

PITFALLS OF OCCUPATIONAL LICENSES IN JP COURT

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**Traffic Lawyers of Texas
25th Annual Traffic Law Update CLE
August 19, 2017**

WHEN CAN YOU FILE IN JP COURTS

You can file for an occupational driver's license in a Justice of the Peace Court as long as the petitioner's license has not been suspended due to a mental or physical disability or a conviction of an offense under Sections 49.04-49.08 of the Texas Penal Code (intoxication and alcoholic beverage offenses).

Each county has at least four Justice of the Peace Courts. We suggest filing in each to see which is the easiest and most expedient. Court procedures vary greatly; some courts require hearings with the petitioner present while others do not; some courts sit on the petition for weeks and others you can "walk through" a petition if the Judge is present. Knowing the nuances of the different courts in your area will help speed the process along.

We have found that most Justice of the Peace Courts will accept a Petition if the petitioner resides anywhere in the county where the Justice of the Peace Court is located; however, some Justice of the Peace courts will only consider a petition if the petitioner lives in the court's precinct.

WHAT MUST BE IN THE PETITION

The petition for an occupational license must be verified and describe the petitioner's "essential need" for the license, which is defined as a need to operate a motor vehicle:

- (A) in the performance of an occupation or trade or for transportation to and from the place at which the person practices the person's occupation or trade;
- (B) for transportation to and from an educational facility in which the person is enrolled; and/or
- (C) in the performance of essential household duties.

TEX. TRANSP. CODE §§ 521.241-42. A sample petition is annexed hereto as Appendix A.

COURT'S CONSIDERATION

Upon filing a petition, the clerk of the court shall send, by certified mail to the attorney representing the state, a copy of the petition and notice of the hearing if the petitioner's license was suspended following a conviction for:

- (1) an offense under Section 19.05 (negligent homicide offenses) or Sections 49.04-49.08 (intoxication and alcoholic beverage offenses) of the Texas Penal Code; or
- (2) an offense to which Section 521.342 applies (minor related intoxication and alcoholic beverage offenses).

The district attorney or county attorney (or assistant attorney) may attend the hearing and may present evidence at the hearing against granting the petition. TEX. TRANSP. CODE § 521.244. If the license was not suspended for a conviction of these offenses, the hearing can be ex parte. *Id.* § 521.244(d).

In determining whether an essential need exists, the judge shall consider whether an essential need exists, the petitioner's driving record and any evidence presented by the State's Attorney, if applicable. *Id.* § 521.244. NOTE: if the petitioner's license was not suspended due to a conviction for an offenses listed above, it can be argued that the State's Attorney does not have a right to present evidence in the case.

COURT ORDERS

Create a good order and use it! Courts like to use their order, but we have found that these orders do not always have the necessary information. For example, if a license has been expired for more than two years, the petitioner must retest; however, the Texas Department of Public Safety (DPS) will not allow the petitioner to retest unless it is in the occupational driver's license order.

Standard orders usually limit the petitioner to a 4 hour driving period. You should always request a longer driving period (and show why a longer period is necessary). The Order can allow the petitioner to drive for up to 12 hours in any 24 hour period. *Id.* § 521.248(b).

Standard orders usually contain a block time and specified route. We have never had a client use these as they are ripe for failure. We always request that the client be permitted to keep a log book instead because life does not always go as planned.

WHAT TO DO AFTER THE ORDER IS GRANTED

After the court issues the order, the order by itself (and log book if applicable) are sufficient for the petitioner to drive for 45 days. After 45 days, the Petitioner must have the occupational license card issued by DPS. We advised our clients to send the required information to DPS as soon as possible by certified mail. We have had some issues with DPS stating they have not received the information after we have confirmation of receipt.

OTHER ISSUES

- DRIVER LICENSE RECORDS: Most courts will require a copy of the petitioner's driving record with the petition (required under § 521.244). To obtain a driving record, you will need the audit number from the petitioner's driver's license.



If you cannot get the audit number, some courts can pull the driving record. If the Court cannot or will not pull the petitioner's driving record, you will need to request the driving record through the mail by using the Application for Copy of Driver Record (form DR-1).

- NEVER HAD A LICENSE: You can get an occupational driver's license if you have never had a driver's license before. Note: Order will need to state that the petitioner must test with DPS. May require that the petitioner has a valid Texas identification card.

- LICENSE SUSPENDED FOR MORE THAN TWO YEARS: If the petitioner's license has been suspended for more than two years, he/she will have to retest with DPS. Make sure your order reflects this!
- TEXAS ID CARD: If the petitioner has a Texas Identification Card (ID Card), you will need to send in a Voluntary Surrender Form (DPS form DL-174) Note: you do not have to send in the actual ID card, just the form (petitioner will need to retain the card as a form of identification pending issuance of Occupational Driver's License Card from DPS).
- SR SUSPENSION-LIABILITY JUDGMENT: Can get an occupational driver's license if the petitioner has a hold for a liability judgment. Things to be aware of:
 1. if the accident was more than two years ago and the petitioner has never been sued, you can submit an Application for Reinstatement of Driver's License and Registration Under the Safety Responsibility Act (form SR-60) to clear the hold;
 2. if the accident was more than ten years ago and is dormant, you can submit a Certificate of No Execution on Dorman Judgment (form SR-88) to clear the hold;
 3. if the judgment has been satisfied or the petitioner is making payments, you can submit forms SR-11 or SR-19 as appropriate to release the hold;
 4. proof of insurance on the date of the accident will release the hold;
 5. proof of bankruptcy will release the hold.
- SURCHARGES: Outstanding surcharges cannot prevent the issuance of an occupational license. *See Wood v. Tex. Dep't of Pub. Safety*, 331 S.W.3d 78, 79 (Tex. App.--Fort Worth 2010, no pet.) (finding the petitioner should not have been denied an occupational license for his failure to pay surcharges)
- COMMERCIAL DRIVER'S LICENSE: A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies. TEX. TRANSP. CODE § 521.242. A CDL holder CAN get an occupational license; however, he/she cannot operate a commercial vehicle with an occupational license.
- MAY NOT NEED AN OCCUPATIONAL LICENSE: A client may not need an occupational driver's license if the suspension is from:
 - SR Suspension;
 - Omni holds;
 - Surcharges; and/or
 - Reinstatement fees

APPENDIX A

Sample Petition, Affidavit and Order

CASE NO: _____

IN THE MATTER OF	§	IN THE JUSTICE COURT
	§	
SAMPLE CLIENT	§	COURT NO. 5
	§	
TX DL: 12345678	§	OF TARRANT COUNTY, TEXAS

VERIFIED PETITION FOR OCCUPATIONAL DRIVERS LICENSE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW SAMPLE CLIENT, Petitioner, and petitions the Court for an occupational driver's license under the provisions of Section 521.242 of the Texas Transportation Code, and in support thereof would respectfully show this Honorable Court the following:

1. Petitioner is a resident of Tarrant County, Texas and resides at: 123 Street, Fort Worth, TX 76102.
2. Petitioner's date of birth is 01/01/1960.
3. [REASON FOR SUSPENSION] Petitioner's license has been suspended between 06/01/2017 and 06/01/2018 for DEPARTMENT SUSPENSION - DWLI. In addition, Petitioner's license has been suspended for outstanding surcharges, Omni holds and/or tickets in other states and will remain suspended until these issues are addressed.
4. Petitioner's license was not suspended for a physical or mental disability or impairment or a conviction under Section 49.04, Penal Code.
5. Petitioner has an essential need to operate a motor vehicle in order to work, attend school and/or perform essential household services as detailed in the attached Affidavit.
6. Based on the foregoing, there is an essential need for Petitioner to operate and on all roads, streets, and highways. Petitioner further requests that the four hour restriction be waived for good cause shown.
7. This Petition is supported by the attached exhibits, which are incorporated herein:

- a. Verification;
- b. Affidavit of Petitioner; and
- c. SR-22 insurance policy covering Petitioner.

8. Petitioner agrees to comply with all conditions placed on the license should this request for an occupational license be granted.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that the Court grant Petitioner an occupational license under such restrictions as the Court may determine.

Respectfully submitted,
HAWKINS & WALKER, PC

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VERIFICATION

BEFORE ME, the undersigned authority, appeared SAMPLE CLIENT and whom being by me duly sworn did depose and state on his/her oath:

“My name is SAMPLE CLIENT. I have read the Petition for Occupational Driver's License and swear that it is true and correct”

SAMPLE CLIENT

SUBSCRIBED AND SWORN TO BEFORE ME on August 17, 2017, to certify which witness my hand and seal of office.

Notary Public, State of Texas

CASE NO: _____

IN THE MATTER OF	§	IN THE JUSTICE COURT
	§	
SAMPLE CLIENT	§	COURT NO. 5
	§	
TX DL: 12345678	§	OF TARRANT COUNTY, TEXAS

ORDER GRANTING OCCUPATIONAL DRIVER'S LICENSE

On this day, the Court considered the Verified Petition for an Occupational Driver's License of SAMPLE CLIENT, Petitioner.

The Court, having examined the pleadings and exhibits attached thereto along with the arguments of Counsel, if any, finds that the allegations contained in the verified Petition of Petitioner on file herein are true and correct, that this Court has jurisdiction in this matter and that the Petitioner has an essential need to operate a motor vehicle in the performance of an occupation or trade or for transportation to and from the place at which the person practices the person's occupation or trade; for transportation to and from an educational facility in which the person is enrolled; and/or in the performance of essential household duties. The Court further finds that Petitioner has good cause to operate a motor vehicle for more than four hours per day.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Texas Department of Public Safety shall issue to SAMPLE CLIENT, Petitioner, upon his/her complying with all requirements of the Texas Motor Vehicle Safety-Responsibility Act (Transportation Code Chapter 601), and the applicable regulations of the Texas Department of Public Safety implementing such statute, an operator's license permitting Petitioner to operate a motor vehicle during the duration of Petitioner's suspension, subject to the following restrictions:

1. This order granting Petitioner's occupational driver's license is effective immediately and shall remain effective for the duration of Petitioner's suspension.
2. Petitioner is ordered to keep, at all times, in any car they drive, a log book and accurately record therein the times and purposes for which they drive. Petitioner is ordered to show said log book to any law enforcement officer upon demand.
3. The Texas Department of Public Safety shall issue to Petitioner an occupational Texas driver's license, referring on its face to this order of the Court. Petitioner's driver's license number should be included.
4. Because of necessity shown, the Court hereby waives the four hour restriction set forth in Transportation Code 521.248(b), but Petitioner may not drive more than 12 hours in a 24 hour period.

5. Petitioner may drive in all Texas Counties.
6. If the Texas Department of Public Safety deems Petitioner needs to submit or resubmit for testing, Petitioner is ordered to do so.
7. Petitioner shall not carry in any vehicle that Petitioner drives a radar or laser detection device.
8. Petitioner shall not refuse any lawful request for a sample of Petitioner's breath, blood or urine in the event Petitioner is stopped for investigation of DWI.
9. Petitioner shall not consume any alcoholic beverages for at least four (4) hours before or during any period of time Petitioner is permitted to drive.
10. Petitioner shall not be convicted of any moving traffic violations.
11. Petitioner shall maintain in full force and effect a policy of automobile liability insurance as required by State law.
12. A CERTIFIED COPY OF THIS ORDER MUST BE CARRIED BY THE NAMED PETITIONER AT ALL TIMES WHILE OPERATING A MOTOR VEHICLE. A PEACE OFFICER MAY EXAMINE THE CERTIFIED COPY UPON REQUEST WHEN PETITIONER IS OPERATING A MOTOR VEHICLE. IT IS AN OFFENSE TO OPERATE A MOTOR VEHICLE WHEN A CERTIFIED COPY OF THIS ORDER IS NOT CARRIED.

RENDERED, SIGNED AND ENTERED on _____.

JUDGE PRESIDING

APPENDIX B

USEFUL WEBSITES

TEXAS ELIGIBILITY WEBSITE:

<https://txapps.texas.gov/txapp/txdps/dleligibility/>

OMNI DATABASE:

<http://www.texasfailuretoappear.com/>

TEXAS SURCHARGES:

<https://www.txsurchargeonline.com/onlineservices.aspx>

LICENSE DRIVER RECORDS:

<https://txapps.texas.gov/tolapp/txldrcdr/TXDPSLicenseeManager>

DPS FORMS SEARCH:

<http://www.dps.texas.gov/InternetForms/default.aspx>