

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (“Commission”), pursuant to the authority set forth in Sections 8(c) (14), (16), (17), and (19), and 10b of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(14), (16), (17), and (19) and 50-309.02 (2014 Repl. & 2015 Supp.)), hereby gives notice of its intent to adopt a new Chapter 21, entitled “Office of Hearing Examiners,” to Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking creates an independent Office of Hearing Examiners (“OHE”) within the Office of Taxicabs (“Office”), with jurisdiction to hear and adjudicate the following types of enforcement actions (contested cases) of the Office: (1) decisions to deny new licenses; (2) decisions to deny renewed licenses; (3) notices of proposed suspensions of licenses; and (4) notices of proposed revocations of licenses. The rulemaking also establishes the rules and procedures applicable to these cases. This rulemaking also amends Chapter 99 to add necessary definitions.

Proposed rulemaking was adopted by the Commission on October 14, 2015 and published in the *D.C. Register* on February 12, 2016 at 63 DCR 001687. The Commission did not receive any comments during the comment period, which expired on March 13, 2016. Changes were made to correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules. No substantial changes were made.

The Commission voted to adopt these rules as final on April 13, 2016, and they will become effective upon publication in the *D.C. Register*.

A new Chapter 21, OFFICE OF HEARING EXAMINERS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is added as follows:

2100 APPLICATION AND SCOPE

- 2100.1 This chapter is intended to create the Office of Hearing Examiners (“OHE”) as an independent unit within the Office of Taxicabs, and to establish fair and consistent procedural rules for the hearing and adjudication of matters by OHE.
- 2100.2 The provisions of this chapter shall apply to all matters heard or adjudicated by OHE.
- 2100.3 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act and the Impoundment Act.
- 2100.4 OHE shall have jurisdiction to adjudicate and conduct a hearing in a matter involving one or more of the following actions by the Office:

- (a) A decision to deny a new license;
- (b) A decision to deny a renewed license;
- (c) A notice of proposed suspension of a license; or
- (d) A notice of proposed revocation of a license.

2100.5 Hearings shall be conducted at the administrative offices of the Office, or elsewhere in the District as designated in an administrative issuance.

2100.6 All adjudications and hearings before OHE shall comply with this chapter, other applicable provisions of this title, the Administrative Procedure Act (“APA”), and other applicable laws.

2100.7 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title other than Chapter 7, the provision of this chapter shall control.

2101 EFFECT OF FAILURE TO APPEAL

2101.1 If an appellant or respondent fails to timely appeal an action taken by the Office enumerated in § 2100.4, the action shall become final and not subject to appeal.

2102 INDEPENDENCE AND IMPARTIALITY OF HEARING EXAMINERS

2102.1 Hearing examiners shall be employees of the Office, but no hearing examiner shall be subject to the supervision, direction, control, or influence of an official, employee, agent, or counsel of the Office or the Commission, except for purposes of time and attendance.

2102.2 No official, employee, agent, or counsel of the Office or the Commission shall engage in *ex parte* communications with an employee of OHE, or attempt to supervise, direct, control, or influence a hearing examiner in connection with the merits or facts of any matter.

2102.3 No official, employee, agent, or counsel of the Office or the Commission shall assign to a hearing examiner any task or duty which is unrelated to adjudications or hearings, or which limits a hearing examiner’s availability to adjudicate matters, except for time and attendance and other administrative matters applicable to all District employees.

2102.4 Hearing examiners shall be required at all times to act in a manner that promotes public confidence in the integrity and impartiality of OHE.

2103 POWERS AND DUTIES OF HEARING EXAMINERS

- 2103.1 All hearings shall be conducted by a hearing examiner. No other official, employee, agent, or counsel of the Office shall have authority to adjudicate contested cases before the Office of Taxicabs.
- 2103.2 Hearing examiners shall conduct fair and impartial hearings, in a manner which ensures that facts are fully and accurately elicited and that all issues are adjudicated expeditiously so as to not create undue delay.
- 2103.3 Hearing examiners shall ensure that each hearing is conducted in an orderly manner, and shall have the authority to physically exclude from a hearing an appellant, respondent, or other individual who substantially interferes with or obstructs the orderly conduct of a hearing.
- 2103.4 Within thirty (30) days following the receipt of a request for a hearing pursuant to § 2106, OHE shall schedule a hearing and serve notice thereof upon the parties.
- 2103.5 Each hearing examiner shall have authority to:
- (a) Administer oaths and affirmations;
 - (b) Examine witnesses and receive testimony;
 - (c) Rule upon offers of proof and receive evidence;
 - (d) Regulate the course and conduct of hearings;
 - (e) Rule upon motions and dispose of procedural requests and similar matters;
 - (f) Hear and decide questions of law and fact;
 - (g) Exclude information which is scandalous, impertinent, or not relevant to the adjudication of the matter;
 - (h) Issue a subpoena to compel a witness to testify; and
 - (i) Limit the evidence and number of witnesses to be heard, and the nature of testimony, to avoid cumulative evidence and to expedite the proceedings.

2104 RECUSAL

- 2104.1 A hearing examiner shall recuse himself or herself from a matter where he or she is unable to act in a fair and impartial manner. Notice of a recusal shall be provided to the senior hearing examiner.
- 2104.2 Grounds for recusal shall include:

- (a) A conflict of interest or the appearance thereof;
- (b) Bias toward a party or the appearance thereof;
- (c) An *ex parte* communication or pre-judgment of the matter by the hearing examiner of any fact or issue; and
- (d) Any other reason for recusal supported by District law.

2104.3 A party shall file a motion to recuse a hearing examiner from participating in the adjudication not later than five (5) days after receipt of the notice of hearing.

2104.4 Each motion for recusal shall be supported by an affidavit setting forth the reasons for recusal. Failure to timely file a motion for recusal by the time required by § 2104.3 may be construed as a waiver of all grounds for recusal.

2104.5 The senior hearing examiner shall rule upon each motion for recusal.

2104.6 If, following recusal, there are no hearing examiners available to adjudicate a matter, the matter shall promptly be transferred to the Commission for adjudication on the merits.

2105 EX PARTE COMMUNICATIONS

2105.1 Hearing examiners shall not engage in *ex parte* communications with any individual, including any official, employee, agent, or counsel of the Commission or the Office.

2105.2 Where a hearing examiner has engaged in *ex parte* communications, the hearing examiner shall disclose such communications on the record, and shall consider whether recusal is required by § 2104.1.

2106 REQUEST FOR HEARING

2106.1 An appeal shall be filed with OHE within the time prescribed by §§ 708 and 709.

2106.2 Each request for a hearing shall include:

- (a) The full name of the respondent or appellant, and the full name of the appellant's or respondent's representative, if any, appearing on the appellant's or respondent's behalf pursuant to § 2108;
- (b) The mailing address, email address, and telephone number of the appellant or respondent, or of the appellant's representative, if any;

- (c) A brief statement of the reasons for the appeal;
- (d) A brief statement of the relief sought from OHE; and
- (e) A copy of the document reflecting the Office's decision to deny a new or renewed license, the notice of proposed suspension, or the notice of proposed revocation.

2107 SUMMARY ADJUDICATION

- 2107.1 An appellant may request that an appeal of a decision to deny a new or renewed license be decided summarily, without a hearing.
- 2107.2 Each motion for summary adjudication shall be supported by evidence that identifies the facts not in dispute, with appropriate affidavits, and citations to relevant legal authority.

2108 REPRESENTATIVES

- 2108.1 An appellant or respondent, at its own expense, may appear through an attorney or non-attorney representative.
- 2108.2 Each representative shall file a notice of appearance at least two (2) days prior to the first scheduled hearing at which the representative expects to appear. The notice shall include the representative's full name, contact information, and, if applicable, the bar number and jurisdiction(s) of admission.
- 2108.3 A representative shall not be heard and shall not file or serve documents, other than a request for a hearing, until a notice of appearance has been filed.
- 2108.4 A representative may withdraw by serving and filing a notice of withdrawal upon all parties, provided that no motions are pending and no hearing has been scheduled. If a motion is pending or a hearing date has been scheduled, withdrawal shall be granted only by leave of the hearing examiner.
- 2108.5 An attorney acting as a representative shall be in good standing in all jurisdictions where the attorney is admitted, and shall comply with the D.C. Rules of Professional Responsibility throughout the course of the representation.
- 2108.6 Each representative shall exhibit professionalism and courtesy, and shall not mislead or make false statements to OHE.

2109 FAILURE TO APPEAR

- 2109.1 Where a respondent or appellant fails to appear for a scheduled hearing, the hearing examiner may enter a default, provided however, that the Office shall be required to proffer sufficient evidence to meet its burden of proof.

2109.2 Where, following default, the Office proffers sufficient evidence to meet its burden of proof, the hearing examiner shall issue a default judgment, which shall constitute the hearing examiner's final decision in the matter.

2109.3 A respondent or appellant may file a motion to set aside a default judgment within ten (10) days following the default judgment. If a respondent fails to file a motion to set aside a default judgment, the default judgment will become final. The hearing examiner may grant the motion for good cause shown.

2110 MOTIONS

2110.1 Motions shall be filed no later than ten (10) days prior to the hearing, shall state the nature of the motion and the relief sought, and shall be supported by appropriate documentation.

2110.2 A response or opposition to a motion shall be filed not later than five (5) days prior to the hearing, and shall be supported by appropriate documentation. Replies and sur-replies shall not be filed without leave.

2110.3 Where leave is required to file a document, a motion for leave shall be filed within ten (10) days following service of the motion or order to which the document is addressed.

2110.4 Each motion other than a motion made at a hearing shall be in writing and shall be served upon all parties to the matter. The filing or pendency of a motion shall not extend any deadline.

2110.5 Motions made during a hearing may be made orally at the discretion of the hearing examiner.

2111 COMPUTATION OF TIME

2111.1 An applicable time period measured in days under this chapter shall be calculated using the computation of time rules prescribed by Chapter 7, if any, and, if none, then in calculating such period:

- (a) The day of the act, event, or default from which the period begins to run shall not be included;
- (b) The last day of the period shall be included;
- (c) Unless otherwise specified, any reference to "days" means calendar days including holidays and weekends; and

- (d) When the last day is a Saturday or a Sunday, or a national or District holiday, the period shall run until the close of business of the following business day.

2112 ENLARGEMENTS OF TIME

- 2112.1 When an act is required or allowed to be done within a specified time, a hearing examiner, upon motion demonstrating good cause, or *sua sponte*, may enlarge the time period.
- 2112.2 If a motion is made to enlarge before the expiration of the period originally prescribed, the hearing examiner may grant enlargement of time for good cause shown.
- 2112.3 If a motion for enlargement of time is filed after the expiration of the time period, the hearing examiner may grant the enlargement for good cause shown, provided that the failure to file the motion prior to the expiration of the time period was the result of excusable neglect.
- 2112.4 A motion for enlargement of time shall not apply to the time prescribed for filing an appeal.

2113 CONTINUANCES OF HEARINGS

- 2113.1 A hearing examiner may continue a hearing for good cause shown, including at a hearing, upon motion or *sua sponte*, provided the continuance does not unduly delay or disrupt the adjudication of a matter, and does not cause undue prejudice to the opposing party.
- 2113.2 Each motion for continuance shall comply with § 2110.

2114 DISMISSALS OF MATTERS

- 2114.1 A respondent or appellant may file a motion to dismiss at any time.
- 2114.2 Parties may file a joint motion to dismiss, with or without prejudice, at any time.
- 2114.3 If a respondent or appellant fails to comply with a hearing examiner's order or with the requirements of this chapter, or fails to prosecute, the hearing examiner may dismiss the matter *sua sponte* or upon motion.
- 2114.4 A dismissal shall be without prejudice, unless the hearing examiner orders otherwise.
- 2114.5 Each motion to dismiss shall be in writing unless made orally at a hearing.

2114.6 Each motion to dismiss shall state the reasons for dismissal and include supporting documentation.

2115 SUBPOENAS

2115.1 A hearing examiner shall have authority to issue a subpoena for the appearance of witnesses or the production of documents, *sua sponte* or upon the filing of a motion.

2115.2 Each motion for a subpoena shall identify the relevance of the documents sought or witnesses requested, and shall be filed not later than ten (10) days prior to the hearing.

2115.3 If a motion for subpoena is granted, the moving party shall serve the subpoena in the manner required by § 714.1 (a) and (c), and shall serve a copy of the subpoena and proof of service upon the opposing party within one (1) day.

2115.4 Proof of service of a subpoena shall be filed with OHE within three (3) days following service of the subpoena, or one (1) day prior to the hearing, whichever is earlier.

2116 BURDEN OF PROOF

2116.1 In all matters adjudicated by OHE, the Office shall bear the burden of proof to establish by a preponderance of the evidence an evidentiary basis for the Office's denial or nonrenewal of a license, or for the Office's proposed suspension or revocation of a license.

2116.2 If the Office has presented all of its evidence and the hearing examiner determines that the Office has not met its burden of proof, the hearing examiner may enter judgment against the Office without the presentation of additional evidence.

2117 EVIDENCE

2117.1 Formal rules of evidence shall not apply to adjudications or hearings before OHE.

2117.2 Hearsay may be considered during a hearing, provided however, that hearsay shall not serve as the sole evidentiary basis for a suspension or revocation of a license.

2117.3 Irrelevant, immaterial, scandalous, cumulative, or unduly lengthy evidence may be excluded at the discretion of the hearing examiner.

2117.4 Each party shall have the right to present witnesses, to conduct direct examination and cross examination, and to introduce documentary evidence.

- 2117.5 Each party shall serve upon the opposing party and file with OHE, exhibit and witness lists, not later than five (5) business days prior to the hearing.
- 2117.6 A hearing examiner may require the production of evidence by either party.
- 2117.7 A hearing examiner may take judicial notice of generally accepted facts, but shall not take judicial notice of any facts in dispute.

2118 DECISIONS

- 2118.1 A hearing examiner shall issue a written decision within thirty (30) days following the hearing.
- 2118.2 Each decision shall include:
- (a) A list of the exhibits accepted in evidence and the witnesses who testified;
 - (b) Findings of fact based on the evidence adduced at the hearing; and
 - (c) Conclusions of law referencing the applicable law and identifying the findings of fact upon which the conclusions rest.
- 2118.3 If the Establishment Act does not require that a hearing examiner's decision be approved by the Commission, the decision shall be a final agency decision.
- 2118.4 If the Establishment Act requires that a hearing examiner's decision be approved by the Commission, the hearing examiner shall promptly refer the matter to the Commission.

2119 RECONSIDERATION

- 2119.1 A motion for reconsideration of a hearing examiner's decision shall be filed within ten (10) days following the issuance of the decision.
- 2119.2 Each motion for reconsideration shall state the grounds for reconsideration and shall be limited to:
- (a) Errors of law; findings of facts not supported by the evidence, or
 - (b) Newly discovered evidence which was not reasonably available to the party at the time of the hearing.
- 2119.3 The filing of a motion for reconsideration shall not stay a decision by the Office to deny a new license, but it shall stay a decision by the Office to deny a renewed license, a notice of proposed suspension, or a notice of proposed revocation.

2120 APPEALS

- 2120.1 This section shall apply to decisions of a hearing examiner which do not require Commission approval under the Establishment Act.
- 2120.2 In accordance with Chapter 7, either party may appeal a hearing examiner's decision to the Commission within thirty (30) days of the issuance of the decision.
- 2120.3 Upon receipt of an appeal from a hearing examiner's decision, the Commission shall render a final decision to affirm, reverse, or modify the decision, or to remand for further proceedings.
- 2120.4 The filing of an appeal shall not stay a decision by the Office to deny a new license.
- 2120.5 The filing of an appeal shall stay a decision by the Office to deny a renewed license, a notice of proposed suspension, or a notice of proposed revocation.

2121 RECORDS OF HEARINGS

- 2121.1 All hearings shall be recorded, and shall be available to the parties and to the public by transcript.
- 2121.2 The administrative record shall consist of the OHE file, exhibits, transcripts, and all other documents filed with or issued by OHE.
- 2121.3 A party appealing a decision of OHE shall bear the expense of producing the transcript where not already produced.

2122 FINAL AGENCY DECISION

- 2122.1 A decision of the Commission on a matter referred under § 2118.4 or appealed to the Commission under § 2120 shall constitute a final agency decision.
- 2122.2 A decision of a hearing examiner which is not timely appealed in accordance with § 2120.2 shall constitute a final agency decision.

Chapter 99, DEFINITIONS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 9901, DEFINITIONS, is amended as follows:

Subsection 9901.1 is amended to add definitions as follows:

“APA” - the Administrative Procedures Act, as defined in this chapter.

“Evidence” - papers, notarized statements, photographs, and other things a party believes are helpful to a case.

“Ex parte communications” – direct or indirect communications about the merits or facts of a matter or impending matter which do not occur in the presence of all parties, and which do not include scheduling or other procedural matters unrelated to the merits or facts of a matter.

“Hearing examiner” – an attorney who hears and adjudicates cases at OHE.

“Matter” - a contested case, as defined in the Administrative Procedures Act.

“Preponderance of the evidence” - evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, sufficient evidence to convince the hearing examiner that something is more likely to have occurred than to not have occurred.

“Proceeding” - the entire adjudication process, from the issuance of a notice of hearing through the issuance of a decision, including the disposition of any motion for reconsideration.

“Senior hearing examiner” – a hearing examiner, as defined in this Chapter, who also performs administrative duties for OHE as allowed or required by OHE rules and by other applicable laws and regulations.