

## Trials in Municipal Court

If you decide to take your case to trial, the Court will not provide an attorney for you. You may, of course, choose to retain one at your own expense. An attorney can explain your rights, and assist you. We urge you to retain your own attorney. If you (and/or your attorney) do not appear personally, you may be deemed to have entered a plea of no contest, and a default judgment may be entered against you. Payment of at least the amount on your citation would be owed to the Court.

You have the right to **transfer a trial** (on any type of charge) to another Municipal Court. To do this, you must make a written demand of this Court within **10 days** prior to your initial court appearance, or you will be forever barred from transferring the trial.

Defendants of OWI or BAC charges have the right to request a **jury trial**. If you plead “not guilty” to a charge of OWI/BAC, and want a jury trial, you must make a demand of this court IN WRITING, within **10 days** prior to this appearance and you must accompany your written demand with the jury and transfer fees. Checks should be made out to the OUTAGAMIE COUNTY COURT CLERK. The case will then be transferred to the Outagamie County Circuit Court for the jury trial, and all further communications would be from them. If you do not properly request the jury trial within this period, you are forever barred and your trial will be held in this Court. (You must then contact the Kimberly Prosecuting Attorney for a pre-trial conference.) If the case cannot be disposed of after this conference, then a trial will be scheduled and held in this court.

### ***WHAT HAPPENS AT A MUNICIPAL TRIAL?***

All trials, except non-traffic juvenile cases, are public trials. You are presumed innocent and will be convicted only if evidence is clear, convincing, and satisfactory that you committed the violation with which you have been charged. This is a formal tape-recorded proceeding where the Prosecutor and the Defendant have the opportunity to present their evidence before the Municipal Judge. Because the burden of proving its case is upon the municipality, they will present their evidence first. The prosecution will produce its witnesses to testify as to the facts and circumstances surrounding the alleged violation and may introduce documentary evidence. You (or your attorney) will be permitted to cross-examine each witness that testifies. Cross-examine means to ask questions of the witness, not make statements to the witness. After the prosecution has introduced all of its evidence, you (or your attorney) will then have the opportunity to testify on your own behalf, call witnesses and present any evidence you have. The prosecution will be permitted to cross-examine each witness that testifies. When you and the municipality have completed your cases, each will be given the opportunity to summarize, by brief argument, their respective cases to the Court. Thereafter, the Court will decide, based upon the testimony, the admissible evidence and the law whether to find you guilty or not guilty. This judgment is usually decided immediately following the trial. If the

Court finds you not guilty, you will be discharged and the complaint against you will be dismissed. If you are found guilty, the extent of the penalty is dependent upon the circumstances surrounding the violation and your past record.

### ***WHAT SHOULD YOU DO TO PREPARE FOR A TRIAL?***

#### **Witness Testimony:**

If you plan to have a witness present, you need to make sure that they will be there on the day of the trial. Any such witness should have personal knowledge of the incident based on what he/she saw or heard. All witnesses must testify in person, and under oath. Do not bring in letters or statements written at your request; they are hearsay and more than likely will not be admitted as evidence. If you have any doubts that a witness you would like to call will appear voluntarily, you have the right to subpoena him/her into court. A subpoena is a document you can obtain from the court. You must present the subpoena with the appropriate witness fees personally to the witness. You cannot mail the subpoena to the witness. If you decide to subpoena a witness, contact the Municipal Court Clerk at least two (2) weeks before your trial date regarding the procedure to be followed, instructions for serving the subpoena and the costs involved.

#### **Police Testimony and Police Reports:**

You should ask the Prosecutor *in writing* what witnesses he/she plans to use at the trial. If you want to ensure that those witnesses are used, you will have to subpoena them yourself. Also, do not assume that the Judge has seen the police report. The Judge has not read the police report and will not read the report unless it is properly submitted at the trial. Do not assume that the prosecution will submit it at the trial. If you want the Judge to see it, you will have to bring a copy and see whether or not it will be admitted as evidence. You can get a copy of the police report from the Prosecutor.

#### **Photos, Maps and Drawings:**

If you think such evidence will help the Judge understand your case, bring them to court. However, you or whoever took the photos or drew the drawings should be prepared to testify about how and when the items came into being.

#### **Testimony by the Defendant:**

If you plan to testify on your own behalf, think about what you are going to say beforehand. If you do testify, the Prosecutor will have the right to cross-examine. If you made a statement to the police or to others, these statements can be used against you at the trial. If you want to have copies of any statement you made, other witness statements or the police reports at the trial, contact the Prosecutors office no later than two (2) weeks before the trial.

### ***WILL I HAVE TO PAY MORE THAN THE AMOUNT ON THE CITATION IF I AM FOUND GUILTY?***

It is a possibility. First, the prosecution may request payment for such things as witness fees, mileage and subpoenas. The forfeiture amount on your citation is not the maximum amount in most cases. The Judge has the authority to impose a higher

forfeiture if he/she deems it appropriate. Finally, if you do subpoena witnesses, you will not be reimbursed for these expenses even if you are found not guilty.

***IF I CHANGE MY MIND, CAN I SETTLE MY CASE BEFORE THE TRIAL?***

Usually you can settle your case before the trial simply by calling the Prosecutor who is handling your case. Do not wait until the last minute. Call at least one (1) week in advance of your trial date.

***IF I AM FOUND GUILTY, CAN I APPEAL?***

Yes, in the event that you are found guilty, you have the right to **APPEAL** to the Outagamie County Circuit Court. The court will provide you with a copy of your appeal rights and the appellate fees. If the municipality loses, it also has the right to appeal the case.

If you decide to appeal a trial verdict, you must do so by filing a written **NOTICE OF APPEAL** with the Municipal Court within **twenty (20) days** of the date of your conviction (judgment). At the same time, you must remit appellate fees, jury fees (if applicable) and the amount of your forfeiture.

Three types of Appeals:

Appeal of the **record only** is when a Circuit Court judge reads transcripts or listens to audio recording from original trial and renders a verdict.

**New Trial with-out jury:** A new trial will be held at the Outagamie County Courthouse. Each side may bring as many witnesses as they like. The circuit court judge decides whether the defendant is guilty or not guilty based only on the evidence that is introduced at the new trial.

**New Trial with Jury** is a trial at the Circuit Court level with a verdict being decided by a 6-person jury of your peers.

**NOTE: ALL OF THE ABOVE-LISTED FEES ARE “NON-REFUNDABLE”, AND YOU WILL NOT RECEIVE THE FEE MONIES BACK, REGARDLESS IF YOU WIN OR LOSE.**