

First Annual Report to
the Governor of Alaska and the Alaska Legislature
from the Office of Administrative Hearings

Prepared by
Terry L. Thurbon
Chief Administrative Law Judge (Acting)

Submitted
January 31, 2005

I. Introduction

In 2004, the Legislature passed and the Governor signed into law Senate Bill 203 (ch. 163, SLA 2004), which created the Office of Administrative Hearings (OAH), an independent office within the Department of Administration (DOA) charged with providing administrative adjudication services, regulatory review and training. *See* AS 44.64.010 – AS 44.64.020. The purpose was “to increase the separation between the adjudicatory functions of executive branch agencies and the agencies’ investigatory, prosecutory, and policy-making functions.” Sec. 1, ch. 163, SLA 2004.

OAH operates under the supervision of a chief administrative law judge (ALJ) for whom the law prescribes certain duties and goals. *See* AS 44.64.020. One of the chief ALJ’s duties is to

submit to the governor and the legislature on January 31 of each year the results of the survey [of hearing participants used to monitor the quality of hearings conducted by OAH and other state agencies] along with a report that includes a description of the activities of the office and recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies[.]

AS 44.64.020(a)(7). This is the first such report.

Consistent with the transition provisions of Senate Bill 203 (sec. 94, ch. 163, SLA 2004), two employees of the Department of Commerce, Community and Economic Development (DCCED) and five employees of the Department of Revenue (DOR), together with the hearing functions they perform, were transferred to OAH effective January 1, 2005. Thus, as of the submittal of this first annual report, OAH has operated as an organizational unit for 30 days. This report, therefore, is predominantly forward looking. It provides a template for future reports, describes activities expected to be carried out by OAH in the coming year, and reports on the snapshot of data and information available for the first 30 days of OAH operation.

II. Activities of the Office of Administrative Hearings

For reporting purposes, the activities of the OAH are grouped into six categories drawn from the statutory duties of OAH and the chief ALJ:

- Adjudication services;
- Peer review for OAH ALJs;
- Publication of decisions;
- Regulations review and development;
- Surveying hearing participants;
- Training of administrative adjudicators.

See AS 44.64.020(a)(4)-(8) & AS 44.64.090.

During the first 30 days of its operation, OAH's activities have, by necessity, focused on continuing to perform the adjudication services for the matters transferred and new matters referred to OAH. Hearings are being held, decisions are being issued and new case assignments are being made almost daily. In addition, systems have been put in place for peer review and publication of decisions. Plans for surveys, development of regulations, and formal training are being made, and OAH representatives have already participated or are scheduled to participate in training activities.

A. Adjudication Services

The adjudication services provided by OAH range from preparing proposed decisions based on written submittals of the parties in simple administrative appeals to conducting trial-like evidentiary hearings in complex matters. The services, however, do not stop at conducting hearings and writing decisions. When the final decision maker is a board or commission, or even a principal agency head, the services can include functioning as a legal adviser to that decision maker. After procedural regulations have been adopted, OAH expects to facilitate use of alternative dispute resolution methods, when appropriate, in administrative adjudication matters handled by OAH.

In terms of subject matter, OAH's case docket is varied, with referrals from DOR presently accounting for about 70% of the caseload. With the transfer of the five DOR and two DCCED employees on January 1, 2005, 321 open case were

transferred to OAH. A few of those cases are carried as “open” simply because appeals to the courts are pending and thus the cases could be remanded for further action by the agency decision maker. Most of the 321 cases, however, are “open” in the sense that a hearing remains to be held or a decision or other action is pending.

The 321 cases transferred to OAH break down into the following agency and subject matter categories:

| | | |
|-------|-------------------------------------|-----|
| DOR | Child Support Services | 153 |
| DCCED | Occupational Licensing | 83 |
| DOR | Permanent Fund Dividend Eligibility | 69 |
| DOA | Other | 16 |

The “occupational licensing” category includes not only appeals from licensing decisions but also other types of cases resulting from matters within DCCED’s purview, including tobacco enforcement cases and real estate surety claims. The “other” category includes cases referred to the Office of Tax Appeals and the DOA hearing officer covering subjects such as taxation, contract and procurement disputes, victims of crime compensation awards, benefits programs, and permitting issues.

During the first four weeks of operation, OAH received 100 new case referrals. These break down into the following subject matter categories:

| | |
|-------------------------------------|----|
| Child Support Services | 45 |
| Occupational Licensing | 6 |
| Permanent Fund Dividend Eligibility | 36 |
| Other | 13 |

At the time this report was sent for printing, OAH’s active caseload totaled about 400 cases, and new referrals were coming in at the rate of 25 cases each week.

It is too early in OAH’s operation to provide data on case closure rates, time devoted to the different case types, the number of cases that are resolved on motions (without hearings) or by settlement, or the number that are diverted for alternative dispute resolution and the success of those efforts. Future reports will include such data, as well as other statistical information, which will serve as performance indicators for OAH’s adjudication services.

B. Peer Review

Peer review serves two purposes: it promotes consistency in decision making and it provides informal training opportunities (for both the reviewed and the reviewing ALJ). OAH's peer review system consists of selectively assigning an ALJ to review the proposed decision and/or to observe the hearing conducted by another ALJ on a case-specific basis. The reviewing ALJ provides written or oral feedback to the reviewed ALJ. The reviewing ALJ also is available for consultations on questions of law or procedure.

Presently, formal peer review assignments are being made with the goal in mind of ensuring that an ALJ venturing into a new subject area receives the benefit of informal training from a peer who has already worked on cases in the subject area. In addition, peer review of decisions occurs on an ongoing basis, especially in the high-volume case docket (child support and permanent fund appeals), when the chief ALJ or an ALJ delegate reviews decisions preliminary to adopting them as final under a delegation from the DOR Commissioner.

C. Publication

Effective July 1, 2005, OAH will be required to "make final agency decisions reached after administrative hearings available online through an electronic data base." AS 44.64.090(a). OAH's webpage has already been updated to provide this data base service. It contains a "Decisions" link for the purpose of posting decisions. Decisions previously posted on the Office of Tax Appeals' webpage have been transferred to the OAH webpage Decisions link.

~~Beginning in mid-February 2005, decisions issued by OAH on or after January 1, 2005, will be scanned and uploaded to the Decisions link. New decisions will be scanned and uploaded almost immediately after they are issued. As resources permit, OAH will scan and upload pre-2005 decisions, as well from existing DOA, DCCED and DOR hardcopy libraries that date back to the early 1980s. OAH is still exploring methods for obtaining decisions from other state agencies on a routine basis and will implement webposting of those decisions no later than the July 1, 2005 effective date of the requirement.~~

D. Regulations

OAH's chief ALJ was given authority to "adopt regulations ... to carry out the duties of the office" as well as to "review and comment on regulations

proposed by state agencies to govern procedures in administrative hearings.” AS 44.64.020(a)(8)&(11). In particular, the chief ALJ must adopt a hearing officer code of conduct, which will apply to hearing officers of all agencies, not just to OAH ALJs.

To satisfy these regulations-related duties, OAH has begun tracking notices of other state agencies’ proposed regulations and has established a timeline for developing OAH procedural regulations and the hearing officer code of conduct. The timeline sets March 1, 2005, as the target date for a draft of the code of conduct and March 28, 2005, as the target date for a preliminary draft of OAH procedural regulations, including regulations for use of alternative dispute resolution methods. The goal is to have both sets of regulations through the public comment process and ready for adoption no later than July 1, 2005.

E. Surveys

OAH’s charge to survey administrative hearing participants as one method of monitoring the quality of the hearings held is not limited to OAH-conducted hearings. OAH is required to survey participants in hearings held by OAH “and other state agencies....” AS 44.64.020(a)(7). To satisfy this duty, the chief ALJ has begun conducting informal, oral surveys of counsel who repeatedly represent parties in administrative hearings and has begun developing a standard survey form that can be completed electronically or by hand.

The standard survey form will be designed to elicit numerical ratings on certain common characteristics of hearings (e.g., adequacy of the time allowed; clarity of procedures and hearing officer’s instructions; understandability of decisions, etc.) and to allow participants to offer narrative comments. All hearing participants appearing before the OAH will be encouraged to respond to the surveys.

To establish a baseline of survey comments against which to measure future responses, in the February-April 2005 period, surveys will be distributed to past hearing participants from the case dockets transferred to OAH. The survey form also will be distributed to a statistically significant sampling of hearing participants identified from the records of other state agencies that conduct administrative hearings, commencing with hearings occurring in calendar year 2005.

Data and narrative comments obtained from the surveys will be analyzed, summarized and reported in subsequent annual OAH reports. OAH also will use

the comments to identify subjects needing additional examination as part of the process of monitoring the quality of administrative hearings. The results of the surveys and the additional examinations will be considered by the chief ALJ in making recommendations for statutory changes.

F. Training

OAH's training mandate extends beyond providing training to OAH employed or retained ALJs and hearing officers. It requires that OAH

make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication, substantive law, alternate dispute resolution, and technical matters for administrative law judges *and other administrative adjudicators*[.]

AS 44.64.020(a)(6). (Emphasis added.) To satisfy this mandate, OAH's training plan will consist of the following components:

- Informal training for OAH ALJs through peer review assignments, periodic conferences among the ALJs, and circulation of case decisions and other materials of interest;
- Formal training for OAH ALJs by attendance at continuing education courses offered by professional associations and the National Judicial College;
- Informal training for all state administrative adjudicators by email circulation/webposting of periodic electronic bulletins/newsletters reporting on developments of interest in administrative law;
- Formal training for non-OAH administrative adjudicators through participation by OAH representatives in periodic, agency-specific conferences;
- Formal training for all administrative adjudicators in the form of course offerings made available by OAH.

In the short period of OAH's operation and the weeks leading up to that operation, OAH representatives have conducted informal training for OAH ALJs and have presented a training segment during a Child Support Services Division conference. OAH representatives are scheduled to participate in a similar Permanent Fund Dividend Division meeting early in February 2005. OAH representatives also are scheduled to present a training segment in an Alaska Bar Association-sponsored continuing legal education course on February 2, 2005.

III. Recommendations of the Chief Administrative Law Judge

In addition to the description of activities, the annual report of OAH is to include "recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies[.]" AS 44.64.020(7). Future reports can be expected to include recommendations resulting from review and development of regulations, survey comments and other observations on how state administrative adjudication processes could be improved. As of the date of this report, no specific recommendations have been developed.

IV. Conclusion

As of the date set for this first annual report, OAH is carrying out its primary core service by conducting hearings and issuing decisions. That service is being provided to the agencies that contributed personnel resources and transferred caseloads to OAH and to other agencies on a reimbursement basis. OAH also has taken steps to satisfy its regulatory review, survey, and training duties, and soon will be developing its regulations. OAH is well on the way to having all mission-critical processes in place long before the July 1, 2005 date on which the vast majority of the provisions of law governing operation of OAH take effect.

Submitted this 31st day of January, 2005.



Terry L. Thurbon
Chief Administrative Law Judge (Acting)
Office of Administrative Hearings
P.O. Box 110231
Juneau, Alaska 99811-0231
(907) 465-1886

Appendix A

Survey Results

In future reports, the detailed survey results on which the narrative analysis in the body of the report will be based will be presented in this appendix.