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**Statement
of the Council for Court Excellence
before the
Committee on Public Safety and the Judiciary
Council of the District of Columbia
FY 2011 Budget Oversight Hearing
on the
Office of Administrative Hearings**

April 30, 2010

Good morning, Chairman Mendelson and members of the committee. My name is James H. Hulme, Court Improvements Committee Chair of the Council for Court Excellence. With me today is Peter M. Willner, a Senior Policy Analyst at the Council for Court Excellence who served as the DC Council's appointee on the Commission on Selection and Tenure of ALJs from January 2004 to April 2008. Our testimony today is on behalf of the Council for Court Excellence ("CCE") regarding the FY 2011 budget proposal for the District of Columbia Office of Administrative Hearings. No judicial member of CCE participated in the formulation of this testimony. I appear today as volunteer board member of the Council for Court Excellence and not on behalf of any client or in any other paid capacity.

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 28 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,



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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 Mayor's proposed FY 2011 budget for the DC Office of Administrative Hearings ("OAH") poses significant changes to the agency's scope. Among them are the return of unemployment insurance cases to the direct jurisdiction of the DC Department of Employment Services ("DOES"), the transfer to OAH of the caseloads from the DC Office of Employee Appeals ("OEA") and the Public Employee Relations Board ("PERB"), and the elimination of the OAH General Counsel position.

The testimony that follows is based upon CCE's 1999 study of the District's administrative adjudication system and the resulting recommendation that the District centralize many of its agency administrative hearings functions, as well as CCE's experience since that time with broad policy issues relating to the establishment and implementation of the DC Office of Administrative Hearings.

Consistent with the recommendations of our 1999 study, whose major findings are embedded in the OAH Establishment Act, CCE recommends that the District of Columbia not reduce the scope of cases under OAH's jurisdiction. To the contrary, the District of Columbia's interest should be in expanding the scope of OAH's jurisdiction, because OAH and the central hearing panel model provides residents with:

- An established platform of services and economies of scale that provide for more efficient and effective case processing, as well as a quality control process that provides for more accurate and consistent decisions.
- Increased perceptions of fairness and decisional independence.



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- An administrative law judge cadre with higher professional qualification standards than in other DC Executive Branch agencies.

The transfer of unemployment insurance cases from OAH to an Executive Branch agency strikes at these core concepts and, at minimum, we strongly urge the DC Council to retain the adjudication of unemployment insurance cases under the jurisdiction of OAH.

As we have stated in previous OAH hearings before this committee, it is important to recall the serious problems that existed in the District's administrative adjudicatory system prior to OAH's establishment in 2002, and the high level and serious efforts made in the mid to late 1990's by the District of Columbia government and then-DC Corporation Counsels Charles Ruff and John Ferren – who both endorsed and supported CCE to undertake a thorough review of the administrative adjudicatory system with the goal of examining areas of improvement. The result was the CCE 1999 report, *A Final Report on Creating a Unified Administrative Hearings Agency in the District of Columbia*.

Among other important findings, the CCE 1999 report found that, prior to OAH, there was little certainty that litigants, including residents and businesses, would receive prompt, efficient, and consistent decisions perceived by them to be fair. Also at the time, there was wide variance in the qualifications for administrative hearing officers; in fact, some District agencies did not require a hearing officer to have passed a state bar exam. The administrative hearing units of most DC Government agencies were seriously underfunded and undersupported, in terms of hearing officer pay, availability of support staff, and case management systems and office technology. Several agencies reported difficulties in attracting and retaining hearing officers because of very low pay, according to documents from an earlier DC Government effort in the mid-1990s to centralize the administrative hearings function.



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In addition, in the 1990's there were reports of high backlog at many of the DC agencies whose function was later folded into the OAH jurisdiction. While there have been occasional reports of isolated, case-specific backlog at OAH, it does not appear to be the widespread delay at the time of the CCE study. As suggested above, economies of scale at OAH means that it can devote resources to promote public understanding and transparency, such as performance measures and meaningful time to disposition standards, while smaller, understaffed offices do not have the resources to devote to this important function.

Taken together, the underlying premise of our 1999 study and of the central hearing panel movement generally, is that when certain adjudication functions are embedded within an Executive Branch agency, the adjudication function takes a back seat to the agency's broader, law enforcement functions. When this happens, it is the litigants – residents and businesses – and the administration of justice that suffer the ill effects.

All this is not to suggest that OAH is without challenges. CCE and other organizations have testified recently and clearly about current concerns with OAH. But these concerns are indicative of a system that is far more transparent, accessible and has far greater capacity than during the earlier, fragmented scheme.

This concludes the testimony of the Council for Court Excellence. The Council for Court Excellence stands ready to assist the DC Council, the Mayor and the Office of Administrative Hearings going forward.

We would be happy to address any questions that you may have.

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**Supplemental Statement
of the Council for Court Excellence
to the
Committee on Public Safety and the Judiciary
Council of the District of Columbia
concerning the
FY 2011 Budget
for the
Office of Administrative Hearings**

May 7, 2010

The Council for Court Excellence writes to supplement the testimony it provided on April 30, 2010, at the FY 2011 budget hearing for the DC Office of Administrative Hearings, concerning the transfer of the adjudication functions of the DC Office of Employee Appeals and the Public Employee Relations Board to OAH.

The subject of transferring adjudication jurisdiction from other agencies to OAH was addressed in CCE's September 1999 study, *A Final Report on Creating a Unified Administrative Hearings Agency in the District of Columbia*. The consensus of the public – private sector study group was that the adjudication function of DC executive branch agencies, boards or commissions not already under the adjudication jurisdiction of OAH should be eligible for future inclusion. In the report, CCE recommended that “the Mayor and DC Council should consider a further set of standards in determining whether existing agencies or boards or commissions should be placed within the central hearing agency. These may include:

- a. existence and duration of any case backlog;
- b. prevalence of a quorum problem over time in the board or commission;
- c. frequency of conflicts of interest on the part of the board, commission or agency in proceedings; and
- d. frequency of factual disputes in contested cases.”

We strongly encourage the DC Council and the Mayor to take these criteria into account when considering the transfer of adjudication jurisdiction to OAH. Momentary budgetary considerations should not be the driving force or even a significant factor in the decision as to the type of cases that OAH should handle.

No judicial member of Council for Court Excellence's Board participated in the formulation of this testimony and does not purport to be issued on their behalf.