



VIEW FROM THE BAR

by Marc Resiman, Esq.



When You Receive a Citation

(Author's note: The following is a re-print of a previous column. I am running it again due to continuing inquiries from liquor licensees about the citation process.)

I am often asked by liquor licensees who are unfamiliar with the citation process what they can expect when they receive a citation. The following is a general outline of the process. Licensees do not always contact a lawyer in these cases, but I recommend that you do so, and this column will be written from that point of view.

The initial event may be one which you won't know is happening, namely an undercover investigation by the State Police Bureau of Liquor Control Enforcement (State Police), who are charged under Pennsylvania law with enforcing the Liquor Code.

Alternately, your premises may be subject to an open inspection, for example, when State Police officers want to check identification of your patrons. In that case, you should contact an attorney familiar with this area of the law promptly so that you may begin to prepare a defense in the event a citation follows.

After the State Police investigation is completed and it has been determined there is a possible violation of the Liquor Code, they will issue a letter which indicates the date and general nature of the alleged violation(s). The licensee is advised that a citation may be issued. Be sure to send a copy of the letter to your attorney.

If the State Police decide to issue a citation, it will be the next document you receive. It will list the alleged violation(s) of the Liquor Code, and indicate the name of the State Police attorney assigned to the case. A form entitled "Waiver, Admission and Authorization" will be attached. You should give your attorney the citation and any information you have about the incident, if you haven't done so already. He or she can then contact the State Police attorney to learn the details of their case against you, and advise you how to proceed.

At this point, one of several things can happen. Your attorney may be able to have the citation withdrawn if he or she is armed with the necessary information about your defense. Or, you may decide to waive the citation if the State Police will not withdraw it and it appears you have little or no chance of prevailing at a hearing. If so, your attorney can negotiate with the State Police attorney as

favorable a recommendation of penalty as is possible under the circumstances. The recommendation of penalty will then be submitted with the signed Waiver form (which constitutes an admission to the charges) to the Office of Administrative Law Judge. (Note: A recommended penalty is occasionally rejected by the judge assigned to the case.)

You may decide to go to a hearing. If so, you will next receive a Pre-Hearing Memorandum from the State Police which will contain, among other things, a list of their witnesses, what they will testify to, and other evidence they will present in support of their case. Your attorney must file a response containing similar information within a specified time period. The case will then be scheduled for a hearing. At the hearing, the State Police, through their attorney, will present their case first, and you will then be given the opportunity to present your defense. The Judge's decision will be mailed to your attorney. If a fine is imposed, it must be paid within 20 days of the mailing date of the decision. If a suspension is imposed, the judge's opinion will indicate the dates during which you cannot serve alcoholic beverages. You must also post at your premises a pre-printed notice indicating that your license is suspended, and the notice must remain up for the entire suspension period. Failure to post it is a separate offense. The judge also has the power to revoke a license if he or she considers the circumstances serious enough.

The Administrative Law Judge's decision may be appealed, and a request for reconsideration may also be made. Both have strict filing deadlines which must be followed. The first avenue for an appeal is to the Liquor Control Board, then to your county Common Pleas Court. Thereafter you can appeal to the Commonwealth Court, and ultimately, to the Pennsylvania Supreme Court. The Supreme Court has discretion whether or not to hear an appeal.

The above is not meant to be an exhaustive account of all the events which might occur should your license be cited, but is only offered as a general guide. If you do receive a citation, I recommend you contact an attorney who practices in this area of the law.

(This column is brought to you as a public service by Marc Reisman, a partner in the law firm of Gelman & Reisman. If you have an issue you would like to see addressed, or if you would like a reprint of a previous column, write to him at 1701 Law & Finance Building, Pittsburgh, PA 15219, or call 1-800-883-1LAW. This column is intended for informational purposes only - consult Mr. Reisman for legal advice specific to your situation.)

www.mymfn.com