

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 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 2004 annual reports jointly.

I. EXECUTIVE SUMMARY OF THIS ANNUAL REPORT

The following is an outline summary of 2004 events and progress:

1. Meetings with Agencies
2. Motor Vehicle Administration (MVA), Graduated Licensing System Cases
3. Administrative Law Judge (ALJ) Salaries
4. National and International Perspectives
5. Strategic Budgeting
6. OAH's Managing for Results (MFR)
7. Expansion of mediation programs and continued development and refinement of mediation techniques
8. Financial Impact of OAH's Fiscal 2004 and Appropriated Fiscal 2005 Budget
9. Diversity

10. Efforts to Increase Public Awareness

11. Digital Recording Equipment

12. Lease Extension

II. DETAIL OF 2004 EVENTS AND PROGRESS

1. Meetings with Agencies

Maintaining communication with the agencies that OAH conducts hearings for is extremely beneficial and vital to the on-going operation of the agency. As a result, meetings were held with various State agencies throughout 2004. For example, the CALJ and/or members of his management staff participated in the following meetings:

- quarterly meetings were held with the Maryland State Department of Education (MSDE);
- on February 11, attended a Tri-Agency meeting with representatives from the District Court of Maryland, MVA and Law Enforcement officials. These meeting were held periodically throughout the year.
- on March 15 and December 6, met with representatives from the Maryland Department of Public Safety and Correctional Services (DPSCS) (and the Inmate Grievance Office) to discuss safety issues, video conferencing, digital recordings, flow of work, and alternative hearing space at certain Correctional facilities;
- held several meetings throughout the year with representatives from the MVA to discuss the increase in numbers of MVA hearings, possible collection of filing fees for different case types, the handling of the increase in filing fees from \$15 to \$125, the consolidation of certain MVA hearings, and the possibility of scheduling "rocket dockets" in MVA locations around the State of Maryland;
- on March 1, met with representatives from the Department of Labor, Licensing and Regulation to discuss scheduling and postponement issues;
- on March 9, met with representatives of the Department of Human Resources (DHR) to discuss the scheduling of Child Abuse and Neglect cases;
- on March 16, the Director of Operations attended the bi-annual State of Maryland Telework meeting;
- on May 11, met with representatives from Morgan State University (MSU) and the Department of Budget and Management (DBM) to discuss MSU's current delegation of authority of its personnel cases to the OAH;

- on May 12, met with representatives of the Commission on Human Relations (CHR) to discuss the current caseload and new types of cases being handled by CHR;
- on July 13, met with representatives from the Maryland Insurance Administration (MIA) to discuss scheduling issues;
- the Deputy Director for Management and Administration, Benjamin Rudo, confers at length with the DBM throughout the year to review OAH's program and financial requirements; and
- although we do not hold hearings for the Maryland Public Service Commission (PSC), representatives from the PSC visited OAH on January 4 to obtain information on OAH's case management system. Also, on May 14, CALJ Dewberry and Director of Quality Assurance, ALJ Laurie Bennett, conducted a training session for PSC Commissioners and Hearing Examiners.

2. Motor Vehicle Administration, Graduated Licensing System Cases

In 2004, OAH received approximately 6,000 additional MVA, Graduated Licensing System (GLS) cases, with no additional funding. In order to address the backlog of GLS cases, "rocket dockets" were developed in which one ALJ conducts up to 45 GLS cases in one day. The rocket dockets were held in the Hunt Valley OAH headquarters in the largest hearing room. The development of these dockets was successful and the additional caseload was dispensed of promptly. As a result, the GLS cases are now intermingled with MVA dockets. ALJ Denise Shaffer recommended the development of the rocket docket, conducted the majority of the dockets, and developed procedures to assist other ALJs who received these docket assignments.

3. Administrative Law Judge (ALJ) Salaries

Over the past fourteen years, the OAH has continuously urged the Administration to increase ALJ salaries. In addition to losing three judges to the D.C. OAH in 2004, OAH lost an ALJ to another State agency for an increased salary, and, in 2003, lost an ALJ to Anne Arundel County Government for a \$23,000 increase in salary.

In March 2004, the FY 2005 budget included a one-grade increase for ALJs. The increase represents a salary of \$92,022 for the top ALJs and raised the starting salary for ALJs to \$64,441. The OAH is very appreciative of the efforts of the Administration on behalf of the ALJs whose work has a significant impact on both public and private interests, and requires a high degree of education, skill, responsibility and professionalism. The ALJs hear a mix of high volume and complex cases, which require detailed written decisions. Written decisions must be issued in accordance with relevant law and within the specified

timeframe. The timeframes vary from ten to ninety days after the close of the record.

CALJ Dewberry considers the increase in ALJ salaries a top priority. The three ALJs who accepted employment with the District of Columbia Office of Administrative Hearings ("D.C.OAH") did so after the DBM granted ALJs the one-grade increase. The ALJ starting salary at the D.C. OAH is approximately \$82,000, which is nearly \$16,000 higher than Maryland's OAH ALJ starting salary. D. C. OAH has advised Maryland that they will be hiring again in 2005, and it finds Maryland's ALJs to be highly qualified candidates. The OAH is concerned that the D.C. OAH will continue to drain Maryland's ALJ staff.

4. National and International Perspectives

National

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.¹ In calendar year 2004, OAH received 65,696 new 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. On March 30, the newly created D.C. OAH visited the Maryland OAH to have the architects, who are designing the D.C. OAH's new office/hearing space, see OAH's Hunt Valley facility.

CALJ Dewberry and ALJs Bennett, Brooks and McClellan attended the Central Panel Directors' Conference in Seattle in September. This annual Conference is extremely worthwhile in that Central Panel Directors are provided with a forum in which to exchange ideas, discuss similar problems, and gain assistance from other central panel states.

In 2004, the former CALJ of the Maryland OAH, John W. Hardwicke, was appointed the Executive Director of the National Association of Administrative Law Judge's (NAALJ). The NAALJ headquarters are housed at the University of

¹ It is noteworthy that, in addition to overseeing the agency, the CALJ, the Directors of Operations and Quality Assurance and their respective deputies all hear cases and participate in the docket on a regular basis.

Baltimore School of Law. ALJ A. Michael Nolan is a member of the NAALJ Board of Governors and OAH's ALJs serve on various NAALJ Committees. In June, ALJ Nolan attended the mid-year NAALJ meeting that was held in Toronto, Canada. The meeting was held in conjunction with the Council of Canadian Administrative Tribunals' 3rd International Conference. The Conference was entitled "Bringing Administrative Justice to the People of the World '*Learning from Each Other*'. The Maryland OAH has been involved with the NAALJ organization for over 10 years.

Maryland hosted the NAALJ Annual Conference in 2004. The Conference was held at the Radisson Plaza Lord Baltimore Hotel on November 3 – 7. Governor Ehrlich's Chief Legal Counsel, Jervis S. Finney, welcomed the Conference attendees to Maryland on behalf of the Governor and the Comptroller, William Donald Schaefer, also gave some welcoming remarks to the attendees.

Chief Judge Dewberry and ALJs James T. Murray, A. Michael Nolan, and Denise Oakes Shaffer were extensively involved in assisting NAALJ with the planning of the Conference. In addition to OAH's six month involvement in the planning of the Conference, ALJs were included in the program and participated on and moderated panels as follows:

- ⇒ CALJ Dewberry participated on a panel entitled: "Operating the Central Panel"
- ⇒ CALJ Dewberry also moderated a panel discussion entitled "Administrative Justice: Agency Perspective";
- ⇒ ALJ Joan Gordon participated on a panel discussion entitled "Ethics";
- ⇒ ALJ Neile Friedman participated on a panel entitled "The Complex Case and Niceties of Decision Making: Pre-hearing Conference, Motions Practice, The Decision and the Order";
- ⇒ ALJ James Murray moderated a session entitled "The In-House Hearing Officer: Does He/She Function Better in Certain Agencies".
- ⇒ ALJ Mary Shock was a panel member for this session, and
- ⇒ ALJ Yvette Diamond participated on a panel entitled "Adjudicating The Pro Se Case"

Former ALJ Paul Handy wrote a historical one-act drama entitled "Merryman", which was based on several true incidents during the Civil War resulting in the incarceration of a Maryland resident at Fort McHenry and refusal of his release because of suspension of habeas corpus by President Lincoln. ALJ Marc Nachman was a member of the cast for this drama that was performed at 8 p.m. on Friday, November 5 for the NAALJ Conference attendees.

Approximately 150 ALJs and hearing officers from around the country, Canada, and the Northern Mariana Islands attended the Conference, including sixteen Maryland ALJs.

Also, OAH's ALJs are members and officers of The Maryland and District of Columbia Association of Administrative Adjudicators ("MDC"), an affiliate organization of NAALJ. ALJ A. Michael Nolan is the past- President of MDC.

ALJs also participate in local bar associations and make presentations to these associations and numerous other community-based organizations.

International

On March 31, the International Law Institute hosted a program on Administration Reform for officials from Tajikistan. As part of that program, the OAH made a presentation on the creation and growth of the OAH and the administrative hearing process. The Tajikistan dignitaries spent half a day at the OAH meeting with CALJ Dewberry and members of management staff. They toured the facility and asked excellent questions.

On June 16, the International Law Institute hosted a program on "Government Integrity and Anticorruption" which was attended by public administrators from India, Tanzania, Nigeria, Liberia and Tunisia. Part of the program included an OAH presentation on "Independence of the Judiciary and Good Governance." The administrators spent several hours with CALJ Dewberry and members of management staff and again, toured the facility and asked excellent questions.

The Maryland OAH is a national model and could not maintain this reputation without the vigorous support of Maryland's executive, legislative and judicial branches of government.

5. Strategic Budgeting

In an effort to continue to provide high quality and efficient services to the citizens of Maryland, the OAH participated in the Governor's Strategic Budgeting Program. The OAH reviewed all agency programs to assess priorities and the need to maintain certain functions. All functions were evaluated based upon how critical they are to fulfilling the mission of the agency. Although it was felt that in an agency the size of OAH, all functions are important, it was determined that several were less critical than others. Upon receiving

instructions from DBM to reduce funding for fiscal year 2006, the OAH utilized the Strategic Budgeting Guide to make these important decisions.

6. Managing For Results

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.

The MFR allows the OAH to track its performance in three key areas:

1. completion of the administrative hearing process, from appeal to disposition, in an efficient and timely manner;
2. issuance of non-bench decisions in a timely manner; and
3. conducting administrative proceedings in a professional and competent manner and issuing decisions that address and resolve the issues raised by the participants to the proceedings.

In fiscal year 2004, OAH was able to document a reduction in the number of days from appeal to disposition in five of the nine case types that it monitors, while the number of days in two other case types remained virtually the same. The percentage of non-bench decisions that were issued in a timely manner increased for the second year in a row to an all-time high of 98.3%. And the number of participants in the hearing process who rated the hearing process as either satisfactory or excellent increased in two of three areas while remaining the same in a third.

7. 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. 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") to promote the use of ADR at OAH. MACRO is considered a court-related agency within the Judicial Branch. Through grant money received by MACRO, the OAH has been able to host 40-hour mediation training sessions over the past four years. These training sessions have been attended by employees from various state agencies including the Office of the Attorney General, DBM, DHR, and DPSCS. Other participants included First Lady Kendel S. Ehrlich, The Honorable Thurman Rhodes from the District Court for Prince George's County, The Honorable Martha Rasin from the District Court for Anne Arundel County, and the Deputy Attorney General, Donna Hill Staton. Each person who complete the mediation course receives 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 has been 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.

In addition, OAH conducted its first Advanced Mediation Training session. All ALJs and legal support staff participated in the advanced training. The ALJs and legal staff were divided into three groups and two-day training sessions were held over a three-month period. The training was specifically geared to the area of special education.

OAH's mediation program for Special Education hearings is a prime example of the benefits of the mediation process. OAH settled approximately 56% of the Special Education cases mediated in 2004. OAH also conducts a large number of settlement conferences for Boat Excise Tax cases.

By providing training to other state agencies, OAH 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.

Mediation Pilot Project with the District Court of Maryland

OAH continues to collaborate 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.

In 2004, a meeting was held with the District Court regarding increasing the number of mediations that the Court sends to OAH. The District Court has also requested that ALJs conduct mediations at the Catonsville District Court and OAH has agreed to travel to that location to conduct mediations.

8. Financial Impact of OAH's Fiscal 2004 and Appropriated Fiscal 2005 Budget

OAH's appropriated budget for FY 2005 is \$11,244,616 covering direct and overhead costs, and including rent and administrative staff. 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 2005 allocation by agency.

9. 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

OAH is proud to report that, of the last seven hires (six ALJs and one staff attorney), three are African American and one is Hispanic. Because of the successful policies developed by OAH in 2002, which were implemented for recruiting and interviewing candidates over the past two years, OAH's diversity among its ALJs and staff attorney position has increased from 6.5% to 14.8%.

10. Increase Public Awareness

In 2004, CALJ Dewberry continued to work to promote the OAH as follows:

- Through the extensive involvement of the OAH in the previously mentioned NAALJ annual Conference held in Baltimore in November
- In November, CALJ Dewberry participated in a one day program for The Maryland Institute for Continuing Professional Education of Lawyers (MICPEL) entitled "The Administrative Procedures Act and Beyond"
- CALJ Dewberry is on the Council of the Administrative Law Section of the Maryland State Bar Association. In 2004, he participated in lunch programs with law students at the University of Baltimore School of Law and the University of Maryland School of Law
- On November 16, Deputy Director of Operations, ALJ Wayne A. Brooks, and ALJ Deborah Harcum Buie made a presentation to the Prince George's County Bar Association
- A group of ALJs is coordinating a program about the consequences of underage drinking and driving. They are producing a video based on

interviews with high school and college students who had alcohol-related driving incidents. The students give firsthand accounts of their experiences and the resulting adverse impact and restrictions upon their daily lives

- ALJs regularly make presentations about hearings and alternative dispute resolution to other State agencies and private organizations. Staff participates in approximately one or two public speaking engagements per month on diverse subjects. The OAH Speakers Bureau is comprised of ALJs who have volunteered to do public speaking about contested case hearings and ADR
- 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.

11. Digital Recording Equipment

OAH purchased digital recording equipment to enhance the quality of recordings and to allow ALJs better access to the recordings to ensure the issuance of timely decisions. A Smart Card is used in the digital recorders and ALJs submit Smart Cards to the Media Office following each hearing docket. The recordings are then downloaded and stored on OAH's network. ALJs can then listen to hearings at their desktop computers. All ALJs were trained to use the new digital recorders. The implementation of this new recording system took approximately four months.

In the long run, this purchase will be a cost savings to the agency in that \$1,400 per month was spent on purchasing cassette tapes. There is also a space saving benefit because there will no longer be cassette tapes that require storage in the Media Office storage area.

12. Lease Extension

The OAH signed a new lease extending the lease period for an additional five years, through November 2011. Prior to agreeing to sign a lease extension, the Department of General Services (DGS) researched the feasibility of moving OAH's headquarters to a more central location. One of the areas that DGS studied was the region surrounding the Baltimore Washington International Airport. DGS determined that it would not be cost effective to move the agency and that the rent that OAH would pay in its current location could not be matched in other areas of the State.

As a condition for signing the new lease, the landlord painted the interior walls and installed new carpet throughout the entire building. These renovations were performed in phases for a three month period, beginning in September and ending in December. The landlord performed all work in the evenings and weekends so that the daily operation of the agency was never interrupted. This was a major undertaking which affected each OAH employee. The entire project went very smoothly.

III. 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.

IV. MISCELLANEOUS ADDITIONAL 2004 ACTIVITIES

A. Administration

1. Personnel

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

OAH began 2005 with 125 authorized positions, of which 124 were filled. Sixty of the positions are for ALJs who are appointed by the CALJ. Of the 124 OAH employees, 29% are African-American and 73% are women. Of the ALJs and staff attorney, 14.8% are African-American and 53% 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 \$64,441 to \$91,022, with the average being \$77,618. These salary levels were effective as of July 2004.

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

In addition to the hearings held at its headquarters location, 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

OAH extensively revised its Website to provide more current information to the public. 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.

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 (2004).

The OAH received 65,696 new cases in CY 2004. This was a significant increase from the 61,318 cases received in CY 2003. The OAH has continued its efforts 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 2004 are included in Attachment C.

1. Statistics for Special Education Hearings and Mediations

In CY 2004, OAH conducted an average of 7 special education due process hearings per month resulting in 84 written special education decisions. There were, however, 435 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 505 special education mediation requests were made in CY 2004, which resulted in an average of 42 mediations being scheduled each month. Of those 505 mediation requests, 330 were actually conducted and 184 settled resulting in a 56% mediation rate.

2. Satellite Offices and Outlying Hearing Locations

Although the Administrative Law Building in Hunt Valley is the headquarters of the OAH, the ALJs conduct less than 40% of the OAH's hearings at this location. The remainder of the hearings is 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 the OAH's satellite offices are fully integrated with the Hunt Valley OAH headquarters through the OAH's network. A team leader assigned to Hunt Valley provides oversight and assistance for the satellite offices.

3. Video-Conferencing

All ALJs are regularly assigned to video dockets. Video conferencing equipment is located in seven correctional institutions across the State of Maryland. Personnel and Inmate Grievance hearings are conducted via video conferencing. The OAH's use of video conferencing, however, is currently limited by several factors. The video conferencing equipment in many of the correctional facilities is no longer functional. In addition, the OAH has only one set of video conferencing hardware. As a result, only one video conferencing docket may be scheduled for each workday. It is also noteworthy that the OAH's equipment is quite antiquated and it is likely that when repairs are needed the parts will no longer be available.

As previously reported, the OAH and the DPSCS have communicated several times in 2004 to discuss upgrading the video conferencing equipment and expanding video dockets to additional Correctional facilities. OAH plans to work with DPSCS in 2005 in the joint procurement and installation of new equipment.

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 are 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.

In CY 2004, four additional ALJs and the OAH's Chief Clerk executed the Telework Agreement. The attached chart (Attachment D) reflects the number of the OAH's employees who teleworked in CY 2004. The ALJs, the Chief Clerk and the Deputy Clerk teleworked for a total of 264.5 days.

In addition to the 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 52 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.

In CY 2004, ALJs worked at home before and/or after traveling to their dockets on 1,478 days for approximately 4,313 hours. During their initial six-month training period, new ALJs are encouraged to spend as much time as possible working at the OAH headquarters and are not eligible to telework. They are, however, eligible to work at home under the OAH's work-at-home policy. Of course, they must either choose to use a laptop provided by the 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.

5. Legislation Affecting the OAH

No legislation that passed during the 2004 Legislative Session significantly impacted OAH's caseload. However, the majority of the Department of Health and Mental Hygiene's Health Occupation Boards submitted legislation that would provide for a subset of the board to hear its own cases. As in the past, OAH opposed all of these bills and CALJ Dewberry and ALJs Brooks and McClellan testified in opposition of these bills. The bill numbers were: SB 330; HB 421; HB 671; HB 917; and HB 1321. All of these bills failed.

The OAH has consistently opposed any legislation that would provide a board with the option of delegating contested case hearings to a small number or subset of board members. The boards are subject to Title 9, §§ 9-1601 through 9-1607.1 of the State Government Article and the contested case provisions of the Administrative Procedure Act (APA). Under § 10-205 of the APA, a board, commission or agency head authorized to conduct a contested case hearing may either conduct the hearing or delegate its hearing authority to the OAH. The OAH was created by the Legislature in 1990 in response to the public perception that an agency cannot fairly decide appeals of actions it has taken. The Legislature determined that an independent body of administrative law judges is better suited to make evidentiary rulings, interpret the law and apply the law to evidence. As a result, an entire board or commission may only hear a case itself or delegate hearing authority to the OAH. In 1993, this position was adopted by the legislature with the re-enactment of the APA. Nearly all boards with any volume of cases delegate their hearings to the OAH. Therefore, we believe that any legislative proposal, as stated above, is unnecessary, and inconsistent with the APA and current administrative practice.

There was also proposed legislation in 2004 that provided that the Motor Vehicle Administration's (MVA) administrative per se and license restriction cases

be consolidated. OAH and the MVA jointly testified in opposition to the bill and informed the House Judiciary Committee that they could accomplish the purpose of the bill without legislation. On November 16, 2004, the MVA Administrator advised the Committee Chair that the two types of hearings would be consolidated for hearing purposes.

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

C. Quality Assurance ("QA")

QA and Operations are jointly responsible for performing twice yearly performance annuals on the ALJs, as required by the Performance, Planning & Evaluation Program ("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 2004, in conjunction with the recently formed hiring committee, QA hired three new ALJs: Buxton Reed Bailey, Yolanda Curtin and Marina Sabett. The three new judges are in the early stages of OAH's training program. They are being trained using a concentrated exposure to each high volume substantive area in conjunction with a mentoring system with an experienced ALJ.

In 2004, again in conjunction the hiring committee, QA hired a new staff attorney, Jennifer Carter-Jones. Ms. Carter-Jones joins two paralegals, one librarian and one assistant librarian to round out the OAH's legal support staff.

The QA legal support staff provides assistance with legal research and writing as well as the preparation of legal memoranda for the entire ALJ staff. They perform other critical duties, such as 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 five interns during the summer of 2004. 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 2004, approximately 22 OAH head notes addressing a variety of subject matter areas were published.

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.

QA maintains 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. 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. The 2004 training program is Attachment E .

In addition to the monthly training sessions, a grant from MSDE allowed the OAH to send five judges to two special education conferences in 2004. ALJs who attended conferences made presentations at the October 1, 2004.

V. Looking Ahead

OAH expects that 2005 will bring a significant enhancement to its technology, which will assist with achieving improvements throughout the agency resulting in better service to the citizens of Maryland. The OAH will be purchasing new computers for all employees as well as a new server. The new server is necessary because of limited storage on the old server and problems that the agency was experiencing when ALJs were working on the Citrex server out of the office and being "kick out" of the system.

The new digital recording equipment that OAH purchased in late 2004 will improve the quality of recordings of hearings and the ability to download the recordings to OAH's network increases efficiency in the office. The cost and storage savings are additional benefits achieved through this new recording equipment.

OAH is looking forward to working with the DPSCS in the joint procurement of new video conferencing equipment. The installation of video

conferencing equipment in additional DPSCS Correctional facilities will further enhance the efficiency of OAH in that ALJs will not be required to travel to the correctional institutions in the outermost areas of the State thereby reducing travel time and the expense of long distance travel.

The OAH regularly updates its Website to ensure that Maryland citizens have the most up-to-date and accurate information as changes occur.

In calendar year 2005, 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. We are looking forward to continuing to work with Governor Robert L. Ehrlich, Jr. and his Administration. OAH enjoys a good working relationship with all agencies and plans to continue the open, regular communication with all agency heads that we hold hearings for.

ATTACHMENT E

<i>DATE</i>	<i>JUDICIAL TRAINING AGENDA</i>	<i>PRESENTER(S)</i>
<i>January 9, 2004</i>	Westlaw computer research Demonstrate digital recorders and review how to use Tracking to SMS decisions on line.	Westlaw employee Catherine Rankin, MIS Staff OAH
<i>February 6, 2004</i>	Sexual Harassment in the Workplace DHMH - Medical Assistance: How to Perform a Sequential Evaluation	Kathleen Masterton, AAG Leah Seaton, ALJ
<i>March 5, 2004</i>	Mock Hearing Advanced Mediation Training (March 4 th and 5 th) (ALJs and legal staff were divided into groups and assigned to mediation training in March, April or May; in an off month, they attended the Mock Hearing training)	Paul Handy, ALJ Dr. Lorig Charkhoudian, Maryland Association of Community Mediation Centers
<i>April 2, 2004</i>	Mock Hearing Advanced Mediation Training (April 1 st and 2 nd)	Paul Handy, ALJ Dr. Lorig Charkhoudian Maryland Association of Community Mediation Centers
<i>May 7, 2004</i>	Mock Hearing Advanced Mediation Training (May 6 th and 7 th)	Dr. Lorig Charkhoudian Maryland Association of Community Mediation Centers
<i>June 4, 2004</i>	Westlaw computer research training	Westlaw employee
<i>July 9, 2004</i>	United States Department of Education, Office of Special Education Programs, reporting requirements Mediation update	Edward Wulkan, Branch Chief, Program Evaluation and Compliance Branch, Maryland State Department of Education J. Bernard McClellan, Dep. Dir. QA, Laurie Bennett, Dir. QA
<i>August 6, 2004</i>	MVA: Demonstration of standard field sobriety tests, ignition interlock, preliminary breath test, Intoximeter breathalyzer	Officer Bill Morrison, Montgomery County Police Department, Representatives of various ignition interlock providers
<i>September 10, 2004</i>	Court of Appeals Review Staff Development Day	Hon. Glenn T. Harrell, Jr. Maryland Court of Appeals
<i>October 1, 2004</i>	Special Education: presentations generated from ALJ attendance at LRP and University of Seattle conferences	Administrative Law Judges Debra Buie, Yvette Diamond, Lorraine Fraser, Noreen Lynch, Marc Nachman, Richard O'Conner, Joy Phillips, Dave Pratt, Eleanor Wilkinson
<i>November 12, 2004</i>	Special Education: IDEA update	Art Cernosia, Esquire
<i>December 3, 2004</i>	No Training	

March 30, 2005

TO: Kenneth H. Masters
Chief Legislative Officer
Governor's Legislative

David A. Treasure,
Executive Director
Office of Budget Analysis
Department of Budget & Management

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

RE: 2004 Annual Reports of the Office of Administrative Hearings and
the State Advisory Council on Administrative Hearings

Enclosed please find, for your review, the Joint 2004 Annual Report 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 Report as soon as possible.

Your prompt attention 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

Thank you.