New York State Bar Association

Committee on Professional Ethics

Opinion 770 – 11/12/03

Topic: Plea bargains; donations as part of agreed sentence

Digest: If probable cause supports a charge, and if all terms of the sentence are legal, a prosecutor may agree to a plea bargain in which the defendant is required to make a donation: (1) to the statutory program known as STOP-DWI, as long as the district attorney is not also "coordinator" of the county's STOP-DWI program; or (2) to a not-for-profit organization, as long as the prosecutors handling or supervising the case do not have a "personal interest" in the organization that reasonably may affect their judgment; they do not know that any lawyer in the district attorney's office has such an interest; and the donation to the organization does not create an appearance of impropriety. A prosecutor may agree that such donations may be made before the plea is entered, and in exchange for a dismissal of, or an agreement not to bring, charges. Under no circumstances may a prosecutor conceal the terms of the plea bargain from the sentencing court.

Code: DR 1-102(A)(3), (4); DR 5-101(A); DR 5-105, (A)-(E); DR 7-102(A)(3), (7), (8); DR 7-103(A)

EC 1-5; EC 5-1; EC 7-13

QUESTIONS

This opinion discusses plea bargains in which a criminal defendant agrees, as part of the sentence, to make a financial donation that is not expressly authorized by statute. The five specific questions considered are as follows:

(1) As part of a plea bargain in which a defendant charged with driving while intoxicated or driving while ability impaired (either charge hereafter "DWI") will plead guilty to a lesser charge, may a prosecutor agree that the negotiated sentence will include a donation by the defendant to the county's STOP-DWI program? [1] Would the answer be different if the district attorney were the coordinator of the county's STOP-DWI program?

(2) More generally, as part of a plea bargain, may a prosecutor agree that the negotiated sentence will include a donation by the defendant to a not-for-profit organization? If so, must the organization be without "ties" to the district attorney's office?

(3) May a prosecutor agree not to bring charges, or to dismiss charges, against a person on condition that the person make a donation to a not-for-profit organization?

(4) As part of a plea bargain that includes a donation by the defendant to a not-for-profit organization, may a prosecutor require that the donation be made before the plea is entered to ensure that the defendant will live up to that part of the bargain?

(5) As part of a plea bargain that includes a donation by the defendant to a not-for-profit organization, may a prosecutor agree that the terms of the agreement concerning the donation will not be disclosed to the sentencing judge?

OPINION

Introduction

All plea bargaining is subject to ethical constraints. Under DR 7-103(A), "A public prosecutor ... shall not institute or cause to be instituted criminal

[1] N. Y. Veh. & Traf Law §1197 authorizes each county to establish and operate a STOP-DWI program, as further described below.

charges when he or she knows or it is obvious that the charges are not supported by probable cause." Under EC 7-13, "The responsibility of a public prosecutor . . . is to seek justice, not merely to convict." A prosecutor, therefore, should not seek a plea to reduced charges unless there is probable cause to believe that the defendant has committed an offense. If there is no such probable cause, the proper disposition is a dismissal. *See Cowles v. Brownell*, 73 N.Y.2d 382, 387 (1989) (if defendant is innocent or the case is unprovable, prosecutor is under an ethical obligation to drop the charges without exacting any price for doing so).

This Committee does not opine on questions of law and, therefore, expresses no opinion on whether the possible plea bargains discussed herein are legally permissible.[2] It is the prosecutor's responsibility to determine whether the proposed dispositions are legal in each case. If a disposition would be illegal, it would also be unethical. *See* DR 1-102(A)(3) (lawyer shall not engage in illegal conduct that "adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer"); DR 7-102(A)(7) and (8) (lawyer representing client shall not "counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent" or "knowingly engage in ... illegal conduct"); EC 1-5 ("[E]ven minor violations of law by a lawyer tend to lessen public confidence in the legal profession."); N.Y. State 479 (1978) (illegal conduct is "of course" unethical "with rare exceptions of inadvertent violations involving no moral turpitude").

First question: plea bargain requiring a donation to STOP-DWI

STOP-DWI is a statutory program, which a county may elect to establish pursuant to N.Y. Veh. & Traf. Law §1197 ("Section 1197"). The county designates the "coordinator" of the program and may fix his or her salary and expenses. Section 1197 further provides that if a county has established a STOP-DWI program, fines and forfeitures collected within that county for certain

[2] The New York Penal Law, Vehicle and Traffic Law and Civil Practice Law and Rules authorize a variety of monetary penalties and forfeitures upon conviction of an offense. We do not find a reported New York judicial decision on the question of whether a sentence for an offense may include a nonstatutory payment in lieu of an authorized monetary penalty. It is clear that a sentence of incarceration that exceeds an authorized term is illegal, even if part of a plea bargain. *See*, *e.g.*, *People v. Cameron*, 83 N.Y.2d 838 (1994); *Kisloff ex rel. Wilson v. Covington*, 73 N.Y.2d 445 (1989). It is unclear whether a waiver of appeal that explicitly waives the illegality of a sentence is enforceable. *See People v. Muniz*, 91 N.Y.2d 570 (1998). A sentence promise may be conditioned upon the defendant's prior fulfillment of various obligations that are not expressly authorized by statute. *See*, *e.g.*, *People v. Avery*, 85 N.Y.2d 503 (1995) (completion of drug rehabilitation program); *People v. Fiumefreddo*, 82 N.Y.2d 536 (1993) (linking of codefendants' pleas); *People v. Anonymous*, 758 N.Y.S.2d 806 (N.Y. App. Div. 2003) (cooperation agreement); *People v. Anonymous,* 757 N.Y.S.2d 847 (N.Y. App. Div. 2003) (same); *People v. Lopez*, 290 A.D.2d 323 (2003) (same).

driving-related offenses must be deposited in a STOP-DWI account controlled by the chief fiscal officer of the county. [3]

The first question posits a plea bargain in which the defendant pleads guilty to a charge reduced from DWI, and in which the reduced charge is not within Section 1197's list of charges whose monetary penalties are paid over to STOP-DWI. May a prosecutor agree that the negotiated sentence on the reduced charge will include a donation by the defendant to the county's STOP-DWI program?

We see no ethical objection to a plea bargain in which, as part of a sentence to a lesser charge, the defendant agrees to make a payment that would have been authorized by law as a penalty for the original charge, as long as the payment is a legally permissible term of the sentence to the lesser charge and the original charge was supported by probable cause.

We believe the answer to the question would be different, however, if the district attorney were also the coordinator of the county's STOP-DWI program. In that situation, the district attorney's dual role would create both a conflict of interest and the appearance that he or she may not be exercising prosecutorial authority in a disinterested manner.

Under Section 1197 the STOP-DWI coordinator is appointed by an officer of the county, is paid salary and expenses fixed by the county, and serves at the pleasure of the appointing body or officer. Among the duties of the coordinator are organizing the STOP-DWI program and making recommendations to the county for the program's funding. The STOP-DWI coordinator is directed by the statute to "coordinate the efforts of interested parties and agencies engaged in alcohol traffic safety, law enforcement, adjudication, rehabilitation and preventive education."

As a practical matter these provisions mean that a STOP-DWI coordinator must create and implement a plan that involves, among others, the local police, the prosecutors, and the courts, and must recommend the budget therefor. The money that funds STOP-DWI, as mentioned above, comes at least in part from monetary penalties levied in DWI cases prosecuted by the county's district attorney.

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[3] Paragraph (1)(a) of Section 1197 mandates that fines, forfeitures and other penalties imposed for aggravated driving without a license pursuant to N.Y. Veh. & Traf. Law §§511(3)(a)(i) and 511(2)(a)(ii) and (iii); driving while intoxicated and driving while ability impaired pursuant to N.Y. Veh. & Traf. Law §§1192, 1192-a, 1193 and 1194-a; and vehicular assault and vehicular manslaughter pursuant to N.Y. Penal Law §§120.03, 120.04, 125.12 and 125.13 be paid over to STOP-DWI. Section 1197 does not require that fines levied pursuant to other traffic offenses, such as driving without a license or in violation of a license restriction pursuant to N. Y. Veh. & Traf. Law §509, be paid over to STOP-DWI.

Prosecutors have a duty to "seek justice." EC 7-13. "This role imposes a responsibility on prosecutors not only to ensure the fairness of the process by which a criminal conviction is attained, but also to avoid the public perception that criminal proceedings are unfair." N. Y. State 683 (1996). "When it is possible to do so ... prosecutors, like judges, must take reasonable steps to avoid professional and personal activities that will interfere with their ability to serve in a disinterested fashion." *Id.*

DR 5-101(A) states that a lawyer "shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests...." DR 5-105(B) states that a lawyer shall withdraw from representation of multiple clients if the exercise of independent professional judgment in behalf of a client will be or is likely to be affected by the lawyer's continued representation of the other client, or if it would be likely to involve the lawyer in representing differing interests.[4] Section 3-1.3(a) of the *ABA's Criminal Justice Standards* (1992) states that a "prosecutor should avoid a conflict of interest with respect to his or her official duties." Section 7.1 of the *National District Attorneys Association's National Prosecution Standards* (1991) states that a "prosecutor should avoid interests and activities which are likely to appear to, or in fact do, conflict with the duties and responsibilities of the prosecutor's office."

If a district attorney were to maintain a dual role as the county's public prosecutor and as the county's STOP-DWI coordinator she would contravene these principles. As district attorney he or she has authority to seek monetary penalties as part of sentences, including plea bargains; as STOP-DWI coordinator his or her program and budget roles give him or her a say in the way the resulting funds are spent. This particular arrangement, in which the district attorney holds a second public office, confers authority that a disinterested prosecutor should not have.

In general, there is no ethical principle barring a district attorney from carrying out his or her legally mandated duties on the ground that a benefit to the office may thereby result. Indeed, it is necessary that a district attorney carry out these duties, as she is the official who is authorized to act.[5] For example, a

[4] Under DR 5-101(A) and DR 5-105(C) the lawyer with the conflict may determine that "a disinterested lawyer would believe" the representation would not be adversely affected and, if so, may proceed with the representation upon obtaining the client's informed consent to the conflict. Even if the conflict in the present inquiry were "consentable" under these rules, it is not clear from whom the prosecutor could obtain consent. When a government or government agency is a client it may consent to a conflict. N. Y. State 629 (1992). However, the district attorney under the circumstances presented here is not the client and cannot waive his or her own conflict.

[5] This is analogous to the rule of necessity that allows an elected district attorney to campaign for himself or herself, even though not allowed to engage in active campaigning for others. N. Y. State 675 (1995).

district attorney may pursue a forfeiture action pursuant to CPLR article 13A, which specifically authorizes, under defined circumstances, the district attorney's retention of forfeited vehicles and the reimbursement of the district attorney's expenses, including a proportion of attorney and other salaries. N.Y. CPLR § 1349 (Consol. 2003).

It is not necessary, on the other hand, for the district attorney to hold two offices. If the power of the second office, in this case the office of STOP-DWI coordinator, allows the district attorney to exercise authority over funds collected in criminal proceedings to benefit the first office, there is both a conflict of interest and the appearance that the exercise of authority as prosecutor may not be disinterested. The conflict is that the same person serves two masters: as prosecutor the district attorney's mandate is to "do justice" in each case, but as coordinator of STOP-DWI he or she serves the financial and other needs of the STOP-DWI program. The appearance problem is that the prosecutor's ability to make STOP-DWI budget recommendations to benefit his or her own office may appear to be an incentive to take dispositions that will pay for those budget allocations. Alternatively, STOP-DWI budget recommendations that benefit the police or court personnel could be perceived as a means of gaining favor with branches of government from whom the district attorney should remain independent.[6]

Therefore, we believe that a district attorney cannot serve as coordinator of STOP-DWI. Our conclusion applies to any criminal proceeding prosecuted by a district attorney's office in which one of the possible outcomes is a payment to STOP-DWI. The district attorney's dual role is problematic in all such situations. Conversely, if there were *no* dual role, it would be ethically permissible for a district attorney's office to include in a plea agreement (or to request after conviction at trial) a monetary penalty resulting in a payment to STOP-DWI. This would continue to be permissible even if the county used STOP-DWI funds for the district attorney's office or other law enforcement purposes.

Second question: plea bargain requiring donation to not-for-profit organization

Is it ethical for a prosecutor to agree in a plea bargain that the defendant will make a donation to a not-for-profit organization as part of the negotiated sentence? If so, must the organization be without "ties" to the district attorney's office?[7]

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[6] On the other hand, a district attorney, as an elected government official, is certainly *not* precluded from making recommendations to local or state or federal government concerning law enforcement expenditures. In our opinion there is a difference between an elected prosecutor who makes such recommendations as part of the well-accepted political tug of war over budgets and a prosecutor who holds two government offices, each of which can be used to benefit the other.

[7] As there does not appear to be any provision in New York law authorizing a sentence that includes such a donation we emphasize again that it is up to the district attorney to determine

If the proposed donation would be a legally permissible component of the sentence, it would be ethically permissible as long as the prosecutors handling or supervising the case do not have a "personal interest" in the organization that reasonably may affect their judgment; they do not know that any lawyer in the district attorney's office has such an interest; and the use of the organization does not create an appearance of impropriety.

DR 5-101(A) states that a lawyer "shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests . . . ." Under EC 5-1, "The professional judgment of a lawyer should be exercised . . . free of compromising influences and loyalties." Section 3-1.3(f) of the *ABA's Criminal Justice Standards* (1992) provides, "A prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests." Section 7.3(d) of the *National District Attorneys Association's National Prosecution Standards* (1991) provides, "The prosecutor should avoid any private interests, financial or otherwise, which may affect his professional judgment in the exercise of the duties and responsibilities of the prosecutor's office."

A "personal interest" or "private interest" in this context is not limited to an interest that produces financial benefits. The not-for-profit organization in the question under consideration might be one to which the prosecutor devotes significant time or contributes significant sums of money. The prosecutor's spouse or other close relative might be an officer or director of the organization. Such a situation might bring the organization within the prosecutor's "personal interests," even if a contribution to it pursuant to a plea bargain would not be of financial benefit to her. *See* Roy D. Simon, Jr., *Simon's New York Code of Professional Responsibility Annotated* 454-56 (Thomason/West 2003).

If a prosecutor has a personal interest in the organization to which a donation will be made pursuant to a plea bargain, DR 5-101(A) directs the prosecutor to determine whether his or her exercise of professional judgment would likely be affected thereby. Not all personal interests in not-for-profit

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whether the inclusion of such a donation in a sentence is legal (see footnote 2). Moreover, the legality of a contribution to a not-for-profit organization as part of a sentence may depend on, among other things, considerations arising under the First Amendment. For example, requiring a contribution to a religious organization may well make the plea agreement illegal. See *Jane Doe v. D'Amelia*, 81 F.3d 1204 (2d Cir. 1996), in which the Second Circuit held that a plea agreement requiring the defendant to make a sworn statement in church as a condition of a dismissal of charges subjected the prosecutor to suit under 42 U.S.C. §1983 for violating the defendant's First Amendment rights. A contribution to an organization advocating a political position would be out of bounds as well. *See* N.Y. State 675 (1995) ("In a number of opinions, this Committee has expressed the view that 'there is a basic incompatibility between the duties of a public prosecutor and partisan policics.'") (quoting N.Y. State 513 [1979]).

organizations are likely to affect professional judgment. Small contributions of time or money to an organization might not, without more, be sufficiently important personal interests to affect a prosecutor's judgment. Even somewhat larger contributions of time or money might not by themselves be likely to affect professional judgment if made to organizations that are so broadly based as to be "generic," such as the United Way or the Red Cross. Whether a prosecutor's involvement with an organization is likely to affect his or her judgment will depend on the nature, size and scope of the prosecutor's involvement as well as the nature, size and scope of the organization. *See id.* at 454-56. If the prosecutor directly handling the case does have a personal interest in the not-for-profit-organization that likely would affect his or her professional judgment, then a contribution to that organization should not be part of the plea bargain.[8]

If there are other lawyers in the prosecutor's office with a personal interest in the not-for-profit organization, should those interests likewise require that the organization in question be left out of the proposed plea bargain? Certainly if there is another lawyer in the office, such as a supervisor, whose professional judgment is brought to bear on the proposed plea bargain, and who has a personal interest in the organization sufficient to affect that judgment, then the organization should be left out of the plea bargain.

Should the organization be excluded from the plea bargain if there is another lawyer in the office with a personal interest in the organization but who is not involved in the case? DR 5-105(D) disqualifies any lawyer in a firm from "knowingly" accepting or continuing a matter if any other lawyer in the firm would be disqualified under DR 5-101(A). This rule of imputed disqualification is not applicable to a prosecutor's office under all circumstances. The New York Court of Appeals has held that imputed disqualification will not be applied to a district attorney's office unless necessary to protect a defendant from "actual prejudice arising from a demonstrated conflict of interest or a substantial risk of an abuse of confidence." *People v. English*, 88 N.Y.2d 30, 33-34 (1996) (quoting *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 55 [1983]). In *English* the Court held that the absence of contact or opportunity for contact between the conflicted attorney and the prosecutors handling the defendant's case in a "'huge' metropolitan" district attorney's office militated against imputed disqualification. *See also Matter of Morgenthau v. Crane*, 113 A.D.2d 20 (1985) (large metropolitan district attorney's office held not disqualified even though an assistant district attorney, who had been screened from case, was first cousin of defendant). Therefore, as a general matter, whether the attorneys in a district attorney's office should be disqualified by imputation under DR 5-105(D) turns on whether the standard set forth in *English* has been met under the circumstances of the case.

[8] As discussed above in footnote four, although DR 5-101(A) provides for a client's informed consent to a conflict, we do not believe such consent to be available under the circumstances presented.

In the question under consideration, as mentioned above, any impermissible conflict may be cured by leaving the proposed organization out of the plea bargain. The disqualification of attorneys or of an entire prosecutor's office is not necessary. For that reason, and despite *English*, our opinion is that the organization should be left out of the plea bargain if the prosecutors handling or supervising the plea know that another attorney within the district attorney's office would be disqualified under DR 5-101(A) from using that organization in a plea bargain.

If the prosecutor does not know of another lawyer in the office who has a "personal interest" in the not-for-profit organization sufficient to trigger DR 5-101(A), must he or she nevertheless investigate whether there is such a lawyer? Neither DR 5-101(A) nor DR 5-105(D) by its terms so requires.[9] However, one may envision a situation in which another lawyer's connection to an organization, though not known to the prosecutors handling the plea, would make it unseemly for the organization to be included in the plea. For example, it may be that the district attorney is the chair and chief fund raiser for the organization contemplated for the plea. Using the organization as the recipient of the donation called for in the plea bargain would certainly create an appearance of impropriety.

Although the concept of appearance of impropriety lacks precise boundaries, it is our opinion that at a minimum the district attorney must be free of a significant "personal interest" in the situation posed. Therefore, the prosecutors handling the case must at a minimum determine whether the district attorney has a "personal interest" in an organization sufficient to create an appearance of impropriety if the organization were to be the recipient of a donation as part of a plea bargain. As discussed above, the nature, size and scope of both the organization and the district attorney's involvement must be considered.

Whether checking is required with respect to other attorneys in the district attorney's office in order to prevent an appearance of impropriety will depend on all the facts and circumstances. Factors to be considered are the size of the office; whether there are other high officials in the office whose personal interests would create an appearance of impropriety; and whether there are lawyers within the office whose involvement with an organization are so well known that use of the organization would create an appearance of impropriety. As a general matter, inquiry should be made of those lawyers personally and substantially involved in the case.

[9] DR 5-105(E) requires that law firms have a system for recording and checking “engagements” in order to avoid conflicts. Whether such a system may have relevance to a district attorney’s office for other situations we do not decide. We believe that it should not be applied by analogy to the question under consideration.

Third question: nonprosecution or dismissal in exchange for donation

Is it ethical for a district attorney to make an agreement not to bring charges, or to dismiss pending charges, against a person on condition that the person make a donation to a not-for-profit organization?

Such an agreement is clearly not ethical unless there is probable cause that the person committed an offense. If probable cause is lacking the proper disposition is either a dismissal or a decision not to bring charges in the first place, and no concessions may be extracted in exchange therefor. *Cowles v. Brownell*, 73 N.Y.2d at 387; DR 7-103(A).

As always, the question of whether the agreement is legal must be decided by the district attorney. Furthermore, as discussed above, the lawyers in the district attorney's office should be without known "personal interests" in the organization.

Section 3-3.8(a) of the *ABA's Criminal Justice Standards* (1992) provides in part, "The prosecutor should consider in appropriate cases the availability of noncriminal disposition, formal or informal, in deciding whether to press criminal charges which would otherwise be supported by probable cause...." We do not find anything in the New York Code of Professional Responsibility that contradicts this guideline, although it does not indicate just what may be required of the defendant in exchange for nonprosecution. [10] We conclude that if, as discussed at length above, a donation may ethically be required in exchange for a reduction of charges, the same donation may ethically be required in exchange for a dismissal of, or an agreement not to bring, those charges.[11] We perceive no ethical principle that a guilty plea to some offense is a required condition to the resolution of a potential criminal action.

Fourth question: requiring that the donation be made before the plea

In a plea bargain requiring a defendant to make a donation to a not-for-profit organization, is it ethical to require that the donation be made before the

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[10] The potential boundaries of the reciprocal agreement are not unlimited. *See Cowles v. Brownell*, 73 N.Y.2d 382 (1989) (disapproving agreement dismissing criminal charges in exchange for defendant's agreement not to bring lawsuit against municipality in which defendant was arrested); *cf. Town of Newton v. Rumery*, 480 U.S. 386 (1987) (permitting a similar agreement under circumstances there presented).

[11] There is a material difference in New York procedure between a dismissal of charges and a decision not to bring charges. A dismissal must be made on motion and determined by the court, and therefore the terms of and reasons for the dismissal are reviewed by a judge. On the other hand, a prosecutor's decision not to bring charges is not subject to judicial review or approval. If the nonprosecution agreement under consideration is an agreement not to bring charges, the prosecutor may arguably have an added ethical burden of appearing to be fair, as no court oversight is involved.

plea is entered, to ensure that the defendant will live up to that part of the bargain? We do not see such prepayment raising any ethical issues other than those discussed above. *See People v Avery*, 85 N.Y.2d 503 (1995) (permitting deferral of sentence until after defendant completes drug rehabilitation program).

Fifth question: nondisclosure of the donation to the sentencing judge

May the district attorney agree that the terms of the plea bargain concerning the donation to the not-for-profit organization will not be disclosed to the sentencing judge?

It is unethical to conceal a material term of a criminal disposition from the court that will ultimately rule on and embody in a judgment the disposition proposed. DR 1-102(A)(4) provides that a lawyer shall not "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." DR 7-102(A)(3) provides that a lawyer shall not "conceal or knowingly fail to disclose that which a lawyer is required by law to reveal." *See Morrissey v. Virginia State Bar*, 448 S.E.2d 615 (Va. 1994) (prosecutor's concealment of, among other things, material term of plea--a $25,000 charitable contribution--from trial court held violation of Virginia's DR 1-102[A][4]).

In the context of the issues discussed in this opinion it seems clear that the donation is a material term of the proposed plea bargains -- if for no other reason than that there is always a question as to whether such a term is legal. The determination of that question may well vary from case to case, depending on the specific facts of the proposed donation. Certainly the court must have the opportunity to review the terms of the plea bargain, including the proposed donation. Every New York court is charged with the responsibility of determining the appropriateness of every sentence it imposes, even if the sentence is embodied in a plea bargain. *See People v. Farrar*, 52 N.Y.2d 302 (1981).

CONCLUSION

If probable cause supports a charge, and if all terms of the sentence are legal, a district attorney may agree to a plea bargain in which the defendant is required to make a donation: (1) to the statutory program known as STOP-DWI, as long as the district attorney is not also "coordinator" of the county's STOP-DWI program; or (2) to a not-for-profit organization, as long as the prosecutors handling or supervising the case do not have a "personal interest" in the organization that reasonably may affect their judgment; they do not know that any lawyer in the district attorney's office has such an interest; and the donation to the organization does not create an appearance of impropriety. A prosecutor may agree that such donations may be made before the plea is entered, and in exchange for a dismissal of, or an agreement not to bring, charges. Under no circumstances may a prosecutor conceal the terms of the plea bargain from the sentencing court.

(2-03)