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By Electronic Mail

April 15, 2011

Mayor's Committee on Consolidation of Administrative Tribunals
c/o Office of the Administrative Justice Coordinator
40 Rector Street, 14th Floor
New York, NY 10006

To the Mayor's Committee on Consolidation of Administrative Tribunals:

As Chair of the Administrative Law Committee of the Association of the Bar of the City of New York, I write to present the view of the Association with regard to the proposal described in the March 25, 2011 Notice of Public Hearing on the recommendation by the Mayor's Committee on Consolidation of Administrative Tribunals (the "Committee") to transfer certain administrative tribunals or types of cases into the Office of Administrative Tribunals and Hearings ("OATH").

As an initial matter, we appreciate the Committee's effort to seek comment from people and groups that appear before the City's administrative tribunals. This is of particular importance given that the Committee's proposals may profoundly impact the many self-represented people who appear before the City's administrative tribunals.

We support the proposed consolidation of the administrative tribunals of the Department of Health and Mental Hygiene ("DOH") and the Taxi and Limousine Commission ("TLC") under the supervision of OATH. The proposed consolidation appears designed to foster independence in the decision making process by the administrative law judges ("ALJs"), who are currently supervised within DOH or TLC; that is, by the agency that commenced the proceeding. The DOH and TLC face particular challenges due to the high volume of proceedings before their ALJs and the need for ALJs to master complex laws, rules and regulations, and, as a result, there has been a perception that certain ALJs are aligned with and dependent upon the agencies (and their attorneys) over whose actions they preside, and such perceptions of influence undermine trust in the integrity of the adjudicatory process and due process.

Because the primary focus of OATH is the training, support and development of independent ALJs, we believe the consolidation of the DOH and TLC tribunals under OATH will provide the greatest opportunity for fostering an independent judiciary. Even with the agencies' efforts, they do not have the resources to provide this training, support and supervision for ALJs and this is not a realistic priority for them. It is the central mission of OATH to uphold the integrity of administrative adjudication and to further due process, and OATH has the additional benefit of lessons learned from the consolidation of the Environmental Control Board ("ECB") under OATH.

We support the proposal to offer access to hearings on DOH violations in all five boroughs. This change should increase access to justice and ease the burden of those appearing on these matters. We also agree that the use of telephonic or internet hearings may be helpful to some people appearing before OATH, particularly when a violation or other agency action is not challenged, but are cautious about the use of these venues to the extent that an agency attorney makes an in-person appearance before the ALJ but the party challenging agency action does not.

We have concerns about the consolidation of such a large number of cases and recognize that the Committee and OATH have considered this issue.¹ The transfer of cases to OATH in itself will not effect change; that requires building a strong, professional culture through continued training, support, review of work quality and communication. To the extent efficiencies are gained through consolidation, we hope that resources will be used to further those goals. Because this is a process, we strongly suggest that the Committee or an independent group outside of OATH review the progress made at ECB as well as at DOH and TLC within the next twelve months and publish the results of the review on the websites of OATH and other relevant City offices. As with all city agencies, OATH is accountable for its work, but accountability can only be achieved with transparency.

In addition, in February 2007, prior to the consolidation ECB under OATH, the City adopted the Rules of Conduct for administrative law judges and hearing officers for the City of New York. In light of the substantially increased role of OATH with respect to ALJs and certain administrative proceedings and four years of experience, the Committee should consider whether the Rules of Conduct are effective and any areas that may require amendment or enhancement.

In conclusion, on behalf of the Association, we support the Committee's proposals, and respectfully ask the Committee to consider the suggestions herein.

Sincerely,



Adrienne M. Ward

Cc: David Goldin, Esq.
Administrative Justice Coordinator

¹ Questions have been raised as to the circumstances under which the agencies affected by this proposal will continue to make "final findings of fact and/or decisions, determinations or orders." See New York City Charter, Chap. 45, § 1048(3); see also § 1046(e). These circumstances are not addressed in the Notice, and we therefore do not provide comment on this issue. We do believe that these circumstances should be fully considered by the Committee prior to taking final action.