

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

DECEMBER 9, 2015

The Advisory Committee to the District of Columbia Office of Administrative Hearings met on Tuesday, December 9, 2015 at 1:00 p.m. at the Kennedy Recreation Center, 1401 7th Street NW, Washington, DC, 20005.

Attendance

Committee Members

Chair Betsy Cavendish, General Counsel to Mayor Muriel Bowser
Toni Jackson, Chief, Equity Section, Public Interest Division, Office of Attorney General

OAH Staff

Chief Administrative Law Judge (ACALJ) Eugene Adams
Acting Executive Director Eric Rice
Clerk of Court James Ishida
Supervisory Attorney-Advisor Rachel Lukens
Administrative Law Judge (ALJ) Claudia Barber
ALJ Elizabeth Figueroa
ALJ Sharon Goodie
ALJ Scott Harvey
ALJ Audrey Jenkins
ALJ Savannah Little
ALJ Mary Masulla
ALJ Sam McClendon
ALJ Denise Wilson-Taylor

Other attendees:

Community member Brianne ?
Alex Alonso, Assistant General Counsel, DC Health Benefit Exchange Authority
Fritz Mulhauser
Dan Pelcher, AARP Legal Counsel for the Elderly
Vanessa Natale, Incumbent OAH General Counsel

Call to Order

The meeting was called to order at 1:00 p.m. by Chair Betsy Cavendish.

Introductions and Welcome

The Chair introduced the Committee and all attendees introduced themselves. Thanks to Department of Parks and Recreation for hosting. At our original meeting this year, it was suggested that we hear from community members and litigants and this field trip meeting is in response to that suggestion.

Notice Regarding September 9, 2015 Meeting Minutes

The Chair announced that an audio recording of the September 9, 2015 meeting is available on the OAH website. The recording takes the place of written meeting minutes.

Remarks of OAH CALJ Adams

CALJ Adams welcomed the Committee members, OAH staff, and members of the community.

Announcements:

- Three Administrative Law Judges will be leaving OAH in the coming months. ALJ Wellner has been confirmed to the D.C. Superior Court. Judges Dean and Nash will be retiring. We will be working with the COST in the coming months to quickly fill those vacancies. A motion was made to officially thank Judges Dean and Nash for their service. The motion passed.
- Vanessa Natale has accepted the position of OAH General Counsel. She is currently the Chief of the Neighborhood and Victims Services Section of the Public Safety Division at Office of Attorney General. She will begin at OAH on Monday, December 14.

Status of planned operational changes:

- OAH is planning to change the configuration of the jurisdictional clusters by which cases are organized and assigned. There will be four jurisdictional clusters rather than the current six. Historically, new jurisdictions have been added to OAH on an ad hoc basis through a series of legislative and regulatory changes. The goal of the new configuration is to improve the organization and distribution of cases amongst the ALJ corps, to ultimately improve the quality and efficiency of decision-making. Through conversations with a number of ALJs and staff, the proposed model has been adjusted, and a final version is near.
- In addition to the jurisdictional changes, OAH is looking to change the way that the Clerk's office does business. The Clerk's office is the heartbeat of OAH and the goal is to ensure that their assistance is as responsive and helpful to the ALJs as possible.
- Along with the Clerk's office changes, OAH is looking to change the way that the Resource Center does business, and provide new resources to our litigants in that space.
- OAH hopes that all of the changes, in addition to improving efficiency and quality of decision-making, will also reflect a renewed commitment to customer service.
- CALJ Adams plans to make several formal announcements toward the middle of next week as to the timing and substance of planned operational changes.

eCourt upgrade:

- The Chair inquired about the progress of the eCourt upgrade and particularly e-filing and availability of orders online.
- Acting OAH Executive Director Eric Rice reported that OAH is looking to complete the upgrade sometime in 2016. OAH currently uses version 5 of eCourt, and will upgrade to version 7. First there will be a test environment for version 7 for several months, before the upgrade can finally take place. The upgrade is therefore likely to be in place sometime toward the summer of 2016.
- The Chair commented that is roughly the schedule that was previously announced, and CALJ Adams responded that the goal will be to move it even faster as possible and to push the contractor to keep on schedule.

Community Member Forum

- The Chair welcomed community members and invited questions and comments. She emphasized that the focus of the discussion would be on court operations more generally, rather than the re-litigation of any particular case matter. She asked for frequent litigants to share thoughts on trends, improvements or the need for improvements, particularly with regard to transparency, customer service, and the quality and legal bases of decisions.
- A recent law graduate shared that she had tried to visit OAH in order to observe hearings and learn more about the agency, and did not find it particularly welcoming. The Chief invited her to come back and visit. He provided his email and direct phone number for all attendees to contact him directly with any concerns.

- Community member Fritz Mulhauser commented on two matters on which he worked with OAH several years ago.
 - First, Mr. Mulhauser explained that while working on the staff of an area legal non-profit organization, several litigants approached him regarding security cameras that they observed in the OAH hearing rooms, which were accompanied by signs stating that the rooms were under observation. This raised concerns that about the confidentiality required in certain types of OAH hearings. After finding no publicly available information about the cameras, Mr. Mulhauser approached OAH management on the issue. He received no response. Ultimately, he filed a FOIA request and was able to obtain some information about the cameras. He brought that again to the attention of OAH along with published information regarding the proper use of cameras in federal courts and other forums, but still received no response from OAH. He expressed frustration about this issue as a time when members of the community tried to get some information about and from OAH but were unsuccessful.
 - The second issue raised by Mr. Mulhauser involved the OAH Rules. At a time when new proposed rules had been published for notice and comment, he had concerns regarding the possibility of law students representing DCPS students in hearings regarding proposed student discipline. He requested clarification from the OAH Rules Committee regarding whether law students could represent DCPS students and their parents in these hearings. He explained that he received what he considered to be a non-responsive answer from the committee. He raised this as another example of attempting to initiate a conversation with OAH about a substantive matter and ultimately ending the interaction dissatisfied.
 - CALJ Adams asked Mr. Mulhauser to please follow up by directly contacting him about the issues.
 - ALJ Figueroa asked that Mr. Mulhauser re-submit his question regarding the rules, because she did not believe it had been passed along to the current OAH Rules Committee, which has different membership and a different Chair than at the time of Mr. Mulhauser's inquiry.
 - ALJ Goodie stated that she believes the OAH Rules allow law students to represent DCPS students as long as the law students are supervised, but explained that there are significant logistical difficulties in arranging such pro bono representation due to the extremely short timeframes required of OAH in those cases.
 - Mr. Mulhauser clarified that his issue is that the OAH Rules only permit law students to appear with a supervisor, which he believes to be arbitrary and which was not a requirement of DCPS when DCPS handled the hearings internally.
 - ALJ McClendon explained that because the rules of Professional Responsibility do not apply to law students, there is a problem with them appearing unsupervised. But an attorney supervising a law student is in fact subject to the PR rules and through those rules is responsible for the student's conduct.
 - ALJ Goodie also expressed concern about law students appearing unsupervised, and believes that in some cases they could do more harm than good. She expressed concerns about quality control, and noted that there is disagreement among the clinical professors in the region on this very issue.
 - Chair Cavendish asked if there is a procedure available on the OAH website whereby members of the public can raise such issues?
 - CALJ Adams responded that the FOIA process is always available but is not always the best way to get information, so again restated his invitation for Mr. Mulhauser or others to contact him directly with questions or issues.
 - ALJ McClendon suggested that OAH consider adding an "Ask a Director" link on the website as many other agencies have.

- ALJ Figueroa noted the only formal method of raising such issues is through the notice and comment process when proposed rules are published.
- Dan Palchick, Attorney at AARP's Legal Counsel for the Elderly, raised two questions on behalf of his organization.
 - Mr. Palchick first expressed concern about the delay between hearings and the issuance of final decisions, and the delay in issuing decisions on motions.
 - CALJ Adams responded that he is aware of this as an issue. There are some particular circumstances where it will necessarily take longer to issue decisions, but in most cases they can be issued relatively quickly. The changes that OAH will be instituting in terms of the reconfiguration of the jurisdictions, should ensure the issuance of quick, timely, and fair decisions, because it will ensure that each ALJ will dedicate their work to only one jurisdiction at a time. OAH will address outliers as best as it can. If there is a particular case matter where someone is concerned about delay, it can be raised directly and the CALJ can inquire into that matter and perhaps offer explanation about the delay.
 - Mr. Palchick then asked about methods for referring pro se clients.
 - CALJ Adams explained that OAH is working toward a new and improved version of the OAH Resource Center that will be more effective at referrals. Part of the impetus for the changes is to address the challenge that we find with OAH staff in the Resource Center being required to walk the line between helping and giving legal advice. The line is blurry, particularly for non-attorneys, but legal ethics requires certain responsibilities. One of the chronic concerns is that OAH staff will be tempted to give legal advice inappropriately or give incorrect advice or information. CALJ Adams, Supervisory Attorney Lukens, and ALJ Goodie met with the DC Bar Pro Bono Center earlier this week and received helpful suggestions about such a refocusing of the Resource Center.
 - The Chair asked for an overview of the resources currently available to pro se litigants.
 - Ms. Lukens provided an overview of the Resource Center, which is a shared space between the Clerk's office and the Office of General Counsel. On the OGC side, 4 days per week, there is an opportunity to have a walk-in interview with a law student, supervised by an OAH Attorney, to receive one-on-one information, assistance, and referrals.
 - ALJ Goodie added that OAH also has a pro bono panel whereby referrals are made to law school clinics. It is modeled on the Superior Court panel, and OAH is interested in particular in expanding the panel to be available for public benefits matters, but there are particular logistical concerns in connecting lawyers to clients.
 - ALJ Figueroa added that OAH also includes a flyer in the scheduling orders so that when public benefits beneficiaries come to hearings, they often report on their attempts to reach a legal services provider, and continuances are routinely granted to allow for beneficiaries to find attorneys. At one time, there was also a warm line sponsored by the Catholic University Law School that provided daily information about the availability of various Legal Services Providers, so that beneficiaries would not have to call each provider individually. It was hugely beneficial but appears to no longer be in use.
 - Ms. Toni Jackson offered that perhaps OAG would be able to assist in providing services to unrepresented litigants.
 - ALJ Barber added that OAH also has bilingual staff and language assistance available in the Resource Center. CALJ Adams noted that there is a bilingual Spanish-English speaker and an Amharic speaker that is soon to return from a sabbatical.
 - Ms. Lukens provided an overview of the language services available to OAH litigants. All efforts are made to provide in-person interpreters in hearings, and Spanish interpreters are on contract and at OAH every Tuesday and Wednesday. When they are not in hearings, they are available for walk-in litigants or phone calls. Otherwise, bilingual staff or language line can be used for any litigant who walks in. OAH also

works with MCS, the city-wide contractor, to schedule interpreters for hearings and mediations where other languages are required.

- Adam Mingal, Attorney Advisor at the D.C. Taxicab Commission, asked about an OAH Rule. He stated that it has always been the practice of DCTC to file its NOIs at the same time that Respondents are served with the NOIs. However, recently the docket was transferred to a different ALJ that issued show cause orders for multiple cases because the NOIs were not accompanied by an affidavit of service as required by the OAH Rules. To his knowledge, that rule has not been enforced previously and it seems duplicative to him given that DCTC's regulations require the Respondent to be served with an invitation to mediate prior to being served with a proposed NOI.
 - CALJ Adams suggested reaching out to PALJ Crichlow, who is Principal for the taxi jurisdiction.
 - Ms. Lukens also noted that OAH is still accepting comments on proposed OAH Rules changes and those can be emailed directly to Rachel Lukens.

Update from the Council on Court Excellence

- Tracy Velazquez and Emily Tatro, policy analysts at the Council for Court Excellence, introduced themselves as leads on a retrospective study of OAH. They reported that they have been very busy with the study since the September Advisory Committee meeting.
- CCE has created a Steering Committee as well as 5 working groups:
 - Litigant input – this group is gathering input from all types of litigants, counsel, and agencies that send cases to OAH. They are meeting with various stakeholders as well.
 - An agency survey was distributed November 2, 2015, and so far they have received 29 responses from 14 of 24 agencies.
 - A counsel survey was distributed November 23, 2015 to both lawyer and non-lawyer representatives, and so far they have received 35 responses.
 - A litigant survey is soon to be distributed.
 - Survey groups or individual interviews will be scheduled as follow up.
 - OAH input – this group is gathering input from OAH employees.
 - An ALJ survey was open from November 19-28, 2015. CCE received 27 responses out of the 33 ALJs. After reviewing the responses they developed questions for follow-up interviews and their goal is to interview about half of the ALJs.
 - On October 31, the Superior Court vacated the decision in former Chief Walker's appeal of her termination. A number of ALJs expressed concern about the confidentiality of CCE's survey because of concerns about discovering in the ongoing litigation. CCE was unsure about the confidentiality concerns, so the interviews have been put on hold until they can discuss fully with their legal counsel and proceed accordingly.
 - An OAH staff survey was finalized and distributed last week, and so far they have received 17 responses. They hope to schedule follow-up interviews in the new year.
 - Boards and Commissions input – this group has interviewed 4 members of the Advisory Committee and all members of the COST. They have attended two Advisory Committee meetings and one COST meeting.
 - Legislative review group – this committee composed a large table of OAH's subject matter, and is looking to draft laws and policies that will improve efficiency relating to OAH's jurisdiction.

- Jurisdictional comparison group – this group has interviewed individuals from central panels all over the country as well as experts in the field not associated with any particular jurisdiction.
- Operations group – this group has four areas of investigation, and is in the information-gathering stage on all four:
 - Organization structure
 - eCourt and data
 - Casehandling
 - Appeals from OAH
- Chair Cavendish commented that the study was very thorough and asked the audience for any questions.
- CCE stated their goal is not to get too far behind CALJ Adams, who is making a number of changes during the course of their study.

Old Business

None

New Business

None

Adjournment

The meeting adjourned at 2:07pm.

Minutes submitted by Rachel Lukens, OAH Supervisory Attorney-Advisor.