

# Table of Contents

## CHAPTER 1. CLIENT CONTACT FORMS

- § 1:1 Overview
- § 1:2 Client “welcome” letter
- § 1:3 Assigned client “welcome” letter
- § 1:4 Engagement letter
- § 1:5 —Hourly Rate
- § 1:6 DWI fines and penalties letter
- § 1:7 Letter requesting no law enforcement contact with client
- § 1:8 Letter requesting preservation of 911 tapes
- § 1:9 Driver under the age of twenty-one (21) letter
- § 1:10 Letter regarding driver license penalties for repeat offenders
- § 1:11 Letter regarding driver license penalties for first time offenders
- § 1:12 Consent for release of information
- § 1:13 Affidavit for transfer and assignment of bail
- § 1:14 Client duties and responsibilities
- § 1:15 Client letter for drivers licensed out-of-state
- § 1:16 Letter to an attorney charged with a NY VTL § 1192 offense
- § 1:17 Letter to client who is an agricultural employee regarding ignition interlock device
- § 1:18 Letter to client regarding vehicles required to have ignition interlock device
- § 1:19 Client vehicle and traffic point chart
- § 1:20 *Kovel* letter for private investigator or defense expert
- § 1:21 Demand letter for law enforcement compliance with CPL § 245.55
- § 1:22 Demand letter for prosecution compliance with CPL § 245.55

## CHAPTER 2. PRE-TRIAL MOTIONS AND FORM REGARDING CLIENT’S DRIVER LICENSE AND BAIL

- § 2:1 Overview
- § 2:2 Request for an order fixing bail
- § 2:3 Request not to suspend license
- § 2:4 Request for a hardship license
- § 2:5 Legal standard for refusal

NEW YORK DRIVING WHILE INTOXICATED DEFENSE FORMS

- § 2:6 Memorandum supporting motion to lift suspension  
(private property)
- § 2:7 Letter to client regarding right to appeal refusal  
hearing finding
- § 2:8 Request for an order of release

## **CHAPTER 3. DISCOVERY PLEADINGS AND RELATED FORMS**

- § 3:1 Overview
- § 3:2 Request for supporting deposition
- § 3:3 Request for a bill of particulars
- § 3:4 Specimen subpoena
- § 3:5 Specimen judicial subpoena
- § 3:6 Freedom of information law request
- § 3:7 Waiver of appearance at arraignment
- § 3:8 Waiver of appearance
- § 3:9 Waiver of preliminary hearing
- § 3:10 Waiver of speedy trial (misdemeanor)
- § 3:11 Waiver of speedy trial (felony)
- § 3:12 Demand letter for initial discovery (over 50/65 days  
since arraignment)
- § 3:13 Motion to compel initial discovery (CPL § 245) and for  
sanctions/remedies
- § 3:14 Demand letter for supplemental discovery
- § 3:15 Motion to compel supplemental discovery (CPL Article  
245) and for sanctions/remedies
- § 3:16 Demand letter for prosecution compliance with CPL  
§ 245.10(c)
- § 3:17 Motion for sanctions/remedies for late compliance with  
discovery (CPL § 245.80(1)(a))
- § 3:18 Motion for sanctions/remedies for lost/destroyed  
material (CPL § 245.80(1)(b))
- § 3:19 Sample reply to people's motion for sanctions/remedies
- § 3:20 Sample letter re: compliance with defendant's  
discovery obligation (CPL § 245.20)
- § 3:21 Sample certificate of compliance (CPL § 245.50)
- § 3:22 Sample supplemental certificate of compliance (CPL  
§ 245.50)
- § 3:23 CPL 245.50 notice of defective certificate of compliance

## **CHAPTER 4. PREPARING FOR A NY VTL § 1192 PROSECUTION**

- § 4:1 Overview
- § 4:2 Preparing for a NY VTL § 1192 prosecution
- § 4:3 Witness preparation checklist

TABLE OF CONTENTS

## **CHAPTER 5. PRE-TRIAL MOTIONS AND FORMS**

- § 5:1 Overview
- § 5:2 Letter to prosecutor for plea negotiations
- § 5:3 Letter to prosecutor for plea negotiations where defense is seeking plea to misdemeanor charge
- § 5:4 Pre-indictment biographical memorandum in case involving fatal accident
- § 5:5 Suppression of evidence derived from unlawful stop and seizure
- § 5:6 Suppression of arrest for failure to comply with rules concerning roadblocks
- § 5:7 Order of suppression for stop at roadblock
- § 5:8 Motion to suppress defendant's statements
- § 5:9 Suppression of in-court identification
- § 5:10 Preclusion of field sobriety test
- § 5:11 Suppression of refusal to submit to a chemical test
- § 5:12 Motion to dismiss refusal of breath screening test charge as facially insufficient
- § 5:13 Motion to dismiss in furtherance of justice
- § 5:14 Suppression of evidence of prior convictions
- § 5:15 Waiver of jury
- § 5:16 Motion to suppress arrest and all evidence derived from it
- § 5:17 Motion to suppress evidence derived from illegal traffic stop
- § 5:18 Supplemental affidavit to suppress arrest when stop occurred in a parking lot
- § 5:19 Motion to dismiss charges based on failure to provide a speedy trial in a misdemeanor case
- § 5:20 Motion to dismiss charges based on failure to provide a speedy trial in a felony case
- § 5:21 Order requesting relief

## **CHAPTER 6. COMMON LAW DWI TRIAL MEMORANDA**

- § 6:1 Overview of Chapter Six
- § 6:2 Legal standard for intoxication v. impairment
- § 6:3 Sufficiency of corroboration to admission of operation
- § 6:4 Sufficiency of evidence of operation (no admission by client)
- § 6:5 Involuntary intoxication
- § 6:6 Involuntary Intoxication (gastric bypass surgery)
- § 6:7 Intoxication and operation must be simultaneous
- § 6:8 Trial memorandum: suppression of field sobriety tests
- § 6:9 Legal standard for endangering the welfare of a child

NEW YORK DRIVING WHILE INTOXICATED DEFENSE FORMS

- § 6:10 Memorandum supporting motion to dismiss for legal insufficiency (diabetic)
- § 6:11 Memorandum in support of trial order of dismissal

## **CHAPTER 7. BREATH AND BLOOD TEST TRIAL MEMORANDA**

- § 7:1 Overview of Chapter Seven
- § 7:2 Extrapolation/relation-back
- § 7:3 Compliance with rules and regulations (rules not provided)
- § 7:4 Compliance with rules and regulations (rules not followed)
- § 7:5 Failure to comply with observation period (10 NYCRR § 59.5(b))
- § 7:6 Insufficient foundation for admission of blood test
- § 7:7 Insufficient proof that gas chromatograph was functioning properly
- § 7:8 Insufficient proof from breath test score of .08%
- § 7:9 Extrapolation/relation-back, aggravated driving while intoxicated
- § 7:10 Insufficient proof from breath test score of .18%
- § 7:11 Motion to preclude breath test evidence
- § 7:12 Right to confrontation of breath test operator
- § 7:13 Right to confrontation of blood test analyst

## **CHAPTER 8. SUFFICIENCY OF EVIDENCE OF PRIOR NY VTL § 1192 CONVICTIONS**

- § 8:1 Overview
- § 8:2 Felony DWI—Inspection of grand jury minutes and reduction to misdemeanor
- § 8:3 —Insufficient proof of prior NY VTL § 1192 offense presented at trial
- § 8:4 Misdemeanor DWAI—Prior offenses *an element* of the offense
- § 8:5 —Admissibility of prior convictions as evidence at trial

## **CHAPTER 9. SENTENCING FORMS**

- § 9:1 Overview
- § 9:2 Motion to withdraw plea (pre-sentence)
- § 9:3 Letter to client regarding pre-sentencing memorandum and character reference letters
- § 9:4 Authorization to release information
- § 9:5 Defense pre-sentencing memorandum
- § 9:6 Defense pre-sentencing memorandum for use with felony convictions
- § 9:7 Alcoholics Anonymous form

## TABLE OF CONTENTS

- § 9:8 DWI sentence outline
- § 9:9 Letter to sentencing judge documenting client's compliance with terms of sentencing
- § 9:10 Waiver of presentencing report for mandatory youthful offender
- § 9:11 Order requiring client to provide a D.N.A. sample
- § 9:12 Client affidavit confirming that he or she does not own a motor vehicle and cannot install an ignition interlock device
- § 9:13 Client close-out letter

## CHAPTER 10. POST-CONVICTION MATERIAL

- § 10:1 Overview
- § 10:2 Letter to client outlining terms of sentence and right to appeal conviction
- § 10:3 Notice to client of right to appeal
- § 10:4 Notice of appeal
- § 10:5 Application for release of defendant on his or her own recognizance on setting of bail pending appeal following conviction for felony DWI
- § 10:6 Motion to proceed as an indigent person on appeal to county court and order granting motion
- § 10:7 Motion for permission to appeal to the appellate division as a poor person
- § 10:8 Motion to vacate the judgment and set aside the sentence on the grounds of factually insufficient plea allocution
- § 10:9 Waiver of revocation hearing
- § 10:10 Request for early termination of conditional discharge and ignition interlock requirement
- § 10:11 Sample order for removal of Ignition Interlock device
- § 10:12 Letter to Department of Motor Vehicle regarding client's youthful offender adjudication
- § 10:13 Employer/employee exception letter regarding installation of ignition interlock device
- § 10:14 Filing letter to court regarding employer/employee exception to installation of ignition interlock device
- § 10:15 Motion for Release Pending Appeal

## CHAPTER 11. PART 136 AND CIVIL REVOCATIONS

- § 11:1 Overview
- § 11:2 Impact of client's driving history on re-licensing
- § 11:3 Weighing of safety factors (15 NYCRR 136.6)
- § 11:4 General consent form (MV-15GC)
- § 11:5 Request for DMV records

§ 11:6 Administrative appeal form (AA-33A)

## **CHAPTER 12. CPL ARTICLE 440 CHALLENGES**

- § 12:1 Overview
- § 12:2 Letter requesting client's court records under FOIL/FOIA
- § 12:3 Sample motion under CPL Article 440
- § 12:4 Sample client affidavit
- § 12:5 Sample proposed order of vacatur

## **CHAPTER 13. CPL ARTICLE 160.59 CRIMINAL RECORD SEALING**

- § 13:1 Overview
- § 13:2 Sample letter to Court requesting Certificate of Disposition
- § 13:3 Sample notice of motion under CPL § 160.59
- § 13:4 Sample client affidavit and verification in support of CPL § 160.59 motion
- § 13:5 Sample proposed statement of non-opposition
- § 13:6 Sample affidavit of service
- § 13:7 Sample decision and order

**Table of Laws and Rules**

**Table of Cases**

**Index**