

CHAPTER 1

Rules of Practice Applicable to Cases at OATH Generally

Subchapter A - General Matters

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

Administrative law judge. "Administrative law judge" shall mean the person assigned to preside over a case, whether the chief administrative law judge or a person appointed by the chief administrative law judge.

Agency. "Agency" shall mean any commission, board, department, authority, office or other governmental entity authorized or required by law to refer a case to OATH, regardless of whether the agency is petitioner or respondent in such a case.

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

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

Chief administrative law judge. "Chief administrative law judge" shall mean the director of OATH appointed by the mayor pursuant to Charter, § 1048.

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

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

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

OATH. "OATH" shall mean the Office of Administrative Trials and Hearings.

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

Petitioner. "Petitioner" shall mean a party asserting claims.

Respondent. "Respondent" shall mean a party against whom claims are asserted.

§ 1-02 Jurisdiction.

Pursuant to Charter § 1049(3), OATH's jurisdiction includes the authority to render any ruling or order necessary and appropriate under applicable law or agency rule for the just and efficient adjudication of cases.

§ 1-03 Applicability.

This chapter applies to the conduct of all cases, including hearings, pre-hearing and post-hearing matters, except to the extent that this chapter may be superseded by CAPA or other provision of law.

§ 1-04 Construction and Waiver.

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

§ 1-05 Effective Date.

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

§ 1-06 Computation of Time.

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

§ 1-07 Filing of Papers.

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

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

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

(d) Proof of service. Proof of service must be maintained by the parties for all papers filed at OATH. Proof of service shall be in the form of an affidavit by the person effecting service, or in the form of a signed acknowledgement of receipt of papers by the person receiving the papers. A writing admitting service by the person to be served is adequate proof of service. Proof of service for papers served by electronic means, in addition to the foregoing, may also be in the form of a record confirming delivery or acknowledging receipt of the electronic transmission.

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

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

Subchapter B - Rules of Conduct

§ 1-11 *Appearances.*

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

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

(c) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance. Participation in a telephone conference call on behalf of a party by an attorney or representative of the party shall be deemed an appearance by the attorney or representative. Nonetheless, upon making such an appearance, the attorney or representative shall file a notice of appearance in conformity with subdivisions (b) and (d) of this section.

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

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

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

(b) Notices of substitution of counsel may be served and filed more than twenty days before trial without leave of the administrative law judge. Applications for later substitutions of counsel shall be granted freely absent prejudice or substantial delay of proceedings.

§ 1-13 Conduct; Suspension From Practice at OATH.

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

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

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

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

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

(f) In the event that an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the chief administrative law judge may, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against him or her, suspend that attorney or representative from appearing at OATH, either for a specified period of time or indefinitely until the

attorney or representative demonstrates to the satisfaction of the chief administrative law judge that the basis for the suspension no longer exists.

§ 1-14 *Ex Parte Communications.*

(a) Except for ministerial matters, and except on consent, in an emergency, or as provided in § 1-31(a), communications with the administrative law judge concerning a case shall only occur with all parties present. If an administrative law judge receives an *ex parte* communication concerning the merits of a case to which he or she is assigned, then he or she shall promptly disclose the communication by placing it on the record, in detail, including all

written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the *ex parte* communication shall be allowed to do so upon request.

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

Subchapter C - Pre-Trial Matters

§ 1-21 Designation of OATH.

Where necessary under the provision of law governing a particular category of cases, the agency head shall designate the chief administrative law judge of OATH, or such administrative law judges as the chief administrative law judge may assign, to hear such cases.

§ 1-22 The Petition.

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

§ 1-23 Service of the Petition.

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

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

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

§ 1-24 Answer.

The respondent may serve and file an answer to the petition within eight days of service of the petition if service was personal, or within thirteen days of service of the petition if service was by mail, unless a different time is fixed by the administrative law judge. In the discretion of the administrative law judge, the respondent may be required to serve and file an answer. Failure to file an answer where required, may result in sanctions, including those specified in § 1-33(e).

§ 1-25 Amendment of Pleadings.

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

§ 1-26 Docketing the Case.

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

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

(c) OATH may determine that the case is not ready for trial or conference and may adjourn the trial or conference, or may remove the case from the trial or conference calendar and place

it on open status. In addition, OATH may determine that the case should proceed on an expedited basis, and may direct expedited procedures, including expedited pre-trial and post-trial procedures, shortened notice periods, and/or expedited calendaring.

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

§ 1-27 Disqualification of Administrative Law Judges.

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

(b) The administrative law judge shall be disqualified for bias, prejudice, interest, or any other cause for which a judge may be disqualified in accordance with § 14 of the Judiciary Law. In addition, an administrative law judge may, *sua sponte* or on motion of any party, withdraw from any case, where in the administrative law judge's discretion, his/her ability to provide a fair and impartial adjudication might reasonably be questioned.

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

§ 1-28 Notice of Conference or Trial.

(a) When a case is placed on either the trial calendar or the conference calendar, and within the time provided in § 1-26(d), if applicable, the party that placed the case on the calendar

shall serve each other party with notice of the following: the date, time and place of the hearing or conference; each party's right to representation by an attorney or other representative at the hearing or conference; the requirement that a person representing a party at the hearing or conference must file a notice of appearance with OATH prior to the hearing or conference; and, in a notice of a hearing served by the petitioner, the fact that failure of the respondent or an authorized representative of the respondent to appear at the hearing may result in a declaration of default, and a waiver of the right to a hearing or other disposition against the respondent. The notice may be served personally or by mail, and appropriate proof of service shall be maintained. A copy of the notice of conference, with proof of service, shall be filed with OATH at or before the commencement of the conference. A copy of the notice of trial, with proof of service, shall be filed with OATH at or before the commencement of the trial.

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

§ 1-29 Scheduling Other Conferences.

In the discretion of the administrative law judge, and whether or not a case has been on the conference calendar, conferences may be scheduled on application of either party or *sua sponte*.

§ 1-30 Conduct of Conferences.

(a) All parties are required to attend conferences as scheduled unless timely application is made to the administrative law judge. Participants shall be prompt and prepared to begin on time. No particular format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the particular case. The administrative law judge may propose mediation and, where the parties consent, may refer the parties to the Center for Mediation Services or other qualified mediators. In the discretion of the administrative law judge, conferences may be conducted by telephone.

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

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

§ 1-31 Settlement Conferences and Agreements.

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

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

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

§ 1-32 Adjournments.

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

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

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

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

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

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

(g) If an administrative law judge determines that a case is not ready for trial or conference and that an adjournment is inappropriate, the judge may remove the case from the calendar. Unless otherwise directed by the administrative law judge, the case will be administratively closed if the parties do not restore the matter to the calendar within 30 days.

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

§ 1-33 Discovery.

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

(b) Depositions shall only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, shall not be permitted except upon agreement among the parties or upon motion for good cause shown. Demands for bills of particulars shall be

deemed to be interrogatories. Resort to such extraordinary discovery devices shall not generally be cause for adjournment of a conference or hearing.

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

(d) Any discovery dispute shall be presented to the assigned administrative law judge sufficiently in advance of the hearing to allow a timely determination. Discovery motions are addressed to the discretion of the administrative law judge. The timeliness of discovery requests and responses, and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties shall be among the factors in the administrative law judge's exercise of discretion.

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

§ 1-34 Pre-Trial Motions.

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

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

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

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

(e) Reply papers shall not be filed unless authorized by the administrative law judge, and oral argument shall not be scheduled except upon the direction of the administrative law judge.

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

Subchapter D - Trials and Hearings

§ 1-41 Consolidation; Separate Trials.

All or portions of separate cases may be consolidated for trial, or portions of a single case may be severed for separate trials, in the discretion of the administrative law judge. Consolidation or severance may be ordered on motion or *sua sponte*, in furtherance of justice, efficiency or convenience.

§ 1-42 Witnesses and Documents.

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

§ 1-43 Subpoenas.

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

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

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

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

§ 1-44 Interpreters.

OATH will make reasonable efforts to provide language assistance services to a party or their witnesses who are in need of an interpreter to communicate at a hearing or conference.

§ 1-45 Failure to Appear.

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

§ 1-46 Evidence at the Hearing.

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

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

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

§ 1-47 Evidence Pertaining to Penalty or Relief.

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

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

§ 1-48 Official Notice.

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

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

§ 1-49 Public Access to Proceedings.

(a) Other than settlement conferences, all proceedings shall be open to the public, unless the administrative law judge finds that a legally recognized ground exists for closure of all or a

portion of the proceeding, or unless closure is required by law. Trial witnesses may be excluded from proceedings other than their own testimony in the discretion of the administrative law judge.

(b) No person shall 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 otherwise, except upon application to the administrative law judge. Except as otherwise provided by law (*e.g.* N.Y. Civil Rights Law § 52), such application shall be addressed to the discretion of the administrative law judge, who may deny the application or grant it in full, in part, or upon such conditions as the administrative law judge deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

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

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

§ 1-50 Trial Motions.

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

§ 1-51 The Transcript.

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

§ 1-51.1 Decision Made on the Record.

An administrative law judge may dispose of a case by making a decision or report and recommendation on the record.

§ 1-52 Post-Trial Motions.

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

CHAPTER 2

Additional Rules of Practice Applicable to Particular Types of Cases at OATH

Subchapter A - Additional Rules for Prequalified Vendor Appeals

§ 2-01 Applicability.

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

§ 2-02 Docketing; Service of the Petition.

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

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

§ 2-03 Answer; Reply.

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

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

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

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

§ 2-04 Further Proceedings.

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

§ 2-05 Discovery.

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

§ 2-06 Determination.

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

§ 2-07 Copies of Determination.

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

Subchapter C - Additional Rules for Human Rights Cases

§ 2-21 Applicability.

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

§ 2-22 Definitions.

For purposes of this subchapter:

Commission. "Commission" shall mean the New York City Commission on Human Rights.

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

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

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

Petitioner. "Petitioner" shall mean the Law Enforcement Bureau of the Commission.

Report and recommendation. The report and recommendation referred to in this title shall constitute the recommended decision and order referred to in the Commission's rules.

§ 2-23 Proceedings Before Referral to OATH.

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

§ 2-24 Docketing the Case at OATH.

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

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

§ 2-25 Intervention.

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

(b) A complainant shall be permitted to intervene as of right, upon notice to all parties and the administrative law judge at or before the first conference in the case, or, if no conference is held, before commencement of trial. The Commission's Law Enforcement Bureau shall prosecute the complaint. Complainants and respondents may be represented by counsel or other duly authorized representatives, who shall file notices of appearance pursuant to the Commission's rules (47 RCNY § 1-15), if before referral of the case to OATH, or pursuant to § 1-11 of this title, if after such referral.

§ 2-26 Withdrawal or Dismissal of the Petition.

After referral of a case to OATH, but before commencement of the hearing, dismissal of the case by the petitioner on the grounds provided in the Commission's rules (47 RCNY § 1-22), or withdrawal of the case by the petitioner pursuant to § 1-32(f) of this title, shall be effected

by notice to all other parties and to the administrative law judge. The complainant may move to withdraw the complaint at any time before commencement of the hearing. All other motions to withdraw or dismiss the petition shall be governed by §§ 1-34 and 1-50 of this title.

§ 2-27 Entry of and Relief from Default.

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

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

§ 2-28 Settlement Conferences.

In addition to or instead of the conduct of settlement conferences pursuant to §§ 1-30 and 1-31 of this title, the administrative law judge may in his or her discretion, on the request of any party, refer the case for a settlement conference to be conducted by the Commission's Office of Mediation and Conflict Resolution pursuant to the Commission's rules (47 RCNY subchapter F). In the discretion of the administrative law judge, proceedings at OATH may be stayed, in whole or in part, pending completion of such settlement conference or for any shorter period of time.

§ 2-29 Discovery.

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

(b) *Scope of discovery.*

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

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

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

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

§ 2-30 Interlocutory Review.

(a) Within five days after issuance of any interlocutory order or decision, a party may move for certification by the administrative law judge that such order or decision may be submitted, in whole or in specified part, for review by the chair of the Commission. If the party moving for certification seeks a stay of proceedings, in whole or in part, pending completion of the

interlocutory review, the motion for certification shall include a statement as to why the failure to grant the requested stay would materially prejudice the party. Certification may also be made, and a stay may be ordered, by the administrative law judge on his or her own motion.

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

§ 2-31 Proceedings After Issuance of Report and Recommendation.

Proceedings following issuance by the administrative law judge of the report and recommendation in the case shall be governed by the Commission's rules (47 RCNY §§ 1-75, 1-76).

Subchapter D - Rules for Post-Seizure Review of Impoundment of Vehicles

§ 2-41 Applicability.

This subchapter shall apply solely to cases brought to determine the validity of post-seizure retention of vehicles by the Police Department or other agency as evidence or for prospective or pending actions to forfeit such vehicles. Chapter 1 of this title shall also apply to such cases except to the extent that it is inconsistent with this subchapter . Cases concerning retention of vehicles seized as evidence or for prospective or pending actions to forfeit such vehicles pursuant to § 14-140 of the New York City Administrative Code shall also be governed by *Krimstock v. Kelly*, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004), and any amendments, modifications and revisions thereof.

§ 2-42 Parties.

For purposes of this subchapter, the agency seeking to retain the vehicle shall be the petitioner, and the claimant to the vehicle shall be the respondent, as defined in § 1-01 of this title.

§ 2-43 Pleadings.

- (a) The time provided in § 1-26(d) for service of the notice of hearing shall not apply.
- (b) Notwithstanding § 1-24 of this title, the respondent may serve and file an answer at any time until the commencement of the hearing.

§ 2-44 Trial Continuances.

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

§ 2-45 Default by Vehicle Owner.

Pursuant to § 1-45 of this title, where an owner of a vehicle fails to appear for trial, having been properly served with required notices, the petitioner need not prove that such owner "permitted or suffered" the allegedly illegal use of the seized vehicle.

§ 2-46 Transcription of Hearings.

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