

legal lines

from
MOORE, SUSLER, MCNUTT & WRIGLEY
Lawyers

A Conversation about Criminal Law

You may know that partner Bob Wrigley concentrates his practice in criminal and family law and that Dan Moore works primarily in Elder law issues. We thought you might like to listen in on a conversation in which Bob answers Dan's questions about what happens after a person is arrested:

Dan: *If I got arrested, I know the first thing I would do is call you; but, what could I expect to happen next?*

Bob: It depends on the reason for your arrest. If it's just a minor traffic ticket the procedure is pretty simple. The ticket the police officer writes actually constitutes the criminal charge. It states what your traffic violation is and gives you an appearance date to be in court. If you decide you don't want to defend the charge, you can simply go to the Circuit Clerk's office ahead of the appearance date, plead guilty and pay your fine. If you do want to contest the charge, you would plead not guilty before the Judge on the date the ticket requires you to appear.

Dan: *What if I have been arrested for something more serious than a traffic violation?*

Bob: Then it depends on how much more serious it is. If you've been arrested because the officer believes you have only committed a misdemeanor, as opposed to a more serious crime called a felony, you will be given a notice to appear. So far I know this sounds much like the traffic ticket; but it gets a little more involved. First, the arresting officer may decide you need to post bond, usually \$100, to be released. In either case, unlike the traffic ticket, you won't be able to just go into the Circuit Clerk's office, plead guilty and pay your fine. You'll really have to appear in court on the date the notice shows.

Dan: *What'll happen then?*

Bob: A lawyer from the State's Attorney's office will be present, and if you're really lucky, release you with-

out filing any charge. If the State's Attorney's office agrees with the arresting officer that you probably committed the misdemeanor, the State's Attorney's lawyer will file what is called an information, to which you'll then either plead guilty or not guilty. If you plead not guilty, the matter will be set for trial and the judge will either release you on just your promise to come back, called a recognizance bond, or continue the previously posted bond pending your appearance at trial.

Dan: *What if I decide to plead guilty?*

Bob: Then the court will explain your rights to be represented by counsel, if you aren't already, and your right to a trial by jury. If you still persist in your guilty plea, you will be asked to sign a waiver of jury trial, after which your guilty plea will be accepted by the judge who will sentence you.

Dan: *This appearance would be my arraignment, right?*

Bob: Right. Whether you plead not guilty to the charge filed by the state's attorney's office and the matter is set for trial at a later date or you plead guilty and are sentenced on the spot, it has been your arraignment.

Dan: *How big or how small a sentence can I get for being found guilty of a misdemeanor?*

Bob: There are several classifications of misdemeanors, but the most serious classification carries a penalty of up to a \$1,000 fine and/or 1 year imprisonment in jail. A petty offense misdemeanor would be a fine only in the amount specified by statute but no jail time at all.

Dan: *What if I get in trouble big time and I'm arrested for the alleged commission of a felony?*

Bob: Well, for openers we might have to rethink the law partnership. But, seriously, if the arrest is for a felony, you are going to see the inside of the

county jail unless or until you can be taken before the judge assigned to first appearances on felonies, where the amount of your bail will be set. Possibly you could get released on your own recognizance if the judge decides the alleged offense is not too serious and that you will appear for your arraignment.

Dan: *Is this the place I hear that I have the right to make one telephone call?*

Bob: You have a right to make a reasonable number of calls to obtain counsel and notify family members of your detention as soon as possible after your arrest.

Dan: *That sounds a little better. How long can they hold me before I get brought before the judge to set my bail?*

Bob: You must be released if you haven't been brought before a judge within a reasonable period of time after your arrest. To make certain this is possible there is even a judge designated for these hearings on Saturdays.

Dan: *There's that word "reasonable" again. It can mean different things to different people.*

Bob: Yes, but part of your constitutional right to due process is that reasonableness is subject to court review. If you think you're being held unreasonably you can get a writ of habeas corpus.

Dan: *If the judge does set bail, I have to come up with 10% of it in cash, isn't that right?*

Bob: Yes, you won't be released until you or someone on your behalf has furnished that cash portion of the bond. Too, in some very serious felonies, where the judge has reason to believe you may skip rather than stand trial and there is too great a danger to society that you will go out and commit a similar crime again, the judge may not set bail but require you to be held or set it so high you may be unable to pay the cash portion.

Continued on reverse...

The New DUI Law

'Tis the season for cook-outs, boating and pool parties, and these hot summer months may lead some to "wet their whistles" with a little more alcohol than usual. While it was never a good idea (or legal) to drink to excess and drive, Governor Edgar has now made it even less tempting. As of July 2, 1997, the blood alcohol limit at which automobile drivers will be deemed legally intoxicated is 0.08 percent—lowered from the previous 0.10 percent level. A blood or breathalyzer test revealing 0.08 or above, or refusing to take the test, will result in an automatic suspension of one's driver's license for the first offense (as well as other possible court-ordered punishments). There are even more severe penalties for multiple offenses.

But do not be fooled into believing that driving a car in an incapacitated state is the only thing that can get one into trouble. Beginning January 1, 1998, the 0.08 percent blood alcohol level will also apply to boat and snowmobile drivers. The penalties for this type of violation are stiff—a hefty fine and possible jail time—and increase with multiple offenses.

Rain or shine, summer or winter, the message is clear: No one should drink and then get behind the wheel of a moving vehicle. Beside the obvious danger to that driver and others, the offender's legal health is also at stake.

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Dan: *In a felony case what will happen between the time I get released on bail and my arraignment?*

Bob: The State's Attorney's office will be deciding, as it did in the misdemeanor case, whether you will be charged with a felony. If the decision is yes, an Information must be filed by the State's Attorney before or at your arraignment.

Dan: *This sounds a lot like how the misdemeanor case goes after arrest.*

Bob: There is a big difference though. But we're going to need to stop here for now. I've got to be in court in twenty minutes for a client's first appearance.

Dan: *Sure. But next time be ready for the big one. "How could you ever defend someone you knew was guilty?"*

Lawyers Presenters in Conferences

Associate Karen Root and partner Bill McNutt addressed the Illinois Association of Non Profit Organizations in Chicago June 10. Karen and Bill discussed the necessity, content and legal significance of employee manuals and handbooks.

Partner Dan Moore will be among the presenters at a seminar at Sarah Bush Lincoln Medical Center September 17, entitled *Advance Directives: The Holistic Approach*, sponsored by the Coles County Long Term Care Ethics Committee. Other presenters will be two physicians, three ministers and a bioethicist from Carle Foundation.

At the seminar Dan will be discussing the Health Care Power of Attorney and Living Will, the main advance directives, and related laws.

Moore, Susler, McNutt & Wrigley
3071 North Water Street
Decatur, IL 62526
(217) 872-1600

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Meanwhile, back at the ranch....

Have you visited us recently? Since the State completed lane revisions north of Pershing Road, it is easier to get into our place. Take the left lane as you approach Pershing Road on North Water Street. It is an easy exit toward our west parking lot at the north end of the building.

And when you get back to our parking lot, you'll notice it's been completely redone. We've rolled out a smooth new asphalt welcome mat. When you exit (we hate to see you go), you can go north out our own exit, without crossing over to the Goodyear store to the north.

Hope you like the new improvements. We're proud of them.

A date saver...

At our April seminar, Preserving Personal Independence, many of our audience said we should do it again. We listen! Seminar II, *Enjoying Personal Independence*, will be presented Saturday, October 25, 1997, again at Illinois Power Plaza.

This time the topics will include travel destinations and ways to enjoy them, satisfying volunteer opportunities, financing your fun, residential alternatives and masterminding your business. The last two topics are vital to being able to do the first two - carefree. So mark your calendar. Plan to join us for what promises to be an enjoyable and profitable afternoon. You may even win one of our exciting door prizes!



Meet Donna Stout

If Donna does not answer our phone very often, it is because she is busy getting work out for the two lawyers she has been assigned. Donna is a fast typist and her biggest stress is when she is unable to get all the work done the same day it is assigned.

Donna graduated from Prince George High School, Prince George, Virginia and attended Braxton School of

Business in Richmond, Virginia where she specialized in legal studies. While in Prince George, she was a member of one of the Prince George Volunteer Fire Departments. Donna joined our staff in 1995. Her husband, David, is a pre-med student at Millikin. When not working, Donna enjoys tending to her house plants, cross-stitching and watching TV.