

**MEETING MINTUES
ADVISORY COMMITTEE TO THE
DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS**

JUNE 2, 2015

The Advisory Committee to the District of Columbia Office of Administrative Hearings met on Tuesday, June 2, 2015 at 4:00 p.m. at the Office of Administrative Hearings, Potomac Room, 441 Fourth Street, N.W., Suite 450 North, Washington, D.C. 20001.

Attendance

Committee Members

Chair Betsy Cavendish, General Counsel to Mayor Muriel Bowser and EOM
Barbara Mack, Legislative Counsel to the D.C. Council Committee on the Judiciary

OAH Staff

Acting Chief Administrative Law Judge (ACALJ) Eugene Adams
Executive Director Kathy Haggerty
Senior Legal Counsel Rachel Lukens
Administrative Law Judge (ALJ) Scott Harvey
ALJ Denise Wilson-Taylor
ALJ Leslie Meek
ALJ E. Savannah Little
ALJ Claudia Crichlow
ALJ Arabella Teal
ALJ Steven Wellner
ALJ Elizabeth Figueroa
ALJ Erika Pierson
ALJ Caryn Hines
ALJ Wanda Tucker
ALJ Margaret Mangan
ALJ Mary Masulla
ALJ Nicholas Cobbs
ALJ Paul Handy
ALJ Calonette McDonald
ALJ Sherri Beatty-Arthur

Others:

Beth Mullin, DDOE Deputy General Counsel

Call to Order

The meeting was called to order at 4:00 p.m. by Chair Betsy Cavendish

Introductions

- Introduction and Welcome of ACALJ Adams:
 - ACALJ Adams' announced his two primary goals for OAH: (1) to help OAH become an efficient central administrative panel and serve as a model for the District and central panels throughout the country; and (2) to collaboratively and transparently make OAH a pleasant place to work.

- ACALJ Adams has begun reviewing a number of policies, practices, and operations to identify areas for adjustment and improvement, including training, case management system, case distribution, filling key vacancies, a handful of personnel matters, standardization processes for templates, and the duties of certain positions such as Principal ALJs.
- He looks forward to regular collaboration with other District agencies in order to strengthen OAH's commitment to District residents and the agencies served by OAH.
- Introduction of all other attendees with brief statements of how long they have been with the OAH, their hopes for the work of the Committee and the court, what they find rewarding or interesting about the work as an ALJ.
- Introduction of Barbara Mack, Legislative Counsel to the D.C. Council Committee on the Judiciary, and Council representative to the Advisory Committee.
 - Councilmember McDuffie has been working with the Office of the DC Auditor to review many of the items that ACALJ identified as priorities, including templates and case management. The Auditor will begin making recommendations in the current fiscal year but they may extend into fiscal year 2016. They are likely to partner with an independent firm to complete the audit.
 - The Judiciary Committee added funding for six law clerks to the proposed OAH budget, and suggests partnering with local law schools to identify recent graduates to serve as law clerks to OAH ALJs. The Council has yet to hold a second vote on the proposed budget.
 - Funding for Unemployment Insurance cases has been hardwired directly from DOES to OAH in an effort to avoid funding complications experienced in past years.
 - The Judiciary Committee is interested in CALJ Adams' discussion regarding standardization of particular ALJ determinations.

Old Business

The Committee had no old business and no minutes of past meetings for approval.

State of OAH, by ACALJ Adams and Executive Director Haggerty

Case management system:

- There are longstanding concerns among the ALJs and staff regarding the need to tweak the current eCourt case management system. This would allow OAH to ensure that all ALJs carry comparable caseloads, which is challenging in light of the diversity of OAH's work and the difference in opinion between the ALJs on the systems used in the past and present.
- Ms. Cavendish inquired as to the current case management system and whether it generates or is capable of generating Key Performance Indicators for OAH. ALJ Wellner explained how eCourt is capable of capturing data regarding the timeframe for resolving particular cases or their subparts. ALJ Wellner believes OAH would benefit from help from the vendor to develop searching and reports to better capture and present that data. He explained the searches and reports that the vendor was able help create in order to comply with our requirements to provide monthly, quarterly, and annual reports to the Department of Labor regarding Unemployment Insurance appeals. He explained that information regarding allocation of cases would require gathering of additional pieces of information such as the length of hearings.
- Ms. Haggerty explained that there are different versions of eCourt, and OAH staff and ALJs have been working within the current version to gather better more useful data for ALJs. Also underway is an update to the newer version of eCourt, which is a bigger project and will provide better document management capabilities, a public portal allowing OAH to publish final orders for public access, and eventually true e-filing capability. The upgrade is already budgeted and OAH has already procured the larger server necessary to complete it.

- ACALJ Adams explained that in the past, many ALJs have had to be involved in the nuts and bolts of eCourt and the IT operations of the agency in order to keep processes moving. Going forward, OAH will rely on its capable administrative and IT staff, and vendor support as provided in the contract, so that ALJs will be able to focus all attention on holding hearings and issuing decisions.

Vacancies:

- OAH is working to fill a handful of key vacancies, including most importantly the Clerk of Court. Ms. Cavendish asked how OAH is faring without a Clerk of Court. ACALJ Adams explained that many of the issues in the Clerk's office relate more to personnel and management, such as time and attendance problems, rather than to overall policies and procedures. The agency must address these issues in order to go forward in updating the case management system and various policies and procedures in the most efficient manner.
- Currently there are no ALJ vacancies. Ms. Cavendish inquired about retention of judicial staff. ACALJ Adams stated that the judicial staff is stable; no ALJs have left OAH since 5 new ALJs were hired in summer of 2014.

Salaries:

- ACALJ Adams commented on the need to increase the salaries of OAH staff, including the ALJs. ALJ salary increases are the subject of ongoing collective bargaining between the IFPTE Federation of Administrative Law Judges (FALJ), the Office of Labor Relations and Collective Bargaining (OLRCB), and OAH. PERB has certified the FALJ bargaining unit, and all parties have begun the collective bargaining process on both compensation and non-compensation matters.

Performance measurement:

- Ms. Haggerty explained that another major priority for OAH is performance measurement. She has begun researching how other administrative courts measure performance in an objective, fair, and data-driven way, and she looks forward to a meaningful and collaborative process to develop such a performance measurement system.

Ms. Haggerty explained that she is also working with IT staff, HR staff, and will be working with the new Clerk of Court to review business processes and ensure that the Clerk staff is working smarter and more efficiently, such as automating the processes of the Cashier's office.

Ms. Cavendish asked how the Advisory Committee can help OAH to move on beyond the unique challenges that the agency has experienced in the last several years. Ms. Mack inquired if there are any actions necessary from the legislative perspective. ACALJ Adams explained that the agency is focusing on the work at hand and identifying and agreeing on agency priorities, and will request assistance and guidance as necessary.

Role of the Advisory Committee

Ms. Cavendish reviewed the role of the Advisory Committee as described in D.C. Code § 2-1831.17. She and ACALJ Adams agreed to quarterly meetings unless and until it becomes necessary to meet more regularly. ACALJ Adams stated his intention to communicate regularly with the Committee but reserve particularly sensitive or important issues for public meetings.

Stakeholders

- ALJ Figueroa discussed the history of stakeholder involvement in the Committee, including not only other District agencies but also representatives of the other side of OAH hearings.

- ALJs Figueroa and Crichlow discussed a past representative on the Committee who was a private individual who had been active in the access to justice community.
- ACALJ Adams noted the Committee’s Charter requires a member of the public, who is not a member of the D.C. Bar, be appointed to the Committee.
- ALJ Teal described efforts OAH has made in the past to meet regularly with stakeholders who represent litigants in various ways, including Legal Services Providers, the Claimant Advocacy Program, Law School Clinics, and others who regularly appear on behalf of individual litigants. ALJ Figueroa commented that in some jurisdictions there are natural stakeholder representatives but in others they are harder to identify.

Community Meetings

- Ms. Cavendish and ALJ Crichlow suggested that a Committee meeting be held in the community to facilitate stakeholder and public involvement, and educate the community.
- ALJ Teal commented that it could be useful as an educational process about OAH, and the interaction with the agencies served by OAH.
- ALJ Crichlow raised concerns that a community meeting could become a “free for all.” ACALJ Adams and Ms. Cavendish agreed that the agenda would be shaped to focus on eliciting public input on particular issues.
- Ms. Mack commented that the Council is interested in hearing about violations being issued from various agencies that the public feels are unnecessary or outdated, or creating a larger backlog for the ALJs, and commented that the Auditor may review these issues.
- ALJ Teal noted that in enforcement cases, there is often a lack of understanding about what the regulations require, so it would be helpful to educate and communicate that perhaps in a community meeting. She also noted that OAH hears challenges to a very small percentage of the overall number of violations issued by enforcement agencies, and a number of OAH litigants are unhappy that their conduct is regulated in any way. She expressed concerns about drawing conclusions for other agencies based solely on trends seen in OAH hearings and decisions.

Issues of Concern to ALJs

Ms. Cavendish requested that the ALJs raise particular issues of concern beyond those addressed by ACALJ Adams and Ms. Haggerty.

Physical Space/Location

- ALJ Pierson noted that OAH is at maximum capacity and has already divided offices to make room for new ALJs. There is no available office space for the newly budgeted law clerk positions, nor for any additional ALJ, legal, or management staff.
- ALJ Pierson also noted that there is insufficient file storage space.
- Ms. Mack stated that the issue of space was raised to CFOs in this year’s budget process, and suggested the Executive identify capital dollars to expand the working space.
- ALJ Tucker noted that the space that was created for OAH several years ago was smaller than what was actually needed or anticipated, with the idea from the beginning that OAH may need to expand to the entire 4th Floor of the building. No efforts have been made on such an expansion thus far.

Expansion of OAH’s Jurisdiction, Fiscal Impact

- ALJ Little noted that frequently, new legislation grants the right to individuals to requests hearings to be held at OAH, but rarely do fiscal impact statements consider the effect on OAH even though that is required by the OAH Establishment Act. She requested that the Judiciary Committee ensure that fiscal impact statements be completed for OAH whenever legislation proposes expansion of OAH’s jurisdiction.

- Ms. Lukens commented on OAH Legal Counsel's efforts to better track proposed and pending legislation and regulations, including strengthening relationships at Council and other District agencies. The next piece is to strengthen relationships with the CFO to address the fiscal impact issues.
- ALJ Handy noted that OAH is also granted jurisdiction of some matters by MOU, which creates difficulties when those agreements lapse or become outdated, so it is preferable to grant new jurisdictions by amending the Establishment Act if possible.
- ALJ Figueroa noted that another problem with the MOU approach is that the public is then not aware when or how OAH has jurisdiction over certain matters. OAH has approached at least one agency to suggest drafting legislation in part to address that problem.
- Ms. Cavendish asked if these issues would be addressed in the pending annual reports that are yet to be published for the last two fiscal years, particularly as it might affect the assessment of caseloads and allocation of work. Ms. Mack commented that it could also affect the budgeting process. ACALJ Adams expressed concerns about having a complicated legal debate in the context of an annual report.

Training

- ALJ Figueroa commented that OAH has never had a dedicated training budget. She explained that the training committee pieces together free events throughout the year but it would be preferable to have a dedicated line item budget to allow for prior planning. She stated that a requested training budget was submitted last year.
- ACALJ Adams explained that a schedule has been set through the fall of 2015 with a combination of free and for-cost training. The agency was able to fund this fiscal year by repurposing vacancy savings, but vacancy savings will not be there in future years so a line item budget is necessary.
- ALJ Figueroa noted that at other agencies such as DCRA, there is a specific amount for training dedicated to each staff member.
- Ms. Haggerty stated there is a \$170,000 training budget for all staff. Internal OAH budget meetings are held monthly to assess spending and reallocation.
- Ms. Cavendish asked if the government covers the cost of bar dues for ALJs and attorneys. ALJ Teal explained that bar dues are not paid for OAH staff, nor are they paid for OAG attorneys. ALJ Cobbs noted that some states such as Maryland do pay these fees for central panel ALJs. ACALJ Adams noted there is an OAG Legal Counsel opinion concluding that the District is prohibited from paying bar fees for OAG attorneys and we should revisit that opinion before making any decisions. Ms. Mack suggested also discussing with BEGA. OAH Legal Counsel will follow up on this issue.

Cross-District IT Collaboration

- ALJ Figueroa explained that many agencies have different case management systems, and it is a problem because they do not interact with each other and do not interact with OAH's eCourt system. She explained that there is no District-wide effort to address this issue. Furthermore, she explained that agencies are also using more sub-contractors for these systems and thus are less able to exercise control.
- ALJ Wellner discussed the benefits that would come from better accountability and collaboration, and expressed concerns that it is not being dealt with because it is so difficult.
- ALJ Teal noted that the City Administrator used to address these sorts of issues, because it requires someone who can make District-wide policy decisions regarding standardization and individualization.
- Ms. Cavendish expressed interest in the discussion and will consider referring it to the MOLC or the City Administrator to consider.

In-Court Interpreters

- ALJ McDonald requested that OAH be able to access more in-court interpreters. ALJ Mangan commented that the system in place is working well but there is sometimes resistance from ALJs and staff to working within the scheduling constraints that maximize interpreter resources.
- Ms. Lukens explained the current system for scheduling interpreters and explained that a major difficulty is with funding. The system for Spanish interpreters, where particular court-certified interpreters have contracts directly with OAH to provide full days of service, works well. For other languages or cases on other days, it is difficult to obtain court-certified interpreters at the price point that the city-wide contract provides.

Next meeting:

The Committee will meet next in September, date TBD, likely September 9, from 3:30-5:30pm to facilitate attendance of OAH staff. Working with ACALJ Adams and ED Haggerty, Ms. Cavendish will identify priorities and work product.

After the September meeting, the next meeting will be held in the community to hear from stakeholders.

Adjournment:

The meeting adjourned at 5:50pm.

Minutes submitted by Rachel Lukens, OAH Senior Legal Counsel.