

**Drug and DWI Defense
Forms and Pleadings
New Jersey Specific**

By Kenneth Vercammen, Esq., Edison, NJ

- Section 1 Pre-Interview**
- Section 2 Office Interview and Preparing Notices to the Court and Prosecutor**
- Section 3 Pretrial Motions**
- Section 4 Trial Preparation**
- Section 5 Trial**
- Section 6 Sentencing and Post Trial**
- Section 7 More Supreme Court Case Law and Federal Statutes**
- Section 8 Marketing the DWI & Drug Defense Practice**



®NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION

For over 50 years, the New Jersey Institute for Continuing Legal Education, a division of the NJSBA, has served the needs of the New Jersey bench and bar. From seminars and legal manuals to CLE On-Demand videos and other educational tools, our products are designed to provide the latest strategies, expert advice, and guidance to practitioners at every stage in their career.

Our success in providing the legal community with the highest quality educational products would not be possible without the countless attorneys, doctors, dignitaries, and other legal experts who volunteer their efforts to serve as lecturers and authors. NJICLE is proud to be the conduit through which they share their knowledge, skills, and expertise with their fellow professionals.

For more information about NJICLE seminars and Publications, please visit NJICLE.com.

The material contained in this publication is for educational purposes only and is not intended to serve as a substitute for the professional services an attorney would normally provide to a client, including up to the minute legal research.

©2020 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a Division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.

Table of Contents

Section 1 Pre-Interview

| | |
|---|----|
| The Telephone Call and Scheduling the Interview | 1 |
| Scheduling an Appointment for Criminal /Traffic Ticket/Municipal Court with Potential Clients Callers | 3 |
| Municipal Court/Traffic Ticket/Criminal Intake Callers Form - Form 1 | 3 |
| Appointment Letter for DWI/Criminal Court/Traffic Representation - Form 2 | 5 |
| Municipal Court Interview Questionnaire – Form 3..... | 6 |
| Confidential DWI Interview Questionnaire Form 4 | 9 |
| Calls from Staff to Potential Clients to Confirm Appointment | 19 |
| Suggestions for Staff When Reviewing Criminal/Traffic Interview Form | 21 |
| Suggestions for Staff for Walk-Ins – What to Do..... | 21 |

Section 2 Office Interview and Preparing Notices to the Court and Prosecutor

| | |
|---|----|
| Preparing for the Attorney-Client Office Interview..... | 23 |
| The In-Office Interview | 23 |
| Potential Issues Regarding Attorney-Client Privilege – RPC 1.6..... | 24 |
| Being Retained (Paid) | 25 |
| Fees | 27 |
| Criminal Retainer Agreement - Form 5 | 29 |
| Cover Letter for Criminal Retainer Agreement (Fee not yet Paid) | 33 |
| Steps to take after being Retained/Paid | 33 |
| Advising the Client to Remain Silent After the Arrest..... | 34 |
| Preparing The Letter Of Representation/Discovery Letter | 34 |
| Criminal Indictable and Disorderly Offense Penalties Chart - Give to Client | 36 |
| Discovery Letter - Form 6 | 37 |
| Calling Court to Confirm Letter of Re Received..... | 37 |
| What to do if you are not Retained | 38 |
| Client’s To-Do Items before Court..... | 38 |
| Indictable Cases – Call the Prosecutor..... | 38 |
| Co-Defendants | 39 |
| Calling Potential Clients to follow up on Retainers and to Seek Payment of Fees; Sending No Fee Letters..... | 39 |
| Pay Our Fees And Sending No Fee Letters | 40 |
| No Fee Letter | |
| Municipal Court/Traffic Representation Fee Not Received [No Fee Letter Municipal Court] - Form 7 | 40 |
| Post-Interview Work | 41 |

| | |
|--|----|
| Telephone Communications with Clients | 41 |
| Make Detailed Notes of All Calls Out | 41 |
| Tips for Making Calls to Clients | 42 |
| Client Fill Out DWI Questionnaire – Form 8 | 44 |
| Don’t Take Cases You Can’t Handle | 45 |
| Immigration Issues | 45 |
| Miscellaneous Issues Concerning Defenses..... | 45 |
| Refusal Defense | 45 |
| Photos of Client Stop Location | 46 |
| Visiting the Scene of the Crime/Accident..... | 46 |
| Speedy Trial..... | 46 |
| Miranda Questions..... | 46 |
| Stop and Frisk | 47 |
| Objection to Scientific Evidence | 47 |
| Obtaining Additional Discovery | 48 |

Section 3 Pretrial Motions

| | |
|---|----|
| Top 10 Tips for Defending the DWI Blood and Urine Case | 49 |
| Notice of Objection to Lab Reports | 51 |
| If Warrant in Blood Cases, After Discovery is Received, File a Brief in Opposition to The Blood Taken Without a Warrant..... | 52 |
| Request for DWI ALCOTEST Discovery & Letter of Representation to Court – From 9..... | 52 |
| Schedule A Discovery Schedule- [Discovery List: DWI Alcotest 7110 Cases] | |
| Breath Machine Discovery Request-ALCOTEST | 53 |
| Right To Know Law/Open Public Records Law (OPRA) Public Records Request – Field Sobriety - Form 10 | 57 |
| DWI Notice Of Motions - Form 11 | 59 |
| Notice Of Pretrial Motions – CDS - Form 12 | 62 |
| Notice Of Pretrial Motions Blood Test - Form 13 | 64 |
| Pretrial Motions – Blood | 64 |
| Letter to Client Enclosing Discovery from Prosecution – Form 14 | 66 |
| Reciprocal Discovery to Prosecution Letter - Form 15 | 66 |
| Notice of Specific Criminal Code Defenses - Form 16 | 67 |
| Letter to Client Recommend DWI Expert - Form 17 | 67 |
| Letter to Client To Advise Hearing Date - Form 18 | 68 |
| File Your Brief to Challenge the Stop of Vehicle..... | 69 |
| Suppression Motion - Form 19 | 69 |
| Motion to Suppress Statements: Violation of Miranda Rights - Form 20 | 70 |
| No Discovery: Dismissal Motion Re: Failure to Provide Discovery - Form 21 | 71 |
| Certification in Support of Motion to Dismiss for Failure to Provide Discovery | 72 |

| | |
|--|----|
| Order of Dismissal with Prejudice and Compel Discovery - Form 22 | 73 |
| Motion for Conditional Discharge First-Time Drug Offender Drug Offender – Form 23 | 74 |
| Motion for Civil Reservation if Accident - Form 24 | 75 |
| Objection to Lab Certificate in Drug or Blood Case - Form 25 | 76 |
| Order to Mark Case Try or Dismiss if State Not Ready to Proceed - Form 26 | 77 |
| Brief on Constructive Possession of Drugs in a Criminal Case - Form 27 | 77 |
| Brief to Suppress Blood Sample and Objection to Lab Report - Form 28 | 79 |
| The State Must Prove Chain of Custody in a Criminal or Blood Case | 82 |
| N.J.R.E. 802 Hearsay Rule | 83 |
| N.J.R.E. 501 Privilege of the Accused..... | 83 |
| Patient And Physician Privilege May Render The Hospital Blood Results Confidential If No Subpoena Or Court Order..... | 84 |
| Miranda Brief in Support of Motion to Suppress Statements - Form 29 | 85 |
| What is Interrogation? | 86 |
| Other Motions and Motions Generally | 87 |
| Pick Your Battles | 87 |
| Notice of Motion to Compel the Prosecutor to Fingerprint and Conduct DNA Test - Form 30 | 88 |
| Letter Re: No Representation - Form 31 | 88 |
| Cover Letter Enclosing Criminal Statutes to Client – Form 32 | 89 |
| Request to Adjourn so Defendant Can Retain New Attorney - Form 33 | 90 |
| Cover Letter to Client Enclosing Arrest Stop Video - Form 34 | 90 |
| Letter Recommending Substance Abuse & Inpatient Treatment - Form 35 | 91 |
| Brief - Objection to Drunken Consent | 91 |
| DWI-Motion for Additional Discovery - Form 36 | 95 |
| Substitution of Attorney - Form 37 | 95 |
| Acknowledgement of Receipt of Documents – Form 38..... | 96 |
| Lincoln Letter - No Charge Form 39 | 96 |
| Letter Regarding Client Referral Out - Form 40 | 96 |

Section 4 Trial Preparation

| | |
|--|-----|
| Watch the Field Sobriety Stop Video | 99 |
| Follow Up on Missing Discovery | 99 |
| Preparing Witnesses Subpoenas | 99 |
| Preparing for Court | 100 |
| Going to Court: What Attorneys Should Bring to Court (or at least keep in car) | 100 |
| RPC 1.3 Diligence | 101 |
| Witness and Subpoena Instructions | 101 |
| Subpoena Duces Tecum (Records) - Form 41 | 102 |
| Subpoena Letter for Records – Form 42 | 103 |

| | |
|---|-----|
| Authorization & Request for Certified Hospital and Medical Records – Form 43 | 103 |
| Target Vehicle Identification in Speeding | 107 |
| Proper Working Order of Speed Devices..... | 107 |
| Qualified Radar/Speed Measurement Operator? | 108 |
| Speeding Defenses..... | 109 |
| Letter to Client to Prepare Cross-Examination Questions – Form 44 | 109 |
| Conflict of Interest: Current Clients | 109 |
| RPC 1.7 Conflict of Interest: General Rule | 109 |
| Letter to Clients Re: Conflict Representing Co-Defendants in a Drug Case – Form 45..... | 110 |
| Letter to Court Enclosing Witness Name – Form 46..... | 111 |
| Calling Clients: To Remind Them That They Must be on Time for Hearings & Trials | 111 |
| Fax Notice to Court of Delayed Arrival – Form 47..... | 112 |
| Municipal Court Bill – If Client Needs Service Not Covered By The Retainer – Form 48..... | 112 |
| Discovery Request for CDS Testing – Form 49 | 113 |
| Letter to Witness – Form 50..... | 113 |
| Defending a Juvenile Delinquency Case..... | 114 |
| Request for Blood/Urine Discovery – Form 51 | 115 |
| Tips When Discovery is Received/Missing Discovery..... | 117 |
| Request for Missing Discovery Letter – Form 52..... | 118 |
| Brief in Opposition to Alleged DRE Drug Evaluation and in Opposition to Introduction of Lab Report..... | 118 |
| Stop & Arrest & Charge with Under the Influence by Drugs Brief | 119 |
| Drug Recognition Evaluation..... | 120 |
| Chemical Testing..... | 120 |
| Legal Argument..... | 120 |
| I. This Court Should Exclude The Results Of Chemical Analysis In This Case Because The State Fails To Establish Chain Of Possession Or Permit Confrontation Of Indispensable Witnesses | 120 |
| II. Any Chemist’s Opinion Of Synergy Between Drugs And Under Influence Would Be Inconclusive Net Opinion That This Court Should Exclude From Evidence | 123 |
| III. This Court Should Exclude The Drug Influence Evaluation, Because The Report, Prepared For The Purposes Of Creating Trial Evidence, Is Hearsay And Inadmissible | 120 |
| IV. This Court Should Exclude Any Statements By Defendant And Medical History In Testimony And The Drug Influence Evaluation Because The Statements Were Obtained Without Proper Miranda Warnings | 124 |
| V. This Court Should Exclude the Drug Influence Evaluation Because The Drug Recognition Evaluation Technique On Which It Is Based Is Not Generally Accepted In The Scientific Community | 125 |

Section 5 Trial

| | |
|---|-----|
| Did the Judge Read your Brief/ Motion? | 129 |
| Motion in Limine – N.J. Evidence Rule 104 | 129 |
| N.J.R.E. 104 Preliminary Questions | 129 |
| Completing Plea Form for Traffic/Disorderly Persons Offenses | 130 |
| Criminal Indictable Offense Pleas | 130 |
| What Should Clients Say to the Judge at Trial or a Plea | 130 |
| Appearance in Front of the Judge | 131 |
| New Jersey Rules of Evidence Relating to Trial | 132 |
| N.J.R.E. 803 Hearsay Exceptions not Dependent on Declarant's Unavailability | 132 |
| N.J.R.E. 807 Discretion of Judge to Exclude Evidence Under Certain Exceptions | 136 |
| N.J.R.E. 401 Definition of “Relevant Evidence” | 137 |
| N.J.R.E. 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time | 137 |
| N.J.R.E. 501 Privilege of Accused | 137 |
| N.J.R.E. 502 Definition of Incrimination | 137 |
| N.J.R.E. 106 Remainder of or Related Writings or Recorded Statements | 138 |
| Field Sobriety Tests | 138 |
| The Standard Field Sobriety Tests - NHSTA - Considerations | 138 |
| DWI Detection And Standardized Field Sobriety Testing (SFST) Glossary of SFST Terms | 139 |
| Romberg’s Test | 142 |
| Sample DWI Cross-Examination Questions | 142 |
| Sample DWI Questions Regarding Under the Influence of CDS | 145 |
| Objections to Witness Examination | 145 |
| N.J.R.E. 615 Sequestration of Witnesses | 146 |
| N.J.R.E. 702 Testimony by Experts | 146 |
| N.J.R.E. 703 Basis of Opinion Testimony by Experts | 146 |
| Plea to a Lesser Defense | 146 |
| Bring a Proposed Order to Court on Discovery | 147 |
| Immigration Concerns Arising from Guilty Plea | 147 |
| Relevant Case Law Concerning Admissibility | 148 |
| US Supreme Court Rules Lab Report Not Admissible in Criminal Case | 148 |
| Melendez-Diaz v. Mass, 129 S. Ct. 2527 (2009) | 148 |
| Lab Report Not Admissible in DWI Case | 148 |
| Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011) | 148 |

Section 6 Sentencing and Post Trial

| | |
|---------------------------------|-----|
| Sentencing | 151 |
| Probation in Lieu of Jail | 151 |

| | |
|--|-----|
| Letter to Client Regarding Sentencing and Duties - Form 53 | 152 |
| Letter Thanking Witness - Form 54..... | 153 |
| End-of-Case Letter/Expungement Recommendation - Form 55 | 153 |
| End-of-Case Client Questionnaire - Form 56 | 154 |
| Letter To Client Re: Deadline and Attorney Fee for Appeal - Form 57..... | 156 |
| Letter To Client Re: No Show in Court - Form 58..... | 158 |
| Order to Be Relieved as Counsel for Clients Who Will Not Cooperate - Form 59 | 159 |
| File Retention..... | 159 |
| Ineffective Assistance of Counsel..... | 163 |

Section 7 Additional Supreme Court Case Law and Federal Statutes

| | |
|---|-----|
| Free Legal Research..... | 165 |
| Relevant U.S. Supreme Court Case Law Headnotes | 165 |
| Williams v. Illinois, 132 S. Ct. 2221 (2012) – DNA Admissible and No Crawford Violations | 165 |
| Terry v. Ohio, 88 S. Ct. 1868 (1968)-Stop and Frisk | 169 |
| Navarette v. California, 134 S.Ct. 1683 (2014)-Permitted Stops Based On 911 Calls ... | 169 |
| Michigan Department of State Police v. Sitz, 110 S. Ct. 2481 (1990) DWI Road-Blocks Only Allowed If Detailed Procedures Followed..... | 170 |
| Brown v. Texas, 443 US 47 (1979)-It Was Not A Criminal Offense Where a Man in Texas Refused To Show Police ID | 171 |
| Hibel v. Sixth Judicial District Court, 124 S. Ct. 2451 (2004)-Requiring Suspect To Disclose Name is Not Fourth Amendment Violation..... | 172 |
| California v. Trombetta, 467 US 479 (1984)-Police Are Not Required To Preserve the Breath Sample | 174 |
| McCarthy v. United States, 89 S. Ct. 1166, 1171 (1969)-A Guilty Plea Must Be Voluntary | 175 |
| Delaware v. Prouse, 440 U.S. 648 (1979)-Police Can't Do Stop Checks Of Cars For Driver's License And Registration Unless Reasonable Suspicion..... | 176 |
| Birchfield v. North Dakota, 136 S. Ct. 2160 (2016)-US Supreme Court Permits DWI Breath Tests, But Rejects Blood Test Without Warrant | 177 |
| Relevant Federal Statutes..... | 180 |
| 36 C.F.R. 4.23(a)-Applies State DWI Laws To Federal Parks, Such As Sandy Hook, NJ | 180 |
| Assimilative Crimes Act, 18 U.S.C. § 13-Offenses on Federal and Military Level..... | 182 |
| 21 U.S.C.A. § 804 Penalties for Simple Drug Possession Under Federal Law (Includes Sandy Hook, N.J., Gateway Recreation Area and Other Federal Parks and Property) ... | 184 |
| Immigration and Refugee Protection Act of Canada..... | 186 |

Section 8 Marketing the DWI & Drug Defense practice

| | |
|---|-----|
| Calling Clients to Follow up After End-of-Case Sent | 187 |
|---|-----|

| | |
|--|-----|
| Business Card for Potential DWI/Drug Offense Clients--the Fish Card | 187 |
| The Fish Card Says: Advise on Arrest for a Criminal Violation | 188 |
| Practice Your Arguments and Public Speaking..... | 188 |
| Rules of Professional Conduct Relating to Attorney Advertising and Marketing..... | 189 |
| RPC 7.1 Communications Concerning a Lawyer’s Service | 189 |
| RPC 7.2 Advertising | 190 |
| Calendar Cards..... | 191 |
| RPC 7.3 Personal Contact with Prospective Clients..... | 191 |
| RPC 7.4 Communication of Fields of Practice and Certification | 194 |
| RPC 7.5 Firm Names and Letterheads..... | 195 |
| Additional Marketing Ideas | 196 |
| Reception Areas | 197 |
| New DWI Statute – Revises certain drunk driving penalties; expands use of ignition interlock devices..... | 198 |
| Conclusion | 211 |
| Acknowledgements | 212 |
| Index of Forms..... | 213 |