

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

15. Entering the Negotiated Plea before the Court:

- A. Prior to the entry of the plea, counsel should:
- a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
 - b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions, and collateral consequences the client will be exposed to by entering a plea;
 - c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and,
 - d. make certain that if the plea is non-binding, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.
- B. Counsel must become familiar with the consequences of a plea or finding of guilty in state court upon any current or future federal prosecution. These consequences include, without limitation, the following:
- a. Federal Lacey Act prosecutions for fish and game violations;
 - b. Federal firearms charges, including those resulting in mandatory minimum sentences when firearms are associated with the possession or distribution of dangerous drugs;
 - c. The possibility of a separate federal prosecution based upon the same transaction, without the defense of double jeopardy, in charges alleging dangerous drug distribution, possession and sale of drug paraphernalia, bank robbery, fraud, environmental crimes, arson, intimidation, kidnapping, murder, civil rights violations, bribery, and child pornography;
 - d. The impact of a conviction on the United States Sentencing Guidelines when determining the client's criminal history category;
 - e. Racketeering Influenced and Corrupt Organization (RICO) prosecutions for engaging in a pattern of conduct which includes state crimes stemming from violence or gambling;
 - f. Money laundering prosecutions for engaging in financial transactions associated with or involving income derived from certain criminal conduct;
 - g. Hobbs Act prosecutions for state crimes of intimidation, arson, and violent crimes impeding or affecting interstate commerce;
 - h. Firearm restrictions on those convicted of felonies and certain misdemeanor convictions;
 - i. Immigration consequences of convictions of re-entry into the United States after certain felony convictions.
 - j. Impact of the Adam Walsh Act

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C. When entering the plea, counsel should make sure that a written plea agreement containing the full content and conditions of the plea agreement are placed on the record before the court.

D. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.