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Standards of Conduct for Attorneys and Representatives at OATH

Most often, the parties and representatives who appear at OATH conduct themselves appropriately. OATH's rules of practice have long included provisions requiring decorum and orderly conduct.

The rules also rely on the code of professional responsibility for attorneys who appear at OATH. In addition, the Rules of Conduct for City ALJs imposes the obligation on judges to "require order and decorum in proceedings before him or her." 48 RCNY App. § 103(A)(2).

On rare occasions, however, ALJs have found it necessary to criticize or even sanction conduct that falls below the standards set forth in section 1-13 of OATH's practice rules. 48 RCNY § 1-13.

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Last Month's OATH Decisions

Personnel

Willingly engaging in an argument likely to result in a fight constitutes misconduct.

In a disciplinary proceeding, a long-time Department of Sanitation employee was found to have committed misconduct when he punched a supervisor and refused to submit to a drug and alcohol

test. ALJ Kevin Casey explained that when two employees fight at the workplace, it does not matter who started the fight if both willingly participated. The evidence, including the force of the blow, respondent's ability to retreat, and witness testimony, established that respondent willingly engaged in an argument that he knew was likely to result in a fight and that he failed to take reasonable measures to avoid escalating violence. ALJ Casey also rejected respondent's assertion that he did not hear any order to submit to drug and alcohol testing or that he thought he had already been suspended as inconsistent and incredible, and recommended a total sixty-day suspension. *Dep't of Sanitation v. Bacigalupo*, OATH Index No. 2091/07 (Jan. 25, 2008).

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Licensing

Hack license revocation recommended for physically and verbally assaulting passenger.

In a license revocation proceeding, ALJ Faye Lewis recommended license revocation for a taxi driver who verbally harassed and physically pulled and pushed a passenger from his car three times. The incident arose from a minor fare dispute. Although the TLC requested that the respondent lose his license and be fined the maximum amount allowed, the ALJ concluded that license revocation was "sufficient punishment" for assaulting and verbally harassing the passenger, and declined to recommend additional fines for these violations. She did, however, recommend an additional $100 fine for the respondent's refusal to provide his name and license number to the passenger. *Taxi & Limousine Comm'n v. Eugene*, OATH Index No. 720/08 (Jan. 8, 2008).

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Vehicle Retention

Police Department entitled to retain vehicle where owner provided with actual notice of right to retention hearing.

Petitioner proved its entitlement to retain respondent's vehicle, which was seized after respondent's arrest for driving while intoxicated and criminal possession of a controlled substance. ALJ Lewis rejected respondent's argument that he was entitled to the return of the vehicle because the Police Department could not prove timely mailed service. Explaining that where the owner and driver are the same, the Department's failure to serve a second notice by mail within five days is not fatal so long as the owner/driver received written notice of the right to a retention hearing at the time of seizure. Here, the ALJ found that the Department established through documentary evidence that it served respondent with written notice at the time of seizure. *Police Dep't v. Thomas*, OATH Index No. 1447/08, mem. dec. (Jan. 24, 2008).

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Padlock Law

Motorcycle repair found impermissible use.

In a padlock proceeding, the testimony of a Department of Buildings inspector established that the driveway and rear yard of a single family residence were being used by the owner of the premises for motorcycle repairs. ALJ Julio Rodriguez found that even though the respondent was repairing his own motorcycles, the Zoning Resolution prohibited all but minor automotive repairs performed within a completely enclosed garage, detached from a residential building. Because the repairs were neither minor nor performed within an enclosed garage, respondent's use of the rear of his premises to repair motorcycles was an impermissible use. *Dep't of Buildings v. Owners, Occupants and Mortgagees of 1875 West 7th Street, Kings Co.*, OATH Index No. 348/08 (Jan. 4, 2008).

Loft Law

One-year time limit to file abandonment application does not restart upon sale of interim multiple dwelling (IMD).

Under section 2-10(f)(3) of the Loft Board rules, all abandonment applications must be filed within one year of the date the owner knew or should have known that the tenant vacated the unit. ALJ Kara Miller rejected an IMD owner's assertion that because it filed its abandonment application within one year of the date the owner had purchased the building, the application was timely, even though the protected tenant had vacated the abandoned unit over twenty years earlier. Therefore, the one-year time limit for filing under section 2-10(f)(3) began running in 1983, the date the prior owner knew that the tenant abandoned the unit. Because a new owner of a building generally steps into the shoes of the prior owner, the ALJ found that the application for a finding of abandonment was untimely and should be dismissed. *Matter of Johnson*, OATH Index No. 967/08 (Jan. 7, 2008).

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