



## **Administrative Justice in the District of Columbia: Recommendations to Improve DC's Office of Administrative Hearings**

September 7, 2016

### **Report Team:**

The Council for Court Excellence

Jason Juffras, Director of Program Evaluation, ODCA

A Report of the Office of the District of Columbia Auditor  
Kathleen Patterson, District of Columbia Auditor

## **About the Office of the District of Columbia Auditor**

The Office of the District of Columbia Auditor's ("ODCA") mission is to support the Council of the District of Columbia by making sound recommendations that improve the economy, efficiency, and accountability of the District government.

To fulfill that mission, ODCA conducts performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are primary customers and ODCA strives to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

## **About the Council for Court Excellence**

Formed in Washington, DC in January 1982, the Council for Court Excellence is a nonprofit, nonpartisan civic organization. The Council is governed by a volunteer Board of Directors comprised of members of the legal, business, civic, and judicial communities, and works to improve the administration of justice in the Washington metropolitan area. The Council accomplishes this goal by:

- Identifying and promoting justice system reforms,
- Improving public access to justice, and
- Increasing public understanding and support of our justice system.

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September 7, 2016

The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia  
The Honorable Kenyan McDuffie  
Chairman, Committee on the Judiciary  
The John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Dear Chairman Mendelson and Councilmember McDuffie:

I am pleased to share this report, *District of Columbia Office of Administrative Hearings: Review and Proposed Recommendations*, which examines the statutory duties, management, operations, supervision, and performance of the Office of Administrative Hearings (OAH), and offers detailed recommendations to make OAH more effective.

The review was performed for my office by the Council for Court Excellence (CCE), a non-profit, non-partisan civic organization that focuses on justice issues in the Washington metropolitan area. CCE played an instrumental role in the establishment of OAH, issuing a 1999 report, *Creating a Unified Administrative Hearings Agency in the District of Columbia*, that served as a blueprint for OAH. Since OAH began operating in 2004, CCE has been involved in monitoring and advising the agency (as well as D.C. policymakers who oversee OAH), and was therefore well-suited to undertake this review.

The Council and then-Mayor Anthony Williams worked together to establish OAH as way to increase the quality and fairness of administrative adjudications in the District of Columbia. Before OAH was created, administrative appeals were often handled by the same agencies that had issued the decisions that were being contested, undermining the real or perceived impartiality of the system. OAH was intended to improve the District's administrative hearing system by consolidating administrative review under an independent body staffed by well-trained administrative law judges subject to performance standards and effective supervision.

CCE finds that OAH has not yet fulfilled its mission of creating a fair, efficient, and effective system of administrative hearings, but this report also highlights reforms that are underway as well as a recent improvement in morale. Even more importantly, the report offers a wide range of recommendations

on topics as diverse as organizational structure and the litigant experience in an effort to support OAH's internal efforts at reform.

I would like to thank the CCE board members, staff, and volunteers for their hard and dedicated work, as well as OAH's Chief Administrative Law Judge Eugene Adams, the OAH judges, staff, litigants, community members, and outside experts who shared their views and experiences to inform this report. We hope that this report will contribute to the ongoing efforts to establish and sustain a fair, effective system of administrative justice in the District of Columbia.

Sincerely yours,

A handwritten signature in blue ink that reads "Kathleen Patterson". The signature is fluid and cursive, with the first name "Kathleen" and last name "Patterson" clearly distinguishable.

Kathleen Patterson  
District of Columbia Auditor

## II. NOTE FROM CO-CHAIRS

September 7, 2016

The Council for Court Excellence (“CCE”) is pleased to provide this report regarding the functioning of the District of Columbia’s Office of Administrative Hearings (“OAH”). OAH was created to meet important objectives – assuring appropriate independent hearings as part of due process for the parties to such hearings; centralizing administrative hearings to take the best advantage of the experience and training of administrative law judges; and assuring appropriate oversight, evaluation and training of administrative law judges. The use of centralized hearing offices is a “best practice” among the other states.

Our report is based on interviews and surveys of the OAH administrative law judges and staff, litigants, and counsel who have appeared before the OAH; a review of practices in other jurisdictions with similar centralized panels; and consideration of the original DC Council legislation and goals. As explained in detail in this report, we believe that OAH has not yet achieved the level of efficiency and effectiveness that the original statute expected. That shortcoming has several bases – leadership issues that have previously hindered organizational development; inconsistent and unclear funding support from the underlying agencies; and a failure to establish the underlying management standards and tools necessary for the organization. While OAH has not yet achieved its expected goals, its staff is dedicated to improving its operations, and we hope that this report will provide impetus toward further improvement.

As co-chairs, we wish to express our sincere appreciation to Chief Judge Eugene Adams, the other Administrative Law Judges, and the staff at OAH, who are all committed to the fair and impartial administration of justice and invested in improving the effectiveness of the agency.

Finally, we thank the task force participants and the CCE staff, identified in Appendix A. Their extensive combined efforts in conducting interviews and research, analyzing the data obtained, and their thoughtful drafting and editing of the material have made our work easier and assured the quality of this report.

Sincerely,



Michael Hays  
Of Counsel, Cooley LLP



Charles A. Patrizia  
Partner, Paul Hastings LLP

### III. EXECUTIVE SUMMARY

The District of Columbia Office of Administrative Hearings (“OAH”) was established in 2001<sup>1</sup> to “provide a fair, efficient and effective forum to manage and resolve administrative disputes.”<sup>2</sup> Over the past 12 years since its implementation, OAH has provided tens of thousands of District of Columbia residents and businesses with a neutral setting in which to appeal DC agency decisions or hold evidentiary or administrative hearings on enforcement or other issues.

After more than a decade of experience with this central hearings panel, the DC Auditor determined that a comprehensive analysis was needed of whether OAH had met its reform objectives and whether additional improvements could be made. The DC Auditor engaged CCE to conduct this analysis.

Based on our review of available information, including participant and counsel surveys, consideration of DC Court of Appeals opinions regarding OAH decisions, and interviews with the OAH Administrative Law Judges (“ALJs”), we have concluded that OAH takes particular care to provide a fair hearing for litigants appearing before the agency. The ALJs and the OAH leadership have also sought to implement other aspects of the agency’s mission – efficiency and effectiveness – but OAH continues to struggle to deliver efficient and effective justice for the parties that appear before it. ALJ performance evaluations have not for the most part been conducted for five years, and inconsistent or unclear case assignment has undermined staff and professional morale. Jurisdiction over agency actions is inconsistent, and to some degree ad hoc. Management structures and oversight are spread among different bodies, whose roles and authority are unclear. Particularly because the disputes heard by OAH ALJs may be relatively small in financial terms, and many District residents lack the resources to have counsel, many residents appear before OAH without counsel. Lack of resources hinders efficiency and degrades the hearing process for pro se litigants and agencies, and imposes burdens on the ALJs.

CCE recommends that OAH make various changes to its organizational and management structure to more closely resemble other central hearing panels and model legislation. We believe that these changes will enable OAH to operate more efficiently and effectively, while improving the delivery of hearing services and resolving management and morale issues. Many of the recommended changes below can be made by changing OAH’s internal policies. Other changes would require amending OAH’s enabling act.

**Jurisdiction:** OAH’s jurisdiction over cases is currently conferred both by statute and by a wide range of Memoranda of Understanding (“MOUs”), essentially contracts, with a variety of DC executive

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<sup>1</sup> DC OAH. *About OAH*. Retrieved from dc.gov: <http://oah.dc.gov/page/about-oah>

<sup>2</sup> The Office of Administrative Hearings. Biennial Report for Fiscal Years 2013-14. Retrieved from [http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13\\_FY14%20Annual%20Report.pdf](http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13_FY14%20Annual%20Report.pdf)

agencies. The reliance on MOUs creates the impression, if not the absolute risk, that a contracting agency that disagrees with OAH's rulings or findings will terminate OAH's jurisdiction, and a perception that OAH's determinations may be influenced by that risk. We recommend that the existing jurisdiction under MOUs be converted to statutory authorization. While OAH should retain the power to enter into MOUs initially, any expanded jurisdiction should be codified within two years.

**Organizational Structure:** OAH's current management structure does not support efficient and effective operations and supervision of staff. The Chief ALJ is responsible for directly supervising 33 ALJs and other senior staff, while also carrying out myriad other duties. In part because performance standards have not been prepared until 2016, and employee evaluations have not been conducted since 2011, OAH staff lack clarity about their job roles and those of their colleagues. OAH's management structure should be revised by reinstating a Deputy Chief ALJ, who should manage the five Principal ALJs, who in turn would manage groups of other ALJs. These changes would allow more individualized and effective management of employees and work groups, and also allow the Chief ALJ to focus on overseeing the agency as a whole. OAH also should continue to clarify the responsibilities of each OAH staff member by ensuring job descriptions are clear and accurate and that employees are aware of the responsibilities of individual staff and departments as a whole.

**ALJ Selection, Evaluation, and Tenure:** ALJs currently do not have the security of career positions, but rather serve for an initial two-year term, followed by a six-year term with the possibility of reappointment. ALJ should have a longer term, or their positions should be converted by statute to career positions, subject to termination for "good cause" only. ALJs also have not been evaluated on any regular basis. All ALJs should be evaluated annually, including the Chief ALJ, using meaningful and measurable criteria.

**Improving Agency Culture:** Although improving agency culture has been a focus of OAH's new administration, ALJ morale remains a significant challenge that impairs OAH operations. Given that a positive agency culture is essential for the agency to perform at its best, OAH should consult with an expert in organizational culture development to improve in this area. The Chief ALJ should continue efforts to establish policies and procedures that are fair to all, while striving to be transparent about proposed and adopted changes. The Chief ALJ should be evaluated annually by the Committee on Selection and Tenure of Administrative Law Judges ("COST"), with COST interviewing ALJs as part of this process. OAH leadership should regularly consult with ALJs and staff regarding the agency's performance and seek ideas for improving OAH.

**COST and Advisory Committee:** OAH does not follow best practices recommended for central hearing panels in the management and support of its ALJs. While the Chief ALJ directly supervises the ALJs, the Chief cannot appoint, reappoint, or terminate ALJs, and has limited rights to discipline them. These



decisions instead are made by COST, whose members lack first-hand knowledge about OAH. While ALJs value COST for preserving judicial independence, it is questionable whether COST actually serves that function, and its role is out of step other central hearing panels across the country. OAH also has a separate Advisory Committee tasked with advising OAH and the Chief ALJ about larger policy concerns, but that Committee meets very infrequently and no longer is an effective support.

To operate more efficiently and effectively, the Advisory Committee should be eliminated and the role of COST changed to more closely resemble the other 31 central hearing panel jurisdictions and model legislation. Over the course of the next two years, many of COST's responsibilities over selection, evaluation, and retention of ALJs should be transferred to the Chief ALJ. COST should retain jurisdiction to hear ALJ discipline and removal issues, and conduct an annual evaluation of the Chief ALJ. All of the Advisory Committee's current functions also should be transferred to COST and the Advisory Committee should be dissolved. Implementing many of these changes will require amending OAH's enabling act, a process that may take as long as one or two years. In the interim, COST should amend its procedures to ensure that its members actively engage in the Commission's work.

**Case Assignment System:** Through January 2016, OAH's process for assigning cases resulted in uneven workloads for ALJs. Chief Judge Eugene Adams implemented a new system effective February 1, 2016, which groups all ALJs into assigned jurisdictional clusters and is aimed at improving fairness and transparency in the case assignment process. To ensure the integrity of the case assignment system, procedures for Principal Administrative Law Judge ("PALJ") case assignment should include random assignment within categories of cases. OAH should analyze the effectiveness of its new case assignment system over the coming months. OAH also should regularly evaluate the ALJs' workloads, particularly new jurisdictional assignments, to ensure cases are distributed fairly.

**Case Processing:** Litigants have been negatively affected by delays in the resolution of their cases due in part to inefficiencies in OAH's case processing system. Moreover, OAH's technology systems are not optimally supporting the agency's case management needs. To improve its case processing, OAH should ensure that caseloads are assigned equitably and reevaluate caseloads on a regular basis; meet recommended case processing deadlines by case type; and return to scheduling cases on an individual basis. Finally, OAH should utilize technology to improve case management by: (1) implementing a uniform case filing system; (2) making OAH records publicly accessible, and case files available online to litigants and agencies; (3) educating all OAH staff about technology systems; (4) increasing the use of telephone video conferencing; and (5) allowing fines to be paid by credit card online.

**Improving Litigant Experience:** Litigants using OAH's adjudicatory services face various challenges. Pro se litigants are unable to participate effectively and meaningfully in the hearing process. Litigants with limited English proficiency also struggle to use OAH's language access resources. Mediation, which can

be particularly meaningful for unrepresented litigants, is underutilized. Gaps remain in the guidance and materials available through OAH's Resource Center for unrepresented litigants. Finally, OAH does not provide clear guidance on how to submit feedback to the agency. Litigants, agencies, and counsel are confused about this process.

To improve litigants' experience, OAH should partner with the DC legal community to increase the availability of advice and representation for unrepresented litigants at least as to more complex matters, and should focus on making the Resource Center, its website, and its materials more user-friendly and accessible. OAH should improve the process for scheduling interpreters and ensure compliance with the DC Language Access Act of 2004 with respect to written materials. ALJs can improve the experience for litigants by consistently notifying parties of the option to mediate their cases and using judicial "engaged neutrality" through more active ALJ participation in developing the facts and legal theories to ensure a more complete and fair record in all cases. Mediation can be encouraged further by developing a roster of volunteer mediators and ensuring that ALJs who opt to mediate are credited in the case management system for this important work. Finally, OAH should update its website to allow stakeholders to submit comments online, better advertise other ways to provide feedback, and adopt systems to review and respond to this feedback.

**Appeals:** OAH and the DC Court of Appeals do not have written procedures in place for the transmission of the Court's appellate opinions, both unpublished and unpublished, and OAH does not consistently track data related to appeals. The Clerk of Court for OAH should work with the Clerk of the DC Court of Appeals to establish such procedures. OAH should track OAH cases on appeal, particularly whether they are affirmed or overturned, by case type and ALJ, and report this data internally and in its annual report.

#### IV. RESEARCH METHODOLOGY

Upon receipt of the DC Auditor’s contract, CCE established a task force to conduct the study, and allocated staff resources to support the Task Force. Task Force members were drawn from members of the CCE Board of Directors, including law firms, public interest groups, and corporate representatives, along with community stakeholders, such as legal service providers that represent litigants in OAH hearings. The Task Force was organized into five working groups each focused on a different research area: Litigant Input, OAH Input, Legislative Review, Jurisdictional Comparison, and OAH Operations. The Working Groups collected information and data from surveys, interviews, and focus groups with various internal and external stakeholders and subject matter experts, along with published reports, academic and law journal articles, news reports, local and federal laws, and regulations.

The methodologies employed by these Working Groups, beyond literature review, are described below. The Litigant and OAH Input Groups conducted surveys and interviews of OAH ALJs, OAH management/staff, hearing participants, and counsel. All of these surveys were designed to capture both qualitative and quantitative data. Participants were not required to respond to each question, so some of the report’s data is representative of a smaller sample size than all of the survey’s respondents.<sup>3</sup> The table below details the number of responses to these surveys.

Respondent	ALJs	OAH Staff	Individuals and Businesses	DC Agencies	Counsel
n =	26	21	56	36	97

Furthermore, responses and commentary collected in interviews and focus groups for this report were analyzed through word recognition software to determine discussion topic frequencies.

**Litigant Input.** In Fall 2015, CCE developed online surveys for three groups of litigant parties at OAH – parties to a case (“litigants”), attorney and non-attorney representatives for parties (“counsel”), and DC government agencies (“agencies”). Thousands of cards requesting participation in an online survey were sent to litigants whose cases had a final decision issued between October 1, 2015 and February 28, 2016. This survey method yielded insufficient responses. Accordingly, CCE staff then administered surveys to litigants in the OAH lobby over three days in March 2016. In total, 56 business and individual litigants, 97 counsel, and 36 agency representatives participated in these surveys.

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<sup>3</sup> Herein, the data that is presented from the surveys developed and administered by CCE represents the opinions of *only* the respondents, and not necessarily those of the entire surveyed target populations.

In early 2016, the Litigant Input Working Group conducted interviews with representatives from the DC Office of the Attorney General (the “OAG”) and the DC Office of the Solicitor General, a division of the OAG. CCE also interviewed lawyers who represent DC government agencies in OAH hearings, and conducted a focus group with eleven attorneys who frequently practice at OAH.

**OAH Input.** CCE developed and administered online surveys to the OAH staff and ALJs. Twenty-six of 33 ALJs and 21 of approximately 41 staff members participated in these surveys. Additionally, members of the OAH Input Working Group conducted in-depth interviews with 27 ALJs, all currently appointed members of OAH’s Advisory Committee, and the three members of COST.

**Legislative Review.** CCE’s Legislative Review Working Group reviewed all relevant DC statutes and regulations, along with Memoranda of Understanding (MOUs) between OAH and DC agencies, and compared these statutes, regulations and MOU materials to the American Bar Association’s “Model Act Creating a State Central Hearing Agency” and the Model Act created by the National Conference of Commissioners on Uniform State Laws.

**Jurisdictional Comparison.** Members of CCE’s Jurisdictional Comparison Working Group compared OAH’s structure, functions, and operations to those of central hearing panels in other states. The Working Group conducted interviews with nine Chief Administrative Law Judges and Executive Directors overseeing central hearing panels throughout the country, including Florida, Georgia, Louisiana, Maryland, North Carolina, Oregon, Washington, Cook County (Chicago, Illinois), and the Federal Energy Regulatory Commission. Qualitative and quantitative data including policies, procedures, and statutes were collected from these interviews and compared to similar data collected from DC OAH.

**OAH Operations.** In early 2016, CCE’s OAH Operations Working Group members conducted interviews with the then-Clerk of the Court of OAH and three of his staff; the General Counsel and one of her staff; and two Resource Center staff members. Working Group members also reviewed case files and observed operations (*e.g.*, Resource Center use, hearings, processing fine payments, etc.) at OAH on various days. Through these interviews and observations, Working Group members developed a deeper understanding of OAH’s organizational structure, case management and assignment system, and information technology. This working group also conducted an in-depth analysis of OAH cases appealed to the DC Court of Appeals.

## V. OVERVIEW OF CENTRAL HEARING PANELS ACROSS THE UNITED STATES

In 1946, the United States Congress enacted the Administrative Procedure Act (“APA”), codifying a set of uniform procedures to govern the way in which federal agencies conduct rulemakings and adjudications. One year earlier, the State of California had passed its own APA, which created the nation’s first central hearing panel. Before 1945, in California and elsewhere, state hearing officers (later known as administrative law judges or “ALJs”) were employees of the individual state executive branch agencies for which they conducted hearings. California’s 1945 legislative changes were relatively modest, establishing a central panel of hearing officers whose jurisdiction was limited to assisting agencies that had no hearing officers of their own or whose hearing officers were temporarily overloaded with work.<sup>4</sup> In 1961, California expanded the central hearing panel concept by enabling legislation requiring that all hearings subject to the state’s APA be conducted by central panel hearing officers.<sup>5</sup>

At first, other jurisdictions did not follow California’s lead. Over time other states and local jurisdictions created central panels. In 1965, Missouri established a central hearing panel, and in the 1970s several more states did the same (Colorado, Florida, Massachusetts, New Jersey, Tennessee, and Wisconsin). Several more followed in the 1980s (Iowa, North Carolina, Washington State, and Wyoming). By the 1990s, the movement gained momentum, with 13 more states creating central hearing panels (Arizona, Georgia, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, North Dakota, Oregon, South Carolina, South Dakota, and Texas). Currently, approximately 30 states plus cities and municipalities have instituted central hearing panel systems.<sup>6</sup>

A few jurisdictions established central hearing panels in response to instances of due process violations or patterns of improper influence on agency adjudications. More often, the impetus was not a specific event but rather a growing awareness that the existing system was subject to a real or perceived structural fairness flaw—namely, whether an agency employee charged with reviewing an earlier agency decision adverse to a citizen or business could be trusted to render a fair and impartial decision.

This fairness concern has its roots in fundamental constitutional due process principles. As the US Supreme Court has emphasized, “[a] fair trial in a fair tribunal is a basic requirement of due process,”<sup>7</sup> and “an impartial decision maker is [an] essential” element of the fairness equation.”<sup>8</sup> Thus, the “Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal

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<sup>4</sup> Abrams, N. (1977). Administrative Law Judge Systems: The California View. *Administrative Law Review*, 29(4).

<sup>5</sup> *Ibid.*, p. 490.

<sup>6</sup> See Appendix C for the list of states that have adopted some form of central hearing panel.

<sup>7</sup> *In re Murchison*, 349 U.S. 133, 136 (1955).

<sup>8</sup> *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970).

cases.”<sup>9</sup> Moreover, the right to an impartial decision-maker extends to quasi-judicial administrative hearings. The Supreme Court “repeatedly has recognized [that] due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities.”<sup>10</sup>

These due process principles can be undermined when a hearing officer or ALJ is adjudicating a proceeding in which one of the parties is his or her employer. Combining regulatory, enforcement, prosecutorial, and adjudicatory functions within a single executive branch commission or agency creates a potential conflict of interest that could improperly influence the outcome of administrative decisions. At a minimum, when the hearing officer or ALJ is hired, evaluated, and potentially rewarded or disciplined by the agency for which he or she is adjudicating cases, there is a perception of unfairness that may undermine the public’s trust. As one commentator has noted, the public typically views such an ALJ as a “captive” of the agency and thus “asks ‘how can I expect to win this case when the [agency] is my accuser, prosecutor, and judge?’”<sup>11</sup>

Conceptually, a central hearing panel would cultivate public confidence in the administrative process by eliminating the above-noted structural conflict of interest and bias concerns. By design, central hearing panel ALJs do not work for, and thus are not subject to, the control of the agencies whose decisions they are reviewing. As a result, they should be insulated from the pressures to which they might otherwise be subject as agency employees.<sup>12</sup>

The American Bar Association has endorsed the central hearing panel concept and has developed legislation entitled “Model Act Creating a State Central Hearing Agency (Office of Administrative Hearings)” (“Model Act”) to promote the concept’s widespread and effective implementation.<sup>13</sup> The Model Act contemplates the creation of an Office of Administrative Hearings “as an independent

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<sup>9</sup> *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

<sup>10</sup> *Schweiker v. McClure*, 456 U.S. 188, 195 (1982).

<sup>11</sup> See generally McNeil, C. B. (1998). Similarities and Differences Between Judges in the Judicial Branch and the Executive Branch: The Further Evolution of Executive Adjudications under the Administrative Central Panel. *Journal of the National Association of Administrative Law Judiciary*, 16-17. See also, Schoenbaum, E. J. (2001). Improving Public Trust & Confidence in Administrative Adjudication: What an Administrative Law Judge Can Do. *Journal of the National Association of Administrative Law Judiciary*, 575,579; Hardwicke, J. W. (1994). The Central Hearing Agency: Theory and implementation in Maryland. *Journal of the National Association of Administrative Law Judiciary*, 14(1).

<sup>12</sup> McNeil, C. B. (1998). Similarities and Differences between Judges in the Judicial Branch and the Executive Branch: The Further Evolution of Executive Adjudications under the Administrative Central Panel. *Journal of the National Association of Administrative Law Judiciary*, p. 18-19.

<sup>13</sup> See generally, House of Delegates of the American Bar Association. (1997). Model Act Creating a State Central Hearing Panel. *Journal of the National Association of Administrative Law Judges*, 17(2). In February 1997, the House of Delegates of the ABA unanimously adopted a resolution recommending that state and territorial legislatures enact the Model Act. In February 2011, the House of Delegates adopted a resolution expressing (a) continued support for the judicial independence and authority granted to the central panel ALJs in the Model Act and (b) opposition to proposals to weaken that independence and authority by empowering Executive Branch agency heads to decide when and whether to use the central panel ALJs, if at all, and to dictate the terms under which the ALJ may exercise any final decision making authority.

agency in the Executive Branch of State Government for the purpose of separating the adjudicatory function from the investigatory, prosecutorial and policy-making functions of agencies in the Executive Branch.”<sup>14</sup>

The ABA Model Act charges the independent central hearing agency with employing ALJs, establishing training and performance standards for them, and hearing and deciding appeals from agency actions. In particular, the Model Act directs the Chief ALJ, among other duties, to establish ethical and performance standards; provide and coordinate continuing legal education and other training programs; and monitor the quality of administrative hearings through the provision of training, observation, feedback, and, when necessary, discipline of ALJs who fail to meet appropriate conduct and competence standards.<sup>15</sup> Under the Model Act, ALJs are career employees, who may “be removed, suspended, demoted, or subject to disciplinary or adverse actions only for good cause.”<sup>16</sup>

In addition to addressing the bias, due process, and public perception concerns discussed above, central hearing panels are designed to achieve other important benefits, including (a) greater efficiency and cost effectiveness through the consolidation and centralization of ALJs and support staff; (b) attraction and retention of higher caliber hearing officers and ALJs by placing ALJs in a dedicated agency and enhancing their independence and stature; and (c) higher quality and speedier decisions and an overall increase in professionalism through improved and systematic training, more coherent performance standards, and expanded and better coordinated support resources.<sup>17</sup>

Whether the above noted benefits have actually been realized in every central hearing panel jurisdiction is beyond the scope of this DC-focused OAH review. There does seem to be a consensus, however, that jurisdictions that have adopted the central hearing panel model have experienced an appreciable improvement over their prior decentralized systems. Indeed, after studying the experience of central hearing panel jurisdictions, a working group of governmental officials, private practitioners, and administrative law experts convened by the Pennsylvania General Assembly to propose a comprehensive updating of the state’s administrative procedures act declared that their “most important substantive proposal...is to establish an independent central hearing panel that would conduct the hearings and render decisions in administrative cases, thereby taking the place of the

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<sup>14</sup> *Ibid.*, p. 314.

<sup>15</sup> *Ibid.*, p. 316.

<sup>16</sup> *Ibid.*, p. 317-18. Moreover, the Chief ALJ—whether appointed by the Executive with the advice and consent of the Legislature, or through “competitive examination”—is also removable only for “good cause.” ABA Model Act § 1-4. That provision, which “protect[s] tenure of the chief administrative law judge by limiting the [Executive’s] power of removal to instances of ‘good cause,’” is a key tool for furthering “judicial independence in the executive judiciary.”

<sup>17</sup> House of Delegates of the American Bar Association. (1997). Model Act Creating a State Central Hearing Panel. *Journal of the National Association of Administrative Law Judges*, 17(2).

adjudicative bodies within the respective agencies.”<sup>18</sup> The working group noted: “The published commentators on administrative law are unanimously in favor of a central panel system,” as “opposed to a system...where each agency has its own adjudicatory staff.”<sup>19</sup> Perhaps most telling, “[n]one of the states that has adopted a central hearing panel has reverted to an agency-by-agency structure.”<sup>20</sup>

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<sup>18</sup> Joint State Government Commission: General Assembly of the Commonwealth of Pennsylvania. (2014). Reforming the Administrative Law of Pennsylvania: Staff report 2014. Journal of the *National Association of Administrative Law Judiciary*, 34(2), p. 317, 323

<sup>19</sup> *Ibid.*, p. 347.

<sup>20</sup> *Ibid.*, p. 348.



## VI. HISTORY OF THE DC OFFICE OF ADMINISTRATIVE HEARINGS

The DC Council legislatively established the District of Columbia Office of Administrative Hearings (“OAH”) in 2001,<sup>21</sup> and OAH began operating in March 2004.<sup>22</sup> The DC Council created OAH to “modernize and improve administrative adjudication,” and to remedy the “perception” that administrative hearing officers did not “fairly and properly” adjudicate cases.<sup>23</sup> OAH currently hears cases from over 24 different agencies, some pursuant to statutory authority and others pursuant to written agreements called Memoranda of Understanding (“MOUs”).<sup>24</sup>

OAH’s creation can be traced, in part, to a 1999 Council for Court Excellence report entitled “Creating a Unified Administrative Hearings Agency in the District of Columbia.”<sup>25</sup> The CCE report was completed at the initiative of then DC Corporation Counsel, the Honorable John Ferren. The 1999 CCE report identified best practices with respect to the use of a unified hearing panel.<sup>26</sup> After publication of this report, CCE board members provided testimony at several DC Council hearings on the Office of Administrative Hearings Establishment Act of 2001.<sup>27</sup>

**Evolution of the Office of Administrative Hearings.** OAH began operating in 2004 under the leadership of then Chief ALJ Tyrone Butler, who was confirmed on May 28, 2003 by the DC Council.<sup>28</sup> As reported by the DC Office of the Inspector General in a 2009 examination of OAH, the agency struggled in its first years of operation. The 2009 DC Office of Inspector General Report (the “IG Report”) identified a number of operational deficiencies, including:

- A growing backlog of cases awaiting a final order;
- Employee abuse of purchase and travel policies;
- Inadequate office and technology equipment;

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<sup>21</sup> D.C. Code § 2-1831 *et seq.*

<sup>22</sup> Leftwich and Ludaway, LLC on behalf of the District of Columbia Executive Office of the Mayor and the Office of Administrative Hearings. (2013). *Confidential Report of Investigation: Redacted version*. Washington, D.C.: Leftwich & Ludaway, p. 8.

<sup>23</sup> Office of Administrative Hearings Establishment Act of 2001, § 3(1), (2).

<sup>24</sup> See Appendix D.

<sup>25</sup> Council for Court Excellence, (1999). *Creating a Unified Administrative Hearings Agency in the District of Columbia*. Washington, D.C.

<sup>26</sup> Office of Administrative Hearings Establishment Act of 2001: Hearings before the Committee on the Judiciary, D.C. Council, (2001), (Testimony of James Mercurio and Ronald Jessamy).

<sup>27</sup> *Ibid.*

<sup>28</sup> Gandhi, N. M., Office of the Chief Financial Officer. (2003). *Fiscal impact statement: “Chief Administrative Law Judge Tyrone T. Butler Confirmation Approval Resolution of 2003”*. Memorandum. Retrieved from: [http://app.cfo.dc.gov/services/fiscal\\_impact/pdf/spring03/Chief%20Admin%20Law%20Judge%20Tyrone%20T.%20Butler.pdf](http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring03/Chief%20Admin%20Law%20Judge%20Tyrone%20T.%20Butler.pdf).

- A lack of standardized training for legal assistants; and
- Inadequate Equal Employment Opportunity training.<sup>29</sup>

The IG Report provided 14 recommendations to improve OAH operations, including the adoption of formal ALJ evaluation procedures and the creation of a training program for legal assistants.<sup>30</sup>

In 2010, Chief ALJ Mary Oates Walker was appointed by Mayor Adrian Fenty and confirmed by the DC Council.<sup>31</sup> The DC Council's Committee on Public Safety and Justice provided Chief ALJ Walker with a list of 20 challenges facing OAH, including the need for appointment of an OAH rules revision committee, implementation of a case tracking system, and adoption of the IG Report recommendations.<sup>32</sup>

In 2012, in response to ALJ concerns, OAH (at the direction of Chief ALJ Walker) and the DC Executive Office of the Mayor retained Leftwich & Ludaway, LLC ("L&L") to investigate some actions of Chief ALJ Walker.<sup>33</sup> As part of its review of OAH, L&L commissioned the National Center for State Courts ("NCSC") to analyze the agency's operations and performance, focusing on its organizational structure; staff performance metrics and evaluation processes; caseload management; case assignment; and information technology performance.<sup>34</sup> NCSC highlighted a number of areas for improvement, including:

- The lack of organizational cohesiveness and goal alignment throughout OAH;<sup>35</sup>
- The absence of clearly defined internal communication channels between the Chief ALJ and ALJs;<sup>36</sup>
- Ongoing issues regarding case assignments and case processing;<sup>37</sup>
- Insufficient judicial performance evaluation standards;<sup>38</sup> and

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<sup>29</sup> Office of the Inspector General (2009). *Office of Administrative Hearings report of inspection*. p. 3-5. [http://app.oig.dc.gov/news/PDF/release09/OAH\\_Final\\_ROI\\_09-08.pdf](http://app.oig.dc.gov/news/PDF/release09/OAH_Final_ROI_09-08.pdf)

<sup>30</sup> *Ibid.*, p. 93-96.

<sup>31</sup> Leftwich and Ludaway, LLC on behalf of the District of Columbia Executive Office of the Mayor and the Office of Administrative Hearings. (2013). *Confidential report of investigation: Redacted version*. Washington, D.C.: Leftwich & Ludaway, p. 8.

<sup>32</sup> Mendelson, P., Council of the District of Columbia. (2009). *Report on PR 18-629, "Chief Administrative Law Judge of the Office of Administrative Hearings Mary Oates Walker Confirmation Resolution of 2010"*. Washington, D.C. Retrieved from <http://lims.dccouncil.us/Download/2381/PR18-0629-COMMITTEEREPORT.pdf>

<sup>33</sup> Leftwich and Ludaway, LLC on behalf of the District of Columbia Executive Office of the Mayor and the Office of Administrative Hearings. (2013). *Confidential report of investigation: Redacted version*. Washington, D.C.: Leftwich & Ludaway, p. 1.

<sup>34</sup> National Center for State Courts (2013). *Organizational study of Office of Administrative Hearings District of Columbia* (final report), p. 8.

<sup>35</sup> *Ibid.*, p. 10.

<sup>36</sup> *Ibid.*, p. 16.

<sup>37</sup> *Ibid.*, p. 17-18.

<sup>38</sup> *Ibid.*, p. 20-21.

- Inadequate security for judges and staff.<sup>39</sup>

Chief ALJ Walker was later removed from office by Mayor Vincent Gray in 2014 for ethics violations, after the DC Board of Ethics and Government Accountability (“BEGA”) issued a notice of violation against Chief ALJ Walker and OAH’s General Counsel.<sup>40</sup> The current Chief ALJ is Eugene Adams, who was appointed by Mayor Muriel Bowser in April 2015 and confirmed by the DC Council.<sup>41</sup>

**Office of Administrative Hearings Staff and Caseload.** OAH is comprised of 33 ALJs, a Chief ALJ, an Executive Director, a Clerk of Court and roughly 40 other support staff.<sup>42</sup> The Commission on Selection and Tenure (“COST”) appoints ALJs to an initial term of two years, and has discretion to reappoint them to additional six-year terms.<sup>43</sup> Only COST has the statutory authority to remove ALJs, and they may be removed only for cause during the term.<sup>44</sup> COST consists of three voting members, with one member appointed by the Mayor, one member appointed by the Chairman of the DC Council, one member appointed by the Chief Judge of the Superior Court of the District of Columbia, and two non-voting members – the Chief ALJ and a representative appointed by the Attorney General.<sup>45</sup> Among the 33 ALJs, the Chief ALJ selects 5 to serve as Principal ALJs.<sup>46</sup> Each PALJ manages the case flow in a jurisdiction area, and ensures that the cases are decided in a timely manner. The Chief ALJ is separately appointed to a six-year term by the Mayor, and confirmed by the DC Council, and is not selected from among the sitting ALJs. The Chief ALJ may serve a maximum of two terms,<sup>47</sup> and can only be removed from office for good cause based on a written finding by the Mayor.<sup>48</sup> The Chief ALJ is required by the agency’s enabling act to establish appropriate ALJ training programs, supervise the entirety of OAH, hire OAH staff, monitor the quality of adjudications, and develop annual case management performance standards for ALJs.<sup>49</sup> In addition, the Chief ALJ may, but is not required to, hear cases.<sup>50</sup>

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<sup>39</sup> *Ibid.*, p. 34.

<sup>40</sup> Government of the District of Columbia Board of Ethics and Government Accountability. (2014). *Amended Notice of Violation*. Washington, DC. Retrieved from [http://www.bega-dc.gov/sites/default/files/documents/1060-001%20-%20Amended%20NOV%20-%205.29.14\\_0.p](http://www.bega-dc.gov/sites/default/files/documents/1060-001%20-%20Amended%20NOV%20-%205.29.14_0.p)

<sup>41</sup> District of Columbia Executive Office of the Mayor (2013) *Mayor Bowser appoints Eugene Adams as Chief Administrative Law Judge*. (Press Release). Retrieved from <http://mayor.dc.gov/release/mayor-bowser-appoints-eugene-adams-chief-administrative-law-judge>

<sup>42</sup> Government of the District of Columbia Office of Administrative Hearings. (2016). *OAHY F16 Performance Oversight Hearing Response*. Washington, D.C., p. 5. Retrieved from [http://dccouncil.us/files/user\\_uploads/budget\\_responses/OAHFY16PerformanceOversightHearingResponses.pdf](http://dccouncil.us/files/user_uploads/budget_responses/OAHFY16PerformanceOversightHearingResponses.pdf).

<sup>43</sup> D.C. Code § 2-1831.08(c).

<sup>44</sup> *Ibid.*, § 2-1831.10(d).

<sup>45</sup> *Ibid.*, § 2-1831.07(a).

<sup>46</sup> OAH FY 2015 Budget Response, p. 1. [http://dccouncil.us/files/user\\_uploads/budget\\_responses/Allattachments\\_1.pdf](http://dccouncil.us/files/user_uploads/budget_responses/Allattachments_1.pdf)

<sup>47</sup> D.C. Code § 2-1831.04(b)(2).

<sup>48</sup> *Ibid.*, § 2-1831.04(b)(7).

<sup>49</sup> *Ibid.*, § 2-1831.05(a).

OAH maintains a robust caseload: 21,838 cases were opened in 2014, and 20,809 were opened in 2015. Of these cases, approximately 65% involve appeals of solid waste and recycling infractions issued by the Department of Public Works (“DPW”). In 2015, 11,071 hearings were held, with over 60% of the hearings related to taxi and DPW matters.

OAH’s cases range widely in legal and procedural complexity, with ALJs adjudicating disputes over waste disposal tickets, suspensions from DC Public Schools, and denials of Medicaid eligibility, among many other issues. There is also a range of statutory or regulatory deadlines for different case types. For example, DC law requires OAH to issue a final decision in DC Public Schools suspension cases within 5 school days, but OAH has up to 150 days to decide Family Medical Leave Act and parental leave cases. Some case types have no statutory or regulatory deadline.

**Internal Organization of OAH.** Chief ALJ Adams has reorganized OAH into four divisions: (a) Trials, Appeals, and Judicial Management; (b) Agency Management and Operational Support; (c) Case Management and Judicial Support; and (d) Judicial Assistance and Legal Counsel.<sup>51</sup> The ALJs are part of the Trials, Appeals, and Judicial Management Division, which is responsible for OAH’s adjudicatory functions. The Agency Management Division, headed by the Executive Director, provides the ALJs and other agency personnel with administrative, information technology, and operational support. The Case Management Division, headed by the Clerk of the Court, manages OAH’s intake and distribution of cases, preparation of forms and documentation, and interfaces with litigants. The Judicial Assistance Division, headed by OAH’s General Counsel, tracks and evaluates relevant developments in laws, regulations, statutes, and court cases.<sup>52</sup>

The organizational chart on the following page illustrates OAH’s current structure:

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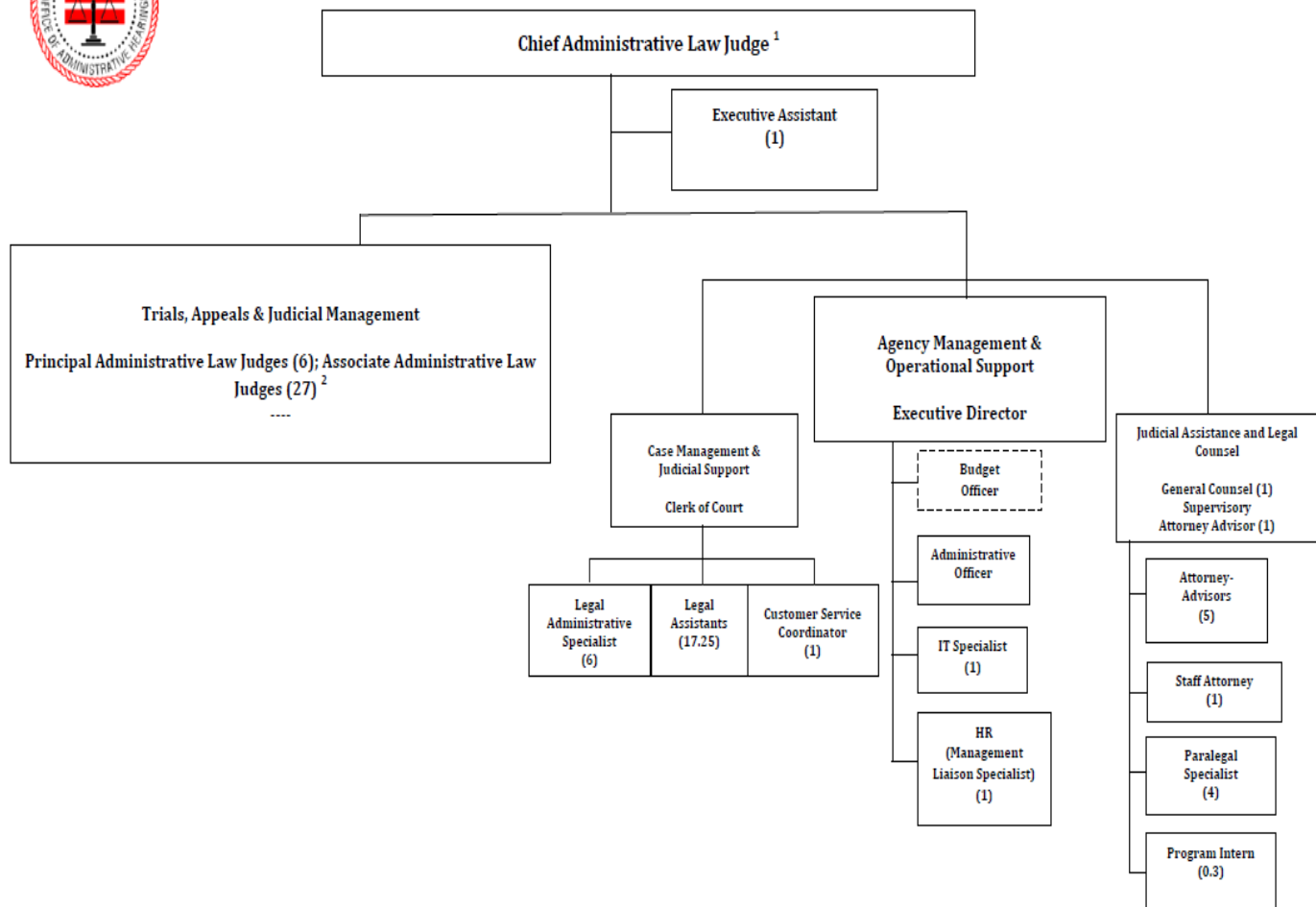
<sup>50</sup> *Ibid.*, § (b)(1).

<sup>51</sup> Government of the District of Columbia Office of Administrative Hearings. (2016). *OAHY F16 Performance Oversight Hearing Response*. Washington, D.C., p. 1-2. Retrieved from [http://dccouncil.us/files/user\\_uploads/budget\\_responses/OAHFY16PerformanceOversightHearingResponses.pdf](http://dccouncil.us/files/user_uploads/budget_responses/OAHFY16PerformanceOversightHearingResponses.pdf). FY2016

<sup>52</sup> *Ibid.*



# OFFICE OF ADMINISTRATIVE HEARINGS ORGANIZATION CHART



Since 2014, ALJs are represented by the International Federation of Professional and Technical Engineers. As of July 2016, the relationship between OAH and the ALJs will soon be subject to a collective bargaining agreement (the “CBA”), which has been negotiated and is undergoing review and approval by the District. The draft CBA provides the ALJs with a number of workplace rights, including the establishment of formal evaluation standards, the right to respond to the Chief ALJ if he or she recommends to COST that an ALJ not be reappointed, and the right to respond to any material placed in the ALJ’s personnel file.

**Case Intake and Assignment.** At present there is no uniform or consistent procedure through which appeals from DC Agencies and Boards are submitted to OAH. Some cases are mailed to a post office box, some cases are hand delivered in hard copies, and others are received via email. The Clerk’s Office

assembles case files and tracks all incoming cases. Several staff are responsible for entering the cases into e-Court, OAH's case tracking software.

Once the cases are processed, the Clerk's office batches new cases by issue area and sends them to the Principal ALJs. Prior to 2016, there was not a clear delineation of case types among PALJs – different PALJs could be assigned the same types of cases. In February of 2016, Chief ALJ Adams instituted a new case assignment system with four different case categories: (1) Enforcement and Licensing; (2) Public Assistance and Benefits; (3) Rental Housing and DC Public Schools; and (4) Employment.<sup>53</sup> Under this new system, the number of PALJs was reduced from six to five (the Enforcement and Licensing group has a subjurisdiction for taxi cases that is managed by the fifth PALJ).

PALJs assign cases to a group of ALJs, who hear cases in that category, along with DPW cases, for a set period of time, and are then rotated to a different category. The Chief ALJ's new case assignment system requires all ALJs adjudicating a certain case category to have the same number of cases. However, there is no further documented procedures for PALJs distributing cases to ALJs.

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<sup>53</sup> E. Adams, personal communication (Email from Eugene Adams to OAH ALJs), January 22, 2016.

## VII. FINDINGS AND RECOMMENDATIONS

Based on the Working Groups' input and review, the Steering Committee identified the following findings and recommendations to improve OAH operations, which are further explained below in the body of the report.

JURISDICTION	
Finding 1	Entering into a Memorandum of Understanding ("MOU") with an agency to establish OAH's jurisdiction is not a transparent process, and makes it possible for a contracting agency that disagrees with OAH's findings to terminate OAH's jurisdiction over the agency's cases.
Recommendation	Any OAH jurisdiction presently authorized by an MOU should be converted to statutory authorization. <sup>54</sup> OAH should retain the power to enter into MOUs initially, but any expanded jurisdiction should be codified within two years.
OAH ORGANIZATIONAL STRUCTURE	
Finding 2	OAH's current ALJ management structure does not support efficient and effective operations.
Recommendation	Revise OAH's management structure to provide more individualized management of employees and work groups, and to allow the Chief ALJ to focus on overseeing the agency as a whole by: (i) reinstating the position of Deputy Chief ALJ; (ii) enhancing the role of the Principal ALJs; and (iii) reconfiguring the direct reports to the Chief ALJ.
Finding 3	There remains a lack of clarity among some OAH staff about the roles and responsibilities of the agency's departments and staff.
Recommendation	Continue to clarify responsibilities of each OAH staff member by ensuring job descriptions are clear and accurate and that employees are knowledgeable regarding the responsibilities of individual staff and departments as a whole.

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<sup>54</sup> See Appendix E for a proposed amendment to the Office of Administrative Hearings Establishment Act that would implement these jurisdictional changes.

<b>ALJ SELECTION, EVALUATION and TENURE</b>	
<b>Finding 4</b>	ALJs do not have the security of career positions but rather serve for an initial two-year term, followed by a six-year term with the possibility of reappointment.
<b>Recommendation</b>	Revise the employment system so that judges have at least a longer term, and be eligible for removal or non-reappointment based only on specific causes.
<b>Finding 5</b>	The great majority of ALJs advised CCE that they had not been evaluated annually over the past several years, which damages ALJ morale and impedes improvement in ALJ performance. OAH management and ALJs recently negotiated standards for evaluation, and ALJs will be provisionally evaluated in October 2016.
<b>Recommendation</b>	Annually evaluate all ALJs, including the Chief ALJ, according to meaningful and measurable criteria.
<b>IMPROVING AGENCY CULTURE</b>	
<b>Finding 6</b>	OAH morale has improved somewhat since NCSC's 2013 analysis of the agency, but remains a significant challenge that impairs OAH operations.
<b>Recommendations</b>	a. OAH should engage an expert in organizational culture development to help it develop a tailored approach to improving in this area.
	b. The Chief ALJ should continue the effort to establish policies and procedures that are fair to all, and to be transparent about proposed and adopted changes.
	c. OAH leadership should regularly consult with ALJs and staff regarding the agency's performance and seek ideas for improving OAH.
<b>COST AND ADVISORY COMMITTEE</b>	
<b>Finding 7</b>	COST blurs the lines of authority within OAH, making it more difficult for the Chief ALJ to supervise the agency efficiently and implement improved procedures or practices. Nevertheless, COST is also highly valued by most ALJs because they believe it protects their judicial independence.
<b>Recommendation</b>	In the short term, amend COST's procedures to better support efficient and effective management of OAH by establishing timelines for COST to make decisions regarding its statutory functions. In the longer term, transfer to the Chief ALJ many of COST's responsibilities and duties, such as the final ALJ hiring decision (from a slate of candidates picked by COST).
<b>Finding 8</b>	OAH's Advisory Committee is no longer an effective support to the agency.
<b>Recommendation</b>	Dissolve OAH's Advisory Committee, and transfer its responsibilities to COST.



CASE ASSIGNMENT SYSTEM	
Finding 9	The process for assignment of cases in place at OAH through January 2016 sometimes resulted in uneven workloads for ALJs. In February 2016, a new system was implemented by which ALJs are divided into four groups that each hear cases from a different set of sending agencies.
Recommendation	OAH should analyze the effectiveness of its new case assignment system over the coming months, and the agency should regularly evaluate the ALJs' workload, particularly new jurisdictional assignments, to ensure cases are distributed fairly. To ensure the integrity of the case assignment system, procedures for PALJ case assignment should include random assignment within categories of cases.
CASE PROCESSING	
Finding 10	Litigants are negatively affected by delays in the resolution of their cases in part due to the inefficiencies of OAH's case processing system.
Recommendations	a. Conduct an in-depth study on the current case processing system to identify areas in need of improvement, and redesign the case processing system based on these findings.
	b. Adhere to the case deadlines established in the CBA.
	c. Return to individually scheduled cases (end combined dockets/master calendar) for those types of cases in which wait times disproportionately burden litigants (e.g., health care finance).
Finding 11	OAH's technology systems are not optimally supporting the agency in achieving its mission.
Recommendations	a. Set a deadline for implementing a uniform electronic process for filing cases, along with a deadline for the public to access OAH records on the OAH website.
	b. Make OAH case dockets and decisions publicly accessible on the OAH website.
	c. Identify case types that are most appropriate for hearings via telephone or video conference. Train ALJs in these types of cases in conducting telephone or video conference hearings.
	d. Update the OAH website so that fines may be paid by debit or credit card online.

IMPROVING LITIGANT EXPERIENCE	
<b>Finding 12</b>	OAH has made efforts to enable pro se litigants to participate effectively and meaningfully in the OAH hearing process. However, this issue remains a continuing challenge.
Recommendations	a. Partner with the DC legal community to increase the number of legal services and volunteer attorneys available to litigants who are unable to afford an attorney.
	b. Implement judicial “engaged neutrality” through more active ALJ participation in developing the facts and legal theories of pro se litigants to ensure a more complete and fair record in pro se cases.
<b>Finding 13</b>	OAH has improved its language access system over the past year, and should continue to focus on strengthening it.
Recommendations	a. Improve the process for scheduling interpreters.
<b>Finding 14</b>	OAH does not provide clear guidance on how to submit feedback to the court, and litigants, agencies, and counsel are confused about the process.
Recommendation	Update OAH’s website to allow litigants to submit online their feedback regarding the agency’s performance and customer service, and advise litigants that OAH also solicits feedback from litigants through in-person events. OAH should also review and enhance its internal process for analyzing and responding to litigant feedback, so that it can implement changes that will result in a more effective and efficient agency.
<b>Finding 15</b>	OAH has improved its approach to mediation over the past year, but mediation is still underutilized.
Recommendations	a. Consistently notify parties of the option to mediate their case.
	b. Build a roster of volunteer mediators available to appear on short notice to assist in resolving cases where the parties have appeared for trial.
	c. Ensure that ALJs who opt to mediate are credited for this contribution.
<b>Finding 16</b>	There are gaps in the guidance and materials available through OAH’s Resource Center.
Recommendations	a. Continue to make the Resource Center more user-friendly and improve available material.
	b. Continue to develop the roster of volunteers and legal service providers who can wait on standby at the Resource Center throughout the week to assist litigants seeking assistance.
	c. Update the Resource Center website to make it easier to navigate.

APPEALS	
Finding 17	OAH and DC Court of Appeals (“DCCA”) do not have written procedures in place regarding transmission of DCCA appellate opinions, and OAH does not consistently track data related to appeals.
Recommendations	a. The Clerk of Court for OAH should work with the DCCA to establish a written procedure for ensuring that OAH receives copies of all DCCA decisions, including both published and unpublished decisions.
	b. OAH attorneys should prepare and circulate monthly memos with summaries of relevant DCCA published opinions and unpublished Memoranda of Judgment (“MOJs”) to all ALJs and attorney-advisors.
	c. OAH should track OAH cases on appeal, particularly whether they are affirmed or overturned, by jurisdiction and ALJ, and report this data in its annual report.

A more detailed explanation of each of the findings and recommendations and procedure for implementation is set forth below.

## A. Jurisdiction

<b>Finding 1</b>	Entering into a Memorandum of Understanding (“MOU”) with an agency to establish OAH’s jurisdiction is not a transparent process, and makes it possible for a contracting agency that disagrees with OAH’s findings to terminate OAH’s jurisdiction over the agency’s cases.
<b>Recommendation</b>	Any OAH jurisdiction presently authorized by an MOU should be converted to statutory authorization. <sup>55</sup> OAH should retain the power to enter into MOUs initially, but any expanded jurisdiction should be codified within two years.
<b>Implementation</b>	This recommendation may be implemented by amending §2-1831.03(b) of the DC Code.

**Comment:** OAH has statutory jurisdiction over appeals from more than ten agencies.<sup>56</sup> OAH has over its history also added additional jurisdiction or been ceded jurisdiction by District agencies, through the use of MOU (essentially contracts). As part of the MOUs, the transferring agency and OAH agree on a financial contribution or transfer, which is intended to fund the OAH activities for the range of cases transferred.

OAH currently has jurisdictional MOUs with varying terms in place with ten District of Columbia agencies.<sup>57</sup> Some agencies, like the Department of Energy and Environment, have transferred adjudication of all administrative matters to OAH. Others have contracted with OAH on a more limited basis – for instance, DC Public Schools have contracted with OAH to hear appeals related to student discipline, residency, and involuntary transfers. Some MOUs set a cap on the number of cases OAH can hear in a year – for instance, the Department of Insurance, Securities and Banking stipulated that it will transfer a maximum of 6 cases per year to OAH.

There is a very wide range of adjudicatory complexities within the many types of cases that DC agencies refer to OAH. This may explain why under the MOUs, the funding provided by the transferring agency for the adjudication of their administrative matters varies drastically. Under some MOUs, OAH is paid

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<sup>55</sup> See Appendix E for a proposed amendment to the Office of Administrative Hearings Establishment Act that would implement these jurisdictional changes.

<sup>56</sup> For a full list of these agencies, see Appendix D on page 64.

<sup>57</sup> These agencies include: (1) Child Support Services Division; (2) Department of Employment Services; (3) Department of Energy and Environment; (4) Department of Health Care Finance; (5) Department of Housing and Community Development; (6) Department of Insurance, Securities, and Banking; (7) DC Public Schools; (8) Health Benefit Exchange Authority; (9) Office of the Chief Financial Officer; (10) Office of the State Superintendent of Education; and (11) and Office of the Attorney General.

only \$125 per case. Other MOUs provide OAH with up to \$4000 per case. Some MOUs, like the one with the Department of Housing and Community Development, cap the amount of fees payable to OAH in a given year regardless of the number or complexity of the cases processed.

While other state and local central hearing panels have the power to enter in to contractual arrangements with agencies to adjudicate cases – similar to the District’s MOU process – a number of judges from other central hearing panels interviewed by CCE indicated that the use of such agreements in their jurisdictions is rare.<sup>58</sup> Former Oregon Supreme Court Justice Michael Gillette indicated that contractual arrangements can result in the central hearing panel rendering decisions “to keep their agency clients.”<sup>59</sup> Justice Gillette further noted that “any system that makes OAH’s future dependent on agencies’ satisfaction with the rulings can create the appearance...of [OAH] acting to please those agencies.”<sup>60</sup>

CCE recommends that OAH’s current jurisdiction over agencies pursuant to MOUs should be converted to statute. This change to statutory jurisdiction should further ensure OAH’s independence from agency pressure and create confidence that each case is being decided on its merits.

To implement this change, OAH should submit an amendment to its statute, extending its jurisdiction over cases sent by agencies that currently have jurisdiction established by MOUs. Going forward, the DC Council could place in one Council Committee lead responsibility for periodically converting OAH MOUs to statute.

CCE considered how OAH should be compensated as MOUs are converted to statute. While the DC Council could fund OAH with a single budget allocation, CCE does not recommend that approach for several reasons. First, such a funding arrangement would not have a clear evidentiary basis, because OAH has not historically collected accurate data regarding the time and costs associated with different case types. Second, such a funding arrangement would require reducing the budgets of agencies sending cases to OAH. Third, it might eliminate the incentive for agencies to get it right the first time to avoid the per case charge.

Instead, when MOUs are converted, OAH should continue to charge “per case” fees to individual agencies, as opposed to having the additional charges embedded in a larger budget allocated to it. This will encourage government agencies to come to the most appropriate decision initially, and avoid costs related to defending their decisions before OAH. This payment system has been implemented in many

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<sup>58</sup> See, e.g., Jim Tuite (Interviewer) & Ann Wise (Interviewee). (2016). Interviews with Director of the Division of Administrative Law for the State of Louisiana. Interview transcript. Unpublished transcripts on file with CCE.

<sup>59</sup> Emily Tatro and Tracy Velazquez (Interviewers) & Justice Michael Gillette (Interviewee). (2015). Interview with retired Oregon Justice Michael Gillette Interview transcript. Unpublished transcripts on file with CCE.

<sup>60</sup> *Ibid.*

other states. In Colorado, agencies make annual payments to the state's central hearing panel based on last year's usage.<sup>61</sup> Oregon also charges agencies a per-case fee. In Florida, agencies pay a proportional share of the central hearing panel's budget based on the amount of time the central hearing panel spends on that agency's cases.

The District's Office of the Chief Financial Officer should work with OAH's Chief ALJ and the respective DC agencies that are a party to MOUs to arrive at appropriate per case compensation. Any compensation agreements already in place may need to be amended once OAH analyzes the costs associated with each case type (as discussed further on p. 46).

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<sup>61</sup> CCE (Interviewer) & Judge Edward Felter (Interviewee). (2016). Interview with Judge Edward Felter. Interview transcript. Unpublished transcripts on file with CCE.

## B. OAH Organizational Structure

Finding 2	OAH's current management structure does not support efficient and effective operations.
Recommendation	Revise OAH's management structure to provide more individualized management of employees and work groups, and to allow the Chief ALJ to focus on overseeing the agency as a whole by: (i) reinstating the position of Deputy Chief ALJ; (ii) enhancing the role of the Principal ALJs; and (iii) reconfiguring the direct reports to the Chief ALJ.
Implementation	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** Currently, the Chief ALJ is responsible for directly supervising all 33 ALJs, along with the Clerk of Court, Executive Director, and General Counsel, while also overseeing OAH's "budgetary, personnel, policy, and planning functions."<sup>62</sup> Carrying out all these duties is an untenable workload for one person. CCE recommends a revised organizational structure as detailed below.

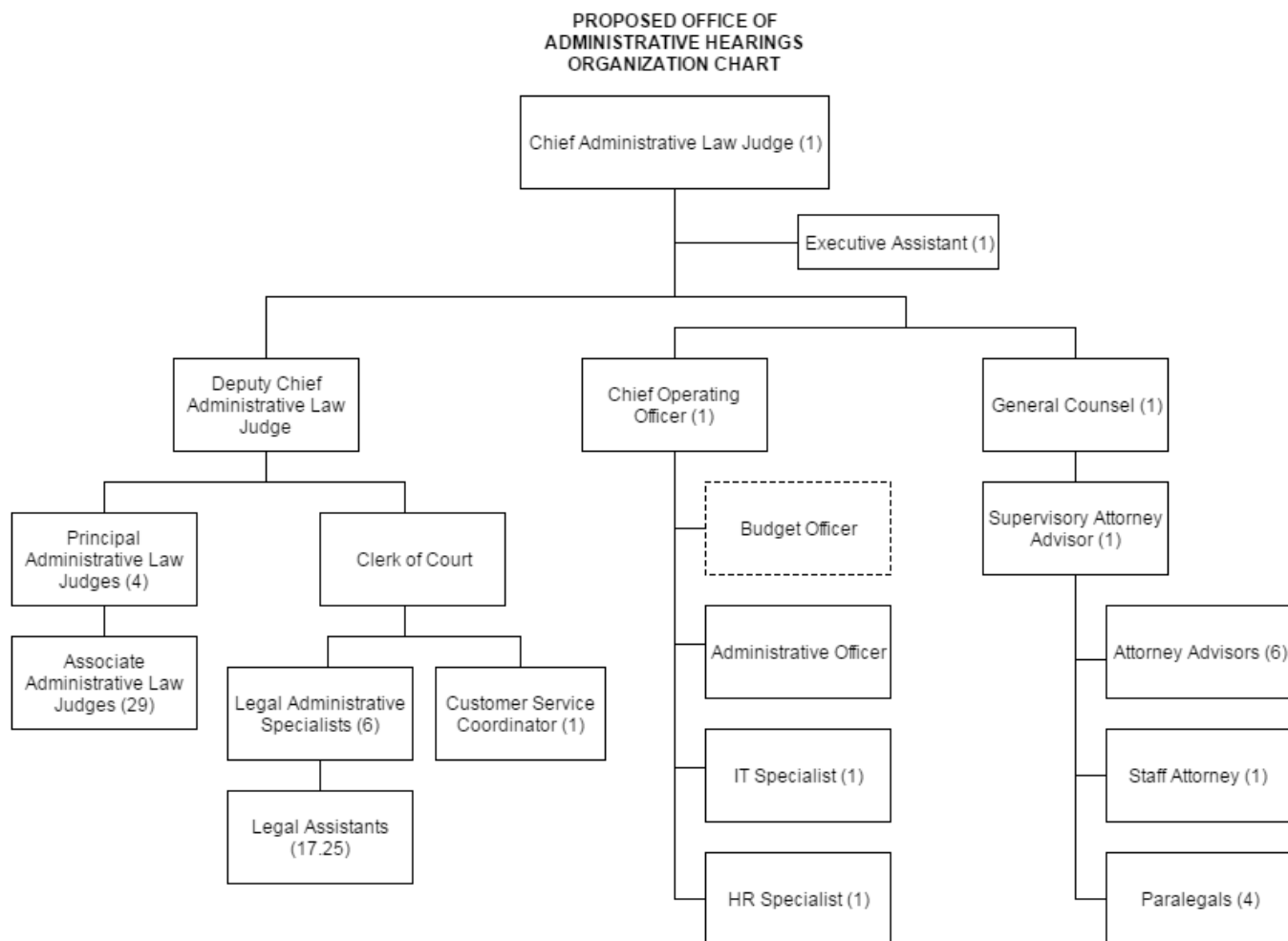
First, OAH should reinstate the Deputy Chief ALJ position, which existed until 2014. The Deputy Chief ALJ would supervise the Clerk of Court, and would also manage the Principal ALJs ("PALJ"), who in turn would be responsible for supervising and evaluating ALJs. PALJs should be selected based on merit, and their caseload should be decreased given the increased management responsibilities. The Deputy Chief ALJ would also supervise the Clerk's office and serve as a connection between the ALJs and Clerk's office. Second, the Executive Director should be recognized as Chief Operating Officer, ("COO"), which more accurately represents the duties in the position description.<sup>63</sup> The COO would continue to supervise OAH's Budget Officer, Administrative Officer, IT Specialist, and Human Resources Specialist.

This reorganization would leave the Chief ALJ directly supervising four employees – the Deputy Chief ALJ, the COO, the General Counsel, and his Executive Assistant – and significantly increase the time available to spend on issues such as agency planning and policy development.

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<sup>62</sup> See DC OAH (2015). Acting Chief ALJ position description. Unpublished job description on file with CCE and DC OAH. Available upon request.

<sup>63</sup> See DC OAH (2015). Executive Director position description. Unpublished job description on file with CCE and DC OAH. Available upon request.



<b>Finding 3</b>	There remains a lack of clarity among some OAH staff about the roles and responsibilities of the agency's departments and staff.
<b>Recommendation</b>	Continue to clarify responsibilities of each OAH staff member by ensuring job descriptions are clear and accurate and that employees are knowledgeable regarding the responsibilities of individual staff and departments as a whole.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** A continuing issue at OAH has been employees lacking clarity about staff roles and responsibilities, which in turn impairs OAH's operational effectiveness. In the Inspector General's 2009 assessment of the agency, only half of OAH staff survey respondents stated that "lines of authority and



responsibility are clearly defined.”<sup>64</sup> In 2013, the National Center for State Courts noted in its assessment of the agency that “there appears to be some system-wide frustrations regarding clearly defined job roles and responsibilities in certain areas.”<sup>65</sup> In CCE’s October 2015 survey, about 60% of ALJs responded that the responsibilities of the Executive Director, Attorney-Advisors, and Paralegal Specialists were unclear.<sup>66</sup>

OAH Staff’s Clarity of Agency Roles				ALJ’s Clarity of Agency Roles			
	Not clear	Somewhat clear	Clear		Not clear	Somewhat clear	Clear
Chief ALJ	0%	41%	59%	Chief ALJ	16%	36%	48%
Executive Director	35%	29%	35%	Executive Director	58%	33%	8%
Principal ALJ	6%	47%	47%	Principal ALJ	40%	40%	20%
ALJ	0%	18%	82%	ALJ	0%	28%	72%
Attorney-Advisors	25%	44%	31%	Attorney-Advisors	60%	28%	12%
Clerk of Court	18%	29%	53%	Clerk of Court	40%	40%	20%
Legal Assistants	12%	47%	41%	Legal Assistants	24%	60%	16%
Legal Administrative Specialists	29%	47%	24%	Legal Administrative Specialists	40%	52%	8%
Paralegal Specialists	18%	47%	35%	Paralegal Specialists	56%	28%	16%

Over the past year, OAH leadership has focused on clarifying staff responsibilities. For instance, at least one Attorney Advisor and one Paralegal staff are assigned to each of the four new jurisdictional clusters and assist only the ALJs in that area. Clerks have been assigned to each jurisdiction as well, who supervise Legal Assistants in properly filing case files and distributing them in a timely manner. The General Counsel and her staff no longer draft or prepare decisions and orders, but instead focus on personnel matters, compliance issues, agency policies, among other items. However, the role of the PALJ remains unclear and without a formal job description, although the CBA describes qualifications

<sup>64</sup> Office of the Inspector General (2009). *Office of Administrative Hearings report of inspection*. p. 16. [http://app.oig.dc.gov/news/PDF/release09/OAH\\_Final\\_ROI\\_09-08.pdf](http://app.oig.dc.gov/news/PDF/release09/OAH_Final_ROI_09-08.pdf)

<sup>65</sup> National Center for State Courts (2013). *Organizational study of Office of Administrative Hearings District of Columbia* (final report), p. 13.

<sup>66</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.

PALJs should have, along with a system for selecting PALJs. As discussed above on page 28, CCE recommends that PALJs should have supervisory responsibilities.

### C. ALJ Selection, Evaluation, and Tenure

<b>Finding 4</b>	ALJs do not have the security of career positions but rather serve for a two-year term, followed by a six-year term with the possibility of reappointment.
<b>Recommendation</b>	Revise the employment system so that judges have at least a longer term, and be eligible for removal or non-reappointment based only on specific causes.
<b>Implementation</b>	This recommendation may be implemented by amending §2–1831.12(e) of the D.C. Code, and amending or rescinding §2–1831.08(b) and §2–1831.08(c)(1)–(4) of the D.C. Code.

**Comment:** Currently ALJs have an initial two-year term, followed by six-year terms.<sup>67</sup> ALJs can only be removed for cause by COST.<sup>68</sup> Per OAH regulations, COST is to give deference to the recommendations of the Chief ALJ, although COST is supposed to reappoint an ALJ if it finds that the ALJ has satisfactorily performed his or her responsibilities and “is likely to continue to do so.”<sup>69</sup> Because the current ALJs remain concerned about the potential for arbitrary action, and there is at least a perception that COST, in deference to the Chief ALJ, might determine not to reappoint an ALJ for unclear reasons, the current system is damaging to morale and may undermine the recruiting of qualified candidates.

Also, CCE could identify only one other state where ALJs have term appointments – New Jersey. In most states with central hearing panels – including Arizona, California, Florida, Louisiana, Maryland, Texas, and Washington (among others) – ALJs are classified as civil servants without term limits.

CCE recommends that the employment system be revised so that judges have at least a longer term, and be eligible for removal or non-reappointment based on specific causes. The revised system could be implemented by conversion to the existing civil service system (which would effectively grant tenure, subject to removal for cause).

Alternatively, a specific “schedule” could be created for ALJs that defined specific employment conditions, and that would include a longer term (e.g., 15 years with two subsequent five-year renewed terms), as well as potentially other matters, such as specific compensation and benefits (e.g., time for continuing education and similar matters) and ALJ qualifications. CCE believes the DC Council should determine the precise terms for ALJ’s revised tenure and related conditions as part of any

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<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.* Non-reappointment of an ALJ is not considered removal, and COST can elect not to reappoint ALJs for any reason.

<sup>69</sup> DCMR Title 6, Section 3705.21.

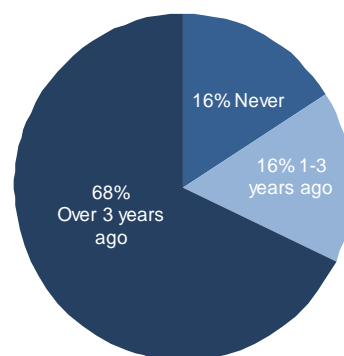
revised legislation. However, the current system is damaging to morale and creates a risk of arbitrary action, and it is those factors which need to be addressed.

<b>Finding 5</b>	The great majority of ALJs advised CCE that they had not been evaluated annually over the past several years, which damages ALJ morale and impedes improvement in ALJ performance. OAH management and ALJs recently negotiated standards for evaluation, and ALJs will be provisionally evaluated in October 2016.
<b>Recommendation</b>	Annually evaluate all ALJs, including the Chief ALJ, according to meaningful and measurable criteria.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies, and by amending the ALJ Collective Bargaining Agreement.

**Comment:** In recent years, OAH performance evaluations have not been given consistently.<sup>70</sup> Only 16% of ALJ survey respondents reported that they had been reviewed within the past three years, 68% were last reviewed over three years ago, and 16% of ALJs stated they had never been reviewed. Other OAH staff respondents similarly reported they were not evaluated consistently.<sup>71</sup> This is a violation of OAH’s enabling act, which requires the Chief ALJ to “develop and implement annual performance standards” and to annually submit to the DC Mayor and DC Council a report including “performance evaluations and case statistics for each [ALJ] from the filing of a case to disposition.”<sup>72</sup>

In addition, failure to conduct annual performance evaluations can have unfortunate repercussions. The lack of evaluations may damage ALJ morale, leave ALJs without any official feedback on the execution of their duties, and make it more difficult to encourage and develop improved performance.

Most Recent Evaluation - ALJ Respondents



<sup>70</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.

<sup>71</sup> Council for Court Excellence. (2016). Survey of OAH Staff. Unpublished raw data.

<sup>72</sup> D.C. Code § 2-1831.05(a)(12).

COST should annually evaluate the Chief ALJ. The Chief ALJ's evaluation should reflect input from litigants, OAH staff, and ALJs, either through surveys or interviews. The Chief ALJ's annual evaluation should be shared with the Mayor and DC Council.

Further, the ALJs should be evaluated annually. In the recently negotiated CBA, the Chief ALJ has committed to annually evaluating all ALJs based on the following performance metrics:

The Parties agree that the ALJs will be evaluated on four criteria: a) timeliness, b) judicial temperament, c) the accuracy and clarity of written orders, and d) legal analysis. The timeliness criteria shall constitute 52% of the evaluation and the remaining criteria shall constitute 16% each. The CALJ shall only review and rate the subjective criteria based on input from litigants, their representatives, members of the public, and other observers who have had the opportunity to consider these matters and who have brought their comments to the attention of OAH. An ALJ who satisfies the timeliness standards and has not been rated on the other three criteria, shall be rated "Meets Expectations." An ALJ who does not satisfy the timeliness standards and has not been rated on the other three criteria, shall be rated "Does Not Meet Expectations."<sup>73</sup>

Evaluating ALJs annually is in line with the practice of the majority of central hearing panels. The four criteria are similar to those assessed in other central hearing panels – other states review criteria including competence, productivity, demeanor in hearings, case management skills, diligence, fairness, and impartiality. Yet, OAH's new evaluation system still has several weaknesses.

First, the Chief ALJ does not have the capacity to conduct and prepare 33 in-depth evaluations a year along with his other responsibilities. OAH's ALJ evaluations would be more meaningful if its management structure were amended as described above in this report, where PALJs would be responsible for drafting evaluations, which would then be reviewed and approved by the Chief ALJ. Even if the PALJ's role as a quasi-manager remains unchanged, they should qualify as "observers" per the CBA who can provide input regarding ALJs' temperament, and their writing and analysis skills.

Second, under the CBA, the Chief ALJ is limited in the evidence he can consider when evaluating ALJs' demeanor, writing skills, and legal analysis. He cannot rely on his own observations, and instead can only rely on input from litigants, the public and "other observers." Input from outside stakeholders is not a sufficient basis for assessing these criteria. The evaluation system would be strengthened if PALJs observed and evaluated ALJs because PALJs are most familiar with individual ALJs' work. An alternative

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<sup>73</sup> Draft Collective Bargaining Working Conditions Agreement between Federation of Administrative Law Judges – D.C. and the District of Columbia and The Office of Administrative Hearings, p. 26 (February 16, 2016) (on file with CCE).

to PALJs evaluating ALJs would be for an evaluation team, comprised of experienced or retired judges to evaluate ALJs' performance in these areas.

Finally, timeliness carries too much weight in this evaluation system. Even if an ALJ's demeanor, writing skills, and legal analysis are not evaluated at all, the ALJ can still be found to Meet Expectations if they meet the timeliness requirement. Evaluating an ALJ's demeanor, writing skills, and legal analysis is an important part of the evaluation process, and OAH should ensure that these evaluations are conducted in a fair and meaningful way.

## D. IMPROVING AGENCY CULTURE

<b>Finding 6</b>	OAH morale has improved somewhat since NCSC's 2013 analysis of the agency, but remains a significant challenge that impairs OAH operations.
<b>Recommendation</b>	a. OAH should engage an expert in organizational culture development to help it develop a tailored approach to improving in this area.
	b. The Chief ALJ should continue the effort to establish policies and procedures that are fair to all, and to be transparent about proposed and adopted changes.
	c. OAH leadership should regularly consult with ALJs and staff regarding the agency's performance and seek their ideas for improving OAH.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** Improving OAH's culture is particularly important given its impact on the effectiveness of the office. Even if the agency implements the recommendations in the report, it will not reach full potential unless the staff work together and collectively implement a culture of improvement and reflection.

During the last two years there has been some improvement in morale among OAH's ALJs. 67% (18) of interviewed ALJs responded that OAH was on the right track, with 22% (6) responding it was not.<sup>74</sup> Several ALJs noted the progress made by the agency over the last year, and that morale had improved.

However, there is still much progress to be made in this area. 75% of interviewed ALJs specifically mentioned that their performance was negatively impacted by a lack of collegiality, teamwork, a positive environment, and/or good morale.<sup>75</sup>

**75% of interviewed ALJs specifically mentioned that their performance was negatively impacted by a lack of collegiality, teamwork, a positive environment, and/or good morale.**

As several ALJs noted in interviews, a significant contributor to low morale among ALJs was their negative experience with the prior Chief ALJ. Others mentioned lack of trust and personality differences among ALJs as being a contributing factor. Below are some recommendations

<sup>74</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>75</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.

regarding improving agency culture.

a. *Engage an organizational culture development expert.* OAH should engage an expert in organizational culture development to help it develop a tailored approach to improving in this area. OAH's culture has great influence on its effectiveness, and improving morale at the office should be carefully considered by someone with expertise in this area.

b. *The Chief ALJ should continue the effort to establish policies and procedures that are fair to all, and to be transparent about proposed and adopted changes.* Discontent among ALJs appears to be based in part on their perception that certain OAH policies and procedures are not fair – particularly those related to case distribution. Before the assignment system was implemented in early 2016, several ALJs perceived that they were treated unequally because of their race – for example, given less complex cases and less support from paralegals and other support staff.<sup>76</sup> Many judges expressed support of the new system, noting it was more equitable.

Implementation of Recommendation No. 5 above, providing for a fair evaluation of all ALJs, including the Chief ALJ, should likewise improve agency morale. Failure to provide meaningful, regular evaluations damages morale and inhibits improvement in critical skills. Therefore, it is imperative that regular, meaningful evaluations be conducted.

c. *OAH leadership should regularly consult with ALJs and staff regarding the agency's performance and seek their ideas for improving OAH.* The Chief ALJ should seek input of ALJs as OAH's policies and procedures are developed. Regular meetings among all ALJs may be a useful forum to discuss potential agency changes and to seek input from ALJs. The Chief ALJ should also regularly solicit written feedback from ALJs regarding their views on agency developments and his effectiveness in his position.

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<sup>76</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.



## E. COST and Advisory Committee

<b>Finding 7</b>	COST blurs the lines of authority within OAH, making it more difficult for the Chief ALJ to supervise the agency efficiently and implement improved procedures or practices. Nevertheless, COST is also highly valued by most ALJs because they believe it protects their judicial independence.
<b>Recommendation</b>	In the short term, amend COST's procedures to better support efficient and effective management of OAH by establishing timelines for COST to make decisions regarding its statutory functions. In the longer term, transfer to the Chief ALJ many of COST's responsibilities and duties, such as the final ALJ hiring decision (from a slate of candidates picked by COST).
<b>Implementation</b>	This may be implemented by amending or rescinding §2-§1831.01(5); §2-1831.06(a)-(d); and §2-1831.07(a)-(g) of the D.C. Code.

**Comment:** By statute, COST has “final authority to appoint, reappoint, discipline, and remove [ALJs].”<sup>77</sup> Over time, this system has not functioned as originally envisioned. COST is making high-level managerial decisions for OAH even though COST members are not closely familiar with the agency, its procedures, and employees.

No other central hearing panel across the country has a COST-like entity making employment decisions for ALJs. COST is inconsistent with the practices of the other jurisdictions and the recommendations of experts in the field. Also, a COST-like entity is not included in the model acts of either the ABA or the National Association of Law Judiciary. Chief ALJs from other jurisdictions who were interviewed by CCE believed that placing these responsibilities with the Chief ALJ is critical because it strengthens his or her authority and ability to supervise and manage the office.<sup>78</sup>

Nonetheless, District of Columbia ALJs value COST. Seventy-four percent of ALJs interviewed thought that COST should not be eliminated, and many noted that COST protects ALJ judicial independence by preventing the Chief ALJ from retaliating or showing favoritism based on an ALJ's substantive decisions.<sup>79</sup> (It should be noted that ALJs were not asked whether they would favor being part of a career civil service system as opposed to continuing under a COST type reappointment system.)

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<sup>77</sup> D.C. Code § 2-1831.06(b).

<sup>78</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with OAH ALJs from non-D.C. Jurisdictions*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>79</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

Interviews with COST members revealed that it may not function as the independent safeguard that many ALJs believe it to be. COST members noted that COST historically has always followed the recommendation of the Chief ALJ when deciding whether to appoint, reappoint, discipline, or remove an ALJ. Further, several COST members said that, when making these decisions, they do not independently investigate or seek more documentation than that which the Chief ALJ provides.

In light of the above, CCE recommends that one of two alternatives be adopted with respect to COST's powers to appoint, reappoint, discipline, and remove ALJs. The first alternative, which CCE does not recommend, but that is in line with the common practice of other central hearing panels, is to abolish COST, and transfer its functions to the Chief ALJ.

The second alternative, and the one favored by CCE, is to continue COST, but to enhance its function as a check on favoritism and bias in the hiring, evaluation, and removal of ALJs. To hire new ALJs, COST should select three to five candidates from submitted applications and present them to the Chief ALJ, who should be authorized to make the final hiring selection from the slate of candidates presented. Similarly, the Chief ALJ would be responsible for conducting periodic evaluations of ALJs (along with the PALJs) and initiating other employment actions, with COST reviewing any adverse employment action affecting an ALJ. And, as noted above, COST should have the principal role in evaluating the Chief ALJ annually, and should collect input regarding the agency's performance from all relevant stakeholders – agencies, litigants, and attorneys. To perform these roles, OAH should be authorized to hire an additional full-time staff member who would assist COST in preparing for and holding meetings, and in generating information independently of the Chief ALJ by soliciting feedback from stakeholders. COST's chair should supervise and evaluate this employee. To hold it accountable, COST should be required to publish an overview of its work in OAH's annual report submitted to the DC Council, which should include any suggestions it has for amending OAH's governing statute. COST members should also testify in front of the DC Council as part of OAH's annual performance review.

Transferring some authority from COST to the Chief ALJ would allow OAH to operate more efficiently and effectively. However, amending OAH's enabling statute to reflect this change (or alternatively to abolish COST) could take several years. Also over the next two years, virtually all of OAH's current ALJs will have concluded their terms and be eligible for reappointment. Given that COST will likely be operating in its current form for at least the next several years, CCE recommends that it establish timelines for making decisions regarding its statutory functions. It is detrimental to ALJ morale and office productivity when it takes many months to make decisions regarding discipline, termination, and reappointment. CCE also recommends that COST members should receive a stipend to incentivize them to fulfill their duties to the extent described in OAH's enabling statute.

<b>Finding 8</b>	OAH's Advisory Committee is no longer an effective support to the agency.
<b>Recommendation</b>	Dissolve OAH's Advisory Committee, and transfer its responsibilities to COST.
<b>Implementation</b>	This recommendation may be implemented by amending or rescinding §2-§1831.01(5); §2-1831.06(a)-(d); and §2-1831.07(a)-(g) of the D.C. Code.

**Comment:** Per its enabling statute, OAH has an Advisory Committee in place that is composed of eight people: (1) the Mayor or his or her designee; (2) the DC Council Chair or his or her designee; (3) the Attorney General or his or her designee; (4) two agency heads appointed by the Mayor (or their designee) from agencies with cases coming before OAH; and (5) two DC Bar members, appointed by the Mayor, who are not employed by the DC government; and a member of the public, appointed by the Mayor, who is not a DC Bar member. The Advisory Committee has the following duties:

- Advise the Chief ALJ in carrying out his/her duties;
- Identify issues of importance that should be addressed by OAH;
- Review issues and problems relating to administrative adjudication;
- Review and comment upon the policies and regulations proposed by the Chief ALJ; and
- Make recommendations for statutory and regulatory changes.<sup>80</sup>

The ABA Model Legislation includes a nine-member uncompensated Advisory Committee that has several duties, including advising the chief administrative law judge in carrying out the duties of the office, reviewing and commenting upon rules of procedure and other regulations and policies proposed by the chief administrative law judge, and reviewing whether agencies exempt from central hearing panel jurisdiction should continue to be exempt.<sup>81</sup> However, the ABA Model Legislation also does not envision an entity similar to COST. While the Advisory Committee may have been a useful vehicle in initially developing OAH, it now meets infrequently. It is difficult for the Chief ALJ and OAH management to coordinate with both COST and the Advisory Committee, and it would be more efficient if the functions of these two committees are re-aligned. In this case, OAH's Advisory Committee should be dissolved and its responsibilities transferred to COST.

<sup>80</sup> D.C. Code § 2-1831.17(e).

<sup>81</sup> National Association of Administrative Law Judiciary. (1993). *Moral Code of Judicial Conduct for State Administrative Law Judges*. Retrieved from [http://www.naalj.org/assets/documents/publications/naalj\\_%20model\\_code\\_of\\_judicial\\_conduct\\_for\\_state\\_aljs.pdf](http://www.naalj.org/assets/documents/publications/naalj_%20model_code_of_judicial_conduct_for_state_aljs.pdf)

## F. Case Assignment System

<b>Finding 9</b>	The process for assignment of cases in place at OAH through January 2016 sometimes resulted in uneven workloads for ALJs. In February 2016, a new system was implemented by which ALJs are divided into four groups that each hear cases from a different set of sending agencies.
<b>Recommendation</b>	OAH should analyze the effectiveness of its new case assignment system over the coming months, and the agency should regularly evaluate the ALJs' workload, particularly new jurisdictional assignments, to ensure cases are distributed fairly. To ensure the integrity of the case assignment system, procedures for PALJ case assignment should include random assignment within categories of cases.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** Until December 2015, OAH's case assignment system distributed the workload unevenly among ALJs, and some ALJs noted in CCE interviews that they had exceptionally heavy caseloads.<sup>82</sup> For example, some ALJs were assigned hundreds of DPW cases, while other ALJs received a handful of these high volume summary cases.<sup>83</sup> ALJs for the most part did not focus on a limited set of case types, and instead would receive many different types of cases of varying complexity. When asked in an October 2015 survey about the biggest operational challenge facing OAH, a third of ALJs cited the current case assignment system and uneven distribution of cases.<sup>84</sup>

The table on the following page details how many cases were assigned to each ALJ in FY14.

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<sup>82</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.

CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>83</sup> The Office of Administrative Hearings. (2014). *Biennial Report for Fiscal Years 2013-2014*. p. 11. Retrieved from [http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13\\_FY14%20Annual%20Report.pdf](http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13_FY14%20Annual%20Report.pdf)

<sup>84</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.

Number of Cases Assigned to each ALJ in 2014<sup>85</sup>

JUDGE	DCPS	DCRA	DDOE	DDOT	DDS	DHCD	DHCF	DHS	DMH	DOES	DOH	DPW	FEMS	MPD	OAG	OHR	OP	OSSE	OTR	SHEL	TAXI	TOTAL
Barber		76	3	6		5	52		1		13	237					5	1	6		8	413
Burnett	6	28							1		8	106							3			152
Cobbs	27					15				92		93										227
Crichlow	28	8	5	4			49	90				211		9	3					56	7	470
Davenport								142				249								41		432
Dean*			2		3		67	154	4		49	100								61		440
England	25					6				135		47										213
Figueroa			8	19	2		49	10			16	225		1	2						10	342
Goode										280	6	32		1								319
Goodie	19			9		5	1	62		12		122								31		261
Handy	25		4		4		44	85	1	42	11	198	4	4				3	3	57		485
Harmon										232		62										294
Harvey		74								125		71										270
Hines	27					11				117		89										244
Jenkins	24	40	5	1		5					14	233					4	2				328
Little								98		19		111								27		255
Mangan	34	18				18			1		1	105										177
Masulla		28		5			53					97					3	2	3			191
McClendon*			16	58								7,267	1	64							1	7407
McDonald*								46		39		108									1	194
Nash	23	2				18				187		59						2	7		1	299
Pierson*	40					23				7		51										121
Poindexter*		29									10	52										91
Rooney										304		55										359
Sharkey*	1	343										72				1	18	3	6		1	445
Teal	31					2				316		53										402
Tucker	34	19				12						92					1					158
Wellner*	10					1				309		57										377
Wilson-Taylor																						
	29			27		1						211										268
Yahner *										2	11	751									20	784
Total	383	665	43	129	9	122	315	687	8	2,218	139	11,216	5	79	5	1	31	13	28	273	49	16,418

<sup>85</sup> The Office of Administrative Hearings. (2014). *Biennial Report for Fiscal Years 2013-2014*. Retrieved from [http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13\\_FY14%20Annual%20Report.pdf](http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13_FY14%20Annual%20Report.pdf)  
Note: In the above chart, one asterisk denotes ALJs who also served in administrative functions, p. 10.

As described above on page 19, in February 2016 Chief Judge Adams implemented a new case assignment system dividing ALJs into four jurisdictional clusters. In interviews conducted by CCE, a majority of ALJs were cautiously optimistic about the new jurisdictional cluster system and its potential to provide a fairer allocation of workload, a mix of complex and more straightforward cases in each cluster, and ultimately more efficient and effective processing of cases.<sup>86</sup> Some noted that it made “good management sense.”<sup>87</sup> However, the majority of central hearing panels in other states do not use a rotation system, with instead ALJs acting as generalists and taking on all types of cases.

In an effort to achieve a balanced workload, DPW cases are now distributed evenly among ALJs, and cases are assigned within each rotation so that each ALJ has the same number of cases. Yet, the new assignment system does not specify how PALJs should assign individual cases to ALJs. This is problematic given that several ALJs expressed concern regarding this issue, with some noting that an ALJ’s race had played a role in the cases assigned to them.<sup>88</sup> At a minimum, to ensure the integrity of the case assignment system, procedures for PALJ case assignment should include random assignment within categories of cases. For example, in North Carolina, PALJs do not assign cases. Instead, judges are electronically assigned to cases based on their availability and caseload. This automated system ensures a fair and balanced division of cases among ALJs.<sup>89</sup>

Some ALJs suggested that OAH should consider longer rotations, at least for some jurisdictions, noting that certain case types (including rental housing, unemployment, and Medicaid cases) have a steeper learning curve and may benefit from greater specialization by the ALJs.<sup>90</sup> Several ALJs also noted that in any rotation system it is important to ensure that ALJs entering new areas are properly trained.<sup>91</sup> Other ALJs were in favor of a more generalist approach with relatively frequent rotations.<sup>92</sup> Several ALJs thought cases should be randomly assigned within the jurisdictions,<sup>93</sup> and one ALJ supported the Clerk’s office assigning cases instead of the PALJs.

We recommend that the Chief ALJ seeking regular feedback from ALJs as to how well the new case assignment system is working. Based on this feedback, the Chief ALJ should continually work to improve the case assignment system, and consider the above suggestions from ALJs.

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<sup>86</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>87</sup> *Ibid.*

<sup>88</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data. p. 4.

<sup>89</sup> Erica Litovitz and David Cox (Interviewers) & Chief Judge Julian Mann, III (Interviewee). (2015). *Interview with North Carolina’s Chief Administrative Law Judge*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

## G. Case Processing

<b>Finding 10</b>	Litigants are negatively affected by delays in the resolution of their cases in part due to the inefficiencies of OAH's case processing system.
<b>Recommendation</b>	a. Conduct an in-depth study of the current case processing system to identify areas in need of improvement, and redesign the case processing system based on these findings.
	b. Adhere to the case deadlines established in the CBA.
	c. Return to individually scheduled cases (end combined dockets/master calendar) for those types of cases in which wait times disproportionately burden litigants (e.g., health care finance).
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

***“[We] need some mechanism to keep cases from sitting too long without resolution.”***

***– ALJ Survey Response***

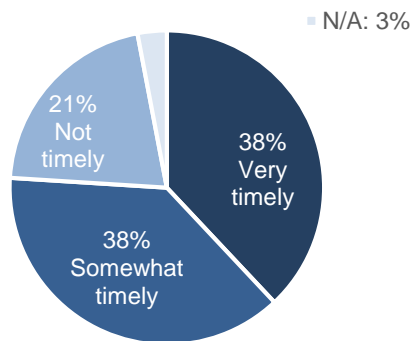
**Comment:** Delays in case processing and disposition have been a perennial challenge for OAH. Former Chief ALJ Walker initiated *Operation Clean Slate* in FY2010 to adjudicate a backlog of 18,000 open cases. By the end of 2012 only 400 of those cases remained open.<sup>94</sup> OAH is to be commended for reducing the case backlog so dramatically in this time period. While OAH's case processing has improved in the opinion of CCE survey respondents, the issue remains an ongoing challenge for the agency. OAH recently reported to the DC Council that

in FY 2016, 1,200 cases were older than 120 days and 104 cases were more than a year old.<sup>95</sup>

<sup>94</sup> Leftwich and Ludaway, LLC on behalf of the District of Columbia Executive Office of the Mayor and the Office of Administrative Hearings. (2013). *Confidential report of investigation: Redacted version*. Washington, D.C.: Leftwich & Ludaway, p. 28.

<sup>95</sup> Government of the District of Columbia Office of Administrative Hearings. (2016). *OAHY F16 Performance Oversight Hearing Response*. Washington, D.C., p. 18. Retrieved from [http://dccouncil.us/files/user\\_uploads/budget\\_responses/OAHFY16PerformanceOversightHearingResponses.pdf](http://dccouncil.us/files/user_uploads/budget_responses/OAHFY16PerformanceOversightHearingResponses.pdf).

### Timeliness of Decision - Agency Respondents



Litigants and agencies with cases before OAH, as well as attorneys who represent private litigants, are concerned about delays in case processing. A significant percentage of surveyed litigants (38%) believe it takes too long to receive a decision from OAH.<sup>96</sup> About two-thirds of counsel and agencies reported that OAH decisions generally are only “somewhat timely” or “not timely at all.”<sup>97</sup> A significant percentage of counsel (23%) and agencies (17%) reported that it can take more than a year to receive decisions in at least some of their cases.<sup>98</sup> Attorneys reported that these delays can put their clients’ health, housing, or businesses at risk, and agencies noted that delays can deter enforcement.<sup>99</sup> About a quarter of litigants, counsel, and agencies identified issues with

delays as one of the top three problems facing OAH.<sup>100</sup>

Twenty percent of ALJs who responded to the survey cited delays in case processing as the top operational challenge facing OAH.<sup>101</sup> Given these findings, we recommend the following steps to improve case processing.

#### Top concerns of attorneys litigating at OAH:

1. Technological accessibility
2. Decision timeliness
3. Case scheduling

a. *Conduct an in-depth study of the current case processing system to identify areas in need of improvement, and redesign the case processing system based on these findings.* As originally recommended in the 2013 report by the National Center for State Courts, OAH should establish a Case Flow Management Task Force, supported by an outside consultant, to analyze the current case processing system and design improvements to make this system more effective.

<sup>96</sup> Council for Court Excellence. (2016). Survey of Litigants. Unpublished raw data.

<sup>97</sup> Council for Court Excellence. (2016). Survey of Agencies & Counsel. Unpublished raw data.

Somewhat timely decisions were reported by 41 percent of counsel and 39 percent of agencies, while 23 percent of counsel and 21 percent of agencies believed that decisions generally are not timely at all.

<sup>98</sup> Council for Court Excellence. (2016). Survey of Agencies & Counsel. Unpublished raw data. Counsel also expressed concerns that they did not receive timely responses to motions, at times rendering the issues moot or requiring the parties to proceed through unnecessary hearings.

<sup>99</sup> Council for Court Excellence. (2016). Survey of Counsel. Unpublished raw data.

<sup>100</sup> Council for Court Excellence. (2016). Survey of Agencies, Counsel, and Litigants. Unpublished raw data.

<sup>101</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.



### Top concerns of agencies litigating at OAH:

1. Decision timeliness
2. Legal training and procedures
3. Decision clarity and quality

First, the Task Force should study the case processing system currently in place at OAH, focusing on processing times, bottlenecks, staffing, and coordination with other executive branch agencies. The Task Force should calculate how much time on average it takes each employee, including ALJs, to process a case from start to finish. The Task Force should then estimate how much it costs to process each case by

multiplying time spent by staff on a case by a percentage of their salaries.

Part of this analysis is already statutorily required, although in the past Chief ALJs have not met this requirement. OAH's enabling act requires it to annually publish a report that includes "case statistics for each Administrative Law Judge from filing of a case to disposition."<sup>102</sup>

After analyzing the case processing system currently in place, the Task Force should propose an updated case processing system and forward it to the Chief ALJ for approval and implementation. The case processing system should include methods for how a case should be filed and assigned to a judge, how hearings should be scheduled, and how and when correspondence regarding the case should be transmitted to litigants. All OAH staff must understand the case processing system and their role in it.

b. *Adhere to deadlines.* In CCE's Fall 2015 survey, nearly two-thirds of the responding ALJs agreed that it would be helpful for OAH to establish recommended case processing deadlines by case type.<sup>103</sup> Proposed deadlines were established during the CBA negotiations, including a new requirement that any case without a deadline in place would be required to be resolved within 120 days (with an allowance for ALJs to petition for a time extension in particularly lengthy or complicated cases).<sup>104</sup> Legal service providers urged that cases that address a "human need", such as housing, should be prioritized.<sup>105</sup> It is important that ALJs adhere to whatever case processing deadlines OAH adopts. OAH should also consider decreasing the 120-day requirement for time-sensitive cases, including rental housing appeals.

c. *Schedule cases individually.* CCE recommends that OAH return to scheduling cases on an individual basis, instead of using the shared docket system, where litigants are not scheduled individually, but instead appear before a judge in groups at the same time and then wait until they are called. Especially for litigants who are seniors, have disabilities, or are missing hourly wages, the shared docket system

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<sup>102</sup> D.C. Code § 2-1831.17(e).

<sup>103</sup> Council for Court Excellence. (2016). Survey of ALJs. Unpublished raw data.

<sup>104</sup> Draft Collective Bargaining Working Conditions Agreement, *supra*.

<sup>105</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

can be burdensome – individuals may have to wait up to an hour at OAH to be called from a shared docket of 10 or more people.<sup>106</sup>

<b>Finding 11</b>	OAH’s technology systems are not optimally supporting the agency in achieving its mission.
<b>Recommendation</b>	a. Set a deadline for implementing a uniform electronic process for filing cases, along with a deadline for the public to access OAH records on the OAH website.
	b. Make OAH case dockets and decisions publicly accessible on the OAH website.
	c. Identify case types that are most appropriate for hearings via telephone or video conference. Train ALJs in these types of cases in conducting telephone or video conference hearings.
	d. Update the OAH website so that fines may be paid by debit or credit card online.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** In its 2013 report, NCSC noted that OAH did not effectively use technology. NCSC recommended adding a second IT position to support the organization in moving toward a paper-free office with “technology-supported business process management.” However, as of June, 2016, records are still not organized electronically, only select staff can fully navigate the eCourt data system, few cases are submitted through e-filing, and the public has no electronic access to court dockets, calendars, pleadings, and decisions. In the CCE survey of agencies litigating at OAH, only 17% percent of respondents reported that they use eCourt.<sup>107</sup> 48% responding agencies still submit paper documents to OAH to initiate a new case, rather than electronic ones.<sup>108</sup> Also, private litigants have no access to eCourt. 68% of ALJs and 100% of OAH staff surveyed agreed that “OAH should move to having the official record be electronic rather than paper.”<sup>109</sup>

#### Top concerns of OAH litigants:

1. Decision timeliness
2. Technological accessibility
3. Case scheduling

<sup>106</sup> *Ibid.* See also, CCE (Interviewer) & attorneys (Interviewee). (2016). *Focus Group of Attorneys*. Focus group transcript. Unpublished transcripts on file with CCE., p. 4.

<sup>107</sup> Council for Court Excellence. (2016). Survey of Agencies Litigating at OAH. Unpublished raw data.

<sup>108</sup> Council for Court Excellence. (2016). Survey of Agencies Litigating at OAH. Unpublished raw data, Q. 21.

<sup>109</sup> Council for Court Excellence. (2016). Survey of ALJs and OAH staff. Unpublished raw data.

a. *Implement a uniform electronic system for filing cases.* Filing cases on OAH’s website will be more convenient for litigants and will also assist OAH in processing cases more efficiently. For example, see the online portal of Florida’s Division of Administrative Hearings, where all documents are required to be submitted.<sup>110</sup>

b. *Make OAH information publicly available on the OAH website.* Litigants and their counsel, as well as the public at large, should be able to search for the status of OAH cases and decisions by keywords, subject matter, and case number. Litigants and counsel should be able to log into the website and to review any documents submitted in support of their case, along with other key information such as the time and date of their next hearing. Implementing this recommendation will most likely lead to other efficiencies, including reducing the number of email and phone calls received in the clerk’s office. New Jersey’s Office of Administrative Law<sup>111</sup> and South Carolina’s Administrative Law Court<sup>112</sup> have well-designed public access portals on their websites that can be reviewed as OAH updates its own website.<sup>113</sup>

***“...efficient tracking and operations of OAH requires an electronic court system.”***

**— Agency Survey Response**

c. *Implement telephone and video conferencing where appropriate.* OAH should use the telephone and video conferencing system it has in place. Currently, telephone conferencing is utilized unevenly. Since it was implemented, the videoconferencing system was tested once in FY15, and used once in FY16. Use of telephone and video conferencing should be made a genuine and viable option for litigants where appropriate, especially for those litigants who live outside of the District of Columbia, or otherwise may find it difficult to travel to OAH.<sup>114</sup>

OAH may want to focus on increasing telephone hearings more than videoconference hearings. For low-income litigants, it may be difficult to access a computer to conduct a videoconference. Even if

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<sup>110</sup> Division of Administrative Hearings. (2011). *eALJ*. Retrieved from doah.state.fl.us: <https://www.doah.state.fl.us/eALJ/Login.aspx?ReturnUrl=%2feALJ%2f>

<sup>111</sup> New Jersey Office of Administrative Law (n.d.). *Homepage*. Retrieved from State of New Jersey Office of Administrative Law: <http://nj.gov/oal/>

<sup>112</sup> South Carolina Administrative Law Court. (n.d.). *Search Decisions of the Administrative Law Court*. Retrieved from scalc.net: <http://www.scalc.net/search.asp>

<sup>113</sup> D.C. OAH. (n.d.). *Office of Administrative Hearings*. Retrieved from dc.gov: <http://oah.dc.gov/>

<sup>114</sup> Council for Court Excellence. (2016). Survey of Litigants at OAH. Unpublished raw data. In a survey of litigants at OAH, 31% of respondents reported living outside of the District of Columbia, 14% lived in Maryland and 17% lived in Virginia.

videoconferences can be conducted using cell phone cameras, it would still increase costs for the litigants through potentially higher phone bills.

***“eCourt is not set up currently to capture all the pieces of history of a case. This makes it hard for OAH employees, attorneys, and non-attorneys to figure out what happened in a case.”***

**-ALJ Survey Response**

Holding hearings by telephone or videoconferencing no doubt will make OAH proceedings more convenient for litigants in some circumstances. However, accessibility for litigants needs to be balanced against some concerns raised by several ALJs during CCE interviews. In contested hearings, not having the litigants appear before the ALJ makes it more difficult to assess credibility, and sometimes the hearing can be harder to conduct – for example cross-examination is

more difficult.

OAH should determine which types of cases and hearings are especially appropriate for telephone or video conferencing and make the option available to litigants, along with training ALJs and OAH staff on how to properly use the existing equipment. Telephone hearings should not be required of litigants but available as an option if they both prefer it.

d. *Allow online payments.* Many fines can currently only be paid with money order or cash by visiting OAH in person, which results in inefficient use of staff time to process payments. Technology for charging such fines to a debit or credit card is easily available and used in other DC Government websites.<sup>115</sup>

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<sup>115</sup> See District of Columbia Department of Motor Vehicles. (n.d.). Online Ticket Payment. Retrieved from DC.gov: [https://prodpci.etimspayments.com/pbw/include/dc\\_parking/input.jsp?ticketType=P](https://prodpci.etimspayments.com/pbw/include/dc_parking/input.jsp?ticketType=P); and District of Columbia Public Library. (n.d.). dclibrary.org.

## H. Improving Litigant Experience

<b>Finding 12</b>	OAH has made efforts to enable pro se litigants to participate effectively and meaningfully in the OAH hearing process. However, this issue remains a continuing challenge.
<b>Recommendation</b>	<p>a. Partner with the DC legal community to increase the number of legal services and volunteer attorneys available to litigants who are unable to afford an attorney.</p> <p>b. Implement judicial “engaged neutrality” through more active ALJ participation in developing the facts and legal theories of pro se litigants to ensure a more complete and fair record in pro se cases.</p>
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** In CCE’s interviews, several ALJs commented on the challenge of ensuring pro se litigants understand the law and OAH procedure.<sup>116</sup> OAH should track the number of pro se litigants and develop a process to identify the types of cases with large numbers of pro se parties that could most benefit from representation by counsel.

*a. Collaborate with legal community to increase legal representation.* Programs need to be developed to better connect unrepresented litigants to the DC legal community. It is important for the entire community to collaborate to address this access to justice issue. A robust and prompt referral system to an increased number of legal service providers and volunteer attorneys would reduce the number of self-represented litigants. By focusing attention on case types in order of priority, incremental progress may be made.

*b. Implement engaged neutrality.* A more difficult issue is the extent to which ALJs should develop the record by intervening and asking self-represented litigants questions designed to evoke their claims and defenses. CCE recommends that ALJs should receive further training in asking non-leading questions to elicit all relevant facts while refocusing rather than interrupting pro se litigants when they narrate those facts.<sup>117</sup> ALJs would adopt a “more active, inquisitorial-based role” without

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<sup>116</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>117</sup> Baldacci, A. (2005). The role of the ALJ in assisting the pro se litigant. *J. Nat’l Ass’n L. Jud.* 27(447), 478-495.

compromising judicial impartiality in order to “assure that self-represented litigants in the courtroom have the opportunity to meaningfully present their case.”<sup>118</sup>

OAH should create written guidelines setting forth best practices for conducting administrative hearings that involve self-represented parties.<sup>119</sup> Depending on the nature and complexity of the case, these practices may include framing the substantive issue to be decided, explaining the hearing process, explaining the burden of proof and consequences of failing to satisfy it and what types of evidence are admissible or inadmissible.<sup>120</sup>

<b>Finding 13</b>	OAH has improved its language access system over the past year, and should continue to focus on strengthening it.
<b>Recommendation</b>	Improve the process for scheduling interpreters.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** Over the past year, OAH has hired a full-time language access coordinator, as well as a new staff member in the Resource Center who can speak several languages. These steps will expand OAH’s ability to serve all litigants, and allow the agency to improve its interpreter services.

*Improve the process for scheduling interpreters.* Attorneys who participated in CCE’s April 2016 focus group noted that sometimes hearings must be rescheduled because interpreters are not available, and that interpreters sometimes appear for cancelled hearings because they were not advised of the cancellation.<sup>121</sup> Improving the scheduling process for interpreters should result in increased efficiency.

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<sup>118</sup> *Ibid.*, p. 492, 460.

<sup>119</sup> See Zorza, R. (2009). Self-Represented Litigants and the Access to Justice Revolution in the State Courts: Cross-Pollinating Perspectives Toward a Dialogue for Innovation in the Courts and the Administrative System. *Journal of the National Association of Administrative Law Judiciary*, 29(1), 82-84. Retrieved from <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1043&context=naalj>

<sup>120</sup> Baldacci, A. (2005). The role of the ALJ in assisting the pro se litigant. *J. Nat’l Ass’n L. Jud.* 27(447), 459-60.

<sup>121</sup> CCE (Interviewer) & attorneys (Interviewee). (2016). *Focus Group of Attorneys*. Focus group transcript. Unpublished transcripts on file with CCE.

<b>Finding 14</b>	OAH does not provide clear guidance on how to submit feedback to the court, and litigants, agencies, and counsel are confused about the process.
<b>Recommendation</b>	Update OAH's website to allow litigants to submit online their feedback regarding the agency's performance and customer service, and advise litigants that OAH also solicits feedback from litigants through in-person events. OAH should also review and enhance its internal process for analyzing and responding to litigant feedback, so that it can implement changes that will result in a more effective and efficient agency.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** Customer service feedback forms are available in OAH's lobby, and historically the agency has received positive feedback through these forms.<sup>122</sup> However, OAH has not published guidance on its website regarding its customer feedback system, and as of June 2016 OAH's online customer survey was not functioning.<sup>123</sup> This lack of input leads to a lack of clarity among OAH's litigants as to how to submit a complaint, compliment, or other feedback. As illustrated in the chart below, government agencies, counsel, and litigants responding to CCE's survey regarding OAH had varying responses of who they would contact with a complaint about OAH.

Who would you contact if you have a complaint about OAH? <i>Respondents could select more than one response</i>						
	PALJ	CALJ	COST	Advisory Committee	Submit comment card	Mayor's office
Agency Officials n=17 <sup>124</sup>	65%	47%	12%	0%	0%	0%
Private Attorneys n=33	39%	61%	0%	21%	0%	0%
Complainants n=10	0%	0%	0%	30%	50%	40%

<sup>122</sup> "In FY13, OAH achieved a 94.75% satisfaction rating on the customer service feedback form, and in FY14, OAH achieved a 92.05% satisfaction rating. Customers overwhelmingly comment on the helpfulness and professionalism of the OAH Resource Center and Reception staff." The Office of Administrative Hearings. (2014). Biennial Report for Fiscal Years 2013-14. Washington, D.C. Retrieved from [http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13\\_FY14%20Annual%20Report.pdf](http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/OAH%20FY13_FY14%20Annual%20Report.pdf)

<sup>123</sup> *About OAH*. Retrieved from DC.gov: <http://oah.dc.gov/page/about-oah>

<sup>124</sup> The number following the notation "n=" reflects the number of respondents.

We recommend the following procedures, as informed by the experience of central hearing panels in other jurisdictions:

First, OAH should facilitate litigant customer feedback through several different channels, and should also memorialize its approach to customer feedback in a written policy. Colorado Senior ALJ Edwin L. Felter Jr. recommends that this policy should require all complaints to be entered into an agency-wide log, and should make clear to agency employees which types of complaints they can resolve and which they should raise with agency management.<sup>125</sup>

Second, OAH litigant feedback forms should also be available on the agency's website. For example, Louisiana's Division of Administrative Law has a customer survey posted on its website.<sup>126</sup>

Third, OAH should solicit in-person feedback from its customers. For example, Colorado's Division of Administrative hearings "conducts 'town meetings' with key agency personnel and representatives of the public [to] give these sectors a forum to air, and...resolve[] their concerns about the delivery of adjudication services."<sup>127</sup>

<b>Finding 15</b>	OAH has improved its approach to mediation over the past year, but mediation is still underutilized.
<b>Recommendation</b>	a. Consistently notify parties of the option to mediate their case.
	b. Build a roster of volunteer mediators available to appear on short notice to assist in resolving cases.
	c. Ensure that ALJs who opt to mediate are credited for this contribution.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

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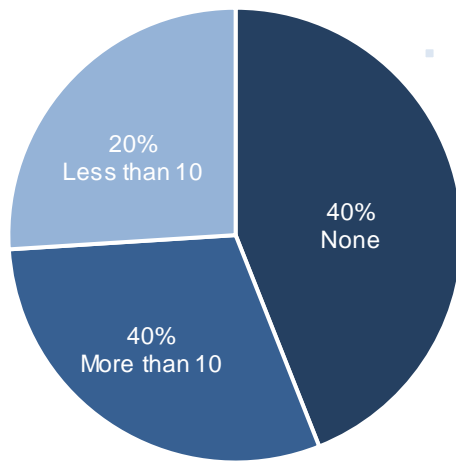
<sup>125</sup> Felter, E.L., Jr. (1995). Administrative adjudication total quality management: The only way to reduce costs and delays without sacrificing due process. *Journal of the National Association of Administrative Law Judiciary*, 15(1), p. 23.

<sup>126</sup> Customer Satisfaction Survey. (2016, May 5). Retrieved from the Louisiana Division of Administrative Law: [http://www.adminlaw.state.la.us/customer\\_survey.htm](http://www.adminlaw.state.la.us/customer_survey.htm)

<sup>127</sup> Felter, E.L., Jr. (1995). Administrative adjudication total quality management: The only way to reduce costs and delays without sacrificing due process. *Journal of the National Association of Administrative Law Judiciary*, 15(1), p. 16.



Number of Cases Mediated in Past Year  
- ALJ Respondents



**Comment:** Although all judges and staff attorneys were certified as mediators in 2007, mediation was infrequently used and not required.<sup>128</sup> More recently, each ALJ has been trained to conduct mediations. Further, over the past year, four Attorney Advisors have been trained in mediation techniques appropriate for administrative adjudications. These Attorney Advisors currently conduct mediations under the supervision of an ALJ, and will

conduct mediations on their own starting on October 1, 2016, the beginning of OAH's new fiscal year. ALJs can request through the General Counsel that these Attorney Advisors be scheduled to mediate their cases. OAH has prioritized taxi consumer cases for mediation, so that it can incrementally build up its use of this alternative dispute technique.

Mediation is increasingly important, especially for pro se litigants. ALJs noted that it enables these litigants to air issues that may not be relevant in a judicial setting, thereby promoting settlement.<sup>129</sup> More fundamentally, settlement of cases through mediation reduces ALJ caseloads, thereby allowing OAH to make more efficient use of scarce resources.

a. *Consistently notify parties about the option to mediate their case.* OAH should notify parties in hearing notices and at their initial hearings of the opportunity for voluntary mediation.<sup>130</sup> The notice should briefly describe the purpose and process of mediation. Parties wishing to engage in mediation should be given a deadline to schedule a mediation date before the date of the case's initial hearing. OAH staff should inquire whether litigants wish to mediate pre-hearing in an effort to resolve the dispute, and should provide them a location to talk if they wish to do so.

<sup>128</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>129</sup> *Ibid.*

<sup>130</sup> See Cummins, H.W. (2010). From conflict to conflict resolution: Establishing ALJ driven mediation programs in workers' compensation cases. *Journal of the National Association of Administrative Law Judges*, 30(2), p. 409, note 2. (recommending voluntary rather than mandatory mediation in worker's compensation cases).

b. *Build a roster of volunteer mediators.* OAH should partner with the DC Bar and other organizations that have trained mediators or which operate mediation services. The DC Superior Court’s Multi-Door Dispute Resolution Division and the Center for Dispute Resolution have each trained large numbers of local mediators and have ongoing relationships with many of them.<sup>131</sup> Volunteer mediators could be scheduled for individual mediations or could be designated as “on call” on certain days – available on short notice to conduct mediations.

c. *Give ALJs credit for mediating.* How a mediating ALJ manages his or her workload will depend on the categories of cases the ALJ has been assigned as a trial judge and the number and expected length of mediations to which the ALJ is assigned. Currently, ALJs do not receive any formal credit for mediating cases, thereby providing a disincentive for ALJs to undertake this extra work.<sup>132</sup> CCE recommends that mediating ALJs should receive appropriate recognition and credit for the number of cases they mediate and the amount of time they devote to mediation. ALJs noted that a more formal structure may be effective in achieving this goal.

<b>Finding 16</b>	There are gaps in the guidance and materials available through OAH’s Resource Center.
<b>Recommendation</b>	a. Continue to make the Resource Center more user-friendly and improve available material.
	b. Continue to develop the roster of volunteers and legal service providers at the Resource Center throughout the week to help litigants seeking assistance.
	c. Update the Resource Center website to make it easier to navigate.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** In CCE interviews, many ALJs noted that the Resource Center was helpful to litigants, and the results of CCE’s 2015 survey suggest that this perception is generally correct: litigants who are aware and use the Resource Center generally find it helpful. Though just over half of litigant respondents reported using the OAH Resource Center, of that group, 30% said it was “very helpful,” 48% said it was “somewhat helpful.” Moreover, 63% of litigant respondents that conducted research at the Resource Center found the information provided to be very helpful.<sup>133</sup> However, there is room for

<sup>131</sup> *Ibid.*, note 2, p. 416 (noting that the Center for Dispute Resolution, University of Maryland Law School, had provided training for OAH ALJs in 2006).

<sup>132</sup> CCE (Interviewer) & ALJ Participant (Interviewee). (2016). *Interviews with D.C. OAH ALJs*. Interview transcript. Unpublished transcripts on file with CCE.

<sup>133</sup> Council for Court Excellence. (2016). Survey of Litigants. Unpublished raw data.

improvement in the utilization of this resource, with many litigants reporting they did not find it helpful or did not know it existed.

Additionally, attorneys participating in the April 2016 focus group noted that visiting OAH or the Resource Center can be intimidating for a first-time litigant.<sup>134</sup> In light of the above, we recommend the following to increase the use and value of the Resource Center:

a. *Continue to make the Resource Center more user-friendly.* OAH and the Resource Center should continually focus on creating a user-friendly, welcoming environment, particularly given that most OAH litigants are pro se, and many are low-income. Attorneys participating in a focus group noted that front-facing staff have a very rigid system in place as to where litigants must sit while waiting to use the Resource Center.<sup>135</sup> However, the procedures for using the Resource Center are not explained or posted, and staff should make litigants aware of how the system works before enforcing it. One way to make the system more user-friendly is by simplifying the Resource Center's waiting system to a "first come, first serve" number system, which should be easier for litigants to navigate. Also, to aid litigants in accessing information, the literature in the Resource Center should be reorganized and labeled so that each topic is clearly identifiable. Staff should identify gaps in the Resource Center's written guidance, and partner with volunteer attorneys, law school clinics, and other legal service providers to develop these materials.

b. *Increase attorneys available for consultation.* Since about half of the litigants surveyed by CCE did not use the OAH Resource Center, and of those that did, a significant percentage (22%) did not find it helpful, additional volunteer law students and attorneys at the Resource Center could significantly improve the user experience for many litigants, particularly those proceeding pro se. There are currently some volunteer attorneys available for a portion of the week, but optimally they should be available there during all hours that OAH is open.

c. *Update the Resource Center website.* The OAH Resource Center website should be updated to make it easier for litigants to access information online. OAH rules and laws posted on the website are difficult to read and understand for litigants with no legal background – these rules should be translated into plain English so that they are accessible to a layperson.<sup>136</sup> The online OAH Resource website includes links to two online videos – one about what to expect at a hearing, and another about how to prepare for a hearing. However, as of June 2016 neither of those links was functioning. OAH

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<sup>134</sup> See notes from CCE (Interviewer) & attorneys (Interviewee). (2016). *Focus Group of Attorneys*. Focus group transcript. Unpublished transcripts on file with CCE.

<sup>135</sup> *Ibid.*

<sup>136</sup> *About OAH*. Retrieved from DC.gov: <http://oah.dc.gov/page/about-oah>

should partner with area law schools, volunteer attorneys, and/or legal service providers to develop more videos to help litigants navigate OAH and the hearing process. A Frequently Asked Questions page, like the one included on the California Office of Administrative Hearings website, would also be a useful resource on the OAH Resource Center website.<sup>137</sup> Oregon, Tennessee, and California have clear online resource guides that can be used as models when developing the OAH Resource Center's online presence.

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<sup>137</sup> CA OAH (2016). *Representing Yourself Before the Office of Administrative Hearings*. See <http://www.dgs.ca.gov/oah/GeneralJurisdiction/RepresentingYourself.aspx>

## I. Appeals

<b>Finding 17</b>	OAH and the DC Court of Appeals (“DCCA”) do not have written procedures in place regarding transmission of DCCA appellate opinions, and OAH does not consistently track data related to appeals.
<b>Recommendation</b>	a. The Clerk of Court for OAH should work with the DCCA to establish a written procedure for ensuring that OAH receives copies of all DCCA decisions, including both published and unpublished decisions.
	b. OAH attorneys should prepare and circulate monthly memos with summaries of relevant DCCA published opinions and unpublished Memoranda of Judgment (“MOJs”) to all ALJs and attorney-advisors.
	c. OAH should track OAH cases on appeal, particularly whether they are affirmed or overturned, by jurisdiction and ALJ, and report this data in its annual report.
<b>Implementation</b>	This recommendation may be implemented by OAH amending its internal policies.

**Comment:** While a relatively low number of OAH decisions are appealed – only about 120 each year - the DC Court of Appeals’ (“DCCA”) holdings regarding OAH decisions are quite significant to OAH as they can influence the case law in its different areas of adjudication. OAH staff estimates that of the approximately 120 cases appealed each year, most are DPW, unemployment, and taxi cases. Very few cases (approximately one per month) are remanded by DCCA to OAH, and they are mostly unemployment insurance cases. As described below, there are several shortcomings in OAH’s collection and dissemination to ALJs of information regarding appeals.

a. *Establish a process for transmitting decisions from DCCA to OAH.* There is currently no regular system where DCCA notifies OAH that an appeal has been decided, or for the DCCA to send opinions to OAH. The OAH General Counsel and Clerk of Court need to establish a consistent schedule for collecting DCCA decisions, and designate a specific staff member to be responsible for collecting DCCA decisions and confirming that all decisions have been received by OAH. This staff member would be responsible for working with DCCA to establish specific procedures for getting all decisions as quickly as possible.

b. *Circulate a monthly memorandum about relevant DCCA decisions.* There is currently no regular procedure for the dissemination to the ALJs of DCCA opinions. The ALJs need to be aware of these binding decisions on a timely basis so that the ALJs can conform their rulings. To assure that OAH ALJs and staff attorneys are current with the development of case law related to the issues OAH adjudicates, memoranda summarizing published DCCA opinions and unpublished MOJs should be circulated among

staff on a monthly basis. While MOJs do not carry the same force of law, they may provide important guidance to OAH regarding how the DCCA is thinking about a particular area of the law.

c. *Track all appealed cases.* OAH lacks documented procedures for collecting appeals data, which is currently not consistently tracked. As a result, OAH has varying amounts of information regarding only a subset of OAH appealed cases. Further, this data mostly relates to OAH internal processing of appeals (i.e., noting when records are requested by an appellate body and delivered) and is collected on only an ad hoc basis. OAH collects virtually no data on the outcome of appeals. OAH should establish a more effective written procedure for collecting and tracking appeals data, including but not limited to information related to: number of cases being appealed, appeal outcomes, remand outcomes, jurisdiction, ALJ, pro se litigants.

# APPENDIX A

# OAH Project Committees

## **Working Group #1: Litigant Input**

- **Representative to Steering Committee: Beth Mellen Harrison, Legal Aid DC**
- Alexander W. Sierck, Cameron LLP
- Tina Nelson, Legal Counsel for the Elderly – AARP
- Mary Ann Parker, Legal Counsel for the Elderly – AARP
- James M. Sullivan, Hollingsworth LLP
- Brian A. Hill, Miller & Chevalier

## **Working Group #2: OAH Input**

- **Representative to Steering Committee: Samuel F. Harahan**
- Barbara K. Kagan, Steptoe & Johnson
- Chris Miller, State Farm Insurance, Inc.
- Dwight D. Murray, Stein Mitchell
- Margaret L. Hines

## **Working Group #3: Legislative Review**

- **Representative to Steering Committee: Michael London, Paul Hastings**
- Thomas B. Martin, Goldblatt Martin Pozen LLP
- Jennifer Lav, University Legal Services
- Brian Wilmot, Paul Hastings
- Rochanda Hiligh-Thomas, Advocates for Justice and Education, Inc.

## **Working Group #4: Jurisdictional Comparison**

- **Representative to Steering Committee: James P. Tuite, Akin Gump**
- David H. Cox, Jackson & Campbell
- Jeffrey Gutman, Public Justice Advocacy Clinic – The George Washington University School of Law
- Erica Litovitz, Jackson & Campbell
- John L. Longstreth, K & L Gates

## **Working Group #5: OAH Operations**

- **Representative to Steering Committee: Fritz Mulhauser, DC Open Government Coalition**
- Beth Harrison, Legal Aid DC
- Mary Ann Parker, Legal Counsel for the Elderly – AARP
- Richard Hoffman
- Tami Weerasingha-Cote, Sidley Austin LLP
- Peter Anthony, Sidley Austin LLP



### **Steering Committee**

- OAH Project Co-Chairs
  - Michael Hays, Cooley LLP
  - Charles A. Patrizia, Paul Hastings LLP
- Ex-Officio Representative
  - James H. Hulme, CCE Court Improvements Committee Chair

### **CCE Staff**

- June B. Kress, Executive Director
- Emily Tatro, Policy Analyst
- Sarah Medway, Policy Analyst
- Ben Moser, Research and Policy Analyst

# **APPENDIX B**

**MODEL ACT CREATING A  
STATE CENTRAL HEARING AGENCY  
(OFFICE OF ADMINISTRATIVE HEARINGS)  
AN ACT concerning**

**Office of Administrative Hearings**

**FOR the purpose of establishing an Office of Administrative Hearings as an independent agency in the Executive Branch in order to provide a source of independent administrative law judges to preside in contested cases; providing for the appointment of a chief administrative law judge; establishing the chief administrative law judge's qualifications, compensation, powers, and duties . . . [other purposes]**

**Section 1. BE IT ENACTED BY THE [NAME OF LEGISLATIVE BODY], That the Laws of [STATE] read as follows:**

**Article - State Government**

**Subtitle [    ]. Office of Administrative Hearings**

**Part I. Office of Administrative Hearings**

**Section 1-1    Scope of Subtitle.**

**(a) Exceptions - - This subtitle does not apply to:**

- (1)    an agency of the Legislative Branch of the State government;**
- (2)    an agency of the Judicial Branch of the State government; or**
- (3)    the following agencies of the Executive Branch of the State government:**

- (i) the Governor;
- (ii) [exception]; and
- (iii) [exception]

(b) except as provided in paragraphs (1), (2), and (3) of subsection (a) of this section, this subtitle shall apply to each agency that employs or engages one or more hearing officers or administrative law judges, either full or part-time, to adjudicate contested cases unless the agency has been exempted by the Governor under subsection (c) of this section.

(c) until one year from the effective date of this statute the Governor temporarily may exempt an agency from this subtitle.

#### **Section 1-2 Establishment and Appointment of Administrative Law Judges.**

(a) The Office of Administrative Hearings is created as an independent agency in the Executive Branch of State Government for the purpose of separating the adjudicatory function from the investigatory, prosecutory and policy-making functions of agencies in the Executive Branch. Administrative law judges shall be selected and appointed [by the Governor upon screening and recommendation of a judicial nominating commission] [through competitive examination in the classified service of state employment] [by the chief administrative law judge].

(b) The hearing officers and administrative law judges of the agencies to which this subtitle applies shall become employees of the Office of Administrative Hearings. [The grandfathered hearing officers and administrative law judges are exempt from the qualifications contained in Section 1-6(a)(2).]

#### **Section 1-3 Responsibility.**

(a) Except as provided herein, the Office shall administer the resolution of all contested cases [unless the agency head or

governing body of any agency hears the case without delegation or assignment to a hearing officer or administrative law judge].

(b) Upon referral by an agency, one or more administrative law judges shall administer the resolution of the matters referred.

#### **Section 1-4 Chief Administrative Law Judge - In general.**

(a) The Office is headed by a chief administrative law judge [appointed by the Governor with advice and consent of the Senate for a term of ( ) years], [through competitive examination in the classified service of state employment] who may be removed only for good cause following notice, and an opportunity for an adjudicative hearing and shall continue in office until a successor is appointed.

(b) The chief administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;
- (2) devote full time to the duties of the Office and shall not engage in the practice of law;
- (3) be eligible for reappointment;
- (4) receive the salary provided in the state budget [receive a salary in the same amount as that provided by law for a { } court judge];
- (5) be licensed to practice law in the State and admitted to practice for a minimum of five years;
- (6) have the powers and duties specified in this subtitle; and
- (7) be subject to the code of conduct for administrative law judges.

(c) The chief administrative law judge may employ a staff in accordance with the State budget.

**Section 1-5 Chief Administrative Law Judge - Powers and Duties.**

- (a) The chief administrative law judge shall:
- (1) supervise the Office of Administrative Hearings;
  - (2) [appoint and remove administrative law judges in accordance with this subtitle (the other option is for the Governor to appoint through a judicial nominating commission as provided by Section 1-2)];
  - (3) assign administrative law judges in any case referred to the Office;
  - (4) protect and ensure the decisional independence of each administrative law judge;
  - (5) establish and implement standards and specialized training programs and provide materials for administrative law judges;
  - (6) provide and coordinate continuing education programs and services for administrative law judges, including research, technical assistance, technical and professional publications, compile and disseminate information, and advise of changes in the law relative to their duties; and
  - (7) adopt rules to implement this subtitle through rulemaking proceedings in accordance with the Administrative Procedure Act or other law.
  - (8) adopt a code of conduct for administrative law judges;
  - (9) monitor the quality of state administrative hearings through the provision of training, observation, feedback and, when necessary, discipline of A.L.J.s who do not meet appropriate standards of conduct and competence, subject to the provisions of Section 1-6(a)(4) below;

- (10) submit an annual report on the activities of the Office to the Governor and to the [Legislature] and;
- (11) [cooperate and assist the State Advisory Council in the discharge of its duties pursuant to Sections 1-12 through 1-14 of this Act.]

(b) The chief administrative law judge may:

- (1) serve as an administrative law judge in a contested case;
- (2) [establish qualifications for the selection of administrative law judges];
- (3) furnish administrative law judges on a contractual basis to governmental entities other than those required to use their services;
- (4) accept and expend funds, grants, bequests and services, which are related to the purpose of the Office, from any public or private source;
- (5) enter into agreements and contracts with any public or private agencies or educational institutions; and
- (6) [create specialized subject matter divisions within the Office.]

**Section 1-6 Administrative Law Judges.**

(a) An administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;
- (2) be admitted to practice law [in the State] [for a minimum of five years];
- (3) be subject to the requirements and protections of [e.g., classified service of State employment and the State ethics code];

- (4) be removed, suspended, demoted, or subject to disciplinary or adverse actions including any action that might later influence a reduction in force, only for good cause, after notice and an opportunity to be heard in an Administrative Procedure Act or other statutory-type hearing and a finding of good cause by an impartial hearing officer;
- (5) be subject to a reduction in force only in accordance with established, objective civil service or merit system procedures;
- (6) receive compensation provided in the State budget [receive a salary in the same amount as that provided by law for a ( ) court judge];
- (7) not perform duties inconsistent with the duties and responsibilities of an administrative law judge;
- (8) devote full time to the duties of the position and [shall not engage in the practice of law unless serving as a part-time administrative law judge];
- (9) be subject to administrative supervision by the chief administrative law judge; and
- (10) be subject to the code of conduct for administrative law judges.

(b) An administrative law judge shall not be responsible to or subject to the supervision, direction or direct or indirect influence of an officer, employee, or agent engaged in the performance of investigatory, prosecutory, or advisory functions for an agency.

#### **Section 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.**

(a) All agencies of State government shall cooperate with the chief administrative law judge in the discharge of the duties of the Office.



(b) The Office shall be subject to audit by [the legislative audit office under the same rules and rotation by which other State agencies are audited].

(c) Except in arbitration or similar proceedings as provided by law or in this subtitle or in regulations adopted under this subtitle, an agency may not select or reject a particular administrative law judge for a particular proceeding.

#### **Section 1-8 Designation of Administrative Law Judges.**

If the Office is unable to assign an administrative law judge in response to an agency referral, the chief administrative law judge shall designate in writing an individual to serve as an administrative law judge in a particular proceeding before the agency [if the individual meets the qualifications for an administrative law judge established by the Office and is subject to the Code of Judicial Conduct].

#### **Section 1-9 Powers of Administrative Law Judges.**

An administrative law judge shall have the power to: (1) issue subpoenas; (2) administer oaths; (3) control the course of the proceedings; (4) engage in or encourage the use of alternative dispute resolution methodologies as appropriate; (5) order a party, a party's attorney, or other authorized representative, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay; and (6) perform other necessary and appropriate acts in the performance of duties.

#### **Section 1-10 Decision-making Authority.**

(a) The assigned administrative law judge shall render the final decision of the agency not subject to agency review, in all hearings for the following agencies:

- (1) [Name of Agency];
- (2) [Name of Agency]; and
- (3) [Name of Agency].

(b) Except as provided by law, the administrative law judge shall issue a proposed [initial, recommended] decision unless the agency authorizes the issuance of a final decision, as provided in the Administrative Procedure Act.

(c) Where a matter is referred to the Office by an agency, the referring agency shall take no further adjudicatory action with respect to the proceeding, except as a party litigant, as long as the Office has jurisdiction over the proceeding. [Nothing in this subsection shall be construed to prevent an appropriate interlocutory review by the agency nor an appropriate termination or modification of the proceeding by the agency.]

#### **Section 1-11 Proposed Decisions and Orders.**

In reviewing a proposed (initial, recommended) decision or order received from the administrative law judge, the agency head or governing body of the agency shall not modify, reverse or remand the proposed decision of the administrative law judge except for specified reasons in accordance with law. Judicial review of agency decisions shall occur in accordance with the Administrative Procedure Act [or other specific statutory provision].

### **OPTIONAL**

#### **Section 1-12 State Advisory Council on Administrative Hearings - Establishment; Composition; Appointment.**

- (a) There is a State advisory council on administrative hearings.
- (b) The council consists of nine members.

(c) Of the nine council members:

- (1) One shall be a member of the Senate of [ ];
- (2) One shall be a member of the House of [ ];
- (3) One shall be the Attorney General or the Attorney General's designee;
- (4) Two shall be directors, secretaries, chief executives, or their designees from agencies involved in the adjudication of contested cases before the Office;
- (5) Two shall be from the general public; and
- (6) Two shall represent the state bar association.

(d) The Governor shall appoint the members specified in subsection (c)(4) through (6) of this section.

**Section 1-13 Terms; Compensation; Chair.**

- (a)
- (1) The term of a member of the council is four years.
  - (2) The terms of the members are staggered as required by the terms provided for members of the council on [DATE].
  - (3) A member is eligible to serve more than one term.
  - (4) A member shall not be disqualified by virtue of being engaged in the practice of law or appearing regularly as an attorney before the Office.

(b) A member of the council may not receive compensation, but is entitled to reimbursement for expenses under the standard state travel regulations.

(c) The council shall designate a chair from among its members.

**Section 1-14 Powers and Duties; Meetings.****(a) The council shall:**

- (1) advise the chief administrative law judge in carrying out the duties of the Office;
- (2) identify issues of importance to administrative law judges that should be addressed by the chief administrative law judge;
- (3) review issues and procedures relating to administrative hearings and the administrative process;
- (4) review and comment upon rules of procedure and other regulations and policies proposed by the chief administrative law judge;
- (5) review and comment on the annual report submitted by the chief administrative law judge; and
- (6) conduct a study of agencies which employ hearing officers to adjudicate contested case hearings which have been exempted by the Governor pursuant to Section 1-1(3) and recommend to the Governor those agencies for which such exemption should be continued by [DATE].

**(b)** The council shall meet at a regular time and place to be determined by the council.

**Section 1-15 Effective Date.**

That Sections 1-1 through 1-14 shall take effect on [DATE].

# **APPENDIX C**

## Centralized Administrative Hearings Offices by State

Alaska	Office of Administrative Hearings <a href="http://doa.alaska.gov/oah/">http://doa.alaska.gov/oah/</a>
Arizona	Office of Administrative Hearings <a href="http://www.azoah.com/">http://www.azoah.com/</a>
California	Office of Administrative Hearings <a href="http://www.dgs.ca.gov/oah/Home.aspx">http://www.dgs.ca.gov/oah/Home.aspx</a>
Colorado	Office of Administrative Courts <a href="https://www.colorado.gov/oac/">https://www.colorado.gov/oac/</a>
District of Columbia	Office of Administrative Hearings <a href="http://oah.dc.gov/">http://oah.dc.gov/</a>
Florida	Division of Administrative Hearings <a href="http://www.doah.state.fl.us">http://www.doah.state.fl.us</a>
Georgia	Office of State Administrative Hearings <a href="http://www.osah.ga.gov">http://www.osah.ga.gov</a>
Hawaii	Office of Administrative Hearings Department of Commerce and Consumer Affairs <a href="http://cca.hawaii.gov/oah/">http://cca.hawaii.gov/oah/</a>
Illinois	Administrative Hearings Department <a href="http://www.cyberdriveillinois.com/departments/administrative_hearings/home.html">http://www.cyberdriveillinois.com/departments/administrative_hearings/home.html</a>
Iowa	Division of Administrative Hearings Department of Inspections and Appeals <a href="http://www.dia.iowa.gov/ahd">http://www.dia.iowa.gov/ahd</a>
Kansas	Office of Administrative Hearings <a href="http://www.oah.ks.gov/">http://www.oah.ks.gov/</a>
Kentucky	Division of Administrative Hearings <a href="http://www.ag.ky.gov/civil/civil-enviro/admin/Pages/default.aspx/">http://www.ag.ky.gov/civil/civil-enviro/admin/Pages/default.aspx/</a>
Louisiana	Division of Administrative Law <a href="http://www.adminlaw.state.la.us">http://www.adminlaw.state.la.us</a>
Maine	Administrative Hearings <a href="http://www.oah.state.md.us/">http://www.oah.state.md.us/</a>
Maryland	Office of Administrative Hearings <a href="http://www.oah.state.md.us/">http://www.oah.state.md.us/</a>
Massachusetts	Division of Administrative Law Appeals <a href="http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/dala/">http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/dala/</a>
Michigan	Administrative Hearing System Department of Licensing and Regulatory Affairs <a href="http://www.michigan.gov/lara/0,4601,7-154-10576---00.html">http://www.michigan.gov/lara/0,4601,7-154-10576---00.html</a>

Minnesota	Office of Administrative Hearings <a href="http://mn.gov/oah/">http://mn.gov/oah/</a>
Missouri	Administrative Hearing Commission <a href="http://www.ahc.mo.gov/">http://www.ahc.mo.gov/</a>
Montana	Office of Administrative Hearings <a href="http://dli.mt.gov/hearings">http://dli.mt.gov/hearings</a>
Nevada	Department of Administration: Hearings Division <a href="http://hearings.nv.gov/">http://hearings.nv.gov/</a>
New Jersey	Office of Administrative Law: Hearings <a href="http://www.state.nj.us/oal/">http://www.state.nj.us/oal/</a>
North Carolina	Office of Administrative Hearings <a href="http://www.ncoah.com/">http://www.ncoah.com/</a>
North Dakota	Office of Administrative Hearings <a href="http://www.nd.gov/oah/">http://www.nd.gov/oah/</a>
Oregon	Office of Administrative Hearings <a href="http://www.oregon.gov/oah/">http://www.oregon.gov/oah/</a>
South Carolina	Administrative Law Court <a href="http://www.scalc.net/">http://www.scalc.net/</a>
South Dakota	Bureau of Administration: Office of Hearing Examiners <a href="http://boa.sd.gov/divisions/hearing/">http://boa.sd.gov/divisions/hearing/</a>
Tennessee	Administrative Procedures Division Secretary of State <a href="http://sos.tn.gov/apd/">http://sos.tn.gov/apd/</a>
Texas	State Office of Administrative Hearings <a href="http://www.soah.state.tx.us/">http://www.soah.state.tx.us/</a>
Washington	Office of Administrative Hearings <a href="http://www.oah.wa.gov/">http://www.oah.wa.gov/</a>
Wisconsin	Division of Hearings and Appeals <a href="http://doa.state.wi.us/divisions/Hearings-and-Appeals">http://doa.state.wi.us/divisions/Hearings-and-Appeals</a>
Wyoming	Office of Administrative Hearings <a href="http://oah.wyo.gov/">http://oah.wyo.gov/</a>

# APPENDIX D



### OAH Subject Matter Jurisdiction and Relevant Standards

Agency	Source of Jurisdiction	Expiration	Funding Structure	Max. Payment	Max. # of Cases	Actual Cases in FY '14
Child and Family Services Agency (CFSA)	Statute	N/A	N/A	N/A	N/A	0
District of Columbia Public Schools (DCPS) – Student Discipline and Residency Verification	MOU	Auto-renewal, with option to terminate w/30 days written notice.	\$125/case, made annually for FY via intra-District advance.	\$125,000 in 2012—unless DCPS consents in writing to more. (Unclear if there has been change since 2012. MOU states: “For each Fiscal Year thereafter, . . . DCPS shall provide to OAH an . . . advance as agreed to by the Parties in writing . . .”	No max: “anticipates approximately 90”	284 (unknown what kind of DCPS case— student discipline, residency, or vendor)
District of Columbia Public Schools (DCPS) – Vendor Disputes	MOU	Auto-renewal, with option to terminate w/30 days written notice.	\$625 per case (based on \$125 per case for up to 5 hours per case). If case goes to hearing, additional charge of \$125 per hour above base rate).	Yearly advance of \$15625, with return of excess.	“Up to 25 or more on as case by case basis.”	284 (unknown what kind of DCPS case— student discipline, residency, or vendor)
Dept. of Consumer and Regulatory Affairs (DCRA)	Statute	N/A	N/A	N/A	N/A	808
Dept. of Disability Services (DDS)	Statute	N/A	N/A	N/A	N/A	14
Dept. of Employment Services (DOES)	Statute	N/A	N/A	N/A	N/A	2545
Dept. of Health (DOH)	Est. Act	N/A	None	None	None	386
Dept. of Health	MOU	9/30/2011	Based on hourly	N/A	N/A	498

Care Finance (DHCF)			rate/cost + indirect cost rate			
Dept. of Housing & Community Development (DHCD)	MOU	9/30/2016	\$4,000/case	\$20,000	No max (5 case estimate)	171
Dept. of Human Serv. (DHS)	Est. Act	N/A	None	None	None	798
Dept. of Ins., Bank., and Sec. (DIBS)	MOU	9/30/2015	\$4,000/case	\$24,000	6	1
Dept. of Behavioral Health (DBH)	MOU	None	No payment	none	none	8
Dept. of Public Works (DPW)	Statute	N/A	None	None	None	15,314
Dept. of the Environment (DOE)	MOU	9/30/15 (automatic renewal)	\$300/case – \$45,000 paid at the beginning of each term, with amounts not used returned	\$45,000	(150)	79
Dept. of Transportation (DOT)	Statute	N/A	No payment	None	None	178
Fire & Emergency Medical Services (FEMS)	Regulation	N/A	No payment	None	None	9
Health Benefit Exchange (HBX)	MOU	9/30/15	\$125/case Payments made quarterly	\$50,000	(400)	162
Metropolitan Police Dept. (MPD)	Est. Act					179
Office of Human Rights (OHR)	N/A	N/A				0
Office of Planning (OP)	Est. Act					44
Office of Tax and Revenue (OTR)	Est. Act					34
OAG-Child Support	MOU	-09/30/2008 -After that automaticall	- (\$369/case.) -Payments made yearly.	\$9,220	25	6

		y renewed each year unless one of the parties objects.	The remaining amount should be returned to OAG after each year.			
Office of the State Superintendent of Education (OSSE)	MOU	09/30/2010 After that automatically renewed each year unless one of the parties objects.	-( \$417/case) -Payments are made at the beginning of each year. The remaining amount should be returned to OSSE after each year.	Can't charge OSSE for child care providers and facilities cases -\$10,437 for 25 "other" cases	All the child care providers and facilities cases +25 "other" cases	12
Shelter	Est. Act.					285
Taxicab Commission	Est. Act					2,500 (recorded in eTims database)
DCRA B21-261 - Sale of Synthetic Drugs Amendment Act of 2015(note that the Temporary Amendment Act, identical in substance, has been enacted)	Est. Act	Legislation Pending. Introduced June 18, 2015 Currently under review. Emergency legislation expires 120 days from July 10, 2015	To be determined by fiscal impact statement.	unknown	unknown	n/a
DHS B21-352 - Advancing Year Round Access to Shelter Policy and Prevention of Homelessness Amendment Act of 2015	Est. Act	Legislation pending. Introduced September 18, 2015. Hearing held on October 13, 2015 Currently under review	To be determined by fiscal impact statement.	Unknown	Unknown	n/a
DOES	MOU	None	Unknown	Possibly 130k-140k	Unknown	n/a

B21-671/A20-426 - The Wage Theft Prevention Act of 2014	pending	Law went into effect on Feb. 26, 2015	however, anticipate budget increase of salary of at least one ALJ (approximately 130k-140k)			
OHR & Possibly DOES B21-0415 Universal Paid Leave Act of 2015	Would require amendment to Establishment Act	Legislation pending. Introduced October 6, 2015 Currently under review	To be determined by fiscal impact statement.	Unknown	Unknown	n/a
DDOT B21-0313 The Transportation Reorganization Amendment Act of 2015	MOU pending	Legislation pending Introduced July 14, 2015 Hearing scheduled for Dec. 4, 2015 Currently under review	To be determined by fiscal impact statement.	Unknown	Unknown	n/a

# APPENDIX E

**Proposed Amendment to Establishment Act**

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Office of Administrative Hearings Establishment Act of 2001.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Office of Administrative Hearings Amendment Act of 2016”.

Sec. 102. The Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*), is amended as follows:

(a) Sec. 6 (D.C. Official Code § 2-1831.03) is amended as follows:

(1) A new subsection (b-10) is added to read as follows:

“(b-10) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), (b-8), and (b-9), this chapter shall apply to all adjudicated cases involving:

(1) Student suspension and expulsion appeals pursuant to Title 38 of the DC Official Code, 5 DCMR B25 § 2507.9, and applicable DC Municipal Regulations.

(2) Student residency appeals pursuant to Title 38 of the DC Official Code and applicable DC Municipal Regulations.

(3) Payment disputes between DCPS and nonpublic special education schools (as defined in 38-2561.01) pursuant to DC Official Code § 38-2561.04.

(4) Medicaid eligibility appeals pursuant to DC Official Code § 7-771.07(1) and (7);

(5) Department of Housing and Community Development cases brought under DC Official Code § 42-1903.16 § 42-1904.06(c), § 42-1904.14, and § 42-1904.15, and cases arising under Chapter 34 of Title 42;

(6) Department of Insurance, Securities and Banking cases brought under DC Official Code § 31-1131.12 and cases arising under Chapter 7 of Title 26 and Chapter 56 of Title 31.

(7) Department of Behavioral Health cases involving the imposition of civil fines pursuant to 16 DCMR § 3501 and § 3502, licensing and certification cases pursuant to DC Official Code § 7-1131.14(2), (4), and (5), and other infractions pursuant to Chapters 11 and 11A of Title 7;

(8) Department of the Environment cases brought under Title 8;

(9) Health Benefit Exchange Authority appeals pursuant to DC Official Code § 31-3171.04(a)(13);

(10) Office of Human Rights cases pursuant to DC Official Code § 2-1935; and

(11) Child support brought by the Office of the Attorney General pursuant to DC Official Code § 46-225.01 and § 46-226.03.”

(2) Subsection (c) is amended to read as follows:

“(c) Those agencies, boards, and commissions that are not included in subsections (a), (b), (b-1), (b-2), or (b-3) of this section may:

(1) Refer individual cases to the Office, with the approval of the Chief Administrative Law Judge; or

(2) Elect to be covered by this chapter, subject to the requirements that:

(A) An election must be approved by the Chief Administrative Law Judge and the Mayor,

(B) The electing party and the Office shall be subject to such terms as the Mayor may set, provided that such terms are irrevocable during the length of the coverage, and

(C) The coverage shall last for no more than two years, and shall not be subject to renewal.

(D) After the conclusion of said two-year period, at the option of and upon subsequent amendment of this statute by the Council, any such coverage shall be statutorily authorized.”

(b) Sec. 8 (D.C. Official Code § 2-1831.05) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) A new subsection (13) is added to read as follows:

“(13) Appoint Administrative Law Judges in accordance with §2-1831.11.”

(B) A new subsection (14) is added to read as follows:

“(14) To the extent he or she deems appropriate, discipline and remove Administrative Law Judges, **subject to the review by the Commission in accordance with §2-1831.10, and**”

(C) A new subsection (15) is added to read as follows:

“(15) Reappoint Administrative Law Judges in accordance with §2-1831.10.”

**(2) Subsection (b)(9) is amended to read as follows:**

“Collect and retain revenues paid in connection with any adjudicated case, which revenues, in the Chief Administrative Law Judge’s sole discretion, may be deposited into either (A) unrestricted funds of the Office or (B) the unrestricted fund balance of the General Fund of the District of Columbia;”

(c) Sec. 9 (D.C. Official Code § 2-1831.06) is amended to read as follows:

(1) Subsection (a) is amended to read as follows:

“There is established the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings. The Commission's mission shall include the recruitment and retention of a well-qualified, efficient, and effective corps of Administrative Law Judges in the Office.”

(2) Subsection (b) is amended as follows:

“The Commission shall:

(1) Advise the Chief Administrative Law Judge in carrying out his or her duties;



(2) Identify issues of importance to Administrative Law Judges and agencies that should be addressed by the Office;

(3) Review issues and problems relating to administrative adjudication;

(4) Review and comment upon the policies and regulations proposed by the Chief Administrative Law Judge; and

(5) Make recommendations for statutory and regulatory changes that are consistent with advancing the purposes of this chapter.

(6) Assist in the appointment of Administrative Law Judges in accordance with §2.1831.11; and

(7) Review, and approve, reject, or modify significant adverse personnel decisions or removal of Administrative Law Judges by the Chief Administrative Law Judge.”

(3) Subsection (c) is repealed.

(d) Sec. 10 (D.C. Official Code § 2-1831.07) is amended as follows:

(1) Subsection (e) is amended to read as follows:

“Members of the Commission shall receive a stipend in the amount of [to be inserted by the Council] and reimbursement of reasonable expenses incurred in connection with their service on the Commission in accordance with applicable law.”

(e) Sec. 9 (D.C. Official Code § 2-1831.08) is amended as follows:

(1) Subsection (b) is amended to read as follows:

“An Administrative Law Judge shall be appointed to the Excepted Service as a statutory officeholder pursuant to § 1 609.08, upon the affirmative vote of a majority of the voting members of the Commission by the Chief Administrative Law Judge after a selection process in accordance with rules promulgated pursuant to § 2 1831.11(a), and any rules promulgated pursuant thereto.”

(2) Subsection (c)(1) is amended to read as follows:

“The initial term of office of an Administrative Law Judge appointed prior to December 6, 2005, shall be 2 years, at the end of which the Administrative Law Judge shall be eligible for reappointment by the Chief Administrative Law Judge to a term of 10 years. After serving an initial reappointment term of 10 years, the Administrative Law Judge shall be eligible for reappointment by the Chief Administrative Law Judge to a new term of 6 years.”

(3) Subsection (c)(2) is amended to read as follows:

“The initial term of office of an Administrative Law Judge hired after December 5, 2005, shall be 2 years, at the end of which the Administrative Law Judge shall be eligible for reappointment by the Chief Administrative Law Judge to a term of 6 years.”

(4) Subsection (c)(3) is amended to read as follows:

“The initial term of office for an Administrative Law Judge appointed after [the date this amendment is enacted], shall be [10 or 15 years], at the end of which the Administrative Law Judge shall be eligible for reappointment by the Chief Administrative Law Judge to a term of [e.g., 5 or 6 years].”

(5) Subsection (c)(4) is amended to read as follows:

“At the expiration of any 6-year term of office, an Administrative Law Judge shall be eligible for reappointment by the Chief Administrative Law Judge to a new term of 6 years.”

(6) A new subsection (c)(5) is added to read as follows:

“Non-reappointment of an Administrative Law Judge shall not be deemed to be discipline or removal of the Administrative Law Judge.”

(f) Sec. 13 (D.C. Official Code § 2-1831.10) is amended to read as follows:

“Sec. 13 Reappointment and discipline of Administrative Law Judges.

**(a)** At least 6 months before the expiration of any term, an Administrative Law Judge seeking reappointment to a new term shall file a statement with the Chief Administrative Law Judge specifying that he or she requests reappointment to a new term. For any Administrative Law Judge who timely files such a statement, the Chief Administrative Law Judge shall prepare a record of the Administrative Law Judge’s

performance with regard to that judge's efficiency, efficacy, and quality of performance over the period of his or her appointment. At a minimum, the record shall contain at least one year of decisions authored by the Administrative Law Judge and data on how the Administrative Law Judge has met applicable objective performance standards.

**(b)** The voting members of the Commission shall vote Chief Administrative Law Judge shall approve or reject a request for reappointment prior to the expiration of the requesting Administrative Law Judge's term, but no earlier than 60 days prior to such expiration. A reappointment approved by the Commission Chief Administrative Law Judge is effective upon expiration of the previous appointment.

**(c)** During a term of office, an Administrative Law Judge shall be subject to discipline and removal, only for cause, with a right to notice and a hearing before the Commission pursuant to this act and rules issued pursuant to § 2-1831.11(a) and (b) by the Chief Administrative Law Judge, subject to review by the Commission of any of the following actions taken by the Chief Administrative Law Judge: (i) the removal of an Administrative Law Judge, (ii) the rejection of an Administrative Law Judge's request for reappointment, and (iii) the imposition of a disciplinary action on an Administrative Law Judge that results in a suspension that exceeds 11 days. significant adverse personnel decision or removal by the Chief Administrative Law Judge, provided that a rejection of an Administrative Law Judge's request for reappointment shall not be deemed to constitute a significant adverse personnel decision or removal by the Chief Administrative Law Judge. An Administrative Law Judge's unexcused failure to meet annual performance standards in any 2 years within a 3-year period shall be among the grounds constituting cause for removal."

(g) Sec. 14 (D.C. Official Code § 2-1831.11) is amended to read as follows:

"Sec. 14 Rules governing the appointment of Administrative Law Judges.

*(a) Process for Appointment of Administrative Law Judges.* The selection process for the appointment of an Administrative Law Judge shall be as follows

(1) The Chief Administrative Law Judge and the Commission shall publish a public notice of a vacancy in the Office of Administrative Hearings. Such public notice shall be advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or administrative law judges in the government. Such notice shall also include:

(A) A description of the Administrative Law Judge eligibility requirements as set forth in §2-1831.08(d);

(B) A description of the required application materials as set forth in subsection (d) below; and

(C) The date and time by which applications materials must be submitted to the Commission, and the method by which materials must be submitted;

(2) Upon the close of the application period, the Commission shall review all submitted applications, and submit to the Chief Administrative Law Judge three (3) candidates for an Administrative Law Judge. The Commission must approve the candidates by a majority vote.

(3) Upon the Commission's submission of the three candidates to the Chief Administrative Law Judge, the Chief Administrative Law Judge shall appoint the Administrative Law Judge from the list of three (3) candidates.

(b) *Initial Rulemaking Authority* In accordance with § 2-505, the Mayor shall promulgate initial rules governing the appointment, reappointment, discipline, removal, and qualifications of Administrative Law Judges within 180 days of March 6, 2002. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) *Rulemaking Authority* Upon convening, or at anytime thereafter, the Commission may amend or repeal, in whole or in part, or may add to, the initial rules promulgated under the authority of subsection (a) of this section, in accordance with § 2-505. Any proposed rule changes shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. The Chief Administrative Law Judge may at any time request that the Commission review and consider proposed rule changes authorized by this subsection. The Commission also, on its own initiative, or upon recommendation of the Chief Administrative Law Judge, may promulgate emergency rules, valid for not more than 120 days, in the limited circumstances permitted by § 2-505(c).

(d) *Rulemaking Requirements*. Any rules promulgated pursuant to subsections (b) and (c) of this section shall be designed to competitively recruit and retain highly qualified, effective, and efficient Administrative Law Judges from the public and private sectors. Any such rules:

- (1) Shall require that Administrative Law Judges meet the qualifications established in § 2-1831.08(d)(1) through (5);
- (2) May prescribe the passing of a qualifying examination as a minimum, but not exclusive, requirement for appointment;
- (3) May prescribe additional qualifications for the purpose of ensuring the appointment of well-qualified, efficient, and effective Administrative Law Judges;
- (4) Shall require that all Administrative Law Judge positions (except positions subject to § 2-1831.08(e)) be timely advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or administrative law judges in the government. The requirements of this subsection (d)(4) shall not apply to any vacancy that occurs upon the expiration of an Administrative Law Judge's term where the Chief Administrative Law Judge has approved a request for reappointment in accordance with § 2-1831.10.

(e) Rules promulgated pursuant to subsections (b) and (c) of this section shall govern the process of selecting Administrative Law Judges."

(h) Sec. 15 (D.C. Official Code § 2-1831.12) is amended as follows:

(1) A new subsection (g) is added to read as follows:

"There shall be an Administrator of the Commission, selected by the Chairman of the Commission. The Administrator shall be a [full or part-time OAH employee] responsible for the administration of the Commission, subject to the supervision of the Chairman of the Commission. The Administrator shall perform such duties as the Chairman of the Commission directs, such as assisting COST in preparing for and holding meetings and in generating information independently of the Chief Administrative Law Judge by soliciting feedback from stakeholders. The Chair of the Commission shall supervise and evaluate the Administrator."

(i) Sec. 20 (D.C. Official Code § 2-1831.17) is repealed.

# **APPENDIX F**

## Proposed Amendment to Establishment Act (Red Line Version)

### **§2-1831.01. Definitions.**

For the purposes of this chapter, the term:

(1) "Adjudicated case" means a contested case or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term "adjudicated case" includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

(2) "Administrative Law Judge," unless otherwise specified, means an Administrative Law Judge of the Office of Administrative Hearings.

(3) "Administrative Procedure Act" means the District of Columbia Administrative Procedure Act ([§ 2-501](#) et seq.).

(4) "Agency" shall have the meaning provided that term in [§ 2-502\(3\)](#).

(5) "Commission" means the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings.

(6) "Contested case" shall have the meaning provided that term in [§ 2-502\(8\)](#).

(7) "Fiscal year" means the period from October 1 through September 30 of the following year.

(8) "Hearing officer" means an individual, other than an agency director, whose permanent duties as an employee of the District of Columbia on the day prior to this chapter becoming applicable to his or her agency consisted in whole or in substantial part of regularly adjudicating administrative matters as required by law. The term "hearing officer" includes, without limitation, any person with a position bearing the title "Hearing Officer," "Hearing Examiner," "Attorney Examiner," "Administrative Law Judge," "Administrative Judge," or "Adjudication Specialist". Notwithstanding anything to the contrary in this paragraph, the term "hearing officer" does not include any employee holding an intermittent service, a temporary appointment of less than one year, or a term appointment of less than one year. The Mayor or the Commission may issue rules in accordance with [§ 2-1831.11](#) to adjust the period of employee tenure required to qualify as a hearing officer, except that such rules may not require a period longer than one year prior to this act becoming applicable to an employee's agency.

(9) "Independent agency" shall have the meaning provided that term in [§ 2-502\(5\)](#).

(10) "Interlocutory order" means any decision of an Administrative Law Judge in a matter other than an order as defined in this chapter.

(11) "Office" means the Office of Administrative Hearings as established by this chapter, and, unless otherwise stated, includes its Chief Administrative Law Judge and its Administrative Law Judges.

(12) "Order" shall have the meaning provided that term in [§ 2-502\(11\)](#).

(13) "Party" shall have the meaning provided that term in [§ 2-502\(10\)](#).

(14) "Person" includes individuals, partnerships, corporations, associations, and public or private organizations and entities of any character other than the Mayor, the Council, the courts, or an agency.

### **§2-1831.03. Jurisdiction of the Office and agency authority to review cases.**

(a) As of the day that begins the first pay period after 180 days following Council confirmation of the individual who will serve as the first Chief Administrative Law Judge of the Office, this chapter shall apply to adjudicated cases under the jurisdiction of the following agencies:

(1) Department of Health;

(2) Department of Human Services;

(3) Board of Appeals and Review;

(4) Repealed;

(5) All adjudicated cases in which a hearing is required to be held pursuant to [§ 7-2108\(a\)](#) and 7-2108(b), including licensing and enforcement matters arising under rules issued by the Child and Family Services Agency;

(6) All adjudicated cases required to be heard pursuant to §§ [8-802](#) and [8-902](#);

(7) Repealed;

(8) Department of Banking and Financial Institutions;

(9) All adjudications involving infractions of rules established pursuant to subchapter II of Chapter 9A of Title 50 and Chapter 15 of Title 18 of the District of Columbia Municipal Regulations;

(10) All adjudications involving infractions of subchapter II-A of Chapter 10 of Title 6 [[§§6-1041.01](#) through [6-1041.09](#)] and the rules promulgated under its authority; and

(11) Adjudications involving infractions of rules established pursuant to subchapter IV of Chapter 9A of title 50 [[§ 50-921.71](#) et seq.].

(b) In addition to those agencies listed in subsection (a) of this section, as of October 1, 2004, this chapter shall apply to adjudicated cases under the jurisdiction of the following agencies:

(1) Department of Employment Services, other than the private workers' compensation function;



**(2)** Department of Consumer and Regulatory Affairs, except for those cases under the jurisdiction of the Rent Administrator and those cases under the jurisdiction of the Real Property Tax Appeals Commission for the District of Columbia;

**(3)** Taxicab Commission;

**(4)** All adjudicated cases of the Office of Tax and Revenue arising from tax protests filed pursuant to [§ 47-4312](#); and

**(5)** All adjudicated enforcement cases brought by the Historic Preservation Office within the Office of Planning.

**(b-1) (1)** In addition to those agencies listed in subsections (a) and (b) of this section, as of October 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator in the Department of Consumer Regulatory Affairs.

**(2)** In preparation for the transfer of jurisdiction of the Rent Administrator's adjudicatory function to the Office, the Rent Administrator of the Department of Consumer and Regulatory Affairs shall submit a plan to the Mayor and Council by December 31, 2004 describing how the Rent Administrator's office will function after its adjudicatory responsibilities are transferred to the Office, the legislative changes needed to prepare the Rent Administrator for its new role, and the resources needed to maintain its non-adjudicatory functions. The plan shall be developed in consultation with the Office.

**(b-2)** In addition to those adjudicated cases listed in subsections (a), (b), and (b-1) of this section, as of January 1, 2009, this chapter shall apply to all adjudicated cases involving:

**(1)** The imposition of a civil fine for violation of firearm registrant requirements pursuant to [§ 7-2502.09\(b\)](#) [(b) repealed];

**(2)** The denial or revocation of a firearm registration certificate pursuant to [§ 7-2502.10](#);

**(3)** The denial or revocation of a dealer license pursuant to [§ 7-2504.06](#); and

**(4)** The imposition of a civil fine for violations of Chapter 10 of Title 7 [[§ 7-1001](#) et seq.], pursuant to [§ 7-1007](#).

**(b-3)** In addition to those cases described in subsections (a), (b), (b-1), and (b-2) of this section, as of May 5, 2010, this chapter shall apply to adjudicated cases required to be heard pursuant to [§ 42-3141.06](#).

**(b-4)** In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), and (b-3) of this section, this chapter shall apply to all adjudicated cases involving the impoundment of a vehicle pursuant to [§ 22-2724\(a\)](#).

**(b-5)** This chapter shall apply to appeals pursuant to §§ 47-857.09a and 47-859.04a.

**(b-6)** In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), and (b-5) of this section, this chapter shall apply to all adjudicated cases involving the failure to report known or reasonably believed child sexual abuse pursuant to subchapter II-A of Chapter 30 of Title 22 [§ 22-3020.51 et seq.].

**(b-7)** In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), and (b-6) of this section, this chapter shall apply to all adjudications involving the imposition of a civil fine for violations of § 48-1201.

**(b-8)** In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), and (b-7), this chapter shall apply to adjudicated cases under the jurisdiction of the District Department of Transportation.

**(b-9)** In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), and (b-8), this chapter shall apply to adjudicated cases involving a civil fine or penalty imposed by the Higher Education Licensure Commission under § 38-1312(a-1).

**(b-10)** In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), (b-8), and (b-9), this chapter shall apply to all adjudicated cases involving:

- (1) Student suspension and expulsion appeals pursuant to Title 38 of the DC Official Code, 5 DCMR B25 § 2507.9, and applicable DC Municipal Regulations.
- (2) Student residency appeals pursuant to Title 38 of the DC Official Code and applicable DC Municipal Regulations.
- (3) Payment disputes between DCPS and nonpublic special education schools (as defined in 38-2561.01) pursuant to DC Official Code § 38-2561.04.
- (4) Medicaid eligibility appeals pursuant to DC Official Code § 7-771.07(1) and (7);
- (5) Department of Housing and Community Development cases brought under DC Official Code § 42-1903.16 § 42-1904.06(c), § 42-1904.14, and § 42-1904.15, and cases arising under Chapter 34 of Title 42;
- (6) Department of Insurance, Securities and Banking cases brought under DC Official Code § 31-1131.12 and cases arising under Chapter 7 of Title 26 and Chapter 56 of Title 31.

- (7) Department of Behavioral Health cases involving the imposition of civil fines pursuant to 16 DCMR § 3501 and § 3502, licensing and certification cases pursuant to DC Official Code § 7-1131.14(2), (4), and (5), and other infractions pursuant to Chapters 11 and 11A of Title 7;
- (8) Department of the Environment cases brought under Title 8;
- (9) Health Benefit Exchange Authority appeals pursuant to DC Official Code § 31-3171.04(a)(13);
- (10) Office of Human Rights cases pursuant to DC Official Code § 2-1935; and
- (11) Child support brought by the Office of the Attorney General pursuant to DC Official Code § 46-225.01 and § 46-226.03.”

**(c)** Those agencies, boards, and commissions that are not included in subsections (a), (b), (b-1), (b-2), or (b-3) of this section may:

**(1)** Refer individual cases to the Office, with the approval of the Chief Administrative Law Judge; or

~~**(2)** Elect to be covered by this chapter, subject to the approval of the Chief Administrative Law Judge and the Mayor, and upon such terms as the Mayor may set.~~

**(2)** Elect to be covered by this chapter, subject to the requirements that:

- (A) An election must be approved by the Chief Administrative Law Judge and the Mayor;
- (B) The electing party and the Office shall be subject to such terms as the Mayor may set, provided that such terms are irrevocable during the length of the coverage;
- (C) The coverage shall last for no more than two years, and shall not be subject to renewal; and
- (D) After the conclusion of said two-year period, at the option of and upon subsequent amendment of this statute by the Council, any such coverage shall be statutorily authorized.

**(d)** Repealed.

**(e)** Nothing in this chapter shall be construed to grant a right to a hearing not created independently by a constitutional provision or a provision of law other than this chapter, except with

regard to the discipline or removal of an Administrative Law Judge or the Chief Administrative Law Judge.

(f) Except as provided in subsection (h) of this section, no agency of the District of Columbia to which this chapter applies shall adjudicate adjudicated cases under the jurisdiction of the Office of Administrative Hearings or employ hearing officers, either full- or part-time, for the purpose of adjudicating cases under the jurisdiction of the Office.

(g) Any case initiated by, or arising from a decision or action of, an agency or a portion of an agency in receivership shall not be heard by the Office unless the receiver has entered a binding agreement that any order issued by the Office in the matter would have the same force, effect, and finality as it would if the receivership did not exist.

(h) Nothing in this chapter shall be construed to limit the authority of an agency covered in subsections (a), (b), (b-1), (b-2), or (b-3) of this section, if the authority exists pursuant to other provisions of the law, to have an agency head or one or more members of the governing board, commission, or body of the agency adjudicate cases falling within its jurisdiction in lieu of the Office. This authority may not be delegated in whole or in part to any subordinate employees of the agency.

(i) (1) A board or commission with authority to issue professional or occupational licenses may delegate to the Office its authority to conduct a hearing and issue an order on the proposed denial, suspension, or revocation of a license or on any proposed disciplinary action against a licensee or applicant for a license. The Office's order shall be appealable to the board or commission pursuant to § 2-1831.16(b).

(2) A case that was delegated by a board or commission to an administrative law judge or hearing examiner employed by an agency subject to this chapter shall be deemed to have been delegated to the Office pursuant to this section as of the date that the agency's adjudicated cases became subject to this chapter.

(j) A person who has filed a protest of a proposed assessment under § 47-4312 and requested a hearing with the Office shall be deemed to have elected adjudication by the Office as the exclusive means of adjudication of all challenges to the proposed assessment, and to have waived any right to adjudication of a challenge to the proposed assessment in any other forum. Nothing in this subsection limits the right of any person to judicial review of an order of the Office pursuant to § 2-1831.16.

#### **§2-1831.05. Powers and Duties of the Chief Administrative Law Judge.**

(a) The Chief Administrative Law Judge shall:

- (1)** Supervise the Office of Administrative Hearings;
- (2)** Oversee and administer assignment of Administrative Law Judges to preside over adjudicated cases heard by the Office;
- (3)** To the extent he or she deems appropriate, establish internal classifications for case assignment and management on the basis of subject matter, expertise, case complexity, and other appropriate criteria;
- (4)** Establish standard and specialized training programs for Administrative Law Judges;
- (5)** Appoint, in accordance with applicable law and available funding, promote, discipline, and remove staff employed by the Office, other than Administrative Law Judges;
- (6)** Provide for, or require completion of, continuing education programs for Administrative Law Judges and other employees of the Office deemed to be necessary or desirable;
- (7)** Develop and implement rules of procedure and practice for cases before the Office (including rental housing cases within the jurisdiction of the Office) and approve the use of forms and documents that will assist in managing cases coming before the Office;
- (8)** Monitor and supervise the quality of administrative adjudication;
- (9)** Develop and implement a code of professional responsibility for Administrative Law Judges;
- (10)** Develop and implement annual performance standards for the management and disposition of cases assigned to Administrative Law Judges, which shall take account of subject matter and case complexity;
- (11)** Apply a pay scale and retention allowances equivalent to those that are available to Legal Service and Senior Executive Attorney Service attorneys in a manner designed to attract highly capable public and private sector attorneys to become Administrative Law Judges in the Office; provided, that Administrative Law Judges shall receive a minimum annual compensation at that point on the ES-10 pay scale that is equivalent to the mid-point of the LX-2 pay scale;
- (12)** Issue and transmit to the Mayor and the Council, not later than 90 days after the close of the first complete fiscal year of the Office's operation and each fiscal year thereafter, an annual report on the operations of the Office. The annual report shall include performance evaluations and case statistics for each Administrative Law Judge from the filing of a case to disposition.
- (13)** Appoint Administrative Law Judges in accordance with §2-1831.11.

- (14) To the extent he or she deems appropriate, discipline and remove Administrative Law Judges, subject to the review by the Commission in accordance with §2-1831.10; and
- (15) Reappoint Administrative Law Judges in accordance with §2-1831.10.<sup>138</sup>

**(b)** The Chief Administrative Law Judge may:

- (1)** Serve as an Administrative Law Judge in any case;
- (2)** Furnish Administrative Law Judges on a reimbursable basis to District of Columbia or other government entities not covered by this unit;
- (3)** Accept and expend funds, grants, bequests, and gifts on behalf of the Office, and accept the donation of services that are related to the purpose of the Office unless such a donation would create a conflict of interest in violation of applicable law;
- (4)** Enter into agreements and contracts under law with any public or private entities or educational institutions;
- (5)** Develop and maintain a program for student interns and law clerks to work in the Office;
- (6)** Recommend to the Commission the proposal and promulgation of rules regulating the appointment, [reappointment,]<sup>139</sup> discipline, and removal of Administrative Law Judges;
- (7)** Adopt, in accordance with [§ 2-505](#), rules that are necessary or desirable to facilitate implementation of this unit, other than rules regulating the appointment, [reappointment,]<sup>140</sup> discipline, and removal of Administrative Law Judges promulgated pursuant to [§ 2-1831.11](#);
- (8)** Assess reasonable filing, copying, and other fees, and adopt rules for waiving or reducing fees for parties who, after careful review, are determined by the Office to be incapable of paying full fees; provided, that filing fees permitted under this subsection shall not be charged to the District of Columbia government or the United States;
- (9)** Collect and retain revenues paid in connection with any adjudicated case, **which revenues, in the Chief Administrative Law Judge's sole discretion, may be deposited into either (A) unrestricted funds of the Office or (B) the unrestricted fund balance of the General Fund of the District of Columbia;**
- (10)** Retain outside counsel, other than the Corporation Counsel, to represent the Office or any employee of the Office in his or her official capacity in actual or anticipated litigation;

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<sup>138</sup> This provision should be included if the Council elects for a reappointment option, as opposed to providing ALJ's with civil service status or something akin to civil service status.

<sup>139</sup> This provision should be included if the Council elects for a reappointment option, as opposed to providing ALJ's with civil service status or something akin to civil service status.

<sup>140</sup> This provision should be included if the Council elects for a reappointment option, as opposed to providing ALJ's with civil service status or something akin to civil service status.

(11) Implement a program for ongoing quality assurance and performance review; provided, that no such review shall require that an outcome in any case be altered;

(12) Issue and implement procedures, practices, and guidelines relating to the operations or responsibilities of the Office; and

(13) Exercise any other lawful authority to effectuate the purposes of this chapter.

#### **§2-1831.06 Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings**

(a) There is established the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings. The Commission's mission shall include the recruitment and retention of a well-qualified, efficient, and effective corps of Administrative Law Judges in the Office.

~~(b) The Commission shall have final authority to appoint, reappoint, discipline, and remove Administrative Law Judges.~~

(b) The Commission shall:

(1) Advise the Chief Administrative Law Judge in carrying out his or her duties;

(2) Identify issues of importance to Administrative Law Judges and agencies that should be addressed by the Office;

(3) Review issues and problems relating to administrative adjudication;

(4) Review and comment upon the policies and regulations proposed by the Chief Administrative Law Judge;

(5) Make recommendations for statutory and regulatory changes that are consistent with advancing the purposes of this chapter;

(6) Assist in the appointment of Administrative Law Judges in accordance with §2.1831.11; and

(7) Review, and approve, reject, or modify certain adverse personnel decisions or removal of Administrative Law Judges by the Chief Administrative Law Judge as set forth in §2-1831.10(c).

(c) Commission members shall have protection from liability as provided in § 2-415(b-1).

#### **§2-1831.07. Commission Members.**

**(a)** The Commission shall consist of 3 voting members. The voting members of the Commission shall serve staggered terms, as provided in subsections (c) and (d) of this section. One voting member shall be appointed by the Mayor, one voting member shall be appointed by the Chairman of the Council of the District of Columbia, with the approval of a majority of the Council, and one voting member shall be appointed by the Chief Judge of the Superior Court of the District of Columbia. The Corporation Counsel, or his or her designee from within the ranks of the Senior Executive Attorney Service, and the Chief Administrative Law Judge shall serve as non-voting *ex officio* members of the Commission.

**(b)** A majority of the voting members of the Commission shall select its chairperson at the start of each fiscal year. In the absence of such a selection, the Commission member appointed by the Chief Judge of the Superior Court of the District of Columbia shall chair the Commission. The Chairperson may designate another member to act for him or her in case of absence or other exigency. A majority of the Commission's voting members shall constitute a quorum.

**(c)** Except as provided in subsection (d) of this section, each member of the Commission shall serve a 3-year term and shall be eligible for reappointment. The terms of the first members of the Commission shall commence on May 1, 2003, and shall expire as provided in subsection (d) of this section. All subsequent terms for members of the Commission shall commence immediately upon the expiration of the previous term. If a vacancy exists after the start of any 3-year term of office, the person appointed to fill that vacancy shall be appointed to serve the unexpired portion of the term. If a member of the Commission leaves office before the expiration of his or her term, a new member may be appointed to serve out the remainder of the term.

**(d)** The initial term of the voting member of the Commission appointed by the Mayor shall expire on April 30, 2004. The initial term of the voting member of the Commission appointed by the Chairman of the Council shall expire on April 30, 2005. The initial term of the voting member of the Commission appointed by the Chief Judge of the Superior Court of the District of Columbia shall expire on April 30, 2006.

~~**(e)** Members of the Commission shall not receive any salary or remuneration, but may receive reimbursement of reasonable expenses incurred in connection with their service on the Commission in accordance with applicable law.~~

**(e)** Members of the Commission shall receive a stipend in the amount of [to be inserted by the Council] and reimbursement of reasonable expenses incurred in connection with their service on the Commission in accordance with applicable law.



(f) No voting member of the Commission shall be eligible for appointment as an Administrative Law Judge or Chief Administrative Law Judge while serving on the Commission and until the passage of at least 3 years from the termination of his or her service on the Commission. No voting member of the Commission shall appear as an attorney or otherwise participate in any professional or representative capacity in any case pending before the Office while serving on the Commission and until the passage of at least 3 years from the termination of his or her service on the Commission. This section does not disqualify any firm or person, other than the member or former member of the Commission, from representing a party in any adjudicated case.

(g) No member of the Commission shall exercise his or her authority, or shall act in any other manner, to direct the outcome of any case pending before the Office.

#### **§2-1831.08. Administrative Law Judges.**

(a) Administrative Law Judges shall be accountable and responsible for the fair, impartial, effective, and efficient disposition of cases to which they are assigned by the Chief Administrative Law Judge.

[Suggested clause if the DC Council elects for Administrative Law Judges to serve as civil service employees without terms]

(b) An Administrative Law Judge shall be appointed to the Excepted Service as a statutory officeholder pursuant to § 1-609.08, ~~upon the affirmative vote of a majority of the voting members of the Commission~~ by the Chief Administrative Law Judge after a selection process in accordance with § 2-1831.11(a), and any rules promulgated pursuant thereto.

[Alternative clause if the DC Council elects for Administrative Law Judges to continue having set terms]<sup>141</sup>

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<sup>141</sup> A specific “schedule” could be created for ALJs that defines specific employment conditions, and that would include a longer term (e.g., 15 years with two subsequent five-year renewed terms), as well as potentially other matters, such as specific compensation and benefits (e.g., time for continuing education and similar matters) and ALJ qualifications. CCE believes the DC Council should determine the precise terms for ALJ’s revised tenure and related conditions as part of any revised legislation. However, the current system is damaging to morale and creates a risk of arbitrary action, and it is those factors which need to be addressed.

**(b)** An Administrative Law Judge shall be appointed, with an initial term length as set forth in subsection (c)(3) below, by the Chief Administrative Law Judge after a selection process in accordance with § 2-1831.11, and any rules promulgated pursuant thereto.

**(c) (1)** The initial term of office of an Administrative Law Judge appointed prior to December 6, 2005, shall be 2 years, at the end of which the Administrative Law Judge shall be eligible for reappointment by the ~~Commission~~ Chief Administrative Law Judge to a term of 10 years. After serving an initial reappointment term of 10 years, the Administrative Law Judge shall be eligible for reappointment by the ~~Commission~~ Chief Administrative Law Judge to a new term of [e.g., 5 or 6 years].

**(2)** The initial term of office of an Administrative Law Judge hired after December 5, 2005 but before [the date this amendment is enacted], shall be 2 years, at the end of which the Administrative Law Judge shall be eligible for reappointment by the ~~Commission~~ Chief Administrative Law Judge to a term of [e.g., 5 or 6 years].

**(3)** The initial term of office for an Administrative Law Judge appointed after [the date this amendment is enacted], shall be [10 or 15 years], at the end of which the Administrative Law Judge shall be eligible for reappointment by the Chief Administrative Law Judge to a term of [e.g., 5 or 6 years].

**(4)** At the expiration of any [e.g., 5 or 6-year] term of office, an Administrative Law Judge shall be eligible for reappointment by the ~~Commission~~ Chief Administrative Law Judge to a new term of [e.g., 5 or 6 years].

**(5)** Non-reappointment of an Administrative Law Judge shall not be deemed to be discipline or removal of the Administrative Law Judge.

**(d)** To be eligible for appointment, an Administrative Law Judge shall:

**(1)** At the time of appointment, be a member in good standing of the District of Columbia Bar and remain in good standing throughout his or her tenure as an Administrative Law Judge;

**[(2)]** If appointed to a position at grade 15 or below, be subject to the residency requirements applicable to attorneys pursuant to § 1-609.06(c).<sup>142]</sup>

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<sup>142</sup> CCE expresses no opinion about whether the residency requirement should remain in the statute. While the policy rationale for having Administrative Law Judges reside in the District is fairly straightforward, there were also concerns expressed regarding the effect of such a residency requirement limiting the pool of qualified applicants if a residency requirement is in place (for example, due to the high cost of living in the District or the possible personal situations of applicants, such as applicants having children attending school in Maryland or Virginia). A possible additional provision would be one similar to §2-1831.12, which provides: “(c) The Executive Director shall be a resident of the District of Columbia or become a resident not more than 180 days after the date of appointment, and shall remain a resident, unless temporarily or permanently exempted from these requirements by the Mayor for good cause.”

**[(3)]** If appointed to a position at a level higher than grade 15, be subject to the residency requirements placed on members of the Senior Executive Attorney Service pursuant to § 1-608.59,<sup>143]</sup>

**(4)** Have at least 5 years experience in the practice of law, including experience with court, administrative, or arbitration litigation;

**(5)** Possess judicial temperament, expertise, experience, and analytical and other skills necessary and desirable for an Administrative Law Judge; and

**(6)** Satisfy all other requirements specified in rules promulgated pursuant to § 2-1831.11(a) and (b);

**(e)** An individual occupying a position as a hearing officer in an agency at the time the agency becomes subject to this chapter is eligible to be appointed as an Administrative Law Judge in the Office; provided, that he or she satisfies all the requirements for appointment as an Administrative Law Judge specified in this chapter and in the rules promulgated pursuant to this chapter.

**(f)** No hearing officer shall be required to accept an appointment as an Administrative Law Judge pursuant to subsection (e) of this section. Any hearing officer who is not appointed or is ineligible to be appointed as an Administrative Law Judge shall be reassigned, without reduction in grade or step, to another position within the agency employing that individual, or by the Mayor to a position in another agency.

**(g)** Any Administrative Law Judge appointed pursuant to the authority of subsection (e) of this section who is not reappointed after expiration of his or her initial 2-year term may be appointed to the Legal Service, and be placed in a position in the agency that employed the individual immediately before he or she accepted the appointment as an Administrative Law Judge or in any other position designated by the Corporation Counsel.

**(h)** The compensation of an Administrative Law Judge shall not exceed the compensation level available to attorneys of the Senior Executive Attorney Service created by § 1-608.53.

#### **§2-1831.09. Powers, duties, and liability of Administrative Law Judges.**

**(a)** An Administrative Law Judge shall:

**(1)** Participate in the program of orientation and in programs of continuing legal education for Administrative Law Judges required by the Chief Administrative Law Judge;

**(2)** Meet annual performance standards applicable to his or her duties;

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<sup>143</sup> See *supra* note 142.

**(3)** Engage in no conduct inconsistent with the duties, responsibilities, and ethical obligations of an Administrative Law Judge;

**(4)** Not be responsible to, or subject to the supervision or direction of, an officer, employee, attorney, or agent engaged in the performance of investigative, prosecutorial, or advisory functions for another agency;

**(5)** Fully participate in Office management committees and management activities to set and steer policies relating to Office operations, including, without limitation, personnel matters;

**(6)** Supervise, direct, and evaluate the work of employees assigned to him or her;

**(7)** Conform to all legally applicable standards of conduct;

**(8)** Decide all cases in an impartial manner;

**(9)** Devote full-time to the duties of the position and shall not:

**(A)** Engage in the practice of law; or

**(B)** Perform any duties that are inconsistent with the duties and responsibilities of an Administrative Law Judge;

**(10)** Cooperate with the Executive Director of the Office to achieve efficient and effective administration of the Office; and

**(11)** Take an oath of office, as required by law, prior to the commencement of duties.

**(b)** In any case in which he or she presides, an Administrative Law Judge may:

**(1)** Issue subpoenas and may order compliance therewith;

**(2)** Administer oaths;

**(3)** Accept documents for filing;

**(4)** Examine an individual under oath;

**(5)** Issue interlocutory orders and orders;

**(6)** Issue protective orders;

**(7)** Control the conduct of proceedings as deemed necessary or desirable for the sound administration of justice;

**(8)** Impose monetary sanctions for failure to comply with a lawful order or lawful interlocutory order, other than an order that solely requires payment of a sum certain as a result of an admission or finding of liability for any infraction or violation that is civil in nature;

**(9)** Suspend, revoke, or deny a license or permit;

**(10)** Perform other necessary and appropriate acts in the performance of his or her duties and properly exercise any other powers authorized by law;

**(11)** Engage in or encourage the use of alternative dispute resolution;

**(12)** When authorized by rules promulgated pursuant to § 2-505, issue administrative inspection authorizations that authorize the administrative inspection and administrative search of a business property or premises, whether private or public, and excluding any area of a premises that is used exclusively as a private residential dwelling. Subject to the exclusions of this paragraph, property (including any premises) is subject to administrative inspection and administrative search under this paragraph only if there is probable cause to believe that:

**(A)** The property is subject to one or more statutes relating to the public health, safety, or welfare;

**(B)** Entry to said property has been denied to officials authorized by civil authority to inspect or otherwise to enforce such statutes or regulations; and

**(C)** Reasonable grounds exist for such administrative inspection and search; and

**(13)** Exercise any other lawful authority.

**(c)** Any rule promulgated pursuant to subsection (b) (12) of this section shall include all protections provided by Rule 204 of the Superior Court of the District of Columbia Rules of Civil Procedure.

**(d)** A person may not refuse or decline to comply with a lawful interlocutory order or lawful order issued by an Administrative Law Judge.

**(e)** In addition to any other sanctions that an Administrative Law Judge may lawfully impose for the violation of any order or interlocutory order, an Administrative Law Judge, or a party in interest in an adjudicated case, may apply to any judge of the Superior Court of the District of Columbia for an order issued on an expedited basis to show cause why a person should not be held in civil contempt for refusal to comply with an order or an interlocutory order issued by an Administrative Law Judge. On the return of an order to show cause, if the judge hearing the case determines that the person is guilty of refusal to comply with a lawful order or interlocutory order of the Administrative Law Judge without good cause, the judge may commit the offender to jail or may provide any other sanction authorized in cases of civil contempt. A party in interest may also bring an action for any other equitable or legal

remedy authorized by law to compel compliance with the requirements of an order or interlocutory order of an Administrative Law Judge.

(f) An Administrative Law Judge has no authority to commit any person to jail.

(g) An Administrative Law Judge shall be subject to suit, liability, discovery, and subpoena in a civil action relating to actions taken and decisions made in the performance of duties while in office on the same basis as a judge of the Superior Court of the District of Columbia.

**[Alternative should the DC Council Elect to retain the Administrative Law Judge reappointment process]**

**§2-1831.10. Reappointment and Discipline of Administrative Law Judges.**

(a) At least 6 months before the expiration of any term, an Administrative Law Judge seeking reappointment to a new term shall file a statement with the ~~Commission~~ Chief Administrative Law Judge specifying that he or she requests reappointment to a new term. For any Administrative Law Judge who timely files such a statement, the Chief Administrative Law Judge shall prepare a record of the Administrative Law Judge's performance with regard to that judge's efficiency, efficacy, and quality of performance over the period of his or her appointment. ~~The record shall be prepared and transmitted to the Commission within 120 days of the filing of the statement.~~ At a minimum, the record shall contain at least one year of decisions authored by the Administrative Law Judge, and data on how the Administrative Law Judge has met applicable objective performance standards, ~~the Chief Administrative Law Judge's recommendation as to whether the reappointment should be made, and any other information requested by one or more members of the Commission. The members of the Commission shall consider all information received with regard to reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless it is determined that the recommendation is not founded on substantial evidence.~~

(b) The ~~voting members of the Commission shall vote~~ Chief Administrative Law Judge shall approve or reject a request for reappointment prior to the expiration of the requesting Administrative Law Judge's term, but no earlier than 60 days prior to such expiration. A reappointment approved by the ~~Commission~~ Chief Administrative Law Judge is effective upon expiration of the previous appointment.

(c) During a term of office, an Administrative Law Judge shall be subject to discipline and removal, only for cause, ~~with a right to notice and a hearing before the Commission pursuant to this act and rules issued pursuant to § 2-1831.11(a) and (b)~~ by the Chief Administrative Law Judge, subject to review by the Commission of any of the following actions taken by the Chief Administrative Law Judge: (i) the removal of an Administrative Law Judge, (ii) the rejection of an Administrative Law Judge's request for reappointment, and (iii) the imposition of a disciplinary action on an Administrative Law Judge that results in a suspension that exceeds 11 days. An Administrative Law Judge's unexcused failure to meet annual performance standards in any 2 years within a 3-year period shall be among the grounds constituting cause for removal.

**§2-1831.11. Rules governing appointment, reappointment, and discipline of Administrative Law Judges.**

*(a) Process for Appointment of Administrative Law Judges.* The selection process for the appointment of an Administrative Law Judge shall be as follows

(1) The Chief Administrative Law Judge and the Commission shall publish a public notice of a vacancy in the Office of Administrative Hearings. Such public notice shall be advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or administrative law judges in the government. Such notice shall also include:

(A) A description of the Administrative Law Judge eligibility requirements as set forth in §2-1831.08(d);

(B) A description of the required application materials as set forth in subsection (d) below; and

(C) The date and time by which applications materials must be submitted to the Commission, and the method by which materials must be submitted;

(2) Upon the close of the application period, the Commission shall review all submitted applications, and submit to the Chief Administrative Law Judge three (3) candidates for an Administrative Law Judge. The Commission must approve the candidates by a majority vote.

(3) Upon the Commission's submission of the three candidates to the Chief Administrative Law Judge, the Chief Administrative Law Judge shall appoint the Administrative Law Judge from the list of three (3) candidates.

~~(a)~~ (b) In accordance with § 2-505, the Mayor shall promulgate initial rules governing the appointment, reappointment, discipline, removal, and qualifications of Administrative Law Judges within 180 days of March 6, 2002. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

~~(b)~~ (c) Upon convening, or at anytime thereafter, the Commission may amend or repeal, in whole or in part, or may add to, the initial rules promulgated under the authority of subsection (a) of this section, in accordance with § 2-505. Any proposed rule changes shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. The Chief Administrative Law Judge may at any time request that the Commission review and consider proposed rule changes authorized by this subsection. The Commission also, on its own initiative, or upon recommendation of the Chief Administrative Law Judge, may promulgate emergency rules, valid for not more than 120 days, in the limited circumstances permitted by § 2-505(c).

~~(c)~~ (d) Any rules promulgated pursuant to subsections (b) and (c) of this section shall be designed to competitively recruit and retain highly qualified, effective, and efficient Administrative Law Judges from the public and private sectors. Any such rules:

(1) Shall require that Administrative Law Judges meet the qualifications established in § 2-1831.08(d)(1) through (5);

(2) May prescribe the passing of a qualifying examination as a minimum, but not exclusive, requirement for appointment;

(3) May prescribe additional qualifications for the purpose of ensuring the appointment of well-qualified, efficient, and effective Administrative Law Judges;



**(4)** Shall require that all Administrative Law Judge positions (except positions subject to § 2-1831.08(e)) be timely advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or administrative law judges in the government. **The requirements of this subsection (d)(4) shall not apply to any vacancy that occurs upon the expiration of an Administrative Law Judge's term where the Chief Administrative Law Judge has approved a request for reappointment in accordance with § 2-1831.10.**

**(d)** ~~(e)~~ Rules promulgated pursuant to subsections (b) and (c) of this section shall govern the process of selecting Administrative Law Judges.

#### **§2-1831.12 Executive Director and Other Personnel.**

**(a)** There shall be an Executive Director of the Office. The Executive Director shall be responsible for the administration of the Office, subject to the supervision of the Chief Administrative Law Judge.

**(b)** The Executive Director shall be appointed by the Chief Administrative Law Judge as a statutory employee in the Excepted Service pursuant to § 1-609.08, and shall serve at the pleasure of the Chief Administrative Law Judge. In making the appointment, the Chief Administrative Law Judge shall consider experience and special training in administrative, operational, and managerial positions and familiarity with court and administrative hearing procedures and operations. The Executive Director need not be an attorney and may not concurrently hold an appointment as an Administrative Law Judge appointed under the authority of § 2-1831.08(b).

**(c)** The Executive Director shall be a resident of the District of Columbia or become a resident not more than 180 days after the date of appointment, and shall remain a resident, unless temporarily or permanently exempted from these requirements by the Mayor for good cause.

**(d)** The Office shall have a Clerk and may have deputy clerks who shall perform such duties as may be assigned to them. The Clerk and deputy clerks may be authorized to administer oaths, issue subpoenas, and perform other appropriate duties.

**(e)** With the approval of the Chief Administrative Law Judge, the Executive Director may appoint and fix the salary of any attorney and non-attorney personnel appointed pursuant to the authority of this chapter, other than Administrative Law Judges, except that no individual appointed by the Executive Director may be paid at a rate greater than the rate of pay for the Executive Director. Law

clerks and attorneys employed by the office in a capacity other than as an Administrative Law Judge shall be appointed as follows:

(f) The Executive Director shall not have supervisory authority over any person appointed as an Administrative Law Judge.

(g) There shall be an Administrator of the Commission, selected by the Chairman of the Commission. The Administrator shall be a [full or part-time OAH employee] responsible for the administration of the Commission, subject to the supervision of the Chairman of the Commission. The Administrator shall perform such duties as the Chairman of the Commission directs, such as assisting COST in preparing for and holding meetings and in generating information independently of the Chief Administrative Law Judge by soliciting feedback from stakeholders. The Chair of the Commission shall supervise and evaluate the Administrator.

#### **§2-1831.13. Interaction of the Office with other agencies; other procedural matters.**

(a) All components of the District of Columbia government shall cooperate with the Chief Administrative Law Judge, the Executive Director, and Administrative Law Judges in the discharge of their duties.

(b) The Office shall be subject to audit and examination on the same basis as other District of Columbia government agencies.

(c) When a case is brought before the Office, any agency that is a party shall take no further decisional action with respect to the subject matter in issue, except in the role of a party litigant or with the consent of all parties, for so long as the Office has jurisdiction over the proceeding.

(d) All documents filed in any case before the Office shall be available to the public for review unless a statute, protective order, or other legal requirement prohibits disclosure.

(e) Beginning November 15, 2004, and by November 15 of each year thereafter, the Chief Administrative Law Judge shall transmit to the Mayor, the Council, and each agency to which this chapter applies, a written summary of the Office's caseload during the previous fiscal year that is attributable to any provision of law administered by or under the jurisdiction of each agency. The summary shall also include comparative data on caseload from prior fiscal years. Each agency to which this chapter applies shall provide a written response to the summary to the Mayor, the Council, and the Office within 30 calendar days of issuance of the summary. The response shall state whether the

agency knows or believes there is a reasonable possibility that such caseload will increase or decrease by more than 10% in the current or following fiscal year based on any planned or ongoing agency actions, or any other reason, and specifying the anticipated amount of the increase or decrease and the reasons therefor. For purposes of this subsection, the existence of a 10% or greater increase or decrease shall be measured pursuant to rules promulgated under this chapter.

**(f)** Prior to any agency promulgating a rule (other than an emergency rule) that will materially affect the number or types of cases heard by the Office, the agency director shall consult with the Chief Administrative Law Judge regarding fiscal and operational impact of the proposed rule, and shall submit to the Chief Administrative Law Judge a statement containing the agency's projections regarding increases in case volume and case complexity likely to follow promulgation of the rule.

**(g)** The director of any agency that becomes subject to this chapter shall direct that all employees of the agency provide the Office with any financial and programmatic information requested by the Office relating to any operational or personnel responsibilities of the Office, including, without limitation, any information the Chief Administrative Law Judge deems necessary in order to absorb the transfer of an agency's adjudication function into the Office. The information shall be provided promptly and in no event later than the 15th day after the request is received. The Chief Financial Officer shall also issue the directive called for in this subsection with respect to the employees under his or her control.

**(h) (1)** Whenever any applicable law or regulation requires or permits the filing in the Office of an affidavit or other writing subscribed to under oath, the subscriber, in lieu of a sworn or notarized statement, may submit a written declaration subscribed as true under penalty of perjury in substantially the following form: "I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct. Executed on (date). "(Signature)".

"I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct. Executed on (date). "(Signature)".

**(2)** Signing such a statement shall be considered the taking of an oath or affirmation for purposes of §§ 22-2402 and 22-2404.

**(i)** No person outside the Office shall participate in or in any way influence or attempt to influence, except through the ordinary litigation process, the fair and independent decisionmaking process in an adjudicated case before the Office.

**§2-1831.14. Representation of parties in adjudicated cases before the Office.**

(a) An individual may represent himself or herself before the Office.

(b) An individual or other party may be represented before the Office by an attorney authorized to practice law in the District of Columbia, or may be assisted by others in such a manner and under such circumstances as are permitted by law, or as may be permitted under the rules of the Office.

(c) A corporation, partnership, limited partnership, or other private legal entity may be represented before the Office by a duly authorized officer, director, general partner, or employee.

(d) An agency may be represented before the Office by the Corporation Counsel, an attorney assigned to the agency, or by a duly authorized agency employee when consistent with applicable law and rules.

(e) The Office shall promulgate rules regulating attorneys practicing before the Office.

**§2-1831.15. Conflicts of regulations.**

Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, this chapter and the rules promulgated pursuant to this chapter shall take precedence in the event of a conflict with other authority with regard to any issue involving or relating to procedures of the Office.

**§2-1831.16. Judicial review and administrative appeals.**

(a) An order of the Office shall be effective upon its issuance, unless stayed by an Administrative Law Judge sua sponte or upon motion of any party. Any party may file a motion for reconsideration of an order or a motion for a new trial within 10 calendar days of service of an order. Unless otherwise ordered by an Administrative Law Judge, the filing of such a motion shall not stay the effectiveness of an order. If such a motion is timely filed, the order shall not be final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.

**(b)** Any agency, board, commission, or body of an agency identified in subchapter III of Chapter 18 of this title [§ 2-1803.01 et seq.], other than the Board of Appeals and Review, shall retain jurisdiction to entertain and determine appeals from orders of Administrative Law Judges, as granted in that chapter. The Rental Housing Commission shall have jurisdiction to review orders of the Office in all adjudicated cases brought pursuant to Chapter 35 of Title 42 [§ 42-501.01 et seq.]. A board or commission that delegates a matter pursuant to § 2-1831.03(i) shall have jurisdiction of any appeal by any party from an order of an Administrative Law Judge issued in that matter.

**(c)** Except as provided in subsection (b) of this section, any person suffering a legal wrong or adversely affected or aggrieved by any order of the Office in any adjudicated case may obtain judicial review of that order.

**(d)** Notwithstanding any other provision of law, any agency suffering a legal wrong or adversely affected or aggrieved by any order of the Office in any adjudicated case may obtain judicial review of that order.

**(e)** Judicial review of all orders of the Office in contested cases shall be in the District of Columbia Court of Appeals in accordance with the procedures and rules of that court.

**(f)** Judicial review of any order of the Office in a matter that is not a contested case shall be in accordance with other applicable law.

**(g)** In all proceedings for judicial review authorized by this section, the reviewing court shall apply the standards of review prescribed in § 2-510. A reviewing court may not modify a monetary sanction imposed by an Administrative Law Judge if that sanction is within the limits established by law or regulation.

**(h)** Notwithstanding any other provision of law, neither the Office nor an Administrative Law Judge shall be a party in any proceeding brought by a party in any court seeking judicial review of any order of the Office, or of any order of an agency head or governing board, commission, or body of an agency that decides any appeal from any order of the Office. Only the parties before the Office or any other party permitted to participate by the reviewing court shall be parties in any such proceeding for judicial review.

**§2-1831.17. Advisory Committee. [Repealed]**

~~(a) There is established an Advisory Committee to the Office of Administrative Hearings.~~

~~(b) The Advisory Committee shall consist of the following 8 persons:~~

~~(1) The Mayor or his or her designee;~~

~~(2) The Chairman of the Council or his or her designee;~~

~~(3) The Corporation Counsel or his or her designee;~~

~~(4) Two agency heads appointed by the Mayor, or their designees, from agencies with cases coming before the Office of Administrative Hearings;~~

~~(5) Two members of the District of Columbia Bar, appointed by the Mayor, neither of whom shall be employed by the District of Columbia government; and~~

~~(6) A member of the public, appointed by the Mayor, who is not a member of the District of Columbia Bar.~~

~~(c) The Mayor shall chair the Advisory Committee, or may designate an Advisory Committee Chair from among its members.~~

~~(d) A member of the Advisory Committee may not receive compensation for service on the Advisory Committee, but is entitled to reimbursement for travel expenses in accordance with applicable law and regulations.~~

~~(e) The Advisory Committee shall:~~

~~(1) Advise the Chief Administrative Law Judge in carrying out his or her duties;~~

~~(2) Identify issues of importance to Administrative Law Judges and agencies that should be addressed by the Office;~~

~~(3) Review issues and problems relating to administrative adjudication;~~

~~(4) Review and comment upon the policies and regulations proposed by the Chief Administrative Law Judge; and~~

~~(5) Make recommendations for statutory and regulatory changes that are consistent with advancing the purposes of this chapter.~~

~~(f) The Advisory Committee shall meet at a regular time and place to be determined by the committee.~~

~~(g) The Chief Administrative Law Judge shall confer with the Advisory Committee at its meetings and shall provide such information as the Advisory Committee lawfully may request.~~

## **§2-1831.18. Study of and report on Bureau of Traffic Adjudication.**

The Mayor shall conduct a study to consider methods to improve the quality of adjudications within the Bureau of Traffic Adjudication at the Department of Motor Vehicles. This study shall review best practices in other jurisdictions and examine issues such as staffing levels, timeliness of decisions, caseloads, and qualifications of hearing examiners. The Mayor shall provide a report to the Council, including recommendations for legislative and operational changes, by October 1, 2002.

# APPENDIX G



## Model Legislation and Codes of Ethics Comparison

TOPIC	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS - MODEL LEGISLATION	ABA MODEL LEGISLATION	DC OAH LEGISLATION
Appointment of Administrative Law Judges	The model legislation does not contemplate a shorter initial term, followed by a longer reappointment term.	Either by the Governor through the recommendation of a judicial nominating commission, through competitive examination in the classified service of state employment, or by the chief administrative law judge. Hearings officers and ALJs of agencies over which the OAH has jurisdiction shall become employees of the OAH. No term or service time mentioned.	The DC Office of Administrative Hearing (“ <b>OAH</b> ”) legislation provides that an Administrative Law Judge (“ <b>ALJ</b> ”) shall be appointed to an initial term of 2 years. An ALJ may be reappointed to a full 10-year term, but such reappointment requires the approval of the Committee on Selection and Tenure.
Cooperation from D.C. Agencies	The model legislation provides that an agency shall not select or reject a particular ALJ for a particular proceeding.	All agencies shall cooperate with the Chief ALJ. An agency may not select or reject an ALJ for a particular proceeding, except in arbitration.	No such prohibition exists in the DC OAH legislation.
Advisory Committee: Exempt Agencies	The model legislation envisioned that the advisory committee would have the power to conduct a study of the agencies exempted from OAH jurisdiction to recommend why such an exemption should continue.	Will conduct studies of exempt agencies and recommend to the governor which agencies should continue to be exempt and for how long.	No such advisory committee power exists in the DC OAH legislation.
Advisory Committee: Appointment of Chair	The model legislation provided that an advisory committee would select a Chair from amongst its members.	The council shall designate a chair from among its members.	The DC OAH legislation provides that the Mayor (or the Mayor’s designee) shall be the Chair of the advisory committee.

<b>Advisory Committee: Assistance from Chief ALJ</b>	The model legislation provided that the Chief ALJ had the duty to cooperate and assist the advisory committee.	The council advises and reviews work done by the Chief ALJ	No such cooperation provision exists in the DC OAH legislation.
<b>Advisory Committee: Composition</b>	The model legislation provided that the advisory committee would consist of nine members, including two from the general public.	Nine members, including two members of the general public, one of the state Senate, one of the state House, one designated by the Attorney General or the Attorney General, two from adjudicated agencies, and two from the state bar association.	The DC OAH legislation provides that the advisory committee shall only consist of eight people, with only one member selected from the general public.

**COMPARISON OF THE NATIONAL ASSOCIATION OF LAW JUDICIARY’S MODEL CODE OF ETHICS WITH THE DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARING’S CODE OF ETHICS**

TOPIC	MODEL CODE OF ETHICS	DC OAH CODE OF ETHICS
<b>Ex Parte Communications: Consultation with Expert</b>	<ul style="list-style-type: none"> <li>The model code of ethics permits an ALJ to obtain the advice of a “disinterested expert” on the law applicable to a proceeding, <i>provided</i> that the judge gives both parties to the proceeding notice, and the opportunity to respond</li> </ul>	<ul style="list-style-type: none"> <li>No such provision exists in the DC OAH code of ethics.</li> </ul>
<b>Prohibition on Broadcasting the Proceedings</b>	<ul style="list-style-type: none"> <li>The model code of ethics recommends that ALJs prohibit broadcasting or televising any hearings.</li> </ul>	<ul style="list-style-type: none"> <li>No such provision exists in the DC OAH code of ethics.</li> </ul>