

Ronald Fyock vs Comm. Of Penna.
2004-699-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RONALD M. FYOCK, JR.,
Plaintiff

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING,
Defendant

:
: No. 2004-699-CD
:
: Commercial Driver License
: Disqualification Appeal
:
: ORDER OF COURT
:
: Filed on Behalf of:
:
: COMMONWEALTH OF PENNSYLVANIA
: DEPARTMENT OF TRANSPORTATION
:
: Counsel of Record:
:
: William A. Kuhar, Jr., Esquire
: Assistant Counsel
: Pa.I.D. No. 38885
:
: Department of Transportation
: Office of Chief Counsel
: Firm No. 052
:
: 1209 State Office Building
: 300 Liberty Avenue
: Pittsburgh, PA 15222
: (412) 565-7555

FILED
AUG 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RONALD M. FYOCK, JR.,

Plaintiff

vs.

No. 2004-699-CD

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING,

Defendant

ORDER OF COURT

AND NOW, to wit: this *25th* day of *August*, 2004,

with the consent of the Department of Transportation, this appeal by the plaintiff, Ronald M. Fyock, Jr., from an order of the Department for the disqualification of his privilege to operate commercial motor vehicles for a period of sixty (60) days pursuant to Section 1611(g) of the Vehicle Code is remanded to the Department to rescind the appealed 60 day disqualification and correct the plaintiff's driving record to show that no action is being taken by the Department against the plaintiff's privilege to operate commercial motor vehicles as a result of his April 21, 2004 convictions in District Court No. 35-2-01 for violating Sections 3309 and 3310 of the Vehicle Code on March 5, 2004 while operating a commercial motor vehicle and that only one of those two March 5, 2004 offenses can be counted for the purpose of Section 1611(g) of the Vehicle Code.

By the Court:

Frederic J. Ammenman

J.

Consented to

William A. Kuhar, Jr.

William A. Kuhar, Jr., Esquire

Attorney for the Department of Transportation

FILED

AUG 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 19 2004

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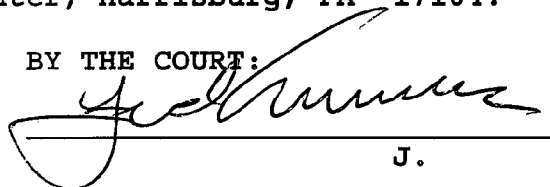
Docket No. 2004-699-CD

O R D E R

AND NOW, this 19th day of May, 2004, upon consideration of the Notice of Appeal of Driver's License Suspension and Request for Supersedeas filed on behalf of Ronald M. Fyock, Jr., IT IS THE ORDER AND DECREE OF THIS COURT that a supersedeas is hereby granted and the April 29, 2004 Notice of the Bureau of Driver Licensing disqualifying Ronald M. Fyock, Jr. from driving a commercial motor vehicle for 60 days is hereby vacated. The Court Administrator of Clearfield County is directed to schedule this case for trial at the next available date when driver suspension appeals are heard.

Counsel for Ronald M. Fyock, Jr. is directed to serve forthwith a copy of this Order and the Notice of Appeal to the Pennsylvania Department of Transportation, Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA 17104.

BY THE COURT:


J.

FILED

5cc

01:53:00
MAY 19 2004

Att'y Kerber

William A. Shaw
Prothonotary/Clerk of Courts
Copy to C/A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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RONALD M. FYOCK, JR.,
Plaintiff

-vs-

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING,
Defendant

Docket No. 2004-699-CD

Type of pleading:
NOTICE OF APPEAL OF
DRIVER'S LICENSE
SUSPENSION AND
REQUEST FOR SUPERSEDEAS

Filed on behalf of:
PLAINTIFF, Ronald M.
Fyock, Jr.

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
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FILED

MAY 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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-vs-

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DEPARTMENT OF TRANSPORTATION,
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Defendant

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Docket No. 2004- -CD

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NOTICE OF APPEAL OF DRIVER'S LICENSE SUSPENSION
AND REQUEST FOR SUPERSEDEAS

COMES NOW, Ronald M. Fyock, Jr., by and through his attorney, Dwight L. Koerber, Jr., Esquire, and files the within pleading, all of which is directed to the April 29, 2004 Notice of Suspension issued by the Commonwealth of Pennsylvania, Department of Transportation.

1. Appellant is Ronald M. Fyock, Jr. (referred to hereinafter as "Fyock" or "Appellant"), of 3019 Punkin Ridge Road, LaJose, PA 15753.

2. Appellee is the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (referred to hereinafter as "DOT" or "Appellee"), which has an address of P. O. Box 68693, Harrisburg, PA 17105-8693.

3. DOT is represented by the Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA 17104.

4. Fyock holds a commercial driver's license, which is No. 19785939.

5. Fyock is a truck driver, currently employed by Brink Transportation, Inc., of R. R. 1, Box 316-H, Houtzdale, PA 16651.

6. On April 29, 2004, DOT served a Notice upon Fyock, informing him that effective June 3, 2004, his privilege to drive a commercial motor vehicle was disqualified for a period of 60 days.

7. Attached hereto as Appendix A is a true and correct copy of the Notice of Disqualification.

8. As shown in that Notice of Disqualification, the action was taken as a result of a violation of the Vehicle Code on April 21, 2004, alleging that Fyock was guilty of "following too closely", a violation of Section 3310 of the Motor Vehicle Code. The Notice does not so state, but it appears that a violation of Section 3310 of the Motor Vehicle Code is treated as a "serious traffic offense".

9. Also issued on April 29, 2004 was a Notice to Fyock stating that he was convicted on April 21, 2004 of violating Section 3309 of the Vehicle Code, entitled, "Driving on Road Lane for Traffic".

10. Attached hereto as Appendix B is a true and correct copy of that Notice. In that Notice, the DOT states that a violation of Section 3309 is a "serious traffic offense".

11. The violations described in Appendices A and B, attached hereto, involving Section 3309 and Section 3310 of the Vehicle Code, are a single incident, as opposed to separate and distinct incidents.

12. The specific facts involved for the violations identified in Appendices A and B, attached hereto, arise out of an event that occurred on March 5, 2004, at approximately 9:15 P.M., on Interstate 80 in Mercer County, at Mile Post 2.9, approximately one mile west of Exit 4.

13. Fyock was operating a tractor trailer unit, with a passenger vehicle operating in front of him. A deer jumped in front of the automobile, thereby causing the automobile to suddenly brake and Fyock to suddenly brake.

14. The automobile that braked was able to correct the course of his vehicle and safely drove away from the incident. The tractor trailer unit Fyock was driving, however, had its rear trailer brakes lock, causing the vehicle to swerve and eventually run off the road and then turn over.

15. The only vehicle involved in the accident, fortunately, was the vehicle operated by Fyock.

16. As a result of the incident of March 5, 2004, multiple charges were filed against Fyock.

17. Fyock believed that he had been safely operating his motor vehicle, in a non-negligent manner, and went to a hearing

resisting the charges. Fyock was not represented by counsel.

18. At the hearing, Fyock spoke with the State Police that had prosecuted the case, and agreed to plead guilty to certain charges, doing so with the understanding that it would not result in a loss of his driving privileges.

19. Fyock has now retained counsel and is in the process of filing Notices of Appeal in Mercer County.

20. Fyock maintains that when a hearing is held on the merits of these cases, that it will be shown that he is not guilty of the serious traffic offenses that have been alleged.

21. Fyock seeks a supersedeas so as to avail himself of the opportunity to have a meaningful hearing on the merits of the charges against him, and would point out that without a supersedeas, the 60 day penalty for conviction of those violations would have already been served prior to the time that a hearing will be held.

22. Accordingly, under the concept of due process, Fyock seeks to have his disqualification delayed until such a hearing occurs.

23. In addition to the aforesaid issue of due process rights, Fyock seeks a supersedeas because the two alleged "serious offenses", arising out of the March 5, 2004 incident, involving Section 3309 and Section 3310 of the Vehicle Code, are clearly just one incident and not separate and distinct incidents.

24. In order for a disqualification to be issued for "serious traffic offenses", 75 Pa.C.S.A. §1611(g) specifically provides that such a suspension of commercial driving privileges will occur only if the two serious traffic violations arise from separate and distinct incidents. The precise statutory language on this point is as follows:

(g) Disqualification for serious traffic offenses.-The department shall disqualify any person from driving a commercial motor vehicle for a period of 60 days if convicted of two serious traffic violations, or 120 days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate and distinct incidents occurring within a three year period.
75 Pa.C.S.A. §1611(g)

25. Attached hereto as Appendix C is a true and correct copy of the provisions of the Vehicle Code at 75 Pa.C.S.A. §1611(g).

26. Under the circumstances, it is clear that the provisions of the Vehicle Code requiring suspension of the commercial driving privileges of Fyock have not been met.

WHEREFORE, Fyock requests that his appeal be granted and that the suspension/disqualification of his commercial driving privileges be vacated, and that the April 29, 2004 Notice, attached hereto as Appendix A, be reversed and set aside.

REQUEST FOR SUPERSEDEAS

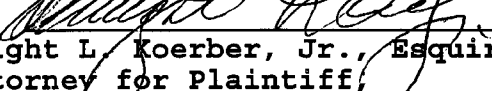
27. Section 1550(b) (2) of the Vehicle Code, 75 Pa.C.S.A.

§1550(b)(2), provides that a supersedeas may be granted by the Court of Common Pleas on an ex parte basis, upon a showing of the reasonable likelihood of success of prosecution of the appeal.

28. Fyock submits that there is a probability of succeeding on the merits of the appeal herein, because (a) it is clear that only a single incident was involved on March 5, 2004 when the multiple citations were issued against him, and (b) the suspension would be completed before a hearing on the merits of the underlying citations that are involved would be held.

WHEREFORE, Fyock prays that a supersedeas be granted, so that the Notice issued on April 29, 2004, attached hereto as Appendix A, does not result in a disqualification for 60 days effective June 3, 2004, and that the proposed Order, attached hereto, be entered.

Respectfully submitted,

By: 
Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff,
RONALD M. FYOCK, JR.

VERIFICATION


I verify that the statements made in this document are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Ronald M. Fyock, Jr.
Ronald M. Fyock, Jr.
DATE: 5-17-04

CERTIFICATE OF SERVICE

I certify that on this 19th day of May, 2004, a copy of the foregoing pleading was served by United States First Class Mail upon the following:

Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104


Dwight L. Koerber, Jr., Esquire

APPENDIX A

Attached hereto is a copy of the Notice of Violation alleging that Fyock was guilty of "following too closely" on March 5, 2004, and issuing the disqualification of his commercial driving privileges for 60 days, effective June 3, 2004.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
APRIL 29, 2004

RONALD M FYOCK JR
3019 PUNKIN RIDGE RD
LA JOSE PA 15753

WID # 041139283410297 001
PROCESSING DATE 04/22/2004
DRIVER LICENSE # 19785939
DATE OF BIRTH 08/22/1962

Dear Motorist:

As a result of your conviction on 04/21/2004 of violating Section 3310 of the Vehicle Code, FOLLOWING TOO CLOSELY on 03/05/2004, your privilege to drive a commercial motor vehicle is being disqualified for a period of 60 DAY(S) as mandated by Section 1611G of the Vehicle Code.

The effective date of disqualification is 06/03/2004, 12:01 a.m.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary driver's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, **Credit** will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR ACKNOWLEDGEMENT, WE WILL SEND YOU A RECEIPT. IF YOU DO NOT RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD SERVING THIS SANCTION.

Please see the enclosed application for restoration fee information.

041139283410297

While your commercial driving privilege is disqualified, the Vehicle Code permits a driver to obtain a noncommercial Class C or M license, if the driver possesses the motorcycle qualification, to drive noncommercial motor vehicles. If you wish to obtain this license, please complete the enclosed application as instructed and return it to the Department.

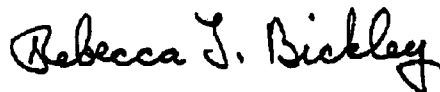
Please be aware that if you elect to obtain this noncommercial Class C or M license, you are still prohibited from operating a commercial motor vehicle. If you do so, you are subject to additional penalties, including possible lifetime disqualification of your commercial driving privilege.

You have the right to appeal the Department's action to the Court of Common Pleas (Civil Division) within 30 days of the mail date (APRIL 29, 2004) of this notice. You must still send in your license before the effective date of disqualification unless you appear in person before a Judge and receive an order permitting you to continue to drive. PLEASE NOTE that this Civil Appeal is in addition to any appeal you have to file from the criminal conviction.

AFTER THE APPEAL HAS BEEN FILED IN THE COUNTY COURT, A TIME-STAMPED CERTIFIED COPY OF THE APPEAL MUST BE SENT BY CERTIFIED MAIL TO:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
OFFICE OF CHIEF COUNSEL
THIRD FLOOR, RIVERFRONT OFFICE CENTER
HARRISBURG, PA. 17104

Sincerely,



Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 8:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

APPENDIX B

Attached hereto is a copy of the Notice issued to Fyock alleging that he violated, on March 5, 2004, "driving on road lane for traffic".

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
APRIL 29, 2004

RONALD M FYOCK JR
3019 PUNKIN RIDGE RD
LA JOSE PA 15753

WID # 041139283410285 001
PROCESSING DATE 04/22/2004
DRIVER LICENSE # 19785939
DATE OF BIRTH 08/22/1962

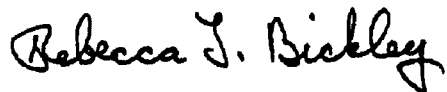
Dear Motorist:

On 04/21/2004 you were convicted of violating Section 3309 of the Vehicle Code, DRIV ON ROAD LANE FOR TRF on 03/05/2004. This violation has been recorded on your driving record as a serious traffic offense.

If you are convicted of other serious traffic offenses within three years from 03/05/2004, your privilege to drive a commercial motor vehicle will be disqualified for a minimum period of 60 days.

Please remember to observe all traffic laws and drive safely on the highways of this Commonwealth.

Sincerely,



Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 8:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

APPENDIX C

Attached hereto is a copy of 75 Pa.C.S.A. §1611(g).

(c) Applicant record check.—

(1) Before issuing a commercial driver's license, the department shall obtain driving record information through the Commercial Driver's License Information System and the National Driver Register.

(2) Before issuing a commercial driver's license with an "H" or "X" endorsement, the department must have received notification from the United States Secretary of Transportation that the individual does not pose a security risk warranting denial of the endorsement. This paragraph shall not apply until such time as regulations are published by the United States Secretary of Transportation as required by the Limiting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001 (Public Law 107-56, 115 Stat. 272).

(d) Notification of license issuance.—When the department has electronic access, but no later than March 31, 1992, the department, within ten days after issuing a commercial driver's license, shall notify the Commercial Driver's License Information System of that fact, providing all information required to ensure identification of the person.

(e) License renewal procedures.—When applying for renewal of a commercial driver's license, the applicant must complete the application form required by section 1606(a) (relating to application for commercial driver's license), providing current and valid information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the English version of the written test for a hazardous materials endorsement must be taken and passed.

(f) Sale of photographs prohibited.—Neither the department nor any person under contract with the department shall sell photographs of holders of a commercial driver's license for any commercial purpose.

1990, May 30, P.L. 173, No. 42, § 8, effective Nov. 1, 1990. Amended 2001, June 26, P.L. 731, No. 75, § 3, effective in 60 days; 2002, Dec. 9, P.L. 1278, No. 152, § 6.1, effective in 60 days.

Historical and Statutory Notes

Act 2001-25 legislation

Act 2001-75, § 3, added subsec. (f).

Act 2002-152 legislation

Act 2002-152, § 6.4, designated the prior text of subsec. (c) as par. (1) of that subsection and added par. (2).

§ 1611. Disqualification

(a) Disqualification for first violation of certain offenses.—Upon receipt of a certified copy of conviction, the department shall, in addition to any other penalties imposed under this title, disqualify any person from driving a commercial motor vehicle or school vehicle for a period of one year for the first violation of:

- (1) section 3802 (relating to driving under influence of alcohol or controlled substance) or former section 3731, where the violation occurred while the person was operating a commercial motor vehicle or school vehicle;
- (2) section 3742 (relating to accidents involving death or personal injury) where the violation occurred while the person was driving a commercial motor vehicle;
- (3) section 3743 (relating to accidents involving damage to attended vehicle or property), where the violation occurred while the person was driving a commercial motor vehicle;
- (4) section 3745 (relating to accidents involving damage to unattended vehicle or property), where the violation occurred while the person was driving a commercial motor vehicle;

- (5) any felony in the commission of which a court determines a commercial motor vehicle was essentially involved, except as described in subsection (a); or
- (6) section 1606(c) (relating to requirement for commercial driver's license), while their driving privileges to commercial driver's license.

(b) Disqualification for offense while carrying hazardous materials.—The department shall disqualify any person from driving a commercial motor vehicle for three years if any of the offenses in subsection (a) occurred while transporting a hazardous material required to be placarded.

(c) Disqualification for two violations of certain offenses.—The department shall disqualify for life any person convicted of two or more violations of any of the offenses specified in subsection (a), or any combination of those offenses, arising from two or more separate and distinct incidents. Only offenses committed after the effective date of this chapter may be considered in applying this subsection.

(d) Mitigation of disqualification for life.—The department may issue regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) may be reduced to a period of not less than ten years, if such reductions are permitted by Federal regulations.

(e) Disqualification for controlled substance offenses.—The department shall disqualify any person from driving a commercial motor vehicle for life who is convicted of using a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance. There shall be no exceptions or reductions to this disqualification for life.

(f) Disqualification for failure to have (CDL).—The department shall disqualify any person from driving a commercial motor vehicle for six months upon receiving a certified record of the person's conviction of violating section 1606(a), except as provided in section 1606(d)(6).

(g) Disqualification for serious traffic offenses.—The department shall disqualify any person from driving a commercial motor vehicle for a period of 60 days if convicted of two serious traffic violations, or 120 days if convicted of three serious traffic incidents occurring within a three-year period.

(h) Conviction in Federal court or another state.—For purposes of the provisions of this section, a copy of a certified record of conviction or a copy of a certified record of administrative adjudication from a Federal court or another state for an offense essentially similar to those offenses which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this Commonwealth.

(i) Surrender of license.—Upon the disqualification of the commercial driving privilege or school vehicle driving privilege of a person, the license shall be surrendered as provided in section 1610 (relating to surrender of license).

(j) Updating driving record.—After suspending, revoking, recalling or canceling a commercial driver's license, the department shall update its records to reflect that action. After suspending, revoking, recalling or canceling a commercial driving privilege issued by another state, the department shall notify the licensing authority of the state that issued the commercial driver's license or nonresident commercial driver's license. 1990, May 30, P.L. 173, No. 42, § 8, effective April 1, 1992. Amended 1992, April 16, P.L. 169, No. 31, § 4, effective in 60 days; 2002, Dec. 9, P.L. 1278, No. 152, § 6.4, effective in 60 days; 2003, Sept. 30, P.L. 120, No. 24, § 13, effective Feb. 1, 2004.

Historical and Statutory Notes

Act 2002-152 legislation

Act 2002-152, § 6.4, inserted "or school vehicle" in the introductory paragraph and par (1) of subsec. (a) and inserted "or school vehicle driving privilege" in subsec. (b).

Act 2003-24 legislation

Act 2003-24, § 13, in subsec. (a)(1), substituted "3802" for "3731" and inserted "or former section 3731".

I. Out-of-state convictions**Notes of Decisions**

that disqualification for life

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 2004- -CD

Ronald M. Fyock, Jr.

vs.

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing

NOTICE OF APPEAL OF DRIVER'S
LICENSE SUSPENSION AND
REQUEST FOR SUPERSEDEAS

FILED

09:06:01
MAY 19 2004

William A. Shaw

Prothonotary/Clerk of Courts

pd 8500

LAW OFFICE

DWIGHT KOERBER, JR.

ATTORNEY-AT-LAW

110 NORTH SECOND STREET

P. O. BOX 1420

CLEARFIELD, PENNSYLVANIA 16830

6-5

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Plaintiff

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Filed on behalf of:
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Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

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*Original
to CA*
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William A. Shaw
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