



IBJ DIRECTIVE DEFENDER'S SCORECARD¹

ASSESSMENT OF: _____

ASSESSOR²: _____

PLACE: _____

DATE: _____

<i>ASPECT OF PERFORMANCE</i>	YES	NO	Training Required
GENERAL			
Counsel does everything possible to gain free and full access to client whenever necessary			
*Counsel is respectful with client and explains attorney-client privilege			
*Counsel should provide zealous and quality representation to clients at all times			
Counsel develops and continually reassesses the theory of the case			
*Counsel abides by ethical norms (no corruption or collusion with state officials) at all times throughout the trial process (or at least, little suspicion)			
Counsel maintains lines of communication open with the client and with the prosecution/court			
Counsel ensures that Accused is present in courtroom for all court proceedings (e.g.: arraignment, trial, sentencing)			
As soon as counsel is retained, counsel begins a detailed file including, but not limited to, interviews, detailed notes, statements, potential pieces of evidence, case law to begin building theory of defense and maintains this file until completion of case			
PRE TRIAL			
<i>DETENTION and ARREST</i>			
Counsel presents self at place of detention <i>at earliest stage possible</i> , upon notification that client is detained			
Upon meeting, counsel informs client of legal rights and ensures that the client understands what they entail			
Prior to agreeing to act as counsel, or accepting appointment by a court, counsel ensures that he has available time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If this is not possible,			

¹ This scorecard is used to assess the performance and needs of public defenders. The scorecard is directive in that if the assessor answers any performance measures in the negative, then it is clear how the Defender must improve his performance. It is also a way for IBJ to assess where training is required, especially if there is a trend throughout a region that a particular practice is not properly performed. Finally, this scorecard could be used to reveal internal performance measures of IBJ training by administering the assessment before training and then at set intervals throughout IBJ programming.

² To be completed by an IBJ representative. This form is to be filled out with the aid of interviews (of the Defender, clients, other judicial actors), review of case assessment forms, and observation.

* These aspects are particularly difficult to assess. However, the assessor should still attempt to make some general assessment based on behavioural attitudes, relationships between parties, and a Defender's practice on a whole (e.g. are there a lot of successful plea bargains?)

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then counsel should move to withdraw			
Counsel does not seek to withdraw from cases without compelling cause			
Counsel explains to Accused what they have been charged with, and the case the prosecution has to prove. Also sees if Accused was reasonably informed of the charges against him			
If Client offers admission or statement without presence of counsel, counsel receives copy and understands circumstances in which admission occurred			
Counsel explains to client the maximum sentence possible and other possible sentencing options available to the court should the client be found guilty			
*Counsel does not participate in any form of corruption/collusion with judicial officials or police to obtain confession or release of Accused			
Counsel presents to appropriate judicial officer a statement of factual circumstance and legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release			
Counsel takes all possible and necessary steps to apply for pre-trial release as soon as possible			
If client is incarcerated and unable to make pre-trial release, counsel alerts the court to any special medical or psychiatric and security needs of the client and request that court direct appropriate officials to meet such needs			
Counsel obtains instructions from client at every stage of trial process (bail, pre-trial release, pleading, etc.)			
With the permission of the client, counsel explores and possibly conducts plea negotiations with state officials. Should there be negotiations, counsel keeps client fully informed of any continued plea discussion.			
Existence of ongoing tentative plea negotiations with prosecution should not prevent counsel from taking steps necessary to preserve a defense			
<i>DISCOVERY AND INVESTIGATION</i>			
Counsel ensures that there is adequate time for trial preparation and applies for a continuation if not			
Counsel conducts independent investigation regardless of the Accused's admissions or statements to the lawyer of facts constituting guilt			
Counsel conducts an in-depth interview of the client as soon as possible and appropriate after retention to obtain information regarding			
o The incident			
o Improper police investigative practices			
o Prosecutorial conduct affecting client's rights			
Counsel seeks full disclosure of relevant materials from the prosecution with reasonable time for counsel to prepare for trial			
In making discovery requests, counsel takes into account that such requests that may trigger reciprocal discovery obligations			
Counsel generally seeks discovery of the following at the earliest time:			
o Charging documents			
o Potentially exculpatory information			
o Names and addresses of all prosecution witness and any statements made by them			
o All oral and written statements made by accused and circumstances			

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in which they were made			
o Prior criminal record of the accused			
o Any evidence of misconduct that government may intend to use against the Accused			
o Relevant physical evidence			
o Expert opinion evidence			
o Statements of any co-Accused			
o Any police reports and investigative notes			
o Note that the Prosecution generally does not have to disclose information relating to solicitor/client privilege, informant privilege, immunity			
Counsel conducts interviews with key prosecution witnesses and has knowledge of purpose of testimony			
Counsel examines and obtains attendance of witnesses for the Defence under the same conditions as witnesses against him			
Counsel considered using, at a minimum, the following sources of investigation:			
o Charging documents (make sure that proper charge approval standards were used and that the wording of the document is sufficiently specific with regards to time, place, date, person, and nature of the offense)			
o Interviews with client and recommended sources by client			
o Potential witnesses			
o Disclosure materials from prosecution			
o Physical (direct + circumstantial) evidence			
o Visiting the scene of the incident (use camera to preserve)			
o Expert opinions			
Consider benefits and disadvantages of judge alone trial or jury trial and explain to client his options			
If jury trial is selected, then consider critical aspects of jury selection			
Counsel seeks and follows instructions of the client in deciding to go to trial			
Counsel strives to enter a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so			
Counsel does not unduly influence client's decision to plead guilty			
Counsel attempts to anticipate weaknesses in the prosecution's proof and prepares corresponding motions			
Counsel explores with client the possibility and desirability of reaching a negotiated disposition of charges rather than proceeding to trial and in doing so fully explains the rights that would be waived by a decision to enter a plea			
If prosecution uses expert witnesses, counsel investigates expertise and credentials of expert witnesses presented by prosecution			
Based on prosecution materials, police reports, and interviews, Counsel should consider whether the client's arrest was lawful			
Counsel conducts adequate legal research with critical thought			
<i>TRIAL PREPARATION (pre-trial motions, etc.)</i>			
Counsel endeavours to establish a proper record for appellate review. As part of this effort, counsel should request whenever necessary, that trial proceedings be			

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recorded			
Counsel arranges for free assistance of an interpreter is necessary for the duration of trial			
Counsel thinks critically and creatively and challenges constitutional validity of laws if possible			
Counsel considers filing pre-trial motions (or requesting voir dieres, advance rulings) when there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief which the court has discretion to grant:			
o Pre-trial custody			
o Constitutionality of provisions or statutes			
o Potential defects of charging process			
o Joinder and severance of Accused			
o Discovery obligations			
o Illegally obtained evidence (were warrants used?)			
o Objections to potential witnesses (challenging competence or compellability or expertise of expert)			
o Involuntary statements or confessions made by Accused			
o Publication ban			
o Unreliable evidence			
o Suppression of evidence			
o Right to a speedy trial			
o Right to a continuance, trial or courtroom procedure			
o Use of prior convictions			
Counsel provides any necessary notices to court for trial (e.g. use of expert witness)			
If prosecution uses expert witnesses, counsel ensures that there is advance notice to the court			
Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor			
In preparing for trial, counsel should consider (with accused) whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt			
Where lacking expertise, counsel conducts appropriate research and seeks advice of more experienced counsel			
Where appropriate, counsel has the following materials organized and available at the time of trial:			
o Copies of all relevant documents filed in case			
o Relevant documents prepared by investigators (police, etc.)			
o Voir dire questions			
o Outline or draft of opening statement			
o Cross-examination plans for all possible prosecution witnesses			
o Direct examination plans for all prospective defense witnesses			
o Copies of defense subpoenas			
o Prior statements of all prosecution witnesses (e.g. transcripts, police reports)			

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o Prior statements of all defense witnesses			
o Reports from defense experts			
o A list of all defense exhibits, and the witnesses through whom they will be introduced			
o Originals and copies of all documentary exhibits			
o Proposed jury instructions with supporting case citations			
o Copies of all relevant statutes and cases			
o Outline or draft of closing argument			
Counsel arranges with client an effective communication method throughout trial			
If there is a preliminary inquiry, Counsel should apply for discharge or committal on a lesser offense if an essential ingredient of the charge is missing			
TRIAL			
<i>OPENING STATEMENT</i>			
Counsel ensures that his opening statement meets the permissible requirements of an opening statement within that jurisdiction			
In preparing the opening statement, counsel considers the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring opening statement until the beginning of the defense case			
Counsel's objective in making an opening statement may include the following:			
o Provide overview of defense case			
o Identify weakness of prosecution case			
o Emphasize prosecution's burden of proof			
o Summarize testimony of witnesses, and role of each in relationship to entire case			
o Describe exhibits which will be introduced and the role of each in relationship to the entire case			
o To clarify the juror's responsibilities			
o To state the ultimate inferences which counsel wishes the jury to draw			
If the prosecutor oversteps the bounds of a proper opening statement, counsel should consider objecting (though sometimes frowned upon), requesting a mistrial, or seeking cautionary instructions, unless tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:			
o Significance of the prosecutor's error			
o Possibility that an objection might enhance the significance of the information in the jury's mind			
o Whether there are any rules made by the judge against objecting during the prosecution's opening argument			
<i>PROSECUTION'S CASE</i>			
Counsel has attempted to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal			

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Counsel is vigilant during prosecution's examination in chief to ensure that no leading/irrelevant/immaterial questions are asked			
Counsel is vigilant during prosecution's case that no immaterial/irrelevant/hearsay evidence is admitted without objection			
Counsel ensures that all prosecution evidence is properly authenticated following the rules of that jurisdiction			
Counsel may choose to object to the admissibility of Prosecution evidence because:			
o No identifying witnesses			
o Opportunity for tampering or contamination occurred			
o There were gaps in the chain of custody (who possessed the item)			
o Item is not a true and accurate depiction			
Counsel listens carefully of examination in chief and takes notes			
Counsel needs to ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If such statements have not been received, counsel should request adequate time to review these documents before commencing cross-examination			
Considers if prosecution witnesses are competent witnesses (no spouses, co-accused, mentally disabled, minors), and if not, object to their testimony			
In preparing for cross examination, counsel:			
o Considers need to integrate cross-examination of each individual witness is likely to generate helpful information			
o Anticipates those witnesses the prosecutor might call in its case-in-chief or in rebuttal			
o Creates any necessary cross-examination plan for each anticipated witness			
o Is alert to inconsistencies or possible variations in witness testimony and highlights these inconsistencies to the court			
o Reviews all prior statements of witnesses and any prior relevant testimony of the prospective witnesses			
o Where appropriate, reviews relevant statutes and local police regulations for possible use in cross examining police witnesses			
o Is alert to issues relating to witness credibility, including bias and motive for testifying and highlights these issues through cross-examinations			
Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel moves (or considers moving) for a judgment of acquittal on each count charged. This request should include that the court immediately rule on the motion in order that the counsel may make an informed decision about whether to present a defense case			
Counsel is aware of opening client to character evidence by asking specific questions during cross examination of prosecution witnesses			
<i>DEFENSE</i>			
Counsel develops the overall defense strategy in consultation with the client			
Counsel considers benefits and disadvantages of having the client testify			
Counsel protects the client's right to non-self-incrimination			
Counsel protects the client's right to silence			

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Counsel ensures that the client's failure to testify is not noted upon and that no negative inferences are drawn			
Counsel protects privilege relationships such as marital privilege and lawyer-client privilege			
If Counsel stages an affirmative defense, Counsel has necessary evidence available for submission to the court in support of this defense			
In preparing for mounting the defense, counsel has, where appropriate:			
o A plan for examination in chief of each defense witness			
o Considered the effective ordering of witnesses for testimony			
o Utilized the potential of character witnesses (if necessary)			
o Utilized the potential of expert witnesses (if necessary)			
Counsel has prepared all witnesses for direct and possible cross-examination			
Counsel has advised witnesses of suitable courtroom attire and behaviour and has talked them through the process of being a witness			
Counsel conducts redirect examination as appropriate			
In performing examination in chief, counsel is capable of refreshing witness' memory			
<i>CLOSING ARGUMENT</i>			
In making an effective closing argument, Counsel uses the defense summation to, where possible:			
o Highlight the weaknesses in the prosecution's argument			
o Describe favourable inferences to be drawn from the evidence			
o Highlight favourable testimony			
If the prosecutor exceeds the scope of permissible argument, Counsel should consider requesting a mistrial or seeking cautionary instructions unless tactical considerations suggest otherwise			
Counsel's finishes the submission asking jury or judge to acquit the Accused			
<i>POST TRIAL</i>			
Upon a verdict of "not guilty," Counsel explains to Accused that he is free to go			
Upon a verdict of "guilty as charged," Counsel:			
o Explains to client what steps are to follow			
o Counsel considers with the client whether or not they should appeal, or if they can appeal as of right			
o If client is returning to custody, Counsel should accompany him if possible. If not, Counsel should meet with client as soon as possible after the verdict			
Where possible, Counsel should exhaust all avenues of appeal			
<i>SENTENCING</i>			
If the client decides to not proceed to trial, plea negotiations should have considerations of sentencing, correctional and financial implications			
In making sentencing submissions, Counsel should ensure that the court is aware of all mitigating and favourable information which is likely to benefit the client (e.g. pleading guilty as a sign of remorse)			

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In preparing for sentencing, Counsel should inform the client of possible sentencing consequences and sentencing alternatives (therapy, volunteer time)			
In preparing for sentencing, Counsel should interview the client for the purpose of obtaining a personal history including prior criminal record, employment history and skills, medical history and condition, financial status, and possibly ask client for any letters of reference that could be beneficial to present to the court			
In preparing for sentencing, Counsel should prepare a folder of relevant materials for submission to the court			
In sentencing submissions, the client may address the court if he so wishes (even though it is usually not recommended) and counsel should not prevent/forbid this			
Counsel must seeks to achieve:			
o the least restrictive and burdensome sentencing alternative that is most acceptable to that of the client			
o a sentence reasonably obtained based on the facts and circumstances of the offense			
o A sentence that takes into consideration the Defendant's background			
o A sentence that uses appropriate sentencing provisions most favourable to the Defendant			
In making sentencing submissions, counsel should ensure that the client is not harm by inaccurate information or information that is not properly before the court in determining the sentence to be imposed			
Upon sentencing, counsel should attend with the client:			
o To complete any necessary paperwork			
o Explain the parole system/ who the parole officer is			
o Explain any possible conditions to release			
o Discuss avenues of appeal			
o Receive instructions on any help or tasks that client requires lawyer to attend to (e.g. phone calls, etc.)			
If client is sentenced to further custody/incarceration, then lawyer should attend client as soon as possible to discuss next step of process if any			