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DRI Cares

Philadelphia Traffic Court Program By Richard H. Maurer

For the past two years, **White and Williams LLP** has provided pro bono representation for defendants sentenced to jail time by Philadelphia Traffic Court, for major vehicle code violations such as Driving While Operating Privilege is Suspended—DUI Related (DUS). Defending this charge is an uphill battle, not just legally but in terms of the national public policy against driving under the influence. In a recent case, my client's driving record covered 109 pages, including 24 convictions for driving without a license and three prior DUIs. Our clients are not sympathetic, and we don't receive laudatory press for this work. However, I understand the purpose of pro bono representation to be three-fold: (1) providing effective legal help for those who cannot afford it; (2) assisting judicial systems by reducing *pro se* representation; and (3) training lawyers to succeed through ingenuity. While our traffic court program is not photogenic, it satisfies all three goals.

THE REPRESENTATION

On appeal, defendants convicted of traffic court offenses receive a trial *de novo* before a judge of the Court of Common Pleas. The reason driving most of our trial *de novo* work is that traffic court judges take the position that they cannot order alternative punishment such as house arrest or work release. While the statutes authorizing alternative punishment do not exempt traffic court convictions, the path of least resistance is Common Pleas, where judges accept their authority to impose alternative punishment for most vehicle code offenses. In the Common Pleas arena, the court's daily confrontations with weapon offenses, aggravated assault, and other felonies puts our clients' moving violations into a better perspective.

Our cases resolve in three ways: (1) a negotiated plea agreement with the district attorney's office; (2) an open plea, where the court decides the sentence and there are no guarantees; or (3) a trial, which generally lasts about 15 minutes and usually involves testimony by a sole witness—the police officer who made the stop in question. The first outcome is a positive event. Our client receives house arrest, work release, or a few weeks of county time, which is a welcome departure from the 60 day or greater term of incarceration imposed by traffic court. The second outcome is less certain, and we make the absence of guarantees, other than the mandatory minimum sentence, clear to our client. Within that framework, however, there is ample room for creative argument based on a defendant's stable home address, continuing employment, responsibility for child care, and (hopefully) the absence of new vehicle code charges since the incident in question. With few exceptions, we have achieved good results on open pleas, with the court ordering alternative punishment, especially when we are able to bring supervisory personnel into



court to testify about our client's progress with drug and alcohol treatment. The third outcome, a trial, is challenging because Pennsylvania law provides few defenses for DUS, and unless our client was forced to drive by a life-threatening emergency or cannot be identified as the driver, conviction is likely. On a positive note, since a DUS trial does not involve a jury or extensive testimony, judges are less likely to respond to a conviction with jail time, compared to more serious offenses tried to a jury.

CONCLUSION

At a time when large firms generally have fewer small cases appropriate for training, our traffic court program gets lawyers into court in a fast-paced setting where creative advocacy prevents jail time. It is also invigorating to get away from decision-making by committee, and the prevailing "cruise control" of large firm practice. When I return from a successful morning in the Criminal Justice Center, I have had the opportunity to help someone directly, in a setting where the occasional bumps test my fundamental skills as a lawyer. The experience has encouraged me to take a second look at the way I defend class actions and other more complicated cases back in my office. While traffic court appeals will not get this firm on the front page of the legal paper, they have gotten me back in the courtroom, while proving the difference one lawyer can make.

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Published by DRI

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