

## OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

### Notice of Promulgation of Rule

**Notice is hereby given in accordance with 1043(b) of the Charter of the City of New York (“Charter”) that the Office of Administrative Trials and Hearings (“OATH”) promulgates the following rule implementing Executive Order No. 148 (June 8, 2011) transferring adjudications from the Taxi and Limousine Commission to the Taxi and Limousine Tribunal at OATH.**

This rule is promulgated pursuant to sections 1043 and 1049 of the Charter and section 1(c) of Mayoral Executive Order No. 148.

This rule was published in the *City Record* on November 1, 2013, and a public hearing was held by OATH on December 2, 2013 at OATH offices at 40 Rector St., 6<sup>th</sup> Floor, Court Room E, New York, New York. Six (6) members of the public attended the public hearing and five (5) members of the public testified at the public hearing on the proposed rule. One written comment was submitted at the public hearing. OATH has considered the testimony from the 5 members of the public and the one written comment concerning the Proposed Rule. After considering the testimony and the one written comment from the December 2, 2013 Public Hearing, OATH has modified the proposed rule. This rule will take effect 30 days after publication.

### Statement of Basis and Purpose of Final Rule

#### Background of Rule Amendments

On November 2, 2010, New York City voters approved a number of Charter revisions, including:

- an amendment authorizing the Mayor, by executive order, to consolidate City administrative tribunals into the Office of Administrative Trials and Hearings (“OATH”), and,
- the establishment of a committee to recommend which tribunals or types of cases should be transferred to OATH.

The Mayor’s Committee on Consolidation of Administrative Tribunals issued its “Report and Recommendations,” dated June 7, 2011, containing an Appendix with recommended modifications to the various tribunals’ rules (“Report” and “Appendix”). The rules contained in the Appendix that were designated as OATH rules, referred to below as “interim rules,” were proposed to be continued until OATH conducted rulemaking governing the procedures of the tribunals to be under its jurisdiction.

As further authorized by the Charter amendments, on June 8, 2011, the Mayor issued E.O. 148, which accepted the Committee’s recommendations and, among other things, transferred to OATH the administrative tribunals then located within the Taxi and Limousine Commission (TLC), and the Department of Health and Mental Hygiene, effective July 3, 2011.

With respect to the Taxi and Limousine Tribunal, E.O. 148, by approving the Report and adopting its Appendix, provided that the rules and procedures governing adjudication at, and otherwise affecting, the TLC Administrative Tribunal, contained in chapters 68 and 69 of Title 35 of the Rules of the City of New York, would generally be continued with some modifications as interim rules of OATH applicable to the Taxi and Limousine Tribunal within OATH. This set of interim rules would be continued until such time as OATH completed rulemaking in accordance with the Charter. See Executive Order 148, §1(b) and (c).

Moreover, TLC is promulgating other conforming changes to chapter 68 of Title 35 of the Rules of the City of New York. The rulemaking actions of TLC and OATH are being coordinated so that the amendments proposed by each entity will take effect at the same time.

Unless otherwise specified, references to 35 RCNY chapters 68 and 69 that are included here refer to provisions modified in accordance with E.O. 148.

#### Summary of Rule Amendments

OATH will repeal the interim rules transferred by Executive Order 148, and add a new chapter 5 in Title 48 of RCNY, which will in general codify the interim rules, but with some further changes reflecting OATH practice. The changes in the new chapter 5 in Title 48 of RCNY:

- Replace all references to the existence and jurisdiction of the TLC Adjudications Tribunal with references to OATH generally or the OATH Taxi and Limousine Tribunal in particular;
- Modify various hearing procedures relating to reschedules, adjournments, notifications, defaults, appeals, and other matters in order to reduce the burden on OATH and respondents, as well as to improve record-keeping;
- Provide language assistance services to respondents when needed;
- Modify rules governing the conduct of people who appear at the OATH Taxi and Limousine Tribunal, including registration and obligations of non-attorney representatives; and
- Where appropriate, make these procedural rules consistent with OATH's practice generally and with respect to other tribunals.

#### Specific Amendments to be Enacted

Section 5-01 ("Definitions Specific to this Chapter") sets forth the meanings of terms specifically applicable to the Taxi and Limousine Tribunal.

Section 5-02 ("Scope of this Chapter") subdivision (a) sets forth the jurisdiction of the tribunal. Subdivision (b) sets forth the tribunal's powers, which include imposing fines and penalties in accordance with the rules of the TLC. Subdivision (c) sets forth the powers of the tribunal's hearing officers. Subdivision (d) provides that the tribunal's rules apply to all cases heard at the tribunal.

Section 5-03 (“Service and Filing of Summons”) cross-references TLC’s rules for the requirements for the proper service of the summons and adds the requirement of filing of the summons with the tribunal prior to the first scheduled hearing date.

Section 5-04 (“Contents of Summons”) subdivision (a) cross-references TLC’s rules for the required contents of summons. Subdivision (b) of this section continues, with changes, interim rule 35 RCNY §68-06, which retained the existing TLC rule on the failure of a summons to contain all required information. Where information required by subdivision (a) is missing, the hearing officer may proceed with the hearing, correct the rule or code section cited, grant an adjournment, or dismiss the violation. Subdivision (c) of this section provides that if a summons is sworn to under oath or affirmed under penalty of perjury, the summons will constitute prima facie evidence of the facts stated therein.

Section 5-05 (“Appearance Requirements”) continues, with non-substantive reorganization, interim rule 35 RCNY §68-07. Subdivision (a) of the new rule sets forth a respondent’s options for responding to a summons where the respondent’s personal appearance is not required. It also clarifies that payment of a fine under this section constitutes a guilty plea. Subdivision (b) sets forth a respondent’s options for responding to a summons where the respondent’s personal appearance is required. Subdivision (c) sets forth the consequence of a respondent’s failure to respond pursuant to subdivisions (a) or (b).

Section 5-06 (“Requests to Reschedule”) continues, with changes, the portion of interim rule 35 RCNY §68-09 related to requests to reschedule a hearing. Subdivision (a) of the new rule sets forth who may make requests to reschedule. Subdivision (b) of the new rule provides procedures for such requests to reschedule. Under the interim rule, pre-hearing reschedule requests were required to be made before the first scheduled hearing date. Reflecting the fact that under the new rule, both TLC and the respondent each have the right to request a prehearing reschedule, the new rule eliminates the requirement that such requests be made prior to the first scheduled hearing date in order to afford both parties the opportunity to request one pre-hearing reschedule, so long as such requests are made at least five business days before the hearing date sought to be adjourned.

Section 5-07 (“Requests for Adjournment”) provides procedures for requests for adjournment. As with the interim rule, the new rule requires that all adjournment requests be made at a hearing either to obtain the testimony of a complaining witness or for good cause. Subparagraph (a)(4)(iii) of interim rule 35 RCNY §68-09, which addressed the non-attendance of complaining witnesses who have submitted a sworn or affirmed summons, has been deleted and moved to new rule Section 5-09 (“Hearings Procedures”).

Section 5-08 (“Hearings – Who Must or Can Appear for the Respondent”) continues, with changes, interim rule 35 RCNY § 68-10. It removes the requirement that a respondent who is not a licensee must appear personally and provides that any respondent

may be represented at a hearing by an attorney or by an authorized non-attorney representative.

Section 5-09 (“Hearings – Procedures”) continues, with changes, interim rule 35 RCNY § 68-11. The new rule makes several substantive changes to the interim rule, described below.

- Subdivision (b) provides that OATH will provide appropriate language assistance services to respondents when needed. This subdivision describes how the hearing officer may make such a determination.
- Subdivision (d) continues, with modifications, the interim rule regarding a respondent’s right to confront TLC witnesses. Subparagraph (d)(1)(i), which addresses the non-attendance of complaining witnesses who have submitted a sworn or affirmed summons, has been moved to this section from interim rule 35 RCNY § 68-09(a)(4)(iii) (“Hearings – Adjournment Requests”).
- Subdivision (h) provides that payment of fines must be made in accordance with TLC’s rules.

Section 5-10 (“Defaults”) continues, with changes, interim rule 35 RCNY § 68-12. The new rule removes requirements from former § 68-12 for certain findings by the hearing officer before a default judgment is issued, to make them consistent with procedures currently in place at the Environmental Control Board (ECB). The new rule additionally standardizes penalties imposed after default determinations as the maximum penalties permitted under TLC rules or other applicable laws.

Section 5-11 (“Respondent’s Right to Challenge a Default Decision”) continues, with changes, interim rule 35 RCNY § 68-13. The new rule makes several substantive changes to the interim rule, described below.

- Subdivision (c) requires that a first motion to vacate filed within 60 days of the default decision state a reasonable excuse for the respondent’s failure to appear at the hearing, without the requirement in the interim rule to show a defense to the charge.
- Subdivision (d) requires that motions filed after 60 days but before two years, provide a reasonable excuse for the respondent’s failure to appear at the hearing and a reasonable excuse for delay in presenting the motion, without the requirement in the interim rule of a reasonable excuse for delay in presenting the motion and a defense to the charge.
- Subdivision (e) of the interim rule, which provided for subsequent motions to vacate, is removed. Subdivision (h) is added, which allows subsequent motions to vacate only in exceptional circumstances and in order to avoid injustice.
- Subdivision (g)(3) of the interim rule, which provided that any default fines paid be refunded when a default was vacated, has been removed. Instead, in accordance with subdivision 5-09(h) of the new rules, policies relating to the collection of fines are to be governed by TLC’s rules.

Consistent with its experience with motions to vacate default decisions at the ECB Tribunal, OATH anticipates that these changes will simplify the process for respondents and increase efficiency without an impact on due process.

Section 5-12 (“Appeals”) combines, with changes, interim rules 35 RCNY §§ 68-14 and 68-15, which provided separate procedures for appeals by respondents and appeals by the TLC. Under the new rule, the procedures for appealing a decision are the same for both respondents and the TLC. In addition to that change, the new rule does the following:  
Re-orders some provisions and adjusts some of the technical requirements for notice and filing of appeals and answers in subdivisions (c), (d), and (e);  
Deletes the Appeal Unit’s authority to modify lawfully imposed penalties;  
Provides that appeals of cases where a hearing officer’s decision results in the suspension or revocation of a license will be expedited by the Appeals Unit.

Consistent with its experience with appeals at the ECB Tribunal, OATH anticipates that these changes will increase efficiency and reduce scheduling difficulties and backlogs without an impact on due process.

Section 5-13 (“Chairperson Review”) is added to be consistent with the new TLC 35 RCNY § 68-12.

- The rule acknowledges the new TLC process that permits the TLC Chairperson, or if he or she designates, the General Counsel for the TLC, to review any determination of the Appeals Unit that interprets an enumerated rule or statute which the TLC administers, and to issue a decision adopting, rejecting or modifying the Appeals Unit decision.
- The Chairperson’s interpretation of the Commission’s rules and the statutes it administers shall be considered agency policy and must be applied in future adjudications involving the same rules or statutes.

Section 5-14 (“Special Procedures”) sets forth special procedures, including timeframes for calendaring and for issuing decisions, applicable to certain kinds of cases heard at the tribunal, as provided by either the Administrative Code of the City of New York or chapter 68 of the TLC’s rules. The procedures in this section apply to cases involving a failure to take a drug test in which respondent submits written documentation for review by a hearing officer, and also to unlicensed activity cases.

Sections 5-15 and 5-16 replace Chapter 69 of the interim rules. Consistent with its experience at the ECB Tribunal, OATH anticipates that these changes to the requirements and regulation of the conduct of representatives at the tribunal will increase access to justice and provide for more orderly hearings, without an impact on due process.

Section 5-15 (“Registered Representatives”) requires representatives of five or more respondents (other than family members) within a calendar year to register with OATH. The new rule prohibits representatives who are not attorneys from misrepresenting their qualifications (see also Prohibited Conduct below). Attorneys admitted to practice in New York State are not required to register.

Section 5-16 (“Prohibited Conduct”) defines prohibited conduct and includes conduct that occurs both inside and outside of the hearing room. It also covers conduct outside OATH that would lead OATH personnel to conclude that a representative lacks honesty and integrity that will adversely affect a representative’s practice before the tribunal—for example, attempted bribery of an issuing officer. The new rule allows the Chief Administrative Law Judge of OATH to suspend registered representatives or attorneys who do not comply with OATH’s rules, but only after the attorney or representative is given notice and a reasonable opportunity to rebut the claims against him or her. The suspension may be for a specified period of time or indefinitely.

Section 5-17 (“Computation of Time”) was added to clarify how to calculate any period of time prescribed in these rules.

OATH’s authority for these rules is found in Sections 1043 and 1049 of the City Charter and Section 1(c) of Mayoral Executive Order No. 148 (June 8, 2011).

New material is underlined.  
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Title 48 of the Rules of the City of New York is amended by adding a new chapter 5, to read as follows:

**CHAPTER 5**  
**TAXI AND LIMOUSINE TRIBUNAL AT OATH**

**§5-01 Definitions Specific to this Chapter**

As used herein the following terms mean:

Appearance means a communication with the Tribunal that is made by a party or the representative of a party in connection with a summons that is returnable to the Tribunal or is or was pending before the Tribunal. An appearance may be made in person or as otherwise provided in this chapter.

Chief Administrative Law Judge means the agency head of OATH appointed by the Mayor pursuant to New York City Charter §1048.

Ex Parte means a communication made to the Tribunal without notice to the adverse party.

Hearing Officer means a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, to carry out the adjudicatory powers, duties and responsibilities of the Taxi and Limousine Tribunal.

OATH means the New York City Office of Administrative Trials and Hearings.

Party means the person named as petitioner or respondent, or intervening as of right, in an adjudicatory action before the Tribunal.

Person means any individual, partnership, unincorporated association, corporation, limited liability company or governmental agency.

Respondent means the person against whom the charges alleged in a summons have been filed.

Summons means the document referred to in Charter §2303 as a notice of violation, which specifies the charges forming the basis of an adjudicatory proceeding before the Tribunal.

TLC means the New York City Taxi and Limousine Commission.

Tribunal or Taxi and Limousine Tribunal means the Taxi and Limousine Tribunal at OATH.

### **§5-02 Scope of this Chapter**

(a) Jurisdiction. In accordance with Mayoral Executive Order No. 148, dated June 8, 2011, and pursuant to Charter §1048 (2), the Taxi and Limousine Tribunal at OATH has jurisdiction to adjudicate charges of violations of any laws or regulations that the Taxi and Limousine Commission has the duty or authority to enforce, and to impose penalties in accordance with applicable laws, rules and regulations.

(b) Hearing Officers. Hearing officers may:

(1) Carry out the adjudicatory powers of an administrative law judge set forth in Title 19 of the New York City Administrative Code.

(2) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments, and oversee and regulate other matters relating to the conduct of a hearing;

(3) Bar from participation in a hearing any person, including a party, representative or attorney, witness or observer who engages in disorderly, delaying or obstructionist conduct that disrupts or interrupts the proceedings of the Tribunal; and

(4) Take any other action authorized by applicable laws, rules and regulations, or that is delegated by the Chief Administrative Law Judge under authority of applicable law, rule or regulation.

### **§5-03 Service and Filing of Summons**

(a) Service of Summons. A summons served pursuant to the requirements set forth in Chapter 68 of Title 35 of the Rules of the City of New York will be considered sufficient service.

(b) Filing of Summons. The original or a copy of the summons together with proof of service shall be filed with the Tribunal prior to the first scheduled hearing date.

### **§5-04 Contents of Summons**

(a) Required Information. A summons must contain, at a minimum, all information required by Chapter 68 of Title 35 of the Rules of the City of New York.

(b) Failure of Summons to Provide Information.

(1) If, at a hearing, a respondent claims that the summons did not provide the required information, the hearing officer will determine whether there is a lack of required information and, if so, the TLC will be given the opportunity to provide the respondent with the required information. The hearing officer will then determine whether the lack of information has unfairly prejudiced the respondent.

(2) The hearing officer may determine whether to:

(i) Proceed with the hearing,

(ii) Correct the citation to the Rule or Code Section; if there is a conflict between the rule or Code section cited and the description in the violation, the description controls the final resolution of the issue,

(iii) Grant an adjournment, or

(iv) Dismiss the violation.

(3) If a summons is dismissed solely because the information specified in subdivision (a) has not been provided, such dismissal will be without prejudice, and the TLC may issue an amended summons.

(c) If the summons is sworn to under oath or affirmed under penalty of perjury, the summons or a copy of the summons will be admitted into evidence and will constitute prima facie evidence of the facts stated therein.

### **§5-05 Appearance Requirements**

(a) When Appearance Is Not Required. If the summons does not require the respondent to appear at a hearing, the respondent may:

(1) Pay the scheduled fine in person or by mail (or in any other manner approved by the Tribunal) prior to the scheduled hearing or other applicable date provided in the summons. Payment of the fine constitutes a guilty plea. By pleading guilty, the respondent admits the charges contained in the summons and waives any right to appeal the determination or assessment of penalties; or

(2) Appear for a hearing at the location, date, and time indicated on the summons. If no hearing date is scheduled, the respondent may request a hearing by pleading not guilty to the summons or as otherwise instructed on the summons.

(b) When Appearance is Required. If the summons requires that the respondent appear for a hearing, the respondent or the respondent's representative must appear for a hearing at the location, date, and time indicated on the summons or reschedule notice, as applicable.

(c) Failure to Appear. A respondent's failure to appear or enter a plea in a timely manner constitutes a default to the charges and subjects the respondent to penalties in accordance with applicable laws, rules and regulations.

### **§5-06 Requests to Reschedule**

(a) A request to reschedule the scheduled hearing date may be made by the TLC or the respondent.

(b) A party requesting that a hearing be rescheduled to a later date must make such request at least five business days before the hearing date. The request may be made ex parte. Good cause is not necessary for a request to reschedule. No more than one request to reschedule will be granted for each party for each summons.

### **§5-07 Requests for Adjournment**

(a) A request to adjourn the hearing to another date must be made to a hearing officer at a hearing. A hearing officer may grant a request for an adjournment to obtain the testimony of complaining witnesses, or upon a showing of good cause.

(1) Adjournment Request to Obtain the Testimony of Complaining Witness. The respondent may request an adjournment for the purpose of obtaining the testimony of a complaining witness who has sworn to or affirmed a summons admitted into evidence pursuant to subdivision 5-04(c) of this chapter. The respondent must explain the subject of the testimony that the respondent intends to obtain from the complaining witness and must explain the relevance of that testimony to either the violations charged or a defense

to those charges. The adjournment may be granted only if the hearing officer concludes that the complaining witness's testimony is reasonably likely to be necessary to a fair hearing of the violations charged or of the defenses to those charges. The hearing officer will issue a written decision explaining the hearing officer's reasons for granting or denying the request.

(2) Adjournment Request Upon a Showing of Good Cause. Either party may request an adjournment upon a showing of good cause. The hearing officer will issue a written decision explaining the reasons for granting or denying the request. In deciding whether there is good cause for an adjournment, the hearing officer may consider:

(i) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the party's case;

(ii) Whether granting the adjournment would be unfair to the other party;

(iii) Whether granting the adjournment would cause inconvenience to any witness;

(iv) The age of the case and the number of adjournments previously granted;

(v) Whether the party requesting the adjournment prepared for the scheduled hearing with reasonable diligence;

(vi) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;

(vii) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and

(viii) Any other fact that the hearing officer considers to be relevant to the request for an adjournment.

### **§5-08 Hearings – Who Must or Can Appear for the Respondent**

(a) A respondent may be represented at a hearing by an attorney or by an authorized non-attorney representative.

(1) Corporations. If the respondent is a corporation, it may also be represented by an officer, director, or employee of the respondent corporation designated as a representative by the respondent.

(2) Limited Liability Companies. If the respondent is a limited liability company, it may also be represented by a member or employee of the respondent limited liability company designated as an agent for the respondent.

(3) Partnerships. If the respondent is a partnership, it may also be represented by any partner.

(b) Proof of Authorization. Any individual representing a respondent at a hearing must provide proof that the respondent has authorized him or her to represent the respondent.

### **§5-09 Hearing Procedures**

(a) Identification Required. A respondent must provide the hearing officer with a valid government-issued photo ID prior to the hearing.

(b) Language Assistance Services.

(1) Appropriate language assistance services will be provided to respondents whose primary language is not English to assist them in communicating meaningfully with the hearing officer. Such language assistance services will include interpretation of hearings conducted by hearing officers, where interpretation is necessary to assist the respondent in communicating meaningfully with the hearing officer. At the beginning of any hearing, the hearing officer will advise the respondent of the availability of interpretation. In determining whether interpretation is necessary to assist the respondent in communicating meaningfully with the hearing officer, the hearing officer will consider all relevant factors, including but not limited to: (i) information from Tribunal administrative personnel identifying a respondent as requiring language assistance services to communicate meaningfully with a hearing officer; (ii) a request by the respondent for interpretation; (iii) even if interpretation was not requested by the respondent, the hearing officer's own assessment of whether interpretation is necessary to enable meaningful communication with the respondent. If the respondent requests an interpreter and the hearing officer determines that an interpreter is not needed, that determination and the basis for the determination will be made on the record.

(2) When required by paragraph (1) of this subdivision, interpretation services will be provided at hearings by a professional interpretation service that is made available by the Tribunal, unless the respondent requests the use of another interpreter, in which case the hearing officer in his or her discretion may use the respondent's requested interpreter. In exercising that discretion, the hearing officer will take into account all relevant factors, including but not limited to: (i) the respondent's preference, if any, for his or her own interpreter; (ii) the apparent skills of the respondent's requested interpreter; (iii) if the respondent's requested interpreter is a child under the age of eighteen, the age of the interpreter; (iv) minimization of delay in the hearing process; (v) maintenance of a clear and usable hearing record; (vi) whether the respondent's requested interpreter is a potential witness who may testify at the hearing. The hearing officer's determination and the basis for this determination will be made on the record.

(c) Right to Present Witnesses. A respondent is entitled to be present throughout the entire hearing and can present witnesses. However, witnesses will be excluded from the hearing room except while they are actually testifying.

(d) Right to Confront Witnesses. The TLC is required to produce a complaining witness, if there is one, where the witness's credibility is relevant, except as otherwise provided herein. If the witness does not personally appear, the TLC must make reasonable efforts to have the witness available by videoconferencing or teleconferencing at the hearing. The respondent will have the opportunity to confront a complaining witness if the witness is produced.

(1) If the TLC is unable to produce the witness in person or by videoconference or teleconference, it will provide the hearing officer with a statement setting forth its efforts to produce the witness. If the hearing officer determines that the TLC's efforts were not adequate, the hearing officer will dismiss the summons.

(2) The non-attendance of a complaining witness who submitted a sworn or affirmed summons will not be considered a failure by the TLC to produce a complaining witness, unless the respondent has already requested an adjournment of an earlier hearing date for the purpose of obtaining the testimony of such a complaining witness pursuant to §5-07 of this chapter.

(e) Conduct of Hearing.

(1) All hearings will be conducted before a hearing officer.

(2) The hearing officer will consider all relevant testimony and review documentary evidence submitted at the hearing.

(3) Evidence at a hearing may include, but is not limited to: affidavits or affirmations submitted under penalties of perjury, records maintained by the TLC or by another governmental body in its regular course of business, photographs and other documents.

(4) Although the formal rules of evidence do not apply, all witnesses must testify under oath or affirmation.

(5) At the conclusion of the hearing, the hearing officer will issue a written decision that includes findings of fact and conclusions of law.

(f) Recordings. All hearings will be recorded by the Tribunal. No other recording or photograph of the hearing may be made without prior written permission of the Tribunal. The Tribunal's recording of the hearing is the official recording.

(g) Findings of Guilt and Imposition of Penalty. If the hearing officer finds that a violation has been committed, the hearing officer will impose the appropriate penalties, which may include a fine, penalty points, a suspension or revocation of the respondent's license and any other penalty authorized by applicable laws, rules and regulations.

(h) Payment of Fines. Payment of fines must be made in accordance with the requirements set forth in Chapter 68 of Title 35 of the Rules of the City of New York.

### **§5-10 Defaults**

(a) A respondent who fails to appear, enter a plea, or make a request to reschedule as required by §5-06 of this chapter will be deemed to have defaulted.

(b) Upon such default, without further notice to the respondent, and without a hearing being held, all facts alleged in the summons will be deemed admitted, the respondent found in violation, and the maximum penalties authorized by applicable laws, rules and regulations, which may include a fine, penalty points, and suspension or revocation of the respondent's license, will be applied.

(c) Decisions rendered because of a default will take effect immediately.

(d) The Tribunal will notify the respondent of the issuance of a default decision by mailing a copy of the decision to the respondent at the address on file with the TLC or by providing a copy to the respondent or respondent's representative who appears personally at the Tribunal and requests a copy.

(e) The respondent may make a motion in writing requesting that a default be vacated pursuant to §5-11 of this chapter.

### **§5-11 Respondent's Right to Challenge a Default Decision**

(a) Motion to Vacate. A respondent may move to vacate a default decision by filing a written motion to vacate within two years from the date of the default decision.

(b) Form of Motion. A motion to vacate must be on a form approved by the Tribunal. The motion must be signed and dated.

(c) Motions Filed Within Sixty Days. A motion to vacate filed within sixty days of the date of the default decision must show a reasonable excuse for the respondent's failure to appear at the hearing.

(d) Motions Filed More Than Sixty Days But Within Two Years. A motion to vacate filed more than sixty days but within two years of the date of the default decision must show a reasonable excuse for the respondent's failure to appear at the hearing, and a reasonable excuse for delay in presenting the motion.

(e) Reasons for Failing to Appear. In determining whether a respondent has shown a reasonable excuse for failing to appear at a hearing, the hearing officer will consider:

(1) Whether circumstances that could not be reasonably foreseen prevented the respondent from attending the hearing;

(2) Whether the respondent had an emergency or condition requiring immediate medical attention;

(3) Whether the matter had been previously adjourned by the respondent;

(4) Whether the respondent attempted to attend the hearing with reasonable diligence;

(5) Whether the respondent's inability to attend the hearing was due to facts that were beyond the respondent's control;

(6) Whether the respondent's failure to appear at the hearing can be attributed to the respondent's failure to maintain current contact information on file with the TLC;

(7) Whether the respondent has previously failed to appear in relation to the same summons; and

(8) Any other fact that the Tribunal considers to be relevant to the motion to vacate.

(f) Granting of Motion to Vacate. If the Tribunal determines that the respondent has met the requirements for a motion to vacate:

(1) The default decision will be vacated and the Tribunal will schedule a new hearing.

(2) Any penalties imposed by the default decision will be vacated.

(g) Denial of Motion to Vacate. If the Tribunal denies the motion to vacate, the default decision and penalties will remain in effect.

(h) If a default decision on the same summons or notice of violation has been previously vacated, and a new default decision has been issued, a motion to vacate the second default decision will not be granted except that in exceptional circumstances and in order to avoid injustice, the Chief Administrative Law Judge or his or her designee will have the discretion to grant a request for a new hearing.

### **§5-12 Appeals**

(a) There shall be an Appeals Unit within the Taxi and Limousine Tribunal at OATH. The Appeals Unit shall determine whether the facts contained in the findings of the hearing officers are supported by substantial evidence in the record, and whether the determinations of the hearing officers as well as the penalties imposed are supported by law. The Appeals Unit shall have the power to affirm, reverse, remand or modify the decision appealed from.

(b) A party may appeal, in whole or in part, any decision of a hearing officer, except that a party may not appeal a decision rendered on default, a denial of a motion to vacate a default decision, or a plea admitting the violations charged.

(c) Appeals decisions are made upon the record of the hearing. The record of the hearing consists of the summons, the recording of the hearing, all briefs filed and exhibits received in evidence as well as the hearing officer's final decision. The Appeals Unit shall not consider any evidence that was not presented to the hearing officer. Except as otherwise provided for in subdivision (g) of this section, the absence of a recording of the hearing does not prevent determination of the appeal.

(d) Except as otherwise provided for in subdivision (e) of this section, a party wishing to appeal must file an appeal, including a written statement describing the basis for the appeal, within thirty days of the date of the hearing officer's decision. At the time the appeal is filed, the appealing party must also serve a copy of the appeal on the non-appealing party and file proof of such service with the Tribunal.

(e) Any party supporting the hearing officer's decision or opposing the matters raised in the appeal may file a response to the appeal with the Tribunal within twenty-one days after the service on that party, except as otherwise provided for in subdivisions (e) or (f) of this section. At the time the response to the appeal is filed, the party filing a response to the appeal must also serve a copy of the response to the appeal on the appealing party and file proof of such service with the Tribunal.

(f) Expedited appeals. The Appeals Unit shall render an expedited decision for any appeal involving a suspension or revocation of a TLC issued license. If a party supporting the hearing officer's decision or opposing the matters raised in the appeal wishes to file a response to the appeal, the response must be filed with the Tribunal within seven days after the service on that party of the appeal of the hearing officer's decision. At the time the response to the appeal is filed, the party responding to the appeal must also serve a copy of the response to the appeal on the appealing party and file proof of such service with the Tribunal.

(g) Requests for hearing recording.

(1) Where a party requests, in writing on a form provided by the Tribunal, a copy of the recording of the hearing within seven days of the date of the hearing officer's decision, that party's time to file an appeal is the later of either the original thirty days from the date of the decision being appealed or twenty-one days from the date the Tribunal provides the requested copy of the recording. If within seven days after the service on a non-appealing party of a copy of an appeal of a hearing officer's decision, the non-appealing party requests, in writing on a form provided by the Tribunal, a copy of the recording of the hearing, the non-appealing party's time to respond to the appeal is extended until twenty-one days from the date the Tribunal provides the requested copy of the recording.

(2) If, for the purposes of appealing a decision, a respondent requests a copy of the hearing recording, such recording shall be produced to such respondent within thirty days after receipt of a written request from such respondent. If the recording cannot be produced within the thirty day period, the determination being appealed shall be dismissed without prejudice.

(h) A decision of the Appeals Unit becomes the final determination of the Tribunal unless either party petitions the TLC Chairperson in accordance with §68-12(c) of Chapter 68 of Title 35 of the Rules of the City of New York.

### **§ 5-13 Chairperson Review**

The TLC Chairperson, or if he or she designates, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:

- (1) A rule set forth in Title 35 of the Rules of the City of New York;
- (2) A provision of law set forth in Chapter 5 of Title 19 of the Administrative Code;
- (3) A provision of law set forth in Chapter 65 of the City Charter.

Upon review of a determination of the Appeals Unit, the TLC Chairperson, or General Counsel, may issue a decision adopting, rejecting or modifying the Appeals Unit decision. The TLC Chairperson, or General Counsel, will be bound by the findings of fact in the record and will set forth his or her decision in a written order. The Chairperson's or General Counsel's interpretation of the TLC's rules and the statutes it administers shall be considered TLC's agency policy and must be applied in future adjudications involving the same rules or statutes.

### **§ 5-14 Special Procedures**

(a) Summary suspension based on a failure to be timely tested for drug use. When the TLC submits written documentation pursuant to 35 RCNY § 68-16(d) from a Licensee refuting summary suspension based on a failure to be timely tested for drug use, the Taxi and Limousine Tribunal at OATH will issue a decision based on the written documentation without a hearing. The decision will include findings of fact and conclusions of law. The decision can be appealed in accordance with the process established in subsection 68-12 of this chapter.

(b) Unlicensed activity. A decision on unlicensed activity with a commuter van pursuant to §19-529.2 of the Administrative Code of the City of New York will be issued within one business day of the conclusion of the hearing or the default.

### **§5-15 Registered Representatives**

A representative, other than a family member or an attorney admitted to practice in New York State, who represents five or more respondents before the Tribunal within a calendar year must:

(a) be at least eighteen (18) years of age;

(b) register with the Tribunal by completing and submitting a form provided by the Tribunal. The form must include proof acceptable to the Tribunal that identifies the representative, and must also include any other information that the Tribunal may require. Registration must be renewed annually;

(c) notify the Tribunal within ten (10) business days of any change in the information required on the registration form;

(d) not misrepresent his or her qualifications or service so as to give rise to a mistaken belief that the representative is an attorney at law if the representative is not. A representative who is not an attorney admitted to practice must refer to him or herself as “representative” when appearing before the Tribunal;

(e) exercise due diligence in learning and observing Tribunal rules and preparing paperwork;

(f) be subject to discipline, including but not limited to suspension or revocation of the representative’s right to appear before the Tribunal, for failing to follow the provisions of this section and of section 5-16 of this chapter.

### **§5-16 Prohibited Conduct**

(a) Prohibited conduct: A party, witness, representative or attorney must not:

(1) engage in abusive, disorderly or delaying behavior, a breach of the peace or any other disturbance which directly or indirectly tends to disrupt, obstruct or interrupt the proceedings at the Tribunal;

(2) engage in any disruptive verbal conduct or action or gesture which a reasonable person would believe shows contempt or disrespect for the proceedings or which a reasonable person would believe to be intimidating;

(3) willfully disregard the authority of a hearing officer or other Tribunal employee. This may include refusing to comply with the hearing officer’s directions or behaving in an abusive, disorderly, or delaying manner as stated in paragraph (1) of this subdivision and subdivision (b) of §5-02 of this chapter;

(4) leave a hearing in progress without the permission of the hearing officer;

(5) attempt to influence or offer or agree to attempt to influence any hearing officer or employee of the Tribunal by the use of threats, accusations, duress or coercion, a promise of advantage, or the bestowing or offer of any gift, favor or thing of value;

(6) enter any area other than a public waiting area unless accompanied or authorized by a Tribunal employee. Upon conclusion of a hearing, a party, witness, representative or attorney must promptly exit non-public areas;

(7) request any Tribunal clerical staff to perform tasks that are illegal, unreasonable or outside the scope of the employee's job duties;

(8) operate any Tribunal computer terminal or other equipment at any time unless the equipment has been designated for use by the public;

(9) submit a document, or present testimony or other evidence in a proceeding before a hearing officer which he or she knows, or reasonably should know, to be false, fraudulent or misleading;

(10) induce or encourage anyone in a proceeding before a hearing officer to make a false statement;

(11) solicit clients, or cause the solicitation of clients by another person on Tribunal premises;

(12) make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or other remote methods, except upon application to the Tribunal. This does not include copies of documents submitted to the Tribunal during a hearing including written or electronic statements and exhibits. Except as otherwise provided by law, the Tribunal may deny the application or grant it in full, in part, or upon such conditions as it deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(b) Prohibited Communication: All parties must be present when communications with Tribunal personnel, including a hearing officer, occur, except as necessary for case processing and unless otherwise permitted by these rules, on consent of the Tribunal or in an emergency. All persons are prohibited from initiating communication with a hearing officer or other employee before or after a hearing or before or after a decision on motion, in order to attempt to influence the outcome of a hearing or a decision on motion.

(c) Penalties for Misconduct: Failure to abide by these rules constitutes misconduct. The Chief Administrative Law Judge or his or her designee may, for good cause, suspend or bar from appearing before the Tribunal an attorney or representative who fails to abide by these rules. The suspension may be either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the Chief

Administrative Law Judge that the basis for the suspension no longer exists. However, the Chief Administrative Law Judge may not act until after the attorney or representative is given notice and a reasonable opportunity to appear before the Chief Administrative Law Judge or his or her designee to rebut the claims against him or her. The Chief Administrative Law Judge or his or her designee, depending upon the nature of the conduct, will determine whether said appearance will be in person or by a remote method. This section in no way limits the power of a hearing officer to discipline any person as set out in §5-02 of this chapter.

(d) Discipline on Other Grounds: The Chief Administrative Law Judge may, in addition to the provisions of subdivision (c) of this section, suspend or bar a representative upon a determination that the representative lacks honesty and integrity and that the lack of honesty and integrity will adversely affect his or her practice before the Tribunal. Any action pursuant to this subdivision will be on notice to the representative and the representative will be given an opportunity to be heard in a proceeding prescribed by the Chief Administrative Law Judge. Factors to be considered in determining whether a representative lacks honesty and integrity may include, but need not be limited to, whether the representative has made intentionally false, misleading or inappropriate statements to parties or Tribunal staff.

(e) The decision of the Chief Administrative Law Judge or his or her designee under subdivision (c) or (d) of this section constitutes a final agency action. Judicial review of the decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

### **§5-17 Computation of Time**

(a) Except as otherwise provided herein, computation of any period of time prescribed in these rules shall be as follows:

(1) The start date for the time period shall not be considered in the computation. The next business day is the first day of the time period.

(2) The computation is based on the number of calendar days.

(3) If the last day in the period is a Saturday, Sunday or New York City legal holiday, the period is extended to the next business day.

(b) Any emergency action taken by the Tribunal which requires action within a 24 hour period shall be taken regardless of whether the 24 hour period includes a Saturday, Sunday or legal holiday.