



City of Willmar Annual Report 2010



Attorney

2010

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 specific duties include the following: criminal matters take up 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 DWIs and all petty misdemeanor traffic offenses, 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 also 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 2010, court trials were scheduled for a total of 19 petty misdemeanor offenses. This compares to 2009 when there were 14 and to 2008 when there were 21 court trials for petty misdemeanors. Of these, 16 were traffic matters and the others were for noisy gatherings, zoning violations and possession of marijuana.

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 and restitution information is sent out, if the victim suffered a loss. 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 when a defendant enters a not guilty plea at arraignment court. In 2010, the City Attorney's Office opened 259 misdemeanor jury trial case files. This compares to 311 opened in 2009 and 306 opened in 2008. The most common misdemeanor offenses are:

Assault (domestic and otherwise) 55 [55 in 2009; 36 in 2008; 46 in 2007];
Underage consumption 16 [7 in 2009; 15 in 2008; 24 in 2007];
No Insurance 20 [23 in 2009; 36 in 2008; 56 in 2007];
Driving after Revocation 11 [20 in 2009; 27 in 2008; 70 in 2007];
Theft and worthless checks 35 [54 in 2009; 76 in 2008; 39 in 2007];
First offense DWI 9 [30 in 2009; 15 in 2008; 22 in 2007];
Order for Protection/Harassment Order violations 19 [19 in 2009; 17 in 2008; 14 in 2007];
Driving after Suspension/Cancellation 24 [13 in 2009; 17 in 2008; 22 in 2007];
Disorderly Conduct 27 [20 in 2009; 18 in 2008; 24 in 2007];
Criminal Damage to Property 13 [17 in 2009; 17 in 2008; 15 in 2007];
False Name/Obstructing Legal Process 11 [17 in 2009; 16 in 2008; 29 in 2007]
Zoning Violations 4 [22 in 2009; 1 in 2008; 4 in 2007]

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 2010, the City Attorney's Office prepared 66 gross misdemeanor long-form complaints. This compares to 119 long-form complaints in 2009, 96 in 2008 and 116 in 2007. Virtually all gross misdemeanor cases are scheduled for an omnibus hearing, pretrial conference and jury trial. Most are

disposed of without a jury trial actually being conducted. The most common gross misdemeanor charges are:

Gross Misdemeanor DWI 46 [*65 in 2009; 55 in 2008; 69 in 2007*];

Driving After Cancellation—IPS 5 [*14 in 2009; 13 in 2008; 14 in 2007*];

Theft/theft related (more than \$500 and less than \$1,000 in value) 1 [*6 in 2009; 8 in 2008; 4 in 2007*]

School Bus Stop Arm Violations 11 [*24 in 2009; 19 in 2008; 20 in 2007*];

No Insurance 6 [*2 in 2009; 2 in 2008; 3 in 2007*].

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 2010 were usually less than 20 due to the change in the number of misdemeanors that are payables. In years prior to the change in payables, 30-40 cases were typical. Gross misdemeanor appearances are scheduled on Monday and Thursday afternoons. Bench trials and pretrials are typically set on Tuesday afternoons. Evidentiary hearings are set when the court calendar allows. During 2010, the City Attorney's Office was scheduled for 645 court hearings, in addition to the jury trials that were scheduled. This compares to 807 in 2009; 866 in 2008 and 948 in 2007. 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 2010, 124 police investigations were brought over for review. This compares to 93 in 2009, 97 in 2008 and 81 in 2007. Of these, prosecution was denied on 74 files, 32 were accepted for prosecution and the balance was 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 are 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 74 victim contacts sent out during 2010. This compares to 133 in 2009, 128 in 2008 and 75 in 2007.

LEGISLATIVE CHANGES

The Legislature made changes in the DWI statutes during the 2010 session affecting the City Attorney's prosecutorial duties. The Legislature specified revocation periods running from one to six years depending on the number of previous DWIs. This will likely increase the number of Driving After Revocation (DAR) cases. The law takes effect July 1, 2011 and those who test .16 or more, or who are repeat offenders, will be required to have a breath testing ignition interlocking device on their

vehicle. If they do not have the interlock device, their revocation period will be longer. The cost is \$50 to install and \$100 per month thereafter. This cost, along with all the other costs resulting from a DWI, is likely to increase DAR prosecutions as the cost of the interlock device is likely to be too expensive for many people.

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 are issued and filed in District Court. A reduced number of letters were sent ordering compliance. Citations for failure to comply with the exterior storage ordinance did not increase significantly over 2010. However, with the inspection of the two mobile home parks being conducted, there were a large number of citations issued for exterior maintenance violations.

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. Six actions were commenced during 2010 contesting forfeiture. Overall, a total of 17 vehicles were forfeited for alcohol driving offenses in 2010.

License 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 for 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. Total number of license applications and insurance certificates reviewed were about the same as last year.

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.

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 2010, 21 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.

DEED Grant – MinnWest Technology Campus/University of Minnesota

The City's agreement to act as the conduit for a Minnesota Department of Employment and Economic Development (DEED) grant involving the MinnWest Technology Campus and the University of Minnesota, resulted in many hours of document review before the project was concluded. Discussions actually began in the fall of 2009 with the first document drafts coming in for review in January 2010. A year later, the final drafts were approved and executed with the University

of Minnesota now set to occupy one of the buildings at MinnWest Technology Campus for 20 years.

The documents do provide for an extension beyond the initial 20-year term.

Respectfully submitted,

Richard L. Ronning
Willmar City Attorney