

**RULES OF PRACTICE AND PROCEDURE OF THE  
NEW YORK CITY TAX APPEALS TRIBUNAL**

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**§1-01 General.** (a) *Scope.* These rules shall govern all proceedings before the tribunal.

(b) *Intent.* These rules of practice and procedure are intended to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with the New York City Department of Finance. In these rules, the Tax Appeals Tribunal has set forth rules of practice and procedure to afford the public both due process of law and the legal tools necessary to facilitate the rapid resolution of controversies while at the same time avoiding undue formality and complexity.

(c) *Resolution of controversies.* The provisions of these rules are not to be so construed as to preclude resolution of a controversy other than by decision of the tribunal commissioners or determination of an administrative law judge or presiding officer. The petitioner or the petitioner's representative, if any, and the commissioner of finance are encouraged to confer at all times prior to the decision or determination in an effort to resolve the controversy.

(d) *Construction.* These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every controversy and shall not be construed to limit or repeal rights afforded or requirements imposed by statute or otherwise.

**§1-02 Definitions.** Unless the context requires otherwise, the definitions contained in this Rule apply.

**Administrative Code.** The term "Administrative Code" means the Administrative Code of the City of New York.

**Administrative law judge.** The term "administrative law judge" means any person duly designated and empowered by the tribunal to conduct any hearing or motion procedure authorized to be held within the tribunal.

**Bureau of conciliation.** The term "bureau of conciliation" means that bureau within the New York City Department of Finance that is responsible for providing conciliation conferences as a means to resolve cases.

**Business Day.** The term "business day" means any day other than a Saturday, Sunday, or a legal holiday of the City of New York.

**Commissioner of Finance.** The term "Commissioner of Finance" means the Commissioner of Finance of the City of New York.

**CPLR.** The abbreviation "CPLR" means the New York State Civil Practice Law and Rules.

**Decision.** The term "decision" means the report that concludes the review by the tribunal commissioners of an administrative law judge's determination.

**Department.** The term "department" means the New York City Department of Finance.

**Determination.** The term "determination" means the report that concludes a hearing before an administrative law judge or presiding officer, or which grants or denies a motion to dismiss the petition or for summary determination.

**Good cause.** The term "good cause" means any cause that would appear to an ordinarily prudent person as reasonable under the circumstances.

**Party.** The term "party" means either the petitioner, if appearing pro se, or the petitioner's representative (as defined in this section) or the commissioner of finance or the representative of the commissioner of finance.

**Domestic Partner.** The term "domestic partner" means a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order

123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.)

**Person.** The term "person" includes, but is not limited to, an individual, partnership, society, association, joint stock company, corporation, receiver, executor or administrator, trustee, assignee, referee, and any other individual or entity acting in a fiduciary or representative capacity, and any combination of the foregoing.

**Petition; petitioner.** The term "petition" includes an "application," "petition," "demand for hearing" or variation of such terms as used in the applicable statutory sections of the New York City Charter and the Administrative Code of the City of New York. The term "petitioner" means the person (as defined in this section) who files a petition (see section 1-04 of these rules).

**Presiding officer.** The term "presiding officer" means any person duly designated and empowered by the tribunal to conduct a small claims hearing pursuant to section 1-11 of these rules. A presiding officer shall be an individual having such training and experience in the area of tax law as to qualify him or her to render determinations on the basis of written submissions of law and evidentiary hearings.

**Proceeding.** The term "proceeding" means all practice pursuant to these rules, commencing with the filing of a petition in response to a statutory notice (as defined in this section) and concluding with a determination by an administrative law judge or presiding officer or, where exception is taken to an administrative law judge's determination, with a decision by the tribunal commissioners.

**Statutory notice.** The term "statutory notice" means any written notice of the commissioner of finance that gives a person the right to a hearing in the tribunal, including, but not limited to, a notice of a tax deficiency, determination of tax due, assessment, or denial of a refund, credit or reimbursement application, or of cancellation, revocation, suspension or denial of an application for a license, permit or registration. For purposes of this definition, if the commissioner of finance fails to act with respect to a refund application before the expiration of the time period after which the taxpayer may file a petition for refund with the tribunal pursuant to section 11-529(c) or section 11-680(3) of the Administrative Code, such failure shall be deemed to be a notice of denial of a refund.

**Tribunal.** The term "tribunal" means the New York City Tax Appeals Tribunal, which includes the tribunal commissioners, the administrative law judge unit, and the small claims unit.

**Tribunal commissioners.** The term "tribunal commissioners" means the commissioners appointed pursuant to section 168 of the New York City Charter to review en banc the determinations of administrative law judges and to perform such other duties as are required by the New York City Charter, the Administrative Code, and these rules.

**§1-03 Representation.** (a) *Representation of petitioner in proceedings before the tribunal.*

(1) *Personal appearance.* Appearances in proceedings conducted before the tribunal may be by the petitioner pro se. A partnership may act through one of its general partners without filing any power of attorney. A corporation may act through one of its officers or employees. Where the corporation acts through an employee, a power of attorney executed by an officer of the corporation must be filed.

(2) *Representation by others.* Any of the following may act as the representative of a petitioner at any stage of the proceedings, if authorized by a power of attorney signed by the petitioner and filed with the tribunal before or concurrently with such representation:

(i) an attorney-at-law licensed to practice in any jurisdiction of the United States;

(ii) a certified public accountant duly qualified to practice in any jurisdiction of the United States;

(iii) a public accountant duly qualified to practice in any jurisdiction of the United States; and

(iv) an enrolled agent allowed to practice before the Internal Revenue Service.

(3) *Minors and individuals under disability.* If the petitioner is under 18 years of age, the adult spouse, parent, or guardian of such petitioner or the person who prepared the petitioner's return may file a petition and appear on the petitioner's behalf without filing any power of attorney. If the petitioner is mentally or physically incapable of filing a petition or appearing on his or her own behalf, anyone having a proper interest in doing so may file a petition or appear on behalf of such petitioner without filing any power of attorney.

(b) *Representation of petitioner in proceedings in the small claims unit before presiding officers.* In proceedings in the small

claims unit before presiding officers, the representatives authorized in subdivision (a) of this section or the petitioner's spouse, domestic partner, child or parent may appear and represent the petitioner. Another individual may appear and represent a petitioner for a particular matter upon the approval of the tribunal.

(c) *Other representation forbidden.* No persons other than those described in the foregoing subdivisions of this section may represent a petitioner in filing a petition or appearing on the petitioner's behalf.

**§1-04 Pleadings.** (a) *Petition.* All proceedings in the tribunal must be commenced by the filing of a petition with the tribunal and the service of a copy thereof upon the commissioner of finance. A form of petition is available from the tribunal upon written request.

(1) *Form of petition.* The petition shall contain or identify:

(i) the name, address, and telephone number of the petitioner;

(ii) the name, address, and telephone number of the petitioner's representative, if any;

(iii) an identifying number or numbers as prescribed by the commissioner of finance in the form of social security numbers, employer identification numbers, or other numeric designations suitable for proper identification of the petitioner, which numbers shall be used by the tribunal for administrative purposes only;

(iv) the date of the statutory notice and the tax or annual vault charge involved, identifying the relevant sections, chapter, and title of the Administrative Code;

(v) if applicable, the years or periods involved, or the date of the transaction, and the amount in controversy, separately stating the principal, interest, and penalty, if any;

(vi) separately numbered paragraphs stating, in clear and concise terms, each and every error of fact or law which the petitioner alleges has been made by the commissioner of finance (e.g., in issuing a notice of determination or in denying a refund application), together with a statement of the facts or law upon which the petitioner relies to establish each said error;

(vii) the relief sought by the petitioner;

(viii) where the amount in controversy is \$10,000 or less, exclusive of interest and penalties, whether the petitioner wishes that the proceeding be conducted as a small claims proceeding;

(ix) in the case of a petitioner entitled to an expedited proceeding, whether the petitioner waives such expedited proceeding;

(x) the signature of the petitioner or the petitioner's representative, if any, beneath a statement that the petition is made with knowledge that a willfully false representation is a misdemeanor punishable under section 210.45 of the New York State Penal Law;

(xi) a copy of the statutory notice being protested;  
and

(xii) a power of attorney, if any.

(2) *Filing and service of petition.* The petition and 2 conformed copies thereof (together with an affidavit of service or other proof of service of a copy of the petition on the commissioner of finance) shall be filed with the tribunal and a copy thereof served upon the commissioner of finance within the time limitations prescribed by the applicable statutory sections, including, but not limited to, section 170 of the New York City Charter and sections 11-529(c) and 11-680(3) of the Administrative Code, and there can be no extension of those time limitations. If filing is made by mail, it shall be made by certified or registered mail. In no event shall the tribunal extend the time limitation for filing and serving a petition.

Where the chief administrative law judge determines that the petition is in proper form, he or she shall send to the petitioner a written, dated acknowledgment of receipt of the petition and immediately forward the petition and a copy of the acknowledgment to the commissioner of finance for preparation of the answer. The time within which the commissioner of finance must answer the petition shall start to run from the date the chief administrative law judge acknowledges receipt of a petition in proper form.

(3) *Corrected petitions.* (i) Where the petition filed by a petitioner is not in the form required by this section, the chief administrative law judge shall promptly return it to the petitioner together with a statement indicating the requirements with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition with the chief administrative law judge. Where the chief administrative law judge determines that the corrected petition is in proper form, the chief administrative law judge shall then acknowledge receipt of the corrected petition and forward the

acknowledgment and the corrected petition to the commissioner of finance pursuant to paragraph (2) of this subdivision. For purposes of the time limitations for filing and service of a petition, a corrected petition is deemed to have been filed and served at the time the original petition was filed and served.

(ii) Where the petitioner fails to file a corrected petition within the time prescribed in subparagraph (i) of this paragraph, the chief administrative law judge may issue a determination dismissing the petition.

(4) *Reference to conciliation.* Where a conciliation conference has not been conducted, the tribunal may, at the request of the petitioner and subject to the consent of the commissioner of finance, suspend action on the petition and refer the matter to the bureau of conciliation.

(b) *Answer.* (1) *Filing and service of answer.* The commissioner of finance shall file an answer and 2 conformed copies with the tribunal and serve a copy thereof on the petitioner, if appearing pro se, or the petitioner's representative, within 60 days of the date the chief administrative law judge acknowledges receipt of a petition in proper form, except that, where a petition for a hearing before the department was filed prior to October 1, 1992, for which the commissioner of finance did not issue a final decision or determination, the commissioner of finance shall not be required to file an answer unless directed to do so by the chief administrative law judge.

(2) The answer as filed shall contain numbered paragraphs corresponding to the petition and shall fully and completely advise the petitioner and the tribunal of the defense. It shall contain:

(i) a specific admission or denial of each material allegation of fact contained in the petition;

(ii) a statement of any additional facts to be proven by the commissioner of finance either as a defense, or for affirmative relief, or to sustain any issue raised in the petition upon which the commissioner of finance has the burden of proof; and

(iii) the relief sought by the commissioner of finance.

(3) *Allegations deemed admitted.* Material allegations of fact set forth in the petition that are not expressly admitted or denied in the answer shall be deemed to be admitted.

(4) *Failure of commissioner of finance to answer.* Where the commissioner of finance fails to answer within the prescribed time, the petitioner may make a motion, on notice to the commissioner of finance, for a determination of default. The administrative law

judge designated by the chief administrative law judge to review the motion shall either grant the motion and issue a default determination, or grant such other relief as is warranted.

(c) *Reply.* The petitioner may file a reply and 2 conformed copies with the chief administrative law judge, and serve such reply on the attorney of record for the commissioner of finance, in response to the answer, within 20 days of service of the answer.

When a reply has been filed, or after expiration of the 20 days, the controversy shall be deemed to be at issue and will be scheduled for a pre-hearing conference as provided in subdivision (d) of this section.

(d) *Pre-hearing conference.* (1) A pre-hearing conference shall be scheduled before an administrative law judge not less than 30 days before the first hearing date. The parties shall be given at least 30 days' notice of the conference. At the conference, settlement will be encouraged. If they are unable to settle the case at the conference, the parties may:

(i) attempt to narrow disagreements as to facts or issues;

(ii) report on the witnesses each party expects to call at the hearing;

(iii) report on the documents each party expects to submit into evidence;

(iv) estimate the amount of time each party expects will be required for the presentation of its direct case;

(v) request documents and/or witnesses; and

(vi) indicate any other matter(s) relevant to the hearing.

A party's case shall not be limited to the estimated time reported; a party's right to call witnesses on such party's behalf or submit documents shall not be limited to the witnesses and/or documents reported; and this conference shall not preclude any additional requests for witnesses and/or documents during the course of the hearing. Notwithstanding the foregoing, the administrative law judge may set a date certain (which date shall be not less than 30 days after the conference) at which time the parties' lists of witnesses and exhibits shall be regarded as final, subject to an application for leave to amend, for good cause shown.

(2) At the pre-hearing conference, the administrative law judge may:



(i) strike either party's pleading for such party's failure to appear at the conference; and

(ii) take such other action as is necessary to expedite the case, including, but not limited to, the scheduling of the petition for a hearing.

(e) *Amended pleadings.* Either party may amend a pleading, including the assertion of an additional deficiency by the commissioner of finance under the provisions of the Administrative Code, once without leave, within 20 days of its service, or at any time before the period for responding to it expires, or within 20 days of service of a pleading responding to it. After such time, a pleading may be amended only by consent of the chief administrative law judge or the administrative law judge or presiding officer assigned to the case. Leave shall be freely given upon such terms as may be just, including the granting of continuances. The administrative law judge or presiding officer may permit pleadings to be amended before the hearing is concluded to conform them to the evidence, upon such terms as may be just, including the granting of continuances. Except as may otherwise be ordered by the chief administrative law judge or the administrative law judge or presiding officer assigned to the case, there shall be an answer or reply to an amended pleading if an answer or reply to the pleading being amended is required. Service of such answer or reply shall be made within 20 days of service of the amended pleading to which it responds.

(f) *Stay of collection or payment of refund.* The filing of a petition with the tribunal shall stay (1) the collection of any taxes or annual vault charges and (2) the payment of any refund of taxes or annual vault charges, together with interest and penalties, which are the subject of the petition; provided, however, that, if the commissioner of finance finds that the assessment or collection of a tax, charge, penalty or interest will be jeopardized by delay, such assessment or collection shall not be stayed. The filing of a petition does not stay the accrual of interest.

**§1-05 Motion practice.**

(a) *General.* To enable the parties to resolve the controversy expeditiously, these rules permit a motion to the tribunal for an order that is appropriate in a proceeding governed by the CPLR, but do not permit a motion for costs or disbursements or motions related to discovery procedures as provided for in the CPLR. For good cause shown, the tribunal commissioners or an administrative law judge designated by the chief administrative law judge may order a form of discovery not otherwise provided for under these rules.

(1) All motions must be made, on notice to the adverse party, within 90 days of the service of a pleading by the adverse party unless a different time period is otherwise prescribed for a particular motion by these rules. The motion shall be filed with the chief administrative law judge and shall be made returnable at the tribunal. The return date on which the motion will be considered by an administrative law judge designated by the chief administrative law judge must be at least 30 days after service of notice of the motion. The adverse party may file an answering affidavit with the chief administrative law judge and must serve a copy on the moving party. The answering affidavit must be filed and served no later than 10 days prior to the return date. Papers may be filed or served as provided in section 1-17 of these rules.

Any reply affidavit shall be filed and served at least one day prior to the return date.

(2) All motions will be decided on the moving papers and answers submitted without oral argument, unless specific application is made for oral argument by a party and the administrative law judge grants that application.

(3) A notice of motion should be typewritten and must specify the supporting papers (e.g., affidavits, admissions, bills of particulars) upon which the motion is based, the return date of the motion and, in separate numbered paragraphs, the relief requested and the grounds for such relief. Any brief shall be filed with the notice of motion and a copy served on the adverse party. Any answering brief must be filed and served no later than 10 days before the return date. Any reply brief must be filed and served at least one day prior to the return date.

(4) The filing of a motion does not constitute cause for postponement of a scheduled pre-hearing conference or hearing, unless such continuance is specifically ordered by the administrative law judge following receipt of such motion.

(5) An order by an administrative law judge on any motion that does not finally determine all matters and issues contained in the petition, for purposes of review by the tribunal commissioners, shall not be deemed final and conclusive until the administrative law judge shall have rendered a determination on the remaining matters and issues. An order by the tribunal commissioners that does not finally decide all matters and issues contained in the petition, for purposes of review under article 78 of the CPLR, shall not be deemed final and conclusive until the tribunal commissioners shall have rendered a decision on the remaining matters and issues.

(b) *Motion to dismiss.* (1) The commissioner of finance may move to dismiss the petition on the ground that:

- (i) a defense is founded upon documentary evidence;
- (ii) the tribunal lacks jurisdiction over the subject matter of the petition;
- (iii) the petitioner lacks legal capacity to petition;
- (iv) there is an action pending between the same parties on the same controversy in a court of any State or the United States;
- (v) the petition may not be maintained because of discharge in bankruptcy, infancy or other disability of the petitioner, payment, release, or statute of limitations;
- (vi) the petition fails to state a cause for relief;
- (vii) the petition has not been timely filed;
- (viii) the tribunal should not proceed in the absence of a person who should be a party; or
- (ix) the tribunal lacks jurisdiction over the taxpayer.

In no event shall a failure by the commissioner of finance to make such a motion be deemed a waiver of any defense. Only one such motion shall be made. The administrative law judge need not issue a determination on the grounds set forth in this paragraph, but may instead make such order as justice requires.

(2) On a motion to dismiss, the administrative law judge may:

- (i) order an immediate hearing to determine facts relating to the grounds for dismissal;
- (ii) treat the motion as a motion for summary determination and, on notice to the parties, proceed pursuant to subdivision (d) of this section; or
- (iii) should it appear that facts essential to support opposition to the motion may exist, but cannot then be stated, order a continuance to permit further evidence to be obtained or make such other order as may be just.

(c) *Dismissal by the administrative law judge or the tribunal commissioners on their own motion.* The administrative law judge or the tribunal commissioners may, on their own motion and on notice to the parties, issue a determination or decision dismissing a petition on the ground that:

(1) the tribunal lacks jurisdiction over the subject matter of the petition;

(2) the tribunal lacks jurisdiction over the taxpayer; or

(3) the petition has not been timely filed or served.

A determination of an administrative law judge denying a motion to dismiss is not subject to review by the tribunal commissioners.

(d) *Motion for summary determination.* (1) After issue has been joined, any party may move for summary determination. Such motion shall be supported by an affidavit, by a copy of the pleadings and by any other available proof. The affidavit, made by a person having knowledge of the facts, shall recite all the material facts and show that there is no material issue of fact to be tried and that the facts mandate a determination in the moving party's favor. The motion shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows sufficient basis to require a hearing of any issue of fact. Where it appears that a party, other than the moving party, is entitled to a summary determination, the administrative law judge may grant such determination without the necessity of a cross-motion.

(2) Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist, but cannot then be stated, the administrative law judge may deny the motion or may order a continuance to permit affidavits or admissions to be obtained and may make such other order as may be just.

(3) A determination of an administrative law judge denying the motion for summary determination is not subject to review by the tribunal commissioners.

(e) *Request to withdraw or modify a subpoena.* (1) Upon issuance of a subpoena pursuant to section 1-08 of these rules, any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, request that the subpoena be withdrawn or modified by filing such request with the administrative law judge or presiding officer assigned to the case or, if no such assignment has been made, to the chief administrative law judge. Such request shall be upon notice to the other party and returnable no later than 1 day prior to the subpoena's return date and shall otherwise conform to the procedural requirements of this section for motions.

(2) *Appeal to tribunal commissioners.* Notwithstanding the provisions of paragraph (5) of subdivision (a) of this section, a party or any person to whom a subpoena is directed may appeal an order granting or denying the request to withdraw or modify the subpoena by filing an exception thereto with the tribunal commissioners.

(f) *Motion to recuse.*

(1) *Motion to recuse administrative law judge or presiding officer.* (i) Either party may move before the chief administrative law judge to recuse the administrative law judge or presiding officer assigned to its case on the basis that the administrative law judge or presiding officer has a personal bias with respect to the case or that the administrative law judge or presiding officer is otherwise disqualified to hear and decide the case.

(ii) The motion to recuse the administrative law judge or presiding officer must be accompanied by an affidavit setting forth the facts upon which the assertion of bias or other disqualification is based.

(iii) The motion to recuse must be made at least 15 days prior to the scheduled hearing date, shall be on notice to the adverse party, and, where not inconsistent with the procedures prescribed in this subdivision (f), shall comply with all procedural provisions of this section.

(iv) The adverse party may respond to the motion to recuse by serving its response on the chief administrative law judge and the moving party not later than five days from the date the motion to recuse was served on such adverse party.

(v) In response to the motion to recuse, the chief administrative law judge shall assign a different administrative law judge or presiding officer to the case or deny the motion by written order. Such order shall be issued not later than five days prior to the scheduled hearing date. A party may not file an exception to such an order until the administrative law judge shall render a determination on the remaining matters and issues.

(2) *Motion to recuse a tribunal commissioner.* (i) On exception, either party may move to recuse a tribunal commissioner on the basis that the commissioner has a personal bias with respect to the case or that the commissioner is otherwise disqualified to hear and decide the case.

(ii) The motion to recuse must be accompanied by an affidavit setting forth the facts upon which the assertion of bias or other disqualification is based.

(iii) The motion must be made with the exception where the movant is the party taking the exception or with the brief in opposition to the exception where the movant is not the party taking the exception.

(iv) The motion to recuse shall be on notice to the adverse party and, where not inconsistent with the procedures prescribed in this subdivision (f), shall comply with all procedural provisions of this section.

(v) The adverse party may respond to the motion to recuse by serving its response on the tribunal and the moving party not later than five days from the date the motion to recuse was served on such adverse party.

(vi) In response to the motion, the tribunal commissioners, without the commissioner who is the subject of the motion, shall either deny the motion or shall decide the exception. The tribunal commissioners shall not issue a separate decision on the motion.

(g) *Motion to consolidate or sever.* (1) On the motion of either party, cases may be consolidated and joined for hearing where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and efficiency may require, provided there is no reasonable objection interposed.

(2) On the motion of either party, hearings may be severed and held separately where the taxes in question are imposed under different tax laws, where there are different tax periods, where there are different taxpayers, or where the furtherance of justice and efficiency so require.

**§1-06 Bills of particulars.** (a) *Notice of demand.* After all pleadings have been served, a party may wish the adverse party to supply further details of the allegations in a pleading, to prevent surprise at the hearing and to limit the scope of the proof. For this purpose, a party may serve written notice on the adverse party demanding a bill of particulars within 60 days of the date on which the last pleading was served.

(b) *Demand for a bill.* The written demand for a bill of particulars must state the items concerning which such particulars are demanded. If the party upon whom such demand is served is unwilling to give such particulars, such party may, in writing to the chief administrative law judge, make a motion to vacate or modify such demand within 60 days of receipt thereof. The motion to vacate or modify should be supported by papers which specify clearly the objections and the grounds for objection. If no such motion is made, the bill of particulars demanded shall be served

within 60 days of the demand, unless the administrative law judge designated by the tribunal shall direct otherwise.

(c) *Penalty for default.* In the event a party fails to furnish a bill of particulars or furnishes a defective bill of particulars, the administrative law judge designated by the tribunal may, upon motion by the adverse party, preclude the party from giving evidence at the hearing of items of which particulars have not been delivered, or the administrative law judge may direct the service of a further bill. In the absence of special circumstances, a motion for such relief shall be made within 30 days of the receipt of the bill claimed to be insufficient, or, in the case of a failure to furnish a bill of particulars, within 30 days of the end of the period within which the bill was required to be served. A preclusion order may provide that it shall be effective unless a proper bill is served within a specified time.

**§1-07            Requests for admissions; production; depositions.**

(a) *Request for admissions.* At any time after service of the answer and not later than 20 days before the hearing, a party may serve upon any other party a written request for admission of the following:

(1) the genuineness of any papers or documents;

(2) the correctness or fairness of representation of any photographs described in and served with the request; or

(3) the truth of any matters of fact set forth in the request. The request shall include a statement that it pertains to matters as to which the party making such request reasonably believes there can be no substantial dispute at the hearing. Copies of any relevant papers, documents or photographs shall be served with the request unless copies have already been furnished.

(b) *Response to request for admissions.* The party to whom the request to admit is directed may choose to respond by serving a statement expressly admitting the matters in question. However, such party is deemed to admit each of the matters as to which an admission was properly requested unless, within 20 days of service of the request, or within such further time as the chief administrative law judge may allow, such party to whom the request is directed serves upon the party requesting the admission a verified statement:

(1) denying specifically the matters as to which an admission is requested;

(2) setting forth in detail the reasons that those matters cannot be truthfully admitted or denied; or

(3) setting forth a claim in detail that the matters as to which an admission is requested cannot be fairly admitted without some material qualification or explanation, that the matters constitute a trade secret or are privileged, or that such party would be disqualified from testifying concerning them. Where the claim is that the matters cannot be fairly admitted without some material qualification or explanation, the party must admit the matters with such qualification or explanation.

(c) *Effect of admissions.* Any admission made, or deemed to be made, by a party pursuant to a request made under this section shall be binding and have effect only in the pending proceeding and not for any other purpose, and it shall not be used against the party making the admission in any other proceeding in the tribunal. The administrative law judge designated by the tribunal may, at any time, allow a party to amend or withdraw any admission on such terms as may be just. Any admission shall be subject to all pertinent objections to admissibility that may be interposed at a hearing.

(d) *Requests to produce and motions to compel production.*

(1) Written requests for production of documents and witnesses and for inspection of real evidence to be introduced at the hearing may be directed by any party to any other party.

(2) The party upon whom the request is served shall, within 30 days of service of the request, produce each item requested or indicate the availability of the witnesses except for those items for which a written objection is served on the requestor. Upon application to the administrative law judge, the party upon whom the request is served shall be granted additional time to respond to such request upon good cause shown.

(3) To obtain a ruling on an objection by the responding party, on a failure to respond or on a failure to produce requested information, the requesting party shall file an appropriate motion with the administrative law judge and shall annex thereto its request, with proof of service on the other party, together with the response and objections, if any.

(4) The administrative law judge may deny the motion to produce, order compliance with the production request, or take other appropriate action. Failure to comply with an order compelling production may result in imposition of appropriate sanctions upon the noncomplying party or attorney, such as preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the petition, or determination of default.

(5) Production pursuant to this subdivision shall be completed no later than 15 days prior to the date of the hearing, unless otherwise authorized by the administrative law judge.



(e) *Depositions to perpetuate testimony.* A party to a case pending in the tribunal, who wishes to perpetuate his or her own testimony or that of any other person or to preserve any document or thing, shall file an application pursuant to this section for an order of an administrative law judge authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document or thing involved will not be available at the hearing of the case, and shall relate only to testimony or a document or thing which is not privileged and is material to a matter in controversy.

(1) *Content of application.* The application to take a deposition shall be signed by the party seeking the deposition or its representative and shall show the following:

(i) the names and addresses of the persons to be examined;

(ii) the reasons for deposing those persons rather than waiting to call them as witnesses at the hearing;

(iii) the substance of the testimony which the party expects to elicit from each of those persons;

(iv) a statement showing how the proposed testimony or document or thing is material to a matter in controversy;

(v) a statement describing any books, papers, documents, or tangible things to be produced at the deposition by the persons to be examined;

(vi) the time and place proposed for the deposition;

(vii) the officer before whom the deposition is to be taken;

(viii) the date on which the petition was filed with the tribunal;

(ix) any provision desired with respect to payment of costs, charges, or expenses relating to the deposition (see subdivision (6) of this section); and,

(x) if the applicant proposes to videotape the deposition, the application shall so state and shall show the names and addresses of the videotape operator and his or her employer.

(2) *Filing and disposition of application.* The application may be filed with the tribunal at any time after the petition is filed. The application shall be made to the administrative law judge assigned to the case or, if no administrative law judge has

yet been assigned, to the chief administrative law judge. The applicant shall serve a copy of the application on each of the other parties to the case, as well as on such other persons as are to be examined pursuant to the application, and shall file with the application a certificate showing such service. Such other parties or persons shall file their objections or other response, with a certificate of service thereof on the other parties and such other persons, within 15 days of such service of the application. A hearing on the application will be held only if directed by the administrative law judge. Unless the administrative law judge determines otherwise for good cause shown, an application to take a deposition shall not be regarded as sufficient ground for granting an adjournment from a date of hearing theretofore set. If the administrative law judge approves the taking of a deposition, he will issue an order which will include in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken. If the deposition is to be videotaped, the administrative law judge's order will so state.

(3) *Use of stipulation.* The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application as hereinabove provided. Such a stipulation shall be filed with the chief administrative law judge in duplicate and shall contain the same information as is required in subparagraphs (i), (vi), (vii), (ix), and (x) of paragraph (1) of this subdivision, but shall not require the approval or an order of the administrative law judge unless the effect would be to delay the hearing of the case. A deposition taken pursuant to a stipulation shall in all respects conform to the requirements of this section.

(4) *Person before whom deposition taken.* Depositions shall be taken before an officer, other than a party, or the attorney or employee of a party, authorized to administer oaths by the laws of the place where the examination is held.

(5) *Arrangements.* All arrangements necessary for the taking of the deposition shall be made by the party filing the application or, in the case of a stipulation, by such other persons as may be agreed upon by the parties.

(6) *Expenses.* The party taking the deposition shall pay all the costs, charges, or expenses of the witness whose deposition is taken by him or her, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition shall pay for the original of the deposition and also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties, provision may

be made for any costs, charges or expenses relating to the deposition. Except under extraordinary circumstances, an administrative law judge shall not order a deposition to be held outside of the City of New York unless the expenses of the commissioner of finance are paid by the party requesting the deposition.

(7) *Use of deposition.* At the hearing or in any other proceeding in the case, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) The deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(ii) The deposition of a party may be used by an adverse party for any purpose.

(iii) The deposition may be used for any purpose if the parties have stipulated to the use of a deposition or if the administrative law judge finds: (A) that the witness is dead; or (B) that the witness is at such distance from the place of trial that it is not practicable for him to attend, unless it appears that the absence of the witness was procured by the party seeking to use the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been so unable to obtain attendance of the witness at the hearing as to make it desirable, in the interests of justice, to allow the deposition to be used; or (E) that such exceptional circumstances exist, in regard to the absence of the witness at the hearing, as to make it desirable, in the interests of justice, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, an adverse party may require him or her to introduce any other part which in fairness ought to be considered with the evidence the party introduced, and any party may introduce any other parts.

(8) *Depositions on written questions.*

(i) A deposition may be taken on written questions when the parties so stipulate or when the administrative law judge so orders because the testimony is to be taken outside New York State.

(ii) The party seeking the deposition shall serve the written questions upon each party. Within 10 days thereafter, a party so served may serve written cross questions upon each party. Within five days thereafter, the original party may serve written redirect questions upon each party. Within three days after being served with written redirect questions, a party may serve written recross questions upon each party.

(iii) Copies of all written questions served shall be delivered by the party seeking the deposition to the office designated in the administrative law judge's order.

(f) *Disclosure of evidence prior to a license revocation hearing.* When the commissioner of finance seeks the revocation of a license or permit, as such terms are used in section 1041 of the City Administrative Procedure Act, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and the identification of witnesses. The provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege, the secrecy provisions of the Administrative Code, or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

**§1-08 Subpoena.** (1) Upon the request of any party, the administrative law judge or presiding officer assigned to the case will issue subpoenas to require the attendance of witnesses at a hearing or to require the production of documentary evidence; provided however, that, where it appears to the judge or officer requested to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, such judge or officer may, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the judge or officer requested to issue the subpoena shall after consideration of all the circumstances determine that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, such judge or officer may refuse to issue the subpoena, or issue it only upon such conditions as such judge or officer deems appropriate. In the event that an administrative law judge or presiding officer has not been assigned to the case or the administrative law judge or presiding officer assigned is unavailable, the request to issue subpoenas may be made to the chief administrative law judge. Subpoenas will be delivered to the person requesting them and service thereof will be said person's responsibility. However, an attorney representing any

party in a proceeding may issue a subpoena pursuant to section 2302 of the CPLR.

(2) If the request for a subpoena is granted pursuant to paragraph (1) of this subdivision, a request to withdraw or modify the subpoena shall be made as described in subdivision (e) of section 1-05 of these rules before a motion to quash, fix conditions, or modify may be made pursuant to section 2304 of the CPLR.

**§1-09 Stipulations.** (a) *General.* (1) (i) The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all undisputed facts not privileged that are relevant to the pending controversy. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence that fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by the adverse party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under these rules without regard to where the burden of proof may lie with respect to the controversies involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(ii) After a conference has been held between the parties to facilitate agreement on the facts, either party may draw a proposed stipulation of facts. The party who drafts a stipulation shall submit it to the other party, who shall review the proposed stipulation and shall indicate agreement or disagreement with every proposed fact to be stipulated. Where such other party disagrees, the position of such other party as to the fact in question should be stated. Failure to complete a stipulation is not a basis for adjournment of the hearing, but the parties shall use their best efforts to conclude the drafting of the stipulation in advance of the scheduled hearing.

(2) That a fact may have been obtained through any authorized discovery procedure is not a ground for omitting such fact from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them that is within the scope of paragraph (1) of this subdivision must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) *Form.* Stipulations shall be in writing and signed by the parties thereto or by their representatives, if any, and shall be filed with the chief administrative law judge in triplicate. Only 1 set of exhibits shall be required. Documents or other papers

that are the subject of stipulation in any respect and that the parties intend to place before the tribunal shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs and shall be appropriately numbered. Exhibits attached to a stipulation shall be lettered serially.

(c) *Filing.* Executed stipulations prepared pursuant to this section, and related exhibits, shall be filed by the parties with the chief administrative law judge at or before commencement of the hearing of the controversy, unless the chief administrative law judge otherwise specifies. A stipulation, when filed, need not be offered formally to be considered in evidence.

(d) *Objections.* Any objection to all or any part of a stipulation should be noted in the stipulation, but the administrative law judge or presiding officer shall consider any objection to a stipulated matter made at the commencement of the hearing or for good cause shown made during the hearing.

(e) *Binding effect.* A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the tribunal commissioners, administrative law judge or presiding officer or agreed upon by the parties. The tribunal commissioners, administrative law judge or presiding officer shall not permit a party to a stipulation to qualify, change or contradict a stipulation, in whole or in part, except where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending proceeding and not for any other purpose, and they shall not be used against any party thereto in any other proceeding in the tribunal.

(f) *Submission without hearing.* (1) *General.* The parties may consent in writing to have the controversy determined on submission without need for appearance at a hearing.

(2) *Procedure.* Within 30 days after the consent is executed, the commissioner of finance shall submit to the administrative law judge or presiding officer assigned to the case all documentary evidence relevant to the issues, including any stipulation entered into by the parties, and shall provide a list enumerating all such documents to the petitioner, if appearing pro se, or the petitioner's representative. Within 30 days after the commissioner of finance provides such list, the petitioner may submit additional documents in support of the petition, and the parties may submit briefs within a reasonable period of time as agreed upon by them, subject to the power of the administrative law judge or presiding officer to fix the time as provided in paragraph (3) of subdivision (c) of section 1-12 of these rules. The parties may also submit proposed findings of fact and conclusions of law.

**§1-10 Agreements to extend or adjourn.** In lieu of making a motion for an extension of time or for an adjournment under these rules, any party may obtain such an extension or adjournment by filing with the tribunal a writing, signed by all of the parties, reflecting the parties' agreement to such extension or adjournment, subject to the approval of the tribunal. Such stipulation shall be filed, prior to the date from which the extension or adjournment is sought, with the administrative law judge or presiding officer to whom the case has been assigned, or, if such administrative law judge or presiding officer is unavailable or no such assignment has been made, with the chief administrative law judge, or, if the case is before the tribunal commissioners, with the president of the tribunal.

**§1-11 Small claims hearings.** (a) *General.* A petitioner who wishes to have the proceedings in his or her case conducted in the small claims unit may so elect at the time of the filing of the petition (or, if the petition was filed before the effective date of these rules, at any time before the hearing, subject to approval of the chief administrative law judge), if the amount in controversy meets the criterion contained in subdivision (b) of this section. The small claims hearing will be an adversary proceeding conducted by an impartial presiding officer. The presiding officer shall conduct the hearing (see subdivision (f) of this section) in a fair manner that permits the parties to offer all relevant evidence to establish their positions. Where certain points or issues are unclear, the presiding officer may ask questions of the parties or of witnesses for the purpose of clarifying the record.

(b) *Criterion for small claims.* Controversies which may be heard by the small claims unit are restricted in amount to \$10,000 (not including penalty and interest).

(c) *Pleadings; applicable sections; notice.* (1) The only pleadings to be served by the parties are a petition by the petitioner (see section 1-04 of these rules) and an answer by the commissioner of finance. The tribunal may prescribe a simplified form of pleadings for small claims matters.

(2) The parties may file briefs, additional documents or other material in support of their pleadings.

(3) The provisions of subdivision (e) of section 1-04 of these rules regarding amended pleadings, and section 1-08 of these rules, regarding subpoenas, are applicable to this section. The provisions of sections 1-05 (other than paragraph (e)1), 1-06 and 1-07 of these rules are not applicable to this section. Notwithstanding the foregoing, the presiding officer may, at the request of either party, (i) consider any of the grounds for dismissal provided for under section 1-05(b) of these rules and

dispose of the matter on such ground, if appropriate, and (ii) allow such limited discovery as the presiding officer shall deem appropriate under the circumstances.

(4) After the petition and answer have been served, the controversy shall be at issue, and the small claims unit shall schedule the controversy for a small claims hearing.

(5) The parties shall be given at least 30 days' notice of the first hearing date, and at least 10 days' notice of any adjourned or continued hearing date unless the parties agree otherwise with the consent of the presiding officer. A request by any party for a preference in scheduling will be honored to the extent possible.

(d) *Adjournment; default.* (1) At the written request of either party, made on notice to the other party and received at least 15 days in advance of the scheduled hearing date, an adjournment may be granted where good cause is shown. In the event of an emergency, an adjournment may be granted on less notice. Upon continued and unwarranted delay of the proceedings by either party, the presiding officer shall render a default determination against the dilatory party.

(2) In the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the presiding officer shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear.

(3) Upon written application to the chief administrative law judge, a default determination may be vacated where the party shows a reasonable excuse for the default and a meritorious case.

(e) *Presiding officer.* The small claims hearing shall be conducted by a presiding officer with the same authorization provided an administrative law judge conducting a hearing by section 1-12 of these rules.

(f) *Conduct of hearing.* (1) The small claims hearing shall be conducted by a presiding officer in such a manner as to do substantial justice between the parties according to the rules of substantive and administrative law. The hearing shall be conducted as informally as possible, consistent with orderly procedure. Any evidence which the presiding officer considers necessary or desirable for a just and equitable determination will be received, except that effect shall be given to the rules of privilege recognized by law. The burden of proof shall be upon the party seeking relief as to each issue, except as otherwise provided by law.



(2) The provisions contained in paragraphs (1) through (5) of subdivision (d) of section 1-12 of these rules, regarding conduct of a hearing, are applicable to a small claims hearing; however, such applicability is not intended to alter the informal nature of the small claims hearing.

(3) The small claims hearing shall be stenographically reported or otherwise recorded, but a transcript thereof need not be made unless the presiding officer otherwise directs. Where a transcript is made, it shall be available for examination at the tribunal or may be purchased by a petitioner pursuant to section 1-16 of these rules.

(g) *Transfer to administrative law judge.* At any time before the conclusion of a small claims hearing, the petitioner may, by written notice to the president of the tribunal, discontinue such small claims proceeding and request that the hearing on the petition be transferred to and conducted by an administrative law judge. Such discontinuance shall be without prejudice to any subsequent proceeding before an administrative law judge. Following such transfer of a matter to an administrative law judge, the matter shall not be transferred back to the small claims unit.

(h) *Determination.* (1) *Issuance of determination.* After the small claims hearing, the presiding officer shall review the evidence and render a determination within three months of completion of the hearing or the submission of briefs, whichever is later. The tribunal shall serve a copy of the determination on the petitioner, if appearing pro se, or the petitioner's representative, and the attorney of record for the commissioner of finance.

(2) *Effect of determination.* The final determination of the presiding officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the tribunal. However, on the motion of either party, the chief administrative law judge may order a rehearing upon proof or allegation of misconduct by the presiding officer. Determinations of presiding officers shall not be considered precedent, nor shall they be given any force or effect in other proceedings in the tribunal.

(i) *Assignment of another presiding officer.* Whenever it becomes impractical for a presiding officer to continue the hearing, another presiding officer may be assigned to continue with the case, unless it is shown that substantial prejudice to a party will result therefrom.

**§1-12 Hearings before administrative law judges.**

(a) *Notice.* (1) After issue is joined (see section 1-04 of these rules), the chief administrative law judge unit shall schedule the controversy for a conference as provided in subdivision (d) of section 1-04 of these rules.

(2) The parties shall be given at least 30 days' notice of the first hearing date, and at least 10 days' notice of any adjourned or continued hearing date unless the parties agree otherwise with the consent of the administrative law judge. A request by any party for a preference in scheduling will be honored to the extent possible.

(b) *Adjournment; default.* (1) At the written request of either party, made on notice to the other party and received at least 15 days in advance of the scheduled hearing date, an adjournment may be granted where good cause is shown. In the event of an emergency, an adjournment may be granted on less notice. Upon continued and unwarranted delay of the proceedings by either party, the administrative law judge shall render a default determination against the dilatory party.

(2) In the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear.

(3) Upon written application to the chief administrative law judge, a default determination may be vacated where the party shows a reasonable excuse for the default and a meritorious case.

(c) *Administrative law judge.* The hearing shall be conducted by an administrative law judge who is authorized to:

(1) administer oaths and affirmations;

(2) sign and issue subpoenas as provided in section 1-08 of these rules;

(3) regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of legal memoranda and other documents;

(4) rule upon questions of evidence; such rulings shall be deemed incorporated in the administrative law judge's determination for purposes of review by the tribunal commissioners; and

(5) render determinations after hearings.

(d) *Conduct of hearing.* (1) At the hearing, the parties may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against them. A copy of a Federal or State determination relating to the issues may be received in evidence to show such determination. Affidavits as to relevant

facts may be received, for whatever value they may have, in lieu of the oral testimony of the persons making such affidavits. Technical rules of evidence may be disregarded to the extent permitted by the decisions of the courts of this State, provided the evidence offered appears to be relevant and material to the issues. However, effect shall be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Upon a finding of good cause, the administrative law judge may order that any witness be examined separately and apart from all other witnesses, except those who are parties. The administrative law judge may, where the record appears unclear, ask questions of the parties or of witnesses for the purpose of clarifying the record.

(2) Where books, records, papers or other documents have been received in evidence, the substitution of a copy thereof may be permitted. Where original exhibits have been received in evidence, the party who offered such exhibits may be permitted to withdraw them after the determination of the administrative law judge or the decision of the tribunal commissioners is final.

(3) For purpose of expedition, stipulation and submission of evidence is encouraged, provided the interests of the parties will not be substantially prejudiced thereby. Although objections to a particular part of a stipulation should be noted therein the administrative law judge shall give consideration to any objection to irrelevancy of stipulated facts made at the hearing (see section 1-09 of these rules).

(4) The burden of proof shall be upon the party seeking relief as to each issue, except as otherwise provided by law.

(5) After the parties have completed the submission of the evidence, they may orally argue the applicability of the law to the facts. If the parties also wish to submit briefs, they may do so. Such briefs shall be filed under the following schedule in the absence of any different direction by the administrative law judge:

(i) the opening brief by the petitioner is due within 45 days of the conclusion of the hearing or the submission without hearing;

(ii) the answering brief by the commissioner of finance within 30 days thereafter; and

(iii) upon application to the administrative law judge, additional briefs may be filed by the parties based on a schedule determined by the administrative law judge. Each party shall serve a copy of its briefs on the other party.

The parties may also submit proposed findings of fact and conclusions of law. The proposed findings of fact shall refer

whenever possible to the relevant pages of the transcript of hearing and exhibits.

A request for extension of time for filing any brief may be made to the administrative law judge prior to the due date and shall recite that the moving party has advised the other party and whether the other party objects to the motion. Delinquent briefs may be rejected by the administrative law judge.

(6) The hearing shall be stenographically reported. A transcript thereof shall be made available for examination at the offices of the tribunal or may be purchased pursuant to section 1-16 of these rules. If either party deems the transcript to be inaccurate in any material respect, the party shall promptly notify the administrative law judge and the other party, setting forth specifically the alleged inaccuracies. The administrative law judge shall specify the corrections to be made in the transcript, and such corrections shall be made a part of the record.

(e) *Determination.* (1) *Issuance of determination.* The administrative law judge shall review the evidence and render a written determination which shall contain findings of fact and conclusions of law. The administrative law judge shall render a determination within six months of completion of any hearing held on or after October 1, 1992, or the submission of briefs relating to such hearing, whichever is later. The administrative law judge may extend such six-month period, for good cause shown, to no more than an additional three months. The tribunal shall serve a copy of the determination on the petitioner, if appearing pro se, or the petitioner's representative, and the attorney of record for the commissioner of finance.

(2) *Effect of determination.* The determination of the administrative law judge shall finally decide the matters in controversy unless a party takes exception by timely requesting review by the tribunal commissioners (see section 1-13 of these rules). Determinations of administrative law judges shall not be considered precedent, nor shall they be given any force or effect in other proceedings in the tribunal.

(f) *Assignment of another administrative law judge.* Whenever it becomes impractical for an administrative law judge to continue the hearing, another administrative law judge may be assigned to continue with the case, unless it is shown that substantial prejudice to a party will result therefrom.

**§1-13 Review by tribunal commissioners.** (a) (i) *Filing and serving of exception.* Within 30 days of the giving of notice of the determination of an administrative law judge, or within 30 days of service of a copy of an exception taken by the other party, any party may take exception to such determination and seek review

thereof by the tribunal commissioners, by filing an exception and 3 conformed copies with the president of the tribunal, either in person or by certified or registered mail addressed to the tribunal. A copy of the exception shall be served at the same time on the other party.

(ii) The president of the tribunal may extend the 30-day period for filing and serving an exception, provided an application for extension is filed with the president of the tribunal within such period and served on the other party, and if good cause is shown.

(b) *Form of exception; briefs.* (1) The exception shall contain:

(i) the particular findings of fact and conclusions of law with which the party disagrees;

(ii) the grounds of the exception, with references, wherever possible, to the relevant pages of the transcript of hearing and exhibits; and

(iii) alternative findings of fact and conclusions of law. A form of exception shall be available from the tribunal upon written request.

(2) A brief and 3 copies in support of the exception may be submitted at the time the exception is filed or within 45 days thereafter. The party taking exception shall serve a copy of the brief in support on the other party. Within 45 days of service of the brief in support, or, if no such brief is filed, within 45 days of the expiration of the time to file such brief in support, the other party may submit a brief and 3 copies in opposition and/or make cross-exceptions and shall serve a copy thereof on the party taking exception.

(c) *Transmittal of record.* Whenever an exception to an administrative law judge's determination is filed, the chief administrative law judge shall transmit to the president of the tribunal the record of the hearing before the administrative law judge.

(d) *Oral argument.* (1) A party taking exception may request, at the time of the filing of the exception, an opportunity for oral argument before the tribunal commissioners. Within the time allowed for submitting a brief in opposition, the other party may request, in writing, an opportunity for oral argument. Failure to make such a request in writing within the prescribed time period shall be deemed a waiver of oral argument.

(2) The tribunal commissioners may grant, deny or limit any request for oral argument and may on their own motion request oral

argument from either party. The president of the tribunal shall advise the parties of the time and place at which oral argument, if any, will be heard. A request for postponement of the argument must be made in writing at least 15 days in advance of the date fixed for argument.

(3) A commissioner who is not present at oral argument but who is otherwise authorized to participate in a decision may participate in rendering such decision.

(e) *Adjournment; default.* (1) At the written request of either party, made on notice to the other party and received at least 15 days in advance of the scheduled date for oral argument, if any, an adjournment may be granted where good cause is shown. In the event of an emergency, an adjournment may be granted on less notice. Upon continued and unwarranted delay of the proceedings by either party, the tribunal commissioners shall render a default decision against the dilatory party.

(2) In the event a party or the party's representative does not appear at a scheduled date for oral argument and an adjournment has not been granted, the tribunal commissioners may render a decision based upon the parties' written submissions or take such other action as they shall deem appropriate under the circumstances.

(3) Upon written application to the tribunal commissioners, a default decision may be vacated where the defaulted party shows a reasonable excuse for the default and a meritorious case.

(f) *Decision.* (1) The tribunal commissioners shall review the record and shall, to the extent necessary or desirable, exercise all the powers which they could have exercised if they had made the determination.

(2) After such review, the tribunal commissioners shall issue a written decision, containing findings of fact and conclusions of law, affirming, reversing or modifying the administrative law judge's determination, or the tribunal commissioners may remand the case for additional proceedings before the administrative law judge or for further action by the commissioner of finance. The tribunal commissioners shall issue a decision within 6 months of the date of the filing of the exception; however, where oral argument is granted or briefs are submitted, the 6-month period will begin on the date oral argument is concluded or briefs are submitted, whichever is later.

(3) The tribunal commissioners are authorized to rule on the validity of the rules of the commissioner of finance where such rules are at issue.

(g) When the tribunal commissioners review a matter, there must be a majority of commissioners present and no fewer than two votes shall be necessary to take any action.

**§1-14 Expedited proceedings.** (a) *Entitlement to expedited proceedings.* An expedited proceeding shall be scheduled in any matter commenced by the filing of a petition protesting a jeopardy assessment or predecision warrant based thereon, unless the petitioner elects otherwise.

(b) *Scheduling of conferences and other expedited proceedings.* A conference as described in subdivision (d) of section 1-04 of these rules shall be scheduled and held by the tribunal within 5 business days of its receipt of such petition and such hearing or oral argument as is permitted or required shall be scheduled to be held within 10 business days of the conference.

(c) *Applicability of rules.* Except to the extent that they would conflict with the time limitations provided for in this section, all other provisions of these rules shall apply to such a matter, but will be liberally construed to allow for expedition.

(d) *Determinations and decisions.* The administrative law judge or presiding officer shall render a determination as soon as possible, but not later than 30 days after the date of completion of such proceedings as are conducted pursuant to the rulings of the tribunal at the conference. Where exception is taken to an administrative law judge's determination, the tribunal commissioners shall issue a decision within 3 months of the date of the petition for the expedited hearing. Any request by the petitioner that delays the expedited hearing process shall extend the time limitations imposed on the tribunal commissioners or the administrative law judge or presiding officer to issue a decision or determination.

(e) *Extensions and Delays.* Any request or act by the petitioner that delays or voluntarily extends the expedited proceedings shall extend accordingly the time limitations imposed on the tribunal to conduct its proceedings or render its decision.

**§1-15 Sanctions. Frivolous Submissions.** If any person shall sign and submit to the tribunal a paper that

(a) such person has not read or

(b) is not, to the best of such person's knowledge, information, and belief formed after reasonable inquiry, well grounded in fact and warranted by existing law, or a good-faith argument for the extension, modification, or reversal of existing law, or

(c) is interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceedings, such person, or the party represented by such person, or both, shall be subject to an appropriate sanction.

**§1-16 Record of hearing.** (a) Within a reasonable period of time after a determination of an administrative law judge, or where exception is taken to an administrative law judge's determination within a reasonable period of time after a decision of the tribunal commissioners, but prior to the commencement of judicial review of such decision, a petitioner may request that the tribunal provide a copy of the record. The record shall consist of:

(1) all notices, pleadings, motions and intermediate rulings;

(2) a transcript of the hearing, if any;

(3) copies of all exhibits or, where the parties consented to have the controversy determined on submission without hearing, the documents submitted to the administrative law judge pursuant to subdivision (f) of section 1-09 these rules;

(4) the determination of the administrative law judge and exceptions thereto, if any; and

(5) the decision of the tribunal commissioners where exception was taken to the determination of the administrative law judge.

(b) The transcript of the hearing may be purchased by a petitioner from the hearing reporter at a charge not to exceed that paid by the tribunal for a transcript. Requests for copies of other parts of the record may be made by a petitioner to the tribunal. The cost of such copies shall be at the rate of 25 cents per page.

**§1-17 Filing and service of documents.** (a) *General rule.*

(1) *Date of filing and service.* If any document required to be filed and served under these rules within a prescribed period or on or before a prescribed date is, after such period or date, delivered by United States mail, the date of the United States postmark stamped on the envelope or other appropriate wrapper in which such document is contained will be deemed to be the date of filing or service. Where delivery is made by other than United States mail, such as by courier, messenger, or similar service, the date of delivery will be deemed to be the date of filing or service. Notwithstanding the above general rule, for the specific and limited purpose of measuring the time allotted for service of a responsive pleading, the date of service of a petition or an answer shall be construed to mean the date of receipt of such



pleading by the commissioner of finance or the petitioner, respectively.

(2) *Mailing Requirements.* Any document required to be filed and served under these rules will not be considered to be timely filed or served, as the case may be, if mailed, unless the document is mailed in accordance with the following requirements:

(i) the document must be contained in an envelope or other appropriate wrapper and properly addressed to the tribunal or the adverse party, as the case may be;

(ii) the envelope or other wrapper containing the document must be deposited in the mail of the United States within the prescribed period or on or before the prescribed date with sufficient postage prepaid. For this purpose, such document is considered to be deposited in the mail of the United States when it is deposited with the domestic mail service of the United States Postal Service. The domestic mail service of the United States Postal Service includes mail transmitted within, among, and between the United States, its territories and possessions, Army-Air Force (APO) and Navy (FPO) post offices;

(iii) the envelope or other wrapper containing the document must bear a date stamped by the United States Postal Service that is within the prescribed period or on or before the prescribed date for filing or service (including any extension of time granted for filing or serving such document, as the case may be). If the postmark stamped by the United States Postal Service on the envelope or other wrapper containing the document does not bear a date that falls within the prescribed period or on or before the prescribed date for filing or serving such document, the document will be considered not to be timely filed or served, as the case may be, regardless of when the envelope or wrapper containing such document is deposited in the mail. Accordingly, the sender assumes the risk that the envelope or other wrapper containing the document will not bear a postmark date stamped by the United State Postal Service within the prescribed period or on or before the prescribed date for filing or service (including any extension of time granted for filing or serving such document, as the case may be). Furthermore, if the postmark made by the United States Postal Service on the envelope or other wrapper containing the document is not legible, the person who is required to file the document has the burden of proving when the postmark was made; and

(iv) in the case of a petition, the filing must be made by certified or registered mail.

(3) *Missing postmark.* If an envelope or other wrapper containing a document and bearing sufficient United States postage is missing a postmark that should have been affixed by the United

States Postal Service, then whether the envelope or other wrapper was mailed in accordance with this subdivision will be determined solely by applying the provisions of subdivision (b) of this Rule, except for the postmarked date required by subparagraph (i) of paragraph (1) of said subdivision (b).

(b) *Postmarks not made by the United States Postal Service.*

(1) If the postmark on the envelope or other wrapper containing the document is made by other than the United States Postal Service (i.e., office-metered mail):

(i) the postmark so made must bear a date that falls within the prescribed period or on or before the prescribed date for filing or serving the document (including any extension of time granted for filing or serving the document, as the case may be); and

(ii) the document must be received by the tribunal not later than the time when an envelope or other wrapper that is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the United States Postal Service within the prescribed period or on or before the prescribed date for filing or service (including any extension of time granted for filing or serving the document, as the case may be).

(2) In case the document is received after the time when a document so mailed and so postmarked by the United States Postal Service would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file or serve the document establishes:

(i) that it was actually deposited in the mail from the place of deposit that was postmarked (except for metered mail) by the United States Postal Service within the prescribed period or on or before the prescribed period for filing the document;

(ii) that the delay in receiving the document was due to a delay in the transmission of the mail; and

(iii) the cause of such delay.

(3) If the envelope or other wrapper containing the document has a postmark made by the United States Postal Service in addition to the postmark not so made, the postmark that was not made by the United States Postal Service will be disregarded, and whether the envelope or other wrapper was mailed in accordance with this subdivision will be determined solely by applying the provisions of subdivision (a) of this Rule.

(c) *Registered and certified mailing.* (1) If an envelope or other wrapper containing a document is sent by United States registered mail, the date of such registration is treated as the postmark date and the date of filing or service, as the case may be.

(2) If an envelope or other wrapper containing a document is sent by United States certified mail and the sender's receipt is postmarked by the postal employee to whom such envelope or other wrapper is presented, the date of the postmark on such receipt is treated as the postmark date of the document and the date of filing or service, as the case may be.

(d) *Mailing from a foreign country.* If the envelope or other wrapper containing the document is mailed in a foreign country, the date of receipt of the envelope or other wrapper will be deemed to be the date of filing or service, as the case may be.

(e) *Saturday, Sunday, or legal holiday.* When the last day prescribed under these rules for filing or service falls on a Saturday, Sunday, or legal holiday in the State of New York, such filing or service shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

**§1-18 Judicial review.** A decision of the tribunal commissioners which is not subject to any further administrative review shall irrevocably decide all the issues raised in the proceeding, unless, within four months after the issuance of such decision by the tribunal commissioners and the giving of notice of such decision to the parties, the petitioner applies for judicial review in the manner provided by article 78 of the CPLR. However, an order by the tribunal commissioners that does not finally decide all matters and issues contained in the petition shall not, for purposes of review under article 78 of the CPLR, be deemed final and conclusive until the tribunal commissioners shall have rendered a decision on the remaining matters and issues.

**§1-19 Extension of time; mailing of determinations and decisions; availability of determinations and decisions and rules.**

(a) *Extension of time.* The tribunal commissioners, administrative law judges, or presiding officers may, on their own motion, or at the request of any party, order a continuance, extension of time, or adjournment for good cause, unless prohibited by statute from doing so. Notice of any such order shall be given to all parties. Where the dates for filing briefs are fixed, an extension of time for filing a brief shall correspondingly extend the time for filing any other brief due at the same time and for filing succeeding briefs, unless the tribunal commissioners,

administrative law judge or presiding officer shall order otherwise.

(b) *Certified mailing of determinations and decisions.* Determinations and decisions of the tribunal shall be sent to the petitioner, if appearing pro se, or the petitioner's representative, and the attorney of record for the commissioner of finance by certified mail.

(c) *Availability of determinations and decisions for publication.* Determinations and decisions of the tribunal other than a determination rendered in a small claims proceeding shall generally be available for publication.

(d) *Availability of rules.* Copies of these rules may be obtained from the tribunal at a charge of 25 cents per page.

**Effective date.** These amendments shall apply to any matter for which a petition for hearing was filed with the commissioner of finance prior to October 1, 1992, and which is still pending on October 1, 1992, any matter for which a statutory notice was issued prior to October 1, 1992, and for which the time period for filing a petition is still open, and any matter for which a statutory notice is issued on or after October 1, 1992.

Notwithstanding the foregoing provisions of this section, the rules of practice in effect prior to October 1, 1992, shall apply to any appeal timely filed based upon a final determination of the commissioner of finance issued prior to October 1, 1992, and otherwise properly appealable to the tribunal under the provisions of sections 168 through 172 of the New York City Charter in effect prior to October 1, 1992.