

## NOTICE TO THE BAR

### **Directive #10-04 - Requirement to Review a Defendant's "Certified Driver Abstract" Prior to Sentencing for Driving While Intoxicated and Other Motor Vehicle Offenses with Graduated Penalties**

Directive #10-04

Questions or comments may be directed to 609-984-8241

TO: Municipal Court Judges

FROM: Richard J. Williams

SUBJ: Requirement to Review a Defendant's "Certified Driver Abstract" Prior to Sentencing for Driving While Intoxicated And Other Motor Vehicle Offenses with Graduated Penalties

DATE: August 31, 2004

At the request of the Judicial Council, in consultation with the Conference of Presiding Judges-Municipal Courts, this Directive is a reminder that all judges must obtain and review a current "Certified Driver Abstract" from the Motor Vehicle Commission ("MVC") before sentencing a defendant for motor vehicle offenses that carry increased penalties for subsequent offenses. It is inappropriate for the sentencing judge to rely on the representations of the prosecutor, defense counsel, or defendant as to the defendant's driving record. The offenses include, but are not limited to:

- (1) driving while intoxicated, N.J.S.A. 39:4-50;
- (2) refusal to submit to chemical test, N.J.S.A. 39:4-50.4a;
- (3) driving while suspended, N.J.S.A. 39:3-40;
- (4) operating a commercial vehicle while intoxicated, N.J.S.A. 39:3-10.13;
- (5) refusal to submit to chemical test while operating a commercial vehicle, N.J.S.A. 39:3-10.24;
- (6) driving without insurance, N.J.S.A. 39:6B-2;
- (7) leaving the scene of an accident, N.J.S.A. 39:4-129; and
- (8) boating while intoxicated, N.J.S.A. 12:7-46.

In order to impose a proper sentence for any of these offenses, the judge must know whether the defendant has previously violated that statute. Accordingly, it is the prosecutor's responsibility to provide the court with the Certified Driver Abstract. If the prosecutor fails to do so, however, the court should proceed with sentencing only if court staff has obtained a Certified Driver Abstract on-line from the MVC's database.

In the case of an out-of-state driver, the judge, before sentencing, should examine both the defendant's New Jersey Certified Driver Abstract and the defendant's driving record for the licensing state. The judge should request that the prosecutor obtain and provide the court with the defendant's driving record from the licensing state as soon as possible. If, however, the prosecutor has not provided the out-of-state driving record by the scheduled court date, the judge should proceed with sentencing the defendant without the out-of-state driving record. In such instances, however, before imposing sentence, the judge should on the record require the prosecutor to provide the out-of-state driving record when it is obtained. When a defendant is sentenced in the absence of the out-of-state driving record and the prosecutor later provides the court with sufficient proof that the defendant should have been sentenced to an enhanced penalty by virtue of an out-of-state conviction, the court shall require the defendant to appear for re-sentencing.

Further, when imposing sentence for a motor vehicle offense with increased penalties for subsequent offenses, the

judge must explicitly state on the record that he or she has personally examined the Certified Driver Abstract and must place on the record the date of the Certified Driver Abstract that was reviewed and the number of times defendant has been previously convicted for that offense. See R. 1:7-4(a), R. 3:21-4(g), and R. 7:9-1(b).

If you have any questions concerning this Directive, please contact the Vicinage Municipal Court Presiding Judge or Municipal Division Manager for your vicinage.

R.J.W.