

## Comments on the New York State Office of Inspector General Report Regarding the New York State Department of Motor Vehicles Manhattan North Traffic Violations Bureau

### CRIMINAL JUSTICE SECTION

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In June 2018, the New York State Office of Inspector General (OIG) issued a report regarding its investigation of the New York State Department of Motor Vehicles (DMV) Manhattan North Traffic Violations Bureau (TVB). The report is based on complaints received by the OIG alleging that TVB employees engaged in a scheme to dismiss traffic tickets. The OIG recommended that DMV establish uniform policy and best practices for all TVBs, and review current procedures at all TVBs.

In response to the OIG report, DMV has taken several administrative actions to address the inappropriate behavior by its employees. Among the actions taken are: increased training, restricting access by clerks to certain information, minimizing unsupervised contact between clerks and attorneys, direct supervisor oversight of clerks, and the installation of new cameras above TVB workstations.

Many of the responses by the DMV are appropriate and necessary to ensure the fair administration of justice in matters coming before the TVB. However, we as practitioners in this area are concerned that in some instances new procedures at the TVB have had a negative impact on the fair administration of justice, particularly for motorists represented by counsel. Of critical importance, as long as the TVB continues to provide the only first-hand glimpse of the justice system for hundreds of thousands of New Yorkers every year, it must be an example of how fairness and efficiency can co-exist and thrive in administrative adjudications.

We note that the OIG report documents corruption solely in connection with the Manhattan North office of the TVB. There is no indication of wrongdoing in the other bureaus. Newly enacted procedures, broadly applied, are having an adverse impact, particularly on those motorists represented by counsel.

Some examples of this adverse impact are that: Attorneys representing motorists are precluded from accessing the "Information Line," this makes providing effective representation difficult and is potentially violative of motorists' constitutional right to legal representation. Attorneys and their clients need to know about suspensions, hearing

dates, money owed to D.M.V., etc., and they need this information as soon as possible. If a motorist has a suspended license, this problem needs to be addressed immediately. It is unfair that a motorist represented by counsel must wait, sometimes several hours, to pay a bond, suggesting he is perceived to lack integrity, and thus needs to see a supervisor, as the clerks direct unsupervised interaction with attorneys has been limited as a result of the OIG report.

It is similarly unfair to instruct motorists represented by counsel that they can approach the counter alone, but not with their retained attorney. Some of the TVBs have announced a structured schedule for attorneys' work.

This arrangement is flawed. Many attorneys, of necessity, appear in multiple courts on a daily basis. An attorney who is present for an 8:30 A.M. calendar and has dropped off work may have left the court prior to the 9:45 A.M. pick up time. Furthermore, an attorney may not be at the court between the hours of 11:15 A.M. and 12:00 P.M. to pay a bond. Receipts should be immediately issued, and not at some "later time." Questions require answers. If motorists may approach the information counter with questions, then their representatives should similarly be permitted the same access to D.M.V. staff and resources.

The new DMV policy of transferring clerical responsibilities to supervisors does not seem to be working efficiently. Approximately half of the motorists appearing at the TVB are represented by counsel. DMV lacks a sufficient number of supervisors to simultaneously handle the clerical work and supervise the clerical staff. This raises the question: who is supervising the clerical staff while the supervisors are performing clerical tasks?

For example, an attorney and his client approached the information counter several weeks ago. A "substitute ticket" was required for their hearing, as well as other information. They were informed that the motorist received a ticket when he was stopped, and therefore he "shouldn't have lost it." This comment was inappropriate as you recognize, motorists need to send their summons to the D.M.V. in order to receive a hearing date. This summons is not returned to the Respondent. Neither the motorist, nor the attorney, has any use for a substitute ticket. In courts outside the T.V.B. system, no substitute ticket is used. One merely "checks in" with the court officer or clerk upon entering the court.

Additionally, at TVB, the calendar is called in the order of motorists check-in. A "new rule" prevents attorneys from checking into the room for a hearing until the judge is physically on the bench. This makes no sense and ensures that motorists represented by counsel are called last. Motorists represented by counsel should not have to wait to have their case called simply because of such a rule.

Additionally, attorneys are no longer permitted to use the DMV bathrooms; the police, however, may use the facilities. This policy discriminates against attorneys, and clearly favors the police department. Mindful that the police and the attorneys are both equal

parties in the hearing, neither one should be treated more favorably than the other. In addition, some of the police rooms are located in the TVB “private area.” As a matter of bolstering the fair administration of justice, the police, as representatives of a party to actions in the TVB, should not have unsupervised access to the clerical area.

In addition to the aforementioned issues, below are listed additional issues that are cause for concern:

- (1) Officers are provided with copies of the original tickets while motorists are not.
- (2) Officers are permitted to testify from scripts prepared subsequent to the issuance of the ticket, sometimes months later. This is permitted even though the police officer has no independent recollection in court.
- (3) The DMV VPASS system often has no dates or only one date, which necessitates attorneys approaching the information counter if the only available date conflicts with their schedule.
- (4) The judges, when assessing penalties, review a life-time record. This information is not available to an attorney. Those attorneys who receive abstracts from the DMV website only have a three (3) year look-back period.
- (5) Given the changes in the DWI laws, it is essential for attorneys to have access to a motorists’ complete record.
- (6) It would be helpful to the DMV as well as the attorneys if bonds could be paid online. Courts outside of New York City permit payments online and charge approximately 2.99% for the privilege. Another option would be to have attorney escrow accounts similar to the procedure for abstracts online.

As practitioners in this area of the law we would welcome the opportunity to collaborate with the leadership at the DMV to ensure the fair administration of justice at the state’s TVBs.