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**Statement of the Council for Court Excellence
Before the Committee on Government Operations and Facilities
of the Council of the District of Columbia**

**Budget Oversight Hearing for the
Office of Administrative Hearings**

June 14, 2021

Good afternoon, Chairman White and members of the Committee. My name is Sosseh Prom, and as Policy Counsel for the Council for Court Excellence (CCE) I am pleased to present our organization's views on the Office of Administrative Hearings (OAH) FY22 budget. CCE is a nonpartisan, nonprofit organization with a mission to enhance justice for all in the District of Columbia. For nearly 40 years, CCE has worked to improve the administration of justice in the courts and related agencies in D.C. through research and policy analysis. Please note that in accordance with our policy, no judicial member of CCE participated in the formulation or approval of this testimony. This testimony does not reflect the specific views of, or endorsement by, any judicial member of CCE.

CCE advocated for the creation of OAH since 1999, and has supported its mission ever since. Over the years, OAH's jurisdiction and caseloads have grown, increasing the importance of its role in ensuring fair and robust administrative adjudication in the District. Most recently, in 2016, CCE developed a report on behalf of the Office of the D.C. Auditor, which made a variety of recommendations for the continued improvement of OAH.¹ We continue to consult and collaborate

¹ Council for Court Excellence, *Administrative Justice in the District of Columbia: Recommendations to Improve D.C.'s Office of Administrative Hearings* (2016), http://www.courtexcellence.org/uploads/publications/OAH_Final_Report_20160908_1.pdf.

with OAH's excellent administrative law judges and seek opportunities to assist OAH in effectively serving the District.

Today, CCE urges this Committee to increase the proposed FY22 funding levels (or place clear earmarks within the existing budget) to address two issues highlighted in our audit report: the need for online access to OAH case records, and the need for greater investment to ensure meaningful and effective participation in OAH proceedings by *pro se* litigants. As D.C. prepares to reopen the city, including lifting public safeguards such as payment moratoriums and extra unemployment benefits, efficient and fair OAH administrative hearings will be paramount to assure existing benefits are delivered accurately. We urge this Committee to work with OAH and provide the funding necessary to achieve efficient, fair, and informed adjudication of public benefits and other critical matters before OAH.

Online access to case records.

CCE's first recommendation for targeted FY22 funding is based on our audit research. The OAH Establishment Act requires that the office make "all documents filed in any case before the Office...available to the public for review."² The Freedom of Information Act (D.C. FOIA) adds the requirement that final orders be published on the internet.³

Unfortunately, for years OAH has lacked the necessary funding for the technology needed to meet these legal obligations, stating that the Office literally cannot afford to follow the law. To date, despite OAH's stated and clear desire to provide it, the public still does not have proper electronic access to court dockets, calendars, pleadings, and final orders. This is a critical

² D.C. Code § 2-1831.13(d).

³ D.C. Code §§ 2-536(a)(3); 2-536(b).

transparency and fairness issue for the District and one that needs to be remedied immediately. D.C. residents, legal advocates, and agency staff will all benefit from the timely publication of these materials.

Case dockets are available only on a screen in the Office, requiring phone calls to the clerk's office to learn routine case details. While OAH has published some final orders on a public portal, there is still major work to be done. Only a few decisions are uploaded and they cannot be usefully searched. Additionally, as best as we can determine, nothing has been added since 2019 though thousands of decisions are issued each year.

Adequate funding is needed to ensure that OAH secures the technological and personnel resources needed to provide the public with full and proper online access to the docket and case records in FY22. We encourage this Committee to coordinate with OAH representatives and confirm the precise budgetary needs to improve the portal and expand on its current capabilities as soon as possible. Doing so will not only bring OAH into compliance with D.C. law, but also has the potential to lead to more efficient use of OAH staff, such as reducing the number of emails and calls received in the clerk's office from litigants and attorneys seeking basic information about their case. This is an issue that will continue to make the District susceptible to litigation, and disadvantages thousands of residents whose cases are heard before OAH each year. The D.C. Council cannot postpone this funding any further.

Assistance for *pro se* litigants.

CCE's second funding recommendation centers on assistance for *pro se* litigants. OAH proceedings can be complex. Thousands of D.C. residents pursue unemployment, shelter, SNAP, or Medicaid benefit denial cases without legal assistance; this frequently means they are left alone

to marshal their case facts or understand the legal standards and procedural rules that apply, inevitably leading to a lack meaningful participation. By providing litigants with resources such as handouts and a self-help center with part-time support, OAH has certainly tried to help address these barriers. Also, CCE commends OAH's collaboration with the legal services community and support of the OAH Legal Assistance Network (OLAN).⁴

But the existing efforts, especially constrained during the public health emergency, have been not enough. The reality is that the immense number of cases before OAH and the limited number of attorneys available to help has created a situation where more often than not, litigants have to navigate the complexities of an OAH hearing completely on their own.

We urge this Committee to provide funding for the expansion of the OAH Resource Center in FY22. We also ask that funding be allocated to put at least one, if not two, full-time dedicated staff on duty in the Center, improve online materials such as videos, and further support OAH's collaboration with legal service providers, law schools, and other volunteers so that every possible kind of assistance is available for litigants. We roughly estimate that such expansion would cost \$250,000 to \$300,000 of additional funds for another FTE and other required resources.

In closing, OAH serves a vital role in ensuring that D.C. residents are able to fairly and quickly adjudicate problems with D.C. government agencies – including benefit errors that can threaten basic survival. Sadly, the current resources available to OAH do not allow for adequately meeting this mandate quickly, efficiently and transparently. We request that this Committee direct

⁴ The OAH Legal Assistance Network (OLAN) is a referral hotline that was created in response to the COVID-19 pandemic by four local legal service organizations: Bread for the City, the Legal Aid Society of D.C., Legal Counsel for the Elderly, and the Washington Legal Clinic for the Homeless. OLAN connects unrepresented litigants with an attorney who can provide referrals, advice, and limited or full representation.

specific funding in the OAH budget so that online public portals are fully developed and unrepresented litigants are able to obtain necessary assistance.

Thank you for your consideration and I welcome any questions.