

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

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LESSON PLAN AND EVALUATION**

THE PUBLIC DEFENDER

With

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Program description

Given the huge volume of important cases that move through the local courts each year, the municipal public defender has become a key player in the process. This one-credit CLE will teach you how the public defender works with the prosecutor and judge to advance the work of the criminal justice system in municipal court.

I. Introduction

- **Practices law in Mercer County, Hamilton Township**
- **On Hamilton Township Council**
- **Hamilton Township Municipal Public Defender for 4 years – appointed by the mayor**

II. Background and History of Public Defender in NJ

- **Betts v. Brady, 316 US 455 (1942) – due process clause of 14th amendment does not require appointment of counsel for those who are indigent**
- **Gideon v. Wainwright, 372 US 335 (1963) – reversed Betts – requires the states to spend money for public defenders to represent indigent people; justices struggled with this concept; states were moving on their own to create public defenders at the time of this case; the Supreme Court felt confident enough that few states would be greatly affected by this ruling; only addressing felony offenses (criminal matters) – not addressing “petty offenses”**
- **“petty offenses” – jail of less than 6 months, fine of up to \$1000**
- **Gideon did not cover petty offenses**
- **No constitutional right for those charged with petty offenses to have appointed counsel**
- **SCOTUS never ruled that constitutional right to counsel for petty offense**
- **Rodriguez v. Rosenblatt, 58 NJ 281 (1971) – people in NJ who are charged with a “consequence of magnitude” and are indigent are entitled to be appointed counsel**
- **Consequences of magnitude = any amount of jail OR license suspension OR fines of \$750 and up**
- **\$750 is an arbitrary baseline set by the courts – in the aggregate**
- **Supreme Court has no authority to create system of public defenders**
- **Attorneys were appointed on ad hoc basis by judges**
- **Madden list - Attorneys were on a list to be chosen by the court**
- **Ultimately legislature created public defender system**

- **Statutory scheme for public defenders – NJSA 2B:24-1 – creates position of public defender and duties of public defender**

III. Duties of public defender in municipal court

- **Handle any client who the court appoints – given file and handle their case as any other client**
- **In places where there are more than 1 public defender – attorney has 2 attorneys because the person has the public defender who is in court that day**
- **Public defender handles entire case from appointment through end of the case up to and including trial and any post-conviction matters in municipal court**
- **Representation of municipal public defender does not go beyond the municipal courthouse**
- **Anyone charged with disorderly persons offense entitles them to a public defender**
- **Who should get the public defender? – court shall determine whether someone’s sentence is likely to entail jail, license suspension, etc.**
- **Judges routinely ask whether someone intends to get own counsel, apply for PD, or represent self**
- **Determining whether someone qualifies for PD requires the court to get additional information about a person**
- **Likely hood of someone going to jail is usually based on whether someone has prior convictions, i.e. prior shoplifting, prior DWI**
- **Judges investigating background of defendant is problematic according to some attorneys**
- **State v. Medina, - states that judges are able to exclude from their minds inadmissible evidence**
- **PD acts as an attorney for those who are in lock-up primarily for bail hearings**
- **PDs represent every person in jail no matter what they are charged with for first appearance – to advise client, argue bail, etc. – not the standard of practice in every county**
- **People in jail come up on jail video – PDs would get appointed to represent that person and could resolve the case that day**

- **NJSA 2B:12-23.1 – allows judges to resolve cases with jail term, alternate penalties**

IV. Process of getting a PD

- **Judges look at charges and make determination of whether person wants to retain counsel, pro se (entitled to do so by *Faretta v. CA*, 422 US 806 (1975)), or if cannot hire an attorney can apply to get PD**
- **Client completes AOC form – “5A” form – Uniform Defendant Intake – basic information from defendant as to financial capabilities**
- **Judge will review 5A (can ask for tax returns and additional financial information outside what is on the form)**
- **Judges err on the side of assigning a PD**
- **PD is not free**
- **Having PDs involved streamline process – quick resolution of the matter**
- **There are those who should not get a PD and could get money for an attorney if they wanted to but judges just assign the PD to err on the side of caution**
- **Judges have vested interest in having PDs involved in the case – quicker resolution of cases; easier to have attorneys on both sides of a case, as opposed to a pro se defendant**
- **After considering 5A form, judge either grants application or not**
- **Public defender fee – there is a fee at superior court level as well**
- **Money collected for PD fees are supposed to go into fund to pay for PD services so that PD is being funded by defendants and to have a fund available for hiring experts, etc. – if money left in the fund at the end of the year, it goes to VCCB**
- **PD receives a yearly salary and health benefits, retirement**
- **Some courts merely charge \$200 for each person who qualifies for PD, other courts assess based on budgetary consideration**

V. The job of a public defender

- **High volume of cases – usually a one-man show**
- **Assess what are client's needs? What will the law allow them to do for sentencing? What are the facts of the case?**
- **Cannot get personally involved with client – just assess needs, etc.**
- **Do not have time to get emotionally involved with a client**
- **Cannot be at war with the prosecutor – must act collaboratively**
- **PD and prosecutor have different responsibilities (RPC 3.8) – 32 min**
- **PD responsible to client just like any other client**
- **Each party (PD, prosecutor and judge) has their own job to do in order for criminal justice system to function**
- **PD and prosecutor must work collaboratively within their own job descriptions**
- **If you want to work out a resolution in client's best interest, need to work with prosecutor**
- **PD cannot try to pull the wool over the prosecutor's eyes in municipal court**
- **Must have high level of trust between PD and prosecutor – to insure plea offer is appropriate for each case – prosecutor must have confidence in PD's representations**
- **Important that prosecutor knows PD did not try to undercut before the judge**
- **PD should look at file and know what client's needs are – so you know at the end of the day where you want to be – prosecutor also knows where he wants to be at the end of the day – this is needed to try to have a meeting of the minds to resolve the case**
- **Must meet the needs of all the participants in the court system in order to have a good resolution**
- **Never take an adversarial posture with the victim – explain to victim their role in the process – sometimes opportunity for victim to vent is all that is necessary –**

what are victim's needs – factor this into the plea negotiations

- **A defendant's ability to pay restitution can assist in putting through a favorable plea**
- **PD must know everything there is to know about sentencing**
- **If you go before a judge without knowing criminal history or driving abstract, then you are not adequately advising your client – to understand collateral consequences**
- **Worst source of information for client's past is the client**
- **99% of cases are plead out – must know what constitutes a legal sentence**
- **If sentence is legal – will it satisfy client's needs? Is this in the interests of justice?**
- **State v. Reiner, 180 NJ 307 (2004) – how to sentence on a school zone offense**
- **Higher quality of advocacy from PD because of familiarity**
- **Must file appropriate motions when there are issues in the case**
- **Be respectful to prosecutors – don't get angry if unable to resolve the case – some cases just have to be tried – let judge make the ruling on the evidence**
- **Public defender appointment is 1 year**
- **PDs can continue representing private clients in the same court – prosecutor cannot practice criminal law in the same county**

VI. Advice to be a good public defender

- **Keep an open mind**
- **Be part of the municipal court team**
- **Be prepared to work hard based on volume**
- **Will learn how to be a good attorney**
- **Clients will not get better representation if they hired you privately**
- **Do not accept money from client – no tips**
- **On public payroll – same scrutiny as other public employee**

- **Go in with the right attitude – part of a team – goal is to advance the needs of the municipal court system**
- **Become a complete and total expert on sentencing**
- **Assess client's needs and find a resolution that fits those needs**
- **Know sentencing – allows you to be creative in handling cases**
- **Understand work is going to be high volume**
- **Have fun!**