

MULTNOMAH COUNTY JUSTICE REINVESTMENT PROGRAM
Judicial Settlement Conference Standards of Excellence Task Force

BEST PRACTICES FOR DEFENSE ATTORNEYS

APRIL 2016

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I. Before the Judicial Settlement Conference

A. Before LS/CMI Interview: Initial Attorney Interview With Client

- In addition to complying with all contractual, statutory, or other professional obligations, counsel should meet with client within two weeks of being appointed as defense counsel to discuss the MCJRP program. Ask about any collateral information (e.g., records of prior mental health or drug/alcohol treatment) that may be helpful. Ask the client to sign a Release of Information (ROI) form. Request the records as soon as possible; it may take some time to get them.
- Explain to client that the LS/CMI Assessment Report is an opportunity to be heard and be forthcoming about their issues; it allows people within the system to see them as people with real problems, not just as someone accused of committing a serious crime. Discourage client from embellishing. Establishing a good relationship with the client prior to the LS/CMI interview is important to building trust.
- Explain the purposes of the MCJRP program. Explain to clients they are eligible for the MCJRP interview, but that does not mean they will be given MCJRP supervision.
- Explain any mandatory minimum sentencing laws (e.g., Ballot Measure 57 or Measure 11) that may apply to the client's case. Explain that these laws require the District Attorney's office, not just the assigned DA, to approve probation on any plea deal. Explain that the defense attorney and judicial officer do not have power to override mandatory minimums. However, explain that the MCJRP interview can be used to "change hearts and minds" with enough case planning and advocacy. Don't let clients give up and be resigned to prison because of their record, drug addiction or mental illness. At the same time, be realistic; don't foster unrealistic expectations if probation is not likely.
- Explain the nature of confidential communications and note that the LS/CMI interview and JSC processes are not on the record. Build the client's trust in the system by informing them that none of the information at the LS/CMI interview or JSC will be used at trial or to force a plea.
- Explain the JSC process. Explain that the DA's office will have to agree to any resolution; it is not just up to the defense lawyer or the judge. Explain the types of information that might help the DA's office evaluate the case. Discuss the client's needs and identify

what things contribute to a client's success or serve as a barrier to success. Explain that the defendant should be prepared to discuss these subjects at the JSC and explain to the DA why the defendant could succeed on supervision despite past violations or revocations.

- Explain to the client that the victim of the underlying crime has certain constitutional and statutory rights and may participate in the JSC process.
- Inform in-custody clients of realistic timelines and barriers to prompt access to information and services. Explain how long the process may take. Give realistic explanations of the timelines for scheduling the LS/CMI interview, scheduling any necessary alcohol & drug evaluation, scheduling the JSC, writing the assessment report, negotiating a plea (including time for DA to staff the case), and arranging for treatment, housing, and other services that may be required as conditions of probation. Discuss 60-day issues and the possible need to waive speedy trial rights.
- For clients with immigration issues, arrange a consultation with an immigration specialist.
- Address any competency issues; client will need to be able to aid and assist in their case before the JSC. If appropriate, schedule an evaluation or aid and assist hearing.
- The LS/CMI interview scheduler should contact defense counsel to schedule the interview. Attempt to work out an agreed date in advance. Be sure to return phone calls promptly. When a date is set, calendar the date and contact the client.

B. LS/CMI Interview Phase

- Defense attorneys should personally appear at the LS/CMI interview if possible. If not available, arrange for coverage.
- Inform the PO if there are collateral records (treatment records and/or mental health records) that may be relevant to client's treatment plan. Bring copies for the PO if they are available.
- If not already provided, get the client to sign a Release of Information (ROI) form at the LS/CMI interview for relevant records.

- Inform the PO of any planned psychological or competency evaluations.
- Advocate for drug and alcohol evaluations or psychological evaluations where appropriate.

C. After the LS/CMI interview & Before JSC

- Get as much mitigation material as possible to the DA prior to the JSC so that the DA has time to digest it. Include employment letters or letters from community or family members. Also, include any specific legal authority that supports any trial motion such as a Motion to Suppress as the DA committee considers the strength of defense motions or other case weaknesses when making pre-trial offers.
- Start developing tangible examples of what will be different for the client on this supervision cycle and that support a different outcome than the presumptive sentence. This can include examples of what failed in the past.
- Read the LS/CMI Assessment Report and any other available evaluations, assessments or reports prior to the JSC.
- Review the LS/CMI Assessment Report with the client; explain specifically the treatment recommendations and housing plan detailed by the PO.
- Provide enough information to the client prior to the JSC to ensure the client will be able to make an informed commitment to completing probation conditions.
- Reach out to any family members or community partners working with the client who might be appropriate to provide input at the JSC.
- Contact the DA assigned to the case to initiate negotiations and discuss options and case issues.
- Review schedules and allocate time appropriately. Avoid late requests to set over the JSC because of scheduling conflicts.

II. At the Judicial Settlement Conference

- Attorneys should personally appear at the JSC if at all possible. If necessary and appropriate for a particular case, make arrangements for coverage.
- Provide notice ahead of time to reschedule the JSC if necessary. Follow the established MCJRP protocol for scheduling and rescheduling.
- Emphasize what will be different for the client this time that supports a downward departure and increases the likelihood of client success. Provide examples, such as housing or different treatment.
- Provide any mitigation reports or other information, if available. If not available, inform the judge, the DA and the PO about the status of any expected mitigation reports or other information.
- Don't try to litigate the case at the JSC in front of the client. If you think the DA may have difficulty proving the case, or the charges are inappropriate, discuss those issues with the DA and judge in chambers, or with the DA outside the presence of the judge. Don't bicker with the DA at the JSC.
- Listen to the Judge and the PO; don't try to control the JSC. Allow the Judge to control the JSC, and the PO to provide additional information about the defendant and the availability of needed treatment and other services.
- Encourage the client to speak to the judge, the DA, and the PO at the JSC, but be prepared to speak for those clients who aren't articulate or too uncomfortable to speak for themselves. If appropriate, explain to the judge and DA that the client may be low functioning (IQ's in the 70's, uneducated or mentally ill).
- Collaborate with the PO in explaining to the Judge and DA the client needs and skills. Explain how utilizing existing skills and addressing treatment and other needs will reduce the risk of recidivism.
- Offer reasonable resolutions that are more likely to build consensus. For example, clients whose criminal histories place them in column "A" on the sentencing gridblock will need to commit to more time and higher local jail sentences up front than a Tier 3 client with a minimal criminal history.

- Discuss eligibility for alternative programs with the parties: START, DISP, Mental Health Court (or supervision by DCJ's Mentally Ill Offender (MIO) unit), or Veteran's Court. Make sure you are familiar with the basic tenets of those programs.
- Negotiate suggested potential terms and conditions of probation which meet the needs of the client. Discuss with clients whether they can realistically meet probation conditions or whether it would make sense to take a shorter prison sentence now rather than facing a longer prison sentence if probation is revoked.
- In non-probation cases, utilize LS/CMI Assessment Report information to negotiate for a shorter prison sentence. Remind the DA and the judge that one of the goals of MCJRP is to reduce prison populations.
- Make sure community partners working with the client (mentor, family, employer, treatment provider, other PO,) have an opportunity to be heard and provide input at the JSC.
- Ask the judge to schedule a time for a follow-up JSC or plea, if appropriate.
- If you reach an agreement with the DA before the next court appearance, communicate the terms of the deal to the PO.

III. After the Judicial Settlement Conference

Comment regarding overall best practices: After the JSC, all parties should continue to communicate about the case and the ultimate sentence. The DA should communicate with the victim as appropriate. The DA and defense counsel should include the PO in e-mail negotiations where appropriate, especially if there will be a probation sentence. Allowing the PO to get started on referrals and arrangement of services prior to adjudication will help save jail days and increase public safety upon release. Schedule the plea for the earliest possible date.

- Keep the client informed about the timing of the plea offer and the approximate time that treatment beds or housing will become available. Remind the client of expectations on probation and the consequences of failing to comply.
- Review the special MCJRP conditions of probation. Make sure the client has a clear understanding of what to expect upon release from custody.

- Review the DA's plea offer with client and any variation from MCJRP recommendations. If client resists, explain alternatives and consider making a counteroffer.
- If the client will be entering a specialty court program as part of the plea agreement, review the specialty court expectations and rules with the client. Contact the treatment court program and schedule an orientation or hearing, if necessary.
- When appropriate, obtain the client's commitment to terms of the offer before the DA presents the case to the committee.
- Schedule a second JSC or plea if needed.
- Provide mitigation reports to the DA and the judge if they were completed after the initial JSC and further negotiations are expected.
- Schedule the plea as soon as possible. If the JSC judge is not available, consider setting the plea with another judge and setting the sentencing in front of the JSC judge. The PO should appear at sentencing for out-of-custody clients or for those who will be released from jail to begin probation. It is not critical to have the PO present at the time of the plea if the defendant is not going to be sentenced. Advise the PO ahead of time if you believe the PO is needed to discuss probation conditions at the plea.
- Use community partners to assist client's transition to community (Outside In, treatment providers, employers, family).