

**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: Conduct of Pre-Trial Mediation in Trials Division

REFERENCE NUMBER: 2021 RG 072

RULEMAKING AGENCY: The Office of Administrative Trials and Hearings (OATH)

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: September 28, 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: Conduct of Pre-Trial Mediation in Trials Division

REFERENCE NUMBER: OATH-ECB-108

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

September 29, 2021
Date

**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 in title 48 of the Rules of the City of New York to establish procedures for pre-conference settlement negotiations in OATH's Trials Division.

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 November 5, 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=m13e90f3092935635b38a2baca1415efb>

When prompted, enter Meeting ID: 2340 406 6336

Password: **OATH**

- **Phone.** For access, dial: 1-646-992-2010
When prompted, enter Meeting ID: **23404066336##**

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 November 5, 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 **November 4, 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 1043 and 1049 of the New York City Charter. This proposed rule was 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

Pursuant to the authority set forth in sections 1043 and 1049 of the New York City Charter, which authorizes the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH) to establish rules of conduct, OATH proposes to amend its rules governing the Trials Division to establish procedures for pre-conference and pre-trial settlement negotiations.

Section one of this proposed rule would amend chapter 1 of title 48 of the Rules of the City of New York by adding a new section 1-31-a. In this section, OATH proposes to grant Administrative Law Judges the authority to direct parties to meet and confer shortly after an issue is joined, but before the matter is brought before the judge for conference. This provision would allow the parties, in all confidence, to weigh the possibilities of resolution before expending time and resources to prepare for a conference or a trial. The same opportunity would be granted shortly before trial.

Section two of this proposed rule would amend chapter 2 of title 48 of the Rules of the City of New York by adding a new subchapter E. This subchapter would provide additional rules for Department of Correction (DOC) cases.

The volume of matters brought by the Department of Correction (DOC) has increased significantly. Upon reviewing these filings, OATH has found that a significant number of them are amenable to quick settlement. Given the measurable increase in cases, facilitating and encouraging rapid resolution where feasible would conserve the time and resources of the parties and the Trials Division, and render the process more efficient.

OATH proposes to require that the parties in DOC matters meet and confer shortly after an issue is joined, but before the matter is brought before a judge for conference. Similar to the proposed provision above, this provision proposes to direct the parties to weigh the possibilities of resolution before expending time and resources to prepare for a conference or a trial, thus allowing for more focused and efficient uses of court resources. The same opportunity would be granted shortly before trial.

Both provisions would result in the more efficient use of Trials Division resources, regardless of the outcome of the pre-conference or pre-trial meeting. Specifically, even where the requirement to meet and confer does not result in a rapid settlement, the provisions would help the parties identify barriers to settlement, resulting in more effective and focused settlement conferences led by the Administrative Law Judges and sharpen the issues before trial.

Finally, to the extent that a percentage of matters are settled quickly and successfully, without the interposition of judges, the judges, relieved of the additional caseload, may more promptly and thoroughly focus their attention on DOC matters not amenable to rapid resolution.

Deleted material is in [brackets].

New text is underlined.

Section 1. Chapter 1 of title 48 of the Rules of the City of New York is amended by adding a new section 1-31-a to read as follows:

§ 1-31-a Pre-conference and Pre-trial Settlement Negotiations

a) The Administrative Law Judge assigned to a settlement conference or a trial may require the parties to meet and confer prior to the settlement conference or prior to the trial, for the purpose of sharing and discussing settlement offers, upon application of either party or *sua sponte*. The Administrative Law Judge may set a deadline by which the parties must meet and confer.

b) Each party must participate in good faith and have present or readily accessible during these meetings an individual possessing the authority to settle the matter. All settlement offers made during this meet-and-confer period are confidential and inadmissible at the trial of any case.

c) If the parties reach a settlement agreement, they must notify OATH immediately and promptly send the settlement agreement to OATH. If the parties do not reach a settlement, they must provide a pre-conference letter to the Administrative Law Judge, pursuant to 48 RCNY 1-31(a), or an equivalent pre-trial letter, at least twenty-four hours prior to appearing at the settlement conference or trial, respectively.

§ 2. Chapter 2 of title 48 of the Rules of the City of New York is amended by adding a new subchapter E to read as follows:

Subchapter E: Additional Rules for Department of Correction Cases

§ 2-51 Applicability

This subchapter applies solely to cases brought by the New York City Department of Correction. Chapter 1 also applies to such proceedings, except to the extent that it is inconsistent with this subchapter.

§ 2-52 Pre-conference and Pre-trial Settlement Negotiations

a) The parties must meet and confer prior to a settlement conference and prior to a trial, for the purpose of sharing and discussing settlement offers.

b) Each party must participate in good faith and have present or readily accessible during these meetings an individual possessing the authority to settle the matter. All settlement offers made during this meet-and-confer period are confidential and inadmissible at the trial of any case.

c) If the parties reach a settlement agreement, they must notify OATH immediately and promptly send the settlement agreement to OATH. If the parties do not reach a settlement, they must provide a pre-conference letter to the Administrative Law Judge, pursuant to 48 RCNY 1-31(a), or an equivalent pre-trial letter, at least twenty-four hours prior to appearing at the settlement conference or trial, respectively.