

Wednesday, October 25, 2006

Getting to yes in misdemeanor cases.

Getting to yes is negotiating with an eye towards fulfilling some key goals of each party to the negotiations, rather than negotiating on positions. A recent negotiation further illustrated the benefit of this approach. My client was criminally charged with possessing marijuana and marijuana paraphernalia possession. The prosecutor refused to offer first-time offender diversion, and instead offered for my client to plead guilty to possession of drug paraphernalia, which is not jailable for the first conviction, but which can create problems later on. I countered to the prosecutor my client's willingness to do a diversion program of sorts on his own, through a state-licensed weekly drug education program, together with a substantial number of community service hours. The prosecutor at first would not budge. However, time was on our side. The prosecutor had a huge docket. I had plenty of time to talk with the three police officers in the case. I suggested to the prosecutor that such a case did not justify keeping three police officers waiting to start the trial, nor for the chemist to have to come to court. The prosecutor asked why our client would not "just plead guilty" to drug paraphernalia, since it was not jailable, and I told the prosecutor that a guilty verdict either for marijuana possession or for paraphernalia each could harm my client's job security. She said she would discuss my negotiation offer with the police officers, which often means the prosecutor will accept our counterproposal. That was the situation in this instance; the case was then placed on the inactive/stet docket, conditioned on completing the drug education program and community service. Numerous times, prosecutors do not give me better negotiation offers in misdemeanor cases until I invest the time for negotiations backed up by our readiness to go to trial. The waiting can tax a client's discomfort/"I want to get it over with" factor, and those concerns must skilfully be addressed, while reassuring the client of the wisdom in taking the lawyer's recommended path. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00