



# THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Winter 2010

## **SHOULD DISTRICT COURT MAGISTRATES LIMIT THEIR 'FACEBOOK FRIENDS' ?**

On November 17, 2009 the Florida Supreme Court Judicial Ethics Advisory Committee issued an Opinion that held that Judges may not add lawyers who may appear before them as their "friends" on social networking sites, such as Facebook. They also ruled that Judges should also not permit lawyers who may appear before them to add the Judge as their "Friend".

The Committee stated: "When used simply to post materials, social networking sites are similar to an internet webpage where information is posted and made accessible for the public to view. Certain social networking sites permit the member to set levels of privacy permitting the member to restrict information, including the identification of the member's 'friends', to certain visitors to the member's page. For example, the member might be permitted to set the privacy settings in a manner such that only the member's 'friends' could see the names of the member's other 'friends'."

Their rationale included: "The Committee believes that listing lawyers who may appear before the judge as 'friends' on a judge's social networking page reasonably conveys to others the impression that these lawyer "friends" are in a special position to

influence the judge. This is not to say, of course, that simply because a lawyer is listed as a 'friend' on a social networking site or because a lawyer is a friend of the judge, as the term friend is used in its traditional sense, means that this lawyer is, in fact, in a special position to influence the judge. The issue, however, is not whether the lawyer actually is in a position to influence the judge, but instead whether the proposed conduct, the identification of the lawyer as a 'friend' on the social networking site, conveys the impression that the lawyer is in a position to influence the judge. The Committee concludes that such identification in a public forum of a lawyer who may appear before the judge does convey this impression and therefore is not permitted."

So the next question for us is: Do these same ethical concerns about "Facebook Friends" apply to Michigan judicial officers? I believe they probably do, but it is at least something to be careful of.

The full Florida opinion can be found at:

<http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2009/2009-20.html>

## Michigan Traffic Safety Summit

Kellogg Hotel & Conference Center  
East Lansing, Michigan  
March 30-April 1, 2010

Mark your calendars for the **15th Annual Michigan Traffic Safety Summit** to be held at the Kellogg Hotel & Conference Center, East Lansing, Michigan. It will be held March 30-April 1, 2010. Visit [www.michigan.gov/ohsp](http://www.michigan.gov/ohsp) for updates and information.

# Hey Lance!!

*This is the section of The Docket where MSP Sgt. Lance Cook's expertise and wisdom can be shared with everyone. Please submit your Motor Vehicle Code questions to [jmckay@shiawassee.net](mailto:jmckay@shiawassee.net) and the responses will be printed.*

### Right Turn Only Lanes

#### Question:

Is there anything that says a "right turn only" lane has to have both pavement markings and a sign to be legal enforceable? I have a little trouble enforcing pavement markings with no sign when pavement markings are covered by snow.

#### Answer:

Yes--sort of. MCL 257.611 doesn't differentiate between the enforceability of signs and pavement markings. However, Section 3B.19 of the MMUTCD clearly states as a Standard "Where through traffic lanes approaching an intersection become mandatory turn lanes, lane-use arrows markings (see Figure 3B-21) shall be used and **shall be accompanied by standard signs**" [emphasis added].

MCL 257.609 and 610 require the various road authorities to comply with the MMUTCD when placing and maintaining traffic control devices.

Therefore, an arrow pavement marking without a sign is not "placed in accordance with this chapter..." for purposes of 611, and is not enforceable.

### Passing On The Right

#### Question:

I have always believed a Michigan driver could NOT pass a group of cars on the right in the flare lane because they didn't want to take their rightful place in the long line. But today (during informal hearings) I couldn't locate a statute that fit. Can you advise?

#### Answer:

Look at [section] 637. They can pass on the right only under two conditions: when there are two or more lanes going in the same direction, and they are in the right lane per sub (1)(b) or (c), or when a vehicle is about to turn left per sub (1)(a). The "moving in substantially continuous lanes" part is where you may be able to declare the move illegal if each and every car in the line was not turning left. Otherwise, you have to fall back on sub (2) "overtaking and passing in safety" or leaving the main travel portion.

### Making U-Turns

#### Question:

We are experiencing people making U turns. Can you direct me to the section in the MVC that will address this?

#### Answer:

There is nothing in the MVC that prohibits a U-turn, provided it doesn't involve behavior that could be considered careless or reckless. If you've adopted the Uniform Traffic Code, then Rule 434 prohibits a U-turn in a business district, or outside of a business district if it interferes with other traffic.

### Center Turn Lanes

#### Question:

Quick question, under 257.642 would it be a violation for someone to use the center turn lane for 807 feet prior to making their left turn. Sounds to me like they were using more as a passing lane. It's a 4 lane roadway with the dedicated turn lane. Let me know your thoughts.

#### Answer:

There I would write it under 611, as the MMUTCD specifies that this particular lane configuration is not to be used for travel or passing, but can be used to make "an immediate left turn" (Page 3B-7, Section 3B-03).

### Loud Exhaust

#### Question:

Officer stopped a violator for loud exhaust and testified that it had some sort of a muffler and that it had a tailpipe that went all the way back past the rear axle. Deputy also testified that it was extremely loud.

The respondent denies doing anything with that baffles and did not have the truck there for me to look at. Is there a violation here under 707. The only thing I see that might fit is that it cannot be amplified.

What's your take on this?

#### Answer:

On the loud exhaust, there are a number of possibilities between 707 and 707f that could apply without using a decibel meter, but the testimony needs to be consistent with the specific element. Sticking with 707, since that's apparently the section that was used, in sub (1) the "good working order" language should be enough if the muffler was rusty or had a loose or broken bracket making it too loud. If not, then it may have an amplifier disguised as a muffler. If it were me as magistrate, I probably would have adjourned the hearing until the driver could bring the vehicle to the courthouse. Failing to bring the vehicle indicates to me that he's hiding something.

707b or 707c(3) might have been better sections to write this particular violation. My two cents.

### Tint Windows

#### Question:

I had a respondent who was cited for tinted windows. Stated his mother sold the car to him and that she had a letter from the eye specialist indicating window tint was necessary. The car was registered in his name and he testified that she has her own car a seldom rides with him.

#### Answer:

Assuming that the mother's doctor note was legitimate (almost none are), then it only applied to her while she was the owner. He's out of luck.

## Overweight Bonds

**Public Act 169 of 2009** - MCL 257.724 was amended effective 12/14/09, to permit the driver or owner of a commercial motor vehicle to post a bond on [overweight violations](#) in the amount of the fines and costs when the ticket is being contested, rather than double that amount as previously required.

## Don't Forget to File Your Financial Report for 2009

Remember, all District Court Magistrates (full or part-time) are required to submit a **2009 ANNUAL FINANCIAL REPORT** to their Regional Office of the State Court Administrative Office by April 15, 2010. The form can be found at: <http://courts.michigan.gov/scao/courtforms/scao/scao17.pdf>

**Note:** Your Chief Judge cannot file his or hers until they receive a copy of each of their magistrate's report(s).

## Under *Ferency* Decision, Does Visual Observation Have to Come First?

#### Ken Stecker from PAAM says:

I believe that the *Ferency* decision lays out the guidelines. The guidelines to me are clear. There is no case that I am aware of in Michigan that specifically interprets what order the guidelines/requirements should be met at a hearing.

It should be noted that the *Ferency* court refers to the "Interim Guidelines and other recommendations issued by the Office of Highway Safety Planning...[or] other agencies or organizations with a demonstrable expertise in this area which promulgate similar guidelines..." for specific information on how to meet these seven guidelines "to allow into evidence speed readings from a radar speedmeter."

The Office of Highway Safety Planning, through the former Speed Measurement Task Force, provided interpretation in the Instructor Manual for the RADAR Training Course. Section 3.9.7 deals with Tracking History. The manual states that:

"Several elements are involved in the valid identification of a target vehicle. Together these elements comprise what is referred to as a complete 'tracking history' and are listed below:"

A. "An operator must be able to visually identify the target vehicle, and to

estimate its speed to be greater than the speed limit."

B. "An operator must correlate the tone of the Doppler-audio with visual observations and estimation of speed of a target vehicle."

C. "An operator must establish that the target speed displayed corresponds with his/her visual estimation of speed and the Doppler-audio output."

I see nowhere in the manual that specifically mentions that a specific order has to be met.

As I remember when I handled these cases as a prosecutor, is that if the officer can testify to the requirements laid out under *Ferency*, I never concerned myself with the order.

**Sgt. Lance Cook from MSP says:**

The *Ferency* decision spells out the court's guidelines for RADAR to be used. In looking at the seven guidelines, there is no specific interpretation given. The court refers to the "Interim Guidelines and other recommendations issued by the Office of Highway Safety Planning...[or] other agencies or organizations with a demonstrable expertise in this area which promulgate similar guidelines..." for specific information on how to meet these seven guidelines "to allow into evidence speed readings from a radar speedmeter."

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The manual does not specifically mention that these must be performed in the order as presented, but that all of the elements must be performed. Additionally, in section 3.7.2, the purpose for the prohibition of "autolock" and "violation warning" features is that they interfere with the tracking history, by preventing the officer from being able to observe a changing display throughout the entire observation.

Bottom line, as I interpret it, is that if the officer can adequately testify to everything required by *Ferency* and the former MSMTF guidelines, it doesn't matter about the order. Goes back to totality of the circumstances. My caveat, however, is that the magistrate is very comfortable with the testimony. If there is any question about target identification, tracking history, or error mitigation, then the citation should be dismissed.

**Proposed Legislation to Watch**

HB 4098 Would eliminate Driver Responsibility Fees.  
SB 317

HB 4101 Would amend Driver Responsibility Fees to one-year assessments instead of two-year.

HB 4141 Would add \$10 fee to all alcohol-related convictions to be paid to Supreme Court for drug treatment courts.

HB 4163 Would require use of headlights during periods of precipitation.

HB 4267 Would prohibit courts from furnishing to the public a copy of an arrest or bench warrant until it is returned (arrest made).

HB 4322 Would create a new 30-day misdemeanor for providing false information regarding court-ordered community service.

**Passed House – 6/10/09**

HB 4343 Would amend window tint law to: (1) allow person to operate vehicle with tint if they reside with the owner who has doctor letter and have permission from the owner; (2) allow other person to operate vehicle with tint if the owner who has a doctor letter is a passenger in the vehicle; and (3) require a new SOS sticker in the back window of a vehicle that has tint and owner has the required letter from a doctor.

- HB 4360 Would codify the extension of the seat belt usage exemption to newspaper delivery personnel, and defines "frequent stops" as a series of stops with at least 1 stop within every ½ mile of travel.
- HB 4362 Would prohibit use of cell phones while operating school bus.
- HB 4369 Would prohibit use of mobile phones while operating a motor vehicle, unless hands-free or under certain exceptions.
- HB 4370, 4394 Would prohibit messaging on an electronic wireless device while operating a motor vehicle. **Passed House – 12/8/09**
- HB 4482, SB 80 Would amend fleeing and eluding offenses to add a 2-year mandatory minimum to all degrees.
- HB 4493 Would prohibit all first year drivers from having more than 1 passenger under 18 years of age other than family member in car.
- HB 4495 Would remove the horsepower threshold from the definition of a moped.
- HB 4604, SB 127 Amend Driver Responsibility Fees - add for certain offenses, and eliminate for certain offenses. Also, payment options amended.
- HB 4648 Would regulate motor vehicle pursuits by police officers.
- HB 4705 & 4706 Would create an Indigent Defense Counsel Fund, and require Courts to impose a 5% bail surcharge and sliding scale probation fee (not to exceed \$135), and transmit monies to the Treasury Dept. for the Fund.
- HB 4748 Would require police officers to ascertain and indicate the race or ethnicity of a person to whom a traffic citation is issued.
- HB 4978 Would prohibit lane changes in an intersection.
- HB 5087 Would modify the definition of off-road recreation vehicle. **Public Act 200 of 2009 – 12/30/09.**
- HB 5123 Would require district court magistrates to be licensed attorneys.
- HB 5140 Would require removal from roadway of motor vehicle involved in accident. **Passed House – 11/5/09**
- HB 5143 Would revise provision relating to establishment of speed limits.
- HB 5254 Would abolish motorcycle helmet requirement.
- HB 5277 Would extend expiration of driver's licenses or permits to the next business day if expires on a government shutdown day.
- HB 5506, HB 5600 Would reestablish speed restrictions on certain gravel and dirt roads.
- SB 473 Would require (whenever possible) the use of 2-Way Interactive Video in certain proceedings.
- SB 566 Would require written notification of the applicability of a driver responsibility fee on a traffic citation written for no proof of insurance.

## **Mark Your Calendars!**

**New Magistrates Seminar  
March 9-11, 2010 at HOJ**

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**Magistrates Specialty Seminar  
July 28, 2010 at HOJ**

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**MADCM Annual Conference  
September 22-24, 2010  
Crystal Mountain Resort  
Thompsonville, MI**