

MINUTES
Office of Administrative Hearings Oversight Committee
Date: Wednesday, October 6, 2010 - 1:30p-3:30p
Dave Pleasant Conference Room
Employment Department Central Office - Salem, OR

The meeting was called to order at 1:35pm by Chair Paul Holvey.

Welcome and Introductions

Chair Holvey welcomed attendees and asked all to introduce themselves.

There were no suggested changes to the meeting agenda.

Committee and Staff

Rep. Vicki Berger, House District 20
Sen. Suzanne Bonamici, Senate District 17
Denise Fjordbeck, Department of Justice
Karla Forsythe, Chief Administrative Law Judge, OAH
Amber Hollister, Governor's Office (via telephone)
Rep. Paul Holvey, House District 8 & Chair of the Committee
David Leith, Department of Justice
Rebecca Nance, Legislative Coordinator, Employment Department
J. Kevin Shuba, Vice Chair of the Committee, Garrett Law Firm
Laurie Warner, Director, Employment Department
Sen. Doug Whitsett, Senate District 28

Other Attendees

Kym Gasper, Dept. of Human Services (DHS)
David Gerstenfeld, ALJ, OAH
Janice Krem, Self
Phoebe Colman, OAH

Approval of Minutes

Sen. Bonamici moved the minutes of the March 18, 2010 OAH Oversight Committee meeting be approved as presented. The motion was seconded by Mr. Shuba. Motion carried.

Model Rules Advisory Group – Project Review

David Leith, Dept. of Justice & OAH Oversight Committee Member

Mr. Leith reminded the Committee that he is a member of Model Rules Advisory Group along with: Karla Forsythe, Chief ALJ; Janice Krem, OSB Designee; Lou Savage, Governor's Designee; and Mike Unger, Public Member.

Mr. Leith reviewed what, in his opinion, are the "top ten" working items of the work of the group. Most of which are at or near consensus, they are:

1. Notice of Sanctions. The agency requirement is to notice appropriate sanction based on what is known at the time of the notice. Agencies may only amend notice before the record closes. The time frames for notice may vary, depending on statute for the individual agencies and/or boards and commissions. The notice must include what the agency thinks ought to happen, with a range that is subject to aggravation or mitigation depending on evidence at the hearing.
2. ALJ Required Discovery Orders. Discovery Orders will be reviewed by the Chief ALJ and cannot be pulled by the agency.
3. Pilot program for "Split Function". Provides for a Case Presenter.
4. Written Exceptions as part of "Split Function" pilot. The lay or AAG present would write an exception if they disagreed with the ALJ. This will give more transparency to the process.
5. Publication of Agency Final Orders. There will be a pilot program with the Oregon State Bar to publish final orders using their fast case search engine. OSB has indicated they are willing to host Final Orders in their database.
6. The default standard will be Good Cause. This will eliminate the beyond party seeking relief control.
7. Reasonable reliance on a party's statement.
8. Treating the hearing request as sufficient to meet the procedural requirement that the party disagrees with the agency.
9. Late hearing requests will be deemed timely filed if postmarked timely and received by the agency.
10. Emergency Suspension Time Lines. A professional is without a license until the issue they have is resolved. Strict time lines will be imposed on all parties. The licensee may choose to take longer.

The next meeting of the group is being planned. Chair Holvey indicated that the next Committee meeting will focus on the work of the Model Rules Advisory Group.

Mr. Leith indicated that at the end of the day, the Model Rules will be determined by the Attorney General.

Chief Administrative Law Judge Update

Karla Forsythe, OAH, Chief ALJ

Budget

Chief Forsythe explained that the OAH is 100% funded through "other funds". Agencies which refer cases to the OAH are charged the actual cost of providing services rendered.

The 2009-11 Legislatively Approved Budget was \$29,041,477, this includes 28 limited duration positions to process increased UI appeals through June 2012.

The 2011-13 Base Agency Request Budget is \$26,353,418. Additionally there will be a requested policy option package of \$1,021,672 for up to 5 limited duration ALJs and one limited duration Office Specialist; this is in anticipation of UI exhaustees turning to the state for other types of support. The total Agency Budget Request is \$27,375,090.

Chief Forsythe also provided Key Performance Measure information to the Committee.

Recusals

Chief Forsythe reviewed recusal information with the Committee. From July 1, 2009 through June 30, 2010, out of the 4,106 hearings tracked, 69 recusal requests were made, about 1.7% of the tracked hearings.

The majority of requests were made by the Department of Human Services (DHS). Here is the summary: request made to recuse one ALJ 39 times; request made to recuse a second ALJ 11 times; a request made to recuse a third ALJ four times; and, a request made to recuse a fourth ALJ three times. The remaining requests were made to recuse nine other ALJs one or two times each.

Final Orders

Chief Forsythe summarized those agencies and the respective divisions that delegate final order authority to the OAH. She also reviewed the volume and response rates for final orders issued, proposed and final orders, proposed orders and combined proposed and final orders. She indicated that from 4th Quarter of 2009 through the end of 2nd Quarter 2010, 65 final orders have not been received by the OAH.

Public Comment

There was no public comment.

Adjournment

The meeting adjourned at 3:00pm.

Next Meeting

The Oversight Committee will meet after the work of the Model Rules Advisory Group has finished their work. The Oversight Committee will want to hear the outcome of the group's work. Potential meeting dates will be sent to the Oversight Committee for consideration.