

**City of New York  
Office of Administrative Trials and Hearings**

**Notice of Promulgation of Rule**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the** Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049, 1049-a and 1043 of the New York City Charter. OATH has amended its procedural rules. These rules are found in Title 48 of the Rules of the City of New York (RCNY). The proposed rule was published in *The City Record* on April 15, 2016, and a public hearing was held on May 16, 2016.

Five members of the public attended the public hearing. Two of those five members testified. OATH also received three written comments. All testimony and comments have been considered and slight modifications have been made to these rules based on some of the testimony and written comments.

**Statement of Basis and Purpose**

**Background**

Section 1049 of the New York City Charter (Charter) authorizes the Chief Administrative Law Judge of OATH to “direct the office...with respect to its management and structure” and to “establish rules for the conduct of hearings.” This proposed rule modifies OATH’s procedural rules, which are found in Title 48 of the Rules of the City of New York (RCNY), as follows:

- Sections 1 through 55 would amend the OATH Trials Division rules to clarify when a party is required or allowed to take specific actions. They would also clarify that language assistance will be provided to parties and witnesses. In addition, parties, prior to participating in a settlement conference, may now be required to submit to an administrative law judge a letter summarizing settlement negotiations and offers. They would also now be required to submit a pre-motion request for an informal conference prior to making a written motion that might allow for disposal of the case without a trial.
- Sections 56 through 79 would allow the OATH Hearings Division (Hearings Division) to adjudicate summonses formerly heard at the Environmental Control Board (ECB) and the Taxi and Limousine Tribunal (TLT).

More specifically, proposed changes in sections 56 through 79 include revisions to Chapters 3, 5 and 6 of Title 48 of the RCNY:

- Subchapters A through F of Chapter 3 and Chapter 5 are proposed to be repealed and redrafted. Many sections contained in these Chapters and Subchapters are now contained in Chapter 6, which governs proceedings before the Hearings Division. (For example, rules pertaining to registered representatives and attorneys have been eliminated from Chapters 3 and 5, and additional requirements have been added to Chapter 6 to address concerns raised by incidents occurring over the past several years.)

- New Chapter 3 would include additional rules that are specific to hearings formerly heard before ECB.
- New Chapter 5 would include rules that are specific to hearings before the former TLT.
- Chapter 6, which contains rules governing procedures at the Hearings Division, is proposed to be amended to provide for adjudication of all cases before the Hearings Division. With respect to cases that were previously adjudicated by ECB, decisions by the Hearings Division are recommendations to the ECB. If an appeal is not filed, such decisions become final orders of the ECB that may be docketed pursuant to section 1049-a(d)(1)(g) of the Charter.
- Chapter 6 is also proposed to be amended to modify the current requirement to pay penalties and fines in full within thirty (30) days of the date of the decision. Full payment of penalties and fines will not be required within thirty (30) days if the agency responsible for collecting the payment enters into a payment plan with the respondent. The requirement to pre-pay fines or penalties prior to appeal has also been modified to permit no prepayment if OATH grants a waiver due to financial hardship, or the agency responsible for collecting penalties waives pre-payment (such as in the case of summonses previously adjudicated at the Taxi and Limousine Tribunal) or enters into a payment plan with the respondent. However, if the decision orders payment of restitution, the amount of restitution must be deposited with the issuing agency prior to acceptance of an appeal.
- Where the rules in Chapters 3 and 5 conflict with the rules in Chapter 6, the rules in Chapters 3 and 5 take precedence.

This reorganization will promote the fairness, efficiency, and consistency of adjudications. It will also allow new types of cases to be adjudicated at OATH in the future.

Deleted material is in [brackets].

New text is underlined.

“Shall,” “will” 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.

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**Section 1. Section 1-01 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-01 Definitions.** As used in this chapter:

**Administrative law judge.** "Administrative law judge" [shall mean] means the person assigned to preside over a case, whether the Chief Administrative Law Judge or a person appointed by the Chief Administrative Law Judge.

**Agency.** "Agency" [shall mean] means any commission, board, department, authority, office or

other governmental entity authorized or required by law to refer a case to OATH, regardless of whether the agency is petitioner or respondent in such a case.

**CAPA.** "CAPA" [shall mean] means the City Administrative Procedure Act, §§ 1041 to 1047 of the New York City Charter ("Charter").

**Case.** "Case" [shall mean] means an adjudication pursuant to CAPA, § 1046, referred to OATH pursuant to Charter, § 1048.

**Chief Administrative Law Judge.** "Chief Administrative Law Judge" [shall mean] means the director and chief executive officer of OATH appointed by the mayor pursuant to Charter, § 1048.

**Electronic means.** "Electronic means" [shall mean] means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression, e.g. facsimile transmission and e-mail.

**Filing.** "Filing" [shall mean] means submitting papers to OATH, whether in person, by mail, or by electronic means, for inclusion in the record of proceedings in a case.

**Mailing.** "Mailing" [shall mean] means the deposit, in a post office or official depository under the exclusive care and custody of the United States Postal Service, of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at such person's last known address.

**OATH.** "OATH" [shall mean] means the Office of Administrative Trials and Hearings, including the OATH Trials Division and the OATH Hearings Division (see section 6-02).

**OATH Trials Division.** "OATH Trials Division" means the adjudicatory body authorized to conduct proceedings pursuant to Chapters 1 and 2 of this Title.

**Petition.** "Petition" [shall mean] means a document, analogous to a complaint in a civil action, which states the claims to be adjudicated.

**Petitioner.** "Petitioner" [shall mean] means a party asserting claims.

**Respondent.** "Respondent" [shall mean] means a party against whom claims are asserted.

**Trial.** "Trial" [shall mean] means a proceeding before an administrative law judge in the OATH Trials Division.

**Section 2. Section 1-04 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-04 Construction and Waiver.**

This title [shall] will be liberally construed to promote just and efficient adjudication of cases. This title may be waived or modified on such terms and conditions as may be determined in a particular case to be appropriate by an administrative law judge.

**Section 3. Section 1-05 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-05 Effective Date.**

This chapter [shall be] is effective on the first day permitted by CAPA, § 1043(e), and [shall apply] applies to all cases brought before the OATH Trials Division. However, for cases initiated prior to the effective date of these rules, no act which was valid, timely or otherwise proper under the rules applicable at the time of the act will be rendered improper by the subsequent effectiveness of this chapter.

**Section 4. Section 1-06 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-06 Computation of Time.**

Periods of days prescribed in this chapter [shall] will be calculated in calendar days, except that when a period of days expires on a Saturday, Sunday or legal holiday, the period [shall] will run until the next business day. Where this chapter prescribes different time periods for taking an action depending whether service of papers is personal or by mail, service of papers by electronic means [shall] will be deemed to be personal service, solely for purposes of calculating the applicable period of time.

**Section 5. Section 1-07 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-07 Filing of Papers.**

(a) Generally. Papers may be filed at OATH in person, by mail or by electronic means.

(b) Headings. The subject matter heading for each paper sent by personal service, mail or electronic means must indicate the OATH index number where one has been assigned pursuant to § 1-26(b).

(c) Means of service on adversary. Submission of papers by a party in a case to the administrative law judge by electronic means, mail or personal delivery without providing equivalent method of service to all other parties [shall] will be deemed to be an *ex parte* communication.

(d) Proof of service. Proof of service must be maintained by the parties for all papers filed at OATH. Proof of service [shall] must be in the form of an affidavit by the person effecting service, or in the form of a signed acknowledgement of receipt of papers by the person receiving the papers. A writing admitting service by the person to be served is adequate proof of service.

Proof of service for papers served by electronic means, in addition to the foregoing, may also be in the form of a record confirming delivery or acknowledging receipt of the electronic transmission.

**Section 6. Section 1-08 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-08 Access to Facilities and Programs by People with Disabilities.**

OATH is committed to providing equal access to its facilities and programs to people with disabilities and OATH will make reasonable accommodations requested by people with disabilities. A person requesting an accommodation for purposes of participation in a case at OATH, including attendance as a member of the public, [shall] must request such accommodation sufficiently in advance of the proceeding in which the person wishes to participate to permit a reasonable time to evaluate the request. A request for accommodation [shall] must be submitted to OATH's [office manager] Calendar Unit.

**Section 7. Section 1-11 of subchapter B of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-11 Appearances.**

(a) A party may appear in person, by an attorney, or by a duly authorized representative. A person appearing for a party, including by telephone conference call, is required to file a notice of appearance with OATH. Docketing of a case by an attorney or representative of a party [shall] will be deemed to constitute the filing of a notice of appearance by that person. The filing of any papers by an attorney or representative who has not previously appeared [shall] will constitute the filing of a notice of appearance by that person, and [shall] must conform to the requirements of subdivisions (b) [and], (d) and (e) of this section.

(b) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States [shall] must be indicated by the suffix "Esq." and the designation "attorney for (petitioner or respondent)", and the appearance of any other person [shall] must be indicated by the designation "representative for (petitioner or respondent)".

(c) Absent extraordinary circumstances, no application [shall] may be made or argued by any attorney or other representative who has not filed a notice of appearance. [Participation in a telephone conference call on behalf of a party by an attorney or representative of the party shall] Any application submitted on behalf of a party or participation in a conference, whether by e-mail, letter or phone, will be deemed an appearance by the attorney or representative. [Nonetheless, upon] After making such an appearance, the attorney or representative [shall] must file a notice of appearance in conformity with subdivisions (b) [and], (d) and (e) of this section.

(d) A person may not file a notice of appearance on behalf of a party unless he or she has been retained by that party to represent the party before OATH. Filing a notice of appearance constitutes a representation that the person appearing has been so retained. Filing a notice of appearance pursuant to [§ 1-11(a) of this subchapter] subdivision (a) of this section constitutes a

representation that the person appearing has read and is familiar with the rules of this subchapter.

(e) Each attorney or representative appearing before OATH must provide his or her address, telephone number, fax number, and an e-mail address on all notices of appearance and must provide prompt written notice of any change in name, address, telephone number, fax number, or e-mail address.

**Section 8. Section 1-12 of subchapter B of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-12 Withdrawal and Substitution of Counsel.**

(a) An attorney who has filed a notice of appearance [shall] must not withdraw from representation without the permission of the administrative law judge, on application. Withdrawals [shall] will not be granted unless upon consent of the client or when other cause exists as delineated in the applicable provisions of the Code of Professional Responsibility.

(b) Notices of substitution of counsel [may] must be served and filed [more than twenty days before trial without leave of the administrative law judge] with OATH and the opposing party. A party may substitute counsel without leave of the administrative law judge as long as the substitution is made more than twenty days before trial. Applications for later substitutions of counsel [shall] will be granted freely absent prejudice or substantial delay of proceedings.

**Section 9. Section 1-13 of subchapter B of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-13 Conduct; Suspension from Practice at OATH.**

(a) Individuals appearing before OATH [shall] must comply with the rules of this chapter and any other applicable rules, and [shall] must comply with the orders and directions of the administrative law judge.

(b) Individuals appearing before OATH [shall] must conduct themselves at all times in a dignified, orderly and decorous manner. In particular, at the trial, all parties, their attorneys or representatives, and observers [shall] must address themselves only to the administrative law judge, avoid colloquy and argument among themselves, and cooperate with the orderly conduct of the trial.

(c) Attorneys and other representatives appearing before OATH [shall] must be familiar with the rules of this title.

(d) Attorneys appearing before OATH [shall] must conduct themselves in accordance with the canons, ethical considerations and disciplinary rules set forth in the code of professional responsibility in their representation of their clients, in their dealings with other parties, attorneys and representatives before OATH, and with OATH's administrative law judges and staff.

(e) Willful failure of any person to abide by the standards of conduct stated in paragraphs

(a) through (d) of this section, may, in the discretion of the administrative law judge, be cause for the imposition of sanctions. Such sanctions may include formal admonishment or reprimand, assessment of costs or imposition of a fine, exclusion of the offending person from the proceedings, exclusion or limitation of evidence, adverse evidentiary inference, adverse disposition of the case, in whole or in part, or other sanctions as the administrative law judge may determine to be appropriate. The imposition of sanctions may be made after a reasonable opportunity to be heard. The form of the trial [shall] will depend upon the nature of the conduct and the circumstances of the case.

(f) In the event that an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the Chief Administrative Law Judge may, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against him or her, suspend that attorney or representative from appearing at OATH, 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.

**Section 10. Section 1-14 of subchapter B of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-14 *Ex Parte* Communications.**

(a) Except for ministerial matters, [and except] on consent, in an emergency, or as provided in § 1-31(a), communications with the administrative law judge concerning a case [shall] must only occur with all parties present. If an administrative law judge receives an *ex parte* communication concerning the merits of a case to which he or she is assigned, then he or she [shall] must promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the *ex parte* communication [shall] will be allowed to do so upon request.

(b) Communications between OATH and a party docketing a case, to the extent necessary to the placement of a case on the trial calendar or conference calendar pursuant to § 1-26(a), [shall] will be deemed to be ministerial communications. Communications between OATH and a party docketing a case, to the extent necessary to a request for expedited calendaring pursuant to § 1-26(c), [shall] will be deemed to be emergency communications.

**Section 11. Section 1-21 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-21 Designation of OATH.**

Where necessary under the provision of law governing a particular category of cases, the agency head [shall] will designate the Chief Administrative Law Judge of OATH, or such administrative law judges as the Chief Administrative Law Judge may assign, to hear such cases.

**Section 12. Section 1-22 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-22 The Petition.**

The petition [shall] must include a short and plain statement of the matters to be adjudicated, and, where appropriate, specifically allege the incident, activity or behavior at issue as well as the date, time, and place of occurrence. The petition [shall] must also identify the law, rule, regulation, contract provision, or policy that was allegedly violated and provide a statement of the relief requested. If the petition does not comply with this provision, the administrative law judge may direct, on the motion of a party or *sua sponte*, that the petitioner re-plead the petition.

**Section 13. Section 1-23 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-23 Service of the Petition.**

(a) The petitioner [shall be responsible for serving] must serve the respondent with the petition. The petition [shall] must be accompanied by a notice of the following: the respondent's right to file an answer and the deadline to do so under § 1-24; the respondent's right to representation by an attorney or other representative; and the requirement that a person representing the respondent must file a notice of appearance with OATH. The notice [shall] must include the statement that OATH's rules of practice and procedure are published in Title 48 of the Rules of the City of New York, and that copies of OATH's rules are available at OATH's offices or on OATH's website [www.nyc.gov/oath](http://www.nyc.gov/oath).

(b) Service of the petition [shall] must be made pursuant to statute, rule, contract, or other provision of law applicable to the type of proceeding being initiated. Absent any such applicable law, service of the petition [shall] must be made in a manner reasonably calculated to achieve actual notice to the respondent. Service by certified mail, return receipt requested, contemporaneously with service by regular first-class mail, [shall] will be presumed to be reasonably calculated to achieve actual notice. Appropriate proof of service [shall] must be maintained.

(c) A copy of the petition and accompanying notices, with proof of service, [shall] must be filed with OATH at or before the commencement of the trial.

**Section 14. Section 1-25 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-25 Amendment of Pleadings.**

Amendments of pleadings [shall] must be made as promptly as possible. If a pleading is to be amended less than twenty-five days before the commencement of the trial, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion.

**Section 15. Section 1-26 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**



**§ 1-26 Docketing the Case.**

(a) A case [shall] must be docketed by filing with OATH a completed intake sheet, and either a petition or a written application for relief. Parties are encouraged to docket cases by electronic means. When a case is docketed, OATH [shall] will place it on the trial calendar, the conference calendar, or on open status. Absent prejudice, cases involving the same respondent or respondents [shall] will be scheduled for joint trials or conferences, as [shall] will cases alleging different respondents' involvement in the same incident or incidents.

(b) When a case is docketed, it [shall] will be given an index number and assigned to an administrative law judge. Assignments [shall] will be made and changed in the discretion of the Chief Administrative Law Judge or his or her designee, and motions concerning such assignments [shall] will not be entertained except pursuant to § 1-27.

(c) OATH may determine that the case is not ready for trial or conference and may adjourn the trial or conference, or may remove the case from the trial or conference calendar and place it on open status. In addition, OATH may determine that the case should proceed on an expedited basis, and may direct expedited procedures, including expedited pre-trial and post-trial procedures, shortened notice periods, and/or expedited calendaring.

(d) The party docketing a case may do so *ex parte*. If the case is placed on the conference calendar or the trial calendar rather than on open status, the party may at the time of docketing also select a trial date and/or conference date *ex parte*. However, OATH encourages selection of trial and conference dates by all parties jointly. In the event that a party selects a trial date or a conference date *ex parte*, that party [shall] must serve the notice of conference or trial required by § 1-28, within one business day of selecting that date. Whenever practicable, such notice [shall] must be served by personal delivery or electronic means.

(e) Cases docketed with the Trials Division are subject to review by the Chief Administrative Law Judge who shall determine whether the case should proceed at the Trials Division or removed to the Hearings Division.

**Section 16. Section 1-27 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-27 Disqualification of Administrative Law Judges.**

(a) A motion for disqualification of an administrative law judge [shall] must be addressed to that administrative law judge, [shall be] accompanied by a statement of the reasons for such application, and [shall be] made as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist.

(b) The administrative law judge [shall] will be disqualified for bias, prejudice, interest, or any other cause for which a judge may be disqualified in accordance with § 14 of the Judiciary Law. In addition, an administrative law judge may, *sua sponte* or on motion of any party,

withdraw from any case, where in the administrative law judge's discretion, his/her ability to provide a fair and impartial adjudication might reasonably be questioned.

(c) If the administrative law judge determines that his or her disqualification or withdrawal is warranted on grounds that apply to all of the existing administrative law judges, the administrative law judge [shall] must state that determination, and the reasons for that determination, in writing or orally on the record, and may recommend to the Chief Administrative Law Judge that the case be assigned to a special administrative law judge to be appointed temporarily by the Chief Administrative Law Judge. The Chief Administrative Law Judge [shall] will either accept that recommendation, or, upon a determination and reasons stated in writing or orally on the record, reject that recommendation. A special administrative law judge [shall] will have all of the authority granted to administrative law judges under this title.

**Section 17. Section 1-28 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-28 Notice of Conference or Trial.**

(a) When a case is placed on either the trial calendar or the conference calendar, and within the time provided in § 1-26(d), if applicable, the party that placed the case on the calendar [shall] must serve each other party with notice of the following: the date, time and place of the trial or conference; each party's right to representation by an attorney or other representative at the trial or conference; the requirement that a person representing a party at the trial or conference must file a notice of appearance with OATH prior to the trial or conference; and, in a notice of a trial served by the petitioner, the fact that failure of the respondent or an authorized representative of the respondent to appear at the hearing may result in a declaration of default, and a waiver of the right to a trial or other disposition against the respondent. The notice may be served personally or by mail, and appropriate proof of service [shall] must be maintained. A copy of the notice of conference, with proof of service, [shall] must be filed with OATH at or before the commencement of the conference. A copy of the notice of trial, with proof of service, [shall] must be filed with OATH at or before the commencement of the trial.

(b) When multiple petitions against a single respondent, or petitions against multiple respondents, are placed on the calendar or calendar conference for joint trial or conference pursuant to § 1-26(a), notice of trial or notice of conference pursuant to this section [shall] must include notice of such joinder.

**Section 18. Section 1-30 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-30 Conduct of Conferences.**

(a) All parties are required to attend conferences as scheduled unless timely application is made to the administrative law judge. Participants [shall] must be prompt and prepared to begin on time. No particular format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the particular case. The administrative law

judge may propose mediation and, where the parties consent, may refer the parties to the Center for Creative Conflict Resolution or other qualified mediators. In the discretion of the administrative law judge, conferences may be conducted by telephone.

(b) At the conference, all parties must be fully prepared to discuss all aspects of the case, including the formulation and simplification of issues, the possibility of obtaining admissions or stipulations of fact and of admissibility or authenticity of documents, the order of proof and of witnesses, discovery issues, legal issues, pre-hearing applications, scheduling, and settlement of the case.

(c) In the event that the case is not settled at the conference, outstanding pre-trial matters, including discovery issues, [shall] must be raised during the conference. In the event that the case is not settled at the conference, a trial date may be set, if such a date has not already been set. The parties [shall] will be expected to know their availability and the availability of their witnesses for trial.

**Section 19. Section 1-31 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-31 Settlement Conferences and Agreements.**

(a) Prior to a conference at which settlement is to be discussed, the administrative law judge assigned to the conference may require each party to provide a pre-conference letter. The pre-conference letter must be sent solely to the administrative law judge by fax or e-mail and marked prominently “CONFIDENTIAL MATERIAL FOR USE AT SETTLEMENT CONFERENCE.” The pre-conference letter must state succinctly:

- (1) the history of settlement negotiations, if any;
- (2) the party’s settlement offer and the rationale for it; and
- (3) any other facts that would be helpful to the administrative law judge in preparation for the conference.

(b) If settlement is to be discussed at the conference, each party [shall] must have an individual possessing authority to settle the matter, either present at the conference or readily accessible. A settlement conference [shall] will be conducted by an administrative law judge or other individual designated by the Chief Administrative Law Judge, other than the administrative law judge assigned to hear the case. During settlement discussions, upon notice to the parties, the administrative law judge or other person conducting the conference may confer with each party and/or representative separately.

[(b)] (c) All settlement offers, whether or not made at a conference, [shall] will be confidential and [shall] will be inadmissible at trial of any case. Administrative law judges [shall] must not be called to testify in any proceeding concerning statements made at a settlement conference.

[(c)] (d) A settlement [shall] must be reduced to writing, or, in the discretion of the administrative law judge, placed on the record. In the event that a settlement is reached other than at a conference, OATH [shall] must be notified immediately pursuant to § 1-32(f). Copies

of all written settlement agreements [shall] must be sent promptly to OATH.

**Section 20. Section 1-32 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-32 Adjournments.**

(a) Applications for adjournments of conferences or trials [ shall] will be governed by this section and by § 1-34 or § 1-50. Conversion of a trial date to a conference date, or from conference to trial, [shall] will be deemed to be an adjournment.

(b) Applications to adjourn conferences or trials [shall] must be made to the assigned administrative law judge as soon as the need for the adjournment becomes apparent. Applications for adjournments are addressed [to] at the discretion of the administrative law judge, and [shall] will be granted only for good cause. Although consent of all parties to a request for an adjournment [shall] will be a factor in favor of granting the request, such consent [shall] will not by itself constitute good cause for an adjournment. Delay in seeking an adjournment [shall] will militate against grant of the request.

(c) If a party selects a trial or conference date without consulting with or obtaining the consent of another party pursuant to § 1-26(d), an application for an adjournment of such date by that other party, especially if such application is based upon a scheduling conflict, [shall] will be decided with due regard to the *ex parte* nature of the case scheduling.

(d) [Counsel shall] An attorney must file an affirmation of actual engagement prior to a ruling on an adjournment sought on that basis. Such affirmation [shall] must state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date that the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the engagement.

(e) Approved adjournments, other than adjournments granted on the record, [ shall] must be promptly confirmed in writing by the applicant, to all parties and to the administrative law judge.

(f) Withdrawal of a case from the calendar by the petitioner [shall] will not be subject to the "good cause" requirement of subdivision (b) of this section. However, such withdrawal, other than pursuant to settlement agreement or other final disposition of the case, [shall] will be permitted only upon application to the administrative law judge, who may grant or deny the application, either in full or upon stated terms and conditions.

(g) At the discretion of the administrative law judge, a grant of an adjournment may be conditioned upon the imposition of costs for travel, lost earnings and witness fees, which may be assessed against the party causing the need for an adjournment.

(h) If an administrative law judge determines that a case is not ready for trial or conference and that an adjournment is inappropriate, the judge may remove the case from the calendar. Unless otherwise directed by the administrative law judge, the case will be administratively

closed if the parties do not restore the matter to the calendar within 30 days.

**Section 21. Section 1-33 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-33 Discovery.**

(a) Requests for production of documents, for identification of trial witnesses, and for inspection of real evidence to be introduced at the trial may be directed by any party to any other party without leave of the administrative law judge.

(b) Depositions [shall] must only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, [shall] will not be permitted except upon agreement among the parties or upon motion for good cause shown. Demands for bills of particulars [shall] will be deemed to be interrogatories. Resort to such extraordinary discovery devices [shall] will not generally be cause for adjournment of a conference or trial.

(c) Discovery [shall] must be requested and completed promptly, so that each party may reasonably prepare for trial. A demand for identification of witnesses, for production of documents, or for inspection of real evidence to be introduced at trial [shall] must be made not less than twenty days before trial, or not less than twenty-five days if service of the demand is by mail. An answer to a discovery request [shall] must be made within fifteen days of receipt of the request, or within ten days if service of the answer is by mail. An objection to a discovery request [shall] must be made as promptly as possible, but in any event within the time for an answer to that request. Different times may be fixed by consent of the parties, or by the administrative law judge for good cause. Notwithstanding the foregoing time periods, where the notice of the trial is served less than twenty-five days in advance of trial, discovery [shall] must proceed as quickly as possible, and time periods may be fixed by consent of the parties or by the administrative law judge.

(d) (1) Parties are encouraged to resolve discovery disputes without the intervention of an administrative law judge. A party objecting to discovery should immediately commence discussion with the requesting party to clarify and possibly resolve the dispute.

(2) Any unresolved discovery dispute [shall] must be presented to the assigned administrative law judge sufficiently in advance of the trial to allow a timely determination. [ Discovery motions are addressed to the discretion of the administrative law judge. The] A written motion to compel discovery must be served on all parties and the administrative law judge assigned to conduct the trial. The motion must state what efforts the parties have made to resolve discovery disputes. Any party objecting to a discovery motion must state, in writing, the grounds for the objection. In deciding whether to grant a request, the administrative law judge may consider the timeliness of discovery requests and responses[,] and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties [shall be among the factors in the administrative law judge's exercise of discretion].

[(e)] (3) In ruling upon a discovery motion, the administrative law judge may deny the motion, order compliance with a discovery request, order other discovery, or take other appropriate action. The administrative law judge may grant or deny discovery upon specified conditions, including payment by one party to another of stated expenses of the discovery. Failure to comply with an order compelling discovery may result in imposition of appropriate sanctions upon the disobedient party, attorney or representative, such as the sanctions set forth in § 1-13(e), the preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the case, or declaration of default.

**Section 22. Section 1-34 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-34 Pre-Trial Motions.** (a) Pre-trial motions [shall] will be consolidated and addressed to the administrative law judge as promptly as possible, and sufficiently in advance of the trial to permit a timely decision to be made. Delay in presenting such a motion may, in the discretion of the administrative law judge, weigh against the granting of the motion, or may lead to the granting of the motion upon appropriate conditions.

(b) A moving party must request in writing an informal conference with the administrative law judge before any dispositive motion will be heard. The request must, in no more than two pages, set forth the nature of the motion.

(c) The administrative law judge may in his or her discretion permit pre-trial motions to be made orally, including by telephone, electronic means, or in writing. The administrative law judge may require the parties to submit legal briefs on any motion. Parties are encouraged to make pre-trial motions, or to conduct preliminary discussions and scheduling of such motions, by conference telephone call or by electronic means to the administrative law judge.

[(c) Motion papers shall] (d) When a motion is made on papers, the motion papers must state the grounds upon which the motion is made and the relief or order sought. Motion papers [shall] must include notice to all other parties of their time pursuant to subdivision (d) of this section to serve papers in opposition to the motion. Motion papers and papers in opposition [shall] must be served on all other parties, and proof of service [shall] must be filed with the papers. The filing of motion papers or papers in opposition by a representative who has not previously appeared [shall] will constitute the filing of a notice of appearance by that representative, and [shall] must conform to the requirements of § 1-11(b).

[(d)] (e) Unless otherwise directed by the administrative law judge upon application or *sua sponte*, the opposing party [shall] must file and serve responsive papers no later than eight days after service of the motion papers if service of the motion papers was personal or by electronic means, and no later than thirteen days after service if service of the motion papers was by mail.

[(e) Reply] (f) The moving party must not file reply papers [ shall not be filed] unless authorized by the administrative law judge, and oral argument [ shall] will not be scheduled

except upon the direction of the administrative law judge.

[(f)] (g) Nothing in this section [shall limit] limits the applicability of other provisions to specific pre-trial motions. For instance, an application for withdrawal or substitution of counsel is also governed by § 1-12; an application for an adjournment is also governed by § 1-32; and an application for issuance of a subpoena is also governed by § 1-43.

**Section 23. Section 1-42 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-42 Witnesses and Documents.**

The parties [shall] must have all of their witnesses available on the trial date. A party intending to introduce documents into evidence [shall] must bring to trial copies of those documents for the administrative law judge, the witness, and the other parties. Repeated failure to comply with this section may be cause for sanctions, as set forth in § 1-13(e).

**Section 24. Section 1-43 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-43 Subpoenas.**

(a) A subpoena *ad testificandum* requiring the attendance of a person to give testimony prior to or at a trial or a subpoena *duces tecum* requiring the production of documents or things at or prior to a trial may be issued only by the administrative law judge upon application of a party or *sua sponte*.

(b) A request by a party that the administrative law judge issue a subpoena [shall] will be deemed to be a motion, and [shall] must be made in compliance with § 1-34 or § 1-50, as appropriate; provided, however, that such a motion [shall] must be made on 24 [hours] hours' notice by electronic means or personal delivery of papers, including a copy of the proposed subpoena, unless the administrative law judge directs otherwise. The proposed subpoena may be prepared by completion of a form subpoena available from OATH. The making and scheduling of requests for issuance of subpoenas by telephone conference call to the administrative law judge or by electronic means is encouraged.

(c) Subpoenas [shall] must be served in the manner provided by § 2303 of the Civil Practice Law and Rules, unless the administrative law judge directs otherwise. The party requesting the issuance of a subpoena [shall] will bear the cost of service, and of witness and mileage fees, which [shall] will be the same as for a trial subpoena in the Supreme Court of the State of New York.

(d) In the event of a dispute concerning a subpoena after the subpoena is issued, informal resolution [shall] must be attempted with the party who requested issuance of the subpoena. If the dispute is not thus resolved, a motion to quash, modify or enforce the subpoena [shall] must be made to the administrative law judge.

**Section 25. Section 1-44 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-44 Interpreters.**

(a) OATH will [make reasonable efforts to] provide language assistance services to a party or their witnesses who are in need of [an interpreter] such services to communicate at a trial or conference. All requests for language assistance must be made to OATH's calendar unit.

(b) A request for language assistance by telephone may be made at any time before the trial or conference.

(c) A request for in-person interpretation must be made at least five (5) business days before the trial or conference

(d) A request for sign language interpretation must be made at least three (3) calendar days before the trial or conference.

**Section 26. Section 1-45 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-45 Failure to Appear.**

All parties, [counsel] attorneys and other representatives are required to be present at OATH and prepared to proceed at the time scheduled for commencement of trial. Commencement of trial, or of any session of trial, [shall] will not be delayed beyond the scheduled starting time except for good cause as determined in the discretion of the administrative law judge. Absent a finding of good cause, and to the extent permitted by the law applicable to the claims asserted in the petition, the administrative law judge may direct that the trial proceed in the absence of any missing party or representative, render a disposition of the case adverse to the missing party, or take other appropriate measures, including the imposition of sanctions listed in § 1-13(e). Relief from the direction of the administrative law judge may be had only upon motion brought as promptly as possible pursuant to § 1-50 or § 1-52. The administrative law judge may grant or deny such a motion, in whole, in part, or upon stated conditions.

**Section 27. Section 1-46 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-46 Evidence at the Trial.**

(a) Compliance with technical rules of evidence, including hearsay rules, [ shall] will not necessarily be required. Traditional rules governing trial sequence [shall] will apply. In addition, principles of civil practice and rules of evidence may be applied to ensure an orderly proceeding and a clear record, and to assist the administrative law judge in the role as trier of fact. Traditional trial sequence may be altered by the administrative law judge for convenience of the parties, attorneys, witnesses, or OATH, where substantial prejudice will



not result.

(b) The administrative law judge may limit examination, the presentation of testimonial, documentary or other evidence, and the submission of rebuttal evidence. The administrative law judge may accept testimony at trial by telephone or other electronic means, including video conferencing. Objections to evidence offered, or to other matters, will be noted in the transcript, and exceptions need not be taken to rulings made over objections. The administrative law judge may call witnesses, may require any party to clarify confusion, fill gaps in the record, or produce witnesses, and may question witnesses directly.

(c) In the discretion of the administrative law judge, closing statements may be made orally or in writing. On motion of the parties, or *sua sponte*, the administrative law judge may direct written post-trial submissions, including legal briefing, proposed findings of fact and conclusions of law, or any other pertinent matter.

**Section 28. Section 1-47 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-47 Evidence Pertaining to Penalty or Relief.**

(a) A separate trial [shall] will not be held as to the penalty to be imposed or the relief to be granted in the event that the petition is sustained in whole or in part.

(b) In the event that a personnel file, abstract of a personnel file, driver record, owner record, or other similar or analogous file is not admitted into evidence at the trial on the merits, the administrative law judge, upon determining that the petition [shall] will be sustained in whole or in part, may request that the petitioner forward such file or record to the administrative law judge for consideration relative to penalty or relief. That request may be conveyed to the petitioner or the petitioner's representative *ex parte* and without further notice to the respondent. The petitioner [shall] must forward only the requested file or record, without accompanying material, and such file or record [shall] must include only material which is available from the petitioner for inspection by the respondent as of right. In his or her report and recommendation, the administrative law judge [shall] will refer to any material from such file or record relied on in formulating the recommendation as to penalty or other relief.

**Section 29. Section 1-48 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-48 Official Notice.**

(a) In reaching a decision, the administrative law judge may take official notice, before or after submission of the case for decision, on request of a party or *sua sponte* on notice to the parties, of any fact which may be judicially noticed by the courts of this state. Matters of which official notice is taken [shall] will be noted in the record, or appended thereto. The parties [shall] will be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by presentation of authority.

(b) Official notice may be taken, without notice to the parties, of rules published in the Rules of the City of New York or in The City Record. In addition, all parties are deemed to have notice that official notice may be taken of other regulations, directives, guidelines, and similar documents that are lawfully applicable to the parties, provided that any such materials that are unpublished are on file with OATH sufficiently before trial of the case to enable all parties to address at trial any issue as to the applicability or meaning of any such materials. Unpublished materials on file with OATH [shall] will be available for inspection by any party or attorney or representative of a party.

**Section 30. Section 1-49 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-49 Public Access to Proceedings.**

(a) Other than settlement conferences, all proceedings [shall be] are open to the public, unless the administrative law judge finds that a legally recognized ground exists for closure of all or a portion of the proceeding, or unless closure is required by law. Trial witnesses may be excluded from proceedings other than their own testimony in the discretion of the administrative law judge.

(b) No person [shall] may make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any trial or other proceeding, whether such trial or other proceeding is conducted in person, by telephone, or otherwise, except upon application to the administrative law judge[. Except] or as otherwise provided by law (*e.g.* N.Y. Civil Rights Law, § 52)[, such]. Such application [shall] must be addressed to the discretion of the administrative law judge, who may deny the application or grant it in full, in part, or upon such conditions as the administrative law judge deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(c) Transcripts of proceedings made a part of the record by the administrative law judge [shall] will be the official record of proceedings at OATH, notwithstanding the existence of any other transcript or recording, whether or not authorized under the previous subdivision of this section.

(d) Unless the administrative law judge finds that legally recognized grounds exist to omit information from a decision, all decisions will be published without redaction. To the extent applicable law or rules require that particular information remain confidential, including but not limited to the name of a party or witness or an individual's medical records, such information will not be published in a decision. On the motion of a party, or *sua sponte*, the administrative law judge may determine that publication of certain information will violate privacy rights set forth in applicable law or rules and may take appropriate steps to ensure that such information is not published.

**Section 31. Section 1-50 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-50 Trial Motions.**

Motions may be made during the trial orally or in writing. Trial motions made in writing [shall] must satisfy the requirements of § 1-34. The administrative law judge may, in his or her discretion, require that any trial motion be briefed or otherwise supported in writing. In cases referred to OATH for disposition by report and recommendation to the head of the agency, motions addressed to the sufficiency of the petition or the sufficiency of the petitioner's evidence [shall] will be reserved until closing statements.

**Section 32. Section 1-51 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-51 The Transcript.**

Trials [shall] will be stenographically or electronically recorded, and the recordings [shall] will be transcribed, unless the administrative law judge directs otherwise. In the discretion of the administrative law judge, matters other than the trial may be recorded and such recordings may be transcribed. Transcripts [shall] will be made part of the record, and [shall] will be made available upon request or as required by law.

**Section 33. Section 1-52 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 1-52 Post-Trial Motions.**

Post-trial motions [shall] must be made in writing, in conformity with the requirements of § 1-34, to the administrative law judge, except that after issuance of a report and recommendation in a case referred to OATH for such motions, as well as comments on the report and recommendation to the extent that such comments are authorized by law, [shall] must be addressed to the deciding authority.

**Section 34. Section 2-01 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-01 Applicability.**

This subchapter [shall apply] applies solely to prequalified vendor appeals pursuant to § 324(b) of the Charter and the rules of the Procurement Policy Board, 9 RCNY § 3-10(m). Chapter 1 [shall] also [apply] applies to such proceedings except to the extent that it is inconsistent with this subchapter.

**Section 35. Section 2-02 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-02 Docketing; Service of the Petition.**

(a) A vendor [shall] must docket an appeal by delivering to OATH a completed intake sheet, with a petition and appropriate proof of service of the petition upon the agency whose prequalification determination is to be reviewed. The petition [shall] must include a copy of the

determination to be reviewed and [shall] must state the nature and basis of the challenge to the determination.

(b) The petition [shall] must be accompanied by a notice to the respondent of its time to serve and file an answer. The notice described in § 1-23(a) [shall] is not [be] required.

**Section 36. Section 2-03 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-03 Answer; Reply.**

(a) If the petition is served personally on the respondent, the respondent [shall] must file an answer, with appropriate proof of service, within fourteen days of the respondent's receipt of the petition. If the petition is served by mail, it [shall] will be presumed that the respondent received the petition five days after it was served.

(b) The answer [shall] must include the determination to be reviewed, the basis of the determination, admission, denial or other response to each allegation in the petition, and a statement of any other defenses to the petition. The basis of the determination included in the answer [shall] must consist of all documentation and information that was before the agency head, including any submissions by the vendor. To the extent that information in support of the determination was not written, it [shall] must be reduced to writing and included in the answer in the form of affidavits or affirmations, documentary exhibits, or other evidentiary material. Also, defenses may be supported by evidentiary material. The answer may be accompanied by a memorandum of law.

(c) If the respondent's attorney or other representative has not already filed a notice of appearance, such notice [shall] must be filed with the answer.

(d) Within fifteen days of the service of the answer, or within twenty days if such service is by mail, the petitioner may file a reply. The reply may include affidavits or affirmations, documentary exhibits, or other evidentiary material in rebuttal of the answer, including information provided to the agency head which was not written. The reply may be accompanied by a memorandum of law.

**Section 37. Section 2-04 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-04 Further Proceedings.**

An appeal [shall] will be decided on the petition, answer and reply, unless the administrative law judge directs further written submissions, oral argument, or an evidentiary hearing, as may be necessary to the decision of the appeal.

**Section 38. Section 2-05 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-05 Discovery.**

Discovery [shall] may not be permitted except upon order of the administrative law judge in connection with § 2-04.

**Section 39. Section 2-06 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-06 Determination.**

The administrative law judge [shall] will render as expeditiously as possible a determination as to whether the agency's decision is arbitrary or capricious.

**Section 40. Section 2-07 of subchapter A of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-07 Copies of Determination.**

The respondent [shall] must send copies of the administrative law judge's determination to such non-parties as may be required, for instance, by the rules of the Procurement Policy Board, 9 RCNY §3-10(m)(5).

**Section 41. Section 2-21 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-21 Applicability.**

This subchapter [shall apply] applies solely to cases brought by the New York City Commission on Human Rights pursuant to the City Human Rights Law, Title 8 of the New York City Administrative Code. Chapter 1 of this title [shall] also [apply] applies to such proceedings except to the extent that it is inconsistent with this subchapter.

**Section 42. Section 2-22 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-22 Definitions.**

For purposes of this subchapter:

**Commission.** "Commission" [shall mean] means the New York City Commission on Human Rights.

**Complainant.** "Complainant" [shall be] is defined according to the Commission's rules, 47 RCNY § 1-03.

**Party.** "Party" [shall be] is defined according to the Commission's rules, 47 RCNY § 1-03.

**Petition.** [The] "Petition" means a complaint as defined in the Commission's rules, 47 RCNY §§ 1-11, 1-12 [shall constitute the petition as defined in § 1-01 of Chapter 1 of this title].

**Petitioner.** "Petitioner" [shall mean] means the Law Enforcement Bureau of the Commission.

**Report and recommendation.** The "report and recommendation" referred to in this title [shall constitute] constitutes the recommended decision and order referred to in the Commission's [Rules] rules.

**Section 43. Section 2-23 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-23 Proceedings Before Referral to OATH.**

Proceedings before the case is docketed at OATH [shall be] are governed by the Commission's rules (47 RCNY §§ 1-01 to 1-62).

**Section 44. Section 2-24 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-24 Docketing the Case at OATH.**

(a) Notwithstanding the provisions of § 1-26 of this title, only the petitioner may docket a case at OATH. The petitioner [shall] must docket a case by delivering to OATH a completed intake sheet, the notice of referral required by the Commission's rules (47 RCNY § 1-71), the pleadings and any amendments to the pleadings, any notices of appearances filed with the petitioner pursuant to the Commission's rules (47 RCNY § 1-15), and any changes of address filed with the petitioner pursuant to the Commission's rules (47 RCNY § 1-16).

(b) Upon docketing the case at OATH, the petitioner [shall] must serve notice of trial, if a trial date has been selected, and notice of conference, if a conference date has been selected, in compliance with § 1-28 of this title.

**Section 45. Section 2-25 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-25 Intervention.**

(a) A person may move to intervene as a party at any time before commencement of the trial. Intervention may be permitted, in the discretion of the administrative law judge, if the proposed intervenor demonstrates a substantial interest in the outcome of the case. In determining applications for intervention, the administrative law judge [shall] will consider the timeliness of the application, whether the issues in the case would be unduly broadened by grant of the application, the nature and extent of the interest of the proposed intervenor and the prejudice that would be suffered by the intervenor if the application is denied, and such other factors as may be relevant. The administrative law judge may grant the application upon such terms and conditions as he or she may deem appropriate and may limit the scope of an intervenor's participation in the adjudication.

(b) A complainant [shall] may be permitted to intervene as of right, upon notice to all parties

and the [Administrative Law Judge] administrative law judge at or before the first conference in the case, or, if no conference is held, before commencement of trial. The Commission's Law Enforcement Bureau [shall] will prosecute the complaint. Complainants and respondents may be represented by [counsel] attorneys or other duly authorized representatives, who [shall] must file notices of appearance pursuant to the Commission's rules (47 RCNY § 1-15), if before referral of the case to OATH, or pursuant to § 1-11 of this title, if after such referral.

**Section 46. Section 2-26 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-26 Withdrawal or Dismissal of the Petition.**

After referral of a case to OATH, but before commencement of the hearing, dismissal of the case by the petitioner on the grounds provided in the Commission's [Rules] rules (47 RCNY § 1-22), or withdrawal of the case by the petitioner pursuant to § 1-32(f) of this title, [shall] will be effected by notice to all other parties and to the [Administrative Law Judge] administrative law judge. The complainant may move to withdraw the complaint at any time before commencement of the hearing. All other motions to withdraw or dismiss the petition [shall be] are governed by §§ 1-34 and 1-50 of this title.

**Section 47. Section 2-27 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-27 Entry of and Relief from Default.**

(a) If the notice of referral to OATH alleges that a respondent has not complied with the requirements of § 1-14 of the Commission's rules (47 RCNY § 1-14), the respondent [shall] must serve and file an affidavit asserting that the respondent has complied with those requirements, or asserting reasons constituting good cause for its failure to comply with those requirements. Such affidavit [shall] must be served and filed at or before the first conference in the case, or, if no conference is held, before commencement of the hearing. If the respondent fails to serve and file such an affidavit within the time allowed by this paragraph, the [Administrative Law Judge shall] administrative law judge will declare the respondent to be in default and [shall] will preclude the respondent from further participation in the adjudication. If the respondent timely serves and files such an affidavit, the [Administrative Law Judge shall] administrative law judge will decide the questions presented, and [shall] will either declare the respondent to be in default and preclude the respondent from further participation in the adjudication, or [shall] will deny the default in full or upon stated terms and conditions which may include such limitations on the respondent's participation in the adjudication as the [Administrative Law Judge] administrative law judge deems to be equitable.

(b) A respondent against whom a default has been entered pursuant to paragraph (a) of this section may move at any time before issuance of the report and recommendation to open the default. Such a motion must include a showing of good cause for the conduct constituting the default, a showing of good cause for the failure to oppose entry of the default in accordance with paragraph (a) of this section, and a meritorious defense to the petition, in whole or in part. In granting any such motion, the [Administrative Law Judge] administrative law judge may impose such terms and conditions as he or she deems to be equitable.

**Section 48. Section 2-29 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-29 Discovery.**

(a) *Policy.* Although strict compliance with the provisions of Article 31 of the Civil Practice Law and Rules [shall not be] is not required, the principles of that article may be applied to ensure orderly and expeditious preparation of cases for trial.

(b) *Scope of discovery.*

(1) With the exception of the substance of any oral or written communications made by and between a complainant or complainant's [counsel] attorney and the petitioner subsequent to a determination that probable cause exists, the materials contained in the petitioner's investigatory file [shall] must be available as of right to any party for inspection and copying subsequent to docketing at OATH upon reasonable notice, unless a default has been entered against that party by the [Administrative Law Judge] administrative law judge.

(2) In the absence of an agreement by the parties, the number of interrogatories, including subparts, [shall be] is limited to fifteen. The [Administrative Law Judge] administrative law judge may permit additional interrogatories upon application for good cause shown.

(3) Any party may take the deposition of any other party as of right. Other depositions [shall] may be taken only upon leave of the [Administrative Law Judge] administrative law judge for good cause shown. No person [shall] may be deposed by the party conducting the examination for a period aggregating more than seven hours except upon consent of all parties or leave of the administrative law judge for good cause shown. Deposition testimony may be recorded by a stenographer or by videotape or audiotape recording, at the option of the party conducting the deposition. The cost of the recording and transcription of deposition testimony [ shall] must be borne by the party conducting the deposition.

(c) *Sanctions.* Failure to comply with or object to a discovery request in a timely fashion as provided by § 1-33 of this title may result in the imposition of sanctions as appropriate, including those specified in § 1-33(e) of this title.

**Section 49. Section 2-30 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-30 Interlocutory Review.**

(a) Within five days after issuance of any interlocutory order or decision, a party may move for certification by the [Administrative Law Judge] administrative law judge that such order or decision may be submitted, in whole or in specified part, for review by the chair of the Commission. If the party moving for certification seeks a stay of proceedings, in whole or in part, pending completion of the interlocutory review, the motion for certification [ shall] must include a statement as to why the failure to grant the requested stay would materially prejudice the party. Certification may also be made, and a stay may be ordered, by the [Administrative Law Judge] administrative law judge on his or her own motion.



(b) As provided by the Commission's rules (47 RCNY § 1-74), failure of a party to seek interlocutory review of a decision or order [shall] does not preclude that party from making such challenge to the Commission in connection with the Commission's review of a report and recommendation in a case, provided that the party timely made its objection known to the [Administrative Law Judge] administrative law judge and that the grounds for such challenge [shall] must be limited to those set forth to the [Administrative Law Judge] administrative law judge.

**Section 50. Section 2-31 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-31 Proceedings After Issuance of Report and Recommendation.** Proceedings following issuance by the [Administrative Law Judge] administrative law judge of the report and recommendation in the case [shall be] are governed by the Commission's [Rules] rules (47 RCNY §§ 1-75, 1-76).

**Section 51. Section 2-41 of subchapter D of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-41 Applicability.**

This subchapter [shall apply] applies solely to cases brought to determine the validity of post-seizure retention of vehicles by the Police Department as evidence or for prospective or pending actions to forfeit such vehicles pursuant to §14-140 of the New York City Administrative Code. Chapter 1 of this title [shall] also [apply] applies to such cases except to the extent that it is inconsistent with this subchapter or with *Krimstock v. Kelly*, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), and any amendments, modifications and revisions thereof.

**Section 52. Section 2-42 of subchapter D of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-42 Parties.**

For purposes of this subchapter, the Police Department [shall] will be the petitioner, and the claimant to the vehicle [shall] will be the respondent, as defined in §1-01 of this title.

**Section 53. Section 2-43 of subchapter D of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-43 Pleadings.**

(a) The time provided in § 1-26(d) for service of the notice of trial [shall] does not apply.

(b) Notwithstanding § 1-24 of this title, the respondent may serve and file an answer at any time until the commencement of the hearing.

**Section 54. Section 2-44 of subchapter D of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-44 Trial Continuances.**

A motion by the petitioner, after the conclusion of the respondent's evidence, for a continuance of trial to present rebuttal evidence in the form of testimony from witnesses not called on the petitioner's case-in-chief, [shall] may be granted for good cause shown.

**Section 55. Section 2-46 of subchapter D of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§ 2-46 Transcription of Trials.**

Notwithstanding § 1-51 of this title, the recording of the trial or of other proceedings in the case, whether electronic or stenographic, [shall] may not be transcribed except (i) upon request and payment of reasonable transcription costs, (ii) upon direction of the administrative law judge, in his or her discretion, or (iii) as otherwise required by law.

**Section 56. Subchapters A through F of chapter 3 of title 48 of the Rules of the City of New York are REPEALED, and new subchapters A and B are added to read as follows:**

**Chapter 3: Rules of Practice Applicable to Proceedings Brought Before the Environmental Control Board Pursuant to §1049-a of the New York City Charter and Provisions of the New York City Administrative Code or New York State Law**

**Subchapter A: General Rules**

**§3-11 Definitions.**

Definitions in section 6-01 of this title apply to terms used in this chapter. In addition, as used in this chapter:

“Board” means the Environmental Control Board of the City of New York.

“Executive Director” means the executive director of the Board.

**§3-12 Scope of Rules.**

This chapter applies to the adjudications of summonses conducted by the Tribunal as authorized by the Board and to other Board proceedings pursuant to §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, and special hearings conducted by the Board pursuant to Title 24 of the New York City Administrative Code.

All such adjudications, special hearings and enforcement proceedings will be conducted pursuant to the rules set forth in Chapter 6 of this Title. Where there is a conflict between this chapter and Chapter 6, this chapter takes precedence.

**§3-13 Computation of Time for Emergency Action.**

Any emergency action taken by the Board that requires action within a 24-hour period will be taken regardless of whether the 24-hour period includes a Saturday, Sunday or legal holiday.

### **§3-14 Claims of Prior Adjudication.**

Whenever a party claims that a summons was previously adjudicated, the hearing officer must allow both parties to present all relevant evidence on all the issues in the case, including the claim of prior adjudication. If a party has raised a claim of prior adjudication, the hearing officer must not decide such claim, but must preserve the claim for the purposes of subsequent appeal to the Appeals Unit, a panel of Board members, or the Board pursuant to §3-15. If, on appeal, a party properly raises and preserves a claim of prior adjudication, the Appeals Unit will review the records of the first and any subsequent hearings in order to assist the panel or Board in determining the claim of prior adjudication. In deciding the claim, the panel or the Board will consider the interests of justice and public safety.

### **§3-15 Panel or Board Review of Appeals.**

(a) The Board will establish panels from among its members to review recommended decisions issued by the Appeals Unit pursuant to §6-19(e), and to issue decisions. A panel may refer a case to the Board for review if the panel is unable to reach a decision. Such case will be considered by the Board and the Board will issue a decision. Unless a party files a request pursuant to subdivision (b) of this section, the decision of the panel or the Board will be deemed to have been issued by, and become the final decision of, the Board. The Board's final decision is also the final decision of the Tribunal.

(b) Superseding appeal decisions. Within 10 days of the mailing of the Board's decision, a party may apply to the Board for a superseding appeal decision to correct ministerial errors or errors due to mistake of fact or law. This superseding appeal decision will become the final decision of the Board. The Board's final decision is also the final decision of the Tribunal.

### **§3-16 Judicial Review of Board Decisions.**

(a) If a Respondent appeals and the Board has not issued a final decision within 180 days from the filing of the appeal, the Respondent may at any time file a petition seeking judicial review of the Hearing Officer's recommended decision pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR). Such Respondent may rely on the recommended decision as the final decision of the Board, provided that the following three conditions are met:

- (1) at least forty-five days before the filing of such petition, the Respondent files with the Board written notice of the Respondent's intention to file the petition; and
- (2) the Board has still not issued a final decision when the Respondent files the petition; and
- (3) the Respondent serves the petition on the Board pursuant to the CPLR.

(b) The Board may issue a final decision after a Respondent files with the Board written notice of intention to file a petition for judicial review under subdivision (a) and before the Respondent has filed the petition.

### **§3-17 Admission After Default.**

Where the Board issues a default decision, in accordance with §6-20 of this Title, permitting Respondent to admit the charge and pay by mail, Respondent may enter a late admission and

payment by mail within thirty days of the mailing date of the default decision. OATH may impose a fee of \$30 for the processing of such late admission.

### **§3-18 Stipulation in Lieu of Hearing.**

(a) At any time before the Hearing Officer issues a recommended decision, the Petitioner may offer the Respondent a settlement of the summons by stipulation in lieu of further hearing. The stipulation must contain an admission of the violation, the further facts stipulated to, if any, the amount of the penalty to be imposed, and the compliance ordered, if any.

(b) If entered into by Respondent and filed with the Tribunal prior to the first scheduled hearing date, the stipulation will be reviewed by the Executive Director or his or her designee. The Tribunal as authorized by the Board will, after receiving such stipulation, issue a final decision incorporating the terms of the stipulation. If the stipulation is not acceptable to the Tribunal, the matter will be rescheduled for further hearing.

(c) If entered into during the course of a hearing and approved by the Hearing Officer, the stipulation will be incorporated into the Hearing Officer's recommended decision.

(d) Decisions based upon stipulations may not be appealed.

### **§3-19 Post Judgment Amendment of Records.**

(a) Upon the written motion of any party, the Board may amend any judgment to designate a judgment debtor by the correct legal name.

(b) The movant must file the written motion with the Executive Director. The movant must also file an affidavit setting forth the facts and evidence relied on and an affidavit of service, by certified or registered mail and regular mail, of the motion on the judgment debtor at the last known address and at the address or addresses at which the summons was or summonses were served. Such motion must be served on the judgment debtor and any other party. The motion must set forth the date and time of the hearing in accordance with the direction of the Executive Director, provided that such date and time will not be sooner than ten (10) days after the service of such motion on the judgment debtor. At such hearing, any party may appear, in person or otherwise, with or without an attorney, cross-examine witnesses, present evidence and testify. If the judgment debtor does not appear at the hearing, the Hearing Officer may proceed to determine the evidence presented by the movant in support of the motion.

(c) If the Hearing Officer finds that the movant has established, by a preponderance of evidence, (i) the correct legal name of the judgment debtor, (ii) that such name is the same party designated on the summons or summonses as responsible for the alleged violation or violations and (iii) that service of the summons or summonses and of all other papers in the proceeding or proceedings was or were properly made upon such judgment debtor, the Hearing Officer will grant such motion and issue a recommended decision directing the amendment of the judgment to reflect the correct legal name of the judgment debtor and of all records relating to the proceedings commenced by the service of the summons or summonses, including the records of judgments filed with the civil court and in the office of the county clerk.

(d) The Hearing Officer will file the recommended decision with the Board and OATH will serve the recommended decision on all parties. Any party who appeared at the hearing, in person or otherwise, may file an appeal of such recommended decision in the manner provided in § 6-19 and the Board will render a final decision on the appeal. Such final decision is the final decision of the Board for purposes of review pursuant to Article 78 of the CPLR.

(e) If an appeal is not filed within the time provided for in § 6-19, the Hearing Officer's recommended decision will become the final decision of the Board and is not subject to review pursuant to Article 78 of the CPLR.

(f) An order correcting a judgment does not affect the duration of a judgment. The judgment will remain in full force and effect for eight (8) years from the date that the judgment was originally entered.

## **Subchapter B: Special Hearings**

### **§3-21 Cease and Desist Actions.**

(a) Scope. This section governs cease and desist actions brought by the Board pursuant to Administrative Code §§ 24-178, 24-257, or 24-524, after Respondent has had notice and an opportunity for a hearing on the violations alleged pursuant to the provisions of §§ 24-184, 24-263, or 24-524 as appropriate, and has failed to comply with orders issued by the Board in such proceedings.

(b) Issuance of Order and Notice. Cease and desist actions are commenced by the Board issuing an order to cease and desist and a notice of special hearing. The order and notice will identify the particular compliance order, previously issued after an adjudicatory hearing or finding of default, which Respondent is alleged to have disregarded, and the activity, equipment, device and/or process involved. The order will direct Respondent to show cause at a special hearing why the equipment, device or process should not be sealed and additional penalties should not be imposed, and will notify Respondent that, if Respondent does not appear as directed, the Board's order will be implemented.

(c) Service. The order to cease and desist and notice of special hearing will be served personally and by regular mail.

### **§3-22 Special Hearing.**

(a) Pre-Sealing Hearing. The special hearing will be presided over by a Hearing Officer who has all of the powers and duties in subchapter C of Chapter 6 of these rules, except as specifically provided in this section. The Hearing Officer may receive evidence presented by the Petitioner who requested the Board to issue the cease and desist order, any intervenor, and the Respondent.

(b) Motions to Intervene.

(1) A person may intervene as of right in a special hearing if such person may be directly and adversely affected by a cease and desist order of the Board. An order imposing a monetary penalty is not an order directly or adversely affecting any person other than a Respondent.

(2) Such person intervening as of right must file a written application with the Tribunal and serve it upon each party to the proceeding not less than five (5) days before the special hearing. Such written application must set forth in detail the reasons why the person seeks to intervene. When such written application is made by any person, the matter will be assigned to a Hearing Officer for disposition. Within three (3) days of being served with such written application, any party may file a response and any supporting documents with the Tribunal. Such response and documents, if any, must be served upon the applicant and all other parties.

(3) An intervenor as of right will have all the rights of an original party, except that the Hearing Officer may provide that the intervenor will be bound by orders previously entered

or evidence previously received and that the intervenor will not raise issues or seek to add parties which might have been raised or added more properly at an earlier stage of the proceeding.

(c) Report. In lieu of a recommended hearing decision, the Hearing Officer will prepare a report summarizing the evidence and arguments and including the Hearing Officer's findings of fact and recommendation as to whether the sealing should proceed and additional penalties should be imposed. The Hearing Officer will promptly file the report with the Board.

(d) Board Order. Upon receipt of the Hearing Officer's report, the Board may adopt, reject or modify the findings and recommendation, and direct such further hearings or issue such further orders to Respondent as are appropriate under the circumstances to assure correction of the violations. In any case in which the Board issues an order requiring the Respondent to take affirmative action, such order may also require the Respondent to file with the Board a report or reports attesting under oath that the Respondent has complied with the order. Failure to file a required report within the time limit set forth in the order may, in the Board's discretion, constitute a violation of the order regardless of whether the Respondent has otherwise complied with the provisions of the order.

(e) Post-Sealing Hearing. At any time after a sealing has taken place, a Respondent may request a special hearing to present evidence as to why the seal should be removed or sealing order modified. The Respondent must make the request by letter addressed to the Board or the Executive Director or his or her designee. A special post-sealing hearing will then be scheduled and presided over by a Hearing Officer and conducted in accordance with the provisions of subparagraphs (a), (b) and (c) of this section.

### **§3-23 Application for a Temporary or Limited Unsealing or Stay.**

If it appears that remediation undertaken by a Respondent cannot proceed or its effectiveness cannot be tested while a seal remains in place, the Respondent may, by written application addressed to the Executive Director or his or her designee, request that a seal be temporarily removed or stayed for a limited period. The Executive Director or his or her designee may authorize a temporary unsealing or stay of sealing for the above specified reasons for such limited period and subject to such conditions as the Executive Director or his or her designee deems appropriate.

### **§3-24 Hearings after Emergency Cease and Desist Orders.**

When the Board has issued an emergency cease and desist order, without hearing, due to an imminent peril to public health or safety, pursuant to Administrative Code §§ 24-178(f), 24-346(a) and (e) or 24-523(a) and (b), any person affected by such emergency order may, by written notice to the Board, request a hearing or an accelerated hearing in accordance with those provisions. The hearing held pursuant to the request will be held by the Board and not referred to a Hearing Officer. The hearing will otherwise be conducted in accordance with the relevant provisions of law and the applicable Board rules for adjudicatory hearings.

**Section 57. Chapter 5 of title 48 of the Rules of the City of New York is REPEALED, and a new Chapter 5 is added to read as follows:**

## **Chapter 5: Rules Applicable to Violations of Laws or Regulations Enforced by the Taxi and Limousine Commission**

### **§5-01 Scope of this Chapter**

This chapter applies to all charges of violations of any laws, rules and regulations enforced by the Taxi and Limousine Commission (TLC). Adjudications of such charges are conducted pursuant to the rules in Chapter 6 of this Title. Where there is a conflict between this chapter and Chapter 6, this chapter takes precedence. Definitions in section 6-01 apply to terms used in this chapter.

### **§5-02 Respondent's Right to Confront Complaining Witness**

(a) Pursuant to Administrative Code § 19-506.1, the TLC must produce the complaining witness in person where such witness's credibility is relevant to the summons being adjudicated. If the TLC is unable to produce such witness in person, the TLC must make reasonable efforts to make the witness available during the hearing by videoconferencing or teleconferencing.

(b) If the TLC is unable to produce the witness in person or by videoconference or teleconference, it must provide the Hearing Officer with a statement outlining its efforts to produce the witness. If the Hearing Officer determines that the TLC's efforts were inadequate, the Hearing Officer will dismiss the summons.

(c) If the Respondent previously requested an adjournment to obtain the testimony of the complaining witness, the non-attendance of the complaining witness will be considered a failure by the TLC to produce a complaining witness under paragraph (b) and may be grounds for the Hearing Officer to dismiss the summons.

### **§5-03 Respondent's Right to Challenge a Default Decision**

Pursuant to Administrative Code § 19-506.1, a Respondent may move to vacate a default decision by filing a written motion to vacate within two (2) years from the date of entry of the default decision.

### **§5-04 Appeals**

(a) Expedited appeals. Either party may appeal a decision pursuant to section 6-19. Where the appeal involves the suspension or revocation of a TLC-issued license, the Appeals Unit will issue an expedited decision.

(b) A party responding to a request for appeal where the appeal involves the suspension or revocation of a TLC-issued license must file the response with the Tribunal within seven (7) days after being served with the appeal. The responding party must also serve a copy of the response on the appealing party, and file proof of such service with the Tribunal.

(c) Requests for hearing recording. Pursuant to Administrative Code § 19-506.1(d), if a Respondent appealing a decision requests in writing a copy of the hearing recording, the recording will be produced to the Respondent within thirty (30) days after receipt of the request. If the recording cannot be produced within the thirty (30) day period, the determination being appealed will be dismissed without prejudice.

(d) Finality. 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 (RCNY).

### **§5-05 Chairperson Review**

(a) Scope of review. The TLC Chairperson or, if designated by the TLC Chairperson, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:

(1) A rule in Title 35 of the RCNY;

(2) A provision of law in Chapter 5 of Title 19 of the Administrative Code; (3) A provision of law in Chapter 65 of the Charter.

(b) Decision. Upon review, 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 TLC Chairperson or General Counsel's interpretation of the TLC's rules and the laws it administers will be considered agency policy and must be applied by the Tribunal in future adjudications involving the same rules or statutes.

### **§5-06 Special Procedures**

(a) Summary suspension based on a failure to be timely tested for drug use. When the TLC submits to the Tribunal written documentation pursuant to 35 RCNY § 68-16(d) submitted by a Licensee, as defined in §35 RCNY 51-03, refuting summary suspension based on a failure to be timely tested for drug use, the Tribunal will issue a decision based on the written documentation. The decision will include findings of fact and conclusions of law. The decision may be appealed in accordance with the process established in § 6-19.

(b) Unlicensed activity. Pursuant to §19-529.2 of the Administrative Code, a decision on unlicensed activity with a commuter van will be issued within one (1) business day of the conclusion of the hearing or the default.

**Section 58. Section 6-01 of subchapter A of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

### **§6-01 Definitions Specific to this Chapter**

As used in this chapter:

“Adjournment” means a request made to a Hearing Officer during a hearing to postpone the hearing to a later date.

“Appeals Unit” means the unit authorized under §6-19 of this Title to review hearing officer decisions.

“Appearance” means a communication with the Tribunal that is made by a party or the representative of a party in connection with a [Notice of Violation] summons that is or was pending before the Tribunal. An appearance may be made in person, online or by other remote methods approved by the Tribunal.

“Board” means the Environmental Control Board of the City of New York.



“Charter” means the New York City Charter.

“Chief Administrative Law Judge” means the director and chief executive officer of OATH appointed by the Mayor pursuant to New York City Charter § 1048.

“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 Tribunal.

“Inspector” means the inspector, public health sanitarian, or other person who conducted the inspection or investigation that resulted in the issuance of a summons.

[“Notice of Violation” or “NOV” means the document, including a summons, issued by the petitioner to a respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Tribunal.]

“OATH” means the New York City Office of Administrative Trials and Hearings, including the OATH Trials Division and the OATH Hearings Division (see section 6-02).

“OATH Hearings Division” means the Health Tribunal, the Environmental Control Board as defined in Charter §1049-a, and the Administrative Tribunal referenced in Title 19 of the Administrative Code of the City of New York.

“OATH Trials Division” means the adjudicatory body authorized to conduct proceedings pursuant to Chapters 1 and 2 of this Title.

“Party” means the Petitioner or the person named as Respondent in a proceeding before the Tribunal.

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

“Petitioner” means the [New York City] governmental agency [authorized to issue Notices of Violations returnable to the Tribunal] or individual who issued a summons.

“Reschedule” means a request made to the Tribunal prior to the scheduled hearing for a later hearing date.

“Respondent” means the person against whom the charges alleged in a [Notice of Violation] summons have been filed.

“Summons” means the document, including a notice of violation, issued by Petitioner to Respondent, which specifies the charges forming the basis of an adjudicatory proceeding before the Tribunal.

“Tribunal” means the OATH Hearings Division[, including the Health Tribunal].

**Section 59. Section 6-02 of subchapter A of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-02 Jurisdiction, Powers and Duties**

(a) Jurisdiction. Pursuant to Charter [section] § 1048, the Tribunal has jurisdiction to hear and determine [Notices of Violation] summonses issued by [any] a City agency or, when permitted by law, an individual, consistent with the following applicable laws, rules and regulations[, including, but not limited to,]:

(1) In accordance with the delegations of the Commissioner of the Department of Health and Mental Hygiene and the Board of Health, the Tribunal has jurisdiction to hear and determine [Notices of Violation] summonses alleging non-compliance with the provisions of the Health Code codified within Title 24 of the Rules of the City of New York, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City and any other laws or regulations that the Department of Health and Mental Hygiene has the duty or authority to enforce.

(2) The Tribunal has jurisdiction to hear and determine summonses returnable to the Board pursuant to §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, and to conduct special hearings and enforcement proceedings before the Board pursuant to Title 24 of the New York City Administrative Code.

(3) In accordance with Mayoral Executive Order No. 148, dated June 8, 2011, and pursuant to Charter §1048(2), the Tribunal has jurisdiction to hear and determine summonses charging 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) General Powers and Duties. The Tribunal [and], including the Hearing Officers [have], has the following general powers and duties:

(1) To conduct fair and impartial hearings;

(2) To take all necessary action to avoid delay in the disposition of proceedings;

(3) To maintain order in the functioning of the Tribunal, including the conduct of hearings;

(4) To decide cases and, if applicable, impose fines and other penalties in accordance with [applicable] law; and

[(2)] (5) To compile and maintain complete and accurate records relating to the proceedings of the Tribunal, including copies of all [Notices of Violation] summonses served, responses, appeals and briefs filed and decisions rendered by Hearing Officers.

**Section 60. Section 6-05 of subchapter B of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-05 Pre-Hearing Requests to Reschedule**

The [petitioner] Petitioner or [respondent] Respondent may request that a hearing be rescheduled

to a later date. A request by a [respondent] Respondent to reschedule must be received by the Tribunal prior to the [date and] time of the scheduled hearing. If a [petitioner] Petitioner requests to reschedule, the [petitioner] Petitioner must notify the [respondent] Respondent at least three (3) days prior to the originally-scheduled hearing date and file proof of that notification with the Tribunal. Respondent may, on a form provided by the Tribunal, waive its right to such notice of the Petitioner's request to reschedule. If a [petitioner] Petitioner fails to provide such proof of notification or waiver, the request will be denied and the hearing will proceed as originally scheduled. Good cause is not necessary for a request to reschedule. No more than one (1) request to reschedule will be granted for each party for each [NOV] summons. [A request by a respondent for the appearance of an inspector, public health sanitarian or other person who issued an NOV (the "inspector") made in the manner described in §6-06 will constitute a request to reschedule under this section.]

**Section 61. Section 6-06 of subchapter B of chapter 6 of title 48 of the Rules of the City of New York is REPEALED and reserved.**

**Section 62. Section 6-07 of subchapter B of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-07 Pre-Hearing Discovery**

[If an opportunity to obtain pre-hearing discovery is offered by the petitioner, discovery] Discovery may be obtained in the following manner:

- (a) Upon written request received by the opposing party at least five business days prior to the scheduled hearing date, any party is entitled to receive from the opposing party a list of the names of witnesses who may be called and copies of documents intended to be submitted into evidence.
- (b) Pre-hearing discovery shall be limited to the matters enumerated above. All other applications or motions for discovery shall be made to a Hearing Officer at the commencement of the hearing and the Hearing Officer may order such further discovery as is deemed appropriate in his or her discretion.
- (c) Upon the failure of any party to properly respond to a lawful discovery order or request or such party's wrongful refusal to answer questions or produce documents, the Hearing Officer may take whatever action he or she deems appropriate including but not limited to preclusion of evidence or witnesses. It shall not be necessary for a party to have been subpoenaed to appear or produce documents at any properly ordered discovery proceeding for such sanctions to be applicable.

**Section 63. Section 6-08 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-08 Proceedings before the OATH Hearings Division**

(a) [Notice of Violation] Issuance and Filing of Summons.

(1) [All proceedings are commenced by the issuance of a Notice of Violation (“NOV”) and filing of the NOV with the Tribunal.

2] The petitioner must file an original or a copy of the [NOV must be filed] summons, together with proof of service, with the Tribunal prior to the first scheduled hearing date. Electronic filing of the summons and proof of service is required unless the Tribunal grants an exception. Failure to timely file all proofs of service shall not divest the Tribunal of jurisdiction to proceed with a hearing or to issue a default order.

(2) Notwithstanding paragraph one of this subdivision, where property has been seized, the Tribunal may adjudicate a summons after it is served and before it is filed.

[3] If the NOV is sworn to under oath or affirmed under penalty of perjury, the NOV will be admitted into evidence and will be prima facie evidence of the facts stated in the NOV. The NOV may include the report of the inspector, public health sanitarian, or other person who conducted the inspection or investigation that resulted in the NOV. When such report is served in accordance with this section, such report will also be prima facie evidence of the factual allegations contained in the NOV.]

(b) Service of the [Notice of Violation] Summons. There must be service of [a Notice of Violation] the summons.

(1) Service of a [Notice of Violation] summons in the following manner will be considered sufficient:

[1] (i) The [NOV] summons may be served in person upon:

[i] (A) the person alleged to have committed the violation,

[ii] (B) the permittee, licensee or registrant,

[iii] (C) the person who was required to hold the permit, license or to register,

[iv] (D) a member of the partnership or other group concerned,

[v] (E) an officer of the corporation,

[vi] (F) a member of a limited liability company,

[vii] (G) a managing or general agent, or

[viii] (H) any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business or institution charged.

[2] (ii) Alternatively, the [NOV] summons may be served by mail deposited with the U.S. Postal Service, or other mailing service, to any such person at the address of the premises that is the subject of the [NOV] summons or, as may be appropriate, at the residence or business address of:

[i] (A) the alleged violator,

[ii] (B) the individual who is listed as the permittee, licensee or applicant in the permit or license or in the application for a permit or license,

[iii] (C) the registrant listed in the registration form, or

[iv] (D) the person filing a notification of an entity’s existence with the applicable governmental agency where no permit, license or registration is required.

[3] If the [NOV] summons is served by mail, documentation of mailing will be accepted as proof of service of the [NOV] summons.

(2) A summons may be served pursuant to the requirements of §1049-a(d)(2) of the New

York City Charter, Chapter 68 of Title 35 of the Rules of the City of New York, or as provided by the statute, rule, or other provision of law governing the violation alleged. For the purpose of serving a summons pursuant to New York City Charter §1049-a(d)(2)(a)(i) and (ii), the term “reasonable attempt” as used in New York City Charter §1049-a(d)(2)(b) may be satisfied by a single attempt to effectuate service upon the Respondent, or another person upon whom service may be made, in accordance with Article 3 of the Civil Practice Law and Rules or Article 3 of the Business Corporation Law.

(3) The Tribunal's decision may be automatically docketed in Civil Court where the summons has been served in accordance with §1049-a(d)(2) of the New York City Charter or the statute or rule providing for such docketing. Where a summons is lawfully served in a manner other than that provided in §1049-a(d)(2) or such other provision of law, the Tribunal may hear and determine such summons but the decision will not be automatically docketed in Civil Court or any other place provided for entry of civil judgments without further court proceedings.

(c) Contents of [Notice of Violation] Summons. The [NOV] summons must contain, at a minimum:

(1) The name and address, when known, of a Respondent;

(2) A clear and concise statement sufficient to inform the [respondent] Respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable, and place when and where such facts were observed;

(3) Information adequate to provide specific notification of the section or sections of the law, rule or regulation alleged to have been violated;

(4) Information adequate for the [respondent] Respondent to calculate the maximum penalty authorized to be imposed if the facts constituting the violation are found to be as alleged;

(5) Notification of the date, time and place when and where a hearing will be held by the Tribunal or instructions to the Respondent on how to schedule a hearing date. Such date must be at least fifteen (15) calendar days after the [NOV] summons was served, unless another date is required by applicable law. Where Respondent waives the fifteen (15) day notice and requests an expedited hearing, the Tribunal may assign the case for immediate hearing, upon appropriate notice to Petitioner and opportunity for Petitioner to appear.

(6) Notification that failure to appear [on the] at the place, date and [at the place] time designated for the hearing will be deemed a waiver of the right to a hearing, thereby authorizing the rendering of a default decision; and

(7) Information adequate to inform the [respondent] Respondent of his or her rights under §6-09 of this chapter.

(d) In the interest of convenient, expeditious and complete determination of cases involving the same or similar issues or the same parties, the Tribunal may consolidate two (2) or more summonses for adjudication at one (1) hearing.

(e) Where a Petitioner withdraws a summons, even if it has been adjudicated, is open or has been decided by the Tribunal, the Petitioner must promptly notify the Tribunal and the Respondent in writing. Thereafter the Tribunal will issue a decision indicating the summons has been

withdrawn.

**Section 64. Section 6-09 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-09 Appearances**

(a) Where the summons states that a penalty for the cited violation may be paid by mail prior to the scheduled hearing or other applicable date provided, a Respondent may admit to the violation charged and pay the penalty in the manner and by the time directed by the summons. Payment in full is deemed an admission of liability and no further hearing or appeal will be allowed.

(b) A Respondent may appear for a hearing by:

(1) Appearing in person at the place, date and time scheduled for the hearing; or[,]

(2) Sending an authorized representative to appear on behalf of such person at the place, date and time scheduled for the hearing who is:

(i) an attorney admitted to practice law in New York State, or

(ii) a representative registered to appear before the Tribunal pursuant to §6-23 of this chapter, or

(iii) any other person, subject to the provisions of §6-23 of this chapter[.]; or

(3) [Unless the NOV] Appearing pursuant to §6-10, when the opportunity to appear remotely is offered by the Tribunal, unless the summons specifies that a Respondent must appear in person at a hearing [a respondent may appear by:

(i) making a written submission for an adjudication by mail, using the U.S. Postal Service or other mailing service pursuant to §6-10; or

(ii) making a written submission for an adjudication online pursuant to §6-10; or

(iii) telephone or by other remote methods when the opportunity to do so is offered by the Tribunal].

[(b)] (c) In addition to the persons allowed to appear in paragraph (b), the current owner of a property may appear on behalf of the prior owner of the property, if the summons:

(1) names the prior owner,

(2) is a premises-related violation, and

(3) was issued after title to the property was transferred.

However, the current property owner may only appear for the purposes of presenting a deed indicating when title passed. The current owner of the property may only present a defense on the merits if the current owner agrees to substitute him or herself for the prior owner, waiving all defenses based on service.

[(c)] (d) Failure to Appear by Respondent. A [respondent's] Respondent's failure to appear at the scheduled time or to make a timely request to reschedule pursuant to §6-05 of this chapter constitutes a default to the charges, and subjects the [respondent] Respondent to penalties in accordance with §6-20 of this chapter.

[(c)] (e) A [petitioner] Petitioner may appear for a hearing through an authorized representative at the place, date and time scheduled for the hearing or by other remote methods when the opportunity to do so is offered by the Tribunal.

[(d)] (f) Failure to Appear by Petitioner. If a [petitioner] Petitioner fails to appear at the scheduled place, date and time, the hearing [will] may proceed without the [petitioner] Petitioner.

(g) Discretionary Intervention. Any person may move for discretionary intervention. The Hearing Officer, taking into account the need to conduct an orderly, expeditious and fair hearing, may permit such intervenor if good cause is shown or if the intervenor is in a position to assist in the proof or defense of the proceeding. Such intervenor will be allowed to participate in the proceeding as the Hearing Officer may direct. In determining the extent of the intervenor's participation, the Hearing Officer will consider the avoidance of unfairness to the parties and the intervenor, and the avoidance of undue delay. An intervenor is not a party to the proceeding and has no standing to appeal the Hearing Officer's decision.

**Section 65. Section 6-10 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-10 [Adjudication by Mail and Online] Remote Adjudications**

(a) [Unless the NOV specifies that a respondent must appear in person at a hearing] When the opportunity to do so is offered by the Tribunal, a [respondent] Respondent may contest a violation by mail [or], online, by telephone or by other remote methods.

(b) [Submissions for] Adjudication by Mail.

(1) A written submission in an adjudication by mail must be received by the Tribunal before the scheduled hearing date or bear a postmark or other proof of mailing indicating that it was mailed to the Tribunal before the scheduled hearing date. If a request bearing such a postmark or proof of mailing is received by the Tribunal after a first default decision has been issued on that [Notice of Violation] summons, such default will be vacated.

(2) The written submission must contain any denials, admissions and explanations related to the individual violations charged, and documents, exhibits or witness statements, if any, to be considered as evidence in support of Respondent's defense. Violations that are not denied or explained will be deemed to have been admitted; defenses not specifically raised will be deemed to have been waived.

(3) After a review by a Hearing Officer of the written submission, the Tribunal will:

(i) issue a written decision and send the decision to the parties; or

(ii) require the submission of additional documentary evidence; or

(iii) require an in-person hearing or hearing by telephone, in which case the parties will be notified.

(c) Adjudication Online.

(1) Submissions [for] in an adjudication online must be received by the Tribunal before or on the scheduled hearing date.

[(d) If the respondent chooses to make a written submission for an adjudication by mail or online, the submission must contain any denials, admissions and explanations pertaining to the individual violations charged, and documents, exhibits or witness statements, if any, to be considered as evidence in support of respondent's defense. Violations that are not denied or explained will be deemed to have been admitted; defenses not specifically raised will be deemed to have been waived.

(e) After a review by a Hearing Officer of the submission for adjudication by mail or online, the Tribunal will:

(1) issue a written decision and send the decision to the parties; or

- (2) require the submission of additional documentary evidence; or
- (3) require an in-person hearing.
- (f) If an in-person hearing is required, the parties will be notified.
  - (2) The submission must contain any denials, admissions and explanations related to the individual violations charged, and documents, exhibits or witness statements, if any, to be considered as evidence in support of Respondent's defense. Violations that are not denied or explained will be deemed to have been admitted; defenses not specifically raised will be deemed to have been waived.
  - (3) After a review by a Hearing Officer of the submission, the Tribunal will:
    - (i) issue a written decision and send the decision to the parties; or
    - (ii) require the submission of additional documentary evidence; or
    - (iii) require an in-person hearing or hearing by telephone, in which case the parties will be notified.
- (d) Adjudication by Telephone. Before or on the scheduled hearing date, a respondent may request a hearing by telephone by contacting the Tribunal.

**Section 66. Section 6-11 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-11 Hearing Procedures**

- (a) A hearing will be presided over by a Hearing Officer, proceed with reasonable expedition and order and, to the extent practicable, not be postponed or adjourned.
- (b) Language assistance services at the hearing.
  - (1) At the beginning of any hearing, the Hearing Officer will advise the [respondent] Respondent of the availability of language assistance services. In determining whether language assistance services are necessary to assist the [respondent] Respondent in communicating meaningfully with the Hearing Officer and others at the hearing, the Hearing Officer will consider all relevant factors, including but not limited to the following:
    - (i) information from Tribunal administrative personnel identifying a [respondent] Respondent as requiring language assistance services to communicate meaningfully with a Hearing Officer;
    - (ii) a request by the [respondent] Respondent for language assistance services; and
    - (iii) even if language assistance services were not requested by the [respondent] Respondent, the Hearing Officer's own assessment whether language assistance services are necessary to enable meaningful communication with the [respondent] Respondent.
  - If the [respondent] 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, language assistance 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,]. If the professional interpretation service is not available for that language, the Respondent may request the use of another



interpreter, in which case the Hearing Officer in his or her discretion may use the [respondent's] Respondent's requested interpreter. In exercising that discretion, the Hearing Officer will take into account all relevant factors, including but not limited to the following:

- (i) [the respondent's preference, if any, for his or her own interpreter;
- (ii)] the apparent skills of the [respondent's] Respondent's requested interpreter;
- [(iii)] (ii) whether the [respondent's] Respondent's requested interpreter is a child under the age of eighteen (18);
- [(iv)] (iii) minimization of delay in the hearing process;
- [(v)] (iv) maintenance of a clear and usable hearing record; and
- [(vi)] (v) whether the [respondent's] 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) When a party appears on more than one (1) summons on a single hearing day, the Tribunal has the discretion to determine the order in which the summonses will be heard.

(d) Each party has the right to present evidence, to examine and cross-examine witnesses, to make factual or legal arguments and to have other rights essential for due process and a fair and impartial hearing. Witnesses may be excluded from the hearing room, except while they are actually testifying.

[(d) Each party has the right to be represented by counsel or other authorized representative as set forth in §§6-09 and 6-23 of this chapter.

(1) A representative or attorney appearing at the Tribunal must provide sufficient staffing to ensure completion of his or her hearings. Factors in determining whether sufficient staffing has been provided may include:

- (i) the number of cases the representative or attorney had scheduled on the hearing date;
- (ii) the number of representatives or attorneys sent to handle the cases;
- (iii) the timeliness of the arrival of the representatives or attorneys;
- (iv) the timeliness of the arrival of any witnesses, and;
- (v) any unforeseeable or extraordinary circumstances.

The failure of a representative or attorney to provide sufficient staffing, as described above, may be considered misconduct under §6-24 of this chapter.

(2) When a representative or attorney appears on more than one NOV on a single hearing day, the Tribunal has the discretion to determine the order in which the NOVs will be heard.]

(e) Oaths. All persons giving testimony as witnesses at a hearing must be placed under oath or affirmation.

(f) All adjudicatory hearings will proceed in the following order, subject to modification by the Hearing Officer:

- (1) Presentation and argument of motions preliminary to a hearing on the merits;
- (2) Petitioner's opening statement, if any;
- (3) Respondent's opening statement, if any;
- (4) Petitioner's case in chief;
- (5) Respondent's case in chief;

- (6) Petitioner's case in rebuttal;
- (7) Respondent's case in rebuttal;
- (8) Respondent's closing argument;
- (9) Petitioner's closing argument.

(g) A record will be made of all summonses filed, proceedings held, written evidence admitted and rulings rendered, and such record will be kept in the regular course of business for a period of time in accordance with applicable laws and regulations. Hearings will be mechanically, electronically or otherwise recorded by the Tribunal under the supervision of the Hearing Officer, and the original recording will be part of the record and will constitute the sole official record of the hearing. No other recording or photograph of the hearing may be made without prior written permission of the Tribunal. A copy of the recording will be provided upon request to the Tribunal. The Tribunal may charge a reasonable fee in accordance with Article 6 of the New York State Public Officers Law.

(h) Unless permitted or ordered by the Hearing Officer, parties are prohibited from submitting additional material or argument after the hearing has been completed.

**Section 67. Section 6-12 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-12 [Burden of Proof] Evidence**

(a) Burden of Proof. The [petitioner] Petitioner has the burden of proving the factual allegations contained in the [NOV] summons by a preponderance of the evidence. The [respondent] Respondent has the burden of proving an affirmative defense, if any, by a preponderance of the evidence.

(b) Admissibility of Summons. If the summons is sworn to under oath or affirmed under penalty of perjury, the summons will be admitted as prima facie evidence of the facts stated therein. The summons may include the report of the inspector, public health sanitarian or other person who conducted the inspection or investigation that resulted in the summons. When such report is served with the summons, such report will also be prima facie evidence of the factual allegations contained in the report.

(c) Admissibility of Evidence. Relevant and reliable evidence may be admitted without regard to technical or formal rules or laws of evidence applicable in the courts of the State of New York. Irrelevant, immaterial, unreliable or unduly repetitious evidence will be excluded. Immaterial or irrelevant parts of an admissible document must be segregated and excluded to the extent practicable.

(d) Types of Evidence. Evidence at a hearing may include, but is not limited to, witness testimony, documents and objects. Documents may include, but are not limited to, affidavits or affirmations, business records or government records, photographs and other documents.

(e) Official Notice. Official notice may be taken of all facts of which judicial notice may be taken and other facts within the specialized knowledge and experience of the Tribunal or the Hearing Officer. Opportunity to disprove such noticed fact will be granted to any party making a timely motion.

(f) Objections. Objections to evidence must be timely and must briefly state the grounds relied upon. Rulings on all objections must appear on the record.

**Section 68. Section 6-13 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-13 Hearing Officers**

Hearing Officers may:

- (a) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments and continuances, and oversee and regulate other matters relating to the conduct of a hearing;
- (b) [Issue] Upon request of a party, issue subpoenas or adjourn a hearing for the appearance of individuals[,] or the production of documents or other types of information[,] when the Hearing Officer determines that necessary and material evidence will result;
- (c) Bar from participation in a hearing any person, including a party, representative or attorney, witness or observer who engages in disorderly, disruptive or obstructionist conduct that disrupts or interrupts the proceedings of the Tribunal, and continue the hearing without that person's presence;
- (d) Carry out adjudicatory powers of:
  - (i) the hearing examiner set forth in Title 17 of the New York City Administrative Code[,] and associated rules and regulations and the New York City Health Code as codified within Title 24 of the Rules of the City of New York, and
  - (ii) an administrative law judge set forth in Title 19 of the New York City Administrative Code;
- (e) Allow an amendment to [an NOV] a summons only upon a motion at any time if:
  - (1) the subject of the amendment is reasonably within the scope of the original [NOV] summons;
  - (2) such amendment does not allege any additional violations based on an act not specified in the original [notice] summons;
  - (3) such amendment does not allege an act that occurred after the original [NOV] summons was served; and
  - (4) such amendment does not affect the [respondent's] Respondent's right to have adequate notice of the allegations made against him or her.
- (f) Request further evidence to be submitted by the [petitioner] Petitioner or [respondent] Respondent; [and]
- (g) Make final or recommended decisions pursuant to applicable law, rule or regulation; and
- (h) Take any other action authorized by applicable law, rule or regulation, or that is delegated by the Chief Administrative Law Judge.

**Section 69. Section 6-14 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-14 Requests for Adjournment**

- (a) At the time of the scheduled hearing or upon motion, a Hearing Officer may [grant a request to adjourn the hearing to a later date only after a showing of good cause as determined by the Hearing Officer in his or her discretion] adjourn a hearing for the testimony of the Inspector or a complaining witness only if:
  - (1) Respondent consents or the Petitioner appears at the hearing, and

(2) the Hearing Officer concludes that the Inspector's or witness's testimony is reasonably likely to be necessary to a fair hearing of the violations charged or of the defenses to those charges.

(b) [Good cause.] If a Hearing Officer has adjourned a hearing:

(1) solely for the purpose of obtaining the Inspector's testimony, and

(2) the Respondent timely appears on the adjourned hearing date, and

(3) the Inspector fails to timely appear on the adjourned hearing date,

the hearing shall not be further adjourned solely to obtain the testimony of such Inspector unless the Respondent consents to the second adjournment or the Hearing Officer determines that extraordinary circumstances warrant the second adjournment. "Extraordinary circumstances" are circumstances that could not have been reasonably foreseen by the Petitioner.

(c) A Hearing Officer may not adjourn a hearing on more than two (2) occasions because of the unavailability of the Inspector.

(d) For all other adjournment requests, a Hearing Officer may grant a request to adjourn the hearing to a later date only after a showing of good cause as determined by the Hearing Officer in his or her discretion. In deciding whether there is good cause for an adjournment, the Hearing Officer will consider:

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

(2) Whether granting the adjournment is unfair to the other party;

(3) Whether granting the adjournment will cause inconvenience to any witness;

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

(5) Whether the party requesting the adjournment had the opportunity to prepare for the scheduled hearing;

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

(7) 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

(8) Any other fact that the Hearing Officer considers to be relevant to the request for an adjournment.

[(c)] (e) Once a hearing has been adjourned, neither party may request a reschedule pursuant to section 6-05 of these rules. A denial of an adjournment request is not subject to separate or interim review or appeal.

**Section 70. Section 6-15 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

### **§6-15 Appearances of Inspectors**

[(a) At the time of the hearing, a respondent may request the presence of the inspector, public health sanitarian or other person who issued an NOV (the "inspector"). The Hearing Officer will determine whether the presence of the inspector will afford the respondent a reasonable opportunity to present relevant, non-cumulative testimony or evidence that would contribute to a full and fair hearing of each party's side of the dispute. Upon such finding, the Hearing Officer will order the appearance of the inspector, or if the inspector is unavailable at the time of the hearing, the Hearing Officer will adjourn the hearing for the appearance of the inspector on a

later date.

(b) If at a hearing a respondent denies the factual allegations contained in the NOV, the Hearing Officer may require the presence of the inspector without a request by the respondent, and, if needed, adjourn the hearing for the inspector to be present.

(c) In the event that the [inspector] Inspector does not appear at the hearing, the Hearing Officer may adjourn the hearing pursuant to §6-14 of this chapter, or may proceed with the hearing without the inspector[,] and sustain or dismiss all or part of the [NOV] summons, as the Hearing Officer may deem appropriate. [In no event will a hearing be adjourned on more than two occasions by the Hearing Officer because of the unavailability of an inspector.]

**Section 71. Section 6-16 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is REPEALED and a new section 6-16 is added to read as follows:**

**§6-16 Representation**

(a) Each party has the right to be represented by an attorney or another authorized representative, as set forth in §§6-09 and 6-23 of this chapter.

(b) An attorney or representative appearing at the Tribunal must provide staffing sufficient to ensure completion of his or her hearings. The failure of a representative or attorney to provide sufficient staffing may be considered misconduct under §6-25 of this chapter. The Tribunal may consider the following factors in determining whether sufficient staffing has been provided:

(1) the number of cases the representative or attorney had scheduled on the hearing date;

(2) the number of representatives or attorneys sent to handle the cases;

(3) the timeliness of the arrival of the representatives or attorneys;

(4) the timeliness of the arrival of any witnesses; and

(5) any unforeseeable or extraordinary circumstances.

(c) When any attorney or representative appears on more than one (1) summons on a single hearing day, the Tribunal has the discretion to determine the order in which such summonses will be heard.

**Section 72. Section 6-17 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-17 [Decision and Order] Decisions**

(a) Decisions. After a hearing, the Hearing Officer who presided over the hearing will promptly write a [written] decision sustaining or dismissing each charge in the [NOV will be promptly rendered by the Hearing Officer who presided over the hearing] summons. The Tribunal will promptly serve the decision on all parties. Each decision will contain findings of fact and conclusions of law. Where a violation is sustained, the Hearing Officer will impose the applicable penalty, which may include a fine, penalty points, a suspension or revocation of the respondent's license or any other penalty authorized by applicable laws, rules and regulations.

(b) Except as provided in subdivision (c), the decision of the Hearing Officer is the final decision unless an appeal is filed pursuant to §6-19 of this Chapter.

(c) Recommended Decisions.

(1) For all violations of Article 13-E of the New York State Public Health Law, the Hearing Officer will issue a recommended decision and order, which the Commissioner of the Department of Health and Mental Hygiene may adopt, reject or modify, in whole or in part.

(2) For all violations of Article 13-F of the New York State Public Health Law where the Department of Health and Mental Hygiene is the petitioner, the Hearing Officer will issue a recommended decision and order, which the Commissioner of such department may adopt, reject or modify, in whole or in part.

(3) For all violations in which summonses are returnable to the Tribunal as authorized by the Board under §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, the Hearing Officer's decision is a recommended decision to the Board. If an appeal is not filed pursuant to §6-19, the Hearing Officer's recommended decision will be automatically adopted by the Board and will constitute the Board's final decision in the matter. The Board's final decision is also the final decision of the Tribunal.

(d) The Tribunal may, due to Tribunal needs or the unavailability of the Hearing Officer who heard the case, designate another Hearing Officer to write the recommended decision. The decision will state the reason for the designation and will be based on the record, which includes (i) the summons, (ii) all briefs filed and all exhibits received in evidence, and (iii) a complete audio recording of the hearing or, if a complete audio recording is unavailable for any reason, a complete transcript of the hearing.

**Section 73. Section 6-18 of subchapter C of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

#### **§6-18 Payment of Penalty**

A copy of the decision, other than a default decision mailed or otherwise provided in accordance with §6-20 of this chapter, will be served immediately on the [respondent] Respondent or on the [respondent's] Respondent's authorized representative, either personally or by mail. Any fines, penalties or restitution imposed must be paid within thirty (30) days of the date of the decision, or thirty-five (35) days if the decision was mailed, unless the agency responsible for collecting payment of the fines and penalties imposed enters into a payment plan with the Respondent.

**Section 74. Section 6-19 of subchapter D of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

#### **§6-19 Appeals**

(a) [When an appeal is filed, the Appeals Unit within the Tribunal will determine whether the facts contained in the findings of the Hearing Officer are supported by substantial evidence in the record, and whether the determinations of the Hearing Officer, as well as the penalties imposed, are supported by law. The Appeals Unit has the power to affirm, reverse, remand or modify the decision appealed from.

(b) A party may appeal, in whole or in part, a decision of a Hearing Officer[, except that a]. An appeal must contain a concise statement of the issues presented, specific objections to the findings of fact and conclusions of law set forth in the Hearing Officer's recommended decision,

and arguments presenting clearly the points of law and facts relied on in support of the position taken on each issue. 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)] (b) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in [§6-16] §6-11(g) of this Chapter as well as the Hearing Officer's written decision. The Appeals Unit will not consider any evidence that was not presented to the Hearing Officer. [The] Except as provided in §5-04 of this Title, the absence of a recording of the hearing does not prevent determination of the appeal.

[(d)] (c) Appeals Procedure.

(1) Within thirty (30) days of the date of service of the Hearing Officer's decision, or thirty-five (35) days if the decision was mailed, a party seeking review of the decision must file with the Tribunal an appeal [application] on a form prescribed by the Tribunal and serve a copy of it on the non-appealing party. An appeal will be accepted by the Tribunal only if:

(i) the appealing party files an appeal [application] on the Tribunal's form; and  
(ii) the appealing party files proof that a copy of the appeal [application] has been served on the non-appealing party; and

(iii) Respondent [pays] provides proof of payment in full of any fines [or], penalties or restitution imposed by the decision, [as set forth in this subdivision, unless the respondent has been granted a waiver of such prior payment] except as provided in subdivision (d).

(2) [Within] Except as provided in § 5-04 of this Title, within thirty (30) days of being served with the appeal [application], or thirty-five (35) days if service is made by mail, the non-appealing party may file a response to the appeal. The response must be on a form prescribed by the Tribunal and will be accepted only if the non-appealing party serves a copy of the response on the other party and files proof of that service with the Tribunal.

(3) An application may be made to the Tribunal to extend the time to file an appeal or a response to an appeal. Such request must be supported by evidence of impossibility or other explanation of inability to file timely. A copy of such application [shall] must be served on all parties, and proof of such service filed with the Tribunal.

(4) Any application for a copy of the hearing recording [shall] must be made within the time allotted for the filing of an appeal or a response to an appeal. A copy of such application [shall] must be served upon all parties, and proof of such service filed with the [tribunal] Tribunal within the time allotted for filing an appeal or response to an appeal. In that event, the time within which to file an appeal or respond to an appeal [shall] will be extended by thirty (30) days from the date when such hearing recording is delivered or mailed to the requesting party.

(5) Further filings with the Tribunal by either party are not permitted.

[(e)] (d) Fines, penalties, and restitution. Filing an appeal [application] will not delay the collection of any fine [or other], penalty or restitution imposed by the decision. An appeal by or on behalf of a [respondent] Respondent will not be permitted unless the fines [or], penalties or restitution imposed [have] has been paid in full prior to or at the time of the filing of the appeal [application, or a waiver of such prior payment is granted]; laws, rules, or regulations provide for a waiver of prior payment of fines or penalties; the Tribunal grants a waiver of prior payment due to financial hardship; or the agency responsible for collecting payment of the fines or penalties imposed enters into a payment plan with the Respondent prior to or at the time of the

filing of the appeal.

(1) An application to the Tribunal for a waiver of prior payment due to financial hardship must be made before or at the time of the filing of the appeal [application] and must be supported by evidence of financial hardship. The Chief Administrative Law Judge or his or her designee has the sole discretion to grant or deny a waiver due to financial hardship. Application for a waiver does not extend the time to appeal.

(2) Notwithstanding paragraph (1), payment of restitution is not subject to waiver due to financial hardship. If a Hearing Officer has ordered payment of restitution, the Respondent must, prior to or at the time of the filing of the appeal, submit proof that the Respondent has deposited the amount of restitution with the agency responsible for collecting payment pending determination of the appeal.

[(f)] (e) Appeals Decision.

(1) [The] When an appeal is filed, the Appeals Unit within the Tribunal will determine whether the facts contained in the findings of the Hearing Officer are supported by a preponderance of the evidence in the record, and whether the determinations of the Hearing Officer, as well as the penalties imposed, are supported by law. Except as provided in sections 3-15, 5-04 and 5-05 of this Title, the Appeals Unit has the power to affirm, reverse, remand or modify the decision appealed from.

(2) Except as provided in sections 3-15, 5-04 and 5-05 of this Title, the Appeals Unit will promptly issue a written decision [affirming, reversing, remanding or modifying the decision appealed from]. Such decision is the final decision of the Tribunal, and judicial review of such decision may be sought pursuant to Article 78 of the CPLR. A copy of the decision will be delivered to the [petitioner] Petitioner and served on the [respondent] Respondent by mail, stating the grounds upon which the decision is based. Where appropriate, the decision will order the repayment to the [respondent] Respondent of any penalty that has been paid.

[(2) The decision of the Appeals Unit is the final determination of the Tribunal, except in the case of a violation arising under Article 13-E of the New York State Public Health Law, entitled "Regulation of Smoking in Certain Public Areas," in accordance with §3.12 of the New York City Health Code codified within Title 24 of the Rules of the City of New York.]

(3) For summonses returnable to the Tribunal as authorized by the Board pursuant to §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, any decision of the Appeals Unit is a recommended decision to the Board. The Board or a panel consisting of members thereof will review the recommended decision pursuant to §3-15 of this Title.

**Section 75. Section 6-20 of subchapter E of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

#### **§6-20 Defaults**

(a) A [respondent] Respondent who fails to appear or to make a request to reschedule as required by these rules will be deemed to have defaulted.



(b) Upon such default, without further notice to the [respondent] Respondent and without a hearing being held, all facts alleged in the [NOV] summons will be deemed admitted, the [respondent] Respondent will be found in violation[,] and the penalties authorized by applicable laws, rules and regulations will be applied.

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

(d) The Tribunal will notify the [respondent] Respondent of the issuance of a default decision by mailing a copy of the decision or by providing a copy to the [respondent] Respondent or the [respondent's] Respondent's representative who appears personally at the Tribunal and requests a copy.

(e) The [respondent] Respondent may make a motion in writing requesting that a default be vacated pursuant to §6-21 of this chapter.

**Section 76. Section 6-21 of subchapter E of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-21 Request for a New Hearing after a Failure to Appear (Motion to Vacate a Default)**

(a) Form of Motion. A motion to vacate a default is a request by a Respondent for a new hearing after the Respondent did not appear. The Respondent must make this motion by application to the Tribunal on a form approved by the Tribunal. The motion must be dated, contain a current mailing address for the Respondent; explain how and when the Respondent learned of the violation and be certified to under the penalties of perjury. If the motion is made by an attorney or other representative, the motion must explain the relationship between the Respondent and the person making the motion.

(b) A first [request] motion to vacate a default by a [respondent] Respondent [for a new hearing after a failure to appear (also known as a “motion to vacate a default”)] that is submitted within sixty (60) days of the mailing or hand delivery date of the default decision will be granted. A motion to vacate a default that is submitted by mail must be postmarked within sixty (60) days of the mailing or hand delivery date of the default decision.

[(b)] (c) A motion to vacate a default that is submitted after sixty (60) days of the date of the mailing or hand delivery date of the default decision must be filed within one (1) year of the date of the default decision and be accompanied by a statement setting forth a reasonable excuse for the Respondent's failure to appear and any documents to support the motion to vacate the default. The Hearing Officer will determine whether a new hearing will be granted.

[(c)] (d) 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 applicable

licensing agency;

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

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

Whether the summons was properly served pursuant to applicable law.

(2) Whether the Respondent was properly named, including but not limited to:

(i) Whether the Respondent was cited generally as “Owner” or “Agent” on all copies of the summons served on the Respondent; or

(ii) Whether the Respondent was an improper party when the summons was issued, such as:

(a) An individual who was deceased or legally incompetent on the hearing date upon which the Respondent did not appear; or

(b) For a premises-related violation, the Respondent was not the owner, agent, lessee, tenant occupant or person in charge of or in control of the place of occurrence on the date of the offense.

A decision to grant a motion to vacate a default is not a final decision on the issues of whether the Respondent was properly served or a proper party on the date of the offense.

(3) Whether circumstances that could not be reasonably foreseen prevented the Respondent from attending the hearing.

(4) Whether the Respondent had an emergency or condition requiring immediate medical attention.

(5) Whether the matter had been previously adjourned by the Respondent.

(6) Whether the Respondent attempted to attend the hearing with reasonable diligence.

(7) Whether the Respondent’s inability to attend the hearing was due to facts that were beyond the Respondent’s control.

(8) 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 applicable licensing agency.

(9) Whether the Respondent has previously failed to appear in relation to the same summons.

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

[(d) A denial of a motion to vacate a default is a final agency determination and is not subject to review or appeal at the Tribunal.]

(e) If a motion to vacate a default has been previously granted, and a new default decision has been issued, a motion to vacate the second default decision in relation to the same [NOV] summons will not be granted [except that in exceptional circumstances and in order to avoid injustice,]. Notwithstanding the foregoing, the Chief Administrative Law Judge or his or her designee will have the discretion, in exceptional circumstances and in order to avoid injustice, to grant a request for a new hearing.

(f) [In exceptional circumstances and in order to avoid injustice, the] Except as otherwise stated in §5-03 of the Title, the Chief Administrative Law Judge or his or her designee will have the discretion, in exceptional circumstances and in order to avoid injustice, to consider a [request for a new hearing] motion to vacate a default filed more than one (1) year from the date of the default decision.

(g) If a motion to vacate a default is granted, the Tribunal will send a notice to the Respondent at

the Respondent's address provided on the motion. If the Respondent is deceased or legally incompetent, a notice will be sent to Respondent's representative at the address provided by the representative on the motion. Notice will also be sent to the Petitioner upon request. If the Respondent is unable to appear on the hearing date scheduled after such motion is granted, the Respondent may request that the hearing be rescheduled one (1) final time.

(h) If a motion to vacate a default is granted and the [respondent] Respondent has already made a full or partial payment, no request of a refund will be considered until after the hearing is completed and a decision issued.

(i) A denial of a motion to vacate a default is the Tribunal's final determination and is not subject to review or appeal at the Tribunal. Judicial review of the denial may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

**Section 77. Section 6-23 of subchapter F of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:**

**§6-23 Registered Representatives**

[(a)] Requirements. A representative, other than a family member or an attorney admitted to practice in New York State, who represents two or more Respondents before the Tribunal within a calendar year must:

[(1)] (a) Be at least eighteen (18) years of age;

[(2)] (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. Failure to register with the Tribunal may result in the Tribunal declining registration in the future;

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

[(4)] (d) Not misrepresent his or her qualifications or service so as to mislead people into believing the representative is an attorney at law or a governmental employee 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;

[(5)] (e) Exercise due diligence in learning and observing Tribunal rules and preparing paperwork; and

[(6)] (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 subdivision and any other rules [in this chapter] of the Tribunal. A list of representatives who have been suspended or barred from appearing may be made public.

**Section 78. Section 6-24 of subchapter F of chapter 6 of title 48 of the Rules of the City of New York is renumbered as section 6-25 and amended, and a new section 6-24 is added, to read as follows:**

**§6-24 Pre-hearing Notification of Schedule for Attorneys and Registered Representatives.**

- (a) No attorney or registered representative may appear on fifteen (15) or more summonses on a given hearing date unless the attorney or registered representative emails or faxes in advance a written list of all scheduled cases to the Tribunal office in the borough where the cases are scheduled to be heard. This list must be sent no later than noon, two (2) business days before the scheduled hearing date.
- (b) Cases may be added to this list on the day of the hearing at the discretion of the Tribunal.

**[§6-24] §6-25 Misconduct**

- (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, action or gesture that a reasonable person would believe shows contempt or disrespect for the proceedings or that a reasonable person would believe to be intimidating;
  - (3) Willfully disregard the authority of the Hearing Officer or other Tribunal employee. This may include refusing to comply with the Hearing Officer's directions or behaving in a disorderly, delaying or obstructionist manner;
  - (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 given express authorization or 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] to the Tribunal which he or she knows, or reasonably should have known, to be false, fraudulent or misleading;
  - (10) Induce or encourage anyone [in a proceeding before a Hearing Officer] to make a false statement to the Tribunal;
  - (11) Solicit clients, or cause the solicitation of client 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 Hearing Officer. 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, such application must be addressed to [the discretion of] the Hearing Officer, who may deny the application or grant it in full, in part, or upon such conditions as the Hearing Officer 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

(1) 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 or in an emergency.

(2) 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 decision on motion.

(c) Penalties for Misconduct

(1) 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 or his or her designee that the basis for the suspension no longer exists.

(2) However, the Chief Administrative Law Judge or his or her designee 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] powers of a Hearing Officer as set out in §6-13 of this chapter.

(d) Discipline on Other Grounds

(1) [The Chief Administrative Law Judge may, in addition to] Notwithstanding the provisions of subdivision (c) of this section, the Chief Administrative Law Judge may summarily 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.

(2) Any action pursuant to this subdivision will be on notice to the representative [and]. After the summary suspension or bar, the representative will be given an opportunity to be heard in a proceeding prescribed by the Chief Administrative Law Judge or his or her designee. Factors to be considered in determining whether a representative lacks honesty and integrity include, but [need not be] are not limited to, considering whether the representative has made false, misleading or inappropriate statements to parties or Tribunal staff.

(e) Judicial Review. 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] determination. Judicial review of the decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

**Section 79. Subchapter F of chapter 6 of title 48 of the Rules of the City of New York is amended to add three new sections after section 6-25 to read as follows:**

**§6-26 Request for a New Hearing Due to Unauthorized Representation.**

Notwithstanding any other provision of these rules, a party may, within three (3) years after a decision pursuant to a hearing has become final, move to vacate the decision on the grounds that the person who appeared on the party's behalf at the hearing was not authorized to do so. Upon a determination that the person who appeared was not authorized to represent the party, the Tribunal may vacate the decision and schedule a new hearing. In exceptional circumstances and in order to avoid injustice, the Tribunal will have the discretion to grant a motion to vacate a decision after the three (3) year period has lapsed.

### **§ 6-27 Defense Based on Sovereign or Diplomatic Immunity**

(a) A Respondent may present a defense based on sovereign or diplomatic immunity:

(1) in a written submission received no later than seven (7) business days before the hearing date stated on the summons, in which the Respondent may admit or deny the violation charged and the Tribunal will assign the matter to a Hearing Officer; or

(2) at a hearing orally or in writing, but only if an attorney or authorized representative of the Petitioner is present at the hearing or if the Respondent at that time consents to an adjournment of the hearing; or

(3) in a response submitted in any case in which adjudication by remote method is allowed pursuant to § 6-10.

(b) Upon presentation of a defense based on sovereign or diplomatic immunity, the Hearing Officer must issue an order:

(1) adjourning the hearing for no less than thirty (30) and no more than sixty (60) days;

(2) setting forth in detail the violations alleged in the summons; and

(3) giving notice to the City entity charged with serving as the official liaison with foreign governments ("liaison") that the Respondent has presented a defense based on sovereign or diplomatic immunity, in which event the Tribunal will promptly serve such order to such liaison.

(c) After an adjournment is granted under subdivision (b), either party may request to extend the time period of the adjournment. The Hearing Officer must grant such request if it is accompanied by a written submission from the liaison indicating more time is necessary for the parties to resolve the matter.

(d) (1) At a hearing held following an adjournment granted pursuant to subdivision (b), the Hearing Officer must issue a determination whether or not the Respondent is entitled to sovereign or diplomatic immunity.

(2) If the Hearing Officer determines that the Respondent is entitled to sovereign or diplomatic immunity, he or she must dismiss the summons without a determination of the Respondent's liability.

(3) If the Hearing Officer rejects the defense of sovereign or diplomatic immunity, a hearing on the violation must be conducted pursuant to the rules governing hearings in this Chapter.

### **§ 6-28 Application to File a Post-Hearing Agreement.**

A written application to file a post-hearing agreement must be made jointly and with the consent of all the parties to a matter. Such applications must be made to the designated Deputy Commissioner of OATH, or his or her designee as approved by the Chief Administrative Law Judge. The post-hearing agreement will not amend the Hearing Officer's final written decision and when filed, will become part of the record.