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COMMITTEE ON CONSOLIDATION OF ADMINISTRATIVE TRIBUNALS
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Mayor's Committee on Consolidation of Administrative Tribunals
Report and Recommendations

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Introduction

On November 2, 2010 City voters approved an amendment to the Charter authorizing the Mayor by executive order to consolidate other City administrative tribunals with the Office of Administrative Trials and Hearings (OATH). The amendment also required establishment of a committee to recommend which tribunals or types of cases should be transferred. The Mayor's Committee on Consolidation of Administrative Tribunals (Committee) was promptly appointed to evaluate adjudications conducted by City agencies and make the required recommendations. The

Committee now recommends that the following be transferred:

- The Department of Health and Mental Hygiene (DOHMH) tribunal
- The Taxi and Limousine Commission (TLC) tribunal
- Revocation of tax benefit cases that originate with the Department of Housing Preservation and Development (HPD)
- Cases originating with the Business Integrity Commission (BIC) that are now adjudicated by the Department of Consumer Affairs (DCA) tribunal

This Report describes the basis for the recommendations and the process followed by the Committee in developing them. The Committee continues its assessment of the City's tribunals. It intends to transmit a final report to the Mayor, which may contain further recommendations for consolidation, later this year.

I. Background

1. City Government Contains a Wide Array of Tribunals

An administrative tribunal is a government agency, or a unit of an agency, that conducts hearings. It is similar to a court, but it is located within the executive rather than the judicial branch. Administrative tribunals usually have specialized caseloads; most hear only cases about laws, rules or regulations that they or their parent agencies enforce. Hearings at tribunals are conducted by administrative law judges (ALJs), hearing officers or hearing examiners – the titles are interchangeable for most purposes. In New York City today, administrative adjudications are generally covered by the City Administrative Procedure Act (CAPA)¹, which requires that a full record be made for each hearing and a written decision be issued in every contested case. Administrative hearings are typically less formal than those conducted in court. Rules of evidence are

¹ N.Y.C. Charter § 1041 et seq.

relaxed, and procedures are simplified. Most parties represent themselves. If a party chooses to be represented, the representative generally need not be an attorney. But ALJs, or their equivalents, in the City are almost always attorneys.

The most common type of administrative hearing in the City is one held to give a respondent who has been issued a ticket by a City officer or employee an opportunity to contest the alleged violation. Another common type is a hearing held to offer an applicant a chance to demonstrate eligibility for, or to contest a decision to remove, a public benefit such as housing assistance.

In recent decades, the number of tribunals in the City and the functions performed by them have grown dramatically. As a result, there has been increasing interest both within and outside government in standardizing the practices of these tribunals, enhancing their professionalism and consolidating them where appropriate.

Currently, there are 12 administrative tribunals² that are part of City government or related agencies:

- **Department of Consumer Affairs, Adjudication Division** has eight full-time ALJs and annually handles 10,000 cases, including consumer complaints, DCA-initiated complaints, and cases originating from NYPD, FDNY and BIC. Penalties range up to \$100,000 and may also involve suspension or revocation of a license or permit. The caseload will increase as a result of a 2010 Charter amendment expanding the tribunal's jurisdiction to include all violations of laws

²In addition to the 12 tribunals identified here, there are a number of agencies, including various boards and commissions, that issue decisions based on records created through hearings at which a non-City party is given the opportunity to present evidence and testimony. Those agencies, such as the Board of Standards and Appeals, the Campaign Finance Board, the Civil Service Commission, the Commission on Human Rights and the Loft Board, are not included here because the hearings that give rise to their decisions are either not presided over by an ALJ or equivalent or are already conducted by OATH on referral from the originating agency. In the latter instance, the OATH ALJ typically issues a report and a recommended decision that are returned to the originating board or commission as basis for final agency action. The Committee is therefore not characterizing those agencies as administrative tribunals. The Board of Collective Bargaining is also excluded because, while a hearing at the Board is conducted before a trial examiner, it is the board rather than the examiner that renders the decision.

DCA enforces.³ Until now, DCA has had to bring some of its cases in State court.

- **Department of Education, Impartial Hearing Office**⁴ oversees an active roster of 70 part-time State-certified impartial hearing officers who conduct 2,500 adjudications per year concerning placement of, or provision of services to, children with disabilities.
- **Environmental Control Board**, a unit of OATH, has a roster of 227 full- and part-time ALJs. It administers an annual caseload of 700,000 cases, issued by 13 different City agencies, with 200,000 hearings conducted each year in person, by mail and online. Penalties range up to \$45,000.
- **Department of Finance, Adjudication Division**, also referred to as the Parking Violations Bureau (“PVB”), has a roster of 120 part-time ALJs who adjudicate 1.2 million parking violations annually in person, by mail and online. Penalties per ticket range up to \$180.
- **Department of Health and Mental Hygiene Administrative Tribunal** has 55 full- and part-time hearing examiners who in FY 2011 conducted 60,000 adjudications involving violations of the City’s Health Code and other State and City laws and regulations enforced by DOHMH. Penalties range up to \$2,000 per violation.
- **Department of Housing Preservation and Development** has seven full- and part-time hearing officers who conduct 600 adjudications annually involving federal Section 8, State Mitchell-Lama and City emergency housing programs.
- **New York Police Department** has an office of the Deputy Commissioner of Trials comprising a Deputy Commissioner and four Assistant Deputy Commissioners who hear disciplinary actions against uniformed and non-uniformed members of the Department. The office prepares reports and recommendations for the police commissioner and may recommend penalties including fines, suspensions or dismissal. NYPD also employs two ALJs to hear appeals from denials of applications for firearms licenses and similar matters.
- **New York City Housing Authority**⁵ has six hearing officers who process 12,000 cases annually concerning termination of tenancy, tenant grievances and other housing matters, plus 1,500 appeals of eligibility determinations for public housing and related benefits.

³ N.Y.C. Charter § 2203(g)(1).

⁴ The Department of Education is not a mayoral City agency. Governance of the New York City School District is established by New York State Education Law, Art. 52-A.

⁵ NYCHA is not a mayoral City agency. It is a public authority established by New York State Public Housing Law, Art. 13, tit. 1.

- **Office of Administrative Trials and Hearings** has ten full-time ALJs who conduct hearings for any city agency, board or commission upon referral. The cases most frequently heard involve City employee discipline, City retention of vehicles seized in connection with criminal prosecutions where vehicle forfeiture is sought as an additional civil penalty, City contractors, alleged violations of the City Human Rights Law and revocations of City-issued licenses.
 - **Tax Appeals Tribunal** has four full-time judges and three appeals commissioners who conduct 40 adjudications per year to confirm, dismiss or modify challenged actions of the Department of Finance. The tribunal's jurisdiction extends to all City-administered corporate, unincorporated business and bank taxes. The tribunal has been consolidated with the Tax Commission in the Office of Administrative Tax Appeals ("OATA").
 - **Tax Commission** has 12 hearing officers, six commissioners and a president, as well as three other attorneys, to review, correct and adjust 50,000 property assessments per year. It has been consolidated with the Tax Appeals Tribunal in OATA.
 - **Taxi and Limousine Commission, Adjudications** has two full-time and 82 part-time ALJs to adjudicate 75,000 to 100,000 cases per year involving TLC and related City rules for medallion taxicabs, for-hire vehicles, commuter vans, paratransit vehicles, and some luxury limousines.
2. Previous Charter Amendments Have Consistently Promoted Coordination and Consolidation of Tribunals

As the number of tribunals grew and their caseloads expanded during the 1970's and 1980's, there developed a broad recognition of the need to establish administrative procedures that would guarantee basic fairness and to standardize those procedures across all tribunals. Along the same lines, there was increasing support for an independent tribunal that would be institutionally neutral as a decision-maker and would be mandated to set and maintain the highest standards of professionalism in adjudication.

One consequence was the 1988 Charter revision. That year voters approved Charter amendments that created CAPA and formalized the status of OATH as a Charter agency with broad jurisdiction. CAPA not only standardized rulemaking processes for City agencies but also spelled out minimum procedural requirements for all agency

adjudications (other than PVB). CAPA further mandated that agencies adopt their own more detailed procedural rules for hearings and appeals.⁶

While recognizing that separate tribunals would continue to exist, the 1988 Charter amendments created a general presumption in favor of OATH as the tribunal to conduct hearings for all City agencies.⁷ The final report summarizing the work of the 1988 Charter Revision Commission made explicit the connection between the standardization of hearing procedures through CAPA and the central role of OATH by explaining that under CAPA adjudication “must be conducted by trained, impartial law judges acting as part of an Office of Administrative Trials and Hearings (OATH) unless a decision is made that specialized needs require agencies to have their own hearing officers for specific matters.”⁸ After the 1988 amendments, the range and complexity of cases coming before OATH increased substantially.

In 2005, voters approved another Charter amendment aimed at standardizing the tribunals. The amendment requires the City to adopt one or more codes of judicial conduct for the City’s administrative law judges.⁹ The Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York (“ALJ Rules of Conduct”), modeled on the New York State Bar Association Code of Judicial Conduct, were promulgated jointly by the Mayor and the Chief Administrative Law Judge of OATH and took effect in 2007. They provide uniform ethical standards for the more than

⁶ N.Y.C. Charter § 1046.

⁷ “There shall be an office of administrative trials and hearings which shall conduct adjudicatory hearings for all agencies of the city unless otherwise provided for by executive order, rule, law, or pursuant to collective bargaining agreements.” N.Y.C. Charter § 1048(1).

⁸ Report of the 1988 New York City Charter Revision Commission (December 1986-November 1988), vol. 1, at 33.

⁹ N.Y.C. Charter § 13-a.

500 ALJs working in the City's diverse tribunals, thereby raising their professional standards and increasing their accountability to the public.

The 2005 Charter Revision Commission also advised the Mayor to create the office of the Administrative Justice Coordinator (AJC) by executive order. The Commission suggested that AJC could improve the tribunals through various means: making recommendations to the Mayor regarding coordination of policies, plans and operations; establishment of budget priorities and policies to increase efficiency, including the appropriate use of information technology; programs for training and professional development of administrative law judges and hearing officers; and programs to enhance alternative dispute resolution.¹⁰ The Mayor took the advice of the Commission and created the position of AJC by executive order in 2006.¹¹

In 2006 AJC partnered with the Mayor's Office of Operations and the Criminal Justice Coordinator to conduct a detailed operational assessment of ECB, which was experiencing difficulty managing its very high case volume. The assessment found that ECB faced many entrenched challenges such as an outdated and inadequate information technology system and inefficiency due to lack of sufficient record-keeping. The assessment concluded that, among the many improvements that were needed, the most important would be to move ECB institutionally from governance by DEP to supervision by the City agency primarily dedicated to tribunal administration – OATH.

ECB was consolidated into OATH by Local Law 35 of 2008.¹² Improvements at ECB since it has come under OATH management have been significant, including the elimination of its backlog, implementation of a new electronic case management system,

¹⁰ Final Report of the 2004-2005 New York City Charter Revision Commission at 50-51.

¹¹ Executive Order No. 84 of 2006.

¹² Codified principally at N.Y.C. Charter § 1049-a.

new rules of procedure and enhanced professionalism of its judiciary. ECB has vastly improved its efficiency in processing cases. Regardless of fluctuations in caseload, the amount of time ECB takes to process cases has consistently decreased. Since its consolidation with OATH, the average time in which ECB issues a decision after a hearing has dropped from nearly 100 days to 24 days (as of the most recent quarter, 3Q FY2011). At the time of consolidation, ECB had nearly 1,000 appeals pending, many of which had been awaiting decision for more than two years. Today, no appeals have been pending more than 180 days. ECB has overhauled its website to make it user-friendly, created an instructional video for the public, released new printed materials and instituted broad use of the Language Line interpretation service for its hearings. It has also introduced online adjudication to allow respondents to contest most tickets and all appeals through electronic submissions rather than in-person appearance at an ECB hearing office. The range, consistency and depth of improvements at ECB testify to the power of oversight by an agency that has tribunal administration as its mission and core expertise.

3. Voters Approve the 2010 Charter Amendment Authorizing Further Consolidation of Tribunals

Seven months ago City voters approved a Charter amendment proposed by the 2010 Charter Revision Commission to authorize further consolidation of tribunals. In its Final Report, the Commission found that public confidence in the impartiality of City administrative adjudications could be adversely affected by the location of many tribunals within the agencies whose determinations the tribunals are called upon to review. Mindful of the success of the ECB consolidation, the Report noted that consolidating more tribunals into OATH would allow for further standardization of

procedures and sharing of management, which would lead to greater efficiency and increased fairness. The Commission determined that the next step would be to enable the Mayor to consolidate other agency tribunals into OATH, where feasible and advisable.¹³

To that end, the Commission proposed a Charter amendment concerning consolidation of administrative tribunals. The amendment was approved by voters in November 2010. The key elements of the amendment, which gives the Mayor power to consolidate tribunals into OATH, are:

- The Mayor is authorized to designate OATH by executive order as the tribunal for the impartial administration and conduct of adjudicatory hearings for violations of the Charter, the Administrative Code, the Rules of the City of New York and any other laws, rules, regulations or policies enforced by City agencies through the conduct of adjudications.¹⁴
- Through executive order, the Mayor may transfer entire tribunals or parts thereof, or categories of adjudications, to OATH. OATH may perform these responsibilities, including responsibilities delegated elsewhere by the Charter or other law, as the Mayor directs in the order. Agencies are authorized to establish their tribunals, or parts thereof, within OATH. No existing rights or remedies shall be lost as a result of such transfer except as necessary to implement the transfer.¹⁵
- The executive order may include provision for matters pending at the time of the transfer, and may deem agency rules in effect on the date of transfer to be OATH rules. The order may also address circumstances in which agencies shall continue to make final findings of fact and/or decisions, determinations or orders.¹⁶
- The Chief Administrative Law Judge at OATH may prescribe qualifications for ALJs transferred from other agencies into OATH that differ from the prescribed terms and qualifications for OATH judges.¹⁷
- OATA and the Board of Standards and Appeals may not be transferred to OATH.¹⁸

¹³ Final Report of the 2010 New York City Charter Revision Commission at 36.

¹⁴ N.Y.C. Charter § 1048(2).

¹⁵ N.Y.C. Charter § 1048(2).

¹⁶ N.Y.C. Charter § 1048(3).

¹⁷ N.Y.C. Charter § 1049(1)(b).

¹⁸ N.Y.C. Charter § 1048(5).

The amendment also requires the establishment of a committee to analyze the tribunals and make recommendations concerning consolidation to the Mayor. The key elements of this portion of the amendment are as follows:

- The Mayor shall constitute a committee to evaluate the adjudicatory functions carried out by City agencies and to make recommendations with respect to transfers into OATH.¹⁹
- The committee shall be chaired by the Deputy Mayor for Legal Affairs and shall have representatives from OATH, the Law Department, the Department of Citywide Administrative Services and any other agency the Mayor deems necessary.²⁰
- Before recommending transfers, the committee shall solicit comments from the public, including segments of the public particularly affected by the proposed transfers. The committee shall hold a public hearing on at least 20 days' notice published in the City Record specifying the transfers under consideration for recommendation to the Mayor.²¹
- The committee's work will be complete upon submission to the Mayor of a final report identifying the tribunals, parts thereof, or categories of adjudications that have been consolidated or should be considered for future consolidation. The Mayor may reconstitute the committee at any time.²²

4. The Committee Recommends Transfer to OATH of the DOHMH and TLC Tribunals and Certain Cases Originated by HPD and by BIC

The Committee was constituted by Mayor Michael R. Bloomberg in November 2010 with Deputy Mayor for Legal Affairs Carol Robles-Román as its Chair. Its other members are Suzanne A. Beddoe, Chief Administrative Law Judge at OATH; Donald P. Brosen, Deputy Commissioner for Fiscal Management and Operations at the Department of Citywide Administrative Services; Anthony W. Crowell, Counselor to the Mayor; Jeffrey D. Friedlander, First Assistant Corporation Counsel at the Law Department;

¹⁹ N.Y.C. Charter § 1048(4)(a).

²⁰ N.Y.C. Charter § 1048(4)(a).

²¹ N.Y.C. Charter § 1048(4)(b).

²² N.Y.C. Charter § 1048(4)(a).

David B. Goldin, AJC; Carole Post, Commissioner of the Department of Information Technology and Telecommunications; Yvonne Quintian, Assistant Director of the Office of Management and Budget; and Elizabeth Weinstein, Director of the Mayor's Office of Operations. Norma Abbene, Deputy Counsel to the Mayor, is Counsel to the Committee.

As outlined in the Charter, the Committee was charged with evaluating the adjudicatory functions carried out by City agencies, drafting proposed recommendations, holding a public hearing on those recommendations and transmitting its formal recommendations to the Mayor. In order to carry out these objectives, the Committee formed four working groups:

- An **outreach group** to introduce the process of evaluation and recommendation to representatives of affected agencies and to coordinate meetings with representatives of the public such as bar and trade associations.
- An **assessment group** to develop evaluations through regular meetings with agency and tribunal representatives and analysis of data and documentation on tribunals and caseloads. The assessment group's focus has been on how consolidation with OATH might benefit tribunals and caseloads and how any recommended consolidation could be practically implemented.
- A **legal group** to conduct any legal analysis required for the Committee's recommendations to the Mayor.
- An **executive order group** to draft the order to be issued to implement the recommendation.

The outreach group began meeting with representatives from many of the City's tribunals in December 2010. The assessment group followed up with more detailed meetings and analyses beginning in December 2010.

The Committee's recommendations are based on a determination that consolidation with OATH can effect immediate and significant improvements in City tribunals. The Committee concludes that consolidation of ECB with OATH has been

successful because, fundamentally, it properly aligned the core activity of the transferred unit (adjudication) with the institutional mission and expertise (tribunal administration) of the agency to which it was transferred. That result can serve as a model for consolidation and as a guide to identification of expected areas of improvement.

The assessment group therefore analyzed where OATH administration could have a similarly positive impact on other tribunals or the management of additional caseloads. Whether that was likely to be true in any individual case would turn on the specific challenges facing a tribunal or arising in the context of managing a particular caseload. Specifically, the assessment group focused on:

- *improvements in strategic management* – gearing tribunal administration to anticipate challenges and achieve consistent gains in efficient case processing
- *increasing professionalism* – maintaining high standards of impartiality, legal skill and the values articulated in the ALJ Rules of Conduct
- *expanding access to justice* – ensuring that all parties, whether or not professionally represented, whether or not proficient in English, are given the opportunity to present their cases fully
- *development and enhancement of information technology* – introducing and upgrading electronic case management systems and capacity for online and other forms of remote adjudication
- *maximizing transparency* – enabling participants and observers to understand tribunal rules, processes, decisions and outcomes
- *use of data for reporting and decision-making* – deploying data to support all of the tribunal's areas of management focus

The assessment group also considered whether consolidation would allow hearings to be held throughout the City (making use of OATH/ECB's five borough locations) and whether that would be beneficial for non-City parties. Finally, the assessment group took into consideration whether public confidence in the adjudication of particular cases might be enhanced by identifying an independent agency rather than the agency issuing a notice of violation or summons as the fact-finder when the agency's ticket is challenged.

The assessment group focused its work on tribunals that appeared likeliest to benefit from consolidation for reasons similar to those applicable to ECB. In particular, assessment at this time has addressed primarily high-volume tribunals that have faced waiting room congestion, case processing backlogs, challenges in fluctuating caseload burdens, lack of transparency, outdated information technology and/or potential public concerns about location of the tribunals within the agencies whose cases the tribunals adjudicate. In addition, the assessment group has noted that the burden of attending a hearing will be eased somewhat if a respondent can be assured of having that hearing in his or her borough of residence (or place of business) rather than having to travel to Manhattan.

The assessment group found that certain tribunals and caseloads would benefit most from immediate consolidation with OATH:

- The DOHMH tribunal
- The TLC tribunal
- Revocation of tax benefit cases originating (but not now being adjudicated) at HPD

- Cases originating with the Business Integrity Commission (BIC) that are now heard at the DCA tribunal

The Committee recommends those tribunals and caseloads be transferred to OATH.²³

The full Committee began its review of those recommendations with the announcement that they were under consideration, which was published in the City Record on March 25, 2011, along with an announcement that the public would have an opportunity to comment on the recommendations at a public hearing to be held on April 15, 2011. The outreach group also distributed a detailed memorandum of the proposed recommendations to trade and industry groups it identified as being stakeholders in the consolidation process, as well as to local civic organizations and bar associations.

Members of the outreach group discussed the recommendations with representatives of interested groups such as the New York State Restaurant Association (NYSRA), the New York County Lawyers' Association (NYCLA) and the City Bar Association (CBA). At the public hearing, the Committee heard testimony from Howard Schoor, Brooklyn Borough Representative for the United Federation of Teachers (UFT), and from Andrew Rigie, Executive Vice President of the Greater New York City Chapters of NYSRA. The Committee received written testimony from NYCLA and CBA and written versions of the testimony delivered orally by Messrs. Schoor and Rigie.

Overall, reaction to consolidation was positive. The suggested new configuration of the DOHMH tribunal as a unit of OATH with local neighborhood offices in all five

²³ As reflected in the notice published in the City Record on March 25, 2011, the Committee also considered a proposed recommendation that the executive order transfer to OATH another category of cases originating at HPD, involving certifications of no harassment, which are already heard at OATH pursuant to agency rule. See Ad. Code §§ 28-107.4(3), 27-2093; Z.R. §§ 23-013, 93-90, 96-110, 98-70, 121-50; Title 28 RCNY § 10-02. After further consideration, the Committee has concluded that no benefit would be derived by including the transfer of these cases in an executive order, since their determination by OATH is already fully authorized by the existing agency rule.

boroughs, which is described in detail below, is expected to bring considerable benefit to small business owners. NYSRA notes that it looks forward to fairer and more streamlined, convenient and efficient hearing processes for food service establishment operators.²⁴ CBA supports the effort being made via consolidation to foster independence in ALJs' decision-making processes, as well as to increase access to justice by holding hearings in all five boroughs.²⁵ NYCLA also supports consolidation in the belief that it will further the goal of achieving fair and impartial justice.²⁶

Testimony received also included suggestions for the Committee. CBA and NYCLA raised some concerns about the consolidation of such a large number of cases. CBA suggested that the Committee or an independent group outside of OATH review the progress made at ECB as well as the DOHMH and TLC tribunals within the next twelve months. NYCLA suggested that high-stakes DOHMH cases be heard at the central OATH headquarters rather than at borough offices. NYSRA submitted a number of suggestions, including holding hearings telephonically,²⁷ allowing food service establishment operators to specifically request which borough office will hear their case, assigning experienced ALJs to hear restaurant cases and setting up a mechanism to allow food service establishment operators to provide feedback about ALJs. The Committee is currently analyzing these proposals.

UFT opposes the recommendations. UFT believes that consolidation will not result in reduced costs or more efficient operations. It expressed concern that a policy

²⁴ Comments of Andrew Rigie, Executive Vice President, Greater New York City Chapters, NYSRA, April 15, 2011 at 2 (available upon request).

²⁵ April 15, 2011 letter from Adrienne Ward, Chair, Committee on Administrative Law, CBA at 1-2 (available upon request).

²⁶ Testimony by James B. Kobak Jr., President, NYCLA at the Public Hearing of the Mayor's Committee on Consolidation of Administrative Trials and Hearings, April 15, 2011, at 1 (available upon request).

²⁷ DOHMH recently promulgated amended rules that authorize telephonic and electronic adjudications. 24 RCNY §§ 7.09, 7.11.

similar to the rule promulgated by ECB after its consolidation with OATH, which tightened standards for the reopening of default judgments, would be implemented at other newly consolidated tribunals. It further expressed concern that ALJs who are expert in adjudications at one tribunal would be assigned to hear cases at another. It argued that public confidence in the impartiality of ALJs would be enhanced more by providing them with protections against discharge or reduced caseloads than by centralizing them in a separate agency.²⁸

The Committee is now prepared to submit these formal recommendations to the Mayor. The Mayor is empowered to issue an executive order directing that consolidation take place. The order, which the Committee's executive order group will assist in drafting, will provide legal authority for and set forth the process by which the agencies and caseloads the Mayor specifies will be consolidated with OATH.

In this Report, the Committee describes in detail its recommendations for consolidation of each agency and caseload, including the process by which consolidation will happen and how the newly constituted tribunals will function or how transferred caseloads will be processed. In addition, the Committee sets forth its plans for assessing other tribunals that are not addressed in this Report and anticipates possible future recommendations for the consolidation of additional tribunals or caseloads within OATH.

II. Assessments and Recommendations

1. The DOHMH Tribunal

The tribunal is located at 66 John Street in Manhattan. In FY10 the tribunal handled approximately 60,000 cases, made up primarily of restaurant (61%) and pest

²⁸ UFT also raised these issues before the 2010 Charter Revision Commission, which took them into account in deciding whether to include the Charter amendment concerning consolidation on the ballot.

control (18%) violations. Other cases adjudicated at the tribunal include violations relating to daycare agencies and day camps, swimming pools and saunas, radiological health care, radioactive materials, asbestos, mold, fumes, ventilation, animals, cigarette vending machines, lead, window guards and violations arising from the Smoke Free Air Act. DOHMH expects a significant increase in that caseload for the coming year as it hires new inspectors to support its expanding restaurant-grading program. The tribunal has the authority to impose monetary penalties on respondents found in violation; penalties range from \$200 to \$2,000 per violation. Hearings are relatively brief, the rules of evidence are relaxed and many respondents represent themselves. However, long waits mean that the time involved in appearing may be substantial, which is one reason some respondents retain professional representatives.

Pest control violations and vector control violations have recently been transferred to ECB. Pest and vector control violations are similar to the kinds of environmental violations that ECB already hears. A number of other kinds of violations now adjudicated by the DOHMH tribunal are also similar in nature and could potentially be transferred to ECB in the future, after issuance of the executive order.

The administrative organization of the tribunal is split into two units, one overseeing adjudications, the other handling operations. That bifurcated structure means the tribunal is overseen by two separate divisions within DOHMH – the adjudications unit reports to DOHMH’s General Counsel, while the tribunal operations unit ultimately reports to the Deputy Commissioner for Finance and Planning.

The adjudications unit relies on a roster of approximately 50 per-diem hearing examiners and five full-time hearing examiners. The unit is responsible for scheduling

hearing examiners' hours, day-to-day management of hearing examiners and issuance of decisions. The operations unit employs approximately 30 staff in a variety of administrative and supervisory roles. The unit is responsible for docketing, calendaring, assembling files, reception, data entry, quality review and mailings – essentially, all pre- and post-hearing case management. At the tribunal level, there is little overlap in responsibilities between the adjudications and operations units; however, the senior agency officials responsible for each division meet regularly to address tribunal-related issues.

The split in tribunal management has made it more difficult for the tribunal to address issues such as scheduling and space allocation that require coordination between the two units. Consolidating the tribunal with OATH would allow OATH to oversee both aspects of the tribunal's administration. OATH has had useful experience in addressing coordination issues raised by a similar, though less rigid, bifurcated management structure that was previously in place at ECB. OATH's ability to focus on tribunal management should facilitate better coordination between the two components of the tribunal's administration.

a) Assessment

Beginning in late 2010 a team designated by the Committee began an operational assessment of the DOHMH tribunal. The assessment team conducted several site visits, familiarized itself with DOHMH's case processing and paper and electronic case management systems and relevant databases and participated in weekly meetings with DOHMH management to discuss tribunal-related issues. The assessment identified six

specific areas in which more focused management oversight and integration into OATH could be expected to improve the performance of the tribunal:

i. Alleviating waiting room congestion

The tribunal has had a long-standing reputation for waiting room congestion. Respondents often spend hours waiting before a hearing begins – and sometimes the press of business means a respondent is told that the case is being “administratively adjourned” and he or she will have to return another day. With more notices of violation being issued and contested after the introduction of restaurant grading in the fall of 2010, the situation worsened. Waiting times went up, and administrative adjournments became more frequent. To be sure, DOHMH leadership commendably sought to address the emergency with a number of urgent responses – especially by maximizing the availability of settlements and rescheduling cases ahead of their hearing dates. Nevertheless, the long history of congestion argues for a structural solution.

ii. Backlog

With the increased pressure to address the influx of contested violations, the tribunal has been experiencing significant backlogs in processing defaults: in late 2010 the tribunal reported a backlog of more than 6,000 defaults. Managing the challenge of a sharply increased volume of contested violations while eliminating the default backlog will require focused management of judicial time and hearing rooms available for adjudication, creativity in deploying resources and careful oversight to track and sustain progress.

iii. Lack of transparency

The lack of transparency and of public information made available by the tribunal contributes to the frustration many respondents experience when trying to contest a notice of violation. The tribunal does provide some basic information on the DOHMH agency website about contesting a violation. However, the information is difficult to locate – requiring advance knowledge that it exists plus a sophisticated approach to searching for it – and is of limited value. DOHMH is the only one of the City’s principal tribunals that makes none of its decisions available online, so respondents and representatives have little ability to determine how other cases were decided in the past. Relevant laws and regulations are difficult to locate online or in print at the tribunal itself.

Providing online information about how to contest violations and access to laws, regulations and prior decisions would enable respondents to familiarize themselves with expectations for their hearings and make their preparations more meaningful. Especially since taking over administration of ECB, OATH has developed the ability to provide members of the public with current information about tribunal processes in plain English on its website and in informational materials at the tribunal. That expertise should be very useful in addressing the same set of issues at the DOHMH tribunal.

iv. IT system integration

Until recently, DOHMH tribunal data was managed using the license- and permit-tracking systems on which DOHMH relies, the City Agency Management Information System (CAMIS), and paper case-folders for adjudication. Over the last year, DOHMH IT and the tribunal have been in the process of developing an electronic case management system, the Administrative Tribunal Automation System (ATAS), which improves

efficiency and data quality using features such as electronic folders, direct data entry from electronic NOV's and coordination with databases such as CAMIS. An early version of this system is in use at the tribunal and has been well received by hearing examiners and tribunal staff. The DOHMH tribunal does not have any staff dedicated to the continued development and maintenance of ATAS: the tribunal is relying on DOHMH IT staff for its ongoing needs.

Development and ongoing maintenance of ATAS are key priorities for the DOHMH tribunal and the agency as a whole. Having worked on the development and deployment of the NYCServ electronic case management now in use at ECB, OATH/ECB IT staff are experienced in overseeing the development and maintenance of an electronic case management system for a high-volume tribunal. In particular, they are familiar with issues of integrating tribunal needs for case management with enforcement agency needs for current information about case statuses or outcomes.

v. Online adjudication

Most of the DOHMH tribunal's caseload is adjudicated through in-person hearings conducted at its hearing office in Manhattan. While the tribunal does offer hearings by mail for some of its cases, that option accounts for only a small portion of its adjudications. The tribunal currently has no ability to offer online adjudication, though the agency did recently adopt a rule to permit telephone participation in hearings.²⁹

Providing respondents with an opportunity to contest violations easily and conveniently is a priority at OATH. OATH has successfully introduced new technology to permit most ECB violations to be contested online. The similarity between many

²⁹ See footnote 27, *supra*.

DOHMH and ECB cases makes it feasible to adapt that technology for a significant portion of the DOHMH tribunal's caseload.

vi. Hearings in five boroughs

In 2009 the Mayor and the Council Speaker jointly supported creation of the Regulatory Review Panel to evaluate City regulations and processes that have an especially serious impact on small businesses. One theme consistently expressed by the restaurant industry in the panel's outreach, and reflected in feedback provided to DOHMH and other City sources over the years, is just how serious an inconvenience it is for a restaurant owner in the Bronx, Brooklyn, Queens or Staten Island to have to travel to Manhattan to contest a violation.³⁰ Consolidation with OATH would allow DOHMH hearings to be held in each of the borough offices to which OATH has access through ECB. Not only would respondents save time and expense, but the added hearing space and flexibility would help alleviate congestion in Manhattan.

b) Recommendations

i. Transfer the DOHMH tribunal to OATH

The Committee recommends that the DOHMH tribunal be transferred from DOHMH to OATH. Restaurant cases, which make up the bulk of the tribunal's caseload, would be heard at the same borough offices as ECB cases but would continue to constitute a separate caseload that would not be transferred to ECB. DOHMH and OATH should continue to review other cases that now constitute part of the DOHMH tribunal caseload: where the two agencies deem it appropriate, they should transfer such cases to ECB, as they have previously done with cases involving mobile food vendors and pest control and vector control violations.

³⁰ Regulatory Review Panel Report, April 2010, at 17.

ATAS would continue to be used for restaurant cases and any other parts of the DOHMH tribunal caseload not transferred to ECB. OATH has put in place a management team with experience in the development and implementation of complex databases and case management systems. Working with DOHMH IT, OATH can provide resources for the ongoing improvement and support of ATAS.

ii. Create an appeals unit to review hearing-level decisions

Under current practice, a respondent – but not DOHMH – may challenge a decision issued by a DOHMH hearing examiner by appealing to the DOHMH review board.³¹ The review board has three members, all appointed by the Board of Health³²: an attorney in the office of the agency’s General Counsel; a second attorney; and a person with experience in public health activities. The Committee recognizes that effective tribunal management includes management of the appellate function. Accordingly, the Committee recommends that the review board be discontinued. With respect to DOHMH cases that are transferred to OATH but are not transferred to ECB, appeals should be decided by an appeals unit within OATH.

In addition, to ensure uniformity of decision-making and bring appellate practice in DOHMH cases into line with existing practice at ECB and TLC, the Committee recommends that the appeals unit be authorized to hear appeals by DOHMH as well as by respondents. Allowing appeals from both sides will enable the appeals unit to develop a comprehensive body of decisions that can be published and serve as authority that the public and legal practitioners can consult for guidance.

³¹ N.Y.C. Health Code § 7.17.

³² Pursuant to Charter § 553(a), the Board of Health is a ten-member board located in DOHMH and comprising five physicians and five members with expertise in other relevant specified areas of science. Its chair is the Commissioner of Health and Mental Hygiene.

Consistent with discussions held by Committee staff with DOHMH and as explained in the Appendix to this Report, the Committee also recommends that the Board of Health adopt a resolution that it is establishing within OATH its Charter-authorized tribunal, with the power to make final decisions on behalf of the agency.³³

The Appendix to this Report sets forth the modifications to current rules and Health Code provisions that the Committee recommends be in effect during the transition period following transfer of the DOHMH tribunal to OATH, pending adoption by OATH through rulemaking of superseding rules after consultation with DOHMH. It may also be appropriate for DOHMH to amend its rules and for the Board of Health to promulgate conforming amendments to the Health Code.

2. The TLC Tribunal

In FY10 the TLC tribunal conducted hearings in approximately 110,000 cases for violations arising from civilian complaints; inspector summonses issued by TLC's Enforcement Division or Safety & Omissions Division, NYPD or Port Authority Police; or administrative summonses issued by TLC's Licensing Division. ALJs have the authority to impose fines or suspensions. Since 2007 cases involving license revocation and certain cases involving summary suspension have been referred by TLC's legal department to be adjudicated at OATH. In the last 18 months TLC enforcement efforts have expanded, resulting in an increased caseload.

³³ See N.Y.C. Charter § 558(e) ("The board of health or an administrative tribunal established by the board of health...shall have the power to enforce its final decisions and orders...."). As described earlier, the Charter amendment concerning consolidation gives the Board of Health the authority to establish its tribunal within OATH. N.Y.C. Charter § 1048(2). For matters arising under the particular provisions of Article 13-E of the New York State Public Health Law, concerning regulation of smoking in certain public areas, the Committee recommends that the same appeals process apply but that DOHMH retain final decision-making authority.

The tribunal employs 36 staff members and 86 part-time ALJs to adjudicate violations of TLC and other City rules by owners and drivers of medallion (yellow) taxicabs, for-hire vehicles (community-based liveries and black cars), commuter vans, paratransit vehicles and some luxury limousines. Parties are often represented by an attorney or industry representative. Depending on the severity of the violation, adjudication may result in suspension of a respondent's license and imposition of a penalty that may range as high as \$10,000.

a) Assessment

Beginning in 2010 a team designated by the Committee began an operational assessment of TLC's administrative tribunal. The assessment team conducted background research, made site visits and reviewed tribunal operations and IT resources. The assessment identified the following as areas in which significant benefit can be expected from consolidation with OATH:

i. Upgrading and modernizing MIS

For its calendaring and case-tracking needs, the TLC tribunal currently relies on a customized Access database designed in-house by a tribunal employee who is not an IT professional. The database has been built on an as-needed basis without any support from TLC's IT department. To date, the current system has met basic tribunal needs, but the system is nearing capacity. The tribunal has only one staff member with the background to administer the system, which leaves it precariously positioned. Because the database was built piece by piece, its functionality is not intuitive, which makes it difficult to transfer maintenance and administrative responsibilities to new employees.

TLC has recognized the need to replace the existing system. Consolidation with OATH makes it possible to address that need efficiently by expanding the existing violations tracking system on which OATH/ECB relies, the Adjudication Information Management System (AIMS) and NYCServ. It will also give the tribunal access to a team of skilled IT professionals with experience in database administration and development of case management systems.

ii. Maintaining rapid flow of cases

In recent years, the tribunal has seen significant fluctuations in the age of open summonses and case processing times. Between FY08 and FY09 the average age of an open summons increased from 64 days to 84 days. It increased again to 148 days in FY10, before dropping to 80 days in December 2010.

Case processing times have also experienced significant fluctuations. In FY08 the average time it took the TLC tribunal to process a case was 3.49 days. The average increased to 6.9 days in FY09 and to 7.15 days in FY10, then declined to 6.18 days in December 2010.

While the fluctuations are largely explained by activities outside the tribunal's control rather than management approaches, they do highlight challenges the tribunal faces and suggest the tribunal could benefit from oversight by a management team with extensive experience in tribunal administration. Because OATH's primary focus is on the quality of adjudications and efficient tribunal operations, it will be able to commit the appropriate resources to maintain a rapid flow of cases. By focusing on forward-thinking management, OATH will be able to rely on ongoing internal planning to anticipate and address problems with volume or backlog.

iii. Improving appearance and use of space at Long Island City

The tribunal's main office in Long Island City is run-down. The space it occupies is poorly configured for efficiency and convenience. Despite efforts to improve signage and provide public information, the waiting area remains unappealing. Addressing improvements in the appearance and use of space at Long Island City is a priority, especially as the lease for the building enters renegotiation this year. OATH's expertise in tribunal administration, including recent experiences in opening a new site for its ECB branch office in the Bronx and preparing a new site for its ECB branch office in Brooklyn to open later this year, makes it the ideal agency to oversee improving the appearance and layout of TLC's Long Island City office.

iv. Accommodating respondents and witnesses

The TLC tribunal does not offer hearings by mail or online adjudication. OATH management can help the tribunal develop these capabilities.

v. Regulation of industry representatives

Although respondents may represent themselves at hearings, many choose to hire representatives to appear on their behalf. The tribunal has made an effort to regulate industry representatives, requiring a basic examination on TLC rules and registration with the tribunal. However, the tribunal would benefit from an evaluation and review of its current practices, including formalized removal proceedings and ensuring quality of representation.

b) Recommendations

i. *Transfer the TLC tribunal to OATH*

The Committee recommends that the TLC tribunal be transferred from TLC to OATH.³⁴ The current structure of tribunal management, administrative staff and judiciary at the tribunal would remain in place but would report to the Chief Administrative Law Judge at OATH after consolidation. For the most part, hearings would remain in their current settings in Long Island City and downtown Manhattan and at Kennedy Airport. Hearings that occur in Staten Island, where the existing TLC accommodations are inadequate, would be conducted at OATH's Staten Island borough office. Respondents in Long Island City, the tribunal's main hearing center, would continue to have immediate access to the other units of TLC that are situated near the tribunal, including licensing and collections.

ii. *Create an appeals unit to review hearing-level decisions while preserving TLC authority to determine final agency action*

Under current practice, either party may appeal an ALJ's decision to TLC's Appeals Unit. The Appeals Unit is staffed by part-time ALJs who do not sit on cases at the initial hearing level. In 2010 the Appeals Unit decided 3,350 appeals.

The Committee recognizes that effective tribunal management includes management of the appellate function. At the same time, the Committee recognizes that consolidation of the fact-finding and other adjudicative functions of an agency tribunal with OATH is not meant to supplant the agency's authority to determine final agency action, for example with respect to the interpretation and enforcement of its rules and

³⁴ The Committee notes that TLC is in the process of amending its rules to eliminate "fitness hearings" for applicants for TLC licenses. After promulgation of the new rules, the hearing process will be replaced by an administrative procedure to be conducted by TLC's licensing unit rather than at the tribunal. See http://www.nyc.gov/html/tlc/downloads/pdf/public_hearing_fitness_interview_rule.pdf.

regulations or the final determination of penalties, unless the agency separately opts to delegate such authority. However, in determining whether to reverse or modify the decision of OATH, the agency determination would need to be based on reasonable policy or legal concerns and consistent with the factual record and findings established by OATH. Accordingly, the Committee recommends that the present TLC Appeals Unit should be continued as an appeals unit of the transferred tribunal within OATH. The agency's ultimate authority should be safeguarded by allowing either party, after receiving a decision from the appeals unit, to petition the agency to modify or reject the appeals decision.³⁵ In determining whether to grant the petition, however, the agency would be bound by findings of fact set forth in the decision. The agency's exercise of that authority would require a written decision. Since the agency would be modifying or setting aside a written decision issued by OATH and since the agency decision to do so would then be subject to review by a State court, it would presumably be only in unusual cases that the agency would intervene, as is now true with respect to agencies that refer cases to OATH but retain the power to reject OATH's recommended decision.

The Appendix to this Report sets forth the modifications of current rules that the Committee recommends be in effect during the transition period following transfer of the TLC tribunal to OATH, pending adoption by OATH through rulemaking of superseding rules after consultation with TLC. It may also be appropriate for TLC to amend its rules.

³⁵ By contrast, the Committee is recommending that after transfer of the DOHMH tribunal, decisions rendered by OATH should be final. The Committee notes that until now DOHMH has not been able to appeal hearing examiner decisions to the Review Board, while TLC has been able to appeal to the Appeal Unit of its tribunal. In each instance, the Committee is recommending that consolidation be accompanied by establishment of an additional level of review that can be invoked by the enforcing agency. In addition, the differences reflect consultation by the Committee with the affected agencies concerning their appropriate roles after consolidation.

3. BIC

BIC is a law enforcement and regulatory agency that oversees the private carting industry and the businesses operating in the City's public wholesale markets.³⁶ BIC inspectors issue notices of violation for infractions that occur in two distinct areas. First, BIC issues approximately 100 violations per year for infractions that occur at the City's public wholesale markets, such as improper truck idling³⁷ or failure to register with BIC to do business in areas adjacent to the public market.³⁸ Pursuant to BIC's regulations, these cases are heard at ECB.³⁹

The second type of violation issued by BIC concerns violations of the City's trade-waste regulations, such as unlicensed or unregistered waste removal, improper operation of a vehicle or failure to provide proper information to BIC in the licensing and registration process.⁴⁰ These violations carry penalties ranging from \$1,000 to \$10,000. BIC issues approximately 2,500 such violations per year. BIC settles a large majority of these cases. The remainder is currently adjudicated at the DCA tribunal,⁴¹ which issues approximately 300 default decisions and hears 200 contested adjudications for BIC per year.

The Committee recommends that all of BIC's trade-waste violation cases be moved from DCA to OATH – preferably to ECB, where its public markets cases are already being heard. These cases are substantially similar in nature to the violations already being heard at ECB. This shift will remove the burden of hearing BIC's cases

³⁶ N.Y.C. Charter § 2101.

³⁷ See Title 17 RCNY § 11-25(b).

³⁸ See Title 17 RCNY § 11-04.

³⁹ Title 17 RCNY § 11-21(a).

⁴⁰ See generally Title 17 RCNY Chapter 1.

⁴¹ Title 17 RCNY § 1-03(a).

from DCA's tribunal, which is undergoing an expansion in its own caseload. In keeping with the City's goal of centralizing adjudication, it is more appropriate that BIC's cases be heard at OATH than at another unrelated agency. ECB is under OATH management and can readily absorb the relatively small number of trade-waste adjudications that BIC generates.

Although the Committee is recommending that direction that this transfer occur be included in an executive order at this time, it recognizes that implementation will require rulemaking by the affected agencies. Currently, BIC rules providing that violations of its trade-waste regulations be heard at the DCA tribunal authorize DCA to make the final determination with respect to disposition of contested cases.⁴² By the same token, BIC rules providing that violations of its public markets regulations may be heard at ECB explicitly accept the tribunal processes followed there.⁴³ That means appeals are resolved by ECB's board. For trade-waste regulation cases to be transferred, BIC and OATH/ECB must agree on an arrangement for resolution of appeals; that will require agency rulemaking. Accordingly, the Committee recommends that the executive order direct the affected agencies to continue the discussions already under way to determine an appropriate process and formalize it in corresponding rules.

4. HPD

The Committee is not recommending that any adjudication function currently performed at HPD be transferred to OATH at this time. There is, however, a category of hearings that originate with HPD that the Committee is recommending be formally transferred to OATH by executive order: revocation of tax benefits hearings, which are

⁴² Title 17 RCNY § 1-03(a).

⁴³ Title 17 RCNY § 11-21(a).

expected to arise under new HPD rules. Including in the executive order that these cases shall be held at OATH will further the City's goal of centralizing administrative justice.

HPD recently issued amended rules governing the revocation of real property tax benefits provided pursuant to the Real Property Tax Law and administered by HPD. The rules allow HPD to revoke a tax exemption or abatement granted a building owner upon a finding that the owner is not eligible for the benefit granted.⁴⁴ Five categories of programs are involved: tax credit low income housing projects controlled by charitable organizations (RPTL § 420-c), newly constructed multiple dwellings (RPTL § 421-a), owner-occupied one- and two-family homes (RPTL § 421-b), conversion of non-residential buildings in Lower Manhattan (RPTL § 421-g) and rehabilitation and conversion of multiple dwellings (RPTL § 489).

A taxpayer who wishes to contest HPD's notice of impending revocation is entitled under the new rules to an administrative hearing to resolve factual issues.⁴⁵ Although HPD has revoked some tax exemptions, it has not as yet held any hearings. However, a caseload is expected to develop soon, primarily under RPTL §§ 421-a and 489. The Committee recommends that the executive order direct that these hearings be conducted at OATH, which can provide the dedicated administrative law judiciary and professional sophistication the cases will require. The salient section of the amended rule provides that these hearings are to be conducted by a "hearing officer," who is defined as "a person designated by HPD."⁴⁶ It is anticipated that, concurrently with the promulgation of the executive order, HPD will designate the Chief Administrative Law Judge at OATH or his or her designee as the person who will conduct these hearings, and

⁴⁴ Title 28 RCNY § 39-01 et seq.

⁴⁵ Title 28 RCNY § 39-02.

⁴⁶ Title 28 RCNY § 39-01.

that HPD and OATH will make any arrangements necessary to ensure that HPD's recently amended rules may be implemented appropriately in light of the transfer.

III. Next Steps

1. Implementation of the Committee's recommendations

If the Mayor accepts the Committee's recommendations, he will issue an executive order directing the transfer to OATH of the DOHMH and TLC tribunals and the specific caseloads originating with HPD and BIC as described here. As authorized by the Charter, the executive order will provide that the transfer be implemented consistent with the procedures and requirements set forth in the Appendix to this Report and that, as specified therein, agency rules and other provisions in effect on the date of the transfers to OATH relating to those tribunals will remain in effect (as modified pursuant to the Appendix if the Mayor so directs) as rules of OATH, or in some cases will remain rules of the relevant agencies where appropriate. OATH (or the relevant agencies, as the case may be) will then have the power to amend those rules, after consultation with the affected agencies (or OATH, as the case may be) and appropriate rulemaking. Some additional steps will also be necessary:

- The Board of Health will designate what will be known as the "Health Tribunal at OATH" as the tribunal established to conduct hearings and make final decisions on its behalf.
- TLC will designate what will be known as the "Taxi and Limousine Tribunal at OATH" as the tribunal established to conduct hearings on its behalf, subject to the appeal and agency review process specified in these recommendations.
- HPD will designate the Chief Administrative Law Judge at OATH or his or her designee as the person who will conduct adjudication of cases involving revocations of tax benefits.

- BIC will consider adoption of a rule transferring its trade-waste caseload to OATH and to ECB in particular and accepting the ECB process for final decision of contested cases.

The Committee anticipates that, if the Mayor accepts its recommendations, they will be implemented with the start of the new fiscal year, i.e., as of July 1, 2011 or as soon as practicable thereafter. The procedures contained in the Appendix are transitional in purpose and intended to be temporary in duration. The Committee further anticipates, and strongly encourages, that as they glean experience from consolidation in practice all agencies involved in the transfer of tribunals will expeditiously complete the additional rulemaking needed to establish the most effective procedures for the disposition of cases by the transferred tribunals.

2. Future assessments by the Committee

The issuance of this report and these recommendations concludes the first part of the Committee's work. As explained above, the Committee began the process of analyzing City tribunals by identifying those tribunals and caseloads that appeared most likely to benefit immediately from consolidation with OATH. At this time the Committee has not assessed other tribunals and caseloads and has made no determination whether their consolidation with OATH is or is not warranted.

The Committee will now turn its attention to those assessments. It is anticipated that the process of conducting and completing those assessments will take place over the next six months. As with the instant recommendations, the Committee will identify and solicit comment on any recommendations it is then considering, with a public hearing being conducted to elicit testimony thereon. The Committee will then issue a final report and recommendations, which it expects to do in the fall of 2011.

Appendix

This Appendix sets forth recommended modifications to rules governing the tribunals of the Department of Health and Mental Hygiene (“DOHMH”) and the Taxi and Limousine Commission (“TLC”) to implement transfer of the tribunals to the Office of Administrative Trials and Hearings (“OATH”). Upon their transfer, they will be designated as the “Health Tribunal at OATH” and the “Taxi and Limousine Tribunal at OATH,” respectively; the pre-existing component of OATH will remain distinct from the transferred tribunals and will be designated as the “OATH Tribunal.” The OATH Tribunal does not include the Environmental Control Board, which is a separate tribunal at OATH.

Consistent with the Mayor’s powers under the Charter, these modifications generally provide for rules now governing the DOHMH and TLC tribunals to be deemed rules of OATH, wherever practicable. OATH may thereafter, through rulemaking pursuant to CAPA, amend those rules. Rules that deal primarily with agency functions and procedures, as well as rules that concern matters DOHMH and TLC have delegated to the OATH Tribunal or are more appropriately within the special expertise of the agency, would remain rules of the respective agencies. In the case of the Health Tribunal at OATH, the process for dealing with appeals would terminate at OATH (with a limited exception in certain smoking-related cases). DOHMH indicated to the Committee that it will specifically designate the tribunal to make final decisions of both fact and law and that it intends to obtain a resolution from the Board of Health to the same effect. DOHMH tribunal decisions generally concern monetary penalties only, and DOHMH and the Board of Health retain the right to affect policy via amendments to the Health Code and DOHMH rules. After consultation with TLC, the Committee recognizes its interest in review of tribunal decisions with consequences for agency policy. The Committee recommends that decisions issued by the Taxi and Limousine Tribunal at OATH be subject to a petition for review to the Chairperson of TLC (“Chairperson”), who would retain the authority to reverse or remand the tribunal’s decision. Such designation is broadly consistent with the current rules, which provide that in virtually all instances where there are recommendations from the TLC tribunal, the Chairperson

makes the final decision. The specific recommendations concerning the rules, including the TLC petition review process, are set forth below.

Department of Health and Mental Hygiene

The DOHMH rules and procedures governing adjudication and otherwise affecting the DOHMH tribunal and review board are set forth in Article 7 of Title I of the Health Code and Chapter 7 of Title 24 of the Rules of the City of New York. The Committee recommends that during the transition to OATH management those rules and procedures be maintained as rules and procedures of OATH or DOHMH (or the Board of Health), as indicated below, with some modifications, including, in limited instances, supersession of rules or Health Code provisions. The Committee's recommendations are intended to preserve the processes established under the rules while reflecting that with consolidation the tribunal will be under the management of OATH rather than remaining a component of DOHMH. References to the tribunal below and in the underlying rules and Health Code provisions are deemed to be references to the "Health Tribunal at OATH." References to the "Review Board" are deemed to be references to the Appeals Unit of the Health Tribunal at OATH. References to the "Director" are deemed to be references to the Chief Administrative Law Judge of OATH or his/her designee. Where the existing rules refer to powers, duties or responsibilities of the tribunal by assigning them to DOHMH, the Board of Health or the DOHMH tribunal and review board, the recommendations clarify that they are assigned to the Health Tribunal at OATH or the OATH tribunal.

Apart from proceedings that take place before the DOHMH tribunal, DOHMH also currently participates in proceedings before OATH. The Committee is not recommending any changes in the conduct or location of those proceedings. Those proceedings shall continue to be governed by the rules that currently govern them. As noted above, the tribunal will be redesignated as the "OATH Tribunal."

During the transition, subject to adoption of an appropriate resolution by the Board of Health, and until adoption of new rules by OATH or DOHMH or new provisions of the Health Code by the Board of Health, the following rules will govern adjudication and disposition of DOHMH matters:

Rules of the City of New York, Title 24, Chapter 7 (“Adjudicatory Hearings”)

§ 7-01 (*Adjudications Conducted by the Department*). This section is superseded and replaced by the following as a rule of DOHMH:

“§ 7-01 Adjudications Conducted by the Department.

“All adjudicatory hearings commenced by a notice or finding of violation pursuant to Article 7 of Title I of the New York City Health Code, where the Department seeks a fine or monetary penalty, pertaining to enforcement of State and local health laws and regulations shall be conducted by the Health Tribunal at OATH, which shall make final findings of fact and conclusions of law subject to appeal consistent with the delegation of the Commissioner of Health and Mental Hygiene and the Board of Health and as provided by the rules of such tribunal.”

§ 7-02 (*Adjudications Conducted by the Office of Administrative Trials and Hearings*). This section continues in effect as a rule of DOHMH. Transfer of the DOHMH tribunal to OATH management does not affect the ability of DOHMH separately to refer any adjudication to the OATH Tribunal. Any such adjudication shall be governed by the rules of OATH that apply to the OATH Tribunal. This represents no change in the existing process. (By contrast, a case that has not been separately referred to OATH but rather is presently adjudicated at the Health Tribunal at OATH will be governed by the provisions of Article 7 of Title I of the Health Code, as modified in this Appendix.)

Rules of the City of New York, Title 24, New York City Health Code, Title I, Article 7 (“Administrative Tribunal”)

§ 7.01 (*Administrative Tribunal*). This section continues in effect as a provision of the Health Code. The "Administrative Tribunal" refers to the Health Tribunal at OATH. The following sentence is added to this section: "The hearing procedures with respect to violations arising under Article 13-E of the New York State Public Health Law, relating to regulation of smoking in certain public areas, shall be the procedures applicable to the Health Tribunal at OATH, subject to review and approval of recommended decisions of the Appeals Unit pursuant to applicable rules of the Department.

§ 7.03 (*Jurisdiction, powers and duties of the Administrative Tribunal*). This section continues in effect as a rule of OATH. Subsection (a) of this section is modified

to read as follows: “In accordance with the executive order of the Mayor pursuant to Charter section 1048 and consistent with the delegations of the Commissioner of Health and Mental Hygiene and the Board of Health, the Health Tribunal at OATH shall have jurisdiction to hear and determine notices of violation alleging non-compliance with the provisions of the New York City Health Code, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City, and any other laws or regulations that the Department has the duty or authority to enforce.”

§ 7.05 (*Organization of the Administrative Tribunal; Director*). This section is superseded and replaced by the following as a rule of OATH: “§ 7.05 Director/Chief Administrative Law Judge. All references in the Health Code to the Director of the Administrative Tribunal shall be deemed to refer to the Chief Administrative Law Judge of OATH or his/her designee.”

§ 7.07 (*Proceedings before the Administrative Tribunal*). This section continues in effect as a rule of OATH. In subsection (c), paragraph (4), the “Department” refers to the Health Tribunal at OATH.

§ 7.09 (*Appearances*). This section continues in effect as a rule of OATH, except that subsection (e) continues in effect as a provision of the Health Code. The following sentence is added at the end of subsection (e): “If an adjudication is open or completed before the Health Tribunal at OATH, DOHMH shall promptly notify the tribunal that it has received payment in full satisfaction of the notice of violation. If DOHMH withdraws a notice of violation, even if it has been adjudicated, that is open or has been completed before the Health Tribunal at OATH, DOHMH shall promptly notify the tribunal.”

§ 7.11 (*Hearings and mail adjudications*). This section continues in effect as a rule of OATH.

§ 7.13 (*Subpoenas*). This section continues in effect as a rule of OATH.

§ 7.15 (*Disqualification of hearing examiners*). This section continues in effect as a rule of OATH.

§ 7.17 (*Review board*). This section is superseded and replaced by the following as a rule of OATH, except that paragraph (ii) of subsection (d) of this section shall be a rule of DOHMH:

“§ 7.17 Appeals.

“(a) There shall be an Appeals Unit within the Health Tribunal at OATH.

“(b) The Appeals Unit shall have jurisdiction to review all final decisions, other than default decisions, of the hearing examiner to determine whether the facts found therein are supported by substantial evidence in the record, and whether the findings and determinations of the hearing examiner, as well as the penalty imposed, are supported by law. In addition, the Appeals Unit may determine whether a monetary penalty, even if it is lawful, should be increased or decreased. The Appeals Unit shall not consider any evidence that was not presented to the hearing examiner. The Appeals Unit shall have the power to reverse, to remand or to modify the decision appealed from or to increase or reduce the amount of the penalty imposed within the limits established by the Health Code or other applicable law.

“(c) A party may seek to review, in whole or in part, any final decision of a hearing examiner, other than a decision rendered on default by the respondent. However, neither a denial of a motion to vacate a default decision nor a plea admitting the violations charged shall be subject to review by the Appeals Unit. Within 30 days of the Health Tribunal at OATH delivering or mailing the hearing officer’s decision to a party or the party’s authorized representative, the party may file two copies of a notice of appeal on a form prescribed by the tribunal, accompanied by two copies of a brief statement setting forth the specific reasons why the decision should be reversed, remanded or modified. Upon receipt of a notice of appeal, the tribunal shall promptly deliver or mail a copy of it, together with a copy of any accompanying statement, to the adverse party. Within 30 days of the tribunal delivering or mailing to a party a notice of appeal filed with the tribunal, the party may file two copies of a response to the appeal with the tribunal, and the tribunal shall promptly deliver or mail a copy of the response to the appealing party. Filing a notice of appeal shall not stay the collection of any

fine or other penalty imposed by the decision. No appeal by or on behalf of a respondent shall be permitted unless the fine or penalty imposed has been paid before or at the time of the filing of the notice of appeal, or the respondent may post a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from. Appeals decisions shall be made upon the entire record of the hearing and the evidence before the hearing examiner. Appeals may be decided without the appearance of the appealing party, but the appealing party may make a request to appear before the Appeals Unit at the time of the filing of the notice of appeal. If the appealing party makes such a request, the tribunal shall provide notice to the parties whether the request is granted and, if so, the date of argument on the appeal, at which either party may appear before the Appeals Unit.

“(d) (i) The Appeals Unit shall promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from, a copy of which shall be delivered to DOHMH and served on the respondent by certified or registered mail, stating the grounds upon which the decision is based. Where appropriate, the decision shall order the repayment to the respondent of any penalty that has been paid. The decision of the Appeals Unit shall be the final determination of DOHMH, except in the case of a violation arising under Article 13-E of the New York State Public Health Law, entitled “Regulation of Smoking in Certain Public Areas.”

“(ii) In the case of a violation arising under Article 13-E of the New York State Public Health Law, the decision of the Appeals Unit shall be a recommended decision to be reviewed by the Commissioner of Health and Mental Hygiene or his or her designee. Within 30 days of the issuance of a decision by the Appeals Unit, either party may submit written argument that the decision of the Appeals Unit should be affirmed, reversed, remanded or modified by mailing or delivering by hand one copy of such written argument to the General Counsel of DOHMH and mailing or delivering by hand one copy to the adverse party. After receipt of written argument from both parties or the passage of 45 days from the issuance of the recommended decision by the Appeals Unit, whichever time is

shorter, the Commissioner of Health and Mental Hygiene or his or her designee shall issue a written decision affirming, reversing, remanding or modifying the decision of the Appeals Unit. Such written decision shall be served on the respondent by certified or registered mail. Where appropriate, the decision shall order the repayment to the respondent of any penalty that has been paid.”

§ 7.19 (*Disqualification of member of Review Board*). This section is superseded and is no longer in effect.

§ 7.21 (*Registration and disqualification of certain authorized representatives*). This section continues in effect as a rule of OATH. In subsection (a), “Department” is deemed to refer to the Health Tribunal at OATH. In subsection (b), “Commissioner” is deemed to refer to the Chief Administrative Law Judge of OATH or his/her designee and “Office of Administrative Trials and Hearings or successor agency” refers to the OATH Tribunal.

§ 7.23 (*Computation of time*). This section continues in effect as a rule of OATH.

Taxi and Limousine Commission

The TLC rules governing adjudication and otherwise affecting the TLC tribunal are set forth in the Rules of the City of New York, Title 35, Chapters 68 and 69. The Committee recommends that during the transition to OATH management those rules be maintained as rules of OATH or TLC, as indicated below, with some modifications, including, in limited instances, supersession of rules. The Committee’s recommendations are intended to preserve the processes established under the rules while reflecting that with consolidation the tribunal will be under the management of OATH rather than remaining a component of TLC. References to the tribunal or to the Commission, except where the context indicates otherwise, are generally deemed to be references to the Taxi and Limousine Tribunal at OATH. Where the existing rules refer to powers, duties or responsibilities of the tribunal by assigning them to TLC or the TLC tribunal, the recommendations clarify that they are assigned to the the Taxi and Limousine Tribunal at OATH or to OATH.

Apart from proceedings that take place before the TLC tribunal, TLC also currently participates in proceedings before OATH. The Committee is not

recommending any changes in the conduct or location of those proceedings. Those proceedings shall continue to be governed by the rules that currently govern them. As noted above, the tribunal will be redesignated as the “OATH Tribunal.”

During the transition, and until adoption of new rules by OATH or TLC, the following modifications of the TLC rules will apply and will govern adjudication and disposition of TLC matters:

Rules of the City of New York, Title 35, Chapter 68 (“Adjudications”)

§ 68-01 (*Scope of this Chapter*). Subsections (a) and (b) continue in effect as rules of OATH; sub-section (c) continues in effect as a rule of TLC.

§ 68-02 (*Penalties*). This section continues in effect as a rule of TLC. If a respondent serves a petition pursuant to the process described in connection with § 68-16, payment of the fine will be deferred until 30 days after delivery of the petition, unless the Chairperson takes action thereon.

§ 68-03 (*Definitions Specific to this Chapter*). This section continues in effect as a rule of TLC. However, some of the terms occur in sections that are, as described below, continued in effect as rules of OATH and some in sections that are continued in effect as rules of TLC. Therefore, OATH may effectively modify those definitions by adopting definitions specific to its own rules. The agencies are encouraged to cooperate in modifying definitions so as to ensure that the public benefits from consistency of terminology. TLC is considering a proposed amendment of this rule that would substitute a more detailed definition of “Fit to Hold a License.” See <http://www.nyc.gov/html/nycrules/downloads/rules/P-TLC-5-12-11-a.pdf>.

§ 68-04 (*Alternative Forum*). This section continues in effect as a rule of TLC and is deemed to govern referrals to the OATH Tribunal.

§ 68-05 (*Service of Summonses and Notices*). This section continues in effect as a rule of TLC.

§ 68-06 (*Contents of Summons or Notice of Violation*). Subsection (a) continues in effect as a rule of TLC; subsections (b) and (c) continue in effect as rules of OATH.

§ 68-07 (*Respondent Options Based on Violation’s Appearance Requirements*). This section continues in effect as a rule of OATH. The reference in subsection (a),

paragraph (1) to the Commission is construed as continuing to refer to TLC, the Chairperson or his/her designee.

§ 68-08 (*Failure to Prosecute by the Commission*). This section continues in effect as a rule of TLC.

§ 68-09 (*Hearings – Adjournment Requests*). This section continues in effect as a rule of OATH.

§ 68-10 (*Hearings – Who Must or Can Appear for the Respondent*). This section continues in effect as a rule of OATH. In subsection (h), the word “Commission” is deemed to refer to the Taxi and Limousine Tribunal at OATH.

§ 68-11 (*Hearings – Procedures*). This section continues in effect as a rule of OATH. The references in subsection (e) and in subsection (f), paragraph (4) to the Commission are construed as continuing to refer to TLC, the Chairperson or his/her designee.

§ 68-12 (*Inquests – Hearing Conducted in the Absence of Respondent*). This section continues in effect as a rule of OATH. In subsection (c), the “Commission” refers to the OATH/TLC tribunal, which is responsible for mailing a copy of the ALJ’s decision to the respondent and recording information pertinent to its mailing. However, the address on file that is referred to in this subsection shall be on file with TLC.

§ 68-13 (*Inquests – Respondent’s Right to Challenge Decision*). This section continues in effect as a rule of OATH. In subsection (b), the word “Chairperson” is deleted and replaced with “Chief Administrative Law Judge of OATH.”

§ 68-14 (*Appeals – By Respondent*). This section continues in effect as a rule of OATH, except that subsection (j) continues in effect as a rule of TLC. In subsection (e), paragraph (1), which concerns requests for copies of recordings, the word “Commission” is deemed to refer to the Taxi and Limousine Tribunal at OATH. Subsection (e), paragraph (2) is modified and continued in effect as follows: “The Taxi and Limousine Tribunal at OATH shall provide Respondent with a copy of the recording within 30 days after receipt of the request. Whenever it provides a copy of the recording of a Hearing to a respondent, the Taxi and Limousine Tribunal at OATH shall simultaneously provide a copy to TLC.” Subsection (e), paragraph (3) is modified and continued in effect as follows: “If the Taxi and Limousine Tribunal at OATH cannot produce the recording to

the Respondent within 30 days, the determination being appealed will be dismissed without prejudice, which means that TLC is entitled to re-issue the violation and the Taxi and Limousine Tribunal at OATH is entitled to rehear the case as a new case.” Subsection (g) is modified by adding the following sentence: “In addition, the Respondent may argue that a penalty, even if it is lawful, should be reduced.”

§ 68-15 (*Appeals – By Commission*). This section continues in effect as a rule of OATH. Subsection (a) is modified to read as follows: “The Commission can appeal a final decision by an ALJ in the circumstances set forth in § 68-15(e).” Subsection (b) is superseded and replaced by the following: “(b) *Filing of appeal*. Two copies of the appeal, accompanied by two copies of the ALJ decision, must be directed to the Appeals Unit. The Appeals Unit shall mail one copy of the appeal and one copy of the ALJ decision to the respondent. TLC may request a copy of the recording of the Hearing within seven calendar days from the ALJ’s determination. The request must be made in writing on a form supplied by the Taxi and Limousine Tribunal at OATH. The Taxi and Limousine Tribunal at OATH will provide TLC with a copy of the recording within 30 days after receipt of the request. If TLC requests a copy of the recording of the Hearing, its time to file the appeal will be the *later* to occur of the following: (1) The original 30 calendar days from the date of the decision being appealed; or (2) Twenty-one calendar days from the date the Taxi and Limousine Tribunal at OATH issues the requested copy of the recording of the Hearing to TLC. Whenever it provides a copy of the recording of a Hearing to TLC, the Taxi and Limousine Tribunal at OATH shall simultaneously provide a copy to the respondent.” Subsection (e) is modified by adding the following sentence: “In addition, the Commission may argue that a penalty, even if it is lawful, should be increased.”

§ 68-16 (*ALJ’s Final and Recommended Decisions*). This section is superseded and replaced by the following as a rule of TLC:

“§ 68-16 Appeals Process and Recommended Decisions

“(a) Except as provided in subsection (b) of this section or as otherwise provided in these rules, appeals from the Taxi and Limousine Tribunal at OATH shall be subject to the following requirements:

“(1) Within 30 days of the issuance of the determination of an appeal by the Appeals Unit of the tribunal, either party may petition the Chairperson to reject the determination by delivering a petition to the General Counsel of TLC and mailing a copy to the adverse party.

“(2) If the respondent delivers and mails such a petition, TLC may submit an answer to the petition within 15 days by delivering such an answer to the General Counsel of TLC and serving it on the respondent. Unless the Chairperson takes action on the respondent’s petition within 30 days of its delivery, the determination of the appeal by the Appeals Unit shall become the final decision of TLC.

“(3) If TLC delivers and mails such a petition, within 30 days the Chairperson may notify the respondent that he or she is considering the petition and within 30 days the respondent may mail an answer to the General Counsel of TLC. If the Chairperson does not notify the respondent that he or she is considering the petition within 30 days of its receipt, or takes no action on the petition within 30 days of the receipt of respondent’s answer or within 60 days of its notification to the respondent if no answer is received, the determination of the appeal by the Appeals Unit shall become the final decision of TLC.

“(4) In reviewing the determination of the Appeals Unit of the Taxi and Limousine Tribunal at OATH, the Chairperson shall be bound by the findings of fact in the decision.

“(5) The determination of an appeal by the Appeals Unit that is not acted upon by the Chairperson shall become a final decision of TLC but shall not be binding precedent on the Chairperson in his/her consideration of subsequent petitions.

“(b) In the following circumstances, initial decisions of ALJs, whether by the Taxi and Limousine Tribunal at OATH or the OATH Tribunal, shall not be subject to the processes and requirements described in subsection (a) of this section, but shall be Recommended Decisions, subject to review by the Chairperson:

“(1) ALJ findings and penalty determinations as to the fitness of Licensees or License Applicants.

“(2) ALJ penalty determinations in padlocking or proceedings under § 19-528(b) of the Administrative Code.

“(3) ALJ findings and penalty determinations in Summary Suspension proceedings pending revocation.”

§ 68-17 (*Procedure for Finalizing Recommended Decisions*). This section continues in effect as a rule of TLC. TLC is considering a proposed amendment of this rule that would establish that a final decision of the Chairperson will be precedent for deciding later cases that involve similar facts or issues. See <http://www.nyc.gov/html/nycrules/downloads/rules/P-TLC-5-12-11-a.pdf>.

§ 68-18 (*Appeal of Chairperson’s Final Decision*). This section continues in effect as a rule of TLC.

§ 68-19 (*Special Procedures – Imposition of Revocation*). This section continues in effect as a rule of TLC.

§ 68-20 (*Special Procedures – Fitness Hearings*). This section continues in effect as a rule of TLC. TLC is considering a proposed amendment of this rule that would eliminate fitness hearings for license applicants. See <http://www.nyc.gov/html/nycrules/downloads/rules/P-TLC-5-12-11-a.pdf>.

§ 68-21 (*Special Procedures – Summary Suspension Pending Revocation*). This section continues in effect as a rule of TLC. In subsection (a)(2), the words “at the Taxi and Limousine Tribunal at OATH” are inserted before the phrase “as established below.” In subsection (b), the word “Commission” is deemed to refer to the Taxi and Limousine Tribunal at OATH.

§ 68-22 (*Special Procedures – Summary Suspension Pending Compliance*). This section continues in effect as a rule of TLC. The obligation set forth in subsection (c)(2) to schedule a requested hearing rests with the Taxi and Limousine Tribunal at OATH.

§ 68-23 (*Special Procedures – Seizure of Unlicensed Taxicab, Paratransit and For-Hire Vehicles*). This section continues in effect as a rule of TLC. The obligation set forth in subsection (f)(2) to issue notice to the owner or respondent of an inquest determination rests with the Taxi and Limousine Tribunal at OATH. Subsection (f)(3) is modified to the extent that the owner or respondent is entitled to appear at the tribunal to comply with the inquest determination or move to vacate the determination.

§ 68-24 (*Special Procedures – Forfeiture of Unlicensed Taxicab, Paratransit and For-Hire Vehicles*). This section continues in effect as a rule of TLC. If TLC pursues an

administrative adjudication pursuant to subsection (d)(3) of this section, the hearing will be scheduled before an ALJ at the OATH Tribunal.

§ 68-25 (*Special Procedures – Abandoned Taxicab, Paratransit and For-Hire Vehicles*). This section continues in effect as a rule of TLC.

§ 68-26 (*Special Procedures – Seizure of Commercial Vans*). This section continues in effect as a rule of TLC.

§ 68-27 (*Special Procedures – Forfeiture of Commuter Vans*). This section continues in effect as a rule of TLC.

§ 68-28 (*Special Procedures – Removal and Storage Fees for Seized Vehicles*). This section continues in effect as a rule of TLC.

§ 68-29 (*Special Procedures – Settlements and Withdrawals*). This section continues in effect as a rule of TLC. Subsection (a)(3) is modified to add the following sentence: “If such an adjudication is open or completed before the Taxi and Limousine Tribunal at OATH, the Chairperson shall promptly notify the tribunal. If the Chairperson withdraws a summons or notice of violation, even if it has been adjudicated, that is open or has been completed before the Taxi and Limousine Tribunal at OATH, the Chairperson shall promptly notify the tribunal.”

Rules of the City of New York, Title 35, Chapter 69 (“Rules for Representatives”)

These rules continue in effect as rules of OATH. After the transfer of the tribunal to OATH, references to the “Commission” in the existing rules will be deemed to be references to both the Taxi and Limousine Tribunal at OATH and TLC, unless the context indicates otherwise. Forms referred to in § 69-04 shall be prescribed by the Taxi and Limousine Tribunal at OATH. References to OATH shall be deemed to refer to the OATH Tribunal.