













Exceptional Sentence Down: Finding and Litigating Mitigation

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Checklist for Advocates Preparing for Sentencing Hearings

- **1. Building the Case for Mitigation**
- **2. Pre-Sentencing Memorandum**
- **3. Witness & Expert Preparation**
- **4. Defendant's Statement**
- **5. Anticipating Prosecutorial Arguments**
- **6. Sentencing Hearing Strategy**
- **7. Post-Sentencing Follow-Up**




1. Building the Case for Mitigation

-  **LISTEN TO YOUR CLIENT!!!!!!!!!!!!!!**
-  **Meet with the Client** – Establish trust, gather life history, and identify mitigating factors.
-  **Interview Key People** – Speak with family, friends, employers, and others for context.
-  **Collect Supporting Documents** – School records, medical history, treatment records, and letters of support.




2. Pre-Sentencing Memorandum

-  **Clearly Outline Mitigating Factors** – Trauma, addiction, mental health, youthfulness, rehabilitation efforts.
-  **Include a Compelling Narrative** – Humanize the client and tell their story.
-  **Attach Supporting Materials** – Psychological evaluations, expert reports, and letters of support.
-  **Cite Relevant Washington Case Law** – O'Dell, Houston-Sconiers, Dunbar, etc.





3. Witness & Expert Preparation

-  **Identify Key Witnesses** – Family members, teachers, social workers, employers.
-  **Prepare Witnesses** – Keep testimony concise and impactful.
-  **Arrange Expert Testimony** – Psychologists, substance abuse counselors, or social workers.





4. Defendant's Statement

-  Assist the client in delivering a sincere, remorseful, and reflective statement.
-  Emphasize personal growth, rehabilitation efforts, and plans for the future.
-  Avoid excuses—focus on accountability and change.



5. Anticipating Prosecutorial Arguments

-  Review prior criminal history and be prepared to address concerns.
-  Identify potential aggravating factors the prosecution may raise.
-  Develop counterarguments that reframe the facts in a mitigating light (Discuss with client).
-  Review prison disciplinary records in resentencing cases and be prepared to address concerns.

6. Sentencing Hearing Strategy

-  **Strong Opening Statement** – Frame the case for mitigation.
-  **Present Pre-Sentencing Memorandum** – Highlight key points for the judge.
-  **Call Witnesses Strategically** – End with the most compelling testimony.
-  **Powerful Closing Statement** – Tie all mitigation arguments together.

7. Post-Sentencing Follow-Up

-  **Ensure Client Understands Sentencing Terms** – Especially for probation or parole.
-  **Evaluate Appeal or Reconsideration Options** – If an exceptional downward sentence is denied