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NEW YORK CITY LIMOUSINE COMMISSION
PUBLIC MEETING
Held on Friday, November 6, 2009
40 Rector Street
New York, New York.

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P R E S E N T :

DAVID KLAHR, Chief of Staff to the
First Deputy Commissioner
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ALISON HARTWELL, Assistant General
Counsel

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PUBLIC HEARING

MR. KLAHR: Good afternoon,
everybody. My name is David Klahr, and I am
the Chief of Staff to the First Deputy
Commissioner here at the Taxi and Limousine
Commission. I am also manager of the Rules
Revision Project.

Today we're holding a hearing for
comment on proposed rules regarding

10 adjudications. This is the second phase of
11 the Rules Revision Project, and to remind
12 everyone, I know some of you have heard this
13 before, this is the zero-sum portion of the
14 project. We are going to rewrite the rules
15 to make them cleaner, use plainer English to
16 simplify them so they are more accessible,
17 and organize them in a way to also make them
18 easier to use.

19 So, the most important concept for this
20 particular phase is that we are not changing
21 the substance of the rules at this time.
22 We're changing what they look like. We're
23 changing the order that they go in. We're
24 changing the language, but we're not changing
25 the policy substance of the rules.

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1 PUBLIC HEARING

2 For those of you who are speaking today
3 and for those of you who might read this
4 transcript online, if you have comments about
5 the substance, you can submit them. You can
6 submit them now. You can submit them later.
7 You can mail them in. You can email them in.
8 You can call us up, but written comments are
9 usually more helpful.

10 We will not, however, consider comments
11 on substance until Phase 3 which won't happen
12 until early 2010. It is not going to happen
13 in 2009, and even if the comments for a
14 particular chapter have passed, we are still

15 welcoming comments on those particular
16 issues, especially if they are a substantial
17 and helpful comment.

18 We are going to wait for a moment, we
19 had couple of late arrivals, just to give
20 them an opportunity to sign up if they wish
21 to speak, and then we can begin.

22 (Whereupon, there was a pause in the
23 proceeding.)

24 MR. KLAHR: Alright, Mr. Mazer, if you
25 would like to begin.

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PUBLIC HEARING

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2 MR. MAZER: Good afternoon, Mr. Klahr.
3 My name is it Peter Mazer and I am general
4 Counsel to the Metropolitan Taxicab Board of
5 Trade, an association representing the owners
6 of approximately 3,500 medallion taxicabs.

7 All of our members at some time or
8 another appear before the Taxi and Limousine
9 Commission's Adjudication Tribunal or other
10 tribunals such as Office of Administrative
11 Trials and Hearings, OATH, and are affected
12 by the rule proposals before you today.

13 Thank you for providing me the
14 opportunity to once again speak on proposed
15 rule changes.

16 Unlike other rule changes that have been
17 considered by the TLC at these special public
18 hearings during which the members of the
19 Board of Commissioners who will be voting on

20 the rule proposals are not in attendance, the
21 Commission acknowledges in its Statement of
22 Basis and Purpose that the rules under
23 consideration today provide for significant
24 and substantive changes to existing rules.

25 Indeed, the entire adjudications

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PUBLIC HEARING

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2 procedure for hearings before the TLC will be
3 vastly different if these rules are enacted
4 in their present form. Therefore, I would
5 urge the commission to consider conducting
6 additional full public hearings before the
7 entire Board of Commissioners prior to voting
8 on these rule proposals.

9 I know that it is the Commission's
10 practice to place the transcript of these
11 public hearings on its website. I also urge
12 the TLC to place any written comments
13 received on its website so that there can be
14 a full, public dialogue concerning these rule
15 provisions. I believe this is necessary
16 because the changes may affect due process
17 rights afforded respondents by the United
18 States and New York State constitutions, as
19 well as the City Charter provisions such as
20 the Administrative Procedure Act, and
21 Administrative Code provisions including
22 recent amendments to the Administrative Code
23 regarding hearing practices and procedures.

24 I'm not going to address every specific

25 concern with technical language contained in

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1 PUBLIC HEARING

2 these rule proposals, and MTBOT reserves the
3 right to supplement these remarks with
4 additional comments. It is my hope that
5 there will be a renewed dialogue with the
6 industry as rule changes are considered,
7 especially in light of substantive changes
8 herein.

9 we encourage the TLC to speak to
10 industry representatives and attorneys who
11 regularly appear before the TLC Tribunal or
12 OATH to obtain their feedback with respect to
13 these new rules. In this regard, this
14 hearing, and these remarks differ from other
15 hearings dealing with the TATC Rule Revisions
16 where the changes were more technical than
17 substantive. With this background, the
18 following are some of my major concerns
19 raised by the new proposals we have before us
20 today.

21 First, there are inconsistencies in the
22 language of Rules 18-03(c), 18-04 and
23 18-19(b), relating to procedures to be
24 followed in cases where the TLC seeks the
25 penalty of discretionary license revocation.

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1 PUBLIC HEARING

2 Rule 18-03(c) states that the "Commission"
3 shall make the determination to seek

4 revocation, while current rules, and proposed
5 rule 18-19(b), place this power in the hand
6 of the Chairperson. Rule 18-04 states that
7 the Commission "can" refer any case to OATH,
8 while rule 18-19(b) mandates that the
9 discretionary revocation cases be referred to
10 OATH. Also, the proposed rules are silent
11 with respect to the situation where a
12 respondent is charged with a violation of a
13 rule that carries a penalty which includes
14 discretionary license revocation. One such
15 example would be Rule 2-60(b). Under present
16 rules, the TLC Tribunal can handle the case
17 if the TLC is not seeking license revocation;
18 if it is, the case must go to OATH. The
19 proposed rules appear to be silent on this
20 situation.

21 with respect to rule 18-05(b), services
22 of summonses on licensees, I would suggest
23 that the Commission consider permitting
24 licensees to designate another entity such as
25 an attorney, an authorized representative, or

PUBLIC HEARING

1 a licensed taxicab agent to be their agent
2 for the receipt of summonses and
3 communications relating to summonses. This
4 change would be consistent with the
5 Administrative Code provisions that provide
6 the designation of a licensed taxicab agent
7 to act on behalf of an owner. The rules also

9 permit a respondent to appear by attorney or
10 authorized representative. The agent,
11 attorney, or authorized representative should
12 also be permitted to receive notices on
13 behalf of the respondent.

14 Sections 18-06(b)(1) and (2), dealing
15 with the procedure to be followed if a
16 summons is missing required information,
17 contains a major change. Under existing
18 rules, the respondent "will be provided the
19 missing information." This is in contrast
20 with current practices wherein the TLC
21 typically does not even provide attorneys or
22 representatives with the opportunity to view
23 copies of the summonses at the hearing to see
24 if all the information is complete and
25 correct. Under the proposed rules, the "ALJ

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1 PUBLIC HEARING
2 will attempt to have the respondent provided
3 with the missing information." This change
4 is significant. Under present rules, a
5 respondent would have an absolute right to a
6 dismissal or an adjournment if the summons is
7 incomplete. Under the proposed rules, the
8 ALJ could decline to provide the respondent
9 with information that may be required under
10 the City Administrative Procedure Act and
11 still go forward with the hearing in
12 violation of law. 18-07 seems to deviate from
13 existing practice. Currently, even if no

14 personal appearance is required, a licensee
15 may chose to either plead guilty at or before
16 the hearing and pay the fine, or appear at
17 the hearing and contest the charge. Rule
18 18-07(b) suggests that in the future, the
19 norm will be to require the respondent to
20 enter a "not guilty" plea upon the receipt of
21 the summons. The proposed rule does not
22 provide a time period during which the not
23 "guilty plea" may be entered, nor does it
24 provide the procedures for entering such a
25 plea, or the consequences if a plea is not

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PUBLIC HEARING

1 entered. while the rule references
2 "information" that will be contained in the
3 face of the notice or summons, such
4 information would be procedural in nature and
5 should be in the rule of itself.

7 Rule 18-09 refers to respondent's
8 requests for adjournments. This rule is
9 contrary to the commission practice that
10 requires respondents one adjournment as a
11 matter of right. The rule is also silent
12 with respect to Commission adjournments. The
13 TLC has articulated the opinion in recent
14 appeals filed by the Commission, that it
15 believes it is entitled to one adjournment as
16 a matter of right, a practice followed by
17 many, but not all ALJs. A better practice
18 would be to grant the Commission and

19 Respondent each one adjournment as a matter
20 of right, with future adjournments available
21 for cause, to be determined by an ALJ.

22 Rule18-11(b) and (c) is inconsistent
23 with law and practice regarding the use of
24 translation services. The new Administrative
25 Code provision which deals with the use of

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1 PUBLIC HEARING

2 translation services elect 18-11(b) and (c),
3 and its present form states simply that all
4 hearings must be conducted in English, and
5 that a respondent has a right to bring their
6 own interpreter which is no longer the
7 practice. These rules should be changed to
8 reflect the current practice.

9 Next, a very significant change in
10 rule 18-11(e), which is inconsistent with the
11 new Administrative Code Section 19-506.1.
12 The Administrative Code permits the
13 Commission to make a witness available by
14 videoconferencing or teleconferencing only
15 "if the Commission is unable to produce a
16 complaining witness in person."

17 The Commission, as a matter of practice,
18 is offering the complainants the choice of
19 appearing either in person or by telephone.
20 The commission is not requiring the
21 complainant to make any showing that he or
22 she is unavailable to appear in person. In
23 its proposed rule, the Commission is

24 codifying this flawed practice by
25 substituting the language contained in the

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1 PUBLIC HEARING
2 Administrative Code which is "if the
3 Commission is unable to produce a complaining
4 witness" with new language which states "if
5 the witness cannot personally appear,"
6 thereby giving complainant the option of
7 choosing not to appear. This was not the
8 intent of the Administrative Code.

9 Rule 18-12 deals with inquests, defined
10 in 18-03(e) as a hearing where "Respondent
11 has failed to appear with the proper
12 notice." In reality, the Commission conducts
13 inquests on all summonses where there is a
14 failure to appear, whether or not there was
15 proper notice. The question of proper notice
16 is a matter to be decided by the ALJ in
17 accordance with the procedures set forth in
18 rule 18-12. Proper notice should not be
19 presumed.

20 Rule 18-14(c), requiring the filing of
21 appeals with the General Counsel differs from
22 the practice of the Commission requiring that
23 appeals be filed at the Adjudications
24 Tribunals. In fact, appeals filed at the
25 General Counsel are typically either

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1 PUBLIC HEARING

2 rejected, or if accepted, forwarded to the
3 Adjudications Tribunal. This has resulted in
4 delays and caused licensees to face
5 unnecessary suspensions of their licenses for
6 nonpayment of fines where an appeal has been
7 timely filed.

8 In one case where I am personally
9 familiar with, I was retained to file an
10 appeal on behalf of a medallion owner, and I
11 filed the appeal with the General Counsel's
12 office as the rule requires, and it was
13 accepted. About a week or so later, the
14 medallion owner contacted me to say that the
15 medallion was placed on suspension for
16 nonpayment of the fine. Since the appeal had
17 been timely filed, the payment of the fine
18 should have been waived, and it was necessary
19 for me to find out what happened. It seems
20 that the General Counsel's office put them in
21 an interoffice envelope, sent them over to
22 Adjudications where they sat in a box along
23 with several dozen other appeals that were
24 just sitting in a box which had never been
25 opened, never been answered, never been

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1 PUBLIC HEARING

2 filed, and all of the respondents who didn't
3 pay their fines, as they had a right to do
4 so, were placed on suspension.

5 So, the rule should be cleaned up.
6 If you want to take them to General Counsel's

7 office, that's fine, but you don't. You take
8 them in Adjudications, and that is creating a
9 bit of a problem with the handling.

10 Along that note, also Rule 18-14(d)(1)
11 defers fine payment if a timely appeal is
12 filed. However, respondents are typically
13 placed on suspension if their fines are not
14 paid in ten days. Since licensees have
15 thirty days to file a timely appeal, perhaps
16 longer if a tape is requested, licensees
17 should have at least thirty days in which to
18 pay fines. This change is required by
19 Administrative Code Section 19-506.1(c).

20 Rule 18-15, dealing with Commission
21 appeals, should require that the Commission
22 also give notice of the appeal to any
23 attorney or representative who appeared on
24 behalf of the respondent in the adjudicated
25 matter being appealed. While that is often

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PUBLIC HEARING

1 done, there are many cases where the
2 Commission takes an appeal with their
3 decision and forwards the notice of appeal
4 only to the respondent, and the respondent
5 who had an attorney or representative was not
6 given notice that the Commission filed an
7 appeal and dismisses it.

9 Rule 18-16(b)(1) and (3) conflicts with
10 the City Charter, section 1046(e) which
11 provides that ALJs shall make final findings

12 of fact. Only conclusions of law are
13 recommendations. 18-16(b)(1) and (b)(3)
14 states that everything on those decisions
15 which relates to the fitness of an applicant
16 are recommendations. Note that 18-07(a)
17 permits a respondent in this regard respond
18 only to the recommendation with respect to
19 penalty. So, the rule should be very clear
20 and show that all findings of fact by
21 administrative law judges are final, and the
22 only part of the administrative law judge,
23 that is a recommendation to either the
24 Chairperson or someone else, is the penalty
25 matter.

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2 Rule 18-20, setting forth the procedures
3 for the fitness hearings, fails to state, as
4 required by law, that ALJs will make
5 non-reviewable findings of fact. Rule
6 18-20(e) differs from the practice of the
7 Commission as well as the Statement of Basis
8 and Purpose in the proposed rules inasmuch as
9 it does not permit the Chairperson to
10 delegate the issuance of final decision and
11 certain applicant fitness hearings. In this
12 case, your Statement of Basis and Purpose
13 says that while the rule provides that the
14 Chairperson will make final decisions with
15 respect to the fitness of new applicants,
16 that that power will continue to be delegated

17 to the Deputy Commissioner for licensing as
18 the practice exists today, while in fact, the
19 rule doesn't state that the Chairperson has
20 the authority to delegate the power that is
21 set forth to make final decision in these
22 cases.

23 Finally, I must address the definition
24 of "Unlicensed Activity" set forth in
25 18-03(1) which would include in the

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PUBLIC HEARING

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2 definition of "unlicensed activity," the
3 operation of the a taxicab with a license
4 that is suspended or expired. By including
5 such activities within the definition of
6 unlicensed activity, the TLC is opening the
7 door to the seizure and civil forfeiture of
8 taxicabs operating with suspended or expired
9 medallions. See Rules 18-23 and 18-24.
10 These provisions conflict with provision of
11 the owners rules that impose penalties on
12 medallion owners, as licensees, who operate
13 taxicabs with suspended or expired
14 medallions. One such rule would be 133(a).

15 More importantly, this practice violates
16 the provision of both the General Municipal
17 Law and the General Obligations Law as well
18 as the Administrative Code, which insure the
19 Continued transferability of taxicab
20 licenses. Even a medallion that is revoked
21 is not a "non-license." Such a medallion can

22 still be transferred pursuant to Section
23 19-512(A) of the Administrative Code even
24 though it could not be operated on the
25 streets for hire. Owner's rules impose

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PUBLIC HEARING

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2 penalties for operating taxicabs with an
3 expired or suspended medallion. Section
4 18-24(a) would subject taxicabs to civil
5 forfeiture and public auction in violation of
6 state law.

7 MTBOT appreciates the opportunity to
8 comment on these rules, as well as the
9 opportunity to address each aspect of the
10 current and proposed rules of the Commission
11 to ensure that the Charter mandates to
12 provide safe, reliable for-hire transportation
13 are satisfied. We look forward to working
14 with the Commissioner and the Commission and
15 your consultant as further rule revisions are
16 considered, and we as always are ready,
17 willing and able to discuss the impacts of
18 these proposed changes with members of the
19 TLC to assist in the development of rules and
20 procedures that fairly protect the riding
21 public and licensees. Any questions?

22 (No response.)

23 MR. KLAHR: Thank you very much. That's
24 very helpful.

25 MR. MAZER: Your welcome.

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PUBLIC HEARING

MR. KLAHR: Ms. Desai, are you ready?

MS. DESAI: Good afternoon. Let me just start off by saying that I agree with almost all of Mr. Mazer's comments.

MR. KLAHR: You realize you are on the record, right?

MS. DESAI: I know. What can I say, you are bringing us together.

Before I delineate specific rule provisions, comment on specific rule provisions, I just want to generally state that one major problem with the TLC rule book as it exists is, it gives too much discretionary powers to the Chairperson. In fact, those powers should be contained and not expanded.

I remember the days when a respondent -- I remember it's mostly taxi drivers, if their license going to be revoked, we would come to a public hearing, and it was before the public hearing that the driver and their attorney or representative would appear, would make arguments to the Commission in public, and before that public hearing is

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PUBLIC HEARING

where there would be given a decision.

I remember being very shocked and disappointed when that process had changed.

I think that that was really the beginning of

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6 changes within the TLC where the office of
7 the Chairperson has been given more and more
8 discretionary powers that it really does not
9 warrant.

10 As a result of that, for example, I have
11 seen many cases where, particularly in
12 reapplication, I think that is a critical
13 aspect in the TLC rule book, that as of now,
14 the TLC seems to have this mentality that
15 once a driver is revoked, they should remain
16 revoked for the rest of their lives, and no
17 matter how many times they reapply, they are
18 not given their license back. I don't know
19 of a kind of profession that holds a licensee
20 to that kind of a standard. Oftentimes, it
21 is not someone who has committed a violent
22 felony, it is an individual who may have
23 accumulated a certain number of points, and
24 for the next two to three years hadn't even
25 gotten a summons. While they did continue to

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1 PUBLIC HEARING
2 drive private car, for example, or even drive
3 taxi in another state, and yet the TLC in
4 many cases will continue to deny those
5 applications.

6 I see specifically it is the office of
7 the Chairperson that is responsible for those
8 denials. Because even with the ALJ, after
9 listening to full testimony and, you know,
10 deciding on the credibility of that

11 respondent on their remorse and their ability
12 to go back to work and their need to go back
13 to work, even if that ALJ recommended they be
14 given their license back, more often than not
15 the Chairperson will continue to deny that
16 license.

17 what I don't see reflected in these
18 revisions is more guidelines as to how the
19 Chairperson can reach that decision without
20 the blanket statement of, you know, acting in
21 the best interest of public health, safety --
22 and I forget the rest of that phrase. Not
23 one that we like to remember. So, I think
24 that's something that really needs to be
25 addressed in this rule book, that there is

1 PUBLIC HEARING

2 already too much unfair discretion, and when
3 discretion is unfair, it basically means that
4 it is arbitrary, and that really needs to be
5 curtailed.

6 As far as specific rules specific to the
7 rule book, this is not in any priority order
8 by the way, but in 18-10(g), where it says,
9 "Denial of any non-attorney to appear at the
10 hearing." That seems very arbitrary. It
11 doesn't give any cause as to why TLC is able
12 to deny somebody who is not a certified
13 representative, a non-attorney to appear at
14 the hearing if that is the person that the
15 respondent feels is best capable of defending

16 them and really representing them.
17 18-11(c) says that everyone can
18 basically have a translated hearing except
19 drivers. This is absolutely unfair. Taxi
20 drivers, the level of English that a taxi
21 driver is required under the TLC rule book is
22 different from the level of English one might
23 need in order to properly defend themselves
24 at a hearing. I think this is something that
25 the TLC must change. It is unfair to have

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1 PUBLIC HEARING

2 taxi drivers be the only licensees that are
3 singled out in this exception.

4 MR. KLAHR: If I could just interrupt
5 for a second to just to clarify your point.
6 what you are saying your position is, is not
7 that you object necessarily to the English
8 language requirement for medallion taxi
9 drivers, but what you are saying is that the
10 level of English required to provide service
11 in a taxi is very different than what would
12 be required to participate actively in court,
13 and therefore, there should be a provision
14 for them to be able to participate in their
15 language of choice within TLC court
16 proceedings?

17 MS. DESAI: Absolutely.

18 18-11(f)(4) says that the Commission
19 will presume that if the document that they
20 require is not produced, that it would have

21 been adverse to the respondent. I think that
22 is a very unfair presumption. Things do get
23 lost, it does not mean that if someone
24 doesn't bring forth the document, it doesn't
25 mean that the document would implicate them.

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1 PUBLIC HEARING

2 I think that should really be struck from the
3 rule.

4 In terms of motions to vacate, as of
5 now, you have to provide both the valid
6 excuse and a defense. We have said this on
7 the record many times, I would like to say it
8 again. I think the rules should really be
9 changed to, "either a valid excuse or a
10 defense." I know many drivers who may have
11 been summoned where the summons may have been
12 issued when they had already had left the
13 city, maybe they are out of the country or
14 just out of the city, and when they come
15 back, they provide a copy of the passport,
16 the ticket, what have you, and assume that
17 that will actually be enough in order to have
18 them granted their day in court. I think it
19 is a very logical assumption for somebody,
20 you know, who is not an officer of the
21 court. And so, this rule should really be
22 changed, that if you have a compelling excuse
23 as to why you did not appear at that hearing,
24 you should be granted that motion. You
25 shouldn't even be required to put your

PUBLIC HEARING

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defense down on paper.

I think similarly there needs to be rules in terms of license renewals. I was not sure that in this section which addresses the right of respondents to submit written documents, which is 18-22(d), where it says, "violation of drug testing rules," I don't know if that is actually referring to license renewal processes, where you know, if you fail to take a drug test and failed to take it on time, and therefore, your license expires, but I know that is another major area of concern for taxi drivers, particularly because at TLC in the past thirteen years that I know of alone, that the TLC has changed the license renewal rules at least like three or four times, and it is very hard for many people to keep up with those changes.

To give you an example, this is a documented case which some of your colleagues will know about, we had an incident of a driver who actually had been in a coma. He was hospitalized and in a coma for several

PUBLIC HEARING

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months. At the time he was in a coma, his brother who is also a taxicab driver, when

4 Mr. Galry's (ph) license renewal first came
5 in the mail, his brother submitted the \$120,
6 filled out the paperwork, put in a note.
7 when Mr. Galry, thank god, made a recovery,
8 was able to go back to work about six months
9 later, went to the TLC, showed them
10 documentation from his doctor saying he had
11 been in a coma at the time of his license
12 renewal, and that is why he was not able to
13 submit in a drug test, the TLC refused to
14 grant him an extension. I mean, it is
15 inhumane, you know, I mean these rules should
16 not be made so strict that they are
17 inhumane.

18 I think these rules have to reflect the
19 fact that drivers as human beings have crises
20 and other issues that do prevent them from
21 submitting to certain requirements, that it
22 is not always some sort of willful neglect on
23 their part. So, particularly around license
24 renewals and inquest of hearing, I think
25 there needs to be more leniency reflected in

PUBLIC HEARING

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these rules.

18-14(i)(2), where it says, "Temporary
licenses can be denied," and one of the
criteria is if there is not a likelihood of
success of the appeal, that just steams like
a conflict to me, and another early
presumption. If I'm not mistaken, it is the

9 legal department who would be making that
10 determination, but, isn't that department
11 supposed to be separate from the ALJs, who
12 would be deciding on whether or not that
13 appeal has any merit? That appears to be a
14 conflict if I'm understanding that properly.

15 Again I wanted to reiterate that appeals
16 of the Chairperson's final decision, I
17 believe strongly that the respondent should
18 be given the option to appear in public
19 before the Commission. I just want to
20 clarify that they are allowed to appear
21 before an executive session, that it is not
22 just that everything is done in writing, but
23 that the respondent is able to stand there
24 with his or her representative or attorney
25 and make a verbal appeal also for

□ 29

1 PUBLIC HEARING

2 themselves.

3 Lastly, in terms of suspensions upon
4 arrest, I again just want to state on the
5 record, I know that we actually are a party
6 of a lawsuit, but I just want to state for
7 the record that I think it is such an unfair
8 practice of the TLC to suspend somebody upon
9 an arrest. There is a presumption of guilt
10 there, the majority of the cases, even
11 according to your own depositions in that
12 lawsuit, have shown that the majority of
13 these arrest cases are in fact the drivers

14 are vindicated, yet they spend months and
15 months of their life without a livelihood,
16 and in fact, I know of many drivers who will
17 more quickly agree to a plea bargain, give up
18 their constitutional rights just because they
19 have lost their livelihood and they want to
20 go back to work as quickly as possible. So,
21 they will settle on a violation as opposed to
22 continuing where they could actually win a
23 complete dismissal of those charges. It is a
24 policy that is really so utterly unfair and
25 punitive, and one that the TLC must take up

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PUBLIC HEARING

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2 again regardless of what is happening in the
3 jurisdiction of the courts. Thank you.

4 MR. KLAHR: Thank you. One last call,
5 one last opportunity if there is anyone in
6 the audience who would like to speak on this
7 chapter and has not signed up yet, indicate
8 if you would like to speak.

9 (No response.)

10 MR. KLAHR: If not, we can go ahead and
11 conclude this meeting, and I thank you all
12 for coming down here on a very crowded day,
13 with a lot of disruptions, to come let us
14 know how you feel about this. So thank you
15 very much.

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