

From the target letter to the closing letter: Tips on how to effectively represent your client

CJA TRAINING

DECEMBER 4, 2015

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3 WAYS CASES BEGIN

1. TARGET LETTERS
2. COMPLAINTS
3. INDICTMENTS

TARGET LETTERS: WHAT TO DO?

- ▶ CALL THE PROSECUTOR
- ▶ TALK TO YOUR CLIENT
- ▶ MAKE A DEAL

DIFFERENCES BETWEEN A COMPLAINT AND INDICTMENT

- ▶ Right to a PC Hearing
 - ▶ Should you have the hearing?
 - ▶ Yes! Have the hearing! Good information can come from the hearing
 - ▶ The only time when not to have a hearing
- ▶ Both have right to detention hearing
 - ▶ What is a presumption case? If you do not know this you need to educate yourself and look at 18 USC Section 3142
 - ▶ Email me for my handout on detention abby_brumley@fd.org

IMPORTANT INFORMATION YOU NEED

- ▶ Criminal history (call Robert wilder or email him Robert_wilder@mssp.uscourts.gov)
- ▶ The charging document i.e. complaint or indictment

*****TIPS

- ▶ DO NOT TALK TO CLIENT ABOUT CASE BEFORE GETTING DISCOVERY
- ▶ THIS IS A GOOD TIME TO LISTEN TO YOUR CLIENT
- ▶ DO NOT LOOK AT THE GUIDELINES BEFORE GETTING DISCOVERY
- ▶ DISCUSS CRIMINAL HISTORY WITH YOUR CLIENT
- ▶ DEPENDING ON THE CLIENT, I USUALLY DO NOT MEET WITH CLIENT BEFORE I HAVE DISCOVERY

RECEIVING DISCOVERY

- ▶ REVIEW AND ORGANIZE
- ▶ LOOK FOR SUPPRESSION ISSUES
- ▶ FIGURE OUT THE GUIDELINES
- ▶ GO SEE YOUR CLIENT
 - ▶ REVIEW THE DISCOVERY
 - ▶ REVIEW THE GUIDELINES
 - ▶ REVIEW THE INDICTMENT AGAIN
 - ▶ GO OVER THE ELEMENTS OF THE CHARGE

**WHAT DISCOVERY
CAN YOU GIVE
YOUR CLIENT?**

NOTHING!!!!

- ▶ Most clients do not like this answer
- ▶ Review the discovery order with your client
- ▶ Give your client a copy of the discovery order
- ▶ You can not make a copy of the discovery for your client or their family
- ▶ Make discovery available for your client for as long as necessary
- ▶ If your client is still wanting a copy:
 - ▶ Advise him that you can file a motion to disregard the protective order; however there are consequences to this
 - ▶ Biggest consequence is that you will not get witness statements before they testify

CALCULATING THE GUIDELINES

- ▶ Make sure your client understands the importance of his criminal history
- ▶ This is not an official calculation
- ▶ The guidelines are advisory
- ▶ You can't guarantee anything
- ▶ Go over the difference between trial and pleading and the benefits of a plea

Plea

- ▶ Request a plea agreement
 - ▶ Depending on the case you may need to negotiate certain things
 - ▶ For example: I may need to reserve my right to appeal certain issues depending on the case.
- ▶ Prior to plea hearing
 - ▶ Prep your client
 - ▶ Review the plea agreement
 - ▶ Allow client to read plea agreement and ask questions
 - ▶ Explain to him what is going to happen at the plea
 - ▶ Review the Judges questions
 - ▶ Go over the indictment again
 - ▶ Go over the elements of the offense
 - ▶ Explain the facts of the case that the prosecutor will state on the record

**IF YOUR CLIENT IS
PREPARED THE PLEA IS
MUCH EASIER**

PRIOR TO PLEA....CONTINUED

- ▶ Explain the PSR and the probation officer
- ▶ Advise client to fill out the paperwork

The PSR

- ▶ Go with your client to the interview
 - ▶ Acceptance
 - ▶ If you do it in writing do not give it to the PO until after the interview
- ▶ When you get the PSR
 - ▶ Review it with your client
 - ▶ Determine what is a correction and what is an objection and what I call “something to point out”

HOW TO COMMUNICATE WITH THE PO

- ▶ BY TELEPHONE
- ▶ BY EMAIL
- ▶ BY LETTER

**TO SEND SENTENCING
LETTERS OR NOT? THAT IS
THE QUESTION**

**TO WRITE A SENTENCING
MEMORANDUM OR NOT?**

SENTENCING

- ▶ **Allocution**
 - ▶ Client writes a letter
 - ▶ Witnesses

The closing letter

- ▶ Always send a closing letter explain the appeal rights
- ▶ Just b/c your client waived his right to appeal does not mean your job is over
- ▶ If your client tells you to file a notice of appeal.....**FILE THE NOTICE!**
 - ▶ Explain to your client why he shouldn't do this

**WE ALL KNOW THEM....WE
ALL HAVE
THEM....QUESTION: WHAT TO
DO ABOUT THE DIFFICULT
CLIENT?**

****TIPS FOR HANDLING DIFFICULT CLIENTS

- ▶ Diligent notes of all meetings
- ▶ Take a witness to meetings
- ▶ If you disagree about going to trial
 - ▶ Prepare a statement for your client to sign

****A FEW MISCELLANEOUS TIPS

- ▶ DO NOT leave your clients documents where other people can see them
- ▶ If you are appointed and another lawyer is later retained and enters their appearance, file a motion to withdraw immediately
 - ▶ Discovery?
- ▶ If you have a procedure question....DON'T CALL THE AUSA!
 - ▶ Call us!!! Abby_brumley@fd.org
- ▶ BEING ADVERSARIES

COOPERATION

- ▶ The “blind cooperation”
- ▶ What you should advise your client?
- ▶ When to cooperate
- ▶ The realistic return

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QUESTIONS