

I'VE RECEIVED A TICKET FOR DWI **WHAT IS GOING TO HAPPEN NOW?**

by Timothy A. Engelmeyer

You've been pulled over and the officer has given you a field sobriety test. You were then taken in to the station and asked to blow into a breathalyzer which measured your blood-alcohol content over .08%. What happens now? This article will give you a short summary of the issues you will face and the likely outcome of the charges pending against you by answering the most commonly asked questions by my clients.

What are the charges? If you blew over a .08% and this is a first time DWI, you probably have two separate proceedings initiated against you. First, you have the underlying ***DWI*** charge. This is the actual charge for driving while intoxicated and it is pending in the Municipality or County in which you were pulled over. This is the criminal prosecution against you.

Additionally, after being arrested and booked, you were given some paperwork and a fifteen (15) day driving permit. The State of Missouri has enacted a statute that allows the Department of Revenue to issue an automatic Administrative Suspension without a hearing. This statute allows the State to suspend your driving privileges for a period of thirty (30) days, followed by sixty (60) days of restricted driving privileges. This is a statutory suspension and is a separate and distinct proceeding from the underlying criminal/traffic charge pending in the Municipality or County. This statute has been challenged on Constitutional grounds and the Missouri Supreme Court has upheld its validity. It is important to note that this suspension will automatically be imposed on day sixteen (16) unless you file a "Request for Administrative Hearing." There is a form for this request that is included with your fifteen (15) day driving permit.

The decision on whether or not to file the "Request for Administrative Hearing" should be discussed with your attorney. A great majority of the administrative suspensions are sustained. It may be a waste of time and money to challenge this decision because there is only one issue to be decided by the Administrative Hearing Officer—whether or not Petitioner was arrested upon probable cause to believe Petitioner was driving a motor vehicle while the alcohol concentration in the blood was .08% or more by weight. In most cases, this is very easy for the State to prove. For practical purposes, the filing of the request for administrative hearing may be a mechanism for delaying the inevitable suspension, but the likelihood of overturning the suspension is minimal.

What can an attorney do for me? Driving While Intoxicated is a Class B Misdemeanor. Upon conviction, it carries a potential penalty of up to six months in jail, a \$500.00 fine and eight (8) points on your driving record. The job of your attorney is two-fold. First, the police report and all other discoverable evidence will be received and examined, along with the other facts of the case. Police procedures will be reviewed. In a nutshell, the entire incident will be examined to assess the likelihood of acquittal if the case is tried. If the case is not tried, the job of your attorney is to negotiate the best possible plea agreement for you. For a first-time offender, your attorney may negotiate a Suspended Imposition of Sentence (SIS) with a period of probation. With an SIS, you are agreeing to plead guilty to the charge, however the sentence is not imposed and you are placed on probation for a period of time. If you do not violate your probation, the sentence is not imposed and you will receive no conviction or points. This type of plea agreement normally carries conditions such as taking the Substance Abuse Traffic Offenders'

Program normally referred to as SATOP. Other conditions may include victim's impact panel, no drinking and driving, community service and payment of recoupment fees to the police department that initiated the arrest. The SIS plea agreement is by no means the only possible agreement that may be worked out and you should consult with your attorney about other possibilities. In addition to negotiating the plea agreement, your attorney will set the case for plea in front of the judge and will be present with you throughout the process.

As mentioned previously, the Administrative Suspension statutorily imposed by the Missouri Department of Revenue is a separate and distinct proceeding. You must file the "Request for Administrative Hearing" within fifteen days or your license will automatically be suspended for thirty days followed by sixty days of restricted driving. The decision on whether to file the Request should be made after consulting with your attorney. As a general rule, when in doubt, file the Request.

What are my (the client's) responsibilities? There are certain tasks the client must handle to make sure that (1) all conditions of probation are met in the criminal/traffic proceeding; and (2) all conditions for reinstatement are met so you may get your license back once the suspension is over.

- (1) Complete SATOP. This is a class that will have to be taken as a condition of probation, as well as to get reinstated administratively. Your attorney should have the name of a SATOP class in your area or you may request a name from the court. Most of the time there will be representatives from various SATOP providers present on the night of court. You may sign up for it on the night of court, however I prefer to have my clients signed up early for various reasons.
- (2) Make sure the other conditions imposed by the court are completed. This includes getting any community service completed, paying any fine and court cost, paying any recoupment fee, and making sure any other conditions imposed are completed.
- (3) Obtain SR-22 insurance. On the Administrative side, you must obtain SR-22 insurance to be eligible for reinstatement. You need to call your (or any other) insurance company and make the necessary arrangements.
- (4) Pay the reinstatement fee. Once again on the Administrative side, you need to pay a small reinstatement fee (along with the SATOP completion certificate and SR-22 insurance filing) and you will be eligible for reinstatement once your suspension period is up.
- (5) Appear at the courthouse on time when instructed by your attorney. Once the case is set for trial or plea, you will need to appear with your attorney on a specific date. You must be on time and dress appropriately. Unless instructed otherwise, please wear slacks and a nice shirt. No cutoffs or t-shirts.

What will all of this cost? The following is a breakdown on what you will owe.

- (1) Attorney's fees. The attorney's fees will depend on a variety of factors, including whether you want your attorney to pursue the Administrative Hearing. You need to call your attorney and go over this in detail. While Engelmeyer & Pezzani is happy to work with

- you regarding your attorney's fees, we do ask that your account be paid in full prior to the conclusion of the case.
- (2) Fines and court costs. If you receive an SIS on the DWI, you will only pay court costs and a recoupment fee for that charge. If there is a companion charge (speeding, improper lane use, stop sign) you may have to plead guilty and pay a fine and court cost pursuant to plea negotiations. The fine on the companion charge may be enhanced in lieu of receiving the SIS and no fine on the DWI charge. This fine may range anywhere from \$350.00 to \$500.00.
 - (3) SATOP. There is a cost for the SATOP class. It is generally around \$350.00+
 - (4) Community Service. If community service is a part of the plea agreement, there may be a cost to participate in a community service program.
 - (5) Recoupment fees. As a part of the plea agreement, you may be required to "repay" the police department for the time and expense it incurred for your arrest. This generally is between \$85.00 and \$150.00.
 - (6) Reinstatement fees. On the Administrative side, a \$45.00 reinstatement fee must be paid (along with SATOP completion and SR-22 insurance filing) before you will be eligible for reinstatement.
 - (7) Restitution. If there was an accident involved, you may be ordered to demonstrate that restitution has been paid to any victim. You also may have to show that your insurance carrier has been advised of the accident and is handling any and all claims that have arisen as a result.

SUMMARY

The preceding article is a summary of what a first-time DWI defendant may expect. This article is not a complete summary of the proceedings and plea agreements will vary depending on many different circumstances. Thank you for choosing Tim Engelmeyer and Engelmeyer & Pezzani, LLC to discuss your case and if you have any questions, please feel free to call our office at 636-532-9933.