

# **ADMINISTRATIVE HEARINGS**

# ADMINISTRATIVE HEARINGS

## **Rules of the City Of New York: Title 6**

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**Note:** New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting [www.nyc.gov/consumers](http://www.nyc.gov/consumers). For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included as a handout in this packet. The New York City Law and Rules are current as of 2012.

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**RULES OF THE CITY OF NEW YORK**  
**TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS**  
**CHAPTER 6: ADMINISTRATIVE HEARINGS**  
**SUBCHAPTER A: GENERAL**

**§ 6-01. Scope and Construction.**

These rules and regulations shall control the conduct of all hearings which the Commissioner of Consumer Affairs of the City of New York, and his or her designee, are authorized by law to conduct. They shall be liberally construed to secure the just, fair, and speedy determination of all matters.

**§ 6-02. Definitions.**

As used herein, the following terms shall have the meanings specified:

**Commissioner.** “Commissioner” means the Commissioner of Consumer Affairs of the City of New York or the Commissioner's designee.

**Complainant.** “Complainant” means the party who alleges the violation which forms the basis for the administrative proceeding.

**Department.** “Department” means the Department of Consumer Affairs of the City of New York.

**Director of Adjudication.** “Director of Adjudication” means the director of the Adjudication Division of the Department or the director's designee.

**File and filed.** “File,” and “filed,” means actual receipt by the office of the Director of Adjudication.

**Hearing officer.** “Hearing officer” means a person designated by the Commissioner or the Director of Adjudication to preside over hearings.

**Licensee.** “Licensee” means any person who holds a license issued by the Department, or who has applied to the Department for such a license and said application is pending.

**Notice of Violation.** “Notice of Violation” means the document which specifies the charges forming the basis of the administrative proceeding.

**Party.** “Party” means the Commissioner, the Department, and any person named or admitted as a complainant or respondent in any Department hearing.

**Person.** “Person” means any individual, partnership, unincorporated association, corporation, or government agency.

**Pleading Letter.** “Pleading letter” means the form issued by the Department which indicates the Department will settle a violation without a hearing, provided the licensee or respondent consents to pay a set monetary amount and agrees to cease the activity which gave rise to the violation(s).

**Respondent.** “Respondent” means the person against whom the charges alleged in the notice of violation have been filed.

**Service.** “Service” means the delivery of a notice or other document to a person who is thereby officially notified of some proceeding or matter at the Department in which he is concerned.

**§ 6-03. Filing.**

All documents to be filed with the Director of Adjudication or a Hearing Officer shall be filed at the office of the Director of Adjudication. Service of documents on an opposing party must be made on or before the same day on which documents are filed with the Director of Adjudication.

**§ 6-04. Forms of Documents.**

- (a) All documents filed with the Director of Adjudication or a Hearing Officer shall contain a caption setting forth the title of the action; the file or complaint number assigned to the action; the license number, where applicable; and a designation as to the nature of the document
- (b) All documents filed with the Director of Adjudication or a Hearing Officer must be signed by the party submitting such documents or by the party's attorney. The signature constitutes a certification by the signatory that he or she has read the document; that to the best of his or her knowledge, information and belief, there are good grounds to support it; and that it is not intended for the purpose of delay.

**§ 6-05. Computation of Time.**

- (a) Except as otherwise provided herein, computation of any period of time prescribed in these rules shall be as follows:
  - (1) The day that triggers the time period is not considered in the computation.
  - (2) The next business day is the first day of the time period.
  - (3) If the last day in the period is a Saturday, Sunday or New York State legal holiday, the period is extended to the next business day.
- (b) The mailing of any document shall not extend any time period unless such extension is specifically ordered by the Director of Adjudication or the Hearing Officer.

**§ 6-06. Notice of Appearance**

If a party is to be represented by an attorney in a matter set for a hearing, the attorney must file a notice of appearance containing his or her name, office address, and telephone number no later than his or her first appearance. Any form of written communication containing the required information may serve as a Notice of Appearance.

**§ 6-07. Sanctions.**

Except as otherwise provided herein, violation of any of the provisions of these rules and regulations or failure to comply with an order made pursuant to these rules and regulations may lead to the preclusion of evidence, documents or briefs offered by that party. In addition, the failure of any licensee to comply with these Rules and Regulations or with an order made pursuant to these Rules and Regulations may be deemed a violation of an order of the Commissioner for which the licensee may be subject to sanctions, including a fine or suspension or revocation of a license.

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**RULES OF THE CITY OF NEW YORK**  
**TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS**  
**CHAPTER 6: ADMINISTRATIVE HEARINGS**  
**SUBCHAPTER B: ADJUDICATORY PROCEEDINGS: PRE-HEARING PROCEDURES**

**§ 6-21. Commencement of Proceedings.**

(a) *Initiating Documents.* All proceedings shall be commenced by service of one or more of the following documents:

- (1) Notice of Violation(s)
- (2) License Summons--Notice of Violation(s)
- (3) License Summons--Notice of Violation for Unlicensed Activity
- (4) Notice of Hearing

These documents shall be issued by the Department on its own and/or on behalf of a complainant. For the purposes of these regulations, the foregoing documents are synonymous with each other and have the same force and effect. In every place where one of the terms for an initiating document appears, it shall be read to include all the other terms, unless specifically excluded.

- (b) *Content.* The Notice of Violation shall contain such information as to give the respondent notice of the particular charges alleged.
- (c) *Service.* Service may be in person or by mail and shall be served in such a manner as to give the respondent timely notice of the scheduled hearing. Mailing to the respondent's last known business or residence address shall be deemed sufficient service, unless otherwise specified by statute.

**§ 6-22. Pre-Hearing Adjournments.**

- (a) Any request for a change in a hearing date or time must be in writing and must be received by the Director of Adjudication at least three business days before the hearing. A copy of the request shall be served on any opposing or affected party. All such requests must be supported by affidavits or documentary evidence proving the need for the adjournment, and must disclose whether the other parties have consented to the adjournment. If all the parties consent the request will be approved once as a matter of course. Otherwise, the request will be approved only upon a showing of necessity to prevent arbitrary or unreasonable hardship to a party. No request shall be deemed granted unless specifically approved.
- (b) A hearing may be adjourned if the request is received, in writing, fewer than three business days before the hearing only upon proof satisfactory to the Director of Adjudication of an emergency, and only after every opposing or affected party has received from the party

requesting the adjournment a copy of the request. Objections to a requested adjournment must be made to the Director of Adjudication.

- (c) Adjourned hearings shall be rescheduled by the Adjudication Division.

**§ 6-23. Pre-Hearing Discovery.**

- (a) Upon written demand, received 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 at the hearing and copies of documents which may be submitted in evidence. All material requested pursuant to a discovery demand must be received at least two business days prior to the hearing date at the office of the Director of Adjudication, and by the party making the request.
- (b) Pre-hearing discovery shall be limited to the matters enumerated in subdivision (a) above.

**§ 6-24. Amendments to Notice of Violation.**

- (a) *Without Leave.* Amendments by the complainant to the Notice of Violation are permitted without prior approval if filed in writing with the Director of Adjudication and received by the opposing party at least five business days before the scheduled date of the hearing.
- (b) *By Leave.* Whenever determination of a complaint will be facilitated thereby, the Director of Adjudication or a Hearing Officer may, upon such conditions as are necessary to avoid injustice or surprise to a party, allow appropriate amendments to the Notice of Violation. Such amendments may be proposed in the form of a motion at any time during the hearing.
- (c) *Conformance to Evidence.* When issues not raised by the Notice of Violation are reasonably within the scope of such Notice of Violation, these issues shall be treated in all respects as if they had been raised in the Notice of Violation. Such amendments as may be necessary to make the Notice of Violation conform to the evidence shall be allowed at any time.

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**SUBCHAPTER C: ADJUDICATORY PROCEEDINGS: HEARING PROCEDURES**

**§ 6-31. Pre-Hearing Disposition of Violations.**

A licensee who receives a Notice of Violation(s) and a pleading letter may respond to it by the following methods:

- (a) *Payment of the Fine Prior to the Hearing.* Prior to the date scheduled for hearing, a licensee may plead guilty and pay the fine specified on the pleading letter either by mail or in person.
  - (1) *By Mail.* Licensee may pay the fine prior to or on the designated hearing date as shown on the front of the Notice of Violation(s) by sending a check or money order (not cash) payable to the “Department of Consumer Affairs” in the amount of the fine specified on the face of the pleading letter. The Licensee shall write the case number including the prefix indicated on the Notice of Violation(s) on his/her check or money order. Payment by mail must be sent to the address specified on the pleading letter. Payment of the fine in this manner must be received by DCA prior to or on the designated hearing date. If the payment is received after the designated hearing date, maximum penalties and default penalties will be imposed.
  - (2) *In Person.* Licensee may pay the fine in person at the Department of Consumer Affairs-Collection Unit, on any business day during DCA's normal business hours, on or before the hearing date.
- (b) *Pleading Not Guilty and Requesting Adjudication By Mail.* At the discretion of the Commissioner or the Commissioner's designee, a pleading letter permitting a licensee to request adjudication by mail will be authorized in lieu of a personal appearance at the hearing. If adjudication by mail is authorized, a licensee may plead not guilty by checking the appropriate box on the pleading letter and mailing to the address indicated on the letter,
  - (1) the stub portion of the pleading letter,
  - (2) a written statement of facts, sworn to before a Notary Public and,
  - (3) evidence which he or she wishes to have considered in his or her defense. Such request must be received by DCA no later than the designated hearing date shown on the front of the Notice of Violation. By requesting adjudication by mail, respondent waives his or her right to appear personally at the hearing and to cross-examine witnesses.
- (c) when an initiating document is served upon a vendor who engages in activities not licensable by DCA, such vendor shall be afforded an opportunity to appear at a settlement conference on a designated date or pay the fine prior to the settlement conference as indicated on the pleading letter

**§ 6-32. Appearances.**

- (a) To defend a Notice of Violation(s) in a case in which a pleading letter was not received or the licensee seeks to appear personally, the licensee shall appear either personally or may be represented by an authorized agent.
- (b) The foregoing shall in no way affect the licensee's right to be accompanied and represented by counsel.
- (c) The Director of Adjudication shall have the authority, at any time prior to the commencement of the hearing, to waive, upon request, the presence of any party at a hearing.

**§ 6-33. Order of Hearings.**

The following shall be the order of all hearings, subject to modification by the Hearing Officer:

- (a) Preliminary motions to the hearing, if any;
- (b) Opening statements, if any;
- (c) Complainant's case in chief;
- (d) Respondent's case in chief, if any;
- (e) Complainant's case in rebuttal, if any;
- (f) Respondent's case in rebuttal, if any;
- (g) Respondent's closing argument, if any;
- (h) Complainant's closing argument, if any.

**§ 6-34. Hearing Officers.**

- (a) *Powers and Duties.* Hearings shall be presided over by a Hearing Officer. The Hearing Officer shall have all powers necessary to conduct the hearing including, but not limited to, the following:
  - (1) To administer oaths and affirmations;
  - (2) To rule upon offers of proof and receive evidence;
  - (3) To regulate the course of the hearing and the conduct of the parties and their counsel;
  - (4) To hold conferences, both on and off the record, for settlement, simplification of issues, or any other proper purpose;
  - (5) To consider and rule upon all procedural and other motions appropriate in administrative proceedings;
  - (6) To question witnesses;
  - (7) To grant adjournments and continuances;
  - (8) To make and file recommended decisions and orders for approval by the Commissioner, the Director of Adjudication or any other person designated by the Commissioner, or to make final decisions and orders if designated by the Commissioner to do so.
- (b) *Disqualification.*
  - (1) A Hearing Officer may, where appropriate, disqualify himself or herself from presiding in a particular proceeding even after the commencement of said proceeding.
  - (2) A party may, for good cause shown, move that the Hearing Officer disqualify himself or herself. Such motion shall be made and ruled upon by the Hearing Officer at the proceeding.
- (c) *Termination of Jurisdiction.* Except for the correction of clerical errors, the jurisdiction of the Hearing Officer shall terminate upon issuance of the final decision and order, unless the proceeding is remanded to the Hearing Officer for rehearing or for any other purposes permitted by these regulations.

### **§ 6-35. Evidence.**

- (a) *Burden of proof.* The complainant shall have the burden of proof in establishing, by a preponderance of the evidence, that the respondent has committed or caused the violation(s) charged in the Notice of Violation. However, the respondent shall have the burden of proof in establishing, by a preponderance of the evidence, any affirmative defenses offered in response to the charges detailed in the Notice of Violation.
- (b) *Admissibility.* Relevant evidence shall be admitted without regard to the technical or formal rules or laws of evidence in effect in the courts of the State of New York, except for rules relating to privileged communications. Hearsay evidence is admissible. Irrelevant, immaterial, unreliable, and unduly repetitious evidence may be excluded by the Hearing Officer.
- (c) *Form.* Evidence may be presented in any form. All testimony is to be given on oath or affirmation, except that the Hearing Officer may accept testimony concerning official records by telephone from any government agency other than the Department.
- (d) *Administrative Notice.* Administrative notice may be taken of all facts of which judicial notice may be taken, of all official records and documents of the Department and of other facts within the specialized knowledge and experience of the Department or the Hearing Officer. Opportunity to disprove such noticed facts shall be granted to any party making timely motion therefor.
- (e) *Objections.* Objections to evidence shall be timely and shall briefly state the grounds relied upon. Rulings on all objections shall appear either on the record or, where decision is reserved, in the Hearing Officer's decision (See § 6-39 below).
- (f) *Exceptions.* Formal exception to an adverse ruling is not required.
- (g) *Matters Undisclosed in Discovery.* If necessary to reach a just determination, the hearing officer may consider any document or testimony produced at the hearing even though the document or the identity of a witness had not been disclosed in response to a discovery demand.
- (h) *Holding Record Open for Additional Documentary Evidence.* At the conclusion of all testimony, the Hearing Officer may hold the record of the proceeding open for an appropriate period of time in order to obtain or allow production of additional documentary evidence to aid him or her in reaching a determination. Any party filing documentary evidence during such period shall serve the opposing party with copies of the evidence submitted. The opposing party may respond in writing to the contents of such evidence within a period of time set by the Hearing Officer.

### **§ 6-36. Subpoenas.**

At the Hearing Officer's discretion, a subpoena may be issued to compel the production of any paper, photograph, or other record relevant to the violations alleged for examination or introduction into evidence, or a subpoena to compel the appearance of persons to give testimony.

- (a) A subpoena may be issued for good cause at the request of any party subject to approval of the Hearing Officer.
- (b) A motion to stay the hearing pending the determination of a motion to quash a subpoena made before a court of competent jurisdiction, may be made to the Hearing Officer by any party.

### **§ 6-37. Post-Hearing Briefs.**

The Hearing Officer shall have the authority to order or to allow the filing of post-hearing briefs on specific issues of fact or law.

**§ 6-38. Record Contents.**

- (a) The Department shall arrange for a verbatim recording of all hearings by any appropriate method. The Notice of Violation, the recording or transcription of the hearing, all exhibits received in evidence, all briefs submitted by the parties, the recommended decision of the Hearing Officer and the final decision of the Department shall constitute the hearing record.
- (b) A party may secure a typed transcription of the hearing by purchasing the same from the service under contract to the Department.

**§ 6-39. Decisions.**

*Hearing Officer's Decision and Order.* After conclusion of the hearing, the Hearing Officer shall prepare a decision and order. The Hearing Officer's decision shall set forth findings of fact and conclusions of law concerning all material issues of fact and law presented in the record.

**§ 6-40. Appeals and Motions for Rehearing.**

Any party aggrieved by the decision and order who takes exception to the decision on grounds of factual or legal error may within thirty days from the date of the decision, file a written appeal with the Director of Adjudication who serves as the designee of the Commissioner. Any party aggrieved by the decision and order who has new evidence which was not available at the time of the hearing may, within thirty days from the date of the decision, file a written motion for rehearing with the Director of Adjudication who serves as the designee of the Commissioner. The above time deadlines may be tolled upon receipt by the Director of Adjudication of satisfactory proof that a transcript of the hearing has been ordered or for other good cause shown. The time to file an appeal shall not be tolled unless specifically requested by a party and ordered by the Director of Adjudication.

- (a) The appeal must contain a concise statement of the case, a specification of the issues upon which the appeal is based, including the precise findings of fact, conclusion, or procedure to which exception is taken, and arguments presenting the points of law and fact relied upon with respect to each issue. Specific references to the record, legal authorities, and other sources relied upon must be included. If exceptions are taken to the final order, the specific amendments or revisions sought must be set forth. The motion for rehearing must state, with specificity, the new evidence which was not available at the time of the hearing and reason(s) for the unavailability of the evidence. A respondent's appeal or motion for a rehearing shall be denied unless the respondent also:

- (1) Submits a check or money order for the sum of \$25.00 (twenty-five dollars) payable to the Department of Consumer Affairs, representing a non-refundable appeal fee, with each appeal or motion for rehearing made by such respondent; and
- (2) Submits simultaneously with the appeal or motion for rehearing either (A) a check or money order made payable to the Department of Consumer Affairs for the amount of the fine imposed by any decision that is the subject of an appeal or a motion for rehearing, or (B) an application for a waiver of the requirement to pay such fine as a requisite for an appeal based upon financial hardship. Such waiver application must include and be supported by evidence of financial hardship, including the most recent tax returns filed by the respondent. Such waivers may be granted at the discretion of the Director of Adjudication. If a waiver application is denied, the respondent shall have 15 days from the date of issuance of the denial to submit payment of the fine imposed by the decision. Failure to submit the payment within this period shall result in denial of the appeal or motion for rehearing.

- (b) A copy of the appeal, motion for rehearing or any other related documents must be served on all parties.
- (c) Within 14 days after service of a copy of the appeal or motion for rehearing, any party supporting the decision and order or opposing the raised in the appeal or motion for rehearing may file an answering brief in the format required by subdivision (a) above.
- (d) Reply briefs by the petitioner shall not be permitted except at the express approval of the Director of Adjudication.
- (e) Further, any restitution awarded by the Hearing Officer shall also be simultaneously deposited with the Department pending determination of the appeal. The determination of the appeal shall be mailed to each of the parties entering an appearance at the prior hearing.
- (f) No application for a stay of enforcement of a decision pending appeal or motion for rehearing may be filed unless an appeal or motion for rehearing has been properly filed in accordance with the requirements of this section. Unless a stay is granted in writing, by the Director of Adjudication, the decision may be enforced pending determination of an appeal or motion for rehearing.
- (g) Failure to deposit with the Department the appeal fee, the amount of any fine imposed as specified in subdivision (a)(2)(A) of this section, or a waiver application, and the amount of any restitution awarded as specified in subdivision (e) of this section will result in the denial of the appeal or motion for rehearing and any related application for a stay pursuant to subdivision (f) of this section.

#### **§ 6-41. Judicial Review.**

After exhaustion of the procedure set forth in § 6-40 herein, judicial review of a final decision or order of the Department may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

#### **§ 6-42. Settlements.**

- (a) *Prior to the Scheduled Hearing Date.* If the charges detailed in the Notice of Violation are settled by mutual agreement of the parties prior to the scheduled hearing date, the terms of the settlement must be filed, in writing, with the Director of Adjudication along with any stipulations or other writings required by the terms of the settlement prior to the scheduled hearing date.
- (b) *At or Subsequent to the Hearing.* At any time on or after the hearing date but before the hearing record is formally closed, the parties may agree to settle the charges enumerated in the Notice of Violation. If a settlement is reached during the hearing, the Hearing Officer shall ascertain that the terms of the agreement are clear, precise, and understood by all the parties, and shall then read them into the record. The terms of any stipulations of settlement or assurances of discontinuance must be in written form, signed by all parties, and filed with the Director of Adjudication within 10 days of the time the agreement is reached.
- (c) *Effect Settlement Agreement.* A settlement agreement has the force of a final order. Failure of a respondent to comply with the terms of a written settlement agreement, in whole or in part, may subject the respondent to additional sanctions, including, where appropriate, a fine and suspension or revocation of a license.

#### **§ 6-43. Default.**

Failure of a party to make a timely appearance at a scheduled hearing shall constitute a default.

- (a) If the complainant or its representative has not appeared at the scheduled hearing time, the Hearing Officer may dismiss the Complaint with prejudice to the complainant.

- (b) If the respondent has not appeared at the scheduled hearing time, the Hearing Officer may conduct an inquest and prepare a decision and order or issue a default decision.
- (c) In addition, any licensee who fails to appear or answer a Notice of Violation will be considered in violation of an order of the Commissioner and may be subject to a monetary penalty, and suspension or revocation of the license.

**§ 6-44. Vacating a Default Decision.**

Where a default decision is rendered following an inquest, any party may, within 15 days from the date the party knew or should have known of the decision, file a written motion to vacate the decision with the Director of Adjudication.

- (a) The motion shall contain a statement offering an excuse for the party's failure to appear on the designated hearing date and a sworn statement outlining a meritorious defense to the charges alleged in the notice of violation.
- (b) In addition, a check or money order for the sum of \$25.00 (twenty-five dollars) payable to the Department of Consumer Affairs, representing a non-refundable appeal fee, must accompany each motion to vacate. Failure to submit the fee will result in the automatic denial of the motion to vacate. If a default decision requires the movant to pay restitution, in addition to the requirements set forth in paragraph (1), the movant must also comply with subdivision (e) of § 6-40.

**§ 6-45. Public Access.**

Hearings conducted by the Department are open to the public, except that the Director of Adjudication may exclude the public from a particular hearing or portion of a hearing or order the sequestering of witnesses for good cause shown by any party. The final decision and order in all proceedings is a matter of public record.