

**CORRECTED**

NEW YORK CITY  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS  
PUBLIC HEARING

ON PROPOSED RULES REGARDING:

- (1) APPEARANCES AND REPRESENTATION AT OATH HEARINGS,
- (2) CONDUCT OF REGISTERED REPRESENTATIVES AND ATTORNEYS AT  
OATH HEARINGS, AND
- (3) CORRECTING CROSS-REFERENCES REGARDING CITY COMMISSION  
ON HUMAN RIGHTS CASES

WEBEX VIDEO CONFERENCE

May 18, 2022

Time: 11:00 a.m. - 1:00 p.m.

May 18, 2022

MEMBERS PRESENT:

Joy A. Thompson, Esq. - Assistant General Counsel,  
OATH

Elizabeth Nolan - OATH

Frank Ng, Esq. - Deputy General Counsel, OATH

Asim Rehman, Esq. - Commissioner/Chief Administrative Law  
Judge, OATH, Chair/Executive Director, OATH ECB

ALSO PRESENT:

Peter Mazer, Esq. - MTOBT

Robert Hochman, Esq. - Cohen, Hochman & Allen

Lindsay Garroway, Esq. - Cohen, Hochman & Allen

Phoebe Dosset, Esq. - Nacmias Law, PLLC

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2 (The public meeting commenced at 11:00)

3 JOY A. THOMPSON, ESQ., ASSISTANT GENERAL  
4 COUNSEL, OATH: Good morning. This is Joy  
5 Thompson. I'm Assistant General Counsel with the  
6 Office of Administrative Trials and Hearings.  
7 I'm going to allow -- good morning. Welcome.  
8 I'm just going to give a minute or two for anyone  
9 else who cares to join our hearing this morning.  
10 So we'll get started very shortly. It's 11:01.  
11 I'm going to wait for 11:02.

12 Good morning. It is 11:02, and we will  
13 get started. I noticed there is one individual  
14 who has dialed in. I see that we have several of  
15 our members are joining us today. So we will  
16 officially start.

17 Again, my name is Joy Thompson. I am an  
18 Assistant General Counsel with the Office of  
19 Administrative Trials and Hearings, also known as  
20 OATH. OATH is conducting this hearing in  
21 accordance with the requirements of the City  
22 Administrative Procedure Act, also known as CAPA.  
23 The purpose of this hearing is to receive  
24 comments from the public on three proposed rules.

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2 The first proposed rule is OATH's  
3 proposed rule regarding appearances and  
4 representation at OATH hearings. The second is  
5 OATH's proposed rule regarding the conduct of  
6 registered representatives and attorneys at OATH  
7 hearings. And the third is OATH's proposed rule  
8 correcting cross-references regarding City  
9 Commission on Human Rights cases. During this  
10 hearing, you will have the opportunity to comment  
11 on each of these proposed rules.

12 I will start by introducing the first  
13 proposed rule, which is OATH's proposed rule  
14 regarding appearances and representation at  
15 OATH's hearings. This proposed rule would  
16 clarify procedures for appearances and  
17 representation in OATH's Hearings Division.  
18 Given the large volume of matters processed and  
19 the added layers of complexity involved in  
20 providing electronic and in person hearings, OATH  
21 has found that it is critical to the continued  
22 efficient running of the Tribunal that its staff  
23 be afforded the preparatory time necessary to  
24 ensure that the hearings are properly executed

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2 and recorded.

3 Accordingly, Section 1 of this proposed  
4 rule would amend the section 6-09 of Title 48 of  
5 the Rules of the City of New York to clarify what  
6 constitutes a proper appearance before the  
7 Hearings Division, either via remote means or in  
8 person, and to renumber the provisions of the  
9 section.

10 Section 2 of this proposed rule would  
11 amend section 6-16 of Title 48 of the Rules of  
12 the City of New York to add a new subsection (d),  
13 which requires registered representatives and  
14 attorneys appearing on behalf of respondents to  
15 provide OATH with an executed authorization to  
16 appear form before the hearing. This rule is  
17 intended to prevent individuals from falsely  
18 claiming to be a respondent's authorized  
19 representative at an OATH hearing.

20 Sections 3 and 4 of this proposed rule  
21 would amend sections 6-24 and 6-24(a) of Title 48  
22 of the Rules of the City of New York to clarify  
23 procedures established to ensure the timeliness  
24 of appearances on 15 or more summonses. In order

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2 to make a timely appearance, a respondent's  
3 attorney or representative must be available and  
4 ready to proceed within three hours of the  
5 scheduled hearing time for each summons. In  
6 practice, however, respondents' representatives  
7 schedule themselves to appear on more summonses  
8 than they can handle within the three-hour  
9 window.

10 The amendments in sections 3 and 4 of  
11 this proposed rule would help OATH's Hearing  
12 Division, Division, excuse me, efficiently and  
13 timely process to completion the high volume of  
14 matters heard by OATH's Hearings Division by  
15 telephone, video conference or other similar  
16 remote means, and provide personnel with  
17 sufficient time to sort and assign matters.

18 OATH's proposed rule regarding  
19 appearances and representation at OATH Hearings  
20 was published in the City Record on April 14,  
21 2022. OATH e-mailed the rule to the Speaker of  
22 the City Council, every member of the City  
23 Council, all community board managers, the news  
24 media, as well as civic organizations. In

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2 addition, OATH posted the proposed rule on OATH's  
3 website, the New York City Rules website, and the  
4 City Records Online website. OATH has been  
5 accepting written comments on the proposed rule  
6 since the day it was published in the City  
7 Record, and it will continue to accept written  
8 comments through the close of business today.

9 At this hearing, you may present an oral  
10 statement concerning this proposed rule. Before  
11 you begin speaking, please identify yourself by  
12 stating your name and affiliation, whether you  
13 are with an agency, the media, etcetera. Speak  
14 slowly and clearly so that your statement can be  
15 accurately recorded. And please limit your  
16 statement to no more than three minutes.

17 Shortly after today's hearing, all,  
18 copies of all written comments received by OATH  
19 concerning this proposed rule, and a summary of  
20 the statements given today, will be made public  
21 on OATH's website. And I'm going to read the  
22 website address. It is long. I'll also post it  
23 in the chat. The website address is  
24 <https://www1.nyc.gov/site/oath/about/legal->



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2 resources-and-rule-making.page Again, I am going  
3 to add this address in the chat so everyone can  
4 access it.

5 Before issuing its final rule, please  
6 know that OATH will carefully consider the  
7 statements presented at today's hearing, as well  
8 as all written comments received by the close of  
9 business today.

10 Now, the floor is open for comments. At  
11 this time, I will ask if you would indicate if  
12 you have any comments to OATH's, the first rule,  
13 which is OATH's proposed rule regarding  
14 appearances and representation. Okay, sir?

15 MR. PETER MAZER: Yes

16 MS. THOMPSON: Could you please identify  
17 yourself?

18 MR. MAZER: Sure. May I begin?

19 MS. THOMPSON: Yes, of course.

20 MR. MAZER: Okay, thank you. Good  
21 morning. My name is Peter Mazer and I am General  
22 Counsel to the Metropolitan Taxicab Board of  
23 Trade. We are a 70-year-old association,  
24 representing the owners and operators of licensed

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2 New York City medallion taxicabs. We operate a  
3 full-service driver center that provides free  
4 representation for taxicab drivers in traffic  
5 court, criminal court and at OATH. During the  
6 past five years, MTBOT attorneys have appeared at  
7 OATH hearings on behalf of drivers in more than  
8 4,800 TLC-related matters and has appeared at  
9 OATH Trials and other OATH Hearings cases in  
10 another 160 cases. I have represented drivers  
11 personally in the vast majority of these  
12 hearings.

13 I speak today against certain  
14 provisions of the proposed rules under  
15 consideration. First, I speak against the  
16 requirement that attorneys be required to submit  
17 written authorization before appearing at or  
18 conducting business before the OATH Hearings  
19 Division. This is a requirement already in place  
20 on non-attorney representatives who, in many  
21 cases, are acting as attorneys and may be  
22 practicing law without a license. Under the  
23 proposed rules, OATH would now require attorneys  
24 to submit authorization forms signed by their

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2 clients before conducting business. This  
3 requirement does not exist for attorneys  
4 appearing at the OATH Trials Division.

5 The Traffic Violations Bureau, where I,  
6 where I also practice, also seems to function  
7 well without having attorneys provide  
8 authorization letters from their clients. Even  
9 in criminal court, I can appear as an attorney  
10 and conduct business on behalf of my client by  
11 filing a notice of appearance.

12 To be clear, what does it mean to be an  
13 attorney of record at a TLC-related case before  
14 the OATH Hearings Division? It doesn't mean that  
15 I will get notices of scheduled or rescheduled  
16 hearings. OATH doesn't send them to attorneys,  
17 even if they refile documents with respect to the  
18 specific case. It doesn't mean that I will get  
19 copies of hearing officers' decisions when I've  
20 appeared at a hearing. No, I don't get them  
21 either. I don't get notices of appeals taken by  
22 the Agency. And, usually, I only find out about  
23 an appeal taken by a petitioner when OATH  
24 reverses its decision and informs my client, not

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2 me. And since OATH's summonses tracker does not  
3 cover TLC summons, I don't get notice of  
4 scheduled hearing dates and times until the  
5 published calendar for the week appears online,  
6 usually on a Friday afternoon, when it is already  
7 too late to schedule a remote hearing for a case  
8 scheduled for Monday, Tuesday or Wednesday, even  
9 if I am the attorney of record and have  
10 previously appeared on the case.

11 I urge OATH to redraft the rules to  
12 eliminate the authorization form requirement for  
13 attorneys admitted to practice in New York. This  
14 can be replaced with a notice of appearance form  
15 that attorneys can file with OATH at the onset of  
16 the case. At the same time, OATH should give  
17 attorneys the usual courtesies that attorneys  
18 receive in other tribunals, like copies of court  
19 papers, decisions, adjournments, schedule notices  
20 and the like. We all have e-mail addresses and  
21 we can receive notices that way.

22 Second, while I understand the  
23 difficulty in scheduling large numbers of cases,  
24 the three-day notice requirement for appearing at

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2 a remote hearing is not workable. I'll give an  
3 example.

4 Recently, I rescheduled a TLC-related  
5 summons online. My reschedule request was  
6 granted and I was advised that I would receive a  
7 new hearing date by mail or e-mail. I did not,  
8 but, instead, learned of the new hearing date  
9 when the week's calendar was posted on Friday  
10 afternoon. The hearing was scheduled for the  
11 following Wednesday. I filed a request for a  
12 remote hearing, but this was turned down because  
13 I failed to give the requisite three days'  
14 notice. It probably would have been turned down,  
15 even if timely, because I had already submitted  
16 my one e-mail that I would be entitled to, to  
17 submit for that day's hearings. So my case was  
18 defaulted.

19 I understand that a tribunal cannot  
20 handle large volumes of cases without rules, but  
21 there have to be exceptions when an attorney  
22 receives late notice of a hearing. A limited  
23 number of add-ons can be accommodated. Maybe  
24 attorneys can add one late case occasionally, or

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2 one or two cases a week. Of course, the whole  
3 situation could be avoided if attorneys who file  
4 notices of appearance on cases be given notices  
5 of the hearings and all correspondence from the  
6 tribunal.

7 I practice before OATH nearly every day.  
8 I want the tribunal to work and I want fair  
9 hearings. While the tribunal has raised genuine  
10 concerns, attorneys should be permitted to  
11 represent their clients without the imposition of  
12 unnecessary burdens and without being able --  
13 unable to receive timely information needed to  
14 defend their clients.

15 And I thank you for giving me the  
16 opportunity to speak today, and I would be happy  
17 to answer any questions that you may have. Thank  
18 you.

19 MS. THOMPSON: Thank you so much, Mr.  
20 Mazer. I just want to point out that we will not  
21 be having, it's not so much a discussion. It's  
22 to take comments. However, once again, your  
23 comments will be reported, will be included with  
24 any transcript, and, importantly to you, I know,

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2 will be considered in any final drafting of the  
3 rules. So, thank you.

4 Do we have another speaker, please?  
5 And, again, just so you'll know where we are, we  
6 are currently, the first item on the agenda is  
7 the appearances rule. It seems, Mr. Mazer,  
8 you've articulated quite a, for several of our  
9 members. Okay.

10 MR. MAZER: Mm-mm.

11 MS. THOMPSON: Okay. So I will move on  
12 to the next proposed rule. At this time, I will  
13 introduce OATH's proposed --

14 MR. ROBERT HOCHMAN: I, I'm sorry.

15 MS. THOMPSON: Oh, so, sure. Yes,  
16 please.

17 MS. LINDSAY GARROWAY: Let him come in  
18 first.

19 MS. THOMPSON: Okay, so --

20 MR. HOCHMAN: Robert Hochman.

21 MS. THOMPSON: Okay. So, sir, what's  
22 your name again?

23 MR. HOCHMAN: Robert Hochman, Cohen,  
24 Hochman and Allen.

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2 MS. THOMPSON: Robert Hochman.

3 MR. HOCHMAN: Cohen, Hochman and Allen.

4 We appear before OATH every day. And we cover, -

5 -

6 MS. THOMPSON: Thank you.

7 MR. HOCHMAN: -- we cover anywhere  
8 between 300 and 500 cases per week. I just want  
9 to know, how is the three hours being defined?  
10 Recently, one of my partners signed in at 9:05.  
11 Her case was not called or assigned to a judge  
12 until 12:05. She waited three hours. Now,  
13 unfortunately, she had to bring her daughter to  
14 daycare that morning, so she wasn't able to call  
15 in at 8:15. She was, had to call in a little bit  
16 later, around 9:05, and there were 30 people  
17 ahead of her. In the past, when there were 30  
18 respondents and you were doing live hearings,  
19 you'd wait maybe about an hour and a half, two  
20 hours. This time, she waited three hours and  
21 then the Building Department attorney showed up  
22 40 minutes later.

23 So, my comment is, how are you defining  
24 the three hours? Are you putting the same time



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2 constraints upon the petitioner? Shouldn't they  
3 have to appear within 30 minutes of a case being  
4 given to an ALJ? Why is only the pressure being  
5 put upon respondents' representatives? And then,  
6 if you are getting near the end of the day and  
7 you, you have a second call-in, you're being  
8 threatened with default as opposed to just having  
9 the matters rescheduled as a professional  
10 courtesy. There's always a, an attitude lately,  
11 as if there's a gotcha type of mentality. Oh,  
12 well, you've, you've taken too long. We're going  
13 to default you. Rather just professionally  
14 and courteously rescheduling the matters so they  
15 can be heard on a different day.

16 And I don't think attorneys overbook  
17 during that three-hour period. I don't, I think  
18 the three-hour period doesn't start the minute  
19 the attorney signs in. They often wait, then  
20 they wait for the judge, then they wait for the  
21 judge to familiarize themselves, then they wait  
22 for the petitioner to come in. Then, the  
23 petitioner often takes 15 or 20 minutes to  
24 research something and come back, and this all

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2 counts against the respondent representative when  
3 it should actually count against petitioner's  
4 representative or be added to the three-hour  
5 timeframe.

6 I have nothing further. Thank you.

7 MS. THOMPSON: Thank you, Mr. Hochman.

8 At this time, I believe, Ms. Garroway, your name  
9 is on. If you would please make your comments.  
10 Thank you.

11 MS. GARROWAY: Yeah. Good morning, Ms.  
12 Thompson. Good morning, everyone. Thank you for  
13 hosting us at this comment session. I'm just  
14 going to echo some of the points that were just  
15 made, as I wholeheartedly agree.

16 My name is Lindsay Garroway. I'm also  
17 from the law firm of Cohen, Hochman and Allen.  
18 I've had the great pleasure of practicing before  
19 OATH myself for 12 years, since 2010. And our  
20 law firm has practiced before OATH for over 30  
21 years now, so we are very pleased to be working  
22 with the Court during this new time, with the new  
23 changes that are happening. We applaud them for  
24 making changes to the rules to make it work for

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2 the safety and health of everyone. However, I do  
3 have some comments. I want to highlight some  
4 problems with the new rule that we are troubled  
5 by, particularly two points.

6 I already submitted some written  
7 comments, but just to add some additional points.  
8 There are two aspects that really impede people's  
9 ability to choose the attorney that they want and  
10 we think OATH should, hopefully, reconsider these  
11 points.

12 The first is the authorization letter.  
13 From some of the reasons that Mr. Mazer commented  
14 very clearly on, I agree that it is unnecessary  
15 and redundant to have lawyers submit  
16 authorization letters when New York State and the  
17 Bar govern a lawyer's conduct in not representing  
18 someone that they have not been retained by. So,  
19 it, it seems a bit surprising, and also  
20 counterproductive, for the Tribunal to add this  
21 requirement for lawyers, when it seems like most  
22 of the rule is being set forth in the interest of  
23 moving the cases along more quickly and to  
24 address certain time constraints. So, adding a

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2 written reschedule notice is going to be  
3 counterproductive to that goal. So we think that  
4 is unnecessary. It's certainly necessary for  
5 non-attorney representatives, but for lawyers who  
6 were already governed by their own ethics rules,  
7 it's not necessary.

8 And, then, the other aspect that's,  
9 that's hugely burdensome on respondents and their  
10 lawyers is the three-day rule requirement. I  
11 actually think that submission of lists three  
12 business days in advance of the hearing date is  
13 great for both sides, and I can absolutely  
14 understand why the Court needs that for their  
15 administrative staff constraints. However, there  
16 must be an exception to add to the list, when  
17 necessary.

18 I, all the time, clients try and seek to  
19 hire me the day before their hearing or two days  
20 before their hearing, and I am now, under the new  
21 rules, put in the very uncomfortable position of  
22 either turning them away and saying, no, you  
23 cannot hire me as your counsel, despite the fact  
24 that I am the lawyer of your choice. I have to

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2 say no to them and they can't hire the lawyer  
3 they want. But they could, they would be free to  
4 hire a different lawyer that's not a high-volume  
5 person before OATH. That is unjust and unfair,  
6 and also a great disservice to them. They,  
7 instead, have to hire a lawyer that's not  
8 familiar with the Court's procedures and is not  
9 specialized in this area. But, also, they have  
10 the option of appearing on their own and asking  
11 the judge for the adjournment and hoping they get  
12 it. They're in a very precarious situation and  
13 not able to hire the lawyer.

14 So I'm not saying the three-day rule  
15 shouldn't remain, but there must be an exception  
16 added where attorneys can add to their lists the  
17 day before when they are newly retained by  
18 clients who very much want a lawyer of their  
19 choice, from our firm or a different firm or any  
20 of the high-volume firms. They must be granted  
21 that exception.

22 In my experience, in the times I have  
23 asked in the past for, for cases to be added to  
24 my list the day before, the answer has been no.

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2 I don't know what criteria OATH considers.  
3 Perhaps the rule should lay out what criteria an  
4 exception will be granted for so that these  
5 things are clearly set out.

6 Thank you very much.

7 MS. THOMPSON: Thank you, Ms. Garroway.  
8 At this time, I'm going to ask if there is any  
9 other comments to the first rule, which is the  
10 proposed rule regarding appearances.

11 MS. PHOEBE DOSSET: I would like to make  
12 one additional comment. This is Phoebe Dosset.  
13 I'm an attorney with Nacmias Law. I --

14 MS. THOMPSON: Could you re-, could you  
15 repeat where you're with, please? The firm.

16 MS. DOSSET: Nacmias, Nacmias Law, --

17 MS. THOMPSON: Thank you.

18 MS. DOSSET: -- PLLC. In the past two  
19 years, I've had the privilege of working as a DOB  
20 attorney at OATH, and now I have gone private and  
21 take care of the respondents.

22 To add to what Ms. Garroway said, I  
23 think this three-day rule, it, it not only  
24 affects our clientele, but if someone from Cohen,

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2 Hochman, Allen cannot take a case from a client  
3 because the three-day rule appla- applies to  
4 them, it applies to every firm. So, effect-,  
5 we're effectively disenfranchising potential  
6 respondents from seeking any legal counsel  
7 whatsoever. So I think this is a bigger and more  
8 comprehensive issue as far as New York City  
9 citizens being able to obtain the representation  
10 they need at an OATH, at an OATH hearing. So I  
11 just wanted to make that bigger point, as well.

12 MS. THOMPSON: Thank you, Ms. Dosset.  
13 Any other comments to the appearances rule at  
14 this time? Okay. Alright. I believe that that  
15 completes the comments for -- is, there's a  
16 number, 917. Is someone trying to say something?  
17 Okay, maybe that's just background noise. I  
18 would encourage everyone, if they are not  
19 speaking, to just mute, just to cut down on any  
20 background noise.

21 And so we will, we'll go on to our next  
22 item. At this time, I will introduce OATH's  
23 proposed rule regarding the conduct of registered  
24 representatives and attorneys at OATH hearings.

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2 This proposed rule would amend OATH's rules of  
3 practice located in subchapter F of Chapter 6 of  
4 Title 48 of the Rules of the City of New York,  
5 governing the conduct of registered  
6 representatives and attorneys appearing before  
7 OATH's Hearings Division. These amendments would  
8 require registered representatives to have proper  
9 authorization when representing respondents and  
10 to be familiar with the relevant facts and  
11 applicable law under- underlying a summons.

12 These amendments also would clarify and  
13 address the types of misconduct and patterns of  
14 misconduct, particularly those involving  
15 dishonesty and integrity, such as registered  
16 representatives who misrepresent themselves as  
17 attorneys, file false documents, and make  
18 statements they know, or should know, not to be  
19 true, as well as soliciting on OATH's premises.

20 Section 1 of this proposed rule would  
21 add the following amendments to Section 6-23 of  
22 subchapter F of Chapter 6 of Title 48 of the  
23 Rules of the City of New York. It would define a  
24 representative as an individual who is not



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2 attorney -- not an attorney -- admitted to  
3 practice in the State of New York, but who is  
4 authorized by a respondent to appear on behalf of  
5 that respondent. It would require a registered  
6 representative to register every two years and  
7 clarify that the representative must submit proof  
8 of identity to register. It removes the  
9 statement concerning the consequences of failing  
10 to register, since registration is con-, is now a  
11 condition of appearance at the tribunal. The  
12 rule would require the representatives to  
13 accurately represent the representative's  
14 qualifications and services. It would clarify  
15 the obligation of registered representative to  
16 exercise due diligence, including demonstrating  
17 knowledge of the facts and subject matter of the  
18 summons, complying with adjournment and  
19 rescheduled hearing dates, and ensuring that oral  
20 and written statements and documents submitted  
21 to the tribunal are authentic and correct. It  
22 would require that a registered representative  
23 act in the respondent's best interests and avoid  
24 any conflicts that would

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2 impair the representative's ability to do so, and  
3 it would require, and it would acqui-, require,  
4 excuse me, the submission of an authorized to  
5 appear form.

6 Section 2 of this proposed rule would  
7 add the following amendments to section 6-25 of  
8 subchapter F of Chapter 6 of Title 48 of the  
9 Rules of the City of New York. It would clarify  
10 what constitutes misconduct by using consistent  
11 terminology; it would prohibit the making of  
12 fraudulent, false or misleading statements to the  
13 Tribunal; it would create a rebuttable pre-  
14 presumption that the exchange of money at the  
15 Tribunal is evidence of solicitation; it  
16 prohibits falsely representing to be an attorney  
17 or government employee; prohibit acting in a  
18 fashion that demon-, that demonstrates a lack of  
19 integrity in the representation of parties;  
20 substitute paragraph (f) for former paragraph 1  
21 of subdivision (b) concerning ex parte  
22 communication; move former paragraph 2 of  
23 subdivision (b) concerning communicating with a  
24 hearing officer to influence a decision; move

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2 that paragraph to paragraph 6 of subdivision (a);  
3 subject respondents and witnesses, in addition to  
4 attorneys and representatives, to penalties for  
5 misconduct; and subject attorneys, in addition to  
6 representatives, to summary suspension or bar.  
7 These proposed amendments represent important  
8 steps in OATH's continuing efforts to identify  
9 and stop impersonators and fraud, facilitate  
10 professionalism and efficiency, and protect the  
11 integrity of OATH proceedings.

12 OATH's proposed rule regarding the  
13 conduct of registered representatives and  
14 attorneys was published in the City Record on  
15 April 14, 2022. OATH e-mailed the rule to the  
16 Speaker of the City Council, every member of the  
17 City Council, all community board members --  
18 excuse me, all community board managers, the news  
19 media, as well as civic organizations. In  
20 addition, OATH posted the proposed rule on OATH's  
21 website, the New York City Rules website, and the  
22 City Records Online website. Again, OATH has  
23 been accepting written comments on this proposed  
24 rule since the date it was published in the City

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2 Record and will continue to accept written  
3 comments through the close of business today.

4 At this hearing, you may present an oral  
5 statement concerning this proposed rule. And,  
6 once again I remind you, please state your name  
7 and affiliation, please speak slowly and clearly  
8 so that your statement can be accurately  
9 recorded, and please limit your statement to no  
10 more than three minutes. Again, now the floor is  
11 open for comments to OATH's proposed rule  
12 regarding the conduct of registered  
13 representatives and attorneys at OATH Hearings.

14 And, again, I have added to the chat, in  
15 case there is a desire to add a written comment  
16 by close of business today at 5:00 p.m., there is  
17 a website address. I'll add it again for those  
18 who may have joined the meeting a little later.  
19 And, again, we're now taking comments on OATH's  
20 proposed rule regarding the conduct of parties  
21 before the Tribunal.

22 MS. GARROWAY: I'll make a comment.

23 MS. THOMPSON: May I ask, is this Ms.  
24 Garroway?

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2 MS. GARROWAY: Yes.

3 MS. THOMPSON: Please.

4 MS. GARROWAY: Thank you, Ms. Thompson.  
5 Again, Lindsay Garroway from Cohen, Hochman and  
6 Allen. Good morning. I am, I am legitimately  
7 confused by a portion of the rule that I hope  
8 OATH will elaborate or clarify. Perhaps an  
9 amendment is necessary to clarify.

10 Section 48 RCNY 6-25 Subsection  
11 (16) is the language that says, talks about  
12 abandonment of cases and it seems to require that  
13 an attorney alert the Tribunal to the fact that  
14 they will no longer be appearing on a case or it  
15 will be considered abandonment and that could  
16 constitute misconduct. I am legitimately  
17 confused about how this will be enforced or what  
18 this means, particularly because it seems to  
19 contradict the three-day list requirement, which  
20 is, that constitutes an attorney's notice of  
21 appearance. So if an attorney did not file a  
22 summons within their list, they have not filed a  
23 notice of appearance on it. So I, I'm not quite  
24 sure how that, how that jibes with the other,

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2 this aspect of the rule.

3 So I would res-, I wish I could ask a  
4 question, but this is only comments. So I would  
5 strongly urge or request that OATH either  
6 elaborate on, within the rule of how they intend  
7 to enforce this or what they intend to use this,  
8 this tool for, or specify more clearly what they  
9 mean by this type of misconduct so that lawyers  
10 like myself have proper guidance and can be sure  
11 not to violate OATH's rules in this capacity.  
12 Certainly, some sort of clarification or  
13 elaboration is necessary here. Thank you.

14 MS. THOMPSON: Thank you again, Ms.  
15 Garroway. Are there any other comments to the  
16 proposed -- oh, yes, Mr., I believe you are Mr.  
17 Mazer. Yes.

18 MR. MAZER: Yes, hi. I just want to  
19 follow up and just add something that Ms.  
20 Garroway mentioned, which is a concern of that  
21 particular san- section. Dealing with the Taxi  
22 and Limousine Commission, what I typically find  
23 is that I publish my list of cases, as I am  
24 required to do, three days or more in advance.

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2 Many times, those cases will, in fact, be  
3 settled, that I will, my clients will take  
4 settlement offers from the Taxi and Limousine  
5 Commission. So we don't go forward with the  
6 hearings, but I don't want to be, I mean the  
7 Tribunal may look at that and say that that's  
8 abandonment.

9 We don't really, I mean the TLC is not  
10 prosecuting the cases. The TLC, in fact, is  
11 withdrawing those summonses. But I don't want to  
12 be tripped up and be considered to do something  
13 that's violative of OATH rules or engaging in  
14 some sort of misconduct because I simply  
15 neglected to inform the Tribunal that I will no  
16 longer be going on cases that have, in fact, been  
17 settled. I just want to make sure that that's,  
18 that it's clear that if you settle a case before  
19 the, the hearing date that you're not abandoning  
20 the case in, in the strict sense of the word,  
21 because you've pretty much done what your client  
22 wanted you to do by settling it. Just wanted to  
23 add that point.

24 MS. THOMPSON: Thank you, Mr. Mazer.

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2 Are there any further comments to this proposed  
3 rule regarding the conduct? Thank you so much.  
4 That said, we will continue with our agenda.

5 At this time, I will introduce the final  
6 rule for today, OATH's proposed rule regarding  
7 the -- excuse me. I lost my place here. Pardon  
8 me. OATH's proposed rule correcting cross-  
9 references regarding City Commission on Human  
10 Rights cases. This proposed rule would amend  
11 Sections 2-23, 2-24, 2-28 and 2-31 of OATH's  
12 Rules of Practice located in subchapter C of  
13 Chapter 2 of Title 48 of the Rules of the City of  
14 New York.

15 The City Commission on Human Rights  
16 recently updated its rules and OATH simply aims  
17 to update its references to those rules for  
18 consistency's sake. OATH's proposed rule  
19 correcting cross references regarding City  
20 Commission on Human Rights cases was published in  
21 the City Record on April 15, 2022. OATH e-mailed  
22 the rule to the Speaker of the City Council,  
23 every member of the City Council, all community  
24 board managers, the news media, as well as civic



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2 organizations. In addition, OATH posted the  
3 proposed rule on OATH's website, the New York  
4 City Rules website, and the City Records Online  
5 website. OATH has been accepting written  
6 comments on this proposed rule since the date it  
7 was published in the City Record and will  
8 continue to accept written comments through the  
9 close of business today.

10 Now, at this hearing, you may present an  
11 oral statement concerning this proposed rule.  
12 Again, please state your name and affiliation,  
13 speak slowly and clearly, and limit your  
14 statement to no more than three minutes. Now, at  
15 this time, the floor is open for comments and  
16 response to OATH's proposed rule correcting  
17 cross-references regarding City Commission on  
18 Human Rights cases. I heard what may have been  
19 some background noise. Okay. I do not believe  
20 we have any comments for this third rule.

21 So, once again, shortly after today's  
22 hearing, copies of all written comments received  
23 by OATH concerning these proposed rules and a  
24 summary of the statements given today will be

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2 made available to the public on OATH's website.  
3 Again, the website address, I'll put one more  
4 time. I believe we have a few people joined us.  
5 That web address is in the chat.

6 Before issuing its final rules, OATH  
7 will carefully consider the statements presented  
8 at today's hearing, as well as all written  
9 comments received by the close of business today  
10 at 5:00 p.m. At this point, as there are no  
11 further comments on these three proposed rules,  
12 this meeting, this public hearing, is now  
13 adjourned. Thank you for attending and please  
14 stay safe and well. Take care.

15 (The public meeting concluded at 11:39  
16 a.m.)

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OATH Public Hearing, May 18, 2022

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of OATH Public Hearing on Proposed Rules on May 18, 2022, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Claudia Marques

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Date: June 1, 2022

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

**Reviewed and corrected by OATH General  
Counsel Office.**

**June 7, 2022**

## Written Comments in response to OATH's Proposed Rule regarding the Conduct of Registered Representatives and Attorneys at OATH Hearings.

OATH received three (3) written comments in response to OATH's Proposed Rule regarding the Conduct of Registered Representatives and Attorneys at OATH Hearings.

(1) Comment added May 11, 2022 1:59 p.m. by Matthew Shapiro

I am writing in regards to the proposed rule defining "misconduct" as:

(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

Currently, OATH rules provide for vacating default judgment after failing to appear at a scheduled hearing. It does not make sense to both classify failing to appear as misconduct as well as providing specific rules to allow default judgments to be opened after failing to appear.

Additionally, summonses are usually scheduled by OATH without the respondent (or attorney) being able to select a specific date. If a summons is rescheduled by an attorney and the attorney is then unavailable on that date, the attorney may have no choice but to "fail to appear" in order to file a request to reopen a default judgment after the hearing date has passed.

Requiring an attorney to provide 7 days notice if they cannot appear on a scheduled date, and classifying this as attorney misconduct, is a significant hardship and an inflexible policy. This is especially the case since now remote hearings require attorneys to submit a list of cases to be heard at least three days prior to the hearing date.

The proposed rule should eliminate this clause from the attorney misconduct definition.

(2) Comment added May 12, 2022 at 11:59 a.m. by Andrew Mundo

My concern is the same as voiced by Matthew Shapiro – the proposed rule defining "misconduct" as:

(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

Currently, OATH rules provide for vacating default judgment after failing to appear at a scheduled hearing. It does not make sense to both classify failing to appear as misconduct as well as providing specific rules to allow default judgments to be opened after failing to appear.

Additionally, summonses are usually scheduled by OATH without the respondent (or attorney) being able to select a specific date. If a summons is rescheduled by an

attorney and the attorney is then unavailable on that date, the attorney may have no choice but to "fail to appear" in order to file a request to reopen a default judgment after the hearing date has passed.

Requiring an attorney to provide 7 days notice if they cannot appear on a scheduled date, and classifying this as attorney misconduct, is a significant hardship and an inflexible policy. This is especially the case since now remote hearings require attorneys to submit a list of cases to be heard at least three days prior to the hearing date.

The proposed rule should eliminate this clause from the attorney misconduct definition.

(3) Comment added May 17, 2022 at 11:36 p.m. by Lindsay Garroway, Esq.

Please elaborate on when Respondent's counsel should provide notice to the Tribunal that it will not be appearing under 48 RCNY 6-25(16). This seems to contradict with the 3 day list requirements which constitute an attorney's Notice of Appearance in any summons or case.