10 DO'S AND DON'TS OF DRUNK DRIVING DEFENSE

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Do's

- 1. Read the Statutes.
 - a. MCL 257.625a-o
 - b. The Motor Vehicle Code.
 - c. Use the jury instructions for the elements.
- 2. Know the Case Law or know where to find it.
 - a. Sources:
 - i. ICLE Michigan Drunk Driving Law and Practice.
 - ii. SADO's Defender Trial Book.
 - b. Cases that every attorney should know:
 - i. People v. Hamilton, 465 Mich. 526 (Constitutionality of arrests.)
 - ii. <u>People v. Pomeroy</u>, 419 Mich. 441, <u>People v. Wood</u>, 450 Mich. 399, <u>People v. Stephen</u>, 262 Mich. App. 239, <u>People v. Burton</u>, 252 Mich. App. 130 (Sleeping driver.)
 - iii. <u>People v. Lyon</u>, 227 Mich. App. 599, <u>People v. Solmanson</u>, 261Mich. App. 657 (Elements of Operating)
 - iv. People v. Lambert, 395 Mich. 296, (Impaired Driving)
 - v. <u>People v Fosnaugh</u>, 248 Mich. App. 444, (Chemical test Admission.)
- 3. Get a copy of the "Michigan Breath Test Operator 2003 Breath Test Manual.
 - a. Procedures
 - b. Administrative Rules
- 4. Conduct a thorough interview with your client.
 - a. Things to focus on:
 - i. Where were they stopped?
 - ii. Place of arrest.
 - iii. What were they stopped for?
 - iv. Determine entire sequence of events from the time they started drinking or using drugs to being released from custody.

- v. Who owns the car?
- vi. What does their driving record look like?
- vii. Have they been convicted of Drunk Driving in the past?
- viii. Was there an accident?
- ix. Review all documentation.
 - a. 625 G permit
 - b. Breath test results sheets.
 - c. Bond forms.
 - d. Towing receipts.
 - e. Accident forms.
 - f. Ticket.
- x. Does your client have a good memory of the incident?
- 5. Do not rely exclusively on the police reports. Get a hold of and review videotapes.
 - a. What to look for:
 - i. Verify whether the police had probable cause to stop.
 - a. Criminal activity
 - b. Civil infractions
 - c. Reasonable suspicion that criminal activity is afoot.
 - b. Destruction of the videotape after requested can sometimes be parlayed into a dismissal.
- 6. Review audiotapes of 911 calls and radio traffic.
- 7. Conduct a thorough in person investigation.
 - a. Take pictures, if necessary.
 - b. Drive the scene.
 - c. Use maps and "Google Earth".
- 8. If there is an Implied Consent violation, hold the hearing.
 - a. Things to remember when conducting the hearing:
 - i. Read the police report.
 - ii. Move for sequestration of non-testifying officers;
 - iii. Don't belabor the point in a hearing if the four issues are met.

iv. Resist the urge to cross examine if they have missed an issue.

9. Hold more trials.

- a. Jury trial should have a theme.
- b. Don't worry too much about the composition of the jury.
- c. Do not play hide the ball with the jury.
- d. Remember that what a witness does not say is just as important as what a witness does say.
- e. If you use an expert, try to find experts who do not have a long track record in criminal cases.
- f. Prepare a trial notebook.
 - i. Pertinent voir dire questions.
 - ii. A list of witnesses.
 - iii. A complete copy of the police report.
 - iv. Complete set of pertinent jury instructions.
 - v. Every piece of evidence that you plan to admit.
 - vi. Copies of all transcripts from hearing or preliminary examinations.
 - vii. Case law relevant to your issues.

10. Hold more preliminary examinations.

Don'ts

- 1. Don't believe that a drunk driving case is unwinnable.
- 2. Don't handle a drunk driving case if you are not going to put in the effort.
- 3. Don't threaten the prosecutor or the judge.
- 4. Don't say too much in your motions.
- 5. Don't file frivolous motions.
- 6. Don't ever believe a prosecutor or any other attorney on the current state of the law.
- 7. Don't take the case too seriously.
- 8. Don't allow your client to direct the defense.
- 9. Don't forget that your reputation is everything.
- 10. Never pass up an opportunity to win.