



From the desk of Ezra Goldman

So you got a traffic ticket? Don't feel bad - it happens to everyone. The thing about traffic tickets is that once they get abstracted to your driving record, your insurance company will learn about them and will use them as an excuse to raise your rates.

I know - but what can I do? He's got me dead to rights!

The truth is that there is camaraderie among lawyers. A city attorney might seem cold-hearted to you but to your lawyer, especially someone who is a "regular" in that court, he will usually do what he can to offer a deal.

1. Civil infraction vs. Misdemeanors

In many states, traffic tickets come in two forms, depending on the charge. Some are misdemeanors, which means that the maximum penalty includes jail. The others are civil infractions, which means there is no possibility of jail. Both can come with fines and points.

There are more and less serious misdemeanors. An OUIL is more serious than an OWI. An OWI is more serious than a Driving While Suspended. Driving While Suspended is more serious than Operating without a Valid License on Person. And so on.

In the range of available plea bargain deals, sometimes your attorney can negotiate a lesser misdemeanor for you. And sometimes, he can negotiate a misdemeanor down to a civil infraction. If you had a civil infraction to start, sometimes he can negotiate that down to one with fewer or zero points.

2. The Factual Basis – where plea deals fall apart!

When the court hears a plea on a misdemeanor, the court has to find a factual basis to believe that the underlying crime took place. Therefore, in the misdemeanor realm, the scope of plea options is limited to what actually took place. You can't plead a felonious assault down to drunk driving because the thing that the defendant admits has to actually have taken place.

I have seen many a drunk driving plea fall apart because the attorney failed to tell his client what was about to happen when they come into Court. If someone has an OUIL and he is pleading guilty to a lesser offense, OWI, the judge can not accept that plea unless he hears sworn testimony that the person's driving was impaired by the consumption of alcohol. Therefore, in the plea, he asks the question: Did the consumption of alcohol impair your ability to operate your vehicle? It is natural to want to say "no" in response to this question because the "yes" makes you feel foolish. But understand – if you say "no," that is called NOT pleading guilty.

So, you have a choice – admit out loud that the alcohol affected you or don't accept this plea deal and go to trial. There are defenses to every crime, including drunk driving. But statistics support the notion that you will be found guilty in your drunk driving trial. If you have a plea deal and you want to accept it, be ready to say that you are guilty of the lesser offence!

3. But that only applies to misdemeanors....

So long as the prosecutor agrees, you can plea bargain a civil infraction down to any other civil infraction because you don't have to testify that you did the underlying act - just that you accept responsibility for it. So, if you went through a red light, you are free to admit to parking illegally. It doesn't matter if you parked illegally or not - you aren't saying you did it. You are just saying that you are willing to accept responsibility for the penalty associated with illegal parking.

4. But I am not entitled to a deal – I am guilty of the very thing the officer charged me with!

The bottom line is that there is negotiating to do, as to things you may never have heard of. For this reason, it is important to hire an attorney for your ticket even if you are guilty. If you can be found guilty of something lesser, you might be penny wise and dollar foolish to avoid the expense of the attorney fee by "just paying the fine." Just paying the fine also means just getting the points!"

Also, you may not be aware of constitutional problems with your arrest. Everyone has a constitutional right to not be stopped by police but the police have a duty to stop you if you are endangering the public or violating a law. There are police departments that will stop you because those little lights around your license plate were out and there are judges that will uphold that. But here are judges who will find that stop to be unconstitutional. The stop can't be pretextual – it has to be legit...

As with every dispute, a criminal case can be worked out and it can be fought out. The thing about fighting things out is that you risk losing the fight. Though they see them every day, sometimes a cop in a shiny uniform has credibility that you don't.

I have worked out more tickets than I can count. I have fought them and won and I have fought them and lost. I have had clients not show up for their ticket hearing and fought them and won anyway. Call today so we can take care of your ticket!

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Ezra Goldman
Law Offices of Ezra N. Goldman PC
24725 W Twelve Mile Road
Suite 110
Southfield, MI 48034

[248-353-2343](tel:248-353-2343)