

Statement of
JAMES P. MERCURIO, MEMBER,
and
RONALD C. JESSAMY, MEMBER,
COUNCIL FOR COURT EXCELLENCE
before the
COMMITTEE ON THE JUDICIARY,
COUNCIL OF THE DISTRICT OF COLUMBIA
regarding the
DISTRICT OF COLUMBIA
"OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ESTABLISHMENT ACT OF 2001"
BILL 14-208
and the
"OFFICE OF ADMINISTRATIVE HEARINGS
ESTABLISHMENT ACT OF 2001"
BILL 14-219

May 23, 2001

Good afternoon, Chairwoman Patterson, members of the Committee, and ladies and gentlemen. My name is James P. Mercurio. With me is Ronald C. Jessamy. We are pleased to be here as volunteer board members and representatives of the Council for Court Excellence. As you know, the Council for Court Excellence is a non-partisan civic organization that works to improve the administration of justice in the local and federal courts and related agencies in the District of Columbia. For nearly 20 years, the Council for Court Excellence has been a unique resource for our community, bringing together members of the civic, legal, judicial, and business communities to work in common purpose to improve the administration of justice. We have worked closely with the D.C. Council in the past on such important areas as the 1994 Probate Reform Act. Last year, we testified on the Sentencing Reform Amendment Act, the proposed budget for the D.C. Child and Family Services Agency, and the Office of Administrative Trials and Hearings Establishment Act. No judicial member of the Council for Court Excellence has participated in the formulation of these comments. Both Mr. Jessamy and I appear today as representatives of the Council for Court Excellence and not on behalf of any client or in any other paid capacity.

Madam Chair, the underlying reason for today's hearing is that D.C. Executive Branch agency adjudication decisions have a pervasive influence in our community - over 200,000 D.C. agency, board, and commission adjudicatory decisions were rendered in 1998 as compared with slightly over 170,000 case dispositions by the D.C. Superior Court in the same period. It is important that the citizenry of the District of Columbia perceive that the administrative appeal process in disputes with their government are timely, fair, and impartial. However, with few exceptions, we found in our 1999 study of the District's administrative adjudicatory systems, that the perception is that when citizens

and businesses have legal disputes with the D.C. Government, they cannot be certain they will receive prompt, efficient decisions that they see as fair. This must change.

For the record, Madam Chair, I want to remind this Committee that in the Summer of 1999 the Council for Court Excellence received a negotiated services contract from the District of Columbia Office of the Corporation Counsel to examine the District's administrative adjudicatory system and research the practices in the 25 or so other jurisdictions which have unified hearing agency systems. Our report, published in September 1999 as "Creating a Unified Administrative Hearings Agency in the District of Columbia," documents D.C. agency administrative adjudicatory practices and national unified hearing agency "best practices" and identifies and analyzes major policy and operational issues. The recommendations contained therein were based upon our work with a wide-ranging public sector group, including representatives from the offices of Councilmembers Brazil, Cropp, Patterson; the Office of the Mayor; the Corporation Counsel's Office; and a number of other District of Columbia Executive Branch agencies.

We are pleased to be here today to offer the strong support of the Council for Court Excellence for the legislative efforts of both Councilmember Patterson and Mayor Williams' Administration, Bill Numbers 14-208 and 14-219 respectively. The commitment of this Committee and the Administration in advancing this important reform initiative deserves particular praise.

The bills now before us represent critical improvements over their progenitor, Bill 13-865, the "OATH Establishment Act of 2000," for which we offered public testimony on October 30, 2000 before this Committee. The current bills correct significant defects and technical problems that we saw in the previous bill. Specifically, the broader scope of agency inclusion offered by the current bills represents an important legislative improvement. As outlined in our September 1999 study, most of the adjudicatory units within

Executive Branch subordinate agencies are appropriate for inclusion within the proposed OATH agency (see Appendix I). Properly implemented, the comprehensive scope of the current bills better serves the constituency of citizens and businesses who presently suffer from the well-documented, long-standing ills of the District's disparate, fractured adjudicatory system. In this regard, we favor the more inclusive approach in the Chair's bill over the more narrowly focused Administration bill.

The timing of the commencement of the proposed OATH agency also differs in the two bills. The Administration bill calls for commencement of the Office's operations on October 1, 2002, and establishes a period not to exceed 3 years to phase-in other case types and agencies, most notably the majority of cases arising under the jurisdiction of DCRA. The more comprehensive OATH agency proposed in the Chair's bill commences its operations a year later on October 1, 2003. The experience of other state hearing agencies across the country suggests that the recruitment of high quality ALJs is facilitated by an agency that at its inception has a substantial and diverse caseload. And we do have concerns, implementation difficulties aside, that dysfunctional agencies with high community and business traffic will remain largely untouched for a period of years. The state of Oregon, whose central panel came "on-line" within the past two years, commenced its central panel operations within a year of passage of its establishing legislation.

Mechanisms of judicial review were another principal concern addressed in our October 30, 2000 testimony. Both current bills have appropriately eliminated the unnecessary levels of judicial review that the earlier bill would have created. An important technical concern exists, however, within the judicial review architecture both bills would create. Each bill as presently written establishes that all contested case appeals shall be heard before the D.C. Court of Appeals, which may conflict with the underlying D.C. Administrative Procedures Act. The final bill reported by this Committee should recognize that appeals for contested cases

are heard, depending upon the type of case, by either the D.C. Court of Appeals or the D.C. Superior Court. Alternatively, the Committee could seek to alter the structure of the D.C. Administrative Procedures Act. The general principle we recommend, however, is not to alter the existing procedural framework for the agencies served by the central hearing office.

Before closing, Madam Chair, permit us to briefly comment for the record on the issue of the selection of the Chief Administrative Law Judge of the proposed OATH agency. The subject will be critically important to the proper implementation and credibility of the Office, whatever its final form. Other jurisdictions, most notably Maryland, have benefitted from the selection - often from the private sector - of a Chief Administrative Law Judge who is well-experienced and independent. The success of the proposed D.C. OATH agency may be determined in large part by the character, competence, and credibility of its first Chief. This, in our view, is a polestar consideration that must be kept in mind in framing the OATH legislation.

In conclusion, we believe that the current bills present a vast improvement in the ability of citizens and businesses to receive timely, fair, and quality administrative adjudication in disputes with their government. We appreciate the leadership and commitment of Mayor Williams in undertaking this good-government reform effort, and we urge the D.C. Council to enact legislation creating a broad based, unified administrative hearing system. The Council for Court Excellence is prepared to work with the D.C. Council and the Administration to finalize this legislation and implement this important reform proposal.

Thank you and we would be happy to address any questions you may have.

Appendix I
D.C. Governmental Units to be Included in the Proposed D.C. Central Hearing

Agency, as Recommended by the Council for Court Excellence

September 30, 1999

I. Governmental units to be legislatively excluded.

The Mayor;
any unit of the Judicial Branch; and
any unit of the Legislative Branch.

II. Governmental units to be included.

Banking and Financial Institutions, Office of
Child and Family Services Receiver *
Consumer and Regulatory Affairs, Department of
Employment Services/unemployment, Department of
Employment Services/worker's comp., Department of
Health, Department of
Housing Authority Receiver *
Human Services, Department of
Insurance and Securities Regulation, Department of
Motor Vehicles, Department of
Professional Licensing and Regulatory Boards
Public Schools (special education hearings)
Public Works, Department of (does not perform adjudications)
Taxicab Commission

III. Governmental units whose inclusion is optional.**

Alcohol Beverage Control Board
Appeals and Review, Board of
Civilian Complaint Review, Office of
Contract Appeals Board
Corrections, Department of
Elections and Ethics, Board of
Employee Appeals, Office of
Fire and Emergency Medical Services, Department of
Historic Preservation Review Board
Housing and Community Development, Department of (does not perform adjudications)
Human Rights and Business Development, Department of
Human Rights Commission
Metropolitan Police Department
Public Employee Relations Board
Public Service Commission
Real Property Assessment, Board of
Sports Commission (does not perform adjudications)
Water and Sewer Authority
Zoning Adjustment, Board of
Zoning Commission

* Presently in court receivership. Agency function would be subject to proposed legislation when court supervision ends.

** Agency Director or the Mayor would have the option to transfer some or all of administrative hearing caseload and function to the proposed central hearing agency.