

# APPENDIX

## K



**REQUEST FOR ACTION**

**Administrative Appeal Hearings**

(SOS License Actions occurring on or after October 1, 1999 - new repeat offender legislation effective October 1, 1999, limits the basis of appeal to circuit court to a legal issue only in all but four types of appeals.)

**MICHIGAN DEPARTMENT OF STATE, DRIVER ASSESSMENT AND APPEAL DIVISION**  
CIRCUIT COURT UNIT, P.O. BOX 30196, LANSING, MI 48909-7696  
<http://www.sos.state.mi.us/dlad/>

TO: Assistant Prosecuting Attorney/Assistant Attorney General

**Petitioner's Name:**

**License Number:**

We have reviewed this case file and ask that on behalf of the Secretary of State you **ensure the enclosed certified master driving record is entered in the record** and take action in accordance with the box checked below:

1. Pursuant to MCL 257.323(3) the circuit court may affirm, modify or set aside only the following license actions:
- a) Application Denial for Medical Reasons [MCL 257.303(d)].
  - b) Driver Assessment Suspension or restriction (not a revocation) [MCL 257.310d, MCL 257.320].
  - c) First Implied Consent Suspension [MCL 257.625f].
  - d) Mandatory Additional Action for Driving While License Suspended (not a revocation), etc. [MCL 257.904(10) or (11)].
2. Pursuant to MCL 257.323(1), petitioner did not appeal to the court within 63 days or 182 days with good cause. The tape of the DAAD hearing is no longer available, per promulgated rule, (Danny Lee Roberts v Secretary of State, Court of Appeals File No. 205616 (1999)) unpublished.
3. Pursuant to MCL 257.323(4), the court must confine its consideration to a review of the record prepared pursuant to sections 322 or 625f or the driving record created pursuant to section 204a for a statutory legal issue and shall not grant restricted driving privileges (Rodriguez v SOS, 215 Mich App 481 (1996)). The court shall set aside the Secretary of State's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:
- a) In violation of the Constitution of the United States, of the state constitution of 1963, or of statute.
  - b) In excess of the statutory authority or jurisdiction of the secretary of state.
  - c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
  - d) Not supported by competent, material, and substantial evidence on the whole record.
  - e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
  - f) Affected by other substantial and material error of law.
- PLEASE ASK THE COURT TO DISMISS THIS CASE.**
4. Transcript Information regarding this case (if applicable):
- a)  No transcript has been requested.
  - b)  Transcript Enclosed.
  - c)  Transcript to follow.
  - d)  Did not give 50 days notice pursuant to MCL 257.323(2).
- PLEASE ASK THE COURT TO ADJOURN THIS MATTER.**
5. Other:
6. See attachments Rodriguez and Roth

A revocation/denial continues until it is approved by DAAD. The through date indicates when the driver is eligible for a hearing to rebut the habitual presumption.

For assistance call: DAAD at: (517) 636-6400.

DLAD-61 (June 2000)

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**REQUEST FOR ACTION**  
**Implied Consent MCL 257.625f**

April 12, 2005

MICHIGAN DEPARTMENT OF STATE, DRIVER ASSESSMENT AND APPEAL DIVISION  
CIRCUIT COURT UNIT, PO BOX 30196, LANSING, MI 48909-7696  
<http://www.sos.state.mi.us/dlad/>

**TO:** Assistant Prosecuting Attorney/Assistant Attorney General

Petitioner's Name: :

License Number:

On behalf of the Secretary of State, **please ensure the enclosed certified master driving record is entered in the record** and please take action in accordance with the action checked below:

**(Please also ensure that the final order includes all actions considered by the circuit court.)**

I. Driver is appealing a **FIRST** implied consent suspension. This appeal is based on:

EQUITIES                       MERITS                       NO PETITION

Please note new limitations on restrictions the court may order for appeal on a first implied consent suspension within seven years [MCLA 257.323c(1); MSA 9.2023c(1)]. The court may not order the length of suspension to be shortened nor grant full relief unless on the merits. [MCLA 257.323(4); MSA 9.2023]. **For a MERIT appeal, Petitioner MUST request a transcript.**

If a conviction for OUIL/UBAC or OWI overlaps the implied consent suspension, the circuit court has no jurisdiction to review the secretary of state's license action. [MCLA 257.323(4), MSA 9.2023]. Therefore, the circuit court may not grant any relief on the implied consent suspension appeal greater than the secretary of state's order for the OUIL/UBAC or OWI conviction.

II. Driver is appealing a **SECOND** implied consent suspension. This appeal may only be on the merits for full relief Kester v SOS, 152 Mich App 329; (1986) and [MCLA 257.323(4), MSA 9.2023c]. A transcript must be requested from the Driver License Appeal Division by the defense. If the petitioner prevails, the entire suspension will be set aside.

**No restrictions are allowed for a second implied consent suspension within seven years (MCLA 257.323c(2); MSA 9.2023c).**

**For a MERIT appeal, Petitioner MUST request a transcript.**

No transcript requested                       Transcript enclosed                       Transcript to follow.

(1) If the court finds the department made a procedural error, such as a notice problem or a 14-day statutory appeal deadline problem, the remedy should be a remand rather than a dismissal or grant relief.

(2) For purposes of further appeal, please enter the enclosed certified master driving record in the record of this action.

(3) **OTHER:**

**257.66 Suspension [MSA 9.1866]** "Suspension "means that the driver's license and privileges to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of the suspension..."

**257.52 Revocation [MSA 9.1852]** "Revocation" means that the operator's or chauffeur's license and privilege to operate a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the secretary of state as provided in '303.

If you have any questions please call DAAD (517) 636-6400.

**REQUEST FOR ACTION**  
**Administrative Appeal Hearings**  
*see attached for jurisdictional chart*

**MICHIGAN DEPARTMENT OF STATE, DRIVER ASSESSMENT AND APPEAL DIVISION**  
**CIRCUIT COURT UNIT, P.O. BOX 30196, LANSING, MI 48909-7696**

April 12, 2005

TO: Assistant Prosecuting Attorney  
Assistant Attorney General

**Petitioner:**

**Driver's License Number:**

On behalf of the Secretary of State, please ensure the enclosed certified master driving record is entered in the record and please take action in accordance with the action checked below:

(Please also ensure that the final order includes all actions considered by the circuit court.)

- (1) The circuit court has no jurisdiction to review a district/trial court licensing sanction issued as part of a sentence for OUIL/UBAC or OWI. [MCL 257.323(5), MCL 257.625(10), MCL 257.625b(8)] Paulson v SOS, 154 Mich App 626 (1986); or if the circuit court is reviewing a departmental administrative action and a district/trial court sanction is still current, the circuit court should not order less than the district/trial court. Paulson v SOS, 154 Mich App 626 (1986). A trial court may not amend its sentence to less than the minimum licensing sanction required by law. Dudley v SOS, Mich App (1994).
- (2) Habitual violators whose licenses are revoked under MCL 257.303(1)(e), (2)(c) and (d) may only appeal within the minimum period of revocation based upon a driving record. After the minimum, the appeal must be based upon a review of the Driver License Appeal Division hearing. A transcript is necessary. The standard of review 323(6) as follows:
- (6) In reviewing a determination resulting in a denial or revocation under '303(1)(d) or (e) or 303(2)(c), (d), or (e), the court shall confine its consideration to a review of the record prepared pursuant to '322 or the driving record created under '204a, and shall not grant relief pursuant to sub section (3). The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:
- (a) In violation of the Constitution of the United States, of the state constitution of 1963, or of a statute.
  - (b) In excess of the statutory authority or jurisdiction of the secretary of state.
  - (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
  - (d) Not supported by competent, material, and substantial evidence on the whole record.
  - (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
  - (f) Affected by other substantial and material error of law. MCL 257.323(6)

No Transcript Request

Transcript to Follow

Transcript Enclosed

- (3) The circuit court lacks jurisdiction to review the departmental remedial action of a denial for application of a commercial driver license (CDL). [MCL 257.323(8)], or a suspension. {MCL 257.319b} bases on hardship/equity. Only legal issues are appealable, such as whether a conviction is substantially corresponding to a MI offense.
- (4) This petitioner is a non-resident. The circuit court may not order SOS to issue a license [MCL 257.303(1)(l)]. The court may or may not be able to grant restricted or full Michigan privileges depending upon the reason for the under-lying action. The other state may not choose to issue a license if the Michigan license is restricted. Petitioner may appeal a denial in the other state.
- (5) The circuit court has no jurisdiction to review a FAC/FCJ suspension (MCL 257.312a) pursuant to section MCL 257.323(5).
- (6) While the MCL 257.904 additional sanction(s) are immediately eligible for circuit court review, the underlying section 303 revocation/denial is NOT. The petitioner must comply with (MCL 257.323(6)). After considering the section 904 additional sanction(s) please ask the court to remand the section 303 revocation/denial to DLAD for a hearing after the minimum period of revocation has been served.
- (7) Other: "THE JUDGE HAS JURISDICTION IN THIS MATTER. HOWEVER BEFORE A COURT DECISION IS MADE, PLEASE MAKE THE COURT AWARE OF THE PETITIONER'S DRIVING INFRACTION AND THE REASONS FOR THE DRIVER LICENSE ACTIONS. THANK YOU."

257.66 Suspension [MSA 9.1866]

§66. "Suspension" means that the driver's license and privileges to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of the suspension ..."

257.52 Revocation [MSA 9.1852]

§52(1) "Revocation" means that the operator's or chauffeur's license and privilege to operate a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the secretary of state as provided in §303.

A revocation/denial continues until it is approved by DAAD or Circuit Court. The through date indicates when the driver is eligible for a hearing to rebut the habitual presumption