

**OFFICE
OF
ADMINISTRATIVE
HEARINGS**



**FISCAL YEAR 2020
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 served as the Chief Administrative Law Judge (CALJ) until December 1, 2019. Director of Operations, Jana Corn Burch, served as Acting CALJ for the remainder of the fiscal year. 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 Fiscal Year 2020 (FY 20) 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.



In FY 20 OAH:

- **Received 33,504 new cases**
- **Accomplished a timeliness rate of approximately 99% for the issuance of written decisions**
- **Conducted 1,053 mediations and settlement conferences**
- **Settled 69% of the special education mediations conducted**
- **Conducted in-depth ALJ Training Sessions**
- **Adopted new regulations**
- **Implemented a plan for emergency and expedited hearings to proceed remotely**
- **Hired three new Administrative Law Judges**

I. EXECUTIVE SUMMARY

The following are some highlights from FY 20:

A. Retirement of Chief Administrative Law Judge Thomas E. Dewberry

On November 30, 2019, CALJ Dewberry retired. CALJ Dewberry served as OAH's agency head for eighteen years, that is, three, six-year terms. Prior to being appointed, CALJ Dewberry served the citizens of Maryland as a hearing examiner for the Public Service Commission and in the Maryland House of Delegates for two terms as Speaker Pro Tem.

B. Acting Chief Administrative Law Judge

Governor Hogan appointed Administrative Law Judge (ALJ) Jana Corn Burch, Director of Operations, to serve as Acting CALJ from December 1, 2019 through June 30, 2020. Prior to December 1, 2019, ALJ Burch served as Director of Operations for eighteen years. She served in a dual capacity as Acting CALJ and Director of Operations for the above-noted seven-month period.

C. Coronavirus Disease 2019 (COVID) Response

Beginning in mid-March, OAH focused its response to the ever-changing landscape of its work environment and the public it serves. It did so to align with Governor Hogan's Executive Orders and the Department of Budget and Management's (DBM) guidance. In its response, OAH balanced its mission to provide due process to Maryland's citizens and businesses with the safety of its dedicated workforce and their families.

OAH took the following actions in its efforts to balance those interests:

Hearings

- Identified emergency hearings and non-emergency hearings.
- Cancelled non-emergency hearings scheduled and notified the public of these cancellations through the OAH website. Changed OAH's main telephone line to provide an automated message informing anyone who called of the cancellations. Rescheduled cancelled hearings and issued notices for new hearing dates and continued to do so for future cancellations.
- Coordinated communications between participants involved in hospital involuntary admission (IVA) hearings and forced medication hearings to

- institute and implement a plan for these hearings to proceed via video conferencing. Those hearings commenced on March 30, 2020 and involved approximately 26 psychiatric units throughout Maryland.
- Implemented a plan for other emergency and expedited cases to proceed via a telephonic or video hearing. Those hearings began during the week of March 23, 2020.
 - Coordinated with the Maryland State Department of Education to contact parties with pending requests for Mediations/Due Process hearings. Conducted daily remote management staff meetings to address unforeseen issues with OAH's new business processes and to plan to commence non-emergency hearings.
 - Conducted numerous conference calls with State agencies for which OAH conducts hearings to discuss implementation of non-emergency hearings in the future.
 - Continued to accept and process hearing requests, filing fees, and pleadings by mail. OAH's clerk's office and other administrative staff communicated with individuals seeking information and processed their inquiries as they would in the ordinary course of business, with limited delay.
 - Ensured that ALJs have access to the information needed to draft and timely issue decisions and orders as well as to conduct and record emergency telephone prehearing conferences through OAH's IT infrastructure.
 - Continued to issue ALJs' decisions in a timely manner.
 - Developed strategies with State agencies and the public to schedule and conduct remote non-emergency hearings as soon as feasible.
 - Conducted monthly ALJ trainings remotely.

OAH's Workforce

- Implemented DBM's screening protocols for entry into OAH, which OAH's security guard carries out each day.
- Placed ALJs on mandatory telework when they are not scheduled to conduct remote hearings at OAH. ALJs arrived at OAH for the remote hearings, with no members of the public present, and then immediately returned home to telework for the remainder of the workday.
- Placed Fiscal, Human Resources, Quality Assurance and IT staff on a rotating telework schedule.
- Allowed OAH's clerk's office staff, who are unable to perform work functions from home, to report to OAH on a rotating schedule of approximately one and a half days each week. This rotation limited their exposure while allowing OAH to maintain essential operations.
- Supplied Administrative Aides with laptops and placed them on a rotating telework schedule with three at home editing and preparing ALJs' decisions for issuance and three at OAH printing and mailing those decisions.

OAH's workforce has been extremely agile and forward thinking during this period of disruption and uncertainty. OAH continued to adapt to the ever-evolving changes that this challenging time brings in a concerted effort to satisfy its mission and protect its workforce.

D. Meetings with Agencies

Maintaining communication with the agencies for which OAH conducts hearings has always been vital to its on-going operation. Holding telephone meetings with state agencies on an almost daily basis as COVID hit was essential for OAH to move forward and determine what platforms could be used to hold remote hearings.

CALJ Dewberry, Acting CALJ Burch and members of management staff met with personnel from the following Maryland State agencies:

- Department of Budget and Management (DBM)
- Department of Education (MSDE)
- Department of General Services (DGS)
- Department of Health (MDH)
- Department of Human Services (DHS), Child Abuse Conference
- Department of Information Technology (DoIT)
- Department of Labor (DLR)
- Department of Legislative Services
- Department of Transportation
Motor Vehicle Administration (MVA)
- Maryland Board of Physicians
- Maryland Institute for Emergency Medical Services Systems
- Maryland State Police
- Office of the Public Defender (OPD)

E. OAH's Fiscal 20 Budget

OAH's appropriated budget for Fiscal Year 20 was \$15,947,602 (\$15,895,130 – Reimbursable Funds and \$52,472 – Special Funds). 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.

In FY 20, OAH improved service to the citizens of Maryland and increased efficiency through:

- **Implementing new recording software**
- **Adopting new regulations**
- **Implementing SB 1000 – Public Safety – Handgun Permit Review Board – Repeal**
- **Implementing remote hearings**
- **Updating OAH's website and developing Frequently Asked Questions for remote hearings.**
- **Providing monthly training to ALJs in all areas of the law**
- **Continuing to encourage parties to view "Representing Yourself at an OAH Hearing" on OAH's website**
- **Making Alternative Dispute Resolution available to parties in as many case types as possible**
- **Continuing to add redacted decisions to OAH's keyword searchable Decision Portal**

F. Local and National Perspectives

Local

Maryland Judiciary

On September 13, 2019, the following Judges participated in the Judiciary's annual update on recent Maryland appellate administrative law decisions: Robert McDonald, Court of Appeals; Matthew Fader, Chief Judge, Court of Special Appeals; Kevin Arthur, Court of Special Appeals; and Judith Ensor, Circuit Court for Baltimore County. This annual review has been presented to ALJs for approximately twenty-six years.

On December 20, 2019, ALJ Laurie Bennett gave a presentation on Not Criminally Responsible/IVAs medical experts at the Medical Services Office of the Baltimore City Circuit Court.

Maryland State Bar Association (MSBA)

ALJ Rachael Barnett served as Chair of the MSBA's Panel on Clerkships at the University of Maryland Francis King Carey School of Law on February 6, 2020.

Baltimore Bar Association of Baltimore City

ALJ Anthony Vittoria participated on Executive Council meetings for the Bar Association of Baltimore City.

Maryland Association of Administrative Adjudicators

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

National

Central Panel Directors

The central panel concept has been incorporated in varying degrees in thirty-one jurisdictions. Maryland's OAH remains one of the largest central panels in the country with the broadest jurisdiction.

The Central Panel Directors meet annually. The Central Panel Directors' Conference was held in Asheville, North Carolina on October 29 – November 1, 2019. ALJs Dewberry, Burch, Shaffer, Helfand and Leidig attended this annual Conference. This is a valuable forum for states to share information and gain different perspectives on the many issues and challenges that they face.

This year, Conference attendees received presentations on the "History of Central Panels and Central Panel Directors Conference," and "What the Feds Can Learn from the States about Central Panels." In addition, each State provided a report on highlights and important developments in the current year.

National Association of Administrative Law Judiciary (NAALJ)

The NAALJ 2019 Annual Conference was held in the San Francisco Bay Area, California on October 26 – 31, 2019. ALJs Leidig, Cole and Shock attended the Conference. ALJ Leidig is the President-Elect and ALJ Shock is on the Board of Governors. ALJ Cole participated on a special education panel discussion. The program included some of the following sessions:

- Year in Review: Legislation, caselaw, societal developments affecting the independence, workload, and public perception of the Administrative Law Judiciary
- Safety and Security in the Hearing Room
- Judicial Ethics for the Administrative Law Judge: the new model code and state examples
- Strategies and techniques for stress management, coping skills, time management, and statutory deadlines

- Overcoming Unconscious Bias
- Judicial Notice, the Guardians of the Record, and the Administrative Law Judiciary Recognition, Resources, and Recovery
- Education Law and Students' Rights: What Administrative Law Judges Need to Know
- Pros and Cons of casual informality, accessibility and the public trust
- Fostering Bias-Free Writing and Hearings
- Beyond the Americans with Disabilities Act: the Accessible Hearing Room and Process.

On May 15, 2020, OAH ALJs participated in the NAALJ Mid-year Webinar entitled "Challenges in Administrative Adjudication." The program included the following sessions:

- Implicit Bias for Judges
- Current Legal Issues in Marijuana Regulation
- Effective Use of Interpreters
- Evidence in Challenging Times

District of Columbia

On July 22, 2019, representatives from the District of Columbia Office of Administrative Hearings conducted a site visit at OAH to discuss Maryland's day-to-day operations and case management system.

G. Administrative Law Judge Appointed to the Judiciary

In October 2019, Governor Hogan appointed ALJ Anthony Vittoria to the Circuit Court for Baltimore City.

There have now been nine former ALJs appointed to the Judiciary and OAH is extremely proud to report on this most recent judicial appointment.

H. Regulations

Pursuant to the Regulatory, Review and Evaluation Act, OAH was required to review all its Regulations in 2018, Code of Maryland Regulations (COMAR) Title 28. Quality Assurance (QA) created three in-house workgroups to review OAH's regulations and recommend changes. This was a comprehensive review and the draft regulations were submitted to the Joint Committee for Administrative, Executive, and Legislative Review and two public meetings were held for input concerning the draft regulations.

We are pleased to report that OAH's draft regulations were adopted in January

2020.

I. Implementation of Senate Bill 1000/HB 1343

Senate Bill 1000/House Bill 1343 – Public Safety – Handgun Permit Review Board – Repeal abolished the Handgun Permit Review Board and provided that an individual who is denied a handgun permit will now appeal directly to OAH. This bill requires OAH to schedule and conduct a hearing within 60 days after receipt of a hearing request. OAH must issue a decision 90 days after the conclusion of the hearing.

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 MDH, DLR and the 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 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 Fiscal Year 20 Activities

A. Administration

1. Personnel

OAH's CALJ is appointed by the Governor for a six-year term. Executive ALJs serve as the Directors of Operations and Quality Assurance.

OAH began FY 20 on July 1, 2019, with 117 authorized positions, 52 of which are ALJ positions. ALJs are appointed by the CALJ. Prior to the creation of the OAH, 85 full-time and 5 contractual hearing examiners were employed by various State agencies to conduct administrative hearings.

Current qualifications require that ALJs be bar-admitted attorneys with a minimum of 5 years of legal experience. ALJs may be removed for cause and are considered special appointees within the professional service of the State Personnel Management System. ALJs have many years of experience conducting hearings. As of April 1, 2020, the entry level salary for an ALJ was \$106,162 and the average ALJ salary is \$106,685.

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 OAH's headquarters, prior to COVID, ALJs travelled throughout the State to conduct hearings in all counties. 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.

OAH operates satellite offices in Cumberland, Rockville and Salisbury.

3. Security

OAH is vigilant to ensure the safety of its employees. As reported in OAH's FY 19 Annual Report, the Director of Finance and Administration, Danara Harvell, continued to work with DGS on a security personnel contract for the Hunt Valley office. OAH firmly held that a security officer with police powers is required in the Hunt Valley office and requested that off-duty police officer services plus a uniformed guard be included in the contract.

We are pleased to report that the new security personnel contract that included a security officer with police powers and a uniformed guard started on February 1, 2020.

B. Operations

OAH's Operations Division:

- schedules and assigns cases
- reviews caseload to ensure that backlogs do not develop
- ensures expeditious case management
- monitors 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 FY 20, OAH received 33,504¹ new cases. Caseload statistics for FY 20 are included in Attachment A.

The OAH conducted 1,053 mediations and settlement conferences during FY 20. All ALJs are certified mediators enabling them to provide mediation services. The OAH's mediation program for Special Education hearings is a prime example of the benefits of the mediation process. In FY 20, OAH successfully resolved 69% of the special education mediations that were scheduled. OAH also conducts mediations in mortgage foreclosure proceedings when requested by a homeowner.

¹ The decrease in the number of new cases received in FY 20 is due to COVID and the closings of state agencies, courts and businesses.

1. Hospital Meetings

The Director and Deputy Director of Operations and Carroll McCabe, Chief of the Mental Health Division of the OPD, continued to meet with hospital personnel to discuss issues concerning the staffing and security at IVA hearings. In FY 20 the following meetings were held:

- September 24, 2019 - Prince George's Hospital
- November 21, 2019 – Southern Maryland Hospital
- December 10, 2019 – Bon Secour Hospital

2. Information Technology (IT)

Operations supervises the IT Department and, in addition to the many IT projects relating to COVID in FY 20, IT executed a new recording software, CourtSmart. On June 19, 2019, the Board of Public Works approved the purchase of the CourtSmart recording software and IT began working with the vendor immediately to implement the software package.

The CourtSmart platform was successfully deployed to all ALJs' laptops and hearing room desktops by December 1, 2019.

In addition, on January 14, 2020, Microsoft discontinued support for the Windows 7 and Windows 2008 Operating Systems. Microsoft Office 2010 is also scheduled to reach the end of support on October 13, 2020.

IT successfully migrated all computers to Windows 10 and Office 365, which will replace Microsoft Office 2010.

3. Performance, Planning and Evaluation Program (PEP)

The Director and Deputy Director of Operations are responsible for evaluating the 52 ALJs in conjunction with Quality Assurance. Operations evaluates ALJs on their attendance, case management, timeliness and collegial relationships. ALJ evaluations are conducted monthly, on each ALJ's Entry of Duty month and reported in January and July.

4. Telework

In FY 20, 81 employees teleworked 47,149 hours. Prior to COVID, ALJs teleworked approximately 20% of the time and also worked 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 though the Internet using their assigned OAH laptop computers or through their home computers.

Allowing ALJs to telework and work-at-home has always 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.

The ALJ staff represents approximately one-half of the total number of OAH employees. Having 52 ALJs already set-up with laptops, remote access and teleworking capability prior to COVID, eased the burden on IT and Operations when Governor Hogan instituted mandatory telework in March 2020.

5. Legislation Affecting OAH

In addition to implementing Senate Bill 1000/House Bill 1343 – Public Safety – Handgun Permit Review Board – Repeal (previously highlighted), OAH implemented HB 891 – State Personnel – Grievance Procedures. The resolution of a grievance is a three-step process consisting of 1) initiation of the grievance in writing to the employee's appointing authority or the appointing authority's designee; 2) an appeal to the Secretary's designee; and 3) an appeal to OAH for a final administrative decision. HB 891 expands the issues that may be heard at OAH.

OAH also monitored HB 985/SB 797 – Compensation to Individuals Erroneously Convicted, Sentenced and Confined or Whose Conviction or Adjudication is Reversed.

In late September 2019, the Board of Public Works (BPW) contacted OAH to request that a Memorandum of Understanding (MOU) be drafted for OAH's ALJs to develop a standardized compensation package for wrongfully convicted individuals. The BPW did not use OAH for these cases and, in January 2020, the BPW made five awards using the average State wage in determining a compensation. HB 985/ SB 797 dealt with this issue and provided that OAH would handle these cases. This bill did not pass during the abbreviated 2020 Legislative Session.

In addition, OAH monitored over 250 bills that it received fiscal note requests for from the Department of Legislative Services or which it believed would impact OAH, if passed.

As noted in previous year's reports, OAH's Legislative Liaison, ALJ John J. Leidig, who reviews and monitors 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 (PIA) 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 manual, Bench Manuals and Case Digests
- supervises staff attorneys, paralegals, librarian and management associate
- is responsible for OAH's Speaker's Bureau
- is responsible for OAH's Managing For Results submission.

1. ALJ Hiring and Training

The QA Division has the primary responsibility for training ALJs. As previously highlighted, three new ALJs were hired in April 2020. All ALJs are cross trained to conduct hearings for over 30 State agencies and are required to master the substantive and procedural law for over 500 different types of hearings. The training process takes approximately nine months to complete.

The QA 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 report to QA on the new ALJs' progress. New ALJs observe experienced ALJs conduct hearings in a specific subject area before being observed as they conduct hearings.

QA conducts mandatory monthly training for the entire ALJ staff, as well as the paralegals and staff attorneys. Attachment B is a list of the FY 20 ALJ training sessions. In addition, QA selects appropriate judicial and special education training programs for ALJs to attend.

2. Performance, Planning and Evaluation Program (PEP)

One of the major focuses of QA continues to be the evaluation of ALJs' performance, which is required by DBM's PEP process. QA is responsible for rating all 52 ALJs on their Presence at Hearings and Written Expression.

3. Library

Decisions written since 1999 are available on OAH's network and can be found electronically by OAH staff. For seven years after issuance, 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 PIA 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 daily inquiries from the public about OAH decisions and general Maryland law information. News about 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 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 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 OAH.

4. Decision Portal

As reported in FY 18 and FY 19, OAH began publishing certain redacted decisions on its website. OAH believes that providing public access to decisions will further an open government and provide the public with educational opportunities. OAH is committed to offering access to its decisions, while ensuring that the rights of individuals related to privacy and confidentiality are protected.

As an independent unit in the executive branch of State government, OAH is subject to the PIA, and its written decisions are public records. Absent an exception, the PIA requires OAH to grant access to its public records "with the least cost and least delay to the person or governmental unit that requests the inspection."

In addition to furthering the PIA's clear and established policy of straightforward access to public documents, publication of OAH decisions will allow the public to gain a better understanding of the nature and quality of the process available to people who are affected by state agency actions. Publication will also enable individuals and attorneys involved in particular cases to educate themselves on the arguments and outcomes in cases similar to their own.

5. Alternative Dispute Resolution (ADR)

QA has worked to ensure that OAH's ALJs, staff attorneys and paralegals are certified mediators. All new ALJ hires must also become certified mediators.

ADR is extremely beneficial because it includes 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, foreclosure mediations
- Encourages and improves communication between the parties
- Is also used in OAH's mediation program for Special Education appeals which is a prime example of the benefits of the mediation process.

6. Speaker's Bureau

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

On February 10, 2020, Deputy Director of Quality Assurance, ALJ Harriet Helfand, provided IVA Training at the Southern Maryland Hospital and on March 2, 2020, she provided IVA training and a mock hearing at the J. Kent McNew Family Medical Center.

IV. COVID

As highlighted in the Executive Summary of this Report, at the beginning of March 2020, the Acting CALJ, Directors and Deputy Directors of Administration, Operations, Quality Assurance, Information Technology, Human Resources and the Chief Clerk worked tirelessly on the overwhelming issues presented by COVID. State agencies were tasked with complying with Governor Hogan's directive to keep State services up and running as much as possible while keeping employees as safe as possible. Below is additional information on the accomplishments from early March through June 30, 2020:

- Identify mission critical duties of each employee to implement mandatory telework as the State moved to Elevated Level II status
- Develop a Mission Critical Report as required by DBM
- Deploy laptops to telework eligible employees
- Develop building access protocols that comply with the Center for Disease Control, MDH and DBM
- Procure cleaning staff in the Hunt Valley building throughout the day
- Update OAH's website on a regular basis to keep the public and state agencies apprised of the status of hearings
- Coordinate with OPD and MDH to develop procedures for remote IVA, forced medication and NCR hearings

- Contact MVA to advise of plans to conduct remote emergency MAB hearings
- Develop protocols for conducting IVA, forced medication and MAB emergency hearings
- Communicate with state agencies to discuss opportunities for non-emergency remote hearings
- Develop and post Frequently Asked Questions for remote hearings on OAH's website
- Provide licensees with an opportunity to opt-in for remote MVA hearings
- Research the feasibility and affordability of the WebEx platform to conduct remote non-emergency hearings in the future
- Develop plans for future in-person proceedings
- Develop screening protocols for future in-person hearings at OAH's Hunt Valley building.

V. *Conclusions*

Along with all State agencies, businesses and Marylanders, OAH has faced exceptional challenges over the past fiscal year. Throughout the year, particularly March through June, we have been able to continue and adapt to a new "norm" thanks to the extraordinary efforts of OAH's dedicated employees and the leadership of CALJ Dewberry and Acting CALJ Burch.

We are pleased to report that in late June 2020, Governor Hogan appointed Chung Ki Pak to a six-year term. CALJ Pak is only the third CALJ since the creation of the OAH thirty years ago. CALJ Pak started at OAH on July 1, 2020. CALJ Pak served as an Administrative Patent Judge at the United States Patent Trial and Appeal Board for over 23 years, where he adjudicated over 6,000 patent cases involving emerging technologies and complex legal issues and wrote over 2,000 opinions eligible for appeal to the U.S. Court of Appeals for the Federal Circuit. He also served as a corporate intellectual property counsel at Union Carbide Corporation and Praxair, Inc., where he provided legal advice and counsel on a wide range of intellectual property issues, including domestic and foreign patent procurement, litigation, trade secrets, antitrust, licensing, and technology transfer issues. CALJ Pak is a proud and longtime Marylander who grew up in Alabama after his family and he immigrated to the United States from South Korea over 49 years ago. He worked his way through and graduated from Auburn University, with a degree in Chemical Engineering, and later Columbus School of Law - The Catholic University of America, where he received his Juris Doctor degree, while working as a Patent Examiner at the U.S. Patent & Trademark Office.

CALJ Pak's vision of the future of OAH lies in embracing technology and recruiting outstanding ALJs and dedicated support staff to provide fair and impartial hearings to the people of Maryland who are affected by the actions of many Maryland State agencies in a safe, efficient and timely manner. The

accessibility and efficiency of OAH will remain strong as it continues to ensure diligent due process for all Marylanders.

CALJ Pak hopes to increase teleworking opportunities for ALJs and support staff through improving and increasing the use of remote hearings, implementing electronic filings and electronic notice, and embracing other useful technological tools. CALJ Pak believes that by increasing teleworking opportunities, OAH can: 1) improve safety and accessibility, 2) reduce any potential COVID related work interruptions, 3) create more family-friendly work environments, 4) reduce inefficiency associated with time on the road, 5) minimize OAH contributions to traffic congestion and pollution, and more importantly, 6) attract and recruit more outstanding ALJ candidates from every part of Maryland.

CALJ Pak looks forward to meeting agency heads and building upon former CALJ Dewberry's outstanding body of work at OAH.

Document #189013

**FY/2020 MONTHLY REPORT
TOTALS**

ATTACHMENT A

	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	TOTALS
CASELOAD FLOW													
I. CASES CARRIED OVER FROM PREVIOUS MONTH	5420	5272	5499	5284	4955	4867	5146	5192	4862	4977	5205	5646	
II. NEW CASES RECEIVED													
A. Complete Cases	3333	3767	3015	3178	2746	3075	3405	2588	2351	1270	1424	2379	32531
B. Untimely Cases	89	69	49	59	58	53	51	59	47	51	34	38	657
C. Incomplete Cases*	26	21	7	20	5	14	17	17	25	7	6	2	167
D. Fee Payments**	1197	1298	923	1034	662	1104	950	1055	1027	252	231	450	10183
E. Mediations - Special Ed	23	20	2	16	12	17	10	13	13	9	8	7	150
F. Due Process - Special Ed	22	19	21	15	12	17	10	15	12	8	8	7	166
TOTAL RECEIVED	3467	3875	3087	3268	2828	3162	3476	2675	2423	1338	1474	2431	33504
III. CASES SCHEDULED													
A. Heard in Full	1346	1516	1394	1499	1032	877	1211	1157	611	105	209	300	11257
B. Special Ed Hearing in Full	0	4	2	2	7	2	2	2	1	0	1	0	23
C. Record Review	4	3	3	3	1	2	3	5	1	0	2	5	32
D. Hearing Continued	59	68	56	81	53	45	64	54	47	1	15	8	551
E. PHC Heard	22	21	14	30	13	17	22	15	11	7	19	128	319
F. Motion Heard	6	1	18	3	1	1	3	3	2	0	2	4	44
G. Mediation Heard (SE)	18	16	11	7	12	7	12	14	8	5	5	10	125
H. SC/Mediation Heard	132	118	138	111	109	91	94	81	52	0	0	2	928
I. Postponed/Liberal Leave	555	581	534	622	473	454	644	485	3872	1037	2250	2010	13517
J. Default	330	299	288	353	287	316	256	227	149	0	2	2	2509
K. Failed to Appear (MVA)	117	124	119	126	88	71	119	92	44	0	0	1	901
L. Scheduled but not Heard	1641	1613	1459	1666	1487	1480	1704	1485	1032	632	595	925	15719
TOTAL SCHEDULED	4230	4364	4036	4503	3563	3363	4134	3620	5830	1787	3100	3395	45925
IV. DISPOSITIONS													
A. Decisions	265	182	195	249	196	172	201	175	196	93	49	49	2022
B. Special Ed Decisions	3	1	3	3	1	4	1	1	1	1	0	0	19
C. Bench Decisions	1277	1453	1326	1445	974	807	1155	1098	593	88	185	246	10647
D. Defaults	374	248	261	261	244	259	287	140	240	81	13	2	2410
E. Untimely	7	13	2	6	4	3	6	7	7	2	2	4	63
F. Untimely (MVA Only)	71	54	40	53	53	47	43	46	40	43	29	31	550
G. Not Settled	4	7	8	4	4	5	6	4	3	0	3	5	53
H. Withdrawn/Settled or Cancelled/Dismissed Reinstated or Duplicate	1614	1690	1467	1576	1440	1586	1731	1534	1228	802	752	973	16393
TOTAL DISPOSITIONS	3615	3648	3302	3597	2916	2883	3430	3005	2308	1110	1033	1310	32157
V. CASES CARRIED OVER TO THE FOLLOWING MONTH	5272	5499	5284	4955	4867	5146	5192	4862	4977	5205	5646	6767	

* Incomplete Cases Received are not calculated in "TOTAL RECEIVED".

** Fee Payments Received are not calculated in "TOTAL RECEIVED".

ATTACHMENT B

QUALITY ASSURANCE ALJ TRAINING SESSIONS FISCAL YEAR 2020		
Judicial Training Date	Topic/Agenda	Presenter(s)
July 12, 2019	2019 Legislative Update	ALJ John Leidig
August 9, 2019	<p><u>Westlaw basics</u></p> <p>How to conduct a search using the search bar</p> <p>How to find Maryland Statutes and Regulations</p> <p>How to find Attorney General Opinions</p> <p>How to locate Maryland Reports and Maryland Appellate Reports</p> <p><u>Westlaw beyond basic</u></p> <p>Explain Westlaw retention policies for old superseded statutes and regulations</p> <p>How to search old, superseded Maryland Statutes and Regulations</p> <p>Advanced search techniques (including 1oolean operators)</p> <p>Special Ed Connection</p> <p>OAH IT issues</p>	<p>Westlaw representatives/ Elizabeth Lukes, OAH Librarian</p> <p>Ryan Benetz, LRP Publications</p> <p>Tareq Ibrahim and the OAH IT team</p>
September 13, 2019	Appellate Review	<p>Court of Appeals Judge Robert McDonald</p> <p>Chief Judge of the Court of Special Appeals Matthew Fader</p> <p>Court of Special Appeals Judge Kevin Arthur</p> <p>Circuit Court for Baltimore County Judge Judy Ensor</p>

October 18, 2019	Writing for Administrative Law Judges	Bryan Garner - LawProse
November 15, 2019	<p>Morning Session</p> <p>Ignition Interlock – Camera demonstration</p> <p>Ignition Interlock – Presentation Q&A for Ignition Interlock</p> <p>Investigations - Procedures Q&A for Investigations</p> <p>Medical Advisory Board</p> <p>Afternoon Session</p> <p>MVA remands</p>	<p>MVA Staff</p> <p>ALJ Shaffer</p>
December 13, 2019	SMS Meetings	Subject Matter Specialist Groups
January 10, 2020	<p>Panel Discussion-Best practices for wavier of representation at IVA/CRP</p> <p>IVA/NCR/CRP SMS group</p> <p>Anti-Stigma Project workshop</p>	<p>Office of the Public Defender, Disability Rights Maryland, MDH/OAG</p> <p>Joy Phillips & Laurie Bennett</p> <p>On Our Own Maryland, Michael Madsen</p>
February 21, 2020	<p>Changes to DCS</p> <p>Veto Overrides and the OAH</p> <p>Court Smart</p> <p>Internet Research</p>	<p>John Leidig/Laura Party</p> <p>Denise Shaffer</p> <p>Jennie Summers</p> <p>Denise Shaffer</p>

March 6, 2020 (morning)	Special Education: Neuropsychological/Neurodevelopmental Disabilities; Language Disorders; Autism Spectrum	Mark Mahone, Ph.D. Alison E. Pritchard, Ph.D. T. Andrew Zabel, Ph.D. Kennedy Krieger Institute
March 6, 2020 (afternoon)	Cultural and Linguistic Competence	Professor Tawara Goode, Georgetown University
April 2020	Annual Special Education presentation by Art Cernosia rescheduled for October 2020 due to COVID-19	
May 15, 2020 (morning)	New Mediation Standards The Court of Appeals of Maryland has adopted new Standards of Conduct for Court-Designated Mediators, effective January 1, 2020 . These standards are applicable when a court refers all or part of a civil action or proceeding to mediation pursuant to the Maryland Rules. The same standards have also been adopted by the Maryland Program for Mediator Excellence for mediations other than civil court-referred mediations, and these standards will be known as the Maryland Standards of Conduct for Mediators, effective January 1, 2020 . All mediators should review the new standards.	Self-Guided Study
May 15, 2020 (afternoon/remote)	NAALJ Mid-year Webinar	

	<p><i>Challenges in Administrative Adjudication</i></p> <p>1 p.m. to 1:45 p.m.—</p> <p><i>Implicit Bias for Judges</i></p> <p>1:55 p.m. to 2:40 p.m.—</p> <p><i>Current Legal Issues in Marijuana Regulation</i></p> <p>2:50 p.m. to 3:35 p.m. —</p> <p><i>Effective Use of Interpreters</i></p> <p>3:45 p.m. to 4:30 p.m. (PDT) — <i>Evidence in Challenging Times</i></p>	<p>Rachel Godsil, Professor of Law, Rutgers Law School</p> <p>James Burack, Director, Colorado Marijuana Enforcement Division</p> <p>Harriet Helfand, Administrative Law Judge, Maryland Office of Administrative Hearings</p> <p>Gregory Holiday, Administrative Law Judge (Ret.), Social Security Administration</p>
<p>June 19, 2020 (remote)</p>	<p>Adverse Child Experiences (ACE) Interface</p> <p>Resilience: The Biology of Stress and the Science of Hope</p>	<p>Lieutenant Veto Mentzell <i>Harford County Sheriff's Office</i> Child Advocacy Center Family Justice Center</p>



Fiscal Year 2020 Annual Report of the State Advisory Council on Administrative Hearings

Legislative Authority and Functions

The State Advisory Council on Administrative Hearings (the "Council") is authorized by State Government Article § 9-1608 of the Maryland Annotated Code. The Council was established with the following purpose and functions:

- 1) To advise the Chief Administrative Law Judge (CALJ) in carrying out his duties;
- 2) To identify issues of importance to administrative law judges (ALJ) that should be addressed by the CALJ
- 3) To review issues and problems relating to administrative hearing and the administrative process
- 4) To review and comment upon policies and regulations proposed by the CALJ
- 5) To advise the Governor as to those agencies for which a continuing exemption under § 9-1601 should be maintained
- 6) To submit an annual report, which may be prepared in conjunction with the Office of Administrative Hearings' (OAH) Annual Report to the Legislative Policy Committee of the General Assembly.

In the interest of government efficiency and economy, the Council submits its Fiscal Year 2020 (FY 20) Annual Report in conjunction with the FY 20 OAH Annual Report.

Council Membership

The Council consists of ten members. Leroy D. Maddox, Esquire, general public representative, continued to serve as Chair.

The following Council members served in FY 20:

- Senator Susan C. Lee, appointed by the President of the Senate;
- Delegate Samuel I. Rosenberg, appointed by the Speaker of the House;

- Karen B. Salmon, Ph.D., agency representative;
- Thomas Andrews, agency representative;
- M. Natalie McSherry, Esquire, general public representative;¹
- Bruce P. Martin, Esquire, Maryland State Bar Association (MSBA) representative;
- Rochelle Eisenberg, nongovernmental attorney representative;
- Michele McDonald, Esquire, designee of the Attorney General; and
- Susan Dishler Shubin, Esquire, Maryland State Bar Association (MSBA) representative.

Retirement of Chief Administrative Law Judge Thomas E. Dewberry

On December 1, 2019, Chief Administrative Law Judge (CALJ) Thomas E. Dewberry retired. CALJ Dewberry served as OAH's CALJ for eighteen years, that is, three, six-year terms. The Council appreciates his commitment, dedication and leadership over the years.

Council Activities

The Council held meetings on October 2, 2019, March 11, 2020 and June 3, 2020. Council members were kept apprised of OAH's overall operations, the monthly Administrative Law Judge (ALJ) training programs, the status of the current year's budget as well as the upcoming fiscal year's budget.

At the June 3, 2020 meeting, Council members were apprised of OAH's response to the Coronavirus 19 disease (COVID). Under the leadership of Acting CALJ Jana Burch, OAH's Directors and Deputy Directors of Administration, Operations, Quality Assurance, Information Technology, Human Resources and the Chief Clerk identified emergency and non-emergency hearings, cancelled non-emergency hearings that were scheduled and implemented a plan to proceed with remote emergency hospital involuntary admission, forced medication and Motor Vehicle Administration Medical Advisory Board hearings using the Google Meet platform and teleconferencing. They also: coordinated with the Maryland State Department of Education to contact parties with pending requests for mediations/due process hearings; continued to accept and process hearing requests, filing fees and pleadings by mail; continued to issue ALJs' decisions in a timely manner and developed strategies with State agencies and the public to schedule and conduct remote non-emergency hearings as soon as feasible. The Council wishes to commend OAH for ensuring that primary mission critical functions continued to be performed while balancing its mission to provide due process to Maryland's citizens and businesses with the safety of its dedicated workforce.

¹ Ms. McSherry served on the Council as the nongovernmental attorney representative until April 16, 2019. On May 6, 2019, CALJ Dewberry wrote to Governor Hogan and requested that he re-appoint Ms. McSherry to fill the vacant general public representative. Ms. McSherry continues to attend Council meetings awaiting official re-appointment.

As reported in FY 19, pursuant to the Regulatory, Review and Evaluation Act, OAH is required to review its regulations every eight years. OAH kept the Council apprised of the progress of the development of in-house committees to review and consider changes to OAH's regulations and the public meetings which were held. As previously noted under the Council's "Legislative Authority and Functions" section, one of the functions of the Council is to "review and comment upon policies and regulations proposed by the CALJ." Council members reviewed and commented on the draft Rules of Procedure prior to submission to the Joint Committee on Administrative, Executive, and Legislative Review (AELR). OAH's Rules of Procedure were finalized in January 2020.

The Council would like to provide the following additional highlights regarding OAH in FY 20:

- Once again, maintained an approximate 99% timeliness rate for issuing written decisions
- The appointment of ALJ Anthony Vittoria to the Circuit Court for Baltimore City
- Scheduled meetings with hospitals around the State and the Office of Public Defender to ensure that each hospital is following safety protocols and has security personnel in place at involuntary admission hearings
- Executed new recording software
- Finalized a new security personnel contract for the Hunt Valley headquarters.

ALJ John J. Leidig, Deputy Director of Operations, reviewed legislation that OAH was monitoring during the 2020 Legislative Session. The OAH monitors bills that (1) could impact OAH's caseload; (2) may require ALJ training; (3) a "Request for Fiscal Note" has been submitted by the Department of Legislative Services; and (4) would provide a board with the option of delegating contested case hearings to a subset of board members.

In FY 20, ALJ Leidig also reported on the implementation of: Senate Bill 1000/House Bill 1343 – Public Safety – Handgun Permit Review Board – Repeal which abolished the Handgun Permit Review Board and provided that an individual who is denied a handgun permit will now appeal directly to the OAH. This bill requires OAH to schedule and conduct a hearing within 60 days after receipt of a hearing request. OAH must issue a decision 90 days after the conclusion of the hearing; and HB 891 – State Personnel – Grievance Procedures. The resolution of a grievance is a three-step process consisting of 1) initiation of the grievance in writing to the employee's appointing authority or the appointing authority's designee; 2) an appeal to the Secretary's designee; and 3) an appeal to the OAH for a final administrative decision. HB 891 expands the things that can be heard at OAH.

Council members were also updated on the following:

- meetings with agency personnel
- ALJ hiring and training
- staffing changes
- attendance at conferences
- presentations
- public outreach

The Council wishes to emphasize that the attached OAH FY 20 Annual Report provides detailed information on the items highlighted in this Report.