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Criminal Procedure Fundamentals

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What Do You Do When a Client in Custody Calls?

Criminal Procedure Fundamentals

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INTRODUCTION

Receiving a call (usually in the middle of the night) from a panicked individual who has just been arrested can be nearly as unnerving for the lawyer receiving the call as for the person calling. The call will often have woken the lawyer who is then expected to think quickly and give cogent legal advice to the detained person. These can sometimes be tricky situations but this paper offers some suggestions for ensuring that the call goes as smoothly as possible.

FIRST QUESTION TO ASK YOURSELF – SHOULD YOU TAKE THAT CALL?

Just because a person in custody calls you at 2:00 in the morning, desperately looking for advice, does not mean that you should give advice. The first aspect of the call you need to assess is whether or not this is a call that requires more experience than you have. If, for example, you have one or two years' experience in criminal law, and the person on the line is being charged with a homicide, you should probably refer that person to someone, either in your firm or outside your firm, that has the experience to handle such a call.

If you do not have a good answering service who can screen calls for you, it is likely you will get calls from people who wish to get a divorce at 3:00 am. People who are arrested on outstanding warrants often already have a lawyer assigned to the substantive matter. You may also not wish to take the call if privacy is compromised, or you may curtail the call if you have reason to believe the person is using the call to the lawyer to purposely delay proceedings.

If you make the initial decision to continue with the call, the following are some points to consider.

PRIVACY

First, determine whether or not you have privacy. Try to explain the concept of privacy in words that the person, who is scared and possibly intoxicated, will understand. The person may also be indignant that the officer appears to be watching or listening to them. While officers usually do the former (they are trained to watch the accused), they rarely do the latter. Ask the detained person if they are in a room by themselves and with the door closed. If the answer is yes, then explain that means that you likely have privacy and may continue with the call.

Occasionally, you will receive a call where it is clear that you do not have privacy but it appears it may not be possible to both have privacy and give the person the immediate advice they require. Some examples of situations where a lawyer may give advice when privacy is compromised include the following: