Admin. October 24, 2006

First Supplement to Memorandum 2006-36

New Topics and Priorities: Additional Information

This supplement reports new information concerning a number of suggested topics and priorities. The following documents are attached as exhibits:

Review of the California Evidence Code

Prof. Miguel Méndez of Stanford Law School has reviewed the list of evidence issues attached to Memorandum 2006-36 at Exhibit pages 70-71. He thinks the reforms in the list would improve the Evidence Code and are likely to be noncontroversial. Email from M. Méndez to B. Gaal (10/22/06).

Among those issues is "[w]hether to amend Evidence Code Sections 912 and 917 to refer to the human trafficking caseworker-victim privilege" (item #8). This issue is the staff's idea, but the staff now believes it should be reframed. Like Evidence Code Sections 912 and 917, Penal Code Section 11163.3 specifies particular privileges to which its substance applies. There might also be other provisions that include a list of privileges. All such provisions should be reviewed to determine whether to add a reference to the newly enacted human trafficking caseworker-victim privilege. The issue for study should therefore be rephrased as "whether to amend Penal Code Section 11163.3, Evidence Code Section 912 or 917, or other statutes to refer to the human trafficking caseworker-victim privilege." **With this revision of item #8, the staff recommends that the Commission approve the list of evidence issues for submission to the Judiciary Committees.**

Employment Agency, Employment Counseling, and Job Listing Services Act

Bryan Sanders has informed the Commission that the Department of Justice is currently doing no enforcement activity of any kind with regard to employment

agencies. He obtained that information through Senator Debra Bowen's office. He therefore believes his concerns "would be best addressed by legislation," rather than referred to the Attorney General's office as recommended in Memorandum 2006-36. See Email from B. Sanders to B. Gaal (10/13/06).

On receiving this information from Mr. Sanders, the staff contacted Senator Bowen's office to learn more about the situation. A member of her staff confirmed that enforcement of the existing laws governing employment agencies currently appears unlikely. He does not think the Commission should get involved in the situation. Like the Commission staff, he views the problem as a lack of enforcement of existing law, not as a matter that should be addressed through new legislation.

We therefore continue to recommend that the Commission **bring the matter to the attention of the Attorney General's office.** Although the current level of enforcement is apparently zero, the Attorney General's office is the organization in position to change that level if appropriate.

Review of Articles of Incorporation by Secretary of State

Nelson Crandall has withdrawn his request that the Commission study Corporations Code Section 110. He has decided to pursue other alternatives. Accordingly, **there is no need for action on his request.**

Scheduling of an Administrative Hearing

Thomas Lasken reports that he has brought his concerns about scheduling of administrative hearings to the attention of OAH, but "the response has been negative." Exhibit p. 6. He has provided a copy of a letter motion in which he raised the issue, and a ruling on the motion by the Presiding Administrative Law Judge in Oakland. Exhibit pp. 7-10.

In the ruling, the Presiding Administrative Law Judge concluded:

- The request for a continuance should be granted.
- An agency is not required to consult with the respondent or respondent's counsel before requesting a hearing date from OAH.
- An agency's request to OAH for a hearing date is not an improper ex parte communication.

Id. at 10. She also said:

> It is understandable that counsel would prefer to be consulted before a case is scheduled for hearing. *The practice may be preferred and preferable,* but it is not required by law.

Id. (emphasis added).

From her comments, it is clear she does not think any statute or rule currently requires consultation of the respondent before scheduling an administrative hearing. But she does not say the approach would be bad policy. In fact, she seems to be saying the opposite.

Notably, however, Mr. Lasken copied his letter motion to the Director of OAH and "never heard back from him or anyone on his behalf." *Id*. at 6. This is not the first time Mr. Lasken has taken that step, to no avail. *Id*.

The staff asked him whether he has formally petitioned OAH for a change in regulation pursuant to Government Code Sections 11340.6-11340.7. He has not done that, but thinks it would be a waste of time. He hopes to find a legislator to sponsor legislation addressing his concerns. Email from T. Lasken to B. Gaal (10/23/06).

Prof. Asimow believes that legislation on this point should not be necessary; OAH should address it. Absent OAH action, however, he thinks the matter "would be a worthy subject for Commission consideration." Email from M. Asimow to B. Gaal (10/23/06); Email from M. Asimow to B. Gaal (10/19/06).

The staff recommends that the Commission **send a letter to OAH suggesting that OAH reexamine the existing method of scheduling an administrative hearing.** Such a letter might help to prompt action, particularly if it is signed by the Commission Chair. **If nothing has been done by this time next year, the Commission should revisit the issue and perhaps commence a study of it.**

Repeal of 1978 Legislation Regarding Sale of Certain Property to Mills Land & Water Company

Mary Jo Baretich, the president of Cabrillo Mobile Home Park Home Owners Association, Inc., has brought a new issue to the Commission's attention. Exhibit pp. 1-5. On behalf of the members of her organization, she urges the Commission to propose to repeal a 1978 law. *Id*. at 1-4. Under that law, Mills Land & Water Company ("Mills") was given a right of first refusal with regard to 28.5 acres of real property that the Department of Transportation previously acquired from Mills for state highway purposes but ultimately did not need for those purposes. 1978 Cal. Stat. ch. 501 (reproduced at Exhibit p. 5). Cabrillo Mobile Home Park is located on that property.

Further factual details are included in an attachment and map Ms. Baretich provided. Those materials are not reproduced here, but are available on request.

Pursuant to the 1978 law, Mills reacquired the property from the Department of Transportation in 2004. Ms. Baretich reports that

> [s]ince the sale of the property, Mills has more than doubled the rent and has forced out several homeowners. Over half of residents here are on fixed incomes, including senior citizens. Their time is running out. They have very little money to fund a lawsuit and have asked me to appeal to you to ... help remove this fraudulent law.

Exhibit pp. 1-2. Her organization maintains that Mills made false statements to obtain passage of the 1978 law and thus the law should be repealed, the 2004 sale rescinded, and Cabrillo Mobile Home Park should be given an opportunity to purchase the property. *Id*. at 1-4.

Whatever its merits, this issue is not appropriate for the Commission to study. The Commission is not an investigative body, charged with conducting factual probes of alleged past wrongdoing. Rather, the Commission's role is to study topics assigned to it by the Legislature and propose legislation for future application. Gov't Code §§ 8280-8298. The Commission typically works on matters affecting major segments of the public, not a select group of private citizens. Its efforts are best-applied to matters that require drafting expertise, not repeal of a single provision as is proposed here.

Ms. Baretich reports that the Attorney General has assigned someone to investigate the matter. Exhibit p. 1. The Attorney General is better-suited to deal with the situation than the Commission. Instead of getting involved in this matter, the Commission should devote its resources to other topics.

Respectfully submitted,

Barbara Gaal
Staff Counsel

October 16, 2006

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Violations of California False Claims Act and Other Statutes
Acquiring Property by Supplying False Statement to Legislature

Dear Commission Staff,

The Assemblymen, the Legislature, the Governor and others, including our residents, were victims in an elaborate scheme perpetrated in 1978 by the Mills Land and Water Company (Mills) through Mills' supplying of fraudulent information for a private bill, the Mangers Bill AB2816. It is critical that you know about this situation. Disturbing ramifications have resulted from Mills' successful perpetration of this scheme. This is the first time that I have written to you regarding the situation. I had contacted the Attorney General, Bill Lockyer, about the situation. He has assigned an Assistant Attorney General to investigate the criminal aspects of the case. I have attached a Memorandum containing the essence of a preliminary Brief that I had prepared regarding the serious ramifications that have resulted from this fraudulent Mangers Law. One result was the sale by CalTrans to Mills of the property that we occupy and had formerly leased from CalTrans. Upon request, I can provide you with a copy of my Brief, including the Issues and Facts associated with this case.

Land that was previously leased by the Cabrillo Mobile Home Park Home Owners Association, Inc. (Cabrillo) from CalTrans for nearly 40 years was sold on August 11, 2004 to Mills. The premise for the sale was an Assembly Bill (AB2816) that was passed in 1978 (The Mangers Law). I have diligently researched this Managers Law and have been able to cite the cases and statutes that support the opinion that this Law contains numerous false statements. These statements were knowingly and willingly supplied by the Mills' representatives to Mike Antonovich, Dennis Mangers and Frank Lanterman in March 1978, in order to induce them into passing a "private law" especially for Mills. The Mangers Bill was signed into law by the Governor on August 21, 1978. I believe that vital information was knowingly withheld from the Assemblymen, so that Mills would eventually prevail as owner of this land.

Since the sale of the property, Mills has more than doubled the rent and has forced out several homeowners. Over half of the residents here are on fixed incomes, including senior citizens. Their time is running out. They have very little money to fund a lawsuit and have asked me to appeal to you to aid

in the prosecution of those people (Mills) who defrauded the Legislature, the Governor and these fine citizens. We are imploring you to help remove this fraudulent law.

CalTrans had rejected our purchase proposals many times, based solely on the Mangers Law. If this Law is proven to have been perpetrated to acquire property through fraudulent means, the Law must be repealed, the sale of the property be declared null and void, and Cabrillo and the Action Boats Company should have the first right of refusal to purchase the property per Streets and Highways Code 118.1, 30410 and the Department of Transportation CTC Resolution G-98-22, Section 2.4.

I only became aware of the California False Claims Act a few months ago. I have read several cases that have been prosecuted by the Attorney General, regarding fraudulent material that was given to California government entities in order to induce these entities to award private gains, money or property to the perpetrators. This is such a case.

This law must be repealed or rewritten. Your Commission has influence and expertise and can aid the State if they decide to prosecute. Felonies were committed. Time has passed, but time does not cure a crime, especially one as serious as this. Crimes remain crimes, even If they are not punished. The fact that many offenses and infractions go unnoticed or unpunished neither justifies them nor constitutes a legal defense for those who committed them.

Since you are in a position of influence and are knowledgeable of the inner workings of the government, you may be able to contact the appropriate people in the Legislature to repeal or rewrite this law. Your tough stand and success against fraud makes your Commission the most likely to get the job done.

I look forward to hearing from you.

Respectfully,

Mary Jo Baretich
President, Cabrillo Mobile Home Park Home Owners Association, Inc.
21752 Pacific Coast Highway, Space 23A
Huntington Beach, CA 92646
mjbaretich@hotmail.com
(714) 960-9507

ATTACHMENTS: MEMORANDUM, Annotated ASSESSOR'S PARCEL MAP, AERIAL LOCATION PHOTO, MANGERS BILL AB2816 (Chapter 501) and copy of FINAL ORDER OF CONDEMNATION 123365 (sale of property to State in 1965)

October 16, 2006

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Violations of California False Claims Act and Other Statutes
Acquiring Property by Supplying False Statement to Legislature

Dear Staff,

The question has been asked as to how the Assemblymen Dennis Mangers, Mike Antonovich and Frank Lanterman came up with the information for the original Mangers Bill, AB2816. We assume they received the information from one of Mills Land and Water Company's representatives. We feel that the assemblymen must have kept some paperwork to protect themselves, to prove that they did not come up with the information in the Bill by themselves. The Assistant Attorney General said that in order to prove that Mills violated the California False Claims Act, paperwork must be produced or witness declarations be filed.

We think the Assemblymen were "used" to get false statements passed through the legislature. We believe that, if they had known the truth, they would have never considered using the information given to them for a Bill. They would have rejected it immediately.

In the Mangers Bill AB2816 archives, would there be a filed copy of the paperwork received from Mills Land and Water Company? As a corporation, we keep all our correspondence related to important matters. Surely, the legislature has the same practice.

We know you are an extremely busy and this matter may not seem so very important to you, but our futures are at stake because of this law.

Many of the residents of our mobile home park are losing their homes because of the Mangers Law. If this Private Law was not in place, we would have had the first right of refusal (per CA Streets and Highways Code 118.1) to purchase this property and protect our futures. We had leased this property for nearly 40 years from the State and managed the mobile home park through our own corporation very successfully. We were able to maintain it as affordable housing in Huntington Beach.

The Mills Land and Water Company doubled our rents ($1150 per month plus additional utility costs) when they took over the property in August 2004, even though they knew that many of the retired, disabled and low-income residents (in their 70's and 80's) only make around $800 per month. They have again raised it $80 more since they took over ownership. Several evictions have occurred and more will happen as these residents spend their meager savings

and take out loans to pay the rent. Mills plans to close the park in the very near future to make way for multimillion-dollar homes and commercial ventures. Many of the residents have no place to go. Some plan to live in their vehicles. It's so sad. This is why we are still fighting for our rights.

The Mangers Law needs to be repealed or a new law written to supersede the law. The sale of the property to Mills would then need to be voided and reverted back to the State. At the time of the sale in August 2004, we had been prepared to offer considerably more money (3.5 million dollars) than Mills (1.5 million dollars) for the property, but the attorney for Caltrans said the Mangers Law gave Mills the first right over us and refused to talk to me or two other residents about our offer.

Once the law has been repealed or superseded, we would then be in a strong position to purchase this land through low interest loans, including the California Mobile Home Resident Owned Property (MHROP) HCD loan. We could again manage the park as we had done for nearly 40 years, and return the rents to affordable rates. Nearly 150 people are affected by this situation.

In the name of justice, it is imperative that Mills Land and Water Company and its officers be held accountable for their actions. The actions may have happened in 1978, but felonies were committed and time does not cure such a serious crime.

Sincerely,

Mary Jo Baretich, President
Cabrillo Mobile Home Park Home Owners Association, Inc.
21752 Pacific Coast Highway, Sp. 23A
Huntington Beach, CA 92646
mjbaretich@hotmail.com
(714) 960-9507

CHAPTER 501

An act relating to state highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1978. Filed with Secretary of State August 21, 1978.]

The people of the State of California do enact as follows:

SECTION 1. Notwithstanding any other provision of law or regulation, the Department of Transportation shall first offer for sale, at fair market value as determined by the department, to the Mills Land & Water Company the approximate 28.5 acres portion of the northwest quarter and southwest quarter of Section 13, Township 6 South, Range 11 West, in the Rancho Las Bolsas the department acquired from the company by judgment on May 11, 1965.

SEC. 2. Within 60 days after receipt of the first offer of the Department of Transportation to sell the approximate 28.5 acres, the Mills Land & Water Company shall notify the department of its acceptance of that offer, or any subsequent offer from the department, and any conditions attached to the acceptance.

SEC. 3. After acceptance of the department's offer by the Mills Land & Water Company and opening of escrow, the department shall, from 45 days after opening of escrow until the closing of escrow and transfer of title, join in the execution of any documents or applications reasonably related to efforts by the company to obtain necessary local zoning approvals, use permits, and other land use approvals for development of the property.

The department shall bear none of the expenses or costs of obtaining such approvals and permits.

SEC. 4. The acceptance of the offer to purchase the approximate 28.5 acres pursuant to Section 1 of this act by the Mills Land & Water Company shall constitute a settlement of any and all claims the company may have against the State of California arising from the acquisition and retention of the parcel by the Department of Transportation prior to its resale to the company, including the dismissal with prejudice of any and all actions brought by the company against the state with respect to the parcel.

SEC. 5. When the Department of Transportation acquired the approximate 28.5 acres in 1965 for the construction of State Highway Route 1 as a freeway, no severance damages were granted to the Mills Land & Water Company for the remainder of its holdings, on the basis that frontage roads which would provide access to the remaining holding would be constructed.

The California Highway Commission, on October 15, 1975, adopted a resolution to rescind its prior authorization to construct the Route 1 freeway and to authorize the disposition of property acquired for such construction.

The sale of the parcel to any entity other than the company would result in its holding being landlocked.

Because of the unique problem presented in this situation, the legislature finds and declares that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution and that the enactment of this act as a special law is necessary for the solution of this problem.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the disposition of the approximate 28.5 acre parcel acquired from the Mills Land & Water Company by the Department of Transportation for the construction of State Highway Route 1 as a freeway be resolved without the necessity of a lawsuit, it is necessary that this act take effect immediately.

FURTHER COMMENTS OF TOM LASKEN

From: Tom Lasken <tlasken@lasken.com>
Subject: Review of New Topics; Calendaring
Sent: October 21, 2006
To: <bgaal@clrc.ca.gov>
Cc: Michael Asimow <asimow@law.ucla.edu>

Dear Ms. Gaal,

Thank you very much for your letter of October 13, 2006, and for sending me a copy of Memorandum 2006-36 regarding New Topics and Priorities. Please forgive the informality of this response, but I just returned last night from several days in Oakland and San Francisco and just read your letter and the memorandum today.

I am pleased that the Commission has taken this chronic issue into consideration. I would, however, like to address the recommendation of "awaiting the outcome of Mr. Lasken's effort to address the problem with OAH."

I *have* formally addressed the issue with OAH, and the response has been negative. Please see my attached letter motion in two cases of December 27, 2005, in which I directly raised the issue of requests for setting being in violation of the prohibition against *ex parte* communications. Note that I copied the Director of OAH, Ronald Diedrich, as I have in several other instances where I have raised this issue, and I have never heard back from him or anyone on his behalf. Then please see the ruling of the Presiding Administrative Law Judge in Oakland, in which she ruled that:

"**Neither the Administrative Procedure Act nor the rules of the Office of Administrative Hearings require an agency to consult with the respondent or counsel prior to requesting a hearing date from the Office of Administrative Hearings. Nor does such contact constitute an improper ex parte communication**." [Emphasis added.]

Thus, it appears that the official position of OAH is that requests for setting are not improper *ex parte* communications and agencies are not required to notice or consult respondents in the setting of cases. I know that the Commission has much weightier matters on its plate, but OAH's position affects *all* its client agencies, so the Commission should know that this issue is not likely to be resolved without legislation.

Thank you again.

Thomas C. Lasken
Attorney at Law

LASKEN LAW OFFICES

980 9th Street, 16th Floor
Sacramento, CA 95814-2736

P.O. Box 8298
Loma Rica, CA 95901-8405

(916) 449-9677 (Voice)
(530) 742-9402 (Fax)

Please reply to: ☐ Sacramento ☑ Loma Rica

December 27, 2005

Melissa Crowell, Presiding Judge
Office of Administrative Hearings
1515 Clay Street, Suite 206
Oakland, CA 94612

Re: Application of Christopher Gray
OAH No. 2005090919
DRE No. H-9358 SF

Accusation of Clifford Lindsay Maas
OAH No. 2005120278
DRE NO. H-9426 SF

VIA FACSIMILE

MOTIONS FOR CONTINUANCE AND/OR TO ENFORCE COURT ORDERS AND PROHIBITIONS AGAINST EX PARTE COMMUNICATIONS

Dear Judge Crowell:

The purpose of this letter is to obtain a change in the dates presently set for hearing in the above matters. The Maas Accusation matter is currently set for January 12, 2005. The Gray Application matter is presently set for February 1, 2005.

I am not sure that the issues raised in the letters should be styled as Motions for Continuance, or as Motions To Enforce Court Orders and/or statutory prohibitions against *ex parte* communications. I am raising these matters together because they have common issues relating to *ex parte* communications, and because each has an issue relating to particular improper matters regarding calendaring.

COMMON ISSUE

It is my position that the practice of DRE in requesting hearing dates from OAH without consulting Respondents and/or their attorneys constitutes improper *ex parte* communication between DRE and OAH in violation of Sections 10430.10 and 10430.20 of the Government Code. While Regulation 1018 specifies the contents of agency requests for setting and does not address the issue of *ex parte* communications, and does not explicitly require notice to the Respondent, it does not, and legally cannot, override the controlling statutory provisions.

Section 10430.10 of the Government Code generally prohibits *ex parte* communications between agencies and presiding officers (OAH). Section 10430.20(b) addresses permissible *ex parte* communication which "concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy." Issues regarding available hearing dates for all parties, and time estimates as referred to in Regulation 1018, are definitely "in controversy" unless the parties have explicitly agreed otherwise. As you know, I handle many DRE cases with OAH, and I am constantly confronted with conflicts in hearing dates that have been set without consulting me or my clients, and time estimates which I often find to be wildly off the mark.

In addition, in every notice of representation I send to DRE, I ask that I be consulted before a hearing date is set. I did so in the Maas case, but the matter was set without consulting me and was set in conflict with a previously set two-day hearing in the Accusation of Optimum Financial, H-4272 SAC, 2005060408. In the Gray case, the matter was set for hearing in violation of your explicit order that "The Department shall consult with Mr. Lasken before resetting this matter for hearing." It was set *ex parte* for February 1 at 9:00 a.m., which requires me to travel to Oakland the previous day, January 31. I have a previously scheduled class from 6:00 p.m. to 10:00 p.m. on January 31. It is for the court to determine whether that would be good cause for a continuance or not, but I should not have to be in the position of asking for a continuance since that date was set in violation of your explicit order that I be consulted. If I had been consulted, I would have objected to setting it on February 1.

The "Common Issue", of course, impinges on long-standing practice. Nonetheless, I have felt that the *ex parte* setting of hearings was probably improper and in violation of due process since I joined DRE in its Los Angeles office in 1977. I recently communicated my concerns about this to Professor Emeritus Michael Asimow of the UCLA Law School, who as you probably know was the primary consultant to the Law Revision Commission in the overhaul of the Administrative Procedure Act which was completed a few years ago. His informal opinion was that the setting of hearings would be "noncontroversial" within the meaning of Section 10430.20(b) only in the special context of a particular case, and particularly not noncontroversial when I have communicated to DRE that I desire to be consulted. He forwarded the subject to the Law Revision Commission which is noting it as a possible matter to be taken up in its future agenda.

ACCUSATION OF MAAS

I have two complaints about the setting of this particular case. First, it was done in spite of my explicit request to be consulted before being set. Second, it was set for a date which conflicts with a previously scheduled hearing. That is obviously good cause for a continuance, but if I had been consulted as requested and as required by the Government Code, I would not be in the position of having to request a continuance. I request that the matter be taken off calendar and reset after mutual consultation among DRE, OAH, and myself. Due to the lack of consultation, I do not know what DRE's time estimate was, but I am estimating at least a half a day due to the serious issues in this case.

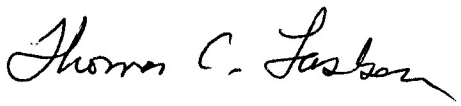
APPLICATION OF GRAY

You granted a continuance in this case in an order issued on December 7, 2005, which as I previously noted explicitly ordered DRE to consult with me before resetting the matter. I was not consulted, and the date arbitrarily set by DRE would cause me to miss a 4-hour class. In addition, I am presently scheduled for 10 days of hearing in January, including 4 days out of the last 6 working days of the month, and would have difficulty finding the time to properly prepare. The court may or may not feel that that is good cause for a continuance, but the issue of a continuance should not even be coming up. The setting of the case was in violation of your explicit order and of the Government Code. Again, I request that the matter be taken off calendar and reset after mutual consultation. Respondent Gray waives the 90 days within which this matter would otherwise be required to be set for hearing.

I am notifying each DRE attorney for the respective case by facsimile copy of this letter. Due to the multiplicity of issues I have not ascertained their positions, and I have not ascertained their unavailable dates since these matters should be reset by mutual consultation after being taken off calendar.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 27, 2005, at Loma Rica, California.

Sincerely,



THOMAS C. LASKEN
Attorney at Law

TCL:mw

cc: David B. Seals, Esq. (via fax) (Gray case)
Truly Sughrue, Esq. (via fax) (Maas case)
Ron Diedrich, Director and Chief Administrative Law Judge (via fax)
Professor Michael Asimow (via email)

OFFICE OF ADMINISTRATIVE HEARINGS
State of California
Department of General Services
1515 Clay Street, Suite 206, Oakland, CA, 94612
510 622-2722 phone | 510 622-2743 fax
www.oah.dgs.ca.gov

December 28, 2005

Thomas C. Lasken, Esq.
Lasken Law Offices
P.O. Box 8298
Loma Rica, CA 95901-8405

Truly Sughrue, Counsel
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

BY FACSIMILE ONLY

Re: *Accusation against Clifford Lindsay Maas*
Agency No. H-9426 SF/OAH No. N2005120278
Hearing Date: January 12, 2006

Dear Counsel:

This letter confirms that I have granted respondent's unopposed motion to continue the hearing in the above referenced matter for good cause shown. Good cause for a continuance exists by reason of a conflict of respondent's attorney. Pursuant to your agreement, the hearing shall be continued to the 1:30 p.m. calendar on February 15, 2006. The matter shall be set for three hours. The Department shall renotice the hearing accordingly.

Respondent objects to the setting of this case without prior consultation of his attorney as violative of the prohibition against ex parte communication. The objection is without merit. Neither the Administrative Procedure Act nor the rules of the Office of Administrative Hearings require an agency to consult with the respondent or counsel prior to requesting a hearing date from the Office of Administrative Hearings. Nor does such contact constitute an improper ex parte communication. It is understandable that counsel would prefer to be consulted before a case is scheduled for hearing. The practice may be preferred and preferable, but it is not required by law.

Very truly yours,

Melissa Crowell

MELISSA G. CROWELL
Presiding Administrative Law Judge

EX 10