



# THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Summer 2010

## **SCHOOL IS IN!**

## **MAGISTRATE CONFERENCE**

## **EDUCATION**

The education program of this year's Annual Magistrates Conference [Sept. 22-24, 2010] will be full of new and exciting information. It will be a must do. If you have never attended an annual conference, this is the year you really should.

Representatives from the Secretary of State will be present to present on the new statutes which take effect this year and some changes regarding driver's license numbers and personal identification cards numbers. There will also be information regarding the new High-BAC-Interlock law and the "take a class-get rid of your points" [driver improvement] statute. Additionally, you will want to hear about the new law [eff. 10/31/10] that gives 4 SOS points for "at-fault collision with another vehicle, a person or any other object".

We will also have a presentation on ARIDE (Advanced Roadside Impairment) and DRE (Drug Recognition Education) from our friends at the Prosecutor's Association and Michigan State Police. Further, they will also cover recent

legal developments in the courts and legislature and give us an update on the medical marijuana.

Our good friend from the Michigan State Police, Sgt. Lance Cook will also present on new legislation not covered by the others, as well as the new standards for speed measurement. His presentation will also include the training and education required to perform RADAR/LIDAR. And as always, he will be available to answer any questions you may have.

Finally, the magistrates are going to be required to participate in a time study this fall. Laura Hutzel from the State Court Administrative Office will be present to give us the training for the mandatory participation in the study.

As you can see the education program is full of new information that is imperative to the performance of our duties as magistrates, so please try and attend. Don't forget, we do have scholarships available for those whose funding units may not be able to cover the costs of the conference.

## How Specific Does Trailer Plate Registration Need To Be When the Trailer is Modified or Rebuilt?

By Sgt. Lance Cook, MSP

Title and plate are based on whatever the owner tells SOS at the time of application. They don't weigh the trailer, or even look at it. Per the requirements in MCL 257.209, they're supposed to verify the information, but if it's non-commercial, they do this with a signature swearing that the person is telling the truth.

If they lied on the title and registration applications, then you're looking at title and registration fraud. SOS can also yank the plate. Safest violation, however, is probably 801 for the wrong fee (if applicable).

Depending on the skill, training, and experience of the officer, he/she may be able to articulate that the trailer "appeared" to be under-registered. That would require additional investigation, including weighing the trailer and examining any VIN that may be present. "Assembled" status applies when a vehicle is built from scratch, or when a vehicle is modified to the extent that it is no longer recognizable as the original manufacturer(s). If the defendant took an existing trailer frame and simply replaced the siding or added a gate, then it shouldn't qualify as assembled, and should be titled under the original manufacturer and date. If a trailer was stripped down and changed into a different body style, i.e. horse trailer into utility trailer, then it could possibly be retitled as assembled.

## School Bus Drivers and Tickets

Article submitted by Magistrate Joe Brutsche  
10th District Court, Battle Creek, MI

Under the Pupil Transportation Act there is considerable training for school bus drivers in Michigan. Magistrates should be aware of these factors when conducting school bus violation informal hearings. If the bus driver follows protocols and checklists a magistrate or District Court Judge would be able to make a more precise decision.

A bus driver must have the appropriate license: CDL A or B with P and S endorsements. A driver may also be restricted from air brake vehicles. Upon being hired they must undergo local school district training, Department of Education (week long school), and medical card. The medical card for school bus drivers is blue, and is good for one year. The certification from the Department of Education is good for two years. The driver must take an approved 6 hour re-certification class every two years, and of course, submit to random drug testing.

The daily routine for a driver is to conduct both a pre-trip and post-trip inspection. This has to be in writing, and it includes a light inspection. You may notice, if you ever go through a school transportation facility, the giant convex mirrors mounted in a parking lot. This permits a bus driver to look into the mirror to see if the rear lights are working. If there are no such mirrors, then they are supposed to get a co-worker to check their rear lights.

Inside the bus near the driver position is a light repeater box. It usually has a schematic drawing of a bus frame (front and rear) There are little lights (usually LED) that will flash the same time the exterior warning lights are activated. A driver can usually look outside and see if the stop arm and its lights are functioning. Brake, horn, wipers, fluids, tires, and other systems are inspected and checked. Only then can a driver put a bus into service.

Since magistrates hear cases that involve drivers failing to stop for school buses red lights, I think it is important to review what constitutes a red light stop. The director of transportation for the school system must review the routes and student pick up points. He or she will determine what is a red light stop. There are factors they have to consider such as distance between stops, speed limits, will students be crossing the road, intersections, traffic signals, blind spots, hills, etc. **IMPORTANT TO NOTE: The transportation director, not the driver, determines a red light stop.**

The process for a driver in making a red light stop is as follows: (1) Between 200 and 400 feet before the stop they must activate the

overhead flashing yellow lights. As we know this is a warning of the impending stop. Motorists could, if legal and safe, go around or pass a bus. (2) When the driver arrives at the stop they must put the bus transmission in neutral, set the parking brake, make sure the passengers are still under control, look around, and when all clear open the door. (3) When the driver flips the switch, release, or door open mechanism a circuit is activated that switches the overhead yellow flashers to the red flasher mode. This is the time that violations would occur. The lights remain red until the door is closed and the circuit is cut. If the bus is using a lift gate or elevator the wait can be quite a long time. (4) Once the students are loaded or discharged, the driver reverses the stop procedure. Activates turn signal and then safely resumes the route.

As a side note bus drivers are trained not to go off pavement. This prevents a bus from being stuck in the mud, sliding down an icy embankment, or becoming a traffic hazard. Additionally most drivers will have in their bus a form or checklist in the event of a failure to stop for school bus signal. Usually they report it to their transportation director who usually contacts the appropriate police agency.

Unless the event is an accident or officer witnessed the occurrence, the violation would be a civil infraction (not witnessed). The officer would have to submit his or her complaint and investigation package to the appropriate prosecuting official. The ticket would then be issued to the driver, and if challenged it would be set for a hearing.

An experienced officer could bring the bus driver, any aides, and competent witnesses to the hearing for testimony. Sometimes the driver of the bus can only testify to a blur, a race or sex of the driver, or a partial license plate. Other times the driver can be a very credible witness. You may hear testimony that it was little Billy who was on their bus for 4 years who drove by. It was grandma Jones because she drives the pickup truck with no tailgate. Or the kids on the bus said it is the person who lives in the green house by the creek. The presumption that the registered owner is the driver can always be

rebutted. In the event of dual names on registrations to vehicles, i.e. husband and wife, the reasonable man standard would always apply. If the husband is ticketed, shows a time card as evidence of alibi, the bus driver testifies the driver was a blonde female aged 18-20 a finding of not responsible would prevail. In that real case the husband / father indicated that his daughter attended a local junior college near the school bus route and her classes ended ½ hour before the time of the ticket.

In the event of a finding of responsibility does your court impose community service as part of the sentencing?

Next is a checklist of factors a magistrate might want to keep for reference in bus hearing cases:

- Officer witnessed or is this an investigation?**
- Accident ticket based on probable cause?**
- Who are the witnesses?**
- Is the bus driver a regular or substitute driver?**
- Is it their normal bus or a spare?**
- What is the bus number?**
- Were the required daily inspections completed?**
- Is it a designated red light stop?**
- ID of vehicle?**
- ID of driver?**
- Is this a presumed owner violation ticket?**

Possible defenses or explanations raised during hearings might be: I didn't see lights; What bus?; I was on a boulevard; Emergency; It wasn't me or prove it was me; I was already next to or going by bus; The lights were still yellow; In my state it is legal to do that; I was ambushed by the lights going yellow to red; The driver of the bus waved me through; A police officer was directing traffic; The bus driver took too long; I was confused by the lights Yellow/Red/Brake/Turn Signals; The fines and costs are so much or too steep.

Additionally magistrates will hear traffic cases or accident tickets in which a bus driver is the defendant. They may have been driving a bus or their own personal vehicle. If you have not had many of these cases, but here are some of the things you will encounter: Same as CDL truck drivers--I'll lose my CDL, I'll lose my job; motions to dismiss, motions to amend plea

agreements between plaintiff and defendants; There were no students on the bus (Raised in a 57 /40 mph case); I thought I was in a 60 mph zone; On bus distractions or emergencies (fights, sick student, handicap passenger); I have to drive that route, and make that left turn at the blind spot which is why I had to pull out and had the front end of the bus struck; The other driver was speeding when I pulled out at the yield sign; I have to back up the bus because it is a dead end road (struck mailbox).

Frequently the driver will show up for court wearing bus driver accouterments (same as ambulance drivers, volunteer firemen, military) hoping that their blue silk jacket with an embroidered school bus, with or without their union affiliation might help sway the court.

Since I drive a parochial school bus for free, listen to my fellow bus drivers at bi-annual recertification, and conduct hearings on these matters. I would like to offer some helpful hints or focus factors that will help you in your decision making. Since there is more at stake than a routine ticket the dynamics of these hearings are usually more intense.

Ask the bus driver the following questions:

1. Did you performed your daily inspections?
2. What do you do if a light is burnt out?
3. Who decided this location is a red light stop?

These hints may assist the court on the issue of credibility in a tough or a close case.

**Editor's Note:** Magistrate Joe Brutsche is a CDL Class B driver, with school bus and passenger endorsements, and has been a MI Department of Education certified school bus driver since 1997.

## Texting While Driving Issues

Excerpt from Listserv from Jill Bennett, MSP

"Officers may not obtain a search warrant or investigative subpoena solely for a violation of 257.602b because this violation is a civil infraction. Officers may obtain consent to examine a 2-way communication device; however, without consent, officers MAY NOT lawfully seize an individual's device to examine the contents."

## Officer Sees Red after Driver Runs an Orange

Submitted by Magistrate Charity Mason  
96th District Court, Marquette, MI

This morning I was conducting an informal hearing on a traffic light violation. After some back and forth with an evasive driver I decided it was time to get to the point so I asked: "What color was the traffic light when you entered the intersection?"

Driver: "I think it was Orange."

Magistrate: "What color?"

Driver: "Orange."

Magistrate: "I'm sorry did you say the traffic light was Orange?"

Driver: "Yes, orange".

In the most earnest tone I can muster I told her, "There is no orange on traffic signals." She responded with a blank stare.

I found her responsible for careless driving (she also turned into the wrong lane and drove into oncoming traffic for 1/4 mile after blowing the red/orange light).

## Watch For Higher Posted Speed Limits

Email from Sgt. Lance Cook, MSP

**Editor Note:** Traveling North on I-127 recently, I noticed the posted speed limit South of Ithaca was 65 mph. I asked Sgt. Lance Cook about it, and here is his response:

A close reading of MCL 257.628 indicates that the statewide 55 mph for non-freeway roads is not a maximum, as the 70 mph freeway speed limit is, but is instead a default speed limit. Nothing prevents a higher speed if based on an engineering study. MDOT did engineering studies, and found an 85th percentile speed of 68 mph for that road, with almost no crashes other than car-deer and single-vehicle. Any that were speed related were too fast for conditions rather than numerical speed violations. After making a couple of improvements to eliminate some dangerous crossings where trucks stuck out into the travel lanes, a TCO was written for 65 mph, signed by MDOT and MSP, filed with both county clerks, and appropriate signs posted.

If all goes as expected, look for 60, 65, or even 70 on some other stretches of rural state trunklines in the near future.

## Magistrate Specialty Seminar

### SEMINAR INTRODUCTION

Michigan Judicial Institute (MJI) is pleased to announce a seminar for new and experienced district court magistrates. The seminar will be held from 9:00 a.m. to 4:00 p.m. on Wed. July 28, 2010 at the Michigan Hall of Justice in Lansing.

### SEMINAR AGENDA

9:00–10:00am Traffic Law Update  
 10:15–12:15pm Sentencing Alternatives for Juvenile and Elderly Traffic Offenders  
 12:15–1:00pm Complimentary Lunch  
 1:00–3:00pm Commercial Drivers License Issues  
 3:00–4:00pm Experiential Learning: “Inside the Cab of a Big Rig”

### LODGING

The MJI will provide double-occupancy lodging for the evening of Tuesday, July 27 for participants whose court offices are located more than **100 miles** from the Michigan Hall of Justice. See registration form for details.

### REFRESHMENTS AND LUNCH

Refreshments (coffee, tea, iced water) and a group luncheon will be provided. All other incidental expenses including mileage, telephone calls, etc., are the responsibility of the individual or his/her funding unit.

### SEMINAR REGISTRATION

The Michigan Judicial Institute is utilizing online registration. Please click on the following link to register: <http://courts.michigan.gov/MjiOnline> and use the invitation code: C7A77C

If you do not have internet access, or are otherwise unable to register electronically, please contact Anne DeMarco at (517) 373-7349 for a paper registration form.

**REGISTRATION DEADLINE  
 MONDAY, JUNE 28, 2010**

## MI Supreme Court Institutes Several Listserv Applications

The Michigan Supreme Court has created separate listserv applications to allow subscribers to receive (1) appellate Orders; (2) appellate Opinions; and (3) administrative matters.

### To subscribe to Appellate Orders:

Send an e-mail to:

[listserv@listserv.michigan.gov](mailto:listserv@listserv.michigan.gov)

with the **exact** phrase in the message body:

Subscribe AppellateOrders

(Words must be on the same line)

### To subscribe to Appellate Opinions:

To receive the Michigan Supreme Court and COA opinion release lists, send an email to:

[listserv@listserv.michigan.gov](mailto:listserv@listserv.michigan.gov)

with the **exact** phrase in the message body:

Subscribe AppellateOpinions

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### To subscribe to Administrative Matters of the Supreme Court:

To receive administrative matters of the Michigan Supreme Court, send an e-mail to:

[listserv@listserv.michigan.gov](mailto:listserv@listserv.michigan.gov)

with the **exact** phrase in the message body:

Subscribe ADMMATTERS

(Words must be on the same line)

You can also find instructions at the website:

<http://courts.mi.gov/supremecourt/Orders.htm>

The listserv is operated and maintained by the Department of Information Technology through the State of Michigan. For your convenience, each message you receive will include instructions on how to unsubscribe from the list.



## Mandatory Time Study for All Magistrates

All magistrates will be involved in a mandatory time study, conducted by the National Center for State Courts, between October 4 and 31, 2010.

The purpose of the study is to review and update SCAO's methods and case weights for estimating judicial need/excess in the trial courts. This is similar to the time study that took place in 2006, but it will be limited to four weeks of data collection instead of 2 months.

Paper forms will be available to record time, but each person should enter their time into NCSC's on-line reporting system at the end of the day. NCSC has estimated that it takes 7-9 minutes per day to record and report time.

All magistrates will have to attend one 2-hour training session in September to prepare for the time study. Training sessions will be offered at various locations around the State during the month of September, but you can get your training session on Friday, September 24 at the MADCM Conference at Crystal Mountain. ***Why travel to the mandatory training somewhere else, when you can get your training at the Conference.***

For more information contact Laura Hutzell at SCAO [HutzellL@courts.mi.gov](mailto:HutzellL@courts.mi.gov) or 517-373-2222.

## New Membership Benefit: MADCM Google Group

We are proud to announce the establishment of a MADCM Google Group® for our association members. This will allow association members to post questions (and answers) to other members of the association via email. This group is only open to persons who are both: (1) current District Court Magistrates (either full-time or part-time) and (2) current members of MADCM.

To apply, simply fill out the application attached to the email by which you received this Newsletter (or email [jmckay@shiawassee.net](mailto:jmckay@shiawassee.net) to get the form) and complete the form and return it by email or mail to Magistrate Kevin McKay. You will then be notified by email how to activate your account in the MADCM Google Group®. Please allow 7-10 business days to complete the application process.

***By placing your name on the application form, you certify that you are currently a District Court Magistrate (either part-time or full-time) and a current member of MADCM.***