



## OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

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## BenchNOTES

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#### **Effective Pre-Trial Conferencing**

It is established practice at OATH to conduct a settlement conference prior to the hearing. This process has proven quite successful in resolving disputes and averting the need for a hearing. To facilitate the settlement process, practitioners appearing at OATH should familiarize themselves with sections 1-30 and 1-31 of our Rules of Practice.

The conference judge's role is to assist the parties in the settlement process by promoting discussion of the issues, evaluating the merits of the case and assessing trial risks. Even in situations where the case does not settle, the conference can be useful in resolving discovery disputes, scheduling and other pre-trial matters.

Conferences are generally scheduled when the case is first docketed at OATH. However, either party may request a settlement conference or the Administrative Law Judge may authorize a conference under section 1-29 of OATH's practice rules. The conference is often the first time that both sides have had the opportunity to fully discuss the issues and present facts they consider relevant to their positions. All parties are required to attend conferences and to participate in good faith settlement discussions.

Agency parties are encouraged to invite key principals to the conference to participate in settlement discussions. It is critical to the settlement process for the person with the authority to approve a settlement to be at the conference or readily accessible for consultation. If a settlement is subject to prior approval by the agency head or another agency official, that must be disclosed during the conference.

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## Last Month's OATH Decisions

### Loft Law

#### Restrictions on tenant use of elevator found improper

The lessees of an interim multiple dwelling sought to restrict residential tenant use of the elevator to move freight during business hours on advance notice. ALJ Faye Lewis required the continuation of full use of passenger elevator service to the IMD tenants because limitations on elevator use would be an impermissible diminution of services. The evidence established that the tenants had the use of the building's freight elevator as of the statutory base date of June 21, 1982, and that an agreement made when a passenger elevator was installed in 1994 unambiguously provided for accessibility to all tenants. *Matter of 117-119 Leasing Corp.*, OATH Index No. 798/07 (Sept. 19, 2007).

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### Conflicts of Interest

#### Former employee fined \$5,000 for misuse of agency vehicle for personal business

In a case where a former agency employee used an agency vehicle for personal travel on numerous instances, the Conflicts of Interest Board adopted the Report and Recommendation of ALJ Alessandra Zorgniotti, and fined the employee \$5,000. The ALJ found that the employee had logged excessive mileage on the vehicle both during and after work hours. This conduct violated the City's conflicts of interest law, which prohibits public servants from using City resources for any non-City purpose and from pursuing non-City business on City time. *Conflicts of Interest Bd. v. Allen*, OATH Index No. 1791/07 (June 12, 2007), *aff'd*, COIB Case No. 06-411 (Sept. 11, 2007).

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### Personnel

#### Attorney guilty of improper actions to aid green card applicant

In a disciplinary proceeding, an attorney was found guilty of neglecting his duty by assisting in the preparation of a false advertisement, which was placed to facilitate a permanent resident application for another employee. Respondent added language to the advertisement requiring a master's degree in an effort to narrow the qualified applicant pool for the employee's position. ALJ

Kevin Casey recommended a thirty-day suspension because of mitigating factors including the high level of the attorney's job performance during his long tenure and the lack of measurable harm caused by his actions. *Dep't of Education v. Rubenstein*, OATH Index No. 1264/07 (Sept. 21, 2007).

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## Licensing

### For hire vehicle license revoked for insurance fraud conviction

ALJ Lewis recommended license revocation for a driver of for-hire vehicles. The ALJ found that the driver lacked the good moral character required of a licensee in view of his guilty plea to a misdemeanor charge of insurance fraud. The driver's claim that he did not know he was committing fraud when he filed a false accident report was not believable. He also showed a lack of contrition by failing to make restitution for the almost \$14,000 paid out by the insurer for physical therapy sessions. *Taxi & Limousine Comm'n v. Carpio*, OATH Index No. 395/08 (Sept. 20, 2007).

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## Vehicle Retention

### Vehicle released absent showing of heightened risk to public safety

ALJ Joan Salzman directed the Police Department to release a vehicle because the Department failed to demonstrate a heightened risk to public safety. Respondent, who was 72 years old, was arrested for driving while intoxicated and was found to have a blood alcohol level of almost twice the legal limit. The ALJ held that, while the respondent's blood alcohol level was high, this fact alone was not enough to demonstrate heightened risk to public safety. Respondent had never been arrested before and was remorseful about his behavior. The Department did not show that the driver had ever engaged in reckless or unsafe conduct that would allow it to retain his vehicle on public safety grounds. *Police Dep't v. Santos*, OATH Index No. 543/08, mem. dec. (Sept. 21, 2007).

