

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

Prepared by
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Chief Administrative Law Judge

Submitted
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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 second 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. OAH operated for its first six months under the transition provisions, hearing DCCED, DOR and DOA cases (including Office of Tax Appeals cases), as well as a few cases voluntarily referred by other agencies.

Effective July 1, 2005, OAH’s jurisdiction expanded to include many categories of cases not previously heard by the DCCED, DOR or DOA hearing units, and OAH formally succeeded the Office of Tax Appeals as the agency with original jurisdiction over tax appeals. Later the same month, the Public Employees Retirement System and Teachers Retirement System appeals were added to the more than forty case categories heard by OAH. Thus, OAH operated in a

transitional phase for six months of 2005 and has operated under its new statutory procedures and deadlines, and with the full complement of duties, only since July 1, 2005.

One additional statutory duty was added by legislation passed in 2005. Under AS 23.30.007, the chief ALJ is responsible for receiving and reviewing applications from persons interested in serving on the Workers Compensation Appeals Commission, and forwarding the names of qualified applicants to the Governor.

Unlike the First Annual Report, which was predominantly forward-looking, this report covers a full calendar year of OAH activities. Because that year was split between the six-month transitional phase and the first six months of OAH's post-transition operation, it is not representative of a typical year. A great deal of time has been devoted during the first year to "start up" issues and to preparing for the expanding jurisdiction and new procedures. As a consequence, most of the emphasis has been on OAH's core function—conducting hearings.

II. Activities of the Office of Administrative Hearings

For reporting purposes, the activities of the OAH are grouped into seven 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;
- Monitoring hearing processes (includes surveying hearing participants);
- Training of administrative adjudicators;
- Recruitment for Workers Compensation Appeals Commission.

See AS 44.64.020(a)(4)-(8), AS 44.64.090 & AS 23.30.007(d).

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. The services can include use of alternative dispute resolution methods. The OAH ALJs are the final decisionmakers only in a few categories of cases. When the final decisionmaker is a board or commission, or even a principal agency head, the services can include functioning as a legal adviser to that decisionmaker.

1. Caseload

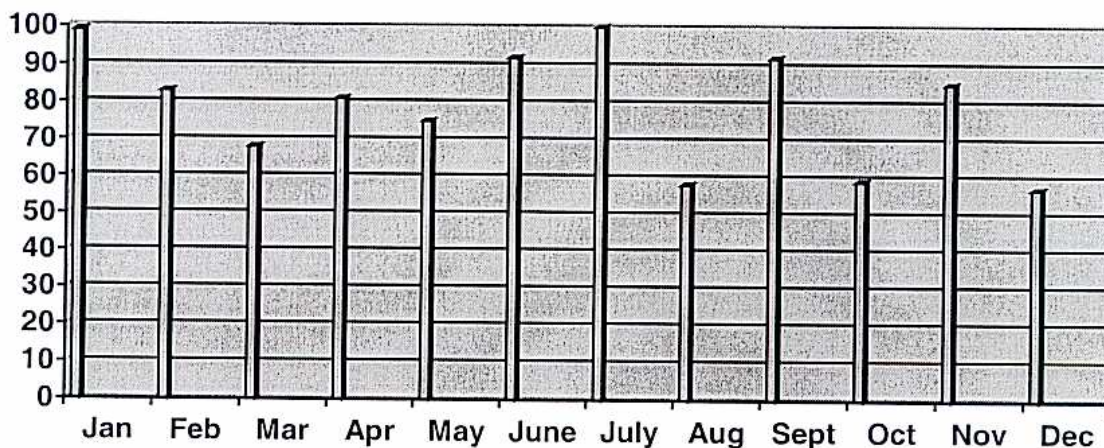
During the first year of operation, OAH's caseload totaled 1,271 cases—321 that transferred on January 1, 2005 with the transferred employees and 950 new cases that came in during the year. The following table shows the number of cases by category and identifies the agency for which the hearing function is performed.

<i>Agency</i>	<i>Case Type</i>	<i>Number</i>
DPS	Alcoholic Beverage Control	1
DCCED	Architects, Engineers & Land Surveyors	9
DHSS	Assisted Living Homes	2
DCCED	Barbers & Hairdressers	2
DHSS	Child Care Facilities	2
DCCED	Chiropractors	4
DCCED	Certified Nurse Aide	12
DOA	Contract claims	9
DCCED	Public Accountancy	1
DOR	Child Support	688
DCCED	Clinical Social Worker	2
DEC	Environmental Permitting	3
DCCED	Dental licensing/discipline	5
DHSS	Benefits/Licensing	3
DNR	Mining Permit	1
DOR	Charitable Gaming	2
DCCED	Big Game Guide	1
HRC	Discrimination claims	6
DCCED	Insurance	6
DCCED	Medical licensing/discipline	12
DCCED	Marine Pilots licensing/discipline/rates	4
DCCED	Nursing	10
DOA	Public Employees Retirement System	18
DOR	Permanent Fund Eligibility	332

ACPE/UA	Permanent Fund Dividend Execution	7
DCCED	Pharmacy licensing/discipline	1
DCCED	Professional Counselor	4
DOA	Procurement	6
AEA	Procurement	1
ACPE	Medical Cancellation of Student Loans	2
DCCED	Psychologist licensing/discipline	1
DCCED	Residential Contractor Endorsement	1
DCCED	Real Estate Appraiser	1
DCCED	Real Estate Commission	7
DCCED	Real Estate Surety Fund claims	25
DCCED	Securities	4
DOA/DOR	Tax	20
DCCED	Tobacco Endorsement	28
DOA	Teachers Retirement System	2
DOA	Violent Crimes Compensation claims	25
DCCED	Veterinarian licensing/discipline	1
	TOTAL	1,271

In addition to categories transferred with the DOA, DOR and DCCED employees, new categories added July 1, 2005 include assisted living and foster care facilities licensing actions, PFD execution appeals, PERS/TRS appeals, ABC Board cases, and Human Rights Commission cases. OAH also received voluntary referrals from the Departments of Environmental Conservation, Health & Social Services, Natural Resources, and Revenue (TAPS assessed valuation appeal), and from the Alaska Commission on Post-secondary Education.

New case referrals throughout 2005 averaged 79 per month. The chart below illustrates the pattern of new cases by month.



During calendar 2005, OAH closed 75.5 percent of the 1,271 cases. In this context “closed” cases are those for which OAH and the final decisionmaker have taken final action and the appeal period has run without a court appeal having been filed. Between 15 and 16 percent of the cases were resolved without the need for an evidentiary hearing. Most of those were resolved on motions. Some were resolved by settlement. Only in a very small percentage of the cases did a party ask the final decisionmaker for reconsideration or to depart from the ALJ’s proposed decision. Appeals were filed in just 1.7 percent of the 1,271 cases, and most of those predated OAH.¹

Case Resolution Data		
	Number	% of Total
Cases Closed	960	75.5
<i>Subset Resolved on Motions</i>	158	12.4
<i>Subset Settled</i> ²	42	3.3
Reconsideration Requested/Proposed Action Filed ³	21	1.7
Appeals Filed	21	1.7
Cases carried over to 2006 ⁴	311	24.5

2. Time Devoted to Hearings

During the first half of the current fiscal year, OAH’s ALJs collectively devoted a total of 4,016.8 hours to hearing cases and related work such as decision writing, ruling on motions, and reviewing record documents and submittals by the parties. About 57 percent of those hours were spent working on high volume

¹ Fifteen of the appeals predate OAH’s formation. OAH carries those on-appeal transferred cases as “open” pending receipt of notice that the appeal has been decided and that no further action is required by OAH. By subject matter, the appeals breakdown as follows: two child support; three contract/procurement; nine professional licensing; two real estate surety claims; one marine pilot rate case; and four tobacco endorsement cases.

² Only two cases were formally diverted for alternative dispute resolution (ADR). One of those was settled through OAH-facilitated negotiations. The second had to be stayed pending resolution of the appellant’s bankruptcy petition before ADR efforts were completed. Many other cases were resolved through stipulated agreements, including with the parties’ consent to entry of final decisions on motions. The “settled” subset of closed cases does not include the ones effectively resolved through informal ADR efforts that led to entry of a final decision by the ALJ on the consent of the parties.

³ For post-July 1, 2005 cases that are subject to AS 44.64.060, the option to file a pre-final decision “proposed action” functions as a substitute for requesting reconsideration, unless a separate statute continues to provide for post-final-decision reconsideration.

⁴ This figure includes cases for which OAH has issued a decision, but action by the final decisionmaker had not occurred by December 31, 2005, and 16 cases that remain on appeal or for which OAH has not been able to learn the status of the appeal.

cases—i.e., child support and permanent fund eligibility appeals—referred by DOR. By comparison, 22 percent of the hours went into the typically more complex DCCED professional and business licensing case docket, which comprised only 131 of total cases by number.

In contrast, the DOR high-volume docket contributed 1,020 cases—more than eight times as many cases as referred by DCCED but requiring only two-and-one-half times the hours commitment. The remaining 21 percent of hours were devoted to a mix of tax, contract, procurement, retirement benefits, crime victims compensation, gaming, securities, insurance, and PFD execution cases, as well as to voluntary referrals of cases involving environmental and mining permits, student loans, licensing, and social services benefits.

3. Deadlines

The cases OAH hears are subject to many deadlines. First and foremost are the OAH-specific deadlines imposed by AS 44.64.060, which apply to most of the post-July 1, 2005 cases OAH hears.⁵ The key deadline for OAH to meet is the 120-days-from-hearing-request deadline for the ALJ to issue a proposed decision.

In addition to the 120-day proposed decision deadline imposed by the OAH-specific statute, other statutes and regulations establish deadlines that apply to several case types. For instance, cease and desist order cases, summary suspension actions, insurance cases, securities cases, and child support appeals all are subject to shorter deadlines than those imposed by AS 44.64.060. Some case types have shorter or different deadlines for getting the cases heard or for issuing the decision, or for both.

Over the course of the year, the OAH ALJs have each carried a caseload of from 180 to 363 cases, depending on the mix of complex versus high-volume or non-complex cases.⁶ Although the case assignments are managed to spread the work among the ALJs as evenly as possible, there is no reliable way to predict how much time a case will require when it is first referred, and OAH has no control over the rate at which the cases come in.

⁵ The following categories of cases were exempted from the AS 44.64.060 deadlines: tax appeals, Human Rights Commission cases, occupational safety and health cases, Violent Crime Compensation Board cases, and Professional Teaching Practices Commission cases. Voluntary referrals from agencies not required to send cases to OAH also are not subject to the AS 44.64.060 deadlines.

⁶ The chief ALJ has carried a caseload ranging from about 20 to 30 percent that of the other ALJs.

OAH manages its cases with the goal of meeting all applicable deadlines to the greatest extent possible. This is challenging, particularly when the need to meet the shorter deadlines in large numbers of cases competes for ALJ time required to keep the rest of the cases on track for the 120-day proposed decision deadline.⁷

In 37 cases, OAH has failed to issue the proposed decision within 120 days after the hearing request was filed with the referring agency. In some of those, the agency did not refer the case to OAH promptly,⁸ thereby cutting into the time allowed for OAH to conduct prehearing and hearing processes and to write a decision. In others, the issues were complex, supplemental hearings were required, or the parties' scheduling limitations posed problems. In the rest (perhaps 60% of the 37), the deadline was missed due to an oversight or because of the time demands on the ALJs from the other (often time-sensitive) cases.

4. Rapid Case Resolution

One of OAH's statutory goals is to "provide for the delivery of high quality adjudication services in a timely, efficient, and cost-effective manner[.]" AS 44.64.020(b)(1). To improve timeliness, efficiency and cost-effectiveness, beginning in July 2005, OAH implemented a procedure meant to provide for more rapid and less costly resolution of cases in the highest of the high-volume docket—child support appeals.

Child support appeals are supposed to be heard within 30 days after a hearing request is filed and the decision is supposed to follow within 20 days after the hearing, or after the record closes if held open for post-hearing submittals. DOR's regulations allow the hearing and final decision date to be put back if a party files a written request (motion) to dismiss the appeal or to have it decided without an evidentiary hearing because only legal issues are raised.

Prior to centralization of the hearing function, when appeals were susceptible to being resolved on motions, much of the "hearing" work turned into a paper exercise stretched over a few months, instead of a prompt opportunity for an

⁷ The 120-day deadline can be extended with the consent of the parties and the chief ALJ. This extend-with-consent tool is being used in several cases on the 120-day clock, to allow parties in complex cases adequate time to prepare for the hearing or to try to resolve the case in advance of the hearing. Of the cases filed with or referred to OAH since July 1, 2005, 366 are subject to the AS 44.64.060 deadlines.

⁸ Under AS 44.64.060(b), agencies are supposed to refer cases to OAH within ten days after receipt of the hearing request.

oral hearing. Often, the appellant and the other parent, both usually without legal counsel, did not know how to respond to a motion; either they sent in nothing or what they sent was not responsive. The hearing officer then had to decide the motion and invest the time to write a detailed decision, explaining things that might be more easily understood if discussed with the parents.

After centralization, two things coincided to make rapid case resolution possible for the child support docket. One was immediate: the availability of up to six ALJs to work on this docket at the same time. The second took effect July 1, 2005: the statutory requirement for the agency to refer child support appeals to OAH within ten days after the hearing request is filed. After that requirement took effect, OAH began scheduling all child support cases for an immediate hearing, regardless of whether a motion is filed.

At the hearing, the ALJ considers motions, attempts ADR or takes evidence, whichever is most appropriate. Since this is done on the oral record rather than through an impersonal exchange of papers in the mail, the ALJ can ensure that self-represented parents understand what is going on and can determine whether the parents consent to dismissal or remand or another appropriate resolution. The parents have a prompt and meaningful opportunity to be heard, and a chance to resolve the case in a cooperative rather than adversarial way. If rapid resolution results, the written decision by the ALJ can be simpler and shorter, taking less time and fewer resources to produce, and preserving precious time for the cases that cannot be resolved this way.

Two examples of the many cases resolved using this approach illustrate the efficiencies achieved by implementation of rapid case resolution in the child support docket:

- Case 1: A man cooperates in genetic testing that shows he is the father of the child for whom support is sought. When he gets the notice establishing paternity, because he wants to be heard on how to set the support amount, he fills out the appeal form, triggering a paternity challenge that must be resolved before a support obligation can be established. The ALJ convenes a telephonic hearing, helps the man understand that he has appealed paternity and that support cannot be addressed until that appeal is resolved. The man explains that he does not want to contest paternity and consents to dismissal of the appeal. The ALJ issues a one-page dismissal order the same day and the parties are then able to move ahead to establish the support amount.
- Case 2: A parent files a request for a formal hearing on child support-related issues before the division has completed an administrative review. A telephonic hearing is held at which the process is explained, so that both parents understand the need for the

administrative review step to be completed. The parents consent on the oral record to the case being remanded back to the division. The ALJ issues a simple remand order the same day. Within 30 days after the request for hearing was filed, the case is back where it belongs and the division is able to complete the administrative review, which may resolve some or all of the issues the parent was trying to raise in the premature appeal. Prior to centralization, the result would have been the same but it might have taken two or three months because of the time necessary to allow the different parties to respond to one another in writing.

This rapid case resolution procedure works very well with the child support docket. OAH is evaluating whether a modified version of it might be useful in PFD eligibility appeals or other parts of the case docket. In the low-volume, complex case docket, similar techniques are being used during prehearing conferences to clarify and narrow issues so that the hearing can be conducted more efficiently.

B. Peer Review

Peer review serves two purposes: it promotes consistency in decisionmaking 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.

Formal peer review assignments are 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, group peer review of decisions or case management strategy is conducted when appropriate, such as when an ALJ faces an issue of first impression for OAH and group peer review is a good tool to promote consistency among ALJs on the issue.

C. Publication

OAH is required to "make final agency decisions reached after administrative hearings available online through an electronic data base." AS 44.64.090(a). Initially, the plan was to post scanned copies of the decisions on OAH's webpage in the existing "Decisions" link containing former Office of Tax Appeals decisions. Two challenges emerged: (1) how to make the decisions available in a readily accessible (user friendly) searchable form and (2) how to

address confidentiality concerns without simply refraining from publishing whole categories of decisions.

The first challenge requires a technological solution or a practical solution requiring a great deal of staff time. Final agency decisions, even those in the cases OAH hears, come in many different forms. Some agencies have decisions available on weblinks, the court system makes Supreme Court cases available electronically but not superior court cases, and OAH's proposed decisions come back as "final" only when signed by the decisionmaker (principal agency head, board or commission chair). Scanning decisions into a PDF format, therefore, initially seemed a sensible approach.

Scanned-to-PDF documents, however, are not key word searchable. Preparing a subject index and cross-referencing each scanned decision to it would be very time intensive for the high volume of decisions within the scope of the statutory directive.⁹ For the e-published decisions to have real utility to the public, a way must be found to make this mix of decisions available in a keyword searchable form, or staff time will have to be devoted to preparing and maintaining a detailed index to help users locate decisions on issues of interest.

The second challenge—protecting confidentiality—theoretically can be answered by redacting identifying information. Redacting decisions, however, is a labor-intensive process in which a single mistake can result in disclosure of confidential information to anyone with access to an Internet connection. This affects the largest groups of OAH-issued decisions (PFD and child support). OAH, therefore, has deferred starting the process of redacting decisions until agency opinions on confidentiality can be reexamined and a solution to e-publishing the decisions in a user-friendly form is found.

OAH has collected its own decisions and existing DOA, DCCED and DOR decision libraries that date back to the early 1980s. OAH has collected some decisions from, or decision links of, other agencies and is still exploring methods for systematically obtaining decisions from other state agencies on a routine basis. OAH will begin making them available electronically once the challenges above have been met.

⁹ AS 44.64.090 directs OAH to collect and make available final decisions from state agencies that conduct quasi-judicial hearings. When added to the hundreds of decisions in OAH cases each year, the collected decisions of other agencies likely will bring the total number of decisions potentially to be published to well over 1,000 each year.

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.

OAH has drafted regulations on procedures for OAH cases and for the Code of Hearing Officer Conduct. A public hearing has been held and written comments have been submitted. OAH is in the final stages of revising the draft regulations to address those comments and preparing a responsiveness summary describing how the comments have been addressed.

OAH routinely tracks notices of other state agencies' proposed regulations and reviews those that have the potential "to govern procedures in administrative hearings." Through the end of 2005, OAH reviewed 48 sets of proposed regulations, most of which did not implicate hearing procedures or did not raise any concerns about how those procedures were addressed. OAH commented on three sets of proposed regulations, recommending changes to (1) drinking water regulations proposed by DEC; (2) gaming regulations proposed by DOR; and (3) motor vehicle and driver licensing hearing regulations proposed by DOA and DPS.

E. Monitoring and Surveys

OAH is required to "survey administrative hearing participants and use other methods to monitor the quality of administrative hearings held by the office and other state agencies[.]" AS 44.64.020(a)(7). The purpose of the surveys and other monitoring is to enable the chief ALJ to include in the annual report recommendations for statutory changes.

The chief ALJ continues to conduct informal, oral surveys of counsel who repeatedly represent parties in administrative hearings and of parties in OAH-heard cases who contact the office about the process. OAH also has developed a method for random selection of participants in its own hearings to whom surveys are to be sent. Surveys are expected to go out to the list developed thus far in the next few

weeks, and to be sent routinely to future hearing participants after their hearing processes are complete.¹⁰

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. It extends to those held by other state agencies. OAH is still in the process of trying to make arrangements with other agencies to obtain sufficient case and party information to include participants from other state agencies' hearings in the written survey exercise. Due to the time demands of the caseload and other work over the past year, OAH has not pursued its original plan to establish a baseline of survey comments from pre-January 1, 2005 hearings.

Data and narrative comments obtained from written 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 consists 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;

¹⁰ The survey form will 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 will allow participants to offer narrative comments.

- Formal training for OAH ALJs by attendance at continuing education courses offered by professional associations and the National Judicial College;
- Informal training for 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 administrative adjudicators in the form of course offerings made available by OAH.

During 2005, OAH provided both formal and informal training for staff members of agencies that appear in OAH-heard cases and for the State Medical Board, for representatives of the Board of Architects, Engineers and Land Surveyors, and for agency staff who serve several boards and commissions. OAH representatives also presented a training segment during a February 2, 2005 Alaska Bar Association-sponsored continuing legal education course on administrative law.

Informal training of OAH's ALJs continued throughout the year. In addition, six of the ALJs attended a continuing legal education course on medical records as part of the preparation for hearing medical cases in the PERS/TRS and professional licensing dockets. One ALJ attended a workers compensation law continuing legal education course, in anticipation of serving as *pro tempore* chair of the Workers Compensation Appeals Commission. Three administrative law judges attended continuing legal education courses offered as part of the state bar convention. One ALJ began preparing to serve as a panelist for a continuing legal education course on real estate surety fund claims scheduled for February 2006.

G. Workers Compensation Appeals Commission Recruitment

Under AS 23.30.007, the chief ALJ has the duty to recruit for vacancies on the Workers Compensation Appeal Commission and to appoint persons to serve as the *pro tempore* chair of that commission if the chair is absent or cannot hear an appeal due to a conflict. The chief ALJ reviews the qualifications of the applicants

for commission positions and must forward to the Governor at least three names for consideration when the attorney-chair position is vacant and at least two names for each commissioner vacancy.

In the fall of 2005, the chief ALJ recruited applicants for the then-newly created Workers Compensation Appeals Commission. Recruitment for the chair position was by direct mailing to all in-state members of the Alaska Bar Association, because the chair must be an attorney licensed to practice in Alaska. Recruitment for the four commissioner positions was by direct mailing to past and present members of the Workers Compensation Board, because the commissioners (other than the chair) must have served on that board.

Fifteen people applied: five for the attorney-chair position and ten for the commissioner positions. One commissioner application was submitted both after the deadline and after the list of qualified applicants had already been transmitted to the Governor, so that application was not reviewed. All of the other applicants were qualified. All fourteen names were submitted to the Governor.

In December 2005, the commission's chair requested appointment of a *pro tempore* chair for a matter she could not hear due to a conflict. The chief ALJ appointed an OAH ALJ to serve a *pro tempore* chair for this matter.

III. Recommendations of the Chief Administrative Law Judge

In addition to the description of activities, OAH's annual report 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(a)(7). OAH is examining the possible need for changes in a few subject areas but has only one specific recommendation to make at this time.

A. Recommendation

Subject to review by legal counsel for the Department of Revenue, OAH recommends that statutory changes be made in AS 25.27 to eliminate the need to send hearing notices and final decisions by certified, return receipt requested mail to the non-agency parties in child support administrative appeals. This change will both improve actual notice and reduce costs.

For appeals of a Child Support Services Division decision on a petition to modify a support obligation, AS 25.27.190(c) explicitly requires that the notice of

hearing be served “personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice is directed” Similarly, AS 25.27.062(e) requires service by certified, return receipt requested mail as the only alternative to personal service for income withholding orders. Most child support decisions resulting from an administrative appeal include an income withholding order component.

As a result of these statutory requirements, the former DOR hearing unit did, and OAH now does, send an average of four pieces of certified, return receipt requested mail for every child support case. Two problems result: (1) actual notice of the hearing, or a copy of the decision, is not received by people who are not available when the postal carrier calls or who are hesitant to sign for deliveries; (2) postage and support staff time costs are higher than necessary with no appreciable benefit to the parties in terms of receiving notice.

OAH estimates the excess postage costs of sending notices and decisions certified, return receipt requested at about \$16.50 per case. With more than 500 child support appeals each year, OAH is spending over \$8,000 per year to send the notices and decisions in a manner that necessarily means some parties who would otherwise get them do not. Many envelopes are return as “unclaimed” or “unable to forward” because of the requirement for a return receipt. Additionally, to prepare a piece of mail to go out certified, return receipt requested rather than regular first class mail triples the staff time required for the mailing function. Eliminating the requirement for certified, return receipt requested mail to serve hearing notices and decisions would improve the likelihood of parties getting notice and save the state money.

B. Potential Future Recommendations

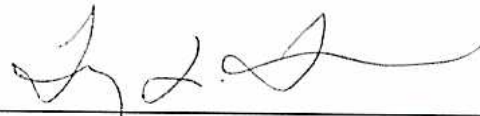
OAH is studying the interplay between the Administrative Procedures Act (APA) adjudication provisions (44.62.330 – AS 44.62.630) and the OAH-specific statutes, and may make recommendations for changes to the APA in a future annual report. With only six months’ experience attempting to reconcile the APA and OAH statutory requirements, however, it would be premature to recommend specific changes at this time.

IV. Conclusion

OAH’s first year has been an extremely busy and productive one. OAH continues to carry out its core service by conducting hearings and issuing decisions

and is making progress on the non-hearing functions. The caseload has been heavy, and the issues associated with starting up a new central hearing panel with functions much broader than conducting hearings have been time consuming. OAH is operating well. I am optimistic that it is only a matter of time until all functions will be up and running with the same efficiency as the core hearing function.

Submitted this 31st day of January, 2006.



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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.