

PRE-TRIAL MOTIONS

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INTRODUCTION

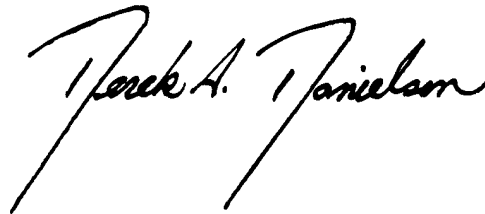
Aggressive pretrial motion practice is an important part of our representation strategy. There are numerous meritorious pretrial motions that can be filed in a driving under the influence case. Our office files between 5 and 10 pretrial motions in most of the cases we take on. A successful pretrial motion can result in the case being dismissed, reduced or, at the very least, the prosecution's case being weakened.

This chapter contains some of the pretrial motions that we frequently file. Generally, we file pretrial motions that attack all of the evidence gathered at each of the critical stages of the driving under the influence case. In many instances, we will file several different types of motions attacking the same piece of evidence. For example, we file a P.C. §1538.5 motion to suppress evidence and also a common law motion to suppress evidence attacking among other things, the chemical test results. We challenge the admissibility of the defendant's statements at trial through the common law motion to suppress as well as Evidence Code Section 402 motions and corpus delicti motions when appropriate.

By using this multi motion approach, you can increase the chances of eliminating the evidence you want out. This approach also informs the prosecution at an early stage that you are ready to zealously defend your client and that this is not going to be just another "routine DUI case".

The success of each one of these motions depends on the facts of each individual case and the climate of the court that the case is before. The motions illustrated here are by no means all inclusive. They are just representative of some of the things that we currently do.

The type of pretrial motions that you file is limited only by the facts of your case and your own creativity. We want to expressly thank Richard Erwin, (of blessed memory) Richard Essen, William Head, John Henry Hingston III, Michael Fremont, and Gary Trichter whose ideas we used in preparing some of the following pretrial motions.

A handwritten signature in black ink that reads "Derek A. Danielson". The signature is written in a cursive, flowing style with a large initial 'D'.

DEREK A. DANIELSON*

LAW OFFICES OF MYLES L. BERMAN

*Derek A. Danielson, Esq. is a graduate of the University of Western Ontario, School of Law. Mr. Danielson is "Of Counsel" to the Law Offices of Myles L. Berman concentrating in the defense of DUI cases.

Prior to his association with Mr. Berman, Mr. Danielson practiced for over 20 years in Toronto, Canada as senior partner in the Law Offices of Danielson and Fox, an internationally recognized firm specializing in the defense of all criminal matters. Mr. Danielson has conducted over 4,000 criminal trials, and has successfully argued cases at all levels of appellate courts in Canada. He has tried over 500 DUI cases.

MOTION FOR PRE-TRIAL DISCOVERY.

In most driving under the influence cases, the only discovery that the defendant receives is a police report, test results and a DMV printout. These documents alone are inadequate, in most cases, to put together a proper defense. Accordingly, we use a comprehensive discovery motion to obtain other items necessary for the defense of a case. Penal Code §1054 requires that an informal request for discovery be made before a formal motion can be brought. In fact, many courts will reject a motion for discovery unless the defendant can show that a previous informal request was made. Therefore, by changing the format of the below attached document and changing the title from "Motion for Pretrial Discovery" to "Defendant's Informal Request for Discovery" and serving said document on the prosecution at the time of arraignment, the requirements of Penal Code §1054 are satisfied. If you do not get discovery as a result of the informal request you can change the format of the document back to "Motion for Pretrial Discovery" and file it as such.

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Attorney for Defendant,

**IN THE MUNICIPAL COURT OF THE JUDICIAL DISTRICT
COUNTY OF , STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF)	CASE NO.:
CALIFORNIA,)
)
Plaintiff,) NOTICE OF MOTION AND
) MOTION FOR PRETRIAL DISCOVERY
)	CONTAINING NOTICE, MOTION vs.
) AUTHORITIES, DECLARATION AND	
) COMPLIANCE ORDER
)
)
Defendant.)
_____)

**TO THE HONORABLE JUDGE PRESIDING
AND TO THE PEOPLE OF THE STATE OF CALIFORNIA:**

PLEASE TAKE NOTICE that on _____ at _____ in Division _____ of the above court, the defendant, by and through one of his/her counsel, will and hereby does move this Honorable Court for a discovery order compelling the prosecuting attorney to tender complete discovery to the defendant based upon the following:

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATUTORY PROVISIONS

California Penal Code Section 1054.1 reads as follows:

§1054.1 **Information to be disclosed by prosecution.** The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
- (b) Statements of all defendants.
- (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
- (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
- (e) Any exculpatory evidence.
- (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

California Penal Code Section 1054.7 reads in relevant part:

The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

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II.