

CAPA REGULATORY AGENDA FY 2020
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Pursuant to section 1042 of the Charter, the Office of Administrative Trials and Hearings (OATH) sets forth below its regulatory agenda for the City's fiscal year of 2020:

HEARINGS DIVISION

1. SUBJECT: Appeals

- A. Reason: To further develop the standards by which the Appeals Unit reviews Hearing Officer decisions.
- B. Anticipated contents: Revisions to 6-19 to include a standard for remand and a standard of review for the Appeals Unit.
- C. Objectives: Setting forth a standard for remand will inform the parties of the circumstances in which the Appeals Unit will remand a matter back to a Hearing Officer. Setting forth a standard of review will enhance consistency in Appeals Unit decisions.
- D. Legal Basis: Section 1049(2)(a) of the New York City Charter.
- E. Types of individuals and entities likely to be affected: Respondents who receive summonses adjudicated in the OATH Hearings Division and the enforcement agencies who issue those summonses.
- F. Other relevant laws: None.
- G. Approximate schedule: 1st or 2nd quarter of Fiscal Year 2020.

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2. SUBJECT: Repeal of Penalty Schedules

- A. Reason: The retrospective rules review conducted by the Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations recommends repeal of all penalty schedules from OATH's rules so that they can be incorporated into the rules of the agencies having rulemaking and policymaking authority over the laws underlying the violations. This will also help alleviate the false public perception that OATH is an enforcement agency, rather than a neutral tribunal. OATH commenced this process in Fiscal Year 2016 and will continue to repeal penalty schedules through Fiscal Year 2020. This process requires coordinated action by OATH and each affected enforcement agency.

- B. Anticipated contents: Repeal of the penalty schedules remaining in Subchapter G.
- C. Objectives: To transfer the penalty schedules to the enforcement agencies that have necessary expertise to determine appropriate penalties for violations of the rules and laws under their jurisdiction based on the severity of each violation and its effect on City residents; to make it easier for the public to find the penalties, which will be located within the same chapter as the rules supporting the violations alleged in the summonses; and to speed up the rulemaking process by eliminating the need for OATH approval of proposed or amended penalties for agency rules that have already been established by the legislature and/or have undergone the CAPA process by the enforcement agency.
- D. Legal Basis: Section 1049(2)(a) of the New York City Charter.
- E. Types of individuals and entities likely to be affected: Respondents who receive summonses adjudicated by the OATH Hearings Division and the enforcement agencies who issue those summonses.
- F. Other relevant laws: None.
- G. Approximate schedule: Throughout Fiscal Year 2020. OATH may not repeal a penalty schedule until the relevant enforcement agency is ready to promulgate a similar penalty schedule in its rules.

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3. SUBJECT: Community Service

- A. Reason: As OATH continues to develop and expand its community service program, including OATH's online community service course, the community service rules in Chapter 7 may need to be amended to reflect new procedures for completing community service.
- B. Anticipated contents: Amendments to Chapter 7.
- C. Objectives: To ensure that the community service rules accurately reflect the procedures necessary to complete OATH's online community service course, which is scheduled to launch in the 1st quarter of Fiscal Year 2020.
- D. Legal Basis: Sections 1049(2)(a) and 1049(4)(g) of the New York City Charter.
- E. Types of individuals and entities likely to be affected: Respondents who receive summonses eligible for community service.
- F. Other relevant laws: Section 1049(4) of the New York City Charter.

G. Approximate schedule: Throughout Fiscal Year 2020.

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4. SUBJECT: Registered Representatives and Misconduct.

- A. Reason: To update and clarify the types of misconduct and patterns of misconduct, particularly those involving dishonesty and integrity issues, currently reflected in registered representative activities. To address concerns that registered representatives are appearing on behalf of respondents without authorization and appearing at hearings with no knowledge of the alleged violations in the summonses. To clarify the procedures for summary suspension hearings.
- B. Anticipated contents: Amendments to Sections 6-23 and 6-25.
- C. Objectives: Add a requirement that registered representatives be knowledgeable about the alleged violations in the summons upon which they are appearing. Add language that conforms to requirements contained in the authorization form that enhances notice and disclosure to otherwise unrepresented respondents. Revise and clarify the types of misconduct and penalties for misconduct. Provide clear explanation of the procedures and burden of proof for a summary suspension hearing.
- D. Legal Basis: Section 1049(2)(a) of the New York City Charter
- E. Types of individuals and entities likely to be affected: Registered representatives and other representatives who appear on behalf of respondents at the Hearings Division.
- F. Other relevant laws: None.
- G. Approximate schedule: 1st Quarter of Fiscal Year 2020.

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5. SUBJECT: Ex Parte Communications.

- A. Reason: To provide a clear and comprehensive definition of ex parte communications and the steps a Hearing Officer must take when an ex parte communication occurs.
- B. Anticipated contents: Chapter 6
- C. Objectives: To remove the current ex parte communication provisions from section 6-25 (Misconduct), as an ex parte communication is not necessarily misconduct and can be

cured by notifying the other party and/or stating the communication on the record. To define an ex parte communication and the steps that a Hearing Officer should take when an ex parte communication occurs.

- D. Legal Basis: Section 1049(2)(a) of the New York City Charter
- E. Types of individuals and entities likely to be affected: Respondents who receive summonses adjudicated by the OATH Hearings Division and the enforcement agencies who issue those summonses.
- F. Other relevant laws: None.
- G. Approximate schedule: 1st Quarter of Fiscal Year 2020.

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6. SUBJECT: Granting a New Hearing After a Failure to Appear

- A. Reason: To ensure that respondents who have a reasonable excuse for failing to appear are granted a new hearing pursuant to 48 RCNY § 6-21(c) and (d).
- B. Anticipated contents: Amendments to Section 6-21(c) and (d).
- C. Objectives: To provide additional factors that a Hearing Officer must consider when deciding a motion to vacate default/for a new hearing when determining whether or not a respondent has shown a reasonable excuse for failing to appear at the hearing.
- D. Legal Basis: Section 1049(2)(a) of the New York City Charter
- E. Types of individuals and entities likely to be affected: Respondents who receive summonses adjudicated by the OATH Hearings Division.
- F. Other relevant laws: None.
- G. Approximate schedule: 2nd Quarter of Fiscal Year 2020.

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7. SUBJECT: General Clean-Up of Chapters 1 and 2 (OATH's Trials Division rules)

- A. Reason: OATH anticipates reviewing the procedural rules for the OATH Trials Division and making necessary amendments to clarify procedures and ensure that consistent language is used.

- B. Anticipated contents: Chapters 1 and 2.
- C. Objectives: This is general clean-up, removing inconsistencies and providing improved guidance as to Trials Division procedures.
- D. Legal Basis: Section 1049(2)(a) of the New York City Charter
- E. Types of individuals and entities likely to be affected: Parties who appear at OATH Trials Division.
- F. Other relevant laws: None.
- G. Approximate schedule: Throughout Fiscal Year 2020.

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8. SUBJECT: General Clean-up of Chapters 3, 5, and 6.

- A. Reason: OATH anticipates reviewing the procedural rules for the OATH Hearing Division and making any necessary amendments to clarify procedures and ensure that consistent language is used.
- B. Anticipated contents: Amendments to Chapter 3, 5, and 6.
- C. Objectives: This is general clean-up, removing inconsistencies and providing improved guidance as to Hearings Division procedures.
- D. Legal Basis: Section 1049(2)(a) of the New York City Charter
- E. Types of individuals and entities likely to be affected: Respondents who receive summonses adjudicated in the Hearings Division and the enforcement agencies that issue the summonses.
- F. Other relevant laws: None.
- G. Approximate schedule: Throughout Fiscal Year 2020.

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