

6-4-2008

Bennett v State Dept. of Transp. Clerk's Record v. 1 Dckt. 35150

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LAW CLERK

Vol. 1 of 2

In the
SUPREME COURT
of the
STATE OF IDAHO

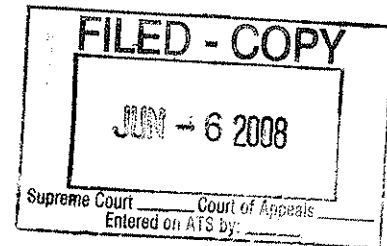
STACIE DAWN BENNETT,

Petitioner-Respondent,

v.

STATE OF IDAHO, DEPARTMENT OF
TRANSPORTATION,

Respondent-Appellant.



CLERK'S RECORD ON APPEAL

Appealed from the District Court of the
Second Judicial District of the State of Idaho,
in and for the County of Nez Perce

The Honorable JEFF M. BRUDIE

Supreme Court No. 35150

ATTORNEY FOR Petitioner-Respondent
Paul Thomas Clark

ATTORNEY FOR Respondent-Appellant
Edwin L. Litteneker

35150

IN THE SUPREME COURT OF THE STATE OF IDAHO

STACIE DAWN BENNETT,)	
)	
Petitioner-Respondent,)	SUPREME COURT NO. 35150
)	
v.)	
)	
STATE OF IDAHO, DEPARTMENT)	
OF TRANSPORTATION,)	
)	
Respondent-Appellant.)	

CLERK'S RECORD

Appeal from the District Court of the Second Judicial District
of the State of Idaho, in and for the County of Nez Perce

BEFORE THE HONORABLE JEFF M. BRUDIE, DISTRICT JUDGE

Counsel for Appellant
Edwin L. Litteneker

Counsel for Respondent
Paul Thomas Clark

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STACIE DAWN BENNETT,)	
)	
Petitioner-Respondent,)	SUPREME COURT NO. 35150
)	
v.)	
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OF TRANSPORTATION,)	
)	
Respondent-Appellant.)	

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STACIE DAWN BENNETT,)	
)	
Petitioner-Respondent,)	SUPREME COURT NO. 35150
)	
v.)	
)	INDEX
STATE OF IDAHO, DEPARTMENT)	
OF TRANSPORTATION,)	
)	
Respondent-Appellant.)	

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PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Respondent
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Facsimile: (208) 746-9160

FILED

2007 NOV 8 PM 4 31

PATTY O. WEEKS
CLERK OF THE DIST. COURT
P. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CV07 02390

In the Matter of the Driving Privileges)
of)
STACIE DAWN BENNETT,)
DL No: [REDACTED])
Respondent.)

Case No.)
ITD File #657000041144

EX PARTE MOTION FOR STAY
PENDING JUDICIAL REVIEW

COMES NOW, the Respondent, STACIE DAWN BENNETT, by and through her undersigned counsel of record, and pursuant to I.C. §67-5274 hereby respectfully moves this court for entry of an order staying the execution and/or enforcement of the Findings of Fact and Conclusions of Law and Order previously entered by the Idaho Transportation Department on or about November 3, 2007, which sustains the suspension of the respondent's driver's license or privileges allegedly for failure of evidentiary testing for alcohol concentration pursuant to I.C. §18-8002A. Relief is requested upon grounds which include, but are not limited to, the following:

1. Appellant has filed a timely Petition for Judicial Review from the Findings of Fact and Conclusions of Law and Order;
2. A stay of the Findings of Fact and Conclusions of Law and Order and suspension of respondent's driver's license or privileges is necessary to preserve Appellant's driving privileges


EX PARTE MOTION FOR STAY
PENDING JUDICIAL REVIEW -1-

during the pendency of a judicial review. Without such relief, respondent will be necessarily denied, as a practical matter, the relief which she is seeking by way of his petition for judicial review ;and

3. A stay is necessary in the interests of justice.

DATED this 8th day of November, 2007.


CLARK and FEENEY

By 
Paul Thomas Clark, a member of the firm.
Attorneys for Respondent.

I hereby certify on the 8th day of November, 2007, a true copy of the foregoing instrument was: Mailed
 Faxed
 Hand delivered
 Overnight mail to:

Michael B. Howell
Idaho Transportation Department
Driver Services Section
P O Box 7129
Boise ID 83707

CLARK and FEENEY

By 
Attorneys for Respondent.

FILED

2007 NOV 8 PM 4 31

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty O. Weeks
DEPUTY

1
2
3 PAUL THOMAS CLARK
4 CLARK and FEENEY
5 Attorneys for Respondent
6 The Train Station, Suite 201
7 13th and Main Streets
8 P. O. Drawer 285
9 Lewiston, Idaho 83501
10 Telephone: (208) 743-9516
11 Facsimile: (208) 746-9160

12
13 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
14 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

15 In the Matter of the Driving Privileges)
16 of)
17)
18 STACIE DAWN BENNETT,)
19 DL No: [REDACTED])
20)
21 Respondent.)

CV07 02390
Case No. CV07 02390
ITD File #657000041144

PETITION FOR JUDICIAL REVIEW


22 COMES NOW Stacie Dawn Bennett, the Respondent in the above-entitled matter by and
23 through her attorney of record, Paul Thomas Clark of the law firm Clark and Feeney, and pursuant
24 to I.C. §§18-8002A(8) & 67-5270 et seq. hereby respectfully petitions this Court for Judicial Review
25 of the Findings of Fact and Conclusions of Law and Order entered by the Idaho Department of
26 Transportation on November 3, 2007, in file No. 657000041144. A copy of said final order is
attached hereto as Exhibit "A". Said proceeding and final order were entered following a hearing
held pursuant to I.C. §18-8002A.

PETITION FOR JUDICIAL REVIEW -1-

DATED this 8th day of November, 2007.

CLARK and FEENEY

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By 
Paul Thomas Clark, a member of the firm.
Attorneys for Respondent.

I hereby certify on the 8th day
of November, a true copy
of the foregoing instrument
was:

- Mailed
- Faxed
- Hand delivered to:

MICHAEL B. HOWELL
IDAHO TRANSPORTATION DEPARTMENT
DRIVER SERVICES SECTION
P O BOX 7129
BOISE ID 83707

CLARK and FEENEY

By 
Attorneys for Respondent.

EXHIBIT A

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PETITION FOR JUDICIAL REVIEW -3-

IN THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

In the Matter of the) File No. 657000041144
Driving Privileges of)
)
STACIE DAWN BENNETT,) FINDINGS OF FACT AND
License No. [REDACTED]) CONCLUSIONS OF LAW AND ORDER
)
_____)

This matter came on for hearing on November 2, 2007, by telephone conference.

The licensee appeared, represented by Paul Thomas Clark, attorney at law.

The Hearing Examiner received the following documents and information as part of the records of the proceeding: The officer's sworn statement submitted in compliance with I.C. Sec. 18-8002A(4)(a), Notice of suspension and temporary permit, Hearing request, Notice of hearing, Results of evidentiary test, Affidavit of Service of Subpoena duces tecum, Affidavit of David Beeman.

The Hearing Examiner, having heard the testimony, having considered the exhibits admitted as evidence, and having taken official notice of the records of the Department, and having considered the matter herein, and being advised in the premises and the law, makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

The driver moved that the suspension be vacated because he had not received the documents requested in the subpoena to the Latah County Sheriff's Office. However, the subpoena gave the Latah county Sheriff until November 5, 2007, to deliver the documents. The driver did not request a continuance to present the evidence.

II.

The peace officer, W.L. Krasselt, had legal cause to stop the driver's vehicle based upon his observation of the driver's vehicle backing out of the parking lot and driving back into the parking lot, the statements of a witness that the vehicle had struck another

vehicle in the parking lot, and discovery of fresh damage and paint exchanges on both vehicles consistent with the incident report. In addition to the officer's personal observations, the driver admitted to the officer that she was the driver.

III.

It is irrelevant that the driver had made prior arrangements for a ride home in anticipation of her being impaired since she chose to drive anyway, even if it was only to relocate the vehicle in the parking lot which is a private area open to the public.

IV.

The peace officer had legal cause to believe that the driver had violated I.C. §18-8004 because of an odor of an alcoholic beverage, admission by the driver of drinking, glassy/bloodshot eyes, slurred speech, impaired memory, and the failure of field sobriety tests, and the driver was placed under arrest.

V.

The driver was advised of the possible denial/suspension of his/her driving privilege.

VI.

After proper warning, the driver did submit to a chemical test and the chemical test was administered by an officer certified to do so.

VII.

The officer certified that he administered the breath test in compliance with the standards and methods adopted by the Department of Law Enforcement for the administration of breath tests which standards include specific directions on a 15 minute observation period prior to the test administration. While the driver testified that the officer was in and out of the room during the waiting period, no specific testimony was produced to show that the 15 minute period was not present. The driver had the burden to do so if she were to successfully challenge the officers statement that he had properly observed the waiting period.

VII.

The driver testified that she was coughing repeatedly prior

to taking the breath test. However, she did not say that she had vomited or regurgitated any substance from her stomach that could have affected the test. According to the Standard Operating Procedures for Breath Alcohol Testing, if "...the subject vomits or is otherwise suspected of regurgitating material from the stomach, the 15 minute waiting period must begin again." The testimony of the driver that she "coughed" is insufficient to invalidate the test or to rebut the statement of the officer that the test was properly conducted.

VIII.

Proper procedures and standards were followed by the peace officer to insure the operation of the test machine to be reliable, with the results of .90 and .95.

IX.

Idaho Code, Section 18-8002A provides for the penalties associated with the failure of a blood alcohol test but is not intended to be all inclusive of all consequences that may result from an arrest for driving under the influence or for the failure of a blood alcohol test. The Idaho Code and the regulations of the Department of Transportation contain other civil consequences for such action.

X.

Idaho Code, Section 49-335(2), provides that a person is disqualified from operating a commercial motor vehicle for a period of one year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

XI.

The disqualification of the driver's commercial driving privileges is a consequence unique to commercial drivers that resulted from the failure of the breath test and is in addition to any consequences contained in Idaho Code, Section 18-8002A.

XII.

A disqualification of commercial driving privileges pursuant
PETITION FOR JUDICIAL REVIEW

to Idaho Code, Section 49-335 is separate and distinct from any suspension entered by a court or administrative agency. Disqualification of commercial driving privileges is always related to and triggered by other actions, convictions or groups of convictions.

XIII.

The Administrative License Suspension proceedings as set forth in Idaho Code, Section 49-8002A are separate and distinct from and not relevant to the disqualification of commercial driving privileges.

XIV.

The requirements of notice and the procedure set forth in Idaho Code, Section 18-8002A are not affected by or modified by Idaho Code, Section 49-335(2), and there is no additional notice requirements to the statutory notices set forth in Section 18-8002A as a result of the additional consequences for commercial drivers in Section 49-335(2).

XV.

All procedures and requirements were followed by the reporting officer pursuant to I.C. Sec. 18-8002A or I.C. §18-8004.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS CONCLUDED THAT ALL OF THE STATUTORY PROVISIONS REQUIRED TO DENY/SUSPEND THE DRIVING PRIVILEGE WERE PROVIDED IN THIS CASE, AND THE FOLLOWING DECISION IS RENDERED:

ORDER

The suspension set out in the Notice of Suspension served pursuant to I.C. §18-8002A is SUSTAINED.

DATED this 3rd day of November, 2007.



MICHAEL B. HOWELL
Hearing Examiner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5 day of November, 2007, I mailed a true and accurate copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER by depositing the same in the United States mail, postage prepaid, addressed to:

STACIE DAWN BENNETT
c/o Paul Thomas Clark
Attorney at Law
PO Drawer 285
Lewiston, ID 83501



FINAL ORDER

(Hearings pursuant to section 18-8002A, I.C.)

This is a final order of the Department.

A motion for reconsideration may be filed with the Idaho Transportation Department's Administrative License Suspension Hearing Unit, PO Box 7129, Boise, ID 83707-1129 within fourteen (14) days of the service date of this order. If the hearing officer fails to act upon this motion within twenty-one (21) days of its receipt, the motion will be deemed denied. Or, pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition for judicial review in the district court of the county in which:

1. A hearing was held;
2. The final agency actions was taken; or
3. The party seeking review of the order resides.

An appeal must be filed within twenty-eight (28) days of the service date of this final order. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

FILED

2007 NOV 13 AM 9 55

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CLERK OF THE DISTRICT COURT

Case No. CV07 02390

ITD File #6570000411111111

[Handwritten signature]

1
2
3 In the Matter of the Driving Privileges)
4 of)
5 STACIE DAWN BENNETT,)
6 DL No. [REDACTED])
7 Respondent.)

ORDER FOR STAY PENDING JUDICIAL REVIEW

8 The ex parte motion of the respondent for stay pending judicial review having been presented
9 before this court, and good cause appearing therefore,

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the execution and/or enforcement
11 of the Findings of Fact and Conclusions of Law and Order previously entered in this matter on
12 November 3, 2007, and the order of the Idaho Transportation Department suspending respondent's
13 driver's license or privileges be, and the same is hereby stayed during the pendency of judicial
14 review of said order. Respondent's driving privileges are therefore ordered reinstated during the
15 pendency of judicial review.
16

17 DATED this 13th day of November, 2007.

18
19 *[Handwritten signature]*
20 _____
District Court Judge

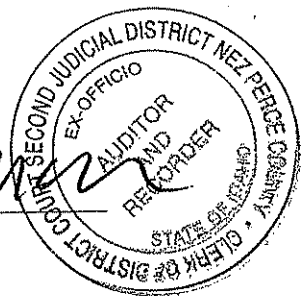
I hereby certify on the ^{Nov 2007} 13th day
of ~~May~~, 2000, a true copy
of the foregoing instrument

was: Mailed
 Faxed
 Hand delivered
 Overnight mail to:

Michael B. Howell - *mailed*
Idaho Transportation Department
Driver Services Section
P O Box 7129
Boise ID 83707

Paul Thomas Clark
Clark and Feeney
PO Box 285
1229 Main Street, Ste 201
Lewiston, ID 83501

CLERK OF DISTRICT COURT
By *[Signature]*
Clerk/Deputy



SHARON KIRBY
ADMINISTRATIVE ASSISTANT, DRIVER SERVICES SECTION
IDAHO TRANSPORTATION DEPARTMENT
3311 WEST STATE STREET
POST OFFICE BOX 7129
BOISE ID 83707-1129
TELEPHONE: (208) 334-8755
FACSIMILE: (208) 332-2002

FILED

2007 NOV 19 AM 9 44

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty O. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STACIE DAWN BENNETT,

PETITIONER,

v.

STATE OF IDAHO,
DEPARTMENT OF TRANSPORTATION,

RESPONDENT,

CASE No.

CV 67-02390

ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

PURSUANT TO SECTIONS 67-5249 AND 67-5275, IDAHO CODE, I AM ENCLOSING THE COMPLETE ADMINISTRATIVE RECORD OF THE ABOVE-ENTITLED MATTER. I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE ENCLOSED DOCUMENTS CONSTITUTE THE TRUE, CORRECT, AND COMPLETE RECORD IN THE CASE. THE RECORD PROVIDED TO THE COURT IS A CERTIFIED COPY OF THE AGENCY'S OFFICIAL FILE CONCERNING THIS MATTER. THE DEPARTMENT HAS RETAINED THE ORIGINAL FILE, AS PROVIDED FOR BY I.R.C.P. 83(N).

THE FOLLOWING IS A LISTING OF THE DOCUMENTS CONSTITUTING THE ADMINISTRATIVE RECORD IN THIS MATTER:

ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

<u>DOCUMENT:</u>	<u>PAGE:</u>
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EVIDENTIARY TEST RESULTS — <i>STATE'S EXHIBIT 2</i>	2
SWORN STATEMENT — <i>STATE'S EXHIBIT 3</i>	3-5
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THE UNDERSIGNED HEREBY CERTIFIES THAT ANY PHOTOCOPIES IN THE ATTACHED ADMINISTRATIVE RECORD ARE TRUE AND CORRECT TO THE BEST OF THE UNDERSIGNED'S KNOWLEDGE.

DATED THIS 16TH DAY OF NOVEMBER 2007.

BY: Sharon Kirby
SHARON KIRBY
ADMINISTRATIVE ASSISTANT
IDAHO TRANSPORTATION DEPARTMENT
DRIVER SERVICES SECTION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THE 16TH DAY OF NOVEMBER 2007, I CAUSED TO BE SERVED A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT BY THE METHOD INDICATED BELOW AND ADDRESSED TO THE FOLLOWING:

- 1. PAUL THOMAS CLARK
 ATTORNEY AT LAW
 PO DRAWER 285
 LEWISTON, ID 83501

XX U.S. MAIL
____ HAND DELIVERY
____ OVERNIGHT MAIL
____ FACSIMILE
 (208) 743-9516

- 2. SECOND JUDICIAL DISTRICT/NEZ PERCE
 PO BOX 896
 LEWISTON, ID 83501

XX U.S. MAIL
____ HAND DELIVERY
____ OVERNIGHT MAIL
____ FACSIMILE
 (208) 750-2057

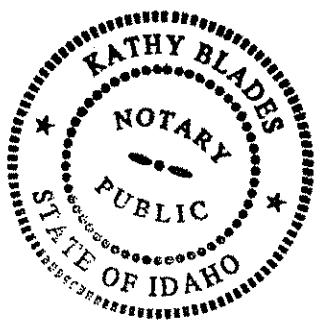
- 3. EDWIN LITTENEKER
 ATTORNEY AT LAW
 PO BOX 321
 LEWISTON, ID 83501

XX U.S. MAIL
____ HAND DELIVERY
____ OVERNIGHT MAIL
____ FACSIMILE
 (208) 746-0344

Sharon Kirby
SHARON KIRBY

STATE OF IDAHO)
)SS
COUNTY OF ADA)

SUBSCRIBED AND SWORN TO ME THIS 16th DAY OF November 2007.



Kathy Blades

NOTARY PUBLIC FOR IDAHO
RESIDING AT: Boise, IDAHO
COMMISSION EXPIRES: 7/2013

ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW



NOTICE OF SUSPENSION for Failure of Evidentiary Testing

(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

0257
DR # 07-1109924

Issued To:

Bennett Stacie O
Last Name First Middle Date of Birth
1333.5 Alder Ave
Mailing Address
Moscow Id 83843
City State Zip

Latah 10/14/07 0236
County of Arrest Time of Arrest
Idaho Driver's License Number A License Class Restrictions
Out-of-State Driver's License Number State
Citation #: 41144 Operating CMV? Yes No
Transporting Hazmat? Yes No

SUSPENSION ADVISORY

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances.
- You are required by law to take one or more evidentiary tests to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional tests made by a person of your own choosing.
- You do not have the right to talk to a lawyer before taking any evidentiary tests to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
 - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and will be valid in Idaho for thirty (30) days from the service of this notice of suspension unless modified or restricted by the court, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
 - You have a right to submit a written request within seven (7) days to the Magistrate Court of Latah County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
 - If you do not request a hearing or do not prevail at the hearing, your license will be suspended by the court with absolutely no driving privileges for one (1) year if this is your first refusal; if this is not your first refusal in the last ten (10) years, your license will be suspended with absolutely no driving privileges for two (2) years.
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
 - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and shall be valid in Idaho for thirty (30) days from the service of this notice of suspension, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
 - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty days from the date of service on this **NOTICE**, suspending your driver's license or privileges. If this is your first failure of an evidentiary test your driver's license or driving privileges will be suspended for ninety (90) days, with absolutely no driving privileges during the first thirty (30) days. You may request restricted driving privileges for the remaining sixty (60) days of the suspension. Restricted driving privileges will not allow you to operate a commercial motor vehicle. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
 - You have the right to an administrative hearing on the suspension before the **IDAHO TRANSPORTATION DEPARTMENT** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and be received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.

THIS SUSPENSION FOR FAILURE OR REFUSAL OF THE EVIDENTIARY TEST(S) IS SEPARATE FROM ANY OTHER SUSPENSION ORDERED BY THE COURT.

— PLEASE REFER TO THE BACK OF THIS SUSPENSION NOTICE FOR MORE INFORMATION —

NOTICE OF SUSPENSION: If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #5 above, commencing thirty (30) days from the date of service of this notice.

Date of Service 10/14/07

NOTE: If a blood or urine test was administered, the department may serve a Notice of Suspension upon receipt of the test results.

Evidentiary Test Failure: §18-8002A Refusal: (original copy to court) §18-8002 Urine/Blood Analysis Pending: §18-8002A

This Section Provides Temporary Driving Privileges.

(If the driver was operating a commercial vehicle, this permit will not provide commercial driving privileges of any kind.)

If issued, this permit grants the same driving restrictions and privileges as those granted by the license/permit seized (except as indicated above), and shall be valid for thirty (30) days from the date you were served this Notice of Suspension for failure or refusal of the evidentiary test(s), unless it is canceled or restricted by the court.

Permit Issued? Yes No License Surrendered? Yes No
A permit was not issued because the license was: Suspended Not in Possession Invalid
 Expired Issued by Another Jurisdiction Not Licensed

001

EXHIBIT
1

Stacie O Bennett
Signature of Temporary Licensee (if you are issued a permit, it is not valid until you sign it)

OCT 17 2007 ITD REC'D

Signature of Reporting Officer (PRINT) W.L. Krassel Agency Code 2905 Telephone Number 208-887-5551

SUSPENSION INFORMATION: The audio version of the suspension advisory substantially conforms to the written text of the suspension advisory.

FOR REFUSAL OF EVIDENTIARY TESTING (PURSUANT TO SECTION 18-8002, IDAHO CODE):

You have the right to submit a written request within seven (7) days to the Magistrate Court indicated on the face of this notice for a hearing to show cause why you refused to submit to or complete evidentiary testing. This is your opportunity to show cause why you refused to submit or failed to complete evidentiary testing and why your driver's license should not be suspended. NOTE: A HEARING REQUEST FOR REFUSING EVIDENTIARY TESTING MUST BE SUBMITTED TO THE MAGISTRATE COURT.

If you fail to request a hearing or do not prevail at the hearing, the court will suspend your driver's license and privileges with absolutely no driving privileges for one (1) year if this is your first offense, or for two (2) years if this is your second offense within ten (10) years.

FOR FAILING EVIDENTIARY TESTING (PURSUANT TO SECTION 18-8002A, IDAHO CODE):

You have been served this *Notice of Suspension* by a peace officer who had reasonable grounds to believe that you were operating a vehicle while intoxicated. Section 18-8002, Idaho Code requires you to take an evidentiary test or tests to determine your alcohol concentration and/or the presence of any drugs or other intoxicating substances. After submitting to the test(s), you may, when practicable, have additional tests conducted (at your own expense).

If you take the evidentiary test(s) and the results indicate an alcohol concentration of .08 or greater (.02 or greater if you are under 21 years of age), or the presence of drugs or other intoxicating substances in violation of the provisions of Sections 18-8004, 18-8004C, and 18-8006, Idaho Code, the peace officer shall:

1. A. Seize your driver's license, (unless you are an out-of-state resident).
 - B. Issue you a temporary driving permit which shall be valid for thirty (30) days from the date of service indicated on the reverse side of this *Notice of Suspension*, if you have surrendered a current valid Idaho license. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
 - C. Serve you with this *Notice of Suspension* that becomes effective thirty (30) days after the date of service indicated on the reverse side of this notice. Failure of an evidentiary test will result in a ninety (90)-day suspension of driving privileges, with absolutely no driving privileges during the first thirty (30) days of the suspension. You may request restricted driving privileges during the final sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind.
2. If you were operating or in physical control of a commercial vehicle and the evidentiary test results indicate an alcohol concentration of:
 - A. .04 to less than .08, your commercial driving privileges will be suspended for ninety (90) days. You will have absolutely no commercial driving privileges of any kind. Any temporary permit issued will be for Class D (non-commercial) driving privileges only.
 - B. .08 or greater (.02 or greater if you are under 21 years of age), or test results indicate the presence of drugs or other intoxicating substances, all of your driving privileges will be suspended for ninety (90) days, with possible Class D driving privileges for the final sixty (60) days of the suspension. You will have absolutely no commercial driving privileges of any kind during the full ninety (90)-day suspension.
 - C. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year (you will have absolutely no driving privileges of any kind).

HEARING REQUEST FOR FAILURE OF EVIDENTIARY TEST:

You have the right to request an administrative hearing on the suspension **BEFORE THE IDAHO TRANSPORTATION DEPARTMENT**. Your request must be made in writing and be received by the department no later than seven (7) calendar days after the date of service of this *Notice of Suspension*. The request must state the issues intended to be raised at the hearing, and must include your name, date of birth, driver's license number, date of arrest, and daytime telephone number because the hearing will be held by telephone. The burden of proof, by preponderance of evidence, shall be upon the driver as to the issues raised in the hearing, pursuant to Section 18-8002A(7), Idaho Code.

If you request a hearing, it shall be held within twenty (20) days of the date the hearing request was received by the Idaho Transportation Department. (Section 18-8002A, Idaho Code) If you do not request an administrative hearing within seven (7) days of service of this *Notice of Suspension*, your right to contest the suspension is waived. This suspension is separate and apart from any suspension that may be ordered by the court as a result of any criminal charges that may be brought against you.

JUDICIAL REVIEW:

You may appeal the decision of the Hearing Officer by seeking judicial review to the District Court. (Section 18-8002A, Idaho Code). Your appeal must be filed as a civil proceeding in District Court, pursuant to Chapter 52, Title 67, Idaho Code.

RESTRICTED DRIVING PERMITS:

If your driving privileges are suspended for a period of ninety (90) days pursuant to Section 18-8002A, Idaho Code, you may request restricted driving privileges for the final sixty (60) days of the suspension (IDAPA Rule 39.02.70.) Restricted driving privileges will not allow you to operate a commercial motor vehicle. You may make your written request for restricted driving privileges any time after the service of this *Notice of Suspension*.

REINSTATEMENT REQUIREMENTS:

Before being reinstated on this suspension, you will be required to pay a reinstatement fee. Any other suspension imposed by the court for this offense will require an additional reinstatement fee.

To request an administrative hearing or apply for a restricted driving permit relating to an administrative license suspension for failing evidentiary testing:

- Make your request in writing (including a daytime telephone number) to the Idaho Transportation Dept., Driver Services Section, PO Box 7129, Boise, ID 83727-7129, OR
- Deliver your request in person to the Driver Services office (331 West State Street, Boise), OR
- Fax your request to Driver Services at (208) 332-4124.

ADMINISTRATIVE RECORD FOR JUDICIAL REVIEW 19

If you have any questions regarding this notice or your driving privileges, call Driver Services at 334-8735.

LATAH COUNTY
INTOXILYZER - ALCOHOL ANALYZER
MODEL NUMBER 34 50-01 3022
10/14/2007 SOLUTION LOT NO. 940000940

SUB NAME=BENNETT, STACIE D
SUB DOB =12/14/90
O.L.N. =IDVKA1477296
OPER NAME=KRINGSGLT, WILLIAM L
ARREST AGENCY=2985

TEST	BRNC	TIME
AIR BLANK	.000	03:16 PDT
INTERNAL STANDARDS PASSED		03:16 PDT
AIR BLANK	.000	03:16 PDT
SIMULATOR TEMPERATURE IN RANGE		
SIX CHK 18097	.002	03:16 PDT
ACCEPTABLE		
AIR BLANK	.000	03:17 PDT
SUBJECT TEST	.000	03:17 PDT
AIR BLANK	.000	03:17 PDT
SUBJECT TEST	.000	03:18 PDT
AIR BLANK	.000	03:18 PDT

W L Kringsgl
OPERATOR SIGNATURE

0257
TIME FIRST OBSERVED

EXHIBIT
2

Stacie D. Bennett
SUBJECT'S NAME

0257
TIME FIRST OBSERVED

LC50
INSTRUMENT LOCATION

W L Kringsgl
OPERATOR

ADDITIONAL INFORMATION AND / OR REMARKS

OCT 17 2007 ITD REC'D

002



INTOXILYZER® INSTRUMENT PRINTER CARD

© 1995 by CMI INC.

EXHIBIT
3

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH.

THE STATE OF IDAHO,

Plaintiff,

-vs-

Stacie D. Bennett
Defendant.

DOB [REDACTED]
SSN [REDACTED]
DL# [REDACTED]
State: Id

State of Idaho,

County of Latah

COURT CASE NUMBER

PROBABLE CAUSE AFFIDAVIT IN SUPPORT
OF ARREST

I, W.L. Krasselt, the undersigned, being first duly sworn on oath, deposes and says that:

- 1. I am a peace officer employed by the Moscow Police Department.
- 2. The defendant was arrested on October 14, 2007 at 0236 AM PM for the crime of driving while under the influence of alcohol, drugs or any other intoxicating substances pursuant to Section 18-8004 Idaho Code. Second or more DUI offense in the last five years? YES NO FELONY MISDEMEANOR

3. Location of Occurrence: 112 N. Main, City of Moscow, Latah County Idaho

- 4. Identified the defendant as: Stacie D. Bennett by: (check box)
 - Military ID State ID Card Student ID Card Driver's License Credit Card(s)
 - Paperwork found Verbal ID by defendant
 Witness: identified defendant.
Other:

- 5. Actual physical control established by: Observation by Affiant Observation by Officer
 - Admission of Defendant to: , Statement of Witness:
 - Other:

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST:

On October 14, 2007, at about 0225, I was stopped in the parking lot of Moscow Transmission, located at 205 N. Main. I saw a black Honda Accord, Idaho license N118607, slowly backing out of parking lot on the north side of CJ's, 112 N. Main. When the vehicle reached the street, the driver stopped and drove back into the lot and parked in a different space. A white male, who had been standing in the lot near the Honda, immediately walked to my location and told me the Honda hit another vehicle in the lot when the driver backed up. The male told me he told the female driver to stop in the lot. The male walked back to the lot while I drove to that location. The driver, later identified with her Idaho drivers license as Stacie D. Bennett, was still seated in the drivers seat of the Honda. The male told me Bennett was the person driving when the Honda hit the other vehicle. Bennett told me she was trying to move the Honda to a better parking space to wait for a ride when she hit the other vehicle. I saw there was fresh white paint transfer on the left front fender of the Honda. I looked at the other vehicle, a white Ford Explorer, and saw where the paint had been freshly scraped on the right rear fender.

I could smell the odor of an alcoholic beverage on Bennett's breath and her speech sounded slightly slurred. I asked Bennett to step out of the vehicle to perform field sobriety evaluations, which she agreed to do. Bennett later told me she was not under a doctor's care, was not taking any medications, and was not epileptic or diabetic.

I asked Bennett how much she had to drink. Bennett told me she had two mixed drinks at a bar in Uniontown when she was on her way to Moscow from Lewiston earlier in the evening.

I checked Bennett's eyes for Horizontal Gaze Nystagmus. I saw jerky pursuit, onset prior to forty five degrees and distinct nystagmus at maximum deviation in both eyes.

I asked Bennett if she knew the alphabet. Bennett told me she could say it forwards and backwards. I asked Bennett if she had been practicing and she told me she had. I asked Bennett to say the alphabet from 'M' through the end of the alphabet. Bennett asked me if I was sure I wanted her to start in the middle and I repeated what I wanted her to do. Bennett said three letters before stopping and stating it was hard. Bennett started over at the letter 'M' and missed or said several letters out of order starting with the letter 'S'.

Bennett counted correctly from 65 to 75 and from 75 back to 65.

On the walk and turn evaluation, Bennett did not take the correct number of steps, did not turn as instructed and missed touching heel to toe on several steps.

On the one leg stand evaluation, Bennett held her arms straight out from her sides for balance during the entire evaluation and put her foot down once.

I placed Bennett under arrest and transported her to the Latah County Jail.

D.U. I. NOTES

Odor Of Alcoholic Beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Admitted Drinking Alcoholic Beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Slurred Speech	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Impaired Memory	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Glassy/Bloodshot Eyes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Sobriety Tests

Gaze Nystagmus	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail
Walk & Turn	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail
One-Leg Stand	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail
Accident Involved	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Injury	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Other ADMINISTRATIVE RECORD FOR JUDICIAL REVIEW

Drugs Suspected Yes No Drug Recognition Evaluation Performed Yes No

Reason Drugs Are Suspected:

n/a

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. Prior to testing, defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002 (A), Idaho Code. The test(s) was/were performed in compliance with Section 18-8003 & 18-8004 (4) Idaho Code and the standards and methods adopted by the Department of Law Enforcement.

BAC:.090/.095 by: Breath Blood Urine Refusal Intoxilyzer 5000
Alco Sensor Instrument Serial #68-013022

Name of person administering breath test: W.L. Krasselt Date certification expires: 04-30-09

By my signature and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and associated reports and documents included herein and made a part hereof is true and correct to the best of my information and belief.

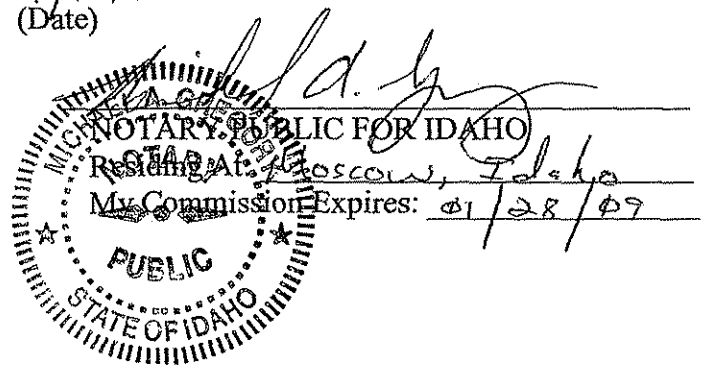
Dated: 10/14/2007 Signed: W.L. Krasselt

(Affiant)

Subscribed and sworn to before me on 10/14/07
(Date)

(Or)

PERSON AUTHORIZED TO ADMINISTER OATHS.
Title: _____



005

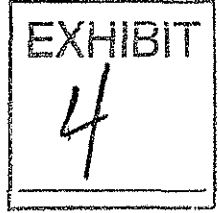
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

THE STATE OF IDAHO,)
)
 Plaintiff)
)
 vs.)
)
 STACIE D. BENNETT)
 DOB [REDACTED])
)
 Defendant)

CASE NO:

UNIFORM CITATION NO: 41144

INITIAL DETERMINATION OF PROBABLE CAUSE AFTER ARREST WITHOUT A WARRANT



The undersigned Judge having examined the affidavit submitted by Peace Officer W.L. Krasselt along with the attached documents, and the complaint against the above-indicated defendant for the crime of:

D.U.I. - I.C. 18-8004

Having been laid before the undersigned Judge, it is hereby determined by the undersigned judge that there is probable cause to believe that the said offense has been committed, and that the defendant has committed it.

DATED this _____ day of _____, 2007.

Judge

006

EXHIBIT

5

BENNETT, STACIE DAWN

KA147720G

12/10/80

50040

OCT 17 2007 INDREC'D

COMMERCIAL DRIVER LICENSE

DAVID

EXPIRES 12/10/2011

RSTS
ENDR N

NUMBER KA147720G
ISSUED 09/14/2007

BENNETT, STACIE DAWN

350072570068

1333.5 ALDER AVE
LEWISTON, ID 83501

DATE OF BIRTH
12/10/1980

SEX: F
HEIGHT: 5 06
WEIGHT: 135
HAIR: BRO
EYES: HAZ

DONOR

Stacie Dawn Bennett


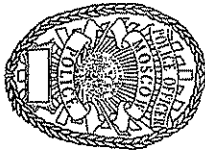
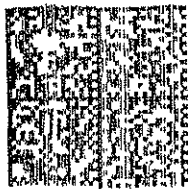


EXHIBIT
6



MOSCOW POLICE DEPARTMENT
P. O. Box 9203
118 East 4th Street
Moscow, Idaho 83843



10/15/2007

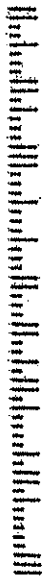
010120012373
\$00.50
10/15/2007
Mailed From 83843
US POSTAGE

26

ATTN: DRIVER SERVICES - ALS
IDAHO TRANSPORTATION DEPARTMENT
P.O. BOX 7129
BOISE, ID 83707-1129

OCT 17 2007 11DRECD

83707+1129-29 8071





IDAHO TRANSPORTATION DEPARTMENT
 Driver Services • P.O. Box 7129
 Boise ID 83707-1129

EXHIBIT
 7

(208) 334-8735
 dmv.idaho.gov

Certification of Receipt of Law Enforcement Documents

I hereby certify that the following documents were received from the sender attached and/or incorporated together **:

- Notice of Suspension Advisory Form – Original
- Notice of Suspension Advisory Form – Goldenrod
- Evidentiary Test Results
- Instrument Calibration Check
- Instrument Operations Log
- Sworn Statement
- Incident/Arrest/Narrative Reports
- Witness Statements
- LAW Incident Table
- Main Radio Log
- Affidavit and/or Order Finding Probable Cause
- Influence Report
- Pre-Booking Information Sheet
- Photocopy of Citation(s)
- Evaluations
- Impound Report
- Towed Vehicle Report
- Field Sobriety Tests
- Video Tape Notes
- Vehicle Collision Report
- Teletype Records
- Miranda Rights
- Driver License – evidenced by attached photocopy

Other documents attached and/or incorporated together**:

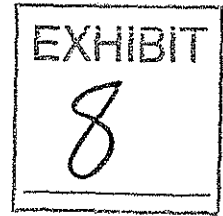
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____

Krista Wilson
 Signature of Driver Services Employee

009

** Staples and other attaching devices are typically removed from documents for the purpose of photocopying and microfilming

PAUL THOMAS CLARK
CLARK and FEENEY
Attorneys for Defendant
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452



VIA FACSIMILE ONLY (208) 332-7810
Idaho Transportation Department
Driver Services Section

RE: STACIE D. BENNETT
DOB: [REDACTED]
DL#: [REDACTED]
ARRESTED: OCTOBER 14, 2007

REQUEST FOR HEARING

COMES NOW STACIE D. BENNETT (herein referred to as Respondent) by and through his attorney of record, Paul Thomas Clark, of the law firm Clark and Feeney, Lewiston, Idaho, and pursuant to I.C. §18-8002A hereby requests a hearing before the Idaho Transportation Department regarding that proposed Administrative License Suspension Notice heretofore served.

The issues which shall be raised at the hearing include, but are not necessarily limited to, the following:

1. Whether the arresting officer had probable cause and/or legal cause to stop, detain and/or arrest the respondent;
2. Whether the arresting officer had probable cause and/or legal cause to believe the respondent had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs, or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code;
3. Whether the test results showed an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C, or 18-8006, Idaho Code. Specifically,

this issue shall also include whether the test results showed an alcohol concentration or the presence of drugs in violation of the said section of the Idaho Code at the time that the arresting officer took possession of respondent's drivers license, issued a temporary permit and/or issued the notice of suspension.

4. Whether the test(s) for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were conducted in accordance with the requirements of section 18-8004(4), Idaho Code. I.C. §18-8004(4) provides in pertinent part as follows:

"...Analysis of blood, urine or breath for the purpose of determining the alcohol concentration shall be performed by a laboratory operated by the Idaho Department of Law Enforcement or by a laboratory approved by the Idaho Department of Law Enforcement under the provisions of approved and certification standards to be set by the department, or by any other method approved by the Idaho Department of Law Enforcement..."

Since the Idaho Department of Law Enforcement has adopted Alcohol Testing Regulations (herein referred to as the ATR's) set forth and cited as IDAPA 11.03, the issue will include whether the test(s) were conducted in accord with said regulations. To the extent that the ATR's require (i.e. see IDAPA 11.03.4, 3) that tests be administered in conformity with standards established by the department in the form of policy statements and training manuals, the issue also includes whether the tests were conducted in accord with such standards issued in the form of policy statements and training manuals. Since the ATR's at 6,1 therein also require that all policies in effect when the alcohol program was managed by the Department of Health and Welfare shall continue to be in effect in the Department of Law Enforcement until the policy is changed or deleted by the Department of Law Enforcement, the issue also includes whether the test(s) were conducted in accord with the policies of the Department of Health and Welfare which are continued in effect, and which are set forth in the Rules Governing the Performance of Forensic Alcohol Examination cited at IDAPA 16.02.7001 et seq.

5. Whether the respondent was informed of the consequences of submitting to evidentiary testing as required in I.C. §18-8002A(2).

6. Whether the respondent was given an opportunity to have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his choosing and/or whether respondent's failure or inability to obtain additional testing was due to denial by the arresting officer.

7. Whether Idaho Code §18-8002A violates respondent's civil rights; whether I.C. §18-8002A violates respondent's state and/or federal constitutional rights including his right to remain silent and right against self-incrimination.

8. Whether, due to delay in testing, the test results can be related back to the time of respondent's observed driving by means of retrograde extrapolation. Included in this issue is the issue of whether the test results can be admissible and/or used in this proceeding because of substantial passage of time between arrest and testing, and the resulting inaccuracy in establishing respondent's alcohol concentration at the time of the driving.

9. Whether the arresting officer (a) seized and/or took possession of respondent's driver's license as required by I.C. §18-8002A(2)(a) & 5(a); issued respondent a temporary permit as required by I.C. §18-80022A(2)(a) & 5(a); forwarded the seized drivers license to the department along with the completed notice of suspension form as required by I.C. §18-8002A(5)(b); properly advised the respondent that he would be eligible for restricted driving privileges during the remaining sixty (60) days of the 90 day suspension as required by I.C. §18-8002A(2)(c), (4)(i), & (9); and/or whether the arresting officer, acting on behalf of the department, served the respondent with the notice of suspension as required by I.C. §18-8002A(5)(a).

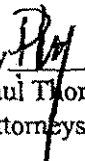
10. Whether the arresting officer has forwarded the sworn statement required under I.C. §18-8002A(5)(b) within five (5) business days following service of the notice of suspension and whether a certified copy or duplicate original of test results accompanied the sworn statement also required pursuant to I.C. §18-8002(A)(5)(b).

11. That the failure to provide a temporary permit to the respondent constitutes an violation of the Equal Protection Provisions and privileges afforded to individuals under the Federal and State Constitution.

It is further requested that a subpoena be issued by the hearing officer to compel the attendance of the arresting officer at the hearing pursuant to I.C. §18-8002(7) and for the officer to bring with him the instrument calibration operations log for the period September 1, 2007, to present, for the Intoxilyzer 5000 upon which the Respondent was tested.

DATED this 16th day of October, 2007.

CLARK and FEENEY

By: 
Paul Thomas Clark, a member of the firm.
Attorneys for Defendant.

013

OCT. 16. 2007 9:10AM

CLARK & FEENEY ATTY

Oct 16 2007 10:10

NO. 5839 P. 1

LAW OFFICES OF
CLARK AND FEENEY
 THE TRAIN STATION, SUITE 108
 1229 MAIN STREET
 P.O. DRAWER 285
 LEWISTON, IDAHO 83501

RON T. BLEWETT
 WILLIAM JEREMY CARR
 PAUL THOMAS CLARK
 THOMAS W. FEENEY
 SCOTT D. GALLINA **
 JONATHAN D. HALLY
 RUBE G. JONES *
 TINA L. KERNAN **
 JOHN C. MITCHELL
 DOUGLAS L. MUSHLITZ
 CHARLES M. STROSCHEIN **
 CONNIE TAYLOR **

TELEPHONE
 (208) 743-9516
 (800) 866-9516
 FAX
 (208) 746-9160
 cfiaw@lewiston.com

* LICENSED IN WASHINGTON & OREGON ONLY
 ** LICENSED IN IDAHO & WASHINGTON

October 15, 2007

VIA FACSIMILE ONLY (208) 332-7810
 Idaho Transportation Dept
 Driver Services Section

Re: Stacie D. Bennett
 DL No: [REDACTED]
 ITD File No. Unknown

Dear Sir:

Enclosed herewith for filing is an original *Request for Hearing* with regard to the above-referenced case.

Thank you for your time and attention to this matter.

Sincerely yours,

CLARK and FEENEY

*Dictated by Mr. Clark and sent
 without signature to avoid delay*

By: Paul Thomas Clark

PTC:dw
 enc.

cc: Stacie Bennett w/enc.

074



IDAHO TRANSPORTATION DEPARTMENT
 Driver Services • P.O. Box 7129
 Boise ID 83707-1129

EXHIBIT (208) 334-8735
 dmv.idaho.gov
 9

50040-IA

(208) 334-8736

REQUESTED BY: BENNETT, STACIE DAWN

PAGE 1

1333.5 ALDER AVE
 LEWISTON ID 83501

D R I V E R L I C E N S E R E C O R D 10/22/2007

FOR:

BENNETT, STACIE DAWN

LICENSE NO: [REDACTED]

ISSUE TYPE: DL

BIRTH DATE: [REDACTED]

CLASS: A -N

1333.5 ALDER AVE

ISSUED: 09/14/2007

OPR STATUS: VALID

LEWISTON

ID 83501

EXPIRES: 12/10/2011

CDL STATUS: VALID

DRV TRAIN: NO

RSTR: NONE

TYPE	DATE	DESC	CLS	DOC #
CITN	02/12/03	EM MISC		
CONV	02/18/03	GLTP PTS:0 CRT:		A01194422
FINE:	0.00	COSTS: 0.00 JAIL DAYS: 0 PROBATION: 0 BAC: .		
COMM	03/05/07	10-YEAR CHECK: ID*WA*		000000000
L196	10/19/07	DIS/FAIL BAC		657A01320819
COMM	10/22/07	STOP 78 DELETED BY: 50040 (DL) 10/16/2007		
L027	10/22/07	ADMIN HEAR CASE		657000041144
PEND	11/13/07	ALS08+ORDRUG TO 02/11/08	OPR	657000041144
		TO 02/11/08	CDL	
			MFLM	A01320819
PEND	11/13/07	CDLALS08+DRG TO 11/13/08	OPR	657A01320819
			CDL	
			MFLM	A01320819

LICENSE IN FILE

12 MONTH POINTS: 0 24 MONTH POINTS: 0 36 MONTH POINTS: 0

015

CONTINUED ADMINISTRATIVE RECORD FOR
 JUDICIAL REVIEW



IDAHO TRANSPORTATION DEPARTMENT
Driver Services • P.O. Box 7129
Boise ID 83707-1129

(208) 334-8735
dmv.idaho.gov

50040-IA

(208) 334-8736

REQUESTED BY: BENNETT, STACIE DAWN

PAGE 2

1333.5 ALDER AVE
LEWISTON ID 83501

D R I V E R L I C E N S E R E C O R D 10/22/2007

FOR:

BENNETT, STACIE DAWN

LICENSE NO: [REDACTED]

ISSUE TYPE: DL

BIRTH DATE: [REDACTED]

CLASS: A -N

1333.5 ALDER AVE

ISSUED: 09/14/2007

OPR STATUS: VALID

LEWISTON

ID 83501

EXPIRES: 12/10/2011

CDL STATUS: VALID

DRV TRAIN: NO

RSTR: NONE

TYPE	DATE	DESC	CLS	DOC #

POINTS ASSESSED ARE FOR DEPARTMENTAL USE ONLY, IN DETERMINING SUSPENSIONS FOR POINTS OR HABITUAL VIOLATIONS.				
*** ACTION PENDING ***				
*** ACTION PENDING ***				
END OF EXISTING RECORD				
AS AN EMPLOYEE OF THE TRANSPORTATION DEPARTMENT, I AM AN OFFICIALLY APPOINTED CUSTODIAN OF DRIVING RECORDS. I HEREBY CERTIFY THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL DRIVING RECORDS OF THIS DEPARTMENT.				
OCTOBER 22, 2007				
 CUSTODIAN OF DRIVER RECORDS				
SECTION 49-203 IDAHO CODE PROHIBITS THE RELEASE OF PERSONAL INFORMATION CONTAINED IN DRIVER LICENSE RECORDS TO UNAUTHORIZED PARTIES, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE INDIVIDUAL THE INFORMATION PERTAINS TO.				
END OF DLR PRINT				

SUBPOENA - CIVIL

EXHIBIT
10

IDAHO TRANSPORTATION DEPT.
3311 W. STATE ST.
BOISE, ID 83703

TELEPHONE # (208) 332-2004
PO BOX 7129
BOISE, ID 83707

BEFORE THE IDAHO TRANSPORTATION BOARD OF THE STATE OF
IDAHO IN AND FOR THE IDAHO TRANSPORTATION DEPARTMENT

ADMINISTRATIVE HEARING

IN THE MATTER OF THE
DRIVING PRIVILEGES
Stacie Dawn Bennett

SUBPOENA

THE STATE OF IDAHO TO: OFFICER W. L. KRASSETT, LEWISTON POLICE
DEPARTMENT


You are hereby commanded to appear before Hearing Officer Michael B Howell
Idaho Transportation Department, as a witness in the above-entitled action, by
means of a **telephone conference call**.

**You will need to provide your telephone number prior to the day of
the scheduled hearing with the Idaho Transportation Department,
at (208) 332-2004.**

The hearing is scheduled on the 2nd day of November 2007, at Ten o'clock (10:00
a.m.) Mountain Time.

Further, prior to reporting, for your convenience you may confirm the status of
your subpoena by calling the Idaho Transportation Department at (208) 332-2004
before 8:00 a.m. on the hearing date listed above.

Witness my hand this 23rd day of October 2007.


By _____
Michael B Howell

ADMINISTRATIVE RECORD OFFICER
JUDICIAL REVIEW

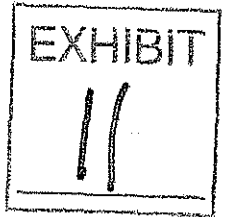
35

017

SUBPOENA – CIVIL

IDAHO TRANSPORTATION DEPT.
3311 W. STATE ST.
BOISE, ID 83703

TELEPHONE # (208)332-2004
PO BOX 7129
BOISE, ID 83707



BEFORE THE IDAHO TRANSPORTATION BOARD OF THE STATE OF IDAHO IN AND
FOR THE IDAHO TRANSPORTATION DEPARTMENT

ADMINISTRATIVE HEARING

IN THE MATTER OF THE
DRIVING PRIVILEGES OF
Stacie Dawn Bennett

SUBPOENA DUCES TECUM

THE STATE OF IDAHO TO: EVIDENCE CUSTODIAN, LATAH COUNTY SHERIFF'S OFFICE

You are hereby commanded to produce evidence for the Administrative Hearing before the Idaho Transportation Department.

You are commanded to provide the following items and documents:

One (1) copy of the Instrument Operations Log for the Intoxilyzer 5000EN SN# 68-013022 for the period of September 14, 2007 through October 15, 2007

Notice To Party To Whom This Subpoena is Directed: This subpoena is issued upon the condition that the requesting party shall advance the reasonable cost of producing the books, papers, documents, or tangible things, to the agency providing the evidence.

The driver's privileges may be stayed pending receipt and review of the requested material. The subpoenaed material must be received by November 5, 2007.

Subpoenaed material must be sent via U.S. Mail to the requesting party:

Paul Thomas Clark
Attorney at Law
PO Drawer 285
Lewiston ID 83501

Phone Number: (208) 743-9516

This subpoena has been issued in compliance with IDAPA rule 39.02.72.300.01

If you have any questions regarding this subpoena you can contact Jackie at 332-2004.

Witness my hand this 23rd day of October 2007.

A handwritten signature in cursive script, appearing to read "Christine B. Green".

By _____
ADMINISTRATIVE RECORDS DIVISION
JUDICIAL REVIEW Hearing Officer



IDAHO TRANSPORTATION DEPARTMENT
Driver Services • P.O. Box 7129
Boise ID 83707-1129

10013
(208) 334-8735
dmv.idaho.gov

PHONE: (208) 334-8736

BENNETT, STACIE DAWN

OCTOBER 23, 2007

1333.5 ALDER AVE
LEWISTON

ID 83501

LIC/IDENT NO: KA147720G
FILE NUMBER: 657000041144
DATE OF BIRTH: [REDACTED]

NOTICE OF TELEPHONE HEARING

A HEARING WILL BE HELD PURSUANT TO YOUR REQUEST REGARDING THE ADMINISTRATIVE LICENSE SUSPENSION DATED OCTOBER 14, 2007 . THE HEARING WILL BE CONDUCTED BY TELEPHONE CONFERENCE CALL ON NOVEMBER 02, 2007 AT 10:00MT . THE TELEPHONE CALL WILL BE PLACE TO:
() YOU, AT TELEPHONE #:
(XXX) YOUR ATTORNEY: PAUL THOMAS CLARK
AT TELEPHONE #: 208 743-9516

THE HEARING OFFICER PRESIDING AT THE HEARING WILL BE MICHAEL B HOWELL.

(XXX) YOUR ENCLOSED DRIVING RECORD INDICATES THAT THIS IS YOUR FIRST FAILURE OF AN EVIDENTIARY TEST WITHIN THE LAST 5 YEARS. IF THE PENDING SUSPENSION IS SUSTAINED, SECTION 18-8002A IDAHO CODE REQUIRES THAT YOUR DRIVING PRIVILEGES BE WITHDRAWN FOR 90 DAYS.

() YOUR ENCLOSED DRIVING RECORD INDICATES THAT YOU HAVE PREVIOUSLY FAILED AN EVIDENTIARY TEST WITHIN THE LAST 5 YEARS. IF THE PENDING SUSPENSION IS SUSTAINED, SECTION 18-8002A IDAHO CODE REQUIRES THAT YOUR DRIVING PRIVILEGES BE WITHDRAWN FOR 1 YEAR.

THE HEARING OFFICER WILL TAKE JUDICIAL NOTICE OF THE RECORDS REGULARLY MAINTAINED BY THE IDAHO TRANSPORTATION DEPARTMENT, THE IDAHO ADMINISTRATIVE PROCEDURE ACT RULES, ALL MANUALS ADOPTED UNDER IDAPA RULES 11.03.01 AND 39.02.72, IDAHO STATUTES, AND REPORTED IDAHO COURT DECISIONS.

THE HEARING WILL BE CONDUCTED ACCORDING TO THE PROVISIONS OF TITLE 67, CHAPTER 52, IDAHO CODE, AND THE RULES OF PRACTICE AND PROCEDURES OF THE IDAHO TRANSPORTATION DEPARTMENT. IF YOU NEED FURTHER ASSISTANCE, PLEASE CALL (208) 332-2004.

CC: PAUL THOMAS CLARK

COPY

IMPORTANT!
INFORMATION ABOUT YOUR TELEPHONE HEARING

- THE IDAHO TRANSPORTATION DEPT., ADMINISTRATIVE HEARING UNIT'S PHONE NUMBER IS (208) 332-2004. THE FAX NUMBER IS (208) 332-2002. THE MAILING ADDRESS IS PO BOX 7129, BOISE ID 83707-1129.
- The Hearing is YOUR chance of presenting witnesses and giving evidence before the Department. The Hearing also provides you or your attorney an opportunity to appeal. To stop the suspension YOU must demonstrate to the Hearing Officer by a preponderance of the evidence that:
 1. The peace officer did not have legal cause to stop you.
 2. The peace officer did not have legal cause to believe you were driving or in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provision of Section 18-8004, 18-8004C, or 18-8006 Idaho Code.
 3. The evidentiary test did not show an alcohol concentration or presence of drugs or other intoxicating substances in violation of Section 18-8004, 18-8004C or 18-8006 Idaho Code.
 4. The test for alcohol, drugs or other intoxicating substances was not conducted in accordance with the requirements of Section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered.
 5. You were not informed of the consequences of submitting to evidentiary testing.
- If you have not provided a telephone number at which you can be reached, or the number contained in the notice is wrong, or if you have a number that is more convenient for you, notify the Administrative Hearing Unit at (208) 332-2004. If you fail to provide a phone number for the given time and date contained in the Notice of Hearing, it will be concluded that you failed to attend the hearing and the matter may be decided in your absence. All hearings will be recorded.
- If you need assistance to participate in the hearing because of speech, hearing, language, or other special needs, immediately contact the Administrative Hearing Unit at (208) 332-2004. Necessary arrangements can be made to assist you.
- The Administrative Hearing must be held within twenty (20) days of the receipt of the Request for Hearing. However, upon showing good cause, the Hearing Officer may grant an extension of up to ten (10) additional days in which to hold the hearing. Any extensions shall not stay the suspension, or the duration of your temporary permit (if one was issued).
- Documents to be presented to the Hearing Officer at the hearing for his consideration are enclosed with this hearing notice. Any additional relevant documents received by the department after this initial notice will be mailed to you. You have a right to object to the inclusion of any documents into the hearing record. The Hearing Officer will make the final determination. You also have the right to submit other documents to the Hearing Officer for consideration. These documents must be provided prior to the hearing.
- An attorney or other adult representative may represent you at the hearing, but representation is not required. It is your responsibility to arrange for any type of representation.
- If you intend to call witnesses, it is your responsibility to have those witnesses available on the date and time of the hearing. The law does not require the arresting officer to be present at the hearing unless subpoenaed.
- If your witnesses are unwilling to participate voluntarily, or documents are not provided voluntarily, you may submit a request to the Hearing Officer that a subpoena be issued. Please mail or fax any requests for subpoenas to the information provided above. This should include the name of the witness and any documents or records in possession of the witness you wish to be produced. Upon issuance of the subpoena by the Hearing Officer, you will be responsible to serve the subpoena to the witness 72 hours prior to the hearing and provide a certificate of service to the Hearing Officer prior to the hearing date. You may be required to pay in advance, if demanded, witness fees and travel fees in accordance with Idaho Civil Procedures.
- Hearings are conducted in an informal but orderly manner. All testimony is taken under oath or affirmation. The Hearing Officer has the sole authority for the conduct of the hearing and will:
 1. Explain the issues and the meaning of terms that are not clearly understood.
 2. Explain the order in which you will testify, ask questions or offer rebuttal.
 3. Assist you in asking questions of other witnesses.
 4. Question you and witnesses to obtain relevant facts.
 5. Determine if testimony and documents being offered are relevant.
 6. Maintain control of the hearing so it will progress in an orderly manner that protects your rights.
 7. Issue a written decision following the hearing.
- Your rights in a hearing are:
 1. To have a representative.
 2. To testify.
 3. To present witnesses and documents.
 4. To question witnesses.
 5. To respond to the evidence presented.
 6. To make a brief statement of your position at the end of the hearing.
- You may petition for the disqualification of the assigned Hearing Officer and have a new one appointed if you have cause to believe that the assigned officer is bias, prejudiced or for some reason unable to give you a fair hearing on the matter. The petition must be sent to the Administrative Hearing Unit office. Your suspension shall not be stayed if such a petition results in the delay of the hearing.
- If you wish to cancel your hearing, your request must be mailed or faxed to the information provided above. Failure to do so will result in the hearing proceeding as scheduled and a default finding being made in your absence.
- If you need to request a continuance or reschedule the hearing. The request must be mailed or faxed to the information provided above prior to the hearing. IF YOU ARE NOT AT THE HEARING, YOU WILL NEED TO INCLUDE A STATEMENT IN YOUR REQUEST THAT SAYS YOU ACKNOWLEDGE THAT THE HEARING WILL NOT BE HELD WITHIN THE 30 DAY STATUTORY TIME, AND THAT YOU ARE AWARE THAT YOUR SUSPENSION WILL REMAIN IN EFFECT.

** Transmit Conf. Report **

P.1

Oct 23 2007 10:38

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
912087469160	NORMAL	23, 10:38	0'24"	2	# O K	

DRIVER SERVICES
ADMINISTRATIVE HEARING SECTION
PO BOX 7129
BOISE ID 83707
Phone: 208 332-2004
FAX: 208 332-2002 (RESCHEDULES, EXTENSIONS, AND WAIVERS)

**ADMINISTRATIVE
HEARING SECTION**

Fax

To: Paul Thomas Clark **From:** Jackie Jones

Fax: 208 746-9160 **Date:** October 23, 2007

Phone: **Pages:** 2

Re: SUBPOENA REQUEST FOR: **CC:**

Stacie Dawn Bennett

Urgent For Review Please Comment Please Reply Please Recycle

Comments: Attached, please find the Subpoena that has been issued, per your request for the A.L.S. hearing on the above person. Your Office will be responsible for serving the Subpoena at least 72 hours prior to the time of the hearing. If service is made please fax a copy of the Certificate of Service prior to the scheduled time of

Administrative Record For
JUDICIAL REVIEW

WAYNE RAUSCH
(208) 882-2216

LATAH COUNTY SHERIFF
PO BOX 8068
MOSCOW, ID 83843

Paper ID: 200701872



IN THE MATTER OF DRIVING PRIVILEGES

-- VS --

PLAINTIFF(S)

COURT: ITD ADMINISTRATIVE HEARING

CASE NO: NA

STACIE DAWN BENNETT

DEFENDANT(S)

PAPER(S) SERVED:

SUBPOENA DUCES TECUM

I, WAYNE RAUSCH, SHERIFF OF LATAH, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 24TH DAY OF OCTOBER 2007.

I HEREBY CERTIFY THAT, ON THE 24TH DAY OF OCTOBER 2007, AT 12:30 O'CLOCK P.M., I, JENNIFER G. STRAMPHER, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** LT JIM LOYD *****

PERSONALLY AT: LATAH COUNTY JAIL, MOSCOW
WITHIN THE COUNTY OF LATAH, STATE OF IDAHO.



DATED THIS 29TH DAY OF OCTOBER 2007.

WAYNE RAUSCH
SHERIFF

SHERIFF'S FEES: 35.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 35.00

BY Jennifer G. Strampher
JENNIFER G. STRAMPHER
SERVING OFFICER

BY Jennifer G. Strampher
JENNIFER G. STRAMPHER
RETURNING OFFICER



To Whom It May Concern,

I, David Beeman on Saturday the 13th of October 2007, received a phone call from Stacie Bennett asking me to be a designated driver for her and a friend at 8:27pm because Stacie and her friend wanted to go to Moscow, Id and go dancing. I, David Beeman agreed to provide them both with safe transport home and to call me when they both were ready or at least getting close to it so that I could drive from home in Lewiston, Id up north to Moscow, Id to pick them both up. Stacie Bennett, then told me that beings it was going to be late that if I, David Beeman wanted to just head up to Moscow, Id to C.J.'s Bar around 1:30am her and her friend would be ready to go and to call her on her cell when I arrived and they would meet me out in front of the bar and I would take them back home to Lewiston, Id.

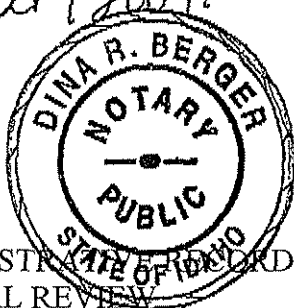
In the early hours of Sunday the 14th of October 2007 at 2:17am, I received a phone call message on my answering machine from Stacie Bennett asking me where I was and to call her back A.S. A.P. because they both were waiting for me and could not reach me on my cell. I, David Beeman deeply regret that I had fallen asleep and missed the second phone call. At 2:26am, Stacie Bennett called back again which woke me up and I answered. Stacie then asked me if I would please hurry up to CJ's bar in Moscow and pick her and her friend up since she had a couple of drinks and her friend was very intoxicated and was trying to leave. I, David Beeman then instructed Stacie to take the keys away from her friend and that I would be there soon to pick them both up, and Stacie agreed to do as I instructed.

I, David Beeman then left my home around 2:40am on October 14th, 2007 from Lewiston, Id and headed for CJ's bar in Moscow, Id. When I arrived at CJ's I found no one there and after calling Stacie Bennett's cell phone for about a half an hour I headed back home to discover that she was arrested in CJ's parking lot on a D.U.I..

Sincerely,

David J Beeman
Wittness

Subscribed & Sworn before me this 17th day of
October, 2007.



ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

Dina R Berger
Notary Public for Idaho
Residing in Lewiston
My Commission Expires

024

CLARK and FEENEY

THE TRAIN STATION, SUITE 106
1229 MAIN STREET
P.O. DRAWER 285
LEWISTON, IDAHO 83501

TELEPHONE: (208) 743-9516
FAX: (208) 746-9160

FAX COVER SHEET

DATE: November 2, 2007
FROM: PAUL THOMAS CLARK
TO: IDAHO TRANSPORTATION DEPT
Michael B. Howell
FAX NO. (208) 331-1704
RE: Stacie Bennett
Hearing date: November 2, 2007, at 10:00 MST

***AFFIDAVIT OF SERVICE - Officer Loyd and Witness
Statement from David Beeman**

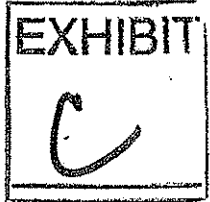
TOTAL NO OF PAGES (INCLUDING THIS COVER PAGE): 3

For missing or illegible pages please telephone (208)743-9516, and speak to: DARLA

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- Certified Mail
- U.S. Postal Service
- Other HAND DELIVERED



WAYNE RAUSCH
(208) 882-2216

LATAH COUNTY SHERIFF
PO BOX 8068
MOSCOW, ID 83843

Paper ID: 200701873



IN THE MATTER OF DRIVING PRIVILEGES

-- VS --

PLAINTIFF(S)

COURT: ITD ADMINISTRATIVE HEARING

CASE NO: NA

STACIE DAWN BENNETT

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, WAYNE RAUSCH, SHERIFF OF LATAH, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 24TH DAY OF OCTOBER 2007.

I HEREBY CERTIFY THAT, ON THE 27TH DAY OF OCTOBER 2007, AT 1:00 O'CLOCK P.M., I, KATHY GAIA, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** KRASSELT, WILLIAM LEON *****

PERSONALLY AT: LATAH CO SO, MOSCOW

WITHIN THE COUNTY OF LATAH, STATE OF IDAHO.

COMMENTS: ALSO SERVED CHECK #43445 FROM CLARK & FEENEY TO OFFICER W.L. KRASSELT IN THE AMOUNT OF \$20.00 FOR WITNESS FEES.

DATED THIS 29TH DAY OF OCTOBER 2007.

WAYNE RAUSCH
SHERIFF

SHERIFF'S FEES: 35.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 35.00

BY

Kathy Gaia
KATHY GAIA
SERVING OFFICER

BY

Jennifer G. Strampher
JENNIFER G. STRAMPHER
RETURNING OFFICER

CLARK and FEENEY

THE TRAIN STATION, SUITE 106
1229 MAIN STREET
P.O. DRAWER 285
LEWISTON, IDAHO 83501

TELEPHONE: (208) 743-9516
FAX: (208) 746-9160

FAX COVER SHEET

DATE: November 2, 2007
FROM: PAUL THOMAS CLARK
TO: IDAHO TRANSPORTATION DEPT
FAX NO. (208) 332-2002
RE: Stacie Bennett
Hearing date: November 2, 2007, at 10:00 MST

***AFFIDAVIT OF SERVICE - Officer Krasselt**

TOTAL NO OF PAGES (INCLUDING THIS COVER PAGE): 2

For missing or illegible pages please telephone (208)743-9516, and speak to: DARLA

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- Express Mail
- Certified Mail
- U.S. Postal Service
- Other HAND DELIVERED

IN THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

In the Matter of the) File No. 657000041144
Driving Privileges of)
)
STACIE DAWN BENNETT) FINDINGS OF FACT AND
License No. [REDACTED]) CONCLUSIONS OF LAW AND ORDER
)
)

This matter came on for hearing on November 2, 2007, by telephone conference.

The licensee appeared, represented by Paul Thomas Clark, attorney at law.

The Hearing Examiner received the following documents and information as part of the records of the proceeding: The officer's sworn statement submitted in compliance with I.C. Sec. 18-8002A(4)(a), Notice of suspension and temporary permit, Hearing request, Notice of hearing, Results of evidentiary test, Affidavit of Service of Subpoena duces tecum, Affidavit of David Beeman.

The Hearing Examiner, having heard the testimony, having considered the exhibits admitted as evidence, and having taken official notice of the records of the Department, and having considered the matter herein, and being advised in the premises and the law, makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

The driver moved that the suspension be vacated because he had not received the documents requested in the subpoena to the Latah County Sheriff's Office. However, the subpoena gave the Latah county Sheriff until November 5, 2007, to deliver the documents. The driver did not request a continuance to present the evidence.

II.

The peace officer, W.L. Krasselt, had legal cause to stop the driver's vehicle based upon his observation of the driver's vehicle backing out of the parking lot and driving back into the parking lot, the Judicial Review

vehicle in the parking lot, and discovery of fresh damage and paint exchanges on both vehicles consistent with the incident report. In addition to the officer's personal observations, the driver admitted to the officer that she was the driver.

III.

It is irrelevant that the driver had made prior arrangements for a ride home in anticipation of her being impaired since she chose to drive anyway, even if it was only to relocate the vehicle in the parking lot which is a private area open to the public.

IV.

The peace officer had legal cause to believe that the driver had violated I.C. §18-8004 because of an odor of an alcoholic beverage, admission by the driver of drinking, glassy/bloodshot eyes, slurred speech, impaired memory, and the failure of field sobriety tests, and the driver was placed under arrest.

V.

The driver was advised of the possible denial/suspension of his/her driving privilege.

VI.

After proper warning, the driver did submit to a chemical test and the chemical test was administered by an officer certified to do so.

VII.

The officer certified that he administered the breath test in compliance with the standards and methods adopted by the Department of Law Enforcement for the administration of breath tests which standards include specific directions on a 15 minute observation period prior to the test administration. While the driver testified that the officer was in and out of the room during the waiting period, no specific testimony was produced to show that the 15 minute period was not present. The driver had the burden to do so if she were to successfully challenge the officers statement that he had properly observed the waiting period.

VII.

ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

The driver testified that she was coughing repeatedly prior

to taking the breath test. However, she did not say that she had vomited or regurgitated any substance from her stomach that could have affected the test. According to the Standard Operating Procedures for Breath Alcohol Testing, if "...the subject vomits or is otherwise suspected of regurgitating material from the stomach, the 15 minute waiting period must begin again." The testimony of the driver that she "coughed" is insufficient to invalidate the test or to rebut the statement of the officer that the test was properly conducted.

VIII.

Proper procedures and standards were followed by the peace officer to insure the operation of the test machine to be reliable, with the results of .90 and .95.

IX.

Idaho Code, Section 18-8002A provides for the penalties associated with the failure of a blood alcohol test but is not intended to be all inclusive of all consequences that may result from an arrest for driving under the influence or for the failure of a blood alcohol test. The Idaho Code and the regulations of the Department of Transportation contain other civil consequences for such action.

X.

Idaho Code, Section 49-335(2), provides that a person is disqualified from operating a commercial motor vehicle for a period of one year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

XI.

The disqualification of the driver's commercial driving privileges is a consequence unique to commercial drivers that resulted from the failure of the breath test and is in addition to any consequences contained in Idaho Code, Section 18-8002A.

XII.

ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

A disqualification of commercial driving privileges pursuant

to Idaho Code, Section 49-335 is separate and distinct from any suspension entered by a court or administrative agency. Disqualification of commercial driving privileges is always related to and triggered by other actions, convictions or groups of convictions.

XIII.

The Administrative License Suspension proceedings as set forth in Idaho Code, Section 49-8002A are separate and distinct from and not relevant to the disqualification of commercial driving privileges.

XIV.

The requirements of notice and the procedure set forth in Idaho Code, Section 18-8002A are not affected by or modified by Idaho Code, Section 49-335(2), and there is no additional notice requirements to the statutory notices set forth in Section 18-8002A as a result of the additional consequences for commercial drivers in Section 49-335(2).

XV.

All procedures and requirements were followed by the reporting officer pursuant to I.C. Sec. 18-8002A or I.C. §18-8004.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS CONCLUDED THAT ALL OF THE STATUTORY PROVISIONS REQUIRED TO DENY/SUSPEND THE DRIVING PRIVILEGE WERE PROVIDED IN THIS CASE, AND THE FOLLOWING DECISION IS RENDERED:

ORDER

The suspension set out in the Notice of Suspension served pursuant to I.C. §18-8002A is SUSTAINED.

DATED this 3rd day of November, 2007.



MICHAEL B. HOWELL
Hearing Examiner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5 day of November, 2007, I mailed a true and accurate copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER by depositing the same in the United States mail, postage prepaid, addressed to:

STACIE DAWN BENNETT
c/o Paul Thomas Clark
Attorney at Law
PO Drawer 285
Lewiston, ID 83501



FINAL ORDER

(Hearings pursuant to section 18-8002A, I.C.)

This is a final order of the Department.

A motion for reconsideration may be filed with the Idaho Transportation Department's Administrative License Suspension Hearing Unit, PO Box 7129, Boise, ID 83707-1129 within fourteen (14) days of the service date of this order. If the hearing officer fails to act upon this motion within twenty-one (21) days of its receipt, the motion will be deemed denied. Or, pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition for judicial review in the district court of the county in which:

1. A hearing was held;
2. The final agency actions was taken; or
3. The party seeking review of the order resides.

An appeal must be filed within twenty-eight (28) days of the service date of this final order. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

9:55 FILED AM
O'CLOCK
NOV 13 2007
PATTY O. WEEKS
State of the District Court
TERESA DANNON
Deputy

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

3 In the Matter of the Driving Privileges)
4 of)
5 STACIE DAWN BENNETT,)
6 DL No: KA147720G)
7 Respondent.)

Case No. **CV07-02390**
ITD File #657000041144

**ORDER FOR STAY PENDING
JUDICIAL REVIEW**

8 The ex parte motion of the respondent for stay pending judicial review having been presented
9 before this court, and good cause appearing therefore,

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the execution and/or enforcement
11 of the Findings of Fact and Conclusions of Law and Order previously entered in this matter on
12 November 3, 2007, and the order of the Idaho Transportation Department suspending respondent's
13 driver's license or privileges be, and the same is hereby stayed during the pendency of judicial
14 review of said order. Respondent's driving privileges are therefore ordered reinstated during the
15 pendency of judicial review.
16

17 DATED this 13th day of November, 2007.

CARL B. KERRICK

District Court Judge

I hereby certify on the 15th day
of ~~May, 2000~~, a true copy
of the foregoing instrument

was: Mailed
 Faxed
 Hand delivered
 Overnight mail to:

Michael B. Howell - *mailed*
Idaho Transportation Department
Driver Services Section
P O Box 7129
Boise ID 83707

Paul Thomas Clark
Clark and Feeney
PO Box 285
1229 Main Street, Ste 201
Lewiston, ID 83501

CLERK OF DISTRICT COURT

By TERESA DAMMON
Clerk/Deputy

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NOV 13 2007

DRIVER SERVICES
ID. TRANSPORTATION DEPT.

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PAUL THOMAS CLARK
CLARK and FEENEY
Attorneys for Respondent
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208) 743-9516
Facsimile: (208) 746-9160

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

In the Matter of the Driving Privileges) Case No. _____
of) ITD File #657000041144
)
STACIE DAWN BENNETT,) PETITION FOR JUDICIAL REVIEW
DL No. [REDACTED])
)
Respondent.)

COMES NOW Stacie Dawn Bennett, the Respondent in the above-entitled matter by and through her attorney of record, Paul Thomas Clark of the law firm Clark and Feeney, and pursuant to I.C. §§18-8002A(8) & 67-5270 et seq. hereby respectfully petitions this Court for Judicial Review of the Findings of Fact and Conclusions of Law and Order entered by the Idaho Department of Transportation on November 3, 2007, in file No. 657000041144. A copy of said final order is attached hereto as Exhibit "A". Said proceeding and final order were entered following a hearing held pursuant to I.C. §18-8002A.

PETITION FOR JUDICIAL REVIEW -1-
ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

COPY

LAW OFFICES OF
CLARK AND FEENEY

DATED this 8th day of November, 2007.

CLARK and FEENEY

By [Signature]
Paul Thomas Clark, a member of the firm.
Attorneys for Respondent.

I hereby certify on the 8th day
of November, a true copy
of the foregoing instrument
was:

- Mailed
- Faxed
- Hand delivered to:

MICHAEL B. HOWELL
IDAHO TRANSPORTATION DEPARTMENT
DRIVER SERVICES SECTION
P O BOX 7129
BOISE ID 83707

CLARK and FEENEY

By [Signature]
Attorneys for Respondent.

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EXHIBIT A

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PETITION FOR JUDICIAL REVIEW -3-
ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

138

IN THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

In the Matter of the) File No. 657000041144
Driving Privileges of)
STACIE DAWN BENNETT) FINDINGS OF FACT AND
License No. [REDACTED]) CONCLUSIONS OF LAW AND ORDER
_____)

This matter came on for hearing on November 2, 2007, by telephone conference.

The licensee appeared, represented by Paul Thomas Clark, attorney at law.

The Hearing Examiner received the following documents and information as part of the records of the proceeding: The officer's sworn statement submitted in compliance with I.C. Sec. 18-8002A(4)(a), Notice of suspension and temporary permit, Hearing request, Notice of hearing, Results of evidentiary test, Affidavit of Service of Subpoena duces tecum, Affidavit of David Beeman.

The Hearing Examiner, having heard the testimony, having considered the exhibits admitted as evidence, and having taken official notice of the records of the Department, and having considered the matter herein, and being advised in the premises and the law, makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

The driver moved that the suspension be vacated because he had not received the documents requested in the subpoena to the Latah County Sheriff's Office. However, the subpoena gave the Latah county Sheriff until November 5, 2007, to deliver the documents. The driver did not request a continuance to present the evidence.

II.

The peace officer, W.L. Krasselt, had legal cause to stop the driver's vehicle based upon his observation of the driver's vehicle backing out of the parking lot and driving back into the parking lot, the statements of a witness that the vehicle had struck another

ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

vehicle in the parking lot, and discovery of fresh damage and paint exchanges on both vehicles consistent with the incident report. In addition to the officer's personal observations, the driver admitted to the officer that she was the driver.

III.

It is irrelevant that the driver had made prior arrangements for a ride home in anticipation of her being impaired since she chose to drive anyway, even if it was only to relocate the vehicle in the parking lot which is a private area open to the public.

IV.

The peace officer had legal cause to believe that the driver had violated I.C. §18-8004 because of an odor of an alcoholic beverage, admission by the driver of drinking, glassy/bloodshot eyes, slurred speech, impaired memory, and the failure of field sobriety tests, and the driver was placed under arrest.

V.

The driver was advised of the possible denial/suspension of his/her driving privilege.

VI.

After proper warning, the driver did submit to a chemical test and the chemical test was administered by an officer certified to do so.

VII.

The officer certified that he administered the breath test in compliance with the standards and methods adopted by the Department of Law Enforcement for the administration of breath tests which standards include specific directions on a 15 minute observation period prior to the test administration. While the driver testified that the officer was in and out of the room during the waiting period, no specific testimony was produced to show that the 15 minute period was not present. The driver had the burden to do so if she were to successfully challenge the officers statement that he had properly observed the waiting period.

ADMINISTRATIVE RECORD FOR VII.
JUDICIAL REVIEW

The driver testified that she was coughing repeatedly prior

to taking the breath test. However, she did not say that she had vomited or regurgitated any substance from her stomach that could have affected the test. According to the Standard Operating Procedures for Breath Alcohol Testing, if "...the subject vomits or is otherwise suspected of regurgitating material from the stomach, the 15 minute waiting period must begin again." The testimony of the driver that she "coughed" is insufficient to invalidate the test or to rebut the statement of the officer that the test was properly conducted.

VIII.

Proper procedures and standards were followed by the peace officer to insure the operation of the test machine to be reliable, with the results of .90 and .95.

IX.

Idaho Code, Section 18-8002A provides for the penalties associated with the failure of a blood alcohol test but is not intended to be all inclusive of all consequences that may result from an arrest for driving under the influence or for the failure of a blood alcohol test. The Idaho Code and the regulations of the Department of Transportation contain other civil consequences for such action.

X.

Idaho Code, Section 49-335(2), provides that a person is disqualified from operating a commercial motor vehicle for a period of one year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

XI.

The disqualification of the driver's commercial driving privileges is a consequence unique to commercial drivers that resulted from the failure of the breath test and is in addition to any consequences contained in Idaho Code, Section 18-8002A.

ADMINISTRATIVE RECORD FOR JUDICIAL REVIEW

XII.

A disqualification of commercial driving privileges pursuant

to Idaho Code, Section 49-335 is separate and distinct from any suspension entered by a court or administrative agency. Disqualification of commercial driving privileges is always related to and triggered by other actions, convictions or groups of convictions.

XIII.

The Administrative License Suspension proceedings as set forth in Idaho Code, Section 49-8002A are separate and distinct from and not relevant to the disqualification of commercial driving privileges.

XIV.

The requirements of notice and the procedure set forth in Idaho Code, Section 18-8002A are not affected by or modified by Idaho Code, Section 49-335(2), and there is no additional notice requirements to the statutory notices set forth in Section 18-8002A as a result of the additional consequences for commercial drivers in Section 49-335(2).

XV.

All procedures and requirements were followed by the reporting officer pursuant to I.C. Sec. 18-8002A or I.C. §18-8004.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS CONCLUDED THAT ALL OF THE STATUTORY PROVISIONS REQUIRED TO DENY/SUSPEND THE DRIVING PRIVILEGE WERE PROVIDED IN THIS CASE, AND THE FOLLOWING DECISION IS RENDERED:

ORDER

The suspension set out in the Notice of Suspension served pursuant to I.C. §18-8002A is SUSTAINED.

DATED this 3rd day of November, 2007.



MICHAEL B. HOWELL
Hearing Examiner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5 day of November, 2007, I mailed a true and accurate copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER by depositing the same in the United States mail, postage prepaid, addressed to:

STACIE DAWN BENNETT
c/o Paul Thomas Clark
Attorney at Law
PO Drawer 285
Lewiston, ID 83501



FINAL ORDER

(Hearings pursuant to section 18-8002A, I.C.)

This is a final order of the Department.

A motion for reconsideration may be filed with the Idaho Transportation Department's Administrative License Suspension Hearing Unit, PO Box 7129, Boise, ID 83707-1129 within fourteen (14) days of the service date of this order. If the hearing officer fails to act upon this motion within twenty-one (21) days of its receipt, the motion will be deemed denied. Or, pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition for judicial review in the district court of the county in which:

1. A hearing was held;
2. The final agency actions was taken; or
3. The party seeking review of the order resides.

An appeal must be filed within twenty-eight (28) days of the service date of this final order. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

RECEIVED

NOV 13 2007

DRIVER SERVICES
ID. TRANSPORTATION DEPT.

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Respondent
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Facsimile: (208) 746-9160

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

In the Matter of the Driving Privileges)
of)
STACIE DAWN BENNETT,)
DL No [REDACTED])
Respondent.)

Case No. _____
ITD File #657000041144

**EX PARTE MOTION FOR STAY
PENDING JUDICIAL REVIEW**

COMES NOW, the Respondent, STACIE DAWN BENNETT, by and through her undersigned counsel of record, and pursuant to I.C. §67-5274 hereby respectfully moves this court for entry of an order staying the execution and/or enforcement of the Findings of Fact and Conclusions of Law and Order previously entered by the Idaho Transportation Department on or about November 3, 2007, which sustains the suspension of the respondent's driver's license or privileges allegedly for failure of evidentiary testing for alcohol concentration pursuant to I.C. §18-8002A. Relief is requested upon grounds which include, but are not limited to, the following:

1. Appellant has filed a timely Petition for Judicial Review from the Findings of Fact and Conclusions of Law and Order;
2. A stay of the Findings of Fact and Conclusions of Law and Order and suspension of respondent's driver's license or privileges is necessary to preserve Appellant's driving privileges

EX PARTE MOTION FOR STAY
PENDING JUDICIAL REVIEW -1-
ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

COPY
CLARK AND FEENEY

during the pendency of a judicial review. Without such relief, respondent will be necessarily denied, as a practical matter, the relief which she is seeking by way of his petition for judicial review ;and

3. A stay is necessary in the interests of justice.

DATED this 8th day of November, 2007.

CLARK and FEENEY

By [Signature]
Paul Thomas Clark, a member of the firm.
Attorneys for Respondent.

I hereby certify on the 8th day of November, 2007, a true copy of the foregoing instrument

was: Mailed
 Faxed
 Hand delivered
 Overnight mail to:

Michael B. Howell
Idaho Transportation Department
Driver Services Section
P O Box 7129
Boise ID 83707

CLARK and FEENEY

By [Signature]
Attorneys for Respondent.

046

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

3 In the Matter of the Driving Privileges)
4 of)
5 STACIE DAWN BENNETT,)
6 DL No: KA147720G)
7 Respondent.)

Case No. _____
ITD File #657000041144

**ORDER FOR STAY PENDING
JUDICIAL REVIEW**

8 The ex parte motion of the respondent for stay pending judicial review having been presented
9 before this court, and good cause appearing therefore,

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the execution and/or enforcement
11 of the Findings of Fact and Conclusions of Law and Order previously entered in this matter on
12 November 3, 2007, and the order of the Idaho Transportation Department suspending respondent's
13 driver's license or privileges be, and the same is hereby stayed during the pendency of judicial
14 review of said order. Respondent's driving privileges are therefore ordered reinstated during the
15 pendency of judicial review.
16

17 DATED this ____ day of November, 2007.

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20 _____
District Court Judge

21
22
23 047

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26 ORDER FOR STAY PENDING JUDICIAL REVIEW -1-
ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW

65

COPY
LAW OFFICES OF
CLARK AND FEENEY

I hereby certify on the ____ day
of May, 2000, a true copy
of the foregoing instrument

1 was: Mailed
2 Faxed
3 Hand delivered
4 Overnight mail to:

4 Michael B. Howell
5 Idaho Transportation Department
6 Driver Services Section
7 P O Box 7129
8 Boise ID 83707

8 Paul Thomas Clark
9 Clark and Feeney
10 PO Box 285
11 1229 Main Street, Ste 201
12 Lewiston, ID 83501

11 CLERK OF DISTRICT COURT

12 By _____
13 Clerk/Deputy

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048

LAW OFFICES OF
CLARK AND FEENEY
THE TRAIN STATION, SUITE 106
1229 MAIN STREET
P.O. DRAWER 285
LEWISTON, IDAHO 83501

RON T. BLEWETT
WILLIAM JEREMY CARR
PAUL THOMAS CLARK
THOMAS W. FEENEY
SCOTT D. GALLINA **
JONATHAN D. HALLY
RUBE G. JUNES *
TINA L. KERNAN **
JOHN C. MITCHELL
DOUGLAS L. MUSHLITZ
CHARLES M. STROSCHEIN **
CONNIE TAYLOR **

TELEPHONE
(208) 743-9516
(800) 865-9516
FAX
(208) 746-9160
cflaw@lewiston.com

November 8, 2007

* LICENSED IN WASHINGTON & OREGON ONLY
** LICENSED IN IDAHO & WASHINGTON

Clerk of The District Court
Attn Criminal Department
Nez Perce County Courthouse
Lewiston ID 83501

Re: In the Matter of the Driving Privileges of Stacie Dawn Bennett

Dear Clerk:

Please file the enclosed *Petition for Judicial Review* and *Motion for Stay Pending Judicial Review* regarding the above referenced matter. Also enclosed is an original and two copies of an *Order for Stay Pending Judicial Review*. Please present the order to the appropriate Judge for review. If the order meets with the Judge's approval and the same is entered, please remit conformed copies in the enclosed envelopes.

Also enclosed is a check in the amount of \$88.00 for filing the petition.

Thank you for your attention to this matter.

Sincerely yours,

CLARK and FEENEY



By: Paul Thomas Clark

PTC:dw

encs.

cc: Stacie Bennett w/encs
Michael B. Howell, Hearing officer w/encs.

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ADMINISTRATIVE RECORD FOR
JUDICIAL REVIEW NOV 13 2007

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DRIVER SERVICES

FILED

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PATTY G. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

James

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

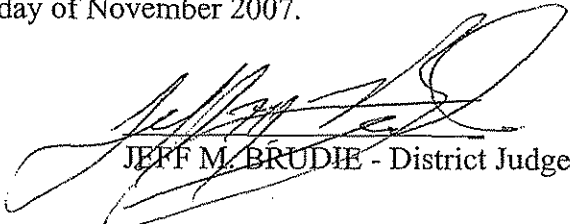
In the matter of the driving privileges of)	
)	
STACIE DAWN BENNETT,)	CASE NO. CV 07-02390
)	
Petitioner,)	ORDER SCHEDULING BRIEFS AND ARGUMENT

A transcript of the proceeding from the Idaho Department of Transportation Hearing Examiner has been lodged with this Court.

THEREFORE, IT IS HEREBY ORDERED:

- 1) Appellant shall lodge their brief on or before December 31, 2007.
- 2) Respondent shall lodge their brief on or before January 28, 2008.
- 3) Appellate argument shall take place on February 21, 2008, commencing at the hour of 10:00 a.m.

DATED this 26 day of November 2007.


JEFF M. BRUDIE - District Judge

ORDER SCHEDULING BRIEFS
AND ARGUMENT

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SCHEDULING BRIEFS AND ARGUMENT was

hand delivered via court basket, or *Messenger Service*

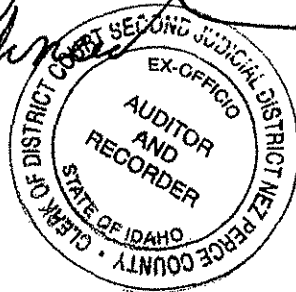
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 26th day of November 2007, to:

Edwin Litteneker
P.O. Box 321
Lewiston, ID 83501-0321

Paul Thomas Clark
PO Box 285
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By *Amelia Schmitt*
Deputy



FILED

2008 MAR 10 PM 1 19

PATTY O. WEEKS
CLERK OF THE DIST. COURT

ICMels
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

In the Matter of the Driving Privileges of)	CASE NO. CV07-02390
)	
STACIE DAWN BENNETT,)	MEMORANDUM OPINION AND
)	ORDER ON PETITION FOR
Petitioner.)	JUDICIAL REVIEW
)	
)	

This matter came before the Court for hearing on February 21, 2008 on Petition for Judicial Review of the Idaho Transportation Department Hearing Officer's Order sustaining the Petitioner's Administrative License Suspension pursuant to I.C. § 18-8002A. The Petitioner was represented by attorney Douglas L. Mushlitz. The Idaho Transportation Department was represented by Edwin L. Litteneker, Special Deputy Attorney General. The Court, having reviewed the record, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PRECEDURAL BACKGROUND

On October 14, 2007, Petitioner Stacie Bennett was arrested by Moscow City Police Officer W.L. Krasselt on suspicion of driving under the influence of alcohol. Bennett was transported to the Latah County Sheriff's office where she was asked to perform a breath test. Based on the results of her tests, Bennett was charged with DUI and her driver's license was suspended. Bennett timely filed for an Administrative Hearing on the license suspension. On November 2, 2007, a telephonic hearing was held before Hearing Officer Michael B. Howell.

During the hearing, Petitioner Bennett testified that at the time she was detained and asked to perform breath testing, she had a sinus infection and chronic cough.¹ When asked if the officer observed her for fifteen (15) minutes prior to having her perform breath testing, Petitioner Bennett testified that, during the observation period, the officer left the room twice, went down a hall and into another room.² Bennett further stated that she was left alone in the room during the times the officer left the room and that she was coughing constantly just prior to performing the test. The Hearing Officer was presented with no testimony other than that of Ms. Bennett.

On November 3, 2007, Hearing Officer Howell entered his Findings of Fact, Conclusions of Law and Order, wherein he sustained Bennett's license suspension. On November 8, 2007, Bennett filed a Petition for Judicial Review and a Motion for Stay Pending Judicial Review. On November 13, 2007, the Court entered an Order staying the license suspension pending judicial review. On November 19, 2007, the Administrative Record was filed with the Court and on December 21, 2007, a transcript of the Administrative Hearing was filed. Briefs were filed by the parties and oral arguments heard by the Court on February 21, 2008.

¹ Adm. Hg. Tr. p. 13.

² Adm. Hg. Tr. pp. 14-15.

STANDARD OF REVIEW

“The administrative license suspension (ALS) statute, I.C. § 18-8002A, requires that the Idaho Transportation Department (ITD) suspend the driver's license of a driver who has failed a BAC test administered by a law enforcement officer.” *In re Gibbar*, 143 Idaho 937, 942, 155 P.3d 1176 (Ct.App.2006). “A person who has been notified of such an administrative license suspension may request a hearing before a hearing officer designated by the ITD to contest the suspension. I.C. § 18-8002A(7). At the administrative hearing, the burden of proof rests upon the driver to prove any of the grounds to vacate the suspension. I.C. § 18-8002A(7); *Kane v. State, Dep't of Transp.*, 139 Idaho 586, 590, 83 P.3d 130, 134 (Ct.App.2003). The hearing officer must uphold the suspension unless he or she finds, by a preponderance of the evidence, that the driver has shown one of several grounds enumerated in I.C. § 18-8002A(7) for vacating the suspension.” *Id.*

“A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.” I.C. § 18-8002A(8). “[J]udicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter, supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code.” I.C. § 67-5277. “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” I.C. § 67-5279(1). Idaho Code Section 67-5279(3) further provides:

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- a) in violation of constitutional or statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) not supported by substantial evidence on the record as a whole; or

e) arbitrary, capricious, or an abuse of discretion.

In an administrative hearing on a driver's license suspension, the burden of proof rests with the petitioner. Idaho Code § 18-8002A(7) states in pertinent part:

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

...

(e) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; . . .

ANALYSIS / DISCUSSION

On appeal, Petitioner Bennett asserts the Hearing Officer's Order sustaining her driver's license suspension should be vacated as the evidence presented shows the breath testing was not conducted in conformity with Idaho State Police Standard Operating Procedures. Petitioner asserts two errors in the administration of the breath test by the arresting officer: (1) she was suffering from a deep cough and coughed constantly during the fifteen minute observation period; (2) the officer left the room at least twice during the fifteen minute monitoring period, leaving Petitioner alone in the room.

"The [Standard Operating Procedures] manual requires that the breath test subject be monitored for a period of fifteen minutes immediately prior to administration of the breath test to assure that the subject did not smoke, ingest any substance, vomit, or belch, which actions could render the breath test inaccurate. In the absence of a validly conducted fifteen-minute wait required by the manual, the hearing officer should vacate the license suspension because the

breath test was not conducted in accordance with the requirements of I.C. § 18-8004(4), I.C. § 18-8002A(7)(d).” *In re Gibbar*, 143 Idaho at 944.

Idaho’s Court of Appeals has held that the fifteen minute observation period does not require the officer to “stare fixedly” at the subject but does, however, require the officer to remain in close physical proximity to the subject so that the officer may use all of his senses to determine whether a subject has belched, burped or vomited during the monitoring period.³ In *State v. Carson*, 133 Idaho 451, 988 P.2d 225 (Ct.App.1999) and *State v. DeFranco*, 143 Idaho 335, 144 P.3d 40 (Ct.App.2006), the Court held the fifteen minute monitoring requirement was not met where the facts showed the officers had failed to stay in sufficient physical proximity to the test subject so as to allow them to use their sense of sight, smell and hearing to monitor the subject.

The instant case is analogous to *Carson* and *DeFranco*. The evidence before the Administrative Hearing Officer was that Officer Krasselt left the room twice, going down a hall and into another room. The only evidence to the contrary was a computer generated form affidavit signed by the Officer that included boiler plate language stating, “The test(s) was/were performed in compliance with Section 18-8003 & 18-8004(4) Idaho Code and the standards and methods adopted by the Department of Law Enforcement.”⁴

The fifteen-minute monitoring period is not an onerous burden, and it is "a precaution that is necessary to insure the validity of the test results." *Id.* This foundational standard ordinarily will be met if the officer stays in close physical proximity to the test subject so that the officer's senses of sight, smell and hearing can be employed. If an officer deviates from that practice, without beginning the fifteen-minute period anew, which is always an alternative in cases of uncertainty, the officer risks that the breath test results will be rendered inadmissible.

State v. DeFranco, 143 Idaho 335, 338, 144 P.3d 40 (Ct.App.2006).

³ See *State v. Remsburg*, 126 Idaho 338, 882 P.2d 993 (Ct.App.1994); *State v. Carson*, 133 Idaho 451, 988 P.2d 225 (Ct.App.1999); *State v. DeFranco*, 143 Idaho 335, 144 P.3d 40 (Ct.App.2006).

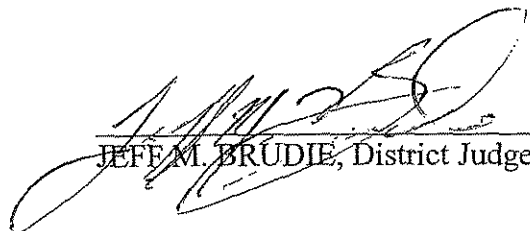
⁴ Exhibit 3 to the Administrative Record.

In the instant case, the Petitioner testified the Officer left the Petitioner alone in the room at least twice during the fifteen-minute observation period, going into another room down the hall. There was no credible evidence contradicting that specific fact. Idaho's Court of Appeals has clearly stated that a breath test has not been conducted in compliance with required procedural standards when an officer fails to stay in close physical proximity to the test subject during the fifteen-minute observation period. In the instant case, the Hearing Officer's finding that the breath test was conducted in compliance with procedural standards is not supported by substantial evidence on the record as a whole. As a result, Petitioner Bennett's driver's license suspension should have been vacated by the Hearing Officer.

ORDER

The Order of Hearing Officer Howell sustaining Petitioner Bennett's driver's license suspension is hereby VACATED.

Dated this 10 day of March 2008.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION & ORDER was:

✓ hand delivered via court basket, or *Messenger Service*

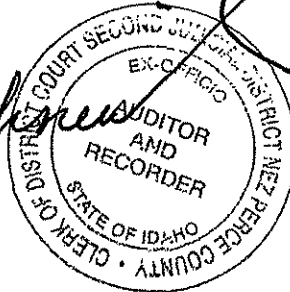
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 10th day of March, 2008, to:

Edwin Litteneker
PO Box 321
Lewiston, ID 83501-0321

Paul Thomas Clark
PO Box 285
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By *Samuel O. Bennett*
Deputy



LAWRENCE G. WASDEN
Attorney General

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
PO Box 321
Lewiston, Idaho 83501
Telephone: (208) 746-0344
ISB No. 2297
Attorneys for Appellant.

FILED
2008 MAR 26 PM 12 26
PARTY O. WEEKS
CLERK OF THE DIST. COURT
James O. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STACIE DAWN BENNETT,)
)
Petitioner/Respondent)
)
v.)
)
STATE OF IDAHO, DEPARTMENT OF)
TRANSPORTATON,)
)
Respondent/Appellant)
_____)

Case No. CV-07-02390
ITD File No. 657000041144
D.L. No. KA147720G

NOTICE OF APPEAL

Fee Category: T.
Fee: Exempt - I.C. § 67-2301

TO: THE ABOVE NAMED RESPONDENT, STACIE DAWN BENNETT, AND
YOUR ATTORNEY, PAUL THOMAS CLARK, CLARK AND FEENEY, P.O.
DRAWER 285, LEWISTON, IDAHO, AND THE CLERK OF THE ABOVE
ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, STATE OF IDAHO TRANSPORTATION
DEPARTMENT (hereinafter referred to as "Department"), appeals to the Idaho Supreme
Court from the Order of the 10th day of March 2008, entered by Honorable Judge Brudie
dismissing the Department's suspension of Ms. Bennett's driving privileges.

2. This appeal is taken on issues of law and fact. It is generally submitted that the issues on appeal will include the District Court's failure to affirm the decision of the Department's Hearing Officer, particularly in regards to the circumstances of the 15 minute observation prior to the administration of a breath alcohol test. A more specific detailing of the issues on appeal will be supplied upon the briefing of this matter.

3. That the Department has a right to appeal to the Idaho Supreme Court as the state agency which originally administratively suspended the driving privileges of Ms. Bennett and appeared through its Special Deputy Attorney General in the Petition for Judicial Review proceedings before the Honorable Judge Brudie.

4. The order described in paragraph 1 above is an appealable order under and pursuant to Idaho Appellate Rule 11(f).

5. (a) The Appellant requests the preparation of the standard reporter's transcript as defined in Idaho Appellate Rule 25(a).

6. The Appellant requests the clerk's record be prepared as provided for under Idaho Appellate Rule 28(a)(1).

7. I certify:

(a) That a copy of the Notice of Appeal has been served on the reporter.

(b) That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the State of Idaho is exempt from paying the estimated fee for preparation of the clerk's record per Idaho Code Section 67-2301.

(d) That the State of Idaho is exempt from paying the appellate filing fee per Idaho Code Section 67-2301.

(e) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 24th day of March, 2008,



Edwin L. Litteneker
Special Deputy Attorney General
Attorney for the Appellant

I DO HEREBY CERTIFY that a true
And correct copy of the foregoing
Document was:

Mailed by regular first class mail,
And deposited in the United States
Post Office

Sent by facsimile

Sent by Federal Express, overnight
Delivery

Hand delivered

To: Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, Idaho 83501

Linda Carlton
Certified Court Reporter
425 Warner Avenue
Lewiston, Idaho 83501

On this 24 day of March, 2008.



Edwin L. Litteneker

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STACIE DAWN BENNETT,)
)
) SUPREME COURT NO. 35150
 Petitioner-Respondent,)
)
 v.)
) CERTIFICATE OF SERVICE
 STATE OF IDAHO, DEPARTMENT)
 OF TRANSPORTATION,)
)
)
 Respondent-Appellant.)

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That no exhibits were marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court this 29 day of April 2008.

PATTY O. WEEKS, Clerk

By *Melba R. Green*
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STACIE DAWN BENNETT,)
)
) SUPREME COURT NO. 35150
Petitioner-Respondent,)
)
v.)
) CERTIFICATE OF SERVICE
STATE OF IDAHO, DEPARTMENT)
OF TRANSPORTATION,)
)
)
Respondent-Appellant.)

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that copies of the Clerk's Record and Reporter's Transcript were delivered on the ____ day of May 2008 to Edwin L. Litteneker, Attorney for Appellant and Paul Thomas Clark, Attorney for Respondent by Valley Messenger Service.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this ____ day of May 2008.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

By _____
Deputy Clerk

CERTIFICATE OF SERVICE