

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

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings (OATH) proposes to amend sections 6-23 and 6-25 of subchapter F of chapter 6 of title 48 of the rules of the city of New York, concerning registered representatives and misconduct.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place from **2:30 p.m. through 3:30 p.m. on Thursday, September 13, 2018**. The hearing will be in the OATH Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to OATH through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Simone Salloum, Senior Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Simone Salloum, Senior Counsel, at 646-500-5742.
- **Hearing.** You can speak at the hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling OATH at 212-436-0708, or you can also sign up in the hearing room before the hearing begins on **September 13, 2018**. You can speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments up to **5:00 p.m. on September 13, 2018**.

What if I need assistance to participate in the Hearing? You must tell us if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0708. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by **September 6, 2018**.

This location has the following accessibility option(s) available: Wheelchair Accessible.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>.

A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at OATH, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH to make this rule? Section 1049(2)(a) of the New York city charter (“charter”) authorizes OATH to make this proposed rule. This proposed rule was included in OATH’s regulatory agenda for this fiscal year.

Where can I find OATH’s rules? OATH’s rules are in title 48 of the rules of the city of New York.

What laws govern the rulemaking process? OATH must meet the requirements of section 1043(b) of the charter when creating or changing rules. This notice is made according to the requirements of sections 1043(b) and 1049(2)(a) of the charter.

Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings (“OATH”) proposes to amend sections 6-23 and 6-25 of subchapter F of chapter 6 of title 48 of the rules of the city of New York, concerning registered representatives and misconduct. To address the problem of registered representatives appearing on behalf of respondents without proper authorization and without knowledge of the alleged violations in the summonses, OATH proposes the following amendments to section 6-23 which:

- Define a representative as an individual, not an attorney admitted to practice in New York State, who is authorized by a Respondent to appear on behalf of the Respondent;
- Require registered representatives to register every two years and clarify that the representative must submit proof of identity to register;
- Remove the statement concerning the consequences of failing to register as it is unnecessary since registration is a condition to appearing on behalf of a respondent;
- Create an affirmative obligation on the representative to accurately represent his or her qualifications or services;
- Clarify that the obligation of a registered representative to exercise due diligence includes demonstrating knowledge of the facts and subject matter of the summons, complying with adjournment and rescheduled hearing dates, and ensuring that oral and written statements and documents submitted to the Tribunal are correct;
- Require that registered representatives act in the Respondent’s best interest and avoid any conflicts that would impair the representative’s ability to do so; and
- Require the submission of an “Authorization for Registered Representative to Appear” form.

To update and clarify types of misconduct and patterns of misconduct—particularly those involving dishonesty and integrity—currently reflected in registered representative activities (e.g., misrepresenting themselves as an attorney, providing false information, and soliciting on Tribunal premises), OATH proposes the following amendments to section 6-25 which:

- Clarify the existing types of misconduct, by using consistent terminology;
- Prohibit making a statement to the Tribunal that a person knows or reasonably should have known to be false, fraudulent, or misleading;
- Prohibit solicitation of parties in the public spaces of buildings within which Tribunal premises are located, or on the premises of any city agency or governmental subdivision that issues summonses returnable to the Tribunal;
- Create a rebuttable presumption that the exchange of money at the Tribunal is evidence of solicitation;
- Prohibit targeted solicitation concerning a summons returnable to the Tribunal;
- Prohibit requesting lists of names and addresses from the Tribunal for the purpose of solicitation or fundraising;
- Prohibit the misrepresentation of a person as an attorney or government employee if that person is neither;
- Prohibit any conduct or course of conduct that demonstrates a lack of honesty and integrity in the representation of parties before the Tribunal, or any other tribunal or court.
- Remove former paragraph (1) of subdivision (b) concerning ex parte communications (communications between a party and a hearing officer about the merits of a case without all parties present), and move former paragraph (2) of subdivision (b), concerning communicating with a Hearing Officer to influence a decision, to paragraph 5 of subdivision (a).
- Subject respondents and witnesses, in addition to attorney and representatives, to penalties for misconduct; and
- Subject attorneys, in addition to representatives, to summary suspension or bar.

This proposal was included in OATH's Fiscal Year 2018 and 2019 Regulatory Agendas.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 6-23 of subchapter F of chapter 6 of title 48 of the rules of the city of New York is amended to read as follows:

(a) "Representative" means an individual, not an attorney admitted to practice in New York State, who is authorized by a Respondent to appear at or before the Tribunal on behalf of the Respondent.

(b) Requirements. A representative, other than a family member or an attorney admitted to practice in New York State, who [represents] appears on behalf of two or more Respondents before the Tribunal within a calendar year must:

[(a)] (1) Be at least [eighteen ([18])] years of age;

[(b)] (2) Register with the Tribunal by completing and submitting a form [provided] prescribed by the Tribunal. [The form must include proof] The representative must also submit proof of identity acceptable to the Tribunal [that identifies the representative,] and [must also include] any other information that the Tribunal may require. Registration

must be renewed [~~annually.~~] biennially (every two years) [Failure to register with the Tribunal may result in the Tribunal declining registration in the future];

[(c)] (3) Notify the Tribunal within [ten (10)] business days of any change in the information required on the registration form;

[(d)] (4) [Not misrepresent] Accurately represent his or her [qualifications and services] services and qualifications. [so as to mislead people into believing the representative is] A representative must not hold him or herself out to be an attorney at law or a governmental employee if the representative is [not] neither. A representative who is not an attorney admitted to practice in New York State must refer to him or herself as “representative” when appearing before the Tribunal;

[(e)] (5) Exercise due diligence in:

(A) learning and observing Tribunal rules; [and]

(B) preparing and submitting paperwork on behalf of Respondents; [and]

(C) demonstrating knowledge of the facts and subject matter of the summons;

(D) complying with adjournment and rescheduled hearing dates;

(E) ensuring that oral and written statements or documents submitted to the Tribunal are correct. A registered representative who knows or has reason to believe that a Respondent has made a factual error in or omission from a document submitted at the hearing must advise the Respondent promptly of such error or omission. A registered representative must urge the Respondent to correct the error and promptly submit corrected information. If the Respondent refuses to do so, the registered representative must withdraw from representation for the summons(es) where continued representation would be a violation under § 6-25 of this chapter;

(6) Act in the Respondent’s best interest and act according to any lawful instructions from the Respondent; and

(7) Avoid conflicts that would impair the representative’s ability to act in the Respondent’s best interest.

(c) In order to appear on behalf of a Respondent, a registered representative must provide an Authorization for Registered Representative to Appear form, including the notarized power of attorney located on the back of the form, prior to the hearing. The representative’s authorization form must contain Respondent’s original signature for a representative to appear at an in-person hearing.

[(f) Be] (d) Discipline. A representative will be subject to discipline, including but not limited to suspension or [revocation of the representative’s right to appear] bar from appearing before the Tribunal, for failing to follow the provisions of this [subdivision] section, § 6-25, and any other rules of the Tribunal. A list of representatives whose registration has been suspended [, revoked,] or who have been barred from appearing may be made public.

§ 2. Section 6-25 of subchapter F of chapter 6 of title 48 of the rules of the city of New York is amended to read as follows:

(a) Prohibited Conduct. A party, witness, representative or attorney must not engage in misconduct, such as:

(1) Engage in abusive, disorderly or delaying behavior, a breach of the peace or any other disturbance which directly or indirectly tends to disrupt, obstruct or interrupt the proceedings [at] or operations of the Tribunal;

(2) Engage in any disruptive [verbal] conduct[, action] or [gesture] communication that a reasonable person would believe to be intimidating or that shows contempt or disrespect for the proceedings [or that a reasonable person would believe to be intimidating] or operations of the Tribunal;

(3) [Willfully disregard] Disregard the authority of the Hearing Officer or other Tribunal employee or contractor. This may include refusing to comply with [the Hearing Officer's] directions or behaving in a disorderly, delaying or obstructionist manner;

(4) Leave a hearing in progress without the permission of the Hearing Officer;

(5) Attempt to influence or offer [or agree to attempt] to influence any Hearing Officer or other Tribunal employee [of the Tribunal] or contractor by the use of threats, accusations, duress [or], coercion, [a] promise of advantage, or [the bestowing] giving or [offer of] offering any gift, favor or thing of value;

(6) Attempt to influence a decision by initiating communication with a Hearing Officer before or after a hearing;

[(6)] (7) Enter any non-public area [other than a public waiting area] unless accompanied or authorized by a Tribunal employee or contractor. Upon conclusion of a hearing, a party, witness, representative or attorney must promptly exit non-public areas;

[(7)] (8) Request any Tribunal [clerical staff] employee or contractor to perform tasks that are illegal, unreasonable or outside the scope of the employee[']s] or contractor's job duties;

[(8)] (9) Operate without express authorization any Tribunal computer terminal or other equipment at any time unless [given express authorization or] the equipment has been designated for use by the public;

[(9)] (10) Make a statement, [Submit] submit a document, or present testimony or other evidence to the Tribunal [which] that he or she knows, or reasonably should have known, to be false, fraudulent or misleading;

[(10)] (11) Induce or encourage anyone to make a false statement to the Tribunal;

[(11)] (12) [Solicit clients or cause the solicitation of client] Solicit a party or cause the solicitation of a party by another person on Tribunal premises, the public spaces of buildings within which Tribunal premises are located, or the premises of any City agency or other governmental subdivision that issues summonses returnable to the Tribunal. The exchange of money in any area of the Tribunal will create a rebuttable presumption of solicitation;

(13) Solicit a party by any form of communication that references a summons issued to that party that is returnable to the Tribunal. This does not include a communication made in response to a specific request of a prospective client;

(14) Request from the Tribunal a list of names and addresses for the purpose of solicitation or fundraising.

(15) Hold him or herself out to be an attorney at law or a governmental employee if the representative is neither. A representative who is not an attorney admitted to practice in New York State must refer to him or herself as a “representative” when appearing before the Tribunal;

[(12)] (16) Make or cause to be made [a stenographic,] an electronic, audio, audio-visual or other verbatim or photographic reproduction of any [hearing or other] proceeding, whether such [hearing or other] proceeding is conducted in person, by telephone, or other remote method[s], except upon [application] request to the Hearing Officer [. This does not include copies of documents submitted to the Tribunal during a hearing including written or electronic statements and exhibits. Except as otherwise provided by law, such application must be addressed to the Hearing Officer], who may grant or deny the [application or grant it] request in full [,] or in part, or upon such conditions as the Hearing Officer deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons[.]; or

(17) Any conduct or course of conduct that demonstrates a lack of honesty and integrity in the representation of parties before this or any other tribunal or court. This includes making false, misleading, or inappropriate statements to parties.

(b) [Prohibited Communication

(1) All parties must be present when communications with Tribunal personnel, including a Hearing Officer, occur, except as necessary for case processing and unless otherwise permitted by these rules, on consent or in an emergency.

(2) All persons are prohibited from initiating communication with a Hearing Officer or other employee before or after a hearing or before or after a decision on motion, in order to attempt to influence the outcome of a hearing or decision on motion.

(c) [Penalties for Misconduct

(1) Failure to abide by [these] the rules of conduct contained in this section, § 6-23, or any other rules of the Tribunal constitutes misconduct. The Chief Administrative Law Judge or his or her designee may, for good cause, suspend or bar from appearing before the Tribunal an attorney [or], representative, Respondent, or witness who fails to abide by these rules. The suspension may be either for a specified period of time or indefinitely until the attorney [or], representative, Respondent, or witness, demonstrates to the satisfaction of the Chief Administrative Law Judge or his or her designee that the basis for the suspension no longer exists. A list of representatives, parties, witnesses, or attorneys who have been suspended or barred from appearing at the Tribunal may be made public.

(2) [However, the] The Chief Administrative Law Judge or his or her designee may not act until after the attorney [or], representative, Respondent, or witness is given notice and a reasonable opportunity to appear before the Chief Administrative Law Judge or his or her designee to rebut the claims against him or her. The Chief Administrative Law Judge or his or her designee, depending upon the nature of the conduct, will determine whether said appearance will be in person or by a remote method.

[This section in no way limits the powers of a Hearing Officer as set out in § 6-13 of this chapter.]

(3) As provided in § 6-13(c), any party, witness, or other person who violates these rules may be required to leave the Tribunal premises.

[(d) Discipline on Other Grounds] (c) Summary Suspension or Bar

(1) Notwithstanding the provisions of subdivision [(c)] (b) of this section, the Chief Administrative Law Judge may summarily suspend or bar a representative or attorney upon a determination that the representative or attorney: (A) lacks honesty and integrity and that the lack of honesty and integrity will adversely affect his or her practice before the Tribunal; or (B) has engaged in egregious disruptive behavior at the Tribunal.

(2) Any action pursuant to this subdivision will be on notice to the representative or attorney. After the summary suspension or bar, the representative or attorney will be given an opportunity to be heard in a proceeding prescribed by the Chief Administrative Law Judge or his or her designee. Factors to be considered in determining whether a representative or attorney lacks honesty and integrity include, but are not limited to, considering whether the representative or attorney has made false[,] or misleading [or inappropriate] statements to parties or Tribunal [staff] employees or contractors.

[(e)] (d) Judicial Review. The decision of the Chief Administrative Law Judge or his or her designee under subdivision (b) or (c) [or (d)] of this section constitutes a final determination. Judicial review of the [decision] determination may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.