

**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 clarify procedures for appearances and representation in 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, 66 John Street, 11th Floor, New York, NY 10038.
- **Fax.** You can fax written comments to OATH, Attention: Joy Thompson, Assistant General Counsel, at (212) 436-0714.
- **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. 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

The Office of Administrative Trials and Hearings (OATH) proposes amendments to clarify procedures for appearances and representation in OATH's Hearings Division.

Section one of this proposed rule would amend section 6-09 of title 48 of the Rules of the City of New York to clarify what constitutes a proper appearance before the Tribunal, either via remote means or in person, and to renumber the provisions of the section. Given the large volume of matters processed and the added layers of complexity involved in simultaneously providing electronic and in-person hearings, it is critical to the continued efficient running of the Tribunal that its staff be afforded the preparatory time necessary to ensure that the hearings are properly executed and recorded.

Section two of this proposed rule would amend section 6-16 of title 48 of the Rules of the City of New York to add a new subsection (d). This subsection would require that registered representatives and attorneys appearing on behalf of respondents provide OATH with an executed authorization to appear form before the hearing. This rule is intended to prevent individuals from falsely claiming to be a respondent's authorized representative at an OATH hearing.

On a regular basis, either intentionally or mistakenly, authorized representatives appear at OATH hearings on behalf of respondents who have neither retained them nor given them authority to act on their behalf in a given matter. When respondents discover this, they exercise their right under OATH rule section 6-26 to have the agency vacate the determination made and schedule a new hearing.

Unauthorized representation results not only in hardship and added expense for the respondent, but also in the duplication of effort and wasted resources at OATH. In order to prevent, or, at minimum, reduce this waste, OATH proposes to add subsection (d).

Requiring all registered representatives and attorneys who appear before OATH to submit a signed authorization to appear form from the respondent named on the summons before appearing at a hearing would assist OATH in ensuring that the person appearing on behalf of the respondent is in fact authorized to do so. The signature requirement includes electronic signatures. This rule also represents one step in OATH's continuing efforts to identify and to stop impersonators, and, thus, protect the integrity of OATH proceedings.

Sections three and four of this proposed rule would amend sections 6-24 and 6-24-a of title 48 of the Rules of the City of New York to clarify procedures established to ensure the timeliness of appearances on fifteen (15) or more summonses. These amendments will help OATH's Hearings Division efficiently

and timely process to completion the high volume of matters heard by OATH's Hearings Division by telephone, videoconference, or other similar remote means and provide personnel with sufficient time to sort and assign matters.

In order to make a timely appearance, a respondent's attorney or representative must be available and ready to proceed within three (3) hours of the scheduled hearing time for each summons. In practice, however, respondents' representatives schedule themselves to appear on more summonses than they can handle within the three-hour window. Should, for example, an attorney or registered representative appear at 8:30 a.m. for all 30 summonses, by the time the respondent's representative goes forward on the remaining matters, it may be well past the three-hour timeliness rule. Should that be the case, the petitioner's representative might no longer be available, putting the petitioner at a disadvantage. Moreover, in such cases, the summonses are likely to be adjourned, further delaying the process.

This rule is intended to avoid waste and delay and ensure the fairness of the process to both sides, clarify the timeliness standard, and promote the efficiency of OATH's adjudications.

Deleted material is in [brackets].

New text is underlined.

Section 1. Section 6-09 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) A Respondent may appear for a hearing personally or be represented by:

- (1) an attorney admitted to practice law in New York State, [or]
- (2) a representative registered to appear before the Tribunal pursuant to §6-23 of this chapter, or
- (3) any other person authorized by a Respondent to appear at or before the Tribunal on behalf of the Respondent, as set forth in §6-23(a) of this chapter.

(b) [A] Respondents may appear for a hearing by:

- (1) Appearing themselves or by representative on the date and time scheduled for the hearing [either] by telephone, [videoconferencing] videoconference, or similar remote means[or in person at the place, date, and time scheduled for the hearing. Respondent's appearance is timely if Respondent or Respondent's representative appears at the scheduled hearing location in person or by telephone, videoconferencing, or similar remote means, and is ready to proceed within three (3) hours of the scheduled hearing time for a summons. However, a representative or attorney appearing on fifteen (15) or more summonses on a given hearing date must comply with the requirements set forth in § 6-24 to be considered timely]; or
- (2) Appearing themselves or by representative in person at the place, date, and time scheduled for the hearing, provided that where the Respondent wishes to proceed in person, the Respondent or the Respondent's representative must make a request for an in-person hearing by e-mailing the Clerk's Office at the e-mail address designated to

process in-person hearing requests five (5) business days prior to the scheduled hearing date; or

(3) Appearing by written communication, including postal mail, written online communication, or by other similar remote means, pursuant to 48 RCNY § 6-10, when the opportunity to do so is offered by the Tribunal.

(c) An appearance is timely if the Respondent or Respondent's representative appears at the scheduled hearing location in person or by telephone, videoconference, or similar remote means, and is ready to proceed within three (3) hours of the scheduled hearing time indicated on each summons to be heard or, where applicable, within three (3) hours of the scheduled hearing time indicated on an adjournment or reschedule notice for each summons to be heard. However, a representative, attorney, or Respondent appearing on fifteen (15) or more summonses on a given hearing date must also comply with the requirements set forth in 48 RCNY § 6-24 or § 6-24-a to be considered timely.

(d) The failure to make a timely appearance constitutes a default and may subject the Respondent to penalties in accordance with 48 RCNY § 6-20.

[(c)] (e) Where the terms of a summons authorize a Respondent to do so, a Respondent may also appear by admitting the violation charged on the summons and paying the penalty for the cited violation in the manner and by the time directed in the summons. Payment in full is deemed an admission of liability and no further hearing or appeal will be allowed.

[(d)] (f) Current Owner of a Property.

(1) Notwithstanding the foregoing, if a prior owner of a property is named on the summons, the current owner of a property may appear on behalf of the prior owner if the summons:

(A) involves a premises-related violation, and

(B) was issued after title to the property was transferred to the current owner.

(2) The current property owner may appear for purposes of presenting a deed and indicating when title passed.

(3) The current owner of the property may also present a defense on the merits of the charge only if the current owner agrees to substitute him or herself for the prior owner and waives all defenses based on service.

[(e)] (g) Failure to Appear by Respondent. A Respondent's failure to appear timely, pursuant to subsections (b), (c) and (d) [(1) of subdivision (b)] of this section, or to make a timely request to reschedule pursuant to 48 RCNY § 6-05, constitutes a default and subjects the Respondent to penalties in accordance with 48 RCNY § 6-20.

[(f)] (h) Notwithstanding any other provision of this section, attorneys or registered representatives who appear in person on fifteen (15) or more summonses on a given hearing date, and those who appear remotely on any matter, must comply with the requirements set forth in 48

RCNY § 6-24 and 48 RCNY § 6-24a₂ respectively. Failure to do so constitutes a default and subjects the Respondent to penalties in accordance with 48 RCNY § 6-20.

[(g)] (i) A Petitioner may appear for a hearing through an authorized representative at the place, date, and time scheduled for the hearing or by remote methods when the opportunity to do so is offered by the Tribunal. If Petitioner elects to appear at the Tribunal, Petitioner's appearance for a hearing is considered timely if Petitioner is ready to proceed within thirty (30) minutes of the timely appearance by Respondent.

[(h)] (j) Failure to Appear by Petitioner. If Petitioner fails to make a timely appearance [timely to appear] at the scheduled place, date, and time, pursuant to subdivision [(g)] (i) of this section, the hearing may proceed without the Petitioner.

§ 2. Section 6-16 of title 48 of the Rules of the City of New York is amended to add a new subsection (d) to read as follows:

(d) In order to appear on behalf of a Respondent:

(1) A registered representative or attorney must provide a signed authorization to appear form prior to the hearing; and

(2) The registered representative or attorney must keep and maintain the authorization to appear form with the original signature of the person authorizing the representation, produce it to the Tribunal upon request, and include a copy of it with all e-mail correspondence to the Tribunal relating to that representation (including but not limited to requests for telephone or online hearings). Failure to produce this form with the original signature for an in-person hearing creates a rebuttable presumption that the registered representative or attorney is not authorized to represent the Respondent. Failure to include a copy of this form with all e-mail correspondence to the Tribunal relating to the representation shall result in rejection of the request for a hearing.

§ 3. Section 6-24 of title 48 of the Rules of the City of New York is amended to read as follows:

§6-24 Pre-[h]Hearing Notification of Schedule for [Attorneys and Registered Representatives for] In-Person Hearings on 15 or More Summonses

(a) No Respondent, attorney or registered representative may appear in person on fifteen (15) or more summonses [on a given hearing date] unless:

(1) No later than noon [three (3)] five (5) business days before the scheduled hearing date, the Tribunal [office in the borough where the cases are scheduled to be heard] receives from the Respondent, attorney, or registered representative [by email] a [written] list of all scheduled [cases] summonses in the format required by and made available by the Tribunal;

(2) [Notices of Appearance are submitted in advance of the scheduled hearing, as directed by the Tribunal, to the Tribunal office in the borough where cases are scheduled to be heard; and] The Respondent, attorney, or registered representative submits only one list of scheduled summonses per hearing date and submits that list electronically, pursuant to

the Tribunal's direction, to a recipient designated by the Tribunal, regardless of the county in which the summonses were scheduled to be heard;

(3) [the Respondent's attorney or representative appears no later than the earliest scheduled hearing time set forth on the summonses to be heard. The timeliness requirements set forth in § 6-09(b)(1) do not apply in such circumstances.] Notices of Appearance are submitted in advance of the scheduled hearing, as directed by the Tribunal, to the Tribunal office in the borough where summonses are scheduled to be heard;

(4) The Respondent, attorney, or representative is able, during the hearing, to e-mail to all parties and the Tribunal the evidence the Respondent, attorney, or representative wishes to submit; and

(5) The attorney or registered representative submits an authorization to appear form signed by the Respondent, authorizing the attorney or registered representative to appear at OATH on the Respondent's behalf.

(b) [Cases may be added to this list on the day of the hearing at the discretion of the Tribunal.] To be considered timely, the Respondent, the Respondent's attorney or representative must:

(i) Appear at the earliest scheduled hearing time indicated on each summons to be heard, or, if applicable, at the earliest scheduled hearing time indicated on each adjournment order or reschedule notice for each summons to be heard, and

(ii) Be available and ready to proceed within three (3) hours of the scheduled hearing time indicated on each summons to be heard, or if applicable, within three (3) hours of the scheduled hearing time indicated on each adjournment order or reschedule notice for each summons to be heard.

(c) The failure to make a timely appearance constitutes a default and may subject the Respondent to penalties in accordance with § 6-20.

§ 4. Section 6-24-a of title 48 of the Rules of the City of New York is amended to read as follows:

§6-24-a Pre-[h]Hearing Notification of Schedule for Attorneys and Registered Representatives for Hearings by Telephone, [VideoConferencing]Videoconference, or Other Similar Remote Means.

- (a) No attorney or registered representative may appear by telephone, [video-conferencing]videoconference, or other similar remote means unless:
- (1) No later than noon three (3) business days before the scheduled hearing date, the Tribunal receives from the attorney or registered representative a list of all scheduled summonses in [a] the format required by and made available by the Tribunal;
 - (2) The attorney or registered representative submits only one list per hearing date and submits that list electronically, pursuant to the Tribunal's direction, to a recipient designated by the Tribunal, regardless of the county in which the summonses were scheduled;
 - (3) The attorney or registered representative makes no changes or additions to the list, unless it is to withdraw [their] representation on a matter; [and]
 - (4) The attorney or registered representative calls in for the first scheduled hearing no later than the earliest scheduled hearing time [as set forth] on [the] each summons[es] to be heard or, if applicable, no later than the earliest scheduled hearing time indicated on each

adjournment order or reschedule[s] notice[s] for each summons to be heard[. The timeliness requirements set forth in § 6-09(b)(1) do not apply in such circumstances]; and (5) The attorney or registered representative submits an authorization to appear form signed by the Respondent, authorizing the attorney or registered representative to appear at OATH on the Respondent's behalf.

- (b) No one registered representative or attorney may appear by remote means on a single hearing date for more than twenty-five (25) summonses, unless an exception is granted by the Tribunal prior to the hearing date.
- (c) Where a law firm, [or] representative firm, or in-house legal department has more than twenty-five (25) cases scheduled on a hearing date, it must assign an additional registered representative or attorney for each group of up to twenty-five (25) summonses to be heard on that date, unless an exception is granted by the Tribunal prior to the hearing date.
- (d) The law firm, [or] representative firm, or in-house legal department must provide the names of the additional registered representatives or attorneys who will appear on [the] each additional group[s] of [cases] summonses on that date. Once a registered representative or attorney is assigned to appear on a group of summonses, a different registered representative or attorney may not appear as a substitute [their], unless an exception is granted by the Tribunal prior to the start of the hearing.
- (e) To be considered timely, the Respondent's attorney or representative must:
 - (i) Appear at the earliest scheduled hearing time [set forth in the group of] on each summons[es] to be heard or, where applicable, at the earliest scheduled hearing time indicated on each adjournment order or reschedule notice for each summons, and
 - (ii) Be available and ready to proceed within three (3) hours of the scheduled hearing time on each [of the] summons[es] to be heard or, where applicable, within three (3) hours of the scheduled hearing time indicated on each adjournment order or reschedule notice for each summons to be heard.
- (f) The failure to make a timely appearance constitutes a default and may subject the Respondent to penalties in accordance with § 6-20.

**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: Amendment of Rules Governing Appearances and Representation in Proceedings at OATH Hearings Division

REFERENCE NUMBER: 2021 RG 110

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 22, 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: Amendment of Rules Governing Appearances and Representation in Proceedings at OATH Hearings Division

REFERENCE NUMBER: OATH-ECB-117

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 22, 2022
Date