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June 7, 2020

## VIA ELECTRONIC MAIL

Adrienne Quigley, Deputy Chief  
Arlington County Police Department  
1425 N. Courthouse Road  
Arlington, VA 22201

RE: Follow up on Traffic Court

Dear Deputy Chief Quigley:

Thank you for the productive call Friday about some of the changes we anticipate coming to the Office of the Commonwealth's Attorney's ("OCA") participation in traffic matters in the General District Court ("GDC").

As I indicated in several of our discussions about this over the past month, we did not come to this decision lightly, but rather after a thorough analysis of several factors. Primarily, this decision was driven by our analysis about our ethical and legal obligations as they pertain to video evidence in criminal misdemeanors. Specifically, we have received guidance that we must obtain and watch the video of all cases in which OCA involves itself, specifically ICV, in order to comply with our legal and ethical obligations under *Brady* and the Rules of Professional Conduct. We are unable to meet those obligations at our current staffing levels in the types of cases we discussed, and accordingly, are exercising our discretion pursuant to §15.2-1627 not to enter appearances in these cases. As we noted to you, this issue has likely been live since the introduction of in-car video but has been an issue that virtually no OCA had addressed. Irrespective of historical practice (of which our OCA has

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historically been an outlier as compared to other OCAs), it is our determination that we can no longer fail to comply with our legal and ethical obligations and must adjust our practices accordingly.

I thought this might help explain the major points of what traffic court may look like going forward as well as answer some questions. Additionally, there are a few changes to “non-jailables” discussed below:

- The OCA **will no longer be staffing an attorney for conferencing cases outside 3C**. These matters will be handled by the officers themselves both in and out of the courtroom. Except for the types of cases described below, OCA will not be involved in plea negotiations or trials unless it is a case that has been consulted with us in advance and we have elected to enter an appearance, or it is in circuit court on appeal. This extends to cases with both retained or appointed counsel and to *pro se* cases. The ACPD is obviously free to determine what level of involvement its officers will have in matters “out of court” and to advise them accordingly. We are of course always available to assist this process in any way we can.
- We anticipate that the judges will rely on the individual officers to initially “screen” cases where a jail sentence may be a realistic outcome in the event of a conviction. We anticipate this will initially lead to early instances where the judges may ask the officers to specifically consult with us if the officer is not prepared to waive jail prior to a trial. In such instances, we will be available in 3B and if it is a case OCA determines it should be involved in, the defendant will be arraigned, advised of their right to an attorney and their right to retain one or be screened for appointed counsel, and the case will be continued to one of the officer’s dates for adjudication in 3B. The officer should then notify OCA Deputy Sloane by email so that the case can enter OCA’s normal workflow of case file preparation. It is our hope that most of these types of cases would begin to be screened with us prior to the court date.
- This change extends to all cases except a limited group of cases that we have advised the GDC that we **will enter appearances on due to their enhanced public safety concerns**. That limited group includes: DWI/DUI, related criminal offenses such as DWI/DUI-related suspension cases and interlock violations, speeding to elude, certain hit and runs, and high-speed reckless

driving cases (100 MPH+). We have advised the court that those cases should be docketed in 3B as part of our normal assumed duties in that courtroom.

As part of that process, the GDC has advised that the following offenses should be ticketed as 2pm arraignment cases where they are not already charged by a warrant. This will allow the defendants to be arraigned and receive attorney advisements, and allow the cases to enter our normal workflow of obtaining reports and other evidence:

- **DWI and Subsequent Offenses: §§18.2-266 through 18.2-272**
    - Particularly applicable to violations of §18.2-270.1 (Interlock) and §18.2-272 (DWI DOS)
  - **DWI-Related Offenses**
    - §46.2-391 (Habitual Offender Revocation); §46.2-391.2 (DWI Administrative Suspension)
  - **Eluding**
    - §46.2-817
  - **Hit & Run**
    - §46.2-894
  - **Reckless Driving by Speed (100 MPH +)**
    - §46.2-862 [To aid the court clerks, tickets where the speed is over the threshold should be noted on the summons so that the clerks can appropriately recognize why the case was scheduled for a 2pm arraignment]
  - **Aggressive Driving**
    - §46.2-868.1
- Additionally, as we discussed, OCA remains available to consult and possibly enter appearances on exceptional cases where there is a heightened public safety interest. While this guidance may be a bit vague, it is our hope and expectation that we will continue to collaborate and identify those cases which on their face may not appear to require OCA, but where our involvement would be appropriate. These cases will likely be in the area of Reckless Driving cases where the charge itself may not indicate that seeking a jail sentence is an appropriate path. These cases should be brought to our attention as soon as possible so that appropriate steps can be taken to preserve

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necessary evidence and alert the court that we are undertaking the necessary procedure to align the case with our dockets.

Admittedly, this will be a collaborative process as we all work to figure out the boundaries and any blind spots in these cases that necessitate changes to our approach. We welcome your partnership and feedback as we work together and make those determinations.

- As a courtesy to both your department and the court, we will continue to monitor compliance matters as we have before. While the form of this may change, the function will remain the same that members of the public will still be able to have our office “process” compliance tickets by providing the documentation to the court for ultimate dismissal by the court. Accordingly, any forms used by your officers on the roadside to facilitate this should remain in use.
- For the same reasons that pertain to traffic court, we will also no longer be involved in what we all call “non-jailables” such as Drunk In Public, Urinating in Public, Littering, and Drinking in Public, charged under their respective county code ordinances, Fare Evasion, and Dogs at Large. Traditionally, we have been involved in these cases only when an attorney is retained, however, equity counsels against continuing this practice as it results in different treatment for those able to retain an attorney versus not.

Additionally, this will extend to marijuana cases charged on or after July 1, 2020 under the newly effective §18.2-250.1 making violations of that section a civil infraction punishable by a civil fine of no more than \$25.

For all of these types of offenses we encourage ACPD to work with the GDC to determine suitable dispositions in these cases that may permit them to be disposed of without convictions, but rather by things such as community service prior to court. This goal could be accomplished with the distribution by ACPD of a form like the one distributed with compliance tickets. We are always available to discuss ways to help ACPD accomplish a similar process for these types of offenses, and in a way that perhaps we can collaboratively dispose of these minor offenses without any additional strain on the resources of either of our agencies.

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We hope that these changes not only enhance our partnership as we focus our attention together on the cases most impacting public safety, but that they broadly enhance both of our respective agencies ability to deliver a safe and thriving community. We stand with you as a ready and willing partner to help these changes go as smoothly as possible and look forward to collaborating to quickly identify and tweak any areas in need of improvement.

Yours very truly,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Parisa Dehghani-Tafti  
Commonwealth's Attorney