

OAKLAND COUNTY CRIMINAL LAW PROTOCOL

Criminal Procedures for Appointed Attorneys in the Oakland County Circuit Court

1. The defendant appears before the District Court magistrate to be arraigned on the complaint and warrant. This is the defendant's first appearance in court. At this time:
 - a. The defendant is represented by the daily arraignment attorney.
 - b. The magistrate sets a bond for the defendant. See MCR 6.104 and 6.106.
 - c. The magistrate sets a date for a probable cause conference (7 – 14 days after arraignment) and a date for the preliminary examination (5-7 days after the probable cause conference). See MCL 766.4.
 - d. If the defendant wishes to have an attorney appointed for the remainder of the case, they must complete and submit the attorney request form. This form is reviewed by the District Court to confirm that the defendant is indigent, and then forwarded to the Oakland County Indigent Defense Services Office (IDSO) for assignment of an attorney.
2. The IDSO will appoint an attorney upon receiving the request from the District Court. Attorneys will receive a notice of appointment by email through the IDSO's appointment database.
 - a. The notice will contain the defendant's name, the offense(s) charged, the name of the court and the next court date.
 - b. The attorney will typically have 24 hours to accept or reject the assignment. This time period may be shortened if necessary to meet the needs of the case. Three rejections in a row will move the attorney to the bottom of the assignment rotation.
3. Upon accepting an assignment, the attorney should do the following:
 - a. Determine if the client is on bond or in jail. The Oakland County Sheriff's website has an "inmate locator" which is very useful.
 - i. If the client is in custody, the attorney must conduct an "initial interview" within 72 hours. See MIDC Standard 2.

- ii. If the client is not in custody, the attorney must conduct the initial interview within a reasonable time and before the first court proceeding.
 - b. File an appearance with the District Court and a written request for discovery.
 - c. Contact the Prosecutor’s Office and attempt to determine which Assistant Prosecutor (APA) is assigned to the case and get discovery if possible. You can email ocpodiscovery@oakgov.com for this information.
 - d. Pull the applicable statute and standard jury instruction for the charged offense(s). This helps ensure that you are aware of every element of the offense(s) charged and what the APA will have to prove.
4. After you have met with your client, if you have concerns that the client may not be competent to assist in their defense, you should be prepared to request a referral to the Forensic Center for a competency evaluation at your next court date. See MCL 330.2020 and MCR 6.125.
5. One of your first decisions will be whether to conduct the preliminary examination (exam) or waive it.
 - a. If you have only received partial discovery at the probable cause conference (PCC), you and your client may feel unprepared to make this decision. In that case, you may wish to ask the court to adjourn the exam to a new date.
 - b. If you are asking the court to adjourn the exam date, your client must be prepared to waive the “21-day rule.” That is the statutory right to have the exam held within 21 days of arraignment.
 - c. If you and your client wish to waive the exam altogether, the court will ask your client certain questions to ensure that the waiver is knowingly, voluntary, and accurate. Waiving the exam will send the case directly to Circuit Court.
 - d. If you elect to hold the exam, the APA will need to present witnesses to prove by a probable cause standard that the charged felony offense(s) were committed and that your client committed them. Any charged misdemeanor offense(s) are not required to be proven at the exam.
 - e. As you review the discovery material (and if there is testimony given at the exam) you should continuously evaluate the case to determine whether you

may need to request funding from the IDSO for an expert or investigator. The request forms are available on the IDSO website.

6. You should be prepared to address your client’s bond at every court proceeding.
 - a. This could include asking the court to reduce or modify the bond. See MCR 6.106(H).
 - b. It could also include speaking with your client about any alleged or potential bond violations, especially if there is a “no contact” order or an order for drug/alcohol testing.
7. If your client waives the exam, or if the court finds probable cause after conducting the exam, the case will be “bound over” to the Circuit Court.
 - a. In almost all cases (exception is cases brought by the Attorney General), you will have already known the name of the assigned Circuit Court judge prior to bind-over.
 - b. You should familiarize yourself with the established criminal call schedule of each Circuit Court judge so that you have a general idea of when your case will be scheduled.
 - c. Your information will be transferred to the Circuit Court’s case management system, and you will receive notice of your next court date, which will typically be the “Arraignment on the Information.”
 - d. You are responsible for adding yourself as the defendant’s attorney in the MiFile e-filing system.
8. After bind-over, the Prosecutor is required to file a “General Information” with the Circuit Court listing all of the offenses charged. The Prosecutor must also file a “Notice of Habitual” information if applicable.
 - a. At the Circuit Court arraignment, you should be prepared to acknowledge receipt of both the general information and the habitual information (if applicable) and have your client “stand mute” to the charges.
 - i. If your client stands mute the court will enter a not guilty plea.
 - ii. In some cases, after standing mute for purposes of the arraignment, it is appropriate to proceed directly to a guilty or no contest plea if

you have already arranged a plea bargain or your client wishes to plead guilty as charged.

- b. Many judges will allow the arraignment to be conducted “by mail,” meaning that you and your client will simply sign a form acknowledging receipt of these documents and setting the case for a subsequent pretrial date.
9. After arraignment the court will set the case for a pretrial. You should be prepared for the following at the time of the pretrial:
 - a. Determine beforehand whether the APA is offering any type of plea bargain or sentencing agreement and engage in negotiations. If the APA is offering a plea that your client wishes to accept, be prepared to enter that plea on the pretrial date.
 - b. If the APA is not offering any sort of plea, determine whether your client wants to plead guilty or no contest as charged, or whether your client wants to set the case for trial.
 - i. If your client wants to plead guilty, you will need to determine whether the assigned judge will entertain any sort of *Cobbs* plea. A *Cobbs* plea is a promise by the judge not to exceed a certain sentencing range.
 - c. If you feel that you do not have enough information to make the decision regarding a plea or trial, you should be prepared to ask for a second pretrial. Depending on your judge, you may or may not have to give detailed reasons to support your request.
10. If your case is set for trial, you should be prepared for the court to issue a discovery order. You should also be prepared to request discovery from the APA. See MCR 6.201. Also keep the following points in mind:
 - a. File any necessary motions, including challenges to any statements made by your client or any appropriate search/seizure motions.
 - b. Some defenses may require you to file notice (e.g., insanity, alibi) and you should do so as soon as possible. In the case of an insanity defense, many courts will allow you to request an evaluation as to “criminal responsibility” in District Court, along with your request for a competency evaluation, even though the statute does not explicitly call for this. See MCL 769.20a.

11. Whether your case is set for trial or is going to result in a plea, you should make every effort to obtain an accurate criminal history from your client.
 - a. You can ask to see the criminal history in the APA's file, and ask the APA for their preliminary sentencing guideline calculation to assist you in understanding the possible sentence that your client may face.
12. The attorney should be prepared for the following if and when their client is convicted, whether by plea or trial:
 - a. You and your client will need to complete probation referral forms to turn in to the court, as well as any required pre-sentence investigation forms. It is always a good idea to ask the court clerk what forms you need to provide.
 - b. The probation department will contact your client in order to prepare a pre-sentence investigation report. Please remember that the attorney has the right to be present with their client during the PSI interview upon request. See MCR 6.425(A)(2).
13. Prior to sentencing, you should obtain a copy of the completed PSI report from the court and review its contents with your client to make sure everything is accurate and there are no additions, deletions, or corrections needed. You should also advise your client of their right to make a statement at sentencing.
14. At sentencing, you should be mindful of the following:
 - a. Tell the court that you have reviewed the PSI with your client and that it is accurate or put any necessary changes on the record.
 - b. Make any necessary arguments for why the sentencing guidelines are not scored correctly.
 - c. Advocate for the best possible sentence for your client. Even if you have already obtained a *Cobbs* agreement and you know what the sentencing is likely to be, it is always best practice to make a full record.
 - d. Allow your client the opportunity to make a statement to the court. Also remind your client that if there was a victim in the case, that person also has the right to make a statement to the court.

15. After sentencing, you should be mindful of the following:

- a. If your client is on bond and was sentenced to probation, the client will be advised on when to report to the probation department.
 - b. You will receive a copy of the judgment of sentence, and you should review it to ensure that it comports with what the judge actually ordered.
 - c. The court will advise your client regarding their appellate rights, and your client may be asked to sign an acknowledgment of those rights.
16. To receive payment, you must submit a voucher through the IDSO's online vouchering system within 30 days of the completion of the case. Remember that MIDC Standard 8 requires attorneys to submit itemized billing statements.