

# CPL 440.10 and 440.20

**Post-conviction litigation resources are available [here](#).**

ILS is keenly aware of the problem of wrongful convictions involving both factually innocent people and those whose constitutional rights have been violated. We are also cognizant of the fact that illegal, invalid, and inappropriately long sentences plague individuals impacted by the criminal legal system.

New York's post-conviction statute allows defense counsel to bring motions to vacate judgments and set aside sentences at any time after judgment, including prior to the filing of the direct appeal. So assigned appellate counsel are uniquely situated to explore issues outside of the record after gathering information from the record and from their clients and other sources. Significantly, during the pendency of the appeal, assigned appellate counsel are now authorized by statute to investigate and, if warranted, file CPL 440.10 and 440.20 motions, and to be compensated for such work (see [County Law § 722](#)).

The Statewide Appellate Support Center supports and consults with attorneys providing mandated representation in their efforts to reinvestigate post-conviction cases, craft legal claims, and file CPL 440.10 and 440.20 motions. Attorneys and staff from the Center also brainstorm with post-conviction counsel about additional potential avenues to correct injustices, including utilizing other types of collateral litigation and working with conviction integrity units in District Attorney Offices across New York State.

In addition to providing individual consultations with attorneys exploring post-conviction litigation, the Center will develop and provide trainings on litigating 440 claims. Future trainings will include topics such as:

- Learning to identify and reinvestigate common red flags for wrongful conviction, such as questionable eyewitness identifications, ineffective assistance of counsel, possible false confessions, unreliable science, prosecutorial and police misconduct, and the use of informants;
- Assembling and filing persuasive 440 motions;

- Preparing for and conducting 440 hearings; and
- Drafting leave applications to the intermediate appellate courts and effectively appealing 440 issues.

The Center will also continue to develop and provide resources to assigned counsel, including motion templates, statements of law on common post-conviction legal grounds, and information on investigators and investigative tools, as well as information on mitigation specialists and how to highlight mitigating materials to promote more favorable dispositions.

The importance of exploring CPL 440.10 and 440.20 claims cannot be overstated. In addition to helping to restore freedom to the wrongfully convicted and unlawfully or excessively incarcerated, defense counsel can present fuller and more accurate accounts of what happened in individual cases and can ultimately contribute to balancing the scales of justice by helping to guard against mistakes and misconduct in the criminal legal system. The Center is committed to supporting post-conviction counsel providing mandated representation in this mission.

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