§ 227. Hearings; determinations. 1. Every hearing for the adjudication of a traffic infraction, as provided by this article, shall be held before a hearing officer appointed by the commissioner. The burden of proof shall be upon the people, and no charge may be established except by clear and convincing evidence. The commissioner may prescribe, by rule or regulation, the procedures for the conduct of such hearings.

2. In any case wherein the people are not ready for the hearing on the scheduled hearing date, the hearing officer may order a dismissal of the charge or the adjournment of the hearing to a subsequent time. In any case wherein the people are not ready for the hearing at an ordered adjourned time and do not provide a minimum of seven days' notice to the department after having been not ready for a hearing on the charge for any reason previously, the charge shall be dismissed unless the hearing officer determines that a substantial traffic safety hazard would result from the dismissal. The commissioner shall promulgate regulations concerning the adjournment of hearings which may permit the dismissal of cases by a hearing officer for reasons not prescribed herein.

3. After due consideration of the evidence and arguments offered in a contested case, the hearing officer shall determine whether the charges have been established. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established, either in a contested case or in an uncontested case where there is an appearance before a hearing officer, or if an answer admitting the charge otherwise has been received, an appropriate order shall be entered in the department's records.

4. a. An order entered upon the failure to answer or appear or after the receipt of an answer admitting the charge or where a determination is made that the charge has been established shall be civil in nature, but shall be treated as a conviction for the purposes of this chapter. The commissioner or his designee may include in such order an imposition of any penalty authorized by any provision of this chapter for a conviction of such violation, except that no penalty therefore shall include imprisonment, nor, if monetary, exceed the amount of the fine

which could have been imposed had the charge been heard by a court. If the charge involves a violation of section three hundred eighty-five of this chapter, the driver's license or privileges may be suspended pending the payment of any penalty so imposed, or, if the charge involves a violation of section three hundred eighty-five of this chapter by a registrant who was not the operator of the vehicle, the registration of such vehicle or privilege of operation of any motor vehicle owned by such registrant may be suspended pending the payment of any penalty so imposed. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-1) of subdivision two of section five hundred three of this chapter.

b. Unpaid fines may be recovered by the commissioner in a civil action in the name of the commissioner. In addition, as an alternative to such civil action, and provided that no appeal is pending, the commissioner may file with the county clerk of the county in which the person resides a final order of the commissioner containing the amount of the fine or fines. The filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to execution issued against property upon judgments of a court of record. No such civil action shall be commenced nor shall such final order be filed until at least thirty days after the department has posted by ordinary mail to the person at the address of such person on file with the department or at the current address provided by the United States postal service notice of the amount of such fine or fines and that such fine or fines are due and owing.

* 5. All penalties and forfeited security collected pursuant to the provisions of this article shall be paid to the department of audit and control to the credit of the justice court fund and shall be subject to the applicable provisions of section eighteen hundred three of this chapter. After such audit as shall reasonably be required by the comptroller, such penalties and forfeited security shall be paid quarterly or, in the discretion of the comptroller, monthly, to the appropriate jurisdiction in which the violation occurred in accordance with the provisions of section ninety-nine-a of the state finance law, except that the sum of four dollars for each violation occurring in such

jurisdiction for which a complaint has been filed with the administrative tribunal established pursuant to this article shall be retained by the state. Notwithstanding any law to the contrary an additional annual sum of three million dollars collected from fines and assessed to the city of New York, shall be deposited into the general fund. Provided, however, that if the full costs of administering this article shall exceed the amounts received and retained by the state for any period specified by the commissioner, then such additional sums as shall be required to offset such costs shall be retained by the state out of the penalties and forfeited security collected pursuant to this article.

* NB Effective until April 1, 2019

* 5. All penalties and forfeited security collected pursuant to the provisions of this article shall be paid to the department of audit and control to the credit of the justice court fund and shall be subject to the applicable provisions of section eighteen hundred three of this chapter. After such audit as shall reasonably be required by the comptroller, such penalties and forfeited security shall be paid quarterly or, in the discretion of the comptroller, monthly, to the appropriate jurisdiction in which the violation occurred in accordance with the provisions of section ninety-nine-a of the state finance law, except that the sum of four dollars for each violation occurring in such jurisdiction for which a complaint has been filed with the administrative tribunal established pursuant to this article shall be retained by the state. Provided, however, that if the full costs of administering this article shall exceed the amounts received and retained by the state for any period specified by the commissioner, then such additional sums as shall be required to offset such costs shall be retained by the state out of the penalties and forfeited security collected pursuant to this article.

* NB Effective April 1, 2019

6. Unless a hearing officer shall determine that a substantial traffic safety hazard would result therefrom, he shall, pursuant to the regulations of the commissioner, delay for a period of thirty days the effective date of any suspension or revocation of a drivers license or vehicle registration imposed after a hearing pursuant to this article,

unless such suspension was imposed because of the failure to pay a monetary penalty. Provided, however, the commissioner's regulations may provide for the immediate surrender of any item to be suspended or revoked and the issuance of appropriate temporary documentation to be used during such thirty day period.