



## **2009 Annual Report of the State Advisory Council on Administrative Hearings**

### ***Legislative Authority and Functions***

The State Advisory Council on Administrative Hearings (the "Council") is authorized by State Government Article § 9-1608 of the Maryland Annotated Code. The Council was established with the following purpose and functions:

- 1) To advise the Chief Administrative Law Judge (CALJ) in carrying out his duties;
- 2) To identify issues of importance to administrative law judges (ALJ) that should be addressed by the CALJ
- 3) To review issues and problems relating to administrative hearing and the administrative process
- 4) To review and comment upon policies and regulations proposed by the CALJ
- 5) To advise the Governor as to those agencies for which a continuing exemption under § 9-1601 should be maintained
- 6) To submit an annual report, which may be prepared in conjunction with the Office of Administrative Hearings' (OAH) Annual Report to the Legislative Policy Committee of the General Assembly.

In the interest of government efficiency and economy, the Council submits its 2009 Annual Report in conjunction with the 2009 OAH Annual Report.

### ***Council Membership***

The Council consists of ten members. Leroy D. Maddox, Esquire, general public representative, continued to serve as Chair. The newest Council member, James P. Johnson, Deputy Secretary of Operations, Department of Health and Mental Hygiene (DHMH), serves as an agency representative and is the designee of the Secretary of DHMH, John Colmers.

The following Council members continued to serve in 2009:

- Senator Jamin B. Raskin, appointed by the President of the Senate;
- Delegate Victor R. Ramirez, appointed by the Speaker of the House;

- Dr. Nancy S. Grasmick, agency representative, State Superintendent of the Maryland Department of Education;
- Nathan J. Greenbaum, Esquire, Maryland State Bar Association (MSBA) representative;
- Florine Jones, general public representative;
- Bruce P. Martin, Esquire, designee of the Attorney General;
- Susan Dishler Shubin, Esquire, MSBA representative; and
- Vacancy, nongovernmental attorney representative<sup>1</sup>.

Many of the Council members' terms remain expired and they are therefore serving in a holdover capacity. The Council and CALJ Dewberry have contacted the Governor's Appointments Office on several occasions requesting the re-appointment of the following members: Leroy D. Maddox, Jr., Esquire; Dr. Nancy S. Grasmick; Nathan J. Greenbaum, Esquire; and Susan Dishler Shubin, Esquire.

### ***Council Activities***

The Council met in March, June and December; these meetings were open to the public. Council members were kept apprised of the OAH's overall operations, the monthly Administrative Law Judge (ALJ) training programs, the status of the current year's budget as well as the upcoming fiscal year's budget. It is noteworthy that, in 2009, the OAH's timeliness rate for issuing written decisions was approximately 98%.

At the March 18<sup>th</sup> meeting ALJ Wayne A. Brooks, Deputy Director of Operations, reviewed the legislation that the OAH was monitoring during the Legislative Session. The OAH monitors bills that (1) could impact OAH's caseload; (2) may require ALJ training; (3) a "Request for Fiscal Note" has been submitted by the Department of Legislative Services; and (4) would provide a board with the option of delegating contested case hearings to a subset of board members.

Also at the March meeting, the Council reviewed and commented on OAH's revised Rules of Procedure in accordance with Md. Code Ann. State Gov't 9-1610(a)(4). The comments provided by the Council were submitted to the OAH's Rules Committee for their consideration. Many of the suggestions made by Mr. Martin at this meeting were incorporated and a revision was sent to Council members on June 3, 2009.

CALJ Dewberry discussed the "Final Report of the Legislative Audits," dated February 5, 2009, with the Council members. He noted the audit findings and OAH responses. CALJ Dewberry further advised the Council that the legislative auditor and OAH's budget analyst suggested that OAH conduct a case hour study to ensure that the formula that is being used for reimbursable funds remains accurate.

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<sup>1</sup> On March 27, 2007, F. Vernon Boozer, Esquire submitted his resignation. As of December 31, 2009 this vacancy has not been filled.

Council members were also pleased that OAH was able to assist the Department of Labor, Licensing and Regulation, Unemployment Insurance (UI) Division, with hearing the backlog of unemployment insurance cases that have developed in the State of Maryland. At the March meeting, CALJ Dewberry reported that after ALJs received training from the UI Chief Hearing Examiner, OAH was handling approximately 75 UI cases per week.

On June 11, 2009, at the Maryland State Bar Association Annual Meeting, Mr. Martin<sup>2</sup>, was the chair of a program entitled "The Office of Administrative Hearings: Serving Justice for Two Decades." The program was a review of the origins of the OAH in recognition of the 20<sup>th</sup> anniversary of the legislation which created Maryland's central hearing agency. CALJ Dewberry participated as a speaker for this session, which discussed OAH's past, present and future. Former CALJ John Hardwicke was also a speaker at this program.

At the June 17<sup>th</sup> meeting, Council members received updates on new legislation that will impact OAH as well as the number of UI cases that OAH was conducting on a weekly basis. In addition, Ms. Shubin provided additional comments on OAH's Rules of Procedure for consideration by OAH's Rules Committee.

At the December 7<sup>th</sup> meeting, ALJ Brooks advised Council members that the Rules of Procedure were finalized and would be resubmitted to the Joint Committee on Administrative, Executive and Legislative Review on January 5, 2010. Members of management staff summarized OAH's efforts to assist with the backlog of UI cases and indicated that OAH was not able to handle UI dockets in the summer months but resumed conducting dockets in October. Council members also received information regarding OAH's recruitments efforts to fill two ALJ vacancies.

Also, at the December meeting, CALJ Dewberry sought the Council's advice regarding proposed legislation would exempt ALJs from the State Personnel Management System's Planning, Performance and Evaluation system (PEP). The Council carried a motion that the OAH not support legislation which would exempt ALJs from the PEP process. In addition, the OAH would consult with Dr. Grasmick regarding the Department of Education's differentiated system whereby mid-cycle evaluations are by-passed in certain circumstances and seek the approval and guidance of Cindy Kollner, Executive Director, Office of Personnel Services and Benefits, Department of Budget and Management.

The Council wishes to emphasize that the attached OAH Annual Report provides detailed information on the items highlighted in this Report.

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<sup>2</sup> Mr. Martin is a member of the Administrative Law Section Council of the Maryland State Bar Association and chaired this program in that capacity.