

Representing a Suspended or Revoked Driver Before the Secretary of State

Formal Administrative Hearing for Relief Pursuant to Section 6-206(a) 9, 10 or 14 of the Illinois Vehicle Code

BY LISA L. DUNN

The Administrative Hearing process is governed by the Illinois Administrative Code, 92 Ill. Am. Code 1001 et. seq. The rules and regulations as well as the hearing procedures have become increasingly complex and are often misunderstood. Still, the attorney can be prepared with adequate knowledge and understanding of the applicable rules, statutes, regulations and policies of the Illinois Secretary of State's Office in order to successfully represent a client.

This article will discuss the successful representation of a client who is suspended or revoked pursuant to subsections 9, 10, or 14 of Section 6-206(a) of the Illinois Vehicle Code.¹ These are generally non-alcohol related suspensions and/or revocations. This article specifically does not cover cases involving a history of alcohol use or alcohol related arrests, as the hearing preparation may be entirely different. It also does not cover the clients eligible for an informal hearing to request driving relief, though much of the hearing preparation and documentation is similar in nature.

INITIAL INTERVIEW

Upon the initial interview with

your client, you will need to review your client's court purposes abstract. Abstracts may be ordered by mail from the Secretary of State or in person at various facilities. You will learn from the abstract whether your client's driving privileges are suspended or revoked, your client's eligibility date for full reinstatement or the end of the suspension, and whether there are any other suspensions, revocations or stops on your client's driving record.

Once you determine that your client is eligible for a formal hearing, you can send a written request to the Secretary of State for a hearing at one of the four locations where formal hearings are conducted, along with the \$50 fee. You will need to determine whether you are contesting the suspension or revocation, or whether

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¹ 625 ILCS 5/6-206.

you are simply requesting a Restricted Driving Permit. Please note that no relief can be granted if your client has a pending ticket. If your client is currently on parole or probation for any offense, you will need to submit a certified or court-stamped copy of the parole/probation terms, a dated and current letter (usually within 30 days prior to the hearing) from the probation/parole officer indicating that your client is in compliance with the terms, and, if your client has been recently discharged, a copy of the discharge.

You will also need to learn if your client suffers from any medical conditions. If your client has been diagnosed with cardiovascular disease, dizzy or fainting spells, a seizure disorder, diabetes, musculoskeletal condition, or a mental disorder (e.g., bipolar, schizophrenia, clinical depression), then you must submit a current completed medical report on the form specified by the Secretary of State. All documents presented to the Secretary of State must be original documents.²

PRE-HEARING MOTIONS

Although not typically presented, the Administrative Code provides for discovery requests and other pre-trial motions pursuant to 92 Ill. Adm. Code 1001.100(e), (f), and (i). This allows the practitioner to review and inspect the contents of the Secretary of State's file in advance of the hearing. This can be especially important if your client may have had a formal or informal hearing in the past and there is no indication of this on the driving record. Or, perhaps your client has no record of the order and documents presented at a prior hearing. You will certainly want to learn if your client had any previous alcohol related arrests, suspensions, or revocations. The file may contain previous formal or informal orders, alcohol/drug evaluations, treatment verification documents, or investigative reports. While that background may have nothing to do with the instant issues before the Secretary of State, you can be sure that the hearing representative will inquire at the hearing. You will want to read the entire contents of the file with a critical eye and prepare your client for any questions that may be raised.

NON-ALCOHOL RELATED OFFENSES: SECTIONS 6-206(A)(9), (10), AND (14)

On behalf of your client, you may request a hearing if

² See 92 Ill. Adm. Code 1001.90(b).

your client's driving privileges are suspended or revoked pursuant to several subsections of Section 6-206 of the Illinois Vehicle Code. A subsection (a)(9) suspension or revocation is due to making a false statement, knowingly concealing a material fact or providing false information or identification in an application for a driver's license, identification card, or permit. A similar, yet different suspension or revocation may be pursuant to subsection (a)(10) due to having possessed, displayed, or attempted to fraudulently use any license, identification card, or permit not issued. A third suspension or revocation that

often arises is pursuant to subsection (a)(14) for unlawful use of license or permit,³ fictitious or unlawfully altered driver's license or permit,⁴ or fraudulent driver's license or permit.⁵ These suspension or revocations on their face may not involve alcohol, but the facts behind them may indicate otherwise.

The burden of proof is on the applicant at the hearing as petitioner. The standard of proof is by a preponderance of the ev-

idence, except as provided by 92 Ill. Adm. Code Sections 1001.100(s) and 1001.420(c), 430(b), and 440(b). The facts and circumstances will dictate the documentary evidence needed for the hearing.

At your initial meeting with your client, you may learn that your client, who is under the age of 21, displayed the ID card of another over the age of 21, in order to obtain access to a bar. If there is evidence of the use or potential use of alcohol by an underage individual in possession of a driver's license or identification card issued to an average individual, then the presumption is that the petitioner intended to use the identification to purchase alcohol or to enter a drinking establishment. [Freed v. Ryan, 301 Ill. App. 3d 952, 704 N.E.2d 746 (1st Dist. 1998).] You will then need to consider whether your client needs to submit an Investigative Alcohol and Drug Evaluation.

Or, at your initial meeting you will learn that your client will testify about his involvement with the fictitious, unlawfully altered, or fraudulent ID card/driver's license. You may learn that the ID card/driver's license he displayed indicated an age over 21 when your client was actually under 21 years old at the time of the incident. Again, you may consider presenting an Investigative Alcohol and Drug Evaluation.

³ 625 ILCS 5/6-301.

⁴ 625 ILCS 5/6-310.1.

⁵ 625 ILCS 5/6-301.2.

*“Armed with the
knowledge of the rules and
policies of the Secretary
of State’s Office, you can
successfully represent a
client.”*

An Investigative Alcohol and Drug Evaluation is requested when the petitioner's loss of driving privileges is not related to a DUI arrest, but alcohol was somehow involved in the conduct that caused the suspension or revocation. This is to be completed by an evaluator and contains a recommendation portion. The attorney is well advised to have her client successfully complete the recommendations prior to the formal hearing and provide proof of the completion at that hearing.

Generally, non-alcohol related suspensions or revocations are the result of poor driving habits, a conscious disregard for the laws governing the operation of motor vehicles, or a combination of both. In order to meet your client's burden of proof, you will need to prove that the issuance of driving privileges will not endanger the public safety and welfare. You should be conversant with your client's driving history, use of alcohol and drugs, and criminal history. All evidence presented should be used to prove that your client will be a safe and responsible driver.

Often, proof of changes in your client's attitude, lifestyle, and any remedial action he has taken is sufficient. Completion of a driver remedial education course or defensive driving course by your client can demonstrate rehabilitation of past driving habits. You may also wish to present character reference letters that stress your client's degree of maturity, responsibility, present attitudes, and

the changes that occurred since the revocation or suspension of his driving privileges. You should pay careful attention to your client's demeanor and his ability to communicate the changes he has made.

RESTRICTED DRIVING PERMIT

If your request seeks a restricted driving permit, then you need to present additional evidence. When your client is applying for hardship relief, meaning that he is not eligible for full reinstatement, then he will need to testify that there is an undue hardship due to the suspension or revocation.⁶ You will need to determine the type of restricted driving permit your client may request. If your client is requesting an employment restricted driving permit then you will need to elicit testimony about your client's job. Your client's testimony will need to include the name and address of his employer, the days and hours of employment, the number of miles driven to and from work and/or driving in conjunction with his employment, and an explanation of how the job duties are currently being performed. Similarly, if your client is requesting a medical, support/recovery, educational, or day care permit, you will need to elicit similar questions.⁷


CLOSE OF THE HEARING

At the conclusion of the hearing, you will be granted an opportunity to make a closing statement. This should summarize the evidence presented with an emphasis on the question of whether your client has met his burden of demonstrating that he is no longer a risk to the public safety and welfare. Upon the close of the hearing, the hearing officer will announce that the testimony presented and documents admitted into evidence will be reviewed and a written decision will be issued. The written decision, referred to as an Order, will contain the recommendation of the hearing officer, decision of the Secretary of State, findings of fact, conclusions of law, and recitation of the applicable statutes and rules. A decision is required within 90 days.⁸

6 92 Ill. Adm. Code 1001.420(i) and 1001.430(i).

7 625 ILCS 5/6-206(c)(3).

8 See 625 ILCS 5/2-118(d) and 92 Ill. Adm. Code 1001.110.




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