

**MEETING MINUTES
ADVISORY COMMITTEE TO THE
DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS**

April 3, 2019

The Advisory Committee to the District of Columbia Office of Administrative Hearings (OAH) met on Wednesday, March 20, 2019 at 11:00 a.m. in the BEGA Hearing Room, 441 4th Street NW, Washington, DC, 20001.

Attendance

Committee Members

Chair Betsy Cavendish, General Counsel to Mayor Muriel Bowser

Toni Jackson, Chief, Equity Section, Public Interest Division, Office of Attorney General

Eugene Adams, Chief ALJ, Office of Administrative Hearings

Alice Thomas, Professor of Law, Howard University

Chelsea Sharon, Legal Aid DC

Jed Ross, Director, Office of Risk Management (arrived at 11:12 a.m.)

Numerous judges and representatives from agency general counsel offices in the audience, as well as staff from OAH.

Call to Order

The meeting was called to order at 11:05 p.m. by Chair Betsy Cavendish.

Introductions

The Chair introduced the Committee and all present members introduced themselves.

Report of OAH by CALJ Adams

CALJ Adams welcomed the Committee members and OAH staff.

Spoke on the March 7, 2019 Oversight Hearing, stating that it was “largely painless.” There were two public witnesses, Legal Aid, Miller Historic Preservation Society. No major criticisms of OAH. One issue regarding timeliness of Orders, from which a meeting to discuss with Chairman Brandon Todd to discuss is being arranged (Meeting scheduled for April 5, 2019.) The results of that meeting may be appended to these minutes at a later date

Infrastructure is ready for a public portal for FYs '19 and '20. Judge Yahner can provide more information

Chair Cavendish asks if this portal will include online access for litigants – incoming or outgoing?

Chief Adams responded “both.”

Chief Adams: ALJs CBA negotiations will take place in the next couple of weeks – currently at the end of the 4-year agreement

Chair Cavendish: Does OLRCB help from the outset of negotiations?

Chief Adams: OLRCB help with negotiations. They also formalize and memorialize the agreement.

[Jed Ross arrives 11:12 a.m.]

Chief Adams: OAH is starting the Judicial Clerkship program with local law schools. OAH will pay half; law schools will pay other half. Will probably have 4 clerks – one for each jurisdictional cluster. They will be assigned with OAH for one year. We currently have funding for this program.

Chair Cavendish: We could have them over to the Mayor’s office for a luncheon meeting with EOM lawyers. Program sounds similar to “Ruff Fellows” at OAG. Which schools?

Chief Judge Adams: They’re from AU and Georgetown.

Tony Jackson: There are good students from UDC as well.

Chief Adams: OAH is experiencing an increasing volume of cases. In FY ’17, there were 17,000 new cases. In FY ’18, there were 31,000 + cases, with an expectation that that number will continue to grow. So far in FY ’19, there are over 11,500 cases.

Chair Cavendish: But your budget hasn’t increased due to the expanding jurisdictional obligations. Are agencies doing more work?

Chief Adams: Both are problems. The Mayor’s program on rats has caused a dramatic increase in DPW cases. DPW is more aggressive in writing Notices of Violations (NOVs) for trash violations that contribute to rat population.

Chair Cavendish: Are there any questions for the Chief?

Jed Ross: Are there any legislative issues that affect OAH?

Chief Adams: There are a couple. Will provide a list at next meeting.

Jed Ross: Risk mitigation effort – ORM will work with agencies to mitigate problems in advance if ALJs are consistently ruling against agencies.

Chief Adams: OAH is looking at that more and will report quarterly to the Mayor’s GC.

Jed Ross: ORM’s job is to go to those agencies to help them fix their problems.

Chair Cavendish: On the rat harborage or DPW trash issues: are people getting warnings?

Chief Adams: I will defer to Judge Crichlow.

Judge Claudia Crichlow: There is an uptick in cases because of the rat initiative. There is no requirement to warn first. There was legislation to warn; but no movement on that. At first all DPW AWEs (Admit with Explanation) had “k” numbers. But now there are some “W” numbers. There is a warning system in place. But it is not widespread and consistently implemented.

Chief Adams: The warning issue resonates with CM Brandon Todd because there were a lot of calls regarding DPW’s aggressive policy.

Alice Thomas: Will those trends be reported to this committee?

Chief Adams: Yes.

Chelsea Sharon: Is DPW’s behavior impacting litigants?

Chief Adams: Yes. ALJ’s have to clarify law in order to gain consistency. Inadequate staffing by agency also has an impact by slowing down procedures. And it frustrates ALJs.

Toni Jackson: Regarding the law clerk issue – OAG is willing to show OAH how OAG does its program.

Judge William England: Regarding agencies messing up the cases for ALJs – the ALJs only job is provide fair hearings; not figure out and fix agency processes and procedures.

Chair Cavendish: We understand that; but part of our job as Advisory Committee members is to identify and fix systemic problems by taking your feedback back to the agencies or ORM. It’s helpful for us to hear from you what the trends are or systemic, repeat issues you see.

Jed Ross: ALJ’s rulings and ORM’s jobs are separate functions.

Chief Adams: It is understood that these issues are not ALJs’ responsibilities.

Chair Cavendish: Let’s hear from the PALJs Rushkoff, Crichlow and Currie.

Bennet Rushkoff: I am the PALJ for Public Benefits. [he explains what the public benefits jurisdiction does]. DHCF does a good job of coverage with attorneys; DHS representatives are also good; but there are not enough of them because the representatives have to not only work the case, but they also have to appear at the hearings.

[Explains the process of the EPD (Elderly and People with Disabilities) waiver cases. Judge Rushkoff explains that the program will pay for aides for these individuals during their recertification period. Lawyers do not have the authority to extend rectifications; only option is to appeal. No major issues other than recertification; OAH is not meeting the 90 day deadline under the law. But benefits continue; the problem is that unqualified people continue to get benefits. The system is broken. The agency is getting flooded with cases and that is impacting public benefits work. Half of the cases are motorized EPD cases.

[Judge Rushkoff gives an example of how the Federal “Scooter Law” is not being applied correctly in DC.]

Shelter: litigants are entitled to shelter as a family ALJ Rushkoff believes in keeping the family together. The issue is what to do when an ALJ misapplies the law. The agency head has an obligation to order the agency to fix any problems with processes and procedures. The ALJ has no authority to do this.

EPD waivers are 70% of public benefits cases. These cases are available on Lexis and Westlaw to view.

Judge Colleen Currie: There are 3 areas within her jurisdiction: Office of Wage Hour, Public Sector Workers Compensation, and Unemployment Insurance. UI is the second largest jurisdiction at OAH

In 2016 – 2349 cases; in 2017 – 2195 cases; 2018 – 2174 cases; Department of Labor guidelines states that a final order must be issued within 30 days.. There are 6 ALJs, 1 part-time judge in 54 hearing slots. The legal assistant corps is very short-staffed at this time. We do approximately 180 cases per month. There aren’t generally any novel cases because there is a rich caselaw precedence from DC Court of Appeals (DCCA). Rarely does DOES have a dog in the fight when it comes to UI cases – except in eligibility issues.

DOES only has 2 hearing representatives; they are non-attorneys. That is a little problematic.

Office of Wage Hour – this is a relatively new jurisdiction; 2016 – 40 cases; 2017 – 56 cases; 2018 – 98 cases. No decisions from DCCA caselaw yet because of newness of the law; ALJ’s are sort of “making law” in these cases right now. OWH cases are very fact-intensive. There are three judges currently hearing OWH cases; the same three are hearing public sector workers compensation cases.; 2016 – 5 cases; 2017 – 78 cases; 2018 – 106 cases; 2019 – 42 so far; on track for 200. These are very large cases; fact intensive; very heavy caseloads; only small set of cases are appealable.

Jed Ross: Public Sector Workers Compensation (PSWC) cases are very expensive and costly to city. Trying to focus on more pertinent cases.

Vanessa Natale: OAH was affected by Federal Government shutdown; staff work increased because federal government employees applying for DOES benefits -- 5,000 applications.

Claudia Crichlow – PALJ for Licensing and Enforcement; there are 13 government agencies in L&E. DPW and DCRA are two of the largest DPW: 2017 – 22,134 cases; 2018 – 11,000 cases

DCRA: Deals with quality of life issues, trash, renovation, etc. Stop work orders from DCRA

DOH -- licensing of doctors and dentists; dangerous dog cases

DFHV: not a large number of those cases for us

DCRA issues – agencies communicate with OAH when they want to ratchet up the tickets ; they are short-staffed too. DCRA stop work orders are problematic as DCRA won't go after contractors.

Jed Ross: I was the director over there (DCRA) for a short time; the homeowner is ultimately responsible for their property. The homeowner can go after the contractor.

Patricia Donkor – Deputy GC DCRA; if we can get information on the contractor, then DCRA will go after the contractors. The GC, Esther McGraw, will happily communicate more with OAH in that regard.

Chair Cavendish, Chief Adams and Jedd Ross have discussion regarding OCFO fiscal impact statements and changes in volume and inspectors.

Patricia Donkor: Another difficulty – contractors re-incorporate under new names; so it's hard to track and keep up with the bad actors.

Judge Crichlow: DPW: Judge Yahner is working on the DPW download project; working on making DPW more paperless by downloading files to eCourt; DPW exhibits would be scanned and shown electronically.

DCRA looking into similar project

Credit Card payment: OAH Attorney Ashlei Ferguson is making progress on that.

Louis Neal: Progress is being made on the credit card portals. Could be partially operational within the next month or two. OAH has the legacy infrastructure. Just needs to work out a system that works best for OAH.

DPW Reconsiderations; request more staff to do recons; maybe something that the judicial clerks and can do.

Alice Thomas: Perhaps you should consider using law school clinics as well;

Sarah Jane Forman – GC OSSE; There needs to be consistency in the outcomes from OAH's AJLJs decisions

Vanessa Natale: OAH's judge are independent; we cannot tell them how to rule. Plus, the facts often determine the outcome. That can change from case to case.

Chair Cavendish: Anything else?

Adjournment

The meeting adjourned at 12:30 p.m.

Minutes submitted by Louis Neal, Deputy General Counsel