

MINUTES
Office of Administrative Hearings (OAH) Oversight Committee
Date: Wednesday, November 15, 2011 - 2:00p-3:30p
Dave Pleasant Conference Room
Employment Department Central Office - Salem, Oregon

The meeting was called to order at 2:06pm by Chair Paul Holvey.

Welcome and Introductions

Chair Holvey welcomed members, attendees and asked all to introduce themselves. Chair Holvey noted the Committee has a new member, Rep. Shawn Lindsay.

Committee and Staff

Karla Forsythe, Chief Administrative Law Judge (CALJ), OAH
Rep. Paul Holvey, House District 8 & Chair of the Committee
David Leith, Department of Justice
Rep. Shawn Lindsay, House District 30
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

Steve Demarest, SEIU and OAH Administrative Law Judge (ALJ)
George Ostertag, OED Budget Manager
Julie Boston, OED OAH Budget Analyst

Approval of Minutes

Mr. Shuba moved the minutes of the October 16, 2010 OAH Oversight Committee meeting be approved as presented. The motion was seconded by Mr. Leith. Motion carried.

OAH Overview

Karla Forsythe, OAH, Chief ALJ

Ms. Forsythe gave a 2011 overview of the Office of Administrative Hearings. Ms. Forsythe's presentation included expense by state agency and cost per disposition information, key performance measures, final orders and recusal information. The Oversight Committee historically has been interested in final orders and recusals. Ms. Forsythe reported that there were 343 final orders issued, of these 286 were received by the OAH and 273 (of the 286) were affirmed. There were 31 recusal requests between July 1, 2010 and June 30, 2011.

Brief discussion along with "questions and answers" followed the presentation.

Model Rules Review

David Leith, Department of Justice

Mr. Leith indicated that the revised model rules were being released today (November 15, 2011) but they will not be filed and effective until January 31, 2012. The effective date coincides with the new Attorney General's manual.

Mr. Leith explained that the new model rules process was quite an odyssey. Changes were considered from a variety of sources including the Model Rules Advisory Group and others. Overall he thinks the updated rules will improve the fairness and perception of fairness. This was not a consensus product but it was the result of a robust, collegial, and collaborative process; no one got everything they wanted in the rules.

Mr. Leith highlighted the major changes as:

- With exceptions, a "Request for Hearing" now functions as a general denial;
- A notice of sanctions now must include a statement of the sanction that would be appropriate, based on the facts understood at the time of and alleged in the notice;
- Emergency suspensions may not be consolidated with the hearing on the merits except by stipulation;
- Timelines for emergency suspension proceedings are now in rule. If an agency doesn't meet these deadlines, the reason must be explained in the final order;
- A timely postmarked hearing request will be treated as timely, unless doing so would be prohibited by statute or would create operational conflicts;
- Limits agency ability to amend notice after hearing – only pre-hearing or during hearing amendments may be made;
- A "lay representative" code of conduct is established;
- A discovery provision for admissions and interrogatories is provided;
- ALJ rulings on discovery and certain rulings in the course of a hearing are no longer subject to immediate agency review; instead, such rulings subject to review by the Chief ALJ; and,
- Other changes were made to conform the rules to changes made by SB 274 (2009) such as substituting a "clear and convincing" standard to modifications of ALJ findings on historical facts and to improve clarity and readability.

Mr. Leith indicated that they did not revise the rules to provide for the bifurcation of attorney functions within the Department of Justice although this is considered a best practice throughout the country. They are looking for a state agency to volunteer to pilot bifurcation.

Mr. Leith reported that the pilot program that publishes final orders on the Oregon State Bar is up and running smoothly.

Public Comment

There was no public comment.

Adjournment

The meeting adjourned at 3:35pm.

Next Meeting

The next meeting is at the Call of the Chair.