City of New York
Office of Administrative Trials and Hearings

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?
The Office of Administrative Trials and Hearings (OATH) proposes to modify the provisions in Chapters 1, 2 and 6 in Title 48 of the Rules of the City of New York. The changes modify various procedures relating to matters adjudicated at OATH. These changes reflect organizational changes at OATH and will simplify, clarify and expedite the adjudications process. Where appropriate, the changes make the procedural rules in Chapter 6 consistent with those of other tribunals at OATH.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place at 2:00 p.m. on May 7, 2015. The hearing will be in Courtroom G located at 100 Church Street, 12th Floor, NY, NY 10007.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to OATH through the NYC rules website at: http://rules.cityofnewyork.us.
- **Email.** You can email written comments to: rules_oath@oath.nyc.gov.
- **Mail.** You can mail written comments to: OATH, Attention: Maria Marchiano, Assistant Commissioner and Senior Counsel, 100 Church Street, 12th Floor, New York, N.Y. 10007.
- **Fax.** You can fax written comments to OATH at: 212-933-3079.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Stacey Turner at (212) 933-3007. You can also sign up in the hearing room before the hearing begins on May 7, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to May 7, 2015.

Do you need assistance to participate in the Hearing? You must tell OATH staff if you need a reasonable accommodation for a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 933-3007. You must tell us by April 30, 2015.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at http://rules.cityofnewyork.us/. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at 100 Church Street, 12th Floor, New York, NY 10007.

What authorizes OATH to adopt this rule? Section 1049 in Chapter 45-A of the New York City Charter authorizes OATH to adopt this proposed rule. OATH's regulatory agenda for this Fiscal Year anticipated that rulemaking may be necessary to amend the existing Rules of Practice of the Health Tribunal at OATH based on its experience.

Where can I find OATH's rules? OATH's rules are found in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? OATH must meet the requirements of Section 1043(b) in Chapter 45 of the Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and section 1049 of the Charter.

Statement of Basis and Purpose

Background

Section 1049 of the Charter authorizes the Chief Administrative Law Judge of OATH to direct the office with respect to its management and structure and to establish rules for the conduct of hearings. With this rule, OATH is modifying its procedural rules to streamline processes, provide greater consistency across tribunals and give OATH the flexibility to transfer or allow new types of cases to be made returnable to OATH in the future. Changes include the revision of Chapters 1 and 2 of Title 48 of the RCNY and the repeal and reenactment of Chapter 6.

The OATH Trials Division

The changes to Chapters 1 and 2 rename the entity governed by these rules as the "OATH Trials Division." These changes include:

- modifying captions for Chapters 1 and 2 and Subchapter D;
- adding a definition of "Trial" to section 1-01;
- changing the words "hearing" and "hearings" to "trial" and trials" throughout; and
- providing a mechanism for review by the Chief Administrative Law Judge to determine the proper venue for hearings or trials.

The OATH Hearings Division

The changes to Chapter 6 expand the applicability of these rules to the newly created OATH Hearings Division. They also modify various procedures relating to pre-hearing rescheduling, adjournments, notifications, defaults, appeals, conduct of participants, and other matters in order to simplify, clarify and expedite the adjudications process. Where appropriate, the changes make the procedural rules at the OATH Hearings Division consistent with those of other tribunals at OATH.

Specific Amendments to be Enacted

The rules in Chapter 6 have been broken down into subchapters to provide for better clarity and readability.

Subchapter A--General

In Section 6-01"Definitions Specific to this Chapter," the terms "Adjournment," "Appearance," "OATH" and "Reschedule" are added, and the term "Hearing Examiner" is changed to "Hearing Officer." The term "Department" is deleted and the term "Petitioner" is modified to reflect that cases will be initiated by various agencies. The terms "Board of Health" and "Health Code" are also deleted as references to both are now contained within the rules that specifically refer to them.

Section 6-02 "Jurisdiction, Powers and Duties of the OATH Hearings Division" is changed to permit the Tribunal to adjudicate Notices of Violation issued by any agency consistent with applicable law. It also reflects that settlement conferences are not being held at the Tribunal. The remainder of former section 6-02 is renumbered as 6-13 "Hearing Officers."

Section 6-03 "Language Assistance Services" has been added to clarify that these services are available at the Tribunal.

Section 6-04 "Computation of time" continues, with one minor modification, former Section 6-10 "Computation of time." Subdivision (b) of this section is modified to provide that if a Tribunal decision is mailed to a party, five, rather than seven, days will be added to the period of time within which the party has the right or requirement to act.

Subchapter B -Pre-Hearing Procedures

New Section 6-05 is titled "Pre-Hearing Requests to Reschedule" and includes material formerly found at section 6-04 with some changes:

- It sets forth the procedures by which respondents may make a request to reschedule a hearing and reduces the number of requests to one per party for each violation.

- It extends the time, up until the time of the scheduled hearing, in which a respondent may request to reschedule a hearing.

- It requires that the petitioner notify the respondent three days before the hearing if the petitioner requests to reschedule the hearing.

Section 6-06 "Subpoenas" is deleted in its entirety. The Hearing Officer's ability to issue subpoenas remains in Section 6-13(b).

New Section 6-06 "Pre-Hearing Requests for Inspectors" contains text from former section 6-05(f)(i)(a) but shortens the time frame for respondent requests from seven business days prior to the scheduled hearing date to three business days. Such request is considered a request to reschedule under section 6-05.

Section 6-07 is added to include a provision for Pre-Hearing Discovery. This provision is consistent with rules governing other tribunals at OATH, which set out the scope of pre-hearing discovery.

Subchapter C -Hearings

Section 6-08 "Proceedings before the OATH Hearings Division" simplifies the requirements of service previously located at section 6-03(b) by no longer requiring certified or registered mailing. It also deletes language specific to the Department of Health and Mental Hygiene as to who may be served.

Section 6-09 "Appearances" reorders former section 6-04, with some changes. The provision allows for the adjudication of cases in person, by mail or online. Appearances by mail and online are allowed unless the Notice of Violation specifies otherwise. An in-person appearance must be at the time, as well as on the date, of the scheduled hearing. This section sets forth what happens when either the petitioner or the respondent fails to appear at the scheduled time. In addition:

- The provisions in former section 6-04 subdivision (b) detailing requirements for appearances by mail are moved to Section 6-10 "Adjudications by Mail and Online."
- The provisions in former section 6-04 subdivision (c) for pre-hearing adjournments are moved to Section 6-05 "Pre-Hearing Requests to Reschedule."
- The provisions in former section 6-04 subdivision (d) for requests for adjournments made at the hearing are moved to Section 6-14 "Requests for Adjournments."
- The provisions in former section 6-04 subdivision (e) detailing the procedures for defaults upon a failure to appear by respondent are moved to Section 6-20 "Default" and Section 6-21 "Request for a New Hearing after a Failure to Appear."
- New subdivisions (c) and (d) detail procedures for appearances by the petitioner and what happens when a petitioner fails to appear at the scheduled time.

Section 6-10 "Adjudication by Mail and Online" renumbers and renames former section 6-05, previously titled "Hearings and adjudications in person, by mail, or by telephone." It includes former sections 6-05 (a) and (h). If the Notice of Violation specifies the respondent must appear in person, these methods of adjudication may not be used.

Section 6-11 "Hearing Procedures" is a new section that incorporates with some modifications, provisions contained in subdivisions (a), (b), (c), and (j) of former Section 6-05 "Hearings and adjudications in person, by mail, or by telephone."

- The provision in subdivision (b), "The hearings shall be open to the public," is removed to accommodate the conduct of hearings by mail, telephone and online.

- New subdivision (d) requires that counsel or authorized representatives who appear on behalf of respondents have sufficient staffing to complete their scheduled hearings. It also gives the Tribunal discretion to determine the order in which the Notices of Violations are heard.

Section 6-12 "Burden of Proof" is a new section that contains portions of former section 6-05(e).

Section 6-13 "Hearing Officers" is a new section that clearly delineates the powers of the Hearing Officers. It includes the powers of Hearing Examiners formerly found in section 6-02(c), information about amending Notices of Violation formerly found in section 6-03(d), and subpoena powers formerly found in section 6-06.

Section 6-14 "Requests for Adjournment" contains provisions regarding requests for adjournment made at a hearing, previously contained in Section 6-04(d). It lists factors that will be considered in deciding whether there is good cause to grant an adjournment request.

Section 6-15 "Appearances of Inspectors" is a new section that incorporates, with some modifications, the provisions that were previously contained in Section 6-05(f).

- Subdivision (a) sets forth the procedure for a respondent to request the presence of the inspector at the time of the hearing. Such request is considered as a request to reschedule the hearing and follows the rules outlined in Section 6-06, which permits such a request up to three, rather than seven, business days prior to the hearing.

- Subdivision (c) permits a hearing to be adjourned no more than two, rather than three, times for the presence of the inspector.

Section 6-18 "Payment of Penalty" is a new section that incorporates, with some modifications, the provisions formerly found in Section 6-05(i). Fines imposed must be paid within thirty days of the date of the hearing decision. OATH will no longer impose late payment penalties if the fine is not paid on time.

Subchapter D-Appeals

Section 6-19 "Appeals" incorporates, with some modifications, the provisions formerly found in Section 6-08. It also adds a provision for extending the time to file an appeal due to impossibility or other explanation as well as a provision tolling the time to appeal if a recording is requested.

- Subdivision (c) describes the record to be considered on appeal and limits the evidence to that which was presented at the hearing.

Subchapter E-Defaults

Section 6-20 "Defaults" contains provisions previously contained in Section 6-04(e) regarding the consequences of a failure to appear at a hearing. Default decisions no longer need to be rendered by a hearing officer.

Section 6-21 "Request for a New Hearing after a Failure to Appear (Motion to Vacate a Default)" contains provisions previously contained in Section 6-04(e)(3) regarding procedures for motions to vacate a default.

- Subdivision (c) lists circumstances to be considered in determining "reasonable excuse" for a respondent's failure to appear at the hearing.

- Subdivision (e) provides that if a motion to vacate a default has been previously granted and a new default decision has been issued for the same Notice of Violation, the second default decision will not be opened except in exceptional circumstances and in order to avoid injustice.

- Subdivision (f) provides that a motion to open a default received more than one year after the default decision will not be granted except in exceptional circumstances and in order to avoid injustice.

- A new subdivision (g) has been added to clarify that if a motion to vacate a default is granted, requests for refunds of payments made after default will not be considered until after the hearing is completed.

Subchapter F-Miscellaneous

Section 6-22 "Disqualification of Hearing Officers" contains provisions formerly found in Section 6-07. There are no major substantive rule changes in the section.

Section 6-23 "Registered Representatives" incorporates, with some modifications, the provisions formerly found in Section 6-09 "Registration and disqualification of certain authorized representatives." Family members of respondents are exempt from the registration requirement. The Tribunal will not charge a fee to register representatives and it will not issue a registration card. The new rule is consistent with procedures currently in place at the Environmental Control Board.

Section 6-24 "Misconduct" is a new section that details prohibited conduct by a party, witness, representative or attorney, including prohibited communications. It also provides penalties for misconduct and procedures for imposing discipline on attorneys or representatives.

OATH's authority to establish these rules is found in section 1049 of the New York City Charter.

Deleted material is in [brackets]. New text is underlined.

"Shall," "will" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The heading of chapter 1 title 48 of the Rules of the City of New York is amended to read as follows:

CHAPTER 1
RULES OF PRACTICE APPLICABLE TO CASES AT THE OATH [GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES] TRIALS DIVISION

§ 2. The definitions of "Administrative law judge" and "Chief administrative law judge," found in section 1-01 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York, are amended, and a new definition for "Trial" is added to appear alphabetically, as follows:

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

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

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

§ 3. Section 1-03 of subchapter A of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

§1-03 Applicability.
This chapter applies to the conduct of all cases, including [hearings] trials, [pre-hearing] pre-trial and [post-hearing] post-trial matters, except to the extent that this chapter may be superseded by CAPA or other provision of law.

§ 4. Subdivisions (b), (e), and (f) of section 1-13 of subchapter B of chapter 1 of title 48 of the Rules of the City of New York are amended to read as follows:

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

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

(f) In the event that an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the [c]Chief [a]Administrative [l]Law [j]Judge may, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against him or her, suspend that attorney or representative from appearing at OATH, either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of [c]Chief [a]Administrative [l]Law [j]Judge that the basis for the suspension no longer exists.

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

§1-21 Designation of OATH.
Where necessary under the provision of law governing a particular category of cases, the agency head shall designate the [c]Chief [a]Administrative [l]Law [j]Judge of OATH, or such administrative law judges as the [c]Chief [a]Administrative [l]Law [j]Judge may assign, to hear such cases.

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

§1-25 Amendment of Pleadings.

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

§ 7. Subdivision (b) of section 1-26 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended, and a new subdivision (e) is added, to read as follows:

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

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

§ 8. Subdivision (c) of section 1-27 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

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

§ 9. Subdivision (a) of section 1-28 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) When a case is placed on either the trial calendar or the conference calendar, and within the time provided in § 1-26(d), if applicable, the party that placed the case on the calendar shall serve each other party with notice of the following: the date, time and place of the [hearing] trial or conference; each party's right to representation by an attorney or other representative at the [hearing] trial or conference; the requirement that a person representing a party at the [hearing] trial or conference must file a notice of appearance with OATH prior to the [hearing] trial or conference; and, in a notice of a [hearing] trial served by the petitioner, the fact that failure of the respondent or an authorized representative of the respondent to appear at

the [hearing] trial may result in a declaration of default, and a waiver of the right to a [hearing] trial or other disposition against the respondent. The notice may be served personally or by mail, and appropriate proof of service shall be maintained. A copy of the notice of conference, with proof of service, shall be filed with OATH at or before the commencement of the conference. A copy of the notice of trial, with proof of service, shall be filed with OATH at or before the commencement of the trial.

§ 10. Subdivision (a) of section 1-31 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

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

§ 11. Subdivisions (a) and (b) of section 1-32 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York are amended to read as follows:

(a) Applications for adjournments of conferences or [hearings] trials shall be governed by this section and by §1-34 or §1-50. Conversion of a trial date to a conference date, or from conference to trial, shall be deemed to be an adjournment.
(b) Applications to adjourn conferences or [hearings] trials shall be made to the assigned administrative law judge as soon as the need for the adjournment becomes apparent. Applications for adjournments are addressed to the discretion of the administrative law judge, and shall be granted only for good cause. Although consent of all parties to a request for an adjournment shall be a factor in favor of granting the request, such consent shall not by itself constitute good cause for an adjournment. Delay in seeking an adjournment shall militate against grant of the request.

§ 12. Subdivisions (a), (b), (c), and (d) of section 1-33 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York are amended to read as follows:

(a) Requests for production of documents, for identification of trial witnesses, and for inspection of real evidence to be introduced at the [hearing] trial may be directed by any party to any other party without leave of the administrative law judge.
(b) Depositions shall only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, shall not be permitted except upon agreement among the parties or upon motion for good cause shown. Demands for bills of particulars shall be deemed to be interrogatories. Resort to such extraordinary discovery devices shall not generally be cause for adjournment of a conference or [hearing] trial.

(c) Discovery shall be requested and completed promptly, so that each party may reasonably prepare for trial. A demand for identification of witnesses, for production of documents, or for inspection of real evidence to be introduced at trial shall be made not less than twenty days before trial, or not less than twenty-five days if service of the demand is by mail. An answer to a discovery request shall be made within fifteen days of receipt of the request, or within ten days if service of the answer is by mail. An objection to a discovery request shall be made as promptly as possible, but in any event within the time for an answer to that request. Different times may be fixed by consent of the parties, or by the administrative law judge for good cause. Notwithstanding the foregoing time periods, where the notice of the [hearing] trial is served less than twenty-five days in advance of trial, discovery shall proceed as quickly as possible, and time periods may be fixed by consent of the parties or by the administrative law judge.
(d) Any discovery dispute shall be presented to the assigned administrative law judge sufficiently in advance of the [hearing] trial to allow a timely determination. Discovery motions are addressed to the discretion of the administrative law judge. The timeliness of discovery requests and responses, and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties shall be among the factors in the administrative law judge's exercise of discretion.

§ 13. Subdivision (a) of section 1-34 of subchapter C of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

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

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

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

§ 15. Subdivisions (a), (b), (c), and (d) of section 1-43 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

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

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

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

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

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

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

§ 17. The heading of section 1-46 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

§1-46 Evidence at the [Hearing] Trial.

§ 18. Subdivision (b) of section 1-49 of subchapter D of chapter 1 of title 48 of the Rules of the City of New York is amended to read as follows:

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

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

§1-50 Trial Motions.
Motions may be made during the [hearing] trial orally or in writing. Trial motions made in writing shall satisfy the requirements of §1-34. The administrative law judge may, in his or her discretion, require that any trial motion be briefed or otherwise supported in writing. In cases referred to OATH for disposition by report and recommendation to the head of the agency, motions addressed to the sufficiency of the petition or the sufficiency of the petitioner's evidence shall be reserved until closing statements.

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

§1-51 The Transcript.
[Hearings] Trials shall be stenographically or electronically recorded, and the recordings shall be transcribed, unless the administrative law judge directs otherwise. In the discretion of the administrative law judge, matters other than the [hearing] trial may be recorded and such recordings may be transcribed. Transcripts shall be made part of the record, and shall be made available upon request as required by law.

§ 21. The heading of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:

CHAPTER 2
ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT THE OATH TRIALS DIVISION

§ 22. Subdivision (a) of section 2-25 of subchapter C of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:

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

§ 23. Subdivision (a) of section 2-43 of subchapter D of chapter 2 of title 48 of the Rules of the City of New York is amended to read as follows:

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

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

§2-46 Transcription of [Hearings] Trials.
Notwithstanding §1-51 of this title, the recording of the [hearing] trial or of other proceedings in the case, whether electronic or stenographic, shall not be transcribed except (i) upon request and payment of reasonable transcription costs, (ii) upon direction of the administrative law judge, in his or her discretion, or (iii) as otherwise required by law.

§ 25. Chapter 6 of title 48 of the Rules of the City of New York is REPEALED, and a new Chapter 6 is added to read as follows:

CHAPTER 6

OATH Hearings Division - Rules of Practice

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.

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

"Charter" means the New York City Charter.

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

"Hearing Officer" means a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, to carry out the adjudicatory powers, duties and responsibilities of the Tribunal.

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

"OATH" means the New York City Office of Administrative Trials and Hearings.

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

"Person" means any individual, partnership, unincorporated association, corporation or governmental agency.

"Petitioner" means the New York City agency authorized to issue Notices of Violations returnable to the Tribunal.

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

"Respondent" means the person against whom the charges alleged in a Notice of Violation have been filed.

"Tribunal" means the OATH Hearings Division, including the Health Tribunal.

§6-02 Jurisdiction, Powers and Duties

(a) Jurisdiction. Pursuant to Charter section 1048, the Tribunal has jurisdiction to hear and determine Notices of Violation issued by any City agency, consistent with applicable laws, rules and regulations. Consistent with the delegations of the Commissioner of the Department of Health and Mental Hygiene and the Board of Health established by section 553 of the New York City Charter, the Tribunal has jurisdiction to hear and determine Notices of Violation 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.

(b) General Powers. The Tribunal and the Hearing Officers have the following powers:

(1) To impose fines and other penalties in accordance with applicable law; and

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

§6-03 Language Assistance Services

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

§6-04 Computation of Time

(a) In computing any period of time prescribed or allowed by this chapter, the day of the act or

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

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

Subchapter B—Pre-Hearing Procedures

§6-05 Pre-Hearing Requests to Reschedule

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 date and time of the scheduled hearing. If a petitioner requests to reschedule, the petitioner must notify the respondent at least three days prior to the originally-scheduled hearing date and file proof of that notification with the Tribunal. If a petitioner fails to provide such proof of notification, 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 request to reschedule will be granted for each party for each NOV. A request by a respondent for the appearance of an inspector, public health sanitarian or other person who issued an NOV (the "inspector") made in the manner described in §6-06 will constitute a request to reschedule under this section.

§6-06 Pre-Hearing Requests for Inspectors

Prior to a hearing, a respondent may request the presence of the inspector, public health sanitarian or other person who issued an NOV at the hearing, provided that the request is made in writing and is received by the Tribunal no later than three business days prior to the scheduled hearing. Such request will constitute a request to reschedule by the respondent under §6-05 of this chapter. Upon such request, the hearing will be rescheduled to allow for the appearance of the inspector, and the respondent does not need to appear at the originally scheduled hearing.

§6-07 Pre-Hearing Discovery

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

(a) Upon written request received by the opposing party at least five business days prior to the scheduled hearing date, any party is entitled to receive from the opposing party a list of the

names of witnesses who may be called and copies of documents intended to be submitted into evidence.

(b) Pre-hearing discovery shall be limited to the matters enumerated above. All other applications or motions for discovery shall be made to a Hearing Officer at the commencement of the hearing and the Hearing Officer may order such further discovery as is deemed appropriate in his or her discretion.

(c) Upon the failure of any party to properly respond to a lawful discovery order or request or such party's wrongful refusal to answer questions or produce documents, the Hearing Officer may take whatever action he or she deems appropriate including but not limited to preclusion of evidence or witnesses. It shall not be necessary for a party to have been subpoenaed to appear or produce documents at any properly ordered discovery proceeding for such sanctions to be applicable.

Subchapter C--Hearings

§6-08 Proceedings before the OATH Hearings Division

(a) Notice of Violation.

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

(2) The original or a copy of the NOV must be filed with the Tribunal prior to the first scheduled hearing date.

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

(b) Service of the Notice of Violation. There must be service of a Notice of Violation. Service of a Notice of Violation in the following manner will be considered sufficient:

(1) The NOV may be served in person upon:

(i) the person alleged to have committed the violation,

(ii) the permittee, licensee or registrant,

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

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

(v) an officer of the corporation,

(vi) a member of a limited liability company,

(vii) a managing or general agent, or

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

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

(i) the alleged violator,

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

(iii) the registrant listed in the registration form, or

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

(3) If the NOV is served by mail, documentation of mailing will be accepted as proof of service of the NOV.

(c) Contents of Notice of Violation. The NOV must contain:

(1) 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;

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

(3) 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;

(4) Notification of the date, time and place when and where a hearing will be held by the Tribunal. Such date must be at least fifteen calendar days after the NOV was served, unless another date is required by applicable law;

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

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

§6-09 Appearances

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

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

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

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

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

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

(3) Unless the NOV specifies that a respondent must appear in person at a hearing, a respondent may appear by:

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

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

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

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

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

(d) Failure to Appear by Petitioner. If a petitioner fails to appear at the scheduled time, the hearing will proceed without the petitioner.

§6-10 Adjudication by Mail and Online

(a) Unless the NOV specifies that a respondent must appear in person at a hearing, a respondent

may contest a violation by mail or online.

(b) Submissions for 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 default decision has been issued on that Notice of Violation, such default will be vacated.

(c) Submissions for adjudication online must be received by the Tribunal before or on the scheduled hearing date.

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

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

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

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

(3) require an in-person hearing.

(f) If an in-person hearing is required, the parties will be notified.

§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, unless the respondent requests 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 respondent's preference, if any, for his or her own interpreter;

(ii) the apparent skills of the respondent's requested interpreter;

(iii) whether the respondent's requested interpreter is a child under the age of eighteen;

(iv) minimization of delay in the hearing process;

(v) maintenance of a clear and usable hearing record; and

(vi) 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) Each party has the right to present evidence, to examine and cross-examine witnesses and to have other rights essential for due process and a fair and impartial hearing.

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

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

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

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

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

(iv) the timeliness of the arrival of any witnesses, and;

(v) any unforeseeable or extraordinary circumstances.

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

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

§6-12 Burden of Proof

The petitioner has the burden of proving the factual allegations contained in the NOV by a preponderance of the evidence. The respondent has the burden of proving an affirmative defense, if any, by a preponderance of the evidence.

§6-13 Hearing Officers

Hearing Officers may:

(a) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments and continuances, and oversee and regulate other matters relating to the conduct of a hearing;

(b) Issue 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;

(d) Carry out adjudicatory powers of the hearing examiner set forth in Title 17 of the New York City Administrative Code, associated rules and regulations and the New York City Health Code codified within Title 24 of the Rules of the City of New York;

(e) Allow an amendment to an NOV at any time if:

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

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

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

(g) Take any other action authorized by applicable law, rule or regulation, or that is delegated by the Chief Administrative Law Judge.

§6-14 Requests for Adjournment

(a) At the time of the scheduled hearing, a Hearing Officer may grant a request to adjourn the hearing to a later date only after a showing of good cause as determined by the Hearing Officer in his or her discretion.

(b) Good cause. In deciding whether there is good cause for an adjournment, the Hearing Officer will consider:

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

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

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

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

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

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

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

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

(c) A denial of an adjournment request is not subject to separate or interim review or appeal.

§6-15 Appearances of Inspectors

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

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

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

§6-16 Hearing Record

A record will be made of all NOVs filed, proceedings held, written evidence admitted and rulings rendered, and such record will be kept in the regular course of business for a reasonable period of time in accordance with applicable law. 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. A copy of the recording will be provided upon request and payment of a reasonable fee in accordance with applicable law.

§6-17 Decision and Order

After a hearing, a written decision sustaining or dismissing each charge in the NOV will be promptly rendered by the Hearing Officer who presided over the hearing. Each decision will contain findings of fact and conclusions of law. Where a violation is sustained, the Hearing Officer will impose the applicable penalty.

§6-18 Payment of Penalty

A copy of the decision, other than a default decision mailed or otherwise provided in accordance with §6-20 of this chapter, will be served immediately on the respondent or on the respondent's authorized representative, either personally or by mail. Any fines imposed must be paid within

thirty days of the date of the decision.

Subchapter D – Appeals

§6-19 Appeals

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

(b) A party may appeal, in whole or in part, a decision of a Hearing Officer, except that a party may not appeal a decision rendered on default, a denial of a motion to vacate a default decision, or a plea admitting the violations charged.

(c) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in §6-16 as well as the Hearing Officer's written decision. The Appeals Unit will not consider any evidence that was not presented to the Hearing Officer. The absence of a recording of the hearing does not prevent determination of the appeal.

(d) Appeals Procedure

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

(i) the appealing party files an appeal application; and

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

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

(2) Within thirty days of being served with the appeal application, or thirty-five days if service is made by mail, the non-appealing party may file a response to the appeal. The response must be on a form prescribed by the Tribunal and will be accepted only if the non-appealing party serves a copy of the response on the other party and files proof of that service with the Tribunal.

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

parties, and proof of such service filed with the Tribunal.

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

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

(e) Filing an appeal application will not delay the collection of any fine or other penalty imposed by the decision. An appeal by or on behalf of a respondent will not be permitted unless the fines or penalties imposed have been paid in full prior to or at the time of the filing of the appeal application, or a waiver of such prior payment is granted. An application for a waiver of prior payment must be made before or at the time of the filing of the appeal application and must be supported by evidence of financial hardship. The Chief Administrative Law Judge or his or her designee has the sole discretion to grant or deny a waiver.

(f) Appeals Decision

(1) The Appeals Unit will promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from. 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.

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

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 NOV will be deemed admitted, the respondent will be found in violation, and the penalties authorized by applicable laws, rules and regulations will be applied.

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

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

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

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

(a) A first request by a respondent for a new hearing after a failure to appear (also known as a "motion to vacate a default") that is submitted within sixty days of the date of the default decision will be granted. A motion to vacate a default that is submitted by mail must be postmarked within sixty days of the default decision.

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

(c) Reasons for Failing to Appear. In determining whether a Respondent has shown a reasonable excuse for failing to appear at a hearing, the Hearing Officer will consider:

(1) Whether circumstances that could not be reasonably foreseen prevented the respondent from attending the hearing;

(2) Whether the respondent had an emergency or condition requiring immediate medical attention;

(3) Whether the matter had been previously adjourned by the respondent;

(4) Whether the respondent attempted to attend the hearing with reasonable diligence;

(5) Whether the respondent's inability to attend the hearing was due to facts that were beyond the respondent's control;

(6) Whether the respondent's failure to appear at the hearing can be attributed to the respondent's failure to maintain current contact information on file with the applicable licensing agency;

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

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

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

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

(f) In exceptional circumstances and in order to avoid injustice, the Chief Administrative Law Judge or his or her designee will have the discretion to consider a request for a new hearing filed more than one year from the date of the default decision.

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

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.

§6-23 Registered Representatives

(a) Requirements. A representative, other than a family member or an attorney admitted to

practice in New York State, who represents two or more Respondents before the Tribunal within a calendar year must:

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

(2) 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;

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

(4) Not misrepresent his or her qualifications or service so as to mislead people into believing the representative is an attorney at law if the representative is not. A representative who is not an attorney admitted to practice must refer to him or herself as "representative" when appearing before the Tribunal;

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

(6) Be subject to discipline, including but not limited to suspension or revocation of the representative's right to appear before the Tribunal, for failing to follow the provisions of this subdivision and any other rules in this chapter.

§6-24 Misconduct

(a) Prohibited Conduct. A party, witness, representative or attorney must not:

(1) Engage in abusive, disorderly or delaying behavior, a breach of the peace or any other disturbance which directly or indirectly tends to disrupt, obstruct or interrupt the proceedings at the Tribunal;

(2) Engage in any disruptive verbal conduct, action or gesture that a reasonable person would believe shows contempt or disrespect for the proceedings or that a reasonable person would believe to be intimidating;

(3) Willfully disregard the authority of the Hearing Officer or other Tribunal employee. This may include refusing to comply with the Hearing Officer's directions or behaving in a disorderly, delaying or obstructionist manner;

(4) Leave a hearing in progress without the permission of the Hearing Officer;

(5) Attempt to influence or offer or agree to attempt to influence any Hearing Officer or employee of the Tribunal by the use of threats, accusations, duress or coercion, a promise

of advantage, or the bestowing or offer of any gift, favor or thing of value;

(6) Enter any area other than a public waiting area unless accompanied or authorized by a Tribunal employee. Upon conclusion of a hearing, a party, witness, representative or attorney must promptly exit non-public areas;

(7) Request any Tribunal clerical staff to perform tasks that are illegal, unreasonable or outside the scope of the employee's job duties;

(8) Operate any Tribunal computer terminal or other equipment at any time unless given express authorization or the equipment has been designated for use by the public;

(9) Submit a document, or present testimony or other evidence in a proceeding before a Hearing Officer which he or she knows, or reasonably should have known, to be false, fraudulent or misleading;

(10) Induce or encourage anyone in a proceeding before a Hearing Officer to make a false statement;

(11) Solicit clients, or cause the solicitation of client by another person on Tribunal premises;

(12) Make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or other remote methods, except upon application to the Hearing Officer. This does not include copies of documents submitted to the Tribunal during a hearing including written or electronic statements and exhibits. Except as otherwise provided by law, such application must be addressed to the discretion of the Hearing Officer, who may deny the application or grant it in full, in part, or upon such conditions as the Hearing Officer deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(b) Prohibited Communication

(1) All parties must be present when communications with Tribunal personnel, including a Hearing Officer, occur, except as necessary for case processing and unless otherwise permitted by these rules, on consent or in an emergency.

(2) All persons are prohibited from initiating communication with a Hearing Officer or other employee before or after a hearing or before or after a decision on motion, in order to attempt to influence the outcome of a hearing or decision on motion.

(c) Penalties for Misconduct

(1) Failure to abide by these rules constitutes misconduct. The Chief Administrative Law Judge or his or her designee may, for good cause, suspend or bar from appearing before

the Tribunal an attorney or representative who fails to abide by these rules. The suspension may be either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the Chief Administrative Law Judge or his or her designee that the basis for the suspension no longer exists.

(2) However, the Chief Administrative Law Judge or his or her designee may not act until after the attorney or representative is given notice and a reasonable opportunity to appear before the Chief Administrative Law Judge or his or her designee to rebut the claims against him or her. The Chief Administrative Law Judge or his or her designee, depending upon the nature of the conduct, will determine whether said appearance will be in person or by a remote method.

This section in no way limits the power of a Hearing Officer as set out in §6-13 of this chapter.

(d) Discipline on Other Grounds

(1) The Chief Administrative Law Judge may, in addition to the provisions of subdivision (c) of this section, suspend or bar a representative upon a determination that the representative lacks honesty and integrity and that the lack of honesty and integrity will adversely affect his or her practice before the Tribunal.

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

(e) Judicial Review. The decision of the Chief Administrative Law Judge or his or her designee under subdivision (c) or (d) of this section constitutes a final agency action. Judicial review of the decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Establishment of Trials Division and Hearings Division

REFERENCE NUMBER: 2015 RG 030

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

(i) is drafted so as to accomplish the purpose of the authorizing provisions of law;

(ii) is not in conflict with other applicable rules;

(iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and

(iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN Date: March 27, 2015
Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Establishment of Trials Division and Hearings Division

REFERENCE NUMBER: OATH/ECB 57

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

(i) Is understandable and written in plain language for the discrete regulated community or communities;

(ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and

(iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/Amina Huda — *March 27, 2015*
Mayor's Office of Operations — Date