

Table of Contents

PART 1. INITIAL CONSIDERATIONS

CHAPTER 1. OVERVIEW; DUTIES OF COUNSEL

§ 0.50	Right to appellate counsel <i>[New]</i>
§ 1	In general
§ 1.5	Appointment of appellate counsel; in general <i>[New]</i>
§ 1.6	Motion—Seeking admission pro hac vice <i>[New]</i>
§ 1.7	Request—For appointment of counsel—By indigent defendant <i>[New]</i>
§ 1.8	Affidavit—For appointment of attorney—By indigent defendant <i>[New]</i>
§ 1.9	Affidavit—By attorney—In support of motion to represent co-defendants <i>[New]</i>
§ 1.10	Affidavit—By defendant—In support of attorney’s motion to represent co-defendants <i>[New]</i>
§ 1.11	Affidavit—By defendant—In support of motion to disqualify co-defendant’s attorney <i>[New]</i>
§ 1.12	Order—Appointment of counsel for indigent <i>[New]</i>
§ 1.13	Order—For payment of compensation to court-appointed defense attorney for indigent <i>[New]</i>
§ 1.14	Voucher—For compensation and expense of representation by appointed counsel <i>[New]</i>
§ 5	Effective advocacy
§ 8.5	Adequacy of appellate representation of criminal client <i>[New]</i>
§ 8.6	Introductory comments <i>[New]</i>
§ 8.7	Petition or application—For order of expungement of criminal record <i>[New]</i>
§ 8.8	Petition or application—For expungement of record—Case of acquittal, release without conviction or sentence of supervision <i>[New]</i>
§ 8.9	Petition or application—For writ of mandamus—To compel court to expunge record of arrest, trial, and conviction <i>[New]</i>
§ 8.10	Motion for new trial—For purpose of expunging criminal record <i>[New]</i>
§ 8.10.50	Motion for new trial—Juror bias—Federal Rule 33 <i>[New]</i>
§ 8.11	Affidavit—In support of motion to order expungement of criminal record <i>[New]</i>

- § 8.12 Order to show cause—Expungement of criminal record
[*New*]
- § 8.13 Order—Expungement of criminal record [*New*]
- § 8.14 Order—For expungement and sealing of record [*New*]
- § 8.15 Amicus curie briefs [*New*]
- § 8.16 Motion and notice in federal court for permission to appear,
file brief, and make oral argument as amicus curiae [*New*]
- § 8.17 Motion for leave to file amicus curiae brief in appellate court
on issues of paramount judicial importance [*New*]
- § 8.18 Motion for leave to file amicus curiae brief and for enlarge-
ment of time for filing in appellate court [*New*]
- § 8.19 Motion for leave to participate in oral argument by amicus
curiae [*New*]
- § 8.20 Affidavit in support of motion for leave to appear as amicus
curiae [*New*]
- § 8.21 Consent in federal court of parties to filing amicus curiae
brief—Court of Appeals [*New*]
- § 8.22 Order—Granting leave to appear as amicus curiae—Reciting
need for amicus curiae [*New*]

CHAPTER 2. THE DECISION TO APPEAL

- § 9 In general
- § 10 Types of appeals
- § 10.5 Appealable decisions [*New*]
- § 10.6 When the right to appeal is triggered [*New*]
- § 10.7 Judgments not subject to appeal [*New*]
- § 11 Primary considerations
- § 13.1 Post-verdict motion for judgment of acquittal [*New*]
- § 13.1.5 Motion for judgment of acquittal [*New*]
- § 13.1.6 Motion for post verdict judgment of acquittal—Louisiana
[*New*]
- § 13:1.6.25 Motion for Judgment of Acquittal—Ohio [*New*]
- § 13.1.7 Motion to set aside verdict—Virginia [*New*]
- § 13.1.8 Memorandum in support of motion for acquittal [*New*]
- § 13.3 Motion for stay of execution of sentence pending appeal
[*New*]
- § 13.5 Waiver [*New*]

CHAPTER 3. BAIL

- § 14 In general
- § 14.1 Federal Bail Reform Act: Overview [*New*]
- § 14.1.5 Revocation [*New*]
- § 14.2 Personal recognizance bond [*New*]
- § 14.3 Appearance bond—Unsecured [*New*]
- § 14.4 Appearance bond—With sureties [*New*]
- § 14.5 Application—For review of conditions of release [*New*]

TABLE OF CONTENTS

§ 14.6	Motion and notice—To amend conditions of release—Excessive bail <i>[New]</i>
§ 14.7	Affidavit—In support of motion for reduction of bail <i>[New]</i>
§ 15	Continuation of trial bond
§ 16	Standards for release on bail
§ 16.5	Restrictions while on bail <i>[New]</i>
§ 17	Appellate review of bail
§ 19	Notice of motion to set bail—State court <i>[Retitled]</i>
§ 20	Memorandum in support of motion—California <i>[Retitled]</i>
§ 21.1	Surety and bail forms; Overview <i>[New]</i>
§ 21.2	Checklist of matters to be considered in drafting bail bond or recognizance <i>[New]</i>
§ 21.3	Bail bond <i>[New]</i>
§ 21.4	Bail bond—Another form <i>[New]</i>
§ 21.5	Bail bond—After indictment <i>[New]</i>
§ 21.6	Motion for post-trial release and supersedes bond <i>[Retitled]</i>
§ 21.6.25	Memorandum in support of motion requesting bond pending appeal <i>[New]</i>
§ 21.6.50	Brief in support of renewed motion for bond pending appeal—Change in circumstances <i>[New]</i>
§ 21.7	Recognizance <i>[New]</i>
§ 21.8	Justification—By surety <i>[New]</i>
§ 21.9	Bail pending appeal <i>[New]</i>
§ 21.10	Bail pending sentencing <i>[New]</i>
§ 21.11	Procedure <i>[New]</i>
§ 21.12	Remittance of forfeited bail <i>[New]</i>
§ 21.12.50	Petition to strike forfeiture and release bond <i>[New]</i>

CHAPTER 4. INITIAL PROCEDURES

§ 22	In general
§ 23	Motion for new trial
§ 23.5	Motion for new trial—Grounds for new trial <i>[New]</i>
§ 23.6	Motion for new trial—Sample motion, pursuant to evidence rule 605(b) <i>[New]</i>
§ 24	Notice of appeal
§ 24.5	Interlocutory appeals <i>[New]</i>
§ 24.10	Notice of appeal—Request for approval as interlocutory appeal <i>[New]</i>
§ 24.15	Motion for stay of proceedings pending interlocutory appeal <i>[New]</i>
§ 24.25	Petition for writ of supersedeas and application for temporary stay <i>[New]</i>
§ 24.50	Notice of motion to dismiss appeal <i>[New]</i>
§ 26	Permission to proceed in forma pauperis
§ 27.5	Timeframe generally <i>[New]</i>
§ 28	Extensions of time
§ 28.50	Amendments to notice of appeal <i>[New]</i>

- § 32 Motion to extend time for appeal and affidavit *[Retitled]*
- § 34 Form of motion for leave to appeal in forma pauperis; affidavit; order
- § 34.1 Notice—Appeal from conviction in inferior court *[New]*
- § 34.2 Notice—Appeal from conviction in court of general jurisdiction *[New]*
- § 34.3 Notice—Motion to extend time to perfect appeal and to proceed in forma pauperis *[New]*
- § 34.4 Notice—To appellant—Counsel’s motion for leave to withdraw—Frivolous appeal *[New]*
- § 34.5 Notice—To appellant—Counsel’s motion for leave to withdraw—Frivolous appeal—Another form *[New]*
- § 34.6 Motion—For leave to proceed on appeal in forma pauperis—For appointment of counsel and free transcript *[New]*
- § 34.7 Petition or application—For order permitting defendant to appeal conviction in forma pauperis and authorizing expenditure of public funds for costs and expenses of appeal *[New]*
- § 34.8 Affidavit—In support of petition for order permitting defendant to appeal conviction in forma pauperis and authorizing expenditure of public funds for costs and expenses of appeal *[New]*
- § 34.9 Order—Permitting defendant to appeal conviction in forma pauperis and authorizing expenditure of public funds for costs and expenses of appeal *[New]*
- § 34.10 Order—Granting leave to proceed in forma pauperis, and appointing counsel *[New]*
- § 34.11 Appeal bond *[New]*
- § 34.12 Stay of execution; introductory comment *[New]*
- § 34.13 Notice—Motion for order staying execution of judgment—Application for stay of execution denied by trial court *[New]*
- § 34.14 Order—Staying execution of judgment *[New]*
- § 34.15 Motion for reinstatement of appeal of right *[New]*
- § 34.16 State’s response opposing motion to vacate convictions *[New]*

PART 2. THE RECORD

CHAPTER 5. MAKING AND PRESERVING THE RECORD AT TRIAL

- § 35 Importance of preserving trial record
- § 35.1 Exception to preservation requirements *[New]*
- § 35.2 Making the record as to issues regarding witnesses *[New]*
- § 35.2.5 Making the record as to issues regarding voir dire *[New]*
- § 35.2.7 Making the record as to Violation of Constitutional Rights *[New]*
- § 35.3 Notice of motion for psychiatric examination of prosecution witness *[New]*

TABLE OF CONTENTS

§ 35.4	Notice of motion to compel prosecutor to produce witness for interview <i>[New]</i>
§ 35.5	Motion for list of prosecution witnesses <i>[New]</i>
§ 35.6	Motion to compel disclosure of identity of prosecution's expert witnesses <i>[New]</i>
§ 35.7	Petition for interstate rendition of material witness made in state of residence of witness <i>[New]</i>
§ 35.8	Affidavit in support of petition for order compelling attendance of out-of-state witness <i>[New]</i>
§ 35.9	Affidavit in support of motion to compel psychiatric examination of prosecution witness <i>[New]</i>
§ 35.10	Order to show cause on application for conditional examination of material witness <i>[New]</i>
§ 37	Conferences
§ 38	Instructions
§ 38.1	Jury instructions as fruitful appellate issues <i>[New]</i>
§ 38.2	Request for instructions <i>[New]</i>
§ 38.3	Instruction on province of court <i>[New]</i>
§ 38.4	Instruction on duty of jury to determine facts <i>[New]</i>
§ 38.5	Instruction that indictment or information is not evidence <i>[New]</i>
§ 38.6	Instruction that duty of attorney is to protect interests of client and that jury not to be influenced by objections <i>[New]</i>
§ 38.7	Instruction on presumption of innocence <i>[New]</i>
§ 38.8	Instruction that burden of proof is on prosecution <i>[New]</i>
§ 38.9	Instruction on definition of reasonable doubt <i>[New]</i>
§ 38.10	Instruction on burden and degree of proof when defendant alleges self-defense <i>[New]</i>
§ 38.11	Instruction on weight of testimony of witness granted immunity <i>[New]</i>
§ 38.12	Instruction on jury's right to consider prosecution's failure to call witnesses <i>[New]</i>
§ 38.13	Instruction on jury's right to consider prosecution's failure to produce evidence <i>[New]</i>
§ 38.14	Instruction on intoxication as negating specific intent <i>[New]</i>
§ 38.15	Instruction on consideration of testimony of defendant <i>[New]</i>
§ 38.16	Instruction that jury is not to be influenced by defendant's exercise of right not to testify <i>[New]</i>
§ 38.17	Instruction that defendant is not required to present evidence <i>[New]</i>
§ 38.18	Instruction that jury is to consider reliability and voluntariness in determining weight to be accorded defendant's pretrial statement <i>[New]</i>
§ 38.19	Instruction on jury's right to accept part and reject part of defendant's pretrial statement <i>[New]</i>
§ 38.20	Instruction that jury may determine voluntariness of confession <i>[New]</i>

HANDLING CRIMINAL APPEALS

- § 38.21 Instruction that jury is to consider each count separately
[New]
- § 38.22 Instruction that jury is to consider each defendant separately
[New]
- § 38.23 Instruction that jury is not to be influenced by joint representation of defendants *[New]*
- § 38.24 Instruction that jury has the right to find defendant guilty of lesser included offense, with one such offense specified
[New]
- § 38.25 Instruction on jury's consideration of, and weight to be given to, testimony of accomplices *[New]*
- § 39 Duty to object at trial
- § 40 Duty to request a ruling on the objection
- § 41 Offers of proof
- § 42 Describing for the record
- § 42.5 Preservation generally *[New]*
- § 43.1 Preserving record for appeal as to suppression of evidence
[New]
- § 43.1.5 Preserving record for appeal as to suppression of evidence—Critical impact of suppression *[New]*
- § 43.2 Interviewing the client for appellate suppression issues *[New]*
- § 43.3 Checklist of questions if building searched *[New]*
- § 43.4 Checklist of questions if automobile searched *[New]*
- § 43.5 Checklist of questions if accused's person is searched *[New]*
- § 43.6 Checklist of questions as to illegally obtained statements
[New]
- § 43.7 Making record of guilty plea *[New]*
- § 44.1 Procedure *[New]*
- § 44.2 Motion—For suppression of evidence—Incriminating statements of defendant—Delay in bringing defendant before magistrate *[New]*
- § 44.3 Motion—For suppression of evidence—Return of property
[New]
- § 44.4 Motion—To suppress testimony of alleged coconspirator—Pending sentencing of coconspirator on bargained guilty plea *[New]*
- § 44.5 Affidavit—In support of motion to suppress defendant's incriminating statements—Delay in bringing defendant before magistrate *[New]*
- § 44.6 Affidavit—In support of motion to suppress evidence and for return of property—Insufficiency of affidavit upon which warrant was issued *[New]*
- § 44.7 Order—Suppressing evidence and directing return of property
[New]
- § 44.8 Notice of motion to suppress evidence *[New]*
- § 44.9 Notice of motion to suppress evidence and counter-affidavit search warrant *[New]*
- § 44.10 Motion to suppress evidence of property seized as result of unlawful search, seizure, and arrest *[New]*

TABLE OF CONTENTS

- § 44.11 Motion for evidentiary hearing to determine voluntariness of confession of defendant *[New]*
- § 44.12 Motion for evidentiary hearing on motion to suppress evidence *[New]*
- § 44.13 Motion to suppress defendant's confession—evidentiary hearing as an alternative *[New]*
- § 44.14 Motion in limine to suppress evidence *[New]*
- § 44.15 Motion to suppress defendant's prior criminal record at trial *[New]*
- § 44.16 Motion to suppress testimony of alleged coconspirator pending sentencing of co-conspirator on bargained guilty plea *[New]*
- § 44.17 Motion to suppress incriminating statements obtained by police officers *[New]*
- § 44.18 Affidavit in support of motion to suppress evidence—Illegal wiretap *[New]*
- § 44.19 Affidavit in support of motion to suppress evidence—Residence searched without warrant or probable cause *[New]*
- § 44.20 Affidavit in support of motion to suppress evidence—Confession improperly obtained *[New]*
- § 44.21 Affidavit in support of motion to suppress evidence—Automobile searched without warrant or probable cause *[New]*
- § 44.22 Affidavit in support of motion to suppress evidence—Defendant searched without warrant or probable cause *[New]*
- § 44.23 Affidavit in support of motion to suppress evidence—Averment that search warrant was invalid because of insufficient description of property *[New]*
- § 44.24 Order suppressing evidence *[New]*
- § 44.25 Order suppressing defendant's statements *[New]*

CHAPTER 6. THE RECORD ON APPEAL

- § 45 In general
- § 46 Contents of the record
- § 47 Designation of record
- § 48 Preparation of the record
- § 49 The unreported trial
- § 50 Transmitting the record
- § 50.5 Scope of the record *[New]*
- § 50.6 Sufficiency of the record *[New]*
- § 51 Motion for transcripts *[New]*
- § 51.5 Notice—To clerk to prepare reporter's transcript *[New]*
- § 51.25 Motion to compel defendant to order transcript *[New]*
- § 52.5 Notice to clerk—To prepare record—Transcript of complete record *[New]*
- § 56.5 Petition or application—For approval of transcript *[New]*

CHAPTER 7. RECORD REVIEW AND ANALYSIS

- § 57 In general
- § 59 Isolating the issues
- § 59.25 Motion for extension of time to file statement of errors *[New]*
- § 59.50 Statement of errors *[New]*
- § 60 Pretrial issues
- § 61 Substantive issues
- § 62 Evidentiary issues
- § 63 Pleadings
- § 64 Adequacy of representation
- § 65 Misconduct
- § 66 Instructions
- § 67 Sentencing
- § 67.5 Waiver *[New]*
- § 67.6 Suspension of rules *[New]*

CHAPTER 8. RECORD AUGMENTATION AND CORRECTION

- § 69 In general
- § 70 Augmentation and correction at the trial court
- § 70.5 Motion for evidentiary deposition in trial court—After appeal filed *[New]*
- § 71 Correction at the appellate level
- § 72 Augmentation at the appellate level
- § 73 Recurrent subjects for augmentation
- § 74 Motion to supplement appellate record—Video evidence *[New]*
- § 74.25 Unopposed motion to supplement the record *[New]*
- § 74.5 Loss of transcript *[New]*
- § 74.6 Reconstruction hearing *[New]*
- § 74.7 Sufficiency of reconstructed record *[New]*
- § 74.8 Motion for articulation *[New]*

PART 3. WRITING THE BRIEF

CHAPTER 9. GENERAL CONSIDERATIONS

- § 75 In general
- § 77 Technical requirements
- § 77.5 Adequacy of brief, generally *[New]*
- § 77.6 Supplementation of briefs *[New]*
- § 77.7 Abandonment of appeal *[New]*
- § 77.8 Court order to file brief *[New]*
- § 77.9 Opening brief—Appeal of district court finding defendant's speech was constitutionally protected *[New]*

TABLE OF CONTENTS

CHAPTER 10. FACTUAL STATEMENTS

- § 78 Purpose and importance
- § 80 Procedural history (Statement of the Case)
- § 80.5 Procedural history (Statement of the Case)—Sample Statement of the Case *[New]*
- § 80.6 Sample statement of the case/procedural history—Bribery *[New]*
- § 81 Summation of evidence (Statement of Facts)
- § 81.5 Sample Statement of the Facts—Appeal of interlocutory order on basis of collateral order doctrine *[New]*

CHAPTER 11. FORMULATING THE ISSUE

- § 83 In general

CHAPTER 12. ARGUMENT

- § 86 In General
- § 87 Form
- § 88 Language and style
- § 89 Accuracy
- § 91 Tactics
- § 93 Proving prejudice
- § 93.5 Sufficiency of evidence as appellate issue *[New]*
- § 93.6 Trial judges' failure to act on its own motions as an appellate issue *[New]*
- § 94 Conclusion and relief sought
- § 96.3 Sample argument *[New]*
- § 96.4 Sample argument—Sentencing reduction and aggravating factors *[New]*
- § 96.4.50 Sample appellate argument—Prosecutorial misconduct in closing *[New]*
- § 96.4.75 Brief—Appellant sample argument—Wrongful admission of hearsay evidence and insufficient evidence of probation violation *[New]*
- § 96.4.76 Brief—Petitioner's sample argument—Burden of reconstruction of incomplete record *[New]*
- § 96.4.78 Brief—Appellant sample argument—Improper denial of *Wheeler/Batson* challenge *[New]*
- § 96.4.79 Brief—Appellant Sample Argument—Court erred in accepting plea where record did not establish Appellant's necessary intent *[New]*
- § 96.4.79.5 Brief—Appellant Sample Argument—Plea accepted without defendant's sufficient factual basis *[New]*
- § 96.4.80 Sample appellate argument—Admission of evidence proper and evidence sufficient for finding of probation violation *[New]*
- § 96.4.85 Brief—Appellee Sample Argument—No structural error by court *[New]*

- § 96.4.86 Brief—Appellant sample argument—Court erred in admitting photographic evidence *[New]*
- § 96.4.87 Appellant Brief—Argument court erred in admitting evidence under residual exception to hearsay rule *[New]*
- § 96.4.90 Appellant brief—Sample argument—Court’s Plain error in admitting testimony *[New]*
- § 96.5 Waiver of issues *[New]*
- § 96.6 Waiver of issues—No waiver *[New]*

CHAPTER 13. RESEARCH AND CITATION

- § 97 In general
- § 101 Citation of authority
- § 101.5 Adequacy of brief, generally *[New]*
- § 101.7 Sample appellant brief asserting denial of his right to confront and cross-examine and ineffective assistance of counsel *[New]*
- § 101.8 Sample appellee’s brief—Whether district court err in instructing the jury on the elements of crime prior to opening statements *[New]*
- § 101.8.5 Brief of plaintiff and appellant state—Asserting abuse of court’s discretion reducing defendant’s sentence following binding plea agreement—North Dakota *[New]*
- § 101.9 Amicus curiae brief in support of petition for writ of certiorari—Whether capital defendant was denied right of confrontation by use of hearsay by prosecutor *[New]*
- § 101.10 Commonwealth’s brief in support of the right of a third-party, who did not intervene in underlying action, to appeal court DNA order—Massachusetts *[New]*

CHAPTER 14. THE REPLY BRIEF

- § 102 In general
- § 103 Purpose
- § 104 Format
- § 105 The decision to file a reply brief
- § 105.5 Sufficiency *[New]*
- § 105.6 Issues raised for first time *[New]*
- § 105.7 Harmless error *[New]*
- § 105.8 Retraction of concession *[New]*
- § 105.9 Timelines *[New]*
- § 106 Sample reply briefs
- § 106.50 Sample appellant’s reply brief addressing the issue of standing *[New]*
- § 106.55 Brief of the Commissioner of Correction-Appellee addressing issue of alleged use of false or misleading evidence *[New]*
- § 106.60 Sample Brief of Petitioner-Appellant—Addressing issue of false or misleading testimony presented by prosecution *[New]*

TABLE OF CONTENTS

- § 106.70 Sample appellee's reply brief addressing ineffective assistance of counsel *[New]*
- § 106.75 Sample appellant's reply brief addressing the issue of waiver of appeal in plea agreement *[New]*
- § 106.76 Reply brief of Appellant/State addressing issue of officer's reasonable suspicion *[New]*
- § 106.77 Sample Appellant's Reply brief in support of motion to dismiss for prosecutorial misconduct *[New]*
- § 106.80 Exercise of court's discretion *[New]*

PART 4. HANDLING RECURRENT ISSUES

CHAPTER 15. MISCONDUCT

- § 107 In general
- § 108 Misconduct of prosecutor
- § 108.1 Prosecutor's questioning of witnesses *[New]*
- § 108.2 Combined defense motion for judgment of acquittal and motion for new trial—Prosecutorial misconduct *[New]*
- § 108.2.5 United States' response in opposition to defendant's first motion for new trial and judgment of acquittal *[New]*
- § 108.3 Opening statements *[New]*
- § 108.3.5 Closing statements *[New]*
- § 108.3.6 Supplemental closing argument *[New]*
- § 108.5 Fundamental error *[New]*
- § 108.6 Fundamental error—*Brady* violations *[New]*
- § 109 Judicial misconduct
- § 109.1 Disqualification of judge as appellate issue *[New]*
- § 109.2 Motion to disqualify trial judge *[New]*
- § 109.3 Motion to have judge withdraw voluntarily *[New]*
- § 109.4 Affidavit for disqualification of judge—Bias and prejudice *[New]*
- § 109.5 Order transferring proceedings on judge's disqualification *[New]*
- § 109.6 Defense counsel conduct *[New]*
- § 110 Jury misconduct
- § 110.5 No misconduct *[New]*
- § 111.5 Prejudice *[New]*
- § 111.25 Motion to dismiss based on prosecutorial misconduct *[New]*
- § 111.50 Sample Argument—Asserting prosecution's closing argument was prejudicial *[New]*
- § 111.75 Sample Argument—Prosecution's closing argument did not constitute misconduct *[New]*

CHAPTER 16. DENIAL OF EFFECTIVE REPRESENTATION

- § 112 In general

- § 113 Incompetence of counsel
- § 113.3 Counsel not ineffective *[New]*
- § 113.3.5 Strategy *[New]*
- § 113.4 Counsel's conduct not prejudicial *[New]*
- § 113.5 Counsel's conduct not prejudicial—Petition for writ of habeas corpus on the ground of ineffective assistance of counsel *[New]*
- § 113.6 Conflict of interest *[New]*
- § 113.7 Conflict of interest—Motion to withdraw by appellant's public defender *[New]*
- § 114 Self-representation
- § 115 Denial of continuance
- § 116 Sample argument raising ineffective representation issue
- § 116.5 Proof of ineffective assistance of counsel in connection with guilty plea *[New]*
- § 116.6 Counsel on appeal *[New]*
- § 116.6.50 Petition for post-conviction relief—Ineffective assistance of counsel—Failure to file appellate brief *[New]*
- § 116.7 Procedural issues *[New]*
- § 116.8 Direct appeal *[New]*

CHAPTER 17. SUBSTANTIVE AND PROCEDURAL ERROR

- § 117 Substantive error, generally
- § 117.1 Substantive error in rape cases *[New]*
- § 117.2 Drug-related offenses *[New]*
- § 117.3 Plain error *[New]*
- § 117.3.5 No plain error *[New]*
- § 117.4 Cumulative error doctrine *[New]*
- § 118 Corpus delicti
- § 119 General principles of criminal substantive law
- § 120 Defenses
- § 120.1 Incompetency to stand trial in federal system *[New]*
- § 120.1.50 Incompetency to stand trial in federal system—In state proceedings *[New]*
- § 120.1.75 Motion for Appointment of Sanity Commission—Louisiana *[New]*
- § 120.2 Motion and notice—For judicial determination of mental competency *[New]*
- § 120.3 Order—For psychiatric or psychological examination of defendant *[New]*
- § 120.4 Order—For hearing on mental condition of defendant—After psychiatric or psychological report indicating mental incompetency *[New]*
- § 121 Procedural error, generally
- § 122 General limitations
- § 122.1 Severance issues on appeal *[New]*

TABLE OF CONTENTS

§ 122.2	Notice of motion for severance <i>[New]</i>
§ 122.3	Motion for a separate trial <i>[New]</i>
§ 122.4	Motion for severance of counts <i>[New]</i>
§ 122.4.5	Joinder issues on appeal <i>[New]</i>
§ 122.4.6	Sample legal basis supporting motion for joinder <i>[New]</i>
§ 122.5	Motion for severance of defendants—Prejudicial joinder on basis of codefendant’s statement to authorities <i>[New]</i>
§ 122.6	Affidavit in support of motion for severance <i>[New]</i>
§ 122.7	Order for separate trial—Prejudicial joinder <i>[New]</i>
§ 123	Deprivation of constitutional rights
§ 123.05	Motion to dismiss—Violation of right to speedy trial <i>[New]</i>
§ 123.1	Duty to preserve evidence—In general <i>[New]</i>
§ 123.2	Duty to preserve evidence—Breath samples <i>[New]</i>
§ 123.3	Ampoules <i>[New]</i>
§ 123.4	Blood, urine, or other specimens <i>[New]</i>
§ 123.5	Videotapes <i>[New]</i>
§ 123.6	Property subject to forfeiture in drug cases <i>[New]</i>
§ 123.7	Property subject to forfeiture in drug cases—Legal trends <i>[New]</i>
§ 123.8	Property subject to forfeiture in drug cases—Forfeiture of attorney fees <i>[New]</i>
§ 123.9	Property subject to forfeiture in drug cases—Jury trial right <i>[New]</i>
§ 123.10	Possible erosion of the Miranda Doctrine <i>[New]</i>
§ 123.11	Illustrative argument attacking search warrant affidavit—Lack of probable cause to search particular premises <i>[New]</i>
§ 123.12	Illustrative request for independent appellate review of trial court’s denial of disclosure of identity of confidential informant <i>[New]</i>
§ 123.13	Illustrative argument attacking search warrant—Good faith exception did not apply to excuse requirement of probable cause <i>[New]</i>
§ 123.15	Forfeiture of right to counsel <i>[New]</i>
§ 124	Errors at trial
§ 124.5	Sentencing <i>[New]</i>
§ 124.6	Issues subject to plain error review <i>[New]</i>
§ 124.7	Actions of court <i>[New]</i>
§ 124.7.75	Opposition to motion for mistrial and/or continuance and to exclude jail inmate’s testimony <i>[New]</i>
§ 124.8	Jury instructions <i>[New]</i>
§ 124.9	Clerical error <i>[New]</i>
§ 124.10	Structural errors <i>[New]</i>

PART 5. SPECIALIZED APPEALS

CHAPTER 18. APPEAL FROM A GUILTY PLEA

- § 125 In general
- § 125.5 Conditional pleas *[New]*
- § 126 *Boykin* grounds for appeal
- § 127 General grounds for appeal
- § 127.5 Law of the case *[New]*
- § 127.75 Allocution transcript of appealed plea *[New]*
- § 128 Appellate procedures for plea review
- § 128.1 Motion to withdraw plea of guilty—In general *[New]*
- § 128.2 Motion to withdraw plea of guilty—Transcript of plea proceedings *[New]*
- § 128.3 Motion to withdraw plea of guilty—Interview checklist *[New]*
- § 128.4 Motion to withdraw plea of guilty—Preparation outline *[New]*
- § 128.5 Motion to withdraw plea of guilty—Consequences of plea withdrawal *[New]*
- § 128.5.5 Motion to withdraw plea of guilty—Resentencing *[New]*
- § 128.6 Appeal—Notice of appeal *[New]*
- § 128.7 Appeal—Record on appeal *[New]*
- § 128.8 Appeal—Brief on appeal *[New]*
- § 128.9 Appeal—Oral argument *[New]*
- § 128.10 Federal habeas corpus proceedings—Notice of appeal *[New]*
- § 128.11 Federal habeas corpus proceedings—Opening brief *[New]*
- § 128.12 Federal habeas corpus proceedings—Reply brief *[New]*
- § 128.13 Federal habeas corpus proceedings—Rehearing and rehearing en banc *[New]*
- § 128.14 Federal habeas corpus proceedings—Petition for rehearing *[New]*
- § 128.15 Checklist—Grounds for withdrawal of guilty plea *[New]*
- § 128.16 Plea agreement—Guilty plea entered by cooperating defendant *[New]*
- § 128.16.5 Plea Agreement—Guilty plea entered by defendant in Medicare fraud lawsuit *[New]*
- § 128.17 Plea in abatement—Grand jury not properly constituted *[New]*
- § 128.18 Plea in bar—Former conviction or acquittal *[New]*
- § 128.19 Plea of not guilty—Insanity at time offense was committed *[New]*
- § 128.20 Motion—For leave to withdraw plea of guilty *[New]*
- § 128.21 Motion—For leave to withdraw plea of guilty—Another form *[New]*

TABLE OF CONTENTS

- § 128.22 Affidavit—By defendant—In support of motion for leave to withdraw plea of guilty *[New]*
- § 128.23 Plain error standard *[New]*
- § 128.24 Issues of waiver and plea *[New]*

CHAPTER 19. REVIEW OF SENTENCE

- § 128.25 Breach of plea agreement *[New]*
- § 129 In general
- § 129.1 Sentence enhancement for firearms in drug cases *[New]*
- § 129.2 Sentence enhancement for firearms in drug cases—“Carrying” a firearm *[New]*
- § 129.3 Sentence enhancement for firearms in drug cases—“Using” a firearm *[New]*
- § 129.4 Sentence enhancement for firearms in drug cases—“Drug fortress” theory *[New]*
- § 129.5 Federal review of sentences *[New]*
- § 129.6 Jurisdiction *[New]*
- § 129.7 Procedural issues *[New]*
- § 130 Improper sentencing procedures
- § 130.1 Erroneous judgment and sentence as fruitful appellate issues *[New]*
- § 130.1.5 Notice and motion to set aside verdicts of guilt *[New]*
- § 130.2 Notice of motion to vacate and set aside excessive fine *[New]*
- § 130.3 Notice of motion to vacate and set aside excessive sentence of imprisonment *[New]*
- § 130.4 Notice of motion to set aside verdict for insufficient evidence *[New]*
- § 130.5 Motion to vacate judgment and sentence *[New]*
- § 130.5.5 Motion to set aside verdict and request for new trial—Violation of constitutional right to fair trial and due process *[New]*
- § 130.6 Motion to vacate and set aside excessive fine *[New]*
- § 130.6.5 Motion for new trial—Denied fair and impartial trial—Competency *[New]*
- § 130.7 Motion to vacate and set aside excessive sentence of imprisonment *[New]*
- § 130.8 Petition for writ of mandamus to set aside commitment *[New]*
- § 130.9 Motion to dismiss petition to vacate or set aside judgment of conviction—Ohio *[New]*
- § 130.9.5 Motion to correct illegal sentence—Maryland *[New]*
- § 130.9.10 Motion for resentencing *[New]*
- § 130.9.12 Motion for amended judgment of sentence to allow defendant to appeal *[New]*
- § 131 Multiple sentences
- § 132 Severity of sentence

HANDLING CRIMINAL APPEALS

- § 132.1 Sample motion for compassionate release from prison
[New]
- § 132.5 Harmless error *[New]*
- § 133 The death case: general considerations
- § 133.1 Statutory interpretation *[New]*
- § 133.2 Elements of the statute *[New]*
- § 133.3 *Furman v. Georgia* *[New]*
- § 133.4 *Gregg v. Georgia* *[New]*
- § 133.5 Mandatory death penalties *[New]*
- § 133.6 The death penalty for minors *[New]*
- § 133.7 Effect of mandatory death sentence invalidation *[New]*
- § 133.8 Capital punishment after Gregg and progeny *[New]*
- § 133.9 Retroactivity *[New]*
- § 133.10 Procedural avenues of constitutional attack of a criminal
defendant's sentence to death *[New]*
- § 133.11 Constitutional attack of state death penalty statutes
through the State Appellate System *[New]*
- § 133.12 Constitutional attack of state death penalty statutes
through a federal habeas corpus proceeding *[New]*
- § 133.13 Drafting a federal habeas corpus petition *[New]*
- § 133.13.50 Substitution of counsel *[New]*
- § 133.14 Sample habeas corpus petition *[New]*
- § 133.14.25 Sample state habeas corpus petition—Florida *[New]*
- § 133.14.50 Amended petition for writ of habeas corpus *[New]*
- § 133.15 Matters related to the habeas corpus petition *[New]*
- § 133.16 Recent developments in the habeas corpus jurisdiction of
federal courts *[New]*
- § 133.17 Statutory summary *[New]*
- § 133.18 Identification of death penalty statutes *[New]*
- § 134 The death case: constitutionality
- § 135.50 Cruel and unusual punishment—Minors *[New]*

CHAPTER 20. THE “NO MERIT” APPEAL

- § 136 In general
- § 137 The decision to withdraw
- § 137.5 Appropriate situations for withdrawal *[New]*
- § 138 Procedure
- § 139 Sample “Anders Brief”—Reasonableness of sentence at issue
[Retitled]
- § 139.10 Sample “Anders Brief”—Determination of drug quantity at
issue *[New]*
- § 139.20 “Anders Brief”—Excerpt—Analysis of discovery violation is-
sue, ineffective assistance of counsel and use of audio
evidence *[New]*
- § 139.30 *Anders* Standard *[New]*
- § 139.50 Defendant's response to *Anders* brief *[New]*
- § 139.70 Review *[New]*

TABLE OF CONTENTS

§ 139.90 Role of inadequate assistance of counsel *[New]*

CHAPTER 21. COLLATERAL ATTACK

- § 140 In general
- § 140.5 Error coram nobis *[New]*
- § 140.6 Petition for writ of coram nobis *[New]*
- § 143.5 Instances of collateral attack *[New]*
- § 143.6 Procedure *[New]*
- § 144 Methods for presenting new evidence

CHAPTER 21A. DRUNK DRIVING CASES *[New]*

- § 144.1 Generally
- § 144.2 Sufficiency of evidence
- § 144.3 Sentencing
- § 144.4 Barring alcohol consumption

CHAPTER 21B. FEDERAL JUVENILE DELINQUENCY ACT *[New]*

- § 144.5 Introduction
- § 144.6 Effects of Comprehensive Crime Control Act of 1984 on the Juvenile Delinquency Act
- § 144.7 Federal jurisdiction
- § 144.8 Standards for transfer or waiver
- § 144.9 Applicability to illegal aliens
- § 144.10 Right to speedy trial
- § 144.11 Procedure *[New]*

PART 6. THE PROSECUTOR ON APPEAL

CHAPTER 22. GENERAL CONSIDERATIONS

- § 145.5 Prosecutor's appeal of sentence *[New]*
- § 146 Initial procedures
- § 147 Timeliness of appeal
- § 148 Notice of appeal
- § 150 Companion writs or special proceedings
- § 152 Determination of whether appellant's brief meets all requirements

CHAPTER 23. THE RESPONDENT'S BRIEF

- § 155.50 Sample Arguments—Plea in bribery prosecution *[New]*

- § 158 Lack of standing
- § 163 Mootness
- § 165 Harmless error
- § 167.5 Issues raised for first time *[New]*
- § 167.7 Sample respondent's brief addressing jurisdiction *[New]*

PART 7. ORAL ADVOCACY

CHAPTER 24. GENERAL CONSIDERATIONS

- § 168 Purpose and importance
- § 169 Right to oral argument
- § 170 Procedure
- § 171 Waiver
- § 171.1 In Banc Proceedings; Statutory Framework *[New]*

CHAPTER 25. TECHNIQUES OF ORAL ARGUMENT

- § 172 In general
- § 174 Opening statement
- § 174.6 Closing statements *[New]*
- § 176 Rebuttal

PART 8. THE OPINION AND DISCRETIONARY REVIEW

CHAPTER 26. THE OPINION

- § 179 In general
- § 179.5 Alteration, amendment of judgment *[New]*
- § 181 Scope of the opinion
- § 182 Standard of appellate review
- § 182.5 Harmless error at the trial court level *[New]*
- § 183 Effect of decision
- § 184 Finality of decision
- § 186 Continuing duties of counsel

CHAPTER 27. SEEKING DISCRETIONARY REVIEW

- § 187 In general
- § 188.50 Petition for Review of Order Dismissing Appeal—Arizona *[New]*
- § 189 Petition for hearing
- § 189.50 Petition for review to state supreme court—Destruction of evidence *[New]*
- § 190 Petition for certiorari

TABLE OF CONTENTS

§ 190.50	Petition for writ of certiorari—Capital case <i>[New]</i>
§ 190.60	Petition for a Writ of Certiorari—Right to assistance of counsel <i>[New]</i>
§ 190.75	Petition for Writ of Certiorari—Jurisdiction of state to prosecute non-Indian for crime in Indian country <i>[New]</i>
§ 190.85	Petition for Writ of Certiorari—To review State Supreme Court’s holding on Double Jeopardy Clause <i>[New]</i>
§ 197	Procedure <i>[New]</i>
§§ 198–199	<i>[Reserved]</i>
§ 200	Model form for motions under 28 U.S.C.A. § 2255 for motion to vacate, set aside, or correct sentence by person in federal custody <i>[New]</i>
§ 200.50	Motion to dismiss defendant’s motions under § 2255 to vacate, set aside, or correct sentence by a person in federal custody <i>[New]</i>
§ 201	Model in forma pauperis declaration and certificate of officer of institution—For use with model form for motions under 28 U.S.C.A. § 2255 <i>[New]</i>
§ 202	Movant’s response as to why motion should not be barred—Model form for use in 28 U.S.C.A. § 2255 cases involving a Rule 9 issue (delayed or successive motions) <i>[New]</i>
§ 203	Allegation in Section 2255 motion—Inadequate assistance of appointed counsel <i>[New]</i>
§ 204	Allegation in Section 2255 motion—Knowing use of perjured testimony by United States Attorney <i>[New]</i>
§ 205	Allegation in Section 2255 motion—Willful suppression of favorable evidence <i>[New]</i>
§ 206	Order—Denying motion to vacate, set aside, or correct sentence <i>[New]</i>
§ 207	Order—For correction of sentence <i>[New]</i>
§ 208	Petition for writ of certiorari—Preliminaries <i>[New]</i>
§ 209	Petition for writ of certiorari—Reasons for granting the writ <i>[New]</i>

Appendix

Appendix C. Bibliography of Appellate Advocacy *[New]*

Index