

Did the Police Take Your Car?

A Guide to Your Trial at the
OATH Trials Division
100 Church Street, 12th Floor
New York, NY



OFFICE OF
ADMINISTRATIVE
TRIALS AND HEARINGS

TABLE OF CONTENTS

Vehicle Cases Heard at OATH	2
Should I Get a Lawyer?	3
Where Do I Go?	4
Be on Time	5
Will You Need an Interpreter?	5
What is a Conference?	6
What is a Trial?	7
Legal Services	12
More Information	13

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VEHICLE CASES HEARD AT OATH: INFORMATION FOR OWNERS AND DRIVERS OF CARS TAKEN BY THE POLICE AFTER AN ARREST

1. If Your Car Is “Seized” or Taken

Under the law, if a car was used in connection with a crime, the police department may "seize" it and then seek title to it in a New York court in what is called a forfeiture proceeding. Owners and drivers have the right to a prompt trial to challenge the Police Department's hold on the car, while waiting for the forfeiture proceeding to take place. You do not have to wait until the forfeiture proceeding starts to try to get your car back temporarily. Police may take a car when the driver is arrested for crimes including drunk driving or when drugs or guns are found in the car.

2. Right to a Trial

As the driver or owner of a car taken by the Police Department you have a right to request a trial at OATH by an Administrative Law Judge who will decide if you can get your car back before a forfeiture lawsuit is decided.

- The Police Department must give the driver a trial request form at the time of arrest. The form is called “Notice of Right to a Retention Hearing.” The Police Department must also mail a copy of the form to the car's owner.
- To request a trial, the owner or driver must mail the hearing/trial request form, or deliver it between 8:30 a.m. to 3:30 p.m., to the Police Department at the address listed on the form. The form cannot be faxed.
- Both the driver and the owner of the car have a right to request a trial, but only one trial will be conducted.

3. If You Request a Trial

- The Police Department will notify you of the time and date of the trial by mail within 2 business days from the date your request was received. The trial must be scheduled within 10 business days from the date your request was received.

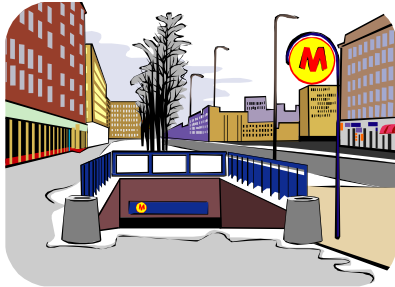


Should I Get A Lawyer?

We encourage you to **get a lawyer** or a **knowledgeable representative** to help you at OATH. You have the right to appear with a lawyer or representative at OATH.

- ▶ You must make your own arrangements with a lawyer or representative. This means you are responsible for asking whether they will charge you money. You must also be sure to give them any notices about your OATH trial
- ▶ If you have a criminal case pending, advise your criminal lawyer about this trial. What you say at an OATH trial could be used against you later in your criminal case.

Where Do I Go?



**Office of Administrative Trials & Hearings
100 Church Street, 12th Floor
New York, NY 10007**

**Tel#: 1-844-OATH-NYC
(1-844-628-4692)**

**Tel#: (212) 933-3097
E-mail: oathcal@oath.nyc.gov**

Be On Time

- ◆ **WHAT HAPPENS IF I AM LATE?**

Be on time for your trial. If you are late, a trial could take place without you and a penalty could be imposed against you.

- ◆ **HOW CAN I RESCHEDULE?**

If you cannot get to a scheduled conference or trial, you must call or email the Police Department representative named on the hearing/trial notice and OATH as soon as possible. Both you and the Police Department attorney must be on the phone call. You can ask the judge if you can come to OATH on another date.



Will You Need An Interpreter?

If you need an **interpreter**, OATH will provide one for free. OATH uses interpreters by phone. They talk on a speaker phone in the courtroom.



What Is A Conference?

Before the trial begins, a judge will meet with you and someone from the Police Department to see if the case can be settled. This is called a **conference**.

- ▶ You may appear with or without a lawyer or representative of your choice.
- ▶ The conference judge will explain what happens at OATH and discuss ways you and the NYPD can settle your case.
- ▶ You can ask questions.
- ▶ You may settle your case with the Police Department if you want to, but you do not have to settle. It is up to you. Settlement is voluntary. It takes both sides, you and the Police Department, to make a settlement. The judge will work with both sides to see whether there are terms that are acceptable to you and the Police Department.
- ▶ **Examples** of possible settlement terms are: fines; storage fees; enrollment in a substance abuse program; surrender of the vehicle; or return of the vehicle. There is no guarantee that you will get any particular settlement terms. These are only examples.
- ▶ If you don't settle, you can have your trial. You have the right to a trial.



What Is A Trial?

How Can I Prepare For My Trial?

- ✓ If your case is not settled in the conference, a different judge will hold a trial. The trial is like a court trial.
- ✓ Bring any documents, witnesses, or other evidence that you think can help your case.
- ✓ Before you come for your trial, you and the Police Department can ask each other for documents about your case – i.e., the documents each side will show the judge. These requests should be in writing.
- ✓ You may appear at the trial with or without a lawyer or other representative of your choice.

Can I get more time?

- ▶ If you need more time, you have the right to ask the judge for more time. This is called an **adjournment**. You can ask for more time if you want to get an attorney or representative or have another good reason to delay the trial.
- ▶ The judge will decide whether or not you can come back another day.

What Happens During My Trial?

- ✓ Both you and the Police Department may make **opening statements**. An opening statement is a summary of what you plan to prove.
- ✓ Then the Police Department will present evidence, usually documents relating to the arrest of the driver. The Department is not required to bring the arresting officer or other witnesses.
- ✓ The Police Department must prove three points to keep the car. The Department must show that each point is “more likely than not.”
 1. First, that there was “probable cause” for the arrest. This means that the police had a legal basis for the arrest.
 2. Second, that the Police Department is likely to win the upcoming civil forfeiture lawsuit.

The owner can argue innocent ownership. That happens when the owner says he or she was not the individual arrested and did not know or have reason to know that the car would be used in a crime. The Police Department may rebut this claim by showing that the owner knew or should have known that the driver would use the car in a crime and/or by showing that the car is really owned for the benefit of that driver.
 3. Third, that it is necessary that the Department keep the car. The police can keep the car if releasing it would create a threat to public safety.
- ✓ After the Police Department presents its evidence, it is your turn to offer evidence and call witnesses.

- ✓ You have the right to ask questions of witnesses the Department calls to the witness stand. This is called **cross-examination**.
 - ▶ These can be **leading** questions that ask the witness to answer yes or no to something you state. These questions can begin, for example, with “Isn’t it true that. . . . ?” Or leading questions can end with words like, “. . . isn’t that correct?” or “. . . , right?”
- ✓ Your witnesses will be under oath. You can ask **direct** questions of your witnesses about what happened.
 - ▶ These are open-ended questions like “Who, What, When, Where, How? What did you see? What did you hear? What do you know?”
- ✓ When you are done with your questions, the Police Department may then **cross-examine** your witnesses.

Should I testify?

- It’s up to you. You may have a hard decision to make about whether to testify.
- It is best to consult a lawyer about the decision whether or not to testify at your OATH trial.
- You have the right under the Fifth Amendment of the Constitution not to testify if your testimony would tend to show that you are guilty of a crime.
- But if you choose not to testify at OATH, the OATH judge may find that your silence means that your testimony would not be favorable to you -- that you agree with what the Police Department has said.
- **Any testimony you give at OATH can be used against you in your criminal case.**

- Although your refusal to testify cannot be held against you in your **criminal** case, the trial at OATH is different. These are **civil**, administrative proceedings at OATH.
- ✓ If you appear without an attorney, and you testify, the judge will ask you to give your statement under oath. The Department's lawyer can ask you questions.
- ✓ The judge may ask questions of you or any witness.
- ✓ Finally, both sides may make **closing statements**. A closing statement is a summary of what you think you have proved. You can ask the judge for the result you want.

What Happens After The Trial?

After the trial ends, the OATH judge will issue a decision within three business days. It will look like this:

Police Dep't v. John Doe
OATH Index No. 9999/08, mem. dec. (Feb. 24, 2011)

Due to failure to comply with the notice provisions of the *Krimstock* Order, petitioner failed to prove its entitlement to retain 1994 Volvo pending the outcome of a civil forfeiture proceeding. Vehicle ordered released.

**NEW YORK CITY OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS**

In the Matter of
POLICE DEPARTMENT
Petitioner
- against -
JOHN DOE
Respondents

MEMORANDUM DECISION

MONICA MASON, Administrative Law Judge

Petitioner, the Police Department ("Department"), brought this proceeding to determine its right to retain a vehicle seized as the alleged instrumentality of a crime pursuant to section 14-140 of the Administrative Code. Respondent John Doe is the owner of the vehicle (Pet. Ex. 6), which was seized following his arrest on January 24, 2011. This proceeding is mandated by *Krimstock v. Kelly*, 2007 U.S. Dist. LEXIS 82612 (S.D.N.Y. Sept. 27, 2007) ("the *Krimstock* Order"). See generally *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

The vehicle at issue is a 1994 black Volvo sedan, Property Clerk Voucher No. 2000012345, which the Department seized following Mr. Doe's arrest for driving while intoxicated (Pet. Exs. 1, 2, 5). Veh. & Traffic Law §§ 1192(2); 1192(2-a)(a), 1192(3), and 1192(1) (Lexis 2012) (Pet. Ex. 3). The Department received the demand for the hearing on February 8, 2011, and trial was scheduled for February 21, 2011 (Pet. Ex. 7). The Department relied on documentary evidence and upon testimony from respondent. Respondent testified on his own behalf. For the reasons set forth below, I find that the Department is not entitled to retain the vehicle.

- ◆ You will receive a copy of the decision by mail.
- ◆ The judge's decision is also posted on the internet.
- ◆ If the judge orders the release of the car, the owner must arrange with the Police Department's Property Clerk to get the car from the pound.
- ◆ The losing party may appeal the OATH decision to the State Supreme Court.

LEGAL SERVICES

You may wish to contact your local bar association or legal services provider to see if you can find a lawyer who will take your case at no charge or for a negotiated fee. You may try calling the numbers below:

Legal Aid Society - 212-577-3300

The Legal Aid Society provides free legal services to low-income clients. To contact the Legal Aid Society, you can call 212-577-3398.

This partial listing of legal service organizations is provided as a public service.

OATH DOES NOT GIVE LEGAL ADVICE AND DOES NOT RECOMMEND ANY PARTICULAR ATTORNEY OR ORGANIZATION.

MORE INFORMATION

You can read more about OATH and look at case law and rules by visiting: <http://www.nyc.gov/html/oath/html/home/home.shtml>

OATH's decisions can also be found for free at www.citylaw.org. Follow the links starting on the home page with "[CityAdmin Online Library](#)." Then click on "OATH," and scroll down to enter the words you want to search to find cases.

You can also read more information about these trials by visiting Columbia University's website, where you can see videos of judges explaining how the process works: <http://www.law.columbia.edu/vehicleseizure>