



# 2018 Annual Conference

Niagara Falls, New York

**Commercial Motor Vehicles  
&  
Driver's License Issues and Updates**

September 24, 2018

**Presenters:**

**Hon. Gary A. Graber**

**Hon. David Brockway**

**2.0 MCLE Professional Practice**

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.



# Gary A. Graber

Sumner Road , Darien Center , NY 14040

Home: (716) 474 2777 - ggraber212@gmail.com

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## Summary

### **COMMERCIAL MOTOR VEHICLE/ COMMERCIAL DRIVERS LICENSE/TRANSPORTATION SAFETY PROFESSIONAL.**

Diligent, cooperative and sincere professional has more than 37 years of notable experience developing and implementing innovative initiatives and approaches geared towards effective administration of justice, judicial education and outreach. Exhibits integrity and sense of urgency in handling complex cases. Demonstrates proven leadership qualities and utmost commitment in promoting compliance with established procedures and regulations in the community and judicial education nationally. Accomplished candidate with vast knowledge on transportation laws and guidelines displays innate ability to empower and train a diverse audience as a manager in the private sector as well. Recognized for consistently exceeding expectations and objectives of the company/ organization. Excellent problem solving, strategic planning and communication and presentation skills.

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## Experience

01/2008 to Present

### **Terminal Manager**

#### ***Transportation Management - Cheektowaga, NY***

- Plan, organize, or manage the work of subordinate staff to ensure that the work is accomplished in a manner consistent with organizational requirements.
- Promote safe work activities by conducting safety audits, attending company safety meetings, or meeting with individual staff members.
- Monitor operations to ensure that staff members comply with administrative policies and procedures, safety rules, union contracts, and government regulations.
- Direct activities related to dispatching, routing, or tracking commercial motor vehicles.
- Direct and coordinate, through subordinates, activities of operations department to obtain use of equipment, facilities, and human resources.
- Conduct employee training sessions on subjects such as hazardous material handling, employee orientation, quality improvement, or computer use.
- Driver (City Peddle) 1990-2008 pick up/deliver freight in 14 western New York counties.

**Town Justice*****Town of Darien Justice Court - Darien Center, NY***

- Provide information regarding the judicial system or other legal issues through the media and public speeches.
- Conduct preliminary hearings to decide issues such as whether there is reasonable and probable cause to hold defendants in felony cases.
- Settle disputes between opposing attorneys.
- Advise attorneys, juries, litigants, and court personnel regarding conduct, issues, and proceedings.
- Write decisions on cases.
- Research legal issues and write opinions on the issues.
- Monitor proceedings to ensure that all applicable rules and procedures are followed.
- Instruct juries on applicable laws, direct juries to deduce the facts from the evidence presented, and hear their verdicts.
- Rule on admissibility of evidence and methods of conducting testimony.
- Sentence defendants in criminal cases, on conviction by jury, according to applicable government statutes.
- Read documents on pleadings and motions to ascertain facts and issues.
- Plan, evaluate, and revise curricula, course content, course materials, and methods of instruction primarily in the area motor carrier safety regulations as they relate to the courts.

**Awards**

- Obtained 2005 New York State Magistrate of the Year; awarded at the New York State Magistrates Annual Conference in Niagara Falls, New York.
- Received the Criminal Justice Award from Genesee County Alcohol and Substance Abuse (2006)
- Outstanding Alumnus Award at the 2006 Leadership Genesee graduation ceremony.
- Acquired the following awards: 2010 Honor and Appreciation Award from the Genesee County DWI Victim's Impact Panel
- 2013 Appreciation Award from the Genesee County Magistrates Association
- 2013 Batavia Kiwanis Criminal Justice Award
- 2013 Western New York Chemical Dependency Coalition Gold Key Award
- 2013 Kevin E. Quinlan Award for Excellence in Traffic Safety; 2014 Certificate of Appreciation for Transportation Law Education, New York State Magistrates Court Clerks Association.
- Recipient of Leadership Award from Genesee County Magistrates for taking a leadership role in spearheading magistrate education classes in Computer Education including mock trials with the District Attorney and Public Defender's Offices.

## Accomplishments

Motor Carrier Safety is an ongoing concern throughout the nation. Recognizing that improved compliance in this regards requires participation of not only the private sector but many other stakeholders as well. Through my experience in the private sector as well as a member of the judiciary I have had the opportunity to volunteer my time to the National Judicial College, National District Attorneys Association, National Center for State Courts and the State of New York Office of Court Administration educating judges and clerks subject matter necessary to complete this task.

The Federal Motor Carrier Safety Regulations that are adopted by the states are often confusing with very little time give to our courts as far as education is concerned. The Department of Transportation, through the Federal Motor Carrier Safety Administration has been very supportive of these initiatives thereby increasing judicial awareness/outreach. Teaching the courts subjects such as disqualifications and convictions will help them realize that Commercial Drivers License holder/ Commercial Motor Vehicle operator are held to a higher standard. This educational course of action in addition to other stakeholder involvement such as licensing, prosecutor and defense counsel awareness as well a private sector education can only improve the chance of reduced crashes involving large trucks with the ultimate goal of saving lives.

My many years of this participation and the ascension through the office of the New York State Magistrates Association to the office of President and the leadership skills during the year long participation as a graduate of Leadership Genesee '05 have certainly prepared me for my future endeavors.

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## References

Gladly Provided Upon Request

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## Skills

Microsoft Office (Word, Excel, Outlook, PowerPoint) WEBEX

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## RELATED EDUCATION/VOLUNTEER

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# Addendum to Commercial Motor Vehicle/Commercial Driver License Education Presentations

- **Continuing education on CMV/CDL issues to more than 1000 New York State City, Town and Village Judges and Court statewide since 2008.**
  - ✓ Created sentencing flow charts to assist these courts with an efficient/effective way to dispose of Transportation Law Violations.
  - ✓ Honored by the New York State Association of Magistrates Court Clerks for these efforts.
  - ✓ Presently scheduled for Court Clerk education in Nassau County - June 2017.
- **Member of Faculty, Commercial Motor Vehicle (CMV) Violation Enforcement, Prosecution, Reporting & Adjudication Program, National District Attorneys Association.**
  - ✓ CDL Presentations
    - New Mexico/2016
    - Virginia/2017
    - Ohio/2017
- **New Mexico Office of Judicial Education.**
  - ✓ CDL Presentation – 9/2017
- **National Judges Association.**
  - ✓ CDL/CMV Presentation at annual conference, Colorado Springs, CO.- 5/2017
- **National Center for State Courts**
  - ✓ Judicial Outreach (CDL)
    - State of Iowa 2016 (Des Moines)
    - Texas Judicial Education (Dallas)
    - National Association of Court Managers (Pittsburgh, PA)
  - ✓ Participation in development of interactive 49CFR 383.51 (disqualification Tables). See:
    - <http://cdlstage.ncsc.org/Legal/CDL-Standards-Requirements-and-Penalties.aspx>
    - Article:  
[http://cdlstage.ncsc.org/~media/Microsites/Files/cdl/Understanding%20the%20CDL%20in%20New%20York%20State%20\(2\).ashx](http://cdlstage.ncsc.org/~media/Microsites/Files/cdl/Understanding%20the%20CDL%20in%20New%20York%20State%20(2).ashx)

**Hon. David M. Brockway**  
Village Justice, Horseheads

Hon. David M. Brockway currently presides as Village Justice in Horseheads (Chemung Co) (2014-present; 1980 to 2000). He is also Acting Town Justice of Reading (Schuyler Co) to which he was appointed in 2016 to handle more than 500 protest arrests. He retired in 2014 as a Family Court Judge (2000-2014) and Acting Supreme Court Justice (2010-2014). He also served as one of the Supervising Judges of the Town and Village Courts in the 6<sup>th</sup> District. Prior to this, he served as an assistant public defender (1975-1980) then in several law firms (1980-2000), including service as village and town attorney to numerous municipalities in Chemung and Schuyler counties. He is an honors graduate of Colgate University and received his J.D. from the Albany Law School of Union University.

**NEW YORK STATE TRANSPORTATION LAW  
(SECTION 14-f) HAZARDOUS MATERIALS**

**IS THE VEHICLE OUT OF SERVICE?**

**YES**

**NO**

**NON-CORRECTABLE VIOLATIONS**

**ALL OTHER VIOLATIONS**  
**THESE VIOLATIONS ARE CORRECTABLE.**  
**IF NOT REPAIRED THE FINES ARE.**  
**FIRST CONVICTION (\$350-\$1000)**  
**SECOND CONVICTION (\$1000- 2500)**  
**No Mandatory Surcharge**  
**Correction Forms available at:**  
[https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT\\_OF\\_CORRECTION.pdf](https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT_OF_CORRECTION.pdf)

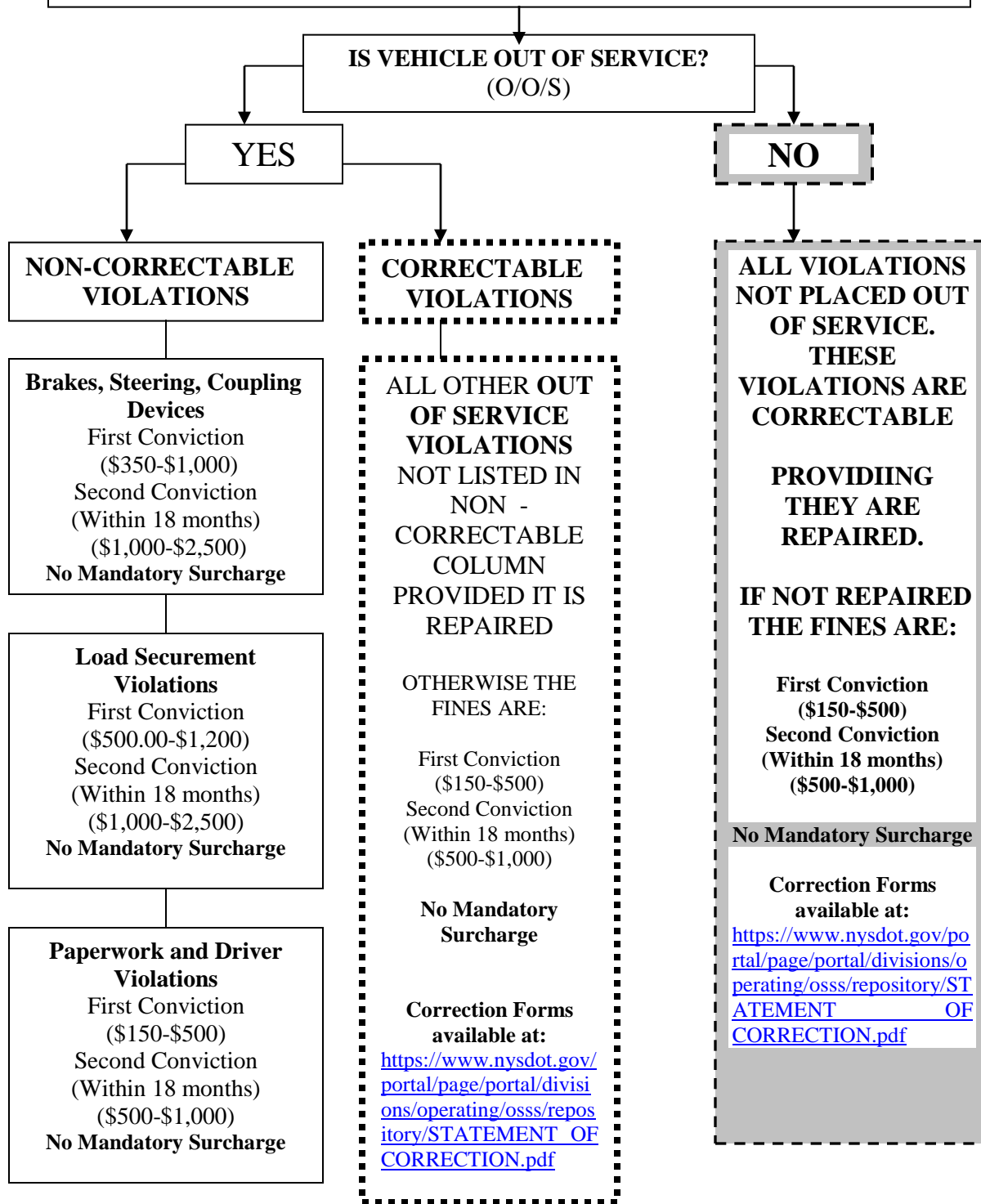
**OUT OF SERVICE (O/O/S)  
Relating to Brakes, Steering and  
Coupling Devices**  
**FIRST CONVICTION (\$500 - \$1500)**  
**SECOND CONVICTION (WITHIN 18 MONTHS)  
(\$1500 – \$2500)**  
**No Mandatory Surcharge**

**OUT OF SERVICE (O/O/S)  
ALL OTHER VIOLATIONS**  
**FIRST CONVICTION (\$350-\$1000)**  
**SECOND CONVICTION (WITHIN 18 MONTHS)  
(\$1000-\$2500)**  
**No Mandatory Surcharge**

**PAPERWORK AND DRIVER VIOLATIONS**  
**FIRST CONVICTION (\$350-\$1000)**  
**SECOND CONVICTION (WITHIN 18 MONTHS)  
(\$1000-\$2500)**  
**No Mandatory Surcharge**



**NEW YORK STATE TRANSPORTATION LAW  
(SECTION 140) COMMERCIAL VEHICLE SAFETY**



**NOTE: FOLLOWING PAGES CONTAIN FARM PLATED VEHICLES, OPERATING OUT OF SERVICE, HOURS OF SERVICE AND HELPFUL WEBSITES.**

**TRANSPORTATION LAW  
(SECTION 140-2d) COMMERCIAL VEHICLE SAFETY  
FARM PLATED VEHICLES ONLY**



**SAME FINES APPLY AS NON-FARM PLATED VEHICLES**

**UNLESS**

**THE O/O/S VIOLATION IS CORRECTED WITHIN THREE BUSINESS  
DAYS**

[https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT  
OF CORRECTION.pdf](https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/repository/STATEMENT_OF_CORRECTION.pdf)

**THEN FINES ARE**

CORRECTED O/O/S BRAKE, STEERING AND COUPLING VIOLATIONS = \$150

CORRECTED O/O/S LOAD SECUREMENT VIOLATIONS = \$250.00

CORRECTED O/O/S FOR ALL OTHER VIOLATIONS = \$50

<https://www.nysdot.gov/portal/page/portal/divisions/operating/osss/truck/regulations>

**TRANSPORTATION LAW  
(SECTION 211/212)**

**LOG BOOKS (HOURS OF SERVICE)**

**ANY CONVICTION**

**\$200 FINE (MISDEMEANOR)**

**(MANDATORY SURCHARGE)  
(\$175 + \$CVAF-\$25 +\$5 T/V =\$205.00)**

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

**OPERATION OF OUT OF SERVICE VEHICLE**

**FIRST CONVICTION  
(\$2,500.00-\$4,000.00)**

**SECOND CONVICTION WITHIN 18 MONTHS  
(\$5,000.00 -\$6,000.00)**

Refer to **VTL Section 510 a** for Suspension/Revocation Sanctions Link below  
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

**REQUIRES/DEMANDS OPERATION OF O/O/S VEHICLE**

**Fine Only: \$2,750.00 to \$25,000.00**

Refer to Transportation Law Section 140.2D (v) (b) at the link below:  
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

**STATEMENT OF CORRECTION FOR EQUIPMENT DEFECT New York State Transportation Law  
(Sections 14F or 140)**

If a summons is issued for an equipment defect in violation of **NYSTL section 14F (except for any out-of-service violation) or section 140 (except for a violation involving an out-of-service defect relating to(i) load securement, (ii) brake systems, (iii) steering components and/or (iv) coupling devices or except for (v) a violation involving the operation of any motor vehicle after it has been placed out-of-service)**, such summons shall be dismissed by the court before the return date if the violation set forth in the summons is corrected not later than one-half hour after sunset on the first full business day, or if such complaint involves a farm plate vehicle, not later than one-half hour after sunset on the third full business day after the issuance of the summons and proof of such correction as set forth below is submitted to the court. For the purposes of this section "business day" shall mean any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

Acceptable proof of repair or adjustment shall consist of a submission to the court on or before the return date of the summons of: (i) a statement of correction from an officially designated state inspection station duly executed by the person performing or making such inspection and bearing the official stamp of the state inspection station; (ii) a statement of correction from an automobile repair shop on the letterhead of such repair shop duly executed by the person who made the correction or (iii) a signed statement of any police officer or a department inspector that the necessary corrections have been made. The statement required by this paragraph shall be directed to the court having jurisdiction of the alleged violation, shall be affirmed as true under penalty of perjury, and shall include the name, occupation and position of the person making the statement, the time and date that the repairs or inspection were made and a statement that the defective equipment, cited in the violation, on the vehicle in question, is in proper working order.