**MEETING MINUTES**

**ADVISORY COMMITTEE TO THE**

**DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS**

**September 29, 2016**

The Advisory Committee to the District of Columbia Office of Administrative Hearings (OAH) met on Thursday, September 29, 2016 at 4:00 p.m. in Courtrooms 15/16 of OAH, 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

OAH Staff

Chief Administrative Law Judge (CALJ) Eugene Adams

Vanessa Natale, OAH General Counsel

Administrative Law Judge (ALJ) Samuel McClendon

ALJ Sharon Goodie

ALJ Paul Handy

ALJ Paul Cobbs

ALJ Mary Masula

ALJ Leslie Meek

ALJ Audrey Jenkins

ALJ Jeremy Alper

ALJ Calonette McDonald

ALJ Denise Wilson-Taylor

ALJ E. Savannah Little

Assistant General Counsel Maia Ellis

Assistant General Counsel Danielle Gurkin

Other attendees:

A representative from Councilmember McDuffie’s office, Jontae Clapp (Barbara Mack Mitchell previously reported that she is no longer the Council representative to the Committee).

**Call to Order**

The meeting was called to order at 4:00 p.m. by Chair Betsy Cavendish.

**Introductions**

The Chair introduced the Committee and all attendees introduced themselves.

**Remarks of OAH CALJ Adams**

CALJ Adams welcomed the Committee members and OAH staff.

**Adoption of the Minutes from December 9, 2015**

The minutes were adopted.

**Legislative Proposals**

The Chair inquired as to whether OAH is moving for any legislation in the fall.

* General Counsel Natale stated that OAH is waiting for approval of the collective bargaining agreement for the ALJs. OAH is waiting for Chairman Mendelson to set a meeting.
* There are amendments to OAH’s Establishment Act that clarify residency requirements.
* The Council on Court Excellence (CCE) suggested legislation but OAH has not moved on it and we are not sure we agree with it.
* CALJ Adams stated that OAH is looking into tweaks as to how we process cases for other agencies. For example, OAH is working with ORM/DOES to make changes to how to process to these cases before OAH begins to hear them.
* General Counsel Natale reported that there is other legislation that OAH is not proposing but supports, such as Department of Behavioral Health (DBH) legislation that was drafted and sent to Council last year. Currently OAH does single letter referrals but OAH needs to officially get jurisdiction. General Counsel Natale stated that she will follow up with a memo of jurisdiction of what OAH officially needs to get in our Establishment Act.
* CALJ Adams noted that we have not divided up our legislative agenda between fall and spring.

**Council on Court Excellence (CCE) Report**

* The Chair expressed support for the idea in the CCE Report that OAH obtain jurisdiction not by Memoranda of Understanding (MOU) but by legislation. General Counsel Natale noted that OAH cannot control the legislation that is passed by DC Council. The Chair stated that DC Council does not always consider the burden on OAH when it passes legislation that sends cases to OAH and inquired if that communication is working better now. CALJ Adams responded that the lines of communication are better but not perfect. OAH is beginning to hear cases from two new jurisdictions: Wage Theft and Public Workers Compensation. One of the conditions (by MOU) is that they send OAH money to pay for additional ALJ and paralegal help. OAH’s goal is and has always been to try to communicate as early and as often with agencies as possible.
* The Chair questioned some of the reasoning in the CCE Report. For example, the CCE Report stated that OAH jurisdictions should be established by statute because otherwise OAH would feel beholden to the agencies that are paying OAH through MOUs. General Counsel Natale stated that this rationale is incorrect and inapplicable to OAH.
* Concerns about the CCE Report were expressed by several people at the meeting. The Chair noted that typically an agency has the chance to respond before the report is published and the entire response is attached to the report. In this instance, it was surprising that the CCE Report stands on its own before OAH had a chance to respond.

**OAH Response to CCE Report**

* CALJ Adams and General Counsel Natale stated that OAH is preparing a response to the CCE Report, and that OAH has major concerns with the report. OAH’s goal is to have one collective response.
* Methodology: ALJ Goodie noted that OAH had concerns about the methodology while the study was going on. Litigants were receiving inserts into their Final Orders that said, “Respond to our survey and we will enter you into a raffle for $50!” This was clearly not appropriate. General Counsel Natale stated that CCE did not discount their findings when there was a noticeably small sample. CCE sent out 5000 solicitations for a survey response and only got back a very small number. It was a small sample to come up with these conclusions that would have a tremendous effect on OAH, and of course, for any particular case, half the parties will be disappointed in the result: doing surveys among litigants, many of whom would be disappointed on the legal conclusion, calls for some methodological sophistication not shown in the report. Other concerns about methodology dealt with the confusing focus of the study. It was a retrospective focus initially; but some of the people working for CCE thought it was forward looking. Many ALJs expressed frustration that CCE did not spend enough time looking at what OAH actually does. Another methodology concern included the fact that the surveys were only done in English; CCE did not talk to the correct people; and the outcome was too political: that is, the negative findings about OAH were immediately used for CCE fundraising, even though the negative conclusion was not really backed up in the report. Also, the work was done over a long period of time, and many of the issues were corrected or addressed by the time of publication.
* Substantively: CALJ Adams and the other ALJs concurred that getting rid of judicial terms was a bad idea. ALJ Handy noted that terms give the ALJs protection and that an agency setting would not be appropriate for OAH. ALJ Wilson-Taylor pointed out that one of the recommendations was that the Advisory Committee should fold into COST, reflecting no appreciation for what the two bodies do. ALJ Little noted that OAH’s independence is critical. CALJ Adams stated that he is very supportive of keeping COST. There was some discussion of the history of the formation of the central hearing panel – to get judges away from the political pressures of being in an agency so responsive to agency leadership. The judges prefer the model of being a panel or collection of judges, not agency employees. The report in some places noted what other jurisdictions do, and then leapt to the conclusion that if OAH was in a minority, the other jurisdictions must have had it right and OAH was doing it wrong. But there was no deeper analysis to determine what exactly was a best practice from the standpoint of providing just results, in a procedurally fair setting for litigants in an efficient manner. Some other recommendations would be expensive to implement and did not seem to acknowledge cost constraints.
* Potentially good ideas: Authority conferred by statute instead of MOU is a good idea. As for the issue of performance evaluations, CALJ Adams stated that there are provisional evaluations that have been agreed upon.

A representative from Councilmember McDuffie’s office was in attendance at the meeting. She has a meeting with CALJ Adams next week. She explained that DC Council would like to know which parts of the report OAH liked and which parts OAH did not like. She explained it was possible that a public hearing could be held on the report.

The Chair stated that she did not think the report’s conclusion regarding efficiency made sense. How could CCE say that OAH is not effective, when OAH hears thousands of cases a year? The Chair expressed her belief that OAH does plenty to make sure that people get fair hearings, and stated that the CCE Report needs to be rebutted.

**Status Check on Public Portal Update**

General Counsel Natale reported that OAH is in the process of updating its public portal but that it is a big, expensive process. OAH’s goal is to be able to use it as a filing mechanism for litigants as well. The Chair suggested that OAH look for funds attached to other open government initiatives.

**Adjournment**

The meeting adjourned at 5:30 p.m.

Minutes submitted by Danielle Gurkin, Assistant General Counsel