

Third 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

Submitted  
January 31, 2007

## 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 third 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 performed, 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. Since then, two agencies have by regulation designated OAH to conduct hearings in case categories not required to be referred to OAH and voluntary referrals

have continued to come in from executive branch agencies and even from the court system.<sup>1</sup>

OAH operated in a transitional phase for six months of 2005 but has operated under its statutory procedures and deadlines, and with the full complement of duties, since July 1, 2005. A new duty was added under legislation passed in 2005. 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.<sup>2</sup> Two ALJ positions have been added to OAH since it formed, one at the end of 2005 and another at the beginning of 2007, bringing the total to eight.

This report covers OAH's activities for calendar year 2006. Unlike the second report, which covered activities for a year split between transitional and post-transition operations, 2006 may be more representative of a typical year. Less time had to be devoted during the year to remaining "start up" issues. Most of the emphasis has continued to be on OAH's core function—conducting hearings—but progress has been made on ancillary functions as well.

## **II. Activities of the Office of Administrative Hearings**

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

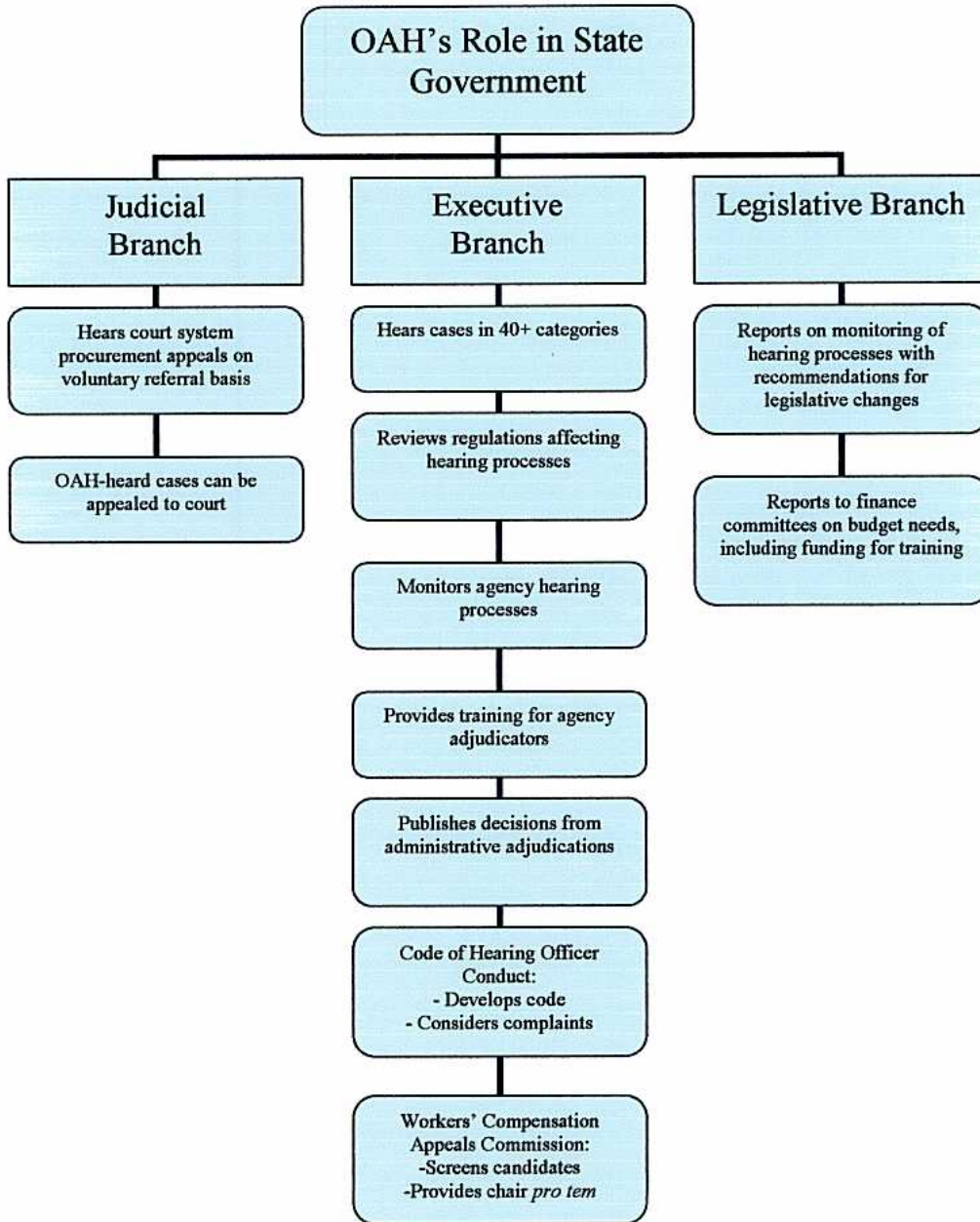
- Adjudication services;
- Peer review for OAH ALJs;
- Publication of decisions;
- Regulations review and development;
- Monitoring hearing processes (includes surveying hearing participants);
- Training of administrative adjudicators;
- Code of Hearing Officer Conduct administration;
- Recruitment for Workers' Compensation Appeals Commission.

See AS 44.64.020(a)(4)-(8), AS 44.64.050, AS 44.64.090 & AS 23.30.007(d). The following figure illustrates OAH's relationship to the three branches of state government.

---

<sup>1</sup> The Department of Health and Social Services has designated OAH as the hearing entity for appeals in child protection substantiated finding cases. 7 AAC 54.215(a). The Alaska Commission on Postsecondary Education has designated OAH as an alternative to contract hearing officers for appeals regarding medical cancellation of student loans. 20 AAC 15.920(f). The court system has used an OAH ALJ to hear protest appeals for court system procurements.

<sup>2</sup> AS 23.30.007.



## 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 do not stop at conducting hearings and writing decisions. They can include use of alternative dispute resolution (ADR) methods. Using formal or informal ADR, or simply through good case management, OAH can resolve many cases within a matter of weeks. Others may remain active for many months, as the parties develop their positions and prepare for detailed presentation of highly technical evidence and argument on complex legal issues. Most fall somewhere between these two extremes.

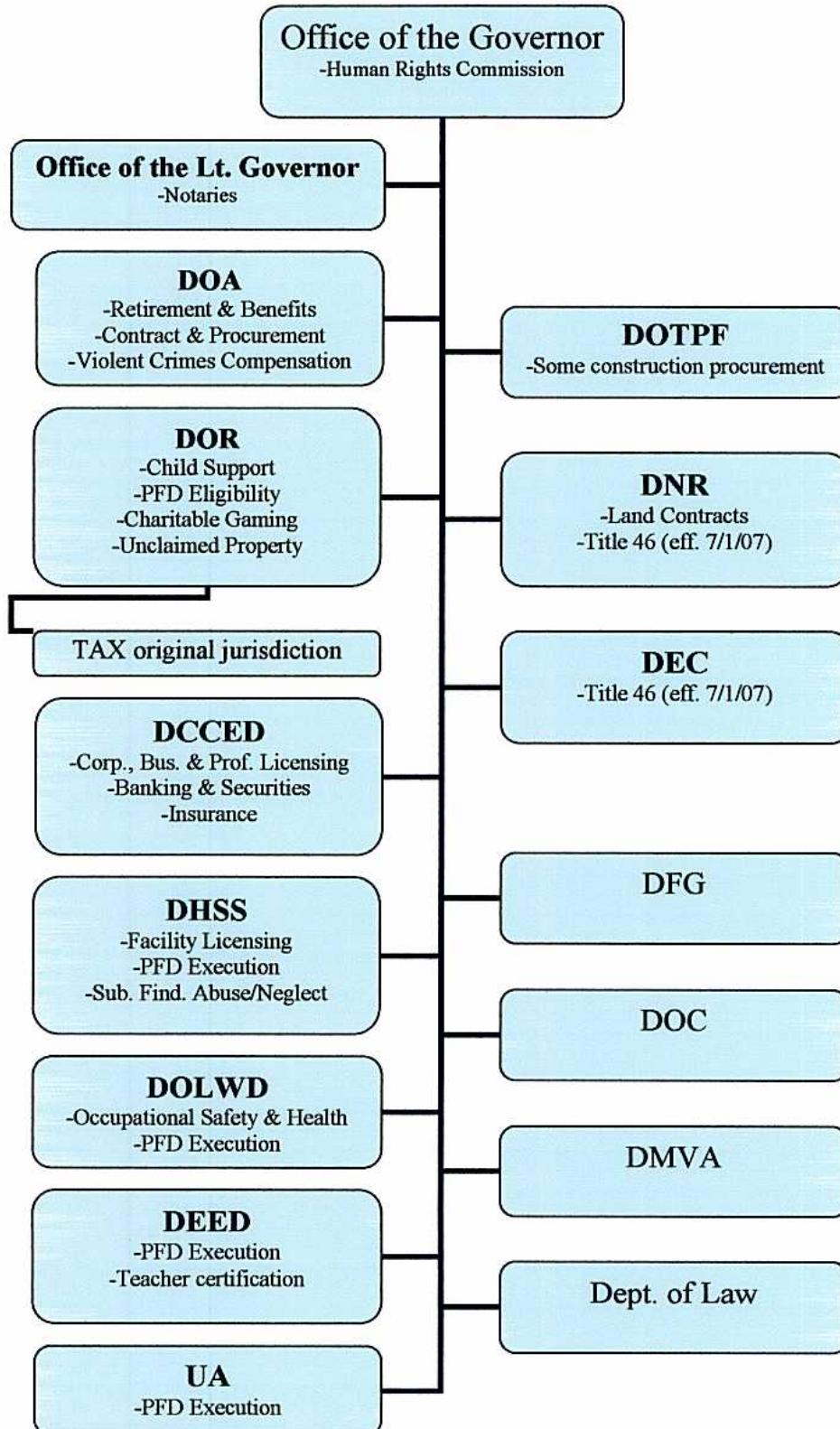
The OAH ALJs are, by law, the final decisionmakers in only a few categories of cases. When the final decisionmaker is a board or commission, or even a principal agency head, the adjudication services can include functioning as a legal adviser to that decisionmaker for the specific case.<sup>3</sup>

The figure below illustrates the reach of OAH's adjudication services under its mandatory jurisdiction. That reach extends to most executive branch departments. The departments for which OAH does not provide services directly may be parties to disputes such as procurement protests that OAH hears on behalf of a separate executive branch decisionmaker. Environmental conservation and certain natural resources matters under AS 46 will become part of OAH's mandatory jurisdiction on July 1, 2007.

---

<sup>3</sup> OAH ALJs do not provide general legal advice to the decisionmaker but rather addresses legal questions for the decisionmaker only in the context of the specific case under consideration. The attorney general is the legal adviser to state agencies under most circumstances.

## Office of Administrative Hearings Mandatory Jurisdiction



## 1. Caseload

During 2006, OAH's active cases totaled 1,173 cases. The caseload was comprised of 298 open cases carried forward at the beginning of the year and 875 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.

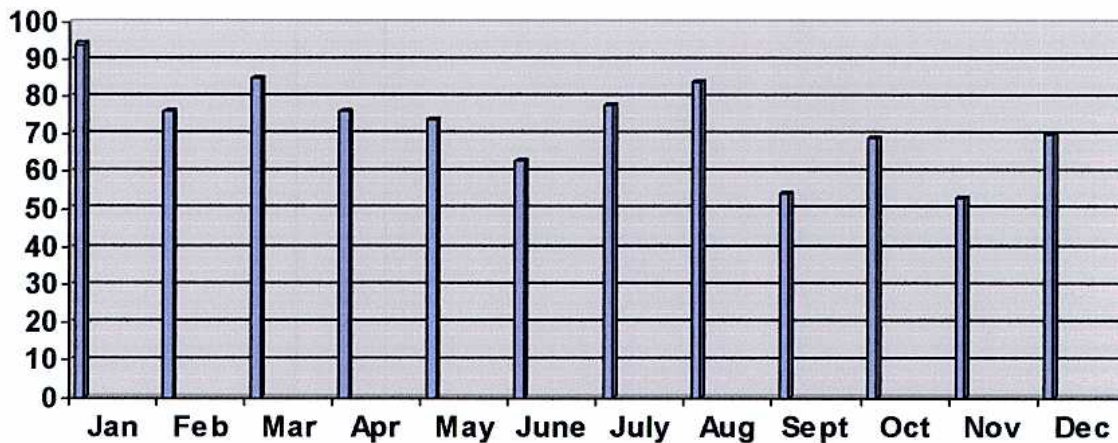
| <i>Agency</i>    | <i>Case Type</i>                         | <i>Number</i> |
|------------------|--|---------------|
| DPS              | Alcoholic Beverage Control               | 1             |
| DCCED            | Architects, Engineers & Land Surveyors   | 4             |
| DCCED            | Administrative Fine—Contractor           | 1             |
| DHSS             | Assisted Living Homes                    | 6             |
| DHSS             | Child Care Facilities                    | 8             |
| DCCED            | Certified Nurse Aide                     | 4             |
| DHSS             | Certificate of Need                      | 9             |
| DCCED            | Collection Agency                        | 1             |
| DOA              | Contract claims                          | 4             |
| DHSS             | Child Protection—Substantiated Finding   | 2             |
| DOR              | Child Support                            | 522           |
| DCCED            | Clinical Social Worker                   | 1             |
| DCCED            | Dental licensing/discipline              | 3             |
| DOR              | Charitable Gaming                        | 2             |
| HRC              | Discrimination claims                    | 18            |
| DCCED            | Insurance                                | 8             |
| DCCED            | Mechanical Administrator                 | 1             |
| DCCED            | Medical licensing/discipline             | 10            |
| DCCED            | Marine Pilots licensing/discipline/rates | 3             |
| DCCED            | Nursing                                  | 6             |
| DLWD             | Occupational Safety and Health           | 10            |
| DOA              | Public Employees Retirement System       | 61            |
| DOR              | Permanent Fund Eligibility               | 308           |
| DEED (ACPE) & UA | Permanent Fund Dividend Execution        | 21            |
| DCCED            | Pharmacy licensing/discipline            | 1             |
| DCCED            | Physical/Occupational Therapist          | 1             |
| DCCED            | Professional Counselor                   | 1             |
| DOA              | Procurement                              | 12            |
| Court System     | Procurement                              | 3             |
| DEED (ACPE)      | Medical Cancellation of Student Loans    | 7             |
| DCCED            | Psychologist licensing/discipline        | 2             |
| DCCED            | Residential Contractor Endorsement       | 1             |
| DCCED            | Real Estate Appraiser                    | 4             |
| DCCED            | Real Estate Commission                   | 5             |
| DCCED            | Real Estate Surety Fund claims           | 25            |
| DCCED            | Securities                               | 5             |

|             |                                    |              |
|-------------|------------------------------------|--------------|
| DOA/DOR     | Tax                                | 26           |
| DCCED       | Tobacco Endorsement                | 33           |
| DEED (PTPC) | Teacher Certification              | 3            |
| DOA         | Teachers Retirement System         | 8            |
| DOR         | Unclaimed Property                 | 1            |
| DOA         | Violent Crimes Compensation claims | 20           |
| DCCED       | Veterinarian licensing/discipline  | 1            |
|             | <b>TOTAL</b>                       | <b>1,173</b> |

In addition to cases required to be referred to OAH under AS 44.64.030(a) or referred under regulations designating OAH to hear them, cases were referred voluntarily by

- DOA (PERs & TRS waiver issues)
- DOR (oil & gas property taxability and valuation)
- DCCED (insurance and marine pilot rates; administrative fine)
- DHSS (certificate of need)
- Court System (procurement protests)

New case referrals throughout 2006 averaged 73 per month. The chart below illustrates the pattern of new cases by month.



During calendar 2006, OAH closed 77.5 percent of the 1,173 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. Twenty-one percent of the cases were resolved on motions or by settlement, without the need for an evidentiary hearing. Parties asked the final decisionmaker for reconsideration or to depart from the ALJ’s proposed decision in 6.3 percent of the cases. Most of those (50 of 57 cases) reflect parties taking advantage of the opportunity afforded in post-July 1, 2005



cases to respond to the ALJ's proposed decision before the final decisionmaker acts. Appeals filed in 2006 represent just 1.3 percent of the 1,173 cases.<sup>4</sup>

| <b>Case Resolution Data</b>                                      |        |            |
|--|--------|------------|
|  | Number | % of Total |
| Cases Closed   | 909    | 77.5       |
| <i>Subset Resolved on Motions</i>                                | 143    | 15.8       |
| <i>Subset Settled</i> <sup>5</sup>                               | 48     | 5.3        |
| Reconsideration Requested/Proposal for Action Filed <sup>6</sup> | 57     | 6.3        |
| Appeals Filed  | 15     | 1.3        |
| Cases carried over to 2007                                       | 262    | 22.3       |

Compared to 2005, the number of new case referrals was down by 75 cases in 2006. One factor was the PFD division's need to temporarily reassign personnel who normally issue the informal conference decisions that generate formal appeals. This caused PFD referrals to slow to a trickle in the last few months of the year. A corresponding upswing in PFD referrals is expected early in 2007.

Another factor was the increase in agency use of the Notice of Denial tool provided by AS 44.64.060(b). Collectively, three departments diverted 63 cases from the formal hearing track by issuing notices denying hearing requests.<sup>7</sup>

## *2. Time Devoted to Hearings*

The reduction in the total number of new cases referred in 2006 did not equate to a reduction in the time required to hear cases. OAH's ALJs collectively devoted approximately 8,400 hours to hearing cases and related work such as decision writing, ruling on motions, and reviewing record documents and submittals by the parties. This

<sup>4</sup> By subject matter, the 2006 appeals breakdown as follows: one alcoholic beverage control case; three child support cases; one contract claim; four professional licensing matters; two PFD eligibility cases; one securities case; and one tax case.

<sup>5</sup> Only one case was formally diverted for alternative dispute resolution (ADR) in 2006 and it ultimately had to be resolved through the hearing process. Most of the "settled" cases were resolved through stipulated agreements. 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.

<sup>6</sup> For post-July 1, 2005 cases that are subject to AS 44.64.060, the option to file a pre-final decision "proposal for action" functions as a substitute for requesting reconsideration, unless a separate statute continues to provide for post-final-decision reconsideration.

<sup>7</sup> The following departments filed with OAH copies of the notices of denial they issued, as required by AS 44.64.060(b): Department of Education and Early Development—Alaska Commission on Postsecondary Education (21); Department of Environmental Conservation (one); Department of Revenue (two child support; 39 PFD). The statute allows agencies to deny a hearing request for reasons allowed by law and requires that notice of the denial be given to the party that requested the hearing and to OAH.

compares to an estimate of 8,033 for 2005, extrapolated from data for the last six months of that year.

Forty-three percent of the 2006 hours were spent working on high volume cases (child support and permanent fund eligibility appeals), even though the high volume cases, at 830, represented 71 percent of the caseload by number. Fifty-seven percent of the hours went into the typically more complex low-volume docket that includes business, professional and facilities licensing cases, retirement and benefits appeals, discrimination cases, contract claims, procurement appeals, and tax appeals. That part of the docket comprised only 343 (or 29 percent) of total cases by number.

### *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 cases OAH hears.<sup>8</sup> 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 85 to 260 cases. The number of cases assigned to any individual ALJ depends on the mix of high and low volume cases, and the range of complexity within the ALJ's individual caseload, as well as on the ALJ's peer review, training and administrative duties.<sup>9</sup> Case assignments are managed to spread the work among the ALJs as evenly as possible. Because it is not possible to reliably predict how much time a case will require when it is first referred and, because OAH has no control over the rate at which the cases come in,

---

<sup>8</sup> 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 may be exempted from the AS 44.64.060 deadlines if the referral agreement between the chief ALJ and the referring agency so provides.

<sup>9</sup> The chief ALJ carries a reduced, approximately one-quarter-of-average caseload. All ALJs perform some peer review, but typically the ones formally assigned as peer reviewers also carry a caseload heavy in complex cases. This accounts for the wide variation of 85 to 260 cases, with the average caseload being about 187.

efforts to balance the workloads of individual ALJs to best position them to be able to meet deadlines are not always successful.

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.<sup>10</sup> The goal of meeting that deadline in each case to which it applies sometimes must give way to the priority of resolving time-sensitive cases first.

OAH did not issue the proposed decision within 120 days after the hearing request was filed with the referring agency in 240 cases to which the deadline applied and was not formally extended. In some cases, the agency did not refer the case to OAH promptly,<sup>11</sup> 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 or the parties' scheduling limitations posed problems. In the rest, the deadline was missed primarily due to the time demands on the ALJs from the other (often time-sensitive) cases and periods of short staffing.<sup>12</sup>

Missing this deadline in 240 cases—20 percent of the total on which OAH worked in 2006—should not be viewed as an indication that the legislation creating OAH was too ambitious in setting the deadline at 120 days. When fully staffed and operating without a backlog, OAH should be able to meet that deadline in an even higher percentage of the cases. That is evident from the fact that most of the missed deadlines were concentrated in the first few months of the year and the frequency with which they occurred went down as the ALJ hired at the end of 2005 took on an increasing share of the caseload and as the rapid case resolution process for child support cases (discussed below) began to yield time savings that could be applied to other parts of the caseload.

Beginning about three months into the year, the missed-deadline cases shifted from a mix of all case types, including child support, to mostly PFD eligibility appeals. This reflects the relative priority given to time-sensitive cases and the history of a longer decision track for PFD appeals. Before the AS 44.64.060 deadlines began to apply to them, PFD appeals were on an eight to nine month decision track under Department of

---

<sup>10</sup> The 120-day deadline can be extended with the consent of the parties and the chief ALJ. This extend-with-consent tool is used to allow parties in complex cases or with particular scheduling issues adequate time to prepare for the hearing or to try to resolve the case in advance of the hearing.

<sup>11</sup> Under AS 44.64.060(b), agencies are supposed to refer cases to OAH within ten days after receipt of the hearing request.

<sup>12</sup> OAH experienced one unexpected ALJ vacancy, which persisted two-and-one-half months. Also, filling of a newly authorized ALJ position was delayed by a protracted recruitment process and the temporary hiring freeze.

Revenue rules. Over the course of 2006, OAH has gradually reduced the previous eight to nine month track for PFD appeals to a three to five month track in most instances.

Now that OAH has a full complement of ALJs on board, it is only a matter of time until the 120-day deadline should be attainable in all case categories to which it applies, including PFD appeals. Unusual cases can be addressed on a case-specific basis, using the tools provided by AS 44.64.060 and OAH's regulations. Unusual circumstances such as unplanned vacancies and irregular spikes in case referrals will continue to be addressed through case management strategies.

#### *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. OAH used this approach throughout 2006, with good results such as obtaining consent to immediate entry of orders remanding for paternity testing or dismissing misdirected appeals in many cases.

At a hearing held usually within 30 days after the appeal is filed, 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.

In 2006, OAH extended a modified version the rapid case resolution procedure to PFD execution and student loan medical cancellation cases, with the result that a few of these cases were resolved at or shortly after the first telephonic meeting between the ALJ and the parties.

OAH has developed a similar approach for PFD eligibility appeals and expects to test it early in calendar year 2007. If test proves successful, the approach will be fully implemented for PFD eligibility appeals.

## **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. This type of peer review has been and continues to be a key part of the training process for new ALJs.

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. Additionally, all-ALJs sessions are conducted one to two times each month on a variety of issues as part of the effort to promote consistency.

## **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.

Since the last annual report, no simple technological solution to allow keyword searching of webposted decisions from the numerous sources OAH is required to collect has been identified. Also, OAH has determined that absent legislative changes to laws on confidentiality, all of the decisions in OAH-heard high volume cases and in some low-volume cases will need to be redacted or pseudonymed before publication.

Rather than further delay making decisions available electronically, in 2007 OAH plans to begin publishing on its webpage in scanned PDF format decisions that are not confidential, together with a subject index and links to other agencies' decisions if

already webposted. As time and personnel resources allow, OAH will begin the process of redacting or pseudonyming confidential decisions, and adding them to the database and subject index.

#### **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 was required to adopt a hearing officer code of conduct, which applies to hearing officers of all agencies, not just to OAH ALJs. Regulations on procedures for OAH cases and for the Code of Hearing Officer Conduct have been adopted and took effect July 2, 2006.

OAH routinely tracks notices of other state agencies' proposed regulations and reviews those that have the potential "to govern procedures in administrative hearings." In 2006, OAH reviewed 75 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) child protection substantiated finding grievance and appeal regulations proposed by DHSS; (2) trust regulations proposed by DCCED; and (3) complaint investigation and hearing procedure regulations concerning alleged violations of the Code of Hearing Officer Conduct proposed by the Department of Law.

#### **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.

OAH launched the written survey project in December 2006, by sending 718 surveys to parties in past OAH-heard cases. (The survey form is attached in Appendix A.) OAH intends to expand the effort to include parties in cases heard by the following executive branch adjudicators:

- Commercial Fisheries Entry Commission
- Department of Education and Early Development (special education hearings)

- Department of Health and Social Services (public benefits hearings)
- Department of Labor and Workforce Development (employment security hearings)
- Division of Motor Vehicles
- Regulatory Commission of Alaska
- Workers Compensation Board
- Workers Compensation Appeals Commission

Preliminary results from the surveys sent thus far show that response rates likely will be good (18% returned within 45 days) and that most hearing participants responding will take the time to add narrative comments. Data and narrative comments obtained from the December 2006 written surveys, and from surveys to be sent during the next three quarters, will be analyzed, summarized and reported in the next annual OAH report.

In 2006, the chief ALJ continued to conduct informal, oral surveys of counsel who regularly represent parties in administrative hearings and of parties in OAH-heard cases who contact the office about the process. OAH also took steps to extend monitoring by observation of proceedings and review of written decisions beyond its own cases, to those of agencies using in-house and contract hearing officers.

## **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;
- 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 2006, OAH provided both formal and informal training for staff members of agencies that appear in OAH-heard cases and for the following adjudicatory boards and commissions:

- Board of Architects, Engineers and Land Surveyors (February);
- Real Estate Commission (March);
- Board of Clinical Social Workers (April);
- Board of Veterinary Examiners (May);
- Workers' Compensation Appeals Commission (May & November);
- Board of Dental Examiners (June).

The chief ALJ presented a continuing legal education (CLE) on OAH's regulations for the Alaska Bar Association's administrative law section and an OAH ALJ participated as a panelist on a Bar CLE regarding the real estate surety fund. One of OAH's ALJs attended a course at the National Judicial College. The chief ALJ participated in training at a national meeting of Central Panel directors.

In addition, OAH began work on the first issue of a long-planned training bulletin to be distributed electronically to state adjudicators. That first issue should be distributed early in 2007, to be followed by a new one at least quarterly thereafter. The bulletin will cover procedural and case developments, as well as ethics for adjudicators.

## **G. Code of Hearing Officer Conduct Administration**

In addition to developing the Code of Hearing Officer Conduct, the chief ALJ plays an on-going role in administering the code. By statute, complaints alleging violation of the code must be considered by the chief ALJ, who determines whether they



meet the standard for referral to the attorney general for investigation.<sup>13</sup> Under the code, mitigation of an alleged violation may exist if the accused hearing officer relied upon a written opinion from the chief ALJ or the attorney general.<sup>14</sup> The chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

In 2006, one complaint was filed and considered by the chief ALJ, who referred it to the attorney general for investigation. The chief ALJ fielded approximately ten questions from hearing officers about code requirements. One resulted in a written opinion.

## **H. Workers' Compensation Appeals Commission Recruitment**

Under AS 23.30.007, the chief ALJ has the duty to recruit for vacancies on the Workers' Compensation Appeals 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 2006, the chief ALJ recruited applicants twice—once in the spring for a then-expiring commissioner term and later in the fall, for an unexpected vacancy resulting from the early resignation of a commissioner. Recruitment 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. All applicants for both vacancies met the minimum qualifications and their names were forwarded to the governor.

Early in 2006, an OAH ALJ completed service begun late in 2005 as *pro tempore* chair for a case in which the commission's chair had a conflict.

## **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).

---

<sup>13</sup> AS 44.64.050(c). Complaints alleging violations by the chief ALJ are considered by the attorney general. AS 44.64.050(e).

<sup>14</sup> 2 AAC 64.060(c).

OAH continues to examine the possible need for changes in a variety of subject areas, as described below, and renews its recommendation from last year's report.

### **A. Recommendation**

OAH renews the recommendation made last year to change 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. If implemented, the recommendation would improve receipt of actual notice and reduce costs.<sup>15</sup>

### **B. Potential Future Recommendations**

*Administrative Procedures Act.* OAH continues to study the interplay between the Administrative Procedures Act (APA) adjudication provisions (44.62.330 – AS 44.62.630) and the OAH-specific statutes, and expects to make recommendations for changes after considering the final revised Model APA expected from the National Conference of Uniform Law Commissioners in the summer of 2007. Thus far OAH has identified the following subject areas possibly needing changes: (1) initiation of proceedings; (2) amendment of accusations; (3) default hearing procedures; (4) hearing notice requirement; (5) hearing venue; (6) distribution of proposed decisions; (7) reconsideration.

*Disclosures of Contact Information.* OAH is evaluating whether to recommend amending provisions in AS 25.27 to address practical, and possible due process, concerns raised by procedures used to protect contact information from disclosure in administrative child support proceedings in which a party asserts that disclosure poses a risk to the child(ren) or a parent.

---

<sup>15</sup> As explained in the January 31, 2006 report, 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 ...” in certain child support case types. 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. As a result of these statutory requirements, OAH sends 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 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.

*PFD File Confidentiality.* OAH is evaluating whether to recommend amending AS 43.23.017 to exclude the formal hearing decision in PFD eligibility appeals from the cloak of confidentiality, for much the same reasons why the applicant gives up that cloak when appealing to superior court. This would allow publication of the decisions, thereby making the administrative precedents on PFD eligibility more widely available, without requiring resource intensive redacting or pseudonyming.

*PFD Execution Appeals.* OAH is evaluating whether to recommend amending provisions in AS 43.23 to remove the PFD execution appeals from the requirement for an APA hearing, in favor of a simpler, more flexible hearing process, better suited to these narrowly-focused appeals.

In addition, OAH continues to evaluate a variety of process issues raised by procurement protest appeals, the State Assessment Review Board hearing process, child support appeals, and other fast-track cases, to determine whether statutory or other changes might improve the processes.

#### **IV. Conclusion**

In 2006, OAH continued to carry out its core service by conducting hearings and issuing decisions, and made good progress on the non-hearing functions. Some of the challenges associated with starting up a new central hearing panel with functions much broader than conducting hearings remain to be conquered. I am optimistic that all functions will be up and running with the same efficiency as the core hearing function by the end of 2007.

Submitted this 31<sup>st</sup> day of January, 2007.



---

Terry L. Thurbon  
Chief Administrative Law Judge  
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.*

## Alaska Office of Administrative Hearings Hearing Participant Survey

Sent: December 2006

Case No. & Type: \_\_\_\_\_

### About the Survey Participant

1. What was your role in this case?     private party             agency party             attorney  
 2. Where do you live?                     rural Alaska             city in Alaska             outside Alaska  
 3. Including this one, in how many  
     hearings have you participated?     1     2-5     6-10     11-20     more than 20

### Administrative Law Judge/Hearing Officer

| Please answer the following questions about the administrative law judge's or hearing officer's performance.                                     | Yes                      | No                       | Does Not Apply           |
|--|--------------------------|--------------------------|--------------------------|
| 1. Did the judge/hearing officer start the proceedings on time?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Was the judge/hearing officer familiar with the issues in the case?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Did the judge/hearing officer pay attention during the proceedings?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Did the judge/hearing officer show you respect?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Did the judge/hearing officer remain even-tempered in the proceedings?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Did the judge/hearing officer give you (or your attorney) opportunities to speak?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Did the judge/hearing officer make clear decisions and rulings during the hearing, such as when objections were raised or requests were made? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Did the judge/hearing officer resolve problems that came up during the case fairly and efficiently?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Did the judge/hearing officer issue written decisions and orders in a timely fashion?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments:  |                          |                          |                          |

### Written Documents

| Please answer the following questions on the quality of written documents, such as decisions, orders and notices, issued by the administrative law judge, hearing officer or support staff. | Yes                      | No                       | Does Not Apply           |
|---|--------------------------|--------------------------|--------------------------|
| 1. Was information provided in notices useful?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Were decisions and orders written in clear, understandable language?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Did the decision describe the facts clearly and accurately?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Did the decision and any orders include clear explanations of the law?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Did the decision's analysis include enough detail to explain the result?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments:   |                          |                          |                          |

### Facilities and Staff Assistance

| Please answer the following questions about the hearing facilities and support staff.  | Yes                      | No                       | Does Not Apply           |
|--|--------------------------|--------------------------|--------------------------|
| 1. Were hearing support staff helpful in answering general (non-legal) questions or redirecting calls to others who could answer them? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Was the location of the hearing room accessible?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. For in-person hearings: was the hearing room (size, set up, temperature) suitable for the type of proceeding?                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. For telephone hearings: was the sound quality of the telephone connection good?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. For participants who listened to a recording of the hearing or other proceedings: was the sound quality of the recording adequate?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Comments:  |                          |                          |                          |

### Overall Satisfaction

|  |                              |                             |
|--|------------------------------|-----------------------------|
| Do you agree with the final result in the case?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Whether or not you agree with the final result, were you satisfied with the hearing process overall? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Why or why not?  |                              |                             |

### General Comments

Please provide any additional comments on the hearing process or other proceedings in this case. You may also use this block to make general suggestions about the administrative adjudication processes of Alaska state agencies. (Attach additional sheets if necessary.)