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Hearing officers biased, some say

By Rich Tucker
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State employees who decide whether to lift license suspensions in driving under the influence cases have been drawing stinging criticism from Jacksonville judges for not appearing impartial.

Judges say Florida Department of Highway Safety and Motor Vehicles hearing officers are acting more like lawyers for the department than independent evaluators, raising questions about their ability to conduct fair hearings. In at least a half-dozen critical opinions released in the last year, Jacksonville judges cited instances where hearing officers questioned witnesses outside the presence of defendants' lawyers and inappropriately limited defendants' questioning of witnesses.

"A failure to preserve an appearance of impartiality seems to be a problem with ... hearing officers," Circuit Judge L. Haldane Taylor said in a 2001 order. "Numerous orders from this circuit have had no apparent effect on the conduct of hearing officers."

Circuit judges overturned or ordered further hearings for half of the 18 Duval County appeals cases they decided last year.

Department officials downplayed criticism about hearing officers' conduct.

"It is understandable that those persons whose driving privilege suspensions are sustained after formal review would have reservations about the hearing officers' decisions," the Department of Highway Safety said in a written response to questions from the Times-Union. "That does not deter ... [the department] from doing what is needed to insure that administrative hearings are conducted impartially, fairly, and with due regard for the rights of each suspended motorist."

Because judges regularly review administrative suspension decisions, they declined to comment specifically on hearing officers but suggested

the situation is not improving.

But attorneys who handle driving under the influence cases say hearing officers' behavior and lack of legal knowledge are a dangerous combination.

"Under this system it is impossible to get a fair shake," said David Robbins, a Jacksonville lawyer who specializes in driving under the influence cases.

Even before a jury decides whether a defendant is guilty of driving under the influence of alcohol, the Department of Highway Safety is required by law to suspend the defendant's driver's license for several months.

To contest that administrative suspension, the defendant must request a hearing with a Department of Highway Safety employee who decides whether the traffic stop was legal and whether the driver either failed or refused a breathalyzer test.

Robbins and other lawyers who handle driving under the influence cases said those administrative hearings are as critical as the criminal case, because a long license suspension can make it difficult for his clients to keep their jobs and meet family responsibilities.

"You get the sense they [hearing officers] want to suspend licenses," said lawyer Curtis Fallgatter. "It doesn't matter what we do, the word of the officer that pulls them over is gospel."

Robbins and Fallgatter said because hearing officers' decisions frequently are overturned, circuit judges should be allowed to postpone administrative license suspensions until appeals are decided. But department officials said postponing suspensions would be counterproductive because their purpose is "getting unsafe drivers off the road following their arrest."

Department officials said hearing officers are continuing to receive training to help them become better arbitrators. And they noted that, in Jacksonville, hearing officers lift more than 40 percent of the administrative license suspensions.

"The criticism by the Circuit Court has been aggressively reviewed," the department said in its written response. "It should be noted that these opinions of the Court are a very small component of the overall group."

Defense lawyers said hearing officers ideally would be independent of the Department of Highway Safety to assure impartiality. In the meantime, the lawyers said they will try to show faults in how hearing officers handle cases through their appeals.

"We're taking it one case at a time," Fallgatter said.

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