

## CHAPTER 6

### OATH HEARINGS DIVISION—RULES OF PRACTICE

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#### SUBCHAPTER A GENERAL

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#### **§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 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.

“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 governmental 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 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.

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

(a) Jurisdiction. Pursuant to Charter § 1048, the Tribunal has jurisdiction to hear and determine summonses issued by a City agency or, when permitted by law, an individual, consistent with the following applicable laws, rules and regulations:

(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 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, including the Hearing Officers, 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 law; and

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

#### **§6-03 Language Assistance Services.**

Appropriate language assistance services will be afforded to respondents whose primary language is not English to assist such respondents in communicating meaningfully. Such language assistance services will include interpretation of hearings conducted by Hearing Officers, where interpretation is necessary to assist the respondent in communicating meaningfully with the Hearing Officer and others at the hearing.

#### **§6-04 Computation of Time.**

(a) In computing any period of time prescribed or allowed by this chapter, the day of the act or default from which the designated period of time begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday or legal holiday, in which case the period will be extended to the next day which is not a Saturday, Sunday or legal holiday. Unless otherwise specified in this rule, "days" means calendar days.

(b) Unless otherwise specified, whenever a party has the right or is required to do some act within a prescribed period of time after the date of a Tribunal decision, five days will be added to such prescribed period of time if the decision is mailed to the party.

**SUBCHAPTER B  
PRE-HEARING PROCEDURES**

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

**§6-06 RESERVED.**

**§6-07 Pre-Hearing Discovery.**

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

The Petitioner or Respondent may request that a hearing be rescheduled to a later date. A request by a Respondent to reschedule must be received by the Tribunal prior to the time of the scheduled hearing. If a Petitioner requests to reschedule, the Petitioner must notify the 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 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 summons.

**§6-06 RESERVED.**

**§6-07 Pre-Hearing 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.

## **SUBCHAPTER C HEARINGS**

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

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

(a) Issuance and Filing of Summons.

(1) The petitioner must file an original or a copy of the 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.

(b) Service of the Summons. There must be service of the summons.

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

(i) The summons may be served in person upon:

- (A) the person alleged to have committed the violation,
- (B) the permittee, licensee or registrant,

- (C) the person who was required to hold the permit, license or to register,
- (D) a member of the partnership or other group concerned,
- (E) an officer of the corporation,
- (F) a member of a limited liability company,
- (G) a managing or general agent, or
- (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.

(ii) Alternatively, the 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 summons or, as may be appropriate, at the residence or business address of:

- (A) the alleged violator,
- (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,
- (C) the registrant listed in the registration form, or
- (D) the person filing a notification of an entity's existence with the applicable governmental agency where no permit, license or registration is required.

If the summons is served by mail, documentation of mailing will be accepted as proof of service of 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 Summons. The 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 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 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 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 at the place, date and 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 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.

## **§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) 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.

(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.

(d) Failure to Appear by Respondent. A 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 to penalties in accordance with §6-20 of this chapter.

(e) A 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.

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

### **§6-10 Remote Adjudications**

(a) When the opportunity to do so is offered by the Tribunal, a Respondent may contest a violation by mail, online, by telephone or by other remote methods.

(b) 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 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 in an adjudication online must be received by the Tribunal before or on the scheduled hearing date.

(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.

#### **§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 of the availability of language assistance services. In determining whether language assistance services are necessary to assist the 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 as requiring language assistance services to communicate meaningfully with a Hearing Officer;

(ii) a request by the Respondent for language assistance services; and

(iii) even if language assistance services were not requested by the Respondent, the Hearing Officer's own assessment whether language assistance services are necessary to enable meaningful communication with the Respondent.

If the Respondent requests an interpreter and the Hearing Officer determines that an interpreter is not needed, that determination and the basis for the determination will be made on the record.

(2) When required, language assistance services will be provided at hearings by a

professional interpretation service that is made available by the Tribunal. 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 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 apparent skills of the Respondent's requested interpreter;
- (ii) whether the Respondent's requested interpreter is a child under the age of eighteen (18);
- (iii) minimization of delay in the hearing process;
- (iv) maintenance of a clear and usable hearing record; and
- (v) whether the Respondent's requested interpreter is a potential witness who may testify at the hearing.

The Hearing Officer's determination and the basis for this determination will be made on the record.

(c) 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.

(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.

#### **§6-12 Evidence**

(a) Burden of Proof. The Petitioner has the burden of proving the factual allegations contained in the summons by a preponderance of the evidence. The 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.

### **§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) 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 a summons only upon a motion at any time if:

(1) the subject of the amendment is reasonably within the scope of the original summons;

(2) such amendment does not allege any additional violations based on an act not specified in the original summons;

(3) such amendment does not allege an act that occurred after the original summons was served; and

(4) such amendment does not affect the 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 or Respondent;
- (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.

#### **§6-14 Requests for Adjournment**

(a) At the time of the scheduled hearing or upon motion, a Hearing Officer may 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) 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.

(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.

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

In the event that the 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 summons, as the Hearing Officer may deem appropriate.

#### **§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.

### **§6-17 Decisions**

(a) Decisions. After a hearing, the Hearing Officer who presided over the hearing will promptly write a decision sustaining or dismissing each charge in 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:

(i) where the Department of Consumer Affairs 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.

(ii) 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.

(4) For all violations of Section 194 of Article 11 of the New York State General

Business Law, Article 5 of the New York State General Business Law, and Sections 192, 192-a, 192-b, and 192-c of Article 16 of the New York State Agriculture and Markets Law, and of any rules and regulations promulgated thereto, the Hearing Officer will issue a recommended decision and order, which the Commissioner of the Department of Consumer Affairs may adopt, reject or modify, in whole or in part.

(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.

#### **§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 or on the 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.

### **SUBCHAPTER D APPEALS**

#### **§6-19 Appeals.**

##### **§6-19 Appeals**

(a) A party may appeal, in whole or in part, a decision of a Hearing Officer. 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.

(b) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in §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. Except as provided in §5-04 of this Title, the absence of a recording of the hearing does

not prevent determination of the appeal.

(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 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 on the Tribunal's form; and

(ii) the appealing party files proof that a copy of the appeal has been served on the non-appealing party; and

(iii) Respondent provides proof of payment in full of any fines, penalties or restitution imposed by the decision, except as provided in subdivision (d).

(2) Except as provided in § 5-04 of this Title, within thirty (30) days of being served with the appeal, 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 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 must be made within the time allotted for the filing of an appeal or a response to an appeal. A copy of such application must be served upon all parties, and proof of such service filed with the 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 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.

(d) Fines, penalties, and restitution. Filing an appeal will not delay the collection of any fine, penalty or restitution imposed by the decision. An appeal by or on behalf of a Respondent will not be permitted unless the fines, penalties or restitution imposed has been paid in full prior to or at the time of the filing of the appeal; 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 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.

(e) Appeals Decision.

(1) 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. 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 and served on the Respondent by mail, stating the grounds upon which the decision is based. Where appropriate, the decision will order the repayment to the Respondent of any penalty that has been paid.

(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.

## **SUBCHAPTER E DEFAULTS**

**§6-20 Defaults.**

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

**§6-20 Defaults**

(a) A 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 and without a hearing being held, all facts alleged in the summons will be deemed admitted, the 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 of the issuance of a default decision by mailing a copy of the decision or by providing a copy to the Respondent or the Respondent's representative who appears personally at the Tribunal and requests a copy.

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

**§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 motion to vacate a default by a Respondent 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.

(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.

(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 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.

(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 summons will not be granted. 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) 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 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 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.

## **SUBCHAPTER F MISCELLANEOUS**

**§6-22 Disqualification of Hearing Officers.**

**§6-23 Registered Representatives.**

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

**§6-25 Misconduct.**

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

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

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

**§6-22 Disqualification of Hearing Officers.**

(a) *Grounds for Disqualification.* A Hearing Officer will not preside over a hearing under the circumstances set forth in subdivisions (D) and (E) of §103 of Appendix A of this title. When a Hearing Officer deems himself or herself disqualified to preside in a particular proceeding, the Hearing Officer will withdraw from the proceeding by notice on the record and will notify the Chief Administrative Law Judge or his or her designee of such withdrawal.

(b) *Motion to Disqualify.* A party may, for good cause shown, request that the Hearing Officer disqualify himself or herself. The Hearing Officer in the proceeding will rule on such motion.

(1) If the Hearing Officer denies the motion, the party may obtain a brief adjournment in order to promptly apply for review by the Chief Administrative Law Judge or his or her designee.

(2) If the Chief Administrative Law Judge or his or her designee determines that the Hearing Officer should be disqualified, the Chief Administrative Law Judge or his or her designee will appoint another Hearing Officer to continue the case. If a Hearing Officer's denial of the motion to disqualify is upheld by the Chief Administrative Law Judge or his or her designee, the party may raise the issue again on appeal.

### **§6-23 Registered Representatives**

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:

- (a) Be at least eighteen (18) years of age;
- (b) Register with the Tribunal by completing and submitting a form provided by the Tribunal. The form must include proof acceptable to the Tribunal that identifies the representative, and must also include any other information that the Tribunal may require. Registration must be renewed annually. Failure to register with the Tribunal may result in the Tribunal declining registration in the future;
- (c) Notify the Tribunal within ten (10) business days of any change in the information required on the registration form;
- (d) Not misrepresent his or her qualifications or service so as to 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;
- (e) Exercise due diligence in learning and observing Tribunal rules and preparing paperwork; and
- (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 of the Tribunal. A list of representatives who have been suspended or barred from appearing may be made public.

### **§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.

### **§6-25 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 to the Tribunal which he or she knows, or reasonably should have known, to be false, fraudulent or misleading;
- (10) Induce or encourage anyone 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 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 powers of a Hearing Officer as set out in §6-13 of this chapter.

(d) Discipline on Other Grounds

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

**§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.

**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.**

**§3-12 Scope of Rules.**

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

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

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

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

**§3-17 Admission After Default.**

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

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

**§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.**

### **§3-22 Special Hearing.**

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

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

### **§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.

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

**§5-01 Scope of this Chapter**

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

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

**§5-04 Appeals**

**§5-05 Chairperson Review**

**§5-06 Special Procedures**

**§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.