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date

Motor Vehicle Commission  
Driver Control Services  
CN 134  
Trenton, NJ 08666-0134

RE: MVC/ DMV v  
DL  
Opposition to Suspension AND  
REQUEST FOR ALJ HEARING

Dear Division of Motor Vehicles:

Please be advised that I represent the defendant/driver in the above entitled matter. Kindly enter my appearance for said defendant and a plea of "NOT GUILTY." We request a hearing on any proposed suspension or other action. **PLEASE SCHEDULE THE HEARING FOR EATONTOWN .**

Demand is made that the Motor Vehicle Commission provide us with discovery pursuant to the New Jersey Administrative Code, NJAC 1:1-1 et seq. and NJAC 1:13-10 and the Open Public Records Act/ Right to Know Law NJSA 47: 1A-1 et seq. Please forward to me all documents which you have in your possession or which are in the possession of any law enforcement agency involved in this case. We demand copies of every letter and notices send to my client.

In addition, each request is specifically sought under NJAC 1:13-10, the Open Public Records Act (OPRA), Brady v Maryland, 373 U.S. 83 (1963) and its progeny, and State v Polasky 216 N.J. Super. 549 (Law Div. 1986). Unless all requested discovery is received, the defense will make a motion to dismiss all charges and will object to any attempt by the DMV to introduce evidence at trial. Please advise us if there is any cost for discovery. Demand is made for a speedy hearing. Upon receipt of the requested discovery, we will provide you with disputed material facts, argument and legal issues. Please be advised we shall rely on the legal cases set forth in this letter.

We request someone from the DMV call us prior to the hearing. I would be glad to speak with you.

## **THE STATE HAS FAILED TO SHOW DUE PROCESS AND ADEQUATE**

### **NOTICE**

The first and foremost requirement prior to a suspension is that of adequate notice of the suspension. In Parsekian v. Cresse, 75 N.J. Super. 405 (App. Div. 1962), the court ruled that it was incumbent upon the Director of the State Division of Motor Vehicles to provide fair and adequate notice to the licensed driver of the proposed suspension of their license. The court recognized that the Director could not arbitrarily suspend the license of a driver without providing both notice and enunciating specific reasons as to why the license was being suspended. A later case, State v. Wenof, 102 N.J. Super. (Law Div. 1968), both reinforced and advanced the earlier Parsekian v Cresse decision. In Wenof, the court again recognized the importance of adequate notice of suspension.

In this case, we request a "No Action" decision. See **DMV v. Henry 01-MVH-0402 (OAL)**.

### **No Additional Suspension Where Substantial Hardship**

Under the **DMV v. Henry** case where respondent's motor vehicle record has been free of significant violations for a substantial period of time, where suspension of his privileges will work some hardship, and where there is evidence that he, at least of late, recognizes that driving privileges come with concomitant obligations, the ALJ orders that, in lieu of the Division's proposed maximum 180-day suspension of a respondent's driving privileges for operating a motor vehicle while his license was already suspended in violation of N.J.S.A. 39:3-40, he be issued a warning instead. [Initial decision dated March 16, 1999.] [Source NJ Law Journal June 28, 1999]

In State v. Hammond 116 N.J. Super. 244 (Cty. Ct. 1971) a notice of scheduled suspension and order of suspension for failure to appear for motor vehicle violations was mailed to defendant, but was returned undelivered to DMV by postal authorities. The defendant was charged with misstatement of fact in an application for registration of a motor vehicle (39:3-37) and application for a registration certificate during suspension (39:3-34). The defendant thereafter applied for and obtained a New Jersey registration certificate for his vehicle. In Hammond there was insufficient evidence of any notice to Hammond of a possible revocation of his registration certificate. Therefore, there is no adequate proof to indicate that due process was satisfied in this case. Hammond, 116 N.J. Super. at 248.

Where the client was suspended by the DMV, the state must introduce 1. Notice of

scheduled suspension. 2. Proof of mailing notice. 3. Order of suspension. 4. Proof of mailing order. 5. Certified motor vehicle abstract. A certified abstract alone is not sufficient to convict if the defendant was suspended only by the DMV.

If the order of suspension was mailed on December 1, 1991 and the DWS offense took place December 2, 1991, a good defense argument is that the Order did not reach his house until after the ticket for DWS.

## **DEFENSES**

A valid suspension of a driver's license cannot be effectuated in the absence of a written notice to the licensee at his last known address, reciting the fact that the suspension will take place and the date of commencement of the suspension. State v. Kindler 191 N.J. Super. 358,360 (Law Div 1983). Failure to appear for a summons is not a substitute for the written notice required by the statute, Id at 361. The court also noted that it's research does not reveal statutory authority for the Municipal Judge to suspend driving privileges. Id at 362

The DMV, prior to suspending a license, or taking specific action against a driver must mail a notice to the driver informing them of the proposed suspension or other action. The proposed action to be taken against any licensee by the DMV becomes effective on the date set forth on the notice except when otherwise specified, unless the licensee or his/her attorney shall make a request, in writing, for a hearing within 25 days from the date of notice. New Jersey Administrative Code (NJAC)13:19-1.2.

Under NJAC 13:19-1.2, the DMV should require a prehearing conference with a DMV employee, or transmit the matter to the Office of Administrative Law for a hearing pursuant to NJAC 1:1. If the parties cannot reach a resolution, the matter should be submitted to the office of Administrative Law for a hearing NJAC 13:19-1.8(d).

The motor vehicle statute, NJSA 39:3-40, is quasi-criminal and penal in nature and must be strictly construed against the State. State vs. Churchdale-Leasing Inc., 115 N.J. 83, 102, 557 A. 2d 277 (1989). The word conviction, as it is used in NJSA 39:3-40, refers only to a plea or a finding of guilty in a court of competent jurisdiction and not an order of suspension entered by the DMV as the result of an administrative proceeding. State vs. Conte, 245 NJ Super. 629 (Law Div. 1990).

In the case at bar, the State and DMV have failed to show my client was properly and fully informed his license was suspended. Thus, no suspended should be imposed on my client.

Very truly yours,

KENNETH A. VERCAMMEN

KAV/  
cc: Client