

10-15-2009

Know Your Audience: How NYC Tribunals Have Addressed Self-Represented Litigants and Increased Access to Justice

Sherry M. Cohen

Joanna Weiss

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/naalj>



Part of the [Administrative Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Sherry M. Cohen and Joanna Weiss, *Know Your Audience: How NYC Tribunals Have Addressed Self-Represented Litigants and Increased Access to Justice*, 29 J. Nat'l Ass'n Admin. L. Judiciary Iss. 2 (2009)
Available at: <https://digitalcommons.pepperdine.edu/naalj/vol29/iss2/3>

This Article is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Know Your Audience: How NYC Tribunals Have Addressed Self-Represented Litigants and Increased Access to Justice

By Sherry M. Cohen* and Joanna Weiss*

Table of Contents

I. INTRODUCTION	486
II. HISTORICAL OVERVIEW OF NEW YORK CITY TRIBUNALS	487
A. <i>The Adjudication Division at the Department of Finance</i>	488
B. <i>Environmental Control Board</i>	489
C. <i>New York City Taxi and Limousine Commission</i>	490
D. <i>New York City Department of Mental Health and Hygiene</i>	490
E. <i>Department of Consumer Affairs</i>	491
F. <i>Office of Administrative Trials and Hearings</i>	491
G. <i>Tax Appeals Tribunal</i>	492
H. <i>Tax Commission</i>	493
III. POPULATION APPEARING BEFORE NYC ADMINISTRATIVE LAW TRIBUNALS	493
IV. NYC ADMINISTRATIVE JUSTICE COORDINATOR AND ALJ RULES OF CONDUCT	496
V. BEST PRACTICES	499
VI. LANGUAGE ACCESS TO NYC TRIBUNALS	505
VII. CONCLUSION	514

I. INTRODUCTION

The first rule of communication is to know your audience.¹ The “audience” at hearings in New York City (NYC) tribunals is mostly comprised of self-represented respondents with Limited English Proficiency. In order to provide full access to the hearing process, NYC tribunals must know and understand the needs of this audience of respondents. The challenge is not only to keep this audience engaged, but also to ensure that it can navigate and fully participate in the hearing process. Tribunals must communicate in a way that protects the respondents’ rights and affords them an opportunity to be heard.

NYC tribunals, especially those that are high volume operations, are on the cutting-edge of access to justice for self-represented litigants and those with Limited English Proficiency. From creating a department within the Mayor’s Office that coordinates access to justice efforts at the tribunals, to the Mayor’s Executive Order to ensure language access to NYC services, NYC has focused on the needs of those who cannot easily navigate the system alone. NYC created “Best Practices Guidelines” for working with self-represented litigants; increased the accessibility of simple, clear information about the tribunals; and used technology to make the administrative tribunals more user-friendly for all respondents. The following is an overview of NYC tribunals and their efforts to increase access to justice.

*Sherry M. Cohen is the Deputy Chief Administrative Law Judge for the NYC Taxi and Limousine Commission where she previously served as an Administrative Law Judge.

*Joanna Weiss is the General Counsel and Deputy Coordinator for the Office of the Administrative Justice Coordinator in the New York City Mayor’s Office.

The authors would like to recognize their colleagues throughout NYC tribunals whose daily efforts increase access for LEPs and the unrepresented. A special thank you to the NYC Taxi and Limousine Commission and the Administrative Justice Coordinator for their support in the writing of this article.

1. J. MARK P. PAINTER, *THE LEGAL WRITER: 40 RULES FOR THE ART OF LEGAL WRITING* 25 (3d ed. 2005).

II. HISTORICAL OVERVIEW OF NEW YORK CITY TRIBUNALS

An understanding of the history of NYC tribunals is important to trace the development of access initiatives. The New York City Administrative Procedure Act (CAPA) governs NYC tribunals.² Although these rules set forth basic standards for hearing procedures and decisions,³ they provide little guidance for the day-to-day operations of a NYC tribunal. Consequently, the administration of the tribunals throughout NYC is left to the agencies that house them.

While many of the tribunals have made strides in providing increased access to justice for self-represented litigants, the challenge of providing access is most evident at NYC's highest volume tribunals where most of the respondents are self-represented. The Adjudication Division of the Department of Finance, the Environmental Control Board, the Taxi and Limousine Commission Courts, and the Tribunal at the Department of Health and Mental Hygiene handle nearly three million summonses each year.⁴ The consequences for losing a hearing at a high volume tribunal is often less severe than at the other administrative tribunals. Many of the summonses that are returnable at these tribunals result in modest fines of \$150 or less, and many respondents choose to defend these tickets themselves since hiring an attorney can be more costly than simply paying the summons.⁵

The history of these tribunals and the evolution of their different and sometimes expanding jurisdictions have contributed to the development of the standards of practice. The following is an

2. NEW YORK, N.Y., CITY CHARTER ch. 40, §§ 1041–1047 (2004), *available at* <http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf>.

3. *Id.* at § 1046 (also stating that the Parking Violations Bureau is not “subject to the requirements of this section”).

4. NYC Administrative Justice Coordinator, *Tribunals*, <http://www.nyc.gov/html/ajc/html/tribunals/tribunals.shtml> (last visited Sept. 29, 2009) (Based on statistics compiled from data from each tribunal) [hereinafter *Tribunals*].

5. *Id.* (Based on a review of internal database records generated by the Environmental Control Board and the Adjudications Division of the Department of Finance).

overview of eight of the NYC administrative tribunals that are faced with the challenge of providing services to self-represented litigants.⁶

A. The Adjudication Division at the Department of Finance

In 1929, New York State passed the Vehicle and Traffic Law (VTL).⁷ Violations of these laws were considered criminal, resulting in a hearing in criminal court.⁸ Over time, the criminal court was unable to handle the overwhelming volume of parking violations. Backlogs grew as police officers were needed at more pressing criminal matters. Respondents failed to report to hearings, causing the response rate for parking tickets to fall as low as twenty-eight percent.⁹

In 1969, the VTL and Administrative Code were amended to create the Parking Violations Bureau.¹⁰ To accommodate the high volume of parking tickets, jurisdiction was transferred from criminal courts to this administrative tribunal. The testimony of police officers was no longer necessary as parking agents took over summoning responsibilities.

Today the Parking Violation Bureau is the Adjudication Division at the Department of Finance. This tribunal employs approximately 150 per diem administrative law judges (ALJs). Approximately one million parking tickets are contested each year.¹¹ The relatively low fines imposed, lead the vast majority of respondents to be self-represented.

6. This overview focuses on tribunals that adjudicate summonses or notices of violation. The Department of Education also has an Impartial Hearing Office that handles educational placement for children in NYC. In addition, the New York Police Department Trial Division hears departmental disciplinary cases.

7. N.Y. VEH. & TRAF. LAW, *see, e.g.*, <http://www.nysgtsc.state.ny.us/vt-ndx.htm> (last visited Sept. 29, 2009).

8. *See* ADMIN. L. JUDGE MANUAL: DEP'T OF TRANSP. (1993), *see also* New York State Department of Civil Service, *Manual For Administrative Law Judges and Hearing Officers* (2008), http://www.cs.state.ny.us/pio/publications/manual_for_hearing_officers.pdf.

9. *Id.*

10. NEW YORK, N.Y., ADMIN. CODE tit. A, ch. 40, § 883a-1.0 (1969), *see also* NEW YORK, N.Y., ADMIN. CODE tit. 19, ch. 2, § 19-201 (2009).

11. *Tribunals, supra* note 5.

B. Environmental Control Board

Like parking violations, certain quality-of-life cases were once handled in criminal court, and again, the high volume of these cases made it impossible to adjudicate them efficiently. In 1972, the Environmental Control Board (ECB) was created to deal with such cases.¹² Thirteen board members oversee part of the ECB. Seven of those members are commissioners of NYC agencies. Those seven NYC agencies are among the twelve that issue notices of violations. The chair of the ECB is the Chief Judge of the Office of Administrative Trials and Hearings (OATH).¹³

Although the Department of Sanitation issues the majority of summonses handled by the ECB, the ECB sees many quality-of-life violations beyond sanitation.¹⁴ More than 700,000 summonses are returnable to the ECB each year, and approximately 200 part-time ECB ALJs conduct over 200,000 hearings each year.¹⁵ The vast majority of respondents at these hearings are self-represented.¹⁶

12. NEW YORK, N.Y., CITY CHARTER ch. 57, § 1404 (1972).

13. In May 2008, City Council passed Local Law 35, giving OATH administrative oversight of the ECB. *See* NEW YORK, N.Y., LOCAL LAW No. 35 (May 2008). Before the merger, ECB was part of the Department of Environmental Protection, one of the enforcement agencies that appeared before the (OATH) tribunal. Their histories, jurisdictions, and operations are discussed separately below. *See infra* notes 14-15 and accompanying text.

14. The number and types of cases heard by ECB have increased substantially over the years. ECB currently hears cases concerning alleged violations of certain provisions of the following rules and laws: Air Asbestos Code & Rules, Air Code & Rules, Building Code & Rules, Community Right to Know Law & Rules, Environmental Conservation Law, Fire Prevention Code & Rules, Food Vendor Rules, General Food Vendor Code & Rules, Hazardous Materials Law & Rules, Health Code & Miscellaneous Food Vendor Rules, Health Code Lead Abatement Code, Hudson River Park Rules, Landmark Preservation Code & Rules, Noise Control Code & Rules, Parks Department Rules, Public Health Law: Canine Waste, Public Market Code & Rules, Public Pay Telephone Law & Rules, Public Safety Graffiti Code, Recycling Rules, Sanitation Asbestos Code & Rules, Sanitation Code, Sewer Code & Rules, Transportation Code & Rules, Vehicle & Traffic Law, Water Code & Rules, and the Zoning Resolution.

15. ECB Internal database, *Issuance Summary* (June 2006) (a report generated monthly).

16. NYC ECB, Frequently asked questions, <http://nyc.gov/html/ecb/html/faq/faq.shtml#lawyer> (last visited Sept. 29, 2009).

C. New York City Taxi and Limousine Commission

The New York City Taxi and Limousine Commission (TLC), which was created in 1971, is responsible for licensing and regulating all for-hire vehicle activity in NYC.¹⁷ In addition to yellow (medallion) cabs, the TLC regulates community-car services, commuter vans, para-transit vehicles, and certain luxury limousines.¹⁸

Summonses, issued by TLC inspectors and the New York Police Department (NYPD), are answerable to the TLC's internal tribunal (the "TLC Courts"). A per diem staff of seventy-five ALJs adjudicates approximately 100 thousand summonses each year.¹⁹

Despite the possibility of receiving a large fine, facing suspension, or even having one's license revoked, more than half of TLC respondents are self-represented. To better serve the population of respondents, and to otherwise ensure that licensees understand what is expected of them, TLC Courts have undertaken many initiatives to increase access at TLC Courts.

D. New York City Department of Mental Health and Hygiene

The NYC Department of Health and Mental Hygiene's (DOH) Administrative Tribunal's five full-time and forty-five part-time ALJs adjudicate NYC Health Code violations, and other related laws.²⁰ Approximately thirty-five to forty thousand DOH summonses are adjudicated each year by this tribunal.²¹

Most of the cases adjudicated at the DOH Tribunal concern restaurant and pest-control violations.²² The tribunal also hears cases involving regulations of day-care centers, environmental

17. NYC TLC, *About TLC*, <http://www.nyc.gov/html/tlc/html/about/about.shtml> (last visited Sept. 29, 2009).

18. *Id.*

19. *Tribunals*, *supra* note 5.

20. *See* DOH, <http://www.nyc.gov/html/doh/html/admintri/at.shtml> (last visited Oct. 4, 2009).

21. *See* DOH, *Triennial Report*, 56, http://www.nyc.gov/html/doh/downloads/pdf/public/triennial_report.pdf (last visited Sept. 30, 2009).

22. *Id.* at 42.

investigations, window-guard violations, pet stores, and pet licenses. Although many food establishments are represented, the vast majority of respondents are self-represented. ALJs' decisions are final and cannot be appealed by the department.

E. Department of Consumer Affairs

The Department of Consumer Affairs (DCA) was created in 1968 through the combination of the Department of Licensing with the Department of Weights and Measures.²³ Although DCA's predecessor agencies also adjudicated cases, the Administrative Code codified the role and jurisdiction of DCA's tribunal in 1973.²⁴

The DCA's tribunal hears cases involving businesses that have been brought up on charges by the DCA or consumers. The DCA Tribunal also has jurisdiction over some licensing cases that originate with the Business Integrity Commission, the NYPD, the American Society for the Prevention of Cruelty to Animals (ASPCA), and the New York Fire Department.

Nine full-time ALJs hear approximately ten thousand cases annually at the DCA.²⁵ ALJs also preside over settlement conferences. Many respondents choose to represent themselves at the hearings, and, similarly, the agency is often not represented. Increasing access to the tribunal bolsters efforts to settle cases. The better the parties understand the charges, defenses, and procedures, the more likely it is that a settlement will occur.

F. Office of Administrative Trials and Hearings

OATH, created by Mayor Ed Koch on July 25, 1979,²⁶ was initially a forum for disciplinary cases in NYC, but has expanded to fill a role as a central tribunal for NYC. In 1991, OATH's jurisdiction was expanded to one of general jurisdiction. As stated in the NYC Charter, OATH was established as "an office of

23. Dep't of Consumer Affairs, *2007 Annual Report*, 4, http://nyc.gov/html/dca/media/video/Annual%20Report/AR_Print.pdf (Sept. 30, 2009).

24. *Id.*

25. *Tribunals*, *supra* note 5.

26. Exec. Order No. 32 (July 25, 1979).

administrative trials and hearings which shall conduct adjudicatory hearings for all agencies of the city unless otherwise provided.”²⁷ Today, the heads of NYC agencies may elect to have any matter heard before OATH.

Around twelve full-time ALJs at OATH hear approximately three thousand cases annually. Cases include disciplinary matters, vehicle-forfeiture hearings, contract disputes, and licensee-fitness hearings.²⁸

While most respondents appear with representation, many are self-represented. Since the merger of ECB with OATH (through the appointment of the Chief Judge of OATH to the position of Chair of the ECB), OATH has increasingly focused on access for self-represented litigants.

G. Tax Appeals Tribunal

The Tax Appeals Tribunal is an independent agency with jurisdiction over all disputes involving taxes administered by NYC, other than real property taxes. The Tax Appeals Tribunal is an independent tribunal, in that all decisions are final and not subject to review by the Department of Finance Commissioner. There is a two-tier system for deciding cases.²⁹ The ALJ Division conducts hearings, and an appeals division handles appeals from these decisions.

Cases at the Tax Appeals Tribunal can be long and complicated. The seven full-time Hearing Officers handle about one hundred cases each year.³⁰ NYC is nearly always represented by the Law Department and nearly all respondents are professionally represented.³¹

27. NEW YORK, N.Y., CITY CHARTER ch. 45-A, § 1048 (July 2004), *available at* <http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf>.

28. *See* OATH website: <http://www.nyc.gov/oath>.

29. NEW YORK, N.Y., CITY CHARTER ch. 7 §§ 168–172 (1992).

30. Interview with Glenn Newman, President, NYC Tax Appeals Tribunal, in New York, N.Y.

31. *Id.*

H. Tax Commission

Since 1857, property owners have been able to apply for a correction of assessments or argue for an exemption to the Tax Commission.³²

Twelve full-time and six part-time ALJs adjudicate approximately 43,000 real property assessment claims each year, including 25,000 hearings.³³ Some of the Hearing Officers are non-attorneys.³⁴ Ninety-five percent of the respondents are represented.³⁵ Of the self-represented, most are confined to cases of re-classification.³⁶ Because of the complexity of the cases, the tribunal is understandably concerned for the five percent of litigants who are self-represented.³⁷

III. POPULATION APPEARING BEFORE NYC ADMINISTRATIVE LAW TRIBUNALS

The first challenge for NYC tribunals is to understand who is in their audience. The population that appears before NYC tribunals drives the programs and policies that increase access to its hearings and services. It is essential that the tribunals offer services and information in a manner that allows New Yorkers to participate meaningfully in the hearing process. For many respondents at the hundreds of thousands of hearings that take place each year, challenging a summons is the most significant contact they will have with the judicial system. Thus, it is critical that the average New Yorker be able to understand his/her rights and responsibilities when issued a ticket.

Appearing at a tribunal with limited proficiency in English may make access to justice a greater challenge. NYC is home to a diverse set of immigrant communities, and many New Yorkers have limited

32. *Id.*

33. *See* City of New York Tax Comm'n, *Annual Report* (March 2009), http://www.nyc.gov/html/taxcomm/downloads/pdf/annual_report.pdf (last visited Sept. 30, 2009).

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

English proficiency or do not speak English at all. Thus, addressing language barriers is of particular concern in NYC. Of NYC's approximately 8 million residents, approximately 2.9 million are foreign born and many do not speak English as a first language.³⁸ Approximately half of the City's residents speak a language other than English at home.³⁹ Nearly one in four NYC residents above the age of five do not speak English well, and in approximately one in six NYC households all adult members of the household have difficulty speaking English.⁴⁰

NYC has millions of residents who speak Spanish as a first language, so tribunals can expect a significant number of parties who speak Spanish. More than half of the foreign-born NYC residents were born in Latin America.⁴¹ Nearly one in four New Yorkers speak Spanish or Spanish Creole at home.⁴² In some parts of NYC, the percentage of Spanish speakers is even higher.

38. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *New York City: Socioeconomic Profile Social Characteristics* (1990), and *id.* (2000).

39. See ANITA KHASHU, CARI ALMO & INSHA RAHMAN, VERA INST. OF JUSTICE, TRANSLATING JUSTICE: A GUIDE FOR NEW YORK CITY'S JUSTICE AND PUBLIC SAFETY AGENCIES TO IMPROVE ACCESS FOR RESIDENTS WITH LIMITED ENGLISH PROFICIENCY (2005), <http://www.vera.org/download?file=235/Translating%2Bjustice.pdf> (last visited Sept. 30, 2009).

40. *Id.*

41. New York City Department of City Planning, *Population: Newest New Yorker-Executive Summary*, http://www.nyc.gov/html/dcp/html/census/nny_exec_sum.shtml (last visited Sept. 29, 2009), see also New York City Department of City Planning, *Part 1 of 2: Country of Birth for the Foreign-born Population New York City, Boroughs and Census Tracts*, (2000) <http://www.nyc.gov/html/dcp/pdf/census/sf3sbp1pt1.pdf>, and New York City Department of City Planning, *Part 2 of 2: Country of Birth for the Foreign-born Population New York City, Boroughs and Census Tracts*, (2000) <http://www.nyc.gov/html/dcp/pdf/census/sf3sbp1pt2.pdf>.

42. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, B16001 *New York City: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Data Set* 2005-2007, http://www.nyc.gov/html/dcp/pdf/census/nyc_boros_05_06_07_language.pdf.

Table 1: Percentage of Population that Speak Spanish by Borough⁴³

Borough	% Spanish or Spanish Creole Speaking*
Bronx	44%
Brooklyn	18%
Manhattan	25%
Queens	23%
Staten Island	9%

*Population over the age of 5. Percentages rounded.

In addition to the Spanish speaking population, NYC has significant populations with Limited English Proficiency (LEP) from all over the globe.

Table 2: Top 10 LEP Languages in New York City⁴⁴

1	Spanish
2	Chinese
3	Russian
4	Korean
5	Italian
6	French Creole
7	Polish
8	French
9	Yiddish
10	Greek

In addition to ensuring fair hearings for the LEP population, NYC administrative tribunals must also make the hearing process accessible to all New Yorkers, regardless of their education level. Of the 5.2 million NYC residents over the age of twenty-five, more than 1.4 million did not graduate high school, nearly a third.⁴⁵ Over 600,000 or twelve percent of NYC residents above the age of twenty-five did not reach high school at all.⁴⁶ Tribunals must consider self-

43. New York City Department of City Planning, BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *Census Statistics* (2000) (Population over the age of 5. Percentages rounded), <http://www.nyc.gov/html/dcp/pdf/census/sf3sbp3pt1.pdf>.

44. *Id.*

45. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, NEW YORK CITY: SOCIOECONOMIC PROFILE SOCIAL CHARACTERISTICS (1990), and *id.* (2000).

46. *Id.*

represented litigants' education level when planning signage, brochures, websites, or other educational and instructional materials.

NYC tribunals must provide access to justice to a diverse set of litigants. In order to ensure access, each tribunal should consider the population that appears at that tribunal. Tribunals must consider: language diversity, educational background, and disabilities.

IV. NYC ADMINISTRATIVE JUSTICE COORDINATOR AND ALJ RULES OF CONDUCT

Spearheading NYC tribunals' efforts to increase access to justice for self-represented and LEP litigants is the NYC Administrative Justice Coordinator (AJC). Upon proposal by the New York City Charter Revision Commission and the Office of the Mayor, this position was created on January 30, 2006 by Mayor Bloomberg's Executive Order to improve professionalism, efficiency, accountability, and transparency in NYC administrative tribunals.⁴⁷

The AJC was tasked to work with tribunals at the Office of Administrative Trials and Hearings, Department of Consumer Affairs, DOH, ECB, Tax Commission, Tax Appeals Tribunal, Parking Violations Bureau, TLC, Board of Standards and Appeals, Loft Board, Civil Service Commission, and the NYPD.⁴⁸ With consent from their commissioners, the AJC could also have responsibilities with the Department of Education and the NYC Housing Authority.⁴⁹

The NYC Charter Revision Commission recognized that ALJs and Hearing Officers represent the face of justice in NYC, and that NYC's tribunals are often the only forum where residents have any significant interaction with city government.⁵⁰ The commission also recognized that many NYC tribunals handled a large volume of cases, often with self-represented respondents.⁵¹ In response to these

47. Exec. Order No. 84 (Jan. 30, 2006).

48. Press Release, Office of the Mayor, Mayor Bloomberg Announces Appointment of David B. Goldin to Serve as City's First Administrative Justice Coordinator (Aug. 17, 2006) (on file with author).

49. Exec. Order No. 84 (Jan. 30, 2006).

50. Deputy Mayor for Legal Affairs Carol Robles Roman, Remarks at the NYC Access to Justice Summit (Sept. 12, 2006).

51. *Id.*

needs, a main function of the AJC's office is to implement programs and policies that would increase the tribunals' transparency and accessibility. Upon the appointment of David Goldin as the first AJC, Mayor Bloomberg publicly acknowledged that among the top priorities of the AJC was to "enhance the public's understanding and ability to access justice."⁵²

Once in place, the AJC aided in drafting and implementing the *Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York* ("NYC Rules of Conduct").⁵³ The creation of ethics rules for NYC ALJs was initially approved by voter referendum, as proposed by the NYC Charter Revision Commission. The Commission recognized that while NYC ALJs were subject to the Code of Professional Conduct for attorneys, the ethical considerations tied to their roles as judges were not addressed. New York State judges have the Code of Judicial Conduct, but this code does not apply to ALJs. The NYC Rules of Conduct serves to bridge this gap in ethical accountability for NYC ALJs.

The NYC Rules of Conduct specifically address the needs of the large population of self-represented litigants that appear before NYC ALJs. Drafted by a panel of high-ranking NYC attorneys,⁵⁴ the NYC Rules of Conduct were enacted on January 12, 2007.⁵⁵ Although loosely based on the New York State Code of Judicial Conduct, the NYC Rules of Conduct addresses specific issues facing ALJs. In particular, the NYC Rules of Conduct adopted a provision mandating ALJs to "take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have his or her case fully heard."⁵⁶ The NYC Rules of

52. Press Release, Office of the Mayor, Mayor Bloomberg Announces Appointment of David B. Goldin to Serve as City's First Administrative Justice Coordinator (Aug. 17, 2006).

53. As Deputy Administrative Justice Coordinator, Joanna Weiss worked with the AJC as the NYC Rules of Conduct were drafted, finalized and implemented from October 2006 through January 2007.

54. The drafters included the AJC, chief judges from several tribunals, and senior attorneys from the NYC Law Department.

55. Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York, 48 R.C.N.Y. app. A (2007).

56. N.Y. COMP. CODES R. & REGS. Tit. 48, § 4-103(a)(8) (2008).

Conduct suggest the following techniques to help facilitate a full and fair presentation of a case by a self-represented litigant:

- (i) liberally construing and allowing amendment of papers that a party not represented by an attorney has prepared; (ii) providing brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted; (iii) providing brief information about what types of evidence may be presented; (iv) being attentive to language barriers that may affect parties or witnesses; (v) questioning witnesses to elicit general information and to obtain clarification; (vi) modifying the traditional order of taking evidence; (vii) minimizing the use of complex legal terms; (viii) explaining the basis for a ruling when made during the hearing or when made after the hearing in writing; (ix) making referrals to resources that may be available to assist the party in the preparation of a case.⁵⁷

After the NYC Rules of Conduct were published, the AJC and OATH, trained NYC ALJs on the application of the new code. Lectures were conducted at each of NYC's administrative tribunals entitled "Overview for the New Ethics Rules for the New York City Administrative Justice System" and a Continuing Legal Education (CLE) program was given at the Association of the Bar of the City of New York, particularly emphasizing the above-cited section 103(a)(8) of the code.⁵⁸ Following these lecture format classes, the AJC and the Administrative Judicial Institute co-taught smaller seminars at each tribunal. In these interactive seminars, ALJs had the opportunity to discuss how to improve access to justice for self-represented litigants while maintaining an impartial position in the courtroom.

Since implementing the Rules of Conduct, as part of an on-going City Hall initiative, the AJC has worked with a number of agencies to initiate new and support existing programs to promote access to justice in NYC tribunals. On September 12, 2007, the Deputy Mayor

57. *Id.* at App. A.

58. The CLE program at the City Bar was co-sponsored by OATH, AJC, and the Administrative Law Committee of the New York City Bar Association. The event was held in February 2007.

for Legal Affairs and Counsel to the Mayor Carol Robles Roman, the Office of the Administrative Justice Coordinator and OATH hosted a summit for Chief ALJs of each of the NYC's tribunals to discuss improving access to justice in NYC's administrative tribunal system. The Summit assembled leaders in the areas of plain language, access to justice and language, access to present up-to-date information and new initiatives in the field of access to justice.

The AJC continues to oversee access to justice projects at tribunals. These projects emphasize use of plain language in public documents, availability of language interpretation services, improved websites and other public information, improved use of technology, and improved training of ALJs in access policies and programs. These projects are further detailed below.

V. BEST PRACTICES

In keeping with its mandate, the AJC has set out to establish a standard of practice for administrative tribunals aimed at increasing access to justice for all parties, specifically self-represented respondents. First the AJC's office assessed each tribunal's standards and practices with self-represented litigants through observations at the tribunals and meetings with tribunal managers.⁵⁹ The AJC evaluated the tribunal rules, procedures, and business practices to analyze how each affected litigants who appeared at the tribunals.

One area of concern was interpretation services. Concentrating on the four higher volume tribunals, the AJC observed that none offered language interpretation services.⁶⁰ In general, respondents who did not speak fluent English appeared at the tribunals with their own interpreters, who were often family members. The interpreters were not professional interpreters and often spoke limited English themselves. Sometimes the family member acted as both interpreter and witness at the hearing. Tribunals re-scheduled hearings where respondents appeared without an interpreter, requiring that the

59. The observations provided about the tribunals are based on visits made to each of the high volume tribunals by Joanna Weiss and the Office of the AJC between January and April of 2007.

60. In contrast, each of the low volume tribunals offered free language interpretations services upon request.

respondent return with an interpreter of their own on a new hearing date. Faced with having to come back to the tribunal on a new date, and with having to find an interpreter, some respondents preferred to plead guilty rather than incur the cost of defending the summons.

The AJC also focused on the ALJs' skills in handling less sophisticated respondents. Through observations of hearings and reports from the tribunals, the AJC concluded that the training of ALJs and staff to work with self-represented litigants varied tremendously among the tribunals.⁶¹

The AJC assessed the public information available for the different tribunals. A review of informational pamphlets, tribunal websites, signage, and available customer service personnel showed that while some tribunals offered extensive public information to help navigate through the hearing process, other tribunals had no readily available public information for respondents.

Where written materials were available, their clarity and simplicity varied. Some materials were written in plain English with easily navigable instructions and helpful photos. For example, the Adjudications Division at the Department of Finance offered respondents a color brochure in plain language. The brochure, available in English, Chinese, Russian, and Spanish, offers respondents clear instructions on the procedures at the tribunal, and even how to properly defend themselves against potential code infractions. Other materials, however, included "legalese" and were too complicated for the average New Yorker to understand.

There was wide variation in the quality of signage, information, and customer service available in tribunal waiting rooms. In some waiting rooms, there were clear and bright signs instructing respondents where to wait for a hearing, obtain information, or pay a cashier. Other tribunals had no signage in the waiting room, or any information available about how long the wait time was for a hearing.

None of the four high volume tribunals surveyed respondents to formally assess the population appearing at the tribunal, the percentage of self-represented respondents, the percentage of respondents with Limited English Proficiency, or whether

61. Based on ALJ training observed by the Office of the AJC (July 2007), and responses to assessment questionnaires by Department of Finance, DOH, and the TLC (Sept. 2008).

respondents were satisfied with the services available at the tribunal.⁶²

After assessing the disparate levels of accessibility at each tribunal, the AJC's office set out to establish standards for access to justice at all of the NYC tribunals. The AJC assembled a committee to draft the *Best Practice Guidelines for City Tribunals*. Comprised of managers from each NYC tribunal, the committee discussed the levels of accessibility at each tribunal, and reviewed examples of guidelines for other administrative tribunals. In particular, committee members each read and relied on Cynthia Gray's article on best practices,⁶³ and on a best-practices manual published by the State Judicial Institute and distributed by the Self-Represented Litigation Network.⁶⁴

The guidelines include an introduction explaining their use to NYC tribunals and the goal of making the tribunals accessible to self-represented litigants:

New York City's administrative tribunals hear a wide range of cases involving violations of local laws and regulations. Hearings may result in monetary fines or penalties, revocation or forfeiture of licenses or permits, or other significant consequences for the parties who appear before these tribunals. The mission of New York City administrative tribunals is to assure a full and fair opportunity to be heard for all parties. This includes ensuring that all parties understand what is required of them so that they may represent themselves effectively when offering testimony and other evidence and presenting relevant arguments and defenses.

The New York City administrative tribunals are structured to allow parties to represent themselves

62. Based on each tribunal's response to the assessment questionnaire. The Office of the AJC drafted and distributed the assessment questionnaires to each tribunal and the responses were provided by each of the high-volume tribunals in September 2008.

63. Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, 27 J.NAALJ 97 (2007).

64. National Center for State Courts, *Best Practiced in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration* (2006).

rather than bear the burden of hiring attorneys or other representatives. Many self-represented parties must overcome language and cultural barriers to effectively represent themselves. Self-represented parties are often small business and property owners. Because of the nature of their businesses, many must navigate several City agencies to operate. The rules that govern these agencies vary significantly, as do the rules that govern the tribunals that hear cases brought by these agencies. There are differences in requirements for service of process and discovery. Some tribunals allow for alternative dispute resolution, such as settlement and arbitration, some do not. Some tribunals require appearance in person, some allow for appearance on submission. The need to develop best practices to assist self-represented parties in understanding these differences is crucial to assuring access to justice for them, as well as for all parties who appear before New York City tribunals. A system that fails to respect the needs of self-represented parties and the limitations on their time and resources is inefficient and costly for everyone. The implementation of best practices can help the tribunals operate more effectively with the available resources and staff.⁶⁵

The Committee structured the guidelines to focus on six areas: (1) tribunal information and public materials, (2) training for judges and hearing officers, (3) training for non-judicial staff, (4) ongoing-needs assessment, (5) user-friendly tribunal space, and (6) intra-city communication.⁶⁶ The guidelines were made final in March 2008 and distributed throughout the tribunals. To make ALJs familiar with

65. NYC Administrative Justice Coordinator, *Initiatives: Best Practice Guidelines for Self-Represented Parties*, http://www.nyc.gov/html/ajc/html/initiatives/best_prat_guide.shtml (last visited Sept. 29, 2009).

66. *Id.*

these guidelines, the committee held a panel discussion at a CLE program at the Association of the Bar of the City of New York.⁶⁷

Since the NYC Access to Justice Summit⁶⁸ and publication of the Best Practices Guidelines, tribunals have begun to examine their own practices and procedures aimed at increasing access for self-represented litigants. NYC tribunals have fulfilled many initiatives aimed at improving access to justice.

Following the Department of Finance's lead in creating a simple guide to parking ticket hearings, other written information has been created to help self-represented respondents. Existing documents were converted into plain language. Each tribunal inventoried its public documents and revised the essential forms and informational materials into plain language. Most public documents now distributed at tribunals are written in plain language. Since the Summit, free language interpretation services have been introduced at each of the four high-volume tribunals.⁶⁹

Tribunals also added and/or revised signage to improve accessibility of their tribunal. At ECB, a prominent sign was displayed to advertise an e-newsletter ECB created, and explained to interested parties how to sign-up to receive it. Several hundred subscribers signed up for the e-newsletter that keeps respondents apprised of changes in procedure at ECB.⁷⁰ At TLC, signage was revised to incorporate principles of plain language.

Several tribunals revised their websites both for content and user-friendly interface. The goal of the revisions is to provide clearer information about the tribunals and make the sites more navigable. The AJC's office worked with ECB to create a website.⁷¹ The

67. Presentation at the City Bar Association, Sponsored by the New York City Bar Committee on Administrative Law, the Office of the Administrative Justice Coordinator, and the Office of Administrative Trials and Hearings (Mar. 11, 2008).

68. New York City Access to Justice Summit (Sept. 12, 2007) (The Summit was primarily sponsored by the Deputy Mayor for Legal Affairs Carol Robles Roman with the Office of the Administrative Justice Coordinator and the Office of Administrative Trials and Hearings as co-sponsors).

69. The effort to use plain language and to increase the use of interpretation services is detailed later in this article.

70. The City Department of Information and Technology (DOITT) maintains the ECB Listserv and confirmed the number of subscribers to the e-newsletter.

71. See ECB website, www.nyc.gov/ecb (last visited Oct. 5, 2009). The website was launched in April 2007.

tribunals at DOE, DOH, TLC, and ECB all initiated processes to continually improve their websites and add information for respondents. At TLC, hearing calendars and motion and appeals forms can now be downloaded. The tribunal at DOE revised public forms available online, improved the site's navigability, and added contact information for all tribunal management. The ECB added content to their website, including a short video explaining how to respond to a summons issued by the Department of Buildings. DCA re-wrote information on their website in plain language.

Some tribunals created new customer service outlets in their waiting rooms to answer any questions respondents might have before a hearing. TLC piloted a program where a tribunal employee greeted respondents as they arrived, offered them any necessary assistance, and provided them information about the hearing process. ECB is also piloting a customer service initiative. Now, an ALJ sits in the waiting room and answers questions respondents may have before starting a hearing.

Tribunals have also instituted new training programs for judges and for support staff. Several tribunals instituted plain language training.⁷² DOH conducted training on best practices.⁷³ TLC invited AJC and OATH to train new ALJs on the NYC Rules of Conduct. Also, tribunals are utilizing the training programs and services available at the Administrative Judicial Institute (AJI). AJI is a resource center within OATH that provides training and continuing legal education for ALJs and tribunals in NYC. AJI has brought prominent speakers to teach ALJs about new concepts and strategies for improving access to justice for self-represented litigants. AJI also offers space and resources to help each tribunal run effective training programs. AJI hosted TLC's and DOH's plain language training programs.

The format of the Best Practices Guidelines also led to the creation of an assessment questionnaire that allows tribunals to evaluate their performance in each of the six areas. The Office of the Administrative Justice Coordinator created and distributed the questionnaire to each NYC tribunal to complete. The AJC met with

72. Plain language training for ALJs will be discussed in greater detail under "Language Access" in this article, *see* discussion *infra* Part V.

73. Based on September 2008 DOH training on plain language and best practices at the AJI.

the management at each tribunal to review their responses to the assessment questionnaire.⁷⁴ Based on these and the accompanying discussions with tribunal management, the AJC's office is drafting formal recommendations for each tribunal to ensure all NYC tribunals reach a high standard of access to justice for self-represented litigants.

VI. LANGUAGE ACCESS TO NYC TRIBUNALS

In addition to the general challenge of serving mostly self-represented litigants, NYC tribunals also serve many Limited English Proficiency (LEP) respondents. Tribunals must institute programs to help the self-represented litigants as well as LEP litigants navigate the often complex system of adjudication. The success of those programs hinges on developing a clear understanding of who constitutes that population and what needs to be done to best service them.

NYC has recognized that in order to benefit from NYC services, residents must be able to understand the services that are available to them and how to obtain them. For many New Yorkers, language has been an obstacle to benefiting from many NYC services.

To better understand its population needs, the Mayor's Office for Immigrant Affairs and the Department for City Planning examined U.S. Census data to determine which languages New Yorkers spoke at home and what their level of proficiency was in both their first language and English. The results were not surprising for a city that has always been rich in immigrants.

Of NYC's approximately 5.8 million adults, around 25% have a low literacy or LEP.⁷⁵ And another 15% have a literacy level in the fifth to eighth grade range.⁷⁶ A document written at a ninth-grade

74. Based on AJC meetings with tribunal management from August 2008 through October 2008.

75. See Sherry Cohen, *Easy-To-Read NYC: Guidelines for Clear and Effective Communication*, Mayor's Office for Adult Education and Mayor's Office for Immigrant Affairs, published at <http://www.nyc.gov/html/oath/pdf/Easy-to-Read%20NYC.pdf> (last visited October 13, 2009).

76. *Id.*

level or higher will be difficult—if not impossible—to understand for more than forty percent of the adult population in NYC.⁷⁷

In an effort to increase access to NYC services, on July 22, 2008, Mayor Michael Bloomberg signed Executive Order No. 120 titled *Citywide Policy on Language Access to Ensure the Effective Delivery of City Services* (Language Access Order). The Language Access Order recognizes that twenty-five percent of NYC residents are of LEP.⁷⁸ It also mandates NYC agencies to make their services accessible to those residents that “do not speak English as their primary language and have a limited ability to read, speak, write or understand English.”⁷⁹

The Language Access Order requires agency heads to implement specific plans to address language access issues within each agency.⁸⁰ Since NYC tribunals provide direct services to the public, they are subject to the Language Access Order. It mandated all NYC agencies that provide services to the public must designate a Language Coordinator in conjunction with the Mayor’s Office for Immigrant Affairs and develop a Language Access Plan for their individual agencies.⁸¹ Under the Language Access Order, each agency must translate all essential documents and forms into the six most commonly spoken languages in NYC (aside from English).⁸² In addition, NYC agencies must provide free interpretation services, either in person or telephonically, and place conspicuous signs informing the public that these services are available.⁸³ Managers and those staff members who have contact with the public must be trained in their agency’s language-access policies.⁸⁴

77. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, *Socioeconomic Profile Social Characteristics – New York City*, 1990 and 2000 Census.

78. Exec. Order No. 120 (July 22, 2008).

79. *Id.*

80. *Id.*

81. Language access plans, for each NYC agency, are published on the Mayor’s Office for Immigrant Affairs website, <http://www.nyc.gov/html/imm/html/executive/eo120.shtml> (last visited Oct. 4, 2009).

82. Exec. Order No. 120 (July 22, 2008).

83. *Id.*

84. *Id.*

To address interpretation needs in NYC tribunals, the AJC surveyed NYC tribunals to determine what their interpretation services needs were. As a result of these surveys and the Executive Order, all tribunals now provide free professional interpretation services either in person or telephonically.⁸⁵ The high volume tribunals, which have high numbers of LEP respondents, use a telephone interpretation service. The service offers access to professional interpreters for over 170 languages. Many tribunals have installed speakerphones in their hearing rooms for the use of telephonic interpretation services. When an interpreter is needed for a hearing or proceeding, the ALJ or a tribunal staff member calls the interpretation service, asks for the desired language, and within moments an interpreter for that language is on the line.

According to its Language Access Plan, since November 2007 OATH and ECB have provided free professional interpretation for all languages at all hearings. In addition, key documents are being identified for translation into other languages. In March of 2009, free professional interpretation services became available for all languages at all hearings at TLC Courts. These services are provided over the phone. All interpreters used in TLC Courts are court-certified. The Department of Finance employs many bilingual staff members, and as of July 2009, will have professional interpretation services available at adjudications.⁸⁶ DOH provides free professional interpretation services to anyone that is in need.

While interpretation services are essential for providing access to unrepresented LEP respondents, adherence to principles of plain language must go hand-in-hand with interpretation in order to maximize language access. If an ALJ uses terms of art and legalese, the interpreter may have difficulty explaining the term. In addition, self-represented litigants who are literate but at a fifth to eighth grade level may have difficulty filling out forms or following instructions at

85. See Language Access Plans, *supra* note 81. NYC has a City-wide contract with a telephonic interpretation service. Individual agencies are billed based on their individual usage.

86. See NYC Finance, *NYC Department of Finance: Language Access Implementation Plan*, (2009) http://www.nyc.gov/html/dof/html/pdf/language_access/dof_language_access_plan.pdf.

a hearing if the language being used is at the post-graduate level of an attorney or ALJ.

Plain language principles are not new to NYC. Before the promulgation of Executive Order 120, NYC tribunals were committed to addressing the language needs of the populations that appeared before them, and to plain language communication. In 1986, the NYC Charter Revision Commission recommended that NYC agencies draft their rules and regulations in plain language whenever possible. In 2007, the newly promulgated NYC Rules of Conduct advised NYC ALJs to minimize the use of complex legal terms, and explain proceedings and rulings.⁸⁷ Finally, from the time the Office of the AJC was created, the AJC has been addressing the issue of language access in NYC tribunals. As discussed above,⁸⁸ on September 12, 2007, at the Summit hosted by the Deputy Mayor for Legal Affairs, AJC and the Office of Administrative Trials and Hearings, tribunal heads had the opportunity to hear from experts in the field of plain language.

Tribunals applied plain language principles to the revision of their public documents and forms. In December 2007, the AJC's Office hosted a training course for NYC tribunal heads given by the Mayor's Office for Adult Education (MOAE) and the Mayor's Office for Immigrant Affairs (MOIA). The course entitled "Easy-to-Read NYC: Guidelines for Clear and Effective Communication," focused on converting public documents and forms into plain language.⁸⁹

The training course addressed both language principles and aesthetics of documents. The instructors explained that readers tend to skim, and both the language used and the look of a document may influence its effectiveness. Tribunal heads, as drafters of public documents, were taught to first determine the specific purpose of a document and then examine the document to determine if the purpose is well communicated to the reader. The drafter should ask themselves whether the reader will understand the purpose of the document and what action needs to be taken. Next, the drafter should

87. N.Y. COMP. CODES R. & REGS. Tit. 48, § 4-103(a)(8) (2008).

88. To access materials from the Justice Summit, see NYC Administrative Justice Coordinator, <http://www.nyc.gov/html/ajc/html/home/home.shtml> (last visited Oct. 5, 2009).

89. Course materials are available online at www.nyc.gov/easytoread (last visited Oct. 5, 2009).

determine who will be the main audience of the document and gear the language to that audience. The instructors emphasized that only important and directly relevant information should be included in a document and that the most important information should come first; at the top of the page or in the first paragraph.⁹⁰

In addition to considering the content of a document, the instructors told the tribunal heads to look at the language in the document. Attorneys often write tribunal documents, using legal terms they have become accustomed to. Legalese is difficult for most people to understand. Legal writing often contains difficult words, passive voice, and repetitive terms. It is inefficient to use complex legal terms in a document aimed at eliciting a specific action from the reader. The reader may not understand what action is expected or required, and must then seek additional help through follow-up questions or phone calls, taking up time of the agency staff. Worse, the reader may fail to act, causing sometimes severe repercussions.⁹¹ If you must use a legal term, be sure to define it.⁹²

Aside from eliminating legalese, the instructors addressed the structure of sentences and paragraphs. Tribunal heads were told to use short, simple, active, declarative sentences. As a rule of thumb,

90. For a discussion of the principles of plain language see J. Mark P. Painter, *Legal Writing 201: 30 Suggestions to Improve Readability or How to Write For Judges, Not Like Judges*, available at <http://www.plainlanguage.org/Legal/legalwriting.pdf> (last visited Oct. 5, 2009), see also Ellen Hoffman, *Getting to "Plain Language,"* 29 J.NAALJ 1 (2009).

91. For example, at the TLC, respondents are most often licensees. Licensees are required to attend hearings or possibly face suspension of their license. It is imperative that the licensee understand where and when their hearing will take place. During the document revision process, TLC changed their "Notification of Adjournment" to "Notice of Re-scheduled Hearing," helping to ensure that respondents understood that their hearing would take place on a new date and time.

92. For example, the New York State Department of Education's *Procedural Safeguards Notice: Rights for Parents for Children with Disabilities* uses legal terms, but immediately defines them: "There are many times when the school district must notify (tell) you in writing of its proposed (planned) action and ask for your written consent (permission) to carry out this action." New York State Department of Education, *Procedural Safeguards Notice, Rights for Parents for Children with Disabilities Ages 3-21*, 1 (2005), available at <http://www.vesid.nysed.gov/specialed/publications/policy/prosafenotice/sept05.pdf>.

if a sentence has fifteen or more words, it can usually be split into two simpler sentences. Paragraphs should be kept to three or four sentences, with the most important information in the first sentence. Overall, writing should be made more personal. Authors should specifically address their audience and take ownership of the document, using the word “I” instead of “the court.”

Instructors from MOIA and MOAE also directed the participants to use white space and bullets to highlight important information. The training highlighted how to successfully size the font of a document, and where the use of color can be effective. The interactive course included workshops in which the participants were tasked with converting a sample document into plain language.

Microsoft Word (Word) has an easy-to-use objective test to determine the grade level of the document you are drafting. To ensure that this feature is active, in the “Tools” menu under “Spelling and Grammar,” in the “Options” menu, make sure “Show Readability Statistics” is checked. When Word finishes checking the grammar of the document, it will give you a list of statistics that describe the readability of the document. Word provides averages for the number of words per sentence, the number of sentences per paragraph, the percentage of passive sentences, and the overall grade level of the document.

Following this course, the AJC asked each tribunal to inventory its public documents, then based on the training, convert these documents into plain language.⁹³ Taking all of these writing principles into consideration, many tribunals revised essential public documents. An example of a revised document that illustrates many of the principles discussed below is the revised letter that TLC Courts send to an applicant for a new license who has attended a license fitness hearing and is awaiting a decision on an application.⁹⁴ In this situation, the ALJ makes a recommendation to the Deputy Commissioner for Licensing. Before the Deputy Commissioner

93. Periodic inventory of public documents is an important exercise for any city agency. Forms often become outdated or duplicative. An inventory can identify those documents that are no longer in use or contain information that needs to be updated.

94. In keeping with plain language principles, TLC renamed its tribunal from TLC Courts and Court Administration to just “TLC Courts.”

makes a final decision, the applicant has an opportunity to comment on the ALJ's recommendation.

The following original letter to the applicant, which accompanied the ALJ's recommendation, was written at the twelfth-grade level and sixty-two percent of the document was written in the passive voice:

A hearing was conducted with respect to your application for a medallion driver license of the Taxi and Limousine Commission and issued the attached Report and Recommendation to the Deputy Commissioner for Licensing pursuant to Chapter 8 of the Taxi and Limousine Commission Rules. A copy of the Report is enclosed.

Respondent is hereby afforded the opportunity to submit a written response to the Judge's Recommendation which together with the Judge's Recommendation, will be submitted for the Deputy Commissioner for Licensing's consideration in rendering the Final Agency Decision in this matter.

Your response, if you choose to make one, must be submitted within ten (10) calendar days from the date of this letter. It must be limited solely to any exceptions or objections you have to the conclusions of law contained in the Report and Recommendation, or to the proposed penalty. No evidence outside of the hearing record can be considered. The final agency decision, which will be made by the Deputy Commissioner for licensing, will become a matter of public record.

Your response must be submitted in writing to the New York City Taxi and Limousine Commission, 32-02 Queens Boulevard, 3rd Floor, ATTN: Fitness Hearing Unit, Long Island City, NY 11101-2324. Failure to do so may cause your submission to not be considered.

The following new plain language letter is written at a ninth-grade level with fourteen percent of the sentences written in the passive voice:

TLC held a hearing about your application for a TLC license. The judge made a recommendation

which states whether your license should be approved. A copy of the recommendation is enclosed. This recommendation has been sent to the Deputy Commissioner for Licensing and Standards.

Before the Deputy Commissioner makes the final decision, you may respond to the recommendation. If you disagree with, or want to add to the recommendation, you may send a letter to the Deputy Commissioner. The Deputy Commissioner will review your letter before making the final decision on your application.

You do not have to respond to the recommendation. But if you decide to send a letter you must:

- Write your name, applicant number and reference number on your letter.
- Mail it within ten (10) calendar days of the date at the top of this letter.
- Mail it to the address below:

NYC Taxi and Limousine Commission
Deputy Commissioner for Licensing and Standards
32-02 Queens Blvd., LIC, NY 11101

Converting public documents into plain language may significantly improve a respondent's experience at a tribunal. However, in high volume tribunals, there is little-to-no motion practice or filings. Most of the contact with the system takes place in the hearing room. As previously discussed, the NYC Rules of Conduct includes a provision advising NYC ALJs to minimize the use of complex legal terms and to explain proceedings and rulings.⁹⁵ In order to follow this mandate, some tribunals are creating courses to teach ALJs to write and speak in plain language. Using the MOIA and MOAE Easy-to-Read NYC Guidelines as a framework, TLC and DOH ALJ training focused on conducting hearings and writing decisions in plain language.⁹⁶

95. N.Y. COMP. CODES R. & REGS. Tit. 48, § 4-103(a)(8) (2008).

96. This training, adapted from Sherry Cohen, *Easy-To-Read NYC: Guidelines for Clear and Effective Communication*, Mayor's Office for Adult Education and Mayor's Office for Immigrant Affairs, published at <http://www.nyc.gov/html/oath/pdf/Easy-to-Read%20NYC.pdf> (last visited October

TLC gave full-day interactive courses in August and September of 2008. Most ALJs were already conducting their hearings, mindful of the make-up of the population of respondents. Spending a full day immersed in the topic helped the ALJs improve their plain language communication skills and emphasized the importance of focusing on the needs of the respondents with a low literacy level.

The training covered the case for plain language usage, the principles of plain language, and a review of alternatives to common legal terms and phrases used at TLC. ALJs were broken up into groups where together they used the just-learned principles to revise a sample TLC decision and draft plain language opening remarks.

The case for plain language included a discussion of the educational background and literacy levels of the TLC respondent population. The course then covered the Language Access Order and the Code of Conduct, thereby providing a legal basis for these necessary changes.

After the case for plain language was made, the principles of plain language were discussed using examples from TLC documents. The class was then broken up into small groups for several workshops. In one workshop, the ALJs were given a “plain language dictionary” to review. Afterward, the ALJs were given a list of frequently used TLC jargon, and asked to come up with plain language alternatives. In another workshop, ALJs were given a sample decision and asked to re-write it in plain language. In the final workshop, the ALJs were asked to draft a plain language version of their opening remarks at a hearing with a self-represented respondent. Before the final workshop, a discussion of the elements that had to be present in the remarks was also had, detailing, for example, an explanation of the hearing procedures and respondent’s rights.

The ALJs left the course with a basic understanding of plain language principles, and concrete tools to use in the hearing room, including the TLC Glossary of Plain Language Alternatives, the sample plain language decision, and opening remarks. The Chief ALJ and Deputy Chief ALJ continue to review decisions and hearings, and counsel ALJs in how they can better communicate in plain language with their audience of respondents.

13, 2009), is mandatory for all TLC ALJs and is now part of the curriculum for any new TLC ALJs. Similar training was created by Ilene Shifrin for DOH ALJs.

Other tribunals have made efforts to improve language access. In December 2008, the Adjudications Division of the Department of Finance translated a plain language informational brochure, "Got Tickets? Your Guide to Parking Ticket Hearings," into Spanish, Chinese, and Russian. In their Language Access Plan, OATH and ECB committed to re-writing documents of key importance into plain language. Any document that is going to be translated will first be rewritten in plain language to ensure that the document will be easy to read in the new language.⁹⁷

By understanding its audience's needs, NYC tribunals have improved access to justice for self-represented and LEP respondents. By offering interpretation services, training ALJs to speak in plain language, and re-writing public documents in plain language, the NYC tribunals are helping to ensure that every party who appears before a NYC administrative tribunal has the opportunity to meaningfully participate in the hearing process.

VII. CONCLUSION

In large part, the NYC administrative tribunals were created so that millions of summonses could be adjudicated quickly and simply, without the often slow and complicated rules of procedure that criminal court summonses require. More recently, NYC shifted its focus from merely creating an efficient process to hear summonses, to creating a process where all parties receive full access to justice. As described above, these goals are not mutually exclusive. The easier it is to navigate a tribunal, the quicker matters get resolved.

NYC is at the forefront of increasing access to justice. By knowing its audience's educational and language backgrounds, NYC has laid the groundwork to ensure that all New Yorkers have fair access to NYC services. NYC tribunals, recognizing that its audience is often self-represented and of a low literacy level, will continue to develop programs aimed at increasing access for these respondents.

97. Office of Administrative Trials and Hearings, *OATH/ECB Language Access Plan*, 5, http://www.nyc.gov/html/ecb/downloads/pdf/lap_ecb.pdf (last visited Sept. 30, 2009).