

~~Performance Standard 6.1 - Appeals~~— Determining Issues to Appeal

Appellate counsel should give a client his or her best professional evaluation of the questions that might be presented on appeal. Counsel, when inquiring into the case, should consider all issues that might affect the validity of the judgment or order, including any that might require initial presentation in a post-conviction proceeding. Counsel should advise the client on the probable outcome of a challenge to the judgment or order.

Appellate counsel should not seek to withdraw from a case solely on the basis of his or her own determination that the appeal lacks merit. Counsel should endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.

If the client chooses to proceed with an appeal against the advice of counsel, counsel should present the case, so long as such advocacy does not involve deception of the court. When counsel cannot continue without misleading the court, counsel may request permission to withdraw while protecting the client's interests to the extent possible.

Appellate counsel has the ultimate authority to decide which arguments to make on appeal. When appellate counsel decides not to argue all of the issues that his or her client desires to be argued, appellate counsel should inform the client of any right to file a pro se brief.

*Adapted from: ABA Standards for Criminal Justice: Defense Function, Standard 4-8.3*

*See also: N.D.R. Prof. Conduct 3.1 (Meritorious claims and contentions).*