

2008 ANNUAL REPORT

OF

WILLMAR CITY ATTORNEY

MAYOR AND CITY COUNCIL MEMBERS:

The City Attorney's Office works on legal matters that fall into two general categories, being civil matters and criminal matters. The criminal matters take up considerably more than 50% of the time of the City Attorney's Office. The criminal matters will be discussed first. The City Attorney's Office is responsible for prosecuting all adults who commit petty misdemeanors, misdemeanors, and many of the gross misdemeanors that occur in the City limits. In addition, a number of juvenile traffic offenses are also prosecuted by the City Attorney if they occur in the City limits. The juvenile traffic offenses include all misdemeanor and gross misdemeanor DWI's and all petty misdemeanor traffic offenses and if the offender is 16 years of age or older.

SPECIFIC CRIMINAL CATEGORIES

Petty Misdemeanors

Petty misdemeanors are not considered a crime, but are considered a civil offense. There is no jail time for a petty misdemeanor offense and the maximum fine on a petty misdemeanor is \$300. The most common petty misdemeanors are minor traffic offenses and shoplifting. Since the only penalty is a fine and no jail time, the defendant is not entitled to a public defender. In addition, the defendant is not entitled to a jury trial. If a not guilty plea is entered, the matter is set for a bench trial. At the time of arraignment, the City Attorney has the right to designate a misdemeanor as a petty misdemeanor with the defendant's consent and the judge's approval. Petty misdemeanors are initiated by the Police Department issuing a tab charge. During 2008, court trials were scheduled for a total of 21 petty misdemeanor offenses. This compares to 2007 when there were 22 and to 2006 when there were 24 court trials for petty misdemeanors. Of these, 13 were traffic matters and the others were noise and dog violations.

Misdemeanors

The maximum fine for a misdemeanor is \$1,000 and the maximum jail time for a misdemeanor is 90 days. Defendants are entitled to a public defender if they are indigent, and are entitled to a jury trial. Most defendants pleading not guilty request a jury trial. If a defendant

pleads guilty at his/her first court appearance, the City Attorney's Office, in most cases, does not have a file on the matter and has no involvement in the case unless the defendant doesn't fulfill his sentence, in which case the City Attorney prosecutes the probation violation or unless there is a victim, in which case, victim information is sent out. If a defendant pleads not guilty at his or her first appearance, the City Attorney's Office opens a file on the case if a file has not been previously opened. A file will be opened prior to arraignment if the defendant or the defendant's attorney contacts the City Attorney's Office prior to the arraignment and requests reports. Opening a file involves obtaining the police report; reviewing the police report; requesting further information (when necessary) from the arresting officer; furnishing reports and evidentiary notices to the defense attorney; ordering subpoenas on lay witnesses; and reviewing the statute involved and doing legal research, as necessary, on any unusual or complicated issues. An average of 1 to 1½ hours, exclusive of court time, is spent on each jury trial file. Most of the cases end up being disposed of without a jury trial. The City Attorney is at arraignment court each week to discuss the cases with defendants or the attorneys for defendants who are represented. Some of the cases are disposed of at arraignment court. Arraignment court continues on Wednesdays for all City criminal cases. All misdemeanor cases are now being set for pretrial conferences and accordingly, a minimum of one court appearance is required of the City Attorney's Office. In 2007, the City Attorney's Office opened 306 misdemeanor jury trial case files. This compares to 380 opened in 2007 and 401 opened in 2006. The most common misdemeanor offenses are:

Assault (domestic and otherwise) 36 [46 in 2007; 70 in 2006; 59 in 2005];

Underage consumption 15 [24 in 2007; 15 in 2006; 9 in 2005];

No Insurance 36 [56 in 2007; 75 in 2006; 50 in 2005];

Driving after Revocation 27 [70 in 2007; 66 in 2006; 42 in 2005];

Theft and worthless checks 76 [39 in 2007; 46 in 2006; 48 in 2005];

First offense DWI 15 [22 in 2007; 28 in 2006; 22 in 2005];

Order for Protection/Harassment Order violations 17 [14 in 2007; 20 in 2006 19 in 2005];

Driving after Suspension/Cancellation 17 [22 in 2007; 50 in 2006; 20 in 2005];

Disorderly Conduct 18 [24 in 2007; 19 in 2006; 24 in 2005];
Criminal Damage to Property 17 [15 in 2007; 6 in 2006; 26 in 2005];
School Bus Arm Violation 3 [2 in 2007; 4 in 2006; 3 in 2005];
False Name/Obstructing Legal Process 16 [29 in 2007; 14 in 2006; 20 in 2005]
Zoning Violations 1 [4 in 2007; 1 in 2006]

Gross Misdemeanors

Gross misdemeanors are crimes with a maximum penalty of \$3,000.00 and one year in jail. The rules of criminal procedure require a formal complaint to be issued in all gross misdemeanor cases. A tab charge from an officer is allowed at the first appearance in District Court for gross misdemeanor DWI cases but a formal complaint must be filed by the time of the second court appearance. For gross misdemeanors other than DWIs, the formal complaint must be prepared prior to the first court appearance. A formal complaint is a multi-page document prepared by the City Attorney's Office that sets out the facts supporting the alleged charges, specifically enumerating the charges, and maximum penalties and statutory citations. The City Attorney's Office goes through the same process with gross misdemeanor files as with misdemeanor jury files with the additional work of preparing the formal complaint. If a defendant is being held in custody, the formal complaint must be prepared within 36 hours. During 2008, the City Attorney's Office prepared 96 gross misdemeanor long-form complaints. This compares to 116 long-form complaints in 2007, 111 in 2006 and 107 in 2005. Virtually all gross misdemeanor cases are scheduled for jury trial and a pretrial conference. Most are disposed of without a jury trial actually being conducted. The most common gross misdemeanor charges are:

Aggravated DWI 55 [69 in 2007; 47 in 2006; 53 in 2005];
Driving After Cancellation – IPS 13 [14 in 2007 19 in 2006; 17 in 2005];
Theft/theft related (more than \$500 and less than \$1,000 in value) 8 [4 in 2007; 9 in 2006; 6 in 2005]
School Bus Stop Arm Violations 19 [20 in 2007; 29 in 2006; 30 in 2005];
No Insurance 2 [3 in 2007; 6 in 2006; 1 in 2005].

To make room for felony DWIs, the nomenclature for gross misdemeanor DWIs was changed in 2005. The second offense DWI is a third degree DWI. The third offense DWI is a second degree DWI. Felony DWI is first degree DWI. A misdemeanor DWI is a fourth degree DWI.

Additional Court Hearings

In previous years, the court tried to have designated City of Willmar criminal court days, however, matters are now scheduled every day of the week. Wednesday morning of each week still remains as arraignment court for petty misdemeanor and misdemeanor cases. Appearances in 2008 remained high with 30-40 City cases being common. Gross misdemeanor appearances are scheduled every day of the week on an as needed basis. Bench trials, pretrials and evidentiary hearings are no longer scheduled at a set time on a set day, but are set when the court calendar allows. During 2008, the City Attorney's Office was scheduled for 866 court hearings, in addition to the jury trials that were scheduled. This compares to 948 in 2007; 910 in 2006 and 686 in 2005. These hearings were in addition to the Wednesday morning arraignments and consisted of the following:

- Bench trials;
- Probation violation hearings;
- Pretrial conferences;
- Evidentiary hearings;
- Omnibus hearings;
- Motion hearings;
- Plea hearings;
- Sentencings;
- Trial Management Conferences; and
- Restitution hearings.

Police Investigations

When the Police Department investigates a complaint and the investigating officer does not know whether charges should be issued, the police investigation is brought to the City Attorney's

Office for review. During 2008, 97 police investigations were brought over for review. This compares to 81 in 2007 and 89 in 2006. Of these, prosecution was denied on 63 files, 18 were accepted for prosecution, and the balance were returned to the Police Department for further investigation and evidence.

Victim Notifications

A significant amount of time is being spent contacting crime victims. As soon as the City Attorney's Office learns of a crime with a victim, notification is sent to the victim as to their rights. Also included with the notice is a restitution claim form and a questionnaire that a victim can complete and send back if they want further information about the case as it progresses through the system. There were 128 victim contacts sent out during 2008. This compares to 75 in 2007, 87 in 2006 and 65 in 2005.

LEGISLATIVE CHANGES

The Legislature made no changes in the criminal statutes during the 2008 session. There are significant changes being considered in the current session of the Legislature that would make wide-sweeping changes to the criminal code. Attached at the end of this report is a League of Minnesota Cities memo that was sent out last week and outlines what the Legislature is considering.

CIVIL MATTERS

Falling under the category of civil matters is practically everything else done by the City Attorney that does not qualify as a criminal matter. These include the following:

Rental Housing Inspection and Zoning Enforcement

When the rental housing inspection ordinance is not being complied with, the matter is referred to the City Attorney. Prior to commencing an action in District Court to compel compliance, one and possibly two letters are sent to seek compliance without court action. If the housing owner does not comply, then a summons and complaint is issued and filed in District

Court. A number of letters were sent ordering compliance and one lawsuit had to be commenced. Citations for failure to comply with the exterior storage ordinance did not increase significantly over 2007. The one civil action commenced in District Court is scheduled for a default hearing.

Civil Forfeitures

The 2000 Legislature changed the procedure for forfeitures. The burden is placed on the property owner to commence a court action if the forfeiture is contested. If the property owner does not commence an action, the property is forfeited to the City without court action. At the time property is taken into custody, the owner is given a notice advising of their rights and the need to commence an action. They have 30 days to commence the action. Four actions were commenced during 2008 contesting forfeiture. Overall, a total of 15 vehicles were subject to forfeiture for alcohol driving offenses in 2008.

Bonds and Insurance Certificates

Every insurance certificate submitted to the City is reviewed by the City Attorney to insure compliance. Insurance certificates are required by the City for leases, City contracts, many permits issued by the City, liquor licenses, and users of the Civic Center. Close to 50% are rejected as being noncompliant when first submitted for review. In addition, performance bonds and labor and material bonds for all City projects are submitted for review by the City Attorney.

Human Rights Department Complaints

At the present time, there are no pending complaints in the Department of Human Rights that involve the City of Willmar. The City's insurance coverage with the League of Minnesota Cities Insurance Trust now covers these claims and are being handled by the Trust.

Two complaints with the Department of Human Rights were resolved during 2008.

Other Civil Matters

The City Attorney drafts numerous ordinances and resolutions for the City Council. In addition, numerous verbal and written opinions are issued every year to City department heads

and police officers. Collection letters are sent out to attempt to collect numerous unpaid accounts due the City. During 2008, 7 collection letters were sent out. Conferences are frequently held with the Zoning Administrator; the City Administrator; the City Clerk; and the Police Chief and Sergeants to discuss and hopefully resolve City issues. Numerous contracts and other documents are reviewed by the City Attorney when requested by City staff.

Other Litigation

During 2008, 1 civil action was commenced on behalf of the City to compel compliance with the rental inspection ordinance and, as mentioned above, is pending a default hearing. Compliance with various ordinances was achieved without resorting to additional litigation. A second suit was filed against the City by the Kvam Trust alleging breach of a settlement made with the Trust over airport land acquisition. A summary judgment motion is scheduled to be hearing by the District Court in May 2009.

CONCLUSION

As the City continues to grow, contacts by the public with the City Attorney's Office and vice versa continue to rise. As you will note from this report, criminal court appearances increased for many types of offenses.

Respectfully submitted,

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Willmar City Attorney