

## **Office of Administrative Hearings Oversight Committee**

**Date: Monday, November 16, 2009**

**1:30p-3:00p**

**Dave Pleasant Conference Room  
Employment Department Central Office  
Salem, OR**

### ***Welcome and Introductions***

Kevin Shuba, Acting Chair, opened the meeting by having all attendees introduce themselves.

### ***Committee and Staff***

Rep. Vicki Berger, House District 20

Sen. Suzanne Bonamici, Senate District 17

Christine Chute, Department of Justice

Karla Forsythe, Chief Administrative Law Judge, OAH

Rep. Paul Holvey, House District 8

Rebecca Nance, Legislative Coordinator, Employment Department

Margaret Olney, Dept. of Justice

J. Kevin Shuba, Vice Chair of the Oversight Committee, Garrett Law Firm

Kelly Skye, Governor's Office

Laurie Warner, Director, Employment Department

Sen. Doug Whitsett, Senate District 28

### ***Other Attendees***

Sara Cromwell, EAB Legal Staff

Richard Davis, OAH

Steve Demarest, OAH

Amber Hollister, Governor's Office

David Leith, Dept. of Justice

David Marcus, OAH

Sarah Owens, EAB

Anita C. Smith, OAH

### ***Approval of Minutes***

Sen. Bonamici moved that the minutes of the September 9, 2008 be approved; the motion was seconded by Ms. Chute. Sen. Whitsett asked about the status of the "DHS Decision Making Process"; Mr. Schradle was to have followed up on it and transitioned from the Oversight Committee prior to completion; staff made note of the request. Minutes were adopted as written.

### ***Model Rules Advisory Group***

*David Leith, Dept. of Justice*

Mr. Leith reviewed the appointments to the Model Rules Advisory Group: David Leith, DOJ; Karla Forsythe, OAH; Lou Savage, Agency Rep.; and, Janice Krem, Administrative Law Practitioner. The public non-attorney seat has yet to be confirmed, Lisa Trussell is under consideration.

Mr. Leith said that the “housekeeping” changes will be made immediately as they pertain to implementation of SB 274. Mr. Leith asked Ms. Chute to review the six “housekeeping” changes:

1. Filing and providing copies of documents
2. Late hearing requests
3. Late filing and amending of documents – will add to the list of deadlines
4. Clear and convincing evidence standard
5. Agencies to send Final Orders to OAH
6. Delay of Agency Order (Stays) based upon other provisions of law

Mr. Leith has started outreach to stakeholders to gain input on the Model Rules project. He will report back on the appropriate reforms, focusing on good government.

Mr. Leith talked about the administrative law philosophical divide: 1) those who prefer the judicial model; and, 2) those who believe that administrative law is a tool of agencies to use as a decision making process. He spoke of his concern with agencies control over the discovery process and indicated that there is room for improvement. Mr. Leith believes that Final Order Authority is at the crux of the philosophical divide.

The timeline for the work of the Advisory Group will dovetail with the legislative process (2011 Legislative Session), if needed. At this point in time he is not sure if there will be legislation required.

Mr. Leith said he welcomes input from the Oversight Committee and gave out his contact information.

### ***Senate Bill 274 Overview***

*Sen. Suzanne Bonamici*

Sen. Bonamici reviewed the legislative process of the bill, how it ultimately went to conference committee and that there was a great deal of support in both chambers. The legislation was effective on August 4, 2009 without the Governor’s signature.

There were six changes that SB 274 made to the APA as it applied to cases before the OAH:

1. Authorizes the Governor to appoint the Chief ALJ;
2. Establishes the OAH within the OED for administrative oversight and support;
3. Requires Attorney General to consult with an advisory group before modifying rules of procedure for contested case hearings;
4. Changes the standard under which agencies may change findings of historical fact from “preponderance” to “clear and convincing” evidence;
5. Modifies the list of ex parte communications that must be reported; and,
6. Requires the Secretary of State use the OAH for hearings

### ***OAH 2009 Portfolio and Strategic Plan***

*Karla Forsythe, OAH, Chief ALJ*

*Anita Smith, OAH ALJ & member of “The Planning Team”*

Ms. Forsythe and Ms. Smith presented the 2009-2012 Strategic Plan Overview. The process for developing the plan was described as looking at a variety of perspectives and balancing them using an inclusive process engaging staff (The Planning Team) and stakeholders. They reviewed the framework, foundation, strategic goals, and objectives & key actions.

Comments by the Oversight Committee were positive about the process and the accomplishments in such a short period of time.

### ***Election of Oversight Committee Chair***

There was consensus that this agenda item be held over for action at the next Oversight Committee meeting.

### ***Public Comment***

There was no public comment.

### ***Good of the Order***

Ms. Skye announced that Ms. Amber Hollister will be replacing her on the Committee as a Governor’s appointee.

### ***Adjournment***

The meeting adjourned at 3:05pm.

### ***Next Meeting***

The next meeting is scheduled for **Thursday, March 18, 2010** from 1:30 to 3:00pm in the Dave Pleasant Conference Room, Employment Department Central Office, Salem, Oregon.