Chapter 6: OATH Hearings Division – Rules of Practice

(Amended City Record 6/1/2015, eff. 7/1/2015)

Subchapter A: General

§ 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 48 RCNY § 6-19 to review hearing officer decisions.

"**Appearance**" means a communication with the Tribunal or any other participation in a proceeding before the Tribunal by a party, the attorney or representative of a party, or another individual in connection with a summons that is or was pending before the Tribunal. An appearance may be made in person or by remote means at the discretion of the Tribunal, as provided in this title.

"**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 Section 1048 of the Charter.

"**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 48 RCNY § 6-02).

"**OATH Hearings Division**" means the Health Tribunal, the Environmental Control Board as defined in Section 1049-a of the Charter, 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 48 RCNY Chapters 1 and 2.

"**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 agency or individual who issued a summons.

"**Remote means**" refers to any means of communication or attendance, as applicable, that does not require the physical presence of a party, representative, or other individual and that has been approved by the Tribunal. At the discretion of the Tribunal, remote means may include, but are not limited to, telephonic communication, postal mail and online communication, including e-mail and videoconferencing.

"**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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 6-02 Jurisdiction, Powers and Duties.

(a) *Jurisdiction.* Pursuant to Section 1048 of the Charter, 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 Section 1049-a of the 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 Section 1048(2) of the Charter, 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015)

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015)

Subchapter B: Pre-Hearing Procedures

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 6-06 Pre-Hearing Requests for Inspectors. [Repealed]

(Amended City Record 6/1/2015, eff. 7/1/2015; repealed City Record 7/8/2016, eff. 8/7/2016)

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

Subchapter C: Hearings

§ 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.

(3) Each case docketed with the Hearings Division is subject to review by the Chief Administrative Law Judge, who shall determine whether the case shall proceed at the Hearings Division or be removed to the Trials Division.

(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 the summons.

(2) A summons may be served pursuant to the requirements of Section 1049-a(d)(2) of the Charter, 35 RCNY Chapter 68, 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 Section 1049-a(d)(2)(a)(i) of the Charter and (ii), the term "reasonable attempt" as used in Section 1049-a(d)(2)(b) of the Charter 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 Section 1049-a(d)(2) of the Charter or the statute or rule providing for such docketing. Where a summons is lawfully served in a manner other than that provided in Section 1049-a(d)(2) of the Charter 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 48 RCNY § 6-09.

(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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 6/18/2021, eff. 7/18/2021)

§ 6-09 Appearances.

(a) A Respondent may appear for a hearing personally or be represented by:

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

(2) a representative registered to appear before the Tribunal pursuant to 48 RCNY § 6-23, or

(3) any other person authorized by a Respondent to appear at or before the Tribunal on behalf of the Respondent, as set forth in 48 RCNY § 6-23(a).

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

(1) Appearing themselves or by representative either by telephone, videoconferencing, or similar remote means or in person at the place, date, and time scheduled for the hearing. Respondent’s appearance is timely if Respondent or Respondent’s representative appears at the scheduled hearing location in person or by telephone, videoconferencing, or similar remote means, and is ready to proceed within three (3) hours of the scheduled hearing time for a summons. However, a representative or attorney appearing on fifteen (15) or more summonses on a given hearing date must comply with the requirements set forth in 48 RCNY § 6-24 to be considered timely; or

(2) Appearing by written communication, including postal mail, written online communication, or by other similar remote means, pursuant to 48 RCNY § 6-10 when the opportunity to do so is offered by the Tribunal.

(c) Where the terms of a summons authorize a Respondent to do so, a Respondent may also appear by admitting the violation charged on the summons and paying the penalty for the cited violation in the manner and by the time directed in the summons. Payment in full is deemed an admission of liability and no further hearing or appeal will be allowed.

(d) *Current Owner of a Property*.

(1) Notwithstanding the foregoing, if a prior owner of a property is named on the summons, the current owner of a property may appear on behalf of the prior owner if the summons:

(A) involves a premises-related violation, and

(B) was issued after title to the property was transferred to the current owner.

(2) The current property owner may appear for purposes of presenting a deed and indicating when title passed.

(3) The current owner of the property may also present a defense on the merits of the charge only if the current owner agrees to substitute him or herself for the prior owner and waives all defenses based on service.

(e) *Failure to Appear by Respondent.* A Respondent's failure to appear timely pursuant to subsection (1) of subdivision (b) of this section, or to make a timely request to reschedule pursuant to 48 RCNY § 6-05, constitutes a default and subjects the Respondent to penalties in accordance with 48 RCNY § 6-20.

(f) Notwithstanding any other provision of this section, attorneys or registered representatives who appear in person on fifteen (15) or more summonses on a given hearing date, and those who appear remotely on any matter, must comply with the requirements set forth in 48 RCNY § 6-24 and 48 RCNY § 6-24a respectively. Failure to do so constitutes a default and subjects the Respondent to penalties in accordance with 48 RCNY § 6-20.

(g) A Petitioner may appear for a hearing through an authorized representative at the place, date and time scheduled for the hearing or by remote methods when the opportunity to do so is offered by the Tribunal. If Petitioner elects to appear at the Tribunal, Petitioner's appearance for a hearing is considered timely if Petitioner is ready to proceed within thirty (30) minutes of the timely appearance by Respondent.

(h) *Failure to Appear by Petitioner.* If Petitioner fails timely to appear at the scheduled place, date and time, pursuant to subdivision (g) of this section, the hearing may proceed without the Petitioner.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/5/2018, eff. 1/4/2019; amended City Record 10/13/2021, eff. 10/13/2021)

§ 6-10 Written Remote Adjudications.

(a) When the opportunity to do so is offered by the Tribunal, a Respondent may contest a violation by written communication, including by postal mail, written online communication, or by other similar remote means, as permitted by the Tribunal.

(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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 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.

(1) *Admissibility of Immigration Status.* A party, representative or attorney shall not offer information concerning a person’s actual or perceived immigration status unless and until the Hearing Officer reviews such information privately and determines that such information is relevant and not introduced solely to subject that person to harassment, intimidation, physical danger, or other harms in connection with the person’s immigration status. Notwithstanding any other provision of this subdivision, a person may voluntarily introduce or authorize the introduction of information about his or her own immigration status.

(2) Any party, representative or attorney who offers information concerning the immigration status of another person not in compliance with paragraph one of this subdivision may be subject to sanctions pursuant to 48 RCNY § 6-25 and such information may be struck from the record.

(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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 4/23/2021, eff. 5/23/2021)

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 6-14 Requests for Adjournment.

(a) At the request of either party during a hearing, a Hearing Officer may adjourn the hearing upon a showing of good cause as determined by the Hearing Officer in his or her discretion.

(b) 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 a reasonable opportunity to prepare for the scheduled hearing;

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

(7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and

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

(c) Once a hearing has been adjourned, neither party may request a reschedule pursuant to 48 RCNY § 6-05. A denial of an adjournment request is not subject to interim review or appeal.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/5/2018, eff. 1/4/2019)

§ 6-15 Adjournments for Inspector Testimony.

(a) Upon request of either party, a Hearing Officer may grant an adjournment for the testimony of an Inspector if the Hearing Officer finds that the Inspector’s testimony is likely to be necessary to a fair hearing on the violation(s) charged and/or the defense(s) asserted.

(b) If a Hearing Officer has adjourned a hearing solely for the purpose of obtaining the Inspector’s testimony, and the Respondent timely appears on the adjourned hearing date but the Inspector fails timely to appear, 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 finds 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 for the appearance of the Inspector.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/5/2018, eff. 1/4/2019)

§ 6-16 Representation.

(a) Each party has the right to be represented by an attorney or another authorized representative, as set forth in 48 RCNY §§ 6-09 and 6-23.

(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 48 RCNY § 6-25. 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 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 the 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 48 RCNY § 6-19.

(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 Section 1049-a of the 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 48 RCNY § 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 8/22/2016, eff. 8/22/2016)

§ 6-18 Payment of Penalty.

A copy of the decision, other than a default decision mailed or otherwise provided in accordance with 48 RCNY § 6-20, 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

Subchapter D: Appeals

§ 6-19 Appeals.

(a) *Filing an appeal.*

(1) A party may appeal a decision of a Hearing Officer in whole or in part. An appeal will be considered by the Tribunal only upon timely completion of the following requirements:

(i) The party seeking to appeal the decision of a Hearing Officer must file the appeal with the Tribunal within thirty (30) days of the date of the Hearing Officer’s decision, or within thirty-five (35) days if the decision was mailed, and the filing must contain proof that the appealing party served a copy of the appeal on the nonappealing party;

(ii) The appeal must be in writing and contain a concise statement of the issues, which must include specific objections to the findings of fact and conclusions of law in the Hearing Officer’s decision, and the points of law and facts that support each objection. The appeal may be on a form prescribed by the Tribunal.

(iii) Where a respondent appeals, that respondent must indicate in writing that payment of any fines, penalties or restitution imposed by the decision has been made in full, unless:

(A) Respondent is granted a waiver of prior payment of fines, penalties or restitution due to financial hardship, as provided in subdivision (b) of this section;

(B) Respondent received a waiver of prior payment of fines or penalties as otherwise provided in law, rules or regulations;

(C) Respondent opted for community service in lieu of a monetary penalty at the hearing; or

(D) 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.

(2) A party may not appeal a decision rendered on default, a denial of a request for new hearing after default (motion to vacate a default), or a plea admitting the violations charged.

(b) *Financial hardship.* 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 sole discretion to grant or deny a waiver due to financial hardship. Application for a waiver does not extend the time to appeal.

(c) *Responding to an appeal.* Except as provided in 48 RCNY § 5-04, the non-appealing party may file a response to the appeal within thirty (30) days of being served with the appeal, or thirty-five (35) days if served by mail. The response must be in writing, served on the appealing party, and filed with the Tribunal with proof of such service within the time allotted. The response may be on a form prescribed by the Tribunal.

(d) *Requests for Extensions of time.*

(1) A party who requests an extension of time to file an appeal or respond to an appeal will receive one automatic extension of thirty (30) days from the date the Appeals Unit grants the request. Any further requests for an extension will be granted for good cause shown.

(2) All parties are entitled to request a copy of the hearing recording from the Appeals Unit. Any requests for hearing recordings will not further extend the party’s time to appeal as set forth in Subsection (1) of this subdivision.

(3) Requests under Subsection (1) of this subdivision must be made in writing within the time allotted to file an appeal or a response, served on all

parties, and timely filed with the Tribunal with proof of service. Requests for an extension may be on a form prescribed by the Tribunal.

(4) Unless one of the exceptions in Subdivision (a)(1)(iii) of this section applies, a request for an extension of time to file an appeal does not extend the time by which the Respondent must pay the penalty pursuant to 48 RCNY § 6-18.

(e) Further filings on an appeal with the Tribunal by either party will not be considered unless requested by the Appeals Unit.

(f) *Review of an Appeal.*

(1) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in 48 RCNY § 6-11(g).

(2) The Appeals Unit will only consider evidence that was offered to the Hearing Officer at the hearing; provided however, upon good cause shown, the Appeals Unit may consider dispositive government records, such as a death certificate or deed, that establish a material fact or defense.

(3) In all cases other than those subject to 48 RCNY § 5-04, the Tribunal will decide an appeal even if there is no hearing recording.

(g) *Appeals Decision.*

(1) When an appeal is filed, the Appeals Unit 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 48 RCNY §§ 3-15, 5-04 and 5-05, the Appeals Unit has the power to affirm, reverse, remand or modify the decision appealed from.

(2) Except as provided in 48 RCNY §§ 3-15, 5-04 and 5-05, the Appeals Unit will promptly issue a written decision. Such decision is the final determination of the Tribunal, and judicial review of such decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules. 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 Section 1049-a of the 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 and issue a final determination pursuant to 48 RCNY § 3-15.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/5/2018, eff. 1/4/2019; amended City Record 6/18/2020, eff. 7/18/2020)

Subchapter E: Defaults

§ 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 48 RCNY § 6-21.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

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

(a) *Form of Request.* A request for a new hearing after default (motion to vacate a default) is a motion by a Respondent for a new hearing after the Respondent did not appear and a default decision was issued. The Respondent must make the request by application to the Tribunal on a form approved by the Tribunal. The request 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 request is made by an attorney or other representative, the request must explain the relationship between the Respondent and the person making the request

(b) A first request for a new hearing after 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 request for a new hearing after 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 request for a new hearing after 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 request. 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.

(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) *Defaulting twice on the same summons.*

(1) If, after a request for a new hearing has been previously granted, a Respondent defaults on the same summons, the second default shall not be eligible for a request for a new hearing. The second default decision is the Tribunal's final determination and is not subject to review or appeal at the Tribunal. Judicial review of the decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

(2) Notwithstanding the forgoing, upon application, the Chief Administrative Law Judge or his or her designee may grant a new hearing after default upon a showing of exceptional circumstances and in order to avoid injustice.

(f) Except as otherwise stated in 48 RCNY § 5-03, 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 Respondent's first request for a new hearing after default made more than one (1) year from the date of the default decision.

(g) If a request for a new hearing after 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 request for a new hearing after 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 decision to grant a request for a new hearing after 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.

(j) A denial of a request for a new hearing after 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.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/5/2018, eff. 1/4/2019)

Subchapter F: Miscellaneous

§ 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.

(Amended City Record 6/1/2015, eff. 7/1/2015)

§ 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;

(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; and

(g) Provide valid government-issued photo identification acceptable to the Tribunal when filing notices of appearance for an in-person hearing or when submitting motions in person, including, but not limited to, reschedule requests and motions to vacate a default.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/30/2020, eff. 1/29/2021)

§ 6-24 Pre-hearing Notification of Schedule for Attorneys and Registered Representatives for In Person Hearings.

(a) No attorney or registered representative may appear in person on fifteen (15) or more summonses on a given hearing date unless:

(1) No later than noon three (3) business days before the scheduled hearing date, the Tribunal office in the borough where the cases are scheduled

to be heard receives from the attorney or registered representative by email a written list of all scheduled cases;

(2) Notices of Appearance are submitted in advance of the scheduled hearing, as directed by the Tribunal, to the Tribunal office in the borough where cases are scheduled to be heard; and

(3) The Respondent's attorney or representative appears no later than the earliest scheduled hearing time set forth on the summonses to be heard. The timeliness requirements set forth in 48 RCNY § 6-09(b)(1) do not apply in such circumstances.

(b) Cases may be added to this list on the day of the hearing at the discretion of the Tribunal.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 12/5/2018, eff. 1/4/2019; amended City Record 10/13/2021, eff. 10/13/2021)

§ 6-24a Pre-hearing Notification of Schedule for Attorneys and Registered Representatives for Hearings by Telephone, Video-Conferencing or Other Similar Remote Means.

(a) No attorney or registered representative may appear by telephone, video-conferencing or other similar remote means unless:

(1) No later than noon three (3) business days before the scheduled hearing date, the Tribunal receives from the attorney or registered representative a list of all scheduled summonses in a format required by the Tribunal;

(2) The attorney or registered representative submits only one list per hearing date and submits that list electronically pursuant to the Tribunal's direction to a recipient designated by the Tribunal, regardless of the county in which the summonses were scheduled;

(3) The attorney or registered representative makes no changes or additions to the list, unless it is to withdraw their representation on a matter; and

(4) The attorney or registered representative calls in for their first scheduled hearing no later than the earliest scheduled hearing time as set forth on the summonses or reschedule notices to be heard. The timeliness requirements set forth in 48 RCNY § 6-09(b)(1) do not apply in such circumstance.

(b) No one registered representative or attorney may appear by remote means on a single hearing date for more than twenty-five (25) summonses, unless an exception is granted by the Tribunal prior to the hearing date.

(c) Where a law firm or representative firm has more than twenty-five (25) cases scheduled on a hearing date, it must assign an additional registered representative or attorney for each group of up to twenty-five (25) summonses to be heard on that date, unless an exception is granted by the Tribunal prior to the hearing date.

(d) The law firm or representative firm must provide the names of the additional registered representatives or attorneys who will appear on the additional groups of cases on that date. Once a registered representative or attorney is assigned to appear on a group of summonses, a different registered representative or attorney may not appear in their place.

(Added City Record 10/13/2021, eff. 10/13/2021)

§ 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; or

(13) Threaten to disclose information related to another person's actual or perceived immigration status for the purpose of intimidating or harming the other person in order to affect the outcome of the proceeding.

(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 48 RCNY § 6-13.

(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.

(Amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 4/23/2021, eff. 5/23/2021)

§ 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.

(Added City Record 7/8/2016, eff. 8/7/2016)

§ 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 48 RCNY § 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.

(Added City Record 7/8/2016, eff. 8/7/2016)

§ 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.

(Added City Record 7/8/2016, eff. 8/7/2016)

Appendix A: Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York

Preamble

§ 100 Terminology.

Terms used in these Rules are defined as follows:

(A) A "**candidate**" is a person seeking selection for or retention in public office by any public election, including primary and general elections and including partisan and nonpartisan elections. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions.

(B) A "**City administrative law judge**" is an administrative law judge, hearing examiner, hearing officer or any other person who conducts or participates in the decision of adjudicative proceedings within a City tribunal. The term "City administrative law judge" does not include members of boards or commissions. The term "City administrative law judge" also does not include the head of an agency, unless the agency is a City tribunal.

(C) A "**City tribunal**" is any City agency or any unit within a City agency that is authorized or charged by law with responsibility for conducting adjudicative proceedings. "City tribunals" to which these Rules are applicable include the tribunals constituting or within the Department of Consumer Affairs, the Department of Finance, the Department of Health and Mental Hygiene, the Environmental Control Board, the Office of Administrative Trials and Hearings, the Police Department, the Tax Appeals Tribunal, the Taxi and Limousine Commission and any similar agencies or units.

(D) "**Closely related**" means that the relationship between one person and another is that of parent and child; siblings; grandparent and grandchild; great-grandparent and great-grandchild; first cousins; or aunt/uncle and niece/nephew.

(E) A "**domestic partner**" is a member of a domestic partnership registered pursuant to Administrative Code § 3-240 or in accordance with Executive Order 123 of 1989 or Executive Order 48 of 1993 or a member of a marriage that is not recognized by the State of New York or of any domestic partnership or civil union entered into in another jurisdiction.

(F) "**Economic interest**" means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, provided that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities or in the manager of such fund unless the City administrative law judge participates in the management of the fund or a proceeding pending or impending before the City administrative law judge could substantially affect the value of the interest;

(2) service as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a spouse, domestic partner or child as an officer, director, advisor or other active participant in any such organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the City administrative law judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the City administrative law judge could substantially affect the value of the securities;

(5) a "de minimis" interest is one so insignificant that it could not raise reasonable questions as to a City administrative law judge's impartiality.

(G) An "**ex parte communication**" is a communication that concerns a pending or impending proceeding before a City administrative law judge and occurs between the City administrative law judge and a party, or a representative of a party, to the proceeding without notice to and outside the presence of one or more other parties to the proceeding.

(H) "**Fiduciary**" includes such relationships as executor, administrator, trustee and guardian.

(I) "**Impartial**" means without bias or prejudice in favor of, or against, particular parties or classes of parties, and with an open mind in considering issues that may come before the City administrative law judge.

(J) An "**impending proceedin**g" is one that has not yet been commenced but is reasonably foreseeable and not merely hypothetical.

(K) "**Integrity**" denotes probity, fairness, honesty, uprightness and soundness of character; it also denotes a firm adherence to these Rules and their standard of values.

(L) To "**know**" is to have actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(M) A "**member of the City administrative law judge's family** " is a spouse, domestic partner, child, grandchild, parent, grandparent, sibling or any other person with whom the City administrative law judge maintains a comparable relationship.

(N) "**Nonpublic information**" is confidential information of which a City administrative law judge becomes aware as a result of his or her judicial duties and which is not otherwise available to the public.

(O) A "**pending proceeding**" is one that has begun but not yet reached its final disposition.

(P) A "**political organization**" is a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(Q) "**Primarily employed by the City** " means employed on a full-time basis or the equivalent or regularly scheduled to work the equivalent of 20 hours per week at one or more City tribunals.

(R) "**Require.**" Where these Rules prescribe that a City administrative law judge "require" certain conduct of others, the term "require" means that a City administrative law judge is to exercise reasonable direction and control over the conduct of those persons subject to his or her direction and control.

§ 101 A City Administrative Law Judge Shall Uphold the Integrity of the Tribunal on Which He or She Serves.

The administration of justice in our City depends on tribunals that adjudicate fairly, without partiality, prejudgment or impropriety. A City administrative law judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity of the tribunal on which he or she serves will be preserved. The provisions of these Rules are to be construed and applied to further that objective. Persons covered by these Rules remain subject to Chapter 68 of the Charter and the rules and opinions issued by the Conflicts of Interest Board interpreting those provisions. To the extent that these Rules conflict with the provisions of Chapter 68 or the rules or opinions of the Conflicts of Interest Board, the provisions of Chapter 68 and the rules and opinions of the Conflicts of Interest Board shall take precedence unless these Rules are more restrictive. Persons covered by these Rules remain subject to Executive Order 16 of 1978 and amendments thereto, and to all other applicable City rules and executive orders. Nothing in these Rules shall limit the duty of City administrative law judges to comply with Chapter 68, the rules and opinions of the Conflicts of Interest Board, Executive Order 16 of 1978 and amendments thereto, and any additional obligations imposed by rules, guidelines or directives issued by agencies or tribunals, or the duty of administrative law judges in the Office of Administrative Trials and Hearings ("OATH") to comply with the Code of Judicial Conduct as set forth in the Rules of the Chief Administrative Judge of the Courts for the State of New York, 22 NYCRR §§ 100 et seq.

§ 102 A City Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of His or Her Activities.

(A) A City administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the

integrity and impartiality of City tribunals.

(B) A City administrative law judge shall not allow family, social, political or other relationships to influence his or her judicial conduct or judgment.

(C) A City administrative law judge shall not lend the prestige of judicial office to advance the private interests of the City administrative law judge or others; nor shall a City administrative law judge convey to others, or permit others to convey, the impression that they are in a special position to influence him or her.

(D) A City administrative law judge shall not testify voluntarily as a character witness before a City tribunal on which he or she serves.

(E) A City administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, immigration or citizenship status, military status, or any other protected status enumerated in the City Human Rights Law, Administrative Code § 8-101, or the State Human Rights Law, Executive Law § 291. This provision does not prohibit a City administrative law judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

(Amended City Record 4/23/2021, eff. 5/23/2021)

§ 103 A City Administrative Law Judge Shall Perform His or Her Judicial Duties Impartially and Diligently.

(A) *Adjudicative responsibilities.*

(1) A City administrative law judge shall be faithful to the law and maintain professional competence in it. A City administrative law judge shall not be swayed by partisan interests, public clamor or fear of public criticism.

(2) A City administrative law judge shall require order and decorum in proceedings before him or her.

(3) A City administrative law judge shall be patient, dignified and courteous to the parties, representatives, witnesses and others with whom the City administrative law judge deals in an official capacity and shall require similar conduct of others subject to his or her direction and control.

(4) A City administrative law judge shall accord to every party to a proceeding, or to that party's representative, the right to be heard according to law.

(5) A City administrative law judge shall perform judicial duties with impartiality. A City administrative law judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, immigration or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code § 8-101, or the State Human Rights Law, Executive Law § 291, or socioeconomic status, and shall require City tribunal staff and others subject to the City administrative law judge's direction and control to refrain from such words or conduct.

(6) A City administrative law judge shall require the parties and their representatives in proceedings before him or her to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, immigration or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code § 8-101, or the State Human Rights Law, Executive Law § 291, or socioeconomic status. This provision does not preclude legitimate advocacy when age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, domestic partnership status, immigration or citizenship status, military status, socioeconomic status or any other similar factor is an issue in the proceeding.

(7) A City administrative law judge shall not initiate, permit or consider ex parte communications, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, if the City administrative law judge (i) reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) insofar as practical and appropriate, provides for prompt notification of other parties or their representatives of the substance of the ex parte communication and allows an opportunity to respond.

(b) A City administrative law judge, with the consent of the parties, may confer separately with the parties and their representatives on agreed-upon matters.

(c) A City administrative law judge may initiate or consider any ex parte communications when authorized by law to do so.

(8) A City administrative law judge shall take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have his or her case fully heard on all relevant points.

(a) Among the practices that a City administrative law judge may appropriately follow and may find helpful in advancing the ability of a litigant not represented by an attorney or other relevant professional to be fully heard are the following: (i) liberally construing and allowing amendment of papers that a party not represented by an attorney has prepared; (ii) providing brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted; (iii) providing brief information about what types of evidence may be presented; (iv) being attentive to language barriers that may affect parties or witnesses; (v) questioning witnesses to elicit general information and to obtain clarification; (vi) modifying the traditional order of taking evidence; (vii) minimizing the use of complex legal terms; (viii) explaining the basis for a ruling when made during the hearing or when made after the hearing in writing; (ix) making referrals to resources that may be available to assist the party in the preparation of the case.

(b) A City administrative law judge shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the record of the proceeding. A communication between a City administrative law judge and a litigant made in fulfillment of the obligations of this paragraph remains subject to the restrictions on ex parte communications contained in the preceding paragraph.

(9) A City administrative law judge shall dispose of all judicial matters promptly, efficiently and fairly.

(10) A City administrative law judge shall not make any public comment about a pending or impending proceeding in any City tribunal. This paragraph does not prohibit a City administrative law judge from making authorized public statements in the course of his or her official duties or from explaining for public information the procedures of the tribunal. This paragraph does not apply to proceedings in which the City administrative law judge is a litigant or a representative of a litigant.

(11) A City administrative law judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the tribunal, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A City administrative law judge shall not disclose, or use for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(B) *Administrative responsibilities.*

(1) A City administrative law judge shall diligently discharge his or her administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and cooperate with other City administrative law judges and tribunal staff in the administration of judicial business.

(2) A City administrative law judge shall require tribunal staff subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the City administrative law judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(C) *Disciplinary responsibilities.*

(1) A City administrative law judge who receives information indicating a substantial likelihood that another City administrative law judge has committed a substantial violation of these Rules shall promptly report such information to the head of the tribunal, the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH, or, as applicable, to the official occupying any successor position. In addition, a City administrative law judge must comply with any agency rules requiring the reporting of such information within the agency or tribunal.

(2) If, in the course of performing judicial duties, a City administrative law judge receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility the City administrative law judge shall take appropriate action.

(3) Acts of a City administrative law judge in the discharge of disciplinary responsibilities are part of his or her judicial duties.

(D) *Disqualification.*

(1) A City administrative law judge shall disqualify himself or herself in a proceeding in which the City administrative law judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the City administrative law judge has a personal bias or prejudice concerning a party; or (ii) the City administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) (i) the City administrative law judge, while in private practice, is serving or has served as a lawyer in the matter in controversy; (ii) the City administrative law judge knows that a lawyer with whom he or she was associated in private practice served during that association as a lawyer in the matter in controversy; (iii) the City administrative law judge knows that a lawyer with whom he or she is associated in private practice is serving as a lawyer in the matter in controversy; or (iv) the City administrative law judge knows that he or she or a lawyer with whom he or she was or is associated in private practice has been or will be a material witness in the matter in controversy;

(c) the City administrative law judge has served in governmental employment and in such capacity participated as counsel, advisor or material witness in the matter in controversy;

(d) the City administrative law judge knows that he or she, individually or as a fiduciary, or the City administrative law judge's spouse or domestic partner, or a person known by the City administrative law judge to be closely related to either of them, or the spouse of such person: (i) is a party to the proceeding; (ii) is an officer, director or trustee of a party; (iii) has an economic interest in the subject matter in controversy; or (iv) has any other interest that could be substantially affected by the proceeding;

(e) the City administrative law judge knows that the City administrative law judge or his or her spouse, domestic partner or a person known by the City administrative law judge to be closely related to either of them, or the spouse or domestic partner of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding;

(f) the City administrative law judge has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the City administrative law judge's adjudicative capacity that commits the City administrative law judge with respect to (i) an issue in the proceeding, or (ii) the parties or controversy in the proceeding;

(g) notwithstanding the provisions of subparagraph (d) above, if a City administrative law judge would be disqualified because of the appearance or discovery, after the matter was assigned to the City administrative law judge, that the City administrative law judge, individually or as fiduciary, or the City administrative law judge's spouse or domestic partner or a person known by the City administrative law judge to be closely related to either of them, or the spouse of such person, has an economic interest in the subject matter in controversy, disqualification is not required if the City administrative law judge, spouse, domestic partner or other relevant person, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A City administrative law judge shall keep informed about his or her personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of his or her spouse or domestic partner and minor children residing in the City administrative law judge's household.

(E) *Remittal of disqualification.*

(1) A City administrative law judge disqualified by the terms of subdivision (D) above may disclose on the record the basis for his or her disqualification. Thereafter, subject to paragraph (2) below, if the parties who have appeared and not defaulted and their representatives, without participation by the City administrative law judge, all agree that the City administrative law judge should not be disqualified, and the City administrative law judge believes that he or she will be impartial and is willing to participate, the City administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(2) Notwithstanding paragraph (1) above, disqualification of a City administrative law judge shall not be remitted if participation in the proceeding by the City administrative law judge would violate Chapter 68 of the Charter or if the basis for disqualification is that:

(a) the City administrative law judge has a personal bias or prejudice concerning a party;

(b) the City administrative law judge, while in private practice, served as a lawyer in the matter in controversy;

(c) the City administrative law judge has been or will be a material witness concerning the matter in controversy; or

(d) the City administrative law judge or his or her spouse or domestic partner is a party to the proceeding or is an officer, director or trustee of a party to the proceeding.

(Amended City Record 4/23/2021, eff. 5/23/2021)

§ 104 A City Administrative Law Judge Shall Conduct His or Her Extra-Judicial Activities so as to Minimize the Risk of Conflict with Judicial Obligations.

(A) *Extra-judicial activities in general.* A City administrative law judge shall conduct all of his or her extra-judicial activities so that they:

(1) do not cast reasonable doubt on the City administrative law judge's capacity to act impartially as a City administrative law judge;

(2) do not detract from the dignity of judicial office;

(3) do not interfere with the proper performance of judicial duties; and

(4) are not incompatible with judicial office.

(B) *Governmental, civic or charitable activities.*

(1) A City administrative law judge shall not appear at a public hearing before an executive or legislative body or official if doing so would cast doubt on his or her ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before him or her unless the issue or party is one with respect to which the City administrative law judge would in any event be disqualified under these Rules or any other provision of law.

(2) In connection with civic or charitable activities, a City administrative law judge may participate in fund-raising or solicitation for membership if:

(a) the City administrative law judge does not use or permit use of the prestige of judicial office for fund-raising or solicitation for membership;

(b) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing or are foreseeably likely to appear before the City administrative law judge;

(c) the City administrative law judge's participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office;

(d) the fund-raising or solicitation for membership is not prohibited by Chapter 68 of the Charter or any other provision of law.

(3) A City administrative law judge shall not accept:

(a) appointment to a governmental committee or commission or other governmental position if his or her activity in such capacity would cast doubt on his or her ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before him or her; or

(b) appointment or employment as a peace officer or police officer, as those terms are defined in Criminal Procedure Law § 1.20, unless he or she is a member of the uniformed force of the police department exercising adjudicative duties.

(4) If not otherwise prohibited by Chapter 68 of the Charter or any other provision of law, a City administrative law judge may be a member or serve as an officer, director, trustee or advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of these rules.

(a) A City administrative law judge shall not serve as an officer, director, trustee or advisor if it is likely that (i) the organization will be engaged in proceedings that ordinarily would come before the City administrative law judge or (ii) such service will involve the City administrative law judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the City tribunal on which the City administrative law judge serves.

(b) A City administrative law judge may be listed as an officer, director, trustee or advisor of such an organization, provided that such listing on letterhead or elsewhere does not include the City administrative law judge's judicial designation unless comparable designations are listed for other persons.

(C) *Financial activities.*

(1) A City administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to reflect adversely on the City administrative law judge's impartiality or exploit his or her judicial position;

(b) involve the City administrative law judge with any business, organization or activity that ordinarily would come before him or her; or

(c) involve the City administrative law judge in frequent transactions or continuing business relationships with those lawyers or other persons who regularly come before the tribunal on which the City administrative law judge serves.

(2) A City administrative law judge shall manage his or her investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as he or she can do so without serious financial detriment, the City administrative law judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(3) A City administrative law judge shall not accept, and shall urge members of his or her family residing in the City administrative law judge's household not to accept, a gift, bequest, favor or loan from anyone, unless such gift, bequest, favor or loan is permitted by Chapter 68 of the Charter and any other applicable provision of law and is:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the City administrative law judge and his or her guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner or other family member of a City administrative law judge residing in the City administrative law judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the City administrative law judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the City administrative law judge in the performance of judicial duties;

(c) a gift which is customary on family and social occasions;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or friend whose appearance or interest in a case would in any event require disqualification under § 103(D) of these Rules;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not City administrative law judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to any other applicants; or

(h) any other gift, bequest, favor or loan, unless the donor is a party or other person who has come or is likely to come before the City administrative law judge or the City administrative law judge knows the donor is or intends to become engaged in business dealings with the City. Any gift received under this subparagraph that exceeds $1,000.00 must be reported to the Administrative Justice Coordinator in the Office of the Mayor or, as applicable, to the official occupying any successor position.

(D) *Fiduciary activities.* The same restrictions on financial activities that apply to a City administrative law judge personally also apply to the City administrative law judge while acting in a fiduciary capacity.

(E) *Service as arbitrator or mediator.* A City administrative law judge may act as an arbitrator or mediator, consistent with Chapter 68 of the Charter and the rules and opinions issued by the Conflicts of Interest Board interpreting those provisions and any applicable agency or tribunal rules, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.

(F) *Practice of law.*

(1) Consistent with all other provisions of these Rules, with Chapter 68 of the Charter and the rules and opinions of the Conflicts of Interest Board, any applicable agency or tribunal rules and with all other provisions of law, a City administrative law judge may practice law, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.

(2) A City administrative law judge shall not represent or appear on behalf of private interests before the City tribunal on which he or she serves.

(3) A City administrative law judge primarily employed by the City shall not represent or appear on behalf of private interests before any City tribunal or agency.

(4) A City administrative law judge shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before the City tribunal on which he or she serves.

(G) *Compensation and reimbursement.* A City administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by these Rules, if the source of such payments does not give the appearance of influencing the City administrative law judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a City administrative law judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the City administrative law judge and, where appropriate to the occasion, by the City administrative law judge's spouse, domestic partner or guest. Any payment in excess of such an amount is compensation.

§ 105 A City Administrative Law Judge Shall Refrain From Inappropriate Political Activity.

(A) A City administrative law judge shall not act as a leader or hold an office in a political organization.

(B) A City administrative law judge shall not solicit funds for a political organization or candidate.

(C) A City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office, except that he or she may continue to hold office while being a candidate for election to or serving as a delegate in a State constitutional convention, if otherwise permitted by law to do so.

(D) A City administrative law judge who is a candidate for elective judicial office shall comply with the Rules of the Chief Administrator of the Courts for the State of New York governing the conduct of such candidates, 22 NYCRR § 100.5. A determination by the State Commission on Judicial Conduct, a court of the State of New York or any other authorized entity that a City administrative law judge has violated those Rules shall constitute misconduct and may subject a City administrative law judge to discipline hereunder.

(E) A City administrative law judge who engages in any other partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves nor be in violation of Chapter 68 of the Charter or any other applicable law.

§ 106 Misconduct.

(A) A violation of these Rules may constitute misconduct and may subject a City administrative law judge to discipline.

(B) A complaint alleging that a City administrative law judge has violated these Rules may be made to the head of the City tribunal on which the City administrative law judge serves or served or to the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH or, as applicable, to the official occupying any successor position. For purposes of this and the succeeding paragraphs of this section, a "complaint" shall include a report made pursuant to § 103(C)(1) of these Rules.

(C) If the head of a City tribunal receives a complaint, he or she shall so advise the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position.

(D) A complaint received by the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH or, as applicable, the official occupying any successor position, shall be referred, after consultation and as appropriate, to the head of the City tribunal on which the City administrative law judge serves or served, to the Conflicts of Interest Board and/or to the Department of Investigation. A complaint concerning the head of a tribunal located within a City agency may also be referred, after consultation and as appropriate, to the head of such agency. A complaint concerning the head of a tribunal not located within a City agency may be referred by the Administrative Justice Coordinator in the Office of the Mayor or the official occupying any successor position, to the Mayor or the Mayor's designee.

(E) The head of each City tribunal shall report to the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, to the official occupying any successor position, the disposition of each complaint alleging a violation of these Rules that has been received by or referred to the head of the tribunal.

(F) The Chief Judge of OATH or, as applicable, the official occupying any successor position, shall maintain a record of every complaint of a violation of these Rules made under this section and of the disposition of each complaint, which record shall be confidential consistent with applicable law. The Chief Judge of OATH or, as applicable, the official occupying any successor position, shall maintain an index of all City administrative law judges found to have violated these Rules and of the discipline imposed in each such case, which index shall be made available for public inspection and copying.

(G) Notwithstanding the foregoing, with respect to a tribunal in any City agency having an internal investigation division, a complaint alleging that an administrative law judge serving on such a tribunal has violated these Rules shall be made to the head of that agency.

(H) Nothing contained herein shall prohibit the head of a tribunal or other officer responsible for employing or appointing a City administrative law judge from refusing further employment to, terminating the employment of or otherwise disciplining the City administrative law judge, if the head of the tribunal or other officer is otherwise authorized to do so.

§ 107 Advisory Opinions; Advisory Committee.

(A) *Advisory opinions.* Advisory opinions with respect to these Rules may be issued jointly by the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, by the official occupying any successor position, after consultation with each other. A request for an advisory opinion may be made by a City administrative law judge, including the supervisor of a City administrative law judge or the head of a City tribunal, or by the head of a City agency. A request may be addressed to the Chief Judge of OATH, or, as applicable, to the official occupying any successor position, who shall provide a copy of it to the Administrative Justice Coordinator in the Office of the Mayor, or, as applicable, to the official occupying any successor position, and who shall maintain a record of all such requests for advisory opinions and of all opinions issued in response thereto. An advisory opinion issued under these Rules shall be based on such facts as are presented in the request or subsequently submitted in a

written, signed document. Advisory opinions shall be issued only with respect to proposed future conduct or action by a City administrative law judge. A City administrative law judge whose conduct or action is the subject of an advisory opinion shall not be subject to sanction by virtue of acting or failing to act due to a reasonable reliance on the opinion unless material facts were omitted or misstated in the request. A previously issued opinion may be amended, upon notice to the subject City administrative law judge, but the amendment shall apply only to future conduct or action by the City administrative law judge. Advisory opinions shall be made public with such deletions as may be necessary to prevent disclosure of the identity of the subject City administrative law judge or any other involved party.

(B) *Advisory committee.* The Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position may jointly appoint an advisory committee and may consult that committee in the preparation of advisory opinions. Advisory committee members shall be members of the bar especially knowledgeable about matters of ethics, administrative law or the operations of City tribunals. Upon request, the committee shall advise the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position, with respect to any question concerning application of these Rules as to which the committee's advice is sought.