

# NEW JERSEY LAWYER

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# PRO BONO

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# Restoring Drivers' Licenses for Ex-Offenders

by William Lim and John G. Koufos

**F**or most New Jerseyans, obtaining a driver's license is a teenage rite of passage. For people returning home following incarceration, it is an economic lifeline that is essential to rebuilding their lives. Recognizing this, the New Jersey Reentry Corporation (NJRC), a nonprofit employment-focused reentry program, has made license restoration the centerpiece of its *pro bono* legal program. Based on NJRC's experience, this article is intended to guide both lawyers and non-lawyer advocates in helping reentry clients get back on the road.

## Scope of the Problem

In the 12 months prior to July 1, 2017, NJRC enrolled 1,627 clients in Hudson, Essex, Passaic, and Ocean counties. Of these, 1,209 were not in possession of a valid driver's license at the time of enrollment, representing 74 percent of NJRC

clients. The vast majority of these clients did not go to prison for a motor vehicle-related conviction. Rather, they left behind a trail of unpaid fines or failures to appear (FTA) on old municipal court summonses. Municipal courts reported these unresolved matters to the New Jersey Motor Vehicle Commission (MVC), which, in turn, suspended their licenses. Thus, to get their licenses back, *pro se* clients must not only re-trace their steps and re-open matters that may be more than a decade old, but then have the financial means to pay the fines imposed by each municipal court and the MVC. Because of the piecemeal nature of having to resolve outstanding matters municipality by municipality, a *pro bono* lawyer's assistance in the restoration process becomes invaluable.

## Re-Assembling the Record

The roadmap by which to begin the process is the client's MVC abstract. While the typical abstract that can be ordered

from the MVC's website does contain useful information about a client's driving history, it is incomplete for the purpose of resolving municipal court matters. However, the MVC does provide, upon request, a different type of abstract, in the form of a restoration eligibility letter with a checklist of reasons why a license is suspended and what must be done before it can be restored. Most importantly, if the client does have municipal court matters still outstanding, the MVC will provide the name(s) of the court(s), the summons number(s), the violation date(s), the violation statute(s), and whether a suspension was ordered due to FTA.

### **Beware of the Bench Warrant**

If the abstract shows an FTA, it is likely that a bench warrant may have been issued for that particular summons. Therefore, it is critical for the lawyer to submit a letter of representation or call the municipal court administrator to ascertain the warrant status and request that it be recalled. Typically, a bench warrant can be recalled if the court can be reasonably assured, for example by way of an attorney letter of representation, that if a new appearance date is scheduled, the client will actually appear.

### **Seeking Relief from Suspension**

Once the lawyer files a letter of representation, using the information obtained from the client's abstract, it is finally time to seek the appropriate relief from the municipal court. Here, the line between typical municipal court traffic defense and post-judgment motion practice becomes blurred. Regardless of whether there is an FTA or only fines, the lawyer should file a motion seeking to convert fines that are owed (or which may be imposed) to jail time previously served, pursuant to N.J.S.A. 39:5-36 and/or N.J.S.A. 2C:46-2. These statutes give municipal court judges the authori-

ty and discretion to credit each day of the client's incarceration against the amount of fines owed, at the minimum rate of \$50 per day. Thus, these statutes become the most powerful tool in the lawyer's arsenal with which to seek a reduction or even the full vacating of fines. With the fines vacated or reduced to an amount the client can actually afford to pay, the matter causing the license suspension is disposed of, and the client gets one step closer to restoration.

For matters that had been previously adjudicated, where the only issue is the amount of fines, the motion to convert or vacate can be essentially characterized as a motion for post-judgment relief. For matters with an FTA, or that had not been otherwise adjudicated, the motion is typically understood by the municipal courts as a request for a hearing or trial. Either way, the lawyer's filing of a letter of representation and a motion to convert or vacate will typically cause the municipal court to calendar the matter.

At the usual plea bargaining stage with the municipal prosecutor on the day of the court appearance, the prosecutor may agree with the motion and recommend to the judge to vacate the fines and/or dismiss the matter. In matters where the only issue is fines, the prosecutor may make no recommendation and allow the lawyer to argue the motion directly to the judge. However, in matters that have not yet been adjudicated, especially where there is an FTA, the lawyer must be prepared to plea bargain with the prosecutor *de novo*. Nevertheless, even if the client pleads guilty to downgraded charges pursuant to a plea agreement, the lawyer still has an opportunity to argue for any fines to be waived at the sentencing stage before the judge.

Of course, not all judges will be inclined to exercise their discretion under the statute without the lawyer

having established a factual basis for good cause shown. This is where three compelling factors can be argued to favor the client. First, the judge needs an accurate history of incarceration from the client in order to calculate how many days of confinement can be credited. Second, the judge may want reasonable assurances that the client is not likely to re-offend, so as to not undermine the deterrence effect of motor vehicle fines. Here, if the client is enrolled in a reentry program, such as NJRC or one of the many other programs throughout New Jersey, a letter of support from a case manager or social worker can be critical.

Last but not least, the judge may want to see a factual basis for the client's indigency in order to be assured that the client's default on outstanding fines was not willful. Here, the judge may place the client under oath and question him or her about his or her financial circumstances, or require the client to sign a Form 5A certification of indigent status.

Remember that the ultimate destination on the roadmap provided by the MVC abstract is to resolve all of the municipal court matters causing a client's license to be suspended. Remember also that the ultimate goal of all this municipal court practice is license restoration. Additionally, remember that the goal of license restoration is in furtherance of the client's ability to seek and maintain employment. Finally, remember that for reentry clients, it is a well-established fact that employment following incarceration is the most effective way of preventing recidivism and, thus, ensuring public safety. ⚖️

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