

HANDLING COOPERATING DEFENDANTS

2023 Bench Bar Conference

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Ryan

- The title of this panel is “Cooperating Defendants.” What does the government consider to be a “cooperating defendant?” Does it turn on whether the defendant is in custody or not? Explain custodial and non-custodial considerations as they relate to cooperation.
- What are the considerations when deciding whether to offer a formal cooperation agreement? Case agent involvement?
- What does a cooperation offer typically consist of?
- Considerations re pre-charging instrument and post-charging instrument offers of cooperation

Ken

- From defense perspective what are the considerations when deciding whether to seek/accept a cooperation agreement?
- What do negotiations consist of? Or are there negotiations?
- Pre and post charging instrument considerations

Judge Schroeder

- How do you handle cooperating defendants’ testimony at pretrial and at trial?
- How do you handle cooperating defendants at sentencing?
 - Do you handle such a defendant differently from a typical substantial assistance paragraph in a plea agreement and/or a typical 5K1.1 motion?

Judge Hawthorn

- Considerations re post-charging instrument and post initial appearance offers of cooperation
 - How do you handle cooperation at initial appearance? Sealing of record/courtroom at initial appearance for safety purposes?
- Differences in violent/non-violent cases
- Coordination or pretrial supervision with probation office, court and government

For all

- Disclosure of cooperation agreements to co-defendants' counsel or to later prosecuted defendants' counsel
- Prepping cooperating defendants to testify
- What does direct/cross of cooperating defendant look like?
- Any other thoughts on cooperating defendants at trial and sentencing

Tiffany

- Probation office policy on pre-trial supervision of non-custodial cooperating defendant
- Does cooperation status affect typical pretrial release conditions?
- How would probation prefer a cooperation agreement and pretrial supervision be addressed at the outset of a case? Discuss cooperation and supervision at initial appearance? Specifically how violations will be handled? Notice to government of alleged violation for safety? Notice to defense counsel?
- How is supervision typically conducted? Home/office visits? Drug tests? How does safety for officer and defendant factor in?

Any Concluding Thoughts?