

**OFFICE  
OF  
ADMINISTRATIVE  
HEARINGS**



**FISCAL YEAR 2022**

**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.

Chung K. Pak serves as 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 Fiscal Year 2022 (FY 22) 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 22 OAH:**

- **Received 29,712 new cases**
- **Accomplished a timeliness rate of approximately 99.75% for the issuance of written decisions**
- **Conducted 436 mediations and settlement conferences**
- **Successfully resolved 55% of the special education cases during mediation sessions**
- **Conducted in-depth ALJ Training Sessions**
- **Trained seven new Administrative Law Judges**
- **Developed a Disaster Recovery site**
- **Ensured that no backlog of cases developed**

## I. EXECUTIVE SUMMARY

The following are some highlights from FY 22:

### A. CONTINUED RESPONSE TO CORONAVIRUS DISEASE (COVID)

As reported in OAH's FY 20 and FY 21 Annual Reports, OAH, like all State agencies, continued to make enormous adjustments to address tremendous challenges during the on-going pandemic. OAH's management team worked around the clock to meet those challenges — the health and safety of our employees and the citizens of Maryland remained our top priority as OAH worked to ensure that it could safely and effectively carry out its mission while providing the highest quality of service.

In FY 22, members of OAH's management team created a Pandemic Plan for Hearing Status (Pandemic Plan). The Pandemic Plan became effective July 1, 2021 based upon Governor Hogan's lifting of the State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 and the Department of Budget and Management's "Return to Office" directive.

The following were members of OAH's management team in FY 22:

Chief Administrative Law Judge (CALJ) Chung K. Pak  
Director of Operations, Executive Administrative Law Judge (ALJ) Jana Corn Burch<sup>1</sup>  
Director of Operations, Executive ALJ John J. Leidig  
Director of Quality Assurance, Executive ALJ Harriet C. Helfand  
Deputy Director of Operations, Executive ALJ Tracey Johns Delp  
Deputy Director of Quality Assurance, Executive ALJ Latonya Dargan  
Director of Finance and Administration, Danara L. Harvell  
Director of Information Technology, Tareq Ibrahim

In developing the Pandemic Plan, consideration was given to the public health climate; concerns of OAH's stakeholders; OAH's reputation; complexity of cases; the efficiency and effectiveness of providing due process; and creating better accessibility to the public for hearings. The purpose of the Pandemic Plan was to expand on in-person hearings in the following order:

- August 2021 (Office of Child Care, Department of Labor)
- September 2021 (Salisbury Office to open, Special Education and Department of Health–Agency)

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<sup>1</sup> Executive ALJ Burch retired as of December 31, 2021. Deputy Director of Operations Executive ALJ Leidi gwas promoted to Director of Operations upon ALJ Burch's retirement.

- October 2021 (Medical Assistance, Public Assistance, Purchase of Care, and Intentional Program Violation, except that Garrett, St. Mary's, Charles, and Calvert County dockets will remain remote, Child Abuse and Neglect, Child Support Administration and Department of Health-Agency cases heard in the local departments of social services pre-COVID)

Due to the emergence of variants of COVID, OAH returned to remote hearings in January 2022 and continues to conduct most hearing types remotely using Webex, Google Meet, and telephone. Although Medical Assistance and Public Assistance cases had returned to in-person hearings in the summer/fall of 2021, those case types pivoted back to remote hearings.

On March 10, 2022, OAH's management team and Chief Clerk held a Planning Session and conducted a case-by-case review to determine which case types would remain remote and which case types would return to in-person once conditions relating to the pandemic improve. At that Session, CALJ Pak noted that things would remain status quo through the end of 2022. The following items were considered:

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

Public confidence and trust/OAH's reputation/Impact of COVID

Quality of Proceedings

- Judging credibility
- Quality of recordings
- Decline in Professionalism
- Amount of time allotted

Equal Access to Justice

- Stakeholders
- Internet Access of Hearing participants

Collegiality/morale of office

Environmental Concerns

- Decreased traffic congestion and related emissions

Recruiting and retaining employees

Reduced cost of travel

Status of E-filing

## *B. Administrative Law Judge Appointed to the Judiciary*

In February 2022, Governor Hogan appointed ALJ Tameika Lunn-Exinor to the District Court of Maryland for Baltimore City.

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

## C. *Legislation*

### *Implementation SB 763 - Public Safety and Criminal Justice - Transparency and Accountability (MPAA)*

In 2021, the General Assembly passed the Maryland Police Accountability Act (MPAA). The MPAA (SB 763) was revised in the 2022 session. Pursuant to the MPAA, ALJs will undergo training to serve on three-member police accountability trial boards (the other two members are a civilian and an officer of equal rank) to decide police misconduct cases. Training will be provided by the Maryland Police Training and Standards Commission. There could be as many as 155 state, municipal, or other law enforcement agencies creating trial boards to comply with this statute, and OAH is investigating how many of these agencies will be requesting ALJs to serve on their trial board. State-wide and bi-county law enforcement agencies, unlike other law enforcement agencies, are required to use OAH's ALJs as chair of the Trial Board.

### *Walter Lomax Act*

As reported in OAH's FY 21 Annual Report, on April 13, 2021, Governor Hogan signed SB 14 – Compensation to Individual Erroneously Convicted, Sentenced, and Confined (The Walter Lomax Act or WLA) into law. This bill passed the Senate and House unanimously on March 30, 2021. The bill had an effective date of July 1, 2021 and required OAH and the Board of Public Works (BPW) to promulgate regulations to implement the hearing process. Prior to the Governor signing SB 14, OAH developed an internal workgroup so that OAH was able to hit the ground running when the Governor signed the bill. On April 22 and 30, 2021, OAH's management team met with BPW's Executive Director and General Counsel and agreed that OAH's Rules of Procedure would apply to these hearings. In a remarkably short period of time, OAH's workgroup developed emergency regulations outlining the process to permit OAH to begin accepting Requests for Orders of Eligibility and scheduling hearings by July 1, 2021. The proposed regulations were disseminated to stakeholders, and OAH and BPW held a virtual public hearing on May 24, 2021. The emergency regulations were approved by the Maryland Division of State Documents and remained effective through December 20, 2021.

As an update, all ALJs received WLA training on July 16, 2021. Also, OAH submitted the proposed final regulations on September 2, 2021, which were published in the Maryland Register on October 8, 2021. The WLA regulations, COMAR 28.05.01, became final on December 13, 2021.

## *D. State-wide Initiatives*

In May, OAH began conducting Identity Fraud Hearings on behalf of the Department of Labor's (LABOR) Unemployment Insurance (UI) Lower Appeals Division. These cases arose during the pandemic from UI benefits that were denied due to lack of sufficient verification of identity. LABOR requested that OAH assist with conducting these cases because LABOR did not have sufficient hearing examiners on staff to handle these cases in an appropriate time frame. LABOR initially estimated a backlog of 12,000 cases. OAH agreed to conduct five dockets per day with nine cases per docket, subject to any scheduling constraints. In April, ALJs were trained to use the LABOR BEACON system.

In August 2021, the Maryland Department of Health (MDH) requested that OAH provide mediation services for cases involving an administrative services organization (ASO) for the Maryland Public Behavioral Health System. The ASO, Optum, went online on January 1, 2020, and the system failed. As a result of the failure of the Optum claims-processing system and transition, MDH instructed Optum to provide estimated payments based on providers' historical 2020 averages and for providers to submit claims for processing. This resulted in overpayments. MDH was able to resolve most of the claims and requested that OAH's ALJs conduct mediations for the claims they were unable to resolve. OAH and MDH continue to work to develop training and a Memorandum of Understanding for the handling of these mediations in FY 23.

For the fifth year, at the request of the Secretary of State, OAH's staff attorney, Brother Frank O'Donnell, was designated as a Loaned Executive in the state-wide 2021 Maryland Charity Campaign (MCC). OAH appreciates his dedication to the MCC campaign as he worked with OAH, the Office of the Attorney General, the Office of the State Prosecutor and the Administrative Office of the Courts to assist the State of Maryland in reaching its MCC goal.

On June 30, 2022, Brother Frank retired from State service. His record for facilitating OAH's extensive participation in the MCC is legendary and OAH sincerely appreciates all of Brother Frank's hard work and dedication over the years.

OAH is pleased to provide valuable assistance to our sister agencies. We appreciate the confidence they have in OAH to handle backlogs of cases, provide mediation services, and assist with staffing the annual MCC.

### *E. OAH's Fiscal 22 Budget*

OAH's appropriated budget for Fiscal Year 22 was \$16,542,037 (\$16,594,436 – Reimbursable Funds and \$52,399 – Special Funds). Approximately 84% of OAH's appropriation is dedicated to salaries and benefits, contractual services and rent of facilities. The breakdown of OAH's budget is:

- 84% Salaries and benefits, including contractual employees
- 4% Contractual services, of which half is dedicated for legal services
- 6% 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. By October 30th of every fiscal year, agencies transfer the appropriated funds to OAH.

### *F. New Administrative Law Judge*

On June 1, 2022, one of OAH's QA Staff Attorneys, Carlton Curry, was promoted to an ALJ. ALJ Curry has been a tremendous asset to OAH while serving as a Staff Attorney since April 2019. As an OAH Staff Attorney, ALJ Curry participated in the Walter Lomax Act workgroup, co-led the Summer Legal Internship Program, and developed and co-presented OAH's Diversity, Equity, and Inclusion Committee training on implicit bias.

ALJ Curry has an extensive legal background that includes serving as the Executive Director of the Maryland Board of Physical Therapy; the Deputy Director of the Maryland Legal Services Program within the Department of Human Services; a Senior Advisor with Sidney Strickland and Associates, a Washington, DC-based regulatory law firm; as well as serving several years with the Federal government as an administrator with the Office of Independent Counsel.

We are confident ALJ Curry will continue to have a valuable impact at OAH as an ALJ.

## *G. Meetings with Agencies*

Maintaining communication with the agencies for which OAH conducts hearings has always been vital to its on-going operations. 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. In FY 22, OAH continued this on-going communication.

CALJ Pak 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 the Environment (MDE)**
- **Department of General Services (DGS)**
- **Department of Health (MDH)**  
**Board of Physicians**
- **Department of Human Services (DHS)**  
**Local Departments of Social Services**
- **Department of Information Technology (DoIT)**
- **Department of Labor (LABOR)**  
**Office of the Commissioner of Financial Regulation**  
**Unemployment Insurance Division**
- **Department of Legislative Services (DLS)**
- **Department of Public Safety and Correctional Services**  
**Inmate Grievance Office**  
**Maryland Police Training and Standards Commission**
- **Department of Transportation**  
**Motor Vehicle Administration (MVA)**
- **Maryland State Police (MSP)**
- **Office of the Attorney General (OAG)**
- **Office of the Public Defender (OPD)**

## *H. Information Technology*

### **E-Filing**

OAH was advised in FY 22 that its over-the-target budget request for E-Filing was approved, and that funding would be provided in OAH's FY 23 budget.

This project involves the acquisition, licensing, and configuration of the Caseload E-Filing Module. OAH does not currently allow parties to file requests for hearings electronically. Parties must submit their requests for hearings by mail along with a check or money order. This manual process for collecting paperwork and payment not only creates a burden on the citizens of Maryland



but is also highly inefficient for OAH. The e-filing module will allow parties to submit paperwork and payment for their hearings through a secure online portal. Personnel at OAH will then be able to validate the information received and create a case in Caseload.

OAH is working with the Department of Information Technology (DoIT) and The Office of State Procurements (OSP) to purchase the module.

### **Cyber Security**

OAH worked with the Office of Security Management (OSM) to commence a series of assessments aimed to identify and address vulnerabilities and risks.

#### **Penetration Testing**

A penetration test was conducted by Cyber Defense Technologies, LLC (CDT) to determine if engineers could gain access to OAH's network and systems. Penetration testing is a simulated attack against an organization, attempting to circumvent security controls and gain authorization access to intellectual property, sensitive data, or protected systems. The penetration tests were conducted between May 16 – 20, 2022 and included network, service, and web attacks as well as application attacks using open-source tools.

#### **Annual Firewall Audit**

A review of OAH's firewall configuration and policies determined that OAH had an overall compliance rate of 86%. DoIT identified nine action items that need to be addressed in their assessment. As of September 1, 2022, nine of the nine action items were completed.

#### **Organizational Security Maturity Assessment**

This component focused on organizational compliance with the security controls described in the IT Security Manual, structured using the National Institute of Standards and Technology Cybersecurity Framework and the standards described in the Maryland IT Security Manual.

OAH was briefed of the results on August 3, 2022 and has partnered with Microsoft and DoIT to improve our cyber resilience. OAH has implemented technology to improve the ability to monitor security logs, devices, and file access. OAH will also implement new vulnerability scanning software and new managed detection and response software on all devices by February 2023.

## *I. Local and National Perspectives*

### **Local**

#### ***Maryland Judiciary***

On September 17, 2021, the following Judges participated in the Judiciary's Annual Appellate Case Update on recent Maryland appellate administrative law decisions: Judges Robert McDonald and Jonathan Biran of the Court of Appeals, Judge Kevin Arthur of the Court of Special Appeals and Judge Judith Ensor of the Circuit Court for Baltimore County.

This annual review has been presented to ALJs for approximately twenty-nine years.

#### ***Maryland State Bar Association (MSBA)***

CALJ Pak and ALJ Leidig participated in the MSBA 2022 Annual Meeting in Ocean City, Maryland on May 31 – June 3, 2022. They attended sessions on: Alternative Dispute Resolution; Maryland Public Information Act; Diversity, Equity, and Inclusion; Cyber Security; and the Administrative Law Section's session entitled: "Redistricting 2022: Latest Developments on Election Litigation and Legislation."

#### ***Maryland Association of Administrative Law Judiciary***

Many of OAH's ALJs are members and officers of the Maryland Association of Administrative Law Judiciary, 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 31 jurisdictions. Maryland's OAH remains one of the largest central panels in the country with the broadest jurisdiction.

The Central Panel Directors meet annually. On September 11 -16, 2021, CALJ Pak and ALJ Leidig attended the 2021 Central Panel Directors' Conference at the National Judicial College in Reno, Nevada. The program included sessions on: "Coaching, Supervision and Caseload Management," "Personal Reflection on the Past, Present and Future of the Central Panel Model," "Best Practices in Adult Education and Conducting Assessments of Learners' Needs," as well as individual state reports.

The Central Panel Directors' Conference provides a valuable forum for central panel states to share information and gain different perspectives on the many issues and challenges that they face.

***National Association of Administrative Law Judiciary  
(NAALJ)***

The NAALJ 2021 Annual Conference was held in Washington, DC on October 3 – 7, 2021. CALJ Pak and ALJs Helfand, Leidig, Dargan, Chapman, Hampton-EL, Osborn and Thibodeau participated in the 2021 Conference. The program included some of the following sessions:

- "A Judicial Ethics Presentation"
- A panel discussion on "The Civil Rights and Voting Rights Amendments"
- "Deference"
- "The Central Panel Study"
- "The Federal Law and Its Requirements and the Impact of Language Choices"
- "Model Adjudication Rules for Administrative Procedure; Process for Updating and Revising Court Rules"
- "Implicit Bias: Trusting the Justice System in a Post-George Floyd Era"
- "Fifth Amendment in Administrative Hearings"
- "Courtroom Security & Active Shooter Preparedness"

In addition, ALJs Helfand and Dargan conducted a Breakout Session on "Best Practices in Conducting a Hearing and Writing a Decision" and ALJ Osborn participated in a Breakout Session entitled "Innovations in Technology, It's Gifts and Curses"

On May 13, 2022, all ALJs participated in the NAALJ Mid-Year webinar on the following topics:

- "Communicating with Self Represented Parties"
- "Judicial Ethics and Professionalism"
- "Unmasking Credibility"

In FY 22, ALJ Leidig served as the NAALJ President, and ALJs Chapman and Osborn currently serve on the NAALJ Board of Governors.

**In FY 22, OAH improved service to the citizens of Maryland and increased efficiency by:**

- **Providing citizens with options for remote, in-person and hybrid hearings**
- **Assisting the Department of Labor's Unemployment Division with its backlog of Identity Fraud cases**
- **Finalizing regulations for the Walter Lomax Act**
- **Developing plans for implementation of SB 763 – Public Safety and Criminal Justice – Transparency and Accountability**
- **Training ALJs and support staff on the conversion of MVA hearings to the Customer Connect platform**
- **Updating OAH's website and enhancing 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**
- **Working with local departments of social services to determine the best platform for remote hearings.**

### *III. 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, LABOR and the Department of the Environment were consolidated into a central hearing agency. 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 was 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 members, 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.

#### *IV. Miscellaneous Additional Fiscal Year 22 Activities*

##### **A. Administration**

##### **1. Personnel**

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

OAH began FY 22 on July 1, 2021, with 115 authorized positions, 57 of which are ALJ positions. During this fiscal year, four support staff positions and one ALJ position were filled. ALJs are appointed by the CALJ. Prior to the creation of the OAH, 85 full-time and five 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 five 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 generally have many years of litigation experience including conducting hearings. As of July 1, 2021, the entry level salary for an ALJ was \$108,286 and the average ALJ salary is \$109,993.

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 five to 90 days after the close of the record.

##### **2. Facilities**

OAH's Administrative Law Building headquarters is in Hunt Valley, is accessible from I-83 North and provides ample free parking. Two light rail stations and bus service are within walking distance of OAH's Hunt Valley office.

OAH began a ten-year lease for the Hunt Valley headquarters in February 2021. As part of that lease, a list of lessor's work was negotiated and the work

was completed April 6, 2022. OAH's Director of Finance and Administration worked with the Department of General Services and the landlord on completing the list of positive upgrades to the building that included electric car charging stations and hearing room construction which consolidated four of the smaller, MVA hearing rooms into two larger hearing rooms.

OAH's Administrative Law Building now houses 19 hearing rooms, 3 mediation rooms, two attorney-client meeting rooms, a clerk's office, public waiting areas, and 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 were held at various locations around the State, including private hospitals and nursing homes. Other hearings were held in government facilities such as courthouses and agency offices. In FY 22, the majority of OAH's hearings remained remote with a small number of in-person hearings held around the state.

OAH operates satellite offices in Rockville and Salisbury. OAH previously had a satellite office in Cumberland and that lease was terminated in FY 22.

### **3. Court Reporting Contract**

OAH's Director of Finance and Administration worked with the State Office of Procurement throughout FY 22 to develop an Information for Bid for a new Court Reporting Contract. We anticipate that a new contract will be finalized and in place in FY 23.

### **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, and Administrative Aide 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 30 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 (2021). In FY 22, OAH received 29,712 new cases. Caseload statistics for FY 22 are included in Attachment A.

OAH conducted 436 mediations and settlement conferences during FY 22. It is important to note that the number of mediations decreased significantly due to the Foreclosure Mortarrium in place because of the COVID crisis. All ALJs are certified mediators enabling them to provide mediation services.

ALJs issued 4,214 written decisions, orders, or rulings on motions in FY 22. Operations remains vigilant in monitoring the timeliness of its written decisions and the timeliness rate for the issuance of written decisions in FY 22 was approximately 99.75%. In addition to the issuance of written decisions, ALJs rendered 7,862 bench decisions in MVA hearings. They also rendered 846 bench decisions in Involuntary Admission (IVA) hearings.

### **1. New Director and Deputy Director of Operations**

On December 31, 2021, former Director of Operations, ALJ Jana Burch, retired from State service. ALJ Burch came to OAH in 1992 from the law firm of Venable, Baetjer and Howard. Within four years of serving in the capacity of ALJ, she was promoted to Deputy Director of Operations. In 2001, she was again promoted to Director of Operations. ALJ Burch served as Acting Chief Administrative Law Judge from December 2019 – June 30, 2020, and did an outstanding job overseeing OAH through the beginning of the pandemic and moving hearings forward in an expeditious manner. ALJ Burch always demonstrated a high level of honesty, integrity, professionalism and an extraordinary work ethic and dedication to OAH, its employees, and the citizens of Maryland. A debt of gratitude is in order for all that ALJ Burch contributed to OAH in her 29 years as an ALJ and member of OAH's management team.

ALJ John Leidig, who served as Deputy Director of Operations, was promoted to Director of Operations. ALJ Leidig started at OAH in 2014 and was promoted to Deputy Director of Operations in 2018. Prior to joining OAH, ALJ Leidig was a partner with Shapiro, Sher, Guinot and Sandler in Baltimore. As Deputy Director of Operations, ALJ Leidig participated in all aspects of Operations and continues his commitment to promoting and enhancing OAH's mission as he leads Operations.

ALJ Tracey Johns Delp was promoted to Deputy Director of Operations. ALJ Delp served as an ALJ since February 2017. She came to OAH from the State's Attorney Office in Harford County where she was the District Court Division Supervisor for that office. Prior to being a State's Attorney in Harford County, she was a State's Attorney in Baltimore City and was previously engaged in private practice in Harford County.

## **2. Conversion to MVA Customer Connect**

In August 2020, the Maryland Department of Transportation Motor Vehicle Administration (MDOT MVA) launched Phase One of its new Customer Connect system, providing additional options and increased flexibility for Marylanders doing business with MDOT MVA. Customer Connect provided more access to online transactions, reduced the use of paper forms and enhanced security. MDOT MVA encouraged residents to take advantage of the convenience provided by Customer Connect from the comfort and safety of home, especially during the COVID-19 emergency.

In September 2020, the MVA advised OAH that the deployment date for Phase Two of Customer Connect was scheduled for December 6, 2021. Phase Two included driver services, driver enforcement, investigations, and financial services. In January 2021, ALJ Denise Shaffer<sup>2</sup> developed an in-house workgroup consisting of the Director of IT, the Chief Clerk, the Deputy Chief Clerk responsible for MVA cases, and several ALJs to provide demonstrations of OAH's processes to Customer Connect representative and to help ensure a smooth transition prior to the December 6<sup>th</sup> rollout date. ALJ Shaffer and the workgroup's primary contacts were with the Customer Connect Hearings /Investigations Team and they were able to enhance the generation of MVA finding of fact forms for:

- License cancellations
- CDL Disqualification
- Fatality Cases
- License Suspension and Revocation
- Outstanding Arrest Warrant
- Child Support
- Reciprocity – Mistaken Identity Only

This was a major undertaking and all ALJs participated in on-site training in October and November 2021.

Operations, QA, and ALJ Shaffer continued to work with MVA before and after the launch of Customer Connect to ensure that all cases and decisions were handled correctly in the new system.

## **3. Continued Response to COVID**

In addition to the previously highlighted update on OAH's continued response to COVID, OAH took the following measures:

- Opened the Rockville and Salisbury satellite offices

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<sup>2</sup> ALJ Denise Shaffer served as Director of Quality Assurance until May 2021 and continued to work on the MDOT MVA Customer Connect project until January 2022.



- Effective February 22, 2022, in accordance with Governor Hogan and DBM's directives, OAH employees and visitors were no longer required to wear masks in the Hunt Valley, Rockville and Salisbury offices. However, unvaccinated employees were strongly encouraged to continue to wear masks
- Scheduled all telephone pre-hearing conferences using the WebEx platform
- Increased the number of remote proceedings that ALJs could conduct from home
- Pivoted Medical Assistance and Public Assistance cases back to remote hearings in January 2022 due to the emergence of the Delta and Omicron variants
- CALJ Pak, ALJs Burch and Leidig met with the Office of the Public Defender and the Maryland Hospital Association to continue to work to determine if hospital hearings should remain remote or return to in-person.

#### **4. Multi-Day Litigation**

OAH continues to see a notable increase in Special Education cases in the past year. This is most likely due to the pandemic and concerns that children may not be receiving services required under the Individuals with Disabilities Education Act. These cases are multi-day, complex, and often emotional.

#### **5. Performance, Planning and Evaluation Program (PEP)**

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

#### **6. Telework**

In FY 22, 79 employees teleworked 71,617 hours. Prior to COVID, ALJs teleworked approximately 20% of the time and worked at home, in between and/or after traveling to their dockets.

Prior to COVID, allowing ALJs to telework created operational efficiencies in that ALJs' travel time was reduced and ALJs were 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 expanded telework program, during COVID, allowed OAH to reduce its fleet by one-third.

The ALJ staff represents approximately one-half of the total number of OAH employees. Having all 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 and again on November 10, 2020.

In addition to the ALJ staff, employees in Operations, Quality Assurance, Finance and Administration and IT are also telework eligible and telework approximately two to three days per week.

## **7. Legislation Affecting OAH**

In addition to working to implement the MPAA, OAH monitored approximately 380 bills that it received fiscal note requests for from DLS or which it believed would impact OAH, if passed.

As noted in previous years' reports, OAH's Deputy Director of Operations serves as the Legislative Liaison. In FY 22, ALJ Delp reviewed and monitored all proposed legislation that affected OAH. She is also responsible for evaluating ALJs; assisting with the daily operation of OAH; serving as OAH's Public Information Act (PIA) Officer; and handling all PIA requests in a timely manner. She is also regularly scheduled to hear cases as an ALJ.

### **C. Quality Assurance (QA)**

#### **OAH's Quality Assurance Division:**

- oversees the quality of written decisions
- 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 Frames Manual, Bench Manuals and Case Digests
- supervises staff attorneys, paralegals, librarian, and management associate
- manages OAH's Speaker's Bureau
- develops OAH's Managing for Results submission

### **1. ALJ Training**

QA has the primary responsibility for training ALJs. QA continued to oversee the new ALJ training for the seven ALJs hired in April 2021. QA is pleased to report that the seven ALJs completed their final training, for multi-day hearings, on December 13, 2021. Following the final training, the new ALJs entered the OAH rotation list for multi-day cases. QA's 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.

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.

OAH anticipates hiring new ALJs in FY 23 due to the vacancies created from ALJ retirements and ALJs appointed to judicial and quasi-judicial positions (Maryland Judiciary, federal administrative judiciary, and Mediator for the U. S. Court of Appeals for the Fourth Circuit).

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 22 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 ALJs on their Presence at Hearings and Written Expression.

## **3. Finalization of WLA regulations**

The WLA emergency regulations (Chapter 28.05.01) were in effect until December 20, 2021. On September 2, 2021, OAH submitted the proposed final regulations to the Joint Committee on Administrative, Executive, and Legislative Review. The proposed final regulations were the same as the emergency regulations with one exception, ".07 Application for Reasonable Attorney's Fees and Expenses." For consistency, the language reads "Lawyers admitted to the bar for fewer than or equal to 8 years: \$125 - \$225." The regulations became final on December 13, 2021.

## **4. Implementation of MPAA**

With the passage of MPAA, QA developed an in-house workgroup. On May 23, 2022, the Directors and Deputy Directors of QA and Operations and OAH's Chief Clerk met with representatives from the Maryland Police Training & Standards Commission to discuss the development and scheduling of a training program for all ALJs.

The MPAA applies to allegations of police officer misconduct involving a member of the public that occurred on or after July 1, 2022. At the May 23<sup>rd</sup> meeting, Maryland Police Training & Standards Commission's representatives agreed to come to OAH's Hunt Valley offices to conduct the in-person ALJ training sessions to be scheduled in FY 23.

## **5. Customer Connect**

Training on the new MVA Customer Connect system was scheduled in October and November 2021 for morning and afternoon sessions with ALJs and Clerk's Office employees responsible for scheduling MVA hearings. The training sessions were held at MDOT's headquarters in Hanover, Maryland. ALJs and Clerk's Office employees needed to be educated on this new system as it pertains to MVA hearings.

After the December 6, 2021 launch date, QA, IT and ALJ Shaffer served as a Help Desk resource for ALJs and worked with the MVA on glitches to the system that pertained to reviewing licensees' driving records, filling out Findings of Fact, and issuing decisions. QA and ALJ Shaffer were liaisons with the MVA and maintained communication to alert them of problems with cases that were converted from the previous Legacy platform to Customer Connect.

## **6. IVA training**

On January 20, 2022, ALJs Helfand and Dargan provided an Involuntary Admission hearing virtual training to the Maryland Hospital Association.

## **7. Summer Interns**

QA is responsible for the OAH Summer Intern Program. A combination of five rising second- and third-year law students participated as OAH interns in the summer of 2021. They assist ALJs in research, writing, and preparing cases, in-person and virtually. All were assigned ALJ mentors and two participated in externship programs.

## **8. Library**

Many decisions written since 1999 are available on OAH's network and can be found electronically. For seven years after issuance, signed hard copies are also available in the library. Due to the privileged and confidential nature of many of OAH's decisions, 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 to the ALJs and other OAH employees by library staff on a weekly basis in the QA Newsletter.

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.

## **9. Decision Portal**

OAH continued to publish certain redacted decisions on its website throughout FY 22. There are now approximately 5,700 redacted decisions on the portal, uploaded since its launch in late 2017. 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.

## **10. 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.

In July 2021, QA conducted an in-house 40-hour mediation training and there are now ten additional certified mediators at OAH. The training was done in five sessions in July rather than 40 hours in one week.

**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.**

## **11. Speaker's Bureau**

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

On August 25, 2021, CALJ Pak gave a presentation on "What OAH Does to Serve the Citizens of Maryland" to the Asian American Community Leaders from Howard, Montgomery, and Baltimore Counties; the Administrative Director of the Governor's Office of Community Initiatives, Christina Poy; and Senator Susan Lee.

On October 5, 2021, Executive ALJs Helfand and Dargan provided a session on "Best Practices for Conducting a Hearing and Writing Decisions" at the NAALJ Annual Conference.

## **D. Information Technology**

COVID created a shift in priorities for OAH's IT Department. In FY 22, IT continued to provide the much-needed support to enhance OAH's ability to conduct proceedings and business operations remotely while ensuring that Cyber Security and Disaster Recovery needs are met.

### **1. E-Filing/Online Payment Processing**

One of the challenges OAH continues to face is finding a "cost effective" E-filing system that provides the necessary functions. To do this, OAH formed

an E-filing Committee from different units of its office together with the head of IT. The Committee established requirements, developed a scope of work, and received demonstrations from One Stop, CaseLines, Maryland Electronic Courts and enhancements to OAH's current case management system, Caseload, that would facilitate E-filing. OAH submitted an over-the-target budget request with its FY 23 budget proposal to purchase an E-filing system. This request was approved.

## **2. Disaster Recovery and Backup Enhancements**

OAH has successfully established a disaster recovery site in Microsoft Azure. This allows OAH to securely connect to vital servers and applications in the event of a disaster.

## **3. Infrastructure Enhancements**

OAH purchased cutting-edge technology that modernizes OAH's system infrastructure. The enhanced technology allows OAH to virtualize all its production servers to improve efficiency and lower costs. Virtualization allows the IT team to become more agile while also adding availability and enhancing reliability.

## **4. Inmate Grievance Office Hearings**

On March 24, 2022, OAH's Management team and Chief Clerk met with representatives from the Inmate Grievance Office (IGO) and the Department of Public Safety and Correctional Services' IT Department. At that meeting, OAH's IT Director requested that IGO consider transitioning IGO hearings from the Cisco Bridge (the Bridge) to WebEx. He reported to the IGO that OAH's IT Department discovered that the Bridge was down on most days from mid-February through March 22<sup>nd</sup>. Rather than postponing the IGO hearings, OAH's IT Department was able to successfully convert the hearings to the WebEx platform and the hearings proceeded as scheduled. OAH continued to work on this transition with the IGO and the correctional facilities' site coordinators and offered to help configure and test connectivity using the WebEx platform.

## ***V. Conclusions***

In FY 23, OAH will focus on implementation of the MPAA; E-filing; Cyber Security; and hiring and training new ALJs.

OAH continues to embrace and improve technology and looks forward to the implementation of an E-filing system so that it can improve accessibility to the public. New laptops, with improved features, were purchased for ALJs in FY 22 to further enhance virtual proceedings.

OAH considers the passage of MPAA to be yet another reflection of the well-earned confidence of the legislative and executive branches in OAH's independence, competence, and expertise. OAH has an incredible legacy of implementing and efficiently and effectively executing complex hearing processes, and the passage of this bill is another proud moment in OAH's history. OAH will ensure that all ALJs are trained by the Maryland Police Training and Standards Commission so that it is able to provide an ALJ panel member to all law enforcement agencies in the State, if requested.

OAH has come a long way in thirty-two years and looks forward to continued enhancements, post-COVID, as it carefully considers the public health climate; concerns of OAH's stakeholders; the reputation of the office; complexity of cases; and the efficiency and effectiveness of providing due process and creating better accessibility to the public for hearings. OAH anticipates that the most complex, document intensive, hearings will be scheduled as in-person hearings in the future. OAH's regulations provide that parties may still submit a request that an in-person hearing be converted to a remote hearing to ensure equal access to justice in all OAH proceedings. OAH will continue to consider feedback from stakeholders and re-evaluate if certain case types should be scheduled as in-person. OAH's ALJs are proficient in conducting remote hearings from home, resulting in operational efficiencies in that ALJs' travel time is reduced and ALJs can focus on decision writing with fewer interruptions and distractions. There is also a savings on fuel, mileage reimbursement, as well as having a positive impact on Maryland's roads and the environment.

In FY 22, OAH provided valuable assistance to LABOR in handling its backlog of UI Identity Fraud hearings and will continue to work to assist in eliminating that backlog in FY 23. OAH also looks forward conducting mediations for MDH and appreciates the confidence state agencies have in our ability to handle backlogs and mediations.

OAH sincerely appreciates the advice and guidance of the State Advisory Council on Administrative Hearings, and the work of its dedicated workforce.

Document #200977



**FY/2022 MONTHLY REPORT  
TOTALS**

**ATTACHMENT A**

	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	TOTALS
<b>CASELOAD FLOW</b>													
<b>I. CASES CARRIED OVER FROM PREVIOUS MONTH</b>	3409	3200	3293	3341	3768	3475	3141	2650	3176	3605	3964	4162	
<b>II. NEW CASES RECEIVED</b>													
A. Complete Cases	2289	2395	2274	2636	2001	1696	1589	2187	2812	2807	2777	2682	28145
B. Untimely Cases	53	50	56	54	46	71	107	80	94	91	146	120	968
C. Incomplete Cases*	10	11	10	13	16	5	5	13	12	5	10	6	116
D. Fee Payments**	699	795	671	744	742	914	511	656	873	845	794	747	8991
E. Mediations - Special Ed	19	51	26	23	20	16	21	27	26	21	28	35	313
F. Due Process - Special Ed	22	43	17	15	17	17	17	28	21	20	29	40	286
<b>TOTAL RECEIVED</b>	<b>2383</b>	<b>2539</b>	<b>2373</b>	<b>2728</b>	<b>2084</b>	<b>1800</b>	<b>1734</b>	<b>2322</b>	<b>2953</b>	<b>2939</b>	<b>2980</b>	<b>2877</b>	<b>29712</b>
<b>III. CASES SCHEDULED</b>													
A. Heard in Full	1025	882	830	738	630	576	739	467	771	945	1081	1165	9849
B. Special Ed Hearing in Full	3	4	0	2	6	0	1	0	1	1	0	1	19
C. Record Review	0	0	1	3	3	0	2	0	3	1	2	2	17
D. Hearing Continued	73	37	57	68	56	57	52	55	66	77	64	82	744
E. PHC Heard	24	58	38	19	41	39	17	21	33	18	26	42	376
F. Motion Heard	2	21	3	22	9	6	1	3	5	2	3	6	83
G. Mediation Heard (SE)	13	14	18	10	11	7	8	13	15	8	10	12	139
H. SC/Mediation Heard	17	17	32	22	24	26	28	23	26	30	19	33	297
I. Postponed/Liberal Leave	530	576	646	496	529	603	521	485	705	534	583	640	6848
J. Default	52	55	95	118	140	151	57	80	77	93	84	103	1105
K. Failed to Appear (MVA)	90	80	65	56	44	29	71	15	65	81	99	114	809
L. Scheduled but not Heard	1329	1425	1515	1568	1581	1428	1194	1300	1728	1521	1565	1581	17735
<b>TOTAL SCHEDULED</b>	<b>3158</b>	<b>3169</b>	<b>3300</b>	<b>3122</b>	<b>3074</b>	<b>2922</b>	<b>2691</b>	<b>2462</b>	<b>3495</b>	<b>3311</b>	<b>3536</b>	<b>3781</b>	<b>38021</b>
<b>IV. DISPOSITIONS</b>													
A. Decisions	258	183	176	158	175	164	141	151	181	162	163	225	2137
B. Special Ed Decisions	2	2	0	4	2	3	1	1	0	1	1	0	17
C. Bench Decisions	932	803	740	659	518	472	643	332	636	852	1007	1114	8708
D. Defaults	55	48	77	54	131	118	140	43	87	55	86	84	978
E. Untimely	7	4	3	7	6	5	6	4	12	3	4	8	69
F. Untimely (MVA Only)	40	34	50	40	35	61	84	66	75	80	137	112	814
G. Not Settled	8	61	78	4	4	3	4	10	10	6	8	5	201
H. Withdrawn/Settled or Cancelled/Dismissed Reinstated or Duplicate	1290	1311	1201	1375	1506	1308	1206	1189	1523	1421	1376	1519	16225
<b>TOTAL DISPOSITIONS</b>	<b>2592</b>	<b>2446</b>	<b>2325</b>	<b>2301</b>	<b>2377</b>	<b>2134</b>	<b>2225</b>	<b>1796</b>	<b>2524</b>	<b>2580</b>	<b>2782</b>	<b>3067</b>	<b>29149</b>
<b>V. CASES CARRIED OVER TO THE FOLLOWING MONTH</b>	<b>3200</b>	<b>3293</b>	<b>3341</b>	<b>3768</b>	<b>3475</b>	<b>3141</b>	<b>2650</b>	<b>3176</b>	<b>3605</b>	<b>3964</b>	<b>4162</b>	<b>3972</b>	

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

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

ATTACHMENT B

FY 2022 Administrative Law Judge Training

Judicial Training Date	Topic/Agenda	Presenter(s)
July 16, 2021	Walter Lomax Act (WLA)	Professor Jeffrey Gutman, GW Law: Introduction' Presentation by the WLA SMS Group
July 2021	40-hour Mediation Training	QA Staff and ALJs
August 14, 2021	Maryland-Centric Special Education Law	Presentation by the MSDE SMS Group
September 11 – 16, 2021	Presented the State of Maryland Report at the Central Panel Directors' Conference	Chief Administrative Law Judge Chung Pak
September 17, 2021	Appellate Case Update	Judge Robert McDonald, COA
	Three Cases of Interest	Judge Jonathan Biran, COA
	Evidence, Including Hearsay, in Administrative Hearings	Judge Kevin Arthur, CSA
	Making Credibility Determinations	Judge Judith Ensor, Circuit Court for Baltimore County

Judicial Training Date	Topic/Agenda	Presenter(s)
October 15, 2021	MVA Customer Connect Training Offsite MVA Training Center	ALJ Denise Shaffer
November 19, 2021	MVA Customer Connect Training Offsite MVA Training Center	ALJ Denise Shaffer
December 10, 2021	ALJ Subject Matter Specialist Group Meetings	All SMS Groups:  MDH, DHS, MVA, IVA/NCR, MIA, RPS, WLA, MSP, LABOR, FM, SPMS, MSDE, APA
January 14, 2022	Bankruptcy Primer  Maryland Homeowner's Assistance Fund  Presentation: FM Changes	Marc R. Kivitz, Esquire  Brandon Floyd Maddy Ciulu, DHCD  FM SMS Group
February 11, 2022	ACES: Adverse Childhood Experiences	Jennifer Redding, Executive Director, Behavioral Health, University of Maryland Upper Chesapeake Health
March 18, 2022	Conducting Complex Hearings        Dealing with Self-Represented Litigants	ALJs Emily Daneker, Robert Levin, Joy Phillips, Steven Thibodeau, and Staff Attorney Alice Johnson  ALJs Alecia Frisby-Trout, Ann Kehinde, Mary Pezzulla, and Abena Williams

Judicial Training Date	Topic/Agenda	Presenter(s)
April 22, 2022	<p>All's Fair in Life and LABOR! Presentations on HIC, REC, MOSH, and Wage and Hour cases</p> <p>Presentation on Unemployment Insurance – Identity Verification cases</p>	<p>Assistant Attorneys General Kris M. King, Catherine H. Bellinger, and Nicholas C. Sokolow, Maryland Department of Labor</p> <p>Judy Grier Smylie, Esq., Director and Chief Hearing Examiner – Lower Appeals Division, Maryland Department of Labor</p>
May 13, 2022	2022 NAALJ Mid-Year Webinar	<p><u>Communicating with Self Represented Parties:</u> Kelly Tait, Professor, University of Nevada, Reno</p> <p><u>Judicial Ethics and Professionalism;</u> Hon. Katherine Kwan MacDonald, Assistant Chief ALJ, California Public Utilities Commission</p> <p><u>Unmasking Credibility;</u> Julia Simon-Kerr, Professor, University of Connecticut School of Law</p>
June 17, 2022	<p>2022 Legislative Session – Legislative Update</p> <p>Special Education Overview for 2021- 2022</p>	<p>Tracey Delp, Deputy Director, Operations</p> <p>Professor Perry A. Zirkel, Lehigh University</p>



## **Fiscal Year 2022 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 2022 (FY 22) Annual Report in conjunction with the FY 22 Office of Administrative Hearings' (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 22:

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

- Vacant<sup>1</sup>, agency representative;
- Thomas Andrews, agency representative;
- April C. Ishak, Esquire, general public representative;
- Bruce P. Martin, Esquire, Maryland State Bar Association (MSBA) representative;
- Rochelle Eisenberg, Esquire, nongovernmental attorney representative;
- Michele McDonald, Esquire, designee of the Attorney General; and
- Susan Dishler Shubin, Esquire, Maryland State Bar Association (MSBA) representative.

### **Council Activities**

The Council held meetings on October 14, 2021, March 2, 2022 and June 16, 2022. 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.

Throughout the year, Council members received updates on OAH's continued response to the Coronavirus 19 disease (COVID). Under the leadership of CALJ Pak, OAH's Directors and Deputy Directors of Administration, Operations, Quality Assurance, and Information Technology, a Pandemic Plan for Hearing Status was implemented on July 1, 2021 based upon Governor Hogan's lifting of the State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 and the Department of Budget and Management's "Return to Office" directive. The purpose of the Pandemic Plan was to expand on in-person hearings in certain case types. However, due to the emergence of variants of COVID, OAH returned to remote hearings in January 2022 and continues to conduct most hearing types remotely.

Members of OAH's management team and the Chief Clerk met in March 2022 to conduct a case-by-case review to determine which case types would remain remote and which case types would return to in-person once conditions relating to the pandemic improve.

The Council wishes to commend OAH for ensuring that no backlog developed during the COVID crisis while balancing its mission to provide due process to Maryland's citizens and businesses with the safety of its dedicated workforce. In addition, OAH focuses on many important factors when considering case types that may remain remote, such as:

- Public confidence and trust/OAH's reputation/impact of COVID
- Quality of Proceedings
  - Judging credibility
  - Quality of recordings
  - Decline in Professionalism

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<sup>1</sup> Former State Superintendent of Schools, Karen Salmon, Ph.D., stepped down from her agency head position at the Maryland State Department of Education on June 30, 2021. That Council position remained vacant in FY 22.

- Amount of time allotted
- Equal Access to Justice
- Stakeholders
- Internet Access of hearing participants
- Collegiality/morale of office
- Environmental Concerns
- Decreased traffic congestion and related emissions
- Recruiting and retaining employees
- Reduced cost of travel
- Status of E-filing

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." As reported in FY 21, Governor Hogan signed SB 14 – Compensation to Individual Erroneously Convicted, Sentenced, and Confined (The Walter Lomax Act) into law on April 13, 2021. This bill passed the Senate and House unanimously on March 30, 2021. The bill had an effective date of July 1, 2021 and required OAH and the Board of Public Works (BPW) to promulgate regulations to implement the hearing process. Prior to the Governor signing SB 14, ALJ Denise Shaffer developed an internal workgroup so that OAH was able to hit the ground running when the Governor signed the bill. On April 22 and 30, 2021, OAH's management team met with the BPW's Executive Director and General Counsel and agreed that OAH's Rules of Procedure will apply to these hearings. In a remarkably short period of time, OAH's workgroup developed emergency regulations outlining the process to permit OAH to begin accepting Requests for Orders of Eligibility and scheduling hearings by July 1, 2021. The proposed regulations were disseminated to stakeholders, and OAH and BPW held a virtual public hearing on May 24<sup>th</sup>. The proposed regulations were then sent to Council members for review and comment on May 28, 2021.

On September 2, 2021, OAH submitted the proposed final Walter Lomax Act regulations to the Joint Committee on Administrative, Executive, and Legislative Review and the regulations were the same as the emergency regulations with one exception, .07 Application for Reasonable Attorney's Fees and Expenses. For consistency, the language reads "Lawyers admitted to the bar for fewer than or equal to 8 years: \$125 - \$225."

The Walter Lomax Act regulations became final on December 13, 2021.

The Council would like to provide the following additional highlights regarding OAH in FY 22:

- Maintained an approximate 99% timeliness rate for issuing written decisions

- Governor Hogan appointed ALJ Tameika Lunn-Exinor to the District Court of Maryland for Baltimore City. Judge Lunn-Exinor is the eleventh former ALJ appointed to the Judiciary
- Created an off-site disaster recovery location on the cloud
- Developed specifications for an E-filing system
- Assisted the Department of Labor with the Unemployment Division's backlog of identity fraud cases
- Worked with the Department of Health to provide mediation services for cases involving an administrative services organization for the Maryland Public Behavioral Health System
- Worked on the implementation and training of ALJs as required under SB 763 – Public Safety and Criminal Justice – Transparency and Accountability, the Maryland Police Accountability Act
- Promoted Staff Attorney Carlton Curry to an Administrative Law Judge
- Trained ALJs and support staff on the conversion of MVA hearings to the new Customer Connect platform

ALJ Tracey Johns Delp, Deputy Director of Operations, reported on legislation that OAH was monitoring during the 2022 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.

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 22 Annual Report provides detailed information on the items highlighted in this Report.