

2019

## North Carolina Department of Motor Vehicles Administrative Procedures

Follow this and additional works at: <https://scholarship.law.campbell.edu/clr>

---

### Recommended Citation

*North Carolina Department of Motor Vehicles Administrative Procedures*, 41 CAMPBELL L. REV. 309 (2019).

This Symposium is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized editor of Scholarly Repository @ Campbell University School of Law.

## North Carolina Department of Motor Vehicles Administrative Procedures\*

GRIFFIN:           MODERATOR, KAREN GRIFFIN\*\*  
BOXBERGER:       PANELIST, KEVIN BOXBERGER\*\*\*  
JONES:             PANELIST, ABE JONES\*\*\*\*  
TURNER:           PANELIST, LEE TURNER\*\*\*\*\*  
MANN:             CHIEF JUDGE JULIAN MANN\*\*\*\*\*  
M/F:               MALE/FEMALE SPEAKER

**M:** Our next panel is on the North Carolina Department of Motor Vehicles, so we're going to get a little bit of admin law, a little bit of criminal law from some of our experts here. We have moderating, is going to be attorney Karen Griffin from Karen Griffin Law.

**M:** And on our panel, Mr. John Fanney could not make it with us today, so Mr. Abe Jones has graciously stepped in for him today, and we're really honored that he's going to be joining us for two panels today. And then we also have Mr. Lee Turner from Turner Law Office, and Mr. Kevin Boxberger from Law Offices of Anna Smith Felts. So, I will hand it over to Ms. Griffin now.

**Griffin:** Good morning, everyone, and thanks again, Mr. Jones, for filling in. We would have loved to have Mr. Fanney, but we're happy to have Mr. Jones. He is a district court judge candidate. He has been chosen or—is—with a select few people to possibly be appointed by the governor as a district court judge. So, just so everybody knows that. [LAUGHTER] We also have Mr. Turner and Mr. Boxberger.

Mr. Turner has been practicing for roughly 28 years. He was a police officer for roughly 10 years before becoming a lawyer. Mr. Boxberger has been practicing for around five years. He does criminal defense, but he's also worked for the Office of Hearing Operations at the Social Security Administration. So, he has also different aspects of administrative law to

---

\* Panelists made edits to this transcript.

\*\* Owner and Partner, Karen Griffin Law, PLLC.

\*\*\* Attorney, Law Offices of Anna Smith Felts, PLLC.

\*\*\*\* Owner and Partner, Law Office of Abraham P. Jones.

\*\*\*\*\* Owner and Partner, Turner Law Office, PLLC.

\*\*\*\*\* Director and Chief Administrative law Judge, North Carolina Office of Administrative Hearings.

bring to the table. And Mr. Jones has been practicing for roughly 42 years. [LAUGHTER]

**M:** Too long.

**Griffin:** So—and we had to do the math on that. And so, we’re proud to have all these lawyers here to talk to us today. First, I’d like to turn it over to Mr. Boxberger. Mr. Boxberger, could you explain to us about different DMV revocations and applicable statutes?

**Boxberger:** Sure. Good morning. I think that this is a good follow up to the first panel. I sat in for a little bit of that. It’s a little bit more exciting for me to talk about because it involves criminal law and not just administrative law. I enjoy criminal law. Some people may think that criminal law and administrative law does not intertwine, but it, on a daily basis, affects our practice. Not so much in the more serious Superior Court matters, you know, dealing with felonies, but more so in criminal district court, and what we call here in Wake County, “disposition or traffic court.”

Some of the typical cases that—every people—or every person is charged with, or most people get charged with, are offenses like speeding, or you forget to pay a fine and your license gets revoked, so you end up being charged with driving while your license is revoked, which is actually a class three misdemeanor and you could go to jail for that. If your license is revoked for an impaired revocation, such as a DWI, then it’s a class one misdemeanor and you can, and some judges will, impose a 120-day active sentence for driving while your license is revoked for a DWI.

Some other areas that I just want to briefly mention, and I get pretty—the way I practice is, I’m very statute-based. I like to know the statutes, I like to cite the statutes, because sometimes, you know, not being as seasoned as my other co-panelists, I go in front of a district court judge, they may think I’m incorrect, or they may think that I don’t know what I’m talking about. So when I say, “Hey, Judge, you know, 20-16,<sup>1</sup> the DMV has authority, have the discretion to revoke someone, for instance, if they have a reckless driving conviction and a speeding over 55 miles per hour but less than 80. And as a result of that, we need what’s called a “prayer for judgment continued,” because if we don’t get the prayer for judgment continued, they’re going to get revoked. And this is an instance, and this certainly isn’t a county in which we have public transportation to accommodate people who don’t have a license.” So, the authority is North Carolina General Statute 20-16.<sup>2</sup>

There are some instances in which the DMV has the discretion to revoke someone, and what I find interesting is, Subsection A says that the division—that being the DMV—has the authority to suspend the license of

---

1. N.C. GEN. STAT. § 20-16 (2017).

2. *Id.*

any operator with or without a preliminary hearing upon a showing of its records.<sup>3</sup> And then it goes through several subsections in which someone can be revoked.<sup>4</sup>

And what I find interesting about that particular language is, we have something called “due process,” right? I mean, before you take this administrative action, I should have the opportunity to have notice and the opportunity to be heard. So, you keep reading down the statute and it says, “However, if the division revokes without a preliminary hearing and the person whose license is being revoked requests the hearing”—so, that’s where they’re supplementing that due process language.<sup>5</sup> At first, you don’t have the hearing, but, oh, wait, if we send you notice, and you want a hearing you do have the right to have a hearing. And I believe we’ll later in the session talk about what those hearings consist of, who’s involved, what burden of proof, what we have to show in order to represent someone in these hearings.

So, those are discretionary. Some examples, again, I just mentioned if you are convicted in a 12-month period of speeding in excess of 55 but less than 80 and a reckless driving. Something that many of you may not know—and I think some criminal defense attorneys may get confused on—if you have any experience in the criminal justice system with speeding tickets in particular, you think, “Oh, nine over, that’s good.” Nine over is nine miles per hour over the speed limit. A lot of times you get charged with, say, 65 in a 45, that’s 20 over, and we go in and we get it reduced to nine over for insurance purposes, as well as revocation purposes.

However, you have to know some of these statutes because 20-16 (a10)<sup>6</sup> says that if you are convicted of speeding in excess of 75, and the speed limit is less than 70, then you can get revoked, and you will get revoked, because I’ve had that happen. I mean, I didn’t represent the person who pled to that, but on the back end, when they were revoked, I had to try to fix that with a motion for appropriate relief. So, what that’s saying is, if you’re going 76 and the speed limit is 60—because we know we don’t have speed limits of 66, 67, 68, 65 and 70—then you can get revoked. If you were going 81 in a 70, you’re going to get revoked.

Although it’s discretionary, the DMV will revoke your license. And again, that just starts that cascade. You get revoked, you need to get to your job, we don’t have good transportation, or you live out in Apex or you live out in Fuquay-Varina, you work in Raleigh—you’ve jeopardized that. You

---

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

take that risk, and you drive, and you get caught, and it just starts that vicious cycle. Which, if you're not aware of, recently the legislature amended that law, where if you were convicted of a driving while license revoked, it'd revoke you. So, if you're revoked for a year, and you got caught driving while your license is revoked and you were convicted, you would be revoked for an additional year, so now you're revoked for two years.

But the legislature said, "You know, we don't want to start that. We understand the difficulties that these people face," so that no longer results in an additional revocation. However, the class one misdemeanor that I discussed previously, it still results in an additional revocation.

The second statute I want to mention is 20-17.<sup>7</sup> The only subdivision you need to worry about in that particular statute is (a)(2), and that's just the impaired driving. I think it's pretty common sense to know that if you get convicted of driving under the influence of an impairing substance, your license will get revoked. We'll talk about the refusal. We'll also talk about some hearings involving DWIs, because honestly, if you're revoked for a simple traffic infraction, we don't have many hearings. But DWIs, that is a large practice. There are multiple charges. There are a lot of charges in Wake County. There are a lot of refusals which have consequences, civil consequences, and in some states, criminal consequence, which the Supreme Court of the United States has addressed. But 20-17<sup>8</sup> is something to keep in mind.

And a couple of things that I just want to further mention, that you may not think about, is the Department of Motor Vehicles regulates driver's license regulations, so it's driving on the roads, the streets, public highways. But I find it interesting—and I knew it, but I kind of dug in a little bit deeper in preparing for this—if you—for provisional, you're 16, 17 years old, you're in high school, you want to get your license. If you drop out and you don't have the driving eligibility certificate, your license will be taken. If you do not pay child support, your license will be taken.

And I find that interesting because those matters really don't have anything to do with me driving on the streets in North Carolina, right? I mean, I've failed to pay child support, what's that have to do with me driving? I mean, it doesn't mean I'm a danger to the public, which is really the rationale with some of these revocations, is if you're convicted of reckless driving, there's a danger there to the other motorists on the road. But child support? I found that interesting. Dropping out of high school, which you know in North Carolina at 16, you can do. You would lose your license in that regard, as well.

---

7. N.C. GEN. STAT. § 20-17.

8. *Id.*

Something else that I found interesting is, people who are in college I know sometimes have a tendency to drink underage. They may use a fake ID to purchase alcohol. Well, guess what? If the DMV gets wind of that, guess what's happening? You're losing your license for a year.

So, when you practice, those are some things that you may look on its face, "Hey, I'm representing. I've been hired—to represent someone who is charged with underaged purchasing alcohol. Purchasing alcohol under age or a child support matter, you also have to, I think, to provide effective representation, you have to inform them that, "Hey, look, if this goes south, your license could also be revoked." It may not happen, but I think it's our duty as attorneys to tell them that it's a possibility, and the consequences, and then what we would do in the event that does happen.

**Griffin:** Thank you, Kevin. So, you talked a little bit about the notice of hearing, and when you get a revocation, how DMV sends you a notice. Mr. Turner, could you speak to that notice? How is it sent? What does it say, more or less? And what's the procedure after they get that notice?

**Turner:** The notice is sent to your address on your license, and that causes a lot of problems for a lot of people because they never change their address, and DMV's only required to send it to the address they have. And it's very time sensitive. At most—they give you a time period of so many days that you can file on the, you know, request a hearing. And if you don't do it within the—and believe me, I've tried many times to get around that, but there—it is a zero-tolerance. If you don't file within the time period, then you're not getting a hearing with DMV.

The hearing process changed a few years ago, and I don't agree with this change because I think it affects a lot of people that would normally apply for a hearing. But the DMV tried to self-fund the hearing officers by charging fees for certain type of hearings, depending on—and I basically deal with five kinds of hearings at DMV that are administrative. The—Kevin mentioned the DWI refusals, the DWI restoration hearings where a person has had a series of DWIs in their past that got them what you would call "permanently revoked." And a permanent revocation is a kind of oxymoron. It's not permanent, you can get it back at some point in time, but you have to go through a hearing process in order to do it.

And so, the permanent revocations, the DWI refusals, speeding tickets where there's a high-speed involved. This happens to a lot of people when they get a ticket out of state, and they follow the officer's advice, and they just send in the money, and then DMV gets wind that you have a 80 in a 55 in Kansas, that they send you that letter, and tell you they're revoking your license, but you can ask for a hearing. And a lot of those are just—most of those, the DMV's pretty sympathetic if you go through the hearing process.

The other ones are people with—they get revoked, as Kevin said, for the—you know, you're too many points, a combination of—because, in order to know how you're going to deal with DMV, first of all, you've got to know how you're going to be—deal in the court system, the criminal courts. Because if you mix certain things, like a careless and reckless and high speed, it gets a revocation, or two high speeds within 12 months will get a revocation. So, you've got to be able to know upfront what you're dealing with, so hopefully you can avoid these issues with DMV later on.

But those are the main ones that we deal with at DMV. But the process changed, where now they charge fees. And like for a DWI restoration, you're looking at, like, \$850 by the time you're finished going through the process that you're going to pay DMV just to have a hearing. And the legislature, they kind of screwed up because they looked at how many hearings they had and thought, "Okay, well, if we have 5,000 hearings for DMV—DWI restoration, then we'll charge this amount," and they didn't realize that now the people are just not doing it anymore.

And I think it's led to an increase in the driving while licensed revoked charges because they don't have the money to do this. So, I think it's—now, they do have a process, you can fill out forms and apply to be indigent, but that is—they didn't make it very simple. It's more complex than an indigent form is if you want a court-appointed attorney in a criminal case. And so, I don't agree with that. I think it cuts out a section of society that can't afford those type of payments, and contributes to this, what we see now, this continuing—as he alluded to—this snowball effect of people just continuing to drive with a revoked license.

But as far as the process goes, with DMV, I'm not a fan of the DMV process because—and I've talked with judges and even with hearing officers, because there are some very good hearing officers, just like there are in any profession. But the majority of the hearing officers—well, all of them are trained by DMV. They're employees of DMV. And therefore, you really have, you know, the fox guarding the henhouse because they know exactly what they're doing. They know exactly what to say in these hearings. And, you know, you really have to come in with an extremely good case or they are going to rule against your client.

And then the problem is the—a few years ago, the rules changed, where now if you—you're allowed after a DMV hearing to appeal it to Superior Court. If you appeal it to Superior Court now, it is judged on the record from the DMV hearing. It's not a trial. It's not a *de novo* type situation where they're hearing new evidence. And so, DMV officers being trained the way they are, they know exactly what to put in that record so that the Superior Court judge will hear it and say, "That's all I need to hear," and he upholds the hearing.

So, I'm not a fan of the process, but it is what it is right now. And I don't know if there's any other alternative other than, you know, some type of a different board reviewing DMV. I just think it needs to be something independent and apart from DMV officers. But that's kind of how the process—I'll—if you want me to later on, I'll talk about the different—what's involved in the different types of hearings, but—[OVERLAPPING]

**Griffin:** Well, I think we've been talking about restoration hearing. And for many of you in the crowd, who probably don't do criminal defense, I wonder if that's a little confusing about what that is. So I'd like—if anyone wants to jump in and elaborate on that, they've been talking about DWIs and being revoked for that, and having a hearing after that revocation, after they're eligible. So, basically if y'all could elaborate on when those revocations occur, how many DWIs someone might have to get to get revoked like that? And then, what do you have to do for the hearing, and how that process works?

**Turner:** Well, I'll speak to the—start with the DWI refusal. If you are arrested for DWI, you're taken down to the Wake County Detention Center. You have the option of blowing in the machine or not blowing in the machine. And they'll read your rights before you go in there, and you understand very clearly that if you don't blow, then DMV is going to take your license for a year. And that is a—that's an administrative revocation that's completely separate and apart from you could win your DWI, be found not guilty, that revocation stays in place.

But it has to be quote-unquote “willful revocation”—I mean, “willful refusal.” And so, that's the—that's generally what you go to that type of hearing for, to contest the willfulness of it. And at those hearings, they do bring in the police officer. He has to establish probable cause for the arrest. And once the hearing officer hears that and then they hear testimony concerning how the test was given, they admit the affidavits that the officer filled out that night. And so they establish that—the record, so that if it is fielded to Superior Court, it—basically, everything's there for the judge to review.

But the issue with those is the officer has to be there. He has to testify as to what he saw that night. He has to explain to the hearing officer whether there—why he says it is a willful revocation. And then, at that point, the hearing officer will make a decision. And the good thing about these is—and we used to do a lot more of them before they started charging these fees—but, as defense attorneys, it kind of gave you a free shot at what the officer was going to say when he got into court, because these hearings occur before the court hearings would occur, normally. And so you get to hear him testify, you know how he testified, you know what he was going to say.



But, the—I believe it was *Brower, Brower v. Killens*,<sup>9</sup> back when Killens was the DMV Commissioner. That case came out which said that the state, so far as criminal court, and the hearing officers, so far as DMV, they were in privity with each other. So if a DMV officer made a ruling that there was no probable cause at a refusal hearing, then that bound over the district court as well, for the refusal part of it. So, that was important for defense attorneys because it helped us in some cases, and also it would hurt you in others. But that's basically what a refusal hearing is, is they determine that.

And if you refused after—if you lose that hearing after six months, if your case is disposed of, then you're allowed to get a limited privilege, but it can continue out for a full year if you haven't disposed of your case yet. And then you also have to worry about the subsequent revocation if you're convicted of the DWI.

**Jones:** One thing I want to add on to what Lee said is that when your potential client first comes to you with the sheaf of paper that the officer gave him on the road, look through all of it, and avail yourself of every possible rung of the ladder, because somewhere along the way someone may have made a mistake, you never know. But you try it out, and go right down here on Tarboro Road and have the hearing, or wherever, and somewhere there in there, you might catch a break. But if you don't look at that whole sheaf of paper, then you just skip out. So, don't overlook it. Look through it, and you might be able to take advantage of it.

**Boxberger:** And I want to add something, and this is kind of a frustration of mine—I think it's more of a social—well, I know it's a social justice policy issue. We have a lot, and we—our firm has probably the most contracts. A contract is where we contract with indigent defense services to provide representation for those who are charged with a criminal offense, facing jail time, and can't afford an attorney. Our firm has five contracts—that's a lot. That's almost like 100% of a one-person practice, and I deal with all of it.

But a frustrating part, that Lee mentioned, is the \$800 for a restoration hearing. He mentions that there is the form that you can fill out for a declaration that you're indigent, which is different than going for a district or Superior Court judge during an initial first appearance, and asking for a court-appointed attorney. Well, what's frustrating about that is, we have an indigent client that I'm representing on a driving while impaired case, their license gets revoked, they don't have the money. I mean, the judge has made a legal determination that this person cannot afford an attorney, in court.

---

<sup>9</sup> *Brower v. Killens*, 122 N.C. App. 685, 472 S.E.2d 33 (1996).

So, I spend an hour, two hours, I would—on a DWI, I would spend a little bit more than that. But on the date of conviction, he has to pay court costs. There's a statutory fine that he would have to—he or she would have to pay. They would have to get a substance abuse assessment and comply with any recommended treatment. We resolved a DWI in district court the other day [INDISCERNIBLE] and the court costs were \$2,500. Indigent. Judge? Can't afford an attorney, but you have to pay \$2,500.

**M:** Crazy.

**Boxberger:** And I find that frustrating because they're dealing with that in court. Say they go on probation, they have to pay that as a condition of probation. If they don't pay it, guess what? They face the possibility of going to jail. Luckily, in Wake County, we have fantastic judges and the judges understand the circumstance, and they'll waive. Although, the judges were starting to waive the fees, so what's the legislature do?

Oh, well, now you have to give everyone who's affected by the waiver of the fees notice. That is several different departments: the Wake County Sheriff's Department. So, then the judges were concerned, "Well, if I don't give them notice and comply with the statute, how am I going to waive the fees? If I can't waive the fees, what do I do? Do I extend them on probation? Do I send them to jail because they're poor?"

So, that ties into this, because this \$800 was just recently implemented. So what do we have? We have a person convicted of a DWI. They have to pay—that was an extreme case, but on average, I would say at least \$500 in court costs. Then they have to get their substance abuse assessment and treatment. Assessment's a hundred dollars. Depending on the outcome of the assessment, they have to comply with treatment, which could be up to a thousand dollars. And they have to do that to get their license back. If it's their first DWI, DMV, the statutes say you have to have recorded with the Department of DMV that you obtained a substance abuse assessment and you have complied with all recommended treatment. Done. Got that. I'm doing good, right? I'm going to get my license back. Oh, by the way, there's a restoration fee you have to pay, too, outside of this hearing. There's a restoration fee you have to pay, 60 bucks. It's a money-making system.

And again, I don't mean to kind of take away from the administrative law piece, but it is a frustration in the fees that come in, and that is seriously an issue that we have to address. Now, if you have the money, fine. I can pay it. It's not a problem for me. But it is for those. And how it can affect you indirectly is this person who can't afford to get their license back is driving on the street, and they get into an accident, and they hit you. But guess what they don't have because they don't have a license? They don't have insurance. So you're stuck with an injury or property damage, and your

insurance company has to front that, if you have the appropriate coverage. And you're like, "Man, that's not right. That's not right." Two other things, briefly, I'm sorry.

**Griffin:** No, go ahead.

**Boxberger:** The hearing officers, I didn't want to touch on that. So, at the beginning, Karen mentioned that I was—it's called an "attorney advisor" for the Social Security Disability, where basically it's a law clerk for an administrative law judge. They say, "Hey, this person, they're alleging that they can't work because they have a disability. These are their impairments, mental and physical. I don't want to pay them. I do want to pay them. Mr. Boxberger, you go write this opinion." That's what we do.

But what's different about the state level—and again, I'm not as versed in other administrative agencies or other administrative law. But the hearing officers are just ordinary people. They're not—they have no legal training. They get training. They don't have any legal training. We go through three years of law school. We study for our bar exam. We pass the bar exam. We get licensed. And then we're still—you know, in the first couple of years of practice, you're still, like, "Oh, well, I really don't know what I'm doing," right? You know, you're kind of figuring it out.

But you have a hearing officer who's making this determination and Lee mentioned the implied consent—it's 20-16.2. You'll hear several references to statutes. And what it says is you have applied consent to test. I'm going to give you this license. Now you're given to the DMV, the—your implied consent to be tested in the event that the officer has a reasonable ground—which is synonymous with probable cause—to believe that you are committing an impaired driving offense. So, that's important. And that's 20-16(d).

That's important because the person was charged with an impaired consent, they had—or the law enforcement officer—this is (d)(2)—had reasonable grounds to believe—again, synonymous with probable cause—that the person has committed an implied-consent offense or violated an alcohol concentration restriction on his or her license.

So, now you're getting this person with no legal training, trying to make a determination about probable cause. Do you think they're reading stat—well, not stats—do you think they're reading case law? No. Do you think they're following up with their approval or disapproval rates on appeal, which we rarely do, as Lee mentioned, because it's just like the prior panel indicated, it's whether the findings of fact are supported by the evidence, and whether the findings of—the evidence support the finding of facts, and the finding of facts support the conclusions of law—a high hurdle to overcome.

And I find it frustrating because that's why we always go for the willfulness prong. Was it willful? And I've tried. And luckily, I've won

several. But I would say more often than not, if you argue that reasonable grounds, it's—whew—over their head. It doesn't matter that they passed the field sobriety test. It doesn't matter that there was no odor of alcohol. It just matters that the officer came in and testified that there was probable cause, or he or she believed that this person was committing an implied-consent offense. Which could be based on a prior record, because they looked in CJLEADS, which is a software they use to check a person's background on the road.

It could be because there was an accident and there's some indication, some hunch that they have. But we know reasonable suspicion, probable cause is an objective test, right? But they don't provide any objective facts at the hearing, but then the hearing officer says that there are reasonable grounds to believe. So, I just find that a little bit frustrating.

When I was at the disability office, we had administrative law judges. They took a test—I know that recently that was challenged—but, they took a test, they were appointed. They are attorneys. I think in other agencies the judges are attorneys, but for some reason the DMV, which I think affects us on a daily basis—our ability to drive, our ability to work and provide for our families—is just a hearing officer. And I'm not demeaning. I'm not devaluing. I'm just saying I find that frustrating.

And the last thing that I wanted to mention, it is helpful that if you are faced with someone and they come to you for a refusal or to represent you on a DWI, that you actually request these hearings. Because, as Lee mentioned, the hearings kind of give you a free shot at the officer. And one thing that I've picked up on is, it's under oath. And we know the rules of evidence, right? If it's under oath, and then in the district court hearing they testify to something different, guess what I can do? I can bring that up. Right?

I mean, you can kind of, I guess, maybe try to get it in if it's not under oath, but it's definitely stronger if you say, "Hey, Judge, this was under oath. They knew that they were supposed to be telling the truth when they took that oath at the DMV hearing and now their testimony is different. And that's important on the credibility of this witness." So, those are just a couple of things that I wanted to touch on.

**Griffin:** I do want to say I think that requesting the hearing is probably the most crucial thing for someone to do, based on what Lee has told us, and what we know up here, that if you don't request it within the time limit, it is forever lost. And like Lee was saying, there's no way around it. The DMV does not care. So, if you're practicing criminal defense, some of you who are in law school and might go on to do that, the first question I ask when someone has told me they refused the breathalyzer test, I ask them if their address is current with the DMV, because the DMV does not forward your

mail. So, if you moved and your address has not been updated, that letter's going somewhere else.

So, I ask them that question because the statute says you can request a hearing 10 days from the date the letter was mailed. So, I ask them, "Is your address current? Are you going out of town?" I tell them to check their mail daily, because that is not a lot of time to request that hearing.

Lee, did you want to add something to what Kevin was saying just now, or did you want to move on to a different topic about these hearings?

**Turner:** Well, no, I don't want to—it doesn't need to be "beat up on DMV" day, but—there are some issues with these hearings. And one of the things I wanted to talk about, too, that you run into frequently if you get out and you're in criminal practice and you do these hearings, is the person that has, you know, in his teenage years, early 20s, picked up three or four DWIs, he's been without his license for 10 years, and now his life is straightened out and he's trying to get everything in line. You do a restoration hearing. And the restoration hearing is probably the most complex because other than the—there's also another hearing where a person has a medical issue, and the medial review board has called you in.

Say you had an accident and the officer noted that you had a seizure, as was what caused the accident. Or, you know, A-Fib or something, some medical condition that caused you not to be able to control your vehicle, then they'll call you in for a medical review. And you sit in front of a panel of doctors, and you have to bring in all of the prescriptions, medical records, and so forth, and they make a decision based a lot upon what the doctors are exam—they're examining your doctor's notes and they make a decision as to whether they feel you're safe to drive. If you're refused, then you can return the following year and try again, and repeatedly till you get your license back. That seems more fair than anything because you've got a panel of doctors that are reviewing it instead of just—a hearing officer facilitates the hearing, but basically everything, all the questions are asked by the doctors involved.

With the DWI restoration hearings, a person has to provide three witnesses and an alternate, and they have to be witnesses that see him on a daily or weekly basis. And they have to come in all under oath and testify to how they know him, how often they see him, how they interact with him. Basically, they have to testify that this person does not use or consume any alcohol, there's no alcohol in the home, that they haven't seen him driving a vehicle. I mean, DMV pretty much has a checklist they go by in those type hearings, and if there's any fudging in any way by any witness, then you're going to be refused.

And so, those are the more difficult ones because also you have to provide, you know, records of your—if you're attending AA regularly, or

what you did to control your substance abuse over the past few years. And so that's probably the more intense and the more—because there's—with DWIs, you're kind of already—if it's a refusal, you're kind of already prepared because you're preparing for the criminal case. But in these, you know, what I do is personally call each and every witness, talk with them, because when an applicant goes in, he fills out a package that he has to return to DMV. So you always get a copy of that as well, so I can go through and call all his witnesses, talk with them ahead of time to see—you know, because if he's going to call a witness, is a guy that saw him six months ago, then that's worthless because they're not even going to—his testimony has no credibility because he doesn't know his habits.

So usually it's coworkers, people that might pick him up and take him to work, family members, wives, you know, even though they—when you use those type people there's some—you know, there might be some bias there because they want to see him get his license back, too, so they can quit carting him around. But, you know, so—[LAUGHS] But those are the more involved hearings, is the medical review and the DWI restorations.

When we talk about these refusal hearings, you're talking about you're sitting in a little office, the hearing officer's behind a desk, you're at the two chairs in front of it. It's very informal. She goes on the record and records everything, but you're literally sitting in a 12-by-12 office having these hearings. And—but the—it is the way the law interacts.

Now, as far as DMV, I think they're exempt anyway from the normal administrative law rules that apply to all these other agencies, with rule-making and so forth. So DMV is just a unique situation. And—but it is something that if you're going to get out in private practice, especially criminal practice, you're going to need to understand it, because it's going to be a necessary part of defending certain people.

**Jones:** If I could add on—this is just an add-on, but I can't resist saying this. All of you are going to be lawyers one day. And the legislature is a place that you need to become familiar with because the laws can change. And there seems to be a pattern now of fewer and fewer lawyers going to legislature because you're going to be busy and so forth. But I would encourage you to run for office, study the law, take this fine sheet down to your legislator and show him or her what the regular person faces if they happen to be unfortunate enough to get a DWI, and how the fines are getting worse and worse and worse. And it'll make a difference because I don't think they hear often from people like you. So, I just wanted to add that on.

**Griffin:** Yeah, and like Lee was saying about these restoration hearings for people who have been revoked for multiple DWIs in a certain period of time and have to have a hearing to get their license back after years, they basically have to prove pretty much, I would say, beyond a reasonable doubt,

just definitively, that they are completely sober. So, that means somebody who got a bunch of DWIs when they were younger or maybe under the age of 21, or during college—the DMV pretty much says to that person, “You can’t get your license back until you’re just not using alcohol whatsoever,” which I think is a little bit of an overreach. I think we all understand we don’t want people dry—drinking or using substances and driving. But I don’t know if y’all would agree, it takes it a little far, especially when these people have to have an interlock device in their vehicle for a number of years, depending on how long their revocation, or how many DWIs they had, and in what period of time.

So, that is a protection from keeping them from drinking and driving, because if that interlock device alerts the company, then they have an issue there. So, I don’t know if any of you guys have any thoughts about that, or?

**Turner:** And that’s another type of hearing that you go to occasionally, is an interlock hearing, where a person’s been called back into the DMV because with—I don’t know if you—the interlock device is a—you know, the nickname’s a blow-and-go, whatever. You just mount it in your dash, you blow into it, the car cranks, and you have to abide by that for so many years under DMV’s rules. If it has a positive result, or the car won’t start for some reason, then when that’s downloaded quarterly, it sends a notice to DMV, and they send you a letter telling you to come in, they want to discuss why your car wouldn’t start on March the 7<sup>th</sup>, or whatever. And so you have to, you know, be able to account for it.

And what she said is true. I understand DMV’s rationale, though, if a person has got four or five DWIs, if he’s still got a few beers in the refrigerator, he probably still doesn’t need to be driving a car, you know, because he has, obviously, might not have learned a lesson. But it is a—you know, if they’re so far detached, I think that the amount of time involved should be considered, too.

But anybody that gets conditionally restored for a DWI restoration is going to have to have an interlock in their car, up to, like, seven years. And that is an extreme cost when you look at what an interlock costs each month to lease it, and to have it calibrated, and installed, that—you know. But that is—my last client, he got his license back, was very happy, but he’s got seven years of riding with an interlock in his truck now, and that’s the part that bothers me more. I would rather them say no alcohol whatsoever in your testimony than to look at forcing somebody to pay for something for seven years. And that’s something you pay for. There’s no indigent form you fill out to get out of that. You’re going to get the interlock in before they allow you drive again.

**Boxberger:** 20-19<sup>10</sup> is the statute regarding the restoration. And, as Lee mentioned about the interlock, which again, costs money, a lot of money, so if you're indigent, guess what? You may not get your license back because you can't get it until you have the interlock system installed, and had it installed for the requisite period of time. But, in addition to the interlock, it does state in Subsection (e)(3) that under the applicable sections, (e)(1), (2), and (4), it may place reasonable conditions or restrictions on the person for any period of time up to five years from the date of the restoration.<sup>11</sup>

And again, that's just limited to those particular subsections. So, it's just not an interlock. It could be an alcohol restrict—I mean, it could be anything. Because sometimes what people have is they have the interlock and they also have an alcohol restriction. Okay? So, that's something which is a crime in and of itself if you violate the alcohol restriction.

And regarding the medical, I've had a couple of those, and Lee or Abe may—or Karen, you may disagree. I'm not convinced that it's helpful to even be represented. You may be able to help someone along the way, but when you go in front of that panel of doctors, it's like someone trying to tell us the law, and you know, it's like I'm arguing. I don't have any expertise in seizures and neurological disorders, and I'm—all I'm basically saying is, "Hey, I've been seizure-free," but guess what? They already know that because they have, you know, the medical records in front of them.

So, I'm not necessarily a—as my practice—a fan, after having done a couple, of saying, "Yes, you know, you pay me a fee and I'll come represent you." Certainly, I can do it pro bono, but I'm just not convinced that we would—and again, they may have a different take on it, but I'm not convinced that I'm really going to help that much because I'm not going to be able to really cipher through seizures, which is the most common and, you know, I'm not a doctor. I wasn't trained as a doctor. So, a neurologist. So, that's kind of my take on the medical.

And the interlock, another practice tip I think is important—in criminal, I think in every area of law, is to be kind. Be kind to everyone involved, because I've had interlock hearings where it was questionable whether she was consuming alcohol, or maybe whether she consumed some other substance, that maybe hinted, because it's not just black and white, alcohol positive it alerts. There are other substances that can trigger these devices, right? Instruments are not—what's it? They're not perfect 100% of the time. That's what you're arguing, anyway. But if you have—

**Griffin:** There are a lot of substances that can set it off.

---

10. N.C. GEN. STAT. § 20-19.

11. §§ 20-19 (e)(1)-(4).



**Boxberger:** A lot. So, if you have a good relationship with the hearing officers—and I know I kind of had my little spiel about them not being attorneys, but you still treat them with respect. That will go a long way in these hearings, because it is completely in their discretion, unless you get to the Superior Court level, which you’ll probably lose.

**Griffin:** Anything y’all want to add to that?

**Turner:** I have to disagree with him a minute on the medical review because most of these people that go into DMV, just like there’s some people that could go into district court and represent themselves, but they don’t understand the process. I think it’s good any time—I will tell anybody, any time you’ve got a criminal charge, you need to have an attorney with you, or any time you go to DMV you need to have an attorney with you. Because somebody just needs to—you’re not there as a—in a medical review board to question the doctors, because I don’t understand their—what they do. But you’re there to make sure that he’s got every possible piece of paper he can have to present to them, so that when they do review it, that they’ve got the full package, and they see everything.

You—a lot of the times, people will bring that into my office, and I’ll say, “Well, we need to get this from—you know, there’s gaps here. You need to get a letter from this doctor that treated you for this and this and this.” If they wouldn’t have sat down and talked, then they wouldn’t have had those things, and those questions would have been asked, and possibly they’d have been refused to be relicensed. So, I think it—just like with, you know, criminal court, it may be a simple issue, but you know, Judge Overby over there, he didn’t like people that would steal, and so I would hate for a thief to have walked in front of him in his courtroom not knowing his propensity to put somebody in jail that was a thief.

And so, it—there’s a little thing, little nuances that go into practicing law that you have to know. And I just think they need representation at DMV, even though, like Kevin said, we’re not there to question the medical experts, but we’re there to make sure that everything they’ve got is what’s needed.

**Jones:** Let me add to what—

**Boxberger:** That’s a good point. I’ll refer all my cases to you.  
[LAUGHTER] [INDISCERNIBLE]

**Jones:** Let me add to what Lee is saying. I always tell my clients, “Don’t ever go to a legal proceeding without a lawyer, even if the lawyer’s sitting outside.” I go with my people, even when the state says, “Well, they can’t have a lawyer,” these internal hearings. They need you, and so, even if it’s just for a security blanket. But I always say, “You can always stop and come out and ask me a question. They can’t stop you from doing that, even

if they won't let me in the room." Be there, because they are novices at this. They don't do what we do, and they need you.

So, it's not just trying to make the money. It's not about that. It's about protecting people's rights. And if you don't do it at the ground level, a lot of times, you get up a little higher, the chance is already gone. So, I always stress to them, "Get yourself a lawyer, just like you wouldn't go to the hospital without a doc. A doc is the one who referred you to the hospital. You don't want to be in there by yourself, on your own."

**Griffin:** So, just to not beat up on Kevin—

**Boxberger:** No, it's fine.

[OVERLAPPING—INDISCERNIBLE]

**Griffin:** I totally agree with the wanting to have a lawyer there, but I'll say, I do feel the same way about Kevin, where I've gone to medical DMV hearings, and felt like his person just wasted money. I worked for a big firm that charged a lot of money. And there was absolutely nothing—

**M:** I don't charge \_\_\_\_\_. I don't charge them \_\_\_\_\_.

**Griffin:** —I had to offer this person. An eye doctor got in front of his face, and moved his finger from side to side, and said, "This person can't see. They cannot drive." And the client did know, though, that it was a huge uphill battle, and they mentioned that, but it still kind of feels bad in a way when you know they want you there, but there's nothing you can do. So, I think that's what Kevin was getting at, where he was saying he just really doesn't like taking people's money sometimes for stuff like that. But I think there's—

**Boxberger:** Sometimes I won't take your money if there's nothing I can help you with.

**Griffin:** Right. Did you have a question?

**M:** I get that.

**F:** Yes, I had a question.

**Griffin:** Does this thing work?

**Turner:** We can hear you.

**Griffin:** We can hear you.

**F:** Do what? It should be on. Okay. Anyways, I work in behavioral healthcare. I had some questions about this DWI stuff because I work with a lot of people that have, you know, addiction issues and whatnot. And I was just wondering, do you have any idea when they started regulating the DWI classes—because I'm not from North Carolina—and what was the motivation for that? Because I know, like, if you have a DWI, many of these people will have to go to some type of, you know, DWI classes, and it has to be a place that's regulated by the state, and it's very—I know some people

that do this, you know. They tell me all about it, and tell me all about the paperwork.

And I just wonder, like, when did this begin and why? What was the motivation to regulate it so intensely? Because you know, I'm a licensed behavioral healthcare provider. I have a couple of licenses. And you know, I provide different services and stuff, and thank God I don't have the state breathing down my neck about exactly what I do in that session, you know, point by point. But with DWI stuff, they do, and they're licensed providers, too. So, I was just wondering, do you guys happen to know, like, how those laws came to be?

**Griffin:** So, are—I'm sorry—are you—so, I think you're making a good point, before we get to your question. DMV is basically regulating what these medical providers do, as far as you understand, from your conversations with them?

**F:** Well, I mean, I don't know anything about the DMV either. \_\_\_\_\_ I'm not really up on the DMV in North Carolina because I'm not from here. I was in the military. My husband's active duty, so I'm not even licensed.

**Griffin:** Right.

**F:** It's like, you know, my driver's license isn't even through here, it's through a different state.

**Griffin:** Sure.

**F:** So I don't know. I just know that the licensed behavioral healthcare providers that are providing these DWI classes to fulfill these legal requirements for people with DWIs are heavily regulated for that service specifically, with all the paperwork, and it's very specific. And I was just wondering, how did it get to that point?

**Griffin:** I think Lee can probably take this one.

**Turner:** Yeah. Well, yeah, I'm the oldest one up here. [LAUGHTER] But I think Judge Overby—the Safe Roads Act that was in the late '80s is what established the assessment process for people. And the assessment process is not dictated by DMV, it's dictated by the Department of Health and Human Resources. Because when you finish that assessment, your form, which is called a "508 form," goes to Department of Health and Human Resources first, and then it's sent—they're sent notice to DMV. But that all started back in the late '80s, and it's been—

But it is—you are right, and it is dictated—that initial assessment is dictated by Human Resources because they tell them what questions you ask, and then once you ask the questions, they determine what factors are present, and then they determine whether it's level one or ADETS that they're going to require you to attend. So, all that is—you're exactly right. There's really not a lot of discretion.

**F:** Right.

**Turner:** And it really depends on how the interview—the interviewee answers the questions. I mean, it's terrible to say, but in all honesty, if they're smart, they go in there and answer the questions—

**F:** [INDISCERNIBLE]

**Turner:** —and tell people what they want to hear, because it's such a—just an elementary process. You just ask certain questions, you check certain blocks, and then at the end you look and say, “Okay, he needs to have 20 hours of treatment.”

**F:** Yeah, I—[OVERLAPPING]

**Turner:** So, it's very dictated by the state, how they do that.

**F:** And so in the late '80s. Do you have any idea what led up to that, like what motivated all these regulations?

**Turner:** They changed everything. The Safe Roads Act changed everything. We went from DUI to DW—it used to be driving under the influence, then it became driving while impaired, so that it covered drugs and any—even prescription drugs, or anything that might be causing you to be impaired.

**F:** Okay.

**Turner:** Whereas, the prior statute was driving under the influence of alcohol.

So, when the Safe Roads Act came out, it just—it changed everything, the whole process changed.

**F:** Right.

**Turner:** The sentencing changed. They—that's when the level one through five, you know, which has developed now into other things, as well. But that's when all that started, was with the Safe Roads Act.

**F:** Okay. I was just curious, because it seems like it's pretty problematic, just from what I've observed, because you have to have certain licenses, which are, I know as a fact, they're extremely to obtain; take years to get these licenses in behavioral health. And then, you know, jump through those hoops if you want to be a provider of that service, the DWI thing. And, it seems like there's a shortage of those services being provided because once you get the licenses, you have a lot of options, and a lot of providers don't feel like dealing the extra state-regulated, paperwork, bureaucracy headache.

And so—and then I, like I said, I have a friend that has done this for a number of years, and she was telling me that she has people in there that don't have an addiction, don't have a substance use disorder, yet are being mandated to do this really excessive amount of addiction-related treatment. And I'm just like—it just seems really odd. So.

**Turner:** Well, and most of them that don't have an addiction problem rated, go into that—they should go into that lowest category, which is ADETS, which is an acronym for Alcohol Driving Education Traffic School, I think.

**M:** Yeah.

**Turner:** And that's just a—that's a 15-hour class you go take over a period of time. And it's more just a—it's not an addiction class. It's a don't drink and drive class, and familiarity with these traffic laws, and such as that. And so—but that's—a person in that—everybody has to get treatment. You don't walk out of that assessment with no treatment. You've got to have some form of treatment in North Carolina.

**F:** Okay.

**Turner:** And that may not be fair, because you may have a person that, you know, just went out to a wedding, and had one class of champagne too much, and blows a .09 and they've never done another thing wrong in their life, and they're right there with the guy that's been drinking and driving for 10 years, and just never got caught, and he walks into the interview and answers all the questions the right way. So, you know, it is very structured, how they assess people.

**Griffin:** Does anyone else have a question? Right now we've got about 30 minutes left, so if anyone else has a question?

**M:** So, my question is two-fold. I'll start with my question on the fees that Mr. Boxberger mentioned earlier. In my own experience, I've noticed that the fees also have sort of a priority, that there seems to be a disconnect between the DMV and the criminal courts on what fees should be paid first and for what reasons.

For example, you'll have a client that comes in and says, "I went to the DMV. They said I'd pay this fee and I'd get my license back." And I say, "I'm sorry to inform you, but you're not even eligible to get your license back until 2020 for A, B and C." So—and it takes them by surprise, and a lot of times they have to save, when you're dealing with indigents that don't have a lot of money. Especially when you're dealing with something that has, like, a limited time period for which you need to—for example, if they have a mandatory four-year probation or suspension, at the two-year mark, if they're in full compliance, you can have a hearing to reduce that suspension to the two-year mark. But they have to be in full compliance, and that means they have to pay their civil revocation fees, their—you know, they have to have their substance abuse and treatment, they have to pay for that.

And if you're lucky, they get in full compliance, then you can get a hearing to waive or remit the court costs and things that are waivable, but they do have to pay those non-waivables first. So, is there any way for the

DMV and the criminal courts to connect better, so the DMV is actually more aware of what the particular person that's asking them about the license is dealing with? So they're not under the impression, "I pay this one fee. I get my license back." So, I'll start with that question, and then I'll follow-up with the second one.

**Boxberger:** Well, I think that's—in a way it is kind of clear, because if you have a—like, a failure to pay a fine, then what the DMV is saying is in that particular CR or infraction number, you didn't pay the court costs. So, if you were revoked for failing to pay a fine, in that instance, I think it's clear. You just look at the case number, you figure out what the court costs are in that particular case number, you go to the cashier's office in that county in which the conviction was, you pay it, then you go back and then you have to pay the restoration fee. Right? So, to the extent that answers your question, I think that's pretty clear.

As far as waiving the fees, that's a little more challenging because—I mean, a judge can't waive all the fees, you know? And it's a—if they're on a period of supervised probation, they'll pay it through probation, in addition to a \$40 supervision fee, right? Because we have to add more costs. So, I mean, it's difficult. The judge is constrained. They can't waive all the fees. The legislature's watching. Matter of fact, there are AOC forms that some judges have to fill out based on—I mean, it's a mess. I know I'm kind of digressing a little bit, but if it's just as simple as failing to pay a fine, pull the driving record, look at the CR number, the infraction number, and then figure out what it is, and go pay it. I don't know if that entirely answers your question, but—and Lee may have more—

**Griffin:** I think part of the question was, how do—is there a better way for them to communicate?

**Turner:** What I tell a client that calls me that has driver's license problems is, I say, "Go to DMV or go online, print your full record out, bring it to me." I say, "This is—you know, you can't call your mechanic and say, 'My car is ticking funny,' and him not hear the car or see the car." You've got to—you've got to sit down as a practitioner and look at the record. And because—just because there may be a permanent revocation on there, that doesn't mean that that permanent revocation can't be changed or go away. That may be caused by a seat belt ticket they paid off 10 years ago, that started that snowball effect, and if you go—especially with Wake County, in our DA's office here, they're very receptive to you going back in there and saying, "Look, this is what's causing this guy."

They won't—Lorin Freeman wants people to drive with a license, and right now, other than DWI—DWI is taboo, you don't—you know, you're not going to mess with that. But if it's these little things that have caused somebody to get revoked, they're very friendly to going in—the public

defender's office has a—one girl that does it all the time—to going in and doing the motion for appropriate relief. Just saying, "This person was not represented. They did not pay a seat belt ticket off in time. It caused revocation." And a lot of the time the DA may just go back 10 years and dismiss that seat belt, which causes a domino effect, and the permanent revocation goes away, and you tell the client, "Go to DMV and pay the restoration fee. You can get your license back."

**M:** Right.

**Turner:** Whereas otherwise, if they talk to a hearing officer, the hearing officer, just like a DA in court, is not going to give a criminal defendant advice. The DMV is not going to give you advice. They're going to say, "You've got four fines. You've got to go pay those off first."

**Jones:** One thing I want to add to it is that, get your business at the courthouse straight, you know—because, so what matters is not so much what's happened, but what's on paper. So go down there and get it straight, and then go on back to DMV and they—because they're going to be informed electronically about what you did down at the courthouse. But if there's something down at the courthouse they see on there, they freeze.

**M:** Right.

**Jones:** And so, you've got to go down there and get that straight, and then you can go deal with them.

**Turner:** But, to answer your—DMV and the courthouse will never communicate with each other, other than through a computer line.

**Griffin:** There used to be a number that lawyers and courthouse clerks could call, and they took that away. So lawyers and courthouse staff have to call the regular DMV number, which 90% of the time will hang up on you because you're on hold for too long. So, I had to have a courthouse clerk—just to kind of go into your communication issue—

I had to have a courthouse clerk fax something to DMV because that was the only way we could get in touch with anyone, saying, "This guy is eligible to get his license back," because they were saying, "The courthouse hasn't sent us whatever," but the courthouse had. So, I don't know if that'll ever get better. We all hope that it will. It's only gotten worse.

**Boxberger:** You know what I've done on multiple occasions, though, is—say you have a dismissal for that seat belt ticket, and that the courthouse has to fax the notice, the DMV will get it, right? Well, just go get a certified copy from the clerk at the Wake County Courthouse, and guess what I do? I take it right over there to the DMV, sign my name in the little book to speak with the hearing officer. I get called by the hearing officer, I give her the certified copy, she updates it, the person's got their license back. So, I think that we can be the conduit, as well, instead of just relying on the courts. And I've done that countless times.

**M:** Right. And I suppose the issue is when you're employed, not from the very beginning, but somewhere in the middle of this particular person dealing with it, they come to you with this understanding in their mind that, you know, "I've got a—I need to pay \$300 and I can get my license back," because that's something that the DMV has informed them. And more times than I can count, you have to say, "Well, actually, that's not the case at all. The DMV's got it wrong." You actually hope more like 5,000 for, you know, A, B and C. You have to do—you've got to have your blow-and-go. You have to do all these things.

So—and this takes these people who don't have the money for even the 300, and it just completely rocks their world. So, having a little bit more information along the road before they have—they come to an attorney, and they should get an attorney from the outset—that's ideal, but we can't make them do that, so.

The second question I had dealt with the interlock system, the blow-and-go, was when these people don't have a vehicle, they are just borrowing their buddy's vehicle, or they're getting rides—because they don't have their license for a number of years, why do they need a vehicle? And then it becomes a requirement that they have a vehicle, and that they install this interlock system, so that puts them in a bind a lot of times. And how do you deal with that?

**Turner:** How do I deal with it? I tell them to go buy a piece of junk with the very lowest insurance they can possibly put on it, so they've got a registered vehicle in their name. And during the one year or two years—however long you're going to have that interlock—because that is the only vehicle you can drive. Your license will have an interlock restriction on it. If an officer stops you, he'll look at it and he will see that, and he'll have to look in the car you're driving, and it better have an interlock. It has to be a car titled to you. If your—if you and your wife or—you know, have the cars are all in her name, you've got to switch one to yours. You—even if it's in the household, you cannot drive a car that's not registered to you.

So, I mean—I'm not being funny, but that's my advice. Buy the cheapest car you can, put the—what's required, liability insurance on it, and put the interlock in, and drive it until you're out. And then you're—once you're there, you know, you're free to go, if you can afford the insurance and everything else. You can get what you want. But that's the only advice, I mean, because there's no way to get around it. The interlock—they're all private companies, they're not—you know, they're monitored by the state, but they're not overseen by the state as far as payment and stuff, so you've got to pay.

And fortunately, there's more than one now. There used to be Monitech and it just had a monopoly on the whole state. Then there's Smart Start, and



that put a little competition in there, so the prices came down and they started things where they would install it for free. So, there is some competition now, when—compared to when Monitech was the only show in town.

**Griffin:** Lee, I have a follow up. What about if you have multiple cars registered in your name, and you're now required to have an interlock device?

**Turner:** If you've got the money you can put it in every one of them if they're registered in your name.

**Griffin:** There's not a requirement that you have to have an interlock in every vehicle registered to you?

**Turner:** Oh, yeah. No, I understand your question now. Yes, if you—I just ran into this a few weeks ago. If you have—if you and your wife have three cars and they're registered jointly between the two of you, you have to have an interlock in—they will check DMV to see what cars are owned by you, and you will have to have an interlock installed in every one of them. So, a lot of people—and that's new. That was—that's something that's just happened in the last few years—well probably, the last year. So now, you're having to have—you know, going to DMV and having title changes so that one car's left in your name, and the cars that you and your wife own jointly, you don't have them in there.

**M:** And there's no legal excuse for someone that just can't afford a vehicle at all? Is that something that the legislature has considered for indigents that just plain and simple can't afford a vehicle, but still need their license?

**Turner:** If you ask my opinion, I think the legislature is geared the other way. I think eventually you'll see everybody that gets a DWI will have an interlock in their car.

**Boxberger:** There's a bill—I think there's a bill right now.

**Turner:** Because there's some—there are, you know, there's all these studies that come out that show all the differences in the number—the percentages of wrecks caused by alcohol if every DWI conviction requires an interlock. So that I don't think the legislature's geared toward helping people get it. I think—but they are geared toward making more people get it.

**Griffin:** A question in back, sir?

**M:** Yes, sir. Judge Mann?

**Boxberger:** While that microphone's passing, I want to be clear, too. There are privileges, and you can get a privilege with an interlock. So, it's not just, "I'm revoked for a year. I can't drive for a year." Under certain circumstances, you can get a privilege, get the interlock installed, and then that will count for your time, as well.

**M:** Yes, sir?

**Griffin:** Yes, Judge Mann?

**Mann:** Thank you for a great panel. I've learned a great deal myself. I know that there are a lot of different causes of action over at Motor Vehicles, but one that I have watched from afar was a lawsuit brought against DMV by—under the Americans Disability Act, and resulted in a consent judgment, I believe, in the eastern district, where there were a lot of complaints about the administrative procedures for disabled drivers and the restoration of disability for drivers.

What do you know about that, and what is the present status of that consent order? I think, if I'm correct, there is no fee that is required to be paid under those causes of action, not sure.

**Griffin:** Judge Mann, I actually tried to get those lawyers. I was helping Mr. Shipman, who was in charge for the symposium, getting all the speakers here. I actually reached out to those lawyers on the docket for that lawsuit. I never heard back, probably because they were very busy helping people. So, I actually wanted to be able to answer that question. I don't know if any of you all know the answer? That's kind of a little bit more outside the realm of what we help people with.

But I think part of the issue—and I don't know if any of y'all know about this—it—they were kind of holding people hostage who had disabilities, in a sense, where every—once it was put on DMV's radar that you had some sort of disability that affected your driving, you, for life, were subject to hearings and sending in paperwork to the DMV proving that you could drive, and subject to these medical hearings.

So, Judge Mann was that—that was part of it, right?

**Mann:** Yes. I just have not heard anything since the publicity about it.

**Griffin:** And I checked the docket on that because I do federal work. So, I checked the docket. The last time I checked it, which was months ago, I didn't see an order there, so I don't know when it came down, so I haven't looked at it, so I can't answer the question. I don't know if anybody else can. But I think it's definitely something we all should know about, so I appreciate that question.

**Mann:** Well, I just didn't know. There might be young lawyers out there that might be interested in this type of representation. And clearly, it's a cause of action that likely would need someone to represent the disabled driver in the restoration.

**Griffin:** Thank you, Judge.

**M:** Thank you.

**Griffin:** Does anyone else have a question right now? I really want to ask Mr. Turner to tell us a story that was promised, semi-promised, about administrative—an administrative law hearing that involved Justice Morgan.

**Turner:** Yeah, it was funny this morning when I saw Justice Morgan here, because the first administrative hearing—and I've been around a while. I remember Judge Overby when he was in district court and I've appeared before him as an AOJ, and also Judge Morrison and Judge Mann, when I was with the Attorney General's Office.

But my first administrative hearing was—one of the things, and I still do this now, is I represent law enforcement officers in their—I don't know if you realize this, but every law enforcement officer, either the sheriff's deputy, company police officer, highway patrolman, Raleigh—they all have to have a certification given to them by the state. That is their ticket to apply to these law enforcement agencies. If they don't have it, they can't work as a police officer.

And so, along the way, various people, they get in—you know, they may have had something in their past that's causing them not to be certified, where—or they may do something while they're a police officer that's causing them to be revoked. And one of the little niches I have is I do represent police officers in those administrative hearings, as well as officers, I represent them when they're involved in deadly force situations where they shoot somebody. I go with them through their SBI investigation and, fortunately, you know, almost every—well, every time I've ever represented one, I've never had one that was not justified in his use of force.

But, the first one I got was a very technical violation. It was a young man that—he had been certified and he—had left one department and was thinking about getting back in law enforcement, but you have to do that within 12 months, and he had gone about 16 months without getting back in. And he had applied for, I think it was Spruce Pine Police—I don't know how I can remember all this many years later. But I think it was Spruce Pine Police Department. And they said, "You've been out too long. We're denying your certification." And so we had this—and I was one of three attorneys in the section, so all of the sudden, I get this on my desk and I'm thinking, "Okay, that's cool. I got a case. I'll"—and I look and it's in Mitchell County, which is Bakersville up in the mountains, in the middle of nowhere.

And so, I got my witness from training standards and we drove up on a—I don't remember what day of the week it was—we drove up and went to Mitchell County, and we're in the middle of nowhere. And we stayed at this hotel, which used to be an old school, and Mike Morgan was the AOJ. He had enough sense to stay in Morganton and drive up that morning to come to the hearing. But—so we got there, we got in, we checked in, and we were

going to watch a ballgame that night, a baseball game. And it's also a dry county, so we had to drive to Roan Mountain—I mean, the other side of Roan Mountain in the Tennessee line to get a six pack of beer to watch the game with while were in a motel room that night.

But the place was kind of a combination—and you mentioned *My Cousin Vinny*—It was kind of a combination of *My Cousin Vinny* and *The Shining*, [LAUGHTER] because anybody that walked down the hallway you could hear them. Everywhere they walked, you could hear them. Any door that opened creaked. And at 3:30 in the morning—a train track ran right below the hotel along the riverbank—it came through at 3:30 and woke me up, which is the first time I'd probably been asleep all night long.

And so, the next morning I'm—you know, being the new guy, I get there early and I'm asking the clerk, and I go into the courthouse—and it's this nice old courthouse, big white courthouse, real old—and there's one lady sitting in the clerk's office. And I'm not—being a police officer for 10 years in Raleigh, in Wake County, you know this is a busy place, and everything's going on, and I asked the lady, I said, "What is the—you know, what courtroom are we going to use? Where to you want us to go?" And she said, "Oh, yeah. I'm aware of y'all coming. You can use the Superior courtroom, the Superior Court courtroom." And I said, "Are you all not"—and there's nobody around. I mean, there was nobody milling around, there was nothing.

And so I said, "Y'all don't have court today?" She said, "Oh, no, the basket's not full." And I said, "What do you mean, the basket's not full?" And you know the wire baskets you see sitting in courtrooms and stuff? She says, "When the basket fills up the chief judge will tell me to make a calendar and we'll call everybody and let them know when to come to court." [LAUGHTER]

So, there's no court going on. So we get up there and it's 10 o'clock in the morning and it is dead quiet. You don't hear a car driving outside. You don't hear anybody talking. We're sitting there, and I have had no sleep, so I'm sitting there trying my best to stay awake. And Morgan was the AOJ, and of course, you know, I asked him—I asked my witness, "Did you get any sleep last night?" He goes, "Not a bit, man, I heard everybody walking, I heard every door." Well, Mike shows up and he's just fresh as he can be because he spent the night in Morganton in a nice hotel down there and drove up that morning.

And so, anyway, we have a little hearing and that was my very first involvement with the administrative law system, and you know, it was an experience. It was a beautiful little town, but don't stay in that hotel that's right above the river if you want to get any rest. [LAUGHTER] But.

**Griffin:** And you kept doing administrative law, and—  
[OVERLAPPING]

**Turner:** Yeah, I've done it all along. And it's not something—you know, with you guys coming up to be lawyers—it's not something you can base a practice on, really, I don't think. But it is something that if you want to carve out that little niche for yourself. I mean, some people do it with doctors, you know. Alan Schneider's an attorney here in Wake County. He does it with lawyers and doctors all the time. He does basically professional responsibility practice. But he is very grounded in that and has a great practice. It's a hard one to get into, but at the same time, if you're—you know, if you have some background in something before you came to law school that you might—those people might need certifications where you would understand what they needed. You know, real estate, things like that. Then, you know, it may be something you want to look into, to supplement your office, you know.

But, yeah, when—I reminded Justice Morgan this morning of that, and he still remembered the place, too. [LAUGHTER] It was funny. You could look—you'd sit at the table—we were here and there was—and, of course, he was in front, and if you'd look down the hallway you could see everybody that was in jail, because the jail was directly connected to the courtroom, and the exercise yard was about 20 feet square with a basketball goal roped up a—to the 20-foot high fence that was running around it. So, it was a unique situation. But that was my first one. I'll never forget that one. But, I guess—

**Griffin:** Thanks for sharing that, Lee.

**Turner:** I guess if anybody's got any questions or anything?

**M:** That's about all.

**Griffin:** Yeah. Is there anything that, Mr. Boxberger, you wanted to add about just things anyone should know, that we didn't go over, that you just wanted to share about these administrative DMV hearings and your criminal practice?

**Boxberger:** I don't think so. I think just if you do practice in criminal traffic, just know the statutes, know what needs to be done, what revokes a person, the limited driving privileges. Don't just prepare for the case itself, but prepare for after the case. If you know they're going to need a substance abuse assessment and treatment, advise them to get that done so after their year is over, they're not surprised when they go to the DMV and find out that there's more money they have to pay. Because they may not be in a position where they would have been within the course of the year, they could have paid the money.

So, I have to say, you know, know the statutes and just be prepared for both before and after, because a lot of times in the criminal practice we represent someone, they go to conviction, and we don't see them again.

**Griffin:** Would you say it would be ineffective not to know the DMV process, well, that coincides with a criminal case, ineffective assistance?

**Boxberger:** I don't use that term lightly.

**Griffin:** Right.

**Boxberger:** You know, and you know the standard is high and the probability has to—you know, of—I don't know if I'd say in—close—I don't want to say ineffective, again, because I don't like to throw that around. I mean, it's kind of like if an attorney or someone alleges ineffective assistance, you take that personal, right? Because we take pride in our jobs and how good we are. So, I would just say, if you want to be a good lawyer, then that's what you should do.

**Griffin:** Thanks, Kevin. Abe, is there anything else you'd like to add? Thanks again for joining us.

**Jones:** No, I'm good. Thank you. [LAUGHTER]

**Griffin:** Well, thank you all. I hope that you guys learned some stuff about DMV today. I know we all did when we started practicing. So, thanks again. If no one else has any questions, I guess we'll wrap up.

[END RECORDING]