



## **2013 Annual Report of the State Advisory Council on Administrative Hearings**

### ***Legislative Authority and Functions***

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

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

In the interest of government efficiency and economy, the Council submits its 2013 Annual Report in conjunction with the 2013 OAH Annual Report.

### ***Council Membership***

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

The following Council members served in 2013:

- Senator Jamie B. Raskin, appointed by the President of the Senate;
- Delegate Samuel I. Rosenberg, appointed by the Speaker of the House;
- Dr. Lillian Lowery, State Superintendent of Schools, agency representative;

- Florine Jones, general public representative;
- Judge Diane O. Leasure, Maryland State Bar Association (MSBA) representative;
- Natalie McSherry, Esquire nongovernmental attorney representative;
- Bruce P. Martin, Esquire, designee of the Attorney General;
- Susan Dishler Shubin, Esquire, Maryland State Bar Association (MSBA) representative; and
- Keith Tobias, agency representative, designee of the Department of Health & Mental Hygiene

The Council was pleased that Governor O'Malley appointed Dr. Lillian Lowery and Natalie McSherry, Esquire to the Council on July 30, 2103 and that all vacancies have now been filled.

### ***Council Activities***

The Council met on May 8, 2013 and September 11, 2013<sup>1</sup> and the meetings were open to the public. Council members were kept apprised of OAH's overall operations, the monthly Administrative Law Judge (ALJ) training programs, the status of the current year's budget as well as the upcoming fiscal year's budget.

The Council would like to commend OAH for again maintaining an approximate 99% timeliness rate for issuing written decisions in 2013.

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

CALJ Dewberry and members of his management staff continued to keep Council members apprised of foreclosure mediations that the OAH received under HB 472 – Real Property – Residential Property Foreclosure Procedures – Foreclosure Mediation. As a reminder, prior to the passage of HB 472 in 2010, CALJ Dewberry received a call from the Governor's Office asking if OAH would be able to conduct foreclosure mediations. The Circuit Court was unable to take on this workload and the Governor turned to the OAH. The law went into effect on July 1, 2010. In 2013, OAH's Director of Operations, ALJ Jana Burch; the Deputy Director of Quality Assurance, Denise Oakes Shaffer; and the Chief Clerk, Linda Novak, continued to work with the Courts, the Department of Housing and Community Development and the Department of Labor, Licensing and Regulation on the handling of these mediations. In addition, in 2013

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<sup>1</sup> Because the Council had almost back to back meetings in 2012 (October 9<sup>th</sup> and December 12<sup>th</sup>), the Council agreed that, for 2013, only two meetings would be held in late April or early May and late September or early October.

OAH continued to work on the implementation of HB 1374, the pre-file foreclosure mediation bill which went into effect on October 1, 2012 however the number of pre-filed mediation requests that OAH received in 2013 was not significant.

OAH received and scheduled 4,113 foreclosure mediations in Fiscal Year 2013. Because of this dramatic increase in the number of foreclosure mediation requests, OAH began scheduling four mediations on each docket at 9 a.m., 11 a.m. 12:30 and 2 p.m. The mediations can take at least two hours or more. OAH also hired and trained four contractual ALJs in 2013 to assist with the significant increase in foreclosure mediations.

Council members are pleased that the OAH continues to handle this significant increase in caseload in a timely manner and continues to work closely with DHCD and DLLR.

ALJ Brooks and members of management staff also provided reports on OAH's implementation of:

- SB 281 – Firearm Safety Act of 2013 which provides that if an ALJ involuntarily commits an individual to a mental health facility the ALJ must also determine that the individual cannot safely possess a firearm based on credible evidence of dangerousness to others and order the individual to surrender any firearms in their possession. OAH's IT Department worked with the Department of Health and Mental Hygiene to extract and securely transfer the data that was to be sent to the Maryland State Police; and
- The Maryland Health Benefit Exchange (MHBE) bill which went into effect on October 1, 2013. ALJs Burch, McClellan and Shaffer and OAH's Chief Clerk, Linda Novak, met with MHBE personnel to discuss hearings which MHBE anticipates delegating to OAH. These hearings will be electronic and all ALJs received training on this new case type in October.

In 2012, Council member, Florine Jones, discussed complaints that she received regarding personnel hearings which are held via video conferencing in the Jessup area and Hagerstown correctional facilities. The complaints that she received dealt with professionalism, physical space, privacy, technical issues and objectivity.

OAH agreed to look into these complaints and discussed the feasibility of locating alternative hearing space outside of the facility or perhaps scheduling these Department of Public Safety and Correctional Services' (DPSC) personnel hearings at OAH's Hunt Valley headquarters. OAH found that approximately 45 DPSC personnel hearings were held per year and that some representatives filed Motions requesting that the hearing location for these types of hearings be changed to Hunt Valley. Consequently, in some instances, the problem was being dealt with on a case-by-case basis.

At the May 8, 2013 meeting, Ms. Jones reported the following:

- there are no longer problems with the hearing space in the Cumberland DPSC facility;
- the hearings in the Hagerstown DPSC facility have been moved to the public library;
- there were still problems at the Jessup facility and the correctional officers would rather have hearings at the OAH headquarters in Hunt Valley.

Ms. Jones summarized that the correctional officers were pleased with the changes that were made thus far and the fact that someone responded to their concerns.

Council members were pleased to hear CALJ Dewberry's reports on the appointment of ALJ Nicole Pastore Klein to the District Court of Maryland for Baltimore City and ALJ Yolanda Curtin's appointment to the Circuit Court for Harford County. ALJs conduct hearings, determine facts, apply the law and render decisions. Those decisions have a tremendous impact on Maryland's citizens. They impact their employment, their access to mental health and medical treatments, their environmental concerns, their education, their safety on our roadway and a host of other issues too numerous to even begin to list. Because those decisions touch the lives of so many people in so many ways, an Administrative Law Judge must demonstrate, at all times, knowledge of vast areas of the law, judicial independence and judicial courage and ALJs Klein and Curtin have done this throughout their tenure at the OAH and Council members are extremely proud of their accomplishments and know that they will both be a tremendous asset to the Judiciary because of their experience as an ALJ at the OAH.

Council members were also updated on the following:

- the many technology enhancements and changes
- meetings with agency personnel
- ALJ hiring and training
- staffing changes
- attendance at conferences
- presentations made
- public outreach

The Council wishes to emphasize that the attached OAH 2013 Annual Report provides detailed information on the items highlighted in this Report.