

2023-2024

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**Statement of the Council for Court Excellence  
To the Committee on Public Works and Operations  
of the Council of the District of Columbia**

**Regarding the February 8, 2024, Performance Oversight Hearing  
for the Office of Administrative Hearings**

Chairperson Nadeau and members of the Committee, we appreciate the opportunity to submit written testimony regarding the performance of the Office of Administrative Hearings (OAH). CCE is a nonpartisan, nonprofit organization with a mission to enhance justice for all in the District of Columbia. For over 40 years, CCE has worked to improve the administration of justice in the courts and related agencies in D.C. through research and policy analysis. (Please note that in accordance with our policy, no judicial member of CCE participated in the formulation or approval of this testimony. This testimony does not reflect the specific views of, or endorsement by, any judicial member of CCE.) Thank you for this opportunity to present our organization's views on the Office of Administrative Hearings (OAH) FY23-24 performance.

CCE's work in this area began in 1999 with advocacy for the creation of OAH and has continued ever since. Over the years, OAH's jurisdiction and caseloads have grown, increasing the importance of its role in ensuring fair and robust administrative adjudication in the District – though not always matched with additional support. In 2016, CCE developed [a report](#),<sup>1</sup> on behalf of the Office of the D.C. Auditor, which made a variety of recommendations for the continued improvement of OAH. In 2023, OAH responded to this Committee's direction by

<sup>1</sup> Council for Court Excellence, Administrative Justice in the District of Columbia: Recommendations to Improve D.C.'S Office of Administrative Hearings (2016), [http://www.courtexcellence.org/uploads/publications/OAH\\_Final\\_Report\\_20160908\\_1.pdf](http://www.courtexcellence.org/uploads/publications/OAH_Final_Report_20160908_1.pdf). |

commissioning the B. McNamee Consulting *Court Feasibility Study* (“BMC Study”)<sup>2</sup> and Mondrian Consulting *Rapid Technology Assessment*<sup>3</sup> commissioned by OAH in 2023. These new reports were made widely available by this Committee in the Council of the District of Columbia’s hearing portal and were shared via email by request. All three reports make overlapping recommendations, which suggests that those recommendations are particularly well-founded and should be adopted as quickly as possible. The body of this testimony discusses those overlapping recommendations using the structure of the 2016 CCE report and urges their adoption.

### **1. Jurisdiction**

In CCE’s 2016 report, we raised the concern that OAH’s reliance on MOUs for adjudication of matters from several agencies “creates the impression, if not the absolute risk, that a contracting agency that disagrees with OAH’s rulings or findings will terminate OAH’s jurisdiction, and a perception that OAH’s determinations may be influenced by that risk.” Our recommendation was to ensure that existing jurisdiction under MOUs be converted to statutory authorization and that any new MOUs be codified as expanded jurisdiction within two years. Bill 22-0352, the Office of Administrative Hearings Jurisdiction Expansion Act of 2017, would have addressed this issue and can be reintroduced.<sup>4</sup>

The BMC Study also raised concerns about inefficiencies caused by a need for better communications and relationships between OAH and agencies and the need for corrections and submissions from agencies, for which they recommended a “collective standard and internal expectation for the relationship [OAH leadership has] with their respective agencies.”<sup>5</sup> This recommendation would be more feasible if all agencies had the same statutory relationship with OAH. We also agree with Chairperson Nadeau that this endeavor would benefit from focused coordination at the Deputy Mayor level.

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<sup>2</sup> B. McNamee Consulting LLC, *Court Feasibility Study* (Sept. 30, 2023) available at: <https://lims.dccouncil.gov/Hearings/hearings/278>.

<sup>3</sup> Mondrian Consulting, *Rapid Technology Assessment* (Feb. 28, 2023) available at: <https://lims.dccouncil.gov/Hearings/hearings/278>.

<sup>4</sup> Bill 22-0352, the Office of Administrative Hearings Jurisdiction Expansion Act of 2017. This bill had broad support from public and government witnesses, and was passed unanimously out of committee and by the full Council. Unfortunately, it was passed subject to appropriations and the funds were never appropriated. However, the amount identified in the Fiscal Impact Statement was 1) a set of reprogrammings, not new funds, and 2) not large in the scope of the District’s budget.

<sup>5</sup> B. McNamee Consulting LLC, *Court Feasibility Study* (Sept. 30, 2023), page 9, available at: <https://lims.dccouncil.gov/Hearings/hearings/278>.

## **2. Organizational Structure**

The 2016 report found that “OAH’s current management structure does not support efficient and effective operations and supervision of staff” and that “OAH staff lack clarity about their job roles and those of their colleagues.” This is echoed in the third recommendation of the 2023 BMC Study, which observed that, “OAH has several talented individuals already working with the court; however, they are undertrained and over-worked” and “one of the primary culprits for the lack of employee training was that staff did not have enough time to train employees to the appropriate level.”<sup>6</sup> We agree with BMC’s recommendation that OAH create standardized training for each position and make it a requirement for all new and existing staff.

## **3. ALJ Selection, Evaluation, and Tenure**

This was not addressed in the BMC Study. For a summary of CCE’s 2016 recommendation, please see Appendix A.

## **4. Improving Agency Culture**

CCE reported in 2016 that ALJ morale “remains a significant challenge that impairs OAH operations” and that “OAH leadership should regularly consult with ALJs and staff regarding the agency’s performance and seek ideas for improving OAH.” BMC reported low morale across positions at OAH and recommended regular employee satisfaction surveys and all-staff meetings as a way of increasing morale and continuously gathering input.<sup>7</sup>

## **5. COST and Advisory Committee**

This was not addressed in the BMC Study. For a summary of CCE’s 2016 recommendation, please see Appendix A.

## **6. Case Assignment System**

CCE identified a need for OAH to analyze the effectiveness of its case management system and regularly evaluate ALJs’ workloads to ensure that cases are distributed fairly. This need was also identified by BMC, which provided OAH with both a forecasting model and a capacity model to continue this work past the end of BMC’s engagement.<sup>8</sup> CCE supports this recommendation, and would further recommend that the Committee receive annual updates on capacity, based on BMC’s models, prior to each year’s Performance Oversight Hearing for OAH.

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<sup>6</sup> B. McNamee Consulting LLC, *Court Feasibility Study* (Sept. 30, 2023), page 7, available at: <https://lims.dccouncil.gov/Hearings/hearings/278>.

<sup>7</sup> *Ibid*, page 5

<sup>8</sup> *Ibid*, page 6

## **7. Case Processing**

In 2016, CCE reported that litigants have been negatively affected by delays in the resolution of their cases due in part to inefficiencies in OAH’s case processing system and overall technology systems. To resolve this, the 2016 report recommended, “OAH should ensure that caseloads are assigned equitably and reevaluate caseloads on a regular basis; meet recommended case processing deadlines by case type [...] OAH should utilize technology to improve case management by: (1) implementing a uniform case filing system; (2) making OAH records publicly accessible, and case files available online to litigants and agencies; (3) educating all OAH staff about technology systems; (4) increasing the use of telephone video conferencing; and (5) allowing fines to be paid by credit card online. BMC discusses the importance of improving caseloads and finding efficiencies throughout its 2023 report. Its Strategic Recommendation #4, “Implement Lean Process Improvements with Technology, People, and Processes” notes that “[i]mproved technology including additional IT staffing was identified as a need across the organization” and that OAH should follow the recommendations in the Rapid Technology Assessment completed earlier that year by Mondrian Consulting.<sup>9</sup> That assessment seems to capture CCE’s recommendations, with the possible exception of online payment functionality.

## **8. Improving Litigant Experience**

CCE’s 2016 report found that “[p]ro se litigants are unable to participate effectively and meaningfully in the hearing process.” Reasons for this included that litigants with limited English proficiency had difficulty using the agency’s language access resources, materials available for unrepresented litigants continued to have gaps, and that OAH did not provide clear guidance on how to submit feedback to the agency. CCE’s recommendations included that OAH partner with the legal community to increase the availability of advice and representation and focus on making the Resource Center, website, and materials more user-friendly and accessible. According to the BMC Study, one ALJ reported that “[m]ost litigants are living in poverty, and have literacy issues, cognitive issues, and mental impairments” and their calls to OAH keep Legal Assistants from other tasks which end up falling to the ALJs.<sup>10</sup> BMC recommended upskilling existing staff, including tapping “a few ALJs and Legal Assistants to become ‘floaters’ who move throughout clusters to work on varying case types as volume changes” and “even support the Resource Center at times in assisting in-person petitioners to correctly file their cases, which will reduce errors other staff would ultimately need to manage down the line.” CCE supports making the best possible use of existing staff positions, while also increasing staff to reflect demand – beginning with BMC’s recommendation of

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<sup>9</sup> Ibid, page 9; Mondrian Consulting, *Rapid Technology Assessment* (Feb. 28, 2023) available at: <https://lims.dccouncil.gov/Hearings/hearings/278>.

<sup>10</sup> B. McNamee Consulting LLC, *Court Feasibility Study* (Sept. 30, 2023), page 35, available at: <https://lims.dccouncil.gov/Hearings/hearings/278>.

13.24 additional FTEs in addition to two IT positions expected to be filled soon.

## **9. Appeals**

This was not addressed in the BMC Study, though many of the recommendations could reduce errors and increase litigant satisfaction. For a summary of CCE's 2016 recommendation, please see Appendix A.

We appreciate the dedication that this Committee has shown by finding funding for some of these improvements, including new FTEs for the OAH Resource Center and IT and consultant studies. We also appreciate that the agency cooperated with the study teams, hired dedicated Resource Center staff, and has expressed a commitment to further improvements. CCE continues to hear very positive feedback from practitioners about the Resource Center and excitement for its future growth and stability. We look urgently forward to OAH publishing a searchable database of final orders and to the agency sharing updates on the three-, six-, twelve-, and eighteen-month milestones laid out in the BMC Study (which include the recommendations from the Mondrian Consulting Rapid Technology Assessment). To alleviate some of the demands that the recommendations would place on an already stretched staff, OAH leadership and the Committee might consider external entities well-suited to tasks like best-practices research such as the National Center for State Courts.

OAH serves a vital role in ensuring that D.C. residents can fairly and quickly adjudicate problems with D.C. government agencies. CCE staff and board members would like to meet with you to discuss these issues in more detail, and to offer our assistance to this Committee and to our colleagues at OAH any time.

## APPENDIX A

### Summary of Recommendations

#### *Administrative Justice in the District of Columbia:*

#### *Recommendations to Improve D.C.'s Office of Administrative Hearings (2016)*

CCE recommends that OAH make various changes to its organizational and management structure to more closely resemble other central hearing panels and model legislation. We believe that these changes will enable OAH to operate more efficiently and effectively, while improving the delivery of hearing services and resolving management and morale issues. Many of the recommended changes below can be made by changing OAH's internal policies. Other changes would require amending OAH's enabling act.

**1) Jurisdiction:** OAH's jurisdiction over cases is currently conferred both by statute and by a wide range of Memoranda of Understanding ("MOUs"), essentially contracts, with a variety of DC executive agencies. The reliance on MOUs creates the impression, if not the absolute risk, that a contracting agency that disagrees with OAH's rulings or findings will terminate OAH's jurisdiction, and a perception that OAH's determinations may be influenced by that risk. We recommend that the existing jurisdiction under MOUs be converted to statutory authorization. While OAH should retain the power to enter into MOUs initially, any expanded jurisdiction should be codified within two years.

**2) Organizational Structure:** OAH's current management structure does not support efficient and effective operations and supervision of staff. The Chief ALJ is responsible for directly supervising 33 ALJs and other senior staff, while also carrying out myriad other duties. In part because performance standards have not been prepared until 2016, and employee evaluations have not been conducted since 2011, OAH staff lack clarity about their job roles and those of their colleagues. OAH's management structure should be revised by reinstating a Deputy Chief ALJ, who should manage the five Principal ALJs, who in turn would manage groups of other ALJs. These changes would allow more individualized and effective management of employees and work groups, and also allow the Chief ALJ to focus on overseeing the agency as a whole. OAH also should continue to clarify the responsibilities of each OAH staff member by ensuring job descriptions are clear and accurate and that employees are aware of the responsibilities of individual staff and departments as a whole.

**3) ALJ Selection, Evaluation, and Tenure:** ALJs currently do not have the security of career positions, but rather serve for an initial two-year term, followed by a six-year term with the possibility of reappointment. ALJ should have a longer term, or their positions should be converted by statute to career positions, subject to termination for “good cause” only. ALJs also have not been evaluated on any regular basis. All ALJs should be evaluated annually, including the Chief ALJ, using meaningful and measurable criteria.

**4) Improving Agency Culture:** Although improving agency culture has been a focus of OAH’s new administration, ALJ morale remains a significant challenge that impairs OAH operations. Given that a positive agency culture is essential for the agency to perform at its best, OAH should consult with an expert in organizational culture development to improve in this area. The Chief ALJ should continue efforts to establish policies and procedures that are fair to all, while striving to be transparent about proposed and adopted changes. The Chief ALJ should be evaluated annually by the Committee on Selection and Tenure of Administrative Law Judges (“COST”), with COST interviewing ALJs as part of this process. OAH leadership should regularly consult with ALJs and staff regarding the agency’s performance and seek ideas for improving OAH.

**5) COST and Advisory Committee:** OAH does not follow best practices recommended for central hearing panels in the management and support of its ALJs. While the Chief ALJ directly supervises the ALJs, the Chief cannot appoint, reappoint, or terminate ALJs, and has limited rights to discipline them. These 6 decisions instead are made by COST, whose members lack first-hand knowledge about OAH. While ALJs value COST for preserving judicial independence, it is questionable whether COST actually serves that function, and its role is out of step other central hearing panels across the country. OAH also has a separate Advisory Committee tasked with advising OAH and the Chief ALJ about larger policy concerns, but that Committee meets very infrequently and no longer is an effective support. To operate more efficiently and effectively, the Advisory Committee should be eliminated, and the role of COST changed to more closely resemble the other 31 central hearing panel jurisdictions and model legislation. Over the course of the next two years, many of COST’s responsibilities over selection, evaluation, and retention of ALJs should be transferred to the Chief ALJ. COST should retain jurisdiction to hear ALJ discipline and removal issues, and conduct an annual evaluation of the

Chief ALJ. All of the Advisory Committee's current functions also should be transferred to COST and the Advisory Committee should be dissolved. Implementing many of these changes will require amending OAH's enabling act, a process that may take as long as one or two years. In the interim, COST should amend its procedures to ensure that its members actively engage in the Commission's work.

**6) Case Assignment System:** Through January 2016, OAH's process for assigning cases resulted in uneven workloads for ALJs. Chief Judge Eugene Adams implemented a new system effective February 1, 2016, which groups all ALJs into assigned jurisdictional clusters and is aimed at improving fairness and transparency in the case assignment process. To ensure the integrity of the case assignment system, procedures for Principal Administrative Law Judge ("PALJ") case assignment should include random assignment within categories of cases. OAH should analyze the effectiveness of its new case assignment system over the coming months. OAH also should regularly evaluate the ALJs' workloads, particularly new jurisdictional assignments, to ensure cases are distributed fairly.

**7) Case Processing:** Litigants have been negatively affected by delays in the resolution of their cases due in part to inefficiencies in OAH's case processing system. Moreover, OAH's technology systems are not optimally supporting the agency's case management needs. To improve its case processing, OAH should ensure that caseloads are assigned equitably and reevaluate caseloads on a regular basis; meet recommended case processing deadlines by case type; and return to scheduling cases on an individual basis. Finally, OAH should utilize technology to improve case management by: (1) implementing a uniform case filing system; (2) making OAH records publicly accessible, and case files available online to litigants and agencies; (3) educating all OAH staff about technology systems; (4) increasing the use of telephone video conferencing; and (5) allowing fines to be paid by credit card online.

**8) Improving Litigant Experience:** Litigants using OAH's adjudicatory services face various challenges. Pro se litigants are unable to participate effectively and meaningfully in the hearing process. Litigants with limited English proficiency also struggle to use OAH's language access resources. Mediation, which can be particularly meaningful for unrepresented litigants, is underutilized. Gaps remain in the guidance and materials available through OAH's Resource Center for unrepresented litigants. Finally, OAH does not provide clear guidance on how to



submit feedback to the agency. Litigants, agencies, and counsel are confused about this process. To improve litigants' experience, OAH should partner with the DC legal community to increase the availability of advice and representation for unrepresented litigants at least as to more complex matters, and should focus on making the Resource Center, its website, and its materials more user-friendly and accessible. OAH should improve the process for scheduling interpreters and ensure compliance with the DC Language Access Act of 2004 with respect to written materials. ALJs can improve the experience for litigants by consistently notifying parties of the option to mediate their cases and using judicial "engaged neutrality" through more active ALJ participation in developing the facts and legal theories to ensure a more complete and fair record in all cases. Mediation can be encouraged further by developing a roster of volunteer mediators and ensuring that ALJs who opt to mediate are credited in the case management system for this important work. Finally, OAH should update its website to allow stakeholders to submit comments online, better advertise other ways to provide feedback, and adopt systems to review and respond to this feedback.

**9) Appeals:** OAH and the DC Court of Appeals do not have written procedures in place for the transmission of the Court's appellate opinions, both unpublished and unpublished, and OAH does not consistently track data related to appeals. The Clerk of Court for OAH should work with the Clerk of the DC Court of Appeals to establish such procedures. OAH should track OAH cases on appeal, particularly whether they are affirmed or overturned, by case type and ALJ, and report this data internally and in its annual report.

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Full report available here:

[http://www.courtexcellence.org/uploads/publications/OAH\\_Final\\_Report\\_20160908\\_1.pdf](http://www.courtexcellence.org/uploads/publications/OAH_Final_Report_20160908_1.pdf).