

**OFFICE
OF
ADMINISTRATIVE HEARINGS**



**2010
ANNUAL REPORT**



About the Office of Administrative Hearings

The Office of Administrative Hearings (OAH) is an independent unit within the executive branch of State government created to centralize and improve Maryland's administrative hearing process at a reduced cost to its citizens.

Thomas E. Dewberry is the Chief Administrative Law Judge (CALJ). A ten-member State Advisory Council on Administrative Hearings (Council) meets regularly and advises the CALJ.

Section 9-1604(c) of the State Government Article requires the CALJ to submit an annual report to the Governor and, subject to Section 2-1312 of the State Government Article, to the General Assembly. Section 9-1604(c) also permits OAH to prepare and submit its report in conjunction with the Council. In the interest of government efficiency and economy, OAH and the Council submit their 2010 annual reports jointly.

Mission

OAH's mission is to provide due process for any person or business affected by the action or proposed action of State agencies in a prompt and efficient manner.

I. EXECUTIVE SUMMARY

The following is a summary of OAH's 2010 accomplishments:

A. Meetings with Agencies

Maintaining communication with the agencies for which OAH conducts hearings is vital to its on-going operation.



In 2010 OAH:

- **Received 45,698 new cases**
- **Successfully mediated 67% of the special education settlement conferences that were scheduled**
- **Conducted 74% of its hearings throughout the State**
- **Provided Community Outreach and Education**
- **Enhanced technology**
- **Provided Statewide mediation training**
- **Conducted in-depth ALJ Training Sessions**
- **Implemented HB 472**
- **Produced an OAH video**

CALJ Dewberry and members of his staff met with personnel from the following Maryland State agencies:

- Office of the Governor
- Judiciary
- Department of Budget and Management (DBM)
- Department of Education (MSDE)
- Department of Health and Mental Hygiene (DHMH)
- Department of Housing and Community Development (DHCD)
- Department of Human Resources (DHR)
- Department of Information Technology (DoIT)
- Department of Labor, Licensing and Regulation (DLLR)
- Department of Natural Resources (DNR)
- Unemployment Insurance Division of DLLR (UI)
- Department of Public Safety and Correctional Services (DPSCS)
- Inmate Grievance Office, DPSCS
- Motor Vehicle Administration (MVA)
- Office of the Attorney General (OAG)

B. Foreclosure Mediations

Prior to the passage of HB 472, Real Property – Residential Property Foreclosure Procedures – Foreclosure Mediation, OAH agreed to absorb this significant undertaking which involves highly complex and technical legal issues. Maryland's new Foreclosure Mediation Law became effective July 1, 2010. The law requires mortgage lenders and servicers to be much more responsive to homeowners facing foreclosure. The law gives homeowners an opportunity to meet with the lender and an OAH Administrative Law Judge who serves as an independent party to ensure that alternatives to foreclosure have been considered and evaluated. It was estimated that OAH would receive approximately 5,500 mediations per year as a result of this legislation. This number was based upon a percentage of the number of foreclosure notices filed in Maryland's circuit courts in 2009.

Beginning in March of this year, members of our management and Clerk's Office staff worked closely with the Courts, DLLR and DCHD to draft regulations and processing procedures, establish hearing space, and conduct training sessions. OAH received a total of nine positions (six ALJs, one staff attorney and two contractual clerical) to handle this increase in workload.

Further details on the implementation of this important endeavor are included throughout this report.

C. 20 Year Anniversary Celebration

The year 2010 marked the 20th year of the existence of the OAH. On June 14th, in commemoration of this anniversary, the OAH scheduled an afternoon celebration, which was held at the OAH headquarters. Remarks were given by CALJ Dewberry and Timothy F. Maloney, Esquire was the keynote speaker. Bernice Verner, Executive Assistant to the CALJ, also gave remarks along with a PowerPoint presentation.

Mr. Maloney was the primary legislative mover on the legislation that provided for the creation of the OAH. There were many guests in attendance, for example: members of the State Advisory Council on Administrative Hearings; Judge Joseph H. H. Kaplan; Judge Alexander Wright; DGS Secretary Alvin Collins; Glendora Hughes, General Counsel, Commission on Human Relations; DLLR Secretary Alexander Sanchez; MVA Administrator John Kuo; Maryland State Police Superintendent Terrence Sheridan; William Clark, who was the chair of the Governor's Task Force on Administrative Hearing Officers in 1988 and was OAH's first Director of Operations. Judge Zarnoch and Dana Dembrow were members of that Task Force. Judge Zarnoch and Bruce Martin, developed the legislation, which was introduced by Senator Vernon Boozer (also present) that provided for the creation of OAH. Former Delegates Kenneth Masters and Carol Petzold were also in attendance. Delegate Petzold was a strong legislative supporter of the central panel concept, who also served on the State Advisory Council on Administrative Hearings for approximately 16 years and was chair of that Council from 1996 – 2001. Judge Zarnoch and Senator Boozer also served on OAH's Advisory Council and Mr. Martin is currently a member of the Council. Judge Zarnoch also served as Vice Chair of the Commission to Revise the Administrative Procedure Act. Melanie Vaughn and Suzanne Fox were present as they were OAH's former Directors of Quality Assurance. All OAH employees were in attendance.

CALJ Dewberry presented 20 Year Plaques to the OAH employees who had been with the agency since its inception. A reception was held following the program.

Mr. Maloney concluded his excellent remarks with the following:

But today is a day of celebration of the past and the present. We salute that rarest of rarities -- a new government program that is a spectacular success. The Office of Administrative Hearings has made history and become a national model, advancing the rule of law not just here in Maryland, but around the nation. And you continue to make history, each day that you decide a case fairly and independently, based solely on the law and the record before you.

D. Community Outreach and Education

In 2010, OAH continued to receive requests for speakers and Administrative Law Judges (ALJ) traveled to high schools around the State to introduce the Emmy Award winning film, *Branded D.U.I.*, and discuss the dangers of underage drinking and driving. The expectation is that teens will identify with at least one of the students in the film, learn from the experiences of their peers and make better choices.



OAH continuously works to increase public awareness so that Maryland's citizens are familiar with OAH and its mission. ALJs are always available for

community outreach and education.

In the past year, ALJs:

- Participated as faculty members for the Academy of Special Education Hearing Officers
- Made presentations to bar associations, community colleges, universities, middle and high schools
- Served as trial judges at area high school and college mock trial competitions
- Served as mentors for the University of Baltimore School of Law's shadowing program

E. "Representing Yourself at an OAH Hearing"

An in-house premier of OAH's video entitled "Representing Yourself at an OAH Hearing," was held on December 13th. The Video Committee, chaired by the OAH's librarian, Elizabeth Lukes, did an excellent job casting, writing and producing this video. The Maryland Institute for Emergency Medical Services Systems lent its services to OAH and worked with the Video committee to film and produce this video at no charge. Dick Gelfman volunteered his services as a narrator.

Copies of the DVD have been ordered and will be distributed to local Department of Social Services offices to be played in waiting rooms, agencies that OAH holds hearings for and the public library. The video will also be played in OAH's waiting area and will be placed on OAH's website so that it can be viewed by

Maryland citizens who may not know what to expect when they have a hearing before the OAH.

F. Local and National Perspectives

Local

Maryland Judiciary

On September 17th, Judge Glenn T. Harrell, Jr., Maryland Court of Appeals, Judge Kathryn Grill Graeff, Court of Special Appeals, and Judge Albert J. Matricciani, Jr., Maryland Court of Special Appeals, presented an annual update on recent Maryland appellate administrative law decisions. Judge Harrell has been conducting this annual ALJ training session for approximately sixteen years.

Maryland State Bar Association

ALJ Wayne A. Brooks, Deputy Director of Operations, served on the Maryland State Bar Association's (MSBA) Board of Governors.

ALJ Kathleen Chapman served as Chair of the Administrative Law Section Council (Section) of the MSBA. CALJ Thomas Dewberry is a member of the Section Council as well. The Section meets on a regular basis throughout the year and is responsible for developing an educational program for MSBA's Annual Meeting. This year, the Section's program was entitled "Practice at the Office of Administrative Hearings: What's New, What's Not, & What's What." The primary focus of the program was a review of OAH's revised and reorganized Rules of Procedure. ALJ Mary Shock participated as a speaker at this Educational Session.

In addition to CALJ Dewberry, ALJs Jana Burch, Director of Operations; J. Bernard McClellan, Director of Quality Assurance; Wayne Brooks, Deputy Director of Operations; Kathleen Chapman; and Mary Shock attended the MSBA Annual Meeting, which was held in Ocean City, Maryland in June. The Educational Programs were beneficial to the ALJs, particularly the programs dealing with dispute resolution, ethics, professionalism, efficient and effective ways to use paralegals, and witness reliability. This annual meeting provides a forum for ALJs to discuss OAH with members of Maryland's legal community.

Access to Justice Commission

ALJs Jana Burch and Daniel Andrews continued to represent OAH on the Access to Justice Commission (AJC). The AJC's mission is to "develop, consolidate, coordinate and implement policy initiatives to expand access to and

enhance the quality of justice in civil legal matters for persons who encounter barriers in gaining access to Maryland's civil justice system."

Maryland Association of Administrative Adjudicators

Many of OAH's ALJs are members and officers of the Maryland Association of Administrative Adjudicators (MAAA), an affiliate organization of the National Association of Administrative Law Judiciary (NAALJ).

National

Central Panel Directors

The central panel concept has been incorporated to greater and lesser degrees in thirty-one jurisdictions. Maryland's OAH is one of the largest central panels in the country with the broadest jurisdiction.

CALJ Dewberry and ALJs Burch, McClellan, and Brooks attended the 2010 Central Panel Directors' Conference in Mackinac Island, Michigan on October 6 - 9th. This annual conference is an opportunity for Maryland's OAH management staff to meet with other central panel directors and exchange ideas. Directors discussed electronic filing, case management technology, web development and enhancement; performance management of judges, as well as judge assignment and rotation.

We are pleased to report that Maryland's OAH will be hosting the 2011 Central Panel Directors' Conference in Annapolis, Maryland on September 7 – 10, 2011.

National Association of Administrative Law Judiciary

The NAALJ 2010 Annual Conference was held in Malibu, California at Pepperdine University Law School on October 10 – 15th. CALJ Dewberry and ALJs Burch, Brooks, Shaffer and Murray attended this impressive program. The program included some of the following sessions:

- A full day of instruction in judicial writing by LAWriters chief instructor
- A full day of seminars on neurological subjects: How the Brain Works; Memory and Deception; The Neuroscience of Substance Dependence; Interaction of Culture and the Brain; and Brain Injury, Disability, Recovery and Assessment.
- *Goldberg v. Kelly* : Casting a Long Shadow after 40 years
- Cognitive Bias and Judicial Decision-Making

- Special Education topics: "How and Why Do You Apply the Sufficiency Standard?" and "To Ask or Not to Ask-What is Your Job as a Hearing Officer?"
- Assessing Witness Credibility
- Best Practices for Conducting Hearings Electronically
- Best Practices for Hearings with Self-Represented Litigants
- An Overview of International Courts
- A Snapshot of Administrative Adjudication in Other Countries

In addition, ALJ Murray attended the NAALJ Mid-year Meeting and Educational Conference in May, which was held in Montreal, Canada.

G. Financial Impact of OAH's Fiscal 2010 and Appropriated Fiscal 2011 Budget

OAH's appropriated budget for Fiscal 2010 is \$12,906,468.

Approximately 95% of OAH's appropriation is dedicated to salaries and benefits, contractual services and rent of facilities. The breakdown of OAH's budget is:

- 83% Salaries and benefits, including contractual employees
- 4% Contractual services of which half is dedicated for legal services
- 7% Rent for three offices
- 6% Routine travel, utilities, supplies and materials, equipment and motor vehicle operations

The majority of OAH funds are reimbursable, which is the transfer of funds from agencies for which hearings are held. An allocation of cost is prepared each year based upon caseload and the time required to adjudicate each type of case. The budgets for the agencies for which OAH holds hearings include an appropriation for "hearings" based on this allocation. On July 1st of every fiscal year, agencies transfer the appropriated funds to OAH. Attachments A and B show Fiscal 2010 and 2011 agency allocations.

In 2010, OAH improved service to the citizens of Maryland and increased efficiency through:

- Assisted with the implementation of Maryland's new Foreclosure Mediation Law
- Conducted Foreclosure Mediations
- Conducted Unemployment Insurance hearings
- Automated MVA hearings
- Produced a video entitled "Representing Yourself at an OAH Hearing"
- Revised and simplified all OAH hearing notices
- Enhanced technology
- Trained ALJs in numerous areas of the law
- Continued community outreach and education
- Continued improvement of OAH's website design
- Utilization of mediations and settlement conferences in various case types

I. OAH and MVA Automation of Operations

In 2010, OAH and MVA implemented the web retrieval system which electronically retrieves and transmits MVA hearing requests and case documents, which are used in MVA hearings, between the two agencies. Additionally, this automated system allows for a customer's driving record to be automatically updated following the completion of a MVA hearing, which an ALJ conducts. The web retrieval system accesses MVA's Data Information Workflow System (DIWS) using pre-existing VPN connectivity between OAH and MVA via networkMaryland™.

There was a pilot group of ALJs and Clerk's Office employees who were trained to use this new system in the fall of 2010. Training of the entire ALJ staff and full implementation is scheduled for January of 2011.

J. Information Technology

The year 2010 brought many technological changes and enhancements to OAH.



Computer Replacement Deployment

OAH purchased new computers to replace outdated workstations and monitors that no longer offered a hardware maintenance warranty. The IT department completed the deployment of new computers and monitors for the Operations, QA, and Administration departments.

OAH's Foreclosure Mediation Web Page

OAH modified its web-site to include information for the public about the foreclosure mediation program. The foreclosure mediation web page contains information regarding OAH's foreclosure mediation process, mediation locations, and information about postponement requests. Also, a link entitled, *Foreclosure Mediation: Frequently Asked Questions*, was added to direct individuals to the Maryland HOPE Initiative web-site, which contains extensive information about Maryland's foreclosure mediation program.

Revision and Addition of Hearing Notices

A complete revision of the content of OAH's hearing notices was completed. As a result, the case management vendor modified the language in its hearing notices.

Clerks Office Burster

OAH purchased a Formax FD 550 burster for the Clerk's Office because the original burster no longer offered a maintenance agreement renewal and replacement parts were not available due to its age. The burster is used to effectively separate forms created during the hearing notice generation process each morning.

HP LaserJet M4345 Multifunction Printer

The IT department installed and configured a HP LaserJet M4354 Multifunction Printer in the Administration department printing room. The HP LaserJet M4354 Multifunction Printer will print, copy, scan to e-mail, and document finishing functions from one easy-to-use device.

OAH's ITMP Fiscal Year 2012

OAH's ITMP Fiscal Year 2012 was submitted to the Maryland Department of Information Technology on September 1, 2010.

Document Management System Upgrade

Two servers were purchased to support the Docs Open document management system upgrade. Initially, the two servers were used to create a Docs Open test environment to support the eDOCS DM migration work group in testing and evaluating the eDOCS DM application. OAH's IT department plans to deploy eDOCS DM application once the work group finishes evaluating the eDOCS DM application in a test environment to ensure complete functionality with the new system.

MVA and OAH Automation of Operations

Throughout 2010, OAH's IT Department was extensively involved in the previously noted MVA and OAH Automation of Operations project.

K. Unemployment Insurance Hearings

The number of unemployment insurance hearings as a result of our weakened economy remained high in 2010. The Department of Labor, Licensing and Regulation Unemployment Insurance Division (DLLR-UI) requested that OAH continue to provide assistance with its caseload. In 2010, OAH conducted seven dockets on a weekly basis for DLLR-UI. Those dockets continued for the entire year. OAH took a brief hiatus during the summer, due to tight scheduling based

upon ALJs' vacations and returned to seven dockets each week in September of 2010.

In 2010, OAH conducted 1,298 UI hearings with a timeliness rating of 99.85%.

L. Rules of Procedure

On March 22, 2010 OAH's revised Rules of Procedure went into effect. The purpose of the revision was to renumber and reorganize the Rules of Procedure into a more logical and sequential format. Minor revisions were made to help clarify certain procedural rules.

II. Legislative History and Background

OAH was created by Chapter 788 (SB 658) of the Laws of 1989, codified in State Government Article, Title 9, Subtitle 16 of the Annotated Code of Maryland. Chapter 788 incorporated the recommendations of the Governor's Task Force on Administrative Hearing Officers.

Noting the concerns of the business community, the public and members of the bar, the Governor charged the Task Force on Administrative Hearing Officers with examining the then-current administrative hearing system and recommending needed changes. The final report strongly endorsed the creation of a centralized administrative hearing process and identified many problems with the non-centralized system. Hearing officers lacked adequate training opportunities, suffered from poor salaries, often failed to write decisions that would withstand judicial scrutiny, were supervised by the agencies for which they issued decisions and were not subject to uniform procedures or codes of responsibility and ethics.

Following enactment of the legislation, staff from agencies as diverse as DHMH, DLLR and the Maryland Department of the Environment were consolidated into a central office. ALJs were cross-trained to handle a wide variety of cases and projected operational efficiencies were realized. Uniform Rules of Procedure were promulgated in 1991 and the Code of Ethics modeled on the Judicial Code of Ethics were adopted.

In late 1991, the Commission to Revise the Administrative Procedure Act (APA) was appointed to study and update Maryland's APA to reflect the creation of the OAH. The Commission included former CALJ Hardwicke, two Cabinet Secretaries and representatives of the Judiciary, business community, labor unions, the MSBA and the Attorney General's Office. The Commission's recommended legislation, Chapter 59 of the Laws of 1993, became effective

June 1, 1993. In 1994, revisions to OAH's Rules of Procedure, COMAR 28.02.01, were adopted incorporating the revisions to the APA.

III. Miscellaneous Additional 2010 Activities

A. Administration

1. Personnel

OAH's CALJ is appointed by the Governor for a six-year term. CALJ Dewberry was appointed on May 22, 2002 and was re-appointed by Governor O'Malley in January of 2008. Executive ALJs serve as the Directors of Quality Assurance and Operations.

OAH began 2010 with 122 authorized positions, all of which 120 were filled at the start of the fiscal year. 53 of the positions are for ALJs who are appointed by the CALJ. Of the total filled positions, 31% are African-American, 1% are Hispanic and 72% are women. Of the ALJs, 16% are African American, 1% are Hispanic and 57% are women. OAH remains committed to maintaining a diverse and qualified workforce. To that end, OAH strives to upgrade salaries as appropriate and to offer a work environment that is both professionally challenging and satisfying.

Current qualifications require that ALJs be bar-admitted attorneys with a minimum of five years of experience. ALJs may be removed for cause and are considered special appointees within the professional service of the State Personnel Management System. Judge salaries range from \$82,905 to \$110,297, with the average being \$89,996.

ALJs' work has a significant impact on both public and private interests and requires a high degree of education, skill responsibility and professionalism. The work frequently involves highly complex legal matters, requiring detailed written decisions that must be issued between seven to 90 days after the close of the record.

2. Facilities

OAH's headquarters in Hunt Valley is accessible from I-83 North and provides ample free parking. There are two light rail stations within walking distance of the building and bus service make the building accessible via public transportation.

OAH's Administrative Law Building houses 23 hearing rooms, two attorney-client meeting rooms, a clerk's office, public waiting areas, a law library,

which is accessible to the public during normal business hours, as well as offices and training rooms for OAH staff.

In addition to the hearings held at its headquarters location, ALJs travel throughout the State to conduct hearings in all counties. OAH operates satellite offices in Cumberland and Salisbury and has dedicated hearing space in Montgomery County.

In 2010, additional hearing space was secured in each of the Circuit Court buildings for the conduct of foreclosure mediations.

B. Operations

OAH's Operations Division:

- schedules and assigns cases
- reviews caseload to ensure that backlogs do not develop
- ensures expeditious case management
- monitors the timeliness of decisions
- supervises ALJs, Clerk's Office staff, IT Staff and secretarial staff
- monitors legislation
- oversees OAH's Telework Program
- handles all Public Information Act requests

OAH conducts fair and timely hearings in contested cases for more than thirty State agencies for over 200 different programs, with over 500 hearing types. Except for entities exempted by statute, a Board, Commission or agency head must hear a contested case personally or must delegate authority to hear the case to OAH or, with the permission of the CALJ, a person not employed by OAH. Md. Code Ann., State Gov't § 10-205 (Supp. 2006). In 2010, OAH received 45,698 new cases. Caseload statistics for 2010 are included in Attachment .

1. Foreclosure Mediations

The number of foreclosure mediations that OAH received in 2010 was much lower than the anticipated 5,500. Two factors that negatively impacted the number of Foreclosure Mediations were 1) lenders expedited foreclosure filing and flooded circuit courts with filings before the effective date of the legislation in order to avoid foreclosure mediations and their cost. OAH did anticipate that this would occur; and 2) since the legislative became effective, mistakes in the manner in which lenders had processed documents had surfaced. This further

delayed foreclosure filings. Of course, OAH did not anticipate that this would take place.

OAH's Chief Clerk visited each circuit court facility in the state of Maryland in the months of April and May and met with each court's administrator to secure space for the foreclosure mediations to be held.

Upon implementation, OAH was prepared to schedule three mediations on each docket at 9 a.m., 11 a.m. and 2 p.m. The mediations take at least two hours or more. As of October 29, 2010:

15 FM dockets were scheduled in September
33 FM dockets were scheduled in October
71 FM dockets were scheduled in November
76 FM were scheduled and closed and
173 FMs were scheduled.

With the need to hire six ALJs to handle the anticipated increase in workload, OAH adhered to the criterion set forth in the August 2002 "Report on Increasing the Diversity of Its Workforce" and the Deputy Director of Operations and Chief Clerks participated on the OAH Hiring Committee. All resumes were reviewed by the members of the Hiring Committee and members of the Committee conducted all interviews.

2. Statistics for Special Education Hearings and Mediations

In 2010, OAH conducted an average of 3 special education due process hearings per month resulting in 42 written special education decisions. There were, however, 266 hearing requests received and the majority of those were scheduled for hearings. Most of those hearing requests were either withdrawn, disposed of via motions or the case settled prior to the hearing date.

It is noteworthy that 257 special education mediation requests were made in 2010, which resulted in an average of 21 mediations being scheduled each month. Of those 257 mediation requests, 90 were actually conducted, resulting in a 67% successful mediation rate.

OAH also conducts mediations in Patient's Bill of Rights, Health Care Matters, Environment, Foreclosure and Boat Excise Tax cases. OAH settled 16% of the total number of mediation/settlement conferences that were conducted in 2010.

3. Satellite Office and Outlying Hearing Locations

Although the Administrative Law Building in Hunt Valley is OAH's headquarters, ALJs conduct less than 30% of its hearings at this location. The remainder of the hearings are held at various locations around the State, including private hospitals and nursing homes. Other hearings are held in government facilities such as courthouses and agency offices. The hearing space at Wheaton Plaza in Montgomery County continues to receive nearly maximum use.

OAH also has an arrangement with DLLR's Unemployment Insurance Hearing Unit with regard to sharing hearing space at various locations throughout the State. Currently, OAH shares hearing space with the Unemployment Insurance office in Hunt Valley and Cumberland.

4. Teleworking

In 2010, 63 ALJs and OAH employees teleworked for a total of 12,841 hours. ALJs also work at home, in between and/or after traveling to their dockets.

In addition to OAH's telework initiative, ALJs are encouraged to establish remote access to OAH through the Internet using their assigned OAH laptop computers or through their home computers. At the end of 2010, those ALJs who had established remote access to OAH were eligible to telework and/or work-at-home under OAH's policies regulating both of those programs.

Allowing ALJs to telework and work-at-home has created operational efficiencies in that ALJs' travel time is reduced and ALJs are able to focus on decision writing with fewer interruptions and distractions. There is also a savings on fuel, mileage reimbursement, wear and tear on State vehicles as well as having a positive impact on Maryland's roads and the environment.

5. Legislation Affecting OAH

Other than the previously discussed HB 472, which had a significant impact on OAH, there were only a few legislative initiatives passed by the General Assembly in the 2010 legislative session which impact OAH. Some of this legislation may generate additional hearings for OAH and others expand the types of remedies that may be considered in various cases. In at least one bill, OAH potentially stands to lose hearings.

State Employees - Employee Performance Appraisals – Revisions - HB 275 Bill Summary: Employee performance appraisals will continue to be

conducted semi-annually, but the bill establishes that one annual appraisal – the mid-year performance appraisal – is an informal evaluation that is excluded from the grievance process. Under the bill, employees may only be given a rating of outstanding, satisfactory, or unsatisfactory in a performance appraisal. Employees are no longer required to participate in the performance appraisal process by preparing a self-assessment. Finally, the bill alters how anonymous surveys may be used to evaluate the performance of a manager or supervisor.

Labor and Employment - Wage Payment and Collection - Order to Pay Wages - HB 404 Bill Summary:

In wage complaints amounting to \$3,000 or less, the Commissioner of Labor and Industry may review and investigate the complaint and may either issue an order requiring the employer to pay, or dismiss the claim. The order to pay wages may include a requirement that the employer pay an additional amount equal to 5% annual interest calculated from the date when the wages were to be paid. Within 30 days of receiving the order to pay, the employer may request a *de novo* administrative hearing before OAH to dispute the order to pay. If no hearing is requested, the commissioner's finding becomes a final order. If a petition for review by the circuit court is not filed by the employer within 30 days of the issuance of a final order, the commissioner may proceed in District Court to enforce payment of the order.

Home Improvement Commission - Guaranty Fund Jurisdiction - HB 409 Bill Summary:

The Maryland Home Improvement Commission administers the Home Improvement Guaranty Fund for the purpose of providing limited restitution – a maximum of \$20,000 per claim and \$100,000 total per contractor – to consumers who file valid claims against home improvement contractors licensed with the commission. This departmental bill establishes that a homeowner may not receive an award from the Home Improvement Guaranty Fund that is in excess of the amount paid by the claimant to the contractor against whom the claim is filed.

Real Property - Residential Property Foreclosure Procedures -

Foreclosure Mediation - HB 472 Bill Summary: This Administration bill establishes processes for loan modification or mitigation and mediation relating to foreclosure activity on residential property. The bill requires that an application for a loan modification or loss mitigation program be sent to the borrower and record owner of a residential property at least 45 days before a foreclosure action is filed. A lender must complete a loss mitigation analysis no later than 30 days before the date of a foreclosure sale. If the residential property subject to the foreclosure action is owner-occupied, the mortgagor or grantor (borrower) may request a foreclosure mediation conducted by the OAH before the foreclosure sale is scheduled. The bill imposes an additional \$300 filing fee on every order to docket or complaint to foreclose a mortgage or deed of trust on residential property and requires a borrower to pay a \$50 filing fee with a

request for foreclosure mediation. Filing fee revenue must be distributed to the newly created Housing Counseling and Foreclosure Mediation Fund administered by the Department of Housing and Community Development (DCHD). The bill took effect July 1, 2010.

Developmental Disabilities Administration - Recipient Appeals - HB 900

Bill Summary: This bill requires the Secretary of Health and Mental Hygiene to provide a recipient of Medicaid-waiver services who has been denied services according to his or her plan of habilitation with a notice within 30 days of the denial an opportunity for a Medicaid fair hearing. The notice must include the reason for the denial and appeal instructions. An individual who receives a written denial notice may appeal the decision.

Victims' Rights - Fatal Vehicular Accident - Suspension of License -

SB189 Bill Summary: This bill establishes the authority of the Motor Vehicle Administration (MVA) to suspend, for a maximum of six months, the license of a driver convicted of a moving violation that contributed to a traffic fatality. Also established is the right of the victim's representative to be notified of a license suspension hearing held as a result of the moving violation, and the right to give an oral or written statement for consideration at the hearing.

Correctional Services - State Correctional Officers' Bill of Rights -

SB887 Bill Summary: The Law Enforcement Officers' Bill of Rights was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends those procedural safeguards to police officers of specified State and local agencies, but did not extend to any correctional officers in the State. This bill establishes the same safeguards to correctional officers.

As noted in previous year's reports, OAH's Legislative Liaison, ALJ Wayne Brooks, who reviews, monitors and testifies on all proposed legislation that affects OAH, also serves as OAH's Deputy Director of Operations, responsible for assisting with the daily operation of OAH and OAH's Public Information Act Officer, responsible for handling all PIA requests in a timely manner; and he is regularly scheduled to hear cases as an ALJ.

C. Quality Assurance (QA)

OAH's Quality Assurance Division:

- oversees the quality of written decisions
- has primary responsibility for the hiring of ALJs and other legal staff
- trains new ALJs
- offers mandatory monthly judicial education for ALJs, paralegals and staff attorneys and out-of-office training programs
- oversees OAH's library
- maintains decision and hearing notice boilerplates, Time Frame matrix, Bench Manuals and Case Digests
- supervises staff attorneys, paralegals, librarian and management associate
- is responsible for OAH's Speaker's Bureau

1. Performance, Planning and Evaluation Program (PEP)

A major focus of QA continues to be the evaluation of ALJs' performance, which is required by DBM's Performance, Planning and Evaluation Program. QA is responsible for rating all ALJs on their Presence at Hearings and Written Expression. In 2010, OAH made major changes to the ALJ PEP evaluation form and the way evaluations are conducted in compliance with the passage of HB 275 - State Employees - Employee Performance Appraisals – Revisions and the Guidelines and Instructions published by DBM. The PEP form was changed to comply with a "1, 2 and 3" point system and the ALJ ratings were either Unsatisfactory, Satisfactory or Outstanding. Also, all end cycle evaluations were scheduled to take place in either December or June, depending on the ALJs' Entry of Duty date.

2. New Hires

As previously noted, as a result of the Mortgage Foreclosure Prevention legislation, OAH was authorized to hire additional staff. The QA Division has the primary responsibility for hiring and training ALJs. OAH adhered to the criterion set forth in the August 2002 "Report on Increasing the Diversity of Its Workforce". Further, the Hiring Committee, comprised of five OAH employees, namely, the Director of Operations, Director of Quality Assurance, Chief Clerk, or their designee(s) and two ALJs selected by the CALJ that included a racial minority and a recent hire, reviewed all of the resumes that were received and conducted interviews. The Hiring Committee then developed a short list for the CALJ to interview and select. QA's Deputy Director of Quality Assurance participated on the Hiring Committee. Six new ALJs were hired and four of the six positions were filled by minority candidates. The two part-time ALJs who are

sharing one position were OAH staff attorneys who were promoted to part-time ALJs.

The new ALJs are highly skilled and well respected individuals.

3. ALJ Training

With the passage of HB 472, OAH worked closely with the Courts and MACRO to implement the provisions of the legislation. The Deputy Director of QA and the Director of Operations attended numerous meetings with the Court Rules committee, the DLLR committee tasked with drafting COMAR regulations implementing the legislation and trainers from MACRO, Civil Justice, Inc. and Wells Fargo, the largest loan servicer in Maryland.

In order to train ALJs in both the substantive and procedural law, QA worked with the above listed stakeholders in preparing and hosting a two-day, substantive law training for ALJs in July. A follow-up operational training was held in early August. QA developed forms, check lists and bench manuals to assist the ALJs when conducting the foreclosure mediations. Follow-up training was also held in October. QA has also hosted a "brown bag lunch" training session for ALJs seeking more information about the foreclosure process and possible workout options.

The training regime for new ALJs provides for the assignment of an experienced ALJ to serve as a mentor for each new ALJ, who can then assist QA in providing support to the new ALJ and also report to QA on the new ALJ's progress. New ALJs observe experienced ALJs conduct hearings in a specific subject area before being observed themselves. New ALJs rotate through the major subject areas for approximately six months, after which they are released to conduct the full range of hearings independently.

In 2010, the QA Division worked with DLLR-UI and developed additional training programs for ALJs.

In addition, the Director of Quality Assurance was extensively involved in the MVA/OAH Automation Project and worked with the MVA project vendor to define and gather system requirements for the user interface and application logic for the ALJ's Findings of Fact screens. He worked to ensure that the electronic forms included all necessary information for the ALJ to issue a decision on the system and that the exhibits were placed on the system in a logical order so that the hearing proceeded with no problems. He also assisted with the training of the ALJs on the new system.

QA conducts mandatory monthly training for the entire ALJ staff, as well as the paralegals and staff attorneys. In addition, QA selects appropriate judicial and special education training programs for ALJs to attend.

4. Decisions on OAH's Network

OAH's computer technology has enabled ALJs to share their work, including decisions, e-mail each other and outside parties, utilize centralized research tools and use on-line research products. In addition, QA is providing valuable support to the ALJ staff and increasing efficiency by maintaining boilerplates, time frames, bench manuals and case digests on OAH's network.

In 2010, the QA Deputy Director of Quality Assurance worked with the IT Department and developed a new protocol for saving ALJ decisions in OAH's Docs Open system. The new form redesign was done to make it easier to save, retrieve and check-out/in documents.

5. Library

Decisions written since 1999 are available on OAH's network and can be found electronically by OAH staff. Signed hard copies are also available in the library. Due to the privileged and confidential nature of many of the decisions rendered by the OAH, a Public Information Act request must be submitted to determine if the decision can be reviewed by a member of the public.

OAH library staff provides research assistance to all OAH employees, as well as to the public. The librarian receives several inquiries from the public daily about OAH decisions and general Maryland law information. News about the OAH and relevant developments in administrative law are gathered and distributed electronically by library staff.

Under the direction of QA, the library provides a print collection developed to assist OAH staff, State agencies, the bar and citizens. Each ALJ and legal staff member also has access to Westlaw and other online legal research services. QA continues to expand its electronic offerings in addition to maintaining printed material.

In support of our commitment to provide legal research services to all OAH visitors, the library now offers two public computer terminals and wireless access to the Internet. The addition of this service allows state employees, lawyers and others to check email and do research during time spent at the OAH.

6. Alternative Dispute Resolution (ADR)

OAH, once again, received a grant from the Mediation and Conflict Resolution Office (MACRO), which is under the auspices of the Maryland Judiciary, to host a 40-hour mediation training session.

These training sessions are extremely successful and:

- are attended by employees from various State agencies including the OAG, DBM, DHR and DPSCS
- include OAH's newest ALJs and staff attorneys who have not had mediation training
- prepare agency employees to resolve disputes at the agency level or consider mediation in cases where an appeal has been filed with OAH
- certify that each participant "has successfully completed a minimum of 40 hours of mediation training including areas specified in Maryland Rule 17-106"

ADR is extremely beneficial because it includes a number of procedures that are designed to simplify and expedite the resolution of controversies without the need for a hearing or trial.

ADR:

- Generally refers to any procedure that utilizes the services of a neutral party to assist in reaching an agreement
- Avoids the expense, delay and uncertainty of litigation
- Provides a forum for the parties to work toward a voluntary, consensual agreement, as opposed to having an ALJ or other authority decide the outcome of the case
- Includes mediation and settlement conferences, which OAH utilizes frequently, in particular in 2010, the foreclosure mediations
- Encourages and improves communication between the parties
- Is used in OAH's mediation program for Special Education appeals which is a prime example of the benefits of the mediation process.

7. Speaker's Bureau

QA is also responsible for authorizing requests made to the Speaker's Bureau and assigning ALJs.

IV. Conclusions

We would like to again quote from Timothy Maloney's excellent keynote speech at OAH's June 14, 2010 20 year anniversary celebration:

It hardly seems like twenty years have passed since the first OAH administrative law judge convened the first contested hearing, and looking back, I think we can safely say that because of OAH, no area of Maryland law has changed more dramatically in twenty years than administrative law. It is certainly not an

overstatement to call what has happened in our state a virtual revolution in administrative adjudication.

We surely needed a revolution. In the days before OAH, administrative adjudication all too often lacked independence, competence, or simple fundamental fairness. It was not unheard of to find hearing examiners being importuned by their agency heads in the midst of the hearing process, or being chastised afterwards for not following the party line. The record was frequently scant or nonexistent. Courts routinely reversed state agency decisions because they lacked even rudimentary findings of fact and conclusions of law.

Maryland's OAH continues to be a very successful, on-going governmental program, which consists of a well-trained, highly professional force of ALJs. It is available as an instrument to serve many adjudicatory and quasi-adjudicatory functions. It was created to serve the people of this State.

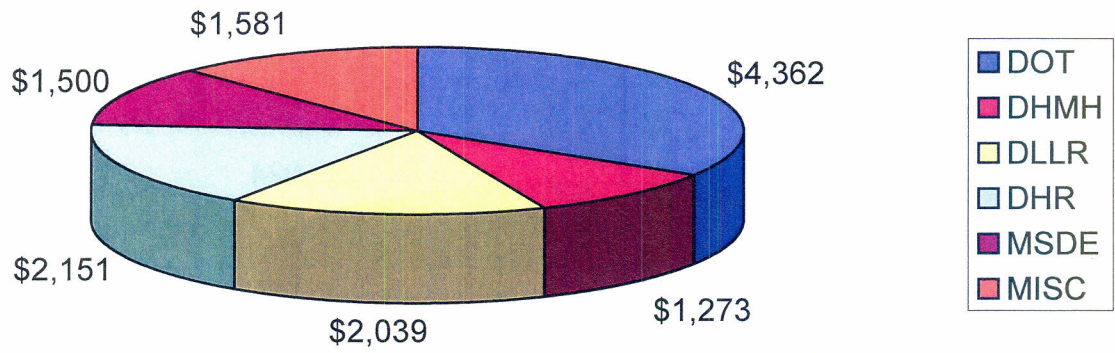
At every opportunity, the Chief Judge has emphasized the great capacity of the OAH to relieve pressures on the judiciary and executive agencies, keeping in mind, particularly, the excellence of the OAH and the professionalism of its staff. In 2010, when OAH was asked to handle the foreclosure mediations for the State of Maryland we were ready, willing and able with a staff of ALJ certified mediators to take on this important program. We accepted the challenge and worked with the Administration and the Judiciary to provide homeowners with an opportunity to meet with the lender and an independent party to ensure that alternatives to foreclosure have been considered and evaluated. In addition, OAH was pleased to continue to provide assistance to the DLLR-UI to work to alleviate the backlog of cases that have developed as a result of the weakened economy. In 2010, OAH conducted 1,298 UI hearings with a timeliness rating of 99.85%. As always, the OAH stands ready to assist each agency in any way that is appropriate.

The OAH is pleased to report that the video entitled "Representing Yourself at an OAH Hearing" is complete and available to the public so that Maryland citizens who may not know what to expect when they have a hearing before the OAH will have access to this helpful video.

OAH will continue to work in 2011 to further improve the administrative hearing process. CALJ Dewberry looks forward to working with Governor O'Malley and his cabinet in the upcoming year as he continues to ensure that the citizens of Maryland receive fair and timely hearings and remains committed to saving the State funds during these difficult fiscal times.

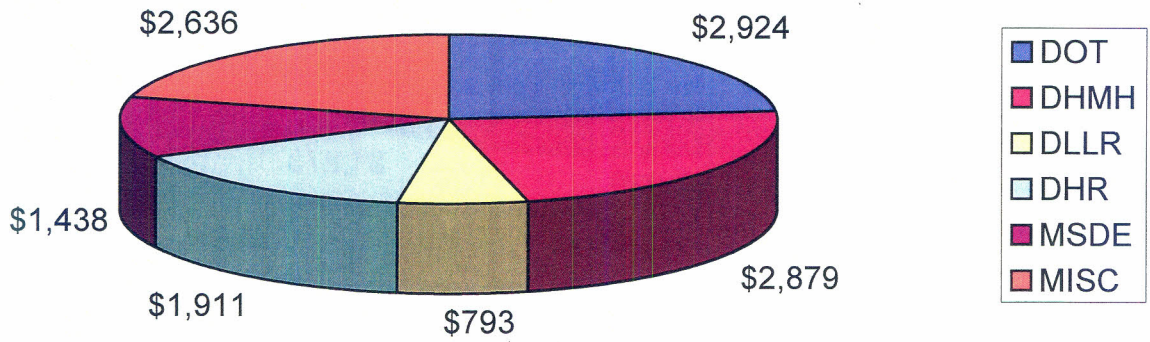
ATTACHMENT A

OAH FUNDING FY 2010 In Thousands



ATTACHMENT B

OAH FUNDING FY 2011 In Thousands



CALENDAR YEAR 2010 - TOTALS

Attachment C

CASELOAD FLOW	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTALS
I. CASES CARRIED OVER FROM PREVIOUS MONTH	6430	6263	6051	6053	5822	5992	5933	6073	6380	7070	6885	6854	
II. NEW CASES RECEIVED													
A. Complete Cases	3448	2712	3936	3670	3531	4060	3703	4297	4428	3531	3281	3595	44192
B. Untimely Cases	69	34	66	92	91	86	72	108	86	87	90	83	964
C. Incomplete Cases*	10	10	28	16	23	13	27	16	22	18	19	17	219
D. Fee Payments*	1546	1280	1991	1958	1507	2087	1823	1874	1704	1757	1641	1773	20941
E. Mediations	10	16	23	27	27	32	29	43	18	18	11	22	276
F. Due Process-Special Ed	17	18	28	22	22	24	23	41	20	17	11	23	266
TOTAL RECEIVED	3544	2780	4053	3811	3671	4202	3827	4489	4552	3653	3393	3723	45698
III. CASES SCHEDULED													
A. Heard in Full	2058	1389	1995	2047	1762	2260	1799	2209	2183	2006	1604	1864	23176
B. Special Ed Heard in Full	2	2	1	3	2	7	4	5	6	5	3	2	42
C. Record Review	0	2	0	3	2	5	1	0	0	2	1	1	17
D. Hearing Continued	55	80	81	49	39	54	54	69	58	95	91	99	824
E. PHC Heard	23	16	25	22	30	24	22	15	28	21	29	19	274
F. Motion Heard	3	3	4	7	3	3	2	3	2	1	7	0	38
G. Mediation Heard	2	2	6	10	11	17	13	16	5	6	7	5	100
H. SC Heard	22	8	7	19	11	13	12	13	32	59	80	65	341
I. Postponed	584	1146	602	575	559	657	560	614	647	638	465	515	7562
J. Default	409	343	505	346	286	421	354	403	367	403	363	351	4551
K. Failed to Appear (MVA)	153	106	108	117	122	168	140	152	137	121	62	117	1503
L. Scheduled but not Heard	1298	1107	1596	1481	1345	1640	1325	1476	1349	1431	1438	1304	16790
TOTAL SCHEDULED	4609	4204	4930	4679	4172	5269	4286	4975	4814	4788	4150	4342	55218
IV. DISPOSITIONS													
A. Decisions	224	189	249	265	223	278	253	229	214	257	219	240	2840
B. Bench Decisions	2	1	4	3	4	6	5	3	6	4	6	2	46
C. Special Ed Decisions	1955	1330	1840	1894	1624	2174	1737	2144	2075	1894	1463	1612	21742
D. Defaults	156	373	319	281	251	223	263	277	206	247	331	221	3148
E. Untimely	5	8	4	4	8	5	6	7	5	6	8	2	68
F. Untimely (MVA Only)	62	27	56	85	91	90	54	81	68	67	63	66	810
F. Not Settled (MSDE-MED)	1	0	4	2	5	8	4	6	5	0	3	2	40
G. Withdrawn/Settled/ Cancelled/Dismissed/ Reinstated/Duplicate	1306	1064	1575	1508	1295	1477	1365	1435	1283	1363	1331	1297	16299 0
TOTAL DISPOSITIONS	3711	2992	4051	4042	3501	4261	3687	4182	3862	3838	3424	3442	44993
V. CASES CARRIED OVER TO THE FOLLOWING MONTH	6263	6051	6053	5822	5992	5933	6073	6380	7070	6885	6854	7135	

* Incomplete and Fee cases are not calculated in "TOTAL Received".