

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



January 31, 2008

The Honorable Adrian M. Fenty
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Fenty:

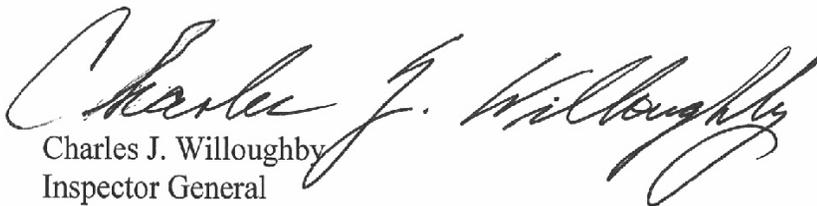
Enclosed please find a copy of a Management Alert Report (MAR-08-I-001) issued January 11, 2008, to the Office of Administrative Hearings (OAH.)

The MAR addresses safety and security deficiencies at OAH facilities and makes eight recommendations for corrective action. OAH's response to the MAR, dated January 25, 2008, is also enclosed.

The Office of the Inspector General is conducting an ongoing inspection of OAH and a full report of inspection will be completed later this year.

If you have questions, please contact Alvin Wright, Jr., Assistant Inspector General for Inspections and Evaluations, at (202) 727-2540.

Sincerely,



Charles J. Willoughby
Inspector General

CJW/zgh

Enclosures

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DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL

CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION
MANAGEMENT ALERT REPORT

OFFICE OF ADMINISTRATIVE HEARINGS

**SAFETY AND SECURITY DEFICIENCIES AT OAH
FACILITIES**

MAR 08 - I - 001

JANUARY 11, 2008

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



January 11, 2008

The Honorable Tyrone T. Butler
Chief Administrative Law Judge
Office of Administrative Hearings
825 North Capitol Street, N.E., Suite 4150
Washington, D.C. 20002-4210

Dear Judge Butler:

This is a Management Alert Report (MAR-08-I-001) to inform you that the District of Columbia (District) Office of the Inspector General (OIG) has determined that the Office of Administrative Hearings (OAH) needs to improve safety and security measures in place for Administrative Law Judges (ALJs), other OAH employees, and parties who have cases before OAH. This issue came to our attention during our ongoing inspection of OAH. The OIG provides these reports when we believe a matter requires the immediate attention of District government officials.

Background

OAH has adjudication responsibilities for 25 District agencies, boards, and commissions. OAH ALJs preside over formal administrative hearings and are responsible for the impartial supervision, administration, and execution of District laws and regulations. Multiple District agencies have cases before OAH, and cases may involve emotionally charged issues, such as unemployment benefits appeals, tax protests, Medicaid provider reimbursement appeals, fire and housing code violations, business licensing issues, rental housing and condominium conversion, enforcement of environmental protection rules, revocation of health-care licenses, housing evictions, and the issuance of fines. For example, in cases involving the Department of Employment Services, a litigant may be seeking unemployment benefits, or the agency may be denying the provision of benefits. Cases involving the Department of Human Services may address a litigant facing eviction from a homeless shelter. ALJs have the authority to issue subpoenas and notices, inform *pro se*¹ respondents about the litigation process, examine witnesses, evaluate and rule on requests for mitigation of fines, impose monetary sanctions for failure to comply with a lawful order, and suspend, revoke, or deny a license or permit.²

¹ *Pro se* is defined as the “appearance in courtroom proceedings by individuals who are unrepresented by attorneys.” See http://www.ajs.org/prose/pro_faqs.asp (last visited 12/11/07). Parties at OAH hearings are often *pro se* litigants who may not understand the administrative hearing process or may be unfamiliar with District law.

² See Administrative Law Judge job description.

The National Association of Hearing Officials³ writes:

Administrative hearing officials and participants at hearings are at increasing risk for harm. Government agencies should address the serious issues surrounding workplace violence and threats to individuals and property in administrative hearings. Agency adoption of written policies and implementation of training to reduce vulnerability of participants and property at hearings will accomplish the following objectives:

- Identify safety and security issues at administrative hearings.
- Establish safety and security goals for the agency.
- Prevent incidents of workplace violence from occurring.
- Provide authority and procedures for dealing with an incident when it occurs.
- Reduce the potential for agency liability.
- Contribute to the safety and integrity of the fair hearing process.

Observations

OAH occupies four suites located in three District government buildings:

- 825 North Capitol Street N.E., Suite 4150;
- 941 North Capitol Street N.E., Suite 9100;
- 441 4th Street N.W., Suite 540S; and
- 441 4th Street N.W., Suite 870N.

There is a security station in the lobby of each building and, typically, two to four armed security guards are present to ensure that visitors pass through a metal detector, and their belongings pass through a magnetometer. OAH office suites within the buildings are open to the public.

ALJs hold hearings throughout the work week in hearing rooms at each site.⁴ Some hearing rooms are small and ALJs, attorneys, litigants, and witnesses are in close proximity to one another (Attachment 1). Furthermore, hearing rooms are often located near ALJ offices, and some ALJ offices are also used as hearing rooms. Only one OAH hearing room has a secure, private entrance for ALJs (Attachment 2). In all other hearing rooms, ALJs must walk past litigants and attorneys involved in the cases they adjudicate when entering and exiting the room, and there is no bailiff or security presence during hearings.⁵

³ See <http://www.naho.org/safety.htm> (last visited 12/11/07).

⁴ OAH has 11 hearing rooms. There is one hearing room at 825 North Capitol Street, N.E.; two hearing rooms at 441 4th Street, N.W.; and eight hearing rooms at 941 North Capitol Street, N.E.

⁵ ALJs may request security for a hearing, and building management will post a uniformed officer inside or outside the hearing room.

In interviews with the OIG inspection team (team), several ALJs expressed safety concerns. They indicated a need for much greater physical distance from parties before, during, and after hearings; a secure and private entrance to hearing rooms; and increased security in office suites. Employees also provided information regarding security incidents that took place during FY 2007.

- On March 21, 2007, a litigant with a history of behaving erratically during hearings, and who frequently appears before OAH, entered an ALJ's office/hearing room at 941 North Capitol Street. The litigant did not knock or announce his presence and walked toward the ALJ. The ALJ ushered him out of the office and explained to the litigant that he could not enter offices at will. The litigant became agitated, began ranting, and exited through a side door. Interviewees speculated that this litigant also pushed his way past personnel at OAH's 825 North Capitol Street location, and walked into another ALJ's office at OAH's 941 North Capitol Street location.
- In September 2007, a litigant became unruly and lunged at an ALJ during a hearing. The litigant lunged so quickly that the ALJ was unable to reach the telephone in the hearing room to call security. The District agency attorney attending the hearing wanted to leave the hearing room to get security, but the ALJ did not want to be left alone with the litigant. While the District agency attorney remained in the hearing room, the ALJ went down the hallway to summon a nearby judge into the hearing room until the hearing could be closed. The ALJ believed calling security in this instance would not have been fast enough, as both the ALJ and the District agency attorney feared for their safety. The ALJ who assisted during the incident informed the presiding ALJ that a hearing can be closed immediately when a litigant becomes unruly, and the litigant can be escorted out of the building by security. Following the incident, management asked ALJs to inform building security when they have a hearing with this particular litigant. Management also asked ALJs to notify them if a similar incident occurred during any other hearing.
- On September 25, 2007, an attorney blockaded a hearing room entrance with two chairs to prohibit a District agency attorney from retrieving a witness from a waiting area. On October 1, 2007, OAH suspended the attorney from further participation in the case and suspended the attorney from practice before OAH for a period of 60 days beginning October 1, 2007. The attorney's return to practice before OAH is contingent upon his submission of a notarized affidavit of care by an authorized health care professional. Additionally, the matter was referred to the D.C. Office of Bar Counsel⁶ for appropriate action. ALJs were informed of the matter during an ALJ meeting on September 27, 2007, and copies of the interim and final orders were e-mailed to them.

⁶ "[T]he Office of Bar Counsel serves as the chief prosecutor for attorney disciplinary matters involving active or inactive attorneys who are members of the D.C. Bar."

See http://www.dcbbar.org/for_lawyers/ethics/discipline/office_of_bar_counsel/obcmmission.cfm (last visited 12/11/07).

The hearing room in the third incident described above did not have a telephone because it had been recently converted from an office to a hearing room to accommodate increased case volume from a new agency. After this incident occurred, OAH management equipped the hearing room with a telephone and a list of emergency numbers for building security (Attachment 3). The emergency numbers connect ALJs to building security, and guards have been instructed to immediately respond to their calls. Finally, legal assistants, who support administration of the OAH docket and calendar,⁷ were briefed on the situation and how to respond to security threats.

In order to gain perspective on OAH functioning and service delivery, the team sent a survey to agencies serviced by OAH. A respondent who routinely interacts with OAH expressed concern about safety and wrote, “[i]t is also important to have courtroom security since violence and safety problems have arisen in OAH courtrooms.”

The team requested information from OAH management regarding safety policies and procedures. OAH stated that 2 of the 11 hearing rooms are equipped with panic buttons⁸ that page 1 or 2 designated legal assistants (Attachment 4). These legal assistants have been instructed to go to the hearing room and assist ALJs when they are paged. If there is an emergency situation requiring building security or medical attention, the legal assistant will call the appropriate party if the judge has not already done so. However, in follow-up interviews, it was reported to the team that the panic button in the hearing room at 441 4th Street, N.W. is not working. Employees also informed the team that panic buttons are not used solely for emergencies. ALJs may use them if they need copies or assistance with exhibits. The OIG is concerned about this practice because legal assistants may not respond timely to an emergency panic button page on the assumption that the summons is for something other than an emergency.

Management also reported that OAH is in the process of finalizing an Emergency Response Plan (Plan) that covers security and other emergency situations. A draft of the Plan was provided to the team for review. It outlines OAH’s policies and procedures for emergency evacuation from facilities, procedures to account for employees after an emergency evacuation, and policies and procedures for the following safety incidents and issues:

- fires and fire prevention;
- reporting an emergency by telephone;
- the use and maintenance of fire extinguishers;
- bomb threats;
- the prevention of an accidental spill or release of chemicals/hazardous materials;
- medical emergencies; and
- how to handle a suspicious package.

⁷ See Docket Clerk job description.

⁸ The hearing rooms with panic buttons are located at 441 4th Street, N.W. and at 825 North Capitol Street, N.E.

The Plan also states that OAH will conduct safety inspections each quarter and issue a written report of findings to all concerned parties.

The Plan does not, however, address policies and procedures for ALJs, legal assistants, and other OAH employees to follow if a safety or security emergency occurs during a hearing, or if an unauthorized individual enters a hearing room or an office area. Moreover, the plan does not outline employee training requirements for handling security or other unusual incidents, require that incident reports are filed following security breaches and/or other safety incidents, or provide guidance on when to implement additional safety precautions. Without these specific details, the plan does not provide OAH employees with the information needed to ensure the safety of OAH hearing participants. Additionally, they do not have guidance on handling a litigant or other unauthorized individual who enters hearing and office areas without approval. Finally, the lack of a more detailed plan may increase the risk of District liability should hearing participants be injured. Given that OAH might not have new, centralized facilities with improved security until 2009,⁹ it is important that current safety and security deficiencies are addressed timely.

Recommendations

The conditions cited above jeopardize the safety of ALJs, OAH employees, and parties who have cases before OAH. Accordingly, the OIG recommends that you give high priority to the following actions:

1. test existing security equipment and report back to the OIG which equipment is operational, which equipment needs repair, and actions planned to address malfunctioning equipment;
2. test all existing security equipment weekly;
3. request a security analysis at each OAH location by the Protective Services Division of the Office of Property Management;
4. consider cost-effective security enhancements for all hearing rooms;
5. develop written policies and procedures that address current safety conditions in hearing and office areas, and establish emergency response protocols for employees in addition to or as part of the draft Emergency Response Plan;
6. ensure that all employees undergo training in safety and security matters, and periodically re-train employees as necessary;
7. develop incident reporting procedures to document, track, investigate, analyze, and make recommendations when emergencies or safety and security breaches occur; and
8. consider safety and security needs when constructing and/or remodeling hearing and office facilities.

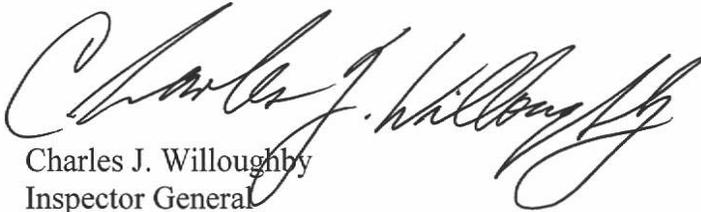
Please provide your comments on this MAR by January 25, 2008. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any

⁹ OAH is working with the Office of Property Management to obtain centralized hearing and office facilities at 441 4th Street, N.W. The team was informed in interviews that the new facilities will not be available until approximately 2009.

disagreement with the concerns and recommendations presented. Please distribute this MAR only to those who will be directly involved in preparing your response.

Should you have any questions or desire a conference prior to preparing your response, please contact Edward Farley, Deputy Assistant Inspector General for Inspections and Evaluations, at 202-727-9249.

Sincerely,



Charles J. Willoughby
Inspector General

CW/gh

cc: Daniel M. Tangherlini, City Administrator
The Honorable Phil Mendelson, Chairperson, Committee on Public Safety
and the Judiciary
The Honorable Carol Schwartz, Chairperson, Committee on Workforce Development and
Government Operations
Kelly Valentine, Director, Office of Risk Management

Attachment 1: OAH hearing room located at 441 4th Street N.W., Suite 870N. ALJ bench (i.e., desk) is in close proximity to where litigants and lawyers are seated.



Attachment 2: Private entrance for ALJs in hearing room located at 441 4th Street N.W., Suite 540S.



Attachment 3: Example of telephone with building security telephone numbers.



Attachment 4: Panic button installed in hearing room underneath ALJ bench located at 441 4th Street N.W., Suite 540S (This panic button is not operational).



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GOVERNMENT OF THE DISTRICT OF COLUMBIA
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Office of the Chief Administrative Law Judge



January 25, 2008

Charles J. Willoughby
Inspector General
717 14th Street, N.W.
Washington, D.C. 20005

RE: Response to January 11, 2008 Management Alert Report on Safety and Security Deficiencies at the Office of Administrative Hearings Facilities

Dear Mr. Willoughby:

This letter is in response to your Management Alert Report (MAR) dated January 11, 2008, regarding The Office of Inspector General's (OIG) evaluation of the safety and security of the D.C. Office of Administrative Hearings (OAH). We appreciate the efforts of your office to outline its concerns in this regard.

OAH takes most seriously the safety of its staff and persons appearing before this office. We believe that the concerns raised by the MAR could be addressed were OAH to have its own centralized facility within which it could exercise control with regard to public ingress and egress, as well as implement better courtroom security features, such as front and back courtroom exits. OAH continues to work closely with the EOM and Council in securing such a centralized facility, and progress is being made in this regard.

OAH currently resides in the multiple locations mentioned in your MAR, *i.e.*, Suites 540-South and 870-North at 441 4th Street; a portion of the 4th and 5th floors at 825 North Capitol Street; and a portion of the 9th floor at 941 North Capitol Street. The reason for OAH's multiple locations is that when OAH was established, the OAH Act required that all property and space associated with the administrative adjudication functions of agencies subject to the Act be transferred to OAH. *See generally* D.C. Official Code § 2-1831.02. However, in securing the space at these locations, OAH "inherited" those agencies' existing security measures, namely, measures that rely on the security personnel stationed in the lobby of each of the locations.

Each of OAH's offices are located in public spaces where any person can access the floor, although at 941 North Capitol and Suite 870-North we are able to utilize internal doors to attempt to separate general public traffic from the staff. For example, at 941 all persons appearing for a hearing have to walk to the back of the suite where hearing rooms and OAH personnel are located. A door separates the public waiting room from the rest of the OAH operations at that location.

As stated, OAH continues to work closely with the EOM and Council in securing a new centralized space for its administrative adjudication. As part of the planning discussions for this

825 North Capitol St., NE Suite 4150, Washington, DC 20002-4210 (202) 478-1421 (202) 442-4789 (FAX)

new space, comprehensive security measures have been discussed. For example, OAH has requested that each of the hearing rooms have a separate entrance for the judges and staff, apart from the public entrance. Also, it was requested during initial talks regarding centralized space that the office itself have a separate entrance for OAH personnel from the general population, perhaps through the use of separate elevator banks. These and other security issues are currently being reviewed by OPM as part of its finalization of the plans for OAH's centralized space.

With regard to our existing space, and as reflected in the attorney disciplinary matter referenced in the MAR, we continue to be immediately responsive to all security issues raised by our staff or the public. Whenever there is a request for security personnel, the OAH Clerk's office is at the ready to fulfill the request. Requests for security are not made often, as the vast majority of OAH cases are administrative and civil in nature, and do not give rise to the heightened security concerns associated with highly-charged civil or criminal matters addressed by the local and federal judiciary. However, if there is a need for such assistance, building security has been excellent in responding timely, whether that need is prearranged or an emergency situation.

Upon reviewing the MAR, OAH is taking the following additional security steps:

Hearing Room Located at 441 4th Street, 870-N

This room was set up to accommodate the increasing number of cases filed by the Department of Public Works (DPW), and DPW's scheduling requests with regard to inspector availability to appear at hearings. While OAH recognizes the concerns of OIG regarding the close proximity of the litigants to the judge and how this can be a potential safety situation, OAH cannot create separate entrances for staff and the public. OAH is considering the following actions:

- 1) Remove all hearings from 870N and redirect them to 540S. This will cause a significant backlog in hearing cases for DPW. DPW filed in FY07 over 16,000 cases and with greater responses from the public for hearings. We expect an increase in filings for FY08. The viability of this option may depend, in part, on how quickly OAH is placed in its new facility. Current estimates are the fall of 2009.
- 2) Work with OPM to request that it build a divider in the room between the litigants and the judge. OPM will have to obtain estimates for the cost of the construction. We note that OPM is unlikely to approve such construction in light of the on-going discussions on providing a centralized space for OAH.
- 3) Install panic buttons (see discussion below).

All Other OAH Hearing Rooms

OAH has two hearing rooms with operational panic buttons. The rooms are located at 825 North Capitol Street, NE, 5th Floor, and 441 4th Street, NW, 540S. The panic buttons are connected to a pager that is housed with a Legal Assistant in the lobby area. The buttons are located under the desks in the hearing rooms where the judge can inconspicuously press the button if assistance is needed. Both hearing rooms' panic buttons have been tested for operational use.

OAH received quotes to have panic buttons installed in the remaining nine hearing rooms (eight hearing rooms at 941/9100 and one at 441/870N). The cost associated to install panic buttons in the hearing rooms ranged from \$16,817.85 to \$21,695.18. Included in the quotes is training for OAH personnel and maintenance fees. This will require a reprogramming of funds to implement and it may take up to 90 days to complete, assuming such an expenditure is approved in light of the anticipated central space for OAH.

General Security Measures for OAH

OAH has contacted the Protective Services Division to schedule a meeting, and to 1) request a security analysis of OAH's existing operations, 2) request security and safety training to the staff of OAH, and 3) request, for each OAH location, a guard post where a security officer will be visible to staff as well as the public. Once a meeting has been convened, OAH will assess what additional funding may be required for these initiatives.

OAH will also draft security and safety procedures to incorporate in the OAH Emergency Response Plan, which will establish an emergency protocol for all staff. The Clerk of the Court is researching and contacting other courts to obtain best practices in security measures. The time for completion of this task is anticipated to be 90 to 120 days.

Regarding the MAR's recommendation of the development of procedures and policies in reporting incidents, we note that OAH's Policy Manual, in Section 1.18, contains procedures for reporting incidents that place harm to the staff and visitors of OAH. All incidents are to be reported to OAH's General Counsel where written reports are drafted detailing the events, which include any appropriate follow up and corrective action. To the extent OIG recommends additional procedures in this regard, we are happy to consider such implementation.

In addition, as discussed above, there have been discussions with OPM regarding security concerns for OAH personnel, customers, and visitors in new centralized space, and OPM has assured OAH that the security concerns will be addressed. The proposed date for OAH to move in its new location is the fall of 2009.

If you should have any questions, please contact me at (202) 478-1421.

Sincerely,



Tyrone C. Butler
Chief Administrative Law Judge

Charles J. Willoughby
January 25, 2008
Page 4 of 4

cc: Daniel M. Tangherlini, City Administrator
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Councilmember Carol Schwartz, Chair, Committee on Workforce Development and
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Kelly Valentine, Director of Risk Management
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