



# TRAFFIC LAWS & COURTS

The newsletter of the Illinois State Bar Association's Section on Traffic Laws & Courts

## Excessive / aggravated speeding

By Jennifer B. Wagner

The Illinois Aggravated or Excessive Speeding statute does not allow for Supervision as a sentencing option, and forces a misdemeanor conviction upon a plea or finding of guilty.<sup>1</sup> This has been found by the 1st District Circuit Court of Cook County to be unconstitutional under the Disproportionate Penalties clause. The Illinois State Bar Association agrees, and has allowed the Traffic Laws and Courts Committee to file an Amicus Brief on behalf of *People v. Rizzo*,<sup>2</sup> the Chicago case that found that not providing Supervision as a sentencing option is unconstitutional.

Entertain the hypothetical of a single mother, Sue, who is driving her five-year-old son Johnny home from some sort of child-type outing involving much food and a bouncy house. They're cruising along splendidly when suddenly Sue

finds herself in the company of a sick kid. A very spontaneously, very sick kid. Unfamiliar substances akin to napalm spew from places on the child she did not know existed. The kid is suffering, she's suffering, it's serious. She and her little bodily fluid pinata are three miles from the closest hospital and she goes for it. She guns it. Speed limit is, whatever, 35, 40, mph? She doesn't know. What is it usually around here? Whatever, she really doesn't care at that point. The last thing Sue's doing is observing the posted speed limit so she can mindfully adhere to all traffic ordinances, rather she's booking to get to the hospital as quickly as possible while avoiding an accident.

Fortunately, it turns out little Johnny just ate too much fried sugar then jumped around like a

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## An overview of DUI evaluations in Illinois

By Jeremy Richey

As a general rule, a motorist cannot plead guilty to a DUI without having a DUI evaluation on file with the trial court. These evaluations are central to DUI sentences in that, at the very least, they determine the level of DUI counseling that trial judges will order. Judges consider these evaluations at any sentencing hearings, and they may also carefully review them when deciding whether to approve a plea agreement. This article will review legal and practical aspects of these evaluations.

### When DUI Evaluations Are Required and Not Required

Both the Unified Code of Corrections and the Illinois Vehicle Code require an alcohol and

drug abuse evaluation before a trial court can enter judgment against a motorist. The Unified Code of Corrections provides that "prior to the imposition of sentence on an individual being sentenced for a [DUI], the individual must undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem."<sup>1</sup> Similarly, the Illinois Vehicle Code provides that "[a]fter a finding of guilt and prior to any final sentencing or an order for supervision, [...] individuals shall be required to undergo a professional evaluation to determine if an alcohol, drug, or intoxicating compound abuse problem exists and the extent

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## Excessive / aggravated speeding

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simian on a bed of air, which produced the possession and flu like symptoms. Unfortunately, Sue got pulled over and ticketed for speeding on her way to the hospital.

Depending on her background, this speeding ticket could cost Sue a year in jail and \$2,500. Obvious problems for our hypothetical or any single parent, any parent. Anyone. Sue's now convicted of a misdemeanor, with great potential for detrimental affects on her driver's license and insurance. More egregiously, the misdemeanor conviction carries with it a lifetime of possible harms. Say she went for a better job and got rejected because she's got a criminal background. In addition to ruining her career, a criminal record could prevent Sue from getting a home, it could prove devastating to Johnny's schooling, eligibility for government aid, and many other federally and privately funded programs. Sue could very easily end up in a situation in which this rash but understandable decision to act on behalf of her child's welfare resulted in much more damage in the long run because Sue was forced into a mandatory conviction.

It is unpleasant, but easy to imagine a scenario in which you feel you have to drive faster than you normally would, faster than the speed limit allows, but not nearly fast enough to get where you need to go. Responding to an unexpected emergency or delayed to an important event. It could and does happen all the time, in Illinois and everywhere people drive. To great drivers with perfect records, no arrests, no traffic tickets, who have never been in an accident, never even a parking ticket. There are an estimated 5,000 Aggravated Speeding convictions in Illinois to date<sup>3</sup> and they happen drivers with mitigating circumstances and no background just as they happen to habitual speeders with a dozen prior violations.

Illinois law mandates that if you plead or are found guilty of Excessive or Aggravated Speeding, driving 26+ mph over the posted speed limit, you are convicted of a misdemeanor.<sup>4</sup> You now have a criminal record. With a criminal conviction, the impact on your life could be devastating in terms of employment, immigration, school, housing, public aid, and in countless other professional and social ways. The speeding conviction

gets reported to the Secretary of State which, in addition to potentially detrimentally affecting your driving privileges, stays on your driving abstract for seven years.<sup>5</sup> And the criminal conviction stays on your record forever unless you go through the hassle and expense to petition to have your record sealed, if eligible.

For some other misdemeanors, Illinois offers another sentencing option called Supervision. Supervision is not a conviction; Upon successful completion of certain specific terms over a specified duration, a case sentenced to Supervision can be dismissed.<sup>6</sup> After that, some of these cases can be expunged, meaning the record of the arrest and all proceedings is electronically cleared and physically impounded.<sup>7</sup>

Supervision is not currently a sentencing option for Excessive Speeding. Yet for other arguably more egregious offenses such as Reckless Driving, DUI, and Theft, Supervision is available as a penalty for eligible defendants.<sup>8</sup> This means that with the law as it stands now one can have theft, a crime of dishonesty and intent, purged from her record as though it never happened, but she would be burdened with a criminal record for Excessive Speeding. Some would define the denial of supervision as a sentencing option as incongruous, disproportionate to the extent as to be "morally reprehensible," and in Illinois, that is unconstitutional.<sup>9</sup> At least one Illinois judge agrees.

In a recent 1st district lower court decision in *People v. Rizzo*, the Honorable Deborah Gubin ruled that not providing supervision as a sentencing option for aggravated and excessive speeding is unconstitutional.<sup>10</sup>

The Illinois mandatory conviction statute violates due process/proportionate penalty protections afforded its people under the Illinois Constitution by forcing a misdemeanor conviction where mitigating circumstances may exist and where arguably more grievous infractions such as DUI and Theft are availed Supervision as a sentencing option.

The law and sentencing statutes pertinent to this article are as follows:

Excessive/Aggravated Speeding,  
625 ILCS 5/11-601.5

(a) A person who drives a vehicle upon

any highway of this State at a speed that is 26 miles per hour or more but less than 35 miles per hour in excess of the applicable maximum speed limit established under this Chapter or a local ordinance commits a Class B misdemeanor. (b) A person who drives a vehicle upon any highway of this State at a speed that is 35 miles per hour or more in excess of the applicable maximum speed limit established under this Chapter or a local ordinance commits a Class A misdemeanor.<sup>11</sup>

Mandatory Conviction sentence  
730 ILCS 5/5-6-1(P) & (Q)

(p) The provisions of paragraph (c) shall not apply to a defendant charged with violating Section 11-601.5 of the Illinois Vehicle Code or a similar provision of a local ordinance. (q) The provisions of paragraph (c) shall not apply to a defendant charged with violating subsection (b) of Section 11-601 of the Illinois Vehicle Code when the defendant was operating a vehicle, in an urban district, at a speed in excess of 25 miles per hour over the posted speed limit.<sup>12</sup>

Paragraph (c) Supervision

(c) The court may, upon a plea of guilty or a stipulation by the defendant of the facts supporting the charge or a finding of guilt, defer further proceedings and the imposition of a sentence, and enter an order for supervision of the defendant, if the defendant is not charged with: (i) a Class A misdemeanor, as defined by the following provisions of the Criminal Code of 1961 or the Criminal Code of 2012: Sections 11-9.1; 12-3.2; 11-1.50 or 12-15; 26-5 or 48-1; 31-1; 31-6; 31-7; paragraphs (2) and (3) of subsection (a) of Section 21-1; paragraph (1) through (5), (8), (10), and (11) of subsection (a) of Section 24-1; (ii) a Class A misdemeanor violation of Section 3.01, 3.03-1, or 4.01 of the Humane Care

for Animals Act; or (iii) a felony. If the defendant is not barred from receiving an order for supervision as provided in this subsection, the court may enter an order for supervision after considering the circumstances of the offense, and the history, character and condition of the offender, if the court is of the opinion that: (1) the offender is not likely to commit further crimes; (2) the defendant and the public would be best served if the defendant were not to receive a criminal record; and (3) in the best interests of justice an order of supervision is more appropriate than a sentence otherwise permitted under this Code.

A misdemeanor conviction means you have a criminal record searchable in the jurisdiction of conviction and anywhere else public records are available. With easy access to sensitive information online, these records can be nearly instantly obtained by employers, potential employers, landlords, school admissions personnel and public and financial aid providers. Put another way: you could be denied freedom, residency, a job, a home, financial aid, and much more just because you drove over the speed limit.

And you can't do much about it. In Illinois, criminal convictions are not expungable. Some may be sealable, but a sealed record still exists and is accessible via subpoena by certain federal and state agencies.<sup>13</sup>

The Secretary of State gets reports of all traffic convictions and license suspension and revocation could result from an Excessive Speeding conviction.<sup>14</sup> And for professional drivers, the impact can be even more devastating.<sup>15</sup> A professional driver if suspended because of a speeding conviction could lose not only his license but his livelihood. An Excessive Speeding conviction can stop you from getting a job, and if you have one, it can take it away.

Right now Illinois Judges' hands are tied with respect to the mandatory conviction on excessive speeding. Even a Rule 402<sup>16</sup> conference with the judge and prosecution leaves the judge with only the charges' statutory sentence range from which to provide recommendation. Mitigation,<sup>17</sup> normally a very big part of a sentencing conference, is moot with respect to Excessive Speeding. No priors and a very good reason for speeding, dire circumstances yet short an affirmative

necessity defense, do not matter for sentencing purposes. The person without even so much as a parking ticket is on the same footing as someone else with five petty speeding tickets, a retail theft, and a prior reckless driving charge for which supervision had been granted.

On August 12, 2014, Judge Deborah Gubin gave the opinion in *People v. Vincent Rizzo*.<sup>18</sup>

She found that though Excessive Speeding should be a criminal charge, not affording supervision as an option for relief is a disproportionate sentence, therefore a substantive due process violation.<sup>19</sup> Attorney Tom Speedie, Council member of the Illinois State Bar Association Section on Traffic Laws and Courts, gives a detailed breakdown of Judge Gubin's opinion.<sup>20</sup>

It is unconstitutional to force a misdemeanor conviction on an Excessive Speeding charge. Supervision is a reasonable sentencing option that should be allowed for consideration by the courts.

An important point to emphasize here is that both the *Rizzo* opinion<sup>21</sup> and this article's leanings are not to discuss whether Excessive Speeding should be charged as a criminal offense, but to argue that as it stands as a criminal infraction, the denial of supervision as a sentencing option is unconstitutional.

The State has filed leave to appeal which has been granted, the State's Response is due April 30.

The Illinois State Bar Association has approved our request to seek leave to file an Amicus brief with the Illinois Supreme Court in *Rizzo*. The ISBA General Counsel's office has permitted the filing of a joint Amicus with the DuPage County Criminal Bar Assn and Illinois Assn of Criminal Defense Lawyers.

Let us revisit Sue, the hypothetical lead footed mommy of spewing Johnny. Say she still booked it to the hospital and got ticketed en route for Excessive Speeding, but this time there were reasonable sentencing laws and she was able to get Supervision as a first time offender. Neither her driving record nor her criminal record were ill affected, she got her dream job, dream house, dream spouse (hey, it's a hypothetical), and she was able to better provide for Johnny and his demonstrative digestive system. Johnny went on to become the foremost G.I. Specialists in the world, and helping millions of patients and

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those close to them during the span of his career.

Where mitigating circumstances may exist and where some other misdemeanor offenses such as DUI, Reckless Driving, and Theft allow for Supervision as a sentencing option for first time offenders, the denial of Supervision as a sentencing option for Excessive Speeding is unconstitutional. The change can happen and is in our hands. Support the availability of supervision as sentencing option for Excessive Speeding. ■

1. *People v. Vincent Rizzo* 37997158: <<http://usharolaw.com/wp-content/uploads/2014/09/>

PEOPLE-v.-VINCENT-RIZZO-37997158-ORDER-HOLDING-STATUTE-UNCONSTITUTIONAL.pdf>

2. *Id.*

3. ISBA Traffic Laws and Courts Council Member Don Ramsell, as of 03/30/15 awaiting FOIA authentication of statistics provided via e-mail to his prior FOIA request

4. Illinois General Assembly, Compiled Statutes, Illinois Vehicle Code: <<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1815&ChapterID=49&SeqStart=116500000&SeqEnd=118000000>>

5. SOS

6. <ActID=1815&ChapterID=49&SeqStart=116500000&SeqEnd=118000000>

7. Illinois Appellate Defender: <<https://www.illinois.gov/osad/Expungement/Pages/default.aspx>>

8. *Id.*

9. See Footnote 1

10. See Footnote 1

11. Illinois General Assembly, Compiled Statutes, Illinois Vehicle Code: <<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1815&ChapterID=49&SeqStart=116500000&SeqEnd=118000000>>

12. Illinois General Assembly, Compiled Statutes, Corrections:

13. See Footnote 7

14. SOS

15. SOS

16. IL SC Rule 402

17. Mitigation statute

18. See Footnote 1

19. Defense atty opinion

20. Speedie article. ISBA's Traffic Laws & Courts newsletter, May 2015.

21. See Footnote 1

## An overview of DUI evaluations in Illinois

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of the problem, and undergo the imposition of treatment as appropriate.<sup>2</sup>

This language appears to be fairly straightforward: an evaluation must be conducted before the trial court can sentence a defendant. But, what would happen if a defendant refused to complete an evaluation? Would the trial court have the authority to sentence the defendant anyway? The answer is "yes" according to the Illinois Supreme Court in *People v. Baker*.<sup>3</sup> The Court ruled that evaluations are permissive rather than mandatory.<sup>4</sup> A court must be able to control its docket and a motorist "should not benefit from his own defiance of the criminal justice system."<sup>5</sup>

### Asserting Fifth Amendment Privilege

An evaluation will likely contain incriminating information obtained from questions posed to the defendant. Can a defendant assert his Fifth Amendment right to not incriminate himself? According to the *Baker* court, the answer is "yes" again.<sup>6</sup> But, the defendant must attend the evaluation appointment and be prepared to assert his privilege at the right time:

In order to claim the privilege, an individual must claim it during the examination and as questions are asked. The individual must assert the claim only in response to potentially incrimi-

nating questions. Furthermore, the individual must either timely assert the privilege or be prepared to establish that the privilege was self-executing. The individual claiming the privilege must have a reasonable ground to believe that his answers to questions asked might tend to incriminate him. Once the individual claims the privilege, it is for the circuit court to determine if under the particular facts there is a real danger of incrimination.<sup>7</sup>

### Levels of Treatment Intervention

The Illinois Administrative Code provides four levels of risk that motorists may pose to public safety: minimal, moderate, significant, and high.<sup>8</sup> Minimal risk requires a defendant to complete at least 10 hours of DUI risk education.<sup>9</sup> Moderate risk requires the risk education plus at least an additional 12 hours of early intervention services.<sup>10</sup> Significant risk calls for the risk education plus at least 20 hours of substance abuse treatment.<sup>11</sup> High risk calls for at least 75 hours of substance abuse treatment.<sup>12</sup> Each evaluation identifies the risk level of the DUI offender.

### Obtaining Evaluations in Other States

If a defendant is not a resident of Illinois, a trial court possesses the discretion to allow the defendant to be evaluated where he

resides.<sup>13</sup> When a defendant resides outside the state, and it is not practical for the defendant to make extra trips to Illinois to complete an evaluation, the trial court's authority to allow an out-of-state evaluation can be useful. It can be frustrating to both the prosecution and the defense when a case is unnecessarily continued for further status because the defendant has not completed an evaluation. Allowing out-of-state evaluations is not only a convenience for the defendant; it also helps resolve cases in a timely manner.

### Local Rules

Legal practitioners should be aware of local rules and other orders that may affect the resolution of cases. For example, in the Sixth Judicial Circuit, the motorist must submit to drug testing as part of the evaluation process, and the evaluation must also contain the circuit's addendum questionnaire.<sup>14</sup> The practitioner should never assume that evaluation requirements are similar in all courts and circuits.

### Locating Evaluation Providers

If a client lives in a county that is not familiar to the practitioner, the practitioner may not know the evaluators in that county. The Illinois Department of Human Services maintains, on its website, a list of providers in each county.<sup>15</sup> This list is useful when helping clients find an evaluator in an unfamiliar area.

### Early Completion of Treatment

If a client is planning to plead guilty to a DUI, counsel should consider encouraging the client to complete all recommended treatment early. The prosecutor for the case may be willing to make the client a better deal (such as a shorter period of supervision) when the prosecutor sees that all counseling is substantially or actually completed. In the event that the case proceeds to a sentencing hearing, the treatment completion will also likely be viewed favorably by the trial court. At the very least, the client will have a mandatory part of his sentence completed. In a routine case, there is little risk and much potential reward to the client completing treatment early.

Quick Reference Chart for DUI Evaluations	
Professional Evaluation Required	730 ILCS 5/5-4-1(a); 625 ILCS 5/11-501.01(a)
Out of State Evaluations Permitted	730 ILCS 5/5-4-1(a); 625 ILCS 5/11-501.01(h).
Provider Licenses Issued by DHS	20 ILCS 301/15-10
Administrative Code -- Evaluations	77 Ill. Adm. Code 2060.503

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1. 730 ILCS 5/5-4-1(a).
2. 625 ILCS 5/11-501.01(a).
3. 123 Ill.2d 233 (1988).
4. *Id.* at 237-38.
5. *Id.* at 238.
6. *Id.* at 243.
7. *Id.* at 243-44 (citations omitted).
8. 77 Ill. Adm. Code 2060.503(g).
9. *Id.* at 2060.503(h)(1).
10. *Id.* at 2060.503(h)(2).
11. *Id.* at 2060.503(h)(3).
12. *Id.* at 2060.503(h)(4).
13. 730 ILCS 5/5-4-1(a); 625 ILCS 5/11-501.01(h).
14. Ill. 6th Jud. Cir. Ct. Admin. Order 94-11.
15. <[http://www.dhs.state.il.us/OneNetLibrary/27896/documents/By\\_Division/OASA/Directories/License\\_Directory\\_by\\_County.pdf](http://www.dhs.state.il.us/OneNetLibrary/27896/documents/By_Division/OASA/Directories/License_Directory_by_County.pdf)>.

## 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, ch.II, sec. 1001 et. Seq. The rules and regulations as well as the hearing procedures have become increasingly complex and often misunderstood. However, the attorney can be prepared with adequate knowledge and understanding of the applicable rules, statutes, regulations and policies of the Secretary of State's Office in order to successfully represent a client.

This article will discuss how to successfully represent a client who is suspended or revoked pursuant to Sections 6-206(a)9, 10 or 14 of the Illinois Vehicle Code. (625 ILCS 5/6-206(a)(9), (10) or (14)). These are generally non- alcohol related suspensions and/or revocations. If there is a history of alcohol use or alcohol related arrests, that is beyond the scope of this article, and the hearing preparation may be entirely different. Some clients may be eligible for an informal hearing to request driving relief. That is also beyond the scope of this article, although much of the hearing preparation and documentation is similar in nature.

### A. Initial Interview

Upon your initial interview with your cli-

ent, 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, what date your client may be eligible for full reinstatement or the end of the suspension, and whether there are any other suspensions or revocations, or stops on your client's driving record.

Once you determine that your client is eligible for a formal hearing, you can send in to the Secretary of State a written request 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 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 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 whether 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 (i.e., 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. (See 92 Ill. Adm. Code 1001.90(b)).

### B. Pre-Hearing Motions

Although not typically presented, the Administrative Code provides for pre-trial motions, including discovery requests. A motion for discovery can be brought 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 whether your client had any alcohol related arrests, suspensions, or revocations in the past. 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.

### C. Non-Alcohol Related Offenses-6-206(a)(9), (10) and (14)

On behalf of your client, you may request a hearing if your client's driving privileges are suspended or revoked pursuant to Section 6-206(a)9 of the Illinois Vehicle Code: a suspension or revocation 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 Section 6-206(a)10 of the Illinois Vehicle Code: a suspension or revocation due to having possessed, displayed or attempted to fraudulently use any license, identification card or permit not issued to the person. A third suspension or revocation that often arises is pursuant to Section 6-206(a)14 of the Illinois Vehicle Code: due to having committed a violation of Section 6-301, 6-301.1, or 6-301.2 of the Illinois Vehicle Code. (5/6-301: Unlawful use of license or permit; 5/6-301.1: Fictitious or unlawfully altered driver's license or permit; 5/6-301.2: Fraudulent driver's license or permit). 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, Petitioner, at the hearing. The standard of proof is by a preponderance of the evidence, 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 what documentary evidence you will need to present at the hearing.

At your initial meeting with your client, you may learn that your client, who is under the age of 21, displayed someone else's ID card who is 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 un-

derage individual in possession of a driver's license or identification card issued to an overage individual, then the presumption is that the petitioner intended to use the overage identification to purchase alcohol or to enter a drinking establishment. *Freed v. Ryan*, 301 Ill. App. 3d 952, 235 Ill. Dec. 173, 704 N.E.2d 746. 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/drivers' 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 of age at the time of the incident in question. Again, you may consider presenting an Investigative Alcohol and Drug Evaluation.

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 same 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 past criminal history. All evidence presented should be used to prove that your client will be a safe and responsible driver.

Oftentimes, 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.

### D. Restricted Driving Permit

If your request includes 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. (92 Ill. Adm. Code 1001.420(i) and 1001.430(i)). You will need to determine what type of restricted driving permit your client is eligible. 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. (625 ILCS 5/6-206(c)(3)).

### E. 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 office 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. (See 625 ILCS 5/2-118(d) and 92 Ill. Adm. Code 1001.110). ■

Lisa L. Dunn, a partner with MASSUCCI, BLOMQUIST, ANDERSON & DUNN, is an attorney with an office in Arlington Heights. She represents clients in criminal and traffic matters in Lake and Cook County. She is also a 17-year veteran of the Secretary of State, Department of Administrative Hearings, having previously served as a part-time contractual Hearing Officer. She has extensive experience with DUI license reinstatement hearings, BAIID violations, and interpretation of the rules and regulations of the Secretary of State. The views expressed in this article are not those of the Illinois Secretary of State but those of the author.

## Upcoming CLE programs

To register, go to [www.isba.org/cle](http://www.isba.org/cle) or call the ISBA registrar at 800-252-8908 or 217-525-1760.

### July

**Wednesday, 7/1/15- Teleseminar**—Outsourcing Agreements. Presented by the ISBA. 12-1.

**Thursday, 7/2/15- Teleseminar**—Planning with Life Insurance Trusts. Presented by the ISBA. 12-1.

**Tuesday, 7/7/15- Teleseminar**—Business Planning with Series LLCs. Presented by the ISBA. 12-1.

**Wednesday, 7/8/15- Teleseminar**—Ethical Issues When Representing the Elderly—LIVE REPLAY. Presented by the ISBA. 12-1.

**Thursday, 7/9/15- Teleseminar**—Settlement Agreements in Litigation- LIVE REPLAY. Presented by the ISBA. 12-1.

**Tuesday, 7/14/15- Teleseminar**—Tax Planning for Real Estate, Part 1. Presented by the ISBA. 12-1.

**Wednesday, 7/15/15- Teleseminar**—Tax Planning for Real Estate, Part 2. Presented by the ISBA. 12-1.

**Tuesday, 7/21/15- Teleseminar**—Restrictive & Protective Covenants in Real Estate. Presented by the ISBA. 12-1.

**Wednesday, 7/22/15- Teleseminar**—Fiduciary Duties & Liability of Nonprofit/Exempt Organization Directors and Officers. Presented by the ISBA. 12-1.

**Thursday, 7/23/15- Teleseminar**—Ethics and Digital Communications- LIVE REPLAY. Presented by the ISBA. 12-1.

**Friday, 7/24/15- Teleseminar**—Estate Planning for Farms and Ranches- LIVE REPLAY. Presented by the ISBA. 12-1.

**Tuesday, 7/28/15- Teleseminar**—Business Planning with S Corps, Part 1. Presented by the ISBA. 12-1.

**Wednesday, 7/29/15- Teleseminar**—Business Planning with S Corps, Part 2. Presented by the ISBA. 12-1.

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**Friday, 7/31/15- Teleseminar**—Eminent Domain, Part 2- LIVE REPLAY. Presented by the ISBA. 12-1.

### August

**Tuesday, 8/4/15- Teleseminar**—Construction Agreements, Part 1. Presented by the ISBA. 12-1.

**Wednesday, 8/5/15- Teleseminar**—Construction Agreements, Part 2. Presented by the ISBA. 12-1.

**Tuesday, 8/11/15- Teleseminar**—Estate Planning with Annuities & Financial Products. Presented by the ISBA. 12-1.

**Thursday, 8/13/15- Teleseminar**—2015 in Age Discrimination Update. Presented by the ISBA. 12-1.

**Friday, 8/14/15- Teleseminar**—Ethical Issues in Buying, Selling, or Transferring a Law Practice. Presented by the ISBA. 12-1.

**Tuesday, 8/18/15- Teleseminar**—Business Divorce: When Business Partners Part Ways, Part 1. Presented by the ISBA. 12-1.

**Wednesday, 8/19/15- Teleseminar**—Business Divorce: When Business Partners Part Ways, Part 1. Presented by the ISBA. 12-1.

**Thursday, 8/20/15- Teleseminar**—Easements in Real Estate. Presented by the ISBA. 12-1.

**Monday, 8/24/15- Teleseminar**—Like-Kind Exchanges of Business Interests- LIVE REPLAY. Presented by the ISBA. 12-1.

**Tuesday, 8/25/15- Teleseminar**—Estate Planning for Guardianship and Conservatorships. Presented by the ISBA. 12-1.

### September

**Tuesday, 9/1/15- Teleseminar**—Estate & Trust Planning With the New 3.8% on Income. Presented by the ISBA. 12-1.

**Wednesday, 9/2/15- Teleseminar**—Drafting Service Agreements in Business. Presented by the ISBA. 12-1.

**Thursday, 9/3/15- Teleseminar**—Drafting Effective Employee Handbooks- LIVE REPLAY. Presented by the ISBA. 12-1.

**Friday, 9/4/15- Teleseminar**—Rights of First Refusal/Rights of First Offer in Transactions. Presented by the ISBA. 12-1.

**Tuesday, 9/8/15- Teleseminar**—Ethics and Pre-Trial Investigations. Presented by the ISBA. 12-1.

**Thursday, 9/10/15- Teleseminar**—Selling Closely-Held Companies to Employees, Part 1- LIVE REPLAY. Presented by the ISBA. 12-1.

**Friday, 9/11/15- Teleseminar**—Selling Closely-Held Companies to Employees, Part 2- LIVE REPLAY. Presented by the ISBA. 12-1.

**Tuesday, 9/15/15- Teleseminar**—Planning to Obtain Tax Free Treatment in Business Combinations. Presented by the ISBA. 12-1.

**Wednesday, 9/16/15- Teleseminar**—Duress & Undue Influence in Estate and Trust Planning- LIVE REPLAY. Presented by the ISBA. 12-1.

**Wednesday, 9/16/15- Live Studio Webcast**—Litigating the Municipal Division Case: "Small" Cases Can Create Big Headaches. Presented by the ISBA Tort Law Section. 10:30-noon.

**Thursday, 9/17/15- Chicago, ISBA Regional Office**—Complex Asset Recovery: Fraudulent Transfers, Offshore Assets & Charging Orders. Presented by ISBA Commercial Banking, Collections and Bankruptcy Section. 8:45-12:15 pm.

**Thursday, 9/17/15- Live Webcast**—Complex Asset Recovery: Fraudulent Transfers, Offshore Assets & Charging Orders. Presented by ISBA Commercial Banking, Collections and Bankruptcy Section. 8:45-12:15 pm. ■

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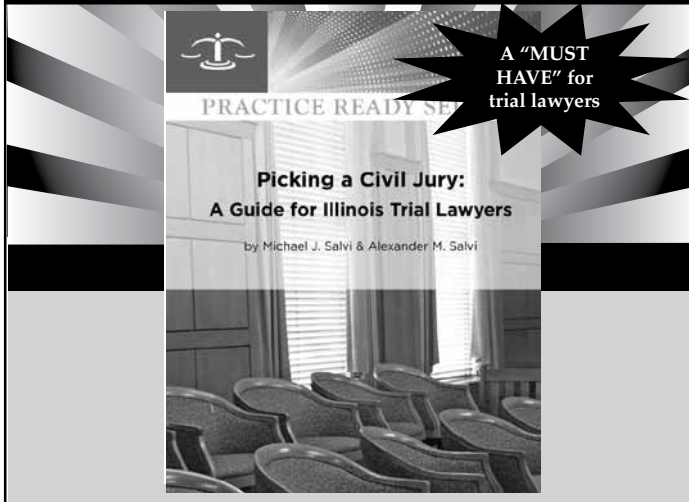
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