Testimony of Saul Fishman, President of the Civil Service Bar Association, on behalf of NYC government Agency Attorneys – joint hearing of Oversight & Investigations and Civil Service & Labor Committees – September 9, 2022

Good afternoon distinguished City Council Committee Chairs and Committee Members, Councilmembers, government officials and concerned New Yorkers,

I am here today to testify about how city agencies, specifically the legal divisions and units of city agencies, have been greatly diminished in staffing, had dedicated, experienced employees, their morale crushed, leave city employment, and how city policies and an unrealistic Mayor are making a bad situation worse each and every day. I’m Saul Fishman, the President of the Civil Service Bar Association, proudly affiliated with Teamsters Local 237. We represent the Attorneys, Agency Attorneys, Agency Attorney Interns and related titles in virtually every Mayoral agency and in the Housing Authority and in the Transit Authority (roughly 40 agencies in all).

I have represented these very dedicated, competent legal professionals for a full decade, and I have to say that, although we’ve endured tough times before, we have never suffered the mass exodus that we are currently experiencing.

One year ago, we conducted a survey of our membership, and the vast majority of members who responded indicated that they were able to perform their work “at least as well” remotely during the approximately 18-month shutdown period. The large majority wanted the ability to telework 2-3 days per week, and stated that if they were not provided with such an option, it would negatively impact their morale and/or desire to stay with their agency.

It turns out that they were not just venting, they were telling the truth. Here are the figures on changes to our membership from March 1, 2020 (just before the pandemic shutdown), to September 1, 2021 (just before the ordered full-time Return to the Office ordered by the former Mayor), and finally some brand-new numbers as of this past Tuesday September 6, 2022, approximately one year after the ordered full-time return. All of these numbers have been provided to us courtesy of our own IT department, who receives the underlying data from a weekly Roster supplied by FISA-OPA (the NYC Office of Payroll Administration).

We had a total of 1,057 members in the various Attorney titles as of March 1, 2020. As of September 1, 2021, after months of threatening a full return to the office but actually approximately two weeks before it was actually implemented, membership was already reduced to 970 members. As of this past Tuesday, approximately one year after the full return to the office with absolutely no teleworking allowed, we were all the way down to 831 agency attorneys. So the bottom line is that in the course of two and a half years, from March 1, 2020 to September 6, 2022, the agencies and the public that they serve have lost 226 hard-working attorneys. That’s nearly 22 percent of our entire membership! 139 attorneys in the past year alone!

Let me start with one tangible example of how an agency’s workforce has been decimated, and its damaging effect on the public:

* Taxi & Limousine Commission (“TLC”), where our members have decreased a shockingly high 43%, from 46 attorneys to 34 attorneys to 26 attorneys from March 2020 until the present.

Here is an email I received from a member yesterday from TLC, who knew that I would be testifying today. They wrote: “Our staffing shortage in the Prosecution Unit at TLC is catastrophic. Pre-pandemic we had 26 staff attorneys (all present), 9 supervising/ senior supervising attorneys. Fully staffed, we should have 31 staff attorneys and 10 supervisors. On return to office we had 19 and 9. We currently have 15 staff attorneys, (including 1 attorney on FMLA, 1 attorney on FMLA, 1 attorney on loan to DOC and 2 attorneys who have given notice) and 10 supervising attorneys…”

“It's not just how short we are, it’s the challenges we face filling vacancies, we know that over a dozen candidates cancelled interviews beforehand or declined offers after an interview. (Some specifically citing salary and lack of schedule flexibility, or lack of remote work). Additionally, at least 2 candidates who accepted offers declined because OMB took so long to approve them they got other offers… This means, for example, that when the public files a complaint against a TLC licensee they wait an average of 36 days before we can even call them to pursue it. That’s AFTER whatever time it took other units to process the Respondent’s information and provide it to us. Then, because other supervisors and I are working in other units, we cannot review and approve cases for settlement so they wait another 70 days for the case to even receive a settlement officer or be scheduled for hearing.”

Further, every single one of us is doing our job while also loaning ourselves out to other units for hours at a time, and the jobs of anyone who calls out sick or takes other leave.

We expect to see hearings dismissed at any point because we will quite simply be unable to appear. We are beyond exhausted. There is the same amount of work as when we are fully staffed. We are all doing 2 or 3 jobs. We fully expect to continue to lose people.”

(end of letter)

And here are serious staffing losses from other agencies that the public relies on most:

* Administration for Children’s Services (“ACS”), where attorneys represent children who are being seriously abused physically, sexually, educationally and otherwise, we went from 246 attorneys to 221 attorneys to 177 attorneys, a drop of approximately 28% in the attorneys who can help convince the Family Court to protect and sometimes remove children in harm’s way from becoming the next Nixzmary Brown or the long litany of other murdered children at the hands of their own supposed guardians;
* Commission on Human Rights (“CCHR), the city agency whose mission is to protect us from discrimination in employment, housing, public accommodation and more, holding mediations and issuing findings of probable cause allowing people to sue and otherwise seek important remedies, preventing further conflict and smoldering tensions: we went from 25 attorneys to 22 attorneys to 15 attorneys, a loss of approximately 40% in skilled legal personnel who would otherwise be available to help nip discrimination in the bud.
* Department of Buildings, whose mission is to make our streets safer from collapse by shoddy work, our workers safer by making sure that contractors and subcontractors follow the Building Codes and other rules; our attorneys work in several units including in the Administrative Enforcement Unit, making sure as best they can through crushing caseloads and calendars that summonses with merit do not get dismissed until the needed repairs and conditions are resolved properly. They too have seen an approximately 40% reduction in their ranks, having gone from 48 attorneys to 43 attorneys to 29 attorneys.
* OATH (Office of Administrative Trials & Hearings), the tribunal which hears the violations issued by most if not all city agencies: down from 35 attorneys to 31 attorneys to 25 attorneys, a reduction of approximately 29%. Needless to say, reduced staffing causes delays inconveniencing all, not to mention tremendous stress, denied personal and vacation days to the remaining staff and further turnover.
* Department of Finance, an agency which performs many functions, including making sure that the right amount of tax gets paid on time, essential to keeping the city running, and the attorneys there go against skilled, high-priced outside attorneys and auditors. The attorney staff at Finance has seen attrition totaling approximately 27%, going from 33 attorneys to 29 attorneys to 24 attorneys.
* Department of Social Services (a/k/a Human Resources Administration and Homeless Services), which provides much of the safety net for our poor and our population who have fallen on hard times: we went from 113 attorneys to 104 attorneys to 92 attorneys, a drop of approximately 19% in the people who can make sure that the laws protecting the neediest are followed in a fair and non-discriminatory manner, and that child support payments are recouped where feasible.
* Department of Consumer and Worker Protection (DCWP, formerly Department of Consumer Affairs), an agency which serves many functions, to name a few, it licenses some 60 different types of businesses, and can seek the revocation of licenses needed to operate stores that repeatedly sell tobacco to minors, cheat workers out of their full pay by systematically undercounting hours worked, home improvement contractors preying on senior citizens, etc. It takes attorneys to carefully draft the charges and present them at OATH hearings and sometimes in State Supreme Court. We’re down approximately 19% there, from 32 attorneys to 28 attorneys to 26 attorneys.

I could go on, but you get the point. Our ranks are being decimated. Our morale is being destroyed. So many of those who haven’t left yet are *actively seeking employment* elsewhere, in record numbers and percentages. They have given up hope that their employer cares about them, is respecting their work-life balance, their limits and their *ethical obligation to act in a professional manner* and to not take on more cases than they can competently handle. These are the same individuals who, with almost no exceptions, *successfully performed their work from home* for approximately 18 months.

Yet they, who often have student debt approaching or even exceeding $200,000, are being told they must come in each and every day to perform the same work, no better than from home, so they can allegedly spend big bucks on lunch out and getting their shoes shined. How tone deaf and out of touch can one be?

And they are being paid less than at comparable employers, such as Legal Aid and Legal Services, who generally have pay scales which increase with each year’s experience. By contrast, we theoretically have four Agency Attorney levels. The city’s dirty secrets along these lines, which attorneys learn after being onboard for a short time, is that almost no one gets to a Level 4, there are relatively few Level 3s, and that “minimum” and “maximum” pay for each level, as specified in our contract, is illusory. There is no mechanism to get anywhere approaching maximum pay, or even above the incumbent minimum. Yes, we do have paltry Recurring Increment Payments (“RIPs”) but they don’t amount to much compared to a true step pay plan, which other employers offer. Indeed some city titles enjoy Step Pay Plans, but the city refuses to offer it to us each and every time we engage in collective bargaining. And they wonder between the shabby treatment, the refusal to offer a hybrid schedule allowing even one or two days a week working from home, very high case loads, minimal opportunity for advancement, lower salaries and so forth, why people are leaving in record numbers, and it’s extremely hard to attract new attorneys? Really?

**Here are some steps that this City Council, through recommendations from your joint Oversight and Civil Service and Labor committees, can and should take that could make a difference**:

* Closely scrutinize the delays involved with onboarding. A high percentage of persons who would consider taking city positions, and even interview for jobs, wind up going elsewhere due to the months of delays inherent in the system as it currently exists. Can there not be budgetary preapproval for a certain number of specified, necessary positions?
* Insist that each agency, starting with the ones enumerated above, show their attempts at recruiting, and whether or not they have had difficulty in recruitment. Almost without exception, they have had tremendous difficulty finding qualified applicants willing to take these positions, especially when the applicants find out that they can only get the posted minimum (and not the range indicated in the posting).
* Given the difficulty in recruiting, our titles ***should be exempted*** from Administrative Code 12-119 through 12-121’s Residency Requirement. For some reason, Commissioners seem afraid to take this logical step!
* While you are examining the above-referenced sections of the Administrative Code, we strongly suggest that it also be **amended** to cover not only difficult to recruit but also difficult to **retain** titles. Absolutely no knowledgeable Agency Commissioner or General Counsel will tell you that we are not difficult to retain! Growing families need the option to live where suitable housing is both available and affordable, including in nearby New Jersey and Connecticut towns. Already a bunch of agency titles are exempt from any residency requirements. For example, the attorneys at Corporation Counsel (“the Law Department”), *who we went to law school with*, are exempt from any residency requirement, because their Commissioner approached DCAS with that request.
* Demand, draft, sponsor, co-sponsor and support legislation to require each city agency to prepare a policy offering employees the ability to work remotely.
* Hold hearings demanding that agency commissioners explain the policy and the need for any excess restrictions on eligibility.
* Require that each agency provide all internal reports, studies, documents, etc. related to worker productivity during the period when many workers performed their duties remotely.
* Help create paths for advancement within agencies as a means to better retain qualified, experienced personnel. One way to do so is to require DCAS to update/ modify their Job Assignment by title code, including “Typical Tasks”. Hardly anyone performs these so-called “Typical Tasks”, and some tasks more typical of higher levels are inserted into lower level titles in order to defeat the possibility of a successful out-of-level grievance. For example, one “Examples of Typical Tasks” for an Agency Attorney Assignment Level I is to “Recommends statutory and regulatory revisions related to agency issues”. Another for a Level I is “May assist in training and supervising the activities of subordinate staff. Guides, supervises and/or reviews work of support staff to ensure completeness and compliance with agency policy and professional standards”. This should instead be the work of an Agency Attorney Level II, whose stated tasks already include “Assists in the overall supervision of the unit, including filling in for other legal staff in emergency situations and reviewing work of the unit” and “May train and oversee the work of attorneys and internes…”
* And to further defeat Level II grievances, “typical tasks” include “May be responsible for the administration, improvement and maintenance of any agency law library” – who has a law library these days? Level II supposedly also has “May serve as the Records Access Appeal Officer under the Freedom of Information Law”. No one I know is doing that. Level II was created to provide an opportunity for promotion for more senior attorneys so they don’t leave before having the opportunity to rise to Level III.
* Assignment Level IV is almost impossible to achieve, causing agencies to make people “Managerial”, i.e.- M1 or M3, even though they perform CSBA bargaining unit work and often do not supervise any more than a Level 3 or 4. And some General Counsels and Chiefs even tell us that they hire non-union “*Managerials” because they can’t find qualified attorneys for what they can pay us*. The head of the Real Estate unit at HPD recently admitted that to us in a Labor-Management meeting! In short, this whole scheme needs to reexamined with an eye to make it more workable and to encourage talented people to come to and stay working for the City.

Thank you very much for your conducting this hearing, and hopefully for taking the needed follow-up hearings for maintaining the city workforce and for corrective legislation and other measures. I am happy to answer any of your questions and will submit the longer version of my testimony by email on Monday.