

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

Notice of Adoption of Rule

Pursuant to the authority vested in the Office of Administrative Trials and Hearings (OATH) by sections 1043, 1049, and 1049-a of the New York City Charter, OATH has adopted amendments clarifying the Rules of Practice for its Hearings Division.

The Environmental Control Board voted to approve a proposed version of these amendments on April 7, 2022. A proposed version of these amendments was published in The City Record on April 14, 2022. A public hearing was held on May 18, 2022. Attorneys who regularly practice before OATH provided testimony at the public hearing, and OATH received three (3) written comments. After considering the comments, OATH amended its revisions to section 6-25 of title 48 of the Rules of the City of New York by removing the text of the proposed rule under subdivision (a) that defined as misconduct the failure to appear or abandoning representation without providing at least seven (7) days' notice to the respondent and the OATH Hearings Division. OATH also adjusted various elements of this rule since it first published the proposed version of this rule and made formatting changes. Particularly, OATH clarified the procedure and applicability of the suspension or bar procedures under this rule, and clarified provisions relating to the maintenance of representative authorization forms. The Environmental Control Board voted to approve a final version of these amendments on August 4, 2022.

Statement of Basis and Purpose of Rule

The Office of Administrative Trials and Hearings (OATH) has adopted amendments to its Rules of Practice located in 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). Among other new requirements, these amendments 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 also clarify and enumerate 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 rule amends section 6-01 of title 48 of the Rules of the City of New York to add a new definition of "representative" in appropriate alphabetical order. The amendment defines 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.

Section two of this rule makes the following amendments to section 6-23 of chapter 6 of title 48 of the Rules of the City of New York:

- Requires a registered representative to register every two (2) years, rather than annually, and clarifies that the representative must submit proof of identity to register;
- Removes the statement concerning the consequences of failing to register, because registration is a condition of appearance at the Tribunal in most instances;

- Requires the representative to accurately state the representative’s qualifications and services;
- Clarifies 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 what they are purported to be;
- Requires 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
- Requires the submission of an authorization to appear form and requires representatives to retain such form through the end of the proceeding.

Section three of this rule makes the following amendments to section 6-25 of title 48 of the Rules of the City of New York:

- Clarifies what constitutes misconduct by using consistent terminology;
- Prohibits the making of false, fraudulent, or misleading statements to the Tribunal or statements that a reasonable person would know to be false, fraudulent, or misleading;
- Create a rebuttable presumption that the exchange of money at the Tribunal is evidence of solicitation;
- Prohibits falsely representing to be an attorney or government employee;
- Prohibits acting in a fashion that demonstrates a lack of integrity in the representation of parties;
- Substitutes a new paragraph (f) for former paragraph (1) of subdivision (b) concerning *ex parte* communication;
- Moves former paragraph (2) of subdivision (b), concerning communicating with a Hearing Officer to influence a decision, to paragraph (6) of subdivision (a);
- Subjects respondents and witnesses, in addition to attorneys and representatives, to penalties for misconduct, and establishes procedure by which not only attorneys and representatives, but also witnesses, other than material fact witnesses, and members of the public can be subject to suspension or bar from appearance before OATH; and
- Subjects attorneys, in addition to representatives, to summary suspension or bar in circumstances of such a severity that OATH determines that a suspension or bar must be implemented on a summary basis to maintain the integrity, safety, or operations of OATH’s Hearings Division.

These 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. The newly included summary suspension rule as set forth in subdivision (c) of section 6-25 of chapter 6 of title 48 of the Rules of the City of New York codifies existing OATH practices. The requirement to obtain a signed authorization from a respondent generally reflects First Department caselaw allowing this practice. The revised *ex parte* communication prohibition parallels the clearer language used in the Trials Division rules.

Deleted material is in [brackets].

New material is underlined.

Section 1. Section 6-01 of title 48 of the Rules of the City of New York is amended by adding a new definition of “representative” in appropriate alphabetical order:

“Representative” means an individual who is not an attorney admitted to practice in New York State and who is authorized by a Respondent to appear at or before the Tribunal on behalf of the Respondent. An attorney suspended or disbarred in any state or territory may not be serve as a Representative.

§ 2. Section 6-23 of title 48 of the Rules of the City of New York is amended to read as follows:

§ 6-23 Registered Representatives

(a) *Requirements.* A [representative] Representative, other than a family member [or an attorney admitted to practice in New York State] of a Respondent, 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 the services and qualifications offered. A Representative must not falsely claim to be an attorney or a governmental employee, or falsely imply as much. A [representative] 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];

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

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

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

(iv) Appearing on scheduled hearing dates;

(v) Ensuring that written statements or documents submitted to the Tribunal are what the statements or documents are purported to be and that witnesses making oral statements are who the witnesses purport to be;

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

(vii) Avoiding conflicts that would impair the Representative's ability to act in the Respondent's best interests.

(b) 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 signature of the person authorizing the Representative and produce it to the Tribunal upon request. If such signature is executed as a paper signature, it must be an original signature. If such signature is executed as an electronic signature, such signature must be in a format identified as acceptable on a website maintained or controlled by OATH. Failure to produce this form with an original or acceptable electronic signature creates a rebuttable presumption that the registered Representative is not authorized to represent the Respondent through the end of the proceeding.

[(f) Be] (c) 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 been suspended or barred from appearing may be made public]; and

[(g) Provide] (d) A Representative must 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.

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

§ 6-25 Misconduct.

(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) [Enter] Attempting to influence a decision by initiating communication with a Hearing Officer before or after a hearing;

(7) 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 or upon direction by a Tribunal employee or contractor, [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 a reasonable person would know 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;

[(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;

[or (13) Threaten]

(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; and

(16) 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 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 attending a proceeding or appearing before the Tribunal [an] any attorney [or representative], Representative, member of the public, or witness, other than material fact witness, 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.] OATH may make public a list of individuals who have been suspended or barred from appearing at the Tribunal.

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

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

(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.

[(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] OATH may summarily suspend or bar a [representative] Representative or attorney upon a determination that the [representative] lacks honesty and integrity and that the lack of honesty and integrity will adversely affect his or her practice before the Tribunal Representative or attorney has engaged in behavior before the Tribunal of such a severity that OATH determines that a suspension or bar must be implemented on a summary basis to maintain the integrity, safety, or operations of 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. Such notice shall be made in a manner reasonably calculated to achieve actual notice to such individual. The notice of charges will contain a warning that a finding of misconduct might result in a bar.

(2) The Respondent may request an in-person trial within fifteen (15) days of service of the notice of charges. Failure to make a timely request will be deemed a waiver of an in-person trial.

(3) 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.

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

(5) 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.

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

(7) If a Respondent does not request an in-person trial on the summary suspension within the time specified in paragraph (2) 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 occur only 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) Communications between a Hearing Officer or other relevant OATH employee and a party that are necessary in order to place a hearing or other meeting on a calendar shall be considered ministerial communications.

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