

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

PLEA BARGAINING IN MUNICIPAL COURT

With

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And featuring

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Program description

Along with the enormous volume of cases they face, municipal prosecutors are confronted with a wide variety of ethical challenges. This 1.5 credit ethics course will tell you all about how our municipal prosecutors accomplish individual justice in individual cases.

I. Introduction

- **Cheryl Cohen, Assistant Camden County Prosecutor (ret.)**

II. What to know when changing your practice from Superior Court to Municipal Court

A. Step 1: Understanding the business of being an attorney

- **Must make a living, must make money**
- **Client to Client Cycle (3 part process)**
 - **Client acquisition phase – activities you take to attract clients to your law firm**
 - **Maintenance phase – keep the client happy when you are leading up to going to court**
 - **Advocacy phase – when you go to court**
- **At the end of the advocacy period the roles between client and attorney will reverse – client will advocate for you in talking to people about your representation – referrals**
- **There is a limit to how far people will travel based on random advertising – typically the radius from location of attorney to client is 5-7 miles**
- **Word of mouth referral from one client to another has no limitation to come see an attorney – no stronger way to get clients than word of mouth**
- **During time when you are getting clients, need to assess client's needs – not whether reasonable or achievable – need to determine how close you can come to meeting those needs**
 - **Need to address discrepancies between client's needs and what is likely to occur**
 - **Need to adjust client's expectations to a means you know you can achieve – function of probability**
- **Ultimately you should try to exceed your client's needs**
- **When you are able to exceed your client's needs then you are going to be a hero to your client**
- **Need to adjust client's expectations and may have needs that he is not aware of, i.e. interlock device, surcharges, etc.**
- **Document your client's needs so you have this when you go to court**
- **Tell client that if circumstances change then he/she needs to tell you**
- **Understanding the business aspect of the practice is the first step in being able to understand municipal court plea practice**

- B. Step 2: Need to know Rules of Court and Sentencing Laws, and other collateral consequences**
 - **Need some level of experience – need to understand the plea process and the specifics of each court in order to meet your client’s needs**
 - **Need to know more than what your client is charged with as well as what each court has as its own practices**
 - **Need to know how each judge will exercise discretion, how prosecutor will address a particular case, issues with police officers, relationship with victim – these should all be part of assessment of a plea agreement in light of your client’s needs**
 - **You will have imperfect information from your client – worse source of information is from your client, i.e. prior record, etc.**
 - **Early on you won’t have police reports, etc. – need to take a worse case scenario view and come to an agreement with your client regarding what can be done on the case**
- C. Step 3: Discovery Process**
 - **Make a discovery demand and receive the discovery – depending on case may need extended discovery, i.e. DWI cases with data downloads, etc.**
 - **Look at discovery to see if there are defenses that you can use that may not have been addressed by your client or that dovetail with what your client has mentioned**
 - **Doesn’t matter what your client says:**
 - **The client’s information is largely inaccurate**
 - **The client will rarely testify (credibility issues)**
 - **What is relevant for the case is in the police report – judge likely to believe what is in the police report – this is the usual course**
 - **Assume what is in the police report are the facts that the judge will find in the case**
 - **With police report – you know the proofs and you know the state’s position**
 - **Look for legal issues that flow from that, i.e. motions to suppress**
 - **Look for weakness in state’s proofs, i.e. slight evidence on particular element, lesser offense is more likely from what is in the reports**
 - **Defenses will be evident as you read the reports**
- D. Step 4: Once you get to court**

- **Transparency with adversary's case/state's case – point out issues – be forthcoming**
- **Holup order [State v. Holup, 253 N.J. Super. 320 (1992)] – if discovery demand has been made and no response has been received, attorney can seek an order compelling state to provide discovery or face court's sanctions, including dismissal of charges**
 - **Strategically – prosecutor is responsible for providing discovery, but the reality is that the police provide the discovery**
 - **If there is an issue, go to prosecutor and let him/her know that we need this piece of discovery and give state a chance to get it – go on the record and get adjournment for state to provide by date certain**
 - **If state does not provide discovery by date certain, tell prosecutor going to submit Holup order if cannot provide discovery – ask how long state needs to get discovery – then go on the record and tell the judge how long the state needs and you will submit an order**
 - **Do not put in order that case will be dismissed – preference for cases to be disposed on the merits**
 - **If structure the order properly, then case cannot proceed anyway because there is evidence missing – entitled to discovery and not provided**
 - **Order would bar use of discovery/evidence that state has not provided – thus the state could not proceed with their case**
 - **In Holup – there are personal sanctions against prosecutor for not providing discovery – this makes things very personal – not a good idea**
 - **Must be fair and professional with your adversary**
 - **May consider a consent order as opposed to Holup motion**
- **Municipal Court matters:**
 - **Traffic offenses**
 - **Disorderly persons and petty disorderly persons violations**
 - **Ordinance violations**
 - **Boating**
 - **Fish and game**

- **Parking**
- **Housing court (some municipalities)**
- **Pitching your client's position to the prosecutor**
 - **Never forget that prosecutor can be your strongest ally – prosecutor can advocate your position to the judge**
 - **Remember that what is in the caselaw and what happens in court are two different things when it comes to plea bargaining – prosecutor may want to discuss with police and/or victim to resolve the case**
 - **Your client is going to plea – present this to the prosecutor – you must advise client what plea process requires, i.e. allocution**
 - **Client must understand what he is pleading guilty to and why, and that this meets expectations**
 - **Attorney should do plea colloquy – if judge will allow**
 - **Client must be ready to plead guilty in order to advocate for your client to prosecutor**
 - **Plea must contemplate a legal sentence – sentence is within parameters set by statutes and that guidelines of plea bargaining rules are met by plea**
 - **Rule 1:1-2 – Construction and relaxation**
- **What happens if you go to court and what plea you are looking for is not the plea that the prosecutor is willing to give?**
 - **Starting point for successful advocacy in a traffic case is 1) certified driving abstract of your client, and 2) you need to know how to read and interpret the abstract**
 - **Ask: what kind of record? Old or young client? Likelihood of getting more tickets in the future? Is it an aberration?**
- **Unsafe operation (N.J.S.A. 2C:39:4-97.2) – as alternative to obstructing plea (N.J.S.A. 2C:39:4-67) that prosecutor won't give**
 - **\$150 first offense**
 - **\$250 surcharge**
 - **Can only use 2 times before starting thinking about timing of priors – must have 5 year time gap – if less then 4 point assessment by DMV**
 - **If available, take advantage if meets client's needs – no points but high fines; but can have points with lower**

fine with alternate plea if the lower fine would better meet client's needs

- **By trying a case you lose the ability to seal the record for a civil reservation**
- **Plea can be sealed through Rules of Court for civil reservation – something client may not be aware of as a benefit to pleading guilty**
- **When dealing with points – also have to be concerned with motor vehicle surcharges, i.e. 6 points over 3 years = \$150 for first 6 points and then \$20 per point thereafter for 3 years – depends on points that you receive/are assessed, not accumulation of points**
- **Is your client on probation by DMV?**
 - **If client pleads guilty to chapter 4 of Title 39 – mandatory suspension for DMV – need to plead to chapter 3**
 - **NJSA 39:3-44 – general mechanical issues violation – consider as an alternate plea to take it outside of Chapter 4**
 - **If prosecutor will not accept a Chapter 3 plea, then tell client that you can go to DMV and request hearing to reduce suspension, i.e. DMV may propose 60 day suspension but you can negotiate with them for less time**

III. DWI/Refusals

- **Need an indepth knowledge of rules of court and guidelines on plea bargaining in particular**
- **Absolute prohibition on plea bargaining DWI offenses**
- **Unique role of prosecutor – required ethically to do individual justice in individual cases – not to seek convictions**
- **Prosecutors have latitude to accomplish ethical and societal function that is expected by the public – part of guidelines of plea bargaining rules**
- **Must have good knowledge of parameters of prosecutor and defense attorney in plea bargaining**
- **Present a defense that may persuade prosecutor to plea bargain**
- **Statistically you are not likely to try a case in municipal court – remote chance when attorneys are involved**
- **If offering nothing, then what can the client lose by going to trial??**

- **Most of the times things work out because municipal court is time driven**

IV. Words of Wisdom

A. Dealing out of your “usual” jurisdictions

- **There is a difference from how you handle yourself in your own county and another county**
- **There is a social network that you have in your own county – pleasant transaction, informal discussions with prosecutor**
- **When in out of county jurisdiction – you must have a different perspective – “make yourself small” – remember you are a “visitor” – you are not in priority position – let the court play itself out first then you do your job**

B. Talking to the prosecutor to resolve the case by plea

- **Remember that prosecutor can be your biggest advocate to resolve a case**
- **When prosecutor knows that your client wants to plead guilty, then you can discuss disputed matters**
- **Plea bargains are impossible to put through unless the plea and sentence agreement meets everyone’s needs – judge, prosecutor, police, victims, client, attorney**
- **If you cannot satisfy the needs of all parties at time of plea and sentencing, then you will not be resolving the case**

C. Speaking to the officers and victims in the case

- **Speak to prosecutor first if you want to speak to police officer – if you are in an out of county jurisdiction**
- **Speak to officer in same way you would approach prosecutor – your client wants to plead guilty, but these are the issues we have – get officer to expend negative energy on attorney, not on client – get emotion out of officer so that it does not effect the resolution of the case during the plea**
- **If you speak with officer, you can make a statement at sentencing that incorporates what officer says to you**
- **Consider how client behaved with office and whether that needs to be addressed with officer, i.e. apology via note or in person at court date**
- **Victim’s rights statute – there is no upside to taking an adversarial position with a victim; you can help your client if you can reduce the monetary damages in advance of the court date**
 - **Compounding statute**

- **In re Friedland 59 NJ 209 (1971) – must have a hearing to determine whether payment of money is in the interest of justice and if amount of restitution is reasonable; in anticipation of plea; no money should be paid until this hearing is held – prevent later argument of compounding**
- **Placate victim**
- **Don't hold anything of value for client, including discovery – personal preference**
- **Be sure to check ethics responsibilities**
- **Have client bring money to court in cash or other negotiable form of currency in order to pay restitution**
- **If there is a restraining order and want to make restitution, then ask prosecutor to make contact with victim to schedule hearing**
- D. Things to remember**
- **Collateral consequences to guilty pleas include:**
 - **Forfeiture of public office**
 - **Removal from US (moral turpitude or aggravated felony by federal standards)**
 - **May effect firearms permit abilities**
 - **Civil liabilities**
 - **Driver's license issues**
 - **Presumption against incarceration for 4th and 3rd degree felonies**
 - **Conditional discharge – is this the best means to resolve? expungement? This will preclude PTI! Resolution now may not be best means to address issues in the future**
 - **Know and understand these and talk with client**
- **Can't live client's life for them...if they make a decision to plea when you disagree, then that is their choice as long as it is an informed decision – final decision is up to the client**
- **Explain to client benefits and disadvantages of pleading – but ultimately the client's decision**
- **Certified Municipal Court Attorneys – the Certification designation will assist clients in locating attorneys who can address client issues and have the knowledge to accomplish those goals**

- **New attorneys should go out and observe municipal courts and meet prosecutors who are there; talk to prosecutors to help you understand the municipal court practice – willing to help; experienced attorneys willing to help new attorneys**