

**Fundamentals of Criminal Practice:
Understanding Local Criminal Courts**

Tuesday, May 4th, 2010

**Radisson Hotel
5:00 p.m. – 8:00 p.m.**

CLE Credits: 2 Credits

**Sponsored by:
Oneida County Bar Association
Oneida County Public Defender, Criminal Division
New York State Defenders Association**

Moderator:

- **The Honorable John S. Balzano, Chief Judge, Utica City Court**

Panelists:

- **The Honorable Christopher C. Clarkin, President of Oneida County Magistrates Association, Local Criminal Court Justice in the Town of Floyd**
 - **Josh Bauer Assistant District Attorney**
 - **Luke Nebush, Assistant Public Defender**
 - **Adam Tyksinski, Assistant Public Defender**

Fundamentals for up and coming attorneys:

1. The Arraignment Procedure
 - a. Make record of representation
 - b. Reading of the complaint
 - i. Waiver
 1. The question is whether defense attorney would like charges read on to the record.
 2. Review complaint for:
 - a. Errors
 - b. Insufficiency
 - c. Lack of supporting depositions
 - ii. No Waiver
 1. In order to nail down sections of the complaint on the record
 - c. Consideration of Bail
 - i. Past criminal history
 1. File 15 attached to all misdemeanor and felony complaints.
 2. Review in order to better evaluate Defendants record
 - ii. Flight risk assessment
 1. Does Defendant have a job?
 2. Family?
 3. History of missing court?
 - iii. Seriousness of charges
 - d. Set next court date
 - e. Make your plea
 - i. Not guilty- move to next part of court proceeding
 - ii. Guilty – plea to charge and allow court to sentence
 1. This may be the appropriate procedure in some situations:
 - a. When it is a violation and the penalty is nominal and client admits
 - b. When client admits and people are considering amending charges to a greater class of felony
 - c. When people's offer is less then what the judge may decide as far a punishment.
2. Next court date
 - a. Violation
 - i. Pre-trial – ADA will ask for time to speak with Complaining witness
 - ii. Disposition – If the matter is one in which all problems can be rectified by next court date.
 - iii. Trial – Bench trial
 - b. Misdemeanor
 - i. Pre-trial

1. Go over information gathered by both Defense attorney and ADA
 2. Talk about possible deals and offers
 3. Talk about possible alternative programs
 - a. Drug Court:
 - i. Year long court
 - ii. Oversees chemical treatment
 - iii. Possible reduction in charges at time of completion
 - b. Mental Health court
 - i. Year long court
 - ii. Oversee the mental health and treatment of clients
 - iii. Offers support staff
 - c. FEU:
 - i. Also a support staff
 - ii. Oversees out of court treatment for:
 1. Drugs
 2. Mental Conditions
 3. Social disorders
 - iii. Bridge between treatment facilities and the court proceedings
 - iv. FEU Reports – completed by FEU in order to show progress or lack there of.
 - ii. Report Date
 1. Time to consider offer
 2. Evaluate the challenges in the case
 3. speak about alternative programs
 - iii. Disposition
 1. Determined actions completed in adjourned time.
 2. Defendant will then accept offer
 - iv. Motion Dates
 1. Defense attorney's submission of motions:
 - a. Dismiss
 - b. Probable cause hearing
 - c. Omnibus
 - v. Jury Calendar
 1. No deal agreed upon
 2. Set the trial date
 3. Choose between bench and jury trial
 4. Discuss any last minute offers
 - vi. Trial Date
3. Speedy trial issues:
 - a. CPL 30.30- guarantee prompt resolution of criminal charges
 - i. Addresses prosecutorial readiness
 1. Readiness represents the preparedness for trial

2. The people do not have to be certain about the outcome or the evidence that will be presented, but rather simply be ready to take a case to trial.
 3. Prosecution must be ready within reasonable amount of time
 4. Dismissal if people do not declare readiness
 - a. A misdemeanor: 90 days
 - b. B misdemeanor: 60 days
 - c. Violations: 30 Days
 - i. If the last day falls on a weekend or holiday the prosecution can wait until the next business day.
 - ii. The speedy trial statue applies to time taken by the people or the prosecution, if however the defense asks for time to consider alternative programs, investigates the case, negotiate with the prosecution the time allowed for the people will be tolled.
 - iii. Defense attorneys must object to the people's adjournment.
 - iv. Prosecution cannot announce readiness before arraignment.
 - v. If new charges are added to an existing case the people must announce readiness on the new charges.
 - vi. Motion to dismiss based on violation of defendant speedy trial rights:
 1. Defense has burden of showing that any delay was met with objection
 2. Must contain the prejudice to the defendant
 3. Prosecutors have right to respond
 - vii. Waiver of speedy trial right:
 1. Waives the defendants right to appeal based on speedy trial denial
 2. A guilty plea waives the right to appeal a speedy trial violation
 - viii. When Defendant is incarcerated:
 1. Prosecution must announce readiness for trial within the statutory period outlined in CPL 30.30(2) or a writ of habeas corpus may be brought in order to have defendant released:
 - a. Felony 90 days
 - b. A misdemeanor 30 days
 - c. B misdemeanor 15 days
 - d. violation 5 days
- b. Statement or identification notice- CPL 710.30 notice:
- i. The prosecution must notify the defense of their wishes to offer evidence of a statement or previous identification of the defendant within 30 days of the defendant's arraignment.
 - ii. Late notice may be allowed if good cause is shown
 - iii. Exception: Not police arranged Identification.

- iv. If notice is lacking the evidence is precluded from trial.
- 4. Professional Responsibility in court
 - 1. ATTITUDE IS EVERYTHING (*It's Just Common Sense*)
 - A. Respect for Judges, Clerks, other attorneys
 - 1. *A Court is a Court, is a Court, is a Court*
Regardless of physical appearances or restrictions, you are still in a courtroom. A judge is required to maintain professional decorum and control over the courtroom. Observe the same courtroom etiquette that you would in any other Court. "May I approach the bench" is a good start. Judges appreciate being addressed as "Your Honor." Every Judge has a different demeanor. If you are unfamiliar with a Judge and if you need to know where the "line" is, don't cross it, ask other attorneys. You may be in a town barn where they pulled out the trucks and set up a table, and the person behind the bench may be a farmer or truck driver, but at the end of the day it is court room and he/she is still the JUDGE...And has all the powers that are implied as such.
You may also find that a non lawyer Judge is particularly well prepared and has thoroughly researched the issues. Town and Village Judges also have 24 Hour/7 day access to law clerks and legal counsel.
 - 2. Judges may "only" be Town/Village Court Judges, but they still APPRECIATE being treated respectfully. Town and Village Judges handle the greatest number of cases within the State. *If you give respect, you should receive respect.*
And one of my personal favorites: do not tell the Judge that he is "incompetent," or is "not a trial trained Judge."
 - 3. Court clerks are the life blood of local criminal courts. Do not talk down to or berate them. Be aware that many clerks are related (by marriage) to the Judge. Don't make the mistake of treating a court clerk inappropriately. Arrogance is not appropriate. If you have a procedural problem with a court clerk, do not hesitate to contact the Judge by phone to discuss the issue.
 - 4. DO NOT BE DEMANDING, Paperwork and files do not leave control of the Court. Copies will be made upon (polite) request.
 - 5. A court is not a *good old boys meeting*. If you want to talk to other attorneys...take it outside. If you want to talk with your client...take it outside. But be ready when called by the Court to the bench.
 - 6. Advise your client as to proper courtroom attire. Hats, shorts and tee shirts are not appreciated. Brief your client on the specifics of what we are doing so he has no surprises the bench. Age 18 and under: while not mandated, make an effort to have a parent present. This shows a concern on the part of the parent to the Court and is appreciated as such.
 - 7. Be sure that the Court has your cell and fax numbers for case of contact. Get your name on the assigned counsel list (contact Kimberly Flint,

Administrator, Supplemental Assigned Counsel Plan; Oneida County
Office Building: 800 Park Avenue, Utica, New York 13501

8. Attorney v. Attorney conflicts:

All discussions at the bench must be kept professional: The Court is well aware that, at times, the sheer nature of our business requires strong disagreement. However, boisterous and loud behavior at the Bench will not be tolerated. Even through the passion of argumentation, do not belittle your counterpart. Be aware that the ADA, as an officer of the Court, should be treated with respect as such. The Court has the obligation of acting as a referee in regards to questions of law, but should not have to referee personality conflicts. Remember, plea agreements are a three party entity. Strive to establish a working relationship, based on mutual respect, between the Court, the ADA and your client. If you are not satisfied with an officer, utilize your options of presentation of motions, and ultimately trial.

2. How to Address the Court:

A. when there are questions about cases:

1. See attached handout of Oneida County T & V Court list with court numbers and times. Ask the judges in whose Courts you appear frequently for their cell numbers, and/or permission to call them at home when there is an immediate need. Be aware that some Town and Village judges only appear in Court once a week and are difficult to tract down.
2. Many Courts have dedicated clerk hours for questions, dispositions, fine/fee payments, etc. (ask when these hours are).
3. An adjournment is **NOT** granted unless you hear it come out of the Judge's (clerk's) mouth, or have it in writing. Faxes (or phones messages) sent to the Court the day of the scheduled appearance may be considered untimely and may not be granted. Some attorneys do this consistently and then wonder why their client's license get suspended, for failure to appear. If the Court grants an adjournment for a specified period, in order for you to deal with the ADA, be sure to contact the Court again when that specified time period/date expires, or expect to see your client's license suspended. **DO NOT** leave it in the hands of the ADA! If you are not getting the correspondence that you need from the ADA, then you need to **APPEAR** on an ADA session and get it addressed in a timely manner.
4. **DWI Arraignments:**
DO NOT REQUEST ADJOURNMENTS, unless absolutely necessary. Suspension pending prosecution will be held at arraignment, unless there is to be a Pringle Hearing. Do Not ask for repeated adjournments for a first appearance in order to keep the Court from suspending. On that note, Pringle Hearings are **NOT** held for the purpose of discovery. They are held to examine two issues only:

A. Facial Sufficiency: ie: does the accusatory instrument conform to the requirements of CPL 100.40 (is there an accompanying SUP DEP/BOP)

B. The Court must find that there exists reasonable cause to believe that the def operated a motor vehicle with .08 of one percent BAC (ie: Datamaster printout which must be certified by the operator)

NOTHING MORE

Everything else becomes a trial issue.

5. Do Not engage in ex parte communication with the Judge when speaking on the phone, Keep these conversations to scheduling issues only.
 6. Call the Court in order to *schedule* civil hearings (small claims, summary eviction proceedings, etc). DO NOT assume that you can schedule these for a normal court night. Many Courts hold civil proceedings on “off” court nights, by appointment only, in consideration of timeliness issues.
- B. When there are questions of law:
1. Questions of law should never be presented in a confrontational or aggressive manner. Be respectful in your approach. Ask for a sidebar. Respectfully request the Court to peruse the relevant statute or to adjourn the matter for presentation of case law. DO NOT turn the issue into a show for all in the court room to witness. Remember that embarrassment is a two way street.
- C. Procedural Questions:
1. When in doubt, simply ask the Judge how he/she intends to proceed.
 2. Every court is different. In my court, on ADA dates, we take prisoners first, attorneys (PL violations/VTL misds) second and traffic last. I give attorneys this consideration as I realize that they may have to be in another court on the same night. In that vain, it is to your benefit to mention that fact to the court clerk when you arrive. It is also to your benefit to be on time. Do not keep the Court waiting.
 3. Remember, plea agreements are a 3 party deal, the Court always has the option to negate. Fine amounts are purely in the jurisdiction of the court...not the ADA.
3. WHEN JUDGES BECOME DIFFICULT:
- A. First ask yourself a question: “Did I do something to deserve this reaction?” In many cases Judges are not adverse to *Respectful* discussion of an issue. In some cases the Judge actually expects this. I personally request that counsel informs me when they believe that I am “out of bounds.” It’s all in your approach, Do not be adversarial.
 - B. Peer Review:

Many attorneys are reluctant to address issues directly with a Judge. An alternate route may be to speak, in confidence to his co-judge in that court. Also available for our concerns, in Oneida County, is the Supervising Judge of Oneida County for Town and Village Courts; Hon, Michael Dwyer (Oneida County Court). Alternatively, you may write to the Fifth Judicial Administrative Judge: Hon. James C. Tormey, or the District Coordinating Judge for Town and Village Courts; Hon. James Murphy, to discuss any issues Special Counsel David Gideon at 315-671-1095 for further information.

5. Felony
 - a. Felony Exam
 - b. Grand Jury
 - c. County Arraignment
 - d. CSI