

CPCS Screening Checklist for Collateral Screenings

Please email this completed checklist along with your screening report to Liz Dembitzer at edembitzer@publiccounsel.net.

This document is not intended to be all-inclusive. It is intended to provide screening attorneys with the minimum areas for investigation.

Please remember, if you are granted a hearing for a new trial motion you should email Liz Dembitzer for assignment of co-counsel unless you have significant trial experience or have taken the Litigating New Trial Motions training in the last three years.

Resources for Screenings Attorneys can be found on MyGideon (please email kmunichiello@publiccounsel.net for a user name and password for access).

The following information should be included in the Screening Memo:

- 1) a summary of the procedural history of the case, including each charge and sentence;
- 2) a factual summary of the case against the client;
- 3) the theory of defense at trial;
- 4) pretrial investigation conducted by trial counsel;
- 5) pretrial motions litigated and the outcome of those motions;
- 6) issues raised on appeal and in other post-conviction motions;
- 7) a summary of the client's personal history (age at conviction, mental and physical health, immigration etc.);
- 8) a list of documents that you have reviewed in conducting your screening;
- 9) an outline of the steps you took in preparing your recommendation, including speaking with the client, the client's family or supporters, prior counsel, investigators, experts and any witnesses;
- 10) a brief description of the issues that the client has asked you to look into and your legal analysis of these claims;
- 11) a brief description of each claim that you have evaluated and your legal analysis of each claim; and
- 12) your final recommendation.

Documents Checklist

Trial Court Materials:

The following materials are commonly found in the trial file. If these materials are not located in the trial file, or in materials obtained in your screening, you must either locate them using alternative means or confirm that they never existed.

- Pre-trial discovery materials:**
 - Police reports, interrogation and interviews notes, identification procedures
 - Complaint/indictment
 - Video or audio recordings (911 calls, bodycam, surveillance, interrogations)
 - Telephone information (such as Cellbrite reports)
 - Search warrant applications and returns
 - Crime lab reports and crime lab file
 - Witness statements
 - Discovery notices

- Defense Investigation and work product materials:**
 - Defense investigator reports
 - Expert resumes and reports
 - Defendant's mental health and/or medical records
 - Internal memos
 - Defense counsel's running sheet

- Trial court materials:**
 - All material pleadings including motions for funds and motions to suppress
 - Rule 17 Motions and material (these may be under a protective order)
 - Complete trial court docket
 - Grand jury minutes
 - Transcripts of arraignment, dangerousness hearing, competency hearing, motion to suppress/dismiss, prior new trial motion hearing, Daubert-Lanigan hearings
 - Trial Transcripts
 - Competency evaluations
 - Exhibit lists and all items and documents marked as exhibits
 - Items and documents marked for ID
 - Immunity/cooperation agreements for any witnesses
 - Co-defendant's case file

Please indicate here the reason any of the boxes above are unchecked:

Post-Conviction Materials

The following is a list of materials pertaining to criminal appeals and post-conviction work. It is essential to review this information to know what legal issues have already been ruled upon, what factual information the court has relied upon, and what information has never been brought before the court.

- Direct appeal materials:**
 - Defense brief and reply brief and record appendices
 - Commonwealth brief appellate brief and record appendix
 - Complete appellate docket
- New trial motion materials:**
 - All previous Rule 30 motions and appendices
 - Commonwealth's opposition filings
 - Orders on Rule 30 motion
 - Motions for post-conviction discovery and appendices
 - Previous 278A motions (including oppositions and orders)
- Further appellate materials:**
 - DAR/FAR applications
 - Defense and CW briefs for appeals of previous Rule 30 or 278A motions
 - Gatekeeper petitions and SJC decisions
 - Any briefs to the SJC
 - SJC docket
- Prior appellate counsel's materials:**
 - All previous post-conviction screenings
 - Innocence Program file
 - Prior appellate counsel's running sheet, memos, notes

Please indicate here the reason any of the boxes above are unchecked:

Federal, Parole, Civil, Competency Materials

Beyond the applicant's Massachusetts criminal case materials, there may be federal district court and circuit filings and decision, written parole decisions, materials from SORB and SDP proceedings, and/or competency evaluations available for your review. If these materials do exist, you should review them in your screening process.

- Federal habeas case materials:**
 - District court docket
 - Pleadings and opposition filings
 - Any written decisions or orders
- Parole Board materials:**
 - Written decisions
- Materials related to SORB/SDP case:**
 - Hearing examiner's classification decision
 - Pleadings in Superior Court seeking judicial review of classification
 - Superior Court decision
 - Appellate briefs and decisions on appeal of a hearing examiner's classification decision
 - G. L. c. 123A SDP Civil Commitment filings
 - Civil Commitment trial transcripts
- Competency evaluations:**
 - G. L. c. 123 § 15 evaluation reports
 - § 15 competency hearing transcripts

Please indicate here the reason any of the boxes above are unchecked:

Information from Individuals

Please indicate below from whom you obtained case information. If you did not consult with the individuals listed below please indicate why

- The client
- Trial counsel
Name (s):
- post-conviction counsel
Name (s):
- co-counsel
Name (s):
- witnesses
Name (s):
- investigators
Name (s):
- experts
Name (s):

Please indicate here the reason any of the boxes above are unchecked or add the names of other individuals consulted:

The Case Running Log

Please document your work. A case running log should record the progress of the case. It should include the dates and substance of all communications with the client and other relevant individuals, including trial counsel, prior attorneys, client's family members and friends, witnesses, investigators, experts, and the prosecutor. It should record specifically each and every document provided to the client, the means by which they were provided and the date on which they were provided.

The case running log should keep track of court dates and court outcomes, and notes on all documents reviewed. A more detailed research log or case organizing tool may be maintained separately but the running log should make reference to the organizing tool and to all legal issues considered.