

Discussion Problems

2024 Judicial Decision-Making for Judges

DISTRICT COURT JUDGES

1. You are taking pleas to H and I felonies when John Doe, a 61-year-old attorney pleads guilty to the Class H felony of embezzlement. He admits to misappropriation of \$24,000 from a couple who were his clients. They have been reimbursed by the client security fund of the State Bar. He is a respected attorney and has served as president of the local bar association. The misappropriation was discovered when a former employee tipped off the State Bar investigators. He has surrendered his license to the State Bar and executed a confession of judgment in the full amount of the misappropriated funds, along with interest. He has made arrangements to pay the full amount back over a three-year period.

The prosecutor is asking for an active sentence to send a message to the community, and to lawyers especially, that such conduct will be punished severely. There is evidence that the attorney has suffered from untreated depression. Your sentence?

Would it be different if there were evidence of a gambling addiction? A substance use disorder? Financial pressure caused by a child’s legal and medical problems?

Permissible sentencing range:

H Max. 39	C/A
	6-8
	5-6
	ASR 4-5

FOR OFFENSE CLASSES F THROUGH I [Minimum Sentence → Corresponding Maximum]							
3 → 13	9 → 20	15 → 27	21 → 35	27 → 42	33 → 49	39 → 56	45 → 63
4 → 14	10 → 21	16 → 29	22 → 36	28 → 43	34 → 50	40 → 57	46 → 65
5 → 15	11 → 23	17 → 30	23 → 37	29 → 44	35 → 51	41 → 59	47 → 66
6 → 17	12 → 24	18 → 31	24 → 38	30 → 45	36 → 53	42 → 60	48 → 67
7 → 18	13 → 25	19 → 32	25 → 39	31 → 47	37 → 54	43 → 61	49 → 68
8 → 19	14 → 26	20 → 33	26 → 41	32 → 48	38 → 55	44 → 62	

2. Since being adjudicated delinquent for first-degree forcible sexual offense under G.S. 14-27.26, Ralph has been in detention awaiting disposition. He is 14 now and is large for his age. There are no known prior offenses. His mother says he “is not a bad kid,” although he probably doesn’t get enough attention because she has three younger children to take care of and she works full time. Other witnesses testify to escalating instances of physical aggression by Ralph, usually toward younger children at school, although no petitions have been filed regarding these. Results of a sex offender specific evaluation are somewhat ambivalent, but indicate a moderate likelihood that Ralph will re-offend. A mental health evaluation indicates that Ralph was diagnosed with Oppositional Defiance Disorder, ADHD, and PTSD, and that his IQ is 80. It ends with a recommendation that he be placed in either a residential program for youth with problematic sexual behavior or a Level IV group home for treatment and for his and others’ protection. Pursuant to the disposition chart in G.S. 7B- 2508(e), a Level 2 or a Level 3 disposition could be ordered. The prosecutor requests a Level 3 commitment to DJJ for placement at a YDC. Ralph’s attorney argues that Ralph suffers from a dual mental illness diagnosis and needs a kind of attention and treatment a YDC cannot offer. The YDC does not offer any treatment for problematic sexual behaviors. The court counselor agrees that the treatment recommended by the evaluation is not available at the YDC, but states that no suitable residential placement is available. Placement in a Level IV facility may be possible in about two months. Ralph’s attorney argues that Ralph should be placed in a local therapeutic group home, where space is expected to become available within a week, until space in an appropriate treatment facility becomes available. The prosecutor argues again for commitment to a YDC.

What is your disposition?

3. You are presiding in juvenile court, specifically abuse, neglect, and dependency court. The first case involves a petition filed by the agency alleging that Baby X is neglected based on the mother's drug use and past history with the agency based on her substance use. At the adjudication hearing, the mother and father stipulated to facts that support an adjudication of neglect. The stipulated facts are that Baby X was born positive for morphine at birth and mother used illegal substances (morphine, Xanax, and marijuana) during her pregnancy. The mother admitted to these stipulations under oath. Medical records introduced at the hearing showed that mother tested positive for drugs at the child's birth. Based on the stipulations and medical records, Baby X was adjudicated neglected. At initial disposition, the parties, including the agency, propose that the disposition will include a case plan to assist with reunification. This agreement was presented to the court. Evidence introduced at the initial dispositional hearing include (1) the parents' prior history with DSS including having had two other children adjudicated neglected and dependent based upon each one of those children having been exposed to illegal drugs prenatally, (2) neither of the two children have been returned to either parents' care because neither parent has consistently participated in the family services plan, and (3) Baby X received morphine as part of her treatment for having been prenatally exposed to drugs and also required a feeding tube and had an irregular heartbeat.

Do you agree with the proposed disposition or do you enter a different disposition order?

4. A 10-year-old girl has always lived with Mother in Nash County. Mother and Father never married. Father lives with his wife and their children in Nash County and has the ten-year-old every other weekend. Father has a good job, nice home, and stable finances. Mother is a loving, caring parent, but she and her husband struggle financially, so they move into cramped quarters with relatives in Georgia. Father files for primary custody. The girl loves her father but wants to stay with her mother.

Who gets custody? What is the visitation plan? Who provides transportation?

5. Upon hearing an equitable distribution case, you determine that an appropriate in-kind division of assets will give husband \$120,079.63 in assets and will give wife \$135,397.42 in assets. Neither party will have debt to pay following the distribution. The husband's retirement account will be divided equally between the two by QDRO (the division of assets does not include the value of the retirement account). This distribution of assets awards wife the marital residence which has a value at the time of distribution of \$110,000.

The husband is 53 years old, and the wife is 50 years old. Neither have health problems at this time, although husband testified that his blood pressure and cholesterol are high.

Wife requests an unequal division, citing the following factors:

- The husband earns substantially greater income: 90k per year vs. -40k per year.
- Long marriage - 24 years
- After separation, Husband purchased a new home with the assistance of his family. The wife is living in the former marital home with the parties' children, now aged 17 and 15.
- The wife did not work full-time during marriage, contributed as homemaker and caregiver for the children.

Keeping in mind the strong presumption in favor of equal division, should there be an unequal division in favor of wife? If so, how much? Will you order that she pay husband a distributive award?

SUPERIOR COURT JUDGES

1. ABC Corp. has sued Shifty Sam, Inc. for breach of contract, and Shifty has counterclaimed for breach of contract and for fraud. On day 120, ABC served Shifty with a broad Request for Production of Documents. Thirty days later, Shifty had neither served a response, produced the requested documents, nor obtained an extension of time. Ten days after that, ABC's counsel sent a letter to Shifty advising that she would not file a motion to compel if Shifty would produce the documents within the next week. On day 180, Shifty's counsel served written responses and objections, but did not produce any documents. The next day, ABC filed a Motion to Compel Discovery.

After a hearing, the trial court ordered Shifty to produce to ABC, within ten days, "all documents responsive to Requests 1 through 27 of Plaintiff's Request for Production of Documents."

On Day 250, ABC moved for sanctions alleging that Shifty had made an untimely response to the court's order and that the response was "misleading, evasive, and incomplete." Shifty responded seven day later, asserting that it had provided "hundreds of pages of documents and a thumb drive containing 2,000 pages of material," and that although there may have been "minor deficiencies," it had made a "determined effort to provide an enormous amount of discovery in a usable form."

On Day 280, ABC's motion for sanctions will be heard. To this point, the facts show that Shifty has only partially complied with the court's order compelling discovery. ABC moves that the court sanction Shifty by dismissing Shifty's counterclaim and striking Shifty's pleadings (including defenses) as they relate to liability. In addition, ABC asks for \$20,000 in attorney's fees incurred because of the discovery dispute.

What is your ruling?

2. You just presided over your first civil jury trial this year. It was a 1½-day trial in which a cleaning company sued one of its subcontractors for negligence in damaging the company's property. (The defendant subcontractor is a sole proprietorship, and its owner is a single father with two small children.) The defendant denied any negligence. At the end of the evidence, defendant moved for directed verdict. You denied the directed verdict because you thought there was *some* (although not much) evidence to support the negligence claim. You believed the jury would find for defendant anyway. Turns out you were wrong. Apparently the jury sided with the cleaning company, and it returned an award of \$50,340.00, the amount the cleaning company asked for. You feel there was *some* (at least a "scintilla" of) evidence to support a negligence verdict. But, overall, you think the evidence so heavily favored defendant that the jury's verdict may be a miscarriage of justice.

Would you order a new trial?

What factors would you consider in making your decision? (Note that our appellate courts have long recognized the trial court's broad discretionary authority to order a new trial when a verdict is contrary to the weight of the competent evidence, but have also cautioned that this authority is to be exercised with "great care" and due regard for the role of a jury.)

3. The 24-year-old defendant was sentenced in May 2022 for possession of cocaine to 4 -15 months, suspended, and 24 months of probation. After she failed three drug screens, the probation officer, under delegated authority, required her to submit to a substance assessment and treatment in a local program through TASC. The defendant subsequently tested positive again and was expelled from the program. The probation officer filed a violation report.

The case is before you, three months later. The defendant is now pregnant. Your decision?

4. You arrive on a Monday morning to call the calendar and to hear some motions. Among the first motions is a motion by a defense lawyer to reduce the secured bond for his client. The client is charged with three counts of felony death-by-vehicle, a Class D felony. Two passengers, a friend and his sister, and a pedestrian (who was also impaired) were killed in a one-car accident on Sunday evening in which the driver lost control of the vehicle and hit a tree as he tried to (and did) avoid hitting an oncoming motorcycle. The driver's alcohol concentration was 0.17. The accident occurred on a two-lane road and there is no indication the defendant was speeding. He has no prior convictions.

The defendant is 21 years old, and has finished a two year program at the local community college. He is single and had an apartment at the time of the arrest. He is trained in heating and cooling repair work and had a job until his arrest fifty days ago. His original bond was \$300,000, which he has not been able to post. His attorney requests that the bond be reduced to no more than \$25,000, citing his work history, his lack of a record and his connection to the community. The DA indicates that he is considering seeking an indictment for second degree murder. What is your decision? What else would you like to know?

Assume that you learn the defendant's parents are undocumented immigrants from Mexico. The defendant is a U.S. citizen. What impact, if any, does this have on your decision?

Assume that the defendant is an honors college student. You learn that his older brother died of an opioid overdose a month before the crash. What impact, if any, does this have on your decision?

The next Monday, you are in an urban county, hearing motions. The first motion up is also a bond reduction motion. It is a case in which a 19-year-old male is charged with breaking and entering and larceny in a series of housebreakings. All together the defendant has five charges, three breaking and enterings of separate houses on successive days and two larceny charges. He is a high school graduate, with plans to go to a community college. He is from an adjoining county to the urban county in which you are holding court. He has no previous charges, but is alleged to be associating with people who do have records of property crimes, two of whom are also charged in the crime spree. He works part-time and lives at home with his mother. He has no history of drug use. His bond is set at \$25,000, secured. He has been in jail for 7 days. His attorney asks that the bond be unsecured and that the defendant be released to the pretrial services program for the county.

Your decision?

5. You are assigned to a county you have not been in for a while. It is a criminal session. On Monday afternoon, the district attorney calls a drug possession case for trial. There is a young attorney there whose firm represents the defendant. The attorney says that the case involves a serious question about whether the defendant actually possessed the cocaine and that the lawyer who has been hired to take the case has a personal family matter that is distracting him (a messy divorce) and that he suddenly on Sunday decided to take a couple of days to gather his emotions. The lawyer asks for a continuance for a month. The prosecutor argues that this is a routine case, that he has not heard about this “personal” situation before, that the firm representing the defendant has eight lawyers in it, and that this is the third request for a continuance from the defense. The young lawyer responds that he is very uncomfortable trying the case since he has never tried a case like this and that he would be the one to try it.

What action do you take?

Would you take the same action if this was the first continuance request?

Would you take the same action if the lawyer had asked the district attorney a week before the trial date for a continuance based on his personal situation?

Assume that you learn that the defendant is the son of a prominent businessman in the community—a medium sized community of about 60,000 people. What impact, if any, does this have on your decision?

Assume that you learn that the defendant was previously convicted of cocaine possession. What impact, if any, does this have on your decision?

Assume that criminal court ends on Tuesday and you are asked by the senior resident judge to hear some civil motions. The first one is a request for a continuance from the same lawyer, presented by the same young lawyer. He wants to continue a motor vehicle negligence trial in which he is representing the plaintiff set for the next Monday, at a session that you are assigned to preside over. The senior resident’s continuance policy puts these last-minute continuances before the trial judge assigned to hear the case.

Here are some facts about the case. It involves an out-of-state witness for the defendant. It involves disfigurement and loss of ability to use one hand by the plaintiff. It is six months older than the average case in the civil superior court docket. The senior resident judge has a fairly strict policy on continuances and is very concerned about the district's statistics. [The lawyer asking for the request is a well-respected member of the bar, whom you went to law school with.] OR [The lawyer asking for the request is known for not keeping up with his business, and for taking on too many cases.]

What factors do you consider in deciding whether to grant the continuance?