

Client Newsletter

Dibble & Miller, P.C.

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D&M^{P.C.}

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Always Remember Your Right to Remain Silent

You come home from work and find that an investigator has stopped by and would like to speak to you about a case they are investigating. You contact them and they ask you to come to their office to get your side of the story. What do you do? What are your rights?

The Fifth Amendment confirms your right to remain silent throughout the process, not just at trial. You do not have to incriminate yourself at any point, including the investigation. This is true of all manner of investigations. For instance, if you are approached by a tax investigator at your place of business who just wants to ask you some simple questions, note that you may be setting yourself up for some very real criminal consequences. For example, by admitting that you did not file a return, you are demonstrating that you had knowledge of this fact, thereby admitting an element of the crime they are investigating. Although generally, your silence cannot be used against you, anything you do say, especially at this preliminary pre-arrest phase, can be used later in court to prove your guilt.

So make sure to take advantage of your right to remain silent at the earliest moment for your own protection.

For some, asserting this right may be difficult. Usually, the investigator will appear courteous and harmless enough, and may promise you that you can go home as soon as you cooperate with them or indicate that you are not the target of the investigation or they may give you the impression that you have to speak with them. But always be aware, if you are a person of interest in their investigation, they are not necessarily on your side. Understand, if they are asking questions, it may be they do not have enough evidence to arrest you. At this point, they are still fishing for evidence to accuse someone of a crime. Imagine if you deny doing anything wrong, but make a statement which simply places you at the scene or indicates you have knowledge of the incident. This may be the last piece of the puzzle that they needed to complete their investigation and arrest you. Your denial of any wrongdoing was ignored, and their sole focus was on your admission that you were present at the scene or had knowledge of the incident. This was what the police were looking for, but of course, they didn't tell you that.

It is imperative that you say nothing at this point without a lawyer acting on your behalf. It may strike you as rude, but if you are sitting across from an investigator who is asking you about a crime, they are not obligated to protect your interests, they are attempting to place blame on a criminal case.

Do You Have To Wait To Be Read Miranda Warnings Before You Can Remain Silent?

Miranda v. Arizona is considered by many to be one of the most significant legal precedents in our history. However, you do not have to wait to hear those famous warnings in order to assert your Fifth Amendment rights.

Generally, "Miranda Warnings" only have to be read after you are placed in custody. By that time, you may have already given the police all that they need to charge you with a crime.

You may think you are interfering with a police investigation if you don't cooperate and remain silent. The crime of Obstruction of Governmental Administration requires that you impair or pervert the administration of law or other governmental function or prevent or attempt to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. Silence is not an act that rises to the level of physical interference that is required by the statute. So, simply remain calm, say nothing, except to ask for a lawyer. Doing so is your right.

The Famous "Miranda Warnings"

These are the "Miranda Warnings" developed to assure that you understand your rights to remain silent and your right to an attorney:

- You have the right to remain silent. Do you understand?
- Anything you say may be used against you in court. Do you understand?
- You have the right to the presence of an attorney before and during any questioning. Do you understand?
- If you cannot afford an attorney, one will be appointed for you free of charge, before any questioning, if you want. Do you understand?

Once you hear these rights, note that a charge of some kind is, in all likelihood, going to be filed against you. At this point, you need to make sure that you contact someone who is on your side who will protect your Constitutional rights. Certainly, errors by police may lead to the exclusion of statements and or evidence, but protecting yourself early in the process is essential and may mean the difference between a successful defense of your case and a conviction.

If you are read your rights, you need to clearly state that you want an attorney and that you will not answer any questions without one. Understand that if you are unclear as to this request, the court may find that you did not assert your right to counsel and may allow statements you made to be used against you. Words such as, "Maybe I should talk to a lawyer," or "I am thinking about getting a lawyer," are generally not enough to clearly indicate your desire to seek counsel. So don't be shy about asking for your rights.

Make sure there is no doubt as to what you want. Ask for a lawyer immediately and politely tell the police the following:

- I want to speak to a lawyer
- I hereby invoke all of my constitutional rights
- I want to remain silent. I do NOT want to answer any questions or speak with you.
- I do NOT consent to any search of my person or property or any other place and I request that my lawyer be present if any search is conducted.
- I do NOT consent to any identification procedure and I request my lawyer be present if any is conducted.

Dibble & Miller Can Help

If you are being investigated or you are arrested, what happens next can be critical to your case. You should never attempt to deal with law enforcement on your own. A substantial part of our general law practice is dedicated to criminal defense. If the police or an investigator contact you, please call Dibble & Miller for a free consultation. It would be our privilege to help you protect your rights.

The foregoing information reflects our current understanding of the law. In order to provide the highest quality representation, we continually remain current regarding the law discussed herein. If you have any questions about these legal principles, please contact Dibble & Miller, P.C. for assistance.

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WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
- **Criminal Law** — *Arrests, Felonies, Misdemeanors, Traffic Tickets, White Collar Crimes, DWIs, Plea Bargains, Trials, and Appeals (State and Federal)*
- **Debtor Rights** — *Debt Resolution and Bankruptcy — We Are A Debt Relief Agency — We Help People File for Bankruptcy Under the Bankruptcy Code*
- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney and Estate Planning and Administration*
- **Family Law** — *Divorce, Custody, Visitation, Child Support, Paternity, Pre-Nuptial Agreements, Separation Agreements, and Family Mediation*
- **Litigation** — *Civil, Business, Contract, Commercial, Corporate, Real Estate and Stockholder and Partner Disputes*
- **Personal Injury** — *All Types, including Car Accidents, Slip and Fall, Physical and Sexual Abuse, Assaults and Work Accidents*
- **Real Estate** — *Residential and Commercial Purchases, Sales, Closings, Mortgages, Land Contracts, Foreclosures and Real Estate Leases*
- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
 - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
 - *Defense against Collection of Income, Payroll, Sales and Corporate Taxes*
 - *Resolution of Tax Levies, Liens and Income Executions*
 - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
 - *Preparation, Filing and Negotiation of Offers in Compromise*
 - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
 - *Innocent & Injured Spouse Defense*

***** IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION *****

We Are A Full Service Law Firm – Free Initial Consultation – Attorney Advertising