

## **NEW YORK CITY TAXI AND LIMOUSINE COMMISSION**

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**Notice is hereby given in accordance with section 1043(b) of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) proposes amended rules governing representatives appearing before the TLC.**

These rules are proposed pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. These proposed rules were not included in the TLC’s regulatory agenda for Fiscal Year 2009 because the need for such rules was not anticipated at the time the regulatory agenda was published.

A public hearing on these proposed rules will be held by the TLC at its offices at 40 Rector Street, 5<sup>th</sup> Floor, New York, New York 10006 on December 5, 2008 at 2:30 p.m. Persons wishing to testify at the hearing may notify the TLC in advance, either in writing or by telephone to the TLC’s Office of Legal Affairs at the address and telephone given below. Any request for a sign language interpreter or other form of reasonable accommodation for a disability at the hearing must be submitted to the Office of Legal Affairs in writing, by telephone, or by TTY/TDD no later than November 25, 2008.

The public hearing will not be a meeting of the Commissioners of the Taxi and Limousine Commission and will be chaired by the TLC’s Deputy Commissioner for Legal Affairs. Persons who wish to speak at the hearing will be strictly limited to three minutes of speaking time. Persons who wish to comment on the proposed rules are urged to submit written comments. There is no page limit on written comments.

Written comments in connection with these proposed rules should be submitted to the Office of Legal Affairs and must be received no later than December 3, 2008 to:

**Charles R. Fraser**  
***Deputy Commissioner for Legal Affairs/General Counsel***  
**Taxi and Limousine Commission**  
**40 Rector Street, 5<sup>th</sup> Floor**  
**New York, New York 10006**  
**Telephone: 212-676-1117**  
**Fax: 212-676-1102**  
**TTY/TDD: 212-341-9596**  
**Email: [tlcrules@tlc.nyc.gov](mailto:tlcrules@tlc.nyc.gov)**

Written comments and a summary of all comments received at the hearing will be available for public inspection at that office.

Section 1. It is hereby proposed to amend Title 35 of the Rules of the City of New York by adding a new chapter 19 thereto to read as follows:

New Material is underlined.

**CHAPTER 19**

**RULES FOR  
REPRESENTATIVES**

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**§19-01 Scope of this Chapter**

- (a) To provide for competent non-attorney representation of Respondents and to establish the rules for authorizing and regulating such Representatives.
- (b) To ensure that Representatives possess or comply with the following:
  - (1) Authorization by the Commission
  - (2) Familiarity with the rules and procedures of the Commission
  - (3) Supervision by an attorney who must assume ultimate responsibility for the Representative's performance
- (c) To provide for a separate forum in which to adjudicate any violation of these rules by such Representatives.

**§19-02 Adjudication of Violation of Rules and Penalties**

- (a) Penalty for Violation of Rules. A violation of these rules by a Representative may result in the suspension and/or revocation of the Representative's authorization to appear before the Commission.
- (b) Adjudication before OATH. The adjudication of any alleged violation by a Representative must be held at, and under the auspices of, the New York City Office of Administrative Trials and Hearings (also known as OATH), before an OATH Administrative Law Judge specially designated to conduct such a hearing.
- (c) Recommended Decision. At the conclusion of the hearing, the OATH ALJ will prepare and submit a Recommended Decision to the Chairperson, who will make the final agency decision as to findings of fact, conclusions of law, and penalties.

**§19-03 Definitions Specific to this Chapter**

Hearing Officer is the Administrative Law Judge (ALJ) who presides over a hearing.

**§19-04 Authorization to Appear Before the Commission**

An individual who wants to be authorized to appear before the Commission Tribunal as a Representative must apply on the proper Commission forms and must meet or comply with all of the following requirements:

- (a) The Applicant must be at least eighteen (18) years of age.
- (b) The Applicant must be of good moral character. A Representative's authorization to appear before the Commission can be suspended or revoked if it is determined that he or she has committed an act evidencing lack of good moral character. An

act evidencing a lack of moral character can be any act that, had it occurred prior to the application, would have served as a basis for denying the application.

- (c) The Applicant must be familiar with all Commission rules and procedures, and will be required to demonstrate his or her knowledge of these rules and procedures prior to approval.
- (d) The Applicant must be sponsored by an attorney duly admitted to the practice of law in the State of New York who has agreed that he or she will directly supervise and review the work product of the Applicant and will assume legal responsibility for the conduct of the Applicant before the Commission.
- (e) The Applicant must provide a Mailing Address to the Commission.
- (f) The Applicant shall also provide the Commission with any e-mail addresses used by the Applicant in the course of business.

**§19-05 Requirements – Procedural**

- (a) *Notification of Cases.* A Representative must supply the Legal Director of Adjudications or his/her designee with a written list of all cases to be handled by that Representative no later than 3:30 p.m. on the day prior to the date that those cases are scheduled for hearing. There must be no additions to this list without the express permission of the Legal Director of Adjudications or his/her designee.
- (b) *Permission to Leave a Hearing in Progress.* A Representative may not leave a hearing in progress without the express permission of the presiding Administrative Law Judge.
- (c) *Restricted Equipment.* A Representative may not operate any Commission computer terminal or other equipment at any time, except for equipment that is specifically provided for the use of the general public.
- (d) *Restricted Areas.* A Representative may not enter any non-public service area at the Commission unless accompanied or authorized by a Commission manager or supervisor.
- (e) *Notification of Change in Mailing Address.* A Representative must notify the Commission immediately of any change in the Representative's Mailing Address.

**§19-06 Requirements – Evidence and Testimony**

- (a) *False Evidence or Testimony.* A Representative may not make, encourage, or knowingly allow any false or misleading statement, document, evidence, or testimony to be offered in any hearing or appeal.

- (b) *Affirmative Duty to Preview Evidence and Testimony.* The Representative may not call any witness or offer into evidence any evidentiary materials unless he or she has examined the evidence or interviewed the witnesses and is satisfied that the evidence or the testimony of the witness will not be false or misleading.

**§19-07 Requirements – General**

- (a) *Behavior Toward the Tribunal.* Representatives may not engage in any of the following types of conduct:
- (1) Disorderly behavior, breach of the peace, or other disturbances that directly or indirectly tend to disrupt or interrupt the proceedings at the Commission
  - (2) Willful disregard of an Administrative Law Judge’s authority prior to, during, or after the course of an administrative hearing conducted at the Commission
  - (3) Actions, gestures or verbal conduct that show disrespect for the proceedings of the Commission
- (b) *Solicitation.* A Representative may not solicit clients or permit someone else to solicit clients for him or her anywhere on the premises of the Commission.
- (c) *Truth in Advertising.* Any advertising or other publicity generated or permitted by a Representative may not contain any false or misleading statement and shall clearly and conspicuously state that the Representative is not an attorney at law.
- (d) *Misrepresentation of Self as Attorney.* A Representative may not call himself or herself an attorney or lawyer and must not advertise that he or she is an attorney or lawyer. The Representative has an affirmative obligation to inform his/her clients or prospective clients and to state clearly and conspicuously in all advertising that he or she is not an attorney.
- (e) *Conflict of Interest.* No Representative may represent more than one person or Business Entity in connection with any matter in which the interests of those persons, partnerships, corporations or associations are in conflict with one another.
- (f) *Incompetent Representation.* No Representative may undertake the representation of a client unless he or she is able provide competent representation. A Representative must, at a minimum, meet the following requirements:
- (1) Be thoroughly familiar with the facts of his or her client’s particular case

- (2) Have a thorough understanding of the rule or rules of the Commission involved in the case
- (3) Be thoroughly familiar with all applicable procedures
- (g) Attempt to Influence Assignment of ALJ. No Representative may attempt to influence an employee of the Commission concerning the selection of an Administrative Law Judge to hear a particular case.

**§19-08 Personal Conduct**

- (a) Bribery. A Representative may not offer or give any gift, gratuity, or thing of value to any employee or member of the Commission or to any other public servant. A Representative must immediately report to the Commission and the New York City Department of Investigation any request or demand for any gift, gratuity, or thing of value by any employee or member of the Commission or any other public servant.
- (b) Deceit or Collusion. In connection with the representation of a Respondent in an adjudication, a Representative must not engage in or consent to any deception or collusion with the intent to deceive the Commission or any other party.
- (c) Cooperation with Law Enforcement. A Representative must, at all times, cooperate with all law enforcement officers, authorized representatives of the Commission, and the New York City Department of Investigation. A Representative must comply with all of their reasonable requests.
- (d) Cooperation with TLC. A Representative must promptly and truthfully answer and comply as directed with all questions, communications, directives, and summonses from the Commission or its representatives and the New York City Department of Investigation or its representatives.

### **Statement of Basis and Purpose of Rules**

These rules are proposed pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. The rules are part of a project undertaken by the Taxi and Limousine Commission (“TLC”) to revise its existing rule book. The first phase of this project consists of reorganizing and redrafting TLC’s rules, to enhance their clarity and accessibility without substantive change. Accordingly, these rules are not intended to make any changes to TLC’s current policies, procedures or operations.

During this first phase of the rules revision project, all of TLC’s existing rules will be redrafted, then posted on a chapter-by-chapter basis on the TLC Web site for review and discussion by interested members of the public. Each chapter will be revised based on that discussion, then published for public comment and public hearing pursuant to the City Administrative Procedure Act (CAPA). Because this phase of the rules revision is intended to involve no substantive changes to the rules, and as announced at the Commission meeting held on August 7, 2008, public hearings will be held separately from monthly stated Commission meetings.

When this process has been completed for all TLC rules, the complete set of rules will be presented to the Commission for promulgation simultaneously with repeal of the current set of TLC rules. The revised rules will replace the existing rules compiled in chapter 35 of the Rules of the City of New York. It is anticipated that the promulgation of the revised rules and repeal of the current rules will occur in 2009.

After the first phase of its rules revision is completed, TLC will move to the second phase, which will involve the assessment of its rules for more substantive changes.

The rules proposed here are as follows:

Current Rule Chapters revised in this rule-making	Proposed Rule Chapters
Chapter 7, Standards of Conduct for Representatives Appearing Before the Commission Tribunal	Chapter 19, Rules for Representatives