

EFFECTIVE ASSISTANCE AT 2 A.M.



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Rules to Live By

1. Demand Privacy and

Confidentiality. This should be done both over the phone AND in person. Don't waive privilege. Assume everything on your client's side is being video and audio recorded. If it is a call on an institution phone ask if it is being recorded. See *State v. Hellstern*, 856 N.W.2d 355 (Iowa 2014); *State v. Lamoreux*, -- N.W.2d --, 2016 WL 672067 (Iowa).

2. **Client Doesn't Talk.** "Yes" or "no" answers is all they are allowed to say.

3. Assume What You Say Will Be

Heard by Bad Guys. Chances are client has his/her cell phone turned up as loud as it can go. The cop is sitting right there and can hear. If they are calling on a jail phone, many jail phones record the calls.

- If you say "we are going to stall" or "tell the officer I'm on my way, but I'm not coming down" expect that to be overheard.
- Ask for privacy and have client ask for privacy.

4. Don't Ask How Much They Have

Drank. Practical practice pointer #1 – clients lie and/or minimize. Most will tell you half of what they actually drank even though you are on their side. Don't bother asking.

- Ask for PBT result if officer will tell them.

- Have a basic understanding of the science. IN GENERAL (not always the case for everyone) body eliminates .015 per hour. Each drink ON AVERAGE raises alcohol concentration by .02.

5. Know the Consequences. You can't give advice if you don't know what you are talking about.

- Prior license suspensions count as prior offenses. Convictions don't matter for license suspension purposes.

6. Know Client's Rights. If you don't know, how do you expect to advise them correctly? Download the Oh Crap App™ if you need a little refresher.

- Consent to search
- 5th Amendment right to remain silent
- Field Sobriety Tests
- Preliminary Breath Test
- 804.20 – Call, consult AND see – attorney, family member, or both.
- Evidentiary testing
- Independent testing.

7. Death, Injury, Eluding, Child in Car, or 3rd Offense OWI = No Consent to Test.

- Unless client is adamant it will be under .08 AND no drugs in system, prescription or otherwise.

8. It Is Client's Decision to Make. Unless one of the circumstances set out in #7 exists ALWAYS leave the final decision up to client. This will avoid the inevitable “well you told me to...” from client when they end up blowing a .258 after “drinking 3 beers.”

9. If You Don't Know, Don't Fake It!

When you answer that phone and give advice you are acting as that person's attorney. You are bound by your ethical obligation to provide competent representation. If you don't know what you are doing, put that client in touch with someone who does. You owe it to the client, if not your malpractice insurance carrier to do so.

10. There Is Nothing More You Can Do Until Morning.

You can't keep a client from getting arrested. If they are getting cuffed and stuffed, they are going to jail. If there is bond, they can bond out, otherwise there isn't anything you can do until the morning.