

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 to its Rules of Practice in title 48 of the Rules of the City of New York to establish procedures for pre-conference settlement negotiations in OATH's Trials Division.

A proposed version of these amendments was published in The City Record on October 6, 2021. A public hearing was held on November 5, 2021. Two written comments were received.

Statement of Basis and Purpose of Rule

Pursuant to the authority set forth in sections 1043 and 1049 of the New York City Charter, which authorizes the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH) to establish rules of conduct, OATH is amending its rules governing the Trials Division to establish procedures for pre-conference and pre-trial settlement negotiations.

Section one of this rule amends chapter 1 of title 48 of the Rules of the City of New York by adding a new section 1-31-a. In this section, OATH grants administrative law judges the authority to direct parties to meet and confer shortly after an issue is joined, but before the matter is brought before the judge for conference. This provision will allow the parties, in all confidence, to weigh the possibilities of resolution before expending time and resources to prepare for a conference or a trial.

Although the parties are not obligated to settle their matters during these pre-trial settlement negotiations, it is OATH's expectation that the parties will participate in the negotiations in good faith and be forthcoming with information and documents relevant to the claim prior to the negotiations, to ensure that full use is made of the early settlement opportunity. The same opportunity would be granted shortly before trial.

Section two of this rule amends chapter 2 of title 48 of the Rules of the City of New York by adding a new subchapter E. This subchapter provides additional rules for Department of Correction (DOC) cases.

The volume of matters brought by the Department of Correction (DOC) has increased significantly. Upon reviewing these filings, OATH has found that a significant number of them are amenable to quick settlement. Given the measurable increase in cases, facilitating and encouraging rapid resolution where feasible would conserve the time and resources of the parties and the Trials Division, and render the process more efficient.

OATH will require that the parties in DOC matters meet and confer shortly after an issue is joined, but before the matter is brought before a judge for conference. Similar to the provision above, this provision directs the parties to weigh the possibilities of resolution before expending

time and resources to prepare for a conference or a trial, thus allowing for more focused and efficient uses of court resources. The same opportunity would be granted shortly before trial.

Both provisions will result in the more efficient use of Trials Division resources, regardless of the outcome of the pre-conference or pre-trial meeting. Specifically, even where the requirement to meet and confer does not result in a rapid settlement, the provisions will help the parties identify barriers to settlement, resulting in more effective and focused settlement conferences led by the administrative law judges and sharpen the issues before trial.

Finally, to the extent that a percentage of matters are settled quickly and successfully, without the interposition of judges, the judges, relieved of the additional caseload, may more promptly and thoroughly focus their attention on DOC matters not amenable to rapid resolution.

Deleted material is in [brackets].

New text is underlined.

Section 1. Chapter 1 of title 48 of the Rules of the City of New York is amended by adding a new section 1-31-a to read as follows:

§ 1-31-a Pre-conference and Pre-trial Settlement Negotiations

- a) The administrative law judge assigned to a settlement conference or a trial may require the parties to meet and confer prior to the settlement conference or prior to the trial, for the purpose of sharing and discussing settlement offers, upon application of either party or *sua sponte*. The administrative law judge may set a deadline by which the parties must meet and confer.
- b) Each party must participate in good faith and have present or readily accessible during these meetings an individual possessing the authority to settle the matter. All settlement offers made during this meet-and-confer period are confidential and inadmissible at the trial of any case.
- c) If the parties reach a settlement agreement, they must notify OATH immediately and promptly send the settlement agreement to OATH. If the parties do not reach a settlement, they must provide a pre-conference letter to the administrative law judge, pursuant to 48 RCNY 1-31(a), or an equivalent pre-trial letter, at least twenty-four hours prior to appearing at the settlement conference or trial, respectively.

§ 2. Chapter 2 of title 48 of the Rules of the City of New York is amended by adding a new subchapter E to read as follows:

Subchapter E: Additional Rules for Department of Correction Cases

§ 2-51 Applicability

This subchapter applies solely to cases brought by the New York City Department of Correction. Chapter 1 also applies to such proceedings, except to the extent that it is inconsistent with this subchapter.

§ 2-52 Pre-conference and Pre-trial Settlement Negotiations

- a) The parties must meet and confer prior to a settlement conference and prior to a trial, for the purpose of sharing and discussing settlement offers.
- b) Each party must participate in good faith. Good faith participation shall be deemed to include the prompt exchange, pre-negotiation, of information and documents relevant to the claim in order to allow each party to prepare for the negotiation adequately. Each party must have present or readily accessible during these meetings an individual possessing the authority to settle the matter. All settlement offers made during this meet-and-confer period are confidential and inadmissible at the trial of any case.
- c) If the parties reach a settlement agreement, they must notify OATH immediately and promptly send the settlement agreement to OATH. If the parties do not reach a settlement, a settlement conference before the assigned administrative law judge will proceed as scheduled, and they must provide a pre-conference letter to the administrative law judge, pursuant to 48 RCNY 1-31(a), or an equivalent pre-trial letter, at least twenty-four hours prior to appearing at the settlement conference or trial, respectively.