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Understanding Case Law and Legal Writing

By: Frederick Ray

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Correct Analysis of Ineffective Assistance of Counsel Claims

The Sixth Amendment's *right to counsel* guarantees a defendant the right to effective assistance of counsel. In *Strickland v. Washington 104 S.ct 2052 (1984)*, the Supreme Court set out the analytical framework for evaluating claims of ineffective assistance of counsel. The court applied an outcome determinative approach.

"The benchmark for judging any claim of ineffectiveness, must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."
***Strickland* at 2063.**

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What does the court mean by "the adversarial process?"
It's the concept of hearings and trials to resolve disputes between two parties: *two adversaries who bring their dispute before a tribunal to be determined by a neutral party who decides who wins based upon the evidence presented.* The truth is determined by testing both sides of the story as the "Adversary System of Justice."

This concept of discovering the truth is controlled by the parties - the state and criminal defendant - who stand equal before a neutral court. A jury of lay citizens, rather than professionally trained judicial officers, determines whether guilt has been proven. The judge acts as a relatively passive "umpire" who settles legal issues between the parties but does not actively seek to control the selection or presentation of those issues or to guide the process to a factually accurate and legally just result.

This concept of justice serves its purpose only when a trial is held before a competent judge and both the prosecution and defense are represented by competent counsel. *If any part of this tripod of justice is weak or fails to satisfy their individual functions, the tripod of justice loses its stability, collapses and fails to produce a reliable result, which is the ultimate goal of this concept.* Each leg of the tripod must be equally strong if the "Adversary System" is to produce justice as its result. The prosecutor, defense counsel and the trial judge have duties and responsibilities that must be met if justice is to be attained.

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Strickland also stated, "... counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Counsel's strategy must be based upon an investigation of the facts and the law applied to the facts in formulating a strategy to serve your interests. There can be no reasonable strategy without conducting a proper investigation. Strickland held that the reasonableness of counsel's actions is measured by what a competent attorney would do under the same circumstances. Strickland also states that attorney competence is defined by professional norms, which are established by the ABA Standards for Criminal Justice-Defense Function Standards, Rules of Professional Conduct and Code of Professional Responsibility. To prove counsel's actions were unreasonable, you must discover violations of the standards for attorney competence. Such violations establish the attorney's incompetence, thereby removing their shield of strategic choice, because incompetent attorneys cannot make strategic choices. Strickland held that attorney competence is measured and analyzed by professional norms (standards).

Courts use these standards as an aid in determining when counsel is ineffective, because they establish the duties of defense counsel and are an excellent basis for analyzing competence. The standards express self-evident concepts of professional ethics and provide notice to attorneys of what's expected of them as well as a guideline for determining competence. The defense standards embody the collective wisdom of ensuring competence for the defense leg of the "tripod of justice." They clearly indicate to counsel what indeed must be done to prove competent representation. Violations of these

standards removes strategy; without strategy, counsel's actions are unreasonable. Counsel couldn't possibly say it was a strategic choice to violate the standards of his profession.

To satisfy the prejudice prong of an ineffectiveness claim, you must demonstrate that counsel's act or omission had an adverse effect on the outcome of the proceedings. *Com. v Marshall 663 A.2d 1100, 1103 (Pa 1993).* You must plead (write it) and demonstrate (show how) that there's a reasonable probability that, but for the act or omission challenged, there's a likelihood you would've been found not guilty of the specific charge or charges. *Com. v Jones 683 A.2d 1181, 1188 (Pa 1996).* This doesn't mean you have to prove you would have been "absolutely" found not guilty, only that there's a "reasonable likelihood" there would've been a difference outcome.

When you understand the legal principles governing ineffective assistance of counsel claims, you will be able to demonstrate in your pleadings how your issues will be proved by developing your argument through the circumstances of your case. The discussion of the circumstances include not only the totality of the evidence that was introduced at trial but also facts concerning the prosecution of the case and how counsel's acts and omissions affected the process of ascertaining the truth and as a result the verdict is unreliable. *Com. v Rivers 786 A.2d 923, 927-930 (Pa 2001).* Boilerplate pleadings such as "counsel did not have a reasonable basis for his act or omission" or "the outcome could've been different," without more, is insufficient. You must develop an argument in support of those conclusions. *Rivers at 931.*

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