

**Statement
of the Council for Court Excellence
before the
Committee on Public Safety and the Judiciary
Council of the District of Columbia

FY 2010 Budget Oversight Hearing
on the
Office of Administrative Hearings**

April 1, 2009

Good morning, Chairman Mendelson and members of the committee. My name is Peter M. Willner. I am a Senior Policy Analyst at the Council for Court Excellence and served as the DC Council's appointee on the Commission of Selection and Tenure of ALJs from January 2004 to April 2008. My testimony today is on behalf of the Council for Court Excellence regarding the Fiscal Year 2010 budget of the DC Office of Administrative Hearings. No judicial member of CCE participated in the formulation of this testimony.

The Council for Court Excellence is a local nonpartisan civic organization founded in 1982 to improve the administration of justice in the courts and related justice agencies in the District of Columbia. For 27 years, CCE has been a unique resource that brings together members of the civic, legal, business, and judicial communities to work in common purpose to identify and promote court reforms, improve public access to justice, and increase public understanding and support of our justice system. CCE has worked closely with the DC Council on many issues, including the Office of Administrative Hearings Establishment Act of 2001 and subsequent amendments.

The Council for Court Excellence would like to express its continuing strong support for the work of the DC Office of Administrative Hearings. In reviewing the FY 2010 proposed budget for OAH, there appear to be two critical areas that require DC Council attention.

1. **Unemployment insurance adjudication.** OAH analysis shows a reduction of eight FTEs - five judges and three staff - in the FY 2010 budget from the prior fiscal year. From that analysis, we further understand that this is due to a technical funding matter in the area of unemployment insurance cases. While the Council for Court Excellence does not have a policy perspective on the method of funding, the fact remains that OAH **must** maintain current judicial staffing levels in order to comply with federal case processing standards and with the expectations of the public and government agencies that adjudicate cases at OAH. We encourage this committee to explore alternative funding mechanisms that do not result in the de-funding of an entire subject matter jurisdiction within OAH.

2. **Case management system.** From the same OAH analysis, we also understand that the future contractual obligations incurred as part of the new OAH case management system are also not reflected in the proposed FY 2010 budget. Properly designed and implemented, a case management system is the critical component in measuring the performance of a judicial or quasi-judicial function and determining its effectiveness and efficiency. In many ways, judicial performance data is among the most intuitive to understand – how many cases are going in and coming out and how quickly are they disposed of? – but in our experience, are too often ignored. The OAH case management system needs to be funded going forward. While CCE does not have a perspective on the cost value of the new OAH case management system, the cost benefit of the OAH case management system is considerably greater than if the separate agency cases were still being adjudicated within the executive branch agencies. Economies of scale, and the cost benefits associated with centralizing many disparate adjudicatory units, was one of the key concepts upon which OAH was established.

Before closing, we would like to comment on the OAH Agency Performance Measures provided on the last page of the FY 2010 proposed budget narrative. Objectives one through three are very instructive performance measures and we commend OAH for providing this key information, including on its website. However, further inquiry is merited about the significant discrepancy between projected and actual reductions in the percentage of hearings reduced due to conducting ADR, listed as objective two. The FY 2008 targeted reduction was 1.5%, while the actual reduction was almost 25%. Future projections estimate hearing reductions at 2.5%, which vary from the actual FY 2008 experience by a factor of 10. There may be a technical reporting reason or other explanation for this discrepancy. Regardless, in FY 2008 the mediation success rate is on par with civil mediation settlement rates in the DC Superior Court civil division, which were 23% in 2007.

The reduction in percentage of hearings raises a further question about the structuring of mediation at OAH. We understand that mediation is conducted by ALJs, a method different than that used in Superior Court, where the mediator is a private attorney and not a judicial officer. The utilization of private attorneys for mediation reduces the workload on judicial officers; in OAH, the question becomes to what extent the mediation program exacerbates the workload of judicial officers? Much depends on whether mediation is voluntary or mandatory and the amount of time it takes a judicial officer to prepare for and conduct a mediation. A possible solution would be for OAH to explore a partnership with the Superior Court's Multi-Door Program panel of pro bono mediators, following the OAH co-location of its offices to 441 4th Street.

This concludes the testimony of the Council for Court Excellence. I would be happy to address any questions that you may have.