

THE TRAFFIC TICKET MAZE

BY WILLIAM W. WEBB, J.D.

In Michigan, traffic citations generally fall into one of two categories: 1) civil infractions or 2) misdemeanors. Civil infractions, such as speeding, improper turn, careless driving, failure to yield, etc. are the traffic offenses that will be the subject of this article. Misdemeanors, such as driving while impaired (referred to on the street as “drunk driving,” reckless driving, negligent homicide and other criminal offenses are not discussed in this article.

You have been stopped by a law enforcement officer and asked to produce your driver’s license, registration and proof of insurance. Let me digress for a moment, most police departments equip their police cars with a video camera that is situated next to the rear view mirror and is recording on a tape in a locked case. The officer will typically be wearing a miniature lapel microphone that will very nicely record everything you both say; the officer can typically turn the audio portion on/off from a switch on his belt. I mention this because now is not the time to express your frustration with being stopped by the police officer. Remain courteous at all times. It is not uncommon for the officer to ask “do you know why I stopped you?” If you acknowledge the offense, the officer will typically place that admission in notes on the back of the officer’s copy of the ticket. On the other hand, you could say, “I notice you have a radar unit, are you stopping me because I was going too fast?” Explaining your situation is always appropriate, for example, “officer, I am not from this area, I am lost...” In this manner, you are polite without acknowledging some perceived wrong-doing on your part. Does this mean you will not be issued a citation? No, but the officer may reduce the offense if you have been courteous and have a good driving record. Assuming the officer issues

you a citation, you should ask, “does the court handling this offense have a procedure where I might be able to avoid having points on my record.” The officer may provide you valuable information for future reference.

You have been issued a civil infraction citation, what are your options?

1) **PAY THE TICKET.** You can contact the court within the time deadline shown on the citation, determine the amount of the fine (if not already printed on the back of the citation) and pay the fine. Make sure you get and save the receipt for the payment if you opt for this option.

A common misconception is that the fine you pay to the court is the only fine—not exactly. In Michigan, insurance companies typically subscribe for a service with the Secretary of State so as soon as a citation appears on your driving record the Secretary of State will immediately notify the insurance company. I am confident the insurance companies appreciate this technology advancement. The insurance company may then decline to provide you a safe driver discount or re-rate the policy for THREE years. A safe driver discount—assuming you have a good driving record—could represent more or less a 25% premium savings. So calculate the loss of your good driver discount for three years and add that to the Court fine and you then have what I refer to as the “real fine.” Even though the “points” for civil infractions drop-off your driving record after a couple of years, the offense is still abstracted on your driving record for many more years. The next time a police officer stops you—the officer will see that traffic offense when your name is entered into the computer terminal in the police car. Having been a police officer, it is my opinion

that police officers will often be less inclined to give you any break if you already have a blemished driving record. City attorney's, prosecuting attorneys and courts, often have similar views.

2) ADMIT WITH EXPLANATION. On the back of a citation form you have the option to admit the offense and provide the court an explanation. Maybe giving an explanation will make you feel vindicated, but all the provisions of "1" above apply as the court takes your money and abstracts the offense on your driving record.

3) DEMAND A HEARING. There are two types of hearings, formal or informal. At a formal hearing, a city attorney or prosecutor will be present together with the police officer and you have the option of having an attorney and the matter will be heard by a judge. Or, you can request an informal hearing, there is no city attorney or prosecutor present it is just you and the police officer and you go before a "magistrate." For the past two decades I have observed a wide variety of procedures utilized by district courts to conduct such hearings and if you do not know what you are doing—your likelihood for success will be, as they say, "problematic."

4) GET SOME LEGAL ADVICE, GO PREPARED. Call the Court, before the deadline on the citation, and advise you want an INFORMAL hearing. Be certain to make a note of WHO you spoke with and the DATE and TIME of the call should there be any confusion. For extra protection, you should also send a letter to the Court, showing the ticket number, confirming your phone conversation that you want an INFORMAL hearing. If there are any dates you will be out of town, you should mention that in the letter. For a nominal fee, the USPS will give you a "certificate of mailing" to confirm you sent the letter. In the meantime, you get a postcard from the Court with a hearing date. At that point, if you want an attorney to assist you,

contact the attorney and see if they will provide you an attorney's "appearance" document that you will take with you for filing if you are unable to reach a resolution on the scheduled informal hearing.

The day for the informal hearing has arrived. Appropriate attire, sport jacket and tie for the gentlemen and equivalent business attire for the ladies are recommended. Do not arrive with jeans, boots and leathers. If you have a cell phone with a camera, leave it in the car as more and more courts will not allow you into the building with a camera.

Some courts will separate those who have good driving records from those who do not and offer to amend the charge to a type of violation that will not appear on your driving record. If such an offer is made, you may wish to give accepting the offer serious consideration as you will only pay the court fine and no offense will be shown on your driving record. On the other hand, if you are offered an "energy ticket" that has no "points," you will need to evaluate more carefully because even though there are no "points," the offense is abstracted on your driving record. Some magistrates will dismiss a case if the police officer is not present; other magistrates routinely proceed without the police officer because, after all, it is an "informal" hearing. If the police officer is present—and you should try to find the police officer immediately upon your arrival at the court—ask the officer if he/she would agree to change the violation to a non-moving violation such as impeding. If you do not get an unequivocal YES, then go immediately to the court clerk's counter and file the Appearance form that I or some other attorney has provided to you and advise the clerk that the matter is presently set that day for an informal hearing and that you want a formal hearing. The Court will then re-schedule.

If you cannot find the police officer before the hearing, wait until your case is called and at

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that point immediately indicate to the magistrate: I HAVE RETAINED AN ATTORNEY AND I HAVE HIS WRITTEN APPEARANCE WITH ME WHICH I WILL FILE WITH THE COURT CLERK AT THIS TIME; I DO NOT WANT AN INFORMAL HEARING. If the police officer is not present, then you should ask that the case be dismissed as the Michigan Court Rules require the presence of the police officer at an informal hearing. If the magistrate declines to dismiss the case because the police officer is not present, immediately indicate what is noted above, that you have retained an attorney and want a formal hearing. If you allow the informal hearing to proceed and you do not like the outcome of that hearing then your only recourse is to file an appeal and pay the fine in advance as a condition of obtaining the appeal right. This option is not recommended.

You tried to resolve this at the INFORMAL hearing and the police officer and/or court were unwilling to change the offense to a non moving violation such a blockading or impeding either because you have points on your driving record or it is that court's policy not to do so and you filed the attorney's appearance—now what? The Court will schedule the matter for a formal hearing and because a city attorney or prosecuting attorney will be present, this is an opportunity for your attorney to see if an amicable resolution can be reached where a fine is paid but you avoid "points" on your driving record or, if no such arrangement to your satisfaction can be reached, to have a formal hearing to establish that you are not responsible for the alleged offense.

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DISCLAIMER: This article is a general discussion of procedural options that you should discuss with an attorney of your choosing; this