

MUNICIPAL COURT PRACTICE

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I. Why Municipal Court Practice?

A. According to the New Jersey Judiciary Annual Report 2011-2012:

- Court Year 2012 Municipal Court Filings
- Case Type Filings
- Indictable * 198,914 (transferred to Superior)
- Disorderly/Petty Disorderly Persons 426,719
- Other Non-Traffic 219,381
- DWI 35,063
- Other Traffic 2,764,573
- Parking 2,485,204
- **Total 6,129,854**

B. Even if you are working at a general practice, family law, personal injury, or real estate firm, etc., you may be asked to work on the occasional Municipal Court case.

Municipal Court practice can be challenging yet rewarding. Clients may be facing penalties such as motor vehicle points, loss of driving privileges, and/or a criminal record.

Therefore, it is incumbent on the law practitioner to understand the Municipal Court system in order to effectively represent clients, successfully resolve cases, and professionally interact with court staff.

II. Common Municipal Court Cases

- A. Traffic violations: These are offenses under Title 39 of the Motor Vehicle Code of New Jersey. Examples are speeding, careless driving, and DWI.
- B. Disorderly Persons offenses: These are offenses under the 2C Code of Criminal Justice. They are less serious than 4th degree crimes but can still carry penalties such as jail time, probation, and/or loss of driving privileges. A conviction for a Disorderly Persons offense would be reported on an individual's criminal history search. Examples are drug possession, shoplifting, simple assault, and harassment.
- C. Local municipal ordinances: These are not criminal offenses but are instead enacted by the town. However, there can be some overlap between a local ordinance and a Title 39 or 2C violation, so it is important to make sure of the exact violation(s) during client intake.
- D. Municipal Court Mediation program: For offenses such trespass, harassment, animal or pet complaints, property disputes, bad checks, and criminal mischief, etc. Through this program, cases can be resolved by a mediator instead of a judge. This could help your client avoid a conviction for a disorderly persons offense.

III. Client Intake and Retention

- A. Retainer agreement: All cases in NJ should have a written retainer agreement signed by the client.
- B. Retainer fee: It is common practice in NJ to handle Municipal Court cases for a flat fee.

Practice tip: Always get the fee upon retention.

- C. Client Intake:
- Client's contact information;
 - Name of the court/town/arresting agency;
 - Court date if known;
 - Summons/complaint numbers;
 - Driver's license number;
 - Client's version of events;
 - Client's prior convictions, if any;
 - Client's immigration status;
 - Make copies of: tickets and summonses, court notices, driver's licenses, police reports, breath test results, insurance cards, registrations cards, etc., when applicable.

Practice tip: The more information that you are able to collect at the beginning of the case can save time later. Making copies of critical documents upon retention can save court appearances and can even mean the difference in the outcome of a case.

- D. Letter of representation: Once retained, it is important to immediately file a letter of representation with the court. This can be done by fax.
- E. Order the client's motor vehicle abstract when possible. A client might not accurately recall his or her driving history from memory. Not all courts will provide an abstract before or during court. Therefore, to avoid unnecessary complications, it is prudent to order an abstract from the Motor Vehicle Commission. The request form can be found at: <http://www.state.nj.us/mvc/pdf/Licenses/DO-21.pdf>

IV. Discovery

- A. A discovery request can also be sent by fax. Case law suggests that the discovery request is to be served on the Municipal Prosecutor c/o the Municipal Court.
- B. Discovery in Municipal Court is governed by Court Rule 7:7-7.
- C. Court Rule 7:7-7(h) states: “No motion for discovery shall be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.”
- D. Note that under 7:7-7(b), the defendant may be required to provide discovery to the prosecutor in certain cases, such as names and addresses of witnesses and expert witness reports.

V. Disorderly Persons Offenses

- A. Penalties:
 - Up to 6 months in jail possible.
 - Up to \$1,000 fine possible.
 - Loss of driving privileges possible for certain offenses such as drug possession.
 - Conviction will appear on a criminal history search.
- B. Diversionary programs: NJ has two types of diversionary programs in Municipal Court. Both programs allow the defendant to avoid a conviction if they complete the terms of the program.
 - Goal is to keep your client’s record clean.
 - First time offenders get “one bite at the apple”.
 - Must abide by certain requirements for a certain length of time.
 - The type of program depends on the offense.
- C. Conditional Discharge:
 - Available for drug offenses.
 - Supervisory period could be 6 months to 2 years.
 - Defendant obligated to pay fines and court costs.
 - Defendant could also be required to report for drug testing.
- D. Conditional Dismissal:
 - Available for non-violent, non-drug offenses.
 - Defendant must enter a guilty plea.

VI. Driving While Intoxicated

- A. Mandatory Penalties (<http://www.state.nj.us/mvc/Violations/dui.htm>):

Alcohol or drug related DUI with BAC of 0.10% or greater

License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
7 months– 1 year	\$300–\$500 fine \$230 IDRC* fee \$100 to drunk driving fund \$100 to AERF* \$1,000/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	Up to 30 days	12–48 hours IDRC* BAC 0.15% or greater: ignition interlock device during license suspension and 6 months - 1 year following restoration

Alcohol or drug related DUI with BAC greater than 0.08% but less than 0.10%

License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
3 months	\$250–\$400 fine \$230 IDRC* fee \$100 to drunk driving fund \$100 to AERF* \$1,000/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	Up to 30 days	12–48 hours IDRC*

Repeated DUI convictions				
Offense	License loss	Fines, fees & surcharges	Prison term	Community service, IDRC & Interlock
2nd offense within 10 years	2 years	\$500–\$1,000 fine \$280 IDRC* fee \$100 to drunk driving fund \$100 to AERF* \$1,000/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	48 hours–90 days	30 days CS 12–48 hours IDRC* Ignition interlock device during license suspension and 1-3 years following restoration
3rd offense within 10 years of 2nd offense	10 years	\$1,000 fine \$280 IDRC* fee \$100 to drunk driving fund \$100 to AERF* \$1,500/year (for 3 years) surcharge \$75 to Neighborhood Services Fund	180 days	Up to 90 days CS (can reduce period of imprisonment) 12–48 hours IDRC* Ignition interlock device during license suspension and 1-3 years following restoration

B. Common defenses to DWI charges:

- Probable cause for the stop.
- Field Sobriety Testing.
- 20 minute observation period.
- Operation of the Alcotest machine.
- Discovery issues.

C. The most important case you should know when handling a DWI case is State v. Chun, 194 N.J. 54, (2008). This case discussed operational and discovery issues relating to the current Alcotest machine. When reviewing discovery, one should look for the “foundational documents.” They are:

- (1) Calibrating Unit, New Standard Solution Report, most recent change, and the operator's credentials of the officer who performed that change;
- (2) Certificate of Analysis 0.10 Percent Solution used in New Solution Report;
- (3) Draeger Safety Certificate of Accuracy Alcotest CU34 Simulator;
- (4) Draeger Safety Certificate of Accuracy Alcotest 7110 Temperature Probe;
- (5) Draeger Safety Certificate of Accuracy Alcotest 7110 Instrument (unless more relevant NJ Calibration Records (including both Parts I and II are offered));
- (6) Calibration Check (including both control tests and linearity tests and the credentials of the operator/coordinator who performed the tests);
- (7) Certificate of Analysis 0.10 Percent Solution (used in Calibration-Control);

- (8) Certificate of Analysis 0.04, 0.08, and 0.16 Percent Solution (used in Calibration-Linearity);
- (9) Calibrating Unit, New Standard Solution Report, following Calibration;
- (10) Draeger Safety Certificate of Accuracy Alcotest CU34 Simulator for the three simulators used in the 0.04, 0.08, and 0.16 percent solutions when conducting the Calibration-Linearity tests;
- (11) Draeger Safety Certificate of Accuracy Alcotest 7110 Temperature Probe used in the Calibration tests; and
- (12) Draeger Safety, Ertco-Hart Digital Temperature Measuring System Report of Calibration, NIST traceability.

D. Many other items are discoverable in a DWI case as well. Dashcam videos, police reports, and documentation relating to Field Sobriety Testing are just some examples.

VII. Working with an Expert Witness

A. Expert witnesses are frequently used by defense attorneys in Municipal Court, specifically in DWI cases. The retention of an expert can often help achieve a better result in a case.

B. Examples of experts used are Field Sobriety Test experts, Alcotest experts, and medical experts.

C. The expert will require a fee to review the case and additional fees may apply to author a report and/or testify in court.

Practice tip: Have the client provide the expert fee before hiring the expert.

D. An expert will expect the law office to forward all discovery to him or her for review. If the expert finds any issues in the case, he or she may author a written report. This report and the expert's curriculum vitae should be forwarded to the prosecutor under reciprocal discovery rules. The attorney should also keep a copy in the file and bring it to the next court date(s).

VIII. Motion Practice in Municipal Court

A. Common examples of motions frequently heard in Municipal Court are: motions to suppress, Holup motions, and speedy trial motions.

B. Many motions in Municipal Court can be made orally. However, motions to suppress must be done in writing and served on the prosecutor.

C. Motions to suppress: The goal of a motion to suppress is to exclude evidence from trial. One common example is a motion to suppress breath test results, if the defendant believes that the breath test was not taken in accordance with proper procedures. A motion to suppress can also be made if the defendant wishes to suppress evidence found during an illegal search or to suppress statements made in violation of Miranda rights.

D. Holup motions: “By way of clarification of the situation where discovery has not been provided, we would also recommend that defense counsel serve a motion, on the papers, with certification similar to R. 1:6-2, upon the municipal prosecutor, filing the original with the municipal court seeking an order limiting time for the production of discovery and upon the municipal prosecutor's failure to do so, dismissal of the action. Such an application and the ensuing order would alert the municipal prosecutor and enforcement authorities to their discovery responsibilities and avoid the inconvenience to litigants and witnesses that occurs with such frequency when all parties appear in court for trial. Another salutary affect of such a practice is to expedite the processing of cases by assuring both sides of the certainty of the trial date and eliminating the unnecessary work, expense and delay resulting from the continuance of a case because the discovery process has not been completed.” State v. Holup, 253 N.J.Super. 320, 325 (1992).

E. Speedy trial motions: In situations where multiple adjournment requests are made by the State, one should be familiar with the concepts of the right to a speedy trial. The factors in determining if a defendant's right to a speedy trial was violated are: length of delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant. Barker v. Wingo, 407 U.S. 514 (1972).

If the judge grants the defendant's speedy trial motion, the appropriate remedy is dismissal of the charge(s).

IX. Recent Case Developments

- A. State v. Kuropchak, ___ NJ ___ (A-41-13): The New Jersey Supreme Court ruled that the Drinking Driving Questionnaire and the Drinking Driving Report are inadmissible hearsay outside of the business record exception.
- B. State v. Keaton, ___NJ ___ (A-92-13): In this case, a State Trooper responded to the scene of an accident where the defendant's car was overturned. Since the defendant was receiving medical attention, the Trooper entered the overturned car to look for the defendant's insurance and registration instead of asking the defendant to produce the documents. Once he was inside the car, the Trooper found an illegal gun and marijuana. The trial court denied the defendant's motion to suppress the evidence and the defendant pled guilty. He appealed the trial court's decision to the New Jersey Appellate Division. The Appellate Division ruled that the search of the car was a violation of the Fourth Amendment and reversed the trial court's decision. The New Jersey Supreme Court agreed with the Appellate Division and held that the trooper's decision to enter the car without asking the defendant first was unlawful.
- C. State v. Myers, A-4295-12T4 (September 8, 2015): The odor of marijuana still gives rise to probable cause to search despite the New Jersey Compassionate Use Medical Marijuana Act.
- D. State v. Martinez, A-5019-12T4 (May 15, 2015): Law firm associate asked for an adjournment so that the partner could try the case. Trial court denied the adjournment request and the defendant was convicted. The Appellate Division reversed the conviction and remanded for a new trial.
- E. State v. Perry, A-1767-13 (March 3, 2015) (Unpublished): The Appellate Division ruled that 2C:40-26 (Operating motor vehicle during period of license suspension) does not apply to defendants who have served a period of license suspension for DWI, but have not yet restored their license.
- F. State v. Taylor, A-3923-13T2 (May 11, 2015) (Unpublished): 10 year step down applied to refusal offender who had ten years since his previous DWI offense.
- G. State v. Kane, A-5773-13T1 (February 17, 2015) (Unpublished): The Appellate Division rejected "the State's claim that defense counsel was obligated under R.P.C. 3.3(a)(5) or other ethical rules to spotlight the statute's potential application adverse to his client's interests. The situation here is markedly distinguishable from In re Seelig, 180 N.J. 234 (2004), in which a defense attorney affirmatively misled a municipal judge about the facts in a vehicular case, i.e., whether the victims had died." Id. at 20-21.

X. Other Notable Cases

A. State v. Witt, 435 N.J. Super. 608 (App. Div. 2014): Should the exigent circumstances test be upheld?

B. State v. Denelsbeck, A-5730-12T3 (October 2, 2014): Should a defendant for a fourth offense DWI be entitled to a jury trial?