

WINNING TRAFFIC TICKETS BY KENNETH A. VERCAMMEN

Too often lawyers throw up their hands when a client presents a ticket involving Driving While Suspended, DWI or Reckless Driving. While defense of traffic ticket charges involving serious motor vehicle charges may become an involved process requiring commitment and persistence, there are a number of viable defenses and arguments that can achieve a successful result.

1. The In-Office Interview at the Law Office

We advise potential clients to bring in a copy of the complaint, all their papers in connection with their case, accident report, and any documents they received from the Motor Vehicle Commissions. Often times I will instruct them to write a confidential narrative if it is a case that is fact- specific or involves a great deal of detail, such as an DWI case.

When the client is first in the office, we have them fill out the Confidential New Municipal Court Interview Form. We obtain background information such as their name, address, the offenses charged, date of the persons arrest, other witnesses, statements given to them by the police, their occupation and information regarding prior motor vehicle convictions. Our interview sheet also asks if there is anything else important, such as a medical condition that affects their case. This form will also let us know whether or not the client will follow instructions and cooperate with us.

After reviewing the summons and the interview sheet, I ask a series of questions of the client. We request the client wait until the end of the interview before explaining their side of the story. We also ask them if there is anything else of importance in connection with the case that we should know.

2. Retaining the Attorney

Rule 1:11-2 of the Rules of Professional Conduct indicate a retainer letter or written statement of fees is required for new clients. I also provide all my clients with written information explaining how to appear in court, information on surcharges, information on points, and information regarding substance abuse treatment, if applicable.

Once we receive our retainer (are paid), we begin work right away. Usually while the client is still in the office, we prepare a discovery letter on the computer to the prosecutor/district attorney and court and hand a copy to the client. We occasionally call the court to advise them that we will be handling the case and to inquire who handles discovery. We check the Lawyers Diary to determine who are the judges and prosecutor/district attorneys for the county or town. It is important to learn about the judge and the prosecutor.

We require a great deal of cooperation from our clients in an effort to help keep their costs reasonable. We require our clients to take photographs of accident sites and prepare diagrams and provide us with the names, addresses, and telephone numbers of witnesses.

I recommend that my clients provide me with a list of between 10 to 15 reasons why they should not go to jail and why court should impose the minimum license suspension. We recommend they obtain a Motor Vehicle Abstract. This provides us with information for mitigation of penalties and also provides information to be considered by the judge in sentencing.

3. Post Interview Work

We also make a Motion to Suppress where there is a question regarding the validity of a stop or search. Any other Motions to Dismiss should be made in writing such as statute of limitations or lack of jurisdiction.

Oftentimes in cases that deal with just one disputed issue such as the admissibility of a blood test result in alcohol or drugs, we can make a Motion in Limine or suggest a pre-trial conference. It is often a good idea to try to know how the judge will decide in order to save us

a three-hour trial on a complicated case. If the court rules against us in the Motion in Limine we can enter a guilty plea contingent upon reserving your right to appeal on that one issue.

4. Discovery Phase

Oftentimes we do not receive all of the discovery that we request. We send a letter to the prosecutor requesting additional discovery and request that the discovery be provided within 10 days. If we do not receive the discovery within 10 days then we prepare a Motion to Compel Discovery.

In the case involving essential witnesses, we occasionally write to the witnesses and ask them to call us so that we can find out what really happened. If possible I have a law clerk call up after we send the initial letter. The attorney cannot testify if the witness provides an inconsistent statement but our law clerks can testify. I sometimes speak to friendly witnesses myself later to make a decision to determine whether or not the witnesses are credible.

Upon receiving discovery, we forward a photocopy of all discovery to our client. We then discuss with the client whether or not they have a reasonable prospect of winning.

In drunk driving cases we review the videotape with the client prior to the trial date and sometimes make arrangements to retain an expert.

5. Preparing for Court

If it is a DWI blood case, we should make an objection to the entry of the lab certificate as evidence at trial. We are also under a responsibility to provide any reciprocal discovery to the prosecutor. Occasionally, in a court where there is only one prosecutor you should call the criminal court prosecutor ahead of time to see if a matter can be worked out or plea bargained. Some prosecutors in lower courts work part time and are not compensated for the many telephone calls they get in their offices.

If we discover a favorable case, we make a copy for the judge, prosecutor, and client. Never assume the part time prosecutor or judge is familiar with all the laws. We can prepare a Subpoena ad Testificandum for witnesses to testify and Subpoena Duces Tecum for witnesses to bring documents. We have our clients hand deliver the Subpoenas and write out their own check for the subpoena fees. It is better to be over-prepared than under-prepared.

Over the years I have made it a practice to build up files on particular legal subjects with complete case law. I now have files for drunk driving, driving while suspended, drugs in motor vehicle, and careless driving.

When we receive the hearing notice we send a follow up reminder to the client to be on time, bring all papers and call 24 hours ahead to confirm the case is still on the calendar. The client should be prepared and look neat. The Grateful Dead and Budweiser T-Shirts should be replaced with something that looks presentable. They should have their pregnant wives sitting next to them.

Preparation is the key to winning cases or convincing the prosecutor of exceptional defenses. Upon arrival at court, we will attempt to ascertain if the police officer is available. Sometimes the police officer is on vacation, retired, or suspended. This may assist your ability to work out a satisfactory arrangement.

There is no prohibition against speaking with States witnesses in a non-threatening way. Outside of the courtroom, I usually call out the name of the non-law enforcement States witnesses to determine what their version of the facts are. If we have an excellent trial issue but believe the judge is going to rule against us, we bring an appeal notice and file it with the Court on the Record. I keep in my car blank forms for Order to Compel Discovery, Order Mark Try or Dismiss, Order to be Relieved, and an Appeal Notice.

6. Plea to a Lesser Defense

If the client is going to enter a guilty plea to an offense, it is important they understand what the offense is and put a factual basis on the record. The Judge will be angry if a person is pleading guilty to a drunk driving case and the judge asked them what he had to drink, the person insists he only had one beer. The judge will send us back to our seat and must refuse to take the guilty plea unless an adequate factual basis is put on the record.

Having previously obtained for my clients their favorable background, I usually put on the record reasons why the judge should give them the minimum penalties.

Letters of reference and character reference letters are helpful in cases where the judge has wide discretion in his sentencing. After the client pleads guilty, it is a good idea to also ask the client on the record if he has any questions of myself or of the court.

7. Conclusion

Whether or not we have a trial or there is a plea to reduce the charge, I wish to walk out knowing I did the best you could for the client. Even if I lose, I want to have been such an articulate advocate that the client walks out saying my attorney is great but the judge is wrong. We try to be innovative and prepare new arguments. We handle a substantial amount of traffic court and personal injury cases and have put case law and certain legal defenses on our website: www.NJLaws.com.

About the Author: Kenneth A. Vercammen is an Edison, Middlesex County trial attorney who has published 125 articles in national and New Jersey publications on criminal court and litigation topics.

Kenneth A. Vercammen is an Edison, Middlesex County, NJ trial attorney who has published 125 articles in national and New Jersey publications on business and litigation topics. He often lectures to trial lawyers of the American Bar Association, New Jersey State Bar Association and Middlesex County Bar Association. He is a highly regarded lecturer on litigation issues for the American Bar Association,

ICLE, New Jersey State Bar Association and Middlesex County Bar Association. His articles have been published by New Jersey Law Journal, ABA Law Practice Management Magazine, and New Jersey Lawyer. He is the Editor in Chief of the New Jersey Municipal Court Law Review. Mr. Vercammen is a recipient of the NJSBA- YLD Service to the Bar Award.

He has served as a Special Acting Prosecutor in nine different cities and towns in New Jersey and also successfully handled over One thousand Municipal Court and Superior Court matters in the past 12 years.

In his private practice, he has devoted a substantial portion of his professional time to the preparation and trial of litigated matters. He has appeared in Courts throughout New Jersey several times each week on Criminal personal injury matters, Municipal Court trials, and contested Probate hearings. He serves as the Editor of the popular legal website www.njlaws.com

KENNETH VERCAMMEN & ASSOCIATES, PC

ATTORNEY AT LAW

2053 Woodbridge Ave.

Edison, NJ 08817

(Phone) 732-572-0500

(Fax) 732-572-0030

website: www.njlaws.com