

DRAFT MINUTES

Office of Administrative Hearings (OAH) Oversight Committee

Date: Wednesday, January 23, 2013 – 1:00p-3:00p

Dave Pleasant Conference Room

Employment Department Central Office - Salem, Oregon

The meeting was called to order at 1:17pm by Chair Paul Holvey.

Welcome and Introductions

Chair Holvey welcomed members and attendees and asked all to introduce themselves.

Committee and Staff

Denise Fjordbeck, Department of Justice

Karla Forsythe, Chief Administrative Law Judge (CALJ), OAH

Rep. Paul Holvey, House District 8 & Chair of the Committee

Melissa Leoni, Government Relations Manager, Employment Department

Laurie Warner, Director, Employment Department

Sen. Doug Whitsett, Senate District 28

Steve Wolf, Department of Justice

Other Attendees

John Mann, OAH

Richard Davis, OAH

David Gerstenfeld, OED Unemployment Insurance Division

Twyla Lawson, DAS

Steve Demarest, SEIU

Dennis Koho, Oregon State Bar

Approval of Minutes

Sen. Whitsett moved the minutes of the September 18, 2012 OAH Oversight Committee meeting be approved as presented. The motion was seconded by Ms. Fjordbeck. Motion carried.

Governor Appointment of Chief Administrative Law Judge per ORS 183.610

Rep. Paul Holvey, Chair and Twyla Lawson, DAS

Ms. Forsythe announced to the Committee that she has decided to not apply for the Chief Administrative Law Judge (ALJ) position due to the unexpected death of her daughter and will retire, but she plans to stay on until the new Chief is appointed. Ms. Forsythe spoke about the importance of the OAH to the state and the honor that it has been to serve in the position. Rep. Holvey thanked Ms. Forsythe for her service and expressed his deepest sympathies and hope for all the best in her future. Director Laurie Warner and Sen. Whitsett commended Ms. Forsythe for her work to improve the OAH.

Ms. Lawson gave a brief update and reviewed the revised recruitment plan for the Chief with the Committee. The position announcement was released on January 10, 2013. Ms. Lawson described working on outreach with Liani Reeves in the Governor's Office. Ms. Lawson asked members to send her names or suggestions for outreach.

Ms. Lawson discussed how the Committee would be involved in finalist interviews and the plans for a stakeholder forum with the OAH staff, depending on the number of candidates. The Committee discussed how the involvement of the Committee would be similar to its past role, but now would be making recommendations to the Governor's Office rather than the Employment Department. Ms. Lawson reiterated that they are working with the Department to make sure that OAH staff have a role in the process and will be sending out more communication as the process moves along.

2013 Legislative Session and Proposed Legislation Impacting Administrative Law

Rep. Holvey reminded the Committee that one of the purposes of the Oversight Committee is to make recommendations to the Legislature and with recent legislation presented to the Committee for such a discussion, he thought it timely to consider that role.

Senate Bill 52

Mr. Dennis Koho from the Oregon State Bar (OSB) Administrative Law Executive Committee and an attorney in private practice that does administrative hearings presented an update on Senate Bill 52 (SB 52). Mr. Koho explained that before FastCase, it was difficult to get historical background on cases unless they went to the Appeals Court. FastCase started with a few agencies. While orders are created electronically, they are only available on paper. Under SB 52, there will be a uniform way to provide many, but not all available decisions in a way that's easier to access. The bill has specific exemptions because of volume or other challenges to the agencies.

Rep. Holvey asked about getting an amendment that would allow the OAH to also get final orders back from agencies as that has been an issue for the Committee and OAH. Ms. Forsythe reported that recent model rule change require final orders within 90 days, and since the Chief is a member of the OSB, he or she will have access to FastCase. The Committee discussed public access to FastCase and the fiscal impact on agencies. Ms. Fjordbeck noted that the exemptions considered are those with higher volumes and where, for example in unemployment insurance benefits, the decisions are fact specific. The Committee discussed agencies covered by the bill, the ability of agencies to charge a fee after the first two requests from the OSB, and the time involved in redacting personally identifiable information before release to OSB.

Mr. Davis reported that the Association of Administrative Law Judges had not taken a formal vote on the bill but in general do support the concept. He also added that they would like to see public access to the information too. Once in the form necessary for FastCase, agencies could make decisions more available to the public. Mr. Mann addressed the issue of consistency from the ALJ perspective; they don't have this information either. Those that hear the cases impacted by the bill are typically members of OSB and will have access.

Sen. Whitsett made a motion to support SB 52 if it is narrowed to contested cases and could be expanded to the public either now or in the future. There was further discussion about the latitude of the OSB to request certain orders and the frequency of requests, and whether an expanded pilot project may be an option. The motion was amended to state that the Committee recommends passage of SB 52 with the expectation that it will need further amendments. After checking the bylaws to determine that a motion could be approved by a majority of members present, the motion was approved three (Fjordbeck, Holvey, Whitsett) to one (Wolf).

Other Bills

The Committee discussed holding future phone conversations about bills that impact administrative hearings and the OAH during the legislative session and then discussed the following introduced bills:

- HB 2170 would change an existing provision in the content of final orders in a way that may be misleading for the vast majority of cases on appeal. After discussion about workability, members of the Committee decided to meet with the bill sponsor to discuss what it might do and the problem it is attempting to fix.
- HB 2171 would allow party facing civil penalty of more than \$2000 to have a jury trial.
- SB 300 would affect many positions but may impact the criteria for removal of the Chief ALJ, which was specifically discussed and addressed in the 2009 legislation.

Public Comment

Steve Demarest commented on the selection of the Chief ALJ and involvement of staff in the selection process. Mr. Demarest also personally thanked Ms. Forsythe for her work with the OAH.

Adjournment

The meeting adjourned at 3:07 pm.

Next Meeting

The next meeting is at the Call of the Chair.