

DISCUSSING PLEA OFFERS WITH CLIENTS

ASHLEY MORSE - JAMESVILLE TRIAL

SO YOU HAVE AN OFFER...NOW WHAT?



CONTACTING THE CLIENT



KEEP IN MIND

Confidentiality

- Be careful of discussion in public areas, including on cell phone
- Avoid group holding cells and hallways where others are present

Duty to communicate

- “A lawyer who receives from opposing counsel...a proffered plea bargain in a criminal case must **promptly** inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or reject the offer”
 - ABA Comments

WHAT'S YOUR ROLE?

Lawyers must conduct investigations into the charges, **make recommendation based on the strength of the case and the applicable law and take care to fully explain the pros and cons of accepting a plea offer to a client.**

You “cannot properly evaluate the merits of a plea offer without evaluating the State’s evidence” *State of Washington v. A.N.J.*, 225 P.3d 956 (2010)

Whatever your client decides it has to be *free, knowing, and voluntary*



GET PREPARED

Copy discovery

View video's and photo's

Information sheets

Set aside time

Put things in writing

Know your case

Know your client

Know your judge



WHAT TYPE OF CLIENT DO YOU HAVE?

The Bully

The Apathetic One

The one with Unrealistic expectations

The disrespectful one

The Addict

The emotional one

The Borderline Personality

Micromanager

The one with another lawyer

Internet Addict/TV Enthusiast

The one with the family

Disabilities



Afraid



Confused



Surprised



Sad



Excited



Disgusted



Proud



Angry



Sick



Happy



Very Happy



Hungry



Lost



Shy



Sleepy



Embarrassed



Unhappy



Very Sad



Tired



Worried

HOW DO WE EFFECTIVELY COMMUNICATE?

Discuss goals and objectives with client

Be clear about choices

Put it in writing

Don't underestimate the client's ability

Focus and Direct conversation

Acknowledge and name feelings

Avoid confrontation

Be aware of your own non-verbal cues

Be honest and direct

Give competent advice

Get on their level

Do-overs

2nd opinions



- Impose your will
- Disengage
- Be Defensive
- Be a GAL
- Take things personal



THE PRO'S AND THE CON'S

Advantages of plea:

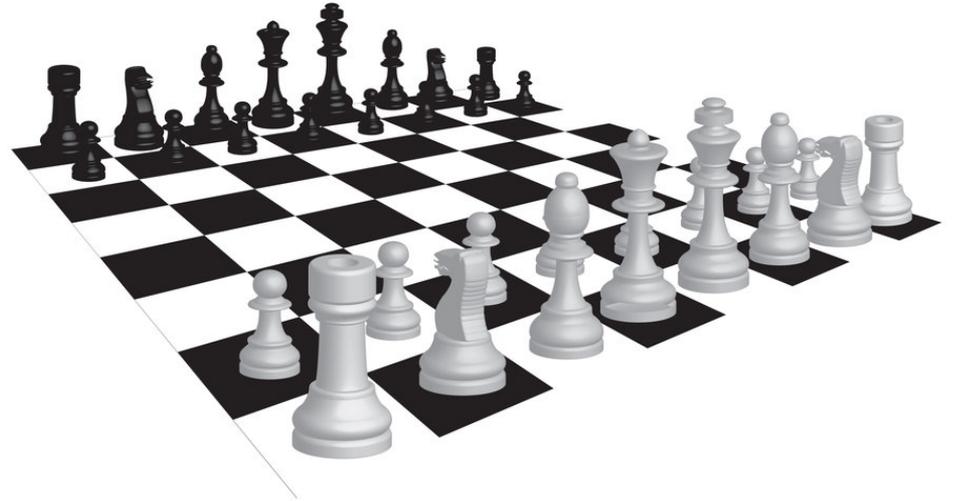
- Avoid other charges
- Sentencing concession
- Avoid collateral consequences
- Deferred agreements
- Shorten time in jail
- Avoid prison
- Avoid criminal conviction

Disadvantages of plea:

- You may win at trial!
- Enhanced future penalties
- No benefit
- registration
- Loss of employment or other opportunities
- Judge will jump the deal
- Housing
- Immigration
- Voting
- Guns and stuff
- School
- Probation conditions
- Driver's License

THE NEXT MOVE

- Accept
- Reject
- Counter



DECISION MAKING

SCR 20:1.2 states: “In a criminal case or any proceeding that could result in deprivation of liberty, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to the plea to be entered, whether to waive jury trial, and whether the client will testify.”

The balance of the remaining strategic decisions go to the attorney

