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MEMBER CALIFORNIA BAR

I. TRAFFIC CASES IN GENERAL

a. Infractions:

i. Set a court date;

ii. Arraignment;

1. Plea guilty or not guilty

2. Traffic School:

a. If you plead guilty, you are eligible for traffic school if:

i. Not charged with speeding 25 mph or more over than the speed limit;

ii. Not charged with alcohol related or reckless driving; more than one point

iii. Have not attended traffic school in past 18 months.

1. In most bay area courts (except Marin) you must request at arraignment or else you forfeit traffic school.

2. Some bay area counties permit internet traffic school, including San Francisco, Santa Clara county permits internet traffic school but requires that you take an exam in a classroom.

b. Some counties permit you to take traffic school despite having attended traffic school in the past 18 months, to help you keep your license, but few counties permit this.

3. Community Service in lieu of fines:

a. Court may convert fine to community service at specified hourly rate.

4. Request discovery

iii. Trial

1. Officer testifies;

2. You and your witnesses testify;

3. Can record the proceedings yourself with permission;

4. Can Request a trial by declaration whereby you can set out your side of the story in a form provided by the court. If you lose, you can request a trial with the officer present.

iv. If you do not appear:

1. Misdemeanor failure to appear (which can be reduced to an

infraction or dismissed if and when you appear);

2. Civil assessment of \$300.00 in addition to fine (in San Francisco).

v. Appeal of Infractions:

1. Procedure:

- a. File a notice of appeal with the traffic court within 30 days you were found guilty; and
- b. File a settled statement on appeal setting forth issues on appeal within fifteen days of filing the notice of appeal;
- c. Court hearing to settle statement on appeal;
- d. File opening brief in Superior Court;
- e. Prosecution files response;
- f. You file reply;
- g. Appear at hearing.

b. Misdemeanor and felony matters (should hire an attorney)

i. Procedure

1. Arraignment;
2. Trial

ii. If you do not appear;

1. Warrant for your arrest; and
2. Misdemeanor failure to appear.

c. Review the specific elements of the crime in which you are charged to determine whether or not you were in violation of the specific code section

II. SPEEDING

a. Basic Speed Law (V.C. §§ 22350 and 22351)

i. Driving faster than is reasonable or prudent but less than the maximum speed limit

ii. Endanger the safety of persons or property

If you can prove that the speed that you were going, although faster than the posted speed limit, was still safe under the weather and road conditions then you may get an acquittal.

- a. Weather;
- b. Visibility;
- c. Neighborhood;
- d. Traffic;
- e. Road width. This defense does not apply on the freeway for speeds in excess of 65 or 70 mph or on a two lane undivided highway at speeds greater than 55 miles per hour.

b. Maximum Speed Limit. (V.C. § 22349)

i. "[N]o person may drive a vehicle upon a highway at a speed

greater than 65 miles per hour;" "no person may drive a vehicle upon a two-lane, undivided highway at a speed greater than 55 miles per hour ..." (V.C. § 22349).

- c. Speeding in Excess of 100 miles per hour. (V.C. § 22348)
 - i. "Any person who drives a vehicle upon a highway at a speed greater than 100 miles per hour is guilty of an infraction " (V.C. § 22348(b)).
 - ii. Punishment:
 - 1. \$500 fine
 - 2. 30 day license suspension
 - a. In Marin County the court will suspend your license for 30 days if you are convicted of driving in excess of 25 miles over the speed limit.
- d. Speeding Defense:
 - i. Radar / Lidar
 - 1. Radar: Radar uses the rate at which radio waves are reflected off of a moving object to determine its speed.
 - a. Some problems that can arise:
 - i. More than one target: The beam emitted from a radar transmitter is wide and can catch you as well as any other cars that are nearby;
 - ii. Weather: Radar transmitter may have inaccurately obtained a reading off of a leaf blowing in the wind rather than your car;
 - iii. Electrical interference;
 - iv. Calibration problems;
 - v. "Moving mode;"
 - vi. Angle of the beam;
 - 2. Laser / Lidar: Uses a low powered beam of laser light that bounces off of the targeted vehicle and returns to a receiver in the unit.
 - a. Problems:
 - i. Have to be aimed exactly on the same part of the car, otherwise it will give false readings.
 - 3. Radar and Lidar are tough to fight, because they are rarely inaccurate, but you can often win this on a technicality
 - ii. Speed Trap: Traffic and Engineering survey: (to determine safe speeds) (V.C. § 22354 and V.C. § 40802 *et al.*)
 - 1. Must have been conducted within the past 5 years or within the past 7 years so long as the person is certified in Radar and

- Lidar, or 10 years and there is certification by an engineer that the road conditions have not changed.
- 2. Road wider than 40 feet, and not a freeway.
- 3. Some exceptions to (a) and (b):
 - a. Not a school, senior zone, or construction zone (15, 20, 25 mph);
 - i. Not a local street or road;
 - b. The survey must include:
 - i. "Prevailing Speeds" 85th Percentile of drivers;
 - ii. Traffic accidents;
 - iii. Specified "road and/or traffic conditions not readily apparent to the driver."
 - c. If you can show that it was an illegal speed trap, then case dismissed.
- 4. Obtain calibration / certification records for:
 - a. Vehicle;
 - b. The radar device;
 - c. The certification records of the officer
- iii. Photographic Radar:
 - 1. Never had to deal with this in the bay area;
 - 2. But if you do have a case, you would argue:
 - a. The person in the picture is not me;
 - b. No traffic engineering survey;
 - c. Obtain calibration records and try to prove that the calibration was not correct.
 - 3. They have to provide a traffic engineering survey,
- iv. Aircraft Radar:
 - 1. Still need traffic engineering survey;
 - 2. If the aircraft say you speeding and it was not independently verified by a CHP unit on the ground then the airplane pilot will have to come in and testify in addition to the officer that pulled you over.
- v. Pacing:
 - 1. Officer will testify as to his certification in conducting "bumper paces" and will testify that he is never wrong.
 - 2. In order to combat this you would argue or cross examine the officer to show all of the following:
 - a. The distance between the officer and yourself was not constant (he sped up);
 - b. The calibration of his vehicle is not accurate;
- vi. Visual Speed estimation:
 - 1. Courts do not like cases where the officer determined speed solely by making a visual estimation.

III. OTHER MOVING VIOLATIONS:

- a. Stop signs (V.C. § 22450):
 - i. "The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection, or railroad grade crossing shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection. If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway or railroad crossing." (V.C. § 22450(a)).
 - ii. If it is a new sign, hidden sign, or unpainted limit line you may have a defense;
 - iii. Take pictures and bring them into court
- b. Running a Stoplight (V.C. § 21453):
 - i. "A driver facing a steady circular red signal alone shall stop at a marked limit line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection, and shall remain stopped until an indication to proceed is shown." (V.C. § 21453(a))."
 - ii. May be enforced by way of automated traffic enforcement system (V.C. §21455.5):
 - 1. Defenses:
 - a. Signs must be present indicating that automated system is in use. (V.C. § 21455.5 (a)(1)).
 - b. Automated system must be regularly maintained (V.C.§21455.5(2)(c)(2)).
 - c. Methods in which the company that is operating the automated traffic enforcement system. The manufacturer or operator of the system may not be paid per citation or obtain a percentage of the funds generated. (V.C. § 21455.5(g)(1)).
 - d. Length of the yellow light must be in accordance the Department of Transportation standards (V.C. § 21455.7(a));
 - e. Not the driver:
 - i. In San Francisco, the court sends with your citation a declaration that you can fill out and send to the court if you were not the driver. If you may have been the driver, but the picture does not reflect that you were the driver, do not sign the declaration under perjury, but instead argue at trial that the picture is not clear as to who the driver was.
- c. High Occupancy Vehicle (HOV) lanes (V.C. § 21655.5-21655.9):
 - i. Read the signs, some say two or more but many in the bay area say three or more;
 - ii. Can challenge if there is not a current survey.

IV. ALCOHOL RELATED TRAFFIC OFFENSES

a. Open Container laws: (Reported to DMV)

i. Kept in Vehicle by driver or owner (V.C. 23225(a)):

1. Elements:

- a. You were driver of a vehicle;
- b. You were in the vehicle;
- c. The vehicle was on the highway;
- d. The container was in the passenger compartment of the vehicle (not the trunk);
- e. Contained an alcoholic beverage;
- f. Seal broken or its contents partially removed.

2. Marin County Case:

- a. Client had open container of Brandy under her seat;
- b. After a search of her car, she admitted that the Brandy belonged to her and not her passenger;
- c. Case was dismissed;
 - i. No probable cause for the stop or search of the vehicle.

ii. On your person (VC § 23222(a)):

1. Elements:

- a. driving a motor vehicle;
- b. on a highway;
- c. on your person;
- d. contained alcoholic beverage;
- e. Seal of the bottle was broken.

iii. Drinking and driving (V.C. § 23220):

- 1. Difficult to prove, because they have to prove that they saw you drinking from the bottle,

iv. Possession of Marijuana in Vehicle (V.C. § 23222).

v. Under 21 alcohol related offenses:

1. Open Container (VC § 23224):

- a. Punishable as a misdemeanor;
- b. \$500 fine;
- c. up to 30 days in jail
- d. Suspended license for 1 year, or delay ability to get license for 1 year
 - i. 1 year mandatory suspension (for those under 21) also applies to:
 - 1. Possession of alcohol by a minor (B&P Code § 25662);
 - 2. Drunk in Public (PC § 647(f));
 - 3. possession of Marijuana or other illegal drugs (V.C. § 23222 or H & S §11357);
 - 4. Graffiti (P.C. § 594).

- ii. Can get a critical needs license restriction if

alternative transportation is inadequate.

2. Driving Under the Influence (V.C. §§ 23136 and 23140):
 - a. Zero tolerance (V.C. § 23136):
 - i. Prohibits driving a motor vehicle with .01 % BAC;
 - ii. Must take chemical and Preliminary alcohol screening test;
 - iii. License Suspension from 1-3 years.
 - b. DUI with .05% alcohol (V.C. § 23140):
 - i. Prohibits driving a motor vehicle with .05% BAC;
 - ii. Will be reported to DMV.

b. DUI (V.C. §23152):

i. Reckless Driving

1. Dry Reckless: (V.C. § 23103)

- a. Prohibits "[driving] any vehicle ... in willful or wanton disregard for the safety of persons or property."
- b. 2 counts on DMV record;
- c. Not a DUI prior

2. Wet Reckless (V.C. § 23103.5)

- a. Many D.A.'s will reduce if it is .08 or .09, under certain circumstances a reduction can be obtained for higher BAC.
- b. Consumption of alcohol;
- c. Reckless driving
- d. Counts as a prior for DUI purposes but with lesser penalties:
 - i. Reduced fine;
 - ii. 3 month DUI class.

ii. V.C. § 23152(a)

1. Elements:

a. You drove a vehicle:

i. Engine running

1. Circumstantial evidence they can prove you had driven, i.e. car crashed into bushes, or slumped over the wheel with the engine running in the middle of Skyline Blvd;

2. But case dismissed in Marin County

when car on only to have the heater on, and declaration from owner of the residence that defendant slept in his car;

ii. Other driver:

1. If there is another driver in the car

- and there is an accident, it is hard to prove who was driving;
 - 2. Obtained an acquittal because the police could not prove that husband (even though he went through field sobriety tests and went into custody without objection) and not wife was driving and witness said that he saw wife driving.
 - b. You were "under the influence of alcohol and/or drugs."
 - i. If the manner in which you were driving (speeding, swerving, accident) suggest, even if BAC was below .08% that you are under the influence then you can be found guilty on that charge.
 - ii. Under this (a) count can be found guilty if you are under the influence of prescription drugs, over the counter drugs, and (of course) illegal drugs.
 - 1. Officers perform Drug recognition test and chemical (urine or blood) test.
 - 2. Case dismissed because even though person had marijuana in his system, the D.A. could not prove he was "under the influence" because the urine test merely revealed that at some time in the past week he had smoked marijuana.
 - iii. 23152(b)
 - 1. Elements:
 - a. Driving (See above)
 - b. Blood alcohol is at or above a .08%.
 - i. Presumed to have a .08% if test occurred within three hours;
 - ii. But you can often prove it was below .08% at the time of driving if you chugged a couple of drinks immediately before getting into the car and your B.A.C. is close to or at .08%, because the alcohol does not absorb into your blood stream immediately.
 - iv. Felony DUI:
 - a. Like regular DUI but cause bodily injury to another;
 - b. Fourth DUI can also be charged as a felony.
 - c. If kill someone will driving under the influence,

you can be charged with manslaughter or murder.

v. Court punishment:

1. First offense

a. Maximum:

- i. \$ 1,000 fine plus \$2,400 in penalty assessments;
- ii. 6 months in jail;
- iii. 6 month license suspension (used to be 4);
- iv. vehicle impounded;
- v. vehicle interlock;

b. Minimum:

- i. Probation (3 to 5 years);
- ii. \$1,400 in fine and penalty;
- iii. 2 days in jail or work program;
- iv. First offender program (3 month)
- v. License suspension / restriction

2. Second conviction in 10 years:

a. Maximum:

- i. \$1,000 fine plus \$3,000 in penalties;
- ii. One year in jail;
- iii. Two year license suspension by DMV;
- iv. Vehicle impounded;
- v. Vehicle Interlock

b. Minimum:

- i. Probation;
- ii. \$1,700 in fines and penalties;
- iii. 18 or 30 month multiple offender alcohol treatment program;
- iv. Ten days in jail;
- v. Ignition interlock

3. Third or more offenses:

a. Maximum penalties:

- i. \$5,000 fine plus \$12,000 in penalties;
- ii. One year in jail (third) or 16 months (fourth)
- iii. Impoundment of vehicle (90 days);
- iv. Revocation of license for three years;
- v. 30 month alcohol treatment program;

b. Minimum:

- i. 400 in fines;
- ii. 120 days in jail (third) or 180 days (fourth)
- iii. Revocation of driver's license (third) or four year license revocation (fourth);

- iv. Completion of 30 month alcohol treatment program.
- 4. Enhancements
 - a. .15 % BAC increased penalties and classes (used to be .2%) (V.C. § 23578);
 - b. Refusal (V.C. § 23577);
 - c. prior conviction;
 - d. Speeding (V.C. § 23582)
 - i. 20 mph over the prima facie speed limit
 - ii. 30 mph over maximum speed limit
 - iii. Additional 60 days in jail (mandatory)
- 5. Additional info:
 - a. Can refuse the field sobriety test;
 - b. Can refuse the preliminary alcohol screening test;
 - c. Cannot refuse the chemical test (breath, blood, or urine),
 - d. No right to a lawyer before taking test (implied consent),
- vi. DMV Consequences of Drunk Driving:
 - 1. DMV as a result of the MADD lobbying in the late 80's and early 90's set up a system whereby drivers would face license suspension penalties even if they beat their criminal case.
 - 2. Arrest:
 - a. Upon arrest for DUI you are issued a 30 day temporary license;
 - b. Must contact DMV to set up a hearing within 10 days of DUI arrest or citation otherwise you forfeit your ability to contest your violation before the DMV.
 - 3. Burden at hearing:
 - a. DMV has burden of proof by a preponderance of the evidence (50/50) rather than the burden in criminal cases of proof beyond a reasonable doubt.
 - 4. Punishment:
 - a. On a first offense 4 months (after 30 days you can go to DMV and get a restricted license after showing proof that you have enrolled in a first offender program).
 - b. A refusal is automatically a one year suspension
 - c. A second offense in 10 years (used to be 7) will result in a 1 year license suspension. A refusal to take a chemical test results in a two year suspension.

- d. A third offense in 10 years will result in a 1 year license suspension and a refusal will result in a three year suspension.
- 5. Superior Court review:
 - a. Pay \$120 you can get DMV in Sacramento to review denial at local DMV;
 - b. If you lose the DMV hearing, you can get appellate review before the superior court.
- vii. Prior out of state DUI convictions (controlled by interstate compact):
 - 1. Usually (if within 10 years) count as a prior for DMV and court purposes;
 - 2. May in some cases argue that the standards in other state or more strict
 - a. Ohio: Prohibits operating a motor vehicle while under the influence.
 - b. California: Prohibits driving a motor vehicle while under the influence.
 - 3. DMV must prove the prior conviction with court dockets from other state to prove prior out of state conviction.

V. NON POINT TRAFFIC VIOLATIONS

a. MUNI:

i. Fare Evasion:

- 1. If you enter through the back of a muni train without paying or if you cannot show proof of payment, you can be charged with an infraction;
- 2. Fines in the amount of:
 - a. \$35 (first)
 - b. \$55 (second)
 - c. \$75 (third)
- 3. Failure to appear can result in a misdemeanor failure to appear.

ii. Passenger Conduct;

- 1. If you smoke, drink, play music, or interfere with the movement of the train you can be charged with a misdemeanor;
- 2. \$500 fine and/or 6 months in jail.

b. Seatbelt / Seat restraint:

- i. Can be pulled over just for not having a seat belt;
- ii. Failure to have child properly restrained will result in a one point violation with the DMV (VC. §§ 27360 and 27360.5).
 - 1. Under 6 or less than 60 pounds must be restrained in a car seat (can be dismissed if you show proof that you purchased a proper child restraint).

c. Parking tickets;

- i. Recently fines in San Francisco were increased.

ii. Contesting:

1. Can contest by mail and must do so within 21 days of the date on the citation. In so doing it is important to set forth your defense and not that it is simply unfair;
2. Defenses:
 - a. Missing / or obscured signs;
 - b. Paint on curb is worn;
 - c. Vehicle broken down or boxed in;
 - d. Defective parking meter.
 - e. Street sweeper went by before car was parked.
3. Upon denial, set up a hearing with DPT or parking agency.

iii. If you fail to pay or contest:

1. Can withhold registration of vehicle until tickets are paid.
2. Five or more unpaid parking tickets can result in your vehicle being impounded and/or booting of your vehicle. (V.C. § 22651);
3. Can send matter to collections, which may result in levy of assets, i.e. wage garnishment.

d. Equipment; License, and Registration violations

- i. If you show a proof of correction signed off by a law enforcement officer and pay a \$10 fee it will be dismissed.
- e. Pedestrian tickets;
- f. Bicycle: (usually not reported to DMV)
- g. Tickets on federal lands (Presidio or other military installations, and federal parks):
 - i. Usually are not reported to the DMV.
 - ii. Are more serious in that it is a federal offense.

VI. MISDEMEANORS

- a. Reckless Driving (V.C. § 23103);
- b. Speed Contests (V.C. § 23109(a)) or Exhibition of Speed (Vehicle Code § 23109(c));
- c. Failure to Appear (V.C. § 40508)
- d. Driving on a suspended license (V.C. § 14601-14601.5)
 - i. Types:
 1. 14601.1: For any other reason (if for failing to appear can be reduced to infraction);
 2. 14601.2: for DUI;
 3. 14601.3: Habitual Offender (getting tickets while license suspended)
 - ii. General elements:
 1. Drove a motor vehicle;
 2. License was suspended or revoked;
 3. you had knowledge of the suspension or revocation:
 - a. Court and you or your attorney were present; or
 - b. DMV must send you a letter that your privilege to drive is suspended or revoked. Many times your license

abstract will tell you whether or not a letter was sent and whether it was returned for improper address.

iii. Penalties (maximum):

1. \$ 1,000 fine (\$2,000 on second);
2. One point against your license;
3. Court's can order the forfeiture of your vehicle.

e. Driving without a license (V.C. § 12500);

- i. Can often be reduced to the infraction of not having a license in your possession if you present a valid license to the court (V.C. §12951)
- ii. Driving without a license in your possession, V.C. § 12951: court must dismiss upon presenting a license to the court but the court has discretion not to dismiss after the third time.

f. Four or more violations of the same traffic offense (V.C. § 40000.28)

VII. ACCIDENTS

a. DMV point counts:

- i. Unless officer indicates accident was not your fault, you will receive one (1) point on your driving record;
- ii. If leave an accident resulting in injury or death to another will result in two (2) points on driving record and a misdemeanor or felony (V.C. § 20001);
- iii. If leave an accident resulting in property damage will result in two (2) points and a misdemeanor charge (V.C. § 20002).

b. Must have insurance (V.C. § 16028);

- i. No insurance and you get pulled over for something else, you face fines of up to \$1,700.00;
 1. Can show you have insurance and case will get dismissed;
 2. Can get insurance after the fact but before your court date and court will usually greatly reduce the fine;
 3. If the vehicle you are driving is not yours and has no Insurance you will be held responsible, not the owner, but if a vehicle is insured, you, as the driver are insured unless there is an exclusion in their policy (excluding you from driving)
 4. If you are driving an employer's vehicle in the course of your employment and the car is not insured, you can sign the notice to appear on behalf of your employer who then has to establish that the vehicle was insured. (V.C. § 16028(d)).
 5. If you are in an accident and do not have insurance, you could face a one year license suspension.

c. Report all accidents to DMV (V.C. § 16075);

- i. Personal injuries; or
- ii. Property damage in excess of \$500.

d. Exchange information with other driver (V.C. § 16025);

Failure to do so may result in an infraction and \$250 fine, plus greater penalty.

VIII. OTHER DMV ACTIONS:

a. Negligent Operator (V.C. § 12810.5):

i. Point Counts:

1. 4 or more points in 12 months;
 2. 6 or more points in 24 months;
 3. 8 or more points in 36 months.
- ii. If DMV contacts you and indicates that you are a negligent operator, you have a right to a hearing and explain your citations and the importance of your driving privileges to you and your household.
- b. Medical Conditions:
- i. If doctor, law enforcement officer, or family member reports to DMV that you are unfit to drive a vehicle, then the DMV will notify you and provide you with an opportunity for a hearing and/or a driving test.