

**City of New York
Office of Administrative Trials and Hearings**

Notice of Adoption of Rule

Pursuant to the authority vested in the Office of Administrative Trials and Hearings (OATH) by Sections 1048, 1049 and 1049-a of the New York City Charter, and in accordance with the requirements of Section 1043 of the Charter, OATH has adopted amendments to chapters 1 and 6 of title 48 of the Rules of the City of New York.

The Environmental Control Board voted to approve a proposed version of these amendments on February 18, 2021. A proposed version of these amendments was published in the City Record on February 26, 2021. A public hearing was held on April 6, 2021. No testimony regarding the amendments was given at the public hearing, and OATH did not receive any written comments from the public. The Environmental Control Board voted to approve a final version of these amendments on April 15, 2021.

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings (OATH) is amending its Rules of Practice for its Trials and Hearings Divisions, currently found in chapters 1 and 6 of title 48 of the Rules of the City of New York as follows. The provisions codified in chapter 6 of title 48 of the Rules of the City of New York govern Environmental Control Board adjudicatory proceedings, as well as other proceedings under the jurisdiction of OATH's Hearings Division.

Rule Changes Section 1

OATH is amending subdivision (d) of section 1-33 of title 48 of the Rules of the City of New York by adding a new paragraph (4) to establish the procedure by which an administrative law judge may issue a protective order denying, limiting, or conditioning the use of any discovery device, in order to prevent the inappropriate use of such device. Section one of this rule clarifies the authority of administrative law judges in the trials division of OATH to prevent parties from inappropriately obtaining information through discovery devices that could later be disclosed to harass or to embarrass other persons involved in the proceeding.

Rule Changes Sections 2-4

OATH is amending its rules to prevent the inappropriate disclosure of immigration-status information in its proceedings. Sections two and three of this proposed rule amend subdivision (b) of section 1-46 and subdivision (c) of section 6-12 of title 48 of the Rules of the City of New York by adding provisions that restrict parties, attorneys and representatives from offering information concerning a person's actual or perceived immigration status at OATH trials and hearings unless an administrative law judge or hearing officer first reviews this information privately and determines that such information is both relevant and not introduced solely to subject that person to harassment, intimidation, physical danger, or other harms in connection with the person's immigration status. This provision will not restrict a party from voluntarily

introducing or authorizing the introduction of information about his or her own immigration status. Violations of these provisions may be subject to sanctions and struck from the record of the proceedings.

Section four of this rule amends subdivision (a) of section 6-25 of title 48 of the Rules of the City of New York to prohibit a party, witness, representative or attorney from threatening to disclose information related to another person's actual or perceived immigration status for the purpose of intimidating or harming the other person in order to affect the outcome of the OATH proceeding.

These rules will protect the integrity of OATH proceedings by assuring individuals that they may appear before OATH and have their matters heard without fear of adverse consequences or threats of intimidation based on their immigration status.

Rule Changes Sections 5 and 6

Local Law 58 of 2020 added section 1-114 to the New York City Administrative Code prohibiting the use of the word "alien" in City rules to describe an individual who is not a citizen of the United States. In order to comply with this local law, sections five and six of this rule amend Section 102 of appendix A to title 48 of the Rules of the City of New York to replace the word "alienage" with the word "immigration."

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (d) of section 1-33 of title 48 of the Rules of the City of New York is amended by adding a new paragraph (4) to read as follows:

(4) On his or her own motion or on the motion of any of the parties, the administrative law judge may issue a protective order denying, limiting, or conditioning the use of any discovery device available under subdivisions (a) or (b) of this section, in order to prevent the inappropriate use of such device.

§ 2. Subdivision (b) of section 1-46 of title 48 of the Rules of the City of New York is amended by adding new paragraphs (1) and (2) to read as follows:

(1) A party, representative or attorney shall not offer information concerning a person's actual or perceived immigration status unless and until the administrative law judge reviews such information in chambers and determines that such information is relevant and not introduced solely to subject that person to harassment, intimidation, physical danger, or other harms in connection with the person's immigration status. Notwithstanding any other provision of this subdivision, a party may voluntarily introduce or authorize the introduction of information about his or her own immigration status.

(2) Any party, representative or attorney who offers immigration status information of a person not in compliance with paragraph one of this subdivision may be subject to sanctions pursuant to § 1-13, and such information may be struck from the record.

§ 3. Subdivision (c) of section 6-12 of title 48 of the Rules of the City of New York is amended by adding new paragraphs (1) and (2) to read as follows:

(1) Admissibility of Immigration Status. A party, representative or attorney shall not offer information concerning a person's actual or perceived immigration status unless and until the Hearing Officer reviews such information privately and determines that such information is relevant and not introduced solely to subject that person to harassment, intimidation, physical danger, or other harms in connection with the person's immigration status. Notwithstanding any other provision of this subdivision, a person may voluntarily introduce or authorize the introduction of information about his or her own immigration status.

(2) Any party, representative or attorney who offers information concerning the immigration status of another person not in compliance with paragraph one of this subdivision may be subject to sanctions pursuant to § 6-25 and such information may be struck from the record.

§ 4. Paragraph (12) of subdivision (a) of section 6-25 of title 48 of the Rules of the City of New York is amended, and such subdivision is amended by adding a new paragraph (13) to read as follows:

(12) Make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or other remote methods, except upon application to the Hearing Officer. This does not include copies of documents submitted to the Tribunal during a hearing including written or electronic statements and exhibits. Except as otherwise provided by law, such application must be addressed to the Hearing Officer, who may deny the application or grant it in full, in part, or upon such conditions as the Hearing Officer deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons[.]; or

(13) Threaten to disclose information related to another person's actual or perceived immigration status for the purpose of intimidating or harming the other person in order to affect the outcome of the proceeding.

§ 5. Subdivision (E) of section 102 of appendix A to title 48 of the Rules of the City of New York is amended to read as follows:

(E) A City administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, [alienage] immigration or citizenship status, military status, or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291. This provision does not prohibit a City administrative law judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

§ 6. Paragraphs (5) and (6) of subdivision (A) of section 103 of appendix A to title 48 of the Rules of the City of New York are amended to read as follows:

(5) A City administrative law judge shall perform judicial duties with impartiality. A City administrative law judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, [alienage] immigration or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291, or socioeconomic status, and shall require City tribunal staff and others subject to the City administrative law judge's direction and control to refrain from such words or conduct.

(6) A City administrative law judge shall require the parties and their representatives in proceedings before him or her to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, [alienage] immigration or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291, or socioeconomic status. This provision does not preclude legitimate advocacy when age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, domestic partnership status, [alienage] immigration or citizenship status, military status, socioeconomic status or any other similar factor is an issue in the proceeding.