

**Skills Training for
Criminal Defense Lawyers**

HYPOTHETICAL EXERCISES
(to be printed by trainees)

Friday September 16, 2016

Macomb County Circuit Courthouse

40 N. Main Street

Mt. Clemens, Michigan

Attorney - Client Interviews

MIDC Standard 2 – meeting client in jail, initial interview

You have just been appointed to represent Ms. Smith. She is charged with first degree home invasion, larceny of a firearm, and felony firearm. She has already been arraigned and was represented by house counsel for purposes of that proceeding. You are meeting with her to talk about the case and prepare for a preliminary examination.

MIDC Standard 2 – meeting client in jail, initial interview

You have just been appointed to represent Ms. Smith. She is charged with assault with a dangerous weapon, and this is the first time she has ever been in trouble with the law. She has already been arraigned and was represented by house counsel for purposes of that proceeding. You are meeting with her to talk about the case and prepare for a preliminary examination.

MIDC Standard 2 – meeting client in office, initial interview, client communications

Ms. Smith has been charged with fleeing and eluding and driving while license suspended. She has already been arraigned and was represented by house counsel for purposes of that proceeding and was released on bond. She is coming to your office to talk about the case, and possibly discuss a plea deal.

MIDC Standard 2 – meeting client in jail, initial interview

MIDC Standard 3 - investigation

You have just been appointed as substitute counsel to represent Mr. Smith. Original counsel quickly waived the preliminary examination. Mr. Smith is charged with armed robbery. It seems pretty clear that there will be no negotiations and this case is headed for trial. Mr. Smith has prior convictions and is generally familiar with the criminal justice system, and wants to talk about the case. You think he should try to have a preliminary examination.

IN THE DISTRICT COURT

Note: this "motion" is a sample to be used only for purposes of a skills training session that focuses on oral advocacy. This is NOT a complete motion, nor should it be considered inclusive of all arguments to be made in a similarly titled pleading. Proper motion practice requires full briefing and significant attention to the details and facts in a particular case, which this sample does not contain.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs

No. 55455

Hon. Notsohappytoday

DEFENDANT SMITH,

Defendant.

MOTION FOR BAIL REDUCTION

Defendant Smith, by her attorney, moves this Court to reduce her bail. This motion is based on the Eighth Amendment to the United States Constitution, Article 1, Section 15 of the Michigan Constitution, and the following reasons:

1. At the arraignment, Ms. Smith was arraigned on the charge of felonious assault.
2. Bail was set at \$5,000/10%.
3. The Eighth Amendment to the United States Constitution and Article 1, Section 16 of the Michigan Constitution provide that excessive bail shall not be required. U.S. Const, Am VIII; Const. Const. 1963, Art. 1, §16.
4. Bail that is set at an amount higher than an amount reasonably calculated to give adequate assurance that the accused will stand trial and submit to sentence if guilty is excessive under the Eighth Amendment. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). Defendant's bail is excessive.
5. Reduction of Ms. Smith’s bail is appropriate because:
 - The dangerous weapon was a butter knife that Ms. Smith threw at her (adult) sister during an argument at a family dinner.
 - Ms. Smith has two kids, a job she is about to lose, she is diabetic and was not allowed to bring her glasses into the jail.

For these reasons, defendant asks that this Court grant her motion for bail reduction.

Respectfully submitted,

By: _____

Defense Counsel

IN THE CIRCUIT COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs

No. 55455

Hon. Reallygrumpyjudge

DEFENDANT SMITH,

Defendant.

MOTION FOR REMAND TO DISTRICT COURT FOR PRELIMINARY EXAMINATION

The defendant, by his attorney, moves this Court to remand the case to the district court for the purpose of conducting a preliminary examination, saying in support thereof:

1. Defendant Smith is charged with armed robbery.

2. A few weeks ago, the case was scheduled for a preliminary examination in the District Court before the Honorable Notsohappy.

3. The original counsel advised defendant Smith to waive the preliminary examination. However, that advice was not sound advice amounting to ineffective assistance of counsel, as it caused the Defendant to forego the opportunity to confront and to test the adequacy of the evidence through cross-examination.

4. This is a serious case with extensive investigation to be done.

5. Although the right to a preliminary examination is a statutory, and not a constitutional right, it is a "fundamental right in most criminal cases," *People v. Duncan*, 388 Mich. 489, 502, (1972), and has been recognized as a "critical stage" of the proceedings. *Coleman v. Alabama*, 399 U.S. 1, 9; 90 S. Ct. 1999; 26 L.Ed.2d 387 (1970); *People v Skowronek*, 57 Mich. App. 110, 114 (1974).

Wherefore, defendant asks that this Court to remand the cause to the district court for a preliminary examination.

Respectfully submitted,

By: _____

Defense Counsel

IN THE CIRCUIT COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs

No. 55455

Hon. Reallygrumpyjudge

DEFENDANT SMITH,

Defendant.

MOTION FOR APPOINTMENT OF INVESTIGATOR

Defendant by his attorney, moves this Court for the appointment of an investigator for the reasons stated in this motion. Defendant Smith specifically requests the appointment of Bobby Doesntmissanything for this purpose. In support of this motion, counsel states the following:

1. Both the federal and state constitutions guarantee criminal defendants the effective assistance of counsel. U.S. Const. Amend VI; Mich. Const. art 1, § 20. Effective assistance of counsel, in turn, requires competent investigation. *Cf, People v. Davis*, 199 Mich. App. 502 (1993).
2. Where a criminal defendant is indigent, courts are obligated to pay the costs of adequate investigation. *Davis, supra*, 199 Mich. App. at 518.
3. Defendant Smith is indigent and cannot afford to pay the costs of conducting an investigation.
4. In this case, armed robbery is the charge. There is a significant amount of investigation to do, including interviewing witnesses, taking pictures at the scene, and reviewing evidence.
5. Investigator Bobby Doesntmissanything is a highly qualified investigator who has been appointed by this court in dozens of other cases in the past two years. His rates have been approved in the past by the court administrator. He works quickly and efficiently. His resume is attached.

For these reasons, defendant asks that this Court appoint Mr. Doesntmissanything, at county expense, to assist counsel in preparing for trial.

Respectfully submitted,

By: Defense Counsel

IN THE CIRCUIT COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs

No. 55455

Hon. Reallygrumpyjudge

DEFENDANT SMITH,

Defendant.

MOTION TO SUPPRESS STATEMENTS

Defendant Smith, by his attorney, moves this Court for an order suppressing all oral and written statements made by defendant Smith at the time of and subsequent to his arrest as they were made in violation of his Constitutional Rights.

1. Defendant Smith was arrested and charged with criminal sexual conduct.
2. Defendant Smith waived his right to remain silent and allegedly made statements to the police.
3. Under the totality of the circumstances, those statements must be suppressed because they were not voluntary, for the following reasons:
 - Mr. Smith was intoxicated at the time of the interrogation. He had been smoking marijuana and drinking heavily before his arrest.
 - Mr. Smith is extremely inexperienced with the police, he had never been arrested before and was unsure of the rights he allegedly waived.
 - The interrogation was extremely long and unfair to defendant. Mr. Smith was held in jail for over four hours, he was tired, and his alleged statements were made after 2:00 a.m. which meant he had been awake due to his work schedule for more than 20 hours.

Based on the totality of the circumstances, Mr. Smith's confession was not voluntary and must be suppressed. *Colorado v. Connelly*, 479 U.S. 157 (1986); *People v. Sexton*, 461 Mich. 746 (2000). For these reasons, defendant's name asks that this Court suppress all oral and written statements.

Respectfully submitted,

By: Defense Counsel