

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

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter that OATH amends sections 6-09 and 6-24 of subchapter F of chapter 6 of title 48 of the rules of the City of New York, concerning appearances. The proposed rule was published in *The City Record* on August 27, 2018, and a public hearing was held on September 26, 2018.

No one testified at the public hearing concerning this rule. OATH received one written comment from Jack Jaffa & Associates concerning the requirement that attorneys and registered representatives must email OATH no later than noon two business days before a scheduled hearing date, a written list of scheduled cases if a representative plans to appear on fifteen or more summonses on a given hearing date. They stated that this requirement is a detriment as OATH does not allow the addition of cases to the list once it has been submitted to OATH.

The amendments to section 6-24 do not substantively change the requirement to appear on fifteen or more summonses on a given hearing date, which was originally promulgated so that the OATH Hearings Division could effectively manage the large volume of hearings scheduled for adjudication each day. Each OATH Hearings Division location manages hundreds of hearings a day, requiring procedures and systems to efficiently advance the hearing calendar. By notifying OATH in advance that one registered representative or attorney will appear on fifteen or more summonses, the Tribunal can then determine how to best allocate its resources to expedite hearings and reduce wait time for both self-represented and represented respondents. The two-day advance notice requirement is necessary for OATH to manage its day-to-day operations.

Upon further review, OATH revised section 6-09(b)(1) so that a respondent may timely appear within three hours of the scheduled hearing time instead of within two hours of the scheduled hearing time. Recognizing that many respondents at OATH are self-represented, this amendment gives respondents an additional hour to timely appear for a hearing and avoid a default decision that imposes higher penalties. OATH also revised sections 6-09(b)(1) and 6-24(a)(2) to clarify that this three hour allowance does not apply to registered representatives or attorneys who are appearing on fifteen or more summonses on a given hearing date. OATH also included in section 6-24(a) the requirement that Notices of Appearance be submitted in advance of the hearing as directed by the Tribunal, which comports with OATH's current process.

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings (OATH) amends section 6-09 of subchapter C and section 6-24 of subchapter F of chapter 6 of title 48 of the rules of the City of New York, concerning appearances.

The amendments to section 6-09 reorder the subdivisions and clarify the rules about appearing before the Tribunal, as follows:

- Subdivisions (a) and (b) set out who may appear on behalf of a respondent and how a respondent or representative may appear.
- Subdivision (c) explains that if a respondent does not wish to contest the summons, they can pay the penalty before the hearing, which is considered an appearance and admission.
- Subdivision (d) provides the framework for when a current owner of a property may appear on behalf of a prior owner.
- Subdivision (e) provides that the failure of a respondent to timely appear constitutes a default.
- Subdivision (f) references the requirements in § 6-24 for registered representatives who wish to appear on 15 or more summonses on a given hearing date, and provides that failure to comply with § 6-24 will constitute a default.
- Subdivisions (g) and (h) set out how Petitioner may timely appear, and provide that the hearing may proceed without Petitioner.

The amendments to section 6-09 are intended to expedite hearings and improve the overall efficiency of the Tribunal. These amendments set timeframes for Respondent and Petitioner's appearance to be considered timely. Section 6-09(b)(1) adds the condition that a respondent's appearance is timely if the respondent appears at the scheduled hearing location within three hours of the scheduled time. Section 6-09(g) adds the condition that, if the Petitioner elects to appear at the Tribunal, Petitioner's appearance is timely if Petitioner is ready to proceed within 30 minutes of the timely appearance of the respondent.

The amendments to section 6-09 also no longer permit a person to move for discretionary intervention, which, if granted, would have allowed an intervenor to participate in a hearing, as a witness but not as a party, at the discretion of the hearing officer. Discretionary intervention was rarely sought and did not grant the intervenor the status of a party to the proceeding.

The amendments to section 6-24 clarify the requirements for an attorney or registered representative to appear on 15 or more summonses on a given hearing date.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivisions (a) through (g) of section 6-09 of subchapter C of chapter 6 of title 48 of the rules of the city of New York are REPEALED and restated, and a new subdivision (h) is added 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 Respondent may appear for a hearing by:

- (1) Appearing in person or by representative 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 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 of this chapter to be considered timely; or
- (2) Appearing by remote method pursuant to § 6-10 of this chapter, only where the summons indicates that such opportunity is available to a Respondent. Where the summons requires personal appearance, a Respondent must appear pursuant to subsection (1) of this subdivision.

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

(f) Notwithstanding any other provision of this section, attorneys or registered representatives who appear on fifteen (15) or more summonses on a given hearing date must comply with the requirements set forth in § 6-24 of this chapter. Failure to do so constitutes a default and subjects the Respondent to penalties in accordance with § 6-20 of this chapter.

(g) 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) Failure to Appear by Petitioner. If Petitioner fails timely to appear at the scheduled place, date and time, pursuant to subdivision (g) of this section, the hearing may proceed without the Petitioner.

§ 2. Section 6-24 of subchapter F of chapter 6 of the rules of the city of New York is amended to read as follows:

(a) No attorney or registered representative may appear on fifteen (15) or more summonses on a given hearing date unless [the attorney or registered representative emails or faxes in advance a written list of all scheduled cases to the Tribunal office in the borough where the cases are scheduled to be heard. This list must be sent no later than noon, two (2) business days before the scheduled hearing date.];

(1) No later than noon two (2) business days before the scheduled hearing date, the Tribunal office in the borough where the cases are scheduled to be heard receives from the attorney or registered representative by email a written list of all scheduled cases;

(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

(3) the attorney or registered representative appears at or before the scheduled hearing time, at the place and date for the scheduled hearing. The timeliness requirements set forth in § 6-09(b)(1) of this chapter, which allows a Respondent or a Respondent's representative to appear within three (3) hours of the scheduled hearing time, does not apply when an attorney or representative is appearing on fifteen (15) or more summonses on a given hearing date.

(b) Cases may be added to this list on the day of the hearing at the discretion of the Tribunal.