

MINUTES
Office of Administrative Hearings Oversight Committee

Date: Wednesday, January 9, 2008

10:00am-12:00n

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 and Staff:

Phil Schradle, Department of Justice
Laurie Warner, Director, Employment Department
Senator Doug Whitsett, Senate District 28
Representative Suzanne Bonamici, House District 34
David Reese, Governor's representative
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:

Sara Cromwell, EAB	Charles Smith, OAALJ/SEIU
Sarah Owens, EAB	Lawrence Smith, OAALJ
Steven Demarest, OAALJ & SEIU Rep	Monica Smith, OAH, OAALJ
Bill Fink, Deputy Director, OED	Lynne Wehrlie, OAH ALJ

Guests:

Lane Shetterly
John DeLorenzo

Housekeeping:

Phil Schradle announced to the group that Representative Bruce Hanna is in the process of being replaced on the Oversight Committee by Representative Vicki Berger; the transition will be complete soon. A motion was put forth to elect Mr. Schradle as the chair of the Oversight Committee. The motion passed. Mr. Schradle suggested that the election of a vice chair be held until the next meeting. The group reviewed the minutes from the October 9th meeting and

made minor changes; the minutes as changed were adopted. Also, suggested bylaw changes were reviewed and adopted with additional changes.

ACTION:

- Elected Phil Schradle as chair of the OAH Oversight Committee
- Future agenda item – election of a vice chair
- Adopted October 9, 2007 meeting minutes with suggested changes
- Adopted bylaw suggested changes

OAH Work Plan Status Update:

Tom Ewing

Mr. Ewing continued his update on actions taken at the OAH to implement the suggestions made by Public Knowledge, LLC. He discussed the following issues:

- Reinforcement of the public perception of judiciary independence – this has been implemented through the consolidation of OAH facilities. While the consolidation process has had mixed reception by OAH staff, Mr. Ewing feels it is the best thing for the OAH. The consolidation will allow interoffice discussion among ALJs and managers, reduce travel time, increase consistency, and file sharing capability. Mr. Ewing stated that the consolidation of the OAH is different from the Circuit Court judges, who by statute must travel to the areas they serve, and is in fact more closely aligned with the situation for Supreme Court Judges who are centrally located. While there was some concern over the OAH sharing staff space with the Employment department, Mr. Ewing explained that the OAH has a separate entrance with its own signage and only private staff common areas are shared. Additionally, the employees with the Employment Department Business and Employment Services section have nothing to do with the hearings process so he is not concerned with conflicts of interest occurring between Employment Department and OAH staff. Ultimately, the decision to co-locate with the Employment Department in Eugene was a fiscal one.

Mr. Ewing was unable to cover all of the actions taken by the OAH to implement the recommendations made by Public Knowledge, LLC and Mr. Schradle asked that the conversation take place at a later date.

ACTION:

- Continue OAH work plan status update.

Perspectives on the OAH & Committee Member Roundtable:

Lane Schetterly, John DeLorenzo and Group

Mr. Schetterly and Mr. DeLorenzo were invited to give the Oversight Committee a brief background of the creation of the OAH. The concept of a central panel was first seriously entertained in 1997, it took until 1999 for the details to be fleshed out. Mr. Schetterly discussed some of the compromises

necessary to get the idea the support needed in the legislature such as latitude in discovery, recusals of ALJs, modification of proposed orders, ex parte contact and minimizing the fiscal impact. Mr. DeLorenzo focused on some proposed changes to the powers of an ALJ given the evolution of the agency. These include giving final order authority to ALJs, and in the case of agencies unwilling to give final order authority to ALJs, require the agencies to participate in the courts via the circuit court. This would allow a de novo review of the record and would place the agency in the same position as the individual appealing the case. Mr. DeLorenzo recognized the potential expense in using the circuit court but indicated that his intention was that proposal was not the preferred method; ideally, agencies would give final order authority to ALJs. The committee was interested in considering Mr. DeLorenzo's proposal further.

For more information on the creation of the OAH;

- The full text of the bill supporting the creation of the OAH – http://pub.das.state.or.us/LEG_BILLS/PDFs/BEHB2526.pdf
- Additional information regarding the history and operations of the OAH – http://www.oregon.gov/OAH/The_OAH2.shtml#_ftn1

ACTION

- No specific action items came from this discussion

State Agency and Public Comment:

A sign up sheet was available for those who wished to make public comment. The following individuals made comments:

- Larry Smith, President of the Oregon Association of Administrative Law Judges discussed the issue of overturned ALJ decisions and the staff survey his group will soon be discussing. He was interested in the information requested at the last meeting from Mr. Ewing regarding statistics of overturned decisions. Mr. Ewing said he was still working on pulling the figures together. The OAALJs will be conducting a similar survey to the one held in 2005, Mr. Smith asked if the committee had any questions they would like on the survey in particular. A request was made to see a draft version of the survey. Mr. Smith indicated that the draft survey may be ready by May.
- Steve Demarest, OAALJ board member, requested time on the next agenda to make a presentation regarding independence of ALJs and the recusal rule. Mr. Schradle indicated that time for the OAALJ will be provided on the next agenda.

ACTION

- Information on overturned decisions will be provided to the committee.
- Mr. Smith will provide Rebecca Nance with the OAALJ survey. Ms. Nance will distribute it to the group; committee members interesting in providing input may do so. The survey will be discussed at an upcoming meeting.

- Provide Mr. Demarest with 15 minutes during the next meeting to give a presentation regarding ALJ independence and the recusal rule.

Agenda Items for Next Meeting:

- Elect a vice chair of the OAH Oversight Committee
- Discuss possible legislation for the 2009 session
- Continuation of OAH work plan to implement Public Knowledge, LLC's suggestions
- Presentation by Mr. Demarest regarding ALJ independence and the recusal rule

The meeting adjourned at 12:20pm

Next Meetings:

March 3, 2008, 1:00pm-5:00pm

May 28, 2008, 1:00pm-5:00pm

Dave Pleasant Conference Room, Employment Department Central Office