Representing Revoked or Suspended Drivers Before the Secretary of State

Larry A. Davis
Attorney At Law
960 Rand Road
Ste. 210
Des Plaines, IL. 60016
847-390-8500

This article first appeared in the Illinois Bar Journal, a publication of the Illinois State Bar Association, in November, 1996, Vol. 84, No. 11.

Representing Revoked or Suspended Drivers Before the Secretary of State

By

Larry A. Davis

I. Introduction

No Illinois administrative agency has been more thoroughly transformed over the last decade than the Secretary of State. This is largely the result of changes in Illinois' DUI laws, tougher enforcement of those laws by state and local authorities, hardening of public opinion against drinking and driving, and stricter administrative regulations and policies.

During this period, unprecedented changes in the Illinois Vehicle Code, the Illinois Administrative Code and the Unified Code of Corrections have produced a bewildering set of statutes, rules, and policies that intimidates even experienced practitioners. Taken together, these factors have led to a high rate of denial for petitions for driving relief.

Even so, attorneys who know and understand the statutes, rules, regulations, and policies of the Secretary of State can effectively, and often successfully, represent those who seek relief from an order of suspension or revocation.

II. Initial Considerations

The first step is to obtain a court purposes abstract of the client's driving record from the Secretary of State ("SOS," Secretary). Abstracts may be ordered by mail from the Secretary of State's Office in Springfield or in person at various SOS facilities.

Review the abstract to determine whether the client may be able to regain driving privileges without a hearing. If, for example, a client's driver's license was suspended or revoked for three or more moving violations within a 12-month period or for a default (bond forfeiture) conviction for DUI, explore the possibility of moving to vacate the convictions.

Also, no hearing is required for suspensions based on three moving violations within a 12 month period when the point total for the violations is sufficiently low. If the notice of suspension has the prefix "P" preceding the client's driver's license number, he or she can get a probationary license by agreeing to complete a remedial course from the SOS.

III. Types of Hearings, Eligibility for Relief, and Forms of Relief

The SOS conducts both the informal hearing or conference and the formal hearing. For those who are eligible, the informal conference often leads to quicker relief, particularly as measured from time of hearing to time of decision. Informal hearings are a creation of the SOS's office (i.e., they are not specifically authorized by statute), and decisions resulting from them do not constitute final administrative decisions for purposes of appeal on administrative review.

These conferences are held in the local SOS facilities (usually no appointment is needed) before a hearing officer who interviews the petitioner from a standardized interview form.

Documentation submitted by the petitioner, together with this completed interview form and the hearing officer's recommendation, are then reviewed in Springfield, where a decision is made and sent by letter to the petitioner. Counsel may represent a client at an informal hearing. Unless otherwise indicated in a letter of denial, petitioners may have another informal hearing 30 days after the preceding one.

The formal hearing is a quasi-judicial adversarial proceeding in which oral testimony and documentary evidence is offered before an administrative hearing officer. Unlike at the informal conference, an SOS attorney presents the state's case and may cross-examine the petitioner and any witness appearing on his or her behalf. Formal hearings are specifically authorized by statute and governed by due process requirements.

Client's convicted of specified offenses or seeking specified relief must have a formal hearing. The formal hearing requirement applies to cases involving death, rescission or modification of suspensions or revocations, multiple convictions or suspensions for DUI, implied consent or summary suspension violations, or any combination of the above arising out of separate incidents. A request for a formal hearing must be made in writing to the facility where the hearing is to be held. Formal hearings are held in Chicago, Joliet, Springfield, and Mount Vernon.

A. *Types of Relief Available*

The Illinois Vehicle Code grants the Secretary authority to issue restricted driving permits or "hardship licenses" for limited purposes (employment, medical, and educational) to grant full reinstatement of privileges where the petitioner is otherwise eligible, or in some situations to rescind, modify, or terminate discretionary (not mandatory) license suspensions or revocations. Those with current cases pending or whose licenses are suspended or revoked in another state are ineligible for hardship relief or reinstatement, unless the suspension or revocation has been for over one year.

B. *Restricted Driving Permits*

Restricted driving permits limit the operation of a motor vehicle to certain days, hours, areas, and purposes of operation. Driving outside of these parameters violates the permit and constitutes the offense of driving while suspended or revoked. In *Foege v Edgar*, the Illinois Appellate Court first defined the issues to be addressed at a hearing seeking hardship relief: (1) the Secretary's statutory duty to protect the public safety and welfare, and (2) the degree of hardship suffered by the petitioner as the result of the loss of driving privileges.

Beginning with *Foege*, Illinois courts have consistently held that in weighing the hardship suffered by a petitioner against the Secretary's interest in protecting the public safety and welfare, the latter is paramount. In other words, hardship will not support a petition for relief without the additional finding that the petitioner is not a risk to public safety.

Since the legislature has expressly given the Secretary discretion under the statute, he or she must exercise that discretion based upon the public interest. This means that the Secretary of State should not issue a restricted driving permit unless he has determined that granting the applicant a restricted driving permit will not endanger the public safety or welfare. However, if the Secretary determines that granting a restricted driving permit will not endanger the public safety or welfare, he should carry out the purpose of the statute by granting the permit. Older offenses should weigh less heavily against the petitioner.

Petitioners must also demonstrate an undue hardship to obtain RDP, through they need not show undue hardship if they are eligible for full reinstatement (see section III (D) below). Undue hardship has been defined by rule.

In *Clingenpeel v Edgar*, the plaintiff lived only a mile from his job and was able to get rides to work every day. The appellate court held that the trial court's reversal of the Secretary's denial was erroneous.

In practice, the Secretary's interpretation of an undue hardship is *very* restrictive. If a petitioner can get to work by any means—ride, bike, train, cab, or walking—the Secretary will usually find no undue hardship. If the petitioner is employed as of the hearing and has used any of these means to get to work, be prepared to present evidence of why undue hardship nevertheless exists. If, for example, the petitioner must walk several miles to work on streets without sidewalks or spend a lot on a limited salary to take cabs, present detailed evidence.

In *Adams v Edgar*, the court affirmed the denial of relief to a person who could walk to work. With no evidence of job applications, interviews with other employers, or any need to drive to get other jobs, the court also rejected the plaintiff's claim that he could get a better paying job if he had a hardship license.

At the time of the hearing, the petitioner must be employed or have a firm job offer. If possible, show proof of employment or a job offer by a letter from the employer stating that alternative means of transportation do not exist or are impractical.

C. *Eligibility for Hardship Relief After Suspension or Revocation*

Petitioners are eligible for consideration of hardship relief immediately upon revocation or suspension, with the following exceptions: petitioners under 21 who are revoked for DUI, those whose licenses are suspended under the Illinois Summary Suspension Law as second offenders (they may apply for relief only if they submitted to a chemical test more than three months after the date of suspension—if they refused testing, they are barred from driving relief during the suspension period); and those with safety responsibility, financial responsibility, unsatisfied judgment, or failure to appear in court suspensions.

A person under 21 who has been revoked for a second or subsequent conviction for illegal transportation of open liquor cannot apply for hardship relief until six months after revocation.

D. *Reinstatement*

Those whose license or privileges have been suspended are eligible for reinstatement after their supervision period has run and they have paid the reinstatement fee. Those whose licenses have been revoked must obtain an order granting reinstatement after an administrative hearing. Reinstatement is not automatic under the law.

E. *Eligibility for Reinstatement After Revocation*

While most people are eligible for reinstatement one year from the effective date of the revocation, there are some exceptions for DUI revocations.

1. A person whose license was suspended under the Illinois Summary Suspension Law and subsequently revoked for DUI may receive credit towards the one-year revocation period for the suspension served to date;

2. A person under 21 revoked for a subsequent DUI offense may not apply for full reinstatement until attaining 21 or waiting one year from the date of revocation, whichever is longer;

3. A person convicted of two DUI offenses for two violations of leaving the scene of an accident involving personal injury or death or two violations of reckless homicide within a 20-year period will be revoked a minimum of three years.

4. A person convicted of three or more of the offenses listed in the preceding paragraph will be revoked for a minimum of six yeas.

5. People whose licenses and privileges are suspended or revoked based on out-of-state offenses may seek credit towards the one-year revocation period equal to the time they were revoked or suspended out of state if they can show that they suffered an undue hardship in that state.

Unlike applications for RDPs, where both risk to the public and undue hardship are at issue, the only issue in a reinstatement application is risk to the public safety and welfare. However, at least one appellate district has suggested that in some cases a petitioner who poses an unacceptable risk to the public safety and welfare for full reinstatement may be eligible for a hardship license.

Also, the Secretary often issues an RDP to a person otherwise eligible for full reinstatement as a probationary device. In these cases the petitioner need not demonstrate an undue hardship; the undue hardship standard applies only if the petitioner is not eligible for full reinstatement. The best approach in these cases is to petition for alternative relief—full reinstatement or, in the alternative, an RDP. These "probationary" RDPs are typically issued for 12 months. A person typically must have driven successfully on a hardship license for eight or nine months before being considered for full reinstatement at a further hearing.

IV. Rescission/Early Termination/Modification of Revocations/Suspensions

Revocations and suspensions may only be rescinded, terminated early, or modified by means of a formal hearing, pursuant to the following:

1. Mandatory revocations and suspensions (generally 625 ILCS 5/6-205), cannot be reduced or modified in any way;

2. Discretionary suspension (generally 625 ILCS 5/6-206) may be terminated early upon application (a) where there are no serious accidents on the person's past record or past revocations/suspensions as defined by 625 ILCS 5/6-205(a) and 5/6-206, (b) where there are no prior violations on the record within the last six months and (c) depending upon the extent of petitioner's culpability for the conduct giving rise to the suspension.

3. Discretionary revocations (generally 625 ILCS 6-206) may be reduced to a suspension or the period of a discretionary suspension may be reduced for good cause considering: (a) prior revocations or suspensions; (b) seriousness of the offense(s) giving rise to the revocation; and (c) whether the person demonstrates that he/she is a low risk for repeating the offense in the future.

V. Relief from Alcohol-Related Revocations/Suspensions

The majority of hearings conducted before the Secretary of State are for alcohol-related cases. These generally include hearings where the petitioner (1) is revoked for DUI or a similar

out of state violation or (2) is suspended for a subsequent violation of the Illinois Summary Suspension Law after failing a chemical test.

The types of documentary evidence offered at these hearings include an alcohol/drug evaluation uniform report, verification of completion of remedial education (except in Level III cases discussed below), a treatment verification (together with a treatment plan, discharge summary, and aftercare plan), and character and abstinence or drinking habit verification letters (discussed below).

Often, the client has had a previous hearing before the Secretary. If so, be sure to get copies of the evidence introduced at that hearing, including the alcohol/drug evaluation, treatment documentation and a copy of the order entered. If the client does not have copies of these documents, you can get them for a fee upon written request to the Secretary of State's Department of Administrative Hearings.

The alcohol evaluation is the single most important item of evidence for your client. Before undergoing the evaluation the client must go to a local Secretary of State facility and obtain an alcohol/drug related driving summary (no appointment necessary). The evaluation must be conducted by an assessor or agency licensed by the Illinois Department of Alcoholism and Substance Abuse ("DASA"). A list of service providers is available at local Secretary of State facilities or by writing the Secretary of DASA. It is essential to select an experienced and competent evaluator. Be certain of the evaluator's qualifications and experience in preparing such evaluations.

It is good practice to give the evaluator a background letter documenting the facts of your client's alcohol or drug related arrests, available blood alcohol concentration levels ("BAC"), personal information, and any alcohol or drug treatment history. You should also give him or her your perception of the client's alcohol/drug use history based on your interview of the client. Finally, give the evaluator copies of any orders based on prior hearings before the Secretary, together with copies of any evaluation and/or treatment documentation previously completed, and identify any issues that the SOS raised in the earlier hearing that the evaluator should address.

Deficient evaluations will probably lead to denied applications. The most common deficiencies are:

1. Failure to include all arrests for DUI regardless of whether a conviction results (the Secretary can consider an arrest even though it did not lead to a conviction);

2. Failure to demonstrate a correlation between the client's indicated alcohol use before the arrest and the indicated BAC, which may bear on the client's overall credibility;

3. Failure to correlate the client's alcohol/drug use history to the DUI arrest history, particularly as it relates to the client's tolerance level as indicated by the BACs at the time of the client's arrests. For example, it is unlikely that a person twice-arrested for DUI within a two- to three-year period with BACc of .20 or more at the time of both arrests would have a history of using alcohol once a month or less, drinking one or two drinks per occasion;

4. Failure to include any illegal drug use, even though it may only have consisted of experimental high school use;

5. Failure to properly classify the individual in light of arrest history or indicated symptoms of substance abuse or dependency regardless of arrest history (see discussion of classifications below).

The evaluation must be completed by a DASA-licensed evaluator on a DASA-approved uniform report form. It cannot be more than six months old as of the hearing date, and any

updated evaluation must have been performed by the same agency. The only exception is that an update evaluation may also be performed by the program providing treatment services to the client as recommended in the original evaluation, even if that program did not perform the original evaluation. The Secretary may deny relief to a person who fails to complete or submit to an evaluation or whose evaluation contains insufficient information.

VI. Evaluation Classifications and Treatment Requirements

Effective November 1, 1992, DASA created a new classification system for DUI offenders and minimum requirements for each classification level. These rules have also been adopted by the Secretary of State.

Some evaluation agencies, and some lawyers and their client's, mistakenly assume that the classifications are dictated solely by the client's arrest history and/or BAC levels.

Regardless of the number of DUI arrests, how they were disposed, or what breath scores were, a person with a history of alcohol or drug abuse or symptoms of dependency must be placed at a Level II (S) or Level III (Dependent) classification. A person who does not exhibit these symptoms may be placed at a minimum classification of Level I, II (M), II (S) or Level III (Non-Dependent) based solely on the number of DUI arrests and dispositions without clinical evidence or symptomology of dependency.

Lawyers should arrange to receive the evaluation and review it before the hearing with their client's to assure that it is accurate and meets the requirements of the Secretary's office. Any errors or omissions should be brought to the evaluator's attention and corrected well before the hearing.

An evaluation by a state-accredited evaluator that supports the client and is otherwise properly prepared may not be ignored by the Secretary in considering whether to grant driving privileges. However, a favorable alcohol evaluation is not the sole factor at issue. As is discussed below, treatment documentation, the petitioner's testimony, and other documentary evidence such as character letters will also weigh heavily in the decision. Failure to comply with the evaluator's education and treatment recommendations lead to denial of privileges.

DASA DUI Classification System

Level I – Non-Problematic

A. *Classification Standards*

1. No prior conviction or court-ordered supervision for DUI and no prior statutory summary suspension or reckless driving conviction reduced from DUI;
2. a blood-alcohol concentration (BAC) of less than .15 after the arrest for DUI; and
3. no other symptoms of substance abuse or dependence.

B. *Classification Minimum Treatment Recommendations*

Completion of 10 hours of alcohol and drug remedial education.

Level II – Moderate or Significant Risk

(i) Moderate Risk

A. *Classification Standards*

1. No prior conviction or court-ordered supervision for DUI and no prior statutory summary suspension or reckless driving conviction reduced from DUI;

2. a BAC of .15 to .19 or a refusal of chemical testing after the arrest for DUI; and

3. no other symptoms of substance abuse or dependence.

B. *Classification Minimum Treatment Recommendations*

Completion of 10 hours of remedial education and 12 hours of group or individual substance abuse outpatient treatment followed by an aftercare plan.

(ii) Significant Risk

A. *Classification Standards*

1. One prior conviction or court-ordered supervision for DUI or one prior statutory summary suspension or reckless driving conviction reduced from DUI; and/or

2. a BAC of .20 or higher after the most current arrest for DUI; and/or

3. other symptoms of substance abuse.

B. *Classification Minimum Treatment Recommendations*

Completion of 10 hours of remedial education and 20 hours of substance abuse outpatient treatment (group or individual) followed by an aftercare plan.

Level III – High Risk

A. *Classification Standards*

1. Symptoms of substance dependence; and/or

2. two prior convictions or court-ordered supervisions for DUI or two prior statutory summary suspension or reckless driving convictions reduced from DUI within a 10 year period from the date of the most current (third) arrest.

B. *Classification Minimum Treatment Recommendations*

For defendants with identified symptoms of dependence:

1. Completion of an intensive outpatient substance abuse treatment program (minimum of 75 hours) followed by an aftercare plan, or

2. completion of a residential or inpatient substance abuse treatment program followed by an aftercare plan.

For defendants without identified symptoms of dependence:

3. completion of an outpatient treatment program (minimum 75 hours) followed by an aftercare plan.

The program must include further assessment and counseling designed to identify and remedy the disorder that causes the high-risk behavior. This assessment and counseling can include, but is not limited to, referrals for psychological testing, physical examinations, and other mental health services designed to identify and reduce or eliminate the high-risk behavior.

VII. Remedial Education

All persons except those classified as Level III (Dependent or Non-Dependent) must successfully complete a remedial education course licensed by DASA *after* the last alcohol-related violation. The course consists of 10 hours of class instruction meeting DASA/SOS curriculum requirements conducted over a minimum of four consecutive sessions of two-and-a-half hours each.

Program staff must complete a remedial education form indicating the test scores (passing grade is 75 percent). Failure to successfully complete a licensed remedial education course can be a basis for denying driving relief. A list of licensed courses is available from the Secretary or DASA.

VII. Treatment Verifications

Treatment providers for Level II and Level III individuals must be licensed by DASA, the Illinois Department of Public Health, the Illinois Department of Professional Regulation, or, in the case of out-of-state therapists, the state in which the therapist conducts business.

Treatment verifications must, at a minimum, contain the following information (1) the name, address, and telephone number of the treatment center; (2) treatment admission and discharge dates and total treatment hours; (3) the type of treatment (e.g., output, intensive outpatient, inpatient, individual, or group therapy); (4) the provider's clinical impression or prognosis (in a Level II or Level III case, the patient must be able to maintain a non-problematic pattern—in a Level III (Dependent) case, he or she must be able to stay sober) and opinion of what the individual gained from treatment and whether recurrence or relapse is likely; (5) recommendations for aftercare; (6) rationale for any modification of DASA treatment requirements; and (7) the report author's dated signature.

The treatment verification form approved by DASA and completed by the licensed treatment program must also include an individualized treatment plan, discharge summary, and aftercare plan.

Many treatment providers supply what may be termed "generic" commentaries on the factors contributing to a pattern of substance abuse, along with a standardized summary of the client's participation in the program. This "cookie-cutter" approach to documentation may result in a denial of relief by the Secretary if the office finds that it is unable to discern the specific treatment issues in the petitioner's case.

Insist that the program provide a detailed, tailored report of the client's problems, how they were treated, and the client's response to treatment and prognosis. If you have the opportunity to help the client choose a program, find a provider who will supply detailed, specific documentation.

IX. Treatment Waivers

Treatment can sometimes be waived if the treatment provider gives a written, detailed rationale for the waiver. Waiver may be appropriate where, for example, considerable time has passed since the last problematic use or the client has changed his or her lifestyle and the causes of the earlier abuse have been addressed. A Level III (Dependent) individual who has abstained for a long time and has been in an AA-style support group but never completed a formal treatment program is a good candidate for waiver.

X Practice Tips for Alcohol/Drug-Related Cases

Beyond the bare administrative rules, lawyers must consider the following practical aspects of preparing clients for the hearing.

A. ***Level I and Level II (Moderate)***

Individuals classed at Level I (Non-Problematic) and Level II (Moderate)—those with one DUI disposition who had a BAC of less than .15 or refused testing—should be prepared to demonstrate a lack of regular abuse prior to the DUI, a new recognition and awareness of their past drinking habits, and an absence of abuse drinking since the DUI.

B. ***Level II Significant (Problematic) and Level III (Non-Dependent)***

Those at Level II Significant (Problematic) and Level III (Non-Dependent) should be prepared to present a drinking history consistent with a pattern of past abuse. Particularly for Level II (Significant) cases involving two or more DUIs or clear symptoms of abuse or Level III (Non-Dependent) cases involving three or more DUIs with no symptoms of dependency, abuse is presumed by the state and the DUIs are seen as a symptom.

The client's documentation and testimony should detail and acknowledge this abuse history and correlate it with the arrests (including the amount consumed at the time of the arrest). It should also detail the reasons for alcohol/drug abuse, such as stress or peer-related abusive use, and describe how the client's habits have changed to a non-problematic pattern (abstinence or otherwise) and how the previous abuse pattern has been addressed (e.g., through a change in peer group or a more effective means of addressing stress).

Any change in drinking habits or lifestyle since the last arrest should predate the hearing by some time, indicating that the changes are permanent, not transitory. Level III (Non-Dependent) individuals must demonstrate at least 12 months of abstinence or non-problematic use. Under some circumstances this period may be reduced to six months.

C. ***Level III (Dependent***

Persons with clear symptoms of dependency must be classed at Level III (Dependent). They must demonstrate a minimum of 12 consecutive months of abstinence. Again, six-month waivers may be considered in certain cases. However, these waivers are almost never granted unless the client has no significant relapse history, is participating in a strong support program, and is suffering a severe hardship from the loss of driving privileges.

Level III (Dependent) persons must also show proof of participation in an “ongoing support/recovery program”. Failure to do so is grounds for denial of relief.

Proof must be established by the petitioner’s testimony of participation and knowledge of the principles of the program, by an evaluation that corroborates this testimony, and by at least three letters that comply with the Secretary’s regulations from co-self-help group members describing how long they have known the petitioner and how long and how often he or she has attended the program.

If the person is involved in AA, one of these letters should be from the person’s sponsor (a concept unique to AA), who should identify himself or herself as such. If the client is not involved in an organized support program such as AA, Narcotics Anonymous or Rational Recovery, he or she must identify the support system and explain how it helps maintain abstinence.

Clients who are not in an organized support group must verify their support system by at least three independent sources in writing or as witnesses. If in writing, the letters must describe the person’s relationship to petitioner (friend, family member, etc.), how long they have known each other, how often they see each other (daily, weekly, etc.), what role the writer plays in

helping the petitioner abstain from alcohol/drugs, and what changes the writer has seen in the petitioner since his or her abstinence.

Additionally, all Level III (Dependent) persons must offer a minimum of three letters verifying their abstinence. Letters must include the author's relationship to the petitioner, how long they have known him or her, how often they see him or her, and how long they know he or she has abstained. The letters must also be dated and signed.

Character and drinking habit or abstinence verification letters are helpful regardless of the client's classification. They should describe the client's maturity, responsibility, present general attitude, and the changes that have occurred since the last arrest.

XI. Formal Hearing

The hearing officer has authority to administer oaths, rule on motions, subpoena witnesses or documents upon motion of any party, examine witnesses, and rule on the admissibility of testimony and evidence. The petitioner may seek substitution of a hearing officer by written petition, and if the request if denied may withdraw the request for hearing and then file a new petition. This *usually* results in the assignment of a new hearing officer. An attorney representing the Secretary also appears at the hearing and, as a practical matter, acts in an adversarial capacity. A record of the proceedings is made with a recorder or court stenographer.

The technique rules of evidence do not apply at formal hearings. While irrelevant or immaterial evidence will be excluded, other evidence subject to exclusion under common or statutory law is admissible as long as it is of the sort commonly relied on by prudent people.

The petitioner bears the burden of proof by clear and convincing evidence to show why he or she should be granted relief from an order of revocation, suspension, or other action. The conduct of the hearing can vary with the individual hearing officer. Most hearing officers allow the petitioner's counsel to proceed with a direct examination of the petitioner and any witnesses and to introduce documentary evidence, subject to cross-examination by the Secretary's attorney. Counsel may request a pre-hearing conference to discuss procedural and other matters. Generally, the following elements are part of every formal hearing.

Opening Statements. Counsel may, but need not, make an opening statement, outlining relevant issues, primarily determined by the client's driving/arrest history, history of alcohol/drug use, and what counsel believes the evidence will demonstrate.

Taking of notice. The Secretary will then establish subject matter jurisdiction, notice of hearing, and a certified copy of the petitioner's driving record and underlying documentation (typically consisting of reports of convictions and notices from the circuit courts).

The attorney for the Secretary will also ask the hearing officer to take notice of any orders (including findings of fact and conclusions of law) entered by the Secretary as the result of prior formal hearings (which usually have resulted in denial of relief) including alcohol/drug evaluations, remedial education verification, and treatment documentation offered at those hearings. While the formal hearing is a de novo proceeding, an objection to the "taking of notice" of such documentation on the grounds that it is irrelevant and prejudicial will probably be denied. Even so, you may wish to object to preserve the record for administrative review.

Similarly, the attorney for the Secretary may attempt to offer and ask the hearing officer to take notice of copies of traffic accident reports on file with the Illinois Department of Transportation. If these reports contain information adverse to the client's interests, you may

object on the bases of lack of foundation, hearsay, relevancy, or violation of the confidentiality provisions of 625 ILCS 5/11-412. If you think such documentation may be present in the Secretary's file, avail yourself of the right to examine the file at least 10 days before the hearing date.

Presenting the case. The client's case-in-chief should include the following elements at a minimum.

· *Direct examination* of the client about marital status, age, number and ages of dependents, educational background, facts about his or her driving record—including specifics of any alcohol/drug related violations (e.g., date and time of arrest, reason for stop, amount of alcohol/drugs consumed, BAC or reason testing was refused—efforts at rehabilitation (including attendance at a driver or remedial education program), alcohol or drug abuse treatment or education programs (including ongoing counseling or self-help group such as AA) if alcohol or drug use is an issue, any change in drinking habits and how it occurred, nature of employment (including days, hours, and radius of driving, and whether driving is required on the job), availability of public transportation, and how driving needs have been met since the loss of driving privileges.

·Introduction of *written verification* of client's completion of any driver improvement or remedial education program and introduction of the written alcohol evaluation if applicable.

·Introduction of character reference and employment verification letters along with any required drinking habit verification letters, treatment records, abstinence letters, letters verifying Alcoholics Anonymous attendance, and employment verification letters.

·*Examination of witnesses* appearing on the client's behalf.

Cross-Examination and Redirect.

The attorney for the Secretary may cross-examine the petitioner and any witnesses appearing on his or her behalf. If the petitioner has not appeared before the Secretary, the state's evidence is usually confined to the petitioner's driving record, including notices of conviction and officers' summary suspension sworn reports, including any BAC information. If the alcohol/drug evaluation and treatment documentation and any other documentary evidence is properly prepared and the petitioner's testimony is consistent, the danger of damaging cross-examination is small.

If there has been an earlier hearing, the Secretary's attorney will have additional documentary evidence and may use it to challenge or discredit the petitioner's testimony and evidence. While you can object to the use of this material as a basis for cross-examination and thus preserve the record for review, the best strategy is to anticipate the state's use of this documentation, making sure that the evaluator has addressed issues raised by the evidence and that your client is prepared to testify about them.

Closing statements. Counsel for both the petitioner and the Secretary have an opportunity to make a closing statement. Your goal in closing should be to summarize the evidence, particularly as it bears on the paramount issue—whether the petitioner has met the burden of demonstrating that he or she is not a risk to the public safety and welfare.

Decisions. At the close of the hearing, the hearing officer will announce that the matter will be taken under advisement and that a recommendation will be made. The officer will submit proposed written findings of fact, conclusions of law, and a recommendation to a designee of the Director of the Department of Administrative Hearings for review. An order will then be entered and copies forwarded to both the petitioner and counsel. The order must be entered within 180 days of conclusion of the hearing.

XII. Administrative Review

As is discussed above, only decisions from formal, as opposed to informal hearings, constitute final administrative decisions from which administrative review may be sought. The Administrative Review Act provides the exclusive means for reviewing administrative decisions of the SOS.

The complaint for administrative review must be filed and summons issued in Cook or Sangamon County within 35 days of the date a copy of the decision is served on the affected party. Failure to file within this period is jurisdictional.

While it is legally sufficient to merely allege that the Secretary's decision is contrary to law or against the manifest weight of the evidence, upon motion of the state or order of the court the complaint must specifically set forth the plaintiff's grounds for seeking to overturn the decision.

The Secretary is represented in these proceedings by the Attorney General's office, which must file its appearance within 35 days of service of the complaint. Unless otherwise ordered or stipulated, the answer to the complaint consists of the entire record of the proceeding from the hearing.

Generally, you may seek leave to submit a written brief or memorandum of facts and issues. The court is prohibited from considering new evidence or testimony and doing so may constitute reversible error.

As stated above, the Secretary is not obliged to grant an RDP, and must weigh the public interest against the hardship suffered by the petitioner before granting relief. The Secretary retains considerable discretion to do so in light of the established authority of administrative agencies to construe statutory provisions, rules, and judicial decisions within its sphere of expertise.

A decision will stand unless contrary to the manifest weight of the evidence. The Secretary's findings and conclusions on questions of fact are considered prima facie true and correct. A reviewing court may not reweigh the evidence or conduct an independent investigation of the facts. It may consider only evidence in the record.

To find that the decision is not supported by the manifest weight of the evidence, a court must conclude that "all reasonable and unbiased persons, acting within the limits prescribed by law and drawing all inferences in support of the findings would agree the finding is erroneous". If anything in the record fairly supports the decision it is not against the manifest weight of the evidence and must be sustained. Decisions which rest in whole or in part on findings unsupported by the evidence adduced at the time of hearing and made part of the record are the most vulnerable to challenge on administrative review.

Note that the court may not enter an order extending an RDP due to expire more than 30 days after entry of the original order granting issuance. Since an RDP may not be issued for more than a 12-month period, if you have obtained an RDP on behalf of your client through administrative review you must advise him or her to seek a *new* administrative hearing to get the permit extended or, if eligible, full reinstatement well in advance of the expiration of the permit.

However, if the permit was granted under an explicit settlement agreement in the trial court which granted the plaintiff a permit until full reinstatement and the Secretary then denied further relief, the court was correct in vacating the agreement and ordering full reinstatement even though this occurred more than 30 days from the court's original order. The appellate court

held that breach of the settlement agreement constituted a "rescission" of the agreement, giving the plaintiff authority to proceed on the original complaint for administrative review.

XIII. Conclusion

The SOS is known for its restrictive approach to driving relief. Clearly, and laudably, the office has led the way in raising public consciousness of the risks posed by drink drivers. However, the Secretary should act favorably on the petitions of those who rehabilitate themselves. By understanding the rules, procedures and philosophy of the Secretary of State, you can make a real difference on behalf of your client.