

DEFENDING TRAFFIC TICKETS

A Resource for *Pro Se* Litigants

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As a criminal defense attorney and motorcyclist, I am frequently called upon to render legal advice and/or representation with respect to the defense of various types of traffic tickets. Unfortunately, my experience is that the attorney fees and costs associated with the defense of such tickets almost always exceed the cost of simply paying the ticket. Therefore, most of my potential traffic ticket clients elect to represent themselves, whether it be going to trial or accepting a plea offer. Please be aware, however, that if you were involved in an accident or caused damages of any type, restitution may be involved and hiring an attorney will likely be important.

Because I am often presented with the same questions, I offer the following general rules, procedures, and guidelines to consider when deciding how best to proceed while and after being issued a traffic ticket in Colorado.

1. Dealing with the Police

Always be polite and courteous with the officer after you have been stopped. Never argue with the officer about the reasons for the stop or the merits of the ticket. Do not admit to any wrongdoing; you have the right to remain silent and you should exercise that right at this time. Although humble apologies sometimes result in the issuance of a warning, more frequently such admissions and apologies will be held against you in court. You should, of course, cooperate with the officer with respect to answering basic identification information and producing required documents such as proof of registration and insurance.

Unlike your friends and family, the police will likely not be impressed with your ability to frighten the elderly by riding mile long, 100+ mph standup wheelies; the police may consider you to be a menace to society and treat you accordingly. However, rude, abusive, or otherwise unprofessional behavior on the part of the police is very rarely a defense to the underlying ticket. The remedy in such instances is to file a formal complaint with the police department.

2. Summons and First Appearance

When you are ticketed, the issuing officer will give you a copy of a citation which commands you, the defendant, to appear at a particular courthouse at a particular time to answer the charge(s). This first appearance is generally called the Arraignment or the Initial Appearance, and it is NOT a trial date. The purpose of this first appearance is to allow you to

meet with the city attorney and/or officer that will be prosecuting the ticket and discuss a possible plea agreement. If a plea agreement is reached, you may conclude the case by simply pleading guilty to the lesser offense at that first appearance and be sentenced accordingly. If you cannot reach a plea agreement, you should plead not guilty. Pleading not guilty will result in the court setting your case over for trial on another date. Note that most traffic cases end at this first appearance.

3. Discovery and Subpoenas

Discovery is the legal term for the exchange of evidence and information between the government and the defendant. Depending upon the type of case, discovery may include the police officer's notes, certifications, and/or credentials, maintenance records for the radar gun and other equipment, witness statements, or any other relevant documents, information, or tangible items.

If you are only charged with a traffic infraction, you do not have the right to obtain discovery material until the trial. If, however, you are charged with a traffic infraction in addition to another more serious offense, you have a right to obtain discovery prior to trial.

You do have the right to subpoena witnesses to testify on your behalf at the trial of the matter. A subpoena compels a person's appearance in court and may also command the person to bring with them documentary evidence that you request. Subpoenas will be issued at your request by the court clerk. You, however, are generally responsible for serving those subpoenas upon your witnesses and paying the witness fees and process server.

4. Trial

You have an absolute right to a trial, which, in the case of traffic infractions, is called a Final Hearing. The purpose of the Final Hearing is, quite obviously, to determine whether you are guilty or innocent of committing the alleged traffic infraction.

The procedures employed at the Final Hearing vary depending upon the jurisdiction. However, the following constitutes a general description of what you may expect:

- a. Before the Final Hearing, the judge, called a referee, will briefly describe and explain the purpose and procedures of the hearing.
- b. In some jurisdictions, the city attorney will prosecute the infraction; in other jurisdictions, the police officer will act as the prosecutor.
- c. The officer will offer sworn testimony and evidence about the facts concerning the alleged infraction. After the officer has offered his or her testimony, you (or your attorney, if you have one) or the referee may ask questions or cross-examine the officer.

- d. Next, you have the right to offer your own sworn testimony about the facts and circumstances of the alleged infraction. You do, of course, have the right to remain silent. If you do choose to testify, the city attorney, officer, and referee have the right to ask questions or cross-examine you.
- e. Additional witnesses may testify, but the order and amount of such witnesses may be limited at the discretion of the court.
- f. At the conclusion of the presentation of the testimony and evidence, you have the right to make a closing statement.
- g. The formal rules of evidence, such as those governing the admissibility of hearsay, DO NOT apply at the Final Hearing of traffic infractions. The referee should nevertheless rule on the admissibility of evidence according to basic notions of fairness.
- h. Regardless of who prosecutes the infraction, every element of the infraction must be proven BEYOND A REASONABLE DOUBT. If the referee finds that all of the elements of the charge(s) against you have in fact been established beyond a reasonable doubt, the referee will find you guilty. Otherwise, the charge(s) will be dismissed. It is important to note, however, that you may be found guilty of a lesser included traffic infraction if the evidence offered at trial supports such a conviction.
- i. If convicted, you have the right to appeal to the district court.

If the officer fails to appear at the final hearing, the charge(s) against you **MUST BE DISMISSED**.

Other than physically appear, you have no duty to do anything whatsoever at the time of the Final Hearing. Always remember that it is the government's job to prove every element of every offense beyond a reasonable doubt. You enjoy both 1) the right to a trial; and 2) the right to remain silent. You have no duty to present any evidence at the Final Hearing, and you certainly do not bear the burden of proving your innocence. Presenting evidence, cross-examining witnesses, making statements, and participating in your own defense are your RIGHTS, not your duties; you may simply sit at the defense table and observe the wonders of our justice system unfold before your eyes. Many people elect not to proceed to trial out of an unwarranted fear that they must somehow conduct themselves as lawyers and abide by complicated rules of procedure. Again, other than physically appear, a defendant has no duty to do anything whatsoever at a trial.

It is my experience that the best plea offers often come on the verge of trial. Therefore, refusing to plead right away and insisting on a trial may result in a better plea offer down the road. Of course, there are also consequences associated with this strategy. First, and most importantly, be aware that proceeding to trial may cause whatever plea offer, if one has been made, to be

withdrawn. Consequently, if you are convicted, you will be convicted of the original charge and not the reduced charge offered. Whether you should plead early or proceed to trial depends upon, among other things, the facts and circumstances of your case and the personality of the officer or city attorney that will be prosecuting the case.

5. Points, Suspension, and Provisional Licenses

Nearly every plea and/or conviction for a traffic infraction is associated with a loss of points on your drivers license, and the amount of points assessed against your license depends upon the severity of the offense. In general, a 21 year old or older driver is allotted 12 points in 12 months or 18 points in 24 months. Conviction for an offense or offenses equaling or exceeding those limitations will trigger the Department of Motor Vehicles (DMV) to suspend your license. If this is your first points suspension, your license will be suspended for 30 days; if this is your second points suspension, your license will be suspended for one year. You do have a right to have a hearing before a DMV hearing officer before your license is suspended. However, the scope of that hearing is limited to whether or not you have been convicted of enough traffic offenses to trigger the point suspension; you will not be permitted to argue that you were in fact innocent of those offenses.

If your license is suspended as a result of the accumulation of excessive points, you may ask for and be granted a provisional license. A provisional license (sometimes referred to as a red license) permits you to drive under certain restrictions such as commuting to and from work or school only. Provisional licenses are issued by the DMV at the discretion of a hearing officer, who will take into account various aggravating and mitigating factors. Receiving additional tickets and/or violating the terms of the provisional license will cause the provisional license to be suspended.

6. Insurance Rates and other Collateral Consequences

In addition to fines, penalties, and points, other consequences arise out of convictions for traffic infractions. The most obvious example of such consequences is the increase in your insurance premiums. To what degree your insurance premium is affected by a conviction for a traffic infraction depends upon the particular policies of your insurance carrier. Some drivers never experience an increase in their premiums because the insurance company never learns of the conviction. However, be aware that some insurance policies require you to report any change in circumstances, including the fact of a recent conviction, and failing to do so may result in the insurance company's refusal to pay a subsequent claim.

Convictions for traffic infractions may cause problems above and beyond higher insurance premiums. For example, many jobs require the employee to maintain a clean driving record in order to remain eligible for employment. In addition, if the traffic offense resulted in an accident or damages to the property of others, you may be ordered to pay restitution to the victim and/or the victim's insurance company. Carefully consider all of the potential effects of a conviction when determining if and how to defend your ticket.

7. Driving Under the Influence

Driving Under the Influence (DUI) is a serious charge and is not considered a traffic infraction. Most of the general rules outlined above, particularly those related to discovery, trial, and consequences DO NOT apply to DUI cases. You should contact an attorney if charged with DUI or a related offense.

8. Conclusion

The above is not intended to be an exhaustive or comprehensive guide to defending traffic tickets. Rather, it is intended to serve as a general outline of your rights and responsibilities and the procedures you will encounter in traffic court. Each case presents its own peculiar facts, circumstances, and problems, and your strategy must accommodate those unique circumstances.

I make myself available for addition questions and help to those who ask, and I welcome and encourage you to contact me if I can be of any assistance.

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