

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

October 24, 2019

The Advisory Committee to the District of Columbia Office of Administrative Hearings (OAH) met on Thursday, October 24, 2019 at 12:00 p.m. in the BEGA Hearing Room, 441 4th Street, NW, Washington, DC 20001.

ATTENDENCE

Committee Members

Chair Betsy Cavendish, Committee Chair, General Counsel to Mayor Muriel Bowser
Eugene Adams, Chief Administrative Law Judge of the Office of Administrative Hearings
Jed Ross, Director, Office of Risk Management
Chelsea Sharon, Legal Aid of DC (arrived after introductions)
Christine Davis, General Counsel, Department of Public Works
Mary Buckley, Community Representative
Toni Jackson, Chief, Equity Section, Public Interest Division, Office of Attorney General
Paul Wolfson, Mayoral Appointee

Several OAH Administrative Law Judges (ALJs) and representatives from the OAH general counsel office were present in the audience.

CALL TO ORDER

Chair Betsy Cavendish called the meeting to order at 12:00 p.m.

APPROVAL OF THE MINUTES FROM THE PREVIOUS MEETING

The committee raised the question of the name of the organization of a public witness represented. The organization listed in the minutes is called the “Miller Historic Preservation Society.” The committee agreed that the correct name of the organization is the MacMillan Historic Preservation Society and amended the minutes accordingly.

Mr. Ross moved to approve the minutes. His motion was seconded and the minutes were approved by the committee.

REPORT FROM CHIEF ADMINISTRATIVE LAW JUDGE EUGANE ADAMS

Personnel Updates

Judicial Law Clerk Program

OAH began the Judicial Law Clerk Program in the last fiscal year. One clerk began in September 2019, and five additional clerks began in October 2019. The clerks were vetted by a committee of OAH ALJs. The clerks have been assigned to different OAH clusters. The clerks will not be responsible for administrative tasks, and will be working on substantive issues at OAH. The goal is to provide young attorneys with experience and OAH with high quality work product. The clerks have so far been given high marks from the agency.

ALJ Vacancies

The Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (COST) will be working to fill two ALJ vacancies. Judge Eli Bruch left the agency on or about July 18, 2019, and Judge Erika Pierson will leave OAH on or about November 14, 2019. To date, about 25-30 applications for the ALJ positions have been received, and the applications were sent to COST two or three weeks ago. Candidate interviews will be scheduled soon. COST will update the interview schedule at the end of this week or the beginning of next week.

Collective Bargaining Agreement with the OAH ALJs

The collective bargaining agreement expired on September 30, 2019. OAH began collective bargaining negotiations with the OAH ALJs on October 14, 2019. The agency and ALJs intend to enter into a four year collective bargaining agreement that will be retroactive to October 1, 2019.

Judge William England, OAH ALJ and Chair of the Federation of Administrative Law Judges clarified that the previous collective bargaining agreement remains in effective into the new agreement is made. Chief Adams also clarified that the old agreement remains in effect.

New Budget Officer

OAH was assigned a new budget officer, Cynthia Davenport.

Principal Administrative Law Judge (PALJ) Vacancies

Chief Adams asked that Judge Vytas Vergeer serve as PALJ to replace the departing Judge Pierson. Judge Vergeer agreed and is currently fulfilling PALJ responsibilities. There is a vacancy in the PALJ position for the Licensing and Enforcement cluster that the Chief hopes to fill in the next few days.

Infrastructure Enhancements

Infax

The Infax system will be installed soon. Two digital screens will be installed in the reception area. Superior Court is an example of a court that is currently using this technology. A few

remote kiosks will be added as well. Litigants will be able to sign in at the kiosks. Implementation is set to occur in 2020.

Digital Court Reporter

The audio recording system used in the hearing rooms (FTR) will be replaced early in the next calendar year by a program called Digital Court Reporter.

Chair Cavendish asked the Chief if any OAH staff will lose their jobs because of the new technology. Chief Adams replied that OAH does not employ court reporters, so new staff members are in jeopardy of losing their jobs. Digital Court Reporter is a technological enhancement that will replace another electronic system.

Call Tree

OAH is hoping to establish either a call center operation or a call tree. The agency is still vetting the technologies, but it has not yet made a decision of how it will proceed. The Chief envisioned the operation coming into effect in 2020.

Department of Public Works (DPW) Data Download

The Chief reported that the data download project with DPW is nearing completion. In the future, all information about cases that DPW will send to OAH will be digital. Chief Adams thanked General Counsel Davis and her staff for helping bring the project to fruition. Currently the system is being tested and it should be up and running imminently.

Chair Cavendish asked if the new system will help OAH manage case volume. The Chief answered that it will reduce staff time that is devoted to data entry and increase information accuracy. In the last fiscal year, DPW cases comprised half of all OAH cases.

Public Portal

There is funding in the current fiscal year to build part of the portal. OAH is trying to determine how big the portal will be for the litigants. It is hoped that litigants will be able to file cases through the portal and search decisions that have been digitized. There are serious decisions to be made, however, about what features it will contain. The Chief will keep the committee apprised of the projects development.

Electronic Payments

At the end of November, litigants who are responsible for certain fine amounts will be able to pay them via credit card. The OAH Cashier's Office has already been closed in anticipation of the new payment method. Litigants will still be able to pay fines with check and/or money orders.

Language Access

Chief Adams reported that OAH received a second consecutive perfect score on the Office of Human Rights Language Access scorecard. He thanked Joseph Mangan, the Language Access Coordinator for his efforts to help OAH achieve this score.

QUESTIONS FROM THE COMMITTEE

Chair Cavendish opened the floor for the Committee members to ask Chief Adams about items of interest in his report.

Mary Buckley said that she Committee were given a tour of OAH and noticed that there were quite a bit of space restrictions around the agency. She asked Chief Adams if the digital systems will help alleviate the space issues. Chief Adams replied that yes, in the long run the digital systems will help space issues at the agency. In the near term, OAH hired a full time staff member to manage the file rooms. His responsibility is to locate and store files correctly. OAH is currently in process of archiving old files offsite. Additionally, OAH may have the funds to hire an outside vendor to revolutionize the filing system. The judicial clerks will not be used for filing tasks; they are young lawyers, some who have passed the bar and some who are still waiting for bar exam results, who will be exposed to substantive work at OAH.

Paul Wolfson asked about the volume of cases and if they have increased. Chief Adams replied that yes, volume has increased. He pointed to the increased volume of rat abatement cases filed by DPW. Additionally, every year the Mayor or Council assign new areas of responsibility for the agency, so the volume grows annually, but the budget and allotted number of positions for ALJs do not grow accordingly.

Mr. Wolfson asked about the consequences of litigants waiting for their cases to be decided. He asked if there were any trends the Chief could identify. Chief Adams said that the consequences are significant for litigants involved in public benefits cases. OAH sent a letter to the Department of Health Care Finance (DHCF) leadership to create a dialogue to make the process more effective. Agencies have administrative review processes that are time consuming, which further effective the age of OAH cases. Chief Adams will make the letter available.

Mr. Wolfson asked if litigants' benefits were being affected. Chief Adams replied that as long as a litigant has filed a hearing request, the decision on reduction or elimination of benefits is tolled until a decision from OAH. The administrative review process backs up the OAH hearing process.

Chelsea Sharon spoke about her experiences as an advocate for litigants in public benefits cases. She said there could be a delay as long as five or six months from the time a hearing is requested until a hearing is held. Some petitioners may retain their benefits during this period, but it depends on when they requested a hearing. Some petitioners do not retain their benefits during the adjudication process. She does not blame OAH for this, but some people are falling through the safety net.

Chief Adams replied that there are limits to what OAH could compel DHCF and the Department of Human Services (DHS) to do. Resources that DHCF and DHS have to conduct administrative reviews and appear at OAH for hearings are thin. Policies at agencies may not be clear or uniformly enforced.

Ms. Sharon observed that the delay in scheduling cases, which is contrary to the federal guidelines, is that there are too many cases and too few judges, but it is not something that could be negotiated with the agencies. She asked if OAH had a plan to increase the number of judges hearing public benefits cases, or if OAH had any other plans to address the issue. Chief Adams indicated that OAH's budget and staff size have not grown. The agency has reached out to Council and the Mayor's office to receive more resources. Chair Cavendish said it was important to have data points to make the case.

Ms. Jackson raised the issue of litigation against the city. When people do not have adequate services, there is a huge liability. She asked if there a plan to triage in the interim. Chief Adams responded that PALJ Rushkoff has been industrious and creative in moving along the public benefits cases. He handles special calendars himself, but it comes down to resources. There is a balancing act with the risk and implications that come along with timeliness requirements. Ms. Jackson and Chair Cavendish indicated that a class action suit could force increased staffing.

Ms. Sharon also sought clarity concerning the grounds for expedited hearings. OAH has not been consistent in ruling on expedited hearing requests. She asked if there were any procedures that contemplate how to handle these requests. PALJ Rushkoff said that there is a wheel in place in which the assigned judge rules on the appropriateness of an expedited request. If the judge determines it is appropriate to expedite the case, it will go on their calendar. Each ALJ has their own discretion as independent judges, so there is not necessarily uniformity on these decisions.

Ms. Buckley asked types of cases were causing the backlog in public benefits cases. Ms. Sharon responded that a huge volume cases involve the reduction of personal care aide hours. Other cases could also be reduction of Food Stamps or Medicaid benefits.

Ms. Buckley said that at one point she worked for DHCF as an investigator. She asked how many cases were frivolous or involved people abusing the system. Ms. Sharon said that she does not have data specifically about the types of instances suggested by Ms. Buckley, but her perspective is shaped by her role as an advocate.

Vanessa Natale, General Counsel of OAH, said that OAH receives cases based on actions taken by the District agencies, and that liability would not fall on OAH. DHS has only 2-3 representatives who could appear before OAH for a maximum of 20 hours per week. The agencies have their own restraints in dealing with these issues. For EPD Waiver cases, DHCF does not have a lot of staff to represent its interests before OAH. Many cases may be filed at OAH with a lack of paperwork or other documentation. As such, DHS may ask for more time to resolve an issue in a case, which further delays its adjudication. Also, the amount of EPD Waivers granted by the District is smaller than last year, further increasing hearing requests. ALJs are extremely conscientious of the needs of public benefits petitioners and the need for quicker resolutions.

Ms. Sharon indicated that across the board, more resources are needed.

Ms. Natale said that new ALJs will be needed, particularly because OAH will soon begin hearing cases involving Universal Paid Leave. It is not known how many cases could be filing, but no new money was allocated to OAH.

Chair Cavendish questioned what types of cases the new ALJs will hear. Chief Adams responded that they will most likely be generalists, but public benefits cases are also a priority.

Chair Cavendish asked how OAH determines what technologies to develop. Chief Adams indicated that there are multiple sources, including OAH staff and ALJs. OAH relies on an eCourt Committee. In addition, the deployment of kiosks will allow OAH to free up staff for other duties.

Chair Cavendish was surprised there were no new resources allocated to OAH for the family leave cases. The Department of Employment Services (DOES), Chief Adams explained is charged with administering the program. OAH will try to work with DOES to receive financial resources. Ms. Natale said the family leave cases will not cover federal or District employees. It is not clear what the volume may be. OAH has tried its best to be on top of it, but people will be able to apply for the program beginning in July 2020. OAH must be prepared to receive cases. Chief Adams said the OAH identified from DOES budget the need for 13 employees (ALJs and other staff).

Chair Cavendish asked about the physical space at OAH.

Chief Adams indicated that OAH is running out of space. With the Metropolitan Police Department moving into One Judiciary Square pending the renovation of its building, expansion in the building may not be possible. OAH is making modest renovations to create new office space, but its space is finite.

Chair Cavendish opened the floor to the audience.

Judge Rushkoff raised the issue of a number of judges who have a lot of seniority are residents of Maryland. Some had been recruited from the Maryland Office of Administrative Hearings. New requirements mandate that ALJs be District residents when they are reconfirmed. ALJs living outside of the District had been grandfathered in, but that appears no longer to be the case. He highlighted an ALJ who is leaving the agency for a different judicial job in the District that does not have a residency requirement. OAH is expected to lose more ALJs to the residency requirement in the next few years. The Council should know how destructive this could be to OAH.

Chair Cavendish replied that the DC Code now clarifies the issue of reappoint. Excepted Service, employees making of \$150,000 a year, and Legal Services are required to be District residents. The requirements are in place all over District Government.

Judge Rushkoff questioned why another judicial agency was able to hire the judge without the residency requirements. He also indicated that many of the Office of General Counsel Section Chiefs may not be District Residents. If OAH is facing a huge volume of cases, it is not the time to be losing seasoned ALJs.

Judge England offered that all of the ALJs that will be affected have years of experience that cannot be replicated by new judges. The new requirement of District residency represents a breach of a promise for ALJs recruited from the Maryland OAH.

Ms. Buckley said that she often attends ANC meetings. The change Council made may represent feedback from District residents concerning a desire for District Government to hire DC residents.

Chair Cavendish clarified the section of the code that contains the residency requirements (D.C. Official Code § 2-1831.08).

Judge Leslie Meek, OAH ALJ, commented that the cost of living in the District of Columbia is quite considerable.

Chair Cavendish indicated that the Office of Risk Management (ORM) offered to work with OAH to reduce litigation risks. ORM will have to look at the budget.

Ms. Sharon asked that the OAH letter to DHCF be disseminated to the whole Committee.

Chair Cavendish asked if there were any other questions for the Committee to consider, but none were raised.

ADJOURNMENT

Mr. Wolfson's motion to adjourn the meeting was seconded. The meeting was adjourned at 12:59 p.m.

Minutes submitted by Joseph Mangan, OAH Staff