

# Adopting a Code of Ethics for Administrative Law Judges

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## I. Background

The City of New York has embarked on an ambitious effort to reform its administrative tribunals, an effort that can serve as a model for other jurisdictions. Many people have their most significant encounters with the administration of justice when they appear before a municipal tribunal.



Recognizing that hearings must always be fair, that participants are entitled to a process that is both efficient and respectful, that the general public should understand how those values are ensured and that all of those goals can best be achieved by implementation of uniform standards across City tribunals, Mayor Michael R. Bloomberg in January 2006 signed an executive order<sup>1</sup> creating the position of Administrative Justice Coordinator. For the past year, the Coordinator's office has been working to enhance the professionalism of adjudications, to increase public awareness of the tribunals and to minimize the inconvenience of the hearing process.

A key undertaking has been the development of a code of ethics for City administrative law judges and hearing officers ("ALJs"). Effective February 13, 2007, the "Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York"<sup>2</sup> is also the first comprehensive code of ethics for ALJs at any level of government—State or local—in New York State.<sup>3</sup> With increasing recognition that ALJs—no less than their judicial-branch counterparts—should be subject to appropriate codes of ethics,<sup>4</sup> the City's experience offers useful guidance to the issues raised in framing such a code.

Approximately 500 ALJs (variously denominated administrative law judges, hearing officers or hearing examiners) serve the City on a variety of administrative tribunals, among them the City's parking violations bureau (formally, the Adjudication Division of the Department of Finance), the Environmental Control Board (which hears civil matters involving violations of, *inter alia*, the City's quality-of-life laws governing sanitation, building construction and maintenance, fire safety and prevention, road repair, and air, noise and water pollution), the Taxi and Limousine Commis-

sion, the Tax Appeals Tribunal, and the administrative tribunals of the Police Department, the Department of Health and Mental Hygiene and the Department of Consumer Affairs. The City's Office of Administrative Trials and Hearings ("OATH") includes 12 ALJs with a specialized caseload of more complex matters such as personnel, disciplinary, discrimination, commercial, licensing and real estate cases. All of the City's ALJs are lawyers. Some, such as those serving OATH, are full-time employees appointed for a fixed term of office. Most City ALJs, however, are part-time per diem employees or independent contractors, many of whom maintain private legal practices or integrate their ALJ service with other occupational activities or family obligations. Some City tribunals—such as OATH and the Tax Appeals Tribunal—handle cases in which, typically, all parties are represented, and hearings may include multiple witnesses and last for days. At other tribunals, respondents are usually *pro se*, and hearings rarely take more than an hour.

In 2005, the City's Charter Revision Commission proposed that the City Charter be amended to require the adoption of a code of ethics for ALJs.<sup>5</sup> The general election that year saw an overwhelming affirmative vote on a ballot question asking approval for a Charter amendment to direct that a code be promulgated jointly by the Mayor and the Chief Administrative Law Judge of OATH.<sup>6</sup>

The impetus to adopt a code of ethics derived from three sources.<sup>7</sup> First, there was a recognition that City ALJs were subject to no single uniform code of ethics. By its terms, the State Code of Judicial Conduct ("State Code")—formally, the Rules of the Chief Administrator of the Courts Governing Judicial Conduct<sup>8</sup>—does not apply to administrative law judges "unless adopted by the rules of the employing agency."<sup>9</sup> Although OATH's ALJs had been made subject to the State Code by the mayoral executive order that created that tribunal,<sup>10</sup> no formal decision had ever been made to impose the State Code on City ALJs or to determine how its provisions would apply. As discussed in more detail below, some of the State Code is not readily applicable to all City ALJs. City ALJs are subject to other ethical rules—as lawyers, they are governed by the Code of Professional Responsibility; as City employees and contractors, they are subject to the City's Conflicts of Interest Law<sup>11</sup>—but those rules do not specifically address the particular ethical issues that confront administrative judges.

Second, adoption of a code of ethics for City ALJs can be expected to enhance the professionalism of the City's administrative judiciary. Articulating a single overarching set of ethical principles will stimulate the ongoing development of an administrative judiciary able to discuss and apply a shared body of ethical doctrine.

Third, adoption of a code will increase the transparency and accountability of tribunals by informing the public of what standards apply to the conduct of City ALJs and providing a means of guaranteeing that those standards will be met.

## II. The State Code and the City Rules

The City Rules are based on the State Code, which in turn is drawn from the American Bar Association's Model Code of Judicial Conduct. The familiar presentation of judicial ethics in both the City Rules and the State Code reflects an organization of key principles that has proven useful over years of application and that comes with a long history of interpretation and refinement in governing bodies and academic circles across the country.<sup>12</sup>

Basic differences between City ALJs and judges of the judicial branch mean that the State Code could not simply be made applicable without modification. Some of those differences are inherent in the concept of an administrative judiciary, some reflect peculiar features of the City's tribunals. Four of the critical differences are discussed below.

First, administrative tribunals are not "independent" in the same sense as are judicial courts. Administrative tribunals are located within the executive, not the judicial branch, which means that constitutional separation-of-powers principles do not bear on the tribunals' jurisdiction. ALJs have only such authority as is statutorily invested in them or delegated to them by the employing agency. An ALJ cannot decide that a statute or regulation is unconstitutional; if the ALJ's authority is delegated by the employing agency, the ALJ ordinarily cannot deem an agency regulation contrary to statute.<sup>13</sup>

Second, because administrative tribunals are located within executive agencies, principles of appellate review do not apply precisely as they would in the judicial branch. In many instances, the ALJ's decision is technically a recommendation, which is subject to further review before becoming final agency action. Although both that process of intra-agency review and any subsequent challenge under CPLR Article 78 may be informally characterized as "appeals," neither is strictly identical to an appellate court's review of a trial court's decision, order or judgment.

Taken together, the factors just mentioned give rise to some practices in administrative tribunals that vary significantly from expectations based on the conduct of judges in the judicial branch. For example, in some City administrative tribunals, ALJs' draft decisions are reviewed by supervisors before issuance and may be subject to editing for clarity, logic and consistent application of law.

Third, ALJs are not elected. Unlike some judges of the judicial branch, ALJs have not run for office and need not worry about running for re-election. In general, then, ALJs are less likely to be part of the pervasively political milieu out of which some elected judges emerge.

Finally, most City ALJs are part-time per diem employees with outside activities and interests. Typically, lawyers who work part-time as City ALJs are not identified as "judges" when making appearances outside of their official duties. Although City ALJs are accorded public respect, their status is not precisely equivalent to that of their judicial branch counterparts.

All of those factors influenced the drafting of the City Rules and explain why its text varies from that of the State Code. They also explain why it is reasonable to expect that interpretation and application of the City Rules, while always mindful of analogous State Code provisions, will likely depart somewhat from the State Code model to take account of the different position of City ALJs. The City Rules are intended to emphasize and support the core values of fairness and impartiality in adjudication. At the same time, the City Rules are *not* intended to require modification of the current structures and practices of the City's tribunals. That is because the Rules are a code of ethics for ALJs, spelling out the standards of conduct applicable to administrative judges: the Rules are not a plan for reorganizing tribunals or redesigning their operations. In some instances, that consideration has been a basis for varying the City Rules from corresponding parts of the State Code.

In any context, the process of creating a code of ethics for administrative law judges can be expected to begin with rules of conduct for judges of the judicial branch and to entail modification of those rules to make them fully applicable to the administrative judiciary. The discussion that follows therefore concentrates on the points at which the City Rules depart from the State Code and explains why those modifications were necessary.

## III. Structure of the City Rules

Apart from its preamble, an introductory section on terminology and a concluding section on the scope of its application, the State Code contains five

substantive sections, each headed by a canon, which is then followed by detailed rules and guidelines. The canons are: “A judge shall uphold the integrity and independence of the judiciary”;<sup>14</sup> “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities”;<sup>15</sup> “A judge shall perform the duties of judicial office impartially and diligently”;<sup>16</sup> “A judge shall so conduct the judge’s extra-judicial activities as to minimize the risk of conflict with judicial obligations”;<sup>17</sup> “A judge or candidate for elective judicial office shall refrain from inappropriate political activity.”<sup>18</sup> Each section corresponds closely with one that appears in the City Rules, with the wording of each canon applied to City ALJs. In several instances, however, the City Rules depart somewhat from the State Code; those differences are discussed in more detail below. The City Rules also add two concluding sections, on enforcement and on advisory opinions.

**A. City Rules § 101. “A City administrative law judge shall uphold the integrity of the tribunal on which he or she serves.”**

Following the State Code, the City Rules emphasize that administrative tribunals must “adjudicate fairly, without partiality, prejudgment or impropriety” and that City ALJs are obligated to uphold those standards.<sup>19</sup> As explained above, the City Rules do not include “independence” among the core values of the administrative judiciary. That omission occurs in recognition of the location of the administrative judiciary within the organization of government. But the importance of maintaining impartiality, and the appearance of impartiality, remains paramount.

**B. City Rules § 102. “A City administrative law judge shall avoid impropriety and the appearance of impropriety in all of his or her activities.”**

The City Rules<sup>20</sup> closely track the State Code<sup>21</sup> in setting forth the basic duty of a judge to sustain public confidence in the integrity and impartiality of the tribunal on which he or she serves. The State Code bars a judge from testifying voluntarily as a character witness in any proceeding.<sup>22</sup> The City Rules limit the prohibition to testimony before a City tribunal on which the ALJ serves.<sup>23</sup> The State Code prohibits a judge from holding membership in an “organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status.”<sup>24</sup> (But a judge is not barred “from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.”<sup>25</sup>) The City Rules extend the prohibition to organizations that practice discrimination on the basis of:

actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status, or any other protected status enumerated in the City Human Rights Law, Administrative Code § 8-101, or the State Human Rights Law, Executive Law § 291.<sup>26</sup>

**C. City Rules § 103. “A City administrative law judge shall perform his or her duties impartially and diligently.”**

This section devotes the greatest detail to elaborating upon the duties of a sitting judge. The State Code includes a proviso that “[t]he judicial duties of a judge take precedence over all the judge’s other activities.”<sup>27</sup> Recognizing that many City ALJs are balancing their service as ALJs with ongoing private practices and other professional and family commitments, the City Rules do not require that the duties of an ALJ “take precedence” over the rest of his or her activities.

**1. Adjudicative responsibilities**

Both the State Code and the City Rules, in setting forth adjudicative responsibilities, address the importance of treating parties appropriately. Following the State Code, the City Rules require that a City ALJ “shall be faithful to the law and maintain professional competence in it” and not be swayed by outcry or fear of criticism;<sup>28</sup> “shall require order and decorum in proceedings”;<sup>29</sup> “shall be patient, dignified and courteous” to those who appear before him or her;<sup>30</sup> “shall accord to [parties and their representatives] the right to be heard according to law”;<sup>31</sup> “shall perform judicial duties with impartiality” and without manifesting bias or prejudice based upon a person’s membership in any group protected against discrimination under federal, State or City law;<sup>32</sup> shall similarly require the parties and their representatives to refrain from manifesting bias or prejudice;<sup>33</sup> “shall dispose of all judicial matters promptly, efficiently and fairly”;<sup>34</sup> and shall not make “pledges or promises of conduct in office,” or commitments concerning particular cases, “that are inconsistent with the impartial performance of the adjudicative duties of the office.”<sup>35</sup>

The City Rules depart from the State Code with respect to four aspects of adjudicative responsibility: treatment of ex parte communications, obligations toward parties not represented by professionals, restrictions on public comments and use of nonpublic information obtained while serving as an ALJ.

### a. Ex parte communications

Of course, it is fundamental to fairness in adjudication that a judge ordinarily may not exchange communications about the substance of a proceeding with one party outside the presence of another party and without notice or disclosure to the absent party. The State Code expresses the principle thus: “A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding. . . .”<sup>36</sup> City ALJs too may not engage in separate communications with parties or their representatives.

From the standpoint of developing a code of ethics for City ALJs, however, the State Code’s reference to “other communications”—i.e., communications other than those with parties—is problematic. A literal reading of that language might lead to preclusion of the internal process used by some City tribunals to review ALJs’ decisions before issuance. Since that process involves only other ALJs, not representatives of petitioning agencies, it does not involve ex parte communications or compromise impartiality. Consistent with the view that the point of the City Rules is to establish standards of conduct for ALJs, not to alter tribunal processes, the City Rules do not include a prohibition on “other” communications under the heading of “ex parte communications.”<sup>37</sup> The City Rules also add a definition of “ex parte communication,”<sup>38</sup> not found in the State Code, to clarify what is being covered. That does not mean the City Rules would permit an ALJ to receive or rely upon an undisclosed communication from a non-party, since such conduct would almost surely violate obligations of fairness and impartiality that pervade the City Rules.<sup>39</sup> Of course, an ALJ is not permitted to receive or rely upon an undisclosed communication about the matter before him or her from the agency whose representative is appearing in the matter, as that would be an ex parte communication, even if the ALJ’s tribunal were itself part of the same agency.

### b. Litigants without professional representation

Unlike a judge of the judicial branch, a City ALJ most often hears cases in which a government agency is prosecuting a claim against a *pro se* litigant. In judicial branch courts, government prosecution typically entails a defendant’s right to representation; *pro se* litigants are most often found, usually as plaintiffs, in private litigation. The situation is quite different in a tribunal that adjudicates parking tickets or violations of quality-of-life laws or commercial regulations.

The City Rules therefore include a provision with no parallel in the State Code. They direct that a City ALJ “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 on all relevant points.”<sup>40</sup> The Rules specify nine practices that a City ALJ may find useful in fulfilling that obligation:

- (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 the case.<sup>41</sup>

A City ALJ is not required to follow every one of those practices in every case, and in particular situations other approaches to fulfilling the obligation to a *pro se* litigant may be appropriate. Although the distinction may sometimes call for careful weighing of competing concerns, fulfilling the obligation to *pro se* litigants does not mean an ALJ should ignore his or her responsibility to treat all parties fairly and impartially—the ALJ may not become an advocate for one party or the other. In particular, the City Rules specify that communications between the ALJ and the *pro se* litigant remain fully subject to the prohibition on ex parte communications. “[A]ny steps taken” to ensure a *pro se* litigant’s opportunity for a full presentation of his or her case should be “reflected in the record of the proceeding,”<sup>42</sup> although typically the practices mentioned above would inherently appear in the record without need for any special identification of them.

### c. Public comment on proceedings

The State Code<sup>43</sup> prohibits a judge from making “any public comment about a pending or impending proceeding in any court within the United States or its territories.” (There are exceptions for a judge’s public statements made in the course of official duties, for explanations of court procedures for public information and for proceedings in which the judge is a litigant in a personal capacity.) The prohibition reflects a concern

that the dignity of the courts may be undermined if judges engage in public debate concerning the merits of pending cases.

Because City ALJs are somewhat less publicly recognizable as judges, there is less risk that their comments will have a similarly deleterious effect. Moreover, because so many City ALJs serve on a part-time basis, the burden imposed by a broad restriction on public comment is greater. Therefore, the City Rules prohibit public comment only if it bears on a proceeding pending or impending before a City tribunal.<sup>44</sup>

#### d. Nonpublic information

Both the State Code<sup>45</sup> and the City Rules<sup>46</sup> bar “disclos[ur]e or use, for any purpose unrelated to judicial duties, [of] nonpublic information acquired in a judicial capacity.” The meanings of the two provisions are quite different, however, because they rest on different definitions of “nonpublic information.” The State Code uses this definition:

Nonpublic information denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.<sup>47</sup>

By contrast, the City Rules definition is: “Nonpublic information’ is confidential information of which a City administrative law judge becomes aware as a result of his or her judicial duties and which is not otherwise available to the public.”<sup>48</sup> The State Code focuses narrowly on information that is legally withheld from public access; the City Rules broaden the scope of the prohibition to cover any confidential information unavailable to the public. Under the City Rules, an ALJ could not, for example, make private use of confidential commercial information provided by a litigant in the course of a proceeding before the ALJ. The State Code provision would not cover such information unless it were the subject of a court order.

## 2. Disciplinary responsibilities

The State Code provides that a “judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.”<sup>49</sup> The City Rules limit that obligation by making it applicable only when a City ALJ has received information “in the course of performing judicial duties:”<sup>50</sup> otherwise, an attorney serving part-time as an ALJ might become subject to the ethical ob-

ligation under the City Rules even if he or she received the information while engaged in private practice.<sup>51</sup>

## 3. Disqualification

The City Rules largely follow the State Code. One exception is with respect to determining the degree of family relationship between a litigant and a judge. The State Code uses the civil law system, which depends on a complicated explanation to establish categories such as the fourth and the sixth degrees of relationship.<sup>52</sup> To encourage ready understanding by non-lawyers, the City Rules discard reliance on civil law classification and simply use the term “closely related,” defined as meaning

that the relationship between one person and another is that of parent and child; siblings; grandparent and grandchild; great-grandparent and great-grandchild; first cousins; or aunt/uncle and niece/nephew.<sup>53</sup>

#### D. City Rules § 104. “A City administrative law judge shall conduct his or her extra-judicial activities so as to minimize the risk of conflict with judicial obligations.”

The City Rules follow the basic tenet of the State Code with respect to off-bench activities. Any judge, whether of the judicial or the executive branch, must be mindful that extra-judicial activities do not “cast reasonable doubt on the judge’s capacity to act impartially as a judge”; do not “detract from the dignity of judicial office”; do not “interfere with the proper performance of judicial duties and are not incompatible with judicial office.”<sup>54</sup>

Recognizing that the great majority of City ALJs are part-time City employees, the City Rules are written to permit lawyers who serve as City ALJs to engage in the full range of extra-judicial activities that do not run afoul of that basic tenet. In certain respects, the City Rules therefore depart significantly from the State Code. For example, the State Code<sup>55</sup> provides that a judge may participate in planning for but may not personally engage in fund-raising on behalf of a charitable organization of which the judge is an officer, director, trustee, advisor or member. In like circumstances, the City Rules permit a City ALJ to engage personally in fund-raising as long as such activity is not inconsistent with service as an ALJ.<sup>56</sup>

The State Code states that a “full-time judge shall not practice law” but does not articulate specific limitations on the legal practice of a part-time judge.<sup>57</sup> Limitations may be inferred, however, from the State Code’s restrictions on judges’ “financial and business dealings.”<sup>58</sup> Rather than rely on inference, the City Rules—mindful of the fact that so many City ALJs

serve part-time and continue to practice law—spell out the restrictions imposed on legal practice.<sup>59</sup>

**E. City Rules § 105. “A City administrative law judge shall refrain from inappropriate political activity.”**

The State Code<sup>60</sup> contains an extensive set of limitations on the types and extent of political activity in which judges and candidates for elective judicial office are permitted to engage. Violations of those provisions are among the most common reasons for disciplinary sanctions to be imposed by the State Commission on Judicial Conduct. By contrast, the City Rules impose few restrictions on political activity: a City ALJ may “not act as a leader or hold an office in a political organization”; may “not solicit funds for a political organization or candidate”; may not continue in office as a City ALJ while a candidate for elective non-judicial office; and, if running for elective judicial office, must comply with the applicable State Code provisions. (“A ‘political organization’ is a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.”<sup>61</sup>) Otherwise, the City Rules caution that a City ALJ “who engages in any other partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves. . . .”<sup>62</sup>

Regulation of ALJs’ political activity under the City Rules is based on a recognition that there is a broad public expectation judges will not engage prominently in political activity and some public identification of ALJs as judges. Accordingly, the City Rules prohibit ALJs from engaging in the most intense forms of political activity—party or club leadership and fund-raising for candidates or organizations. As long as they are not inconsistent with an ALJ’s other obligations under the City Rules, however, other types of political activity are not precluded by the Rules.

Unlike many judges of the judicial branch, ALJs are not elected to office. In addition, because they are less likely to be products of a political culture and do not have to worry about running for re-election, City ALJs are not subject to the same kinds of political pressures that may bear on the elected judiciary. Since so many City ALJs are part-time judges who engage in a range of other activities, it would be especially inappropriate to extend unduly restrictions on their ability to express and act on their political concerns and interests. The specific prohibitions contained in the City Rules are designed to take those factors into consideration.

**F. City Rules §§ 106 (“Misconduct”), 107 (“Advisory opinions; advisory committee”)**

The State Code does not include provisions for enforcement, which are established separately elsewhere. Special issues are raised by the sanctioning and removal of State judges who are elected or have been appointed to office for fixed terms.

There is no unified mechanism in the City for sanction or removal of ALJs, and the City Rules do not purport to create one. As noted above, ALJs covered by the City Rules are employed under a variety of circumstances. The City Rules simply provide that a violation constitutes misconduct and may subject a City ALJ to discipline.<sup>63</sup> A complaint alleging a violation may be made to the head of a tribunal on which an ALJ serves, in which case the head shall advise the Administrative Justice Coordinator and the Chief ALJ of OATH. A complaint may also be made directly to the Coordinator or the Chief ALJ. In either case, the Coordinator and the Chief ALJ are jointly to refer the complaint, as appropriate, to the head of the tribunal, the Conflicts of Interest Board and/or the Department of Investigation. The Chief ALJ is to maintain a confidential record of complaints received and a publicly available index of instances in which violations of the City Rules are found to have occurred and of the discipline imposed in each such case.

The head of a tribunal or an ALJ may request an advisory opinion concerning application of the City Rules to anticipated future conduct. Requests for advisory opinions are to be directed to the Chief ALJ of OATH and responses are to be made jointly by the Chief ALJ of OATH and the Administrative Justice Coordinator. The Chief ALJ of OATH and the Administrative Justice Coordinator are authorized to appoint an advisory committee with whom to consult in developing advisory opinions.

**IV. Conclusion**

Administrative law judges are not *per se* subject to the State Code of Judicial Conduct. Adoption of an appropriate code of ethics for administrative law judges is warranted because other rules of conduct, such as those applicable to lawyers or municipal employees generally, do not cover all of the issues that affect the performance of the administrative judiciary. Because of key differences between administrative judges and their counterparts in the judicial branch, the State Code of Judicial Conduct cannot readily be made applicable to administrative law judges without some significant modifications. Areas in which modifications may be made are suggested by the City’s experience in developing its Rules of Conduct for administrative law judges.

## Endnotes

1. Executive Order No. 84 (January 26, 2006).
2. 48 R.C.N.Y., Appx. A.
3. New York State has had a requirement that each State tribunal adopt an “administrative adjudication plan.” 9 N.Y.C.R.R. § 4.131. Only the Workers’ Compensation Board, however, has actually adopted a code of judicial conduct for its ALJs.
4. See Patricia E. Salkin, “Symposium: Modern Ethical Dilemmas for ALJs and Government Lawyers: Conflicts of Interest, Appearances of Impropriety, and Other Ethical Considerations: Judging Ethics for Administrative Law Judges: Adoption of a Uniform Code of Judicial Conduct for the Administrative Judiciary,” 11 Widener J. Pub. L. 7 (2002).
5. “Advancing Accountability: Balanced Budgets and Administrative Ethics: Final Report of the 2004–2005 New York City Charter Revision Commission” (August 2, 2005) (“Charter Revision Commission Report”) (available at [www.nyc.gov/html/charter](http://www.nyc.gov/html/charter)).
6. The question received a 79 percent “yes” vote. New York City Charter Revision Commission press release, “Voters Endorse Charter Changes by 3-1 Margin” (available at [www.nyc.gov/html/charter](http://www.nyc.gov/html/charter)). The new provision has been codified as New York City Charter § 13-a.
7. See Charter Revision Commission Report, *supra*, note 5; Transcripts of the Meeting of the Charter Revision Commission on January 19, 2005 and of the Expert Forum of the Charter Revision Commission on March 7, 2005 (available at [www.nyc.gov/html/charter](http://www.nyc.gov/html/charter)).
8. 22 N.Y.C.R.R. § 100.
9. 22 N.Y.C.R.R. § 100.6(C).
10. Executive Order No. 32 (1979).
11. See New York City Conflicts of Interest Board Advisory Opinions 93-10 (Revised) (January 31, 1994) and 95-8 (April 10, 1995) (advising that New York City Conflicts of Interest Law applies to City Parking Violations Bureau ALJs); *In re Naomi Rubin*, New York City Conflicts of Interest Board Case No. 94-242 (April 24, 1995) (applying Conflicts of Interest Law to Parking Violations Bureau ALJ).
12. Although the City Rules are based on the State Code because of its familiarity, they also draw on model codes of conduct that have been framed to apply to federal and state administrative law judges, including the National Association of Administrative Law Judges’ Model Code of Judicial Conduct for State Administrative Law Judges (1999), the American Bar Association’s Model Code of Judicial Conduct for State Administrative Law Judges (1995) and the American Bar Association’s Model Code of Judicial Conduct for Federal Administrative Law Judges (1989).
13. The question of the “independence” of the administrative judiciary has been widely debated. See, e.g., James E. Moliterno, “The Administrative Judiciary’s Independence Myth,” 41 Wake Forest L. Rev. 1191 (2006); Edwin L. Felter, Jr., “Special Problems of State Administrative Law Judges,” 53 Admin. L. Rev. 403 (2001); L. Hope O’Keeffe, “Note: Administrative Law Judges, Performance Evaluations, and Production Standards: Judicial Independence Versus Employee Accountability,” 54 Geo. Wash. L. Rev. 591 (1986).
14. 22 N.Y.C.R.R. § 100.1.
15. 22 N.Y.C.R.R. § 100.2.
16. 22 N.Y.C.R.R. § 100.3.
17. 22 N.Y.C.R.R. § 100.4.
18. 22 N.Y.C.R.R. § 100.5.
19. 48 R.C.N.Y., Appx. A, § 101.
20. 48 R.C.N.Y., Appx. A, § 102.
21. 22 N.Y.C.R.R. § 100.2.
22. 22 N.Y.C.R.R. § 100.2(C).
23. 48 R.C.N.Y., Appx. A, § 102(D).
24. 22 N.Y.C.R.R. § 100.2(D).
25. *Id.*
26. 48 R.C.N.Y., Appx. A, § 102(E).
27. 22 N.Y.C.R.R. § 100.3(A).
28. 48 R.C.N.Y., Appx. A, § 103(A)(1). 22 N.Y.C.R.R. § 100.3(A) provides, in part: “A judge shall not be swayed by partisan interests, public clamor or fear of criticism.” 48 R.C.N.Y., Appx. A, § 103(A)(1), by contrast, provides that a City ALJ “shall not be swayed by partisan interests, public clamor or fear of public criticism” (emphasis added). The word “public” was added in recognition that in some City tribunals draft decisions are reviewed internally before issuance: an ALJ is not ethically obligated to resist his or her supervisor’s criticisms and suggestions for improvement of a draft decision.
29. 48 R.C.N.Y., Appx. A, § 103(A)(2).
30. 48 R.C.N.Y., Appx. A, § 103(A)(3).
31. 48 R.C.N.Y., Appx. A, § 103(A)(4).
32. 48 R.C.N.Y., Appx. A, § 103(A)(5).
33. 48 R.C.N.Y., Appx. A, § 103(A)(6).
34. 48 R.C.N.Y., Appx. A, § 103(A)(9).
35. 48 R.C.N.Y., Appx. A, § 103(A)(11).
36. 22 N.Y.C.R.R. § 100.3(B)(6).
37. “A City administrative law judge shall not initiate, permit or consider ex parte communications. . . .” 48 R.C.N.Y., Appx. A, § 103(A)(7). In both the State Code and the City Rules, the general prohibition is followed by several exceptions not relevant here.
38. “An ‘ex parte communication’ is a communication that concerns a pending or impending proceeding before a City administrative law judge and occurs between the City administrative law judge and a party, or a representative of a party, to the proceeding without notice to and outside the presence of one or more other parties to the proceeding.” 48 R.C.N.Y., Appx. A, § 100(G).
39. 48 R.C.N.Y., Appx. A, §§ 101, 102(A), 103(A)(5), 103(A)(9).
40. 48 R.C.N.Y., Appx. A, § 103(A)(8).
41. 48 R.C.N.Y., Appx. A, § 103(A)(8)(a).
42. 48 R.C.N.Y., Appx. A § 103(A)(8)(b).
43. 22 N.Y.C.R.R. § 100.3(B)(8).
44. 48 R.C.N.Y., Appx. A, § 103(A)(10).
45. 22 N.Y.C.R.R. § 100.3(B)(11).
46. 48 R.C.N.Y., Appx. A, § 103(A)(12).
47. 22 N.Y.C.R.R. § 100.0(K).
48. 48 R.C.N.Y., Appx. A, § 100(N).
49. 22 N.Y.C.R.R. § 100.3(D)(2).
50. 48 R.C.N.Y., Appx. A, § 103(C)(2).
51. That is not to say that a corresponding ethical consideration would not apply to an attorney in private practice who obtained information about another attorney’s unethical or unprofessional conduct. See Code of Professional Responsibility EC 1-04. It should be clear, though, that the source of that obligation would be the Code of Professional Responsibility, not the City Rules.

52. A judge is disqualified if, *inter alia*, a party to the proceeding is a person within the “sixth degree of relationship” to the judge (22 N.Y.C.R.R. § 100.3(E)(1)(d)) or the lawyer representing a party is a person within the “fourth degree of relationship” to the judge (22 N.Y.C.R.R. § 100.3(E)(1)(e)). 22 N.Y.C.R.R. § 100.0(C) provides:
- The degree of relationship is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.
53. 48 R.C.N.Y., Appx. A, § 100(D). Thus, parties within the “sixth degree of relationship” under the civil law definition would not be “closely related” within the meaning of the City Rules. Disqualification is always required “in a proceeding in which the City administrative law judge’s impartiality might reasonably be questioned” (48 R.C.N.Y., Appx. A, § 103(D)(1)). The degree of relationship between the ALJ and a party is relevant to determining whether the ALJ’s disqualification is automatically required. If a litigant is the ALJ’s second cousin, disqualification is not automatically required on the ground that the party is closely related to the ALJ (48 R.C.N.Y., Appx. A, § 103(D)(1)(d)) but it might very well be required on the ground that the ALJ had a “personal bias or prejudice concerning a party” (48 R.C.N.Y., Appx. A, § 103(D)(1)(a)) or simply on the ground that the ALJ’s impartiality might reasonably be questioned.
54. 22 N.Y.C.R.R. § 100.4(A); compare 48 R.C.N.Y., Appx. A, § 104(A).
55. 22 N.Y.C.R.R. § 100.4(C)(3)(b)(i).
56. 48 R.C.N.Y., Appx. A, § 104(B)(2) provides:
- In connection with civic or charitable activities, a City administrative law judge may participate in fund-raising or solicitation for membership if:
- (a) the City administrative law judge does not use or permit use of the prestige of judicial office for fund-raising or solicitation for membership;
- (b) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing or are foreseeably likely to appear before the City administrative law judge;
- (c) the City administrative law judge’s participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office;
- (d) the fund-raising or solicitation for membership is not prohibited by Chapter 68 of the City Charter [the City Conflicts of Interest Law] or any other provision of law.
57. 22 N.Y.C.R.R. § 100.4(G).
58. “A judge shall not engage in financial and business dealings that (a) may reasonably be perceived to exploit the judge’s judicial position; (b) involve the judge with any business, organization or activity that will ordinarily come before the judge; or (c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.” 22 N.Y.C.R.R. § 100.4(D)(1).
59. 48 R.C.N.Y., Appx. A, § 104(F) provides:
- (1) Consistent with all other provisions of these Rules, with Chapter 68 of the Charter [the City Conflicts of Interest Law] and the rules and opinions of the Conflicts of Interest Board, any applicable agency or tribunal rules and with all other provisions of law, a City administrative law judge may practice law, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.
- (2) A City administrative law judge shall not represent or appear on behalf of private interests before the City tribunal on which he or she serves.
- (3) A City administrative law judge primarily employed by the City [*i.e.*, on a full-time basis or regularly scheduled to work more than 20 hours per week as an ALJ] shall not represent or appear on behalf of private interests before any City tribunal or agency.
- (4) A City administrative law judge shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before the City tribunal on which he or she serves.
60. 22 N.Y.C.R.R. § 100.5.
61. 48 R.C.N.Y., Appx. A, § 100(P). The definition in 22 N.Y.C.R.R. § 100.0(M) is virtually identical.
62. 48 R.C.N.Y., Appx. A, § 105(E).
63. 48 R.C.N.Y., Appx. A, § 106(A).

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