

FINAL MINUTES

OAH ADVISORY COMMITTEE MEETING

July 19, 2017

441 4th Street, NW, Offices of OAH, Suite 450 North

Call to Order: 4:03 PM

Members In Attendance

Betsy Cavendish Chair Advisory Committee

Tony Jackson OAG

Alice Thomas

Cheryl Johnson, on behalf of Wayne Turnage, HCFA

Mary Buckley, newly appointed Member

Melinda Bolling, Director, DCRA

Absent: Paul Wolfson

Judges and Staff: Chief Judge Eugene Adams OAH; Mary Masulla, Sharon Goodie, Angela Harvey, Louis Neal, Audrey Jenkins, Vanessa Natale, Natalia Kalloo, New ALJ Deborah Carroll, Elizabeth Figueroa

Minutes for last meeting need not be approved, as the meeting was videotaped and the recording was posted in conformance with the Open Meetings Act.

Cavendish: Mayor has told the Chief that she would appreciate if the ALJ are seeing systematic problems please let us know and we will examine the issue for a potential fix it at the root cause. We will look into anything you bring to us, both the administration and advisory committee board.

GC Natale: we brought a couple of issues to Betsy's attention: emergency hearings for DHS/DHCF the number of requests increased due to notice failure issues; we also reported hearing from ALJ Rooney regarding awards of UI benefits not being implemented as promptly as previously.

ALJ Masulla: We are seeing a problem regarding default judgments in DPW and DCRA cases. We review the files to ascertain the adequacy of notice, to make sure the individuals/company defendants have been properly served, at the last known address. A couple of cases where DPW issues a notice of violation and to the party has to respond, fines double if there is no response.

We wait until we get the signed return receipt from certified mail in the file, if DPW doesn't get the signed receipt they will post it on the building. These are the steps taken to ensure proper service. DCRA regulations do not call for special service, just service by mail. The concern is that people and entities are not getting the Notice of Infractions, people in hearings telling ALJs that they have not received the infractions. I check the database to make sure that the addresses match, but there is inconsistency between addresses in DCRA database and the OTR database. Systemic problem that I want to bring to your attention, I see it when I get defaults in these cases and worry that they have not been served. Especially in the DCRA cases, these can be very expensive, as fines are tripled.

Interruption: *Swearing in of new advisory board member to OAH by Office of the Mayor* by Alan Karnofsky of the Mayor's Office of Talent and Appointments.

Director Bolling: from an agency point of view we are concerned with show causes that arise, we are looking for a change that includes e-mail as an acceptable form of service to make sure people are served. The statute was changed to allow service by regular mail, as people were evading certified mail, just not picking it up from the post office or signing for it, as they knew it brought bad news, that they were in trouble. We are exploring email service and the whole problem of notice, and are looking at it to evaluate what can be done to fix it

Jackson: it has due process implications but I need more time to look at it.

Judge Figueroa: one of the interesting things is that we don't learn about the failure of the owner to receive the notice until years later when it comes up in the sale of the property. It comes up as a lien on the property, but it is not an unusual occurrence that with the passage of time.

Judge Carroll: process in the DPW and DCRA side to make sure that the agent is listed, because the owners might be outside of the District. If the registered agent is served then we can say the owner is served.

Cavendish: do any of the other ALJs see this coming up with other agencies' jurisdictions, besides DPW and DCRA?

Judge Masulla: no, only in the enforcement jurisdictions, where the city is seeking fines. The simple act of not answering doubles or triples the fines.

Jackson: what happens if we don't receive the certificate of service?

Masulla: the posting is the backup to a certificate of service. But the problems are in DCRA because the only required service is first class mail. If they don't answer that then it becomes problematic because it triples the fine.

Jackson: if you were to serve the registered agent, I think you would want to get registered mail not just first class mail.

Bolling: there is a large volume of corporations where the registered agents do not exist, or they don't have the right one on record. The company needs to list/verify a registered agent every two years, but they hire a registered agent and pay the fees for a couple of months, then drop the service until it's time for re-registration.

Judge Masulla: that does happen, but that is a small percent of cases. I just wanted to raise the issue today, I know it won't get resolved today, but at least we know about it now. There are some cases that we get returned mail where the person receiving it got it by mistake. My experience in the DPW context is that we get a large percent of signed and returned receipts.

Cavendish: would e-mail service help solve the problem as Director Bolling suggests?

Judge Masulla: it will increase the likelihood of people getting things and getting them quick. And it will give us a higher level of confidence in our receipts. We get pictures of the NOV posted on the properties for DPW and that helps.

Cavendish: so you would want an e-mail sent return receipt requested with a screenshot of the notice that the email was opened?, analogous to getting a picture that NOV that was posted?

Judge Masulla: that is a possibility

Chief Adams: there are a number of people who are our defendants who do not have the access to e-mail, or who are not are fluent enough to understand what they have to do in these situations

Cavendish: you are right, this possible email solution would be in addition to the mailed notice, not a substitute for it.

Director Bolling: we are moving to a much more on-line model, where businesses will do 90% of their business online with us. So email service would work better for businesses – they'd be on record with an email. But it might not be as easily done with individual pro se litigants

Cavendish: I will take these ideas back.

Thomas: the people have an obligation to update their address every two years, I think serving by mail should be enough. The statute should go back to certified mail, return receipt, it has some accountability for the people.

Judge Masulla: you have to serve it by means reasonably calculated so that the other party receives it. But it depends on the measure of the case about what it means to be reasonably calculated. Lots of Supreme Court law on proper service, but it's not one formula.

Thomas: I believe certified mail, return receipt should be enough to meet those standards

Judge Masulla: that's why it is in the DPW statute but not in the DCRA

Bolling: at one point the statute did say certified mail, return receipt, but it was a budget problem and people were intentionally not getting accepting it.

Judge Goodie: Ms. Thomas to your point that a DPW goes off the OTR website, I've had multiple cases where the party comes in and say that they have given DPW or OTR their change of address but it is still wrong. The Office of Tax and Revenue does not update addresses as change of address notices come in.

Judge Masulla: I have always wondered how the updates happened

Judge Carroll: In my experience OTR won't change it unless the deed has been changed

Judge Masulla: something to look into is how OTR updates their records to put into their database, if they are not updating except in those circumstances it is something to think about.

Buckley: if you fail to update your address maybe the agency can keep a notice when they send out mail with a copy of the address

Bolling: DCRA did want to change the NOI form to be electronically created, versus paper, it would be generated directly from the information put in the field. Would this be acceptable for OAH?

Jenkins: are you saying the notices will come electronically?

Bolling: no, it will be printed but it won't look like the notices look now. It will be generated by the computer and then sent out in paper

Judge Figueroa: does the order on the form make a difference to data entry people?

Harvey: No

Judge Figueroa: Another issue: make sure to leave room for the boxes for requesting accommodations – like for language access -- on the forms

Judge Carroll: One other issue: There have been modifications from the organic statutes, related to DPW and citing to the organic statute and not the specific code they are being cited to

Judge Figueroa: I think that happened when the handhelds were being used they weren't changed with what statutes they were citing

Bolling: it's vital that the right statute is cited when there is a citation

Cavendish: any other systematic issues you are seeing?

Chief Adams: as we become aware of them we will report them as part of our regular process

Cavendish: Chief, can you update us?

Chief Adams: I have to take my remarks out of order;

New Judges/Reappointments. I want to announce that as of July 12 two new ALJs started in our office, Deb Carroll and Alexis Taylor, they are both wonderful assets. We have 8 judges that have been recently reappointed or are pending, all those will be addressed before the summer is over. There has been a wrinkle but we are working to fix it.

Budget. The OAH budget for 2018, my understanding is that our budget was increased by \$1.4 million, before Natalia tells you about them I want to tell you what we did not get. We did not get a vacancy in which we could put a Deputy Chief ALJ, at the end of the day is it a big deal? Yes and no. Also, we did not get the additional funding to update our electronic case file program, we are requesting a reprogramming 2017 fund for the public portal, and next year we will find ways to save money and continue the upgrade to the case management system.

Transparency/Technology. We are working on making DPW and DCRA orders available to the public to view online, while it is not the full public portal it is something. We picked them because they are the most numerous, the most frequently viewed, and there are no confidentiality problems.

GC Natale: it is not going to be perfect but it will be something that can be sorted by the party's names. Final orders only because we get calls about them frequently

Chief Adams: this is a baby step to where we are going to go, now I want Natalia to update you about the budget because she can answer the questions

Natalia: we are looking at solutions, one is a cloud based software that some agencies already use. FY18 budget, we have some increasing and enhancement; we have received an enhancement for salary adjustments, overtime pay \$211K, and an increase of \$55K from excepted service to legal services, increase of Medicaid funding, and MOU from UI to provide legal services. All this made the \$1.4 million for FY18.

Chief Adams: we did not take a hit, but we also did not receive everything in our wish-list

Judge Masulla: I am sending cases of significant public interest to Lexis/Nexis and Westlaw for publication.

Cavendish: are other ALJs sending decisions to Lexis/Westlaw?

Judge Jenkins: we have to be reminded to do it. We had a person who took them and uploaded them

Judge Figueroa: it's mixed, self-selected, not updated. Since they are not Shepardized, there is lack of value even to those who can view them. Those discussions have been ongoing with Lexis/Westlaw. Different agencies have their cases only on one or the other platform, in the

future the District should think about having only one platform. Ours are uploaded on both, an example is RH commission which is only on one.

Cavendish: does anyone have a reaction to this?

Judge Carroll: it would be better to have a district wide contract with just one service that posted our decisions of interest

Judge Masulla: I thought we don't pay to have them uploaded into Westlaw

Judge Figueroa: I heard mixed things, I heard we have to pay for them to upload decisions.

Chief Adams: a number of ALJs prefer Westlaw and others Lexis, but to save money we should consider this.

Cavendish: this is all new to me

Jackson: I think it'll be beneficial to have decisions Shepardized.

Chief Adams: and I think it will be beneficial to have one contract for the whole city

Cavendish: I can see the value of the one contract

Thomas: I am a little lost, with the ALJs here, you already pay for Westlaw and Lexis? Yes, and you upload to both?

Judge Masulla: we don't upload to both, you can be designated to have them uploaded to one

Thomas: how do you decide what should be uploaded? Is there a standard that everyone uses?

Judge Jenkins: there was a designated person to make the final call

Cavendish: who was it that made the call?

Judge Jenkins: OGC

Cavendish: will it be beneficial to send out reminders about uploading orders?

Chief Adams: yes, and I will make sure that happens

Cavendish: Thank you. Have we covered everything you wanted to cover Chief?

Chief Adams: the only other thing is that the **absorption of our new responsibilities** has gone very well. Also, we were approached by DCPS who want us to hear their section 504 rehabilitation cases. We came to a consensus that it is a fine idea, with some caveats. The plan right now is to begin absorbing those as early as the new fiscal year. This will be in MOU form, we need to tweak the MOU we already have with them.

Jackson: how many are you expecting to receive?

Chief Adams: they are not sure, one thing I asked the PALJ was what is their best guess of what their universe will look like. They assured us that it won't overwhelm us, but did not give us an exact number.

Cavendish: we talked about regularizing the jurisdictions by statute rather than MOU, what is the status for that?

Chief Adams: it is my understanding that we got some tweaks to the act that will eliminate some MOUs. Other agencies wanted more time to look at this idea before giving up the MOUs and giving jurisdiction to OAH.

One other change: All the staff attorneys here will be moved to Legal Service starting October 1st. They were in Excepted Service. Pay and security are less good in Excepted Service. The position that was formally the Executive Director, has been converted into a COO position.

Judge Figueroa: was it just one agency that was taken out of the budget as MOU?

Chief Adams: I'm not sure, Vanessa would know better

Judge Figueroa: the experience with DBH can teach us that we could incorporate some language in the MOUs that plan for the future to make the MOU end and bring jurisdiction under statute.

Chief Adams: the idea is that it should be as administratively efficient for the other agency as to us, the process remains ongoing, and it picks up at this time of year because MOUs renew on October 1st.

Cavendish: what is the status of the Council for Court Excellence's recommendation to move the OAH from being a central panel, to an agency?

Chief Adams: the judges have not supported that recommendation, our ALJs are satisfied with their titles, how they are selected, and they are generally reluctant to move to a model that will impact their careers. The councilmembers are not moving on that either.

Judge Figueroa: was there discussion on that?

Judge Goodie: no, I don't think so

Chief Adams: It was a proposal by the CCE when they did their study and we addressed it then; we are finalizing a unified response.

Cavendish: do any of the other advisory members have questions?

Buckley: You mentioned that if you had money you would update your case management system, would this make it easier for your staff?

Chief Adams: Absolutely, but it is expensive. What happens is that we end up being farther back in the line than other agencies.

Buckley: You mentioned overtime, if you had that system will you not need overtime?

Chief Adams: I am not sure about that, what I think most of the folks here are unanimous about a fully operational and upgraded portal will be a godsend to all of us and the public.

Natalia: we have some ALJs that use manual timekeeping but we can use the case managing system to track the time. It's an ad hoc, as we evolve we are going to have additional needs that we might not have the budget for today.

Chief Adams: this has been something that has been on our wish list since I got here, as well as my predecessors

Thomas: the public should lobby to their councilmembers

Chief Adams: we have a select group of constituents, everybody else might be an interested public citizens. It's a work in progress, it is not near the end line.

Cavendish: you mentioned the reappointments, will you have any vacancies?

Chief Adams: no, we are fully staffed

Cavendish: any further questions? No, okay, any old business? No, okay. Any new business? No, okay then we are adjourned.

5:11 PM.