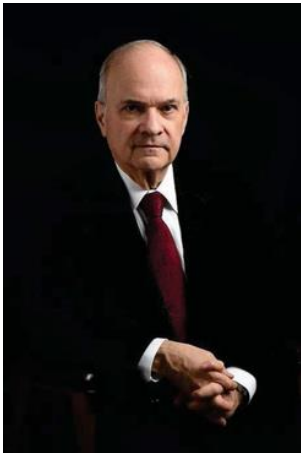


Q&A With Fidel Del Valle, Head of the NYC Office of Administrative Trials and Hearings

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Fidel F. Del Valle

Created in 1979 and added to the City Charter in 1988, the Office of Administrative Trials and Hearings hears more than 800,000 cases a year from the city's enforcement agencies. Its latest expansion came on June 13, when Mayor Bill de Blasio signed the Criminal Justice Reform Act, giving OATH jurisdiction over low-level quality of life summonses issued by the New York City Police Department and Parks Department that historically were filed in Criminal Court.

OATH's reach has grown significantly over the past 20 years. It now hears all human rights complaints under the city's Human Rights Laws (1997); claims brought by city contractors arising out of terms of their agreements (1999); single-room occupancy (SRO) landlord harassment hearings (2001); retention hearings over the police-seized vehicles allegedly used in crimes (2004); violations of the Lobbying Law (2006); and denials of marriage licenses or domestic partnerships (2008).

Also in 2008, the city's largest administrative tribunal, the Environmental Control Board, was placed under OATH. Fidel F. Del Valle said a backlog of 7,000 environmental cases was eliminated while the time it took for a decision to be issued fell from an average of 96 days in 2007 to an average of just six days in 2010 "by providing hearings and appeals online, hearings by phone and educational materials for the public," he said. In 2011, OATH grew yet again, taking administrative cases from the Department of Health and Mental Hygiene, the Taxi and Limousine Commission and Business Integrity Commission. And just last year, OATH began hearing all Department of Consumer Affairs cases.

Del Valle has been involved with OATH since its inception and was named its commissioner and chief administrative law judge in 2014. He discussed how OATH has adapted to its growing role over the years and its plans for the future. His answers have been edited for length and clarity.

Q: Why was the Office of Administrative Trials and Hearings created?

A: OATH began as a small office created by executive order by then-Mayor Ed Koch to address procedural defects in disciplinary cases, license revocation cases and contract cases. He wrote that "administrative trials

have too often been characterized by procedural shortcomings and inconsistent, judicially reversible results. It has therefore become necessary to reform the due process trial system by establishing a new Office of Administrative Trials and Hearings.” He said the office would “provide independent and professional administrative law judges to make reports and recommendations to the agency head in civil service, licensing, contractual and other administrative trials and hearings required by law or contract.”

Executive Order 32 of 1979 gave OATH “the authority to conduct disciplinary, disability or other trials and hearings permitted or required by the New York State Civil Service Law.” With its creation, OATH became the first central municipal administrative tribunal in the country.

Q: How was OATH chosen as the agency to hear what had been low-level criminal offenses?

A: The City Council, with the Mayor’s Office of Criminal Justice, determined the venue for [Criminal Justice Reform Act] cases during the legislative process. Moving low-level offenses out of criminal court and into an administrative tribunal is old news in New York City. Most summonses now heard by the Hearings Division were originally Criminal Court violation summonses. For example, sanitation violations went to Criminal Court before they were moved in the 1980s. They now are heard at the OATH Hearings Division. These offenses are violations, not crimes. That is, they are neither misdemeanors nor felonies. Except for parking, traffic and transit violations, OATH is New York City’s central administrative law court.

Q: How did you become involved with OATH? What is your history as a jurist?

A: I first became involved in 1979, the year OATH was established, when I was a new attorney working for the New York City Probation Department. I was given the assignment to prosecute a disciplinary case, which went to OATH. I learned its practice and guiding principles from OATH’s first chief ALJ, Richard Failla, who later went on to become a state Supreme Court justice.

In law school, we learned that administrative law was very informal; the hearing process and procedure was loose and the judicial review standard is substantial evidence. Failla decided to follow the CPLR, the Rules of Evidence and formal proceedings. With no substantive change, OATH has held to those principles ever since then.

I practiced civil and administrative law on behalf of the city for the Probation Department, the Police Department and the Taxi and Limousine Commission from 1978 to mid-1995. I left the TLC as chairman in 1995 and engaged in private practice until November 2014. The practice involved administrative law and civil law. A significant amount of time was dealing with matters before the Eastern and Southern districts. I had expressed to Bill de Blasio that government service was my first love. He made clear to me that his vision of equity includes that every New Yorker who gets a summons receives a fair, impartial, unbiased hearing; and further, that once they have a hearing that they feel that they were given a fair, impartial, unbiased hearing. He offered me this position which brings my career to almost a full circle. His view was so in line with OATH’s founding principles embraced in 1979 that I did not hesitate to accept.

Q: How is OATH structured? How many administrative law judges hear cases?

A: As of last year, OATH is now comprised of two divisions: the OATH Trials Division and the OATH Hearings Division. The Trials Division is essentially the part of OATH which was established by Mayor Koch and is responsible for handling complicated administrative law cases. With few exceptions, these types of cases began to be heard at OATH at some point prior to 2008. The Trials Division holds proceedings in a formal courtroom setting and depending on the type of case, trials can last anywhere from a day to a few weeks. ALJs who are subject to the New York State Code of Judicial Conduct and who are appointed to five-year terms work in the OATH Trials Division. Not including the chief administrative law judge, there are currently 12 ALJs who work at the OATH Trials Division.

The OATH Hearings Division is where nearly all summonses issued by city enforcement agencies, apart from parking, traffic and transit summonses, are filed for hearings. OATH has approximately 300 per diem hearing officers on its roster to hold these hearings. With the creation of its Hearings Division, OATH streamlined the administrative hearing process across all cases types that come to the Hearings Division. Now, all summonses are subject to the same rules and procedures regardless of what agency issued the summons. All OATH hearing officers have been cross-trained and can hold a hearing on any type of summons that is filed at OATH.

Q: How do you select who serves as an OATH ALJ? What qualifications must they have? Do they have to be members of the bar?

A: All ALJs must be admitted to the bar for at least five years. Anyone admitted less than 10 years does not receive serious consideration. Credentials are reviewed by a screening committee of ALJs who select a group for interviews, those who pass the interview process are given a test case assignment and are expected to submit a written decision as a writing sample which is again reviewed and possibly after another interview by the committee the number of candidates is reduced to three who are then interviewed by the chief ALJ who makes the final choice and appointment.

Candidates to become hearing officers must be admitted to the bar for at least five years in order to be considered. They respond to openings posted on the website and resumes are reviewed by a committee of senior Hearings Division staff who select a number for interviews. Candidates are then interviewed by a panel and are expected during the interview to write a decision as a writing sample.

Q: Typically, how long do OATH cases take to resolve? What percentage go to trial?

A: At the OATH Trials Division, most of the cases are initially conferenced by an administrative law judge and a majority of cases settle through that process. Cases that are not settled continue to trial before a different ALJ. Approximately 750 cases each year will go to a full bench trial, which is about the same number of full bench trials that occur in Criminal Court. If the case goes to trial, the case is concluded at OATH with the issuance of a report and recommendation which often include findings of fact, decisions of law, and a recommendation for penalty, when appropriate. The agency that brought the case then issues the final decision and order, adopting or rejecting, in whole or in part, the ALJ's report and recommendation. In 2016, 99.5 percent of the decisions rendered by OATH ALJs were adopted by the city agencies as the final determination.

At the OATH Hearings Division, about 36 percent of summonses are admitted to and paid or settled prior to the hearing; 22 percent are fought at hearings in-person, online, by phone, by mail or by web cam; and 42 percent are issued a decision finding the respondent in violation by default due to failing to respond. Approximately 40 percent of contested summonses are dismissed. OATH hearing officers' decisions are final unless an appeal from the hearing decision is accepted by the OATH Appeals Unit. If a respondent disagrees with the appeal decision, the proper recourse would then be to initiate an appeal under Article 78 of the CPLR.

Q: In the weeks since the Criminal Justice Reform Act took effect, have you seen a sharp rise in the caseload?

A: The CJRA took effect on June 13, 2017, which means that June 13 was the first day that the NYPD could begin to write a civil summonses returnable to OATH for the low-level offenses. Most summonses will have hearing dates about 45 days from the date of the summons being issued. While we have already had a few respondents contesting summonses for having an open container of alcohol at our Hearing Division locations, we expect to begin to see the impact of the law in late July when the first summonses have their hearing dates. We also expect to see an increase in the usage of OATH's remote hearing methods since the summonses.

Q: With 100,000 new cases expected as a result of the city's Criminal Justice Reform Act, OATH's overall caseload could increase by about 12 percent. How will your office absorb the new cases?

A: OATH has a long and successful history of taking on new case types and caseloads and will use its expertise in tribunal administration to ensure that its operations are not negatively impacted.

The operational challenge we have been preparing for over the past year is not how we will handle the new caseload, but rather how we will implement the new responsibility of providing community service as a penalty in lieu of a monetary fine for these specified violations. OATH is contracting with the Center for Court Innovation (CCI) to fulfill this mandate. The community service option is available for respondents of most CJRA summonses that appear at any OATH Hearings Division location to admit to or fight the summons in-person.

OATH has six Hearing Division locations throughout the five boroughs and has created designated space at each location where community service programs will be administered by CCI staff. Community service as defined in the City Charter is "performing services for a public or not for profit corporation, associate, institution, or agency in lieu of payment of a monetary civil penalty." Community service programs offered to respondents at OATH will include an e-learning video module, on-site group programs facilitated by CCI staff, and off-site community service programs with the Parks Department and/or Sanitation Department. We have worked closely with CCI to establish protocols and information sharing at each OATH location and we expect most respondents who choose the community service option will be able to complete their service on site directly after the hearing has concluded.

Q: Are the new cases OATH is now handling different than its traditional cases? Has any new training been needed?

A: The most significant difference is that previously all alleged violations coming to OATH were in some fashion business- or property-related. These new matters are related to personal conduct. The demographics and sophistication of younger respondents is expected to be quite different. To ensure that all OATH respondents understand their rights we have opened help centers at each of our Hearing Division locations. These help centers are manned by procedural justice coordinators who report to the agency's ombudsperson. They are tasked with assisting respondents and helping them understand why they were issued a summons, the city's rules and laws, the new community service option and whether they are eligible, and what case-specific options are available to them depending on the status of their case and where they are in the hearing process.

One thing that will help OATH handle the caseload is that last year, we finalized the reorganization that created the Trials Division and the Hearings Division. In doing so, OATH now has a singular process for all summonses filed with the Hearings Division and our full cadre of hearing officers are able to hear any type of case filed at OATH, including the summonses issued under the CJRA. All of our hearing officers have been trained on the new law and the new community service option. Additionally, all employees in OATH's clerk's office have been trained. Clerks are responsible for checking people in for hearings and answering questions from respondents who call the Hearings Division.

Q: What guarantees for due process are in place?

A: OATH rules, practices and procedures ensure that due process is in place for all proceedings. The Hearings Division Rules of Practice ensure that the respondent and the agency that issued the summons are on equal footing and OATH does not make exceptions to its rules for either respondents or for city agencies. For example, the rules state that each party, the respondent and the agency that issued the summons, each have one automatic reschedule. The rules also state that each party has the right to appeal and each has the opportunity to respond to an appeal if the other party files one. All deadlines to appeal are also the same for both parties.

OATH has also begun to review cases where the respondent has failed to appear. If a summons is found to have not been served properly, which may very well be the reason why the hearing was missed, then the summons is dismissed rather than a default decision being issued. Of course, adding an ombudsperson and creating help centers with OATH's procedural justice coordinators help ensure respondents understand the process and their rights.

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