

## UPCOMING TRAININGS & CONFERENCES

A full list of NDAA's virtual learning sessions is available at [ndaa.org/training-courses/](https://ndaa.org/training-courses/). For current information, effective best practices, and targeted resources for prosecutors, visit [ndaa.org/covid-19](https://ndaa.org/covid-19).

**NDAA's Mastering Masking Digital Course/ On Demand Training (CLE Available)**  
[ndaa.org/training/mastering-masking-2/](https://ndaa.org/training/mastering-masking-2/)

**NDAA's Human Trafficking and the Impact on Commercial Driver's Licenses/On Demand Training**  
[ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/](https://ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/)

**NDAA's Prosecuting DUI Cases Online Course/ On Demand Training (CLE Available)**  
[ndaa.org/training/prosecuting-dui-cases/](https://ndaa.org/training/prosecuting-dui-cases/)

**NDAA's Investigation and Prosecution of Drug-Impaired Driving Cases Online Course/On Demand Training (CLE Available)**  
[ndaa.org/training/on-demand-learning-investigation-and-prosecution-of-drug-impaired-driving-cases/](https://ndaa.org/training/on-demand-learning-investigation-and-prosecution-of-drug-impaired-driving-cases/)

**NDAA's Un-Masking CDL Masking: Action Plan for Improved CDL Enforcement & Masking Avoidance (Live Webinar)**  
January 26, 2023 @ 2:00-4:00 p.m. ET

**NDAA's 2023 Job Fair and Prosecutor Advocacy Day**  
January 29-February 1, 2023, Washington, DC

## RESOURCES

**Impaired Driving Resources**  
[ndaa.org/programs/ntlc/](https://ndaa.org/programs/ntlc/)

**CDL-Related Resources**  
[ndaa.org/programs/ntlc/commercial-drivers-license/](https://ndaa.org/programs/ntlc/commercial-drivers-license/)

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## Empowering Judges and Keeping the Roads Safe

*By Judge Gayle Williams-Byers  
South Euclid Municipal Court, South Euclid, Ohio*

**Editor's Note**—This article originally appeared in the Fall 2019 issue of Highway to Justice. Highway to Justice is a publication of the American Bar Association (ABA) and the National Highway Traffic Safety Administration (NHTSA). It is reprinted here with permission.

In June 2018, a truck plowed into a Jeep Wrangler stopped in traffic on Interstate 84 in Idaho, killing the truck driver and three Idaho airmen who were in the Jeep. A newspaper account later revealed that the truck driver had been convicted of more than 20 driving-related violations in four states before the crash and additional offenses in other states.

The obvious question was, why was a driver with so many convictions still on the road and in possession of a commercial driver's license? One likely reason, though it was not part of the record, relates to an all-too-common traffic court practice called "masking." Masking relates to plea bargains struck by

commercial driver's license or CDL holders who are in danger of accruing driving violations including driving under the influence that could result in the automatic suspension of their licenses and commercial driving privileges.<sup>1</sup> When drivers are cited, whether in their personal or professional vehicles, they often seek to plead guilty to different, non-moving or reduced infractions, agree to attend driver's education courses or seek to participate in diversion or deferred prosecution programs.

Prosecutors and judges are often sympathetic to the drivers' argument that the loss of the CDL will take away their means of earning a living and supporting their family. But preserving a driver's license in this way effectively—and illegally—masks the true record of dangerous driving.

The Federal Commercial Motor Vehicle Safety Act was enacted to prevent the concealment of unsafe driving records and to establish uniform sanctions for certain unsafe driving practices by holders of a commercial driver's license. Under the Federal regulations that were promulgated under the Act, all out-of-State traffic convictions involving a CDL holder, regardless of whether the violation occurred in a commercial or private vehicle, must be reported to the licensee's licensing state.



Under 49 CFR § 384.226, a State is prohibited from masking, deferring imposition of a judgment of conviction, or allowing an individual to enter a diversion program that would prevent a conviction from appearing on the commercial driver's license record. Under this regulation, a "conviction" would include an unvacated adjudication of guilt or forfeiture of bail, a court-accepted guilty plea, or payment of a fine or court cost.

In order to promote compliance with the Federal Commercial Motor Vehicle Safety Act and its regulations, the Motor Carrier Safety Improvement Act of 1999 requires the withholding of certain Federal funds from States found to be non-compliant with the Federal regulations regarding masking. Additionally, the Federal government has the authority to also prohibit non-compliant States from issuing CDLs.

More attention, however, has been focused on commercial drivers and how the Courts handle their traffic violations. For nearly 20 years, for example, The National Judicial College, has been educating judges about masking and other highway safety regulations. In the past two years, more than 300 judges have tuned in to the College's live national webcasts on the subject or to webcasts customized for each of the 50 states. In 2016 and 2017, 447 judges attended in-person courses presented in seven states.

And the efforts appear to be finally paying off. In Florida, for example, judges report that it was commonplace to withhold convictions in almost all commercial operators' cases, such as speeding, careless driving and improper lane changes. Romana Lavalas, a [former] senior attorney for the National Traffic Law Center of the National District Attorneys Association, says though that awareness of masking is clearly on the rise in courthouses, and "if judges are doing what they're supposed to do, the right drivers will get disqualified."

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<sup>1</sup> For example, commercial drivers may be disqualified from operating a commercial vehicle for 60–120 days for speeding excessively, reckless driving, following a vehicle too closely, and 1–3 years for operating a vehicle under the influence of alcohol or drugs. In some instances, a commercial driver may be disqualified for life from operating a commercial vehicle for a subsequent conviction for operating under the influence.

When asked, many State Court judges have said they were unaware of the concept of “masking” as well as its impact on road safety and noncompliance with federal law. I’ve had the opportunity to teach NJC courses on commercial driver’s license issues around the country, and have found that many, “if not all” of the judges I’ve taught were unaware that masking was a violation of federal law. For example, a justice of the peace from Delaware, who attended one of the NJC programs commented:

“I had no idea that these plea agreements effectively violated the law until I took the course. I now take a much closer look at the record of violations.”

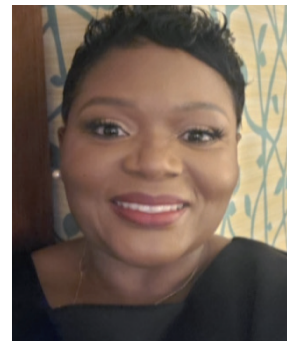
The National Judicial College is continuing its year-round program of State-specific webcasts and in-State seated courses designed to provide judges with opportunities to understand CDL issues, including masking, with presentations scheduled through September 2020. For more information regarding a program in your State, go to [www.judges.org](http://www.judges.org), or call The National Judicial College.

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### About the Author

Judge Gayle Williams-Byers formerly served as Administrative and Presiding Judge of the South Euclid Municipal Court in South Euclid, Ohio from January 1, 2012 until her retirement on July 31, 2022.

During her tenure, she joined the American Judge’s Association, one of the largest judges-only organizations in North America, which has a mission of providing quality education programs and high-level publications to its members. As a member of the organization, Judge Byers served as President-Elect and Chair of the Education, Domestic Violence, Diversity, Membership, Social Media and Technology and Judicial Wellness Committees.



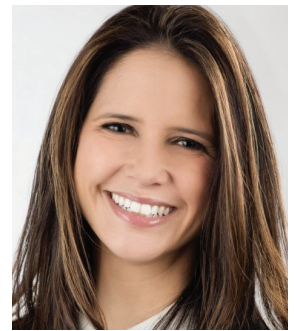
Prior to joining the bench, Judge Byers served as an Assistant Cuyahoga County Prosecutor, ending her career as Supervisor of the Cuyahoga County Grand Jury. Additionally, Judge Byers has been appointed to serve as the only Judicial Fellow for the National Judicial College (Reno, Nevada) where she has honed expert skills in the area of Commercial Drivers, licensing and federal penalties. She teaches courses to judges across the United States on topics ranging from Judicial Wellbeing to Ethically Handling Commercial Drivers in Criminal and Traffic courts. Further, she provides advice and guidance to the National Judicial College on topics related to commercially licensed drivers.

Since retiring in 2022, Judge Byers has appeared as television host and jurist on A&E network’s Court Night Live where she adjudicated civil matters in a Chicago pop-up courtroom. During her tenure on the bench, Judge Byers spearheaded several innovative advancements, including livestreaming court proceedings, creation of an IOS App to provide instant docket access, implementing a monthly Night Court docket and creation of the only suburban Specialized Mental Health Docket in Cuyahoga County. Judge Byers was also the catalyst in forming the first suburban Drug Court initiative in partnership with Cleveland Municipal Court.

Judge Byers received her B.A., M.N.O., and J.D. degrees from Case Western Reserve University.

# Staffing Changes at NTLC

At the end of December, NTLC says good bye to Aaron Ann Cole Funfsinn. Aaron Ann has served as a Staff Attorney on the Federal Motor Carrier Safety Administration grant since June 2021. During her time with NTLC, Aaron Ann worked tirelessly to elevate the mission of FMCSA, promoted accountability of CDL holders, educated traffic safety partners about the dangers of masking convictions, and advanced the importance of prosecutors in saving lives on our roadways. Aaron Ann will be taking on the role of Managing Attorney at Hicks & Funfsinn, a personal injury firm in Lexington, Kentucky. Her last day will be December 31, 2022. We wish Aaron Ann great success in her new endeavor.



Aaron Ann Cole Funfsinn

Replacing Aaron Ann will be NDAA's own Bella Truong. Bella joined NDAA as a Staff Attorney in March 2022. Bella has a dozen years of multifaceted legal experience prior to joining NDAA, the majority of which she served as a prosecutor in both the Cumberland County District Attorney's Office (Fayetteville, NC) and the Pierce County Prosecuting Attorney's Office (Tacoma, WA). She has focused on impaired driving cases for many years and has also provided training and guidance for multidisciplinary teams, including training FBI agents on local laws dealing with human trafficking. Additionally, she served as a Military Intelligence Officer with the United States Army where she led teams of analysts to prepare, train, and execute tactical and combat operations, including Operation Enduring Freedom. Bella is a graduate of the United States Military Academy at West Point and the University of Kansas School of Law. She will begin her new position with NTLC on January 1, 2023. Her email is ► [btruong@ndaajustice.org](mailto:btruong@ndaajustice.org). Please join us in welcoming Bella to our amazing traffic safety community!



Bella Truong



# ***Un-Masking CDL Masking: Action Plan for Improved CDL Enforcement & Masking Avoidance***

**January 26, 2023**

**Webinar 2:00 p.m.–4:00 p.m.**

***Featuring NTLC Senior Attorney Jim Camp***



Commercial Driver License holders have the privilege of operating 80,000-pound vehicles, and with that privilege comes greater training, licensing expectations and responsibility. Federal and most state law prohibits the “Masking” of convictions. 49 CFR 384.226 states, in relevant part, that “The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver’s conviction, for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the driver’s record...”

Misconceptions continue to persist surrounding this statute’s mandate requiring the reporting of CDL/CMV violations and convictions and prosecutors’ discretion to negotiate these cases. This presentation will analyze the rules and regulations about CDL operators and the legal, as well as the often deadly, practical consequences of what happens when unsafe CDL drivers are allowed to operate commercial motor vehicles.

This webinar is free and may earn attendees CLE credit.\*

To register for this webinar, [click here](#).

\* NDAA has applied for CLE credit in Illinois, Kansas, Mississippi, Ohio, Pennsylvania, Tennessee, Texas, and Virginia based on state requirements and guidelines. All other attorneys seeking CLE credit should contact their state bar for more information. At the conclusion of the course and after completion of the electronic evaluation survey, all attendees will receive a uniform continuing education certificate that they may use to report their continuing education hours to their state bar or reporting agency. Questions regarding CLE can be directed to Courtney Jan at ► [cjan@ndaajustice.org](mailto:cjan@ndaajustice.org).