



Garden State CLE
 21 Winthrop Road • Lawrenceville, New Jersey 08648
 (609) 895-0046 fax- 609-895-1899
Atty2starz@aol.com

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GARDEN STATE CLE LESSON PLAN

A 2.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUTION

SENTENCING OF DISORDERLY PERSONS AND PETTY DISORDERLY PERSONS OFFENDERS

WITH

**HON. PAUL A. CATANESE (RET.)
FORMER MERCER COUNTY PRESIDING
MUNICIPAL COURT JUDGE**

AND FEATURING

ROBERT RAMSEY, SENIOR INSTRUCTOR

Program Description

Imposition of legal and proper sentences in municipal court criminal cases.

I. INTRODUCTION

- **Garden State CLE**
- **Panelists**
[Hon. Paul A. Catanese (Ret.)
Former Mercer County Presiding
Municipal Court Judge
And Robert Ramsey, Senior Instructor]
- **Scope of Topic**
[1:50 duration and 9 pages of materials]

II. SENTENCING GOALS

- **First, to do justice**
- **Address the victim's issues**
- **Deter future conduct**
- **Guide youthful offenders**
- **Rehabilitate the individual**

III. GET THE PROPER PARTIES IN FRONT OF THE COURT

- **Prosecutor, usually**
- **Defendant and counsel**
- **Victim or store representative**
- **Officer, often**
- **Waiver of some of the above is proper under certain circumstances**

IV. PAPER: REQUIRED DOCUMENTS

- **Plea form**
- **CCH Criminal Case History**
- **Enhancements are impacted by criminal history**
- **Judges can't sentence without it. How will a Judge know aggravating and mitigating factors without it?**

- **Police Reports, because they give you a context of the incident. Not subject to rules of Evidence post-conviction. Without the officer there, the report is the next best thing and it can help to provide the factual basis needed for the plea. Substance abuse reports, evidence, priors, possession and related offenses ranging from driving offenses to resisting arrest etc.**

V. PLEA COLLOQUY

- **Collateral consequences are a part of sentencing**
 - i. Immigration**
 - ii. Driving Privileges**
 - iii. Public Office**
 - iv. Work consequences**
 - v. Others**

VI. CIVIL RESERVATION

- **That the conviction will not be used in civil proceedings. Very rare for this request to be denied. E.g., death cases.**

VII. PLEA ENTRY

- **Voluntariness**
- **Knowledge of the Defendant to the exposure they are facing**
- **Rights waived by the Defendant**
- **Resentencing possibilities in a probation case**
- **Factual basis related in court, along with language issues**
- **Pleas provide a mutuality of advantage (i.e. good deal) by offering a lesser sentence to the defendant and a lesser time and resource consumption for the State**
- **Pleas are like the old Frank Sinatra song: “All or Nothing At All”**
- **It is improper for the Judge to take the plea but order a different fine, for example.**
- **This Judge is not comfortable with giving a range of the sentence or fine. Many are comfortable with that approach. A Judge may say, it is not sufficient and allow the**

parties to start over. Of course, the Prosecutor and experienced counsel will know the ranges that are sufficient for their regular Judge.

VIII. STATE vs. MEDINA

- Applications to recuse are not required simply because the Court had to decide other things about the case. E.g., D.V. with *ex parte* testimony. State v. Medina, 147 N.J. 43, 61 (1996).
- Compartmentalize and proceed. Judges should not feel intimidated if a plea has been rejected and a trial must proceed
- Example of exceptions: DWI revelation of merits/BAC results; hearing from victims and defendant's plea withdrawal.

IX. STATE vs. WARREN

- Sentencing under a certain cap. State v. Warren, 115 N.J. 433, 443 (1989)
- State can't withdraw, but Defendant can withdraw if sentence exceeds agreed cap.

X. PUNISHMENT

- **It's a balancing act**
- **Say the right thing**
- **Do the right thing**
- **Size up the Defendant**
- **Assess credibility of the Defendant and any other witness. Watch the body language.**
- **Ask them about the prior offenses, discuss the priors in sizing up.**

XI. THE JUDGE'S TOOBBOX

- **First offenders: presumption in favor of non-incarceration**
- **Fines: ability to pay is a factor, not the only factor. Individual justice and individual penalties.**

XII. SENTENCING IN DOMESTIC VIOLENCE

- **Alcohol, substance abuse and anger are almost always involved**
- **Punish the misconduct**
- **Assure no REPEAT conduct**
- **Victim input is critical**
- **DV registry, also critical although not required**

XIII. STATE V. BENDIX AND HARDSHIP ON SUSPENSION

- **State v. Bendix, 396 N.J. Super. 91 (App. Div. 2007)**
- **The Defendant must show some level of hardship**

XIV. AGGRAVATING AND MITIGATING CIRCUMSTANCES IN SENTENCING

- **It is a required exercise**
- **Use the words, not the numbers**
- **Weight the factors**

- **7 felonies and 5 DPs and this is theft and he has 4 prior theft offenses**
- **Listen to the Defendant and his counsel for changes in sentencing below the cap. At times, the lesser penalty is proper**
- **Remorse and responsibility**

XV. JAIL CREDITS

- **Credit for time served**
- **“Shock sentencing” Not after 70 days in jail already served**
- **Children, support, elder care issues**
- **“You don’t want to kill the guy”. Punish but remember → these are petty offenses.**

XVI. ADVICE

- **Address the defendant**
- **Go through it all in great detail**
- **Make sure the Defendant understands all discussed on the record**
- **Discuss the 10 day sentence of community service not previously discussed and compel**

the defendant to discuss the matter with his attorney

- **Spread the pronouncement of sentence upon the record clearly**
- **Don't rush the sentence**
- **Do it step by step, use a "cheat sheet"**