

## **§ 39-09 Representatives at Parking Violations Bureau Hearings.**

### **(a) Brokers.**

(1) Definitions. Broker. "Broker" means a person who:

- (i) is not the owner or operator of the summonsed vehicle;
- (ii) represents another person or firm;
- (iii) requests a hearing three or more times within any six month period; and
- (iv) is not an employee of the respondent (as defined in § 39-09(b)(1)).

(2) Rules and authorization. The rules set forth in paragraph (8) of subdivision (a) of this section apply to brokers appearing before the Department in any capacity, which include but are not limited to: the fleet program, stipulated fine program, commercial abatement program, car rental program, hearings by mail, CAU hearings, and scheduling and billing.

A broker must register with the Department before representing a respondent before the Department in any capacity. Such registration must be on a Broker Authorization Form prescribed by the Department. The Broker Authorization Form must be:

- (i) signed by a duly authorized principal, officer or partner of the respondent;
- (ii) duly acknowledged before a Notary Public; and

(iii) mailed to PVB by certified mail, return receipt requested, or hand delivered to the Fleet Program Manager, who will issue a receipt. The Broker Authorization Forms will be filed in a central location in the Commercial Adjudication Unit (CAU). Upon revocation of the authorization of a broker to represent a person or company, it is the joint and several responsibility of the broker and the person or company to notify PVB within seven days by certified mail, return receipt requested.

(3) Hearing location and schedule. All hearings involving brokers shall be conducted by appointment only in CAU. No other location or unit (e.g. Help Centers) shall schedule or conduct hearings for respondents represented by brokers.

(4) Fleet program and car rental program. All respondents represented by a broker must register in the Fleet Program, if eligible. For vehicles registered in either the Fleet Program or the Car Rental Program, no hearing will be allowed without a PVB computer-generated log.

(5) Hearing logs. For vehicles not in the Fleet Program or Car Rental Program, brokers shall be responsible for the proper preparation of the hearing log as per instruction of the CAU manager.

(6) Summons copy fees. Companies represented by brokers are subject to the same summons copy fees as the general public (§ 39-02(e)).

(7) Hearing procedures.

(i) Before each hearing, brokers must submit to the CAU reception clerk all of the summonses scheduled to be adjudicated. These summonses will be delivered to the presiding judge before the hearing begins. No additional summonses may be submitted or accepted for adjudication at that hearing session once the hearing begins without the authorization of the CAU manager.

(ii) The hearing shall not be interrupted or stopped by the broker because of a dispute on a ruling. The determination of the presiding judge is final and may be overruled only by an appeal.

(iii) Except for the lunch break, the hearing shall proceed without interruption until the end of the day, unless before then the ALJ adjudicates all of the summonses the broker has submitted or adjourns the hearing.

(iv) Absent such adjournment, if the broker is not present or otherwise fails to proceed at the hearing, the ALJ may render judgment on all of the unadjudicated summonses as if they were submitted for a hearing by mail.

(v) Any summons not adjudicated on the day of the hearing due to an adjournment for further evidence shall be retained by CAU together with documents attached thereto, and shall be adjudicated on the adjourned date by the same ALJ who began the hearing, if possible. On that adjourned date, the ALJ shall not hear any of the broker summonses except those left unadjudicated from the original hearing without special authorization from the CAU manager.

(8) Conduct while at PVB.

(i) Brokers shall observe in good faith the laws and regulations governing the adjudication of parking violation summonses and any forms and instructions provided to the broker by the Department.

(ii) Brokers must exercise due diligence in:

(1) Learning and obeying applicable statutes, rules, and instructions governing the disposition of, or agreements concerning payment of, parking violation summonses before the CAU;

(2) Complying with schedules for appearances; and

(3) Ensuring that their oral and written arguments and statements to the Department are correct.

(iii) A broker who knows or has reason to believe that a respondent has made a factual error in or omission from a document submitted at the hearing must advise the respondent promptly of such error or omission. A broker shall urge the applicant to correct the error and promptly submit the corrected information. If the applicant refuses to do so, the broker must withdraw from representation for the summons(es) where continued representation would violate this section.

(iv) Brokers must not file an application, submit a document, or present testimony or other evidence that is obviously false, or that the broker knows or has reason to believe is false, fraudulent, or contains false information.

(v) Brokers must not make any statement or fail to disclose any fact in any situation where such broker knows or has reason to know such statement or failure to disclose information will mislead the ALJ at a hearing.

(vi) Brokers must not present a demand or an opinion of fact or law to the ALJ at a hearing unless the broker holds it in good faith and can support it on reasonable grounds.

(vii) A broker must not sign an application in the name of the applicant. A broker signing an application pursuant to a broker authorization form must sign in the broker's own name.

(viii) Brokers must not attempt to initiate conversations or correspondence about particular cases with the ALJ before or after the hearing. At the hearing, brokers must discuss the scheduled matters only. Brokers must not telephone or write the ALJ or other employees of the Department before or after the hearing with additional arguments.

(ix) Brokers must not attempt to influence any ALJ or employee of the Department by the use of threats, false accusations, intimidation or coercion; promises of advantage; or the presenting or offer of any gift, favor or thing of value. A broker must report promptly any such acts of which the broker is aware to the New York City Department of Investigation.

(x) Brokers must not engage in disrespectful conduct in appearing before an ALJ through means including, but not limited to, using abusive language or disrupting a hearing.

(xi) Brokers must not go into any non-public service area unless accompanied or authorized by a manager or supervisor and they must not operate any PVB terminal or other equipment at any time.

(xii) Brokers must not request any Department clerical staff to perform non-routine tasks. All such requests must be addressed directly to and approved by the CAU Manager. "Nonroutine" means anything out of the regular processing stream.

(9) Penalty for violation of these rules. Any broker who willfully or repeatedly violates these rules may be barred from representing clients at PVB in any capacity. The Commissioner may, after providing notice to the broker and an opportunity to be heard, suspend the broker for up to five years from appearing before the Department in any capacity, except that the broker may appear on parking violations issued in the broker's name. Such notice will inform the broker of the reasons for the proposed suspension and that the broker has the right to present information as to why the broker should not be suspended to the Commissioner, or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail. Any suspension will apply solely to the broker unless the Department has evidence that the standard practice of the broker's company was to commit infractions in its interactions with the Department regardless of the broker involved.

(b) Employees.

(1) Definitions.

Employee. As used in these regulations, the term "employee" refers to a person who:

(i) is a principal, partner, officer or salaried employee of the respondent; (ii) was not the operator of vehicle at the time it was summonsed; and

(iii) is not a broker (as defined in § 39-09(a)(1)).

(2) Rules and authorization. The rules set forth in paragraph (8) of subdivision (b) of this section apply to employees appearing before the Department in any capacity, which include but are not limited to: the fleet program, stipulated fine program, commercial abatement program, car rental program, hearings by mail, CAU hearings, and scheduling and billing.

An employee must register with the Department before representing a respondent before the Department in any capacity. Such registration must be on an Employee Authorization Form prescribed by the City of New York Department of Finance. The Employee Authorization Form must be:

(i) on the letterhead of the registrant;

(ii) signed by a duly authorized principal, officer or partner of the respondent; and

(iii) duly acknowledged before a Notary Public. Such Authorizations must be received by CAU before an employee may act on behalf of his or her company. They will be kept on file at CAU.

(3) Hearing location and schedule. All hearings in which employees act as representatives shall be conducted by appointment only in CAU. No other location or unit (e.g. Help Centers) shall schedule or conduct hearings for respondents represented by employees.

(4) Fleet program and car rental program. All respondents represented by an employee must register in the Fleet Program, if eligible. For vehicles registered in either the Fleet Program or the Car Rental Program, no hearing will be allowed without a computer-generated log.

(5) Hearing logs. For vehicles not in the Fleet Program or Car Rental Program, employees shall be responsible for the proper preparation of the hearing log as per instruction of the CAU manager.

(6) Summons copy fees. Companies represented by employees are subject to the same summons copy fees as the general public (§ 39-02(e)).

(7) Hearing procedures.

(i) Before each hearing, employees must submit to the CAU reception clerk all of the summonses scheduled to be adjudicated. These summonses will be delivered to the presiding judge before the hearing begins. No additional summonses may be submitted/accepted for adjudication at that hearing session once the hearing begins without the authorization of the CAU manager.

(ii) The hearing shall not be interrupted or stopped by the employee because of a dispute on a ruling. The determination of the presiding judge is final and may be overruled only by an appeal.

(iii) Except for the lunch break, the hearing shall proceed without interruption until the end of the day, unless before then the ALJ adjudicates all the summonses the employee has submitted or adjourns the hearing.

(iv) Absent such adjournment, if the employee is not present or otherwise fails to proceed at the hearing, the ALJ may render judgment on all of the unadjudicated summonses as if they were submitted for a hearing by mail.

(v) Any summons not adjudicated on the day of the hearing due to an adjournment for further evidence shall be retained by CAU together with documents attached thereto, and shall be adjudicated on the adjourned date by the same ALJ who began the hearing, if possible. On that adjourned date, the ALJ shall not hear any summonses except those left unadjudicated from the original hearing without special authorization from the CAU manager.

(8) Conduct while at PVB.

(i) Employees shall observe in good faith the laws and regulations governing the adjudication of parking violation summonses and any forms and instructions provided to the employee by the Department.

(ii) Employees must exercise due diligence in:

(1) Learning and obeying applicable statutes, rules, and instructions governing the disposition of, or agreements concerning payment of parking violation summonses before the CAU;

(2) Complying with schedules for appearances; and

(3) Ensuring that their oral and written arguments and statements to the Department are correct.

(iii) An employee who knows or has reason to believe that a respondent has made a factual error in or omission from a document submitted at the hearing must advise the respondent promptly of such error or omission. An employee shall urge the applicant to correct the error and promptly submit the corrected information.

(iv) Employees must not file an application, submit a document, or present testimony or other evidence that is obviously false, or that the employee knows or has reason to believe is false, fraudulent, or contains false information.

(v) Employees must not make any statement or fail to disclose any fact in any situation where such employee knows or has reason to know such statement or failure to disclose information will mislead the ALJ at a hearing.

(vi) Employees must not present a demand or an opinion of fact or law to the ALJ at a hearing unless the broker holds it in good faith and can support it on reasonable grounds.

(vii) An employee must not sign an application in the name of the applicant. An employee signing an application pursuant to an employee authorization form must sign in the employee's own name.

(viii) Employees must not attempt to initiate conversations or correspondence about particular cases with the ALJ before or after the hearing. At the hearing, employees must discuss the scheduled matters only. Employees must not telephone or write the ALJ or other employees of the Department before or after the hearing with additional arguments.

(ix) Employees must not attempt to influence any ALJ or employee of the Department by the use of threats, false accusations, intimidation or coercion; promises of advantage; or the presenting or offer of any gift, favor or thing of value. An employee must report promptly any such acts of which the employee is aware to the New York City Department of Investigation.

(x) Employees must not engage in disrespectful conduct in appearing before an ALJ through means including, but not limited to, using abusive language or disrupting a hearing.

(xi) Employees must not go into any non-public service area unless accompanied or authorized by a manager or supervisor and they must not operate any PVB terminal or other equipment at any time.

(xii) Employees must not request any Department clerical staff to perform non-routine tasks. All such requests must be addressed directly to and approved by the CAU Manager. "Non-routine" means anything out of the regular processing stream.

(9) Penalty for violation of these rules. Any employee who willfully or repeatedly violates these rules may be barred from representing his or her employer at PVB in any capacity. The Commissioner may, after providing notice to the employee and an opportunity to be heard, suspend the employee for up to five years from appearing before the Department in any capacity, except that the employee may appear on parking violations issued in the employee's name. Such notice will inform the employee of the reasons for the proposed suspension and that the employee has the right to present information as to why the employee should not be suspended to the Commissioner, or his or her designee, within 10 business days of delivery notice by hand or 15 business days of the posting of notice by mail. Any suspension will apply solely to the employee unless the Department has evidence that the standard practice of the employee's company was to commit infractions in its interactions with the Department regardless of the employee involved.

(c) Unpaid representatives.

(1) Definitions.

Unpaid representative. An "unpaid representative" is a person who:

(i) is not the owner or operator of the summonsed vehicle;

(ii) represents another person or firm;

(iii) is not a broker (as defined in § 39-09(a)(1)) or employee (as defined in § 39-09(b)(1)); (iv) is not representing the respondent as an attorney; and

(v) receives no fee or other payment for representing respondents at PVB.

(2) Authorization for summonses not in judgment. Prior to any hearing involving summonses not in judgment, an unpaid representative must file with the Department of Finance a signed and notarized designation from the respondent that the representative is authorized to represent the respondent.

(3) Authorization for summonses in judgment. An unpaid representative may not have a hearing on summonses in judgment unless he or she submits to the Department of Finance a notarized Request for Hearing After Judgment, signed by the registrant of the summonsed vehicle and duly acknowledged before a Notary Public.

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