

Dear Client,

Thank you once again for entrusting The Kavinoky Law Firm with your DUI case. Our entire DUI Defense Team knows this is a difficult time for you, and we will do everything in our power to achieve the best possible result for your DUI charge.

I write to explain the process that applies to your DUI case. We will, of course, keep you updated as your DUI case progresses; however, my experience is that by providing you more information about the DUI defense process, your anxiety will decrease.

Keep in mind that there are two separate cases: the DUI criminal court case, and the DMV case. They are related, in that they both arise from your DUI arrest. However, they proceed independently, and the result obtained in one case generally has no bearing on the other.

DUI Criminal Proceedings

At the time of your drunk driving arrest, you were given a notice to appear in court. This first court appearance is called the arraignment. We will be appearing for you at this appearance; you do not need to be present. (One of the benefits of hiring a private attorney to represent you in a misdemeanor DUI case is that we are able to appear on your behalf, and you are free to go about your normal business.)

At the arraignment, we will enter a "not guilty" plea and schedule your case for a pretrial conference, or we may not enter any plea at all, and simply continue the arraignment until a future date. Neither course of action is better than the other; there are simply different customs in different courts, and the action that we take initially is designed to allow us time to investigate your DUI case.

If your DUI case involved a blood test, we will get a court order for the blood sample to be split for independent testing by our lab. There, we will check for alcohol content, as well as anti-coagulant and preservative levels and bacterial growth. Integrity of the sample (or lack thereof) is a key issue for both court and the DMV.

Following the arraignment, your DUI case will be set for a pretrial conference. The pretrial conference is an

opportunity for us to meet with the prosecutor, review the DUI case for possibility of settlement, and perhaps get a plea-bargain offer. Because of congested court calendars, it is not unusual for a DUI case to have a series of pretrial conferences. This is typical, and candidly, delay is sometimes a tactic that we employ to our benefit. After each pretrial conference, we will write you and let you know what happened, and the date of the next court appearance.

During the pretrial phase, we may need to file one or more motions. Motions are simply a formal request that the judge order something. Examples of typical motions in a DUI case are motions to suppress evidence, motions to force the prosecutor to turn over additional discovery, or motions to delve into the arresting officer's private personnel file for complaints of excessive force or dishonesty.

Some of these motions can be accomplished without your being present in court; others will require your presence. When we are setting your case for a motion that requires you to be there, we will do our utmost to give you as much advance notice as possible, so that you can make whatever arrangements are necessary to be present.

At the conclusion of the pretrial phase, the prosecutor will give us an offer for a plea-bargain. This offer may be an opportunity to plead to a lesser charge, such as reckless driving, or may simply be a negotiation about the consequences to be imposed if you admit to driving under the influence. Because every case is different, what is a good deal in one case may be a bad deal in another. We will, of course, review the particular circumstances of your DUI case with you to assist you in deciding whether to accept or reject the prosecutor's plea-bargain offer.

If the plea-bargain is accepted, this will bring an end to the DUI criminal case. Typical plea-bargains include being placed on probation for a period of time (as short as one year or as long as five years, depending upon the nature of the DUI case), as well as the imposition of a variety of terms and conditions of probation. Typical terms and conditions include paying a fine, taking educational courses ([DUI classes](#)), or having a restricted driver's license. The terms and conditions of probation vary

widely, as they will reflect the plea-bargain that is unique to your DUI case.

If the plea-bargain is not accepted, the case will be set for a [jury trial](#). Every person charged with a crime in California has the Constitutional right to a jury trial, where [12 citizens are selected](#) from the community to listen to the evidence, be instructed on the applicable law, and render a verdict by applying the facts to the law.

A jury trial generally lasts about a week or so, depending upon which courthouse your case is assigned to. A jury trial in a DUI case is like any other criminal case. It begins with jury selection, and proceeds through [opening statements](#), [examination](#) and [cross-examination](#) of each of the witnesses, [closing arguments](#), jury instructions, deliberations, and verdict.

If you are charged with a violation of Vehicle Code Section 23152 (b), driving with a [blood or breath alcohol level](#) of .08% or higher, and if you are acquitted of that charge (meaning that all 12 jurors agree you are not guilty of the charge), then the DMV case is automatically set aside. This is the only thing that can happen in court that will impact the DMV Hearing.

DMV Hearing

Every DUI arrest in California also triggers a DMV case. Typically, when you retained my firm to defend your interests, we immediately contacted the DMV to request a hearing on your behalf. The DMV Hearing is an administrative action, separate and apart from the court action (although arising from the same event), where the DMV is attempting to suspend your driver's license for a period of time.

In a first-offense DUI case, assuming that a chemical test was given, the DMV is seeking to suspend your license for 4 months. However, it is possible to obtain a restricted license after one month of the suspension has passed, assuming that you get enrolled in a first-offender alcohol program, file an SR-22 proof of insurance certificate, and pay a license reissue fee.

In a second-offense DUI case, assuming a chemical test was given, the DMV is seeking to suspend your license for one year, with no opportunity for a restricted license.

In DUI cases where there was a refusal to take the test, the DMV sanctions increase: a one-year suspension on a first-offense DUI, two years on a second-offense DUI, and so on. Please be sure to talk to me if you have any questions about the nature of the suspension you are facing with the DMV.

After we send in your DMV Hearing Request form, we will be contacted by the DMV to schedule your hearing. This will typically take about one month, the time in which the temporary license you were given is due to expire. We will make sure that the DMV sends you a new temporary license, which will replace the pink temporary license you were given at the time of your DUI arrest. This is just another paper license. If you need a photo I.D. card, I recommend that you immediately go to the DMV and apply for one.

During the investigative phase, which will take place between the time of your DUI arrest and the time of the DMV Hearing, we will be working up your case for purposes of the DMV proceedings. Much of the investigative work we will be doing for purposes of the court case will serve us well here, whether it is reanalysis of the blood sample, or investigation into problems with the breath testing equipment.

At the time of the DMV Hearing, your presence may or may not be required, depending upon what issues we have to raise with the DMV. If your presence is required, we will endeavor to give you as much advance notice as possible. We may also need to elicit testimony from a forensic expert, but will try to ascertain this as quickly as possible and let you know.

There are no uniform rules for how a DMV Hearing will proceed. Often, the DMV will seek to rely only on documentary evidence (the police reports), and will not introduce evidence from "live" witnesses. Other times the DMV will subpoena the arresting officer to cure a defect in the paperwork. Sometimes we will want to subpoena the officer, although this too will vary.

Since the DMV usually relies on paperwork to try to make its case against you, usually our most effective defense at the DMV Hearing is to attack the admissibility of the paperwork. If we are successful in keeping the paperwork out, the DMV will be forced to set aside its action against you. If we subpoena the officer to be present at the time of the DMV Hearing, we have an advantage that accrues primarily to the benefit of the court case, inasmuch as we have the chance to cross-examine the officer without the prosecutor being present. However, if we do so, the officer will be present to fix any problems with the paperwork.

Because of the variety of issues that can arise, there are no fixed rules about how the DMV Hearing will be held. As a general rule, in-person hearings are conducted, although in certain cases a telephonic DMV hearing is best. We will let you know our thoughts as the hearing date draws near.

The DMV will typically send notices of hearings, temporary driver's licenses, and other documents to you from time to time. Occasionally, DMV Sacramento will send notices that conflict with those sent from the local DMV. This is not uncommon, and is simply an example of one office not knowing what another office is doing. Please fax copies of all documents you receive to our [Tarzana office](#), where we route all of our mail for expedited handling.

Thank you once again for allowing us the privilege of working on your DUI case. I hope this letter has helped shed light on the DUI defense process, and some of the issues that typically arise. If you have any questions about any aspect of your DUI case, I welcome your call at any time.

Very truly yours,

THE KAVINOKY LAW FIRM
A PROFESSIONAL LAW CORPORATION

[Darren T. Kavinsky](#)
Attorney at Law