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Young Lawyers

BY PAOULA ARMENI, Young Lawyers Chair

WHAT TO EXPECT AT A DUI ADMINISTRATIVE HEARING

No matter what area of practice in which you are involved, chances are you will receive questions from friends, family members or acquaintances regarding incidents of driving under the influence and, more specifically, the effect an arrest for driving under the influence can have on someone's (hereinafter, "licensee") driver's license. This article is meant to provide a brief and general overview of the Department of Motor Vehicles (DMV) administrative process when someone is cited or arrested for suspicion of driving under the influence.

Notice and Opportunity to Be Heard

Prior to the DMV taking away licensee's driver's license, due process requires that the licensee receive notice of the suspension and the opportunity to be heard.

Whether or not a licensee provides blood or breath will determine how quickly he or she will receive a notice of the suspension. If a licensee provides a breath sample with an alcohol content of .08 or above, he or she will immediately receive notice that their license will be suspended in seven days. Therefore, in this situation, a person has seven days to request an administrative hearing. If, in the alternative, a blood test is taken, notice of a suspension will not be provided until after the results of the alcohol or drug content is determined. This usually takes a couple of months after which the licensee will receive a certified letter from the DMV advising the licensee that his or her license will be suspended. Upon receipt of the certified letter, one can request an administrative hearing.

Prior to the Administrative Hearing

Once an administrative hearing is set, the licensee is entitled to a temporary license which is usually available within 24 hours of requesting the administrative hearing. The licensee will be required to go to the DMV to pick up the temporary license. The temporary driver's license will be valid until a final decision is made by the administrative law judge.

Hearing

Under Nevada law, administrative driver's license revocation proceedings are considered to be civil in nature, not criminal. Consequently, the burden of proof is placed on the licensee and not on the state; the licensee must prove that he or she was not driving while intoxicated. A DMV Administrative Hearing usually involves three people: the administrative law judge, the police officer who arrested or cited the licensee and the attorney who represents the licensee. The licensee can attend the hearing if he or she wishes but that attendance is not necessary. The scope of review during a driver's license revocation hearing is limited to three issues:

1. whether or not the person failed to submit to an evidentiary test;
2. whether or not a person's blood alcohol level exceeded the legal limit at the time of the test; and
3. whether or not the DUI officer who ordered an evidentiary test had reasonable grounds, at the time the test was ordered, to believe the person had been driving or in actual physical control of a vehicle while intoxicated.

During the hearing, the witnesses will testify under oath and will be subject to cross-examination. Witnesses may be subpoenaed and evidence can be admitted. Hearings are recorded and, therefore, audio recordings of the hearing are available upon request.

After the hearing

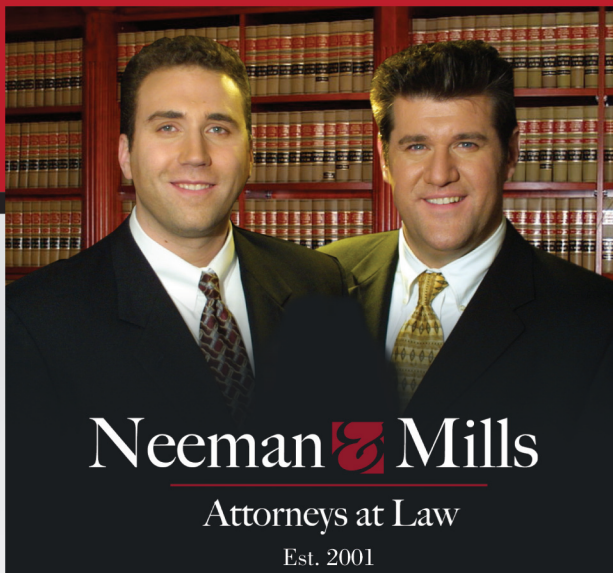
Within a couple weeks of the DUI administrative hearing, both the licensee and the licensee's attorney will receive the final decision of the administrative law judge in the mail. Such decision will advise, if the licensee's driver's license will be suspended or reinstated. If the final decision made is that the licensee's driver's license will be suspended, then that determination can be appealed to the district court and ultimately to the Nevada Supreme Court within 30 days.

Upon a finding that licensee's driver's license will be suspended, the licensee will lose his or her driving privileges for 90 days on a first DUI. The licensee will, however, be eligible for a restricted license (for work, school, medical appointments, etc.) after 45 days of the suspension. ■

PAOLA M. ARMENI is an associate with the law firm of Gordon Silver in the Litigation Department's Government Investigations and Business Crimes Group. She is the current president of Nevada Attorneys for Criminal Justice and a member of the National Association of Criminal Defense Lawyers, Clark County and American Bar Associations, State Bar of Nevada and is the Southern Representative for Young Lawyers Section of Nevada State Bar. Armeni was recognized by Super Lawyers magazine as Mountain States Rising Star for years 2009 and 2010.

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