



NEW YORK COUNTY LAWYERS' ASSOCIATION

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Administrative Law Judge Reform Report by the New York County Lawyers' Association Subcommittee on Administrative Law Judge Reform of the Task Force on Judicial Selection

This Report was approved by the Board of Directors of the New York County Lawyers' Association at its regular meeting on September 12, 2005.

The Charter Revision Commission initially requested comments concerning whether the New York City Charter should be amended to include a position of Administrative Law Judge Coordinator and whether a Code of Ethics should be adopted for New York City Administrative Law Judges ("ALJ's") and Hearing Officers. *See* Preliminary Report of the Charter Revision Commission dated June 10, 2005 ("Preliminary Report"). The Preliminary Report recommended the establishment of the position of Administrative Law Judge Coordinator. In its Final Report of the 2004-2005 New York City Charter Revision Commission dated August 2, 2005 ("Final Report"), the Charter Revision Commission recommended that the position of Administrative Law Judge Coordinator be established by Executive Order but again did not provide a job description or budget for the proposed position. *See*, Final Report at 50.

The Preliminary Report also discussed the need for a Code of Ethics for New York City ALJ's. The Final Report recommends a ballot initiative that would "require the Mayor and the Chief ALJ of the Office of Administrative Trials and Hearings ("OATH") . . . to jointly issue rules establishing one or more code or codes of professional conduct for the City's ALJ's and Hearing Officers . . ." *See* Final Report at 83, Appendix A-2.

NYCLA's Task Force on Judicial Selection (hereinafter "Task Force") appointed a Subcommittee, consisting of Thomas V. Marino, Chairman, and Eugene J. Glicksman, Harley D. Diamond and Carol A. Sigmond, members (hereinafter collectively the "Subcommittee") to prepare a report responding to the Charter Revision Commission proposals^[1] and addressing the problems leading to these proposals.

^[1] The Subcommittee wishes to thank Damion Sanders, Fordham University Law School Class of 2006, for his assistance in the preparation of this Report.

EXECUTIVE SUMMARY

The Subcommittee supports the ballot initiative to the extent it requires the adoption of a uniform code of professional conduct applicable to all ALJ's and Hearing Officers serving in an adjudicatory function.

After an extensive review of the existing legal structure in which the adjudicatory function of ALJ's and Hearing Officers is performed in the City, the Subcommittee has concluded that the City lacks elementary and fundamental safeguards to insure the competence, fairness and impartiality of its tribunals. While the adoption of basic rights and procedures recommended by this Subcommittee is a start, the City must also adopt a method of insuring that these rights are respected and the procedures enforced. An Administrative Law Judge Coordinator with the coordinate power and an appropriate budget may be one way to achieve this result; however, in the absence of such fundamental laws and procedures, the Subcommittee questions the need for the creation of an essentially undefined position.

The Charter Revision Commission's stated goal is that: "All administrative tribunals must have the highest standards of adjudicatory practice to ensure that disputes continue to be resolved fairly, impartially, efficiently and consistently." *See*, "Final Report at 19. Similarly, Ethical Consideration 8-1, 22 NYCRR § 1200 states that we should endeavor to have a legal system that "commands public respect."^[2] With these guiding principles, the Subcommittee strongly recommends changes that would:

1. clearly distinguish the duties and responsibilities of ALJ's in their rule-making and adjudicatory functions;
2. require that all agencies that employ ALJ's in an adjudicatory function immediately comply with rules and regulations consistent with 9 NYCRR § 4.131 and/or 5 U.S.C. §§ 554, 556, 557, 3105 and 5372; and,
3. adopt by Charter a uniform code of professional conduct applicable to all New York City Administrative Law Judges similar to the code recommended by the National Association of Administrative Law Judges consistent with the regulations cited in paragraph 2 above. <http://www.naalj.org>

PRELIMINARY STATEMENT

Often the experience before administrative tribunals is the only gauge that citizens of this City have to measure the quality of City government. Administrative tribunals must be seen for what they are, the face of justice in our community. Deputy Mayor Robles-Roman, in testimony before the Charter Revision Commission, conceded as

^[2] EC8-1 provides in pertinent part: "Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances..."

much: "[T]he Mayor and I share the view that the City's administrative tribunals are often the only forums where our citizens have any significant interaction with City Government. The City's Administrative Law Judges^[3] and hearing officers represent the face of justice in our City and hence what justice means to a great number of New Yorkers each day." (Testimony of Deputy Mayor Robles-Roman before the Charter Revision Committee on January 19, 2005.)

The Subcommittee therefore commends the Charter Revision Commission for beginning the necessary and pressing process of reforming the City's administrative justice system. In particular, we applaud the Commission's effort to place on the ballot an initiative to establish a uniform Code of Professional Conduct that would govern both Administrative Law Judges and Hearing Officers performing an adjudicatory function at City agencies.

The Commission's reforms, however, do not go far enough. Currently, the City lacks a consistent set of principles governing all agencies that employ Administrative Law Judges and Hearing Officers in administrative tribunals. In the absence of such a set of rules, each agency is permitted to manage the process of administrative hearings however it chooses. This *ad hoc* approach to justice makes it impossible to insure that litigants will receive a consistent or even minimally acceptable quality of justice before New York City administrative tribunals. Fortunately, both the State and Federal governments have already tackled many of the issues confronting the City and the City can accomplish much and quickly simply by following their examples. Only after the City has established a uniform set of governing principles should the Mayor create a system to insure that City agencies comply with those principles. At that point, with the predicates for the position established, including its duties and responsibilities, the Mayor could create an Administrative Law Judge Coordinator to effect necessary reforms and oversee a fair and impartial administrative tribunal system.

Accordingly, at this time, the Subcommittee cannot endorse the proposal to create the position of Administrative Law Judge Coordinator and urges the Mayor to adopt immediately the reforms outlined in this Report.

BACKGROUND

A. LEGAL FRAMEWORK AND SHORTCOMINGS OF THE CITY'S RULES

^[3] New York City agency Administrative Law Judges are also widely known as "Hearing Officers" or "Hearing Examiners" within their agency context. The title "Administrative Law Judge" is largely a courtesy title as the lawyers who adjudicate violations have an agency title of "Hearing Officer." The State defines a Hearing Officer as "a person designated and empowered by an agency to conduct adjudicatory proceedings" and includes hearing officers, hearing examiners, and ALJ's. 9 NYCRR § 4.131. Significantly, OATH and the Tax Appeals Tribunal employ ALJ's. Charter §§ 1049(1) and 168(d). The United States government defines Administrative Law Judges as the employees authorized to conduct proceedings in accordance with 5 U.S.C. 553 (rule making) and 554 (adjudicatory). 5 U.S.C. 3105 and 5372.

The New York City Charter § 1048 establishes OATH as the agency charged with conducting hearings for City agencies, unless otherwise provided by Executive Order, law or rule. This Charter provision makes it appear as though New York City is among the municipalities “that have taken the administrative law judge function from the executive agency and have placed that function into a separate agency.”^[4] However, the New York City Administrative Code contains numerous provisions that would appear to allow agencies to hold their own administrative adjudicatory hearings.^[5] As a result, except as to issues involving employee discipline, OATH hearings are the exception, rather than the rule.

By operation of the Charter, all agency adjudicatory hearings are governed by the City’s Administrative Procedure Act (“APA”), New York City Charter, Chapter 45, Section 1046. Section 1046 requires: 1) reasonable notice of hearings that includes a statement of the legal authority and jurisdiction under which the hearing takes place, the time and place of the hearing and a statement of the matters to be adjudicated, including reference to applicable sections of the law and rules; 2) a hearing at which the parties are afforded due process to include subpoena power, cross examination of opposing witnesses and a bar on *ex parte* communications concerning the dispute (including distribution of unpublished internal agency directives), except as to ministerial matters; 3) findings of fact based solely on the record; 4) a record of the hearing; 5) a hearing officer whose sole responsibility is adjudicative; and 6) a written decision.

Unlike the State, the City’s APA does not contain provisions mandating that ALJ’s employed by City agencies be fair, impartial or independent of the agency that employs them.^[6] For example, 9 NYCRR § 4.131 mandates that ALJ’s employed by the State to conduct adjudicatory hearings be: “impartial, efficient, timely, expert and fair.” ALJ’s employed by the Federal government must meet similar requirements. To insure that they do so, Federal ALJ’s and the agencies that employ them are required to develop a full and complete record so as to allow for a fair disposition of the applicable dispute on appeal.^[7]

Also, the City has not attempted to draw a clear distinction between the fact-finding function performed by ALJ’s serving the rule-making function on the one hand and the adjudicatory function on the other. This distinction is clearly drawn at both the

^[4] National Association of American Law Judges website, <http://www.naalj.org> (describing “central panel states”).

^[5] *E.g.*, New York City Charter Chapter 65, Section 2302(c), which allows the Taxi and Limousine Commission to conduct its own adjudicatory hearings, or New York City Charter Chapter 64, Section 2203 (e), which appears to allow the Commission of Consumer Affairs to hold its own adjudicatory hearings. Time has not permitted the Subcommittee to analyze exhaustively the Charter provisions, Administrative Code provisions and Rules applicable to each agency.

^[6] The Department of Consumer Affairs has included this provision in its rules and regulations. This was the only agency that appeared to have such a provision.

^[7] 5 U.S.C. §§ 554, 556 and 557 have been judicially construed to require the Administrative Law Judge to “develop a full and fair record. . .” *Smith v. Secretary of Health, Ed. and Welfare*, 587 F.2d 857 (C.A. 7 1978). *See also Diabo v. Secretary of Health, Ed. and Welfare*, 627 F.2d 278, 282 (D.C.C. 1980) (“The administrative law judge has the power and duty to investigate fully all matters in issue, and to develop the comprehensive record required for a fair determination of disability.”)

State and Federal level. *See* 9 NYCRR § 4.131. *Compare* 5 U.S.C. § 551(5)(which defines "rule making" as an agency process of formulating, amending or repealing a rule) *with* 5 U.S.C. § 551(7)(which defines "adjudication" as an agency process for the formulation of an order). *See* 5 U.S.C. § 553 (rule making) and § 554 (adjudicatory). For a general discussion of the conflict created as a result of the dual functions performed by ALJ's *see*, M. Asimow, *The Administrative Judiciary: ALJ's in Historical Perspective*, 20 J.Nat'l A.Admin.L.Judges 157 (Spring 2000)("About half the states now have stripped at least some of their agencies of their captive judges, moving judges into a separate agency. Central panels have some very important advantages particularly in giving private parties the sense their cases are being heard by an independent judge.") *See also*, *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759. 764-66 (1969).

The failure by the City to draw this distinction in the rules and regulations governing its ALJ's and Hearing Officers is significant because when an ALJ receives evidence from an agency as part of his/her rule-making function, impartiality is not assumed, while impartiality is essential to the adjudicatory process. In order to prevent the role played by the ALJ serving the rule-making function from undermining the independence of ALJ's performing the adjudicatory function, the State and Federal governments have distinguished these two roles. The City, however, has not. The failure to do so undermines the confidence of the Bar in the way the adjudicatory function is performed.

Compounding this problem is the fact that the City, unlike the State, does not mandate that its ALJ's be independent of the agency they serve when performing the adjudicatory function. Specifically, 9 NYCRR § 4.131 bars a State agency from using an ALJ's rulings or decisions as criteria in making decisions concerning salary, promotion and benefits, working conditions, case assignments or opportunities. State agencies may not establish quotas for decisions, nor may the agencies direct the ALJ's to take a particular action in any given case. Furthermore, where an agency head does not adopt an ALJ's decision or recommendation, the agency head must give a written explanation for his/her failure to do so. Similar statutes, 5 U.S.C. §§ 554, 557, 3105 and 5372, have been adopted by the Federal government to insure the independence of its ALJ's. The City has not adopted similar safeguards.

The City has neither standardized selection criteria nor training available for ALJ's and Hearing Officers. In contrast, State agencies are required to publish an administrative adjudication plan that addresses the selection and training of ALJ's, maintains the independence of ALJ's, and sets forth rules of procedure and decision. At the Federal level, the selection criteria for ALJ's are published in the Code of Federal Regulations.^[8]

Finally, the State has a separate agency, the Office of Regulatory Review (formerly the Office of Business Permits and Regulatory Action), tasked with the duty of reviewing complaints against an agency's system of administrative adjudication. ALJ's employed by the Federal government and private parties appearing before ALJ's in administrative hearings have access to the Office of Government Ethics ("OGE"). OGE

through its Office of Agency Programs is tasked with insuring that all government agencies comply with all applicable ethical requirements. The City APA does not contain any comparable provision; neither is there an agency charged with ensuring City ALJ's comply with ethical rules.^[9]

B. THE CITY DOES NOT MAINTAIN CURRENT CENTRALIZED INFORMATION ABOUT ALJ's EMPLOYED BY ITS AGENCIES

There is no central repository of statistical information about ALJ's employed by the City. Despite considerable efforts, the Subcommittee was unable to obtain current and complete information about current ALJ programs and was told by officials at several City agencies that the limited information available in the 2003 Charter Revision Commission Report was the most current information available. The Subcommittee discovered that the City does not maintain a current and comprehensive list of agencies that employ Administrative Law Judges and Hearing Officers. Vital to understanding the status of the ALJ programs employed by the City would be a list of agencies employing full-time and *per diem* ALJ's and the extent to which they use each. Unfortunately, that information is not available in any central repository. Nor is it possible to ascertain the educational background and qualifications of the Administrative Law Judges employed by the City on either a full-time or per diem basis or what each has received as compensation. No statistical information is maintained on the ALJ's appellate record so it is impossible to ascertain how often decisions by an ALJ have been overturned by the agency or a court. Records are also not maintained regarding any complaints filed against the judge or the outcome of the complaint proceeding.

While it is our understanding that individual agencies may keep "informal" statistics, such informal data are not helpful in providing oversight to the administrative justice system. Only by compiling and maintaining publicly available data and statistics can the public be assured that the system is operating fairly for all.

According to the 2003 Charter Revision Commission, New York City had roughly 61 City agencies employing an estimated 500 lawyers as ALJ's and/or Hearing Officers/Examiners.^[10] The Subcommittee made a FOIL request or telephone inquiry to each New York City agency to inquire about its ALJ policies and statistics. The Subcommittee has determined that there are approximately 300 ALJ's who are full-time employees; the remaining personnel are classified as either part-time or per diem ALJ's.^[11] In 2004, OATH employed ten ALJ's, including one Chief ALJ.^[12] Although a number of agencies acknowledged keeping internal records related to applications, payroll and complaints, several agency contacts were unaware of any records or statistics

^[9] Under the Charter, the City has a Public Advocate charged with receiving and investigating complaints by citizens against the City. However, the Charter bars the Public Advocate from processing complaints about agency adjudications. New York City Charter, Chapter 2, Section 24 (f).

^[10] 2003 Charter Review Report

^[11] *Id.* at 115 n. 42 (2003 Charter Review Report). Per diem refers to part-time ALJ's who are paid on a daily rate. Per diem hearing officers are generally hired on a temporary basis, or hired for a particular matter or series of matters. See generally Borchers & Markell, § 11.17n.3 at 397.

^[12] *Id.* at 116 (2003 Charter Review Report).

kept on ALJ's. The table that follows lists various New York City agencies employing ALJ's and, if known, the number of ALJ's they employ.

<u>AGENCY</u>	<u>Source of Law</u>	<u>No. of ALJ's</u>
Bd. of Standards and Appeals	City Charter §§ 659-669	5
Bronx Community Boards (12)	Charter §§ 85	TBD
Brooklyn Community Boards (18)	Charter §§ 85	TBD
Civil Service Commission	Charter §§ 813	5
Civilian Complaint Review Board	Charter § 440	TBD
Commission on Human Rights	Charter §§ 900-906	TBD
Department of Consumer Affairs	Charter §§ 2201-2204	8
Department of Education	Charter §§ 520-527	TBD
Dept. of Environmental Protection	Charter §§ 1401-1404	81
Dept. of Finance - Parking Violations	Charter § 1504	105
Dept. of Health and Hygiene	Charter § 558	34-42
Dept. of Transportation	Charter §§ 2901-2906	TBD
Equal Employment Practices Commission	Charter §§ 830-832	TBD
Landmarks Preservation Commission	Charter §§ 3020-3021	0
Loft Board	Multiple Dwelling Law	1
Manhattan Community Boards (12)	Charter §§ 85	TBD
Office of Administrative Trials and Hearings	Charter §§ 1048-1049	10
Office of Collective Bargaining	Charter §§ 1170-1177	5
Police Department	Charter § 431	TBD

Queens Community Boards (14)	Charter §§ 85	TBD
Staten Island Community Boards (3)	Charter §§ 85	TBD
Tax Appeals Tribunal	Charter § 168	6
Tax Commission	Charter § 153	11
Taxi and Limousine Commission (TLC)	City Charter § 2301 (2300-2304)	61-67

C. THE NEED FOR UNIFORM AND COMPREHENSIVE ETHICAL STANDARDS

Regardless of agency or level of government, ALJ's must balance daily the inherent conflict of their position – a duty of loyalty to their employing agency and a duty to make independent decisions concerning agency actions. The Federal and State governments acknowledge and address this conflict. By contrast, the City does not acknowledge this conflict and, therefore, does not deal with it at all.

The Subcommittee has spoken to a number of ALJ's employed by the City at agencies other than OATH, all of whom feel that they are subject to an irreconcilable conflict: the requirement to be loyal to the agency and the duty to adjudicate disputes independently and in a fair and impartial manner. To deal with this conflict, the State and Federal administrative law systems contain provisions that ensure that an ALJ may not be disciplined, directly or indirectly, for making any given decision. In addition, State and Federal ALJ's have a resource available to deal with ethical conflicts as they arise, which is a role that could conceivably be filled by an “Administrative Law Judge Coordinator” in a properly designed management program for ALJ's and Hearing Officers. At the Federal level, ethical issues may be addressed to the Office of Government Ethics. At the State level, ethical issues may be addressed to the Office of Regulatory Reform. There is no parallel resource available to City ALJ's.

This perceived conflict affects the due process rights of litigants. In *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-43 (1980), the United States Supreme Court explained that "decisional independence" is essential to due process as follows:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. The neutrality requirement helps guarantee that life, liberty and property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has

been done," by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this Court. (Citations omitted.)

This standard applies not only to courts of record but also to administrative tribunals as well. In *Schweiker v. McClure*, 456 U.S. 188, 195 (1982), the Court stated: "As this Court has repeatedly recognized, due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities." See, *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975) ("Concededly, a 'fair trial in a fair tribunal is a basic requirement of due process.' . . . This applies to administrative agencies which adjudicate as well as to courts . . ." Not only is a biased decision maker constitutionally unacceptable but 'our system of law has always endeavored to prevent the probability of unfairness".) Accord, *Padberg v. McGrath-McKechnie*, 203 F.Supp.2d 261, 287-88 (E.D.N.Y. 2002)(with respect to the NYC Parking Violations Bureau the Court noted: "Due process requires a 'fair trial in a fair tribunal' . . . 'administrative agencies which adjudicate' are bound by this rule as well as courts.") (http://dackman.homestead.com/files/padberg_decision.htm) Accord, *Matter of 1616 Second Ave. Rest. v. New York State Liq. Auth.*, 75 N.Y.2d 158, 161, 551 N.Y.S.2d 461, 550 N.E.2d 910 (1990).

Another problem is that City ALJ's are frequently subject to several different, but overlapping, standards of conduct. ALJ's employed by the City who are attorneys admitted to practice before the Courts of the State of New York, like ALJ's employed by the State, are subject to the ethical canons of that Bar.^[13] However, not all ALJ's serving the same agency are lawyers admitted to practice before the Courts of the State of New York. City ALJ's, like their state counterparts, must also comply with rules and regulations, as well as the code of conduct, of any agencies that employ them. Unlike the State however, the City employs a large number of part-time and per diem ALJ's and Hearing Officers, many of whom are employed by several agencies and are therefore subject to a large number of agency rules and regulations that may be inconsistent.^[14] Finally, ALJ's must comply with the laws and regulations generally applicable to all employees of the City. As the employee of a particular government agency, the ALJ is responsible for following that agency's rules.

The Manual for Administrative Law Judges and Hearing Officers promulgated by the State of New York specifically notes:

In New York State, an ALJ is subject to at least one and often several standards of ethics, depending upon the ALJ's professional and employment status. For example, every ALJ is subject to the

^[13] E.g., American Bar Association, MODEL RULES OF PROFESSIONAL CONDUCT (1995).

^[14] For example, the New York City Taxi and Limousine Commission's ("TLC") rules state that violations must be described with specificity; the time, date and place of the violation must be fully noted, along with a detailed description of the alleged violation. A mere restatement of the law alleged to have been violated is insufficient. See TLC Rule 8-06(a). Yet with the Environmental Control Board, the same "mere restatement of the law" on the fact of the Notice of Violation is considered to make a valid *prima facie* case against a respondent.

New York State Code of Ethics, found in the Public Officers Law. Other ethics provisions that may be applicable to individual ALJ's include:

1. The Code of Professional Responsibility, which applies to ALJ's who are also attorneys. . . ;
2. The Code of Judicial Conduct, which applies to all ALJ's who are also judges within New York's Unified Court System, but may also apply to other ALJ's . . . "[15];
3. The Ethics in Government Act contained in the Public Officers Law that applies to public officials, and the regulations adopted thereunder by the New York State Ethics Commission;
4. Ethics provisions that may be contained within agency regulations in the New York State Official Compilation of Codes and regulations which apply to agency employees; and
5. The Agency's Code of Ethics for ALJs, if one has been adopted. . . .

This list applies equally to State and City ALJ's and Hearing Officers. The complexity of the ethical rules that apply to ALJ's and Hearing Officers in New York, as well as the perceived conflict many ALJ's feel exists between their duty toward the prosecuting agency and their role as impartial and independent decision makers, cries out for the adoption of a uniform code of conduct applicable to all ALJ's and Hearing Officers employed by the City, whether employed on a permanent, part-time or per diem basis. Furthermore, agency rules similar to 9 NYCRR § 4.131 would help insure that litigants receive a "fair trial in a fair tribunal" when their matters come before tribunals maintained by City agencies.

D. LITIGATION CONCERNING NEW YORK CITY ADMINISTRATIVE ADJUDICATORY PROCEEDINGS HAS IDENTIFIED THESE SHORTCOMINGS

[15] Despite the qualified language used in this provision, it is clear to the Subcommittee that the Code of Judicial Conduct applies to ALJ's and Hearing Officers employed by the City. *See, Crosson v. Newman*, 178 A.D.2d 719, 720, 576 N.Y.S.2d 950, 951 (3rd Dept 2002) ("First, it appears that other represented nonjudicial employees performing quasi-judicial duties such as Administrative Law Judges are also subject to the Code of Judicial Conduct.") (citing 1991 Opinion of the NY State Bar Association, Committee on Professional Ethics 617); *Levy v. New York State Workers' Compensation Board*, 292 A.D.2d 388, 738 N.Y.S.2d 377 (2nd Dept. 2002). *But see*, N.Y. State Bar Ass'n Committee on Prof'l Ethics, Formal Op. 594 (1988).

The perceived conflicts between the loyalty owed by ALJ's to the agencies employing them and their duty as impartial decision makers has already resulted in a constitutional challenge to the New York City TLC procedures for suspension of taxicab drivers' licenses.^[16] *Padberg* and *Sloan* highlight alleged due process deficiencies in adjudications conducted by City agencies.

THE PROPOSED ALJ COORDINATOR

Beyond the recommendations in the Preliminary Report that there be an ALJ Coordinator, the proposal lacked any specific information concerning this position, such as a mission statement, proposed job description, list of the duties and responsibilities, and proposed qualifications for the Coordinator. In its letter to Mayor Bloomberg, which is annexed to the Final Report at 140 as Appendix H, the Charter Revision Commission explained the function of the position as follows:

. . . a full-time Coordinator of Administrative Justice, with appropriate resources, to consult with tribunals and related agencies and assist the Mayor with respect to: coordination of policies, plans and operations common to the management of these tribunals; establishment of budget priorities for the tribunals; establishment of programs for training and professional development of administrative law judges and hearing officers; and establishment of programs to enhance alternative dispute resolution.

We further believe that the establishment of the Coordinator of Administrative Justice would provide the context for any ballot proposal we might consider on the topic of administrative judicial reform.

Significantly, the Charter Revision Commission has not explained in substantive detail how creating a new bureaucracy will address any of the structural deficiencies noted above. Indeed, without a proper legal framework, the position could easily exacerbate existing problems. The Subcommittee is concerned that the position of ALJ Coordinator may amount to nothing more than the establishment of a one-person commission to further study a long festering problem that needs action not more study. The Subcommittee believes that solutions adopted by both New York State and the Federal government offer a clear blueprint to the City and the Charter Revision Commission for the changes that need to be made to assure litigants before New York City administrative tribunals that the ALJ or Hearing Officer who is hearing the case is

^[16] See, *Padberg v. McGrath-McKechnie*, 108 F. Supp.2d 177 (E.D. New York 2000); *Padberg v. McGrath-McKechnie*, 203 F.Supp.2d 261 (E.D. New York 2002); *Sloan v. New York City Taxi and Limousine Commission*, Index No. 123003/01, February 27, 2002. (http://decisions.courts.state.ny.us/fcas/fcas_docs/2002mar/30012300320011sciv.pdf) (http://decisions.courts.state.ny.us/fcas/fcas_docs/2002may/30012300320012sciv.pdf)

independent of the agency and will decide their case in a competent, fair and impartial manner. Simply put, there is nothing in this proposal for an ALJ Coordinator that provides the public any assurance that New York City is endeavoring to provide litigants a “fair trial in a fair tribunal.”

In the absence of a more detailed proposal for the ALJ Coordinator, the Subcommittee cannot endorse this proposal at this time.

RECOMMENDATIONS OF THE SUBCOMMITTEE

For the reasons set forth above, the Subcommittee strongly recommends changes that would:

1. clearly distinguish the duties and responsibilities of ALJ's in their rule-making and adjudicatory functions;
2. require that all agencies that employ ALJ's in an adjudicatory function immediately comply with rules and regulations consistent with 9 NYCRR § 4.131 and/or 5 U.S.C. §§ 554, 556, 557, 3105 and 5372; and
3. adopt a uniform code of professional conduct applicable to all New York City Administrative Law Judges, whether by Charter or Executive Order, similar to the code recommended by the National Association of Administrative Law Judges consistent with the regulations cited in paragraph 2 above. <http://www.naalj.org>

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