

Getting Started: Developing an Investigation and Discovery Plan

New Felony Defender Training

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You got the file. Now what?

- Case still in District Court – Probable Cause stage
- No right to “formal” discovery until case goes to Superior Court
- Sources of “informal” discovery:
 - Client
 - Client’s family or friends
 - Law enforcement, if they will talk to you
 - Motions filed in District Court
 - Motion to Modify Bond
 - Demand for Probable Cause Hearing

Demand for Probable Cause Hearing

- Filed in District Court
- Governed by Article 30 (15A-611 through 615)
- Also 15A-606 addresses demand and waiver of PC
- If you can get one:
 - Excellent source of discovery
 - Opportunity to cross-examine state's witnesses
 - File motion for recordation of PC hearing
 - Get order for transcription of hearing
- Motion to continue PC hearing is not timely unless made 48 hours prior to PC hearing – after that, must have “extraordinary cause.” 15A-606(f)

Demand for Probable Cause Hearing

- Trade off PC hearing for some discovery?
- May force a better plea

Bond Hearings: Motion to Modify Bond

- **Can be good source for discovery**
- **Article 26; 15A-531 – 547.1**
- **State will likely lay out some facts about the case in opposition**
- **Good opportunity to show your clients you are on their side**
- **Also shows them the criminal justice system is not on their side**

Bond Hearings: Motion to Modify Bond

■ Considerations:

- Client better off in custody (drug use, mental health issues, etc.)**
- Prior record issues (more time in, better chance for special probation, DA more willing to deal on credit for time served)**
- Access to client**
- Client out of jail better able to assist**
- Client out of jail better able to make a living (restitution issues)**

Plea vs. Trial

■ Client Centered-

- Does client want plea or trial? (Ultimately their decision)
- Their version of events vs. law enforcement or victim's statements
- Their prior record
 - Can they testify?
 - What sentence are they subject to at trial vs. plea?
 - "Trial Tax"

Discovery

- **Request for Voluntary Discovery (Article 48; 15A-901 through 910)**
 - **After indictment/PC hearing/waiver of PC hearing**
 - **No later than 10 working days after**
 - **If negative/no response or 7 days pass after request you may then file motion for discovery**
 - **Tip: File Request for/Alternative Motion for Voluntary Discovery**
 - **Prevents you from having to file motion after filing Request**
 - **File the Request/Alternative Motion! (protect record)**

Discovery

- 15A-903 governs what you get
- You get everything!!!
 - “complete files of all law enforcement and prosecutorial agencies”
 - Defendant’s statements
 - Co-defendant’s statements
 - Witness Statements
 - Investigating officers’ notes
 - Results of tests and examinations
 - “or any other matter obtained during the investigation of the offenses....”

Discovery

“...any other matter or evidence obtained...”

- **Photographs**
- **Physical evidence**
- **Videos**
- **Weapons**
- **Biological evidence**
- **Polygraph results**
- **Fingerprint cards**
- **Anything collected in the course of the investigation!!!**

Discovery

- Request for Discovery should include everything (see handout)
- Cite NC Statutes, and federal and state constitutions (protect record)
- Follow up with letters to ADA if no response
 - Always follow up with letters if you can
 - Shows a timeline of requests and “good faith” effort to work with ADA

Discovery

- Discovery from requests are the 1st layer
- Review original packet for other items missing
 - Example: Police report mentions surveillance tape, but not tape in 1st discovery packet – where's the tape?
 - Example: Police report mentions "substance" sent to SBI lab for testing – where's the lab report and accompanying documents?
 - *Always assume you DON'T have everything*
- Follow up with professional request (letter) – if no response, file motions to compel additional discovery

Investigators

- Give them a plan of action:
 - What to do
 - Who to interview
 - What locations to view (photograph)
- Sit down with them and go over case
- Give them the discovery that you have been given so they will understand the case
- *Ask for their input and advice!*
 - They like it
 - They have more experience than you in getting information
 - They can help you streamline an investigation

Investigators

- **Think about which investigators you want for a particular case**
 - Female victim of sexual assault (female investigator to interview her)
 - Interview of snitch (maybe former law enforcement)
 - Investigators with special backgrounds (military, arson investigation, sex assault investigation, homicide investigation, forensic training)
- **Let investigators meet with client**
 - They are often better at getting info. than you are
 - Different kind of relationship
 - Can help “talk sense” into client re: pleading when necessary

Mitigation

- **Discovery is not just about guilt/innocence**
- **Also about sentencing**
- **Some cases are won at sentencing**
- **Use discovery and investigators to dig up facts about your client**
 - **Family life**
 - **School**
 - **Achievements**
 - **Hardships**
 - **Employment**
 - **Substance Abuse/Mental Health Issues**

Mitigation

- Mitigating Factors – N.C.Gen.Stat. 15A-1340.16(e)
- 20 mitigating factors you can use plus one “catch all”
- The “catch all” is where cases can be won at sentencing
- Tell the client’s life story
- Utilize Sentencing Services when possible
 - Like having your own mitigation investigators

Some Standard Motions

- Request for Arraignment (15A-943)
- Motions Practice (15A-952)
 - Motions to Continue
 - Change of venue
 - Special venire
 - Dismissal (15A-955)
 - Dismissal for failure to plead
 - Motion to strike
 - Bill of Particulars
 - Severance of offenses
 - Joinder of Offenses

Some Standard Motions

- **Motions to Preserve Evidence**
 - File in District Court
 - Then re-file in Superior Court after case bound over
- **Get an Order!**
- **If no Order, get State's objection on record.**
- ***Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988).***