

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Civil Service Commission (“CSC”) is proposing to repeal Chapter 2 of Title 60 of the Rules of the City of New York, which governs determinations of the CSC, and replace it with new Chapters 2 and 3, governing procedures for hearing and determining appeals filed with the CSC.

When and where is the Hearing? The CSC will hold a virtual public hearing on the proposed rules using Zoom. The public hearing will take place at 1:00 PM – 2:00 PM on Thursday, June 16, 2022.

To participate in the public hearing, enter the Zoom URL:

<https://us02web.zoom.us/j/84028044855?pwd=ZXliMVdzWHUxM2VyMENNTkd3WTZZdz09>. If prompted to provide a password or number, please enter the following: Meeting Number: 840 2804 4855 Password: 506209

You may also join the hearing via audio device or dial in via phone. To dial in via phone, please use the following dial in number and participant code: Phone: 929 205 6099 Access Code: 840 2804 4855 Password (if requested): 506209

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

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

- **Website.** You can submit comments to CSC through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to appeals@nyccsc.nyc.gov.
- **Mail.** You can mail comments to Amanda M. Wismans, General Counsel, 1 Centre Street, Room 2300N, New York, NY 10007.
- **Fax.** You can fax comments to CSC, 212-669-2727.
- **By Speaking at the Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing appeals@nyccsc.nyc.gov. You can also sign up at the hearing before the hearing begins on June 16, 2022. You may speak for up to three minutes.

Is there a deadline to submit comments? All written comments must be submitted on or before June 9, 2022.

What if I need assistance to participate in the Hearing? You must tell CSC if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail or email at the addresses given above. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by June 2, 2022.

This hearing has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access for persons with vision impairments.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of oral comments concerning the proposed rule received from the public or any agency will be made readily available as soon as practicable. To request a copy, please visit the CSC's offices located at the David N. Dinkins Manhattan Municipal Building, One Centre Street, New York, NY from 10:00 AM to 3:30 PM Monday through Friday in the 23rd floor reception room.

What authorizes CSC to make this rule? Sections 1043 and 813 of the City Charter authorize the CSC to make these proposed rules. This proposed rule was not included in CSC's regulatory agenda for this fiscal year because it was not contemplated when CSC published the agenda.

Where can I find the CSC rules? The CSC rules are in Title 60 of the Rules of the City of New York.

What rules govern the rulemaking process? CSC must meet the requirements of Section 1043 of the City Charter when creating or amending rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE

The New York City Civil Service Commission ("CSC") is an independent, non-mayoral city agency, authorized by section 813 of the New York City Charter to hear and decide appeals from certain determinations made by other City agencies under the New York State Civil Service Law.

The CSC is made up of five Commissioners appointed by the Mayor to six-year terms upon approval by the City Council. The Mayor may designate one of the Commissioners as Chair and one as Vice Chair on a yearly basis. No more than three Commissioners may be affiliated with the same political party.

The majority of appeals that come before the CSC fall into two categories:

- Appeals by applicants or eligibles who have been disqualified for character, medical, psychological or other reasons affecting their eligibility for appointment in accordance with Section 50 of the Civil Service Law.
- Appeals by City employees who have been disciplined for misconduct or incompetence in accordance with sections 75 and 76 of the Civil Service Law.

These proposed rules would repeal Chapter 2 of Title 60 of the Rules of the City of New York, which governs determinations of the CSC, and replace it with new Chapters 2 and 3, governing procedures for hearing and determining appeals filed with the CSC. These proposed rules are intended to inform City agencies and the public as to the existing CSC procedures for appeals, including, but not limited to, motion practice, hearings, and the CSC's decision-making process. They are also intended to clarify and expand upon, not to alter, the provisions of the current Chapter 2. Whereas the current form of the rules addresses the basics of CSC procedures and practice, the new rules are intended to provide a great deal more specificity and detail.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Chapter 2 of Title 60 of the Rules of the City of New York, relating to determinations of the New York City Civil Service Commission, is REPEALED and a new Chapter 2 is added to read as follows:

CHAPTER 2

General Rules of Practice Applicable to Appeals Heard and Decided by the Commission

Subchapter A - General Matters

§ 2-01 **Definitions.** As used in this title, the following terms have the following meanings:

Agency. “Agency” means a governmental agency established by or pursuant to law whose final action or determination may be appealed to the Commission pursuant to New York State and New York City laws and regulations. *See also:* Respondent.

Agency head. “Agency head” means the head of an agency.

Appeal. “Appeal” means a request to review the final action or determination of an agency head or designee made pursuant to Charter § 813(d).

Appellant. “Appellant” means a party who has filed an appeal with the Commission seeking review of final agency action or determination within the Commission’s jurisdiction.

CAPA. “CAPA” means the City Administrative Procedure Act, §§ 1041-1047 of the Charter.

Commission. “Commission” means the New York City Civil Service Commission, authorized by Charter § 813.

Charter. “Charter” means the New York city charter.

Commission chair. “Commission chair” means the Commissioner designated by the Mayor to serve in the capacity as chair in accordance with the provisions of Charter § 813(a).

Commissioner. “Commissioner” means a member of the Commission duly appointed in accordance with the provisions of Charter § 813.

CSL. “CSL” means the New York State Civil Service Law.

Disqualification. “Disqualification” means a final determination by an agency head or designee under CSL § 50(4), and any applicable City Personnel Rules promulgated thereunder, finding that an applicant fails to meet one or more of the requirements established for the position by law, rule, personnel services bulletin, executive order, or notice of examination.

Electronic means. “Electronic means” means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to print the communication.

Ex parte communication. “Ex parte communication” means any oral or written communication between a party and the Commission concerning the merits of a pending appeal that was not communicated to all parties.

Filing. “Filing” means submitting papers affecting an appeal to the Commission, whether in person, by mail, or by electronic means.

In camera review. “*In camera* review” means the procedure whereby the Commissioners privately review confidential, sensitive, or private information to determine whether it may be used by a party or shared with the other party.

Interim order. “Interim order” means an order by the Commission directing a party to address issues identified by the Commission or to request additional information that is important to the final disposition of an appeal.

Mailing. “Mailing” means any communication with the Commission delivered by the United States Postal Service or a private delivery service.

Ministerial matter. “Ministerial matter” means any oral or written communication between a party and the Commission about procedural matters that do not concern the merits of a pending appeal.

Hearing. “Hearing” means an appearance in-person or by video or phone conference convened at the discretion of the Commission. *See* § 1-15 of these rules.

Respondent. “Respondent” means the agency that is the adverse party to the appellant.

§ 2-02 Jurisdiction.

(a) The Commission’s jurisdiction is set forth in § 813 of the Charter, pursuant to which the Commission is responsible for hearing and deciding appeals from specific agency actions, including appeals brought either by disqualified candidates for competitive civil service positions or permanent civil service employees in competitive titles who have been subject to discipline. For the purposes of § 813(d) of the Charter, the Commission’s power to hear and determine appeals is exercised when the Commission reviews the written submissions of both parties and renders a written determination. At its discretion, the Commission may call for a hearing prior to rendering a written determination.

(b) The Commission’s jurisdiction includes the authority to reverse, modify or affirm a final action or determination of an agency, and to render any ruling or order necessary and appropriate under applicable law or agency rule for the just and efficient adjudication of appeals.

§ 2-03 Applicability.

This chapter applies to the conduct of all appeals, including submission of appeal documents, motions, and hearings, except to the extent that this chapter may be superseded by CAPA or other provisions of law.

§ 2-04 Construction and Waiver.

This chapter shall be liberally construed to promote just and efficient adjudication on the merits of appeals filed with the Commission. This chapter may be waived or modified on such terms and conditions as the Commission may determine to be appropriate in a particular appeal.

§ 2-05 Effective Date.

This chapter shall be effective on the first day permitted by CAPA § 1043(e) and shall apply to all appeals. However, for appeals initiated prior to the effective date of these rules, no act which was valid, timely or otherwise proper under the rules applicable at the time of the act will be rendered improper by the subsequent effectiveness of this chapter.

§ 2-06 Computation of Time.

Periods of days prescribed in this chapter shall be calculated in calendar days, except that when a period of days expires on a Saturday, Sunday or legal holiday, the period shall run until the next business day. Where this chapter prescribes different time periods for taking an action depending on whether service of papers is personal or by mail, service of papers by electronic means shall be deemed to be personal service.

§ 2-07 Filing of Papers.

(a) Generally. Papers may be filed at the Commission through the online portal or by e-mail. As an alternative, papers can be submitted in person or by mail.

(b) Means of service on adversary. After filing of the initial appeal request, all subsequent submissions must be contemporaneously submitted to the opposing party using the same or equivalent means of service. The Commission may deem submissions not served on all other parties via similar means to be *ex parte* communication. See § 2-13, *infra*.

§ 2-08 Extension Requests.

A party in an existing appeal may request an extension of time to file documents with the Commission. The Commission, in its discretion, may grant an extension request upon good cause shown.

§ 2-09 Interim Orders.

The Commission, in its discretion, may issue interim orders directing a party to address issues identified by the Commission or to submit additional information.

§ 2-10 Access to Facilities and Programs by People with Disabilities.

The Commission is committed to providing equal access to its facilities and programs to people with disabilities and the Commission will make reasonable accommodations requested by people with disabilities. A person requesting an accommodation for purposes of participation in an appeal at the Commission, including attendance as a member of the public, must request such accommodation sufficiently in advance of the proceeding in which the person wishes to participate to permit a reasonable time to evaluate the request. A request for accommodation must be submitted to the Commission at least five business days in advance of the proceeding.

Subchapter B - Rules of Conduct

§ 2-11 Representation and Appearances.

(a) A party may appear in-person, by an attorney, or by any representative of their choosing. A person appearing for a party, including by telephone or video conference, is required to file a notice of appearance with the Commission and must file a copy with the agency once representation has been established. An appeal request submitted by an attorney or representative of an appellant shall be deemed to constitute the filing of a notice of appearance by that person. The filing of any papers by an attorney or representative who has not previously appeared shall constitute the filing of a notice of appearance by that person and shall conform to the requirements of subdivision (c) of this section. All communication to the Commission and the agency must be made through appellant's attorney or representative.

(b) No application shall be made or argued by any attorney or other representative who has not filed a notice of appearance. Participation in a telephone or video conference call on behalf of a party by an attorney or representative of the party shall be deemed an appearance by the attorney or representative. Nonetheless, upon making such an appearance, the attorney or representative must file a notice of appearance in conformity with subdivision (c) of this section.

(c) A person may not file a notice of appearance on behalf of a party unless they have been authorized by that party to represent the party at the Commission. Filing a notice of appearance constitutes a representation that the person appearing has been so authorized. Filing a notice of appearance pursuant to § 2-11(a) of this subchapter constitutes a representation that the person appearing has read and is familiar with the rules of this subchapter.

§ 2-12 Conduct; Suspension from Practice at the Commission.

(a) All individuals interacting with the Commission, whether in person or in writing, must comply with the rules of this subchapter and must conduct themselves at all times in a dignified, orderly and decorous manner and must comply with the orders and directions of the Commission.

(b) In the context of a hearing, all parties, their attorneys or representatives, and witnesses must address themselves only to the sitting Commissioners, must avoid conversation and argument among themselves, and must cooperate with the orderly conduct of the proceeding.

(c) Attorneys or other representatives of the parties appearing before the Commission must be familiar with the rules of this subchapter.

(d) Attorneys appearing before the Commission must conduct themselves in accordance with the canons, ethical considerations, and disciplinary rules set forth in the New York Rules of Professional Conduct in all aspects of an appeal.

(e) If an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the Chair may, in the Chair's discretion, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against them, suspend that attorney or representative from appearing at the Commission, either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the Chair that the basis for the suspension no longer exists.

§ 2-13 *Ex Parte Communication.*

Except for ministerial matters, by consent, in an emergency, or pursuant to an *in camera* review, communication with the Commission concerning any issue material to a pending appeal, whether written or oral, shall only occur with all parties present; or will be deemed an *ex parte* communication. If the Commission receives an *ex parte* communication, the Commission may require the offending party to cure it.

§ 2-14 *Recusal of Civil Service Commissioners.*

(a) A motion for recusal of any Commissioner to preside over any individual appeal must be addressed to that Commissioner and to the Chair and must be accompanied by a statement of the reasons for such application. The motion must be made as soon as practicable after a party has reasonable cause to believe that grounds for recusal exist.

(b) A Commissioner shall be recused for bias, prejudice, interest, or any other cause for which a judge may be recused in accordance with § 14 of the New York Judiciary Law. A Commissioner may, on motion of any party or on their own motion, withdraw from any individual appeal, where in the Commissioner's assessment, their ability to provide a fair and impartial review and disposition might reasonably be questioned.

Subchapter C – Hearings

§ 2-15 Hearings Generally.

In its discretion, the Commission may grant the parties to an appeal the opportunity to appear in person, via video- or telephone conference, or by other means, to address the issues presented on the appeal. Specific hearing procedures are set forth in § 3-01 and § 3-05 of these rules.

§ 2-16 Post-Hearing Submissions

At the request of a party and in the discretion of the Commission, a party may be granted leave to make a post-hearing submission. Such submission must be submitted in the time allotted by the Commission. The opposing party may have the opportunity to respond to the submission and then the hearing record will be closed.

§ 2-17 Public Access to Hearings

Public access shall be presumed at hearings conducted pursuant to § 76 of the CSL. At all other hearings, public access shall not be presumed but may be granted at the discretion of the Commission.

§ 2-18 Notice of Hearing.

Parties will be notified in advance of any scheduled conference or hearing with instructions on how to participate.

§ 2-19 Adjournments.

(a) Applications to adjourn a conference or hearing must be made to the Commission as soon as the need for the adjournment becomes apparent. Applications for adjournments are considered in the discretion of the Commission and shall be granted only if timely and for good cause. Although consent of all parties to a request for an adjournment shall be a factor in favor of granting the request, such consent shall not by itself constitute good cause for an adjournment.

(b) Approved adjournments, other than adjournments granted orally and in the presence of the parties on the record, shall be promptly confirmed in writing to all parties by the applicant.

§ 2-20 Pre-Hearing Conferences.

(a) Participants notified to attend a pre-hearing conference must be prompt and prepared to begin on time. No format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the appeal. In the Commission's discretion, conferences may be conducted in person, by telephone, or by videoconference.

(b) The parties must have an individual possessing authority to settle the matter either present at the conference or readily accessible.

(c) If the appeal is not settled at the conference, the parties may be required to appear for a hearing before the Commissioners.

(d) If the appeal is settled at the conference, the agency shall provide written notice to the Commission.

§ 2-21 Witnesses and Documents.

The parties to a hearing conducted pursuant to § 2-15 of these rules must have all of their witnesses available on the hearing date. A party intending to introduce documents into the record at a hearing must serve the other side via mail or electronic means prior to the hearing date.

§ 2-22 Interpreters.

The Commission will make reasonable efforts to provide language assistance services to a party or their witnesses who need an interpreter to communicate at a hearing or conference. Application for an interpreter must be made to the Commission five business days prior to the hearing.

§ 2-23 Failure to Appear.

An appellant's unexplained failure to appear for a scheduled conference or hearing either in person or by authorized representative may result in a dismissal of the appeal with prejudice.

§ 2-24 Official Notice.

(a) In reaching a decision, the Commission may take official notice before or after submission of the appeal for decision, on request of a party or without request but with notice to the parties, of any fact which is generally known or that can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. Matters of which official notice is taken shall be noted in the Commission's written disposition of the appeal.

(b) Official notice may be taken, without notice to the parties, of rules published in the Rules of the City of New York or in The City Record. In addition, all parties are deemed to have notice that official notice may be taken of other publicly available regulations, directives,

guidelines, notices of examination, and similar documents that are lawfully applicable to the parties.

§ 2-25 The Hearing Recording.

(a) All hearings shall be recorded by the Commission; a copy of the audio and/or video may be made available to the parties upon payment of the applicable fee.

(b) No party or other person shall make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, except as provided in subdivision (a) of this section, whether such hearing or other proceeding is conducted in person, by telephone, or by videoconference.

(c) Audio and/or video recordings of hearings that are made pursuant to subdivision (a) of this section are made a part of the record and shall be the official record of proceedings before the Commission, notwithstanding the existence of any other transcript or recording.

§ 2-26 Decision.

(a) The Commission will issue a final decision after fully considering the arguments by the parties and the record on appeal.

(b) The Commission may dispose of an appeal by placing its decision on the record during a hearing or at the conclusion of a pre-hearing conference.

(c) Unless the Commission finds that legally recognized grounds exist to omit information from a decision, all decisions will be issued without redaction. In its own discretion, or on the motion of a party, the Commission may redact or omit certain information.

Subchapter D – Motions

§ 2-27 Motions.

(a) A party seeking relief from the Commission concerning an appeal may file a motion requesting such relief.

(b) Unless otherwise directed, all motions submitted to the Commission must be served on the other party by mail or electronic means.

(c) For all motions, the other party will have 30 days to respond, unless the relief sought by the motion warrants a shorter time.

(d) In its discretion, the Commission may deem any request for relief to be a motion and may cure any defects arising from non-compliance with this subchapter. The Commission will, in its discretion, liberally construe requests for relief by self-represented appellants.

CHAPTER 3

Additional Rules of Practice Applicable to Particular Types of Appeals Heard and Decided by the Commission

Subchapter A – Rules for Civil Service Law Section 76 Appeals

§ 3-01 Requirements to File an Appeal.

An appeal to the Commission by any person aggrieved by a final determination of guilt and/or a penalty of punishment imposed in a disciplinary proceeding conducted pursuant to CSL § 75, must be filed with the Commission by email or electronic means within twenty (20) days of the date of the notice of final disciplinary action. Such additional time in which to appeal as provided in CSL § 76 shall be allowed where service of the final determination was by mail. Appeals must include a copy of the agency head's final disciplinary action that was delivered to the appellant.

§ 3-02 Untimely Appeals.

If an appeal is untimely filed with the Commission, the agency may move to dismiss the appeal. Motions for dismissal on timeliness or jurisdictional grounds may be made prior to submission of the record of the disciplinary proceeding. The Commission may, in its discretion, deem an appeal to be timely and accept it for processing.

§ 3-03 Agency Submissions.

Upon receipt of a valid disciplinary appeal, the Commission will issue a notice of appeal to the agency. The agency will have thirty (30) days from the date of the notice of appeal to submit the complete record of the disciplinary proceeding as identified in the notice of appeal. Such submission shall be via electronic means, whenever practicable, or via mail. Any documents not previously provided to appellant or appellant's attorney or representative must be sent to appellant or appellant's attorney or representative when submitted to the Commission.

§ 3-04 Proceedings.

The Commission will review the record below and will afford the parties the opportunity to submit written arguments on the findings of fact, conclusions of law and penalty imposed. The

Commission decides appeals based on the record of the disciplinary proceeding conducted by the agency or its designee. Should the Commission schedule a hearing, the parties may offer their arguments on the findings of fact, conclusions of law and the penalty imposed. Evidence that was not in the record of the disciplinary proceeding may not be presented to the Commission.

Subchapter B – Rules for Appeals from Determinations of the Commissioner of the Department of Citywide Administrative Services or Their Designee.

§ 3-05 Requirements to File an Appeal.

(a) An appeal to the Commission by any person aggrieved by an action or determination by the commissioner of citywide administrative services or their designee, shall lie only where the action or determination appealed from is made pursuant to the commissioner of citywide administrative services' powers and duties as enumerated in paragraphs 3, 4, 5, 6, 7, and 8 of Section 814(a) of the Charter or paragraph 5 of Section 814(b) of the Charter. Such appeal shall be made in writing to the Commission within thirty (30) days of the date of the notice of the action or determination. If notice of the action or determination is by mail, there shall be a rebuttable presumption that notice occurred as of five (5) calendar days after the date of the mailing of the notice of action or determination.

(b) The Commission's review of non-disciplinary appeals adopts the same default privacy considerations that governed during the agency process below.

§ 3-06 Untimely Appeals.

If an appeal is untimely filed with the Commission, the Commission will request an explanation from the appellant for the untimely appeal. Upon the submission of such explanation, the Commission may, in its discretion, deem an appeal to be timely and accept it for processing.

§ 3-07 Proceedings.

(a) The Commission will decide appeals from actions or determinations of the commissioner of citywide administrative services or their designee on the basis of written submissions by the parties. Such submissions must include the record in support of the determination by the commissioner of citywide administrative services or appropriate motions to dismiss the notice of appeal. The Commission, however, may hear oral argument to afford appellant an opportunity to make an explanation and to submit facts in opposition to the action or determination of the commissioner of citywide administrative services. At such proceedings, the commissioner of citywide administrative services will be permitted to defend their action or determination.

(b) Any new information that a party wishes to introduce must be submitted to the opposing party reasonably in advance of the hearing so that the opposing party may review the new information and respond to it at the hearing.

(c) Witnesses. Witnesses may testify in the discretion of the Commission. A party intending to offer a witness must so inform the Commission and the adverse party at least five (5) business days prior to the hearing. Character witnesses may be heard in the discretion of the Commission.

**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 of Practice

REFERENCE NUMBER: 2021 RG 094

RULEMAKING AGENCY: Civil Service Commission

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 L. GOULDEN
Acting Corporation Counsel

Date: February 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 of Practice

REFERENCE NUMBER: CSC-1

RULEMAKING AGENCY: Civil Service Commission

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

February 22, 2022
Date