

MILITELLO LAW FIRM, PLLC  
DWI ATTORNEYS

Prospective DWI Client Information Form - REFUSAL

Full name: \_\_\_\_\_ Today's date: \_\_\_\_\_

Address w/ City and Zip: \_\_\_\_\_

Client's cell phone number: \_\_\_\_\_ Alternate phone: \_\_\_\_\_

Preferred email: \_\_\_\_\_

Is email an acceptable way to contact you? (Circle one) Yes / No

Prospective client's birth date: \_\_\_\_\_ Current age: \_\_\_\_\_

Date of arrest: \_\_\_\_\_ Location of arrest? (City/Town): \_\_\_\_\_

What are you charged with? \_\_\_\_\_

When and where is your next court appearance? Place / Date / Time:

\_\_\_\_\_

Did you take a breath test? (Circle one) Yes / No

If you took the breath test, what was the BAC result? \_\_\_\_\_

Was there a collision of any sort before your arrest? (Circle one) Yes / No

Have you ever been charged or convicted of DWI, DWAI, DUI, BUI, or OUI before, at any point in time, anywhere in the U.S.? \_\_\_\_\_

Do you hold a pistol permit? (Circle one) Yes / No

Please list *all* prior convictions (including DWI), whether the conviction was in NYS or not (excluding traffic tickets): \_\_\_\_\_

*Please note that if you have two prior felony convictions, a local court judge cannot release you at arraignment. They are bound by law to take you into custody. On the other hand, if you have no prior felony convictions and no outstanding felony charges, the local court judge is bound by law to release you at arraignment. It is important for you to let us know if you have prior felony convictions.*

Where were you born? \_\_\_\_\_

What is your first language? \_\_\_\_\_

Are you a citizen of the United States? If not, please state your citizenship and describe your immigration status: \_\_\_\_\_

Full name of spouse or partner and date of birth:

\_\_\_\_\_

Do you have children that require transportation to currently scheduled medical appointments? Please describe: \_\_\_\_\_

Are you a veteran? (Circle one) Yes / No

If so, please describe your service: \_\_\_\_\_

Occupation: \_\_\_\_\_

Employer or School name and address:

\_\_\_\_\_

Please indicate your work schedule with start/stop times:

\_\_\_\_\_

Are you currently on probation or parole? If yes, please explain:

\_\_\_\_\_

Are you currently being treated for any substance abuse issues (please describe):

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Please list any prescription medications you are on and their daily dosages:

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Please list any physical conditions that effect your balance, coordination, *or* that are being treated by a physician: \_\_\_\_\_

Describe your current living situation (please make sure to note if you live with anyone on probation or parole): \_\_\_\_\_

Has the judge already set bail, and if so, in what amount:

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Canada restricts travel into their country if non-Canadian citizens are convicted of any type of alcohol-related driving offense. How often, if ever, do you travel to Canada? Please describe the reason for travel: \_\_\_\_\_

Are you currently involved in any court matter involving custody of children? If so, please tell us the name (location) of the court, and describe what is happening:

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Are you currently involved in any other court matter *not* involving custody of children (criminal, civil, etc....)? If so, please tell us the name (location) of the court, and describe what is happening:

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We all encounter stressors in our life at one point or another. Are you currently, or have you recently experienced any of the following stressors? *(Please circle all that apply.)*

*Marriage or relationship problems – Death or illness of a friend or family member*

*Drug or alcohol addiction - Pressure at work or loss of a job – Issues concerning your children –*

*Other*

Please describe the stress you are experiencing:

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How did you find us? Google - Avvo.com - Justia - Referral

Other: \_\_\_\_\_

**For office use only**

Has OASAS Information been given? \_\_\_\_\_

If not, why? \_\_\_\_\_

No hardship - REFUSAL CASE.

### **Next Steps:**

There are a few things we will ask you to do, so that we may more effectively defend you, and so that your case goes more smoothly for you.

1) At your first court appearance, the judge will seize your license and suspend your driving privileges pending the outcome of your case. Because you refused to take a breathalyzer test, you will not be eligible for a hardship license. The judge in your criminal case will notify the DMV that they need to set a date for a Refusal Hearing, at which point we can attempt to get your driving privileges back.

2) Regarding DMV Refusal Hearings: the DMV is required to hold these hearings within 15 days of your arraignment, or they are obligated to give you your license back. In this age of COVID-19, these hearings are largely NOT taking place within 15 days. However, the only way to get your license back is to make an in-person appointment at the DMV. It is currently taking months to schedule an appointment at the DMV. If a Refusal Hearing is not held within 15 days of your arraignment you can order a replacement license from the DMV online and resume driving.

3) Although your license will be seized, do NOT get a non-driver ID from the DMV. It will result in the forfeiture of your driving privileges, and can make it harder to get conditional driving privileges before. If you need a government-issued photo ID, this would be a good time to get a passport.

4) The judge will typically order you to get a substance abuse evaluation as a condition of releasing you without bail. The evaluation must be done by a clinician certified by the NYS Office of Alcohol and Substance Abuse Services (OASAS). We will be providing you with a list of clinicians. Please schedule an evaluation, and more importantly, follow through with any

recommended treatment. If you are recommended for treatment, please bring a current treatment update letter to every court appearance. Many providers will tell you that they sent it to me. Don't trust them. Get one in your own hands and bring it to court. Thank you!

**5)** If you have one, please email us ([emily@militello.lawyer](mailto:emily@militello.lawyer), [adam@militello.lawyer](mailto:adam@militello.lawyer)) a short bio. We want to know about your life so that we can present you as a human being to the prosecutor and judge – not just as another person with a DWI charge. You can send us an updated résumé including education history, employment history, and volunteer history, but we also want to know about your hobbies, family, and personal life.

**6)** Complete the automobile information form and return it to us. ([emily@militello.lawyer](mailto:emily@militello.lawyer), [adam@militello.lawyer](mailto:adam@militello.lawyer))

**7) Do not call the court.** Although most court clerks are both friendly and helpful, they really don't like getting calls from defendants who are represented by a lawyer. The calls themselves can cause problems because people often offer information about their case that the clerk really shouldn't hear. On top of that, you are hiring me to be your point of contact. Allow me to do that. A large part of my job is to manage your case, and I don't want you known as “the defendant who keeps calling the court.” It isn't helpful. Thank you!

**8)** The best way to reach Adam is by sending an email to both Emily ([emily@militello.lawyer](mailto:emily@militello.lawyer)) *and* Adam ([adam@militello.lawyer](mailto:adam@militello.lawyer)). Texting Adam should be reserved for business hours, communications on your day of court, or in the event of an emergency. I want to be available to my clients as much as possible, but I need some down time from work just like everybody else. Thank you!

## Substance Abuse Assessments

Please call any one of these providers, tell them you have been charged with a DWI, and also tell them that your lawyer wants you to get a “substance abuse assessment.”

**Note well:** With the exception of Anita McLeod, these agencies will typically not send me the assessment report. Please give them my contact information, and sign a HIPAA release allowing them to send me the report when it is complete but also **get a copy of the report for yourself and bring it to court with you.**

**Also note:** These agencies will give you a urine screen. If you have any unprescribed drugs (marijuana, for example) in your system you will not get into additional legal trouble, but the agency will almost certainly refer you to treatment.

Anita McLeod, LCSW (McLeod Counseling, PLLC)  
250-B Lucius Gordon Drive Suite 4B West Henrietta, NY 14586  
(585)967-9700

Unity Hospital of Rochester  
1565 Long Pond Rd Rochester, NY 14626 (585) 368-6900  
or, 2000 Winton Rd S., Rochester, NY 14618; (585) 368-6900

Delphi Drug and Alcohol Council, Inc.  
1839 E Ridge Rd Rochester, NY 14622  
(585) 467-2230 x35

Huther-Doyle Memorial Institute, Inc.  
801 West Avenue Rochester, NY 14611  
(585) 325-5100 x3501

Strong Memorial Hospital  
300 Crittenden Blvd Rochester, NY 14642  
(585) 275-5597

Westfall Associates, Inc.  
919 Westfall Road Rochester, NY 14618  
(585) 473-1500 x240

## **LIVINGSTON COUNTY**

CASA-Trinity, Inc. d/b/a Trinity of Chemung County  
4612 Millennium Dr  
Geneseo, NY 14454  
(585) 991-5012

*We do not suggest using this provider, as our experience is that they recommend EVERYBODY for treatment regardless of situation.*

CASA-Trinity, Inc. d/b/a Trinity of Chemung County  
45 Maple St  
Dansville, NY 14437  
(585) 335-5052

*We do not suggest using this provider, as our experience is that they recommend EVERYBODY for treatment regardless of situation.*

## **WAYNE COUNTY**

Brigitta Lalone, LCSW-R  
3800 Railroad Avenue  
Williamson, NY 14589  
(315) 945-8530  
<http://www.Lalonecounselingservices.com>

Joseph I. Peters, LCSW-R  
145 W. Pearl Street  
Newark, NY 14513  
(315) 331-5659

## **ORLEANS COUNTY**

GCASA  
249 East Ave.  
Albion, NY 14411  
(585) 589-0055



## First Appearance in Court: What to Expect in a Refusal Case

Your first appearance in court is called an arraignment. At your arraignment, the judge will read the charges against you, and if she has a “report of refusal” from the police, she will suspend your license pending the outcome of a DMV Refusal Hearing. It goes something like this:

- The judge or clerk will call out your name.
- You walk to the front of the courtroom, and stand at the bench with your attorney. You should stand next to your attorney, on the side so that you are not in-between him and the prosecutor.<sup>1</sup>
- The judge will ask your name, and you respond.
- The judge will ask if you are present with your attorney, and you say, “yes.”
- The judge will begin to read the charges against you. It will go something like this, “Ms. Smith, you are charged with violating NYS VTL 1192(3) Common-Law DWI, VTL 1192(2) DWI per se, and VTL 1180(d) Speeding 75 in a 55.”
- At that point, your attorney will say, “Your Honor, we enter a plea of not guilty to all the charges and waive a further reading.”
- The judge will then look through the paperwork that was filed to see if you took a chemical test.<sup>2</sup> Since you did not take that test, the judge will take your license and suspend it pending prosecution.
- After the judge suspends your license, she will schedule a DMV Refusal Hearing. The DMV Refusal Hearing needs to be scheduled within 15 days of your arraignment, and is an opportunity to argue that you should get your license back. Please review “Step 2” in the “Next Steps” list to be prepared for this.
- The judge may address the issue of bail. Misdemeanor DWI cases where the defendant is a first-time offender, and where there was no accident, will always result in the defendant being released on their own recognizance (ROR’d). If you are on probation, or if you have two prior felony convictions, we will discuss the issues of bail and remand at our first meeting.
- The judge will end your appearance by scheduling a second court date, which often consists of a pre-trial conference between the judge and attorneys.
- To learn about other aspects of what is happening at court or in your case, we have put up a very big FAQ section at <http://RochesterNYDWI.lawyer>. It has information on Victim Impact Panels, Ignition Interlock Devices, the differences between DWAI and DWI, and more.

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1. Irondequoit and Penfield Town Courts are the rare exception to this rule. Defendants stand in the middle of the bench, between the defense attorney and the prosecutor.

2. This is commonly called a breath test, or Breathalyzer. In most counties it is actually a DMT Datamaster chemical test of your breath to determine your blood alcohol content (BAC).