

PREPARATION FOR THE MUNICIPAL COURT CASE

BY KENNETH A. VERCAMMEN

I. The Telephone Call and Scheduling the Interview

Municipal Court is a great place where new practitioners can get some trial experience and meet more experienced attorneys. By commitment and preparation, you can obtain excellent results and satisfy clients. Too often lawyers throw up their hands when a client presents a ticket involving Driving While Suspended, DWI or Operating Without Insurance. While defense of municipal court 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. Rather than simply suggest that a client pay the ticket and avoid litigation, an attorney should accept the challenge and apply his best legal talents to protect the client's rights.

You should never provide legal advice over the telephone. We do however often advise potential clients of some of the mandatory penalties and jail terms that the court could impose. This makes people realize the seriousness of the charge. We direct them 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 Commission. Oftentimes 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 assault case.

II. The In-Office Interview

When the client is first in the office, we have them fill out the Confidential New Criminal Case Interview Sheet. We obtain background information such as their name, address, the offenses charged, date of the person's arrest, other witnesses, statements given to them by the police, their occupation and information regarding prior criminal convictions and 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. If they refuse to provide information you may have a problem client.

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. The client may have pending serious criminal charges in another state or country. I usually open up our statute book and show the clients the specific language of the offense they are charged with and explain to them the maximum penalties that could be imposed. By understanding the charges they are facing, my clients are more likely to realize the seriousness of the offense and pay our retainer.

III. Being Retained (Paid)

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, information on IDRC, and information regarding substance abuse treatment, if applicable.

Famous Beverly Hills attorney Jay Foonberg writes: The fee: “Get it Up Front.” This is the best time to obtain your fee while your client is in fear and is in jeopardy. If you are owed money after the case is over, you will never get it. The written fee agreement also protects you from clients that demand that you appeal or provide work other than what is set forth in the retainer agreement.

Once we receive our retainer, 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 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. However, we usually recommend the client call the court, plead not guilty and make the appearance in drunk driving cases or other charges. It makes it easier for our law office to obtain our own adjournment later on, if necessary, rather than having the law office call a second time and ask for a second adjournment. If the case involves the Motor Vehicle Commission (MVC) and suspension, we sometimes prepare a subpoena to the MVC. We check the Lawyers Diary to determine who are the judges and prosecutors for the 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 have our clients serve the subpoenas on the MVC, insurance companies or other entities. 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 MVC Abstract. This provides us with information for mitigation and penalties and also provides information to be considered by the judge in sentencing

Law is a business. Municipal court could be very lucrative if you provide competent representation and satisfy your client. I try to impress my clients and hope they will send additional clients.

IV. Post Interview Work

Conditional discharges are available to clients charged with drug offenses who have never previously been arrested or previously convicted of the drug offense. Again, to avoid embarrassment it is a good idea to speak with the prosecutor and the police officer because they may have a criminal abstract to indicate that the client is not eligible for conditional discharge.

If the matter is still at the indictable level, we make application for Pre-Trial Intervention. Unfortunately, PTI is not available if the criminal charges are downgraded and not indictable. We also make a Motion to Suppress where there is a question regarding the validity of a stop or search. You can also make a Motion to Dismiss on De Minimis Infractions N.J.S.A 2C:2-11 for non-substantial offenses (i.e. shoplifting one candy bar). Any other Motions to Dismiss should be made in writing such as statute of limitations or lack of jurisdiction.

If the client has prior offenses where the client plead guilty, we may make a Motion to Vacate the plea if the defendant was not informed of his rights as required under Rule 7:4-2b. The post-conviction relief application can be made under Rule 3:22 and Rule 7.

If the matter involves a private citizen complaint, you should also send a discovery letter directly to the complainant, then follow it up with a telephone call and possibly a motion to compel discovery.

Oftentimes in cases that deal with just one triable issue such as the admissibility of a blood test result in alcohol or drugs, you 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 you a three-hour trial on a complicated case. If the court rules against you in the Motion in Limine you can enter a guilty plea contingent upon reserving your right to appeal on that one issue.

V. Discovery Phase

Oftentimes we do not receive all of the discovery that we request. We send a letter to the prosecutor requesting additional discovery pursuant to Rule 7:4-2g and request that the discovery be provided within 10 days. If we do not receive the discovery within 10 days then we may make a motion to compel discovery. We thus make a motion to compel discovery pursuant to State v. Holup 253 NJ Super. 320 (App Div 1992)

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 could not testify if the witness provides an inconsistent statement but our law clerks could testify. I sometimes speak to friendly witnesses myself later to make a decision to determine whether or not the witnesses are credible. You must protect yourself from looking like a fool. Oftentimes the clients are not telling the truth and the witnesses are not telling the truth.

If the client has multiple charges in other towns arising from the same client, you can make a motion to the assignment judge to consolidate the case in one court. In criminal cases where your client was intoxicated, you can make a motion under ATRA- Alcohol Treatment and Rehabilitation Act for treatment in lieu of jail and dismissal charges.

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

In drunk driving cases we review the videotape with our client prior to the trial date and make arrangements to retain an expert. Prior to trial you should determine who the trial judge and prosecutor will be. It is very important to know your judge and to discuss with other attorneys familiar with the judge how your

trial judge handles cases and sentencing. It is also a good idea to know the prosecutor's position on your case- such as the merger of a CDS in motor vehicle charge.

VI. Preparing for Court

If it is a drug case, we may 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 town where there is only one prosecutor we will call the municipal court prosecutor ahead of time to see if a matter can be worked out or plea bargained. Municipal prosecutors work part time and are not compensated for the many telephone calls they get in their offices. If you do call Municipal prosecutors remember they do not have any of the files in their offices and are too busy to discuss a detailed case.

If you discover a favorable case, make a copy for the judge, prosecutor, and client. Never assume the part time prosecutor or judge is familiar with all the laws ex. State v. Lightfoot – cannot be sentenced as a second offender if not convicted of first offense prior to second offense

We 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. On the day of the trial, I bring a huge brief case containing my equipment for battle: Court Rules (GANN edition); the Police Manual (GANN edition), the Police Manual (GANN edition), Evidence Book (GANN edition), my case file, and my cumulative folder on the topic of law. 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, drug possession, assault, and careless driving. The New Jersey Lawyers Diary contains a list of points and a list of maximum/minimum penalties. We make a photocopy of this area, reduce it and tape it inside our Police Manual so that we have a handy reference for points. We also reduce and tape inside the Police Manual the accident chart, which describes the different numerical codes on the accident report. We also tape inside the Police Manual the MVC Municipal Court Guide which sets forth the identifying numbers of the different towns and

courts throughout the State of New Jersey, to determine where the prior violations took place that are set forth on the DMV abstract.

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

When you receive the hearing notice 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. You also must make sure that your client is prepared and looks 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. There is no prohibition against speaking with State's witnesses. Outside of the courtroom, I usually call out the name of the non-law enforcement State's witnesses to determine what their version of the facts are. If you know you are going to have a trial or will be late, attempt to have the case marked ready hold for an hour late, otherwise you will be sitting around for a long period of time. If you have an excellent trial issue but believe the judge is going to rule against you, bring an appeal notice with you 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.

VII. Plea to a Lesser Defense

If your client is going to enter a guilty plead to any defense, it is important they understand what the offense is and put a factual basis on the record. You will be embarrassed if your client is pleading guilty to a drunk driving case and the judge asked your client what he had to drink, the client insists he only had one beer. The judge will send you back to your seat and must refuse to take the guilty plea unless an adequate factual basis is put on the record.

When your case is called, speak clearly before the court, providing your name and spelling out your name and where you are located. The judges like to know the names of new or unfamiliar attorneys. Your name is your future and announcing it also provides free publicity for yourself. The judges and prosecutors want to move the calendar. However, your obligation is always to

your client. Sometimes you have nothing to lose by trying a case. Courts are forbidden from increasing penalties merely because someone excused their constitutional right to a trial.

Having previously obtained for my client their favorable background, I usually put on the record reasons why the judge should give him the minimum penalties. In Motor Vehicle cases, if the charges are to be dismissed by plea bargain make sure the prosecutor writes dismissed, rather than merged. If the matter involves an accident, I ask that the court indicate on the back of the ticket that the guilty plea is not to be used in a civil matter.

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.

VIII. Conclusion

Whether or not you have a trial or there is a plea to reduce the charge, you wish to walk out knowing you did the best you could for your client. Even if you lose, you want to have been such an articulate advocate that your client walks out saying my attorney is great but the judge is wrong. Always be innovative and prepare new arguments. Unfortunately, plea-bargaining is still prohibited in drunk driving and drug cases although it is perfectly acceptable in murder cases, selling heroin and defacing street signs. Hopefully, soon the Supreme Court will change this archaic rule. You must be able to show your ingenuity and desire to win. As of this publication, there are still no DMV points to 39:4-67, "Interface with Traffic," which carries only a small fine.

We handle a substantial amount of municipal court and personal injury cases and have put case law and certain legal defenses on our website www.NJLaws.com. If you have an overly difficult case and have problems handling it, do thorough research or refer the case out.

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 municipal court and litigation topics. .

Kenneth Vercammen is the 2008 Municipal Court Attorney of the Year by the Middlesex County Bar Association. He was selected one of only three attorneys as a Super Lawyer 2008 in NJ Monthly in the Criminal – DWI category. Kenneth Vercammen was the NJ State Bar Municipal Court Attorney of the Year and past president of the Middlesex County Municipal Prosecutor's Association.□□ He is the past chair of the NJ State Bar Association Municipal Court Section. He is the Deputy chair of the ABA Criminal Law committee, GP Division.

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Kenneth Vercammen was selected one of only three attorneys as a Super Lawyer 2007-2008 in NJ Monthly in the Criminal - DWI. Kenneth Vercammen was the NJ State Bar Municipal Court Attorney of the Year and past president of the Middlesex County Municipal Prosecutor's Association.□□ He is the past chair of the NJ State Bar Association Municipal Court Section. He is the Deputy chair of the ABA Criminal Law committee, GP Division.

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