

**TRANSCRIPT OF THE NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
PUBLIC HEARING**



DATE OF PUBLIC HEARING: September 20, 2021

TIME: 11 AM – 1 PM

WebEx Video Conference

1. ***Joy Thompson: Good morning and welcome everyone. We will get***
2. ***started in a second. I realize that you will see the name of the Deputy***
3. ***General Counsel but my name is Joy Thompson. Okay, it is 11 am***
4. ***so, we will get started.***

5. ***Good morning again. My name is Joy Thompson. I am the Assistant***
6. ***General Counsel with the Office of Administrative Trials***
7. ***and Hearings, also known as OATH. Thank you for attending today's***
8. ***hearing.***

9. ***OATH is conducting this hearing in accordance with the***
10. ***Requirements of the City Administrative Procedure Act also***
11. ***Known as CAPA. The purpose of this hearing is to receive comments***
12. ***from the public on OATH's proposed rule clarifying the***
13. ***procedures and protocols for remote proceedings and appearances***
14. ***in OATH's Trials and Hearings Divisions.***

15. ***During the COVID-19 pandemic, state, and local authorities***
16. ***provided for the use of remote methods to conduct adjudications.***

17. ***Mayoral Emergency Executive Order 177, which was dated***
18. ***January 27, 2021, and Mayoral Emergency Executive Order 179,***
19. ***dated February 1, 2021, which were extended by a series of***
20. ***subsequent Mayoral Emergency Executive Orders, broadened***
21. ***OATH's authority to adjudicate most summonses filed in the OATH***
22. ***Hearings Division and petitions filed in OATH Trials Division by***
23. ***remote means.***

24. A little bit of background noise. If people could just put themselves
25. on mute.

26. As of the date during this period, OATH developed
27. and refined the processes and protocols that make telephone and
28. video conference communications more efficient and easier to use.

29. As of the date of this hearing, OATH continues to adjudicate most
30. matters remotely. OATH is now seeking to formalize remote
31. proceedings and the processes underlying them. In order, to ensure
32. that parties appearing before OATH continue to have the option to
33. appear remotely. OATH is proposing to amend its rules to make
34. appropriate procedural adjustments to establish OATH's ability to
35. use remote methods of adjudication. The adoption of these rules is
36. necessary to prevent any potential interruption of this option in
37. these times of pandemic.

38. At this time, I am going to ask everyone to please go on mute. I am
39. actually going to mute those who are. It will just take a moment to
40. go ahead and mute those who are not muted. Okay, so we can
41. proceed.

42. Okay. At this point, I am going to proceed with the description
43. of what we are doing today in our rule.

44. The proposed rule was published in The City Record on
45. August 20, 2021. OATH also e-mailed the rule to the Speaker of the
46. City Council; every Member of the City Council; all community board

47. managers; the news media; as well as civic organizations. In
48. addition, OATH posted the proposed rule on OATH's website; the
49. New York City Rules website; and the City Records online website.
50. OATH has been accepting written comments on the proposed rule
51. since the date it was published in The City Record and will
52. continue to accept written comments through the close of business
53. today.

54. At this hearing, just a second, I am hearing more background noise.
55. Just a second.

56. At today's hearing, you may present an oral statement concerning
57. the proposed rule. I will ask that before you begin speaking that you
58. please state your name and affiliation whether you are with an
59. agency, the media, etc.

60. I will ask that you speak slowly and clearly, so that your statement
61. can be accurately recorded. I will ask that you please limit your
62. statement to no more than three minutes.

63. Shortly after today's hearing, copies of all written comments
64. received by OATH, concerning this proposed rule, and a
65. summary of the statements given today, will be made
66. available to the public on OATH's website. I will read the website.
67. It's a long website, and I will read it, and I will also put the website
68. address in the chat for those who are attending remotely.
69. The website address is:

70. <https://www1.nyc.gov/site/oath/about/legal-resources-and-rule-making.page>
71. Again, I have added this website address to the chat section of this
72. meeting.
73. Before issuing its Final Rule, OATH will carefully consider the
74. statements presented at today's hearing, as well as all written
75. comments received by the close of business today. Thank you again
76. for attending this hearing.
77. The floor will soon open for comments. Again, before you begin
78. speaking, please I will call on people on the WebEx. If you would like
79. to address something, please state your name and affiliation.
80. Speak slowly and clearly so that your statement can be accurately
81. recorded, and please limit your statement to no more than three
82. minutes.
83. At this time, I open the floor, and I ask if there are any person who
84. would like to speak. And if you are mute, I will unmute you. But
85. again, the floor is open.
86. Yes, can we please just clarify the proposed ruling.
87. Joy Thompson: And your name is.
88. Theresa Scavo, Chair of Community Board 15, Brooklyn.
89. Joy Thompson: Chair of Community
90. Theresa Scavo: Board 15, Brooklyn
91. Joy Thompson: You asked for clarification of the rule.
92. Theresa Scavo: Yes
93. Joy Thompson: I, I um

94. Joy Thompson: Do you have any specific? Were you not able to
95. review the rule?
96. Theresa Scavo: I read the rule. I just want point of clarification.
97. You are proposing to remain somewhat virtual going forward.
98. Joy Thompson: Yes, that is what the rule states. Again, I can review
99. the summary of the rule. Would that be helpful?
100. Theresa Scavo: Well my point is, Southern Brooklyn has the
101. largest concentration of seniors. Seniors who do receive violations
102. for sometimes what I consider frivolous issues. For a senior to
103. climb, give an example: The avenue train station has a massive
104. staircase, to board a train, to come physically in person to an OATH
105. hearing, to fight a hundred-dollar sanitation violation. It is ludicrous.
106. Most time seniors have to rely on their children to either assist them
107. to maneuver transportation to Manhattan. They are told by their
108. children which I hear constantly; don't pay the hundred dollars.
109. Don't try to fight it because it is more trouble than it's worth trying to
110. travel to Manhattan. Leaving these violations virtually, gives a
111. person dignity to sit and try to prove they are not guilty. They are not
112. forced to travel to Manhattan, or suffer the expense to trying to drive
113. into Manhattan and pay these ridiculous tolls and parking.
114. So, kudos to OATH. I hope this passes and I hope you give everyone
115. a chance to remain virtual.
116. Joy Thompson: Thank you, Ms. Scavo.

117. Theresa Scavo: Thank you

118. Joy Thompson: for your comments

119. Will anyone else like to weigh in on this proposal?

120. Inaudible....

121. Joy Thompson: Excuse me, I believe that someone is titled

122. Anonymous. Are you speaking at the hearing?

123. I think that may be just some background noise. I will mute that for

124. now. Please unmute yourself if you would like to make another

125. comment regarding this rule. We have several people involved in

126. this meeting.

127. I noticed there's another person unmuted. The last two digits of the

128. phone number is 4 2. Would you like to say something?

129. Again, the floor is open for any further comments about the

130. proposed rule. That would keep a remote option available for some

131. OATH Hearings and Trials.

132. I will give people a couple of more minutes. Again, you can provide

133. written comments at the link in the chat. We are taking notes and

134. this meeting is recorded. I will give us a couple of more minutes.

135. It is 11:13. Before I close, we will close this hearing at 11:15 if there

136. are no further comments. So, there's one more minute.

137. Again, I thank Ms. Scavo for her comments.

138. Okay, as it is, it is now 11:15. Again, I want to thank you for your

139. attendance. As there are no further comments on OATH's proposed

140. rule regarding remote proceedings and appearances in OATH

141. Trials and Hearings Divisions, this meeting is now adjourned.

142. I want to thank you all for attending. Please be safe and well.

CERTIFICATION

This is to certify that I have typed the above record by listening to the Webex video conference in the State of New York and that to the best of my knowledge and belief the above record that is typed by me is a true and accurate record of the Webex video.

Elizabeth Nolan

Elizabeth Nolan

Date Transcribed: September 23, 2021



**TESTIMONY OF THE UNITED FEDERATION OF TEACHERS
HEARING OFFICERS (PER SESSION) CHAPTER
BY TONY FELDMESSER
CHAPTER LEADER**

**BEFORE THE NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

**REGARDING A PROPOSAL TO AMEND RULES OF PRACTICE
FOR THE CONDUCT OF REMOTE PROCEEDINGS**

SEPTEMBER 20, 2021

My name is Tony Feldmesser and I serve as the chapter leader of the United Federation of Teachers (UFT) Hearing Officers (Per Session) Chapter. On behalf of the hearing officers represented by our union, I would like to thank the NYC Office of Administrative Trials and Hearings (OATH) for holding today's public hearing on its proposal to amend its rules of practice in title 48 of the Rules of the City of New York to clarify, refine, and establish rules for the conduct of remote proceedings.

As you well know, since March 2020 most summonses filed in the OATH Hearings Division have been adjudicated by remote means. It has been a learning experience for all parties involved; and while there are benefits to remote hearings, I believe it is prudent that we also consider the challenges posed by remote hearings before we set them as the default option in adjudication proceedings.

As attorneys, we have an ethical duty to make sure those appearing before us have their full due process rights respected. While I am not against having a remote option available to respondents, I think our agency needs to first study and analyze the impact remote hearings have had on those due process rights before we institute a rule change and materially affect a respondent's right to a live hearing as the pandemic abates.

I would like to first point out that most remote hearings are conducted on the phone and as a result are absent of critical visual components. For example, on the phone I am unable to use or see physical gestures and facial expressions which, during a live hearing, can be a tool both to control the flow of information and assess each party's credibility. In a remote hearing over the phone, the different parties often speak on top of one another, and there are challenges with asking for pauses to get clarification or do snap research.

In addition, we have hearing officers who share workspaces with family members in their home, making it difficult for them to conduct remote hearings. Due process concerns also arise when respondents may not be in physical places where they can focus or adequately hear what is going on. There is no way to see whether there are unidentified people listening in on a remote hearing or perhaps coaching witnesses. There is simply not the level of control that there is in a live hearing.

This leads me to a point that I believe is necessary to mention, namely that hearings must be open to the public and its scrutiny. Courts and tribunals never operate behind closed doors. OATH has not addressed how it plans to open remote hearings to the public as required by the Constitution and federal law. One of the biggest problems with making remote hearings the default option is that people may be denied a live hearing as of right. There are no objective criteria being proposed along with this rule change to ensure that right.

As for respondents that need translation services, I can anecdotally say that I have not presided over as many cases that need translation services since we went remote. I strongly believe we should investigate whether this a general trend and study if, for example, non-English speakers are choosing to pay their summons rather than request a hearing at higher rates due to barriers remote hearings present. I think it's important that we also research trends among senior residents and other populations that may lack sufficient computer skills.

In addition to issues related to protecting respondent's rights to due process, I would also like to remind members of this public hearing that in December 2020, the UFT filed an improper practice petition with the Office of Collective Bargaining against OATH. Since the start of the pandemic OATH has made unilateral changes to the working conditions of hearing officers represented by our chapter without notice or bargaining to be able to accommodate for remote hearings. To list a few examples:

1. At the start of the pandemic only a limited number of hearing officers were called to do remote work. For example, only 33 hearing officers were scheduled out of a roster of around 350 from March 2020 to May 2020.
2. In April 2020 OATH instituted a remote work platform that a significant number of hearing officers could not utilize due to a lack of proper equipment or training. Those lacking equipment or training were rendered ineligible for work.
3. Many hearing officers, in an effort to receive work, purchased equipment, or an extension for their current computer, at their own expense in order to access the remote platform. When assigned work, these officers are not reimbursed for the equipment, paper, printers, ink, phone or other expenses incurred as a result of remote work.
4. For those who remain on the roster and are assigned work, they have seen a sharp increase in workload with back to back hearings being required with no or minimal time for preparation between hearings. At the same time, hearing officers may be assigned to cases involving areas of law that they are less familiar with, and this lack of familiarity is not considered when expecting hearing officers to handle an increased number of summonses.

I will not argue against remote hearings, but I will say we need to take a step back and assess how they are implemented. Working conditions for hearing officers in a remote setting are different, and how we protect people's right to due process needs to be evaluated. Our office touches every day New Yorkers, whether it's a homeowner fighting a water summons or a restaurant owner fighting a health violation. Let's not be hasty in the transition, let's instead work out a true plan to effectively provide New Yorkers due process and just outcomes using modern comforts.