencing (CRM-0121) [§ 8.66]

V. Sample Letter in Support of Sentencing Recommendation [§ 8.67]

Form 8.67A Sample Letter in Support of Sentencing Recommendation (CRM-0122)

- VI. Motion for Sentence Credit [§ 8.68]**
Form 8.68A Motion for Sentence Credit (CRM-0123)
- VII. Motion to Set or Revise Restitution [§ 8.69]**
Form 8.69A Motion to Set or Revise Restitution (CRM-0124)
- VIII. Motion to Remit Fines, Costs, Fees, and Surcharges (*Pedersen Motion*) [§ 8.70]**
Form 8.70A Motion to Remit Fines, Costs, Fees, and Surcharges (CRM-0125)
- IX. Guilty Plea Questionnaire and Waiver of Rights (CR-227) [§ 8.71]**
Form 8.71A Guilty Plea Questionnaire and Waiver of Rights (CRM-0126)
- X. Notice of Right to Seek Postconviction Relief (CR-233) [§ 8.72]**
Form 8.72A Notice of Right to Seek Postconviction Relief (CRM-0127)

**CHAPTER 9
POSTCONVICTION PROCEEDINGS**

- I. Introduction [§ 9.1]**
- II. Quick Reference Guide to Postconviction Relief Under Wis. Stat. § 809.30 [§ 9.2]**
 - A. The Right to Seek Postconviction Relief [§ 9.3]
 - B. Notice of Intent to Seek Relief [§ 9.4]
 - C. Appointment of Counsel [§ 9.5]
 - D. Transcripts and Circuit Court Case Records [§ 9.6]
 - E. Filing of Notice of Appeal or Motion for Postconviction Relief [§ 9.7]
- III. Quick Reference Guide to Postconviction Motions and Writs [§ 9.8]**
 - A. Common Wis. Stat. § 809.30 Postconviction Motions [§ 9.9]
 - 1. Motion for a New Trial (Form 9.48A) [§ 9.10]
 - 2. Motion to Withdraw Guilty or No-Contest Plea (Form 9.49A) [§ 9.11]
 - 3. Motions Addressing Sentence [§ 9.12]
 - a. Sentence Modification (Form 9.50A) [§ 9.13]
 - b. Resentencing [§ 9.14]
 - c. Illegal Sentence [§ 9.15]
 - d. Challenges to Court’s Modification of Sentence [§ 9.16]
 - 4. A Note on Ineffective Assistance of Counsel [§ 9.17]
 - B. Procedural Motions [§ 9.18]
 - 1. In General [§ 9.19]
 - 2. Motion for Release Pending Appeal (Form 9.51A) [§ 9.20]
 - 3. Motion for Determination of Competency [§ 9.21]
 - 4. Motion for Postconviction Discovery [§ 9.22]
 - C. Post-postconviction Motions [§ 9.23]
 - 1. In General [§ 9.24]
 - 2. Motion for Postconviction Relief Under Wis. Stat. § 974.06 [§ 9.25]
 - 3. Motion for Postconviction Deoxyribonucleic Acid (DNA) Testing of Certain Evidence [§ 9.26]
 - 4. Petitions for Modification of Conditions of Extended Supervision Under Wis. Stat. § 302.113(7m) (Forms 9.52A–.52C) [§ 9.27]
 - 5. Court Hearing Regarding Positive Adjustment Time [§ 9.28]

6. Petitions for Release to Extended Supervision for Felony Offenders Serving Life Sentences Under Wis. Stat. § 302.114 [§ 9.29]
7. Petition for Release for Inmate with Extraordinary Health Condition [§ 9.30]
- D. Writs (Extraordinary Remedies) as Methods of Review [§ 9.31]
 1. Introduction [§ 9.32]
 2. Procedure [§ 9.33]
 - a. Non-Writ Procedure [§ 9.34]
 - b. Writ Procedure in the Court of Appeals and Supreme Court [§ 9.35]
 3. Writ Practice in General: Waiver or Deferral of Filing Fees [§ 9.36]
 4. Writ of Habeas Corpus (Forms 9.45A–.45C) [§ 9.37]
 5. Writ of Certiorari (Forms 9.46A–.46C) [§ 9.38]
 6. Writ of Mandamus [§ 9.39]
 7. Writ of Prohibition [§ 9.40]
 8. Writ of Quo Warranto [§ 9.41]
 9. Writ of *Coram Nobis* [§ 9.42]

IV. Checklist of Postconviction Motions and Writs (CRM-0128) [§ 9.43]

V. Writ Practice in General: Waiver or Deferral of Filing Fees [§ 9.44]

- Form 9.44A Prisoner’s Petition for Waiver of Prepayment of Fees and Costs—Affidavit of Indigency (CRM-0129)
- Form 9.44B Order on Petition for Waiver of Fees and Costs (CRM-0130)
- Form 9.44C Wisconsin Department of Justice Certification Form as to Prior Dismissal(s) (DOJ Form DJ-LS-22) (CRM-0131)
- Form 9.44D Authorization to Withhold Money from Trust Account (CRM-0132)
- Form 9.44E Order on Prisoner’s Petition for Waiver of Prepayment of Fees/Costs (CRM-0133)
- Form 9.44F Petition for Waiver of Fees and Costs—Affidavit of Indigency (CRM-0134)

VI. Writ of Habeas Corpus [§ 9.45]

- Form 9.45A Petition for Writ of Habeas Corpus (CRM-0135)
- Form 9.45B Writ of Habeas Corpus (CRM-0136)
- Form 9.45C Order Granting Writ of Habeas Corpus (CRM-0137)

VII. Writ of Certiorari [§ 9.46]

- Form 9.46A Petition for Writ of Certiorari (CRM-0138)
- Form 9.46B Writ of Certiorari (CRM-0139)
- Form 9.46C Order Granting Writ of Certiorari (CRM-0140)

VIII. Notice of Intent to Pursue Postconviction Relief [§ 9.47]

- Form 9.47A Notice of Intent to Pursue Postconviction Relief (CRM-0141)
- Form 9.47B Sample Letter to State Public Defender Appellate Division (CRM-0142)

IX. Motion for a New Trial [§ 9.48]

- Form 9.48A Motion for a New Trial (CRM-0143)

X. Motion to Withdraw Guilty or No-Contest Plea [§ 9.49]

- Form 9.49A Motion to Withdraw Guilty or No-Contest Plea (CRM-0144)

XI. Motion to Modify Sentence: Legal Error or New Factor [§ 9.50]

Form 9.50A Motion to Modify Sentence (CRM-0145)

XII. Motion for Release Pending Appeal [§ 9.51]

Form 9.51A Motion for Release Pending Appeal (CRM-0146)

XIII. Petition to Modify Court-Imposed Conditions of Extended Supervision Under Wis. Stat. § 302.113(7m) [§ 9.52]

Form 9.52A Petition to Modify Court-Imposed Conditions of Extended Supervision (CRM-0147)

Form 9.52B Verification of Date of Release to Extended Supervision (CRM-0148)

Form 9.52C Order Modifying Court-Imposed Conditions of Extended Supervision (CRM-0149)

CHAPTER 10

HANDLING PUBLIC DEFENDER CASES

I. Introduction [§ 10.1]

II. Quick Reference Guide to SPD Policies and Procedures [§ 10.2]

A. Determination of SPD Eligibility [§ 10.3]

1. Right to Counsel [§ 10.4]

2. Authority to Determine Eligibility for SPD Appointment [§ 10.5]

3. Method of Determining Eligibility [§ 10.6]

4. Review of SPD Eligibility Determinations [§ 10.7]

B. Certification of Attorneys [§ 10.8]

1. Introduction [§ 10.9]

2. Certification Criteria [§ 10.10]

a. Certification for Circuit Court Representation [§ 10.11]

b. Certification for Appellate Cases [§ 10.12]

3. Continuing Legal Education Requirement [§ 10.13]

4. Counties in Which Private Counsel May Be Certified [§ 10.14]

5. Certification Decisions [§ 10.15]

C. Assignment Procedure [§ 10.16]

1. Assignment of Cases [§ 10.17]

2. Client's Right to Request Another Attorney [§ 10.18]

3. Assignment of Previously Retained Counsel [§ 10.19]

D. Investigators and Experts [§ 10.20]

E. Vouchers and Payment [§ 10.21]

1. Statutory Compensation Rate [§ 10.22]

2. Payment Procedures [§ 10.23]

3. Appeal of Reduced Payments [§ 10.24]

III. Eligibility Determinations [§ 10.25]

Form 10.25A SPD Ability to Pay Form (CRM-0150)

Form 10.25B SPD Eligibility Evaluation Form (Appellate Division) (CRM-0151)

Form 10.25C Petition for Appointment of an Attorney: Form Summary (CRM-0152)

Form 10.25D Petition for Appointment of an Attorney, Affidavit of Indigency (CRM-0153)

Form 10.25E Order on Petition for Appointment of an Attorney: Form Summary (CRM-0154)

Form 10.25F Order on Petition for Appointment of an Attorney, Affidavit of Indigency (CRM-0155)

IV. SPD Private-Bar Certification Applications and CLE Form [§ 10.26]

Form 10.26A Assigned Counsel Division—General Certification Application (CRM-0156)

Form 10.26B Misdemeanor Certification List Request (CRM-0157)

Form 10.26C Class B–I Felony Certification List Request (CRM-0158)

Form 10.26D Class A Felony Certification List Request (CRM-0159)

Form 10.26E Appellate Certification List Request (CRM-0160)

Form 10.26F Trial – Litigation Experience and Training Requirements (CRM-0161)

Form 10.26G Appellate – Litigation Experience and Training Requirements (CRM-0162)

V. SPD Materials Generally Applicable to Private-Bar Appointments [§ 10.27]

Form 10.27A Minimum Attorney Performance Standards for Appointed Private Bar Counsel (CRM-0163)

Form 10.27B Minimum Attorney Performance Standards: Appellate Division (CRM-0164)

Form 10.27C Core Principles of Juvenile Defense Practice (CRM-0165)

Form 10.27D State Public Defender Request for Transcripts (CRM-0166)

Form 10.27E SPD Trial Attorney Questionnaire (CRM-0167)

VI. Hiring Experts or Investigators in SPD Cases [§ 10.28]

Form 10.28A Motion for Ex Parte Hearing (CRM-0168)

Form 10.28B Motion for Expert Funding (CRM-0169)

Form 10.28C Sample Brief in Support of Motion for Expert Funding (CRM-0170)

Appendices

A Truth in Sentencing II—Penalty Chart (CRM-0171)

B Pre-Sentence Investigation Recommendation Guidance to Agents of the Division of Community Corrections (CRM-0172)

C Wisconsin Circuit Court Fee, Forfeiture, Fine and Surcharge Tables (CRM-0173)

TABLE OF CASES

TABLE OF STATUTES, REGULATIONS, AND RULES

FORMS INDEX

SUBJECT INDEX