



Garden State CLE
 21 Winthrop Road • Lawrenceville, New Jersey 08648
 (609) 895-0046 fax- 609-895-1899
Atty2starz@aol.com

Video Course Evaluation Form

Attorney Name _____

Atty ID number for Pennsylvania: _____

Name of Course You Just Watched _____

Please Circle the Appropriate Answer

Instructors: Poor Satisfactory Good Excellent

Materials: Poor Satisfactory Good Excellent

CLE Rating: Poor Satisfactory Good Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

Word #3 was: _____ Word #4 was: _____

What did you like most about the seminar?

What criticisms, if any, do you have?

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

New Jersey Continuing Legal Education
Services presents:

Generation Drunk:



***Drunk-Driving
Sentencing under
New Jersey Law***

LESSON PLAN

Table of Contents

Part I – Sentencing Ranges

Part II – Collateral Consequences

Part III - Technical Issues

Part IV - Prior Offenses

Part V – Post-Conviction Relief

Part VI - School Zone Offenses

Part VII - Plea Bargaining

Part VIII - Advocacy



Part I – Sentencing Ranges

a. First Offense

A DUI non-school-zone defendant who is to be sentenced as a first offender will be subject to a variety of sanctions. These include the following:

| Monetary Sanction | Required Amount | Statute |
|-----------------------------|-----------------|----------------------------|
| Fine | \$250–\$400 | N.J.S.A. 39:4-50(a)(1)(i) |
| Fine | \$300–500 | N.J.S.A. 39:4-50(a)(1)(ii) |
| VCCB | \$50 | N.J.S.A. 2C:43-3.1 |
| SNF | \$75 | N.J.S.A. 2C:43-3.2 |
| DUI Enforcement | \$100 | N.J.S.A. 39:4-50.8 |
| DUI Surcharge | \$100 | N.J.S.A. 39:4-50(i) |
| Court Costs | \$33 | N.J.S.A. 22A:3-4 |
| Additional fine assessments | \$6 | N.J.S.A. 39:5-41 |

D/I Loss – N.J.S.A. 39:4-50(a)(1)(i) – 90-days

D/I Loss - N.J.S.A. 39:4-50(a)(1)(ii) – 7 months to 1 year

All months have 30 days

Jail = 30 days

IDRC = 12 to 48 Hours

Ignition Interlock – optional BAC < .15 - otherwise (6 months to 1 year) N.J.S.A. 39:4-50(a)(1)(iii)

Unresolved Issues:

Synergistic Effects of drugs & alcohol

State v. Glynn, 20 N.J. Super.20 (App. Div. 1952)

The Rule of Lenity – Patel v. MVC, 200 N.J. 413 (2009); see also State v. Gelman, 195 N.J. 475 (2008).

b. Second Offense

A non-school-zone DUI defendant who is to be sentenced as a second offender will be subject to a variety of sanctions. These include the following:

| Monetary Sanction | Required Amount | Statute |
|-----------------------------|------------------------|------------------------|
| Fine | \$500-\$1,000 | N.J.S.A. 39:4-50(a)(2) |
| VCCB | \$50 | N.J.S.A. 2C:43-3.1 |
| SNF | \$75 | N.J.S.A. 2C:43-3.2 |
| DUI Enforcement | \$100 | N.J.S.A. 39:4-50.8 |
| DUI Surcharge | \$100 | N.J.S.A. 39:4-50(i) |
| Court Costs | \$33 | N.J.S.A. 22A:3-4 |
| Additional fine assessments | \$6 | N.J.S.A. 39:5-41 |

D/I Loss – N.J.S.A. 39:4-50(a)(2) – 2 years

All months have 30 days

Jail = 2 days to 90 days (May be served in IDRC – N.J.S.A. 39:4-50(a)(3))

30 days (180 hours) community service

IDRC = 12 to 48 Hours

Ignition Interlock – mandatory 1 to 3 years during & following d/I suspension

Related Cases – State v. Walsh, 236 N.J. Super. 151 (Law Div. 1989) – But non-consideration of

Title 2C agg/mit factors now open to question due to *Moran* case.

c. Third Offense

A non-school-zone DUI defendant who is to be sentenced as a third offender will be subject to a variety of sanctions. These include the following:

| Monetary Sanction | Required Amount | Statute |
|------------------------------------|------------------------|-------------------------------|
| Fine | \$1,000 | N.J.S.A. 39:4-50(a)(3) |
| VCCB | \$50 | N.J.S.A. 2C:43-3.1 |
| SNF | \$75 | N.J.S.A. 2C:43-3.2 |
| DUI Enforcement | \$100 | N.J.S.A. 39:4-50.8 |
| DUI Surcharge | \$100 | N.J.S.A. 39:4-50(i) |
| Court Costs | \$33 | N.J.S.A. 22A:3-4 |
| Additional fine assessments | \$6 | N.J.S.A. 39:5-41 |

180 Jail (discretionary - up to 90 days in IDRC-approved in-patient rehab)

10-year suspension of driving privileges

IDRC Participation

Ignition Interlock – mandatory 1 to 3 years during & following d/l suspension

Related Cases – State v. Fyffe, 244 N.J. Super. 310 (App. Div. 1990) – (retro credits for rehab)

State v. Luthe, 383 N.J. Super. 512 (App. Div. 2006) – No SLAP

AOC (Carchman) Memorandum of October 25, 2006 immediate imposition of DWI jail terms.

Part II – Collateral Consequences

a. MVC Surcharges – N.J.S.A. 17:29A-35 (Sorry - Only 1 surcharge per customer)

b. Insurance Eligibility Points N.J.A.C. 11:3-34.4(a) and N.J.A.C. 11:3-34 Appendix Schd. 1

c. Vanity Plates – N.J.S.A. 39:3-33.5

d. No Cause of Action – N.J.S.A. 39:6A-4.5 (Caviglia v. Royal Tours, 178 N.J. 460 (2004))

Any person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of [R.S.39:4-50](#), section 2 of P.L.1981, c. 512 ([C.39:4-50.4a](#)), or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident

Payment of PIP Benefits permitted

Part III. Technical Issues

- a. No Rules of Evidence – N.J.R.E. 101(a)(2)(C); State v. Carey, 232 N.J. Super. 553 (App. Div. 1989);**

- b. Abstract Review – N.J.S.A. 2B:25-5.1; Directive #10-04. - MVC Abstract Sufficient Evidence of Prior Offenses – State v. Burger, 74 N.J. Super. 208 (App. Div. 1962).**

- c. Plea with a Civil Reservation – Rule 7:6-2(a)(1)– State v. LaResca, 267 N.J. Super. 411 (App. Div. 1993) (Superior Court Rule 3:9-2 – State v. Tsilimidos, 364 N.J. Super. 454 (App. Div. 2003))**

- d. Restitution made out-of-Court - In re Friedland, 59 N.J. 209, 220 (1971)**

“In the future, should an attorney wish to have complaints dismissed by his client he must first go before the prosecutor and a judge and make a full and open disclosure of the nature of the charges and the terms, if any, under which the dismissal is sought. The dismissal should not be consented to unless both the judge and the prosecutor are satisfied that the public interest as well as the private interests of the complainant will be protected.”

e. Stay of Sentence – Rule 7:13-2 (N.J.S.A. 39:5-22) (See also Rule 3:23-5)

Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate.

f. Work Release/In-patient – N.J.S.A. 39:4-51

A person who has been convicted of a first or second violation of [section 39:4-50](#) of this Title, and in pursuance thereof has been imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not, after commitment, be released therefrom until the term of imprisonment imposed has been served. A person imprisoned in the county jail or workhouse may in the discretion of the court, be released on a work release program.

No warden or other officer having custody of the county jail or workhouse shall release therefrom a person so committed, unless the person has been released by the court on a work release program, until the sentence has been served. A person sentenced to an inpatient rehabilitation program may upon petition by the treating agency be released, by the court, to an outpatient rehabilitation program for the duration of the original sentence.

g. Weekend Jail – N.J.S.A. 2B:12-22

A court may order that a sentence of imprisonment be served periodically on particular days, rather than consecutively. The person imprisoned shall be given credit for each day or fraction of a day to the nearest hour actually served.

State v. Grabowski, 388 N.J. Super. 431 (Law Div. 2006)); But see State v. Kotsev, 396 N.J. Super. 389 (App. Div. 2007)

h. Cap on jail terms – State v. Owens, 54 N.J. 153 (1969)

i. Anti-Merger of DWI Penalties & Companion Tickets

State v. Baumann, 340 N.J. Super. 553, 556-557 (App. Div. 2001)

State v. Eckert, 410 N.J. Super. 389 (App. Div. 2009)

Related Cases:

State v. Mara, 253 N.J. Super. 204 (App. Div. 1992)

State v. Wade, 169 N.J. 302 (2001)

j. Double Counting of BAC as an Aggravating Factor

State v. Kromphold, 162 N.J. 345 (2000)

State v. Yarbough, 100 N.J. 627 (1985)

State v. Mara, 253 N.J. Super. 204 (App. Div. 1992)

k. Probation – NJSA 39:5-7 - In any proceeding instituted pursuant to the provisions of this subtitle, except where a mandatory penalty is fixed herein, the magistrate may suspend the imposition or execution of sentence, and may also place the defendant on probation under the supervision of the chief probation officer of the county for a period of not less than six months nor more than one year. The probation shall be effected and administered pursuant to the provisions of [sections 2A:168-1](#) to [2A:168-13 of the New Jersey Statutes](#).

IV. Prior Offenses

a. Determining Prior Offenses (Count the V's)

b. All prior version of N.J.S.A. 39:4-50 and Driving while Impaired

State v. Gelok, 237 N.J. Super. 503 (App. Div. 1989)

State v. Culbertson, 156 N.J. Super. 167 (App. Div. 1978)

State v. DiSomma, 262 N.J. Super. 375 (App. Div. 1993)

c. Out-of-State Convictions based on substantially similar law

Division of Motor Vehicles v. Ripley, 364 N.J. Super. 343 (App. Div. 2003)

d. Out-of-State Convictions not known to prosecutor or judge

In re Seelig, 180 N.J. 234 (2004) - Candor

Mitchell v. United States, 526 U.S. 314 (1999) – Right to Remain Silent

e. Out-of-State Convictions based entirely on BAC less than .08 %.

N.J.S.A. 39:4-50(a)(3):

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L.1966, c. 73 ([C.39:5D-1 et seq.](#)), shall constitute a prior conviction under this subsection unless the

defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

f. Controlling Dates (Violation Date) for Sentencing Purposes – State v. Bischoff, 232 N.J. Super. 515 (App. Div. 1989)

g. Order of Offenses

State v. Guiendon, 113 N.J. Super. 361 (App. Div. 1971); State v. Petrello, 251 N.J. Super. 476 (App. Div. 1991)

As related to step-down on 3rd and 4th offenses

h. “We’re Living in a Ciancaglini World” (State v. Ciancaglini, 411 N.J. Super 280 (App. Div. 2010))

and compare:

State v. DiSomma, 262 N.J. Super. 375 (App. Div. 1993); State v. Tekel, 281 N.J. Super. 502 (App. Div. 1995); In re Bergwall, 85 N.J. 382 (1981) (see dissent in In re Bergwall, 173 N.J. Super. 431 (App. Div. 1980).

i. Step-Down – State v. Burroughs, 349 N.J. Super. 225 (App. Div. 2002)

As applied to Refusals – State v. Fielding, 290 N.J. Super. 191 (App. Div. 1996)

As applied to *Laurick* Applications – State v. Conroy, 397 N.J. Super. 324 (App. Div. 2008)

j. Mistaken or Illegal Prior Sentence – State v. Nicolai, 287 N.J. Super. 528 (App. Div. 1996)

Part V – Post-Conviction Relief

a. Laurick/Hrycak applications

State v. Laurick, 120 N.J. 1 (1990)
State v. Hrycak, 184 N.J. 351 (2005)
Rule 7:10-2(g)

Overcoming 5-year limitation – State v. Bringhurst, 401 N.J. Super. 421 (App. Div. 2008)

Venue – State v. Schadewald, 400 N.J. Super. 350 (App. Div. 2007)

Release Pending Disposition of Appeal – Subject-matter jurisdiction – Tactics & Strategy

Rule 3:23-5(a) “Relief From Custodial Sentence. If a custodial sentence has been imposed, and an appeal from the judgment of conviction has been taken, the defendant shall be admitted to bail by a judge of the Superior Court in accordance with the standards set forth in R. 3:26-1a.”

b. Other post-conviction relief applications

No factual basis
Ineffective Assistance
Other PCR Applications
Illegal Sentence

Part VI - School Zone Offenses – NJSA 39:4-50(g).

a. School Zone Characteristics:

Generally a strict liability offense

Provides 24/7 protection in school-zone

Enforcement varies Around the State based upon enforcement agency and targeted area.

1) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) driving through a school crossing as defined in [R.S.39:1-1](#) if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(3) driving through a school crossing as defined in [R.S.39:1-1](#) knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution

b. Sentencing - State v. Reiner, 180 N.J. 307 (2004) Merger with Greater-included offense.

Part VII - Plea Bargaining

a. In General - State v. Hessen, 145 N.J. 441 (1996)

b. GUIDELINE 4. LIMITATIONS.

No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:

A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and

B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%).

If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge.

A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.

Except in cases involving an accident or those that occur when school properties are being utilized, if a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge.

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline.

Part VIII - Advocacy

a. Aggravating & Mitigating Factors

Matter of Connor, 124 N.J. 18 (1991)

The facts are not disputed. Respondent had been an Atlantic County Superior Court Judge since 1979. On Monday, April 16, 1990, respondent left the Atlantic County Courthouse and drove to his home in Linwood, arriving at approximately 5:00 p.m. There he consumed a significant amount of alcohol and subsequently decided to return some books to the library. While driving in a westerly direction on Ocean Heights Avenue in Egg Harbor Township, he failed to realize that the vehicle ahead of him was slowing down to make a left turn. Respondent attempted to go around that vehicle on the right, but his left front bumper struck the right rear of the vehicle. The respondent left the scene at a high rate of speed, substantially in excess of the fifty miles-per-hour speed limit. He turned right off Ocean Heights Avenue onto English Creek Road and turned right again onto Mill Road. Approximately two miles from the accident scene, respondent lost control of his vehicle, which left the road, struck some trees, and came to a stop in a wooded area.

The vehicle that respondent had struck was being driven by Holly J. Bennett, whose three young children were passengers. After being struck, Ms. Bennett followed respondent, catching up to him after respondent's car came to a final stop off the side of Mill Road. Several police officers soon arrived. Following a brief investigation at the scene, they arrested respondent. He underwent two breathalyzer tests, which produced blood alcohol levels of .17 percent and .16 percent, respectively. Respondent was charged with the motor-vehicle offenses recited in the complaint.

Later that evening, respondent visited Assignment Judge Richard J. Williams at his home and reported what had occurred.

Notwithstanding respondent's egregious conduct at the time of the incident, there are significant mitigating factors in connection with this episode. On the day following the accidents and arrest, respondent called Ms. Bennett to inquire about her condition and that of the passengers in her vehicle. He apologized to Ms. Bennett for the accident and offered to pay for any damages that she had incurred. Next, he wrote a series of letters to Atlantic County judges explaining what he had been charged with, admitting guilt to all the charges, and apologizing for the incident. Respondent then called Seabrook House, a clinic specializing in the treatment of substance abuse, and scheduled an interview for that day. The respondent had an interview with a counsellor from Seabrook House who recommended an inpatient treatment program. Recognizing the extent of his drinking problem, respondent decided to enroll in a thirty-day residential treatment program. Later that day, respondent prepared and released to the press a written statement acknowledging responsibility for his actions and offering a general apology.

Immediately after the court hearing, respondent entered Seabrook House for a thirty-day residential treatment program. Following his release from Seabrook House, respondent enrolled in a prescribed outpatient program, consisting of weekly group-therapy sessions run by a counsellor and individual counselling sessions with a therapist. Additionally, respondent followed a recommended course of three meetings per week at Alcoholics Anonymous. He also has a sponsor, an attorney with whom he speaks at least once each week.

We acknowledge and give the same weight to most of the mitigating circumstances that influenced the Committee to impose lenient discipline-respondent's acknowledgment of guilt, his contrition, his public apology, his genuine self-confrontation and commitment to rehabilitation, the absence of a prior record of misconduct, and his exemplary personal and professional reputation. Other alleged mitigating factors, however, are not entitled to the weight assigned by the Committee. Although respondent did not, to his credit, attempt to take advantage of his judicial office, the police on the scene quickly learned he was a judge, albeit nothing more was made of that. Further, while the post-accident events involving the

on-the-scene investigations moved swiftly, it does not appear that respondent's cooperation was immediately forthcoming. Respondent did not completely respond to police inquiries concerning the accident, giving evasive or false answers.

Moreover, we cannot overemphasize several aggravating factors. Aside from the gravity *per se* of the motor vehicle violations, the drunk driving offense resulted in an accident involving innocent people; the offense of leaving the scene of *27 the accident not only served to interfere with proper law enforcement but placed the victims of the accident potentially in greater jeopardy; and the careless driving offense clearly posed added dangers to other innocent persons. Further, respondent engaged in other deleterious conduct. When confronted after the final accident, he attempted to leave the scene; he did not respond initially to the investigating officers; and when he did respond, he denied being involved in a prior accident and blamed the victim for the incident.

We have felt in other cases involving judicial misconduct that a public reprimand is fitting disciplinary action with respect to drunk driving and possibly a derivative driving offense. In each of those cases, the judge had no prior record of personal, professional, or judicial misconduct, possessed a well-deserved judicial reputation of excellence, and most importantly, was sincerely contrite and genuinely determined to achieve sobriety and rehabilitation. Those factors redound as well to respondent.

That portrait, however, does not fully depict respondent. The regrettable post-accident circumstances that aggravated the situation were understandably, although not excusably, the result of common human failings: panic, confusion, and overwhelming mortification. They were not the by-product of an evil or antisocial mindset. Nevertheless, discipline in this case calls for more than the sanction found appropriate in other cases because the ethical transgressions in their totality are more serious. Respondent's offenses went beyond drunk driving, posing an actual serious risk to the safety of others, as well as to the proper and effective administration of important laws affecting public safety.

Related Cases:

Matter of Collester, 126 N.J. 468 (1992)

b. Willful Violations - State v. Moran, 202 N.J. 311, 328-329 (2010)

For ease of reference, we direct municipal court and Law Division judges to consider the following factors in determining whether to impose a license suspension under [N.J.S.A. 39:5-31](#), and, if so, the length of the suspension: the nature and circumstances of the defendant's conduct, including whether the conduct posed a high risk of danger to the public or caused physical harm or property damage; the defendant's driving record, including the defendant's age and length of time as a licensed driver, and the number, seriousness, and frequency of prior infractions; whether the defendant was infraction-free for a substantial period before the most recent violation or whether the nature and extent of the defendant's driving record indicates that there is a substantial risk that he or she will commit another violation; whether the character and attitude of the defendant indicate that he or she is likely or unlikely to commit another violation; whether the defendant's conduct was the result of circumstances unlikely to recur; whether a license suspension would cause excessive hardship to the defendant and/or dependants; and the need for personal deterrence. Cf. [N.J.S.A. 39:5-30c](#) (enumerating factors to be considered by MVC in determining appropriateness of imposing maximum suspension of three years). Any other relevant factor clearly identified by the court may be considered as well. It is not necessarily the number of factors that apply but the weight to be attributed to a factor or factors.

Related Cases: State v. Walsh, 236 N.J. Super. 151 (Law Div. 1989)

c. Victim's Rights

N.J.S.A. 39:4-50.9 – Drunk-Driving Victim's Bill of Rights

Article 1, section 22 – State Constitution of 1947

A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, "victim of a crime" means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.

d. Dealing with Victims of Drunk Drivers – Tactics & Strategies

