

CJCC Courts Committee
Sentencing Orders Workgroup
January 14, 2022 at 10:00 a.m.

Present: Karin Sonneman, Kalene Engel, Kelsie Horst, Mike Kuehn, Renee Rumpca, Judge Buytendorp, Lacey Bartsh, Mike Flaherty, Becky Brandt

Issue of Concern: (1) Inaccuracies and inconsistencies in Rule 15 plea petitions by mail (which then get converted into sentencing orders) and (2) sentencing orders arising from in court hearings which contain inaccurate information are creating problems in supervision for the Department of Corrections.

Examples of issues:

- An order for no use or possession, but no order for random testing means there is no way to enforce that part of the order
- Rule 15 petitions for gross DUIs that do not have standing conditions for testing
- An in court hearing where the written order did not contain what the judge actually ordered.
- Ordering supervision of a petty misdemeanor; DOC cannot supervise a petty.

Source of the problem:

- Part of this could be attributable to the way things are negotiated, where it might be missed or is not discussed or the plea petitions are deliberately made vague by the defense attorney.
- This could also happen because sometimes the conditions are missed by the court clerks during in person hearings. There are several newer clerks and if the information is stated in order that is different from the norm, it could get missed. Besides that, the clerks are now managing the Zoom hearings and trying to take notes on the order.

How this affects the DOC:

- If there are errors or missing data, it is a process to try and get it fixed.
- DOC modifies their probation agreement to conform to what is ordered and can only enforce what is in the sentence.

Possible Solutions:

- Mike F. received a list of standard conditions from DOC and has been including those in the plea petitions he is doing. He noted that it would be helpful to have DOC provide the words/phrasing that the DOC would like to see, should the prosecutor and defense attorney incorporate that condition into the agreement.
 - DOC could provide language for standing conditions and optional conditions so that if the parties want to include that in the order, it is phrased correctly.
- Years ago, Brian Pafundi prepared a Rule 15 petition that incorporated a list of standing conditions. That seemed to work well while it was in use but it hasn't been used in years.
- Lacey created a fillable standard plea petition and took it to the state level to see if they would approve a more standard format for plea petitions. They declined. She screenshared the template

and showed where the standard conditions could be incorporated. State court administration was supportive of attaching standard conditions as an attachment.

- Having the judge recite the sentence in a certain order would help her clerks to take accurate notes. Lacey shared a checklist that they are using when processing plea petitions. The order of the checklist aligns with the court clerk's order.
- If a judge orders "no use" but the court clerk does not also hear "random testing" the clerk should seek clarification.
- Judge reviewing mail in Rule 15s can screen them more carefully for missing conditions.
- Probation officers attend hearings and catch the issues as they occur. Renee stated this was not always possible due to lack of staff.
- More training for court staff and judges.
- Prosecutor being more careful about what to include.

Understandings:

- Plea petitions are a joint recommendation and the judge can fix/amend it
- Just getting the standard language from the DOC does not mean that they are dictating what should be sentenced. That's a matter of negotiation between prosecutor and defense attorney.

Conclusions:

- It is important to have some standardization of the language being used, so getting the language from DOC will help
- Everyone can be watchful for inconsistencies.
- Having the judge use the checklist for sentencing will help keep the order consistent for clerks and should increase accuracy

Next Steps:

- Lacey will provide Kalene with the checklist and Rule 15 Plea Petition template
- Renee will send the standard DOC language on conditions for 2nd, 3rd, and 4th degree DWIs and misdemeanor assault to Kalene.
- Kalene will distribute the above with the minutes.
- Becky will make sure judges and clerks have the checklist in an area accessible to them at the time of sentencing
- Prosecutors and defense attorneys and judges be more mindful of inconsistencies and use standard language when conditions are agreed to/ordered
- Next meeting: March 10, 2022 and 10 a.m.

Adjourned: 11:00 a.m.

Minutes by Kalene Engel