

DUI DEFENSE – A PRACTICAL APPROACH

Course Instructor – Stacey M. Washington

- I. Introduction – Is a DUI defense practice right for you?
 - a. Factors to consider
 - i. Emotions - Defending clients with possible abuse/addiction problems
 - 1. Society's view
 - 2. Prosecutor's view/role
 - 3. Judge's view/role
 - 4. Your role as attorney
 - 5. Your practice and goals
 - ii. Level of expertise required
 - iii. Resources to use
 - 1. Free versus paid
 - a. Internet
 - b. Subscriptions
 - c. Hard books
 - d. Continuing legal education
 - e. Colleagues
 - 2. Alcohol/substance abuse assessments
 - a. Regular doctor/therapist versus certified specialist
 - b. When to recommend
 - c. HIPAA release
- II. Initial client contact and interview
 - a. typical DUI arrest
 - i. the stop
 - ii. officer's statutory duties upon arrest
 - 1. field sobriety tests
 - 2. chemical rights and tests
 - a. Implied Consent
 - b. refusals
 - 3. the license
 - iii. Right to Counsel
 - iv. Independent chemical tests
 - v. Release from jail – drying out
 - b. Bond and conditions
 - i. Amount
 - ii. Testing
 - iii. tethers
 - c. When the client calls –
 - i. from jail or post-release
 - ii. client attitudes and expectations
 - iii. Initial questions and fact gathering

- iv. Advice to give
 - v. scheduling the office consultation
 - 1. where to meet for the first time
 - 2. presence of third parties/loved ones
 - 3. intake questionnaire
 - d. Fees
 - i. Hourly versus flat
 - ii. How much? What's included in the fee?
 - iii. Oral versus written agreement
 - e. Status of the license
 - i. Temporary driver permit
 - ii. Implied Consent hearing
 - f. Steps once you are retained
 - i. Court pleadings
 - ii. Discovery
 - iii. Driving record
 - iv. Implied Consent hearings and transcripts
- III. Overview of the substantive law and penalties
 - a. Your state's legal limit and various DUI offenses
 - i. Misdemeanors
 - ii. felonies
 - b. Companion or related offenses
 - c. Penalty enhancement and repeat offenders
 - d. Common penalties (statutory and/or judicial)
 - i. Fines, costs, other penalties
 - 1. Victim Impact Panel sessions
 - 2. Minimum jail/prison time
 - 3. Treatment
 - 4. Testing
 - 5. Probation
 - 6. Vehicle immobilization
 - ii. Licensing
 - 1. DMV versus judicial
 - a. License suspension or revocation
 - b. Restricted driving
 - c. Driver Responsibility and reinstatement fees
 - d. Ignition interlock device
 - e. Vehicle immobilization
- IV. Discovery, Defenses, Pretrial Motions
 - a. Time limits
 - i. Misdemeanors
 - ii. Felonies
 - iii. Motions
 - b. Police reports and videos
 - c. Dispatch logs and recordings
 - d. Witness interviews and statements

- e. Accident investigation reports
- f. Discussions with the prosecutor
- g. Visiting the scene
- h. Polygraph testing
- i. Destruction of evidence
- j. Experts
 - i. Accident reconstruction
 - ii. Chemical testing
 - 1. Retrograde extrapolation
- k. Field sobriety tests
- l. Defendant's statements and *Miranda*
- m. Chemical tests
 - i. Breath, blood, urine
 - ii. Independent testing
 - iii. Consent versus warrant
 - 1. Probable cause
 - 2. Who can't consent to blood tests by law?
- n. typical pretrial motions
 - i. the evidentiary hearing
 - 1. officer's testimony
 - 2. defendant's testimony
 - 3. burden of proof
 - ii. the judge and ruling
- o. negotiations/plea bargaining
 - i. goals
 - ii. importance of knowing your prosecutor, judge and jurisdiction

V. Breath and Blood Testing

- a. The breath testing instrument/machine – how much do you need to know about it?
 - i. Administrative rules and other resources
 - ii. Operator training and quality assurance
 - iii. The results and role in the case
- b. cross-examination of the operator
- c. preliminary breath tests
- d. blood tests
 - i. whole blood versus serum
 - ii. hospital tests for treatment
- e. urine tests
- f. medications that may affect blood alcohol content

VI. Trial

- a. Factors to consider
 - i. Likelihood of acquittal or reduction of charge
 - ii. Client expectations
 - iii. Costs
 - iv. Time limits

- b. Bench versus jury
 - c. Strategy and preparation
 - i. Theory
 - ii. Evidence – documents, audio and video recordings, test results, witnesses
 - iii. Jury instructions
 - iv. Burden of proof
 - v. Rules of evidence and objections
 - vi. Pre-trial motions
 - vii. Post-judgment motions
 - d. Jury selection
 - i. Voir dire by judge or attorneys?
 - ii. Knowing the jury pool
 - e. Opening and closing statements
 - f. Sequestration of witnesses
 - g. Cross-examination of arresting officer and other witnesses
 - h. Defense witnesses
 - i. Types
 - ii. Purpose
 - iii. Preparation
 - i. Courtroom style
 - i. Demeanor and decorum
 - ii. Engaging and convincing the jury
 - iii. Traditional versus electronic
 - j. Appeals
 - i. Jurisdiction – felonies versus misdemeanors
 - ii. Appeals of right versus application for leave to appeal
 - iii. Motions
 - iv. Bond
 - v. Standard of review
 - vi. License appeals
 - 1. Administrative hearings
 - 2. Court
- VII. Sentencing
- a. Judicial considerations
 - i. Judge's background and philosophy about DUIs
 - ii. Presentence interview
 - iii. Defendant's pretrial actions
 - 1. Assessments
 - 2. Support groups and treatment
 - 3. Abstinence since arrest
 - 4. Attitude
 - 5. First versus repeat offender
 - 6. New arrests or charges
 - iv. Sentencing memoranda
 - v. Role of defense attorney

- vi. Sentencing hearing
 - vii. Post-sentence
 - b. Sobriety court
 - i. Purpose
 - ii. Eligibility
 - iii. Structure
 - iv. Client considerations
 - v. Case transfers
- VIII. Collateral Consequences
 - i. Job
 - ii. School
 - iii. Loved ones; life
 - iv. Travel
 - v. Out-of-state license
 - vi. Expungement of conviction