



Navigating the Minnesota Commitment Appeal Panel: Overview of Practice and Procedures

March 2026

Overview of Civil Commitment to Direct Care and Treatment (“DCT”)

Types of Civil Commitment

- CAP decides “reductions in custody”—changes in DCT facility or release, *not* initial commitment
- Two general categories of committed individuals appearing before the CAP:
 - Those committed as a “sexually dangerous person” (“SDP”) and/or a “sexual psychopathic personality” (“SPP”) (*see* Minn. Stat. § 253D.02, subds. 15, 16);
 - Those committed as a “person who has a mental illness and is dangerous to the public” (“MI&D”) (*see* Minn. Stat. § 253B.02, subd. 17).

Minnesota Sex Offender Program

- Three-Phase Treatment Program

- Phase One: Focuses primarily on each client's ability to maintain behavioral control and to consistently conform to the rules of the program. Clients work to develop skills in problem-solving, understanding and reducing therapy-interfering behaviors (or barriers to change), and begin to develop an understanding of how thought processes affect behavior.
- Phase Two: Focuses primarily on securing an agreed upon history of the client's offending behavior and the factors that contributed to it. Clients are expected to identify and develop resolution of the issues underlying their offense behaviors.
- Phase Three: Focuses on the application and internalization of the treatment process. Clients are expected to demonstrate meaningful change and consistent utilization

- MSOP Facilities

- Secure Facility in Moose Lake

- Generally houses individuals in Phases One and Two of treatment
 - DCT controls who moves here from St. Peter

- Secure Facilities in St. Peter (Pexton and Shantz Halls)

- Typically the first placement - houses individuals on judicial holds
 - Generally house individuals in Phases Two and Three of treatment; also Alternative Program
 - DCT controls who moves here from Moose Lake

- Non-Secure Facilities in St. Peter (Community Preparation Services)

- Unlocked, non-secure setting; CAP controls transfers to CPS
 - Can be any treatment phase

Forensic Services

- Treatment Program
 - Provides evaluation and specialized mental health treatment services to patients statewide who have been civilly committed MI&D
- Forensic Services Facilities
 - Secure Facility in St. Peter (Forensic Mental Health Program)
 - Typically houses individuals in earlier stages of treatment
 - Non-Secure Facility in St. Peter (Forensic Transition Services)
 - Similar to CPS, an unlocked, non-secure facility

Reduction in Custody Overview

Reductions in Custody

FIRST REVIEW:

Special Review Board (SRB)

SECOND (DE NOVO) REVIEW:

Commitment Appeal Panel (CAP)

Petition for Reduction in Custody

PETITIONING PROCESS: 253B.18, subd. 5 (MI&D cases)
253D.27 (SDP/SPP cases)

WHAT: MI&D and SDP/SPP cases

WHO: Client, Client's Attorney or Head of Treatment Facility

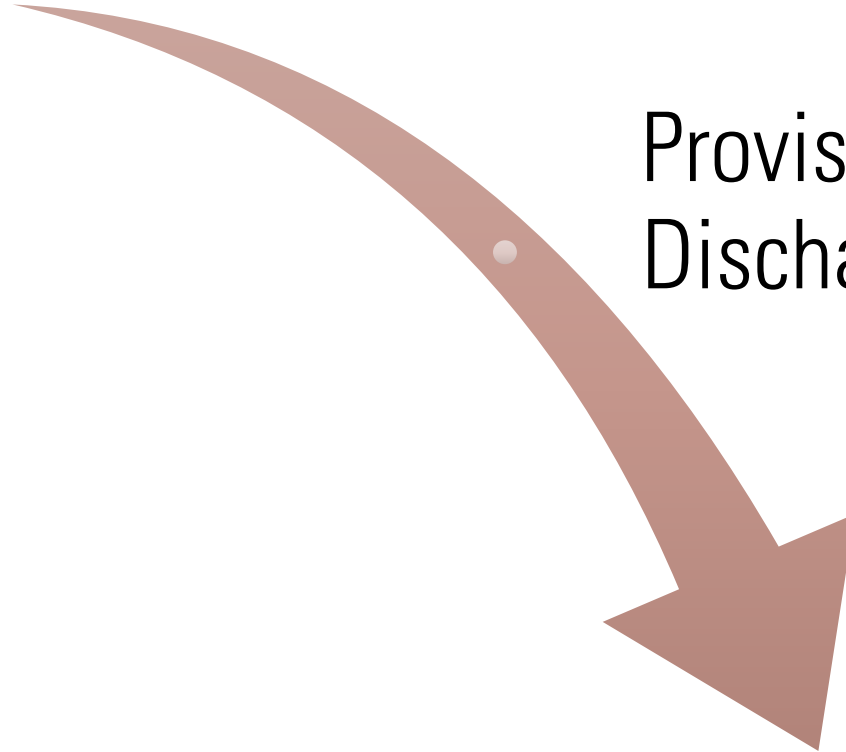
WHEN: 6 months after commitment or after conclusion of prior petition. MI&D clients receive automatic 3-Year reviews.

*TYPES OF
REDUCTIONS
IN CUSTODY*

Transfer

Provisional
Discharge

Discharge



SRB HEARING PROCESS

STYLE: Administrative Hearing

SRB MEMBERSHIP: 3 – Multidisciplinary

SOURCES OF INFORMATION: SRB Packet (DCT); SRB Treatment report (DCT); Risk Assessment (DCT); Client and Victim Submissions

DECISION MAKING: Findings of Fact and Recommendations

Overview of CAP Proceedings

COMMITMENT APPEAL PANEL (CAP)

FORMERLY THE SUPREME COURT APPEAL PANEL (SCAP)

- Referred to in statute as the “judicial appeal panel” for reductions in custody for indeterminate civil commitments under Minn. Stat. 253B (MID) and 253D (SDP/SPP)
- There are 17 mostly senior district court judges who are appointed by the Chief Justice and sit on 3 Judges Panels, who are paid by the Branch with DCT funds.
- 3 Panels operating:
 - Hennepin County: Chief Hon. Bridget Sullivan, Mon. hearings, Law Clerk Jen Dailey
 - Ramsey County: Chief Hon. Edward Sheu, Thurs. hearings, Law Clerk Jen Dailey/Kelsea Gould
 - Ramsey County Remote: Chief Hon. Teresa Warner, Tues. hearings, Law Clerk Kelsea Gould

Petitioning for rehearing from SRB recommendation

- 30 days to file with CAP
 - Must state relief requesting
 - CAP can't consider if not considered by SRB
- Client, Attorney General (o/b/o DCT Executive Board), County Attorney may petition
- Committed person is always considered/referred to as the Petitioner

Counsel appointment and getting records

- CAP issues order appointing attorney
- MSOP will provide records at time examiner is appointed & updated records 20 days prior to hearing
- CAP provides records request form to attorney/examiners, so can obtain records at any time
 - Email requests to MSOP records department

Examiner appointment

- CAP has discretion regarding appointment of examiners
- CAP's current practice is to appoint an examiner where:
 - SRB recommends granting reduction in custody but DCT risk assessment does not support a reduction in custody OR
 - SRB recommends denying reduction in custody and DCT risk assessment does not support a reduction in custody, but CAP determines client should receive a court-appointed evaluation
- Client has option to waive appointment of examiner
- Parties may retain their own experts at their own cost

Scheduling hearings

- Phone conference to find hearing date
 - Pre-trial scheduling order with phone info & possible hearing dates timeframe
 - Check availability of witnesses & have ready for phone conference
 - Hearings generally held remotely, but parties may motion for in-person hearing
 - In-person hearings currently held in Hennepin & Ramsey County

Scheduling order issued with relevant deadlines

- 20-day statement summarizing position & relief requested (MSOP only)
- Witness & exhibit lists (along with copies of exhibits) filed 14 days prior to hearing
- Witnesses
 - Send letter to examiner 2 weeks prior to hearing if you want them present to testify
 - Subpoena other witnesses as needed
 - MSOP/FMHP employees generally accept email service
 - Email copies of exhibits and hearing link to your witnesses

Scheduling order - continued

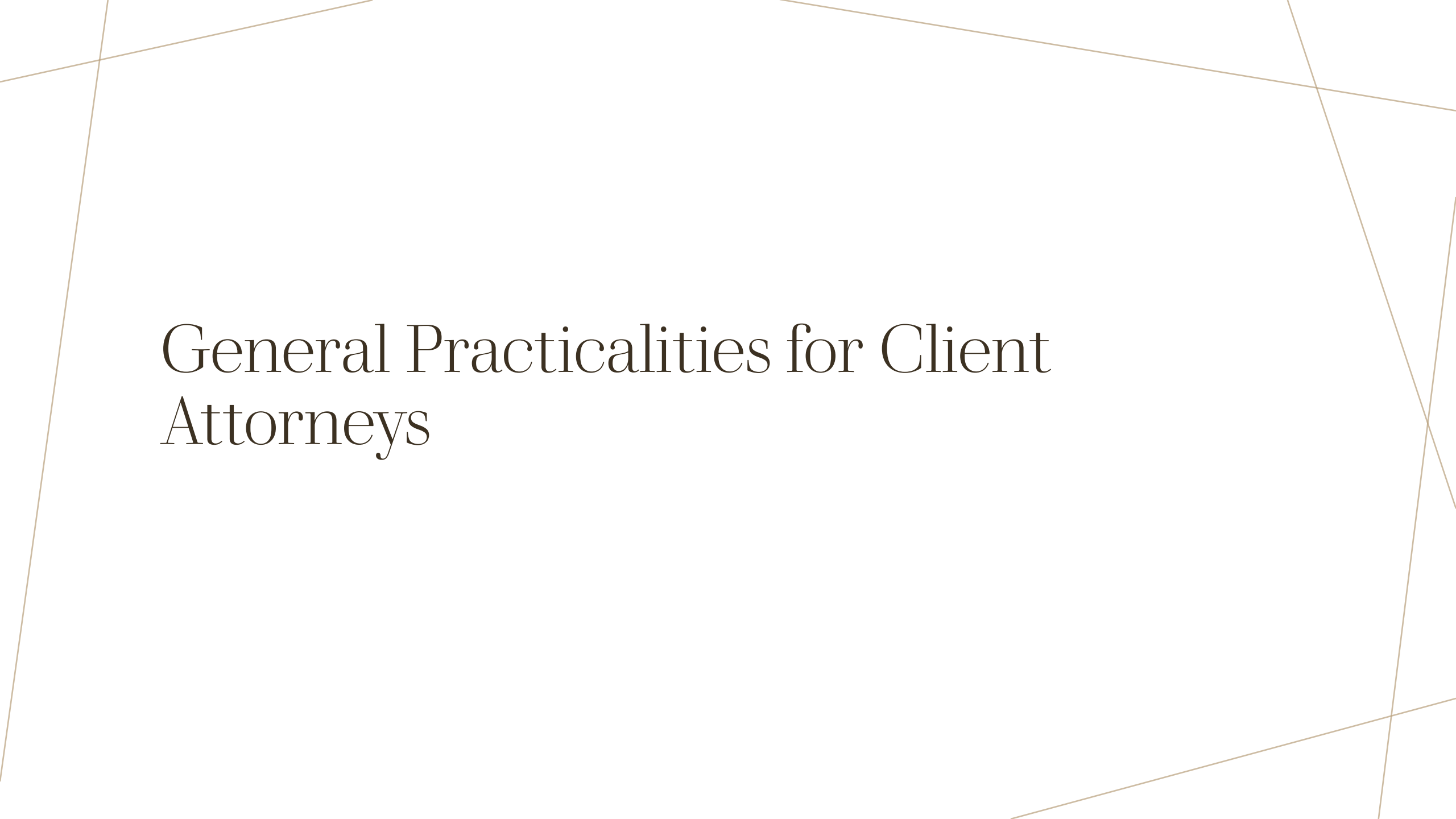
- Meet & confer between attorneys
 - 1 week prior to hearing
 - AG's office files written memo re positions
- Transportation (if needed)
 - MSOP/FMHP transports clients residing in their facilities
 - Clients on provisional discharge need to make arrangements

Part One v. Part One/Two Hearing

- CAP has discretion on how to schedule hearings
- Generally, CAP practice is to:
 - Hold a “Part One” hearing first when SRB *has not* recommended relief
 - Hold a combined “Part One/Part Two” hearing first when SRB *has* recommended relief
- Part One hearing means the committed individual puts on his or her case-in-chief
 - Case may then move on to a Part Two hearing at a later date, at which DCT and County put on their case-in-chief, and committed individual may present rebuttal
- Part One/Part Two hearing means DCT and County must also be ready to present their case-in-chief as well

Burdens of Production and Persuasion

- Transfer: Petitioner always has the burden of persuasion by preponderance of the evidence (Minn. Stat. §§ 253B.19, subd. 2(c); 253D.28, subd. 2(e))
 - Governing factors are at Minn. Stat. §§ 253B.18, subd. 6 and 253D.29, subd. 1(b)
- Provisional Discharge and Discharge: Petitioner must first present a prima facie case, then party opposing must prove by clear and convincing evidence the requested reduction in custody should be denied
 - Governing factors for provisional discharge are at Minn. Stat. §§ 253B.18, subd. 7 and 253D.30, subd. 1
 - Governing factors for discharge are at Minn. Stat. §§ 253B.18, subd. 15 and 253D.31, but must be applied consistent with *Call v. Gomez*, 535 N.W.2d 312 (Minn. 1995)
 - Due Process grounds for relief

The background features several thin, light brown lines that intersect to form various geometric shapes, including triangles and polygons, creating a modern, minimalist aesthetic.

General Practicalities for Client Attorneys

Attorney Appointment & Payment

- Client entitled to representation as long as under commitment
 - Recent changes now allow for self-representation at CAP hearings under certain circumstances
- County appoints attorney when initial commitment petition filed
 - Remain appointed until discharged by court order
 - Handle SRB hearings & everyday issues
 - County pays attorney unless privately retained
 - County pays at county-approved rates which vary across the state
 - Rates range between \$75/hr - \$150/hr

Attorney Appointment & Payment

- CAP appoint attorney to handle CAP proceedings
 - DCT pays attorney through conclusion of CAP hearing process (i.e., receiving order & final discussion with client regarding order)
 - \$100/hr for attorney, \$50 for paralegal, \$50/hr for travel
- Appeal of CAP order, if any, is paid by county

Case Load

- Similar arguments, records, judges, attorneys, examiners, so once familiar easier to handle & takes less time to prepare
 - Can use SRB argument as starting point for CAP
 - DCT works with attorney re subpoenas for MSOP staff
- Most cases are fairly quiet until get close to trial
 - Video meetings easy to schedule with MSOP for client meetings
 - Defense attorney can appear remotely or from facility with client

CAP Considered Part of the Appellate Court System, Not District Court

- Use EMACS system for filing/pleadings
 - File petitions under AP-Rehearing Petition (not a Motion for Reconsideration)
 - Use a filing type such as Stipulation or Request for Relief if you want the CAP to see them prior to the scheduled hearing date
 - If something requires attention prior to a hearing date, either use correct filing type or email the law clerks a heads up to watch for the filing (or both)
 - For any motions, use AP – Request for Relief. That indicates an order is required and is more appropriate than “other” or “correspondence.” Essentially every e-filing needs to start with AP as the filing type and then the best and closest subtype.
- Cases don’t show up on courthouse monitors or MCRO

CAP Considered Part of the Appellate Court System, Not District Court, cont'd

- Christa Rutherford- Block is Clerk of Appellate Courts main contact person for CAP files (Christa.Rutherford-Block@courts.state.mn.us)
- **FILE A NOTICE OF WITHDRAWAL INTO THE CAP FILE IF YOU ARE NOT GOING TO REPRESENT YOUR CLIENT AT CAP**
- E-file exhibits using one searchable pdf - do not file each exhibit separately
- E-file as exhibits anything you want the Panel to consider, such as a provisional discharge plan, relapse prevention plan, or examiner report, etc.
 - SRB exhibits and examiner reports are docketed into the panel file, but the Panel does not consider them unless they are received as an exhibit

EMACS Filing Types and Subtypes for Commitment Appeal Panel Cases

Choosing the Filing Type:

To create a filing in an existing appeal panel case, you will choose the following options in EMACS (sample appeal number of AP12-3456 used below – please enter your case number):

▼ Court Selection

Court Level*

Appeal Panel ▼

Filing Category*

Existing Case ▼

▼ Existing Case

Appellate Case Number* ?

A

-

Administrative Case Number* ?

ADM

-

Appeal Panel Case Number* ?

AP

-

Filing Type*

AP ▼

Choosing the Filing Subtype:

Subtype	When to Use and Helpful Tips
Attorney Appearance	Notices of appearance, notices of substitution of counsel *For withdrawal of the committed person's counsel, please use AP – Request for Relief
Confidential Examiner's Report	Confidential Examiner's Report *For status updates please use AP - Other
Exhibit List and Exhibits	Exhibit list and the accompanying exhibits. *Please upload the list as a separate PDF from the exhibits.
Other	Stipulations, Correspondence, Status updates
Rehearing Petition	Rehearing petitions *Should also be used to initiate a new MI&D case *Please upload the petition as a separate PDF from any findings.
Request for Relief	Motions, notices of withdrawal of the petition, notices of withdrawal of counsel on behalf of the patient
Witness List	Witness List *Please do not upload your witness list with your exhibit list/exhibits filing.

Things CAP Judges Would Like Attorneys to Know

- Inform the law clerks about remote observers. The Panel Judges do not want an essential witness falling off the Zoom.
- They have read all exhibits in detail prior to hearing
- Follow the scheduling order
 - File required pleadings and copies of exhibits on time
 - Bring wi-fi capable laptop computer so you can connect to zoom for in person/hybrid hearings
 - If client decides to withdraw petition & cancel hearing, do so ASAP to save cost & allow hearing date to be available for others



Questions?