

**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 located in subchapter F of chapter 6 of title 48 of the Rules of the City of New York, governing the conduct of registered representatives and attorneys appearing before OATH's Hearings 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 1:00 p.m. on May 18, 2022**. 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=m4c5f2b212c257053067a4dd70783aecd>

When prompted, enter Meeting ID: **2337 857 8841**
Password: **OATH**

- **Phone.** For access, dial: **1-646-992-2010**
When prompted, enter Meeting ID: **2337 857 8841##**

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 May 18, 2022**.

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 **May 17, 2022**.

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 authorize OATH to make this proposed rule. This proposed rule was included in OATH's regulatory agenda for this Fiscal Year.

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 located in subchapter F of chapter 6 of title 48 of the Rules of the City of New York, governing the conduct of registered representatives and attorneys appearing before OATH's Hearings Division (Tribunal). These amendments would require registered representatives to have proper authorization when representing respondents and to be familiar with the relevant facts and applicable law underlying a summons. These amendments would also clarify and address the types of misconduct and patterns of misconduct, particularly those involving dishonesty and integrity, such as registered representatives' misrepresenting themselves as attorneys, providing false information, and soliciting on OATH's premises.

Section one of this proposed rule would add the following amendments to section 6-23 of subchapter F of chapter 6 of title 48 of the Rules of the City of New York:

- Define a representative as an individual who is not an attorney admitted to practice in New York State but who is authorized by a respondent to appear on behalf of the respondent;
- Require a registered representative to register every two (2) years and clarify that the representative must submit proof of identity to register;
- Remove the statement concerning the consequences of failing to register, since registration is a condition of appearance at the Tribunal;
- Require the representative to accurately represent the representative's qualifications and services;
- Clarify the obligation of a registered representative to exercise due diligence, including demonstrating knowledge of the facts and subject matter of the summons, complying with adjournment and rescheduled hearing dates, and ensuring that oral and written statements and documents submitted to the Tribunal are authentic and correct;
- Require that a registered representative act in the respondent's best interests and avoid any conflicts that would impair the representative's ability to do so; and
- Require the submission of an authorization to appear form.

Section two of this proposed rule would add the following amendments to section 6-25 of subchapter F of chapter 6 of title 48 of the Rules of the City of New York:

- Clarify what constitutes misconduct by using consistent terminology;
- Prohibit the making of false, fraudulent, or misleading statements to the Tribunal;
- Create a rebuttable presumption that the exchange of money at the Tribunal is evidence of solicitation;
- Prohibit falsely representing to be an attorney or government employee;
- Prohibit acting in a fashion that demonstrates a lack of integrity in the representation of parties;
- Substitute paragraph (f) for former paragraph (1) of subdivision (b) concerning *ex parte* communication;
- Move former paragraph (2) of subdivision (b), concerning communicating with a Hearing Officer to influence a decision, to paragraph (6) of subdivision (a);
- Subject respondents and witnesses, in addition to attorneys and representatives, to penalties for misconduct; and
- Subject attorneys, in addition to representatives, to summary suspension or bar.

These proposed amendments represent important steps in OATH's continuing efforts to identify and stop impersonators and fraud, facilitate professionalism and efficiency, and protect the integrity of OATH proceedings.

Deleted material is in [brackets].

New material is underlined.

Section 1. Section 6-23 of subchapter F of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) "Representative" means an individual, not an attorney admitted to practice in New York State, who is authorized by a Respondent to appear at or before the Tribunal on behalf of the Respondent. An attorney disbarred in any state or territory may not be a representative.

(b) Requirements. A representative, other than a family member [or an attorney admitted to practice in New York State], who [represents] appears on behalf of two (2) or more Respondents before the Tribunal within a calendar year must:

[(a)] (1) Be at least eighteen (18) years of age;

[(b)] (2) Register with the Tribunal by completing and submitting a form [provided] prescribed by the Tribunal. [The form must include proof] The representative must also submit proof of identity acceptable to the Tribunal [that identifies the representative,] and [must also include] any other information that the Tribunal may require. Registration must be renewed [annually. Failure to register with the Tribunal may result in the Tribunal declining registration in the future] every two (2) years;

[(c)] (3) Notify the Tribunal within ten (10) business days of any change in the information required on the registration form;

[(d)] Not misrepresent his or her qualifications or service so as to mislead people into believing the representative is an attorney at law or a governmental employee if the representative is not] (4) Accurately represent services and qualifications. A representative must not falsely claim to be an attorney at law or a governmental employee, or falsely imply as much. A representative who is

not an attorney admitted to practice [must refer] in New York State shall be referred to [him or herself] as “representative” when appearing before the Tribunal;

[(e)] (5) Exercise due diligence in [learning];

(A) Learning and [observing] following Tribunal rules [and preparing paperwork];

(B) Preparing and submitting documents on behalf of the Respondent, including timely motions and appeals;

(C) Acquiring basic knowledge of the facts and applicable law charged in the summons;

(D) Appearing on scheduled hearing dates; and

(E) Ensuring that oral and written statements or documents submitted to the Tribunal are authentic, meaning that they are what they purport to be.

(6) Act in the Respondent’s best interests and according to lawful instructions from the Respondent; and

(7) Avoid conflicts that would impair the representative’s ability to act in the Respondent’s best interests.

(c) In order to appear on behalf of a Respondent, a registered representative must:

(1) Provide an authorization form prior to the hearing; and

(2) Retain the authorization form with the original signature of the person authorizing the representative and produce it to the Tribunal upon request. Failure to produce this form with the original signature creates a rebuttable presumption that the registered representative is not authorized to represent the Respondent.

[(f) Be] (d) Discipline. A representative will be subject to discipline, including but not limited to suspension or [revocation of the representative’s right to appear] bar from appearing before the Tribunal, for failing to follow the provisions of this [subdivision] section, § 6-25, and any other rules of the Tribunal. A list of representatives [who have] whose registration has been suspended or who have been barred from appearing may be made public; and

[g] (e) Provide valid government-issued photo identification acceptable to the Tribunal when filing notices of appearance for an in-person hearing or when submitting motions in person, including, but not limited to, [reschedule] requests to reschedule and motions to vacate a default.

§ 2. Section 6-25 of subchapter F of chapter 6 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) Prohibited Conduct. [A party, witness, representative or attorney must not] Individuals appearing before the Tribunal, including parties, witnesses, representatives, and attorneys, must not engage in misconduct. Misconduct includes but is not limited to:

- (1) [Engage in abusive] Abusive, disorderly, or delaying behavior, a breach of the peace, or any other disturbance [which] that directly or indirectly tends to disrupt, obstruct, or interrupt the proceedings [at] or operations of the Tribunal;
- (2) [Engage in any disruptive verbal] Disruptive conduct[, action] or [gesture] communication that a reasonable person would believe to be intimidating or that shows contempt or disrespect for the proceedings [or that a reasonable person would believe to be intimidating] or operations of the Tribunal;
- (3) [Willfully disregard] Disregarding the authority of [the] a Hearing Officer, [or other] Tribunal employee, or contractor. This may include refusing to comply with [the Hearing Officer's] directions or behaving in a disorderly, delaying, or obstructionist manner;
- (4) [Leave] Leaving a hearing in progress without the permission of the Hearing Officer;
- (5) [Attempt] Attempting to influence or offer [or agree to attempt] to influence any Hearing Officer, [or] Tribunal employee, [of the Tribunal] or contractor by the use of threats, accusations, duress [or], coercion, [a] promise of advantage, or [the bestowing] giving or [offer of] offering any gift, favor, or thing of value;
- (6) Attempting to influence a decision by initiating communication with a Hearing Officer before or after a hearing;
- (7) [Enter] Entering any non-public area [other than a public waiting area] unless accompanied or authorized by a Tribunal employee or contractor. Upon the conclusion of a hearing, [a party, witness, representative or attorney] the parties, witnesses, representatives, and attorneys must promptly exit non-public areas;
- [(7) Request] (8) Requesting any Tribunal [clerical staff] employee or contractor to perform tasks that are illegal[, unreasonable or outside the scope of the employee's job duties];
- [(8) Operate] (9) Operating without express authorization any Tribunal computer terminal or other equipment at any time, unless [given express authorization or] the equipment has been designated for use by the public;
- [(9) Submit] (10) Making a statement, submitting a document, or [present] presenting testimony or other evidence to the Tribunal [which he or she knows, or reasonably should have] known[,] to be false or that should be known to be false, fraudulent, or misleading, including the submission of a false authorization form;
- [(10) Induce] (11) Inducing or [encourage] encouraging anyone to make a false statement to the Tribunal;
- [(11) Solicit clients] (12) Soliciting a party or [cause] causing the solicitation of [client] a party by another person on Tribunal premises. The exchange of money in any area of the Tribunal will create a rebuttable presumption of solicitation;
- (13) Falsely claiming to be an attorney or government employee. A representative who is not an attorney admitted to practice in New York State shall be referred to as a "representative" when appearing before the Tribunal;

[(12) Make] (14) Making or [cause] causing to be made [a stenographic,] an electronic, audio, [audio-visual] audiovisual, or other verbatim or photographic reproduction of any [hearing or other] proceeding, regardless of whether [such hearing or other] the proceeding is conducted in person[,], or by [telephone, or other] remote methods, except upon [application] a request 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 grant or deny the [application or grant it] request 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;

(15) Engaging in any conduct or course of conduct that demonstrates a lack of honesty and integrity in the representation of parties. This includes, but is not limited to, making false or misleading statements, misappropriating fees, and providing misinformation concerning the payment of penalties and fines;

(16) Failing to appear at a hearing or abandoning representation without providing at least seven (7) days' notice to the Respondent and the Tribunal; and [or

(13) Threaten] (17) 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 proceeding.

(b) [Prohibited Communication.

(1) All parties must be present when communications with Tribunal personnel, including a Hearing Officer, occur, except as necessary for case processing and unless otherwise permitted by these rules, on consent or in an emergency.

(2) All persons are prohibited from initiating communication with a Hearing Officer or other employee before or after a hearing or before or after a decision on motion, in order to attempt to influence the outcome of a hearing or decision on motion.

(c) Penalties] General Discipline for Misconduct.

(1) Failure to abide by [these] the rules of conduct contained in this section, § 6-23, and any other rules of the Tribunal constitutes misconduct. [The Chief Administrative Law Judge or his or her designee] OATH may, for good cause, suspend or bar from appearing before the Tribunal [an attorney or representative,] any individual, including attorneys and representatives, who fails to abide by these rules. [The suspension may be either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the Chief Administrative Law Judge or his or her designee that the basis for the suspension no longer exists.] A list of individuals who have been suspended or barred from appearing at the Tribunal may be made public. This section in no way limits the powers of a Hearing Officer as set out in § 6-13 of this chapter.

(2) [However, the Chief Administrative Law Judge or his or her designee may not act until after the attorney or representative is given notice and a reasonable opportunity to appear before the Chief Administrative Law Judge or his or her designee to rebut the claims against him or her. The Chief Administrative Law Judge or his or her designee, depending upon the nature of the conduct, will determine whether said appearance will be in person or by a remote method] OATH

will provide the individual charged with a written notice of the charges setting forth the alleged misconduct and specifying the date by which the individual must respond in writing.

(3) OATH will review the notice of charges, the written response, and all evidence presented, and render a final written determination, based on the preponderance of evidence presented.

[This section in no way limits the powers of a Hearing Officer as set out in § 6-13 of this chapter.]

[(d)] (c) Discipline [on Other Grounds] for Behavior Warranting Summary Suspension.

[(1)] Notwithstanding the provisions of subdivision [(c)] (b) of this section, the Chief Administrative Law Judge may summarily suspend or bar a representative or attorney upon a determination that the representative or attorney lacks honesty and integrity and that the lack of honesty and integrity will adversely affect [his or her] the representative's or attorney's practice before the Tribunal, or the representative or attorney has engaged in egregious or disruptive behavior at the Tribunal. The summary suspension or bar is effective on the date set forth in the notice of charges.

[(2)] Any action pursuant to this subdivision will be on notice to the representative. After the summary suspension or bar, the representative will be given an opportunity to be heard in a proceeding prescribed by the Chief Administrative Law Judge or his or her designee. Factors to be considered in determining whether a representative lacks honesty and integrity include, but are not limited to, considering whether the representative has made false, misleading or inappropriate statements to parties or Tribunal staff.]

(d) Procedures for Summary Suspension.

(1) Upon imposing summary suspension, OATH will provide the individual charged with a written notice of the charges setting forth the conduct allegedly warranting summary suspension, as well as any other allegations of misconduct. The notice of charges will contain a warning that a finding of misconduct might result in a permanent bar.

(A) The Respondent may request an in-person trial within ten (10) days of receipt of the notice of charges. Failure to make a timely request will be deemed a waiver of an in-person trial.

(B) If the Respondent requests an in-person trial, OATH will schedule a trial in OATH's Trials Division to be held within fifteen (15) days of receipt of the request. The trial will be conducted pursuant to chapter 1 of this title, and the notice of charges will constitute the petition referenced in §§ 1-22 and 1-23 of this title.

(C) Notwithstanding § 1-24 of this title, a Respondent must file a written answer within fifteen (15) days of receipt of the notice of charges.

(D) The administrative law judge presiding over the trial will determine (i) whether the representative or attorney engaged in misconduct; (ii) whether the summary suspension should be continued; and (iii) any applicable penalty.

(E) A final determination shall be issued within thirty (30) days of the end of the in-person trial. Where a determination is not made within this timeframe, any summary suspension must be lifted.

(F) If a Respondent does not request an in-person trial on the summary suspension within the time specified in paragraph (B) of this subdivision, the Respondent shall be deemed to have waived the right to an in-person trial before an administrative law judge, and the matter shall proceed pursuant to the rules for General Discipline of Misconduct under subdivision (b) of this section. Where a Respondent waives the right to an in-person trial, the summary suspension will continue until a final determination is made by OATH.

(e) Judicial Review. [The] A decision [of the Chief Administrative Law Judge or his or her designee under] pursuant to subdivision (b), (c) or (d) of this section constitutes a final determination. Judicial review of the [decision] determination may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

(f) Prohibition against Ex Parte Communication.

(1) Except for ministerial matters, and except on consent or in an emergency, communications with a Hearing Officer concerning a case must only occur with all parties present, either in person or by remote means. If a Hearing Officer receives an ex parte communication concerning the merits of a case to which the Hearing Officer is assigned, then the Hearing Officer must promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom the Hearing Officer has communicated. A party desiring to rebut the ex parte communication will be allowed to do so upon request.

(2) To the extent necessary to the placement of a case on the calendar, communications between OATH and a party filing documents in a matter will be considered ministerial communications.

**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: Registered Representatives Appearing before OATH

REFERENCE NUMBER: 2022 RG 026

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: March 25, 2022

**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: Registered Representatives Appearing before OATH

REFERENCE NUMBER: OATH-ECB-115

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

March 28, 2022
Date