

Sunday, October 7, 2007

DWI: Fight back against administrative suspensions and civil fines.

Image from National Institute of Standards & Technology.)
When I was a public defender lawyer in the early 1990's, I heard that more indigent defendants were willing to pay a private lawyer to defend for drunk driving cases than for plenty of other types of cases, in order to preserve their right to drive. Of course, if loss of driving privileges is a motivator for indigent defendants to pay for privately-retained DWI counsel, I wonder if the real risk of jail leads them to hire retained counsel to try to avoid incarceration at all, seeing that people cannot drive during their incarceration period. In any event, here are a few practical tips for defending against administrative loss of driving privileges for drunk driving cases in Maryland and the District of Columbia, and for fighting Virginia's draconian civil fines for drunk driving and reckless driving cases: In Maryland and Washington, D.C., arresting cops routinely serve notices on the defendant advising of the administrative loss of driving privileges (for a specific time period in Maryland, and for an unstated time period in Washington, D.C.). It is critical to timely file a demand for a hearing to challenge a loss of driving privileges. In Maryland, just get the properly-prepared hearing demand (together with the required fee) postmarked by the deadline. In Washington, D.C., for local people, it probably is best to go personally to the DMV office to request a hearing date. It appears dicey to request a hearing by fax, although one lawyer a few years ago told me he routinely requested his hearings by fax. The fax number at the DMV for demanding such hearings is (202) 727-0646; the head of that hearing division is Ms. Carol Cade, at 202-727-6105. I recently accompanied a client to seek a D.C. DMV suspension hearing, even though he was beyond the short deadline listed on his notice of intention to suspend for seeking a hearing. Fortunately, one of the more experienced employees there informed me that the deadline for out-of-state defendants to seek a hearing had been extended from ten days to fifteen business days, which made our hearing request timely. Word to the wise: Demand an administrative suspension hearing even if you think you are late filing a request for such a hearing. An argument for having more time to seek such a hearing date in Washington is that some or all of the suspension notices continue listing the DMV's old address on K Street, where now the hearing office is at the MVA headquarters to the left of the District of Columbia Superior Court, in the basement level accessible from C Street, Northwest. Similarly, in Maryland, around two years ago an MVA employee told me that late written requests (where they are late to a certain point) for administrative suspension hearings were generally being accepted as timely filed, due in part to the MVA's backlog in scheduling administrative suspension hearings. In D.C., the DMV presents suspects with a form for seeking an administrative hearing to contest loss of driving privileges in D.C. One of the lines seeks the grounds for seeking a hearing. The best thing to say in that blank probably is: "I am presumed innocent under the law." In Maryland, the hearing application form asks why the suspect no longer possesses a license. I usually just answer that the police confiscated the license on the incident date. In Virginia, the ongoing big news about DWI and reckless driving cases involves the draconian civil fines imposed for such cases. Thus far, some lawyers have succeeded in persuading some judges to rule the statute unconstitutional for violating equal protection of the laws for only applying the law to Virginia licensees. Meanwhile, some members of Virginia's legislature are focused on updating this civil fine statute to apply to all drivers, not just Virginia-licensed or Virginia-resident drivers. Meanwhile, for basic background information on defending drunk driving cases, see here. Jon Katz. **ADDENDUM:** At first this blogpost may seem dry. However, people's lives and livelihoods are significantly harmed when their driving privileges are suspended. Consequently, this blogpost points to some important tips for defending against the adverse civil collateral consequences of drunk driving arrests and convictions.

Posted by Jon Katz in Drunk driving/DWI/DUI at 00:00