

Civil (aka Collateral) Consequences

State Public Defender Conference

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Introduction

Wide variety of consequences that flow from arrest and conviction

Collateral/civil: terms to refer to consequences that go beyond terms of sentence in the criminal case

Public versus private consequences

Public: imposed through government action, by law

- Loss of driver's license
- Deportation
- CCAP record

Private

- Private employer
- Family/social relationship
- Other commercial/business impact-loan application

Application of consequences (Statutory analysis)

Automatic (mandatory) or discretionary

Permanent, temporary, or conditional

Relief/exceptions

Client interviewing: Identifying areas of Interest/concern

- Time
- Listening
- Open-ended questions
- Five important questions
 - Employment/school
 - Public benefits
 - Family
 - Hunting/firearms

- Birthplace/citizenship

Scope of representation

Whether retained or appointed, unlikely that you can provide open-ended representation of a client on all potential legal issues, present and future

Scope of appointment, for example, is limited to criminal case (or other specific court proceeding)

SPD allows for ancillary representation on a limited basis, but does not allow unlimited representation on civil matters

Duty of attorney to clarify scope of representation, especially if aware of another proceeding in which the client could benefit from legal services

Identifying potential consequences

So many potential consequences that it is not realistic to identify and discuss them all

Many provisions apply only to specific occupations &/or licenses

Criminal statutes generally do not list the civil/collateral consequences

Some consequences adversely affect so many people or affect people so profoundly that a reasonable standard of practice requires awareness (and discussion with client)

- Immigration (*Padilla v. Kentucky*, 559 U.S. 356 (2010) ; 971.08(1)(c) (advice to non-citizen before plea of guilty accepted))
- Driver's license (section 343.31 and related statutes, administrative rules)
- Probation conditions (*but see Garski v. State*, 75 Wis. 2d 62, 248 N.W.2d 425 (1978); *State v. Dugan*, 193 Wis. 2d 610, 534 N.W.2d 897 (Ct. App. 1995))

Restrictions specified in sentencing statute, section 973.176

- Firearms (felony conviction)
- Voting rights (felony conviction)
- Working with children (child sex offender)

Knowledge of consequences informs client's decisions and attorney's negotiations

- Client can weigh what is most important to him/her in deciding whether to have a trial or accept a plea agreement
- Attorney can suggest terms of agreement that respond to client's priorities
- Attorney may have "neutral" reason to support counter-offer, rather than claiming that prosecutor's offer is unreasonable
- Example: client is concerned about right to use firearm for hunting. If other terms of prosecutor's offer are acceptable, attorney may be successful in persuading prosecutor to amend to misdemeanor
 - As with all negotiations, need to know attitudes of prosecutor
 - Prosecutor may affirmatively want to impose the consequence
 - If prosecutor will not agree to disposition that protects against the consequence, client can make a knowing decision whether to proceed to trial. Often, however, prosecutor has no interest in imposing the consequence upon the client and, therefore, may agree to a disposition that does not carry the civil consequence

Resources

National Inventory of Collateral Consequences of Conviction, abacollateralconsequences.org

Wisconsin handbook, *Criminal Consequences of Conviction: The Impact of Criminal Records under Wisconsin Law*, wisspd.org/htm/ATPracGuides/CivConseqConv.pdf

American Council of Chief Defenders Best Practices report, *Assisting Clients with Immigration and other Civil Consequences Report*, nlada.org/DMS/Documents/1331326857.24/Best%20Practices_Assisting%20Client%20with%20Immigration%20and%20other%20Civil%20Consequences.pdf