

MINUTES
Office of Administrative Hearings Oversight Committee
Date: Wednesday, May 28, 2008
1:00p-5:00p
Location: Room 3
Employment Department Central Office

Welcome and Introductions:

Chair Phil Schradle, Department of Justice, opened the meeting and requested all attendees introduce themselves.

Committee and Staff:

Phil Schradle, Chair, Department of Justice
Laurie Warner, Director, Employment Department
Senator Doug Whitsett, Senate District 28
Senator Suzanne Bonamici, Senate District 17
Representative Vicki Berger, House District 20
David Reese, Governor's Representative
J. Kevin Shuba, Vice-Chair, Garrett Law Firm
Tom Ewing, Chief Administrative Law Judge
Christine Chute, Department of Justice
Rebecca Nance, Legislative Coordinator, Employment Department

Other Attendees:

Sara Cromwell, EAB
Sarah Owens, EAB
Steven Demarest, OAALJ & SEIU Rep
Bill Fink, Deputy Director, OED
Lynne Wehrle, OAH ALJ

Guests:

Jeremy Emerson, DHS
Kym Gasper, DHS, Director's Office
Mick Gillette, Oregon Supreme Court
Kathleen Haley, Medical Board
Jon Hills, DCBS, Building Codes Division

Perspectives on Administrative Law:

Justice Mick Gillette

Justice Gillette was invited to speak to the committee regarding his observations of how decisions are made in administrative law. Justice Gillette referred to a diagram of his view on how the administrative law decision process works. This diagram, "Justice Gillette charts the OAH" is available on the OAH Oversight Committee website at:

http://www.employment.oregon.gov/EMPLOY/OAHOC/docs/OAH_Chart_Gillette.pdf

ACTION:

- No action items from this agenda topic.

Perspectives on the OAH – Multi-Agency Panel:

Guest Panelists Listed Below

- **Jon Hills**, DCBS, Building Codes Division (BCD) – Mr. Hills discussed suggestions for how DCBS and OAH can work better together. His suggestions included cross-agency training and limiting the number of ALJs who hear BCD cases. Mr. Hills pointed out that ALJ decisions on BCD decisions are proposed orders.
- **Kathleen Haley**, Medical Board – Ms. Haley stated that the Medical Board accepts proposed orders from the OAH. She said that there are instances where the ALJ is not experienced enough with either medical statutes or medical knowledge. The Medical Board is against relinquishing final order authority because of the specific and complex nature of the cases before the board. Ms. Haley also stated that she discussed relinquishing final order authority with other health licensing boards and they are also opposed to it. Additionally, Ms. Haley discussed a poll of other states she'd taken last year regarding central panel final order authority in Medical Board equivalent cases; of the respondents, only Washington, DC gave final order to its ALJ equivalents and the board director from Washington, DC stated that they do not go into contested cases hearings if at all possible. Ms. Haley also pointed out that the Medical Board members must be practicing medicine and therefore have an intimate knowledge of medical issues and it is because of that expertise that the board should retain final order authority. Prior to the advent of the OAH, the Medical Board used contract hearing officers who were required to be a member of the bar.
- **Kym Gasper**, DHS, Director's Office – Ms. Gasper discussed the final order authority issue, the recusal rule as well as other areas of concern regarding the OAH from DHS's perspective. Ms. Gasper stated that DHS is in favor of the department retaining its final order authority largely due to the complexity and variety of DHS related cases. Some programs within DHS have proposed orders but some have relinquished final order authority to OAH. Ms. Gasper also brought up DHS's Federal Code issues; some CFRs will not allow for final order authority to be relinquished. Ms. Gasper stated that DHS requests the recusal of an ALJ very rarely. There has been an instance of a high recusal rate of a particular ALJ by a particular division of DHS (specifics not discussed) however, Ms. Gasper clarified that the Director's Office of DHS was looking into the situation. As a final point, Ms. Gasper mentioned DHS's concern over the quality of some decisions and the amount of time necessary to train new ALJs on DHS related laws.

ACTION

- More information regarding relinquishing final order authority and the impact of that change under Federal law was requested.
- Mr. Schradle offered to work with DHS to gain an understanding of what processes DHS uses in decision making to report back to the committee.

Housekeeping:

Mr. Schradle entertained a motion to approve the minutes from the March 3, 2008 meeting. The motion was moved seconded, the minutes were adopted with no changes.

A discussion regarding meeting protocol for public members during testimony was distributed to the group prior to the meeting. Mr. Schradle asked the committee for input regarding the proposed protocol. The intent of the protocol is not to limit discussion or public input in any manner but to set up boundaries for testimony. A recommendation was made to make the charge of the committee clearer to the public; namely, while the committee will hear about particular interactions with the OAH, the committee does not have the authority to intervene in the decision making process. This statement regarding the charge of the committee could be provided in a handout and/or posted to the public website. The committee did not feel it was necessary to officially adopt the proposed protocol. The committee consensus was to not limit the public from testifying, the rules of testifying are at the discretion of the chair.

ACTION:

- Mr. Schradle will work to refine a statement as to the charge of the committee to be posted to the public website.

OAH Workplan Update:

Tom Ewing

Mr. Ewing focused his presentation on two key issues, communication between staff and a staff survey.

The communication piece has been addressed by adding discussion forums for both lead and line staff to share their concerns with management. Mr. Ewing indicated these forums are going well.

The staff survey focused on staff concerns from operations and facilities to the business practices of the OAH. Mr. Ewing shared the results of four of the questions he believed to be of the most interest to the committee. Two thirds of OAH staff from Salem and Tualatin offices responded to the survey. The questions, as well as the percentages of response are:

- Question: Do you feel the offices (i.e. Salem or Tualatin) are attractive and professional?
 - Responses:
 - 85% agreed or strongly agreed
 - 11% had no opinion
 - 5% disagreed
- Question: Do you find it comfortable working in a consolidated office?
 - Responses:

- 83% agreed or strongly agreed
 - 9% had no opinion
 - 9% disagreed
- Question: Do you look forward to coming to work?
 - Response:
 - 57% agreed or strongly agreed
 - 20% were neutral
 - 23% disagreed
- Question: Do you enjoy working for the OAH?
 - Response:
 - 70% agreed or strongly agreed
 - 20% were neutral
 - 10% disagreed

Mr. Ewing believes that the survey shows that there is still work to be done with staff satisfaction at the OAH though much progress has been made. He believes that, by and large, management and staff are working together to create a positive and constructive culture.

A question was raised about the status of customer satisfaction surveys. Mr. Ewing clarified that the OAH does conduct customer satisfaction surveys and that the surveys are a sampling of customers, both citizens and agencies, specifically licensing and regulatory cases and not every case heard by the OAH. Mr. Ewing reads every returned survey. The survey attempts to capture courtesy of staff, conduct of the hearing and satisfaction with the order. Mr. Ewing said that if the survey is returned and an issue deeper than dissatisfaction with the result of the order is evident, he looks into the root of the issue. A question was raised about whether surveying only particular cases was giving a complete picture of the OAH and its operations. The committee suggested that perhaps every certain number of cases should be surveyed; not by program area but by random order. A suggestion was made to compile a complaint matrix listing all complaints and what the issue was to better inform the committee as to the issues which have come up in regards to the OAH.

A question was raised regarding the committee's examination of the judicial integrity of the OAH. Senator Whitsett indicated that he does not believe that the committee has addressed this issue but stated that it is a concern for ALJs. Senator Whitsett had a list of questions, put together by ALJs, which he believes addresses the issue of judicial integrity. Mr. Ewing stated that he would be happy to address this issue. The committee considered conducting a survey with questions focused on judicial integrity.

Finally, the committee asked about ALJ specialization, specifically the creation of a dedicated UI panel. Mr. Ewing stated that that issue is under review by the agency.

ACTION

- Send OAH website link for newsletter out to the committee

State Agency and Public Comment and Group Discussion:

A sign up sheet was available for those who wished to make public comment. The following individuals made comments:

- Steve Demarest, OAALJ, discussed the status of the upcoming OAALJ survey. He said the OAALJ is willing to collaborate with the committee on conducting the survey. He also stated that he thinks he would like to see both the OAALJ survey and the committee's potential survey rolled into one so the survey process is less overwhelming to staff. Mr. Demarest also stated that there is an interest on the part of ALJs to know when the committee will take action on the charges outlined in its enabling statute, including a recommendation on the appointment or reappointment of the Chief ALJ. He said that OAH employees feel unsettled because the appointment/reappointment issue has not been resolved. Additionally, Mr. Demarest praised Tom Ewing for showing no less commitment to the OAH in spite of being in an interim position. Laurie Warner clarified Mr. Demarest's concerns over the reappointment by stating that the committee only makes a recommendation to the Director regarding appointment/reappointment and that the committee had agreed to wait until it was fully operational and had a full breadth of OAH knowledge before reconsidering the issue. She also stated that Mr. Ewing will continue to serve as Chief ALJ until he is reappointed or another appointment is made.
- Group Discussion, the group discussed the possibility of conducting a survey of staff.

ACTION

- Mr. Schradle requested that all committee members be given the OAALJ survey as well as a list of questions offered by Senator Whitsett.
- Mr. Ewing and Mr. Schradle will pull together background information on the decisional independence issue for the committee. Committee will review articles and formulate possible questions.

The meeting adjourned at 5:00pm

Next Meeting:

Rebecca Nance will propose potential dates and poll the committee shortly