



FOS NEWS - Our clients come first

Editor: Diane Slomowitz

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THE JURY FOUND DEREK CHAUVIN GUILTY. WHAT HAPPENS NOW?



By Jacob Manian

The country, and world, watched as a Minnesota jury convicted former police officer Derek Chauvin of Murder (Second Degree); Murder (Third Degree); and Manslaughter (Second Degree) in the death of George Floyd.

Chauvin's sentencing is scheduled for June 25, 2021.

What has happened and will happen between the jury verdict and sentencing?

While this case occurred in

Minnesota, similar procedures would occur in Wisconsin.

As soon as the verdict was read, the judge (Peter Cahill) revoked Chauvin's bail, under which he had been out of custody since October 2020.

Revocation of bail is common after a defendant is found guilty in a criminal trial. Chauvin will await sentencing while in custody.

For his own safety as a police officer and a high-profile defendant in a publicized case, Chauvin will be held in a segregated unit at the Minnesota Correctional Facility - Oak Park Heights.

Chauvin has filed a motion

for new trial. It is rare that such motion is granted.

As the sentencing date approaches, the prosecutors and Chauvin's lawyers will prepare formal statements in support of their respective sentencing recommendations.

Victims' statements and a presentencing report will be prepared and filed. At the sentencing itself, the judge will hear from counsel for both sides.

The judge will also consider statements from Floyd's family and friends as to Floyd's character and the suffering they have experienced, which could influence the ultimate sentencing deci-

sion.

Chauvin, as defendant, will have the right to address the court and have written and oral statements made by his family, friends and colleagues.

Since an appeal is all but certain, Chauvin's lawyers likely will advise him not to make any statement at sentencing.

After considering all relevant facts, the judge will make findings as to the facts and factors he finds to be particularly relevant and influential, and sentence Chauvin to a term of confinement.

Chauvin's sentencing will be

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Maddente Profiled in AWL Newsletter



FOS Associate Lauren Maddente was profiled in a recent edition of the Association of Women Lawyers Newsletter.

Lauren is the Association's Director of Membership.

The profile can be accessed at foslaw.com/wp-content/uploads/2021/03/LEM-AWL-Newsletter-Profile.png.

FOS shareholders Diane Slomowitz and Laurna Kinnel are also AWL members.

Lauren was previously profiled in Marquette University's Pro Bono Week feature. That profile can be accessed at foslaw.com/maddente-featured-in-marquette-university-blog/.

FOS Attorneys Named "Best Lawyers in America"

Four FOS attorneys have been named as Best Lawyers in America, as published in Milwaukee Lifestyle Magazine's April 2021 issue.

Shareholder Michael Koutnik was named a Best Lawyer in corporate law.

Shareholder Jacob Manian was named a Best Lawyer in criminal defense - general practice.

Of counsel Ken Barczak was named a Best Lawyer in

trusts and estates.

Shareholder Matthew O'Neill was named a Best Lawyer in appellate law, arbitration, and commercial litigation.

The full awards can be viewed in Milwaukee Lifestyle Magazine's digital issue, which can be found at https://mydigitalpublication.com/publication/?%20m=17069&i=701339&p=54.

MAKE SURE YOU UNDERSTAND YOUR RESIDENTIAL OFFER TO PURCHASE



By Michael Koutnik

Most Wisconsin residential home sales use the standard “WB-11 Residential Offer to Purchase.”

FOS’s attorneys have noted a few common myths about the form and its impact on residential real estate transactions.

Myth No. 1: A Buyer Can Always “Get Out” of the Contract.

Once buyer and seller have signed the document, a Residential Offer to Purchase is a binding contract.

As simple as that sounds, sometimes one party believes the contract can simply be cancelled.

That is only true, however, if the contract specifically allows for cancellation, whether under a contingency (home inspection or financing) or another provision.

Myth No. 2: A Buyer Only Risks Earnest Money.

If a buyer violates or tries to wrongly cancel the contract, the buyer may lose his or her earnest money.

But sometimes that is only the beginning.

The WB-11 form allows a wronged seller to sue for additional remedies, such as damages.

The buyer can also be sued for specific performance - a court order requiring the buyer to perform the contract and buy the property.

Myth No. 3: A Buyer Can

Always Control How Defects Are Cured.

If a buyer’s inspector identifies residential defects, the WB-11’s standard language allows the seller to decide how to cure that defect.

The contract only requires that the cure be done in “a good and workmanlike manner.”

The buyer has no right to review or participate in the cure.

Because the seller’s interest is to do the minimum necessary to cure a defect, the buyer can be disappointed in the result.

Myth No. 4: There is No Real Timeline to Address Defects.

The standard contract’s inspection contingency applies

to all inspections, including specialized or follow-up inspections.

For example, if the buyer’s home inspector notes a potential chimney issue, the buyer will likely want to have a chimney contractor inspect it.

That additional inspection (and any written report) must occur well before the original inspection’s deadline, with enough time for the buyer to negotiate with the seller or terminate the contract.

The parties may by agreement modify these and other provisions.

However, the first step towards potential modification is understanding the underlying WB-11 form.

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based on Minnesota’s sentencing guidelines, and the judge’s evaluation of the underlying circumstances, Chauvin and Floyd.

Under Minnesota’s guidelines, the presumptive sentence for second degree and third degree murder is 12-1/2 years.

That sentence can be increased or decreased based on multiple factors the court may find relevant and persuasive.

For example, the judge may find that certain aggravating

factors - such as Floyd’s vulnerabilities or the presence of children during the crime - warrant an increase in Chauvin’s sentence. Another factor, as Chauvin’s attorneys will point out, is that Chauvin has no prior criminal record.

Whatever the sentence, this case will not end on the sentencing date.

Chauvin’s criminal appeal will take months, if not years, to work its way through the system, before there can be any finality to this case.

REAL ID REQUIREMENTS EXTENDED

This newsletter’s Winter 2019 issue described the then-impending requirement that your driver’s license comply with the federal REAL ID program to allow you to enter a federal agency or board an airplane: <https://foslaw.com/wp-content/uploads/2020/06/Revised-Winter-2019-Newsletter-11.22.2019.pdf>

In light of the backlogs motor vehicle departments have incurred due to the COVID-19 pandemic, the Transportation and Security Administration has extended the REAL ID deadline from October 1, 2021 to May 3, 2023.

This is the second extension of the initial October 1, 2020 deadline.

For additional information on REAL ID’s requirements, see the prior FOS article or go to www.tsa.gov/real-id.

CAN EMPLOYERS REQUIRE EMPLOYEES' PROOFS OF VACCINATION?



By Laurina Kinnel

Over one year into the global COVID-19 pandemic, essentially every adult in the United States who wants a vaccine can finally get one.

As our population's vaccination rates increase and case rates (hopefully) continue to decrease, restrictions are being lifted and a return to normalcy is in sight.

Including - for those employees unceremoniously sent home last spring, when businesses shifted to remote working policies - a return to the office.

These developments have many asking, "So what's next?"

Setting aside whether an employer can (or should) require employees to be vaccinated, or whether "vaccine passports" are a sound idea, the question arises: can an employer require that you disclose your vaccination status?

Can that employer require its employees to provide proof that they have been vaccinated?

The answer from the Equal Employment Opportunity Commission ("EEOC") is clearly yes.

The EEOC reviewed this question in conjunction with the requirements of the Americans With Disabilities Act ("ADA").

Recent EEOC guidance indicated that requiring proof of vaccination is "not likely to elicit information about a disability and, therefore, is

not a disability-related inquiry."

The EEOC took pains to emphasize, though, that in asking whether an employee has been vaccinated, employers should not ask additional follow-up questions that may elicit privileged information about an employee's medical status or potential disability.

That could yield an ADA violation.

Why, given these requirements, would an employer even want to know if employees have been vaccinated?

Perhaps to see if a "critical mass" of employees have received vaccines, such that returning to the office is relatively low risk or that existing safety measures can be relaxed.

Or, as the Centers for Disease Control modifies its guidance for vaccinated and unvaccinated people, to know whether an employee must quarantine before or after travel.

An employer, of course, should have a legitimate business reason - not mere curiosity - for such inquiry.

And any inquiry should end after the employee answers the question with a simple "yes" (and copy of vaccination record) or "no."

Employers requesting proof of vaccination should store responsive records securely with other private employee information.

If you have questions about proof of vaccination requirements, contact your FOS attorney.

RESERVATIONS OF RIGHTS LETTERS: A TALE OF NO COVERAGE?



By Robert Ollman, Jr.

Frank, who owns multiple warehouses, tries to save funds by removing parking lot snow/ice on his own.

One morning after a heavy snowfall, a truck driver delivering supplies falls on the ice of one of his lots. The truck driver sues Frank.

After briefly panicking, Frank remembers he bought an insurance policy for the warehouse, and files a claim.

The insurer, while appointing counsel to represent Frank, issues a reservation of rights letter to Frank.

The letter states that the insurer will, for the moment, provide a defense.

It continues that the insurer is acting under a "reservation of rights," and quotes policy provisions jeopardizing coverage, including an exclusion for snow and ice removal.

What does this mean?

It means that the insurer will pay for Frank's defense unless and until it obtains a court order that it owes no

obligations under the policy.

By notifying its insured that it believes a claim may not be covered, and paying for the insured's defense while that issue is determined, the insurer preserves its right to later contest coverage.

That way, the insurer avoids a court holding that it acted against the insured in bad faith.

A successful reservation of rights letter must, among other things, include citations to and quotations of each specific policy provision justifying any coverage defense, plus an explanation

why such provision(s) could result in a denial of coverage.

In Frank's case, the insurer likely would seek a declaration from the court that the policy's snow and ice removal exclusion means that the insurer has no defense or coverage obligations.

If successful, the insurer will no longer have to pay for Frank's defense and will not have to pay any damages awarded against Frank.

If you receive a reservation of rights letter, contact FOS to determine what, if any, policy exceptions or other coverage issues may exist.



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PAID LEAVE TAX CREDITS, INCLUDING FOR COVID-19 VACCINATIONS

Even with the COVID-19 vaccination process well underway, vaccination appointments are often limited to employees' working hours.

Some employees may suffer vaccination side-effects, which may lead to employee absences.

To encourage widespread vaccinations, one provision of the recently enacted American Rescue Plan provides temporary paid leave tax credits for eligible employers.

This provides pay for employees who are unable to work (or telework) due to a COVID-19 related reason, including obtaining,

or recovering from side effects due to, a COVID-19 vaccination.

Refundable tax credits are available for the *2nd and 3rd quarters of 2021 (April 1-September 30, 2021)* to qualifying businesses with fewer than 500 employees, which offer such paid sick or family leave to employees through September 30, 2021 and pay wages for leave taken during that period.

The tax credit for paid sick leave covers wages paid for COVID-19 related reasons - if the employee was sick or quarantining, awaiting the results of a COVID-19 test, or obtaining or recovering from a COVID-19 vaccine.

The credit is available for up to two weeks' leave (80 hours), limited to \$511 per day and \$5,110 in the aggregate, at 100% of the employee's normal rate of pay.

The tax credit for paid family leave covers wages paid for COVID-19 related reasons - if the employee was taking care of someone quarantining or to provide care due to a COVID-19 related school or child care closures.

This credit is available for up to twelve weeks' leave, limited to \$200 per day and \$12,000 in the aggregate, at 2/3 of the employee's regular rate of pay.

The Internal Revenue Service (IRS) estimates that

nearly half of all U.S. private-sector employers will be eligible for the tax credit.

The IRS's fact sheet on the credit is located at home.treasury.gov/system/files/136/Paid-Leave-Credit-Snapshot.pdf.

The IRS's formal guidance on the credit is located at www.irs.gov/newsroom/employer-tax-credits-for-employee-paid-leave-due-to-covid-19.

FOS can help guide your small business through the new COVID-19 vaccination paid leave credits.