

MINUTES
Office of Administrative Hearings Oversight Committee
Date: Wednesday, October 3, 2007
1:00pm-3:30pm
Location: Dave Pleasant Conference Room
Employment Department Central Office

Welcome and Introductions

Phil Schradle, Department of Justice, opened the meeting and requested all attendees introduce themselves.

Committee & Staff:

Phil Schradle, Department of Justice
Laurie Warner, Director, Employment Department
Senator Doug Whitsett, Senate District 28
Representative Suzanne Bonamici, House District 34
Representative Bruce Hanna, House District 7
David Reese, Governor's Legal Counsel
J. Kevin Shuba, Garrett Law Firm
Tom Ewing, Chief Administrative Law Judge
Christine Chute, Department of Justice
Janet Orton, Rules Coordinator, Employment Department
Rebecca Nance, Legislative Coordinator, Employment Department

Other Attendees:

Neil Bednarczyk, AFSCME Rep	Monica Smith, OAH, OAALJ
Margaret McDowell, Internal Auditor	David Marcus, OAH
Gerry Brodosy, Public Knowledge LLC	Kyle Hoppe, Attorney, ALJ
Jill Marie Messecer, OAH	Lynne Wehrlie, OAH ALJ
Sara Cromwell, EAB	Michael Frances, OAH
Sarah Owens, EAB	Jeff Pullman, SEIU
Steven Demarest, OAALJ & SEIU Rep	Billy Gostevskyh, Business Owner
Bernadette House, OAH OAALJ	Darrell Mona, Associated with Mr.
Lawrence Smith, OAALJ	Gostevskyh
Jonathan Micheletti, OAALJ	

Housekeeping:

This was the first meeting of the Oversight Committee Meeting with a quorum since the April 18th, 2007 meeting. The minutes from both the April 18th, 2007 and May 9th, 2007 meetings were approved and adopted; these are minutes of a near quorum committee and were found to be acceptable and adopted as such.

ACTION – Adopted 4/18/07 and 5/9/07 meeting minutes

***Review of Public Knowledge, LLC's Report on OAH:
Gerry Brodsky, Public Knowledge, LLC***

Mr. Brodsky highlighted the findings from the review of OAH conducted by Public Knowledge, LLC. Public Knowledge, LLC was asked to review several areas of OAH and report the findings back to the Oversight Committee; this is the result of that review. The report found that the OAH is meeting its goals set forth by the legislature including impartiality, fairness and judicial independence as well as an increased sense of impartiality and fairness felt by staff and customers. Public Knowledge also examined efficiency based on cost per referral which has stayed essentially flat in spite of increases in salary costs which indicates increased efficiency. As such, Public Knowledge concluded the OAH is generally achieving the objectives set forth by the legislature. There was a recommendation that the OAH update their stationary and business cards to increase the perceived independence of the agency. The Public Knowledge report then focused on issues of concern raised through the study. The biggest concern was over how changes are implemented and the way change is managed at the OAH. Public Knowledge found that part of this issue stems from the OAH's lack of an agency mission; Public Knowledge had to piece together what they believed the mission statement for the agency was based on survey input and the statute.

Public Knowledge was also able to point to several strategic initiatives though they found them to not be well documented. These initiatives include; consolidation of hearing office panels, standardization of hearings templates, a code of ethics, co-location of ALJs and administrative staff, organization by geographical area, a case waiting system, a tiered salary structure and cross-training efforts. The intent of the Public Knowledge report was not to justify one of the OAH's proposed initiatives over another option but to examine whether or not the initiative was feasible and defensible. Though these initiatives are practical, defensible and similar to other states efforts, Public Knowledge found that the problems relating to the initiatives have to do with change management. Participants in Public Knowledge's survey expressed concern over their lack of participation and input into the change process. Public Knowledge also noted that some of the survey participants in the open forums were reluctant to participate and some did not provide survey input. However, Public Knowledge is satisfied they received a great cross-section of employees making the results viable. Public Knowledge recommended OAH write a vision and goals statement for the agency and allow staff to participate in the process. This will provide clarity to the direction of the agency and the steps to take to get there. Public Knowledge also recommended additional performance measures, beyond those required by the Federal Government, to include some of their goals. There was also a recommendation to routinely survey staff to check that they believed the goals were being met.

Another recommendation of Public Knowledge which was not one of the current perceived goals of the agency was to have a devoted panel of

paraprofessionals to hear Unemployment Insurance cases as opposed to the current situation where ALJs hear UI cases. Public Knowledge sees this as an opportunity to cut back on salary costs associated with UI cases without limiting the quality of decisions and increasing morale as ALJ's are often not satisfied with hearing UI cases.

Mr. Brodsky emphasized that the task of the Public Knowledge review was not to ferret out issues within the OAH, such as the fear and retribution issues mentioned by some of the committee members, but simply to examine whether the initiatives of the OAH are in line with the requirements of the legislature.

Comments on Public Knowledge, LLC's Report on OAH:

Tom Ewing, Chief ALJ

Mr. Ewing asked for the opportunity to comment on some of the claims in the Public Knowledge, LLC report though he did agree with some of the findings. Mr. Ewing stated that he believed the issue of better perceived independence would occur through the current consolidation process. OAH has plans to utilize its own conference rooms for hearings and update its stationary to reflect its independence from the Employment Department. Mr. Ewing also stated that the writing of a vision statement and strategic plan for the agency is in the process; once the draft is complete it will be sent to staff for review and revision and ultimately agency-wide adoption. The vision statement will most likely include references to the three goals of the OAH as outlined by the legislature; judicial independence, quality hearings and decisions and operational efficiency. The strategic plan will include; initiatives to improve communication including a committee of ALJs and staff with a forum for issues to be brought forth, a cross-training program, a case blending system which will add variety to the caseload of ALJs, a case management system and an improved electronic library of information for customers. Mr. Ewing stated the OAH would be looking into Public Knowledge's recommendation of a dedicated UI panel based in part on an examination of other states central panels.

ACTION – Mr. Ewing will bring a copy of the 2007-2009 Overview to the next meeting

***Office Consolidation and Other Issues:
Committee***

A question was posed about the status of the consolidation; how far along in the process was it and who was affected. Mr. Ewing clarified that the consolidation has occurred in Eugene and will soon be completed in Salem and Portland. Part of the reasoning behind the consolidation is to improve the culture and efficiency of OAH and the perceived independence. When OAH was initially created the offices were not consolidated as a cost savings measure; ALJs were housed in their original agencies. Additionally some telecommuted from home easing the financial burden incurred with the creation of the OAH. Mr. Ewing also addressed the concern regarding requiring current telecommuting ALJs who now have to commute to the consolidated offices. He stated that the OAH has a

fairly liberal telecommuting policy which ALJs will still be able to take advantage of after the consolidation. The policy is one day per week of the ALJs choice and a second day, again of the ALJs choice, pending manager approval.

The issue of what type of order an ALJ issues also was discussed. On cases such as UI and DUIs, ALJs issue final orders however some of their rulings are only recommendations to agencies who can then decide to not follow the recommendation. Mr. Ewing is examining what other states with central panels have their ALJs issue and the benefits of one system over another. He has found that most states follow the federal model which is agencies can change findings of fact and conclusions of law. An issue in line with the concern over the type of order issued by an ALJ is whether or not the ultimate decision issued by the agency is binding on the citizen and this brings into question the perceived judicial independence of the OAH. Mr. Ewing stated though that he believed that the vast majority of decisions issued by ALJs are accepted by agencies.

Mr. Ewing then discussed the percentage of hearings which were UI, approximately 60%, as compared to the number of staff charging to UI, about 30 FTE of 105 FTE. While Mr. Ewing finds the idea of the UI specialized panel attractive, he also recognizes the value in having individuals who are cross-trained to cover other areas as needed.

State Agency and Public Comment:

A sign up sheet was available for those who wished to make public comment.

The following individuals made comments:

- Steven Demarest, Oregon Association of Administrative Law Judges (OAALJ) and Service Employees International Union (SEIU). Mr. Demarest began by addressing the number of decisions which are set aside by agencies when the decision is not in line with the agency's original decision believes that this is not a number which is often considered. He also voiced concern over the recommendation from the Public Knowledge, report that Unemployment Insurance cases be handled by a dedicated panel of paraprofessionals. Mr. Demarest believes that this idea wouldn't work and points to other state's central panels, where hearings officers are required to be members of the bar, as examples. Mr. Demarest then expressed concern that not all of the staff in the Public Knowledge survey felt they could really voice their concerns in the provided questionnaire. Mr. Demarest, on behalf of SEIU, assisted in conducting a more detailed survey, copies of which were provided to the group.

ACTION – Mr. Ewing will bring information on the number of recommendations agencies decide against to the next meeting

- Larry Smith and Jon Micheletti, OAALJ. Mr. Micheletti briefly discussed the history of the Oregon Association of Administrative Law Judges (OAALJ) as a nonprofit organization of ALJs and others interested in "promoting standards of excellence and fairness in the administrative law

process.” He said that the creation of a central panel had been the vision of many within the OAALJ and that the association was willing to assist the committee as needed. Mr. Micheletti also said the OAALJ conducted a survey in 2005 of ALJs which was believed to be more comprehensive than the Public Knowledge survey. He shared the survey with the group and said that the OAALJ plans to re-survey in the post-consolidation period. Mr. Smith expressed the OAALJ’s concern over ALJ independence. He asked that Mr. Ewing provide information which indicates that OAH is ensuring the independence of every ALJ as required by ORS 183.610. He stated that the issue of independence is really the concern of the OAALJ. Mr. Smith also voiced concern that the OAALJ was not consulted regarding the Public Knowledge report.

- Kyle Hoppe, ALJ. Mr. Hoppe wanted to express his agreement with the idea that ALJs with concerns have another forum to express their issues free of repercussions. However, Mr. Hoppe is not sure if the Oversight Committee is the best forum for that discussion.
- Billy Gostevskyh and Darrel Mona, Business Owner and Business Representative. Mr. Mona brought up some concerns specific to the Countrywide Construction case which he felt needed to be addressed by the committee. The issues include; the timeframe for requesting a telephone hearing, the need to file a second stay, the recusal of an ALJ and the lack of a style citation manual for the Construction Contractors Board. Mr. Gostevskyh discussed his concerns regarding decisions based on whether or not the party is licensed. He feels he has to do a better job making his case against another party if the other party is not licensed and he is.

ACTION – Mr. Ewing will disseminate the rules regarding recusal to the committee

Agenda Items for Next Meeting:

- Elect a Chair of the OAH Oversight Committee
- Approval of Committee by-laws

Action Items for Next Meeting:

1. Committee Members, please email Rebecca Nance your interim contact information.

The meeting adjourned at 3:40pm

Next Meeting: January 9, 2007 (tentative)