

Medical

What can I do – from the very start of a case – to help a client get medical or psychological care at MDC?

- *Be sure you get a signed HIPAA release form for EVERY detained client. Get it at presentment. You never know when you will need it! Without a signed HIPAA release, MDC cannot communicate with you about medical care for your client.*
- *Get any prescriptions and provide to MDC asap. The agents often take any needed medication on arrest. Ask for it, give it to the Marshals and have the court order that MDC ensure client gets prescribed medication with specific info on drug name and quantity. Take photos on your cell of any medications so that you can follow up with email to MDC Legal with specific information on what prescriptions are needed. (Note that not all drugs are on the BOP formulary. For example, very few painkillers are permitted and BOP strongly prefers to give Prozac over other anti-depressants.).*
- *Get any prior medical records and provide to MDC asap.*
- *Ask the judge at the first appearance to enter a detailed medical order and direct that MDC report back on medical care provided by a set date. And GET THAT HIPAA so judge can also direct MDC to share that information with counsel.*
- *Tell clients that there is a specific mailbox on Trulincs to submit medical care requests. Handwritten and verbal requests go into the void. The trulincs requests are preserved so at the least you can show that client has been requesting medical care. The MDC's first response is always "tell the client to put in a cop-out."*

What if I have a client at MDC who still doesn't seem to be receiving the medical care they need?

- *Did the Magistrate Judge enter a medical order at the time of initial presentment? If so, email MDC Legal (email addresses below) and ask that Legal help ensure that order is being followed and give as much specific information as you have as to what care is needed.*
- *Tell your client to put in written requests for medical care on Trulincs. Handwritten and verbal requests are not logged in the medical care system, so if client is able to do it on Trulincs that is much better.*
- *Be sure you get a signed HIPAA release form for EVERY detained client. Get it at presentment. You never know when you will need it! Without a signed HIPAA release, MDC cannot communicate with you about medical care for your client.*
- *Email MDC Legal and specify what care is needed. Squeaky wheel gets the grease. Keep emailing. At least once a week.*
- *If feasible in particular case, ask the AUSA to get involved and agitate for client to get care. BOP is part of DOJ....*
- *Get a court order and ask the judge to order that the MDC report back by a specific date as to what care has been provided.*

What is best way to get medical records from MDC?

- The quickest and easiest way is for the crim AUSA to obtain them. They can get them in about an hour. Yes, this is wrong. Yes, what about HIPAA. So you may not want to do this.

- Email that signed HIPAA you got, plus a *Touhy* letter and a subpoena explaining why you need the records (e.g., for mitigation) to Neha Khan and Irene Chan at MDC Legal.
- Make a FOIA request by emailing ncro-foia-s@bop.gov , and include your client's consent via the BOP form DOJ 361 certificate of identity. Make clear that the request is expedited.

Touhy Requests

- Routine *Touhy* requests (eg for client medical records) should be emailed to Legal. If the request is more unusual or there is a time-sensitive court order, also copy in the Touhy coordinator from EDNY Civil Division, Pauline.Stamatelos@usdoj.gov.

Legal Visits In Person

If an issue comes up on weekdays during day (before 3:30 pm), ask lobby officer or VR officer to call Legal. If evenings or weekends, ask for Duty Lieutenant or Institutional Duty Officer.

Legal Visiting Hours: Weekdays 8 am to 8 pm. BUT you cannot enter between 2-5 pm (the count is from 3-5 pm) and they get weird if you try to enter after 7 pm. Weekends/holidays: 8 am to 3 pm. BUT there is a morning count that starts at 9, so you either have to get there by 8:45 and stay through count, or enter at 11. Social visits are weekdays from noon to 8 and weekends noon to 3.

Can I bring in my laptop? Legal visitors can now bring in a laptop and an external drive (NO THUMB DRIVES) without pre-approval. You have to bring with you the laptop form (copy attached) and just hand it to the lobby officer with your client forms.

What if lobby officer or VR officer says my clothing is inappropriate? New policy is that no legal visitor can be turned away based on clothing except by a Lt, Captain or Institutional Duty officer. So if a CO tells

you no entry because of your clothes, ask the CO to call one of those people or Legal and insist until you get such a person. You can minimize likelihood of this issue by (a) being a man, or (b) dressing Amish.

What if I (or my paralegal or my expert) am an approved visitor but when I get to the front desk, the lobby officer says they don't see my name on the list? Ask them to look on the list on the computer. Then ask them to call Legal. Simultaneously, email BRO-LegalVisit-s@bop.gov yourself and ask someone to call front desk. Don't relent.

Yes, you can get multiple clients brought down at one time in the morning when there are no social visits. No, the VR officer does not know about this policy. When you put in your client sheets, ask for 2 to 3 clients to be brought down at once (assuming you are not going to be a very long time with a single person, in which case tell the officer you will be a while with the first person but will bring them the second sheet when you are wrapping up). If VR officer says no can do, say you understand this is the policy from the Captain and ask them to look at the "Legal Visiting Guide." This is only for the mornings (when no social visits) and only if not a separation issue with another detainee.

If you want to stay through the count, let VR officer know in advance.

Are new arrests still being quarantined due to COVID-19?

Sometimes. Currently this seems to depend on where client is coming from (overseas? Lots of time in transit?). All new (male) arrests usually are housed in unit 41 (or in the SHU if some security concern). If you are able to obtain proof that a new client has been vaccinated, email it to MDC Legal asap to reduce quarantine time.

Remote Legal Access

Remind me again, how do I book a legal call or VTC with a client at MDC?

- All the info and links to the scheduling system are available at: <https://www.federaldefendersny.org/mdc-legal-calls-faq>

How do I find out if a client has moved units? For purposes of legal call scheduling, Federal Defenders receives an updated unit roster every Friday. If you go into the legal call booking system (again, available at <https://www.federaldefendersny.org/mdc-legal-calls-faq>) and enter your client's name and reg number, you will learn the unit. But this information is only updated on Fridays)

What if a legal call doesn't come at all or my client is not brought to the VTC room? Email MDC Legal at the BRO-legalvisit-s@bop.gov email address if afternoon call or any VTC is 10 minutes or more late. If you don't let them know, they can't help. If you email them and no one responds, please let Deirdre know.

What if I need an urgent legal call (same day/next day)? *Urgent calls are handled by MDC, not Federal Defenders.* Email MDC Legal at the BRO-Legalvisit-s@bop.gov email address, explain why you need the call urgently and why you can't visit in person (e.g., "I have a filing due tomorrow and I am not able to visit in person"), give the client name and reg number and give your name and phone number and available times. The more specific you are, the more likely you are to get the call.

Why does my morning call never come at the time I book it for?

Because the morning calls are in a block from 9 AM to noon, and you need to be available for the entire block. You book a specific time just so MDC can try to make the calls in a particular order, but basically for the morning calls, the Legal Department or CO calls around 8:30 or 9 to see when you are available, and then calls you.

If you have specific legal access (including legal mail or discovery issues), email Deirdre at Deirdre_vonDornum@fd.org. Please also fill out the feedback form after every legal call so that we can track issues! We use the feedback info in mediation every week but only about 40% of CJA lawyers respond, which makes Deirdre very very sad.

Discovery

How do I send e-discovery to MDC? This has changed over the last couple months. You can still send CDs directly to clients, but please remember that not all the CD players on the unit computers work. For larger discovery, MDC no longer requires that portable hard drives come from the USAO; defense lawyers can now send them directly. BUT: no thumb drives! And portable hard drive (with cord) must be hand-delivered (in envelope addressed to MDC Legal Dept with cover letter specifying what is on the hard drive and client name, reg number, case number) to the East (old) building front desk. No, mailing it doesn't work. Hand-delivery.

What is best way to get hard copy discovery to client at MDC? Drop it off in the legal mail box (in an envelope that has client name and reg number, is marked as Legal Mail, and has your name and "Attorney at Law" on it). Much faster than postal delivery. **DO NOT USE FEDEX OR EXPRESS MAIL.** It sits in a warehouse off site.

Lawsuits Against MDC

How does my client join "the MDC lawsuit"?

- There is no class action regarding medical care at MDC.
- There is a pending class action, *Scott v. Quay*, 19-cv-107-ERK (E.D.N.Y.) that includes everyone who was at MDC during the blackout of January 2019, and which is being led by Katie Rosenfeld at Emery Celli. For information, go to www.mdcblackout.com.

- There is also a pending civil lawsuit brought by Federal Defenders (represented by Kaplan Hecker) against MDC that concerns only legal access/Sixth Amendment issues. *Federal Defenders v. BOP*, 19-CV-660 (MKB) (EDNY). This case is in front of CJ Brodie and is being mediated by Loretta Lynch.

Lockdowns

Why is everyone locked in at MDC all the time lately?

- Short Answer: the new warden (Warden Ma'at) is trying to get rid of all the cell phones and weapons and drugs that have made their way into the institution. He is doing so by locking down every unit and doing search after search until the unit comes up clean.

MDC Contact information: **Email is best! Get it in writing!**

Operator: 718-840-4200

BRO-legalvisit-s@bop.gov: use this address to request an urgent legal call, to ask why a remote legal call or VTC is not happening, to ask about clearance, etc.

Sophia Papapetru (Supervising Atty): spapapetru@bop.gov
718-840-4200 x4744 OUT ON PARENTAL LEAVE JULY TO
SEPTEMBER 2023

Mike Cardew (paralegal, has been there a long time, can be very helpful if you are nice to him!): mcardew@bop.gov

Marc Peakes (paralegal): mpeakes@bop.gov

Irene Chan (staff attorney): ichan@bop.gov

Neha Khan (staff attorney): nkhan@bop.gov

John Wallace (staff attorney/FOIA coordinator): jxxwallace@bop.gov

Adam Johnson (now regional counsel. The *most* helpful but don't overuse him): A10johnson@bop.gov

Bro-subpoenas-s@bop.gov: send all subpoenas here but also copy in Sophia Papapetru or Peakes

Bro-ExecAsst-s@bop.gov: email to Warden's office. I have never received a response to any email sent here but

Bro-WardenSecretary-s@bop.gov: email to Warden's secretary, Mr. Smith. Save for emergencies, but he does answer. 718-840-5141