

The Office of Administrative Hearings (OAH) is an independent unit within the executive branch of State government created to centralize and improve the administrative hearing process of Maryland government. Concurrently, it was expected that administrative adjudication would be independent of state agencies at a reduced cost to the citizens of the State. The mission of the OAH is to provide flexible due process for any person affected by the action or proposed action of State agencies.

Chief Administrative Law Judge (CALJ), Thomas E. Dewberry, heads the OAH. A ten member State Advisory Council on Administrative Hearings (the Council) meets quarterly 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. Chapter 662 of the Laws of 1994 permits the OAH to prepare and submit its report in conjunction with the Council. In the interest of government efficiency and economy, the OAH and the Council submit their 2002 annual reports jointly.

## **I. INFORMAL REPORTS**

Although this Report is mandated by statute and is intended comprehensively to cover all OAH activities during calendar year 2002, OAH attempts to update legislative and executive branch personnel on its activities throughout the year. CALJ Dewberry and members of his management staff met with: Secretary Foster, Department of Budget & Management (DBM); Dr. Nancy Grasmick, State Superintendent, Department of Education (MSDE); Secretary Stuart Simms, Department of Public Safety and Correctional Services (DPSCS); Anne Ferro, Administrator, Motor Vehicle Administration (MVA); and personnel from the Department of Health and Mental Hygiene (DHMH) and the Department of Human Resources (DHR) (since CALJ Dewberry's appointment on May 22, 2002).

The Deputy Director for Management and Administration, Benjamin Rudo, confers at length with DBM to review OAH's programs and financial requirements throughout the year.

## **II. EXECUTIVE SUMMARY OF THIS ANNUAL REPORT**

The following is an outline summary of 2002 events and progress:

1. New Chief Administrative Law Judge
2. Legislation affecting the OAH
3. Administrative Law Judge (ALJ) Salaries

4. National Perspectives
5. OAH's participation in Managing for Results (MFR)
6. Expansion of mediation programs and continued development and refinement of mediation techniques
7. Financial impact of OAH's Fiscal 2002 and appropriated fiscal budget
8. Diversity
9. Efforts to Increase Public Awareness
10. Security
11. Transition

### **III. DETAIL OF 2002 EVENTS AND PROGRESS**

#### **1. New CALJ**

Effective May 22, 2002, Governor Glendening appointed former Delegate Thomas E. Dewberry, OAH's new CALJ for a six-year term. CALJ Dewberry is a lifelong resident of Catonsville; he graduated from Loyola High in 1969, UMBC in 1973, and University of Baltimore Law School in 1977. He served as Hearing Examiner and Senior Hearing Examiner for the Maryland Public Service Commission from 1979 until his appointment as CALJ. He was elected to the House of Delegates in 1990, 1994 and 1998 and was a Member of the House Appropriations Committee and served on several subcommittees. He was elected Speaker Pro Tem from 1996 – 2002.

On May 22, 2002 CALJ Dewberry was sworn in by Suzanne Mensh, Clerk of the Circuit Court for Baltimore County, at OAH's headquarters in Hunt Valley. The Speaker of the House of Delegates, Casper R. Taylor, Jr., provided greetings and introduced the following attendees who gave remarks: The Honorable C. A. Dutch Ruppensberger, Baltimore County Executive; The Honorable J. Joseph Curran, Jr., Attorney General; The Honorable Talmadge Branch, Delegate, Chairman, Maryland Legislative Black Caucus; Leroy Maddox, Jr. Esquire, Chair, State Advisory Council on Administrative Hearings; The Honorable George W. Della, Jr., Senator; The Honorable James E. Malone, Jr. Delegate; and The Honorable S. G. Samuel Moxley, County Councilman.

Since his May 22 appointment, CALJ Dewberry has immersed himself in all aspects of the OAH. He has:

- met with management staff in order to assess the major areas of concern and deal with issues that needed to be addressed early on;
- had an open door policy with regard to all OAH employees and has met with ALJs, employees in Administration, docket specialists and team secretaries;
- attended meetings with agency personnel in order to learn the operations and specifications of each agency;
- maintained OAH's national presence and attended the annual meetings of the American Bar Association, the Central Panel Directors' Conference and the National Association of Administrative Law Judges;
- attended three quarterly meetings of the State Advisory Council on Administrative Hearings;
- prepared and submitted OAH's August 1, 2002 Diversity Report in compliance with the directive in the 2002 Joint Chairmen's Report;
- arranged an August 19 luncheon with members of Maryland's minority community to increase public awareness and seek their assistance in attracting minority ALJ candidates;
- worked to increase public awareness about the OAH in general (details can be found under in item #9 in this Executive Summary);
- trained as an ALJ to conduct hearings in the following areas: Department of Human Resources - Child Abuse and Neglect and Income Maintenance; Department of Labor, Licensing and Regulation – Home Improvement Commission; Maryland Insurance Administration (MIA); Department of Health & Mental Hygiene - Medical Assistance and Involuntary Admission and DBM– Personnel;
- been certified to conduct hearings on his own for MIA and DBM (personnel hearings) and has written decisions in the areas of Child Abuse and Neglect and MIA; and
- participated in OAH's 40-hour mediation training program and became a certified mediator.

## **2. Legislation**

Legislation was introduced in 2002 providing: for the establishment of at least four regional offices; eliminating the authority of the CALJ to establish qualifications for and to appoint, remove, suspend and demote ALJs; authorizing the Governor to appoint remove, suspend, and demote ALJs under specified circumstances; and providing for a salary and requiring specified appointment qualifications for an ALJ. This legislation was defeated in committee.

In October 2002, the MIA contacted OAH regarding legislation that passed in the 2002 Session. HB 521 – Property and Casualty Insurance – Use of Credit History and HB 1002 – Motor Vehicle Liability Insurance – Premium Increases – Consumer Information.

Initially, the MIA estimated that 900 additional cases would be generated by the two bills with the majority resulting from HB 1002 (surcharge cases). Although such cases in the past have proven to be rather basic, as a result of modifications to the bill, the definition of surcharge has been expanded and it is anticipated that the cases will be more complex. Additionally, MIA has seen an increase in requests for contested cases from commercial carriers that would certainly make the matter at issue more complex and lengthier. At a November 14, 2002 meeting with MIA, it was revealed that the initial estimate was low based upon the number of premium notices that have been sent out. MIA stated that it believed that a more reflective number would put the number of potential cases in the 6,000+ range.

The OAH has not been granted any additional funds or positions to absorb this anticipated increase in caseload. At a minimum, such an increase would require the addition of at least another docket specialist and between one to three ALJs.

### **3. ALJ Salaries**

The following is a review of OAH's efforts in the past to increase ALJ salaries:

- The Attorney General's Office received a two-grade pay increase in the fiscal year 2001 budget. Although DBM recommended a similar increase for ALJs in 2000, the Governor did not fund the increase in the fiscal year 2002 budget.
- On October 10, 2001, at a meeting with Governor Glendening, Senator Walter Baker and CALJ John Hardwicke discussed ALJ salaries and submitted several proposals for the Governor's consideration.
- The 2001 Joint Chairmen's Report provided that DBM conduct a study regarding the appropriateness of ALJ's and Public Defender's Office salaries. On October 12, 2001 a DBM analyst met with key members of OAH's management staff and several ALJs to work on that study.
- ALJ salaries were further discussed at OAH's December 3, 2001 budget meeting with the Governor's Chief of Staff, Al Collins, and DBM Secretary, T. Eloise Foster.
- DBM's January 2002 Study recommended an increase for the entry ALJ level; however, OAH does not have any ALJs in this level at this time. DBM further concluded that an across-the-board increase for all ALJs was not justified.

CALJ Dewberry also considers the increase in ALJ salaries a top priority. On July 17, 2002, CALJ Dewberry; Benjamin Rudo, Deputy Director for Management and Administration; ALJ Jana Burch, Director of Operations; and ALJ Laurie Bennett, Director of Quality Assurance, met with Secretary Foster and others to request an increase in ALJs' salaries.

OAH intends to continue to work to increase compensation for ALJs, particularly in view of the disparities between the compensation for ALJs compared with members of the Board of Contract Appeals and the Workers' Compensation Commission.

#### **4. National Perspectives**

At the time of the creation of the OAH, Maryland was the twelfth state to have a centralized office for handling administrative appeals and hearings. The central panel concept has now been incorporated to greater and lesser degrees in 28 jurisdictions, the most recent being Washington, D.C. Maryland's OAH is among the largest central panels in the country with the most jurisdiction. When fully staffed, it employs over 60 ALJs, including the CALJ and the Directors of Operations and Quality Assurance and their respective deputies. In calendar year 2002, OAH received 56,311 cases.

Over the years, States contemplating the establishment of a central panel have contacted Maryland for information, statistics, and guidance. In addition, once established, central panel states continue to seek advice and guidance from the OAH.

CALJ Dewberry and ALJs Burch, Bennett and Brooks attended the Central Panel Directors' Conference in Chicago in September. This Conference gives Central Panel Directors a forum in which to exchange ideas, discuss similar problems, and gain assistance from other central panel states.

The National Association of Administrative Law Judge's (NAALJ) Annual Conference was held in Lexington, Kentucky in October and CALJ Dewberry and ALJs Noreen Lynch, Beverly Nash, A. Michael Nolan, Judith Finn Plymyer and Thomas Welshko attended the Conference. CALJ Dewberry participated in a panel discussion dealing with the following Central Hearing Panel Issues: 1. Funding and Fiscal Issues; 2. Hearings for Local Governments; and, 3. Accountability. ALJ Nolan is a member of the NAALJ Board of Governors. In addition, many of OAH's ALJs serve on various NAALJ Committees.

CALJ Dewberry attended the annual American Bar Association meeting in Washington, DC on August 8 and 9. He attended several programs and the Executive Committee meetings of the National Conference of Administrative Law Judges (NCALJ) in the Judicial Division of the American Bar Association (ABA).

Both the OAH and the ABA benefit through OAH's participation in NCALJ. The ABA receives guidance and direction derived from OAH's successful experience in the creation and implementation of a central hearing agency. Specifically, OAH has provided guidance in the development of long and short-range goals for the ABA in the development of a cogent philosophy of administrative adjudication in the interdependence among executive agencies and executive adjudicators. OAH benefits

by sharing the prestige of its association with the ABA and with participation in many ABA programs in many areas of the country.

We believe that the Maryland OAH would not be the national model it is today without the vigorous support of Maryland's executive, legislative and judicial branches of government.

Locally, CALJ Dewberry attended the Maryland State Bar Association's Annual Meeting in Ocean City, Maryland on June 13, 2002. ALJ Michael Wallace participated in a MVA panel presentation for the Administrative Law Section. ALJ Judith Finn Plymyer is Past Chair of the Administrative Law Section. CALJ Dewberry attends quarterly meetings of the Section Council.

OAH's ALJs are members and officers of the Maryland Association of Administrative Adjudicators, an affiliate organization of NAALJ. ALJs also participate in local bar associations and make presentations to these associations and numerous other community-based organizations.

## **5. Managing for Results**

This year OAH continued to refine its MFR plan and performance measurement systems in an effort to ensure OAH's compliance with its mission to provide flexible due process for any person affected by the action, or proposed action, of a State agency. OAH worked closely with Darrin Aycock, Budget Analyst, DBM, to improve the MFR plan and address any questions. OAH again received positive assessments of its plan after submission.

OAH also continues its use of a customer survey, previously developed under the guidance of Ron Lippincott, the State's MFR consultant. This customer survey is sent to all parties, who have appeared before OAH during a selected month, on a quarterly basis. OAH is also continuing to develop a second survey that will be used for proceedings where a bench rather than a written decision is issued. Surveys will also be used in mediations and settlement conferences.

The OAH strives to provide an efficient and high quality administrative hearing process to the citizens of Maryland and views the MFR plan as a valuable tool to assess its success in achieving that goal. It appreciates the State's MFR program and considers it an important mechanism by which to measure quality and strive for improvements over a period of time.

## **6. Mediation / Alternative Dispute Resolution**

Alternative Dispute Resolution (ADR) includes a number of procedures designed to simplify and expedite the resolution of controversies without the need for a hearing or trial. ADR generally refers to any procedure which utilizes the services of a neutral party to assist in reaching an agreement, thus avoiding the expense, delay, and uncertainty of litigation. Generally speaking, ADR provides a forum for the parties to work towards a voluntary, consensual agreement, as opposed to having a judge or other authority decide the outcome of the case. ADR includes mediation and settlement conferences, which the OAH utilizes frequently. Mediation is particularly desirable because it encourages and improves communication between the parties.

OAH continues to expand ADR services available to parties with pending administrative hearings. OAH is working with the Mediation and Conflict Resolution Office (MACRO) (formerly known as the ADR Commission) to promote the use of ADR at OAH. The OAH was fortunate again this year to receive a grant from MACRO to provide a 40-hour course in mediation. Participants included OAH personnel and personnel from other State agencies, including numerous Assistant Attorneys General, who appear before the OAH at hearings. ALJs, who had already completed 40-hour mediation training programs, assisted in the teaching and monitoring of our training program. Other presenters included: Romana Buck, Public Policy Director, MACRO; Lorig Charkoudian, Executive Director, Community Mediation Program; Lou Gieszl, Deputy Executive Director, MACRO; Debbie Hilliard, R.N., C.N.S., MSt, Sheppard Pratt; Professor Homer C. LaRue; Patricia Miller, Esq., National Institute for Conflict Resolution; Jonathan Rosenthal, Court ADR Resource Director, MACRO; and, Bernard Wynder, Maryland Commission on Racial and Ethnic Bias. Each person who completed the course received a certificate acknowledging that he or she "has successfully completed a minimum of 40 hours of mediation training including areas specified in Maryland Rule 17-106." The training was very successful, and OAH plans to offer future courses in mediation for its professional employees and other State employees who may also benefit from the skills involved.

OAH's mediation program for Special Education hearings is a prime example of the benefits of the mediation process. OAH settled approximately 64% of the Special Education cases mediated in 2002. Also, OAH settled approximately 66% of the Boat Excise Tax cases scheduled for a formal settlement conference. Overall in 2002, OAH settled approximately 60% of all cases scheduled for ADR proceedings.

OAH believes that, by providing training to other state agencies, they will be better equipped to resolve disputes at the agency level, or will be more inclined to request mediation in cases where an appeal has been filed with the OAH.

OAH seeks to increase awareness of the ADR services available by developing a brochure to promote its ADR program.

#### Mediation Pilot Project with the District Court of Maryland

OAH is collaborating with the District Court for Baltimore County to provide mediation in the full range of civil matters. The District Court will refer cases where a trial is expected to last ½ day or longer and is, therefore, burdensome to the docket. Mediation will take place at OAH one day per month with a maximum of four cases per day. Participation by the litigants is voluntary. OAH has initially identified four ALJs to mediate these cases. The ALJs identified possess strong mediation skills and knowledge about District Court practice. OAH considers mediation to be one of the key devices for easing the seriously overburdened Court system and for the prompt and effective disposition of executive agency/citizen disputes.

### **7. Financial Impact of OAH's Fiscal 2002 and Appropriated Fiscal 2003 Budget**

OAH's appropriated budget for FY 2003 is \$10,796,909 covering direct and overhead costs, and including rent and administrative staff. OAH's cost containment amount for FY 2003 is \$ 230,000 meaning the Agency must take measures to reduce expenditures by this amount. DBM has allowed OAH to retain any of the cost containment needed to complete the purchase and implementation of the case management system. Anything over and above is to be reverted back to the General Fund.

The OAH is funded through the transfer of funds from the agencies for which hearings are held. An allocation of costs is prepared each year based on 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 1 of every fiscal year, each agency transfers the appropriated funds to OAH. See Attachments A & B for charts showing the FY 2003 allocation by agency.

### **8. Diversity**

The Joint Chairmen's "Report – Operating Budget," April 2002 notes that the General Assembly is concerned that the OAH workforce does not fairly represent the minority population of the State. The following language was placed on page 39 of the JCR:

*Further provided that the Office of Administrative Hearings (OAH) shall provide a report to the budget committees by July 1, 2002, detailing what actions OAH will take to increase the diversity of its workforce, particularly among the Administrative Law Judge positions. This plan shall include:*



*(1) Strategy and goals to increase workforce diversity; (2) corresponding strategies that OAH will implement to achieve the identified Strategies and goals; (3) criteria for successful implementation of identified strategies; and (4) deadlines for the completion of each Criteria to be implemented.  
The budget committee shall have 45 days to review and comment on the report from the date of its receipt.*

OAH requested a one month extension and submitted its report to the JCR on August 1, 2002. The Report includes five Goals with coordinating strategies and criteria with deadlines for completion:

- Goal 1 To advertise and interview to attract minorities
- Goal 2 To increase public awareness in the minority community about the mission of the OAH and its impact on Maryland's businesses and citizens
- Goal 3 To train and mentor ALJs
- Goal 4 To raise OAH salary structure sufficient to attract and retain a diverse cadre of ALJs
- Goal 5 To hire legal staff, commensurate with available hiring opportunities, such that the ranks of the legal staff at OAH move significantly closer to reflecting the diversity of the population of Maryland

In furtherance of Goal 2, a luncheon to increase public awareness in the minority community was held at OAH on August 19, 2002. OAH sent invitations to the following: Chief Judge Robert Bell, Court of Appeals of Maryland; Senator Ulysses Currie; Delegate Obie Patterson, Chair, Maryland Legislative Black Caucus; Delegate Adrienne Jones; Delegate Verna Jones; Leroy Maddox, Jr., Chair, OAH's Advisory Council; Ann Gordon, Coordinator, Office of Statewide Equal Employment Opportunity; David Moore, Senior Hearing Examiner, Public Service Commission; Gilbert Holmes, Dean, University of Baltimore School of Law; Jose Bahamonde-Gonzalez, Associate Dean, University of Maryland Law School; Dana Morris, Assistant Dean of Career Development, University of Maryland Law School; Patricia M. Worthy, Interim Dean, Howard University School of Law; Amish Shah, Esquire, President, South Asian Bar Association; Carlos Acosta, Esquire, President, Maryland Hispanic Bar Association; Cornelia Bright Gordon, Esquire, President, The Waring Mitchell Law Society of Howard County; Steven Mitchell, Esquire, President, Monumental City Bar Association; George Simms, Esquire, President, The J. Franklyn Bourne Bar Association; Anne Gbenjo, Esquire, Past President, Black Women's Bar Association of Suburban Maryland, Inc.; Cheryl Y. Haskins, Esquire, President, Alliance of Black Women Attorneys; and, Charles Grant Byrd, Jr., Esquire.

The luncheon was well attended and the participants shared excellent suggestions with OAH's management staff and several ALJs.

## **9. Increase Public Awareness**

CALJ Dewberry has been working to promote the OAH. Some of the upcoming events and activities that will help the OAH become more visible are as follows:

- CALJ Dewberry is coordinating public awareness efforts with a subcommittee of the State Advisory Council on Administrative Hearings. The subcommittee members are: Delegate Carol S. Petzold; Dr. Nancy Grasmick; and Susan Dishler Shubin. At the December 19, 2002 Advisory Council meeting Delegate Petzold provided Council members with a "Report to OAH Advisory Council by Marketing Task Force." The Report includes recommendations for a Marketing Plan "to support increased ALJ salaries and a better understanding of OAH and its processes and is recommended to target: 1. The public; 2. Legislators; and 3. State agency heads";
- ALJs regularly make presentations about hearings and alternative dispute resolution to other State agencies and private organizations. There has been approximately 1 or 2 public speaking engagements per month for many years on diverse subjects. In 2002, for instance, ALJs spoke to forensic psychiatrists and a law school class about commitment hearings, joined a panel discussion presented by DBM about reclassification hearings, talked about special education hearings to educators and school administrators, described drunk driving hearings at a MADD meeting. The OAH has recently formalized its outreach efforts by organizing a Speakers Bureau. The Speakers Bureau is comprised of ALJs who have volunteered to do public speaking about contested case hearings and ADR. OAH's Advisory Council supports the Speakers Bureau. The Speakers Bureau has developed a brochure that will be used to help advertise the program;
- ALJs increase public awareness of the office in other ways, such as presiding at mock trial competitions, attending conferences, presiding at the Baltimore City District Court's Teen Court program, and participating in various professional associations;
- CALJ Dewberry attended a Baltimore County Bar Association Bench Bar Committee meeting. This led to a tour of the OAH by the four newest Baltimore County Circuit Court judges. The visitors were Judges Michael Finifter, Ruth Jakubowski, Susan Souder and Vicki Ballou-Watts. As a result of this visit, OAH will be contacting Chief Judge Joseph Murphy, Court of Special Appeals of Maryland, in order to have OAH included on the new judge training program;
- CALJ Dewberry has submitted an article about the OAH for the State Bar Association's Litigation Section newsletter; and

- CALJ Dewberry was interviewed for an article by Director of Communications of the Maryland State Bar Association, Janet Eveleth.

## **10. Security**

In 2000, OAH established a Security Committee to make recommendations for improving security. Not all of the recommendations were adopted. The following measures, however, were implemented:

- Visitor passes are now provided to all non-OAH personnel entering non-public areas;
- Windows were placed in hearing room doors to allow visual access;
- Surveillance cameras were placed in the lobby area; and,
- Swinging doors with locks were placed in small hearing rooms to impede access to an ALJ by a litigant.

The OAH has had a panic button system in hearing rooms at its headquarters in Hunt Valley for several years.

In 2001, because of increased and continued security concerns raised by employees, a supplemental budget request for FY 2003 for \$133,000 was submitted to cover the cost of a metal detector and security personnel. Unfortunately, the supplemental budget request was not funded.

## **11. Transition**

On November 15, CALJ Dewberry attended a mandatory meeting with Governor Glendening's Chief of Staff, Gene Lynch. The purpose of the meeting was to discuss the transition to the new Administration and the requirement that each agency submit a Transition Book. Following the November 15 meeting, OAH submitted its Transition Book on November 21, 2002. The Book included: 1. An Overview of the OAH; 2. Budget Information; and 3. Items of Concern. The Items of Concern included: Possible FY 2004 Budget Reductions; Administrative Law Judges (Salaries and Diversity); Increase in Maryland Insurance Administration caseload; and Department of Health & Mental Hygiene's Departmental Legislative Proposal – LR 0001.

OAH appreciates the leadership that Governor Parris N. Glendening has given over the past eight years and looks forward to working with newly elected Governor Robert L. Ehrlich, Jr. in continuing to provide the citizens of Maryland with due process in a prompt and efficient manner.

#### **IV. LEGISLATIVE HISTORY AND BACKGROUND**

The 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 with examining the then-current administrative hearing system and recommending needed changes. The Task Force issued a final report strongly endorsing the creation of a centralized administrative hearing process and identifying 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 the Departments of Health and Mental Hygiene, Licensing & Regulation, and Environment were consolidated into a central office. ALJs were cross-trained to handle a wide variety of cases, and projected operational efficiencies began to be 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 the OAH. The Commission included CALJ Hardwicke, two Cabinet Secretaries, and representatives of the judiciary, business community, labor unions, Maryland State Bar Association, 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 the Office's Rules of Procedure, COMAR 28.02.01, were adopted incorporating the revisions to the APA.

#### **V. MISCELLANEOUS ADDITIONAL 2002 ACTIVITIES**

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

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

The CALJ is appointed by the Governor for a six-year term. As previously stated, Governor Parris Glendening appointed CALJ Dewberry for a six year term on May 22, 2002. Executive ALJs serve as the Directors of Operations and Quality Assurance.

OAH began 2002 with 141 authorized positions, of which 127 were filled. Sixty-nine of the positions are for ALJs who are appointed by the CALJ, sixty-one of the ALJ positions were filled. Of the 127 OAH employees, 26% are African-American and 71% are women. Of the ALJs, 9% are African-American and 54% are women. As previously mentioned, OAH is committed to maintaining a diverse and qualified workforce. To that end, OAH strives to upgrade salaries as appropriate and to offer a work environment that is both professionally challenging and satisfying.

Current qualifications require that ALJs be bar-admitted attorneys with a minimum of 5 years of experience. The ALJs may be removed for cause and are considered special appointees within the professional service of the State Personnel Management System. Judge salaries range from \$55,804 to \$82,826, with the average being \$70,416. These salary levels were effective as of July 2002.

OAH's Clerk's Office had several positions become vacant during 2002. When the hiring freeze was implemented, a total of three vacancies existed in the Clerk's Office. Exceptions were filed with DBM for all three positions. Only one of the exceptions requested was granted. One position has been abolished and one will remain vacant until the hiring freeze is lifted.

## **2. Facilities**

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

The Administrative Law Building houses 23 hearing rooms, two attorney-client meeting rooms, a clerk's office, ample public waiting areas, a law library accessible to the public during normal business hours, as well as offices and training rooms for OAH staff.

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

## **3. Technology**

In 1998, OAH purchased hardware and software and installed a Local Area Network (LAN). The network provides e-mail, internet access, word processing and spreadsheet capabilities, document management, and access to research materials such as the Annotated Code, COMAR and Lexis/Nexus. In 1999, OAH installed a Citrix line and employees, with the required Virus Protection, were allowed to access the system from their home computers. Additionally, ALJs' monthly schedules are on the system so

that ALJs have immediate access to schedule changes. Also, ALJs are able to electronically submit their daily docket status reports and bi-weekly docket control sheets.

In 2001, OAH completed the re-design of its Website as stated in its 2000 E-Government Annual Project Plan. Citizens accessing OAH's Website are provided with:

- A. sample decisions
- B. general information about our hearings
- C. information about each agency case type that is heard by the OAH
- D. directions to hearings
- E. phone numbers for OAH contacts (i.e. postponement clerks, MVA docket specialists, etc.)
- F. e-mail address for comments/suggestions
- G. business hours and holiday schedule
- H. information regarding employment opportunities
- I. forms and information for purchasing copies of audio and video hearings
- J. the inclement weather policy
- K. OAH's organizational chart
- L. subpoena request forms
- M. Public Information Act request form
- N. list of processing fees (filing cases, subpoenas, copying audio and video hearings, copies or original transcripts, etc.)
- O. information concerning how to obtain copies of decisions
- P. Hearing Notices
- Q. information concerning how to request a postponement

OAH believes that the many improvements to the Website will provide citizens with substantial information about the agency and answers to questions about the hearing process.

Due to the constantly changing nature of today's technology, OAH is in the process of converting its case management system to a Windows based system. Conversion to the Windows format is expected to be accomplished without disruption to our current case management system. The new system is expected to make data entry and retrieval simpler and reduce the possibility of errors. The system is expected to be fully operational by Spring 2003.

## **B. Operations**

The 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 the OAH or, with the permission of the Chief Administrative Law Judge, a person not employed by OAH. Md. Code. Ann., State Gov't. § 10-205 (1999 & Supp. 2000).

OAH estimates that it will receive 56,000 new cases in FY 2004. OAH has continued to reduce the number of hearings by encouraging the parties to engage in settlement conferences and mediations. Those case resolution mechanisms have been most successful. Caseload statistics for CY 2002 are included in Attachment C.

## **1. Statistics for Special Education Hearings and Mediations**

In calendar year 2002, OAH conducted approximately eight special education due process hearings per month resulting in 94 formal written special education decisions. There were, however, 468 hearing requests received and the majority of those were scheduled for hearings. Most of those hearing requests were either withdrawn or the case settled prior to the hearing date.

It is noteworthy that 454 special education mediation requests were made in 2002, which resulted in an average of 38 mediations being scheduled each month. Of those 454 mediation requests, 296 were actually conducted and 189 settled resulting in a 64% mediation rate.

## **2. Satellite Offices and Outlying Hearing Locations**

Although the Administrative Law Building in Hunt Valley is the headquarters of the OAH, less than 40% of the hearings conducted by ALJs are held at this location. The balance of the hearings are held at various locations used by the OAH around the State, including private hospitals and nursing homes. Other hearings are held in government facilities such as courthouses and agency offices. In addition to those facilities, the OAH has continued to lease hearing space at Wheaton Plaza in Montgomery County. The space continues to receive nearly maximum use.

The OAH also has an arrangement with the Unemployment Insurance Hearing Unit of the Department of Labor, Licensing and Regulation with regard to sharing hearing space at various locations throughout the State. Currently the OAH shares hearing space with the Unemployment Insurance office in Hunt Valley and Cumberland.

The OAH also maintains satellite offices in Cumberland and Salisbury. Two ALJs are assigned to the Salisbury office. These ALJs also conduct hearings at the Hunt Valley headquarters. Both of OAH's satellite offices are fully integrated with the Hunt Valley OAH headquarters through OAH's network. A team leader assigned to Hunt Valley provides oversight and assistance for the satellite offices.

### **3. Video-Conferencing**

All ALJs receive video conferencing equipment training and are regularly assigned to video dockets. Problems previously experienced with the video conferencing equipment have been resolved and the hearings are going well at most locations. Four video locations at the prisons in Hagerstown are now on-line for video-conferencing. OAH's use of video conferencing, however, is limited because it has only one set of video conferencing hardware.

### **4. Teleworking**

In 1999, Governor Glendening signed legislation requiring the State to re-establish a telecommuting program for State employees. The program, now called "teleworking" allows certain designated State employees to work from home or alternate work sites. The program set a mandate that 10% of an agency's eligible employee population be allowed to telework.

The OAH implemented the State's Telework Program. Each OAH teleworker must sign both an Agency Telework Agreement and an OAH Internal Telework Policy Agreement. ALJs are then assigned to telework from one to four days per month. Assignments are made on a rotating basis depending on the ALJ's workload and availability.

To date, 39 ALJs and a Deputy Clerk of Assignment have executed the Telework Agreement. The attached chart (Attachment D) reflects the number of ALJs and the Deputy Clerk who teleworked in calendar year 2002. Those ALJs collectively teleworked for 261 days.

In addition to OAH's telework initiative, the ALJ staff has been encouraged to establish remote access to the OAH either through Citrix or the internet. They may do so either by the use of their assigned OAH laptop computers or through their home computers. At this juncture 51 of 61 ALJs have remote access to the OAH. As a result, those ALJs are eligible to telework and/or work-at-home under the OAH's policies regulating both of those programs.

OAH had been collecting and recording telecommuting data regarding its work-at-home policy since October 1999. That data included the number of days, as well as the number of hours, on which ALJs worked at home. In calendar year 2002, ALJs worked at home before and/or after traveling to their dockets on 921 days for approximately 2593 hours.



During their initial six-month training period, new ALJs are encouraged to spend as much time as possible working at OAH and are not eligible to telework. They are, however, eligible to work at home under OAH's work-at-home policy assuming they either choose to use a laptop provided by OAH and/or have a personal computer at home, which is connected to the Citrix system and/or the internet, in order to access the OAH's network. Our newest ALJ, who began work at OAH in June 2002, became eligible to telework in December 2002.

### **C. Quality Assurance**

In 2002, ALJ Laurie Bennet was selected as the Director of OAH's Division of Quality Assurance (QA). ALJ Bennett has served as an ALJ at OAH since its inception. ALJ Bennett selected a new deputy director, ALJ J. Bernard McClellan.

QA continued to coordinate and refine the evaluation process, as required by the Performance, Planning & Evaluation Program (PEP). The ALJ evaluation was overhauled in response to the agency's needs and ALJ comments and suggestions. QA and Operations evaluate each ALJ every six months, as required by PEP. The evaluation is useful for identifying ALJs who need additional training and support.

QA is primarily responsible for hiring and training new ALJs. In 2002, in conjunction with the newly formed hiring committee, QA hired a new ALJ, Deborah Buie. QA was responsible for training ALJ Buie and CALJ Dewberry. Their training will continue into calendar year 2003. They are being trained using a concentrated exposure to each high volume substantive area in conjunction with a mentoring system with an experienced ALJ.

QA began the year 2002 with two staff attorneys, two paralegals and two full time librarians. During the year, one of the staff attorneys resigned to explore other opportunities. QA is not recruiting to fill that position due to the hiring freeze. The QA staff provides assistance with legal research and writing as well as the preparation of legal memoranda for the entire ALJ staff. Other duties include providing mediation services, assisting with developing and implementing ALJ training, and redacting confidential decisions which are available for distribution to the public upon request.

QA participates in job fairs at law schools and colleges offering legal and paralegal programs in order to attract volunteer student interns for the OAH. QA had six interns during the summer of 2002. QA continues to seek volunteers as a method to assist the ALJ staff and to provide greater exposure of the OAH to the legal community.

QA coordinates the publication of OAH decisions in The Daily Record. QA selects decisions and prepares the head notes for publication. In 2002, 37 OAH head notes

addressing a variety of subject matter areas were published in The Daily Record. OAH has had discussions with LexisNexus about publishing its decisions. Many OAH decisions contain confidential information that must be redacted before they could be published. OAH cannot assign the responsibility for redacting to LexisNexus, and OAH does not have the resources to do the redacting. Negotiations with LexisNexus continue, however.

OAH's computer technology has enabled the ALJs to share their work, including decisions, e-mail each other and outside parties, utilize centralized CD ROM research tools, and use on-line research products. During the course of the year, QA provided continuing training, both in-house and by LexisNexus representatives, in the use of research technology. The efficient and proficient use of these resources continues to increase as OAH staff becomes more comfortable with the technology.

QA maintains decision boilerplates for every kind of case it hears. Each boilerplate contains the essential information that should be included in that decision, such as the procedural regulations that apply. Boilerplates provide the ALJs with the basic framework for a decision. QA is responsible for updating and revising the boilerplates. Keeping the boilerplates current is a time consuming and arduous process but well worth the effort. With the advent of computer networking at OAH, QA has been able to revise and update the boilerplate instantaneously to the benefit of all OAH staff.

QA also maintains and updates the Time Frames matrix, which states the statutory or regulatory due date for every case type. Because due dates vary greatly, the matrix is critical. The matrix is available on OAH's network for easy reference.

In addition, QA maintains, revises and updates Bench Manuals and Case Digests in various subject areas. These materials are available on the network and assist ALJs in staying current in the law.

## **1. Library**

The OAH library is open to the public. OAH's librarian and assistant librarian serve both the OAH and the public.

Every written decision issued since 1999 is available on OAH's network and can be researched electronically; hard copies can be researched manually. Decisions issued prior to 1999 are searchable manually and on an outdated but functional database, called Premise, which is available on a computer located in the library.

OAH librarians scan all new law journals and legal research material available through the internet. Through e-mail, they notify judges of interesting articles and

cases that pertain to the OAH. They provide research assistance to all OAH employees, as well as to the public. The librarians respond to more than ten telephone inquiries each day from the public relating to OAH's decisions and other information available in our library.

QA also oversees collection, development, and expansion of services provided by the library to OAH staff, State agencies, the bar and citizens. As previously mentioned, OAH has contracted with LexisNexus for on-line access, which includes an electronically searchable COMAR database. In addition to the on-line LexisNexus service, the CD ROM technology, which is also available through the computer network, offers access to the Maryland Annotated Code, COMAR, Maryland cases and Attorney General's Opinions, and the Code of Federal Regulations. QA continues to expand the electronic library as well as maintaining and adding to printed material.

## **2. Continuing Judicial Education**

QA offers ongoing training for ALJs in procedural and substantive issues related to all cases within OAH's jurisdiction. Monthly training sessions keep ALJs abreast of reforms, changes in agency rules and regulations, case law, etc. Attachment E is a list of the monthly training sessions conducted during 2002.

In addition to the monthly training sessions, a grant from MSDE allowed the OAH to send five judges to the Annual Special Education Conference in Tampa in the Spring.

## **VI. Conclusions**

OAH looks to 2003 as a year of opportunity. We are looking forward to working with Governor Robert Ehrlich and his Administration and are eager to assist in any way that is appropriate. Under the leadership of a new CALJ, the agency intends to remain in the forefront of administrative law and increase efforts to educate the public about the role of the OAH.

Most importantly, the OAH will work to accomplish all goals set forth in its August 1, 2002 "Report on Increasing the Diversity of the Office of Administrative Hearings' Workforce" and will continue to work with and seek the assistance of members of Maryland's minority community.

As previously mentioned, ADR provides a forum for the parties to work towards a voluntary and consensual agreement, as opposed to having a judge or other authority decide the outcome of a case. ADR allows the parties of a dispute to avoid the expense, delay, and uncertainty associated with a formal judicial hearing, while encouraging and improving communication between the parties. OAH will continue to offer and encourage mediations and settlement conferences to parties in administrative

cases, assist the District Court with its mediation project and provide mediation training to employees in other State Agencies. The OAH wishes to acknowledge and thank MACRO for the funding that it has provided for OAH to train other State employees and enter into the mediation pilot project with the District Court.

In calendar year 2003, the OAH will continue to seek to improve the administrative hearing process in Maryland. The OAH is confident that that goal will be accomplished with the continued support of its dedicated employees, the Advisory Council and the community of OAH consumers.

## **MEMORANDUM**

January 29, 2003

TO: Management Staff  
FROM: Bernice Verner  
RE: OAH's 2002 Annual Report

Attached is the latest draft of OAH's 2002 Annual Report. I would like everyone to review the entire report and make any changes that you believe are appropriate. You will note that there are some yellow highlighted areas where I have questions, need an update or am waiting for attachments.

If at all possible, I would like to have everyone's draft returned to me (even if it is just to say that you approve of the draft) with attachments by February 7.

Thank you for your anticipated cooperation.

## MEMORANDUM

March 1, 2002

TO: Joseph C. Bryce  
Chief Legislative Officer  
Governor's Legislative Office

Neil O. Bergsman, Executive Director  
Office of Budget Analysis  
Department of Budget & Management

FROM: Bernice Verner  
Executive Assistant to the Chief Administrative Law Judge

RE: 2001 Annual Reports of the Office of Administrative Hearings  
and the State Advisory Council on Administrative Hearings

Enclosed please find for your review the 2001 Annual Reports of the Office of Administrative Hearings and the State Advisory Council on Administrative Hearings.

These Reports are required to be submitted to the Governor and the Legislative Policy Committee under State Government Article §§ 9-1604 and 9-1610 of the Annotated Code of Maryland. We would like to submit the Reports as soon as possible.

Your prompt attention to these Reports is appreciated. Please do not hesitate to call with any questions. I can be reached at 410-229-4105 or [bverner@oah.state.md.us](mailto:bverner@oah.state.md.us)

Thank you.

**MEMORANDUM**

***VIA FACSIMILE***

February 15, 2002

TO: Members, State Advisory Council on Administrative Hearings

FROM: Bernice Verner

RE: 2001 Report of the State Advisory Council on Administrative Hearings

Attached is a draft of the above-mentioned Report. Delegate Carol S. Petzold and Mr. Leroy D. Maddox have approved this draft. Please advise me of any comments you may have regarding the Report. If you approve of the Report please advise me either by telephone (410-229-4105) or by e-mail ([bverner@oah.state.md.us](mailto:bverner@oah.state.md.us)). I would like to receive your comments/approval by Friday, February 22, 2002.

Thank you for your anticipated cooperation.

