

Boot Camp for Municipal Prosecutors Plea Bargaining, Purposes, Strategies and Constraints August 15, 2014

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Loveland



The contents of this presentation reflect the view of the presenter, not of CML.

General


- No right to plea bargain
- Discretionary with prosecutor
- Judge free to accept/reject



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Purpose -Why do we do it?

- Docket management/Judicial economy
- Effective administration of justice
- Provide citizens opportunity to be heard



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When?


- Pre-arraignment: diversion
- By mail?
- At arraignment
- At pre-trial conference
- At or before trial



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What types of plea bargains

- Dismissal
- Refiling in Juvenile or County Court
- Deferred Prosecution-really post-filing diversion
- Deferred Sentence
- Reducing, amending or adding charges
- Sentence concessions/recommendations



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How to determine what to offer

Policies/Guidelines

- Set standard offers (absent *extraordinary* aggravating or mitigating circumstances)
- Purposes of sentencing:
 - Deterrence
 - Punishment
 - Rehabilitation
 - Restitution



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Considerations when making offers

- Type of charge
- Purpose of ordinance
- Degree of harm to community
- Property damage or personal injury
- Strength of case
- Quantum and quality of evidence
- Prior record of defendant



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Considerations (cont'd)

- Attitude and behavior at time of arrest
- Number of charges
- Victim impact
- Officer recommendation (if any)



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Strategies

- Introduce yourself, be professional, be courteous
 - You are the face of the City/Town
 - Know your role: advocate for municipality, ensure integrity and fairness of the process, pursue convictions and consequences, and seek justice



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Strategies (cont'd)

- Communication skills:
 - Listen, find out concern
 - Give options/alternatives
 - Tone of voice
 - Do not lecture
- Consider giving pre-arraignment speech



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Strategies (cont'd)

- Know resources available
- Know court costs, fines and surcharges
- Know what the Judge is likely to accept



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Strategies (cont'd)

- Assess your case
 - Correct charge
 - PC, but not enough for BRD
- Advise of known consequences consequences
 - Points
 - MIP suspension
 - Ability to Seal/Expunge




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Strategies (cont'd)

- Let Defendant know whether offer withdrawn if set for trial.
- In general, do not leave offers open up to trial date if primary purpose is docket management.

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Strategies (cont'd)

Difficult/argumentative Defendants

- Be professional
- Give them chance to speak
- Set over for Pre-Trial
- Remind them of their right to trial
- Remind them of right to consult with attorney at all stages

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Constraints

- Ethical
- Legal
- Available resources
- Available time


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Constraints (cont'd)

- Treat like situations alike
- Juveniles- parent must be present
- Make sure defendant knows you are not their attorney, cannot give legal advise
- Treat *pro se* defendants the same as you treat defendants represented by attorneys


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Questions/Discussion

Contact information:
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MUNICIPAL COURT, Larimer County, Colorado 810 E. 10 th St, Loveland, CO 80537 (970) 962-2482	
THE CITY OF LOVELAND, COLORADO v. Defendant.	▲ COURT USE ONLY ▲
Teresa Ablao, Assistant City Attorney AR #17700 500 E. Third St., Loveland, CO 80537 (970) 962-2540	Summons Number:
MOTION RE: DISPOSITION	

The City of Loveland, by and through undersigned counsel, states to the Court as follows:

- There is no agreed disposition at this time. Please set for trial pretrial conference.
 Though probable cause existed for issuance of the summons and complaint, the City moves for dismissal of the summons and complaint for the following reason: _____

- The City moves to amend the summons and complaint by dismissing the following charge(s): _____

Upon the Defendant's plea of guilty or no contest to the remaining charges or added/amended charge(s) of:
_____ CC _____
_____ CC _____

- The Parties move the Court to accept the Defendant's guilty plea to the charge(s).

As a condition of this disposition, the Defendant agrees to:

- Waive a factual basis
 An order from the Court forfeiting any marijuana, paraphernalia, contraband or other illegal items held in evidence
 Complete and file proof, in the time period ordered by the Court:
 _____ class essay _____ hours of Useful Public Service
 Pay restitution
 Other: _____

- Other/recommendations: _____

Respectfully submitted _____, 2014.
By: _____
Teresa Ablao, Assistant City Attorney
Defendant

ORDER

It is hereby ORDERED that the above motion and conditions are (GRANTED) (DENIED) this day of _____, 2014.

By: _____
William E. Starks, Municipal Judge

Hello, My name is _____ I am an assistant City Attorney and the municipal court prosecutor representative for Loveland. This court appearance is called an arraignment. An arraignment is to advise of the rights you have when you enter the criminal justice system and of the charges against you. In a few moments the Judge will do that advisement. After your advisement you will have one of 4 options listed on the sheet next to me:

- Plead guilty or no contest
- Plead not guilty and set your case for trial
- Speak with the me, the prosecutor
- Or continue your case to another date in order to speak with an attorney or other person

If you choose to speak with the prosecutor, the Judge will direct you out into the hall and I will call your name when I receive your file from the bailiff.

You need to understand that I am not your attorney and cannot give you legal advice regarding the strength or defense of your case. I represent the City of Loveland. I will be able to discuss a possible plea bargain and also discuss the officer's notes, witness statements or accident reports, if any, in order for you to decide whether you want to set your case for trial, plead guilty or accept a plea bargain.

There are certain charges that the City, **generally** does not offer plea bargains on:

- Any traffic violation that carries two points or less
- Handicapped parking violations
- Accident cases involving bodily injury

If you do talk with me, you must return to the courtroom to talk with the Judge. If you leave before seeing the Judge, he may issue a warrant for your arrest.

Additional Juvenile docket information:

- In order to speak with me, you must have a parent or guardian present with you. You may request another court date if your parent or guardian is not with you today.
- Alcohol, MJ or paraphernalia violations- a conviction may affect your driver's license privilege even though your offense may have had nothing to do with driving. A conviction could result in your license being suspended until you have completed community service or a substance abuse class on a first offense. Subsequent violations may involve longer periods of license suspension up to one year.