

Court Type of the State of New York  
County: PART \_\_

The People of the State of New York,

— against —

CLIENT,  
Defendant-Petitioner.

[Ind./Dkt.] No. \_\_\_\_\_

Memorandum of Law

## INTRODUCTION

[Write introductory paragraph(s) here. Weave in the most relevant facts of the case with a summary of the argument.]

[Include a conclusory statement summing up the argument. For example: Defense counsel's errors, both individually and cumulatively, were objectively unreasonable and cannot be justified as legitimate strategic or tactical decisions. Moreover, there is a reasonable probability that if defense counsel had not made such mistakes, the outcome of the proceeding would have been different.]

## ARGUMENT

**Client Was Deprived of Effective and Meaningful Representation Where Defense Counsel Failed to [List Errors in Succinct Way].**

Mr. Client was denied effective and meaningful representation, and his conviction should be vacated, pursuant to CPL 440.10 (1) (h) (*see* US Const Amends VI, XIV; NY Const art I, § 6; *Strickland v Washington*, 466 US 668, 686 [1984]; *People v Benevento*, 91 NY2d 708, 712-13 [1998]; *People v Baldi*, 54 NY2d 137, 147 [1981]).

Both the United States and New York Constitutions guarantee every criminal defendant the right to the effective assistance of counsel (*see Strickland*, 466 US at 686; *Baldi*, 54 NY2d at 146). Under the federal standard, [Mr. Client](#) is entitled to the reversal of his conviction if he can establish that defense counsel’s performance fell below an “objective standard of reasonableness” and that it prejudiced his case at trial so as to “undermine confidence in the outcome,” meaning “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” (*Strickland*, 466 US at 688, 694).

New York law requires courts to assess whether counsel’s performance “viewed in totality” amounts to “meaningful representation” (*People v Turner*, 5 NY3d 476, 480 [2005], quoting *Baldi*, 54 NY2d at 147; *see Benevento*, 91 NY2d at 712). This inquiry “focuses on the fairness of the process as a whole rather than its particular impact on the outcome of the case” (*People v Caban*, 5 NY3d 143, 156 [2005] [internal quotation marks and citations omitted]).

However, it is constitutionally irrelevant whether counsel may have performed competently during other stages of the proceeding. The *Strickland* inquiry focuses on whether the “identified acts or omissions” constitute deficient performance and were prejudicial (*Kimmelman v Morrison*, 477 US 365, 386 [1986] [finding that conduct beyond the “identified acts or omissions” is only relevant where it sheds light on whether the errors were reasonable]; *see also People v Jones*, 167 AD3d 443, 443 [1st Dept 2018] [“Under both the state and federal standards, a single, prejudicial error may constitute ineffective assistance, regardless of whether counsel’s overall

performance ‘bespoke of general competency.’”], quoting *Rosario v Ercole*, 601 F3d 118, 124-126 [2d Cir 2010], *cert denied* 563 US 1016 [2011]). Thus, even “[a] substantial, single ‘blunder’ could, of course, qualify” as sufficiently prejudicial (*People v Flores*, 84 NY2d 184, 188 [1994]).<sup>1</sup>

Moreover, “where counsel’s errors individually may not constitute ineffective assistance, the cumulative effect...can deprive defendant of meaningful representation” (*People v Wright*, 25 NY3d 769, 779 [2015] [internal quotation marks, brackets, and citations omitted]; see *People v Oathout*, 21 NY3d 127, 132 [2013]).

The severity of defense counsel’s failures at **Mr. Client’s** trial completely undermined confidence in the verdict (*see Strickland*, 466 US at 688). These errors, both individually and cumulatively, caused **Mr. Client** identifiable prejudice and deprived him of effective and meaningful representation.

A. Defense counsel was ineffective for failing to [\[write out most significant error here\]](#).

[\[Introductory paragraph\(s\) related to defense counsel’s most significant error.\]](#)

[\[Weave in the relevant facts with the relevant case law holding that counsel is ineffective for making this type of error.\]](#)

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<sup>1</sup> “New York state courts would be wise to engage in separate assessments of counsel’s performance under both the federal and the state standards [to] ensure that the prejudicial effect of each error is evaluated with regard to outcome” (*Rosario v Ercole*, 617 F3d 683, 685 [2d Cir 2010, Wesley, J., concurring]).

[End with a conclusion, such as: Defense counsel’s inexplicable failure unquestionably deprived Mr. Client of the right to a fair trial, and his conviction must be reversed due to ineffective assistance of counsel.]

B. Defense counsel was ineffective for failing to [write out another error here].

[Introductory paragraph(s) related to defense counsel’s error.]

[Weave in the relevant facts with the relevant case law holding that counsel is ineffective for making this type of error.]

[End with a conclusion, such as: Where Mr. Prior Lawyer has failed to provide a strategic or legitimate explanation for his failure to object and request a mistrial during summation, Mr. Client was deprived of the effective assistance of counsel, and his conviction must be reversed.]

C. Defense counsel was ineffective for failing to [write out another error here].

[Introductory paragraph(s) related to defense counsel’s error. (Note: Include more or fewer sections depending on how many errors are being alleged.)]

[Weave in the relevant facts with the relevant case law holding that counsel is ineffective for making this type of error.]

[End with a conclusion, such as: Defense counsel’s nonstrategic failure to [detail error] deprived Mr. Client of effective and meaningful representation.]

D. Had defense counsel [list out what counsel should have done to avoid making the errors above], there is a reasonable probability that the outcome of the proceeding would have been different.

There is, at a minimum, “a reasonable probability that...the result of the proceeding would have been different” (*Strickland*, 466 US at 688, 694) if defense

counsel had [e.g., properly investigated Mr. Client's case and advocated for him during the charge conference and the prosecutor's summation].

[Include paragraph(s) with the most relevant facts of the case that show that the mistake(s) made by defense counsel prejudiced the client. Emphasize that each error individually caused sufficient prejudice to the client to deprive him of effective assistance of counsel.]

In this case where the evidence was [weak/circumstantial/not overwhelming/etc.], defense counsel's errors, singularly and cumulatively, denied Mr. Client effective and meaningful representation, and his conviction should be vacated (see US Const, Amends VI, XIV; NY Const art I, § 6; *Strickland*, 466 US at 687; *Benevento*, 91 NY.2d at 713).

## CONCLUSION

For the reasons set forth above and in the affirmation in support of Mr. Client's motion to vacate the judgment of conviction, this Court should vacate Mr. Client's conviction where he was denied the effective assistance of counsel (CPL 440.10 [1] [h]). Alternatively, this Court should hold an evidentiary hearing to resolve any factual dispute necessary to the determination of the motion (CPL 440.30 [5]).

Respectfully Submitted,

LAWYER, ESQ.  
[Office Name]  
[Office Address]  
[Work Email]  
[Work Phone]