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DUI COLLISIONS

Understanding the Hidden Parts of the Criminal Process

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This paper begins with the presumption that you have already interviewed the client, accepted the representation and have gotten the basic information and documentation that you would for any car crash case. For the purposes of this paper we will begin with a car wreck in which your client was driving down the road when another car pulled out in front of her causing the wreck. The driver of the other vehicle was listed as being under the influence and was arrested. (It is not always the case as we have had some cases where the defendant was believed to be intoxicated, but for some reason no arrest or test were run on him.)

The purpose of this paper is to provide you with a source of information and reference to be used in the handling of a DUI car wreck case. I am always looking for new forms, outlines and information so if you would send me a copy of any that are not here (or are better) I would appreciate it.

Working up a case is like anything else in litigation, your job is to get all the information you can and then distill it down to a workable trial theme. Also as you get the information and documents in, you want to make sure you have them in a form which will allow you to admit them into evidence. Make a copy of the original and put it away with the authentication and then use the copies.

The following are the questions I believe need to be asked and suggestions as to how to get the questions answered:

WHAT DOES YOUR CLIENT WANT OUT OF YOUR REPRESENTATION?

This should be the first question you ask in any case, but it is especially important in DUI cases. First as in before you spend one penny on the case. While this question does not directly fall under the category of working up the case, it is probably one of the most important you will ask. The answer will be the most important you will get throughout the handling of the case. If the answer is they don't want anything other than the other driver to get put in jail then you need to make sure they understand your limitations and that the DA is going to control that determination. When your client gives you the answer and, assuming it is one you can realistically achieve, have them write down the answer so you can put it in your file.

WHY YOUR CLIENT BELIEVES THE OTHER PARTY IS RESPONSIBLE?

Start with the basic question of why they believe the other party is at fault. The answer is not that they were drunk, but what did they do or not do that caused the wreck. The DUI is an aggravating factor not the causative factor. They were there and may bring an understanding that you will not have. Always ask why they believe the other person is responsible.

Once you get the question answered, you can begin gathering the information and documentation which will help you develop the case.

CRASH REPORT:

The crash report (it is not an accident report) may usually be picked up within a few days to a few weeks from the date of the crash. You generally need to provide at least one of the drivers' names, the date and location. Your client may have already picked up a copy, but you need to make sure you have one in admissible form prior to trial. If you send a request to the DPS and receive an affidavit that no report can be found, it probably means that it has not been received and filed so call your local office first and, if it need be, just calendar it to resend the request later.

If there was a death, make sure that your request includes all measurements, photos and other information and documentation be produced. This may require that a public information request be made. You should also contact the investigating officer to see if she has any notes or photographs in her personal file. In a DUI case the officer may have made notes to assist him or her if they later have to testify that may not be included in the official crash report.

It is also helpful to request any 911 tapes which may be related to your case. While pictures and video are great, the actual audio of people calling in to report the crash and injuries brings the crash to life for the jury.

What information can the crash report provide? It can provide you with a good starting point on a number of areas, but remember that they are not always accurate. We have had a case with a person who had multiple operations resulting from the collision and was listed as not injured. Also I have seen a person who died from seat belt related injuries listed on the report as unbelted. So when looking at the report, put it in context with the facts as you understand them and as they develop with your investigation.

The areas the crash report covers are:

- Location;
- Date;
- Time;
- Weather Conditions;
- Road Conditions;
- Damage to vehicles;
- Drivers;
- Vehicle Owner;
- Employment;
- Passenger;
- Positions in the vehicle;
- Restrained;
- Injuries;
- Cause of wreck; Contributing factors;
- Tickets issued;
- Diagram;
- Witnesses;

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