

LAW OFFICE OF | MARK COHEN, P.C.



NEW FOR 2017: NO DRIVING WHILE ON YOUR PHONE, UNLESS.... *(Read on)*

For this last issue of the year, I thought I would provide some practical information about a new law that takes effect January 1st. All those who have the nasty habit of driving with phone in hand will be impacted. And let's face it, driving under the influence of a cell phone is an all too common occurrence. The problem is that using your cell phone while driving can kill and that's not good.

Come January 1st, Vehicle Code §23123.5 will impose greater restrictions on phone use while driving. The old V.C. §23123.5 prohibited cell phone use for texting and talking unless it was operated in hands-free mode. A court of appeals case interpreted V.C. §23123.5 to mean that while texting and phoning are prohibited, using the map app. isn't. In response, the legislature changed V.C. §23123.5 in several important ways. It's now prohibited to drive while holding and operating a phone *unless* the phone is specifically designed and configured to allow voice-operated and hands-free operation and is used in that mode while driving. (V.C. §23123.5(a))

But there's more. A driver can use a phone "in a manner requiring the use of the driver's hand while driving only if both the following conditions are satisfied":

1. The phone is mounted on the windshield as provided in Vehicle Code §26706(b)(12) [*more on that in a moment*] or

is

- mounted on the dashboard or center console “in a manner that does not hinder the driver’s view of the road”, *and*
2. The driver’s hand is used to activate or deactivate a feature or function of the handheld [phone] with a motion of a single swipe or tap of the driver’s finger.” (V.C. §23123.5(c))

In plainer English, you cannot “*hold and operate*” your phone while driving, period. *Unless,*

- It’s voice operated and on hands-free mode; *and*
- the phone is mounted on the dash or center console in a manner that doesn’t hinder your view or is mounted on the windshield in compliance with V.C. §26708(b)(12); *and*
- The driver’s hand is only used to activate or deactivate the phone with a single swipe or tap.

So, what does V.C. §26708(b)(12) say? First, you need to understand that subparagraph (a) of V.C. §26708 prohibits the operation of a car when there is an object or material displayed, installed, or affixed to the windshield, side and rear windows or if the object obstructs or reduces the driver’s clear view through the windshield. In other words, you can’t have anything on your windshield. If you do, it must fall under some exception, but it still cannot block your view. Subparagraph (b) of V.C. §26708 however, provides 14 exceptions to this don’t block the windshield rule, subparagraph (12) being one of them:

“(12) A portable Global Positioning System (GPS), which may be mounted in a seven-inch square in the lower corner of the windshield farthest removed from the driver or in a five-inch square in the lower corner of the windshield nearest to the driver and outside of an airbag deployment zone if the system is used only for door-to-door navigation while the motor vehicle is being operated.”

So, you must either have your phone mounted as V.C. §26708(b)(12) describes or mounted on the dash or center console in a manner that doesn’t hinder your view.

Confused. Well, so was I when I read through V.C. §§23123.5 and 26708. Bottom line: Don’t use your phone in the car. Look at the scenery instead. But if you have to use your phone, it must be on hands-free mode and mounted in a manner that complies with V.C. §23123.5(c)(1). And by the way, V.C. §23123.5 also applies to a “broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device.” (V.C. 23123.5(f)).

Got questions? Give me a call (but not when you’re driving).
Happy New Year.

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In the next issue: *Judicial bias and misconduct: Some interesting cases.*

You got a legal question? Give me a call.



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Quotes of the Month:

"That makes me smart." –Donald Trump, responding to Hillary Clinton's suggestion that he pays no federal income tax (Sept. 26, 2016)

"I could stand in the middle of Fifth Avenue and shoot somebody, and I wouldn't lose any voters, okay? It's, like, incredible." –Donald Trump, speaking at a rally in Sioux Center, Iowa as the audience laughed, January 23, 2016

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