Title 48: Office of Administrative Trials and Hearings (OATH)

Chapter 1: Rules of Practice Applicable to Cases at the OATH Trials Division

(Amended City Record 6/1/2015, eff. 7/1/2015)

Subchapter A: General Matters

§ 1-01 Definitions.

As used in this chapter:

Administrative law judge. "Administrative law judge" means the person assigned to preside over a case, whether the Chief Administrative Law Judge or a person appointed by the Chief Administrative Law Judge.

Agency. "Agency" means any commission, board, department, authority, office or other governmental entity authorized or required by law to refer a case to OATH, regardless of whether the agency is petitioner or respondent in such a case.

Appearance. “Appearance” means a communication with the OATH Trials Division or any other participation in a proceeding before the OATH Trials Division by a party, the attorney or representative of a party, or another individual in connection with a petition that is or was pending before the OATH Trials Division. An appearance may be made in person or, at the discretion of the OATH Trials Division, by remote means.

CAPA. "CAPA" means the City Administrative Procedure Act, Sections 1041 to 1047 of the New York City Charter ("Charter").

Case. "Case" means an adjudication pursuant to CAPA, Section 1046 of the Charter, referred to OATH pursuant to Section 1048 of the Charter.

Chief Administrative Law Judge. "Chief Administrative Law Judge" means the director and chief executive officer of OATH appointed by the mayor pursuant to Section 1048 of the Charter.

Electronic means. "Electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression, e.g. facsimile transmission and e-mail.

Filing. "Filing" means submitting papers to OATH, whether in person, by mail, or by electronic means, for inclusion in the record of proceedings in a case.

Mailing. "Mailing" means the deposit, in a post office or official depository under the exclusive care and custody of the United States Postal Service, of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at such person's last known address.

OATH. "OATH" means the Office of Administrative Trials and Hearings, including the OATH Trials Division and the OATH Hearings Division (see 48 RCNY § 6-02).

OATH Trials Division. "OATH Trials Division" means the adjudicatory body authorized to conduct proceedings pursuant to 48 RCNY Chapters 1 and 2.

Petition. "Petition" means a document, analogous to a complaint in a civil action, which states the claims to be adjudicated.

Petitioner. "Petitioner" means a party asserting claims.

Remote means. “Remote means” refers to any means of communication or attendance, as applicable, that does not require the physical presence of a party, representative, or other individual and that has been approved by the OATH Trials Division. At the discretion of the OATH Trials Division, remote means may include, but are not limited to, telephonic communication, postal mail and online communication, including e-mail and videoconferencing.

Respondent. "Respondent" means a party against whom claims are asserted.

Trial. "Trial" means a proceeding before an administrative law judge in the OATH Trials Division. Such proceedings may either be conducted in person or, at the discretion of the OATH Trials Division, by remote means.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 1-02 Jurisdiction.

Pursuant to Section 1049(3) of the Charter, OATH's jurisdiction includes the authority to render any ruling or order necessary and appropriate under applicable law or agency rule for the just and efficient adjudication of cases.

§ 1-03 Applicability.

This chapter applies to the conduct of all cases, including trials, pre-trial and post-trial matters, except to the extent that this chapter may be superseded by CAPA or other provision of law.

(Amended City Record 6/1/2015, eff. 7/1/2015)

§ 1-04 Construction and Waiver.

This title will be liberally construed to promote just and efficient adjudication of cases. This title may be waived or modified on such terms and conditions as may be determined in a particular case to be appropriate by an administrative law judge.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-05 Effective Date.

This chapter is effective on the first day permitted by CAPA, § 1043(e), and applies to all cases brought before the OATH Trials Division. However, for cases initiated prior to the effective date of these rules, no act which was valid, timely or otherwise proper under the rules applicable at the time of the act will be rendered improper by the subsequent effectiveness of this chapter.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-06 Computation of Time.

Periods of days prescribed in this chapter will be calculated in calendar days, except that when a period of days expires on a Saturday, Sunday or legal holiday, the period will run until the next business day. Where this chapter prescribes different time periods for taking an action depending whether service of papers is personal or by mail, service of papers by electronic means will be deemed to be personal service, solely for purposes of calculating the applicable period of time.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-07 Filing of Papers.

(a) *Generally.* Papers may be filed at OATH in person, by mail or by electronic means.

(b) *Headings.* The subject matter heading for each paper sent by personal service, mail or electronic means must indicate the OATH index number where one has been assigned pursuant to 48 RCNY § 1-26(b).

(c) *Means of service on adversary.* Submission of papers by a party in a case to the administrative law judge by electronic means, mail or personal delivery without providing equivalent method of service to all other parties will be deemed to be an *ex parte* communication.

(d) *Proof of service.* Proof of service must be maintained by the parties for all papers filed at OATH. Proof of service must be in the form of an affidavit by the person effecting service, or in the form of a signed acknowledgement of receipt of papers by the person receiving the papers. A writing admitting service by the person to be served is adequate proof of service. Proof of service for papers served by electronic means, in addition to the foregoing, may also be in the form of a record confirming delivery or acknowledging receipt of the electronic transmission.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-08 Access to Facilities and Programs by People with Disabilities.

OATH is committed to providing equal access to its facilities and programs to people with disabilities and OATH will make reasonable accommodations requested by people with disabilities. A person requesting an accommodation for purposes of participation in a case at OATH, including attendance as a member of the public, must request such accommodation sufficiently in advance of the proceeding in which the person wishes to participate to permit a reasonable time to evaluate the request. A request for accommodation must be submitted to OATH's Calendar Unit.

(Amended City Record 7/8/2016, eff. 8/7/2016)

Subchapter B: Rules of Conduct

§ 1-11 Appearances.

(a) Parties may appear themselves, by an attorney, or by a duly authorized representative. A person appearing for a party is required to file a notice of appearance with OATH. Docketing of a case by an attorney or representative of a party will be deemed to constitute the filing of a notice of appearance by that person. The filing of any papers by an attorney or representative who has not previously appeared will constitute the filing of a notice of appearance by that person, and must conform to the requirements of subdivisions (b), (d) and (e) of this section.

(b) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States must be indicated by the suffix "Esq." and the designation "attorney for (petitioner or respondent)", and the appearance of any other person must be indicated by the designation "representative for (petitioner or respondent)".

(c) Absent extraordinary circumstances, no application may be made or argued by any attorney or other representative who has not filed a notice of appearance. Any application submitted on behalf of a party or participation in a conference will be deemed an appearance by the attorney or representative. After making such an appearance, the attorney or representative must file a notice of appearance in conformity with subdivisions (b), (d) and (e) of this section.

(d) A person may not file a notice of appearance on behalf of a party unless he or she has been retained by that party to represent the party before OATH. Filing a notice of appearance constitutes a representation that the person appearing has been so retained. Filing a notice of appearance pursuant to subdivision (a) of this section constitutes a representation that the person appearing has read and is familiar with the rules of this subchapter.

(e) Each attorney or representative appearing before OATH must provide his or her address, telephone number, fax number, and an e-mail address on all notices of appearance and must provide prompt written notice of any change in name, address, telephone number, fax number, or e-mail address.

(Amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 1-12 Withdrawal and Substitution of Counsel.

(a) An attorney who has filed a notice of appearance must not withdraw from representation without the permission of the administrative law judge, on application. Withdrawals will not be granted unless upon consent of the client or when other cause exists as delineated in the applicable provisions of the Code of Professional Responsibility.

(b) Notices of substitution of counsel must be served and filed with OATH and the opposing party. A party may substitute counsel without leave of the administrative law judge as long as the substitution is made more than twenty days before trial. Applications for later substitutions of counsel will be granted freely absent prejudice or substantial delay of proceedings.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-13 Conduct; Suspension from Practice at OATH.

(a) Individuals appearing before OATH must comply with the rules of this chapter and any other applicable rules, and must comply with the orders and directions of the administrative law judge.

(b) Individuals appearing before OATH must conduct themselves at all times in a dignified, orderly and decorous manner. In particular, at the trial, all parties, their attorneys or representatives, and observers must address themselves only to the administrative law judge, avoid colloquy and argument among themselves, and cooperate with the orderly conduct of the trial.

(c) Attorneys and other representatives appearing before OATH must be familiar with the rules of this title.

(d) Attorneys appearing before OATH must conduct themselves in accordance with the canons, ethical considerations and disciplinary rules set forth in the code of professional responsibility in their representation of their clients, in their dealings with other parties, attorneys and representatives before OATH, and with OATH's administrative law judges and staff.

(e) Willful failure of any person to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, may, in the discretion of the administrative law judge, be cause for the imposition of sanctions. Such sanctions may include formal admonishment or reprimand, assessment of costs

or imposition of a fine, exclusion of the offending person from the proceedings, exclusion or limitation of evidence, adverse evidentiary inference, adverse disposition of the case, in whole or in part, or other sanctions as the administrative law judge may determine to be appropriate. The imposition of sanctions may be made after a reasonable opportunity to be heard. The form of the trial will depend upon the nature of the conduct and the circumstances of the case.

(f) In the event that an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the Chief Administrative Law Judge may, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against him or her, suspend that attorney or representative from appearing at OATH, either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the Chief Administrative Law Judge that the basis for the suspension no longer exists.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-14 *Ex Parte* Communications.

(a) Except for ministerial matters, on consent, in an emergency, or as provided in 48 RCNY § 1-31(a), communications with the administrative law judge concerning a case must only occur with all parties present, either in person or by remote means. If an administrative law judge receives an *ex parte* communication concerning the merits of a case to which he or she is assigned, then he or she must promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the *ex parte* communication will be allowed to do so upon request.

(b) Communications between OATH and a party docketing a case, to the extent necessary to the placement of a case on the trial calendar or conference calendar pursuant to 48 RCNY § 1-26(a), will be deemed to be ministerial communications. Communications between OATH and a party docketing a case, to the extent necessary to a request for expedited calendaring pursuant to 48 RCNY § 1-26(c), will be deemed to be emergency communications.

(Amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

Subchapter C: Pre-Trial Matters

§ 1-21 Designation of OATH.

Where necessary under the provision of law governing a particular category of cases, the agency head will designate the Chief Administrative Law Judge of OATH, or such administrative law judges as the Chief Administrative Law Judge may assign, to hear such cases.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-22 The Petition.

The petition must include a short and plain statement of the matters to be adjudicated, and, where appropriate, specifically allege the incident, activity or behavior at issue as well as the date, time, and place of occurrence. The petition must also identify the law, rule, regulation, contract provision, or policy that was allegedly violated and provide a statement of the relief requested. If the petition does not comply with this provision, the administrative law judge may direct, on the motion of a party or *sua sponte*, that the petitioner re-plead the petition.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-23 Service of the Petition.

(a) The petitioner must serve the respondent with the petition. The petition must be accompanied by a notice of the following: the respondent's right to file an answer and the deadline to do so under 48 RCNY § 1-24; the respondent's right to representation by an attorney or other representative; and the requirement that a person representing the respondent must file a notice of appearance with OATH. The notice must include the statement that OATH's rules of practice and procedure are published in Title 48 of the Rules of the City of New York, and that copies of OATH's rules are available at OATH's offices or on OATH's website www.nyc.gov/oath.

(b) Service of the petition must be made pursuant to statute, rule, contract, or other provision of law applicable to the type of proceeding being initiated. Absent any such applicable law, service of the petition must be made in a manner reasonably calculated to achieve actual notice to the respondent. Service by certified mail, return receipt requested, contemporaneously with service by regular first-class mail, will be presumed to be reasonably calculated to achieve actual notice. Appropriate proof of service must be maintained.

(c) A copy of the petition and accompanying notices, with proof of service, must be filed with OATH at or before the commencement of the trial.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-24 Answer.

The respondent may serve and file an answer to the petition within eight days of service of the petition if service was personal, or within thirteen days of service of the petition if service was by mail, unless a different time is fixed by the administrative law judge. In the discretion of the administrative law judge, the respondent may be required to serve and file an answer. Failure to file an answer where required, may result in sanctions, including those specified in 48 RCNY § 1-33(e).

§ 1-25 Amendment of Pleadings.

Amendments of pleadings must be made as promptly as possible. If a pleading is to be amended less than twenty-five days before the commencement of the trial, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-26 Docketing the Case.

(a) A case must be docketed by filing with OATH a completed intake sheet, and either a petition or a written application for relief. Parties are encouraged to docket cases by electronic means. When a case is docketed, OATH will place it on the trial calendar, the conference calendar, or on open status. Absent prejudice, cases involving the same respondent or respondents will be scheduled for joint trials or conferences, as will cases alleging different respondents' involvement in the same incident or incidents.

(b) When a case is docketed, it will be given an index number and assigned to an administrative law judge. Assignments will be made and changed in the discretion of the Chief Administrative Law Judge or his or her designee, and motions concerning such assignments will not be entertained except pursuant to 48 RCNY § 1-27.

(c) OATH may determine that the case is not ready for trial or conference and may adjourn the trial or conference, or may remove the case from the trial or conference calendar and place it on open status. In addition, OATH may determine that the case should proceed on an expedited basis, and may direct expedited procedures, including expedited pre-trial and post-trial procedures, shortened notice periods, and/or expedited calendaring.

(d) The party docketing a case may do so *ex parte*. If the case is placed on the conference calendar or the trial calendar rather than on open status, the party may at the time of docketing also select a trial date and/or conference date *ex parte*. However, OATH encourages selection of trial and conference dates by all parties jointly. In the event that a party selects a trial date or a conference date *ex parte*, that party must serve the notice of conference or trial required by 48 RCNY § 1-28, within one business day of selecting that date. Whenever practicable, such notice must be served by personal delivery or electronic means.

(e) Each case docketed with the Trials Division is subject to review by the Chief Administrative Law Judge, who shall determine whether the case shall proceed at the Trials Division or be removed to the Hearings Division.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 6/18/2021, eff. 7/18/2021)

§ 1-27 Disqualification of Administrative Law Judges.

(a) A motion for disqualification of an administrative law judge must be addressed to that administrative law judge, accompanied by a statement of the reasons for such application, and made as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist.

(b) The administrative law judge will be disqualified for bias, prejudice, interest, or any other cause for which a judge may be disqualified in accordance with § 14 of the Judiciary Law. In addition, an administrative law judge may, *sua sponte* or on motion of any party, withdraw from any case, where in the administrative law judge's discretion, his/her ability to provide a fair and impartial adjudication might reasonably be questioned.

(c) If the administrative law judge determines that his or her disqualification or withdrawal is warranted on grounds that apply to all of the existing administrative law judges, the administrative law judge must state that determination, and the reasons for that determination, in writing or orally on the record, and may recommend to the Chief Administrative Law Judge that the case be assigned to a special administrative law judge to be appointed temporarily by the Chief Administrative Law Judge. The Chief Administrative Law Judge will either accept that recommendation, or, upon a determination and reasons stated in writing or orally on the record, reject that recommendation. A special administrative law judge will have all of the authority granted to administrative law judges under this title.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-28 Notice of Conference or Trial.

(a) When a case is placed on either the trial calendar or the conference calendar, and within the time provided in 48 RCNY § 1-26(d), if applicable, the party that placed the case on the calendar must serve each other party with notice of the following: the date, the time and, if applicable, the place of the trial or conference and whether the OATH Trials Division has determined if it will be held in person or by remote means; each party's right to representation by an attorney or other representative at the trial or conference; the requirement that a person representing a party at the trial or conference must file a notice of appearance with OATH prior to the trial or conference; and, in a notice of a trial served by the petitioner, the fact that failure of the respondent or an authorized representative of the respondent to appear at the hearing may result in a declaration of default, and a waiver of the right to a trial or other disposition against the respondent. The notice may be served personally, by mail, or, upon consent of the parties, by e-mail, and appropriate proof of service must be maintained. A copy of the notice of conference, with proof of service, must be filed with OATH at or before the commencement of the conference. A copy of the notice of trial, with proof of service, must be filed with OATH at or before the commencement of the trial.

(b) When multiple petitions against a single respondent, or petitions against multiple respondents, are placed on the calendar or calendar conference for joint trial or conference pursuant to 48 RCNY § 1-26(a), notice of trial or notice of conference pursuant to this section must include notice of such joinder.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 1-29 Scheduling Other Conferences.

In the discretion of the administrative law judge, and whether or not a case has been on the conference calendar, conferences may be scheduled on application of either party or *sua sponte*.

§ 1-30 Conduct of Conferences.

(a) All parties are required to appear at conferences as scheduled unless timely application is made to the administrative law judge. Participants must be prompt and prepared to begin on time. No particular format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the particular case. The administrative law judge may propose mediation and, where the parties consent, may refer the parties to the Center for Creative Conflict Resolution or other qualified mediators.

(b) At the conference, all parties must be fully prepared to discuss all aspects of the case, including the formulation and simplification of issues, the possibility of obtaining admissions or stipulations of fact and of admissibility or authenticity of documents, the order of proof and of witnesses, discovery issues, legal issues, pre-hearing applications, scheduling, and settlement of the case.

(c) In the event that the case is not settled at the conference, outstanding pre-trial matters, including discovery issues, must be raised during the conference. In the event that the case is not settled at the conference, a trial date may be set, if such a date has not already been set. The parties will be expected to know their availability and the availability of their witnesses for trial.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 1-31 Settlement Conferences and Agreements.

(a) Prior to a conference at which settlement is to be discussed, the administrative law judge assigned to the conference may require each party to provide a pre-conference letter. The pre-conference letter must be sent solely to the administrative law judge by fax or e-mail and marked prominently "CONFIDENTIAL MATERIAL FOR USE AT SETTLEMENT CONFERENCE." The pre-conference letter must state succinctly:

(1) the history of settlement negotiations, if any;

(2) the party's settlement offer and the rationale for it; and

(3) any other facts that would be helpful to the administrative law judge in preparation for the conference.

(b) If settlement is to be discussed at the conference, each party must have an individual possessing authority to settle the matter, either present at the conference or readily accessible. All individuals participating in the conference shall be present or readily accessible either in person or, at the discretion of the OATH Trials Division, by remote means, as applicable. A settlement conference will be conducted by an administrative law judge or other individual designated by the Chief Administrative Law Judge, other than the administrative law judge assigned to hear the case. During settlement discussions, upon notice to the parties, the administrative law judge or other person conducting the conference may confer with each party and/or representative separately.

(c) All settlement offers, whether or not made at a conference, will be confidential and will be inadmissible at trial of any case. Administrative law judges or other individuals designated by the Chief Administrative Law Judge to conduct settlement conferences must not be called to testify in any proceeding concerning statements made at a settlement conference.

(d) A settlement must be reduced to writing, or, in the discretion of the administrative law judge, placed on the record. In the event that a settlement is reached other than at a conference, OATH must be notified immediately pursuant to 48 RCNY § 1-32(f). Copies of all written settlement agreements must be sent promptly to OATH.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 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.

(Added City Record 12/6/2021, eff. 1/5/2022)

§ 1-32 Adjournments.

(a) Applications for adjournments of conferences or trials will be governed by this section and by 48 RCNY § 1-34 or § 1-50. Conversion of a trial date to a conference date, or from conference to trial, will be deemed to be an adjournment.

(b) Applications to adjourn conferences or trials must be made to the assigned administrative law judge as soon as the need for the adjournment becomes apparent. Applications for adjournments are addressed at the discretion of the administrative law judge, and will be granted only for good cause. Although consent of all parties to a request for an adjournment will be a factor in favor of granting the request, such consent will not by itself constitute good cause for an adjournment. Delay in seeking an adjournment will militate against grant of the request.

(c) If a party selects a trial or conference date without consulting with or obtaining the consent of another party pursuant to 48 RCNY § 1-26(d), an application for an adjournment of such date by that other party, especially if such application is based upon a scheduling conflict, will be decided with due regard to the *ex parte* nature of the case scheduling.

(d) An attorney must file an affirmation of actual engagement prior to a ruling on an adjournment sought on that basis. Such affirmation must state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date that the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the engagement.

(e) Approved adjournments, other than adjournments granted on the record, must be promptly confirmed in writing by the applicant, to all parties and to the administrative law judge.

(f) Withdrawal of a case from the calendar by the petitioner will not be subject to the "good cause" requirement of subdivision (b) of this section. However, such withdrawal, other than pursuant to settlement agreement or other final disposition of the case, will be permitted only upon application to the administrative law judge, who may grant or deny the application, either in full or upon stated terms and conditions.

(g) At the discretion of the administrative law judge, a grant of an adjournment may be conditioned upon the imposition of costs for travel, lost earnings and witness fees, which may be assessed against the party causing the need for an adjournment.

(h) If an administrative law judge determines that a case is not ready for trial or conference and that an adjournment is inappropriate, the judge may remove the case from the calendar. Unless otherwise directed by the administrative law judge, the case will be administratively closed if the parties do not restore the matter to the calendar within 30 days.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-33 Discovery.

(a) Requests for production of documents, for identification of trial witnesses, and for inspection of real evidence to be introduced at the trial may be directed by any party to any other party without leave of the administrative law judge.

(b) Depositions must only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, will not be permitted except upon agreement among the parties or upon motion for good cause shown. Demands for bills of particulars will be deemed to be interrogatories. Resort to such extraordinary discovery devices will not generally be cause for adjournment of a conference or trial.

(c) Discovery must be requested and completed promptly, so that each party may reasonably prepare for trial. A demand for identification of witnesses, for production of documents, or for inspection of real evidence to be introduced at trial must be made not less than twenty days before trial, or not less than twenty-five days if service of the demand is by mail. An answer to a discovery request must be made within fifteen days of receipt of the request, or within ten days if service of the answer is by mail. An objection to a discovery request must be made as promptly as possible, but in any event within the time for an answer to that request. Different times may be fixed by consent of the parties, or by the administrative law judge for good cause. Notwithstanding the foregoing time periods, where the notice of the trial is served less than twenty-five days in advance of trial, discovery must proceed as quickly as possible, and time periods may be fixed by consent of the parties or by the administrative law judge.

(d) (1) Parties are encouraged to resolve discovery disputes without the intervention of an administrative law judge. A party objecting to discovery should immediately commence discussion with the requesting party to clarify and possibly resolve the dispute.

(2) Any unresolved discovery dispute must be presented to the assigned administrative law judge sufficiently in advance of the trial to allow a timely determination. A written motion to compel discovery must be served on all parties and the administrative law judge assigned to conduct the trial. The motion must state what efforts the parties have made to resolve discovery disputes. Any party objecting to a discovery motion must state, in writing, the grounds for the objection. In deciding whether to grant a request, the administrative law judge may consider the timeliness of discovery requests and responses and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties.

(3) In ruling upon a discovery motion, the administrative law judge may deny the motion, order compliance with a discovery request, order other discovery, or take other appropriate action. The administrative law judge may grant or deny discovery upon specified conditions, including payment by one party to another of stated expenses of the discovery. Failure to comply with an order compelling discovery may result in imposition of appropriate sanctions upon the disobedient party, attorney or representative, such as the sanctions set forth in 48 RCNY § 1-13(e), the preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the case, or declaration of default.

(4) On his or her own motion or on the motion of any of the parties, the administrative law judge may issue a protective order denying, limiting, or conditioning the use of any discovery device available under subdivisions (a) or (b) of this section, in order to prevent the inappropriate use of such device.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 4/23/2021, eff. 5/23/2021)

§ 1-34 Pre-Trial Motions.

(a) Pre-trial motions will be consolidated and addressed to the administrative law judge as promptly as possible, and sufficiently in advance of the trial to permit a timely decision to be made. Delay in presenting such a motion may, in the discretion of the administrative law judge, weigh against the granting of the motion, or may lead to the granting of the motion upon appropriate conditions.

(b) A moving party must request in writing an informal conference with the administrative law judge before any dispositive motion will be heard. The request must, in no more than two pages, set forth the nature of the motion.

(c) The administrative law judge may in his or her discretion permit pre-trial motions to be made orally, including by telephone, electronic means, or in writing. The administrative law judge may require the parties to submit legal briefs on any motion. Parties are encouraged to make pre-trial motions, or to conduct preliminary discussions and scheduling of such motions, by conference telephone call or by electronic means to the administrative law judge.

(d) When a motion is made on papers, the motion papers must state the grounds upon which the motion is made and the relief or order sought. Motion papers must include notice to all other parties of their time pursuant to subdivision (d) of this section to serve papers in opposition to the motion. Motion papers and papers in opposition must be served on all other parties, and proof of service must be filed with the papers. The filing of motion papers or papers in opposition by a representative who has not previously appeared will constitute the filing of a notice of appearance by that representative, and must conform to the requirements of 48 RCNY § 1-11(b).

(e) Unless otherwise directed by the administrative law judge upon application or *sua sponte*, the opposing party must file and serve responsive papers no later than eight days after service of the motion papers if service of the motion papers was personal or by electronic means, and no later than thirteen days after service if service of the motion papers was by mail.

(f) The moving party must not file reply papers unless authorized by the administrative law judge, and oral argument will not be scheduled except upon the direction of the administrative law judge.

(g) Nothing in this section limits the applicability of other provisions to specific pre-trial motions. For instance, an application for withdrawal or substitution of counsel is also governed by 48 RCNY § 1-12; an application for an adjournment is also governed by 48 RCNY § 1-32; and an application for issuance of a subpoena is also governed by 48 RCNY § 1-43.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

Subchapter D: Trials and Hearings

§ 1-41 Consolidation; Separate Trials.

All or portions of separate cases may be consolidated for trial, or portions of a single case may be severed for separate trials, in the discretion of the administrative law judge. Consolidation or severance may be ordered on motion or *sua sponte,* in furtherance of justice, efficiency or convenience.

§ 1-42 Witnesses and Documents.

The parties must have all of their witnesses available on the trial date. A party intending to introduce documents into evidence must bring to trial copies of those documents for the administrative law judge, the witness, and the other parties. Repeated failure to comply with this section may be cause for sanctions, as set forth in 48 RCNY § 1-13(e).

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-43 Subpoenas.

(a) A subpoena ad testificandum requiring the attendance of a person to give testimony prior to or at a trial or a subpoena duces tecum requiring the production of documents or things at or prior to a trial may be issued only by the administrative law judge upon application of a party or *sua sponte*.

(b) A request by a party that the administrative law judge issue a subpoena will be deemed to be a motion, and must be made in compliance with 48 RCNY § 1-34 or 48 RCNY § 1-50, as appropriate; provided, however, that such a motion must be made on 24 hours' notice by electronic means or personal delivery of papers, including a copy of the proposed subpoena, unless the administrative law judge directs otherwise. The proposed subpoena may be prepared by completion of a form subpoena available from OATH. The making and scheduling of requests for issuance of subpoenas by telephone conference call to the administrative law judge or by electronic means is encouraged.

(c) Subpoenas must be served in the manner provided by § 2303 of the Civil Practice Law and Rules, unless the administrative law judge directs otherwise. The party requesting the issuance of a subpoena will bear the cost of service, and of witness and mileage fees, which will be the same as for a trial subpoena in the Supreme Court of the State of New York.

(d) In the event of a dispute concerning a subpoena after the subpoena is issued, informal resolution must be attempted with the party who requested issuance of the subpoena. If the dispute is not thus resolved, a motion to quash, modify or enforce the subpoena must be made to the administrative law judge.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-44 Interpreters.

(a) OATH will provide language assistance services to a party or their witnesses who are in need of such services to communicate at a trial or conference. All requests for language assistance must be made to OATH's calendar unit.

(b) A request for language assistance by telephone may be made at any time before the trial or conference.

(c) A request for in-person interpretation must be made at least five (5) business days before the trial or conference

(d) A request for sign language interpretation must be made at least three (3) calendar days before the trial or conference.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-45 Failure to Appear.

All parties, attorneys and other representatives are required to appear at OATH and to be prepared to proceed at the time scheduled for commencement of trial. Commencement of trial, or of any session of trial, will not be delayed beyond the scheduled starting time except for good cause as determined in the discretion of the administrative law judge. Absent a finding of good cause, and to the extent permitted by the law applicable to the claims asserted in the petition, the administrative law judge may direct that the trial proceed in the absence of any missing party or representative, render a disposition of the case adverse to the missing party, or take other appropriate measures, including the imposition of sanctions listed in 48 RCNY § 1-13(e). Relief from the direction of the administrative law judge may be had only upon motion brought as promptly as possible pursuant to 48 RCNY § 1-50

or § 1-52. The administrative law judge may grant or deny such a motion, in whole, in part, or upon stated conditions.

(Amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 1-46 Evidence at the Trial.

(a) Compliance with technical rules of evidence, including hearsay rules, will not necessarily be required. Traditional rules governing trial sequence will apply. In addition, principles of civil practice and rules of evidence may be applied to ensure an orderly proceeding and a clear record, and to assist the administrative law judge in the role as trier of fact. Traditional trial sequence may be altered by the administrative law judge for convenience of the parties, attorneys, witnesses, or OATH, where substantial prejudice will not result.

(b) The administrative law judge may limit examination, the presentation of testimonial, documentary or other evidence, and the submission of rebuttal evidence. The administrative law judge may accept testimony at trial by telephone or other electronic means, including video conferencing. Objections to evidence offered, or to other matters, will be noted in the transcript, and exceptions need not be taken to rulings made over objections. The administrative law judge may call witnesses, may require any party to clarify confusion, fill gaps in the record, or produce witnesses, and may question witnesses directly.

(1) A party, representative or attorney shall not offer information concerning a person's actual or perceived immigration status unless and until the administrative law judge reviews such information in chambers and determines that such information is relevant and not introduced solely to subject that person to harassment, intimidation, physical danger, or other harms in connection with the person's immigration status. Notwithstanding any other provision of this subdivision, a party may voluntarily introduce or authorize the introduction of information about his or her own immigration status.

(2) Any party, representative or attorney who offers immigration status information of a person not in compliance with paragraph one of this subdivision may be subject to sanctions pursuant to 48 RCNY § 1-13, and such information may be struck from the record.

(c) In the discretion of the administrative law judge, closing statements may be made orally or in writing. On motion of the parties, or *sua sponte*, the administrative law judge may direct written post-trial submissions, including legal briefing, proposed findings of fact and conclusions of law, or any other pertinent matter.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 4/23/2021, eff. 5/23/2021)

§ 1-47 Evidence Pertaining to Penalty or Relief.

(a) A separate trial will not be held as to the penalty to be imposed or the relief to be granted in the event that the petition is sustained in whole or in part.

(b) In the event that a personnel file, abstract of a personnel file, driver record, owner record, or other similar or analogous file is not admitted into evidence at the trial on the merits, the administrative law judge, upon determining that the petition will be sustained in whole or in part, may request that the petitioner forward such file or record to the administrative law judge for consideration relative to penalty or relief. That request may be conveyed to the petitioner or the petitioner's representative *ex parte* and without further notice to the respondent. The petitioner must forward only the requested file or record, without accompanying material, and such file or record must include only material which is available from the petitioner for inspection by the respondent as of right. In his or her report and recommendation, the administrative law judge will refer to any material from such file or record relied on in formulating the recommendation as to penalty or other relief.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-48 Official Notice.

(a) In reaching a decision, the administrative law judge may take official notice, before or after submission of the case for decision, on request of a party or *sua sponte* on notice to the parties, of any fact which may be judicially noticed by the courts of this state. Matters of which official notice is taken will be noted in the record, or appended thereto. The parties will be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by presentation of authority.

(b) Official notice may be taken, without notice to the parties, of rules published in the Rules of the City of New York or in The City Record. In addition, all parties are deemed to have notice that official notice may be taken of other regulations, directives, guidelines, and similar documents that are lawfully applicable to the parties, provided that any such materials that are unpublished are on file with OATH sufficiently before trial of the case to enable all parties to address at trial any issue as to the applicability or meaning of any such materials. Unpublished materials on file with OATH will be available for inspection by any party or attorney or representative of a party.

(Amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-49 Public Access to Proceedings.

(a) Other than settlement conferences, all proceedings are open to the public, unless the administrative law judge finds that a legally recognized ground exists for closure of all or a portion of the proceeding, or unless closure is required by law. Members of the public may be provided access to such proceedings in person or by remote means, in the discretion of the administrative law judge. Trial witnesses may be excluded from proceedings other than their own testimony in the discretion of the administrative law judge.

(b) No person may make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any trial or other proceeding, whether such trial or other proceeding is conducted in person or by remote means, except upon application to the administrative law judge or as otherwise provided by law (e.g. N.Y. Civil Rights Law, § 52). Such application must be addressed to the discretion of the administrative law judge, who may deny the application or grant it in full, in part, or upon such conditions as the administrative law judge deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(c) Transcripts of proceedings made a part of the record by the administrative law judge will be the official record of proceedings at OATH, notwithstanding the existence of any other transcript or recording, whether or not authorized under the previous subdivision of this section.

(d) Unless the administrative law judge finds that legally recognized grounds exist to omit information from a decision, all decisions will be published without redaction. To the extent applicable law or rules require that particular information remain confidential, including but not limited to the name of a party or witness or an individual's medical records, such information will not be published in a decision. On the motion of a party, or *sua sponte*, the administrative law judge may determine that publication of certain information will violate privacy rights set forth in applicable law or rules and may take appropriate steps to ensure that such information is not published.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016; amended City Record 10/13/2021, eff. 10/13/2021)

§ 1-50 Trial Motions.

Motions may be made during the trial orally or in writing. Trial motions made in writing must satisfy the requirements of 48 RCNY § 1-34. The administrative law judge may, in his or her discretion, require that any trial motion be briefed or otherwise supported in writing. In cases referred to OATH for disposition by report and recommendation to the head of the agency, motions addressed to the sufficiency of the petition or the sufficiency of the petitioner's evidence will be reserved until closing statements.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-51 The Transcript.

Trials will be stenographically or electronically recorded, and the recordings will be transcribed, unless the administrative law judge directs otherwise. In the discretion of the administrative law judge, matters other than the trial may be recorded and such recordings may be transcribed. Transcripts will be made part of the record, and will be made available upon request or as required by law.

(Amended City Record 6/1/2015, eff. 7/1/2015; amended City Record 7/8/2016, eff. 8/7/2016)

§ 1-51.1 Decision Made on the Record.

An administrative law judge may dispose of a case by making a decision or report and recommendation on the record.

§ 1-52 Post-Trial Motions.

Post-trial motions must be made in writing, in conformity with the requirements of 48 RCNY § 1-34, to the administrative law judge, except that after issuance of a report and recommendation in a case referred to OATH for such motions, as well as comments on the report and recommendation to the extent that such comments are authorized by law, must be addressed to the deciding authority.

(Amended City Record 7/8/2016, eff. 8/7/2016)