

Checklist For PCR Hearings

- Contact defendant's prior trial counsel (including any co-counsel) and appellate counsel re: ineffectiveness claims; send a copy of PCR application.
- Use the tools of civil litigators: Requests for Admissions, Interrogatories (possibly Adjudication of Law Points) to narrow the issues.
- Request discovery of billing records and relevant correspondence from defendant's prior criminal trial, appellate, and postconviction counsel
- Consider who your witnesses will be -- call, depose, or use affidavits (if both sides stipulate):
 1. Consider calling 1st or 2nd chair prosecutors to rebut applicant in prosecutorial misconduct claims or where claims are made about juror conduct, courtroom decorum, plea negotiations;
 2. Consider calling 1st or 2nd chair defense trial counsel to rebut applicant's ineffective assistance of counsel claims;
 3. Consider calling defendant's appellate counsel as under *Strickland* it is virtually impossible to attack a strategic decision not to appeal an issue;
 4. Consider calling investigators to rebut police misconduct claims;
 5. Consider calling trial judge or jurors, depending on nature of claims; and
 6. Consider calling other court personnel (court reporter, attendant, clerks).
- In your briefing urge the Court to make explicit rulings on independent state waiver grounds, even if these rulings serve only as an alternative basis for dismissal (such rulings protect against later federal habeas corpus actions).
- Maximize your record: Be certain to have the trial judge explicitly take judicial notice on the record of the entire underlying court files (ideally, admit a copy of the whole file as a PCR exhibit, including motions, depositions, trial exhibits, and the Pre-Sentence Investigation Report, which often has useful information).
- Be sure the PCR hearing is transcribed.
- Make sure PCR exhibits are preserved at the end of the PCR (some clerks routinely destroy civil exhibits if not claimed) *see* Iowa R. Civ. P. 1014 (clerk may destroy exhibits w/o notice); keep a copy of PCR exhibits in your office file.