

## **How to prepare for your Probation Interview**

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*Mr. Sullivan wrote the following article for Crime, Justice & America Magazine in 2001, and it has been reprinted many times since in CJA and other legal periodicals.*

Probation Officers (sometimes referred to as PO's) are law enforcement officers who work for the court system. Among other duties, they act as the court's (the judge's) investigator.

There are various reasons that one might need to be interviewed by a probation officer. The very first person to whom you might talk after being arrested, sometimes even you talk to your lawyer, is a probation officer. When your bail is considered, the PO makes a report that eventually finds its way to the judge, who in turn decides the amount of bail and whether you get released OR. (On your "own recognizance", or without having to post a bail).

Another situation is when a client is granted formal (or supervised) probation. In that case, as in the previous example, the probation officer can either be the client's best friend or worst enemy. Probation officers can make a client's life miserable or very smooth. It's mostly up to the client.

### **PRE-SENTENCE INTERVIEWS**

This article deals with pre-sentence reports and is specifically designed to help prepare you for your interview with the probation officer. It is designed to help you get fair treatment by the judicial system at this, one of the most important hearing in your case.

As in the previous examples, the probation officer acts as the judge's investigator as the court's advisor. The probation officer performs the investigation, prepares a report, and makes a recommendation to the judge as to what sentence you should receive. The judge is free to accept, reject, or totally ignore the recommendation, but it can be very persuasive, and in any case, is almost always very likely to have a strong impact on your case. Probation reports and recommendations remain in your court file forever, although they are kept confidential from the general public without a court order.

### **WHEN DOES A SENTENCING OCCUR?**

The majority of criminal cases are resolved by way of a plea bargain. Plea bargains (also known as negotiated dispositions, plea agreements, or deals) involve the defendant entering a plea of guilty (or no contest) to one or more charges, usually lesser charges, in exchange for a promise of a substantially reduced sentence. But even when the prosecutor and the attorney cut a deal, sentencing is always decided by the court.

Sometimes, a client will go to trial and be found guilty of one or more of the charges. This, too, may involve lesser charges to those of which he or she was originally accused.

When either of these things happen, either a plea bargain or a guilty verdict, the

defendant is referred to probation by the court, because the judge usually does not know enough about the defendant or the nature of the offense to make an informed and intelligent decision about the sentence.

When the client is referred to probation is when the probation officer's work begins. The PO conducts an investigation, prepares a report, and makes the recommendation as to what the judge should do at sentencing. As mentioned earlier, the court is free to follow the recommendation contained in the report, or deviate from it, but the report and recommendation is always important as a starting point. But not only does the PO's work begin, the client's does as well. And the client has a lot of work to do.

### **FIRST STEPS**

You should go directly to the probation department as soon as the court orders you to, usually on the day your case is settled, or the day you receive your guilty verdict. Give the receptionist a valid address and telephone number so that the probation officer or a staff member can contact you and set up the interview. Make sure that you ask the representative when you will likely be contacted and be careful to check your mail and your telephone answering machine at or about that time. It is very important that you follow up on probation's attempts to contact you. In fact, if you have not been contacted by the time indicated, you need to take the initiative to contact them again to set up the interview. This not only shows your willingness, even eagerness, to cooperate with them. Because your attitude is an important part of your report, this will show the judge that you are taking this matter very seriously. When you are given your appointment, make sure that you arrive promptly with all the items you are going to need.

### **GET STARTED NOW**

Probation officers have only a limited amount of time to get a report out. In the course of about one day, they must:

- Read the prosecutor's file (this contains only negative information about you)
- Talk to any witnesses and victims (again, only bad stuff there)
- Interview and investigate you (finally, the good stuff.)

*Time is your enemy when it comes to the sentencing report, because the PO has a limited amount of it, and it is easier for them to acquire negative information about you than positive. The PO will have the DA's file, and that contains everything about how horrible the crime and you are. If there is anything good to be said about you (and there always is), it will have to come from your references: family, friends, neighbors, ministers, drug counselors, teachers, employers, etc., and YOU. Therefore, you need to go to the interview prepared to give the PO documentation about what a great person you are, and you need to have names, addresses and phone numbers available so that he or she can verify the information.*

- Be prompt
- Dress to impress
- Come prepared

Be prompt, and dress to impress. The PO wants to see you treat him or her with respect.

Show up on time, better yet a little ahead of time, and show up the way you would show up for court. Dress as if you are going to church or to a job interview. Remember, this is the single most important event in your case. It deals with the issue every client is most concerned about. The bottom line the amount of time in custody.

### **USE COMMON SENSE**

Common sense is so important here. For example, if you have pled guilty to a drug related offense, you should expect to be asked to provide a urine sample at your initial interview. And you had better be certain that it will be a clean test, or at least be ready with an explanation as to why it will not be a clean test. (E.g., "I live/work in a place where I breathe in a lot of secondhand marijuana smoke. I'll move/change jobs right away.")

If you have a suspended drivers license, be sure you do not drive to the interview. In fact, do not even have a set of car keys on you. This is the type of thing PO's are trained to look for. Don't forget, probation officers are law enforcement officers with arrest powers.

And by all means, don't drive a stolen car to the interview. This sounds obvious, doesn't it? Well, it happened in a case not that many years ago.

### **WHAT TO BRING**

As soon as you receive and read this brochure, you'll want to start gathering as much documentation as you can about your life. Look for the best documentation you can about the following topics so that the PO is totally overwhelmed by how little work he or she has to do to acquire information to go into your report. The PO will soon see that you are the ideal candidate for a grant of probation. The six common topics addressed in every probation report are the following:

- Defendant's personal history (or social history)
- Circumstances of the offense
- Defendant's statement of offense
- Substance use
- Prior record
- Interested parties
- Collateral information
- Evaluation and recommendation.

### **PERSONAL HISTORY**

It is the job of the probation officer to get to know you, and the way to do this is through the interview. Don't worry about being nervous. Everybody is, and the PO is used to that. It actually helps you if you're nervous, because it shows that you realize the importance of the situation, and that you take the case seriously.

The PO gets to know you also through the documentation and items you bring to the interview. See if you can find items at your home, or at schools or jobs you've attended, showing any accomplishments in your childhood, in school, in the military, or in the

community. Just as an example, if you helped remove graffiti from walls ten years ago, don't just tell the PO about it, provide a certificate documenting it, with the name and phone number of someone who can be called to verify it. If you didn't receive a certificate, go out and find the person who supervised the job, and prepare a typewritten letter for the supervisor to sign, complete with the supervisor's name, address and telephone number.

If you got a written commendation at work, bring it in. If you don't have it, go to your employer and ask for a copy. Bring in proof that you were employee of the month, even if it's the only month you were so recognized. Bring in any other employment records. Bring in tax returns to show how long you've been gainfully employed, paying taxes, and supporting yourself and your family. Bring in diplomas, awards, nice letters, etc., to show your accomplishments. If you got a medal in the military, bring in the medal itself, along with a picture or a photocopy of it to go in the report. Even something from the boy scouts or the girl scouts. Get a letter from your bank saying you have a good account and you don't bounce checks. If the victim of your crime happens to be an acquaintance of yours, and that person ever sent you a nice letter, bring it in. Any documentation that can prove an important point should be brought to the PO. Nice letters from neighbors, friends, etc. Bring in membership records of any fraternal organization (Elks, Rotary, etc.) to show your service to the community. If there was ever an item in the newspaper about you, find it and bring it in. Make good use of local libraries and the internet. Probation officers are only human, and they have a tendency to weigh good deeds against the one they're looking at in the DA's file. Anything that you can find may be helpful.

Remember that you never get a second chance to make a first impression, and that the way the PO thinks about you during the first few minutes of the interview will probably dictate the direction of the report and recommendation.

### **SUBSTANCE USE**

If you have ever been treated for any addiction or abuse problem, and you complete the program, show proof to the probation officer, so that you can be shown to have benefited from that type of program (as opposed to jail or other punishment.)

If you have never been treated, and you are prepared to admit that you have an addiction to drugs, alcohol, sex, thievery or gambling (or any other type of addictive, self destructive type behavior), show the PO that you have already inquired about how to deal effectively with the problem. Provide documentation (names, addresses, information) about programs you've already contacted about dealing with your problem. Obviously, if you think it's necessary and beneficial, go ahead and enroll in a treatment program designed to deal with your problem. Then show proof of enrollment, and proof of regular attendance. Be sure you're able to discuss with the PO that which you have already learned at the meetings. Alcoholics Anonymous (AA) meetings are relatively easy to find and attend, so are Narcotics Anonymous (NA) meetings. Just look in the Yellow Pages, find out where the meetings are held, and show up. Be sure to ask for a court card, a card which is signed by the meeting's director and is designed to show proof of your attendance.

Attendance at AA and NA never hurts, especially if there is any indication that you need it. And if you need a treatment program, ask my office about them. They come in all ranges of cost and effectiveness. Some are looked upon highly by the court, others, not so. The courts usually feel that the more expensive the program, the easier it is to complete, and the less beneficial it is to the patient.

Even if you aren't charged with a substance abuse crime, and even if there is no indication that substance played a part in its commission, every probation report is going to deal with your history of substance use. If you don't know how to answer these questions in a way that will best suit your case, ask your lawyer to advise you. You always have a right to present the truth in a light most favorable to you.

### **DO NOT BE EVASIVE ANSWER THE QUESTIONS**

PO's are experienced interviewers and they deal with criminals every day. One usually cannot bluff a probation officer effectively. Try to answer all of the questions and show that you are giving it your best effort. One time a client was seen to be purposefully evasive when the PO asked him about any past use of marijuana. He was not prepared for the question and refused to be specific. He just kept waffling, so the PO asked him detailed questions. The PO asked him when the first time was that he smoked it. The client responded, "age 17." She then asked him when the most recent time was that he had smoked it. The client responded, "about age 32." So with nothing more than that from the client, the PO wrote that the defendant started smoking marijuana at the age of 17 and stopped smoking it at age 32. That sounded terrible. It would have been much better if the client had been prepared for the question and had been more specific. Having thought about the question before it was posed to him, he could have had given a 100% truthful but still very positive answer. He could have responded, for example, that he experimented with marijuana about eight or nine times over the course of 15 years. Better yet, he could have said that he vividly remembers the day that he decided never to do illegal drugs ever again. It was January 30th, 1996, and he quit because he embarrassed his son in front of his friends at a football game. "It was one of the most significant days in my life", he might have said, "No more drugs for me, never again after that day."

For you, maybe it's the day you were arrested for this offense. "The first day of the rest of my life. I learned my lesson and benefited from it." That type of stuff impresses PO's.

### **DEFENDANT'S STATEMENT**

Sometimes you will be instructed to write out in longhand your own version of the events. Sometimes, you can type it. And other PO's ask you to tell them in your own words at the time of the interview.

One rule holds for almost all cases: ADMIT IT!

Believe it or not, the court and the probation officer would rather see you admit having committed the crime, than trying to make them wonder whether or not an innocent person has been wrongfully convicted. The judge does not want to see someone whom he took a guilty plea from saying, in effect, "Your judicial system is flawed. I was forced into

pleading guilty. My lawyer coerced me. The cops are all lying. I was railroaded by the prosecutor. You're going to sentence an innocent person."

As long as you didn't testify the opposite way at trial, it's important for you to admit the conduct and try your best to mitigate it (give a good spin) to make it sound either justified or less severe.

The judge would much rather see you say, in so many words, "I admit that I did it, and I'm sorry. The system works. It feels better to get it out in the open. Confession is good for my soul. I respect the system that you as a judge (or a probation officer) represent. I acknowledge your authority to sentence me because I'm guilty. But, what I did is out of character for me, and here's why you should give me the benefit of a second chance."

And you have to show remorse. Even if the victim is your most hated enemy, swallow hard and express your sorrow that he or she had to suffer. Acknowledge that the victim has been injured and has been inconvenienced by having to come to court and deal with the system. After all, you're the one who got caught. You're the criminal, he or she is the victim. It's tough sometimes, but it's in your interest. You're going to get a better sentence if you can manage to get the words and the emotions out. There's an old gag which goes like this. "Sincerity is essential. If you can fake that, you've got it made." Admitting your criminal conduct will show the probation officer that you are mature and that you take responsibility for your acts. Those are the qualities of a person who is a good candidate for probation. Almost no one who remains in a state of denial ever gets probation, absent unusual circumstances.

And be sure to stress that if and when you get a grant of probation, the very first things you are going to do is to make restitution to the victim, and pay your fines. Show the PO that you have genuine sorrow and remorse for the victim.

Another important thing to remember is that you should allow your attorney to stress to the judge what a good person you are and why you deserve a lenient sentence. If you just concentrate on providing the basis for that conclusion, it sounds so much better if you are not the one asking for leniency. A family member may appear at the sentencing and tell the judge why you need to be supporting your family instead of being warehoused in a jail. And your lawyer can risk getting the court annoyed by claiming that you are not a criminal, but you should not.

## **MITIGATION**

On the other hand, you need to be able to discuss the unique factors in your life which caused you to act in the way you did. If you find yourself discussing the responsibility of someone else (like a parent or a stepparent or someone else) be sure to do so without trying to make excuses or shifting the blame. Hypothetically speaking, say you were going to try to convince the PO (and therefore, the judge) that your problem stemmed from a bad upbringing. This is just an example. In that case, a good attitude to express would be something like, "Well, my upbringing wasn't very good because this happened and that happened. This is no bad reflection on my parents, they did the best they could,

and they are ordinarily very good people and good role models. I'm sorry that I disappointed them, but they made mistakes with my situation. At least now I know not to make the same mistakes with my kids that they made with me."

Any discussion of other individuals' responsibility should sound similar to that. Even a codefendant's involvement should be treated the same way. "I feel sorry for both of us that we ever got together. He's not a bad person, but when we got together, we both did things that were out of character for us. But it was his idea to do this and this, and he did this on his own. I only assisted him, etc."

### **REAL LIFE DO'S AND DON'TS**

When expressing remorse, be careful not to lay it on too thick. Don't make the same mistake one of my clients made when he was trying so hard to impress the PO of his remorse. He apparently was a lousy actor, and without her saying in the report that she disbelieved him, she simply reported his demeanor while he was talking to her. She stated in her report that the client slumped in his chair, held his head in his hands and kept repeating to himself, "Oh, a 46-year-old man and a 16-year-old girl! A 46-year-old man, and a 16-year-old girl! Oh, I'm so ashamed."

It obviously looked and sounded phony to her, but she didn't have to say so to get her point across to the judge. She simply described in her report exactly what she saw him do and say, and the judge got the point. He saw that the client was being overly dramatic and insincere.

One client came off as very distraught, though, and it paid off for him handsomely. He had admitted having engaged in inappropriate conduct with his twelve-year old daughter one evening when he was very drunk. It was the one and only blemish in his otherwise perfect life, and he expressed his sorrow and shame in a way that had a ring of truth to it. When he was asked what kind of a sentence he thought would be appropriate, he responded, "The maximum, whatever that is. I don't know, the death penalty> Am I eligible for that? I deserve it." The PO was blown away, and was so convinced that he was genuinely remorseful, she recommended a grant of probation and no jail time. It's a bit of a high-risk answer, though. Remember the old saying, "Be careful what you ask for. You may just get it."

### **LEAVING THE INTERVIEW**

When you are leaving the interview, look the PO in the eye, shake hands, and thank him or her for doing a very thorough job. Say that you look forward to seeing the final report. Say that you're sorry to have created all of this work for him or her, what with all the documents you have brought in.

Of course, you will have done just the opposite. You will have made the PO look like a superstar in the eyes of his or her supervisor and the judge. They will look at the thickness of the report and believe that it was the PO who did an incredibly thorough investigation, when in fact it was you all along. You. The probation officer's hero. The star. The model probationer.

## **CONCLUSION**

Be sure to stay in touch with your lawyer's office and be sure that you show up on time for your sentencing hearing in court. If you feel as if there are things that are not covered here, please feel free to contact your lawyer and discuss them. After all, every case is different, and every client has special needs and unique circumstances. This article is intended only as a reference piece, and there is always the possibility that modifications will need to be implemented.