

HANDLING THE CRIMINAL CASE

BY KENNETH A. VERCAMMEN

I. The Telephone Call and Scheduling the Interview

Misdemeanor level Criminal and traffic Courts are a great place where 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 Drug Possession, Driving While Suspended, DWI or Assault. While defense of criminal 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 plead guilty and avoid trial, 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 Commissions. 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, 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/ 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 and penalties and also provides information to be considered by the judge in sentencing

Law is a business. Criminal 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

Many states have programs for first time offenders who have never previously been arrested or previously convicted of a criminal offense. Again, to avoid embarrassment it is a good idea to speak with the prosecutor/ district attorney and the police officer because they may have a criminal abstract to indicate that the client is not eligible for a diversions type program. 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 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 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.

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.

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

In drunk driving cases you should review the videotape with the 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, you should make an objection to the entry of the lab certificate as evidence at trial. You 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 Criminal prosecutors in lower courts work part time and are not compensated for the many telephone calls they get in their offices. If you do call Criminal 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. You should prepare a Subpoena ad Testificandum for witnesses to testify and Subpoena Duces Tecum for witnesses to bring documents. You should 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, drug possession, assault, and careless driving.

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. 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.

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. Often the police officer is on vacation, retired, or suspended and this may assist your ability to work out a satisfactory arrangement for your clients.

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 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 plea to an offense, 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 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.

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. We handle a substantial amount of criminal 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.

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