

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

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings (OATH) proposes to amend its Rules of Practice for its Trials and Hearings Divisions, currently codified in chapters 1 and 6 of title 48 of the Rules of the City of New York, to provide additional mechanisms to challenge certain discovery demands made during the course of OATH proceedings and to establish protections in order to assure individuals appearing before OATH that they may do so without experiencing intimidating threats.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place **from 11:00 a.m. through 12:00 p.m. on April 6, 2021**. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, visit:

<https://nyc-oath.webex.com/nyc-oath/j.php?MTID=m5cb4d0eac72314c74b902416a18e9b59>

When prompted, enter **Meeting ID: 179 202 6580**
Password: oathrules

- **Phone.** For access, dial: 1-646-992-2010 or 1-408-418-9388.
When prompted, enter **Meeting ID: 179 202 6580##**

How do I comment on the proposed rules? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to OATH through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Joy Thompson, Assistant General Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Joy Thompson, Assistant General Counsel, at 212-361-1900.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing may speak for up to three minutes. Please access the public hearing by internet video and audio or by telephone using the instructions above.

Is there a deadline to submit written comments? You may submit written comments until **5:00 p.m. on April 6, 2021**.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may contact us by email at enolan@oath.nyc.gov or by telephone at (212) 436-0708 to request a reasonable accommodation. Please tell us by **April 5, 2021**.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>. Shortly after the public hearing, a summary of oral comments and copies of all written comments will be available to the public on OATH's website, at <https://www1.nyc.gov/site/oath/about/legal-resources-and-rule-making.page>.

What authorizes OATH to make this rule? Sections 1048, 1049 and 1049-a of the New York City Charter authorize OATH to make this proposed rule. This proposed rule is not included in OATH's regulatory agenda for this Fiscal Year, because it was not contemplated at the time the regulatory agenda was created.

Where can I find OATH's rules? OATH's rules are located in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? This notice is made according to the requirements of Section 1043 of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings (OATH) proposes to amend 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 Change Section 1

OATH is proposing to amend 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. This rule would clarify 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 Change Sections 2-5

OATH is proposing amendments to its rules that would prevent the inappropriate disclosure of immigration-status information in its proceedings. Sections two and three of this proposed rule would

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 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 would not restrict a party from voluntarily introducing or authorizing the introduction of information about his or her own immigration status. Violations of these provisions could be subject to sanctions and struck from the record of the proceedings.

Sections four and five of this rule change would amend subdivision (a) of section 6-25 of title 48 of the RCNY 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 would 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 6 and 7

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 six and seven of this rule would amend Section 102 of appendix A to title 48 of the RCNY 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 section 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 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

§ 5. Subdivision (a) of section 6-25 of Title 48 of the Rules of the City of New York is amended by adding a new paragraph (13) to read as follows:

(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.

§ 6. 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.

§ 7. 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 is 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.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Protection of Immigrants Appearing Before OATH Tribunals

REFERENCE NUMBER: 2020 RG 103

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: February 12, 2021

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Protection of Immigrants Appearing Before OATH Tribunals

REFERENCE NUMBER: OATH-ECB-99

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the violations pose significant risks to public health and safety.

/s/ Francisco X. Navarro
Mayor's Office of Operations

February 16, 2021
Date