STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

FILED
2009 AUG 18 AM 10: 47
BY _____ DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

In Re: The Matter of
Intoxilyzer Source Code Motions

STANDING ORDER

WHEREAS:

1. In *State v.Brunner*, 767 N.W.2d 677 (Minn. 2009), the Minnesota Supreme Court held that the district court did not abuse its discretion in finding that the defendant had made a sufficient showing that the Intoxilyzer source code is relevant information that may relate to the defendant's guilt or innocence.

2. The district court findings upheld by the Supreme Court in *Brunner* were based on generalized offers of proof that can easily be made in every case.

3. On July 16, 2009, in *State of Minnesota v. CMI of Kentucky, Inc.*, United States District Court Judge Donovan Frank issued an Order approving a settlement agreement authorizing Qualified Minnesota litigants to have access to the Intoxilyzer 5000EN source code.

4. In order to efficiently administer the anticipated volume of source code motions, it is necessary that Hennepin County District Court adopt a uniform procedure in handling source code motions.

THEREFORE, IT IS HEREBY ORDERED:

1. In order to establish relevancy in a motion for access to the source code, the moving party need only submit an affidavit stating that he or she is in possession of those documents submitted to the district court in *State v Brunner*, referenced above. Copies of the documents themselves need not be submitted.

2. In misdemeanor and gross misdemeanor DWI cases, the following procedures shall be utilized in determining motions for access to the Intoxilyzer source code:

   a. A motion for access to the Intoxilyzer source code, and a supporting affidavit described in paragraph 1 above, must be filed and served no later than three days before the first scheduled pretrial conference.

The state will have three days to respond or may do so orally on the record at the pretrial conference.

b. The pretrial conference judge shall decide the source code motion in a written order issued within five days after the pretrial conference.

c. If the pretrial judge determined that the defendant is a Qualified Minnesota litigant but the necessary access to the source code cannot be completed by the date set for trial, a motion for a continuance will be heard on the trial date by the trial calendar judge.

3. In implied consent cases, the following procedures shall be utilized in determining motions for access to the Intoxilyzer source code

a. Upon completion of the criminal case, the Petitioner shall file a scheduling order which identifies the source code issue together with any other issues that need to be resolved at the implied consent hearing. A motion by the Petitioner for access to the Intoxilyzer source code, and a supporting affidavit described in paragraph 1 above, must be filed and served together with the scheduling order. Failure to file and serve the motion and affidavit with the scheduling order shall be deemed a waiver of the source code issue.

b. All non-source issues shall be heard and decided by the judge assigned to the first scheduled implied consent hearing.

i. If a non-source code issue is resolved in the Petitioner's favor, the judge shall issue, within the time allowed by law, a written order rescinding the revocation.

ii. If the non-source code issues are resolved in the Commissioner's favor, the judge shall issue, within the time allowed by law for implied consent orders, a written order related to the non-source code issue.

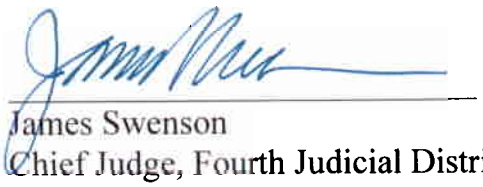
1. If the judge determines that the Petitioner is a Qualified Minnesota litigant and should be allowed more time to investigate the source code, the judge shall continue the case to a calendar devoted solely to source code issues on a date determined by the Chief Judge or his designee.

2. If the judge determines that the Petitioner is not a Qualified Minnesota litigant or otherwise should not

be allowed more time to investigate the source code, the judge shall issue an order sustaining the revocation.

4. This Order supersedes the Court's July 8, 2008, Standing Order regarding source code motions.

Dated: August 18, 2009



James Swenson
Chief Judge, Fourth Judicial District