# CLIENT AND CASE INFORMATION

Name:

(aka):

Case Number:­­­­­­­­­­­­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DDA: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DOB: SSN: Sex:   
Address:

Phone: Work: Home: Cell:

Email addresses and social media:

Emergency contact name: Phone

Emergency contact email:

Obtain signed releases of information: 🞎 Yes 🞎 No

Motion for release: Hearing date:

Custody: 🞎 Yes 🞎 No

Location: Bail amount:

Jail ID#: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Released on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other cases: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Conflict check done? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Received and read:

Charging instrument

Police reports (also read with client)

PC affidavit

Recog report

Remind client: 🞎 Do **NOT** discuss case with anyone except counsel; 🞎 Jail calls are recorded & reviewed

With whom (spouse, etc.) can you share case information and to what degree?

Notes:

**COURT DATES AND CALENDARING:**

Notice the Court and DA of representation: 🞎 Completed 🞎 N/A

Review UTCRs and local rules for court deadlines and “standard” court appearances, including:

|  |  |  |
| --- | --- | --- |
| Arraignment | Date: | Time: |
| Entry of plea | Date: | Time: |
| Deadline for filing demurrer | Date: | Time: |
| Pretrial conference | Date: | Time: |
| Other docket matters | Date: | Time: |
| Deadline for filing pretrial motions | Date: | Time: |
| Notice of defenses | Date: | Time: |
| Call date | Date: | Time: |
| Trial | Date: | Time: |

Does local custom and practice require client to be at all court appearances? 🞎 Yes 🞎 No

Can client appear by phone or video? 🞎 Yes 🞎 No

**Calendar all court dates and notify client in writing.**

**BAIL - RELEASE – ARRAIGNMENT – TRIAL DATE ASSIGNMENT:**

Bail: 🞎 Yes 🞎 No Amount: $

Note to Practitioner: If a third party offers to post bail, explain that there are two ways of doing so – in their own name or by putting the money on client's books. Explain that posting in third party's name exposes them to liability for the entire amount of bail, not just the 10%, if client violates release agreement. Also explain that however bail is posted, there will be bail fees and the Court considers it the client's money, and it can be used to satisfy any existing financial obligations of client as well as any fees, fines or penalties imposed by the Court.

Date arraigned:

Next court cate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Purpose (plea entry/release hearing): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Request release hearing, review statute for criteria (ORS 135.245)

Trial within 60 days (see exceptions under ORS 136.295)

Probation violation within 14 days (ORS 137.545)

Trial date/call Assignment:

Client notified of all court dates

**REVIEW CHARGING INSTRUMENT AND STATUTES:**

Compare charging instrument to relevant statutes.

Determine elements of the offense- including a review of pertinent Uniform Jury Instructions.

Evaluate charges for grounds for demurrer under ORS 135.610 et seq. and Motions to Dismiss.

Evaluate charges for affirmative defenses, such as post-charge delay in executing arrest, double jeopardy, and statute of limitations.

Is there a co-defendant?

Who is representing the co-defendant? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Evaluate charges for defenses such as self-defense, entrapment, duress, mental state defenses, and choice of evils.

**CHECK FOR ALTERNATIVE DISPOSITIONS:**

In DUII cases, check client’s eligibility for diversion (ORS 813.215). Timely file request for hearing due to administrative license suspension (ORS 813.210).

Evaluate availability of Civil Compromise under ORS 135.703.

Evaluate availability of District Attorney diversion programs (ORS 135.886).

Explore court-sponsored diversion/treatment alternatives – primarily offering in drug and domestic violence cases.

**PRE-INDICTMENT NEGOTIATION:**

Can the case be resolved through negotiation before the case goes to grand jury?

Decide whether you should contact the Deputy District Attorney prior to grand jury.

**STARTING THE CASE:**

File a discovery motion (ORS 135.815-135.865)

Review the discovery. If it appears incomplete, write a letter to the prosecutor requesting the missing information. If complete discovery is not turned over, request a hearing.

Review the jail recognizance report and take notes on prior convictions.

Review the “probable cause” affidavits.

Do the allegations make logical sense?

Is there a non-criminal explanation for the allegations?

What are the possible defenses to the case?

**INITIAL SENTENCING ASSESSMENT:**

Determine the following:

Maximum and minimum penalties.

Guideline grid from criminal history and crime seriousness.

Evaluate risk that the client may be subject to mandatory minimum sentences or denial of earned time credit (ORS 137.700 *et seq.*) and whether there is a statutory exception to evade the mandatory minimum (ORS 137.721).

Evaluate risk that the client may be subject to mandatory minimum for crimes having the use or threatened use of a firearm (ORS 161.610).

Assess client’s eligibility under “escape clauses” in mandatory minimum cases (ORS 137.709 and ORS 137.712).

If convicted, are sentences likely consecutive or concurrent (ORS 137.123)?

Are the charges from the same or separate criminal episodes (ORS 161.067)?

Are there grounds for upward and downward departures? (OAR 213-008-0003 – 213-008-0007)?

**CLIENT ASSESSMENT AND CONSULTATION:**

Is English the client’s first language? Do you need to get an interpreter?

Can client aid and assist in their own defense? Watch for signs of mental illness, lack of competency, illiteracy, and complications from a head or other injury.

Get clients phone numbers, address, email, along with that of another family member or significant other so you can contact the client.

Find out if client has other active criminal cases.

Ask client for criminal history and cross check with the discovery.

Ask about client’s:

Educational background

Family background

Military status

Medical issues

Immigration status (Padilla referral needed?)

Mental health status (mental health evaluation needed?)

Head or other injury

Review the charges with client.

Give client a copy of the charging document and police reports with victim’s contact information redacted. Caution client not to share the reports with others.

Review the mandatory and minimum sentences with client.

Review the sentencing guidelines with client and begin determining possible grid-blocks based on the crime seriousness and client’s criminal history.

Discuss possible collateral consequences with client, including possible consequences to professional licensing, driver’s license, employment, deportation, sex offender registration, and denial of government benefits.

Discuss possible case dispositions with client, including trial, plea negotiation, diversion, civil compromise, and dismissal based on newly discovered evidence.

If trial is an option, discuss with client the right to testify at trial or to remain silent. Caution client not to discuss the case with anyone and explain the attorney client privilege and how the privilege includes communications with other members of the defense team including your investigator.

If client is in custody, caution that all of client’s phone calls will be recorded and that the Deputy District Attorney may examine who has visited client.

Explain to client that any statements client makes to others about the case may be used as evidence against client and that includes statements client believes to be helpful.

Caution client not to be on social media as the content could be used against client or make the case more difficult to resolve.

Find out from client if client is on probation or any other kind of supervision (e.g., parole, PPSV). If so, find out name of parole officer.

Find out any information client has about witnesses.

**INVESTIGATION:**

Seek production of records in the possession of third parties under ORS 136.580.

Review the police reports and other discovery with your investigator and make a list of tasks for the investigator which may include:

Interviewing the state’s witnesses, making sure “victim’s rights” are read to victims.

Subpoenaing and interviewing defense witnesses.

Gathering documents and other evidence such as 911 calls, police records, and dispatch logs.

Preparing exhibits such as maps and photos.

Visiting the scene to take photographs, measurements and understanding the allegations against the client.

Get a Google map and/or Google street view of the scene.

Surveillance video?

Get information on the weather conditions and lighting at the time of the alleged incident.

Make a timeline of the incident, matching witness statements to the timeline, and placing other evidence in the timeline.

Check social media of alleged victim and witnesses.

Collect all newsprint and video regarding the case.

Photograph and observe physical evidence in the state’s evidence room.

Get signed releases of information from client.

Gather mitigation evidence.

**INITIAL LEGAL REVIEW:**

Examine whether there are appropriate motions to be filed:

Jurisdiction correct (ORS 133.007)?

Demurrer needed (ORS 135.610 *et seq.*)?

Statute of limitations (ORS 131.125 *et seq.*)?

Speedy trial issues (ORS 136.290, Article 1, section 10 of the Oregon Constitution)?

Motions to suppress?

Do any defenses need notices filed (alibi (ORS 135.455) and mental defense (ORS 161.309))?

Motion to subpoena school, DHS, mental health or psychiatric records of the complainant?

**WITNESS ASSESSMENT:**

Make a list of potential defense and state witnesses.

Have attempts been made to interview all witnesses?

Compile all impeachment evidence on the state’s witnesses, such as prior convictions or contradictory statements.

Do you need to try and subpoena medical records, phone records, or other similar evidence?

What impressions did your investigator make about the state’s witnesses?

What motivations do the state’s witnesses have to lie?

Can you explain the testimony of the state’s witnesses without calling them liars?

**DO YOU NEED EXPERT WITNESSES OR EXPERTS TO EVALUATE THE EVIDENCE:**

Forensic expert to evaluate drug quantity or purity?

Forensic expert to examine computer evidence?

Medical doctor?

Psychologist to evaluate client’s mental health?

Should you have client take a polygraph by someone you hire?

Should client do a drug and alcohol evaluation?

Are there eyewitness identification issues for which you may need an expert?

Accident reconstruction expert?

**GATHER MITIGATION EVIDENCE:**

Have client and client’s family write a biography of client’s life, so you do not miss mitigation evidence.

Is client amenable to treatment and do you have evaluations supporting treatment?

Has client entered a treatment program?

Can client make restitution to the victim?

Do you have expert reports on client’s mental health, drug and alcohol dependence, competency, or medical status?

Have you accumulated character letters about client from family and friends?

Do you have expert reports on the physical evidence such as an accident scene reconstruction or forensic evaluation of computer evidence?

Do you have character letters of support from family and friends?

**PLEA NEGOTIATIONS AND ALTERNATE RESOLUTIONS:**

Negotiate a plea offer with the Deputy District Attorney assigned to the case, making sure the offer is inclusive of all counts and all charges.

Attempt counteroffers based on mitigation evidence and/or newly discovered evidence.

Consider having a settlement conference if you think it could be helpful in getting a better plea offer or assisting the client in getting a better understanding of the case.

Is a civil compromise allowed on the charges and is the victim amenable (ORS 135.703)?

Are the charges in the plea offer expungeable (ORS 137.225)?

What are the ramifications in the plea offer regarding deportation and other collateral consequences?

Is restitution involved in the plea offer?

Is the offer a contract plea under ORS 135.432(2)?, in which the trial judge agrees to a negotiated sentence prior to sentencing?

**FILE MOTIONS TIMELY AND TURN OVER DISCOVERY:**

File special notices such as mental health defenses and self-defense.

File legal challenges such as motions to suppress, demurrers, and speedy trial motions.

Turn over reciprocal discovery as required under ORS 135.805 *et seq.*

**REASSESS THE CASE AND REVIEW WITH CLIENT:**

What facts are coming in at trial?

What facts will be excluded from trial and what facts maycome in at trial?

What will the witnesses testify to, both fact and expert?

What physical evidence will be admitted at trial?

What has the investigation revealed?

What are the dangers of losing at trial such as mandatory minimum sentences and collateral consequences such as license revocation or deportation?

Are there problems with client testifying at trial such as impeachment with prior inconsistent statements or with a prior criminal record?

What are the advantages and disadvantages of a court trial vs. a jury trial?

Review all this evidence with the client and try and assess the strengths and weaknesses of the case.

Review the plea offer with client and compare the consequences that flow from such a guilty plea to the consequences of a conviction at trial.

If client decides to go to trial, client gets to decide whether to try the case to a judge or jury and whether to testify.

**CLIENT ACCEPTS THE PLEA OFFER:**

Review the plea petition and right of appeal forms with client and sign.

Prepare documents for sentencing, which may include the following:

A summary of client’s background and the case evidence.

Mitigation evidence.

Character letters.

A sentencing memorandum.

Client has a right of allocution at sentencing. Client should be prepared to make a statement at sentencing, have written a letter to the Court, or be prepared to say my attorney has covered everything I wish to say.

Review the sentencing order to make sure it is accurate.

**ATTORNEY PREPARATION IF CLIENT DECIDES TO GO TO TRIAL:**

Draft jury instructions.

Create exhibits.

Prepare witness list.

Draft motions in limine.

Prepare voir dire, opening, cross examinations, direct examinations, and closing.

Prepare motion for judgment of acquittal.

Prepare pocket briefs on potential evidentiary issues.

Turn over witness list and statements of defense witnesses.

Have legal resources handy at trial such as the jury instruction book, “Evidence” by Kirkpatrick, the criminal code, and the vehicle code.

**CLOSING THE CASE:**

Send the client a closing letter with the judgment enclosed.

File the Notice of Appeal, if client wishes to appeal.

Close the file.

**RESOURCES:**

Contact the Oregon Criminal Defense Lawyers Association (OCDLA) for assistance and support (<https://www.ocdla.org/>; 541-686-8716)

See the “Principles and Standards for Counsel in Criminal, Delinquency, Dependency, and Civil Commitment Cases” available on the Oregon State Bar website at <https://www.osbar.org/surveys_research/performancestandard/index.html>.

**IMPORTANT NOTICES**

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice.  This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices.  © 2023 OSB Professional Liability Fund