

time and place for the deposition, and a general description of expected testimony. Depositions may be taken by oral examination or on written interrogatories.

**Dismissal.** A hearing examiner may dismiss a proceeding if a party dies or if there are no issues of fact to be determined.

**Prehearing Conference.** Prior to a hearing, a hearing examiner may call a prehearing conference to define and simplify the issues and scope of the proceeding. A prehearing conference may produce agreements on matters not requiring proof, admission of fact, requests for documents, admissibility of evidence, limitation of witnesses and disposition of motions.

The hearing examiner must file a report defining issues, specifying a schedule for exchange of exhibits, noting the date of hearing and indicating the deadline for filing objections to the report. The hearing examiner may revise the report after receipt of objections.

**Failure to Appear.** If a respondent fails to appear at a hearing where he is required to appear, the hearing examiner may suspend the respondent's license. The suspension takes effect five days after the respondent receives notice and remains in effect until the respondent appears at a hearing or, when not required at a hearing, pays the appropriate civil fine.

**Witnesses.** A party may call witnesses to testify in his behalf. A witness must testify under oath. The hearing examiner and any party may question any witness.

When a respondent denies the commission of an infraction, the officer issuing the notice of infraction must appear at the hearing. When the respondent admits or admits with explanation, the officer need not appear unless (1) the respondent requests the officer's appearance at the same time he answers and the hearing examiner determines the officer would assist in setting a sanction or (2) the hearing examiner decides to call the officer.

**Evidence.** The District of Columbia has the burden of proving the commission of an infraction by clear and convincing evidence. Clear and convincing evidence is a stricter standard than preponderance of the evidence, the



usual standard for civil actions. On the other hand, clear and convincing evidence is a lesser standard than beyond a reasonable doubt, the usual standard for criminal actions.

A respondent has the right to present oral and documentary evidence relevant to issues raised by the notice of infraction and answer. The hearing examiner has discretion to determine the order for presentation of evidence. The hearing examiner must exclude evidence which does not contain facts of probative value or is not relevant to the issues to be decided. Testimony privileged by statute or court decision is also excluded.

A hearing examiner may not consider a respondent's driver record in determining whether an infraction is established. In contrast, a hearing examiner may consider a respondent's driver record in determining what sanction to impose.

Objections to evidence must be in short form. No documents may be submitted after the hearing except upon agreement of all parties and the hearing examiner.

A hearing examiner may take official notice of (1) matter cognizable in District of Columbia courts; (2) technical or specialized facts within the knowledge of the hearing examiner; (3) facts in the records and files of the Department of Transportation. A hearing examiner must provide notice of matters officially noticed to all parties before or during the hearing. A party may contest any matter officially noticed.

**Decisions.** After the hearing in a case where the respondent denies the commission of an infraction, the hearing examiner must determine whether an infraction has been established. If an infraction is not established, the hearing examiner issues an order of dismissal. If an infraction is established or if the respondent admits or admits with explanation the commission of an infraction, an appropriate order is entered in the records of the Department of Transportation. An order establishing an infraction is an adjudication that the infraction has been committed for the purposes of this act and for assessment of traffic violation points.

A hearing examiner may announce his decision orally after the hearing or may announce it later in writing. In

either event, all parties must receive written copies of the decision. The decision must include findings of fact and conclusion of law. The decision is limited to the record except for matters officially noticed.

If an infraction is established, the hearing examiner may impose sanction, which may include a civil fine and penalties, completion of traffic school or both. A hearing examiner may stay the sanctions if the respondent appeals the decision, posts a security equal to the civil fine and penalties and exchanges his operator's permit for a temporary permit. All fines and penalties go into the general fund of the District of Columbia.

**Record.** Each hearing must be recorded and available for transcribing. A person who requests a transcript must pay costs. A transcript may be changed only for an error of substance.

The official hearing record must include the following: (1) notice of infraction and answer, (2) motions and rulings, (3) all evidence received, (4) statement of matters officially noticed, (5) offers of proof and objections, (6) arguments, (7) hearing examiner's findings of fact and conclusion of law, and (8) all memoranda, reports and other documents from Department of Transportation personnel.

#### TITLE III -- PARKING, STANDING, STOPPING, AND PEDESTRIAN INFRACTIONS

Section 301 provides for administrative adjudication of all parking, standing, stopping and pedestrian infractions, except those committed by serious offenders as provided in section 302. Parking, standing and stopping infractions involve halting a vehicle, whether occupied or not, except to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic sign or signal. Pedestrian infractions are violations committed by persons on foot.

The effect of section 301 is to transfer the initial process for adjudicating all parking, standing, stopping and pedestrian offenses, except those committed by serious offenders, from the Superior Court of the District of Columbia to the D.C. Department of Transportation. Section 301 further provides that the section supercedes any provisions of existing law that conflict.



Section 302 exempts from Title III infractions committed by serious offenders. Parking, standing, stopping and pedestrian infractions committed by persons who, during the 18 months preceding the infraction, have been assessed over \$750 in fines and penalties are subject to criminal prosecution if the Corporation Counsel asserts jurisdiction. Conviction of an infraction under this section is punishable by a fine up to \$300 and imprisonment up to 10 days.

Section 302 requires the Director of the Department of Transportation to promptly notify the Corporation Counsel of any infraction committed by a person with over \$750 in fines and penalties. If the Corporation Counsel asserts jurisdiction within 15 days of notification, the infraction is tried as a criminal offense in the Superior Court of the District of Columbia. If the Corporation Counsel does not assert jurisdiction within 15 days of notification, the infraction is adjudicated civilly in the Department of Transportation.

When the Corporation Counsel asserts jurisdiction as provided by this section, he must notify the respondent by certified mail that the infraction will be prosecuted criminally. An action or statement made by a respondent in compliance with this act before receipt of this notice is inadmissible in the criminal proceeding. Thus if a respondent admits the commission of an infraction before receipt of notice, the admission would not be admissible.

Section 303 provides that a notice of infraction serves as a complaint and summons for an infraction subject to Title III. Thus a notice of infraction initiates an action in the Bureau of Traffic Adjudication and requires a respondent to answer as provided in section 305. Section 303 further provides that the notice of infraction may be the same as the uniform traffic notice. Consequently the notice of infraction could serve as a ticket which a police officer or Department of Transportation employee issues to a motorist or parked vehicle.

Section 303 provides that the original of the notice of infraction must be filed in the records of the Department of Transportation. The section further provides that the notice of infraction is prima facie evidence of the facts it contains. Thus if credible evidence is not introduced to prove facts other than those contained in the notice of infraction, the notice of infraction is sufficient proof of

the facts it contains. Section 303 also provides for dismissal of a notice of infraction that is defective on its face.

Section 303 requires the Director of the Department of Transportation to develop a form for the notice of infraction and to provide administrative controls for its dispersal. Section 303 requires the director to include in the notice of infraction the following information: (1) the procedures for filing an answer, (2) the deadline for filing an answer and (3) the consequences of not answering within the deadline.

Section 303 also requires that the notice of infraction contain the name of the respondent, the license plate number, the license plate type and the make and model of the vehicle. If the operator of the vehicle is not present at the time of service, the officer issuing the notice may substitute "owner" for the name.

Section 303 requires the officer issuing a notice of infraction to serve a duplicate of the notice of infraction on the respondent. If the operator of the vehicle is present at the time of service, the notice must be personally served on him. If the operator is not present, the notice must be served by affixing it conspicuously to the vehicle. Placing a notice securely under a vehicle's windshield wiper would constitute valid service if the operator is not present.

Section 303 provides that a person who operates a vehicle with the owner's permission is the owner's agent for service of the notice of infraction. Thus service on an operator, either personally or by affixation, is equivalent to service on the owner.

Section 304 addresses liability for parking, standing and stopping infractions committed by an operator who is not an owner. The section provides that an operator is primarily liable for an infraction. Thus the Department of Transportation would proceed against an operator instead of an owner whenever this approach is practical.

Except for a lessor, an owner who gives an operator permission to use a vehicle is liable for any infraction committed by the operator. Thus when it is not practical to proceed against an operator who is not the owner, the