

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**OFFICE OF ADMINISTRATIVE
HEARINGS**

**REPORT OF INSPECTION
SEPTEMBER 2009**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



September 8, 2009

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

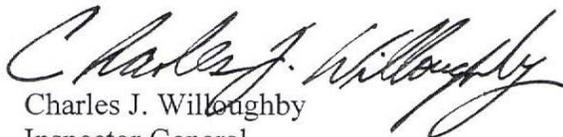
Dear Judge Butler:

Enclosed is our *Report of Inspection of the Office of Administrative Hearings (OAH) (OIG No. 09-I-0030FS)*. Comments from OAH on the inspection team's 18 findings and 24 recommendations are included in the report.

In addition, we have enclosed *Compliance Forms* on which to record and report to this Office any actions you take concerning each recommendation. These forms will assist you in tracking the completion of action(s) taken by your staff, and will assist this Office in its inspection follow-up activities. We track agency responses to all conditions cited, and compliance with recommendations made in our reports of inspection. We request that you and your staff establish response dates on the forms and advise us of those dates so we can enter them on our copies of the *Compliance Forms*. We know that in some instances, matters beyond your control such as budget decisions impact on trying to set specific deadlines. We request, however, that you assign *target dates* based on your knowledge and experience regarding particular issues. Please ensure that the *Compliance Forms* are returned to the OIG by the response date, and that reports of "Agency Action Taken" reflect actual completion, in whole or in part, of a recommended action rather than "planned" action.

We appreciate the cooperation shown by you and your employees during the inspection and look forward to your continued cooperation during the upcoming follow-up period. If you have questions or comments concerning this report or other matters related to the re-inspection, please contact me or Alvin Wright Jr., Assistant Inspector General for Inspection and Evaluations, at (202) 727-2540.

Sincerely,


Charles J. Willoughby
Inspector General

CJW/lm

Enclosure

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Letter to Judge Tyrone T. Butler

September 8, 2009

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Inspections and Evaluations Division
Mission Statement

The Inspections and Evaluations (I&E) Division of the Office of the Inspector General is dedicated to providing District of Columbia (D.C.) government decision makers with objective, thorough, and timely evaluations and recommendations that will assist them in achieving efficiency, effectiveness, and economy in operations and programs. I&E goals are to help ensure compliance with applicable laws, regulations, and policies, to identify accountability, recognize excellence, and promote continuous improvement in the delivery of services to D.C. residents and others who have a vested interest in the success of the city.

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ACRONYMS

ACRONYMS

ACRONYMS

ADR	Alternative Dispute Resolution
ALJ	Administrative Law Judge
ART	Agency Review Team
COST	Commission on Selection and Tenure
CS	Career Service
D.C.	District of Columbia
DCMR	District of Columbia Municipal Regulations
DCRA	Department of Consumer and Regulatory Affairs
DOES	Department of Employment Services
DOH	Department of Health
DPM	District Personnel Manual
DPW	Department of Public Works
DRES	Department of Real Estate Services
EEO	Equal Employment Opportunity
EOM	Executive Office of the Mayor
FOIA	Freedom of Information Act
FTE	Full-time Equivalent
FY	Fiscal Year
GAO	U.S. Government Accountability Office
HR	Human Resources
I&E	Inspections and Evaluations
IT	Information Technology
LA	Legal Assistant

ACRONYMS

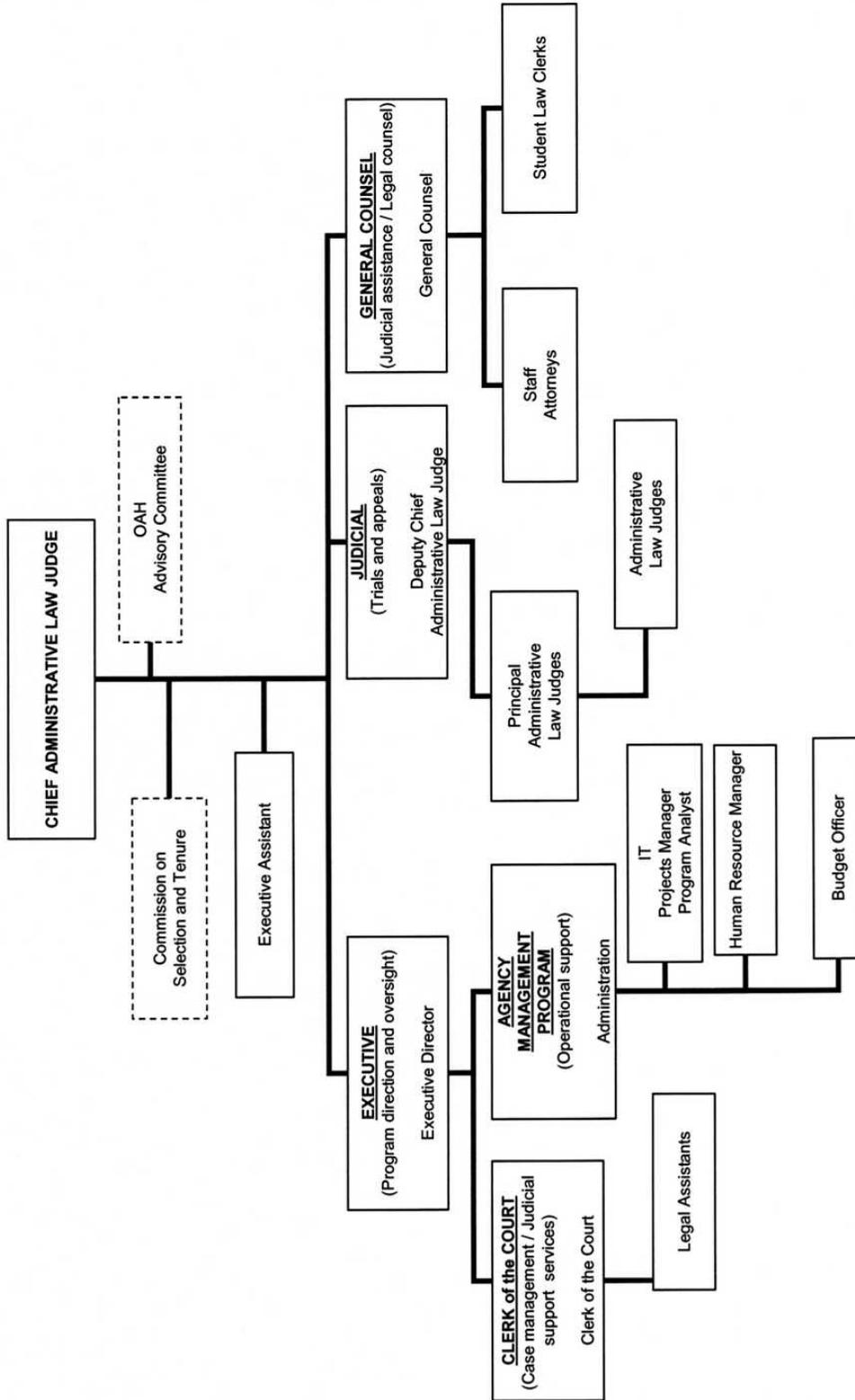
LSDBE	Local, Small, and Disadvantaged Business Enterprise
MAR	Management Alert Report
MSBA	Maryland State Bar Association
NOI	Notice of Infraction
NOV	Notice of Violation
OAG	Office of the Attorney General
OAH	Office of Administrative Hearings
OCFO	Office of the Chief Financial Officer
OCP	Office of Contracting and Procurement
OFRM	Office of Finance and Resource Management
OFT	Office of Finance and Treasury
OHR	Office of Human Rights
OIG	Office of the Inspector General
OIO	Office of Integrity and Oversight
OPM	Office of Property Management
PALJ	Principal Administrative Law Judge
PMP	Performance Management Program
PRS	Peer Review System
PS&J	Public Safety and Justice
ROI	Report of Inspection
SMART	Specific, Measurable, Attainable, Realistic, and Time-Related
SOAR	System of Accounting and Reporting

ORGANIZATION CHART

ORGANIZATION CHART

ORGANIZATION CHART

FY 2007
Office of Administrative Hearings
 Performance Based Budget Structure



Organizational Structure Provided by OAH on July 30, 2007.

ORGANIZATION CHART

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

OVERVIEW

The Inspections and Evaluations (I&E) Division of the Office of the Inspector General (OIG) conducted an inspection of the Office of Administrative Hearings (OAH) from August 2007 to April 2008.¹ OAH's stated mission is "to enhance the quality of life in the District of Columbia by providing citizens and government agencies with a fair, efficient, and effective system to manage and resolve administrative litigation arising under District of Columbia law."² OAH is an independent agency and consists of Judicial, General Counsel, and Executive branches.³ Administrative Law Judges (ALJs) within the Judicial Branch adjudicate cases involving citizen, employee, and business disputes against District agencies. ALJs hear cases from over 25 different agencies, boards, and commissions of the District of Columbia.

The inspection objectives were to evaluate the overall sufficiency and quality of OAH's policies, procedures, and internal controls regarding key operational and administrative areas, and to evaluate the quality of service delivery to customers. The inspection team assessed OAH's organizational structure; management; human resources (HR) policies and practices; court administration; and compliance with applicable laws, regulations, policies, and procedures.

The team conducted 70 interviews, observed work areas, reviewed files and documents, and issued anonymous Internet-based surveys to agency employees and stakeholders. A list of the report's 18 findings and 24 recommendations is included at Appendix 1. The team also issued a Management Alert Report (MAR 08-I-001 at Appendix 2) regarding safety and security deficiencies at OAH facilities.

Management Alert Report

Safety and security of ALJs, other employees, and hearing participants at risk. (Page 29) Employees reported three security incidents that occurred during fiscal year (FY) 2007: a litigant with a history of behaving erratically walked into ALJ offices unannounced; an unruly litigant lunged at an ALJ during a hearing; and a litigant blockaded a hearing room entrance with chairs to prohibit an attorney from retrieving a witness from the waiting area. Security measures such as panic buttons were located in certain hearing rooms, but they were used to summon legal assistants (LAs) to perform administrative duties rather than reserved for use during emergencies only. In addition, OAH's Emergency Response Plan did not contain policies and procedures for ALJs, LAs, and other OAH employees to follow if a safety or security emergency occurred during a hearing or if unauthorized individuals entered a hearing room or employee office.

¹ Members of the OAH inspection team were detailed to work on a priority OIG matter during the course of this inspection. Consequently, issuance of the OAH report of inspection (ROI) was delayed.

² See <http://oah.dc.gov/oah/cwp/view.a,3,q.593344.oahNav.%7C32999%7C33001%7C33003%7C.asp> (last visited Jan. 2, 2009).

³ FISCAL YEAR 2007 ANNUAL REPORT, "GOVERNMENT OF THE DISTRICT OF COLUMBIA, OFFICE OF ADMINISTRATIVE HEARINGS," at 4.

EXECUTIVE SUMMARY

Key Findings

As of April 2009, OAH had a reported backlog of approximately 1,600 Department of Public Works (DPW) abatement cases. (Page 35) OAH's internal Performance Measure Committee recommended that the standard for issuing a final order is either the timeframe required by law for a particular type of case or not more than 90 days after a hearing and close of the record, whichever is shorter. Between FY 2006 and 2009, OAH did not meet this standard for DPW abatement cases. In 2007, there was a backlog of 669 abatement cost motions⁴ and since then, it has more than doubled to nearly 1,600 according to DPW.

Employees did not adhere to purchase card and travel card policies and procedures. (Page 37) Employees with purchase card authority committed violations, employees modified travel arrangements for personal reasons without reimbursing the District for excess costs, and travel costs were not properly documented and reconciled.

Inadequate oversight of the check deposit process may result in revenue being unaccounted for and/or improperly allocated to District agencies. (Page 52) The team found that OAH does not properly record and reconcile check payment information; LAs do not properly screen checks to ensure that they contain data necessary to deposit checks; and inaccurate ticket payment information was entered in ProLaw.⁵ These factors limit OAH's ability to ensure that revenue is properly accounted for, and there have been instances when District citizens and agencies were adversely affected by inaccurate payment reports.

Occupation of limited office space within three District buildings creates inefficiencies and burdens litigants and neighboring agencies. (Page 57) OAH lacks central office space and the agency's existing office locations can no longer accommodate OAH's complement of employees. Insufficient office space impairs OAH's ability to hire additional employees, accommodate existing employees, schedule hearings timely, mediate cases, and establish a resource center that offers *pro bono* services to litigants.

Information Technology (IT) tools and support, office equipment are inadequate and hinder the processing of cases. (Page 61) The team found that ProLaw is frequently inoperative and does not capture and report metrics necessary to monitor court operations. In addition, IT equipment is not always in working condition, which delays case processing.

Agency Management

OAH's Executive Branch is led by an Executive Director and contains two divisions – the Clerk of the Court and the Agency Management Program. The Clerk of the Court Division manages OAH's caseload and supports the Judicial Program. A Clerk of Court manages the unit and oversees LAs who process case files, manage the day-to-day administration of the court's

⁴ DPW administers a sanitation enforcement program under which its inspectors issue notices of violation (NOVs) for noncompliance with the Civil Infractions Act of 1985. Examples of such violations include rodent harborage and illegal waste dumping. If DPW determines that the violation has not been sufficiently abated, the agency can issue an abatement cost motion to recover the agency's cost in remedying the violation.

⁵ OAH uses ProLaw as its case management software.

EXECUTIVE SUMMARY

caseload, and provide customer service to parties coming before the court. The Agency Management Program provides operational support and oversight for OAH's programs and activities. The Program consists of IT, HR, and budget personnel. The Executive Director plans, designs, and implements programs, projects, studies, and other work for these divisions.

The team found that:

- The Chief ALJ drafts and approves his own performance evaluations and pay adjustments.
- ALJ performance evaluations are not conducted in accordance with District Personnel Manual (DPM) regulations.
- Use of term appointments when hiring LAs contributes to high turnover rates within the Clerk of Courts Division.
- Standardized training for LAs is needed to improve case management efficiency.
- Employees report that senior managers are frequently absent and do not adhere to tour of duty requirements.
- Written policies and procedures for mediation have not been formalized.
- Equal Employment Opportunity (EEO) Counselors have not received adequate training.
- An OAH EEO Counselor may have violated an EEO regulation governing complainant confidentiality.

Recommendations

The OIG made 24 recommendations to OAH to improve the deficiencies noted, establish and implement internal controls, and increase operational efficiency. Many recommendations focused on developing written policies and procedures, expanding court administration procedures, improving employee training, addressing employee turnover rates, and strengthening managerial and fiscal oversight.

Compliance and Follow-Up

The OIG inspection process includes follow-up with inspected agencies on findings and recommendations. Compliance forms with findings and recommendations were sent to OAH along with this ROI. The I&E Division will coordinate with OAH on verifying compliance with recommendations in this report over an established time period. In some instances, follow-up inspection activities and additional reports may be required.

EXECUTIVE SUMMARY

INTRODUCTION

INTRODUCTION

INTRODUCTION

Background and Perspective

The Inspections and Evaluations (I&E) Division of the Office of the Inspector General (OIG) conducted an inspection of the Office of Administrative Hearings (OAH) from August 2007 to April 2008.⁶ The inspection objectives were to evaluate the sufficiency and quality of controls regarding key operational and administrative areas, and to evaluate the quality of service delivery to customers. OAH was established in 2003 as an independent administrative tribunal and its mission is “to enhance the quality of life in the District of Columbia by providing citizens and government agencies with a fair, efficient, and effective system to manage and resolve administrative litigation arising under District of Columbia law.”⁷ The agency hears administrative cases from over 25 agencies, boards, and commissions of the District of Columbia. Cases typically involve citizen, employee, and business disputes with District agencies.

OAH was established to improve the quality of administrative adjudication in the District, and to increase stakeholders’ confidence in a fair and impartial hearing process.⁸ Administrative Law Judges (ALJs) preside over administrative hearings and are responsible for the impartial administration and execution of District laws and regulations. Since its establishment in 2003, less than 1 percent of OAH’s cases have been appealed to the D.C. Court of Appeals and, of these cases, approximately 93 percent have been decided in a manner favorable to OAH.⁹ In fiscal year (FY) 2007, OAH’s budget was approximately \$7.3 million and there were 58.3 full-time equivalents (FTEs). OAH reported that 24,106 cases were filed, which represented a 19 percent increase over FY 2006 filings.

OAH is an independent agency and consists of Judicial, General Counsel, and Executive branches.¹⁰

- The Judicial Branch conducts administrative hearing proceedings. The branch employs 27 ALJs, 4 Principal Administrative Law Judges (PALJs), 1 Deputy Chief ALJ, and 1 Chief ALJ. PALJs assist in the distribution of cases, preside at hearings, and evaluate ALJ performance. The Deputy Chief ALJ manages the Judicial Program and reports to the Chief ALJ, who oversees budgetary, personnel, policy, and planning functions for OAH.
- The General Counsel Branch supports OAH’s judicial function by providing legal analysis, research, and drafts of final orders. The General Counsel, who reports to the Chief ALJ, oversees the program. There are four staff attorneys who research legal and

⁶ Members of the OAH inspection team were detailed to work on a priority OIG matter during the course of this inspection. Consequently, issuance of the OAH report of inspection (ROI) was delayed.

⁷ See <http://oah.dc.gov/oah/cwp/view.a,3,q.593344,oahNav,%7C32999%7C33001%7C33003%7C.asp> (last visited January 2, 2009).

⁸ Prior to the establishment of OAH, a District agency that issued civil infractions or heard appeals also held its own administrative hearings. Many stakeholders felt that this arrangement did not promote impartiality.

⁹ Letter from Tyrone Butler, Chief ALJ, to Peter J. Nickles, Attorney General (Mar. 14, 2008).

¹⁰ FISCAL YEAR 2007 ANNUAL REPORT, “GOVERNMENT OF THE DISTRICT OF COLUMBIA, OFFICE OF ADMINISTRATIVE HEARINGS,” at 4.

INTRODUCTION

policy issues, and draft orders, memoranda, opinions, and other documents applicable to cases before OAH.

- The Executive Branch consists of the Clerk of Court Division and the Agency Management Program. The Clerk of Court Division manages OAH's caseload and supports the judicial program. A Clerk of Court oversees legal assistants (LAs) who manage the day-to-day administration of the court's caseload and provide customer service to parties coming before the court. The Agency Management Program provides operational support and oversight for OAH programs and activities. The Program consists of Information Technology (IT), Human Resources (HR), and budget personnel. The Executive Director oversees, plans, designs, and implements programs, projects, studies, and other work for the Executive Branch.

Scope and Methodology

OIG inspections comply with standards established by the Council of Inspectors General on Integrity and Efficiency, and pay particular attention to the quality of internal control.¹¹ The inspection team (team) evaluated the overall sufficiency and quality of OAH's policies, procedures, and internal controls regarding key operational and administrative areas. In particular, the team assessed compliance with applicable laws, regulations, and policies; management and application of HR policies; court administration; and the quality of service delivery to customers.

The team conducted 70 interviews, observed work processes, reviewed case files, and issued anonymous Internet-based surveys to agency employees and stakeholders. The team reviewed OAH's internal reports, policies, and procedures; District of Columbia Municipal Regulations (DCMR); the District Personnel Manual (DPM); and applicable best practices. OAH employees and District stakeholders were cooperative and responsive. A list of the report's 18 findings and 24 recommendations is included at Appendix 1. The team also issued a Management Alert Report (MAR) regarding safety and security deficiencies at OAH facilities. A summary of the MAR and OAH's response are included in this Report of Inspection (ROI). A copy of the MAR and OAH's response are located at Appendix 2 and at oig.dc.gov.

OAH reviewed the draft of this report prior to publication, and its comments follow each OIG recommendation. **Note:** The OIG does not correct an agency's grammatical or spelling errors, but does format an agency's responses in order to maintain readability of OIG reports. Such formatting is limited to font size, type, and color, with the following exception: if an agency bolds or underlines text within its response, the OIG preserves these elements of format. In one instance, however, the OIG redacted information pertaining to a personnel matter that OAH included in one of its responses.

¹¹ "Internal control" is synonymous with "management control" and is defined by the U.S. Government Accountability Office as comprising "the plans, methods, and procedures used to meet missions, goals, and objectives and, in doing so, supports performance-based management. Internal control also serves as the first line of defense in safeguarding assets and preventing and detecting errors and fraud." STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT, Introduction at 4 (Nov. 1999).

INTRODUCTION

Compliance and Follow-Up

The OIG inspection process includes follow-up with inspected agencies on findings and recommendations. Compliance forms listing findings and recommendations were sent to OAH along with this ROI. The I&E Division will coordinate with OAH on verifying compliance with recommendations in this report over an established period. In some instances, follow-up inspection activities and additional reports may be required.

INTRODUCTION

**Findings and
Recommendations:**

**EMPLOYEE AND STAKEHOLDER
SURVEYS**

Survey Methodology

In September 2007, the team distributed an anonymous, Internet-based survey to OAH employees. The survey solicited employees' opinions about agency operations, management, and their overall level of job satisfaction. Likewise, in October 2007, the team distributed an anonymous "OAH Stakeholder Survey" to District agencies and commissions that fall under OAH's jurisdiction. Individuals who interact with OAH were asked their opinions about the administrative hearing process, OAH functioning, and the quality of service OAH provides. Both surveys consisted of multiple choice and open-ended questions that allowed respondents to provide written comments. Seventy-one surveys were distributed to OAH employees; the OIG received 43 completed surveys. Forty-seven stakeholders received surveys; 16 provided completed surveys.

The results of these surveys appear in Table 1 and Table 2 below. Summaries of the responses to open-ended questions are included after each table.¹²

¹² Employees responded to closed-ended statements by selecting from a Likert scale of Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree, and Unable to Comment. A field entitled "Additional Comments" was also included so that respondents could supplement a multiple choice response with additional information as needed. In Tables 1 and 2, the Agree column represents the combined responses for the Agree and Strongly Agree answers; the Disagree column represents the combined responses for the Disagree and Strongly Disagree answers. Both tables list the percent and frequency of each Agree, Neutral, and Disagree response, as well as the frequency of Unable to Rate responses and those who did not respond (in parentheses).

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

Table 1: Office of Administrative Hearings Employee Survey Results¹³

Statement	Agree	Neutral	Disagree	Unable to Rate	Did Not Respond
Organization					
3. I have a clear understanding of OAH's strategic goals.	33 71.7%	3 6.5%	10 21.7%	(6)	(2)
4. I understand and agree with the organizational structure of OAH.	31 63.3%	5 10.2%	13 26.5%	(3)	(2)
5. OAH's organizational structure supports its mission.	26 52%	12 24%	12 24%	(2)	(2)
6. OAH's facilities are satisfactory.	4 7.8%	5 9.8%	42 82.4%	(1)	(2)
7. My workspace is adequate and conducive to high productivity.	6 11.8	6 11.8	39 76.5%	(1)	(2)
Management					
8. I think management is responsive to my needs.	30 63.8%	7 14.9%	10 21.3%	(3)	(4)
9. The reporting structure allows me to effectively communicate with management.	35 72.9%	4 8.3%	9 18.8%	(2)	(4)
10. Lines of authority and responsibility are clearly defined.	27 56.25	8 16.66%	13 27.1%	(2)	(4)
11. Management keeps me adequately informed about issues that affect my job functions.	25 53.2%	8 17.0%	14 29.8%	(3)	(4)
12. Management has clearly defined goals and priorities for my work.	29 51.4%	8 21.6%	10 27.0%	(3)	(4)
13. Management provides useful and constructive feedback when reviewing my work.	30 63.8%	12 25.5%	5 10.6%	(3)	(4)
14. Management plays an active role in my professional development and advancement.	25 52.1%	9 18.8%	14 29.2%	(2)	(4)
15. I can disagree with management without fear of retribution.	30 61.2%	8 16.3%	11 22.4%	(1)	(4)
16. There are vacancy announcements for all open positions.	11 36.7%	6 20.0%	13 43.3%	(20)	(4)
Work Environment/Job Satisfaction					
17. High ethical standards are maintained throughout OAH.	32 69.6%	6 13.0%	8 17.4%	(2)	(6)

¹³ Percentages contained in the OAH Employee and Stakeholder surveys may not equal exactly 100 percent due to rounding. Survey items one and two requested the employee's work location and division.

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

Statement	Agree	Neutral	Disagree	Unable to Rate	Did Not Respond
18. Favoritism is not an issue at OAH.	23 50%	6 13.0%	17 37%	(2)	(6)
19. I receive recognition when my performance exceeds management's expectations.	21 50%	9 21.4%	12 28.6%	(6)	(6)
20. The salary and benefits I receive are comparable to other independent administrative tribunals.	8 20%	4 10%	28 70%	(8)	(6)
Communication					
21. OAH has effective communication between and among all levels of personnel.	15 34.1%	5 11.4%	24 54.5%	(2)	(8)
22. I am satisfied with the information I receive from management regarding what is going on in my division.	24 55.8%	9 20.9%	10 23.3%	(3)	(8)
23. I am satisfied with the information I receive from management regarding what is going on in OAH.	21 47.7%	9 20.5%	14 31.8%	(2)	(8)
24. OAH has done an adequate job of educating the public about its mission and purpose.	18 45%	7 17.5%	15 37.5%	(6)	(8)
25. OAH has done an adequate job of educating District agencies about its mission and purpose.	17 50%	3 8.8%	14 41.2%	(12)	(8)
Policies and Procedures					
26. There are written policies and procedures to cover all aspects of my duties and responsibilities.	21 51.2%	5 12.2%	15 36.6%	(4)	(9)
27. Decisions affecting employees are made according to established policies and procedures.	17 47.2%	7 19.4%	12 33.3%	(9)	(9)
28. All employees adhere to current procedures for reporting time and attendance.	18 52.9%	5 14.7%	11 32.4%	(11)	(9)
29. Absenteeism is not a problem at OAH.	15 42.9%	8 22.9%	12 34.3%	(10)	(9)
Duties and Responsibilities					
30. My job description adequately reflects what I do on a daily basis.	27 69.2%	9 23.1%	3 7.7%	(6)	(9)

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

Statement	Agree	Neutral	Disagree	Unable to Rate	Did Not Respond
31. I am given adequate authority to do my job.	36 81.8%	1 2.3%	7 15.9%	(1)	(9)
32. I am allowed to make decisions that should be made at my level in OAH without undue influence.	33 73.3%	3 6.7%	9 20%	(0)	(9)
33. The amount of work I am asked to do is reasonable.	33 73.3%	4 8.9%	8 17.8%	(0)	(9)
34. The time frames established for most assignments are reasonable.	37 86.0	1 2.3	5 11.6	(2)	(9)
35. Assignments are fairly distributed and are manageable.	23 56.1%	7 17.1%	11 26.8%	(4)	(9)
36. I have the tools and resources I need to do my job well.	18 40%	5 11.1%	22 48.9%	(0)	(9)
Work Standards and Performance Evaluations					
37. There are written policies and procedures in place that outline how performance evaluations are carried out.	23 57.5%	4 10%	13 32.5%	(5)	(9)
38. I understand how I am evaluated.	25 58.1%	5 11.6%	13 30.2%	(2)	(9)
39. There are written work standards and performance measures in place for my job duties.	24 63.2%	3 7.9%	11 28.9%	(7)	(9)
40. I receive an annual performance evaluation from my supervisor.	29 81.0%	1 3.0%	6 17.0%	(9)	(9)
41. OAH performance evaluations are effective in promoting quality work.	17 46%	11 29.7%	9 24.3%	(8)	(9)
42. OAH performance evaluations are fair.	20 60.6%	5 15.2%	8 24.2%	(12)	(9)
Training					
43. There are training opportunities available to support my professional development.	32 74.4%	4 9.3%	7 16.3%	(2)	(9)
44. The training I receive is relevant to my job.	33 80.5%	5 12.2%	3 7.3%	(4)	(9)
45. The training I receive is effective.	31 77.5%	6 15%	3 7.5%	(5)	(9)
Information Technology					
46. ProLaw adequately manages cases.	8 22.2%	7 19.4%	21 58.3%	(9)	(9)

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

Statement	Agree	Neutral	Disagree	Unable to Rate	Did Not Respond
47. ProLaw adequately captures and reports information required to monitor court operations.	7 20%	5 14.3%	23 65.7%	(10)	(9)
48. I have received adequate training on how to use all of OAH's data systems.	7 19.4%	8 22.2%	21 58.3%	(9)	(9)
49. I have the IT tools I need to carry out my job duties.	22 50%	7 15.9%	15 34.1%	(1)	(9)

Key Survey Findings

The team considers the following survey items to be of particular interest:

- Survey statement 6 OAH's facilities are satisfactory. **(82.4 percent Disagree)**
- Survey statement 7 My workspace is adequate and conducive to high productivity. **(76.5 percent Disagree)**
- Survey statement 20 The salary and benefits I receive are comparable to other independent administrative tribunals. **(70.0 percent Disagree)**
- Survey statement 21 OAH has effective communication between and among all levels of personnel. **(54.5 percent Disagree)**
- Survey statement 46 ProLaw adequately manages cases. **(58.3 percent Disagree)**
- Survey statement 47 ProLaw adequately captures and reports information required to monitor court operations. **(65.7 percent Disagree)**
- Survey statement 48 I have received adequate training on how to use all of OAH's data systems. **(58.3 percent Disagree)**

Open-Ended Questions

50. What is done well at OAH?

Employees stated that OAH's central panel system¹⁴ is superior to other administrative court models and fosters a high level of judicial independence and impartial due process. OAH staff is committed to helping litigants and ensuring that customers receive fair hearings and well-

¹⁴ Prior to OAH's formation, District agencies conducted administrative hearings internally. In order to prevent the appearance of biased decision making, the Mayor centralized administrative hearing functions under a sole agency, OAH. This structure is referred to as a central panel structure because a single, independent District agency adjudicates cases for multiple District agencies.

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

written final orders. There is a high sense of collegiality among the ALJs and OAH's working relationships with various District agencies have improved.

Respondents also stated that in spite of inadequate resources and understaffing, employees work well as a team and the staff makes a "valiant" attempt to process and issue orders in a timely manner. OAH manages to schedule and conduct a large number of hearings in inadequate hearing space, and LAs process thousands of cases with inadequate staffing.

51. What is not done well at OAH?

Respondents identified three areas that do not function well: the IT unit, Clerk of Court Division, and senior management.

IT Unit: Respondents reported a need for additional IT staff and improved IT support. They also indicated that ProLaw does not meet internal and external reporting requirements and needs to be replaced.

Clerk of Court Division: Employees reported that the Clerk of Court Division is understaffed and LAs are not properly trained on ProLaw. As a result, case processing is sometimes delayed and reports are not always completed timely.

Senior Management:¹⁵ Employees reported that OAH senior managers have not implemented policies and procedures for some office operations. This deficiency reduces transparency and gives an appearance of arbitrariness in management decisions. Employees cited the PALJ selection and retention process, the allocation of office space, and the approval of travel and training opportunities as areas lacking adequate guidelines. Employees also stated that management is not responsive to their concerns, and staff meetings should be held more often to ensure that employees are knowledgeable of issues affecting the agency.

52. What would you like to see improved at OAH?

A majority of survey respondents replied that ALJs' and LAs' compensation levels need to be addressed. ALJs are not paid in accordance with salary provisions set forth in the OAH Establishment Act,¹⁶ and LAs are compensated below fair market rates.

Survey respondents also noted that senior management does not provide adequate oversight of the office and questioned why management has not formalized policies for performance management and mediation.

¹⁵ When responding to questions regarding OAH senior management, the team observed that responses to open-ended survey questions were not as favorable as responses to multiple choice statements.

¹⁶ The OAH Establishment Act (codified at Title 2, Chapter 18A of the D.C. Code) establishes the Office of Administrative Hearings as an independent agency within the executive branch of the District of Columbia government. The Act provides that ALJs receive "a pay scale and retention allowances equivalent to those that are available to Legal Service ... attorneys..." See D.C. Code § 2-1831.05(a)(11)(2007). On May 28, 2008, the Committee on Public Safety and the Judiciary added \$1,035,913 to OAH's personal services budget so that ALJs could be paid at the midpoint of the Legal Services scale.

Lastly, survey respondents stated that efficiency at OAH would improve if managers periodically reviewed and updated OAH work processes, and if the agency were located within a single, central hearing space. One employee wrote that “[a] new, centralized space with adequate office and hearing space would do wonders for office efficiency [and] morale....”

53. Do you have any recommendations that will improve OAH’s efficiency and effectiveness?

Respondents indicated a need for routine training, additional office space or a centralized location, a new case management system, and transparency in decision-making. They also cited a need for additional LAs, training, implementation of office policies and procedures, and the ability for judges to hear cases from all jurisdictions.¹⁷

54. Identify any private, District government, and federal agencies that you believe are not fully cooperative with OAH and explain why you believe this is so.

Most respondents stated that they were not aware of any uncooperative entities. However, some respondents expressed frustration with the Mayor and the D.C. Council for not addressing ongoing staffing needs, correcting ALJ salaries so that they comply with the OAH Establishment Act, or acquiring a centralized OAH office; in addition, ALJs opposed reducing ALJ reappointment terms from 10 years to 6 years.

55. Did you receive any instruction or coaching on how to respond to or address a particular question or topic of this inspection?

Four respondents replied “yes” but did not state the type of instruction they received.

56. Are you aware of any fraud, waste, abuse, favoritism, or other illegalities in any other area of OAH? If so, please explain.

The majority of respondents stated that they were not aware of any violations. Other respondents stated that employees are held to different levels of accountability, time and attendance abuse occurs, some employees receive preferential treatment, and OAH purchase and travel cards are abused.

57. Please provide any other information that you believe may be relevant to our inspection or that you believe we should consider.

Most respondents did not provide additional information; however, several employees identified management, the Clerk of Court Division, training, absenteeism, and staffing levels as areas to evaluate.

¹⁷ Within the context of this report and the functions of the OAH, the term “jurisdiction” connotes a District agency for which the OAH adjudicates cases and is not a reference to another state or local municipality.

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

Table 2: Office of Administrative Hearings Stakeholder Survey Results¹⁸

Statement	Agree	Neutral	Disagree	Unable to Rate	Did Not Answer
General Information					
4. OAH is critical to my agency's mission.	Yes: 19 82.6%		No: 4 17.4%	(0)	(0)
Communication					
5. There is clear communication between my office and OAH.	15 75%	3 15%	2 10%	(1)	(2)
6. OAH is responsive to my questions and concerns.	14 70%	4 20%	2 10%	(1)	(2)
7. The employees I interact with are knowledgeable and helpful.	16 80.0%	3 15.0%	1 5.0%	(1)	(2)
8. The OAH employees I interact with are courteous and professional.	18 90.0%	2 10.0%	0 0%	(1)	(2)
9. I have contacted Administrative Law Judges and discussed questions and concerns regarding pending cases.	Yes: 4 19.0%		No: 17 81.0%		(2)
10. Court forms developed by OAH are easily understandable and readily available.	10 66.7%	3 20.0%	2 13.3%	(6)	(2)
Community Outreach					
11. OAH does a good job of informing the public about its adjudicatory process.	4 40%	4 40%	2 20%	(9)	(4)
12. OAH does a good job of informing my agency of changes in laws and regulations.	5 35.7%	5 35.7%	4 28.6%	(5)	(4)
13. The OAH website is easy to use, well-organized, and contains helpful information.	2 22.2%	7 77.8%	0 0%	(10)	(4)
OAH Performance					
14. OAH schedules hearings in a timely manner.	7 41.2%	3 17.6%	7 41.2%	(2)	(4)
15. OAH notifies parties of their upcoming hearing in a timely manner.	11 61.1%	2 11.1%	5 27.7%	(1)	(4)

¹⁸ Survey items one, two, and three solicited the respondent's agency, position, and interaction with OAH.

OAH EMPLOYEE AND STAKEHOLDER SURVEYS

Statement	Agree	Neutral	Disagree	Unable to Rate	Did Not Answer
16. OAH issues final orders that are clearly written and well-reasoned.	8 44.4%	2 11.1%	8 44.4%	(1)	(4)
17. OAH issues final orders in a timely manner.	5 29.4%	6 35.3%	6 35.3%	(2)	(4)
18. When requested, OAH provides my agency with accurate reports in a timely manner.	6 37.5%	3 18.8%	7 43.8%	(3)	(4)

Open-Ended Questions

19. Please describe how the transfer of funding, office space, and full-time employees impacted your agency when OAH assumed responsibility for conducting administrative hearings.¹⁹

Agency comments varied regarding the impact that OAH’s formation had on agency operations. Some employees replied that there was no impact, while others stated that displaced administrative hearing employees had to find other positions within the agency or retire. Some stakeholders also commented that although funding and FTEs were transferred from their agency to OAH, OAH did not assume all of the agency’s administrative hearing functions as required by the OAH Establishment Act. As a result, the agency lost funding but had to continue performing certain administrative hearing responsibilities that the agency believed fell within OAH’s purview.

20. What is done well at OAH?

Overall, respondents felt that the administrative hearing process is managed well and staff members are very helpful. Many respondents stated that administrative hearings are conducted in a professional manner, and OAH management is responsive to their concerns.

21. What is not done well at OAH? How has this impacted your agency?

Several stakeholders wrote that the Clerk of Court Division is not efficient because LAs do not fully understand how to carry out their job responsibilities. This results in mismanaged cases and the erroneous dismissal of tickets. Respondents commented that case filings are repeatedly lost, payments are not deposited quickly, hearings are not scheduled timely, and decisions are not issued promptly. One respondent wrote, “Notice of a hearing date is not sent until 5 months, on average, after the hearing request, but only a few weeks prior to the actual hearing. This results in continuance requests from respondents and from [agency employees] who already have approved leave.” Another respondent commented that when hearings regarding litigants’ eligibility for Medicaid benefits are not scheduled timely, there is the

¹⁹ D.C. Code §§ 2-1831(c)(3) and (4) required all funding, property, and FTE position authority associated with the administrative adjudication functions of the agencies to which the OAH Establishment Act applied to be transferred to OAH.

potential for waste. Because Medicaid benefits cannot be discontinued while the OAH hearing is pending, ineligible litigants continue receiving benefits to which they are not entitled.

Several respondents commented that the administrative hearing process is rigid, which presents a hardship for unrepresented (e.g., *pro se*) claimants who are unfamiliar with the various forms and motions required by OAH. Lastly, access to public files is limited, which makes it hard to track the outcome of cases and judgments. This affects an agency's ability to determine the success and cost/benefit of enforcement actions.

22. What is your opinion of OAH locations and facilities?

Respondents had varied opinions. Most stakeholders stated that OAH facilities are satisfactory, or they had no comment. The remaining stakeholders reported that OAH needs a central hearing space that is accessible by public transportation and has a sufficient number of hearing rooms so that cases can be scheduled in a timely manner. Additional comments included adding witness waiting rooms and conference rooms, and improving security within hearing rooms.

23. Do you have any recommendations that might improve OAH's efficiency and effectiveness?

Responses to this question varied and included suggestions such as:

- posting administrative hearing forms on OAH's website so that they are more accessible to the public;
- hiring qualified LAs;
- improving ProLaw so that cases can be tracked accurately; and
- establishing timeframes for issuing final orders.

24. Are there additional stakeholders who should participate in this survey on OAH functioning? Please provide names, e-mail addresses, and agency affiliations when possible.

Some survey respondents identified additional stakeholders, and the team either requested that the stakeholders complete the online survey or called them to obtain their opinions about OAH operations.

25. Are there any other issues or concerns you would like addressed during this inspection of OAH?

Some respondents expressed concern with the quality of final orders and the amount of time it takes to render decisions for cases that involve small fines. Respondents also stated that frequently, final orders have careless mistakes in them, which shows a lack of professionalism. In addition, one stakeholder stated, "OAH's interpretation of due process requirements and the increasing complexity of proceedings is often disproportionate to the size of the fines involved and require an excessive amount of agency resources to prosecute these matters. The OAH [Establishment Act] needs to be amended to create a less cumbersome track for handling these cases...."

26. Are you aware of any fraud, waste, abuse, favoritism, or other illegalities within OAH?

Respondents did not report any issues of fraud, waste, or abuse that prompted additional review by the OIG.

**Findings and
Recommendations:**

Summary of Management Alert Report

MANAGEMENT ALERT REPORT

MANAGEMENT ALERT REPORT

1. Safety and security of ALJs, other OAH employees, and hearing participants at risk.

The team found safety and security deficiencies at OAH facilities. In interviews with the team, several ALJs indicated a need for 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 three security incidents that took place during FY 2007. In March 2007, a litigant with a history of behaving erratically during hearings entered an ALJ's office/hearing room at 941 North Capitol St., N.E. (941) without authorization. In September 2007, two additional incidents occurred. One involved an unruly litigant lunging at an ALJ during a hearing and, in the other incident, an attorney disrupted hearing proceedings by blockading the hearing room entrance with two chairs to prohibit a District agency attorney from retrieving a witness from the waiting area.

The team found that 2 of OAH's 11 hearing rooms are equipped with panic buttons²⁰ for ALJs to use in the event of an emergency. The panic buttons page one or two designated LAs who have been instructed to go to the hearing room and assist ALJs. However, the team learned that the panic button in the 441 4th St., N.W. (441) hearing room did not work and ALJs have used panic buttons for non-emergency requests.

OAH management provided the team with a draft of its Emergency Response Plan (Plan), which contains protocols for emergency evacuation from facilities, procedures to account for employees after an emergency evacuation, and procedures for responding to safety incidents and issues. The team observed that the Plan does not adequately address policies and procedures for ALJs, LAs, and other OAH employees to follow when a safety or security emergency occurs during a hearing, or when an unauthorized individual enters a hearing room or an office area. In addition, the Plan does not define an unusual or major incident, nor does it establish a standardized protocol for reporting and tracking such incidents. The response does note, however, that OAH is researching this issue and will incorporate additional emergency protocol procedures into the Plan within 90-120 days.

The team issued a MAR to OAH that contained eight recommendations for improving hearing room safety and security measures. See Appendix 2 for the MAR and OAH's response. OAH replied that it would try to improve safety and security conditions by working with the Executive Office of the Mayor (EOM) to secure a centralized facility that affords OAH more autonomy over security matters. OAH also requested that the D.C. Office of Property Management's (OPM)²¹ Protective Services Division conduct a security analysis of existing operations, provide security training to OAH staff, and post a security officer at each OAH location.

OAH also replied that addressing the close proximity of hearing participants at the 441 hearing rooms and installing panic buttons in the 441 and 825 North Capitol St., N.E. office (825) locations were unlikely. Budgetary constraints and existing plans for the agency to relocate to a new facility in FY 2009 were already underway, thereby reducing the chance of

²⁰ The hearing rooms with panic buttons are located at 441 4th St., N.W. and 825 North Capitol St., N.E.

²¹ Effective August 1, 2009, OPM was renamed the District Department of Real Estate Services (DRES).

MANAGEMENT ALERT REPORT

creating separate hearing room entrances for ALJs and increasing the physical distance between ALJs and litigants.

New Recommendations:

- (1) That the Chief ALJ update the Plan to include policies and procedures that address what to do when a safety or security emergency occurs during a hearing and when an unauthorized individual enters a hearing room or an office area.

Agree _____ **X** _____ Disagree _____

OAH's Response, as Received:

OAH Comments Overview: OAH appreciates the opportunity to comment upon the findings and recommendations in the Report. Our responses to the specific findings and recommendations are included below as instructed. Initially, however, we wish to make some general observations that will help place both the Report and our responses in context.

In challenging circumstances (including, as the Report notes, inadequate office space and insufficient numbers of the staff), the men and women of OAH provide due process and fairness for the citizens and the Government of the District of Columbia on a daily basis. We listen to the concerns of our stakeholders, and strive to implement changes based on their concerns, consistent with our obligation to administer justice fairly and in accordance with the law. Some of these accomplishments include:

- *Expanding our jurisdiction into many new areas at the request of government officials. These areas have included child support enforcement, firearms licensing, Food Stamps intentional program violations and special education vendor disputes, among others.*
- *Implementing oral hearing requests and simplified hearing notices in DHS cases, at the request of, and in cooperation with, legal services advocates.*
- *Public outreach to citizens and government agencies alike, including the Access to Justice Commission, DC Bar educational programs, and numerous task forces composed of public and private representatives interested in our various jurisdictional areas.*

We are proud of these and many other initiatives that have helped to improve the administration of justice for everyone in our City.

As the Report notes, the OIG personnel assigned to this project were detailed to work on a priority OIG matter during the course of their work on this project, which delayed issuance of the Report. Because most of the investigatory work occurred during 2007, most of the information contained in the Report dates from 2007 or earlier. Understandably, then, many of the findings in the Report do not reflect current operations at OAH. Some of the issues identified in the Report have been addressed, and improvements have been made. Regrettably, some problems (including lack of adequate space and insufficient numbers of support staff) remain. In

MANAGEMENT ALERT REPORT

the responses that follow, we will endeavor to point out improvements that have been made since the major investigative work occurred in the hope of presenting an accurate, and current, view of OAH and its operations.

In some instances, the Report refers to the opinions of particular individuals, either employed by OAH or outside the agency, usually without identifying those individuals. (We imply no criticism of the decision not to identify the individuals, as we understand that the inspectors have promised confidentiality to persons whom they interviewed. We do note, however, that it can be difficult to respond to general statements attributed to unidentified persons.) Unfortunately, it appears that some of the individuals whose opinions are mentioned in the Report either did not know all the facts when they expressed those opinions or, if they did know all the facts, intentionally attempted to mislead the investigators. The validity of those opinions, therefore, must be evaluated in that light. In our responses, we will endeavor to correct factual errors or omissions, once again in the hope of presenting an accurate view of OAH's operations.

We appreciate the efforts and consummate professionalism of all those persons at the IG's office who contributed to this Report, and hope for a constructive dialogue on the issues that have been identified. We present our specific responses in that spirit.

OAH Comment: OAH agrees with this recommendation.

OAH updated its policies to include security and emergency procedures in hearing rooms. All issues identified above will be addressed when OAH occupies its new centralized space. Since May 2007, OAH has worked very closely with OPM to ensure the new space will remedy these issues. Based on a June 9, 2009 e-mail from OPM, we anticipate agency operations will begin to be centralized at 441 4th Street NW 4th Floor by March 2010.

- (2) That the Chief ALJ work with the Office of Risk Management²² to define unusual incidents and major unusual incidents within the context of operations at OAH; implement policies and procedures whereby OAH employees are required to document and communicate to management the specifics surrounding unusual and major unusual incidents; and institute a mechanism for reviewing and implementing changes in OAH operations in response to a major unusual incident.

Agree _____ **X** _____ Disagree _____

²² "The Office of Risk Management, Risk Identification Analysis and Control (RIAC) Division assists District agencies in taking a proactive approach to occupational safety and health. The RIAC [D]ivision works with District [a]gencies to identify and mitigate hazards that pose a potential risk to employees' and the public's safety and health." <http://orm.dc.gov/orm/cwp/view.asp?A=1386&Q=607008> (last visited May 7, 2009).

MANAGEMENT ALERT REPORT

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

Since the MAR, OAH has been working more closely with the Office of Risk Management (ORM), and the Protective Services Division (PSD). We worked with PSD on June 5, 2008 to develop stronger safety guidelines. Also, we met with Commander Lopez, PSD, on August 4, 2008 to further discuss security measures. Finally, on January 15, 2009, PSD approved our 'revised security procedures.'

OAH has established a positive working relationship with the ORM Occupational Safety and Health Manager. In a series of e-mails on May 11, 2009, we inquired about specific safety concerns. Also, we scheduled an on-site visit with ORM during the month. We informed ORM of the many hurdles that confront us due to OAH's occupying borrowed space in two of our three locations. The overall responsibility for those spaces generally fall under the Department of Health at 825 North Capitol and Department of Consumer and Regulatory Affairs at 941 North Capitol. In those locations, which house the majority of our operations, the overall responsibility for office modifications does not rest with OAH. OAH is unable to implement a change without involving the agencies responsible for the space. In the end, anything beyond a minor fix is often not addressed due to a lack of funding.

**Findings and
Recommendations:**

KEY FINDINGS

KEY FINDINGS

KEY FINDINGS

2. As of April 2009, OAH had a reported backlog of approximately 1,600 Department of Public Works (DPW) abatement cases.

According to the OAH Performance Measure Committee, the time standard for issuing a final order is either the timeframe required by law for a particular type of case or not more than 90 days after a hearing and close of the record, whichever is shorter.²³ OAH management encouraged ALJs to meet this goal; however, a substantial backlog of DPW cases developed in FY 2007.

DPW administers a sanitation enforcement program called the Solid Waste Education and Enforcement Program. Under this program, DPW inspectors issue notices of violation (NOVs) to District residents and businesses for noncompliance with the Civil Infractions Act of 1985 and the Litter Control Administration Act. These violations are also referred to as nuisances, and examples include rodent harborage, failure to keep sidewalk and dumpster areas clean, and illegal waste dumping. Inspectors issue NOVs to the alleged violators and provide a copy of the NOV to OAH. OAH policies and procedures state that LAs should process NOVs in ProLaw within 10 days of receipt. After receiving a NOV, the respondent must reply by denying the charge and requesting a hearing, admitting guilt and paying the fine, or submitting a plea of “admit with explanation” where he or she explains why the violation occurred. When respondents do not reply to a NOV within 14 calendar days, they are in default and may be held liable for additional penalties.

Respondents who request a hearing and are found guilty of the violation must remove the nuisance. If DPW re-inspects the premises and determines that the nuisance has not been satisfactorily abated, DPW can abate the nuisance and fine the property owner for the associated expenses. The fine can equal as much as three times the cost that DPW incurs for abating the nuisance and preventing its recurrence. After abating nuisances, DPW can file an abatement cost motion requesting that the property owner remit payment for the abatement services that were provided. The abatement cost motion must be filed and served upon the respondent no later than 120 days after service of the final order, and OAH receives copies of the motion. The respondent can contest a claim for abatement services by requesting a hearing with OAH.

During FYs 2006 and 2007, DPW issued 669 abatement cost motions that totaled approximately \$400,000 in fines. DPW reported that only one of these cases had been heard and, as of April 2009, the backlog of cases had increased to 1,561. Revenue collected from abatement fines is deposited into DPW’s Solid Waste Nuisance Abatement Fund (O-Fund)²⁴ and used to offset the costs of abating solid waste nuisances. Because OAH has not issued final orders on abatement cases in a timely manner, DPW has not recouped any potential revenue from abatement fines.

²³ OAH, REPORT OF THE COMMITTEE ON ALJ PERFORMANCE MEASURES 10 (undated).

²⁴ According to the Office of Finance and Resource Management, “Special Purpose Revenues, or O Type Revenues, are funds generated from fees, fines, assessments, and reimbursements dedicated to the District agency that collects the revenues to cover the cost of performing the related functions.”
[Http://ofrm.dc.gov/ofrm/cwp/view.a.1415.q.639474.asp](http://ofrm.dc.gov/ofrm/cwp/view.a.1415.q.639474.asp) (last visited Feb. 5, 2009).

KEY FINDINGS

In December 2007, OAH managers informed the team that this backlog of abatement cases developed because OAH experienced an increase of more than 80 percent in cases filed by DPW from FYs 2005 to 2007, and they did not have sufficient staff to process abatement cost motions. OAH managers stated that they were trying to get a firm grasp on the backlog and anticipated being up to date with processing abatement cost motions by the end of FY 2008 barring unexpected staffing shortages or caseload increases. In March 2009, an OAH manager informed the team that the backlog of abatement cost motions persisted because OAH did not have sufficient LA staffing and the primary goal for ALJs in that jurisdiction was to process a backlog of unrelated DPW default cases. The manager stated that once these two matters were resolved, OAH would be able to address the backlog of abatement cost motions.

Recommendation:

That the Chief ALJ establish a strategy for eliminating the backlog of abatement cost motions within a prescribed timeframe and ensure that appropriate resources are allocated to carry out this initiative.

Agree **X** Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

With the help of law student interns who are reviewing files and producing draft decisions for review by an ALJ, OAH has decided more than 300 abatement cost motions as of July, 2009. We expect this process to continue in the coming months, using available law student interns and other resources. We estimate that the backlog of undecided abatement cost motions will be eliminated during the first quarter of FY 2010

The filing of an abatement cost motion by DPW does not necessarily mean that the motion will be successful. DPW has filed a large number of motions in cases in which the respondent was not liable for the underlying violation. In such cases, there is no legal basis for holding the respondent liable for abatement costs. The motion must be denied in all such cases. In an effort to streamline the processing of abatement cost motions, in future cases decided in favor of a respondent, we will endeavor to include language in the final order denying any abatement cost motion that has been or will be filed. This language will eliminate the need for a separate order on abatement costs in those cases. In addition, when our new case management system becomes operable this year, we will be better able to track abatement cost motions and, if possible, have them decided at the same time as a final order is issued, at least in those cases in which DPW files a motion before the case is finally decided.

Of course, devoting increased attention to any one type of DPW case necessarily means that less attention can be devoted to others, especially in light of our staff shortage recognized in other portions of the Report. We will strive for increased efficiencies, aided by our new case management system, and expect that there will be more balanced processing of abatement cost motions with the underlying NOV's.

KEY FINDINGS

3. **Employees did not adhere to purchase card and travel card policies and procedures.**

OAH participates in the District's Purchase Card and Travel Card Programs, which are federally-sponsored programs administered by the District's Office of Contracting and Procurement (OCP). Under these programs, designated employees may use charge cards to purchase goods, services, travel, and vehicle fleet-related items in amounts of \$2,500 or less.

For agencies participating in the District's Purchase Card Program, the agency director is the chief executive officer and "is responsible for assuring the proper management and oversight of agency purchase card activities."²⁵ This individual is also responsible for "[t]aking any appropriate corrective/disciplinary actions against employees who engage in purchase card waste, fraud, abuse and/or misuse/mismanagement."²⁶ Each participating agency must establish an Agency Review Team (ART) to oversee agency credit card activities.²⁷

Every District employee who receives purchase or travel card authority is required to attend an OCP training session that reviews the District's procurement process, the D.C. Purchase and Travel Card Program procedures, program monitoring and oversight, ethical standards, and possible sanctions for misuse/abuse. Additionally, employees with purchase card authority must have a signed Delegation of Contracting Authority memorandum from OCP.²⁸

a. In FY 2007, OAH employees committed 14 purchase card infractions, the highest number among District agencies according to OCP.

When using the purchase card to procure goods or services, cardholders are responsible for "[s]electing and negotiating with vendors for best value; [r]otating the use of vendors (merchants) so as to avoid the unauthorized practice of splitting purchases;²⁹ [and] keeping complete and accurate records of card purchases."³⁰ Additionally, "[o]nly purchases of goods, supplies, and services that are directly related to the programmatic function of the cardholder's agency programs shall be approved (by the [lead authorizing official]) and made (by the cardholder) using a purchase card."³¹ Cardholders are prohibited from paying taxes for services and goods,³² and are encouraged to purchase from Local, Small, and Disadvantaged Business Enterprise (LSDBE) vendors³³ to help meet District LSDBE goals.

²⁵ Government of the District of Columbia Purchase Card Training Program, 53 (Oct. 2007).

²⁶ *Id.* at 54.

²⁷ The ART consists of the agency head, the agency program coordinator, the lead authorizing official, and the designated billing official. Its oversight responsibilities include identifying instances of questionable purchases and ensuring disciplinary action against agency cardholders.

²⁸ The team reviewed Delegation of Contracting Authority memoranda for all OAH employees with purchase card authority.

²⁹ Splitting purchases "is an unauthorized practice prohibited by 27 DCMR *Contracts & Procurement* that is characterized by the '*intentional*' breaking down of a known buying requirement in order to stay within a certain threshold (e.g., the \$2,500 single purchase limit)." Government of the District of Columbia Purchase Card Training Program, 49 (Oct. 2007) (emphasis in the original).

³⁰ *Id.* at 60.

³¹ *Id.* at 78.

³² "When making card purchases..., the cardholder shall inform the vendor (merchant) that the purchase is for official District Government purposes and that the District Government is exempt from and will not pay the

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OCP procedures require that documents associated with the use of a purchase card shall be obtained and retained by the cardholder, including original receipts, confirmations, and statements. If there is no documentation from a transaction, the cardholder shall write, sign, and submit a memorandum noting the absence of documentation. The team reviewed OAH's FY 2006 and 2007 purchase card records and observed multiple apparent infractions. These infractions included the following: split purchases; missing receipts; a lack of monthly reports with attached statements and receipts; non-compliance with LSDBE requirements; and payment of sales taxes on purchases. FY 2006 and 2007 infractions are detailed in Tables 3 and 4 below.³⁴

Table 3: FY 2006 OAH Purchase Card Program Procedural Infractions³⁵

Date of Infraction	Infractions	ART Team action taken	Status of Participant?
11/2/2005, 11/3/2005, 11/4/2005	Splitting orders	Counseling	Account cancelled
12/15/2005	Failed to produce receipts	Requested card-holder investigate	Account cancelled
1/3/2006, 1/5/2006, 1/17/2006	Paid taxes	Instructed to request refund	Separated from DC Government Service
5/24/2006, 5/25/2006, 5/31/06	Paid taxes	Instructed to request refund	Active
7/6/2006	Paid taxes	Cardholder requested refund	Separated from DC Government Service

following taxes: Federal Excise Tax; Transportation Tax; 4.1.1.1 District of Columbia Sales and Use Tax; or General Sales Tax.” *Id.* at 77 (emphasis in the original).

³³ LSDBE – “Vendors (merchants, suppliers) classified as such by the D.C. Office of Local Business Development [who] may be eligible for preference points when bidding on District government contracts and may have special preference in supplying goods and services under a D.C. Supply Schedule (DCSS).” *Id.* at 48

³⁴ On June 16, 2009, the OIG provided OAH a draft of the ROI for review and comment. The formatting and text contained in Tables 3 and 4 of the ROI were modified subsequent to OAH's review in order to report excerpts of information verbatim from FY 2006 and 2007 procedural infraction reports provided from OCP.

³⁵ These FY 2006 infractions were committed by four employees.

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Table 4: FY 2007 OAH Purchase Card Program Procedural Infractions³⁶

Date of Infraction	Infraction	ART Team action taken	Status of Participant?
11/21/2006	Abuse Mismanagement Splitting purchases	Employee sanctioned	Still Active Cardholder
11/22/06	Abuse Mismanagement Splitting purchases	Employee sanctioned	Still Active Cardholder
11/27/2006	Abuse Mismanagement Splitting purchases	Employee sanctioned	Still Active Cardholder
12/1/2006	Abuse Mismanagement Splitting purchases	Employee sanctioned	Still Active Cardholder
12/1/2006	Abuse Mismanagement Splitting purchases	Employee sanctioned	Still Active Cardholder
6/27/2007	No receipts	Requested invoice/receipt	Still Active Cardholder
6/28/2007	No receipts	Requested invoice/receipt	Still Active Cardholder
7/2/2007	No receipts	Requested invoice/receipt	Still Active Cardholder
7/25/2007	No receipts, Submitted credit card payment form	Requested invoice/receipt	Still Active Cardholder
8/1/2007	No receipts	Requested invoice/receipt	Still Active Cardholder
8/8/2007	No receipts, Submitted Quote Form	Requested invoice/receipt	Still Active Cardholder
8/13/2007	No receipts, Submitted Vendor Statement	Requested invoice/receipt	Still Active Cardholder
Various	Waste, Consistently purchase from non-LSDBE vendors despite reports of being under LSDBE compliance levels	Requested future purchasing from LSDBE vendors in order to reach required LSDBE spending goal	Still Active Cardholder
6/20/2007	No monthly report or statement with invoices was submitted	Requested monthly report with statement and invoices	Still Active Cardholder
7/2/2007	No monthly report or statement with invoices was submitted	Requested invoice/receipt	Still Active Cardholder

³⁶ All FY 2007 infractions were committed by two employees.

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When procedural infractions occur, the agency director is required to take corrective action against the cardholder committing the violations. In FY 2006, the Chief ALJ took corrective action against a cardholder for violating purchase card policies by providing additional training to an employee, and rescinded several employees' purchase card authority. However, the number of infractions increased in FY 2007. OAH had a total of 14 infractions while the agency with the second highest number of infractions in that FY was cited 5 times. Violations of purchase card policies and procedures continued during FYs 2008 and 2009, as OAH was cited for splitting purchases, missing receipts, and violating the federal Antideficiency Act.³⁷ Consequently, in March 2009, OCP suspended purchase card privileges for two cardholders and designated a new agency Approving Official.

b. Employees modified travel arrangements for personal reasons without reimbursing the District for the excess costs that were unrelated to official government business.

The District Travel Card Program allows agencies to pay for travel costs using a revolving charge card issued to agency personnel. Individuals issued a travel card under the program may use it to pay for travel and travel-related expenses incurred while on official government travel. Two OAH employees had travel card authority, and travel cards were used to pay for transportation, lodging, and meals when employees traveled for training and conferences.

District policy prohibits excess costs, circuitous routes, delays, and luxury accommodations when making travel arrangements.³⁸ Moreover, employees are responsible for excess costs incurred for personal preference or convenience. The team found several such violations during a review of FY 2006 and 2007 travel card documentation.

- In March 2006, an employee used a travel card to purchase a \$225.19, non-refundable airplane ticket, modified his/her flight itinerary, and subsequently used the travel card to purchase a second ticket that cost \$362.20. The team was unable to find documentation that OAH was reimbursed for the cost of the second ticket. In a second instance, this employee modified his/her flight itinerary, purchasing two tickets for \$276.20 and \$254.45. Once again, the cost of the second ticket was not reimbursed.
- Several employees attended a conference in Seattle, Washington scheduled from September 6, 2006, through September 8, 2006. OAH conference attendees arrived on September 5 and departed on September 9, 2006. However, one of these employees arrived on September 3, 2006, and extended his/her stay through September 10, 2006. Consequently, \$238 in hotel costs was charged to the OAH travel card for this extension. The team learned that there was no justification for the extended stay, and OAH was not reimbursed the cost of the hotel room.

³⁷ “The Antideficiency Act is one of the major laws through which Congress exercises its constitutional control of the public purse. It evolved over a period of time in response to various abuses.... The fiscal principles underlying the Antideficiency Act are really quite simple. Government officials may not make payments or commit the United States to make payments at some future time for goods or services unless there is enough money in the ‘bank’ to cover the cost in full....” [Http://www.gao.gov/ada/antideficiency.htm](http://www.gao.gov/ada/antideficiency.htm) (last visited May 26, 2009).

³⁸ 1 DCMR § 801.5.

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- In September 2007, an employee used the purchase card to extend his/her stay in Las Vegas, Nevada for 4 days following a conference. No justification was provided for this extension and OAH was not reimbursed for the \$60.10 difference in airfare.
- In June 2007, an employee attended a Maryland State Bar Association (MSBA) Conference in Ocean City, Maryland. The MSBA provided conference attendees with room rates for 13 hotels that ranged from \$79 to \$389. The employee selected a three-bedroom, ocean-front condominium at a resort hotel for \$379 per night. The reservation was for 3 nights for a total cost of \$1,137. The team learned that justification for staying in the condo was not provided, and OAH was not reimbursed for any extra cost accrued.

The actions cited above wasted government funds. According to OCP's purchase card procedures, the District government may recoup payment from current and former employees for misused funds.³⁹ An OAH employee attempted to obtain reimbursement from the employees who incurred the expenses listed above, but met resistance and was unable to do so when agency management refused to require repayment of the misused funds. When agency officials do not carefully monitor travel card purchases or take corrective action against cardholders who violate purchase card policies and procedures, the risk that some cardholders will make fraudulent, improper, abusive, and/or questionable purchases increases.

c. Employees do not properly document and reconcile travel costs.

A D.C. Training Form 1 and a Travel Justification Form must be completed when employees request use of the travel card for travel and training purposes.⁴⁰ OAH also requires that employees provide a description of the training course or conference that they will attend. OCP policies and procedures state that cardholders making travel arrangements must obtain a signed Travel Authorization Form from their Approving Official for travel advances. Travel advances will not be approved without completion of this form. Additionally, all necessary documentation associated with use of the travel card, including receipts, must be retained by the cardholder.⁴¹

At the end of each month, cardholders reconcile costs and expenses associated with these forms, including all receipts and statements. Reconciliation should be completed within 3 days after receiving a monthly bank statement. This process entails matching travel receipts and Travel Request Forms with monthly bank statements to verify each travel or travel-related purchase made by the cardholder.

The team reviewed FY 2006 Travel Cardholder Transaction Logs and monthly reports completed by cardholders. The team noted 10 instances where employees did not have prior approval for training and/or travel. For example, there were instances where employees did not receive advance approval for training and travel or supporting documentation such as flight itineraries, conference agendas, and hotel receipts were missing. The following table details these 10 transactions.

³⁹ Government of the District of Columbia Purchase Card Training Program, 76 (Oct. 2007).

⁴⁰ 1 DCMR § 815.1 - 2.

⁴¹ See <http://wiki.in.dc.gov/index.php/P-CARD> (last visited Jun. 10, 2009).

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Table 5: Selected OAH Travel Card Transaction Activity - FY 2006

Transaction Log Date	Total Cost of Training and/or Travel	Missing Documentation
November 2005	\$ 5,156	Prior approval
December 2005	\$ 724	Prior approval
January 2006	\$ 410	Prior approval; Airfare receipt for \$270.20
February 2006	\$ 1,886	Prior approval
March 2006	\$ 1,192	Prior approval
April 2006	\$ 2,143	Prior approval
May 2006	\$ 2,020	Prior approval
June 2006	\$ 2,581	Prior approval
July 2006	\$ 1,429	Prior approval
September 2006	\$ 5,267	Prior approval; Hotel receipt for \$854.28 Hotel receipt for \$640.71 Hotel receipt for \$854.28
Total Expenses	\$22,808	

When employees do not obtain supervisory approval before attending training or a conference, they may obligate agency funding that is not available. Moreover, there is increased risk of fraudulent and/or abusive travel card activity. Finally, according to OCP policies and procedures, “[i]f violators fail to review and approve transactions by the conclusion of the following month's billing cycle[,] the [Designated Billing Official] DBO is authorized to suspend non-compliant participants in the program.”⁴²

Recommendations:

- (1) That the Chief ALJ develop and implement internal controls that reduce the number of purchase card infractions committed by agency cardholders.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

However, a number of the FY 2006 and FY 2007 OIG findings were never presented to OAH as ‘infractions,’ but rather as procedural matters that OAH immediately addressed. We have reproduced the Report tables below and identified actions by OAH staff related to the FY 2006 and FY 2007 ‘infractions.’

⁴² *Id.* at 40.

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OIG Response: **The OIG stands by the finding as written. When responding to this report, the Chief ALJ wrote “...a number of the FY 2006 and FY 2007 OIG findings were never presented to OAH as ‘infractions,’ but rather as procedural matters that OAH immediately addressed.” The information referenced in tables 3 and 4 of the OIG ROI is reported verbatim from reports that were compiled by OAH’s ART and sent to OCP.⁴³ These reports use the term “infraction” to denote instances when Purchase Card policies were not followed. The OIG agrees that the infractions in question were procedural, and the title for both tables “OAH Purchase Card Procedural Infractions” conveys this. OAH’s response appears to meet the intent of this recommendation.**

In addition, the OIG Report contends that such violations continued throughout FY 2008 and FY 2009. Neither OCFO nor OCP has identified continuing violations to OAH. OAH was cited with a single violation in FY 2008, in the last billing cycle of the fiscal year. The infraction was a split purchase on a supply and equipment order from a LSDBE vendor. On February 10, 2009, the OCFO cited an “Improper Purchase Card Transaction” and recommended that OCP revoke the individual’s privileges. OCP then revoked purchase card privileges for the individual.

After additional discussions between OAH and OCP, OCP also recommended that, to prevent future infractions, senior staff members, who often have support staff make purchases using their cards, should not have purchase or travel cards in their names. This OCP recommendation prompted another OAH senior staff member to choose to surrender the purchase/travel card. This second card was not suspended, as OIG now contends, due to an infraction. We ask for a revision to the OIG statement on page 35 to correct this error. Below is a specific example of an OIG statement (footnote deleted) that is inaccurate.

“Violations of purchase card policies and procedures continued during FYs 2008 and 2009, as OAH was cited for splitting purchases, missing receipts, and violating the federal Anti-Deficiency Act. Consequently, in March 2009, OCP suspended purchase card privileges for two cardholders and designated a new agency Approving Official.”

OIG Response: **The OIG statement contends that violations of policies and procedures continued, and did not use the term “infractions.” The OIG spoke with a senior manager of OCP’s Purchase Card Program who confirmed that cancellation of purchase card privileges for the cardholders in question was required in order to comply with Purchase Card policies and procedures. This manager also informed the OIG that a third cardholder’s privileges were suspended for charging a prior year’s expense on the purchase card.**

TABLE 3: FY 2006. In each case listed below, OAH acted to address any issue that was reported by the OCP or the OCFO financial staff. No one identified “split purchases” in November 2005 as an issue to OAH.

⁴³ According to OCP procedures, each agency that participates in the Purchase Card Program shall establish an Agency Review Team that shall include the agency head, agency program coordinator, lead authorizing official(s), and designated billing official as members.

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OIG identifies as an infraction on 12/15/2005, “no receipts.” However, OAH immediately provided all receipts to OCFO staff once notified that a receipt was missing. The OCFO staff approved payment to the vendor in this instance because the purchases were appropriate.

Finally, the issue of paying taxes on certain purchases was also immediately addressed. These cases involved first-time relationships between a vendor and OAH where the vendor did not immediately realize that “Office of Administrative Hearings” was a District of Columbia government entity. Upon receiving the invoice and/or purchase card statement, OAH staff saw that a sales tax was charged and immediately informed the vendor involved that, as a government entity, OAH should not be charged sales tax. The vendor then requested the government tax-exempt ID number and the sales tax was refunded on a subsequent purchase card statement. Payment of taxes was never reported to OAH as a violation/infraction because OAH immediately addressed the issue when it arose with particular vendors.

OIG Response: The OIG does not dispute that the infractions were corrected once identified; rather, the intent was to highlight the frequency with which infractions occurred. OAH’s response appears to meet the intent of this recommendation.

FY 2006 Chart

Date	Infraction	ART Action Taken	Status of Cardholder	OAH RESPONSE
11/2/2005	Splitting purchases	Counseling	Account cancelled	<i>Never reported to OAH as an infraction, Cardholder voluntarily turned in card.</i>
11/3/2005	Splitting purchases	Counseling	Account cancelled	<i>Never reported to OAH as an infraction, Cardholder voluntarily turned in card.</i>
11/4/2005	Splitting purchases	Counseling	Account cancelled	<i>Never reported to OAH as an infraction, Cardholder voluntarily turned in card.</i>
12/15/2005	No receipts	Requested cardholder to investigate	Account cancelled	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder voluntarily turned in card.</i>
1/3/2006	Paid taxes	Instructed cardholder to request funds	Separated from D.C. government service	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received.</i>
1/5/2006	Paid taxes	Instructed cardholder to request funds	Separated from D.C. government service	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received.</i>

KEY FINDINGS

Date	Infraction	ART Action Taken	Status of Cardholder	OAH RESPONSE
1/17/2006	Paid taxes	Instructed cardholder to request funds	Separated from D.C. government service	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received.</i>
5/24/2006	Paid taxes	Instructed cardholder to request funds	Active cardholder	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received, Cardholder no longer active.</i>
5/25/2006	Paid taxes	Instructed cardholder to request funds	Active cardholder	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received, Cardholder no longer active.</i>
5/31/2006	Paid taxes	Instructed cardholder to request funds	Active cardholder	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received, Cardholder no longer active.</i>
7/6/2006	Paid taxes	Instructed cardholder to request funds	Separated from D.C. government service	<i>Never reported to OAH as an infraction, District Government Tax Exempt Number provided to vendor and a credit received.</i>

TABLE 4: FY 2007. Except for the single employee reprimand shown in Table 4, no agency ever identified these events as ‘infractions’ to OAH.

OIG identifies three apparently separate incidents of ‘split purchases.’ A January 30, 2007 OFCO memorandum asserted an improper purchase card transaction had occurred because a number of transactions appeared to be ‘split purchases.’ Each of the three charges occurred in the same billing cycle. In a February 7, 2007 response, OAH explained that the vendor in question, the National Judicial College (“NJC”), provided (and still does provide) training for individual OAH ALJs. NJC sent separate invoices to cover the training to individual ALJs, rather than sending a group invoice to OAH. OAH paid the invoices as they were received from the ALJs and did not intentionally “split” the charges. OAH believed that purchase cards were the best mechanism to register individuals for training, particularly since each invoice was below the \$2,500 threshold.

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After this issue was raised, OAH staff accepted the recommendation of OCFO staff that OAH establish a purchase order in the PASS system for NJC. On January 30, 2007, OAH created a purchase order in PASS for the next judicial training session and no further problems have been identified to OAH.

OIG also identifies a number of instances in which OAH allegedly has failed to provide receipts and reports. However, whenever such an issue was brought to OAH's attention, OAH provided the requested receipts and reports to the OCFO staff and OCP to support purchases and payment. Because each issue was resolved during FY 2007, OAH remained in 'good standing' with OCP. OAH reactivated both its purchase and travel cards for FY 2008 and would not have been able to do so if these issues were outstanding.

OIG Response: The OIG does not dispute that the infractions were corrected once identified; rather, the intent was to highlight the frequency with which infractions occurred. OAH's response appears to meet the intent of this recommendation.

FY 2007 Chart

Date	Infraction	ART Action Taken	Status of Cardholder	OAH RESPONSE
11/21/2006	Abuse Mismanagement Splitting purchases	Employee sanctioned; written reprimand from the OCFO	Active cardholder	<i>OAH provided detailed account to OCFO upon request; Cardholder no longer active.</i>
11/27/2006	Abuse Mismanagement Splitting purchases	Employee sanctioned	Active cardholder	<i>Same as above.</i>
12/1/2006	Abuse Mismanagement Splitting purchases (cited twice for these infractions)	Employee sanctioned	Active cardholder	<i>Same as above.</i>
6/20/2007	No monthly report or statement with invoices was submitted	Requested monthly report with statement and invoices	Active cardholder	<i>Never reported to OAH as an infraction, receipts and report provided to support purchase, Cardholder no longer active.</i>
6/27/2007	No receipts	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>

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Date	Infraction	ART Action Taken	Status of Cardholder	OAH RESPONSE
6/28/2007	No receipts	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>
7/2/2007	No receipts	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>
7/2/2007	No monthly report or statement with invoices was submitted	Requested monthly report with statement and invoices	Active cardholder	<i>Never reported to OAH as an infraction, related to above issue, receipts and report provided to support purchase, Cardholder no longer active.</i>
7/25/2007	No receipts (submitted credit card payment form)	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>
8/1/2007	No receipts	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>
8/8/2007	No receipts (submitted quote form from vendor)	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>
8/13/2007	No receipts (submitted vendor statement)	Requested invoice/receipt	Active cardholder	<i>Never reported to OAH as an infraction, receipts provided to support purchase, Cardholder no longer active.</i>

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Date	Infraction	ART Action Taken	Status of Cardholder	<i>OAH RESPONSE</i>
Various	Consistently purchased from non-LSDBE vendors despite reporting LSDBE compliance	Requested future purchasing from LSDBE vendors in order to reach required LSDBE spending goal	Active cardholder	<i>Never reported to OAH as an infraction, OAH staff attempted to use the purchase card to purchase items from LSDBE vendor when feasible.</i>

- (2) That the Chief ALJ, in accordance with DCMR, recoup payment for misused agency funds.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

However, as noted below in comments to the incidents outlined in the report, OAH believes that the facts indicate that agency funds have not been misused.

- In March 2006, an employee used a travel card to purchase a \$225.19, non-refundable airplane ticket, modified his/her flight itinerary, and subsequently used the travel card to purchase a second ticket that cost \$362.20. The team was unable to find documentation that OAH was reimbursed for the cost of the second ticket. In a second instance, this employee modified his/her flight itinerary, purchasing two tickets for \$276.20 and \$254.45. Once again, the cost of the second ticket was not reimbursed.
- *The ALJ attended this conference in a leadership role where he/she served as a member of a judicial board. The individual had to change his/her itinerary unexpectedly due to personal issues. OAH understood that the issue of the reimbursement for the second ticket had been resolved three years ago. E-mails were exchanged about these charges in May 2006 and further documentation was provided. No further requests for information were ever received.*

OIG Response: Information justifying the alternate flight arrangements and documenting that additional costs were repaid to the District were not on file during the OIG's review of travel records. As of this writing, the OIG has not received documentation regarding this issue.

- Several employees attended a conference in Seattle, Washington scheduled from September 6, 2006, through September 8, 2006. OAH conference attendees arrived on September 5 and departed on September 9, 2006. However, one of these employees arrived on September 3, 2006, and extended his/her stay through September 10, 2006. Consequently, \$238 in hotel costs was charged to the OAH travel card for this extension.

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The team learned that there was no justification for the extended stay, and OAH was not reimbursed the cost of the hotel room.

- *This individual stayed one day after his/her scheduled return date from a conference, because he/she attended a high level judicial board meeting in place of the Chief Judge. OAH understands that, within the scope of District of Columbia Travel Guidelines, a traveler can arrive a day before the official event or stay a day after. OAH provided this information in support of the charge.*

OIG response: **Information justifying why this employee arrived 2 days prior to the start of the approved stay was not on file during the OIG's review of OAH travel records. As of this writing, the OIG has not received documentation regarding this issue.**

- In September 2007, an employee used the purchase card to extend his/her stay in Las Vegas, Nevada for 4 days following a conference. No justification was provided for this extension and OAH was not reimbursed for the \$60.10 difference in airfare.
- *This statement is incorrect. This individual attended a September 2007 professional association conference. The individual reimbursed the District of Columbia Government on October 15, 2007, with a check for the amount in question.*

OIG Response: **Documentation that payment was rendered was not on file during the OIG's review of OAH travel records. As of this writing, the OIG has not received documentation regarding this issue.**

- In June 2007, an employee attended a Maryland State Bar Association (MSBA) Conference in Ocean City, Maryland. The MSBA provided conference attendees with room rates for 13 hotels that ranged from \$79 to \$389. The employee selected a three-bedroom, ocean-front condominium at a resort hotel for \$379 per night. The reservation was for 3 nights for a total cost of \$1,137. The team learned that justification for staying in the condo was not provided, and OAH was not reimbursed for any extra cost accrued.
- *Based on Travel Guidelines, OAH does not understand the alleged infraction in this matter. The OAH employee was given a 'suggested' list of hotels in a price range of \$79 to \$389 per night. The employee selected accommodations within the same area and \$10 below the maximum allowable limit (\$379 per night). Based on the maximum limit, the employee saved the District \$30 over the 3 day conference period.*

OIG Response: **According to the U.S. General Services Administration (GSA), per diem is an allowance for lodging (excluding taxes), meals and incidental expenses. GSA establishes per diem rates for destinations within the continental United States, and employees should not exceed this daily allowance when travelling. In FY 2007, the maximum per diem rate for Ocean City, MD was \$223. As noted in this report of inspection, an OAH employee obtained lodging for \$379 per night, which exceeded the \$223 per diem maximum by \$156. In addition, OCP Directive No.**

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OCPD 9001.00 section 4.3.5 states, “Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business shall not be acceptable....” Consequently, the OIG viewed the \$379 per night, 3-bedroom condominium that was reserved to accommodate one OAH employee, as a luxury accommodation. According to documentation provided to the OIG, no justification was provided to explain why one employee required such expansive accommodations.

TABLE 5 FY 2006 TRAVEL. Table 5 purports to identify a series of travel and training requests where an employee went on travel without prior approval. This information is not correct. OAH employees always sought (and seek) prior approval from a superior/supervisor before official travel. The agency approving official granted prior approval for all agency travel and required documentation was provided.

OIG Response: During its review of OAH travel documentation, the OIG observed instances when required authorization forms such as the “Travel Justification Form” and the “Training Request Form 1” were not on file, or required descriptions of the training course or conference were not submitted. As of this writing, the OIG has not received documentation regarding this issue.

FY 2006 Travel

Transaction Log Date	Total Cost of Training and/or Travel	Missing Documentation	OAH RESPONSE
November 2005	\$ 5,156	Prior approval	<i>Prior approval granted</i>
December 2005	\$ 724	Prior approval	<i>Prior approval granted</i>
January 2006	\$ 410	Prior approval; Airfare receipt for \$270.20	<i>Prior approval granted</i>
February 2006	\$ 1,886	Prior approval	<i>Prior approval granted</i>
March 2006	\$ 1,192	Prior approval	<i>Prior approval granted</i>
April 2006	\$ 2,143	Prior approval	<i>Prior approval granted</i>
May 2006	\$ 2,020	Prior approval	<i>Prior approval granted</i>
June 2006	\$ 2,581	Prior approval	<i>Prior approval granted</i>
July 2006	\$ 1,429	Prior approval	<i>Prior approval granted</i>
September 2006	\$ 5,267	Prior approval; Hotel receipt for \$854.28 Hotel receipt for \$640.71 Hotel receipt for \$854.28	<i>Prior approval granted</i>
Total Expenses	\$22,808		

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- (3) That the Chief ALJ ensure that the ART periodically reviews purchase card and travel card documentation to improve compliance with OCP policies and procedures.

Agree _____ **X** _____ Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

However, as detailed above, other than two purchase card infractions, OAH is unaware of the multiple situations now identified as 'infractions' by OIG.

Prior reviews have not identified OAH as having multiple purchase and travel card infractions. For example, on February 5, 2008, OCP requested that OCFO and OAH staff submit a complete list of all FY 2007 and FY 2008 Purchase Card Program Procedural Infractions. The list was in preparation for an upcoming Council Oversight Hearing for OCP that covered all District agencies participating in the purchase card program. The requested information was provided and only the November 21, 2006 'apparent' split purchase was identified, as far as OAH is aware. OAH believes that no other violations occurred. During the Oversight Hearing that subsequently occurred, OAH was not singled out as an agency that intentionally committed waste, fraud, abuse, or mismanagement; split purchases; paid taxes; failed to provide receipts; or purchased prohibited items.

OAH, therefore, requests a revision to Key Finding 2(a): "In FY 2007, OAH employees committed 14 purchase card infractions, the highest number among District agencies according to OCP". OCP never made such a statement during its Council Oversight Hearing. Based upon data collected by OCFO and OAH and provided to OCP, there is no basis for OIG's statement. OAH has not flagrantly and intentionally violated purchase card regulations and has never been informed of multiple infractions.

OIG Response: The OIG stands by the finding as written. The 14 purchase card infractions were observed on the "FY 2007 Purchase Card Program Procedural Infractions" report generated by the OAH ART.

OAH will continue to cooperate with OCFO and OCP to better understand the regulations and prevent any purchase card infractions.

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4. **Inadequate oversight of the check deposit process may result in revenue being unaccounted for and/or improperly allocated to District agencies.**

In 2006, the Office of Integrity and Oversight (OIO), under the Office of the Chief Financial Officer (OCFO), performed a review of the cash receipt and deposit process at OAH.⁴⁴ This audit was initiated when the Associate Chief Financial Officer for the Public Safety and Justice Cluster learned that 512 checks totaling \$121,996.28 were stale-dated. Subsequent to this discovery, the OIO issued a report that included findings and recommendations for strengthening OAH's check receipt and deposit process.

In order to increase accountability and compliance with OIO's recommendations, OAH developed the following internal check deposit policies and procedures:⁴⁵

[1] No more than three (3) staff members should be assigned to this process within a given timeframe.

[2] Checks are received at each OAH location and in the P.O. Box, which is located at the Post Office Station at 100 Massachusetts Avenue NE. Only two staff members are provided keys to the P.O. Box.

[3] To the extent possible, checks should not be handled in the reception area, but in a private room or office.

[4] All checks should be immediately stamped with the Restrictively Endorsed stamp, "Deposit Only, DC Treasury." A copy of the check should be made, placed in the appropriate case file, and recorded on the case management system.

[5] Only the copy of a check should be time/date stamped for the case file. (Under no circumstance should the actual check be time/date stamped.)

[6] The staff person should write the appropriate jurisdiction and case number on each check to ensure that checks are deposited to the correct accounts.

[7] A fiscal year [E]xcel spreadsheet is used to record and track each check transmitted to the office, and is updated weekly.

⁴⁴ The OCFO is responsible for oversight and direct supervision of the financial and budgetary functions of the District government. *See* http://cfo.dc.gov/cfo/cwp/view,a,1327,q,591020,cfoNav_GID,1681,cfoNav,%7C33299%7C,.asp (last visited May 26, 2009).

⁴⁵ Money orders, personal checks, and cashier checks are the only forms of payment that OAH currently accepts.

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[8] All checks should be processed by Thursday afternoon. One of the designated staff members delivers all checks to the Budget Analyst, OCFO [Public Safety and Justice] PS&J Cluster staff, for reconciliation and deposit by mid-day Friday....

All monies are deposited directly into each enforcement agency's account.⁴⁶

During a review of OAH's check deposit process, the team found several instances where OAH was noncompliant with these internal policies and procedures.

a) *Failure to reconcile checks received with checks deposited limits OAH's ability to assure that agencies receive correct revenues.*

In 2006, the OIO found that OAH's LAs did not maintain a check receipt log, which prevented a proper reconciliation of OAH receipts with deposits into OCFO accounts. OAH subsequently implemented a policy requiring that LAs record all check payments in ProLaw, which serves as the official record of payments received. Payments are also recorded in a Microsoft Excel check log spreadsheet, which serves as a backup to ProLaw in the event that ProLaw data becomes lost or corrupted. OCFO policies recommend that check logs document the individual or company's name, check date, check number, check amount, date received, the employee who received the check, treasury deposit date, and the System of Accounting and Reporting [SOAR]⁴⁷ revenue receipt document number.⁴⁸ OAH, however, only records the check number, payment date, and the payment amount in ProLaw and its backup check log.

Once the designated LA documents the checks in the two databases, the Supervisory LA reviews and transmits the checks weekly to the OAH Budget Officer. When transmitting checks, the Office of Finance and Resource Management⁴⁹ recommends that a staff member prepare a delivery receipt listing all of the documents transported. The staff member transporting the checks should have the recipient review the contents of the delivery and sign and date the hand delivery receipt.⁵⁰ OAH's Budget Officer reported that when receiving checks for deposit, a report listing all of the enclosed checks is not included nor is a delivery receipt appended to the package for signature. Consequently, there is no mechanism for reconciling the checks that OAH received with those that were transmitted to the Budget Officer and subsequently deposited.

⁴⁶ OAH provided this revenue deposit procedure on July 30, 2007.

⁴⁷ SOAR is a financial management system used to monitor budgeting and accounting functions within District agencies. See <http://newsroom.dc.gov/file.aspx/release/5819/gandhi051601.pdf> (last visited Jan. 6 2009).

⁴⁸ Government of the District of Columbia, Office of the Chief Financial Officer, Government Operations Cluster Office of Finance and Resource Management, Accounting Operations Manual, 19.

⁴⁹ The Office of Finance and Resource Management is a division of the OCFO that provides financial management services to District agencies under its purview and continuously seeks improvements in operational efficiency on behalf of the government and the residents of the District. See <http://ofrm.dc.gov/ofrm/cwp/view.asp?a=1415&q=639474> (last visited May 26, 2009).

⁵⁰ The Office of Finance and Treasury is responsible for managing cash and other liquid assets of the District government, as well as its borrowings and debt repayment. See <http://cfo.in.dc.gov/cfo/cwp/view.asp?a=1195&q=489205&cfoNAV=30642> (last visited Jan. 6, 2009).

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OAH's failure to reconcile deposited funds impacted its ability to accurately report the amount of revenue deposited into District agency accounts. For example, DPW reported that in FY 2006, OAH underreported the amount of money that had been deposited into DPW's O-fund. The OCFO sent DPW a report indicating that OAH had deposited approximately 25 percent more money than OAH had reported depositing into DPW's fund. As a result, DPW managers were concerned that OAH was not properly accounting for the revenue it receives, and DPW may not have been receiving all of the revenue due it.

Because OAH does not adhere to check receipt and deposit internal controls, its ability to accurately monitor payments is diminished. As a result, the Clerk of Court must rely on the Budget Officer's deposit records in order to document deposited revenue.

- b) Failure to ensure that checks include required information before forwarding them to the OAH Budget Officer delays and possibly prevents revenue from being deposited.*

According to OAH policies and procedures, litigants can either mail in fine payments or go to an OAH office to make a payment. OAH's payment instructions state the following:

Make a personal check, cashier's check, or money order payable to the **D.C. TREASURER** (no cash accepted by mail) for the total amount of fines and penalties due ... for the infraction(s) you are admitting....Write the **NOTICE NUMBER** ... on the front of your check or money order. Make a photocopy of this Notice for your records.

After completing all required information, enclose full payment with this Notice in an envelope with required postage and mail to:
Infraction Clerk, Office of Adjudication and Hearings, 825 North Capitol Street, N.E., 4th Floor (Suite 4150), Washington, DC 20002-4210 (202) 442-9091.

Alternatively, you may submit this Notice in person with payment and required information at the above address weekdays, 9:00 A.M. - 5:00 P.M.⁵¹

When LAs receive check payments, they must review them to ensure that the checks are signed, dated, and have the correct notice number. The notice number is important because it corresponds to the agency that will receive the payment. If all of this information is present and accurate, LAs accept the payment, document receipt of payment in ProLaw and the check log spreadsheet, and prepare a "receipt of payment" final order for the respondent.

During a review of check deposit documentation, the team observed that numerous checks were processed and forwarded to the Budget Officer for deposit without having the requisite information on them. Between FY 2006 and January 2008, the OAH Budget Officer

⁵¹ Payment instructions are included on OAH's website, final orders, and NOV's issued by the agency.

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returned 92 checks totaling \$54,470 to the Clerk of Court Division for one of the following reasons:

- the check was stale-dated;
- the check was not signed;
- the check had no date or it contained the incorrect date;
- the check was unreadable;
- the check did not list the correct agency code; or
- the payee had been modified.

Similarly, in FY 2008, the Budget Officer received a delivery of approximately 300 checks for various fine payments that needed to be deposited. During a preliminary review, the Budget Officer observed that most checks did not have identifying information such as a case number or jurisdiction for which the payments could be attributed. The Budget Officer returned this group of checks to OAH and requested that requisite information be added so that the checks could be deposited in the proper agency fund.

An example of OAH's misprocessing a check occurred in FY 2007 when a respondent submitted a \$500 payment for a fine he incurred from the Department of Health (DOH). The respondent made the check payable to OAH and the Department of Consumer and Regulatory Affairs (DCRA) was written on the check to indicate which agency should receive the payment. The LA who accepted this check should not have done so because the check was not made payable to the D.C. Treasurer, the case number was not written on the check, and the DCRA was cited as the agency that would receive payment rather than DOH. OAH and the Budget Officer processed this check in spite of these errors, and the check was subsequently deposited into a fund for DCRA. As a result of this check being deposited into the wrong fund, DOH did not renew the respondent's license because records indicated that he had not paid OAH for the violation that he committed. This error could have been prevented, however, if the check had been properly screened.

c) ProLaw contains inaccurate revenue data that may adversely impact District citizens and agencies' operations.

OAH uses ProLaw to issue monthly Payment Order Reports to agencies under its jurisdiction. These reports list the Notices of Violation (NOVs) or Notices of Infraction⁵² (NOIs) that each agency issued, whether OAH had issued final orders, whether full or partial payments had been received, and whether late penalties could be imposed. DPW, for example, uses Payment Order Reports to identify which respondents have not paid their fines and are subject to having a lien placed against their property. DPW managers reported that there have been instances when payment order reports were inaccurate and when DPW attempted to issue liens, property owners demonstrated that OAH had processed their payments for the referenced fine. The team also learned of instances when OAH sent a NOV or final order to respondents that stated their fine had doubled because the payment was late or had not been submitted. However, respondents came to OAH and produced cancelled checks showing that the fines had been paid on time.

⁵² Notices of infraction are similar to NOVs and are issued when individuals or businesses commit civil infractions.

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OAH employees and stakeholders reported that the information entered in ProLaw is inaccurate and that OAH needs a new system for tracking payments. OAH employees speculated that the inaccurate data may result from inadequate policies and procedures for the check receipt and deposit process, and that payment information is not entered timely or is entered incorrectly.

Recommendations:

- (1) That the Chief ALJ ensure that check information recorded in ProLaw and Microsoft Excel databases complies with OCFO standards, and that quality assurance policies and procedures for periodically verifying the accuracy of data entered into each database are established.

Agree _____ **X** _____ Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH continuously works to improve the quality of the data recorded in the ProLaw case management system ("CMS") and in spreadsheets. OAH is phasing out the ProLaw CMS. By the end of FY 2009, the new system will be installed and operating for any new case filed with OAH. The implementation of the new CMS will address a number of challenges presented by the ProLaw CMS.

- (2) That the Chief ALJ seek guidance from the OCFO and develop policies and procedures specific to documenting and reconciling checks that are delivered to the OAH Budget Officer for deposit.

Agree _____ **X** _____ Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH strives to meet its fiduciary responsibilities and will continue to work with the OCFO to do so. In October 2005, OAH agreed with OIO's request to review OAH cash accounting and management practices. The OIO conducted its review and, in April 2006, published its Final Report. It identified six weaknesses and recommendations for improvements. In a Council Oversight Hearing on the matter, OAH assured the council members that each finding would be addressed and the required corrective action would be implemented. OAH then took steps to do so.

In March 2009, OIO announced a follow-up review. The OIO auditor conducted a series of on-site tests and reviews of OAH revised processes as well as checks submitted to the OCFO. In addition, the auditor met with the agency Controller. In April 2009, the OIO auditor informed

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OAH that the auditor did not detect major concerns and that current OAH policies and procedures were good. However, new OCFO formats for policies and procedures required OAH to conform its documents. Finally, the auditor requested that OAH designate a new OCFO check reviewer due to the retirement of the previous reviewer. OAH has submitted updated policies and procedures to OIO.

OIG Response: **At the time of the inspection, the OIG observed that some internal check deposit policies and procedures were not adhered to and that additional quality assurance oversight was needed. OAH's planned actions appear to meet the intent of the recommendation.**

- (3) That the Chief ALJ ensure that LAs are trained to properly identify incomplete checks, and establish procedures that instruct LAs how to handle payments that do not include all required information.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

When a check processing issue arises, OAH addresses it immediately and often communicates with the OCFO over such matters. For example, in December 2008, OAH staff responsible for check processing met with OCFO/Controller to resolve accounting and check matters. Without an OCFO representative present at either of our locations due to space and seating limitations, reviewing and transmitting checks is more of a problem than it should be. We anticipate that when OAH moves into its centralized space, OAH's budget officer will move from his current location at 1923 Vermont Avenue, NW, to the new office space.

5. Occupation of limited office space within three District buildings creates inefficiencies and burdens litigants and neighboring agencies.

When OAH was established, it received funding, property, and FTE positions from agencies that previously held administrative hearings.⁵³ As a result, OAH inherited four offices that are located within three different District government buildings. The offices provided sufficient space for OAH when it was first established, but since then the number of FTEs has more than doubled. OAH's complement of employees increased from 36 to 61 between FYs 2004 and 2007, and the existing offices can no longer accommodate OAH's staff. According to employees, OAH's three separate locations and the limited amount of office space have become major impediments to agency operations.

When visiting OAH's facilities, the team observed that many ALJs share offices and some ALJs have dual functioning offices.⁵⁴ ALJs who have dual functioning offices must leave

⁵³ D.C. Code § 2-1831.02 (c).

⁵⁴ A dual functioning office serves as both an office and a hearing room.

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when other ALJs hear cases in their office. As a result, ALJs are unable to efficiently carry out their job responsibilities. According to Virginia Courthouse Facility guidelines, each ALJ should have a private office that accommodates a desk and workspace for conducting legal research, writing opinions and judgments, reviewing case files, preparing for upcoming hearings, and meeting with attorneys and court personnel.⁵⁵ Moreover, given the current construct of multiple office locations, each OAH location hears cases for certain jurisdictions. As a result, ALJs typically are assigned their caseloads according to office location. This method of assigning cases was implemented to reduce the amount of time ALJs spend commuting between their offices and hearing rooms in other buildings. However, a number of ALJs still commute between OAH offices for hearings, and they do not always receive case files/information timely because documents are sent via interoffice mail. ALJs stated that if OAH offices were not located in three different buildings, they could become generalists.⁵⁶

The team also observed that LAs work in overcrowded and less than optimal conditions. For example, two LAs were stationed to work in a cubicle that would normally accommodate one employee; one LA's desk was located in a supply room; and the conference room served as the primary work area for several LAs.

In addition, LAs stated that the limited space affects file maintenance and their ability to location information quickly. During FY 2007, approximately 24,000 new cases were filed with OAH, which represented a 19 percent increase over filings in FY 2006. This increase in the number of filings, coupled with inadequate space for additional file cabinets, caused LAs to store case files in boxes. However, employees stated that there is no established filing system for this temporary storage method. Consequently, if a case is contested or OAH receives a Freedom of Information Act (FOIA) request for a file, LAs have a general idea of where the case file might be, but it may not be readily accessible. In addition, there is no check-out system for case files. These factors increase the risk of misfiled or lost files. In the event that files are not readily located, a duplicate file may be generated. This practice, however, can be risky because information such as exhibits or motions that litigants file as part of a case may be contained in one file but not the duplicate. If an ALJ were to use an incomplete case file during a hearing, it could negatively affect the efficiency and/or the outcome of the proceedings.

Of significant note is the impact that OAH's space constraints had on the provision and quality of service to litigants. Employees indicated that there are no private accommodations that allow litigants to confer with their lawyers or engage in mediation. The National Center for State Courts writes, "[m]eeting in hallways, various empty rooms, or other courthouse areas has not been a sufficient response to address the burgeoning needs of [Alternative Dispute Resolution] ADR⁵⁷ programs. Needs of court-annexed ADR programs include space that allows for the necessary confidentiality, access and comfort that such programs require...."⁵⁸ The team learned that when mediations occur, conversations can be heard in adjacent offices, hearing rooms, and in communal areas where employees work. One employee stated,

⁵⁵ The Virginia Courthouse Facility Guidelines also suggest that ALJ offices should range between 250 and 350 sq. ft. See <http://www.courts.state.va.us/ed/resources/vacourtfacility/complete.pdf> (last visited May 28, 2009).

⁵⁶ Generalist ALJs preside over administrative hearings from an array of jurisdictions rather than a prescribed few.

⁵⁷ ADR is another term for mediation.

⁵⁸ [Http://www.ncsconline.org/WC/Publications/KIS_ADRMedRoomPub.pdf](http://www.ncsconline.org/WC/Publications/KIS_ADRMedRoomPub.pdf) (last visited Jan. 8, 2009).

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I hear parties discussing case strategy, testimony, and other topics that I should not hear. I also overhear conversations in the restrooms, which judges share with parties and government personnel who are often witnesses in OAH hearings. Even when I travel to another floor to avoid contact with parties, I pass parties and overhear conversations as soon as I leave the OAH suite.

ALJs in adjoining hearing rooms can sometimes hear mediation sessions as well. Consequently, an ALJ may hear a mediation session for a case he or she might later adjudicate.

Lastly, OAH's occupancy of offices at 825 North Capitol St., N.E. and 941 North Capitol St., N.E. has become an imposition to the primary lessees of the buildings: DOH and DCRA. OAH senior managers reported that, "two of OAH's main offices (825 and 941) are under pressure by the primary lessees of this space...to vacate these offices. We understand that OAH's inability to vacate these offices has created problems for these agencies with regard to their hiring and other personnel management issues."

OAH has been and continues to work with OPM⁵⁹ to secure a centralized hearing space that will address the aforementioned problems. According to OAH managers, a centralized office location at 441 4th Street, N.W. was identified and construction will begin in January 2010. The new facility will be available for occupancy in FY 2010 and the move will occur in two phases. Completion of the first phase is scheduled for April 2010. Ten hearing rooms, the receptionist area, and the majority of employee offices and cubicles will be ready for use at that time. The second phase is scheduled for December 2010, at which time the remaining hearing rooms and offices will be available. Ideally, there will be a third phase that will allow for a resource center. The resource center would provide a place for litigants and their representatives to consult with each other, and would offer legal assistance to *pro se* litigants.

Recommendation:

That the Chief ALJ, in partnership with DRES, ensure that OAH's new centralized facility sufficiently accommodates agency personnel, litigants, and agency functions.

Agree **X** Disagree

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH has been working and continues to work with OPM to ensure that OAH's centralized location will accommodate present and future needs. OPM expects that in March 2010, the OAH will begin to centralize all functions currently located at 825 North Capitol Street NE and 941 North Capitol Street NE to OJS, 441 4th Street NW—Fourth Floor. OPM expects that, no later than September 2010, OAH will move all functions currently located at OJS Suites

⁵⁹ As noted earlier, OPM was renamed DRES effective August 1, 2009, after OAH submitted its comments to the draft report.

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540 South and 870 North to the fourth floor. In addition, OPM is working on providing OAH space for a Resource Center for stakeholders. Below is a table detailing the timeline of events associated with the planned relocation.

<i>Date</i>	<i>Responsible Entity(s)</i>	<i>Event</i>	<i>Purpose</i>
<i>May 5, 2007</i>	<i>OPM, OAH</i>	<i>Transmittal</i>	<i>To transmit a signed OAH "Space Allocation Request" to OPM.</i>
<i>June 12, 2007</i>	<i>OPM, OAH</i>	<i>Scheduled Meeting</i>	<i>To discuss preliminary plans for the move to 441 OJS.</i>
<i>June 13, 2007</i>	<i>OPM, OAH</i>	<i>Transmittal</i>	<i>To transmit a Draft Re-Stacking Plan of OJS 441 to OAH.</i>
<i>June 22, 2007</i>	<i>OPM, OAH</i>	<i>E-mail</i>	<i>To transmit a preliminary schedule for OAH's move to 441 OJS.</i>
<i>Date</i>	<i>Responsible Entity(s)</i>	<i>Event</i>	<i>Purpose</i>
<i>November 1, 2007</i>	<i>OPM, OAH, Devroux & Purnell Architects</i>	<i>Scheduled Meeting</i>	<i>To discuss initial plans about space.</i>
<i>November 6, 2007</i>	<i>OPM, OAH, Devroux & Purnell Architects</i>	<i>Scheduled Meeting</i>	<i>To discuss planning and design.</i>
<i>November 11, 2007</i>	<i>OPM, OAH, Devroux & Purnell Architects</i>	<i>E-mail</i>	<i>To submit space requirement questionnaire.</i>
<i>February 2, 2008</i>	<i>OPM, OAH, Devroux & Purnell Architects</i>	<i>E-mail</i>	<i>To receive sketch plans of space</i>
<i>March 10, 2009</i>	<i>OPM, OAH, Devroux & Purnell Architects</i>	<i>Meeting</i>	<i>To finalize and sign-off on floor plans after multiple modifications.</i>
<i>April 9, 2009</i>	<i>OPM, OAH, Interior Architects</i>	<i>Meeting</i>	<i>To discuss furniture plans and purchases.</i>
<i>April 20, 2009</i>	<i>OPM, OAH, Interior Architects</i>	<i>Meeting</i>	<i>To determine the total items and type of items to purchase.</i>
<i>May 7, 2009</i>	<i>OPM, OAH, Interior Architects</i>	<i>Meeting</i>	<i>To review initial test-fit of furniture/scale.</i>
<i>May 28, 2009</i>	<i>OPM, OAH, Interior Architects</i>	<i>Meeting</i>	<i>To review and approve revisions to test-fit.</i>
<i>June 12, 2009</i>	<i>OPM, OAH, Interior Architects</i>	<i>Conference call</i>	<i>To discuss the completion of the furniture procurement package.</i>

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6. **Information Technology (IT) tools and support, office equipment are inadequate and hinder the efficient and timely processing of cases.**

- a) *ProLaw is frequently inoperative and does not capture/report the performance metrics necessary to monitor court operations.*

Caseflow management may be defined as: the court supervision of the case progress of all cases filed in [a] court. It includes management of the time and events necessary to move a case from the point of initiation (filing, date of contest, or arrest) through disposition....⁶⁰

According to best practices:

The ability to monitor both individual case progress and the success in meeting disposition standards is essential to sustain an effective case management system ... At a minimum, a case management system should provide the capability to: 1) monitor case progress; 2) generate various reports for measuring inventory, delay, activity, and scheduling practices; and 3) generate reports showing compliance with guidelines....⁶¹

OAH manages cases through ProLaw. The program schedules motions, trials, discovery deadlines, and other court dates and is designed for smaller and mid-size law firms, corporate legal departments, and government law offices.⁶²

Employees reported that they experience numerous problems with ProLaw and identified the following issues:

- On average, the system is inoperative approximately once a month for a period of nearly 2 days.
- LAs entered data into ProLaw but, when they re-entered the system, the data was not saved.
- An LA committed a data processing error in ProLaw that prevented other LAs from entering case file information for 2 weeks.
- In one instance, ProLaw was accessible by only one LA's computer, which required other LAs to rotate using this computer to enter data into the system.

Because cases have to be entered into ProLaw before they can be scheduled, backlogs developed and scheduling hearings was delayed. According to a senior manager, only one employee within the Clerk of Court Division has received formal training on ProLaw and is proficient at using the system. Many employees believed that if LAs received formal or standardized training on ProLaw, then the frequency of data processing errors and system failures would decline.

⁶⁰ CASEFLOW MANAGEMENT GUIDE, State Court Administrative Office, Chapter 1, Section B (1), Dec. 2003.

⁶¹ *Id.* at Chapter 5, Section A.

⁶² See <http://west.thomson.com/prolaw/> (last visited Jan. 29, 2008).

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In addition to the issues cited above, OAH employees stated that ProLaw does not accurately track the dates on which cases are heard and decided. Some ALJs stated that they track their cases individually because ProLaw's caseload reports contain incorrect data. These ALJs use spreadsheets or conduct manual counts of their cases and compare their information to ProLaw caseload reports. Tracking cases with spreadsheets and manual counts is inefficient and error prone. Moreover, OAH management cannot effectively measure case backlogs because ProLaw provides flawed data. Similarly, external stakeholders said in interviews that ProLaw reports provided to them by OAH are inaccurate. As a result, they cannot determine which cases have been heard and processed or if they have received fines from litigants.

Employees also stated that ProLaw cannot produce reports with the case data needed to monitor court operations. Consequently, D.C. Council and OIG requests for data were not fulfilled. For example, a Councilmember from the Committee on the Public Safety and the Judiciary requested the number of cases that have been backlogged 120 days or more and the average length of time in which final orders are issued. The Chief ALJ responded that, "Unfortunately, this number cannot be determined using OAH's current case management system. OAH had a ProLaw trainer on site last week, and he could not compose a query that would accurately capture this information. We are mindful of the need to track this information, however, and will ensure that our new case management system will be able to track this and other metrics."⁶³ The team requested the following case management metrics for all cases:

- the original date of the NOI, NOV, or appeal;
- the fine amount;
- the date the case management order was issued;
- the hearing date; and
- the date the final order was issued.

OAH management responded that they tried to create a report with the requested information but one could not be done.

ProLaw provides ineffective case management because valid case data cannot be generated. The team is concerned that annual performance measure data provided to the City Administrator may be inaccurate given OAH's inability to internally track case management metrics.

To address the challenges associated with ProLaw, OAH management is procuring a new case management system. According to OAH, the new system will:

- be Internet-based;
- not allow users to change the infrastructure of the system;
- be user friendly;
- produce Crystal⁶⁴ and query reports; and

⁶³ Letter from Tyrone Butler, Chief ALJ, to Peter J. Nickles, Attorney General (Mar. 14, 2008).

⁶⁴ "Crystal Reports is a popular Windows-based report writer (report generation program) that allows a programmer to create reports from a variety of data sources with a minimum of written code."
[Http://whatis.techtarget.com/definition/0,,sid9_gci214605.00.html](http://whatis.techtarget.com/definition/0,,sid9_gci214605.00.html) (last visited Apr. 28, 2008).

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- be compatible with Microsoft Outlook, which will aid with scheduling.

A contract has been awarded for the project, and OAH estimates that the new case management system will be implemented by the summer of 2009.

b) Inoperative office equipment delays case processing.

OAH's FYs 2008-2009 Strategic Plan states that "[t]he purpose of the information technology activity is to provide network, telephone, and computer hardware and software support and information services to department management and staff so they can use technologies to produce, communicate, and manage information without undue delay."⁶⁵

According to employees, a majority of OAH's equipment was inherited from those District agencies for which OAH assumed case adjudication responsibilities. Employees stated that OAH's copiers are inadequate and require frequent repairs. Although two new copier/fax machines were purchased in 2006, employees said they continue to experience challenges. Copiers frequently jam and, when they do, they remain inoperative for 1 to 2 days. Also, there is only one copier/fax machine at 941. There was an instance when the machine was inoperative for 10 days, and another when the machines at both 941 and 825 were inoperative simultaneously.

Employees contend that the copy/fax machines cannot handle the volume of work required to process cases timely and, when the copier/fax machine at OAH's 941 location was inoperative, employees traveled to OAH's 825 location to make copies. When copiers/fax machines are inoperative and not repaired timely, LAs cannot copy, fax, send out final orders at the end of the day, or receive faxed documents for cases. Consequently, cases are delayed and backlogs develop. Additionally, when employees use a single copy machine because another is inoperative, an undue burden is placed on all jurisdictions and, again, cases are delayed and backlogs develop.

Recommendations:

- (1) That the Chief ALJ ensure that the new case management system is implemented within the contract's prescribed timeframe and that all employees who use the new system are thoroughly trained.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH has been working closely with Sustain, Incorporated, the vendor on the CMS. By the end of FY 2009, the new CMS will be installed and operating for any new case filed with OAH. As part of the contract, Sustain will conduct extensive training before, during and after

⁶⁵ *Id.* at 15.

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the system implementation date. Training sessions for the Lead Legal Assistants are on-going. Sustain will also provide on-going system support, maintenance and upgrades.

- (2) That the Chief ALJ request an assessment of OAH's office equipment requirements to determine whether new and/or additional equipment is needed to improve agency functioning.

Agree **X** Disagree

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

Over the last several years, OAH has worked to ensure that office equipment is replaced or updated based on funding availability. Below is a list of office supplies, software and equipment purchased in the last three years. Though this list is not exhaustive, it provides a snapshot of major upgrades and changes.

OAH Purchases of Supplies and Office and IT Equipment

<i>Supplies and Equipment Purchases</i>				
<i>Date</i>	<i>Quantity</i>	<i>Amount</i>	<i>Description</i>	<i>Purpose</i>
<i>June 2006</i>	<i>Multiple</i>	<i>\$21,668</i>	<i>Supplies and Equipment</i>	<i>Standard Purchases</i>
<i>August 2006</i>	<i>Multiple</i>	<i>\$37,622</i>	<i>Supplies and Equipment</i>	<i>Standard Purchases</i>
<i>November 2006</i>	<i>Multiple</i>	<i>\$45,000</i>	<i>Supplies and Equipment</i>	<i>Standard Purchases</i>
<i>April 2007</i>	<i>Multiple</i>	<i>\$14,100</i>	<i>Supplies and Equipment</i>	<i>Standard Purchases</i>
<i>October 2007</i>	<i>Multiple</i>	<i>\$61,240</i>	<i>Supplies and Equipment</i>	<i>Standard Purchases</i>
<i>November 2008</i>	<i>Multiple</i>	<i>\$74,410</i>	<i>Supplies and Equipment</i>	<i>Standard Purchases</i>
<i>August 2006</i>	<i>2</i>	<i>\$800</i>	<i>Desk Top Printers</i>	<i>Upgrade</i>
<i>May 2006</i>	<i>3</i>	<i>\$1,199</i>	<i>Desk Top Printers</i>	<i>Upgrade</i>
<i>July 2007</i>	<i>1</i>	<i>\$100</i>	<i>Desk</i>	<i>Replacement</i>
<i>April 2008</i>	<i>1</i>	<i>\$700</i>	<i>Replace ALJ's Office Furniture</i>	<i>Replacement</i>
<i>October 2008</i>	<i>4</i>	<i>\$1,0199</i>	<i>Office Printers</i>	<i>Upgrade</i>
<i>November 2008</i>	<i>1</i>	<i>\$499</i>	<i>Office Printer</i>	<i>Upgrade</i>
<i>Hardware Information Technology Purchases</i>				
<i>Date</i>	<i>Quantity</i>	<i>Amount</i>	<i>Description</i>	<i>Purpose</i>
<i>November 2005</i>	<i>7</i>	<i>\$12,273</i>	<i>Desk Top</i>	<i>Replacement/Upgrade</i>

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			<i>Computers</i>	
<i>February 2006</i>	<i>13</i>	<i>\$23,815</i>	<i>Desk Top Computers</i>	<i>Replacement/Upgrade</i>
<i>April 2006</i>	<i>2</i>	<i>\$11,976</i>	<i>Office Copier Machines</i>	<i>New Purchase to improve performance</i>
<i>April 2006</i>	<i>1</i>	<i>\$23,478</i>	<i>Network Storage/Data Array</i>	<i>New Purchase to improve IT/Network performance</i>
<i>June 2006</i>	<i>10</i>	<i>\$14,399</i>	<i>Laptop Computers</i>	
<i>June 2006</i>	<i>25</i>	<i>\$30,775</i>	<i>Courtroom Computers</i>	<i>Replacement/Upgrade</i>
<i>June 2007</i>	<i>4</i>	<i>\$340</i>	<i>Computer Switches</i>	<i>New Purchase to improve IT/Network performance</i>
<i>November 2008</i>	<i>14</i>	<i>\$8,792</i>	<i>Desktop Computers</i>	<i>Replacement/Upgrade</i>
<i>February 2009</i>	<i>4</i>	<i>\$18,876</i>	<i>Office Copier Machines</i>	<i>Replacement/ Increased capacity</i>
<i>Software Information Technology Purchases</i>				
<i>Date</i>	<i>Quantity</i>	<i>Amount</i>	<i>Description</i>	<i>Purpose</i>
<i>February 2006</i>	<i>5</i>	<i>\$6,975</i>	<i>FTR Software</i>	<i>Increase Licenses</i>
<i>June 2006</i>	<i>35</i>	<i>\$4,900</i>	<i>dtSearch Legal Research Software</i>	<i>Increase/Upgrade Licenses</i>
<i>June 2006</i>	<i>25</i>	<i>\$101,923</i>	<i>FTR Digital Recording Software: Court Hearing</i>	<i>Increase/Upgrade Licenses</i>

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7. The Chief ALJ drafts and approves his own performance evaluations and pay adjustments.

Chapter 14 of the DPM establishes parameters for the District government’s performance management program (PMP). The PMP is a systematic process by which an agency involves its employees in improving performance and accomplishing the agency’s mission and goals. OAH personnel reported that although they have independent personnel authority, the agency adopted the DPM because internal HR policies and procedures had not been developed.

The PMP prescribes work expectations that employees are accountable for, and establishes an objective way to evaluate employees’ work performance based on specified criteria. The Chief ALJ position is classified as Excepted Service and, according to D.C. regulations, Excepted Service employees must meet certain eligibility requirements in order to receive a performance evaluation.⁶⁶ Namely, they must have a performance plan in place for at least 90 days prior to their annual performance evaluation, and must be rated by their immediate supervisor. If the supervisor is absent, a higher-level official designated by the agency head must evaluate Excepted Service employees.

The Chief ALJ is the OAH agency head and, therefore, is not supervised by another OAH employee. In addition, because OAH is an independent agency, the Chief ALJ is not subject to review by the Executive Office of the Mayor. When reviewing the D.C. Code, the team observed that it does not state whether the Chief ALJ is subject to a performance evaluation given that there is no higher level official designated to assess his performance. Although the D.C. Code is silent with regard to this matter, the Chief ALJ completed his own performance evaluation in FYs 2006 and 2007. According to the Chief ALJ, completing his own performance evaluation was acceptable because “OAH is an independent agency... [and] no one entity has supervisory authority over the OAH agency Director.” By completing his own evaluation, the Chief appears to have violated the DPM’s requirement that a higher level official conduct the evaluation. In addition, DPM § 1403.3(c) states that the purpose of the PMP is to objectively evaluate employees’ performance. The Chief ALJ’s completion of his own performance evaluation was inherently subjective because an employee cannot rate him/herself without bias.

Of further concern to the team was that by completing his own performance evaluation, the Chief ALJ was also approving his own merit pay percentage increase.⁶⁷ Excepted Service employees who receive a performance rating of “3-Meets Expectations” or better are eligible to receive a merit pay percentage increase of at least four percent of their salary. Therefore, the Chief ALJ assessed his own performance, authorized, and subsequently received salary increases without internal or external oversight.⁶⁸ On a related note, there is no oversight authority.

⁶⁶ According to DPM § 904.1(a), “Excepted Service statutory positions include positions occupied by employees who ... serve at the pleasure of the appointing authority; or who, as provided by other statute, serve for a term of years subject to removal for cause as may be provided in the appointing statute.”

⁶⁷ The merit pay percentage increase consists of cost of living and merit percentage point increases.

⁶⁸ According to D.C. Code § 2-1831.04(c), “The Chief Administrative Law Judge shall be compensated at the Grade 18 level, Step 5, of the Mayor’s Excepted Service Schedule.” In July 2005, the Excepted Service pay schedule was amended to allow for an open range salary schedule with progression there on based on performance. The Chief ALJ’s salary was converted to a pay band comparable to the former Grade 18, Step 5 compensation rate. The D.C.

evaluated,” the OIG disagrees with the Chief ALJ’s assertion that this “arguably leaves to his discretion the appropriate evaluation methodology to be used.” The OIG stands by its finding that because the OAH enabling statute does not appoint a supervisor for the Chief ALJ and he does not have a Performance Plan prepared by an employee occupying a higher position than his own, that he is not entitled to a performance evaluation in accordance with the PMP. Further, if a District agency employee is not entitled to a PMP performance evaluation by virtue of his position atop the agency hierarchy, the employee would not therefore be entitled to conduct his own performance evaluation.

- (2) That the Chief ALJ and EOM determine whether the Chief ALJ position is subject to a performance evaluation. If it is determined that the Chief ALJ is subject to an evaluation, then a higher-level independent official or entity such as COST should be assigned responsibility for establishing performance measures and evaluating the Chief ALJ’s performance annually.

Agree X Disagree _____

OAH’s Response, as Received:

OAH Comment: OAH agrees with this recommendation.

Due to the nature of their work product, and the need for impartiality, for fairness and for protection from undue outside influences, judges historically have not been subjected to an evaluations structure as contemplated by the DPM. Rather, judges are usually evaluated at the time of the renewal of their terms and at specified years of service, at which time public comments on the judge’s performance are received and the judge’s decisions reviewed by an independent body or commission. In the absence of any other controlling authority, the Chief ALJ performed a self-evaluation utilizing the same form used by all OAH ALJs for purposes of evaluation and salary increases. As noted in the Report, the OAH Act is silent on the methodology by which the Chief Administrative Law Judge is to be evaluated, and arguably leaves it to his discretion the appropriate evaluation methodology to be used. See generally D.C. Official Code § 2-1831.05 (Powers and duties of the Chief Administrative Law Judge). As noted in the Report, this issue is further complicated because OAH is an independent agency within the Executive branch. D.C. Official Code § 2-1831.02(a).

Information concerning proposed and actual salaries is not hidden. Such information for all OAH staff, including the Chief ALJ, is routinely included in agency budget submissions to the EOM and, thereafter, to the City Council. Salary increases cannot occur without approval from those entities.

OAH will raise the issue of performance evaluations and salary increases for the Chief ALJ with the EOM and at the next scheduled COST meeting.

8. ALJ performance evaluations are not conducted in accordance with DPM regulations.

According to the OAH Establishment Act, the Chief ALJ must develop and implement annual performance standards for the management and disposition of cases assigned to ALJs. The standards shall take into account subject matter and case complexity.⁷⁰ In addition, because ALJs are classified as Excepted Service employees, ALJ performance standards must comport with guidelines set forth in the DPM. The DPM states that performance measures for Excepted Service employees must consist of core competencies and specific, measurable, attainable, realistic, and time-related (SMART) goals. Core competencies are behaviors employees must demonstrate on the job, and SMART goals are performance requirements employees are expected to accomplish during the rating period. Each core competency and SMART goal is rated using a five-point scale where one is the lowest and five is the highest attainable rating. The ratings for each measure are combined to determine the employee’s overall performance rating score. Excepted Service employees who receive an overall performance rating of “3- Meets Expectations” or better are eligible to receive a merit pay increase that ranges between four and six percent of their annual salary. (See Table 6 below.)

Table 6: Merit Pay Percentage Increases Based Upon an Excepted Service Employee’s Overall Performance Rating Score (eff. Jan. 2007)

Employees Rated Under the PMP			
Overall Performance Rating Level	Market Adjustment⁷¹	Merit Increase	Total Increase
1 Does not meet expectations	0%	0%	0%
2 Needs improvement	0%	0%	0%
3 Meets expectations	3%	1%	4%
4 Exceeds expectations	3%	2%	5%
5 Significantly exceeds expectations	3%	3%	6%

Source: DPM Bulletin Nos. 11B-61 & 14-23

Prior to FY 2006, ALJ performance standards did not comport with the DPM’s performance management guidelines because they did not contain core competencies and SMART goals. As a result, ALJs were not eligible to receive merit pay percentage increases. To correct this deficiency, the Chief ALJ established the “Committee on ALJ Performance Measures” to assess strengths and weaknesses of OAH’s existing performance measures model and to propose a new performance evaluation model that complied with DPM regulations. After completing its study and obtaining internal and external feedback from peers, committee members prepared and distributed a draft OAH Evaluation Program to senior managers. The new program format contained competencies and goals, as required by the DPM, that evaluate the judicial aspects of ALJs’ duties and responsibilities.

Senior managers incorporated elements of the Committee’s proposed performance standards several months after the FY 2006 rating period began but they did not inform ALJs of

⁷⁰ D.C. Code § 2-1831.05(a)(10) (Supp. 2005).

⁷¹ The term “market adjustment” is also referred to as a “cost of living” increase.

the revisions. This process violated DPM § 1406.1, which states that each supervisor shall complete a Performance Plan, which informs employees how they will be evaluated within 30 days of the beginning of each rating period. If supervisors do not inform employees of work expectations at the start of a rating period, employees may not know what is expected of them, and supervisors may not be able to hold them fully accountable for performance deficiencies.

The team also learned that in FY 2006, the Chief ALJ reduced the highest overall rating score that ALJs could receive for that rating period from a score of “5-Outstanding” to “3-Meets Expectations.” Senior managers stated that they altered the scale because they were assessing ALJ performance for a portion of the rating period rather than the full period. They believed that this was agreeable to both management and ALJs because a performance rating of “3-Meets Expectations” qualified ALJs to receive merit and cost of living increases that were unattainable in prior fiscal years.

When reviewing the completed FY 2006 performance evaluations, the team observed that all but one ALJ received a rating of “3-Meets Expectations,” and there was minimal narrative attesting to each ALJ’s performance. The instructions on OAH’s Performance Evaluation Form direct the evaluators to: “Review the following Competencies and discuss how each applies to the Administrative Law Judge’s duties and responsibilities. . . . Include comments to support performance ratings.” Likewise, raters are instructed to provide comments to support performance ratings when assessing employees’ compliance with SMART goals. Evaluators, however, did not provide substantive and specific explanations as to why employees received a “3-Meets Expectations” rating for each competency and SMART goal. The comments only stated, “Due to OAH’s recent implementation of these interim performance standards, the rating of ‘Meets Expectations’ is the highest for this FY 2006 Evaluation Period.” A summary paragraph was included at the end of each employee evaluation to describe the ALJ’s overall performance, but the individual measures did not contain narratives justifying these ratings.

In FY 2007, OAH remained noncompliant with DPM requirements. During interviews, ALJs reported that management had not formally adopted a set of performance measures, and they were unsure which performance standards were being used. When the team reviewed the FY 2007 ALJ performance evaluations, it observed that management had applied the same measures that were used in FY 2006. Because there was continuity in the performance measures from FY 2006 to 2007, evaluators should have been able to capture and analyze appropriate performance data for the FY 2007 evaluations. However, this was not done. OAH managers once again explained to the team that all ALJs received a “3-Meets Expectations” rating because this was the first year that ALJ performance measures conformed to DPM requirements and the rating qualified ALJs to receive the corresponding 4% salary increase.

The use of this alternate rating scale continued in FY 2008. A senior manager explained that, “OAH determined it would adapt a pass/fail evaluation system. [Three] is meet expectations which is a “pass” and would allow a 4% across the board increase for ALJs rather than have varying increase levels.” OAH’s “pass/fail” system, however, undermines the intent of the performance evaluation process and does not distinguish superior or sub-par work performance within specific performance areas. Some ALJs opined that narrative information should have been included to support each competency and SMART goal rating, so that specific

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areas where improvement was needed would be clearly identified. Members of COST echoed these sentiments and stated that the evaluations did not provide substantive information for them to use when evaluating ALJs for reappointment to 6- or 10-year terms.

Recommendations:

- (1) That the Chief ALJ formally adopt a PMP for ALJs that complies with DPM requirements.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

The annual ALJ form now complies with the District's applicable personnel requirements for employees such as the OAH ALJs who are within the Excepted Service personnel category. As the Report notes, the Chief ALJ commissioned a committee of ALJs to review the applicable law and codes of judicial ethics and create an evaluation form consistent with those requirements. During the course of the year the committee used to develop the form, drafts of the form were circulated to the entire ALJ corps for extensive comment and feedback. No material changes were made to the performance standards that were presented by the committee to the Chief ALJ. Senior management now uses those standards for evaluation of the ALJs. As such, any suggestion that the ALJs were not aware of the evaluation format, standards and methodology prior to being evaluated is not accurate.

In order to guard against even the perception of unfair surprise in this regard, however, ALJs were subjected to a "pass/needs improvement/fail" grading system during the implementation of the evaluation form in FY 2006. Under this approach, the highest performance category ALJs could receive was "3-Meets Expectations." This approach served the dual purpose of providing fair notice of the transition to a new evaluation system, as well as a fair methodology for ensuring a 4% raise across-the-board for ALJs whose overall evaluation ranking was "3".

As a general proposition, OAH senior management believes that the "pass/needs improvement/fail" approach to the evaluation, coupled with a personalized narrative and individual evaluation conferences with each ALJ, is appropriate for its current operations for three main reasons. First, as discussed above, the nature of a judge's work, and the need for independence and a lack of undue outside influence in that work, does not necessarily lend itself well to a standard evaluation model. See D.C. Official Code § 2-1831.05(a)(10) (Chief ALJ to create and implement performance standards under the OAH Act). In addition, because of its current space constraints, not every OAH ALJ hears every type of case, although most have at least two or three jurisdictions on their dockets. The case mix is varied. Some cases are high volume, generating thousands of 3-4 page orders per year. Other cases are highly complex, involving multiple parties and generate one or two 30-40 page orders per month. Moreover, while the high volume cases generally may involve less complex issues, keeping up with the

crushing volume of these cases requires a special skill set in itself. Some cases have strict federal or District time deadlines, while others have no deadlines at all beyond the internal standards set by OAH. To the extent that all ALJs were, in the course of a year, adjudicating an equivalent mix of cases, e.g., high-volume, low-volume, simple, complex, external deadlines, internal deadlines, a reasoned methodology could be constructed to distinguish the fine-tuned performance levels above “meets expectations” with regard to ALJs’ performance. Currently, such assessments would be unduly subjective, and would create an evaluation environment of distrust and perceived favoritism, resulting in poor morale and affecting OAH’s operations and the public accordingly.

Second, contrary to the suggestion in the Report, the current OAH evaluation model provides meaningful feedback for the ALJs. Not every ALJ receives a 3 in every evaluation category. ALJs who need improvement in certain specified areas are counseled formally through the evaluation process, and throughout the year as necessary. The ALJs are provided feedback on what is working well and what needs improvement for purposes of the next evaluation period. In addition, as part of the evaluation process, the ALJs are required to submit yearly Individual Development Plans (IDP) which are reviewed and approved by their supervisors. The IDPs specify development goals and objectives the ALJ would like to achieve in the upcoming evaluation period, and these IDPs are reviewed during each year’s evaluation conference.

Third, the current evaluation model provides greater uniformity in raises, when the budget allows for such raises to be given. The OAH Act does not contemplate non-supervisory ALJs with the same seniority being paid at varying levels, and such a practice is largely inconsistent with the approach taken by the local and federal Article III court judiciary whose judges receive a uniform salary. Prior to the most recent increase for ALJ salaries provided by the Council, OAH attempted to have ALJs at salary levels that varied based on their seniority, not unlike federal administrative law judges within the Executive Branch. However, some ALJs had negotiated with the Commission on Selection and Tenure to receive higher starting salaries than their counterparts. As a result, those ALJs received salaries inconsistent with their tenure at OAH. Once this information somehow became known among the ALJ corps, there were several protests made to senior management, with at least one senior ALJ threatening to resign over the issue. The effect on ALJ morale was debilitating. So that the ALJ pay disparity would not worsen, senior management determined it was in the best interest of the operation to permit only uniform raises, with exemplary performance (usually in the area of OAH committee work) being recognized separately through receipt of a Chief Judge’s Certificate of Merit and, perhaps, a one-time performance bonus, budget permitting. With the most recent FY 2009 salary adjustment, all non-supervisory ALJs are now at the same salary level, and complaints regarding the unfairness of ALJ salary disparity are a non-issue.

As noted, OAH is not in disagreement with the general conclusion of the Report that evaluations be meaningful and in accordance with applicable regulations. Given the context in which it is operating, OAH believes its current evaluation methodology meets those requirements. In keeping with the concerns of the Report, however, OAH senior management will revisit its current evaluation model when OAH moves to its consolidated space (thereby creating a more unified ALJ caseload) and can utilize its new case management system to better

9. Use of term appointments when hiring LAs contributes to high turnover rates within the Clerk of Court Division.

According to DPM § 823.4, “[a]n agency may make a non-competitive term appointment to a position at or below grade level CS-12....” These appointments are classified as term positions, which range between 13 months to 4 years. According to the Office of Management and Budget’s Circular, OAH’s Clerk of Court Division was approved for 15 FTEs in FY 2007, but 17 FTEs actually worked within the division. Fourteen of the 17 FTEs, however, were hired under a 13-month term appointment rather than a Career Service appointment.⁷² At the end of his or her 13-month term, OAH managers assessed the LA’s performance to determine whether he or she should be terminated, have his/her term appointment extended, or be considered for a permanent position.

During interviews with LAs, several reported that OAH offers few opportunities for advancement to permanent, Career Service appointments. Career Service appointments, unlike term appointments, do not have a designated termination date. Consequently, most LAs prefer employment within the Career Service because this designation offers more job-stability. LAs stated that if there are no available Career Service LA positions within OAH when their term appointment expires, they would seek employment elsewhere. The lack of job security coupled with low compensation rates, demanding workloads, and poor management have created low morale and high turnover rates among LAs. OAH personnel data showed that the turnover rate for LAs was 53 percent in FY 2006 and increased to 69 percent in 2007.

The U.S. Government Accountability Office (GAO) guide entitled *Internal Control Management and Evaluation Tool* (GAO-01-1008G, August 2001) recommends that an agency avoid a high personnel turnover rate because it could impair internal controls. According to OAH employees, high turnover rates and staffing shortages in the Clerk of Court Division caused significant delays in scheduling cases, entering data in ProLaw, and processing defaults.⁷³

When the team spoke with OAH management in March 2009, a manager reported that the LA turnover rate declined to 23 percent in FY 2008. The manager also stated that OAH plans to address its use of term appointments when hiring LAs: “For the individuals who have worked at least 12 months with OAH, they will be able to compete for their position and come on-board permanently. Currently, these term individuals are receiving full benefits that a permanent, career staff person would receive.”

In addition to high turnover rates, employees reported that they do not have enough FTEs to staff the Clerk of Court Division. OAH’s caseload and complement of ALJs increased significantly in recent years, but the number of LAs did not increase proportionately. As a result, the division’s ability to provide efficient case management declined. In FYs 2006 through 2008, OAH management submitted budget enhancements to the D.C. Council requesting additional

⁷² An OAH manager explained that term appointments were used in order to quickly hire employees to these positions. The remaining three employees performed supervisory related duties and were classified as either Career Service or Management Supervisory Service employees.

⁷³ According to OAH procedural rules, a notice of default is issued when a respondent does not reply to a NOI or NOV within the time allowed by law.

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funding for LA FTEs. While an increase in LA FTEs is needed to accommodate the growing case volume, the Clerk of Court Division also needs to implement retention strategies that reduce LA turnover rates.

Recommendations:

- (1) That the Chief ALJ develop a strategy to employ and train LAs who possess the education, skills, and experience needed to provide effective services.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH has continually worked to improve recruitment and retention of legal assistants. Each fiscal year since 2006, the turnover rate of legal assistants has decreased. In addition, OAH continues to provide training for legal assistants. OAH provides case management training and various software training. Further, as part of each legal assistant's performance review, eight hours of DCHR/Center for Workforce Development training is required. Finally, the Clerk of Court works with ALJs to development training programs that improve operational and procedural effectiveness. Training programs have included:

- *FY 2006—30 hours of ProLaw training;*
- *FY 2008—28 hours of ProLaw training;*
- *September 17-20, 2007—Legal Assistant General Training with ALJ's serving as instructors;*
- *January 9, 2009—Legal Assistant Training on various motions and filings;*
- *June 22-26, 2009—Legal Assistant General Training with ALJ's serving as instructors;*
- *On-going Monthly Legal Assistant meetings, a portion of which is devoted to Legal Assistant training.*

The issues of training, recruiting, and retaining legal assistants continue to be of great concern to management staff. Since FY 2007, OAH has raised staffing issues and concerns with the Executive and the Council. Each budget development period, OAH has requested 10 additional LAs to increase and improve the ability of support staff to effectively work with ALJs and other staff and to avoid employee burnout. Currently, OAH is not adequately staffed to support the increased demands of the office. In FY 2007, OAH support staff was reduced by four positions. This reduction occurred even as we reported a 19 percent caseload increase in FY 2007, following an 18 percent caseload increase in FY 2006. Though support staff receives continuous training, LAs often inform us that they are overworked. This workload contributes to errors and employee burnout that management works to address. We continue to work with the Executive and the Council to address this on-going support staff issue.

OIG Response: **The OIG stands by the finding as written. When responding to this report, the Chief ALJ wrote, “Each fiscal year since 2006, the turnover rate of legal assistants has decreased.” At the time of this inspection, documentation provided by OAH personnel reported that the turnover rate among legal assistants in FYs 2006 and 2007 was 53 and 69 percent, respectively. According to an OAH employee, the FY 2008 turnover rate was 23 percent which represented the first decline in since 2006.**

- (2) That the Chief ALJ seek an increase in the number of Career Service LA positions so that term employees have the opportunity to seek permanent employment and thereby aid retention.

Agree X Disagree _____

OAH’s Response, as Received:

OAH Comment: OAH agrees with this recommendation.

As of July 2009, OAH has advertised as Career Service positions all 13-month term positions. Each term employee applied for permanent employment by completing the DC Form 2000. OAH no longer has 13-month term employees.

10. Standardized training for LAs is needed to improve case management efficiency.

GAO’s *Internal Control Management and Evaluation Tool* recommends that agencies provide training and counseling to help employees maintain and improve competence for their jobs. A training program and a control mechanism to help ensure that all employees receive appropriate training should also be in place to meet employee needs.

LAs are responsible for a variety of tasks that include entering case file information, scheduling hearings, greeting the public, processing fine payments, and maintaining case file documentation. When they are hired, LAs are assigned to handle cases for specific jurisdictions. Legal Administrative Specialists⁷⁴ within the jurisdictions train new LAs on their duties and responsibilities. However, the quality of the training they receive is dependent upon the knowledge and experience of the trainer, rather than standardized manuals or protocols.

Several employees stated that LAs are not properly trained on certain responsibilities, which increases the frequency of errors. As noted earlier, a LA entered incorrect data in ProLaw, which subsequently caused the system to become inoperative for 2 weeks. Sometimes, checks are not properly screened, which delays revenue deposits. Employees also indicated that it is occasionally difficult for Legal Administrative Specialists to find adequate time to train new employees because trainers are expected to maintain their regular, high-volume caseloads; consequently, additional training, reference manuals detailing key work processes, and a prescribed training period would be helpful.

⁷⁴ Legal Administrative Specialists have supervisory functions over LAs.

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If LAs were to receive standardized training on court operations for the jurisdictions they are assigned to, fewer case management errors would occur, and the Clerk of Court Division could operate more efficiently. OAH management recognized the need for additional training, and in September 2007, the Clerk's Office held a formal training session during which ALJs trained LAs on a variety of topics including basic hearing procedures, customer service, final order dissemination, exhibit preparation, and ProLaw. If OAH standardized the information provided during internal training sessions and compiled reference materials specific to each jurisdiction, LAs would have uniform guidelines to refer to when completing tasks. Such guidelines would likely increase quality, minimize errors, and allow LAs to more easily learn functions in other OAH jurisdictions as needed.

Recommendation:

That the Chief ALJ ensure that standardized training materials and reference manuals for each jurisdiction are developed and detail how LAs should execute their duties.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH has standardized materials for training. However, we continue to improve our training and prepare new and updated materials. Currently, OAH has multiple LA training modules including the ProLaw system and case processing. Training programs have included:

- *FY 2006—30 hours of ProLaw training;*
- *FY 2008—28 hours of ProLaw training;*
- *September 17-20, 2007—Legal Assistant General Training with ALJ's serving as instructors;*
- *January 9, 2009—Legal Assistant Training on various motions and filings;*
- *June 22-26, 2009—Legal Assistant General Training with ALJ's serving as instructors;*
- *On-going Monthly Legal Assistant meetings, a portion of which is devoted to Legal Assistant training.*

11. Employees report that senior managers are frequently absent and do not adhere to tour of duty requirements.

The DPM provides that the regular basic work week is 40 hours per week comprised of 5, 8 hour days, Monday through Friday.⁷⁵ Several employees expressed concerns about absenteeism and non-standard work hours among senior managers. For example, one employee stated, "It appears that there are different [time and attendance] rules for senior management."

⁷⁵ DPM § 1204.2(b)(1) and (3).

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Employees said that some senior managers do not work their scheduled tour of duty.⁷⁶ For example, employees stated that some senior managers arrive at work between 10:00 a.m. and 11:00 a.m. and leave at 5:00 p.m. Several employees stated that senior managers are on leave so frequently that it does not seem possible they have accrued enough hours to cover these absences given their tenure with the District. For example, it was noted that one manager was on leave approximately 70 days in 2005, 84 days in 2006, and 47 days through October 2007.

Senior managers have significant responsibilities for agency functions and provide operational support and oversight for OAH programs and activities. If they are frequently absent during regular office hours, they are unavailable to the employees whom they supervise and unable to address agency issues timely and solve problems. Additionally, senior managers may be violating tour of duty and attendance requirements set forth in the DPM.

Recommendation:

That the Chief ALJ ensure that all employees adhere to DPM requirements regarding time, attendance, and tours of duty.

Agree **X** Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

The Chief ALJ ensures that all OAH employees, whether management or non-management staff, adhere to all federal and District of Columbia laws relating to time, attendance, and tours of duty, and will continue to do so. Any time away from the office is duly accounted for and approved by the employee's supervisor and/or Chief ALJ, as appropriate, and the Report does not suggest otherwise. As seasoned professionals, senior OAH managers often work evenings and weekends, in furtherance of OAH's mission.

As with any organization, there are times that require flexibility in an employee's work schedule. For example, during the time periods listed above, an OAH senior manager

That manager required a more flexible work schedule, OAH treats all its employees as professionals in this regard and, in accordance with applicable law and the needs of the office, has always endeavored to work with employees at all levels who may need extended time away for such personal reasons as illness, tending to family member illnesses or other obligations, or humanitarian overseas travel. Regardless of the situation, any time away from the office is duly accounted for and approved by the employee's supervisor and/or Chief ALJ, as appropriate.

⁷⁶ "Scheduled tour of duty means the period within an administrative workweek, within which employees are required to be on duty regularly." *Id.* at § 1299.1.

OIG Response: **At the time of this inspection, the OIG was informed that OAH had not developed policies and procedures for a flexible work schedule. According to DPM § 1208.5, the basic requirements for a flexible work schedule include: a) designation of a core time during which all employees must be present; b) designation of flexible time periods from which the employee can select; c) time periods that do not commence prior to 6 a.m., nor end after 6 p.m.; and d) maintenance of accurate time and attendance controls to ensure that employees account for 8 hours per day, 5 days per week. The OIG recommends that the Chief ALJ ensure policies and procedures for flexible work schedules adhere to the DPM.**

12. Written policies and procedures for mediation have not been formalized.

D.C. Code § 2-1831.09(b)(11) states that ALJs may “[e]ngage in or encourage the use of alternative dispute resolution....” and 1 DCMR § 2815.1 provides that “the Chief Administrative Law Judge may establish practices and procedures for any Alternative Dispute Resolution (ADR) program for the Office of Administrative Hearings.” Further, “[s]ubject to any procedural requirements designated by the Chief Administrative Law Judge, a presiding Administrative Law Judge may refer any case for mediation or early neutral case evaluation unless otherwise prohibited by law.”⁷⁷

Moreover, OAH’s FY 2008 Performance Plan states:

Objective 1: Reduce the time for reaching final disposition.

INITIATIVE 1.1: Introduce a mediation alternative to a full administrative hearing.

Currently there is no alternative to a formal administrative adversarial hearing before a judge OAH will implement a mediation program that will allow parties to resolve their disputes without a formal hearing. The expected outcome will be a reduction in the number of formal hearings the OAH will be required to conduct. (Emphasis in the original.)

ALJs reported that mediation often involves parties who have accumulated 20 to 30 violations; typically, conducting hearings for these cases is lengthy. They indicated that mediation provides an alternative to holding hearings on these matters, which would require a significant expenditure of resources. In January 2007, the Chief ALJ asked OAH’s training directors to develop a plan to train all ALJs in mediation. A mediation committee was formed to lead the project, and the goal was to have all ALJs receive 40 hours of basic mediation training so that they could mediate cases pending before OAH. The committee recommended that a core

⁷⁷ *Id.* § 2815.2.

group of ALJs provide mediation for certain jurisdictions appropriate for the process⁷⁸ and that mediators should receive periodic training. The committee also recommended that:

- there should be a methodology used to track mediation cases;
- mediation coordination should be considered with the Superior Court of the District of Columbia for subject matter areas in which the Court hears related issues;
- spaces and time for mediation should be identified; and
- standard forms for the Agreement to Mediate and the Settlement Agreement should be developed.⁷⁹

In June 2007, the majority of ALJs and the Executive Director attended mediation training. Following the training, the mediation committee outlined an initial mediation referral program that established a point of contact for mediation referrals, and criteria for determining which cases were appropriate for mediation. Additionally, the committee recommended that the Deputy Chief ALJ track cases referred to mediation for number of cases referred; number of cases mediated; number of cases that were partially resolved at mediation; and number of cases completely resolved at mediation.

As of March 2009, the Chief ALJ had not formalized the recommendations of the mediation committee and had not promulgated written procedural requirements for mediation. Consequently, some judges indicated that mediation does not occur as frequently as it should, while others questioned the relevance of the training because no formal mediation policy has been developed.

Recommendation:

That the Chief ALJ implement policies and procedures for mediation and ensure that ALJs receive periodic, ongoing mediation training.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

As noted in the Report, in FY 2007, OAH ALJs received certification as trained mediators. A refresher course is scheduled for OAH ALJs in August 2009.

OAH continues to develop the FY 2007 mediation initiative by expanding the use of mediation in various jurisdictions and developing a pilot program for "mandatory" referral to

⁷⁸ The mediation committee's report states: "The factors favoring suitability for mediation include: (a) there is an ongoing relationship between parties; (b) there is a need to address future conduct, as well as the present dispute; (c) the case is relatively complex, so that use of mediation may save time and resources; (d) the controversy involves something more than a fine or dollar amount issue; and (e) the case does not require a short decisional deadline, unless the deadline can be waived." OAH REPORT ON MEDIATION TRAINING, 5 (June 2007).

⁷⁹ *Id.* at 6.

mediation. In FY 2008, over 144 mediations were completed, an increase of 163% from FY 2007. In addition, OAH's Rules Committee will be tasked with considering additional policies and procedures for mediation as part of its review of the OAH Rules and Practice and Procedure (1 DCMR chs. 28 and 29). Expanding OAH's mediation program, while part of OAH's long-term strategic goals, will be difficult until additional resources, particularly physical space and personnel, become available. As noted in the Report, space to hold such mediations will continue to be extremely limited until OAH makes its anticipated move to a centralized space in or about the third quarter of FY 2010. Moreover, OAH is mindful of the concerns raised by the DC Council and the Council for Court Excellence during this past year's Operations and Budget Oversight hearings about using exclusively OAH ALJs for mediation, thereby making those ALJs unavailable for other hearing duties. OAH has been in contact with the District of Columbia Superior Court's Multi-Door Dispute Resolution Division to explore an expansion of OAH's current mediation resource in keeping with that model.

13. Equal Employment Opportunity (EEO) Counselors have not received adequate training.

The District's Office of Human Rights (OHR) was established to ensure that District agencies comply with the District of Columbia Human Rights Act of 1977 and Title 4 of the DCMR, which contains EEO guidelines. OHR requires that EEO Counselors within agencies under the Mayor's authority are trained on how to advise complainants and conduct inquiries into allegations of discrimination. According to the OHR, new EEO Counselors must participate in a 32 hour training session upon designation as an agency EEO Counselor, and federal government best practices require that existing EEO Counselors receive 8 hours of continuing EEO counseling training each year.⁸⁰

OAH incorporated the D.C. Human Rights Act of 1977 as part of its policy manual. OAH's procedures state that the agency's Human Resource Manager, General Counsel, Deputy Chief ALJ, and the Executive Director all serve as EEO Counselors. As of March 2009, however, only two of the four employees listed above had received EEO training. One of the employee's training took place prior to his or her tenure at OAH, while the second employee had recently completed a 1 day, EEO training course for managers. The employee who had recently completed the 1 day EEO training course, however, served as the primary point of contact for EEO matters even though he/she had not fulfilled OHR's requirement for completing 32 hours of training. When EEO Counselors do not receive appropriate training on handling allegations of discrimination and harassment, they may violate District regulations when advising claimants on EEO matters or aggravate an ongoing act of discrimination.

⁸⁰U.S. Equal Employment Opportunity Commission Management Directive, "Equal Employment Opportunity Pre-Complaint Processing," Chapter 2, § I (B-C), Available at <http://eeoc.gov/federal/md110/chapter2.html> (last visited Jan. 6, 2009).

Recommendation:

That the Chief ALJ implement EEO training requirements for existing and new EEO Counselors and ensure that OAH adheres to the District of Columbia Human Rights Act of 1977 and Title 4 of the DCMR.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

OAH believes that OAH EEO Counselors have neither violated any District regulations when advising claimants on EEO matters nor aggravated any ongoing acts of discrimination.

In an effort to comply with the District of Columbia Human Rights Act of 1977 and Title 4 of the DCMR, OAH has made arrangements with OHR to take the required training classes at their next offering in August 2009. Because the training is not immediately available, we are taking a pro-active approach and will have our EEO Counselors enroll in OHR's E-Learning Training Program on EEO and Diversity. The online training is interactive, scenario-based, and provides crucial information about diversity in the workplace and the importance of fairness and equal treatment.

We believe that these two training opportunities, along with the required eight hours of annual continuing EEO counseling training, will ensure that OAH EEO Counselors are knowledgeable of, and continue to abide by EEO rules and guidelines.

14. An OAH EEO Counselor may have violated an EEO regulation governing complainant confidentiality.

In July 2008, OHR provided training on sexual harassment to OAH employees. During this session, OAH management identified the employee who would act as the primary EEO Counselor. Following this training session, an ALJ felt that a senior OAH manager made light of the questions and comments posed by an employee. Consequently, the ALJ e-mailed OAH's EEO Counselor and stated that the senior manager's behavior was inappropriate given the subject matter that was discussed. The ALJ suggested that the EEO Counselor speak to the senior manager about this because this manager was alleged to have exhibited similar behavior in prior OAH training sessions.

After receiving the ALJ's e-mail, the EEO Counselor forwarded it to the senior manager in question to review. According to 4 DCMR § 105.10, "[t]he EEO Counselor shall not reveal the identity of a complainant who has come to the Counselor for consultation, except when authorized to do so by the complainant in writing...." The EEO Counselor may have violated this DCMR mandate because the ALJ did not authorize the EEO Counselor to share the e-mail with the senior manager. The EEO Counselor's action resulted in the senior manager sending an

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inappropriate and abrasive e-mail response about the ALJ to the entire OAH staff, which exacerbated the situation.

When employees approach an EEO Counselor with questions, concerns, or allegations of discrimination, they should be certain that their issues will be handled confidentially. In this instance, the EEO Counselor's and senior manager's actions may have dissuaded other employees from reporting their issues for fear of retaliation. If employees do not feel that they can confide in EEO Counselors, then they may not report their concerns regarding discrimination or adverse situations.

Recommendation:

That the Chief ALJ ensure that employees and agency EEO Counselors are knowledgeable of and abide by EEO rules and guidelines governing the complaint process and complainant confidentiality.

Agree X Disagree _____

OAH's Response, as Received:

OAH Comment: OAH agrees with this recommendation.

As the District's administrative law judiciary, OAH necessarily takes all claims of harassment very seriously. OAH strives to follow the pertinent regulations to the letter.

Unfortunately, abrasive and inappropriate e-mails were exchanged between an ALJ and a senior manager. The senior manager's e-mail was mistakenly sent to all staff, rather than all senior staff. After the e-mail exchange, the two individuals were counseled by the Chief ALJ. In addition, the Chief ALJ sent out an agency-wide e-mail regarding the incident.

As to the incident in July 2008 mentioned in this Report, at the completion of the training, a senior manager, the sexual harassment trainer and the EEO Counselor spoke with the employee. Before the employee left the training site, he/she was provided with all the information necessary to follow through on a sexual harassment claim.

OIG Response: The OIG acknowledges OAH's response; however, the focus of the finding was the EEO violation involving the disclosure of a complainant's identity without obtaining prior consent from the complainant.

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- Appendix 1:** List of Findings and Recommendations
- Appendix 2:** MAR 08-I-001 “Safety and Security Deficiencies at OAH Facilities” and OAH’s Response
- Appendix 3:** OAH Employee and Stakeholder Survey (blank samples)

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APPENDIX 1

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Summary of Management Alert Report:

1. Safety and security of ALJs, other OAH employees, and hearing participants at risk.

- (1) That the Chief ALJ update the Plan to include policies and procedures that address what to do when a safety or security emergency occurs during a hearing and when an unauthorized individual enters a hearing room or an office area.
- (2) That the Chief ALJ work with the Office of Risk Management to define unusual incidents and major unusual incidents within the context of operations at OAH; implement policies and procedures whereby OAH employees are required to document and communicate to management the specifics surrounding unusual and major unusual incidents; and institute a mechanism for reviewing and implementing changes in OAH operations in response to a major unusual incident.

Key Findings:

2. As of April 2009, OAH had a reported backlog of approximately 1,600 Department of Public Works (DPW) abatement cases.

That the Chief ALJ establish a strategy for eliminating the backlog of abatement cost motions within a prescribed timeframe and ensure that appropriate resources are allocated to carry out this initiative.

3. Employees did not adhere to purchase card and travel card policies and procedures.

a. In FY 2007, OAH employees committed 14 purchase card infractions, the highest number among District agencies according to OCP.

b. Employees modified travel arrangements for personal reasons without reimbursing the District for the excess costs that were unrelated to official government business.

c. Employees do not properly document and reconcile travel costs.

- (1) That the Chief ALJ develop and implement internal controls that reduce the number of purchase card infractions committed by agency cardholders.
- (2) That the Chief ALJ, in accordance with DCMR, recoup payment for misused agency funds.
- (3) That the Chief ALJ ensure that the ART periodically reviews purchase card and travel card documentation to improve compliance with OCP policies and procedures.

4. **Inadequate oversight of the check deposit process may result in revenue being unaccounted for and/or improperly allocated to District agencies.**

- a. *Failure to reconcile checks received with checks deposited limits OAH's ability to assure that agencies receive correct revenues.*
- b. *Failure to ensure that checks include required information before forwarding them to the OAH Budget Officer delays and possibly prevents revenue from being deposited.*
- c. *ProLaw contains inaccurate revenue data that may adversely impact District citizens and agencies' operations.*

- (1) That the Chief ALJ ensure that check information recorded in ProLaw and Microsoft Excel databases complies with OCFO standards, and that quality assurance policies and procedures for periodically verifying the accuracy of data entered into each database are established.
- (2) That the Chief ALJ seek guidance from the OCFO and develop policies and procedures specific to documenting and reconciling checks that are delivered to the OAH Budget Officer for deposit.
- (3) That the Chief ALJ ensure that LAs are trained to properly identify incomplete checks, and establish procedures that instruct LAs how to handle payments that do not include all required information.

5. **Occupation of limited office space within three District buildings creates inefficiencies and burdens litigants and neighboring agencies.**

That the Chief ALJ, in partnership with DRES, ensure that OAH's new centralized facility sufficiently accommodates agency personnel, litigants, and agency functions.

6. **Information Technology (IT) tools and support, office equipment are inadequate and hinder the efficient and timely processing of cases.**

- a. *ProLaw is frequently inoperative and does not capture/report the performance metrics necessary to monitor court operations.*
 - b. *Inoperative office equipment delays case processing.*
- (1) That the Chief ALJ ensure that the new case management system is implemented within the contract's prescribed timeframe and that all employees who use the new system are thoroughly trained.

- (2) That the Chief ALJ request an assessment of OAH's office equipment requirements to determine whether new and/or additional equipment is needed to improve agency functioning.

Agency Management:

7. The Chief ALJ drafts and approves his own performance evaluations and pay adjustments.

- (1) That the Chief ALJ immediately cease conducting and approving his own performance evaluations and salary increases.
- (2) That the Chief ALJ and EOM determine whether the Chief ALJ position is subject to a performance evaluation. If it is determined that the Chief ALJ is subject to an evaluation, then a higher-level independent official or entity such as COST should be assigned responsibility for establishing performance measures and evaluating the Chief ALJ's performance annually.

8. ALJ performance evaluations are not conducted in accordance with DPM regulations.

- (1) That the Chief ALJ formally adopt a PMP for ALJs that complies with DPM requirements.
- (2) That the Chief ALJ take steps to ensure that all ALJs are informed of the new PMP policies, procedures, and performance evaluation measures, and communicate changes in the PMP to employees on a timely basis.
- (3) That the Chief ALJ ensure that ALJs are rated thoroughly and according to their actual performance, and that evaluators address each competency and SMART goal using narratives that substantiate their ratings.

9. Use of term appointments when hiring LAs contributes to high turnover rates within the Clerk of Court Division.

- (1) That the Chief ALJ develop a strategy to employ and train LAs who possess the education, skills, and experience needed to provide effective services.
- (2) That the Chief ALJ seek an increase in the number of Career Service LA positions so that term employees have the opportunity to seek permanent employment and thereby aid retention.

10. Standardized training for LAs is needed to improve case management efficiency.

That the Chief ALJ ensure that standardized training materials and reference manuals for each jurisdiction are developed and detail how LAs should execute their duties.

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11. Employees report that senior managers are frequently absent and do not adhere to tour of duty requirements.

That the Chief ALJ ensure that all employees adhere to DPM requirements regarding time, attendance, and tours of duty.

12. Written policies and procedures for mediation have not been formalized.

That the Chief ALJ implement policies and procedures for mediation and ensure that ALJs receive periodic, ongoing mediation training.

13. Equal Employment Opportunity (EEO) Counselors have not received adequate training.

That the Chief ALJ implement EEO training requirements for existing and new EEO Counselors and ensure that OAH adheres to the District of Columbia Human Rights Act of 1977 and Title 4 of the DCMR.

14. An OAH EEO Counselor may have violated an EEO regulation governing complainant confidentiality.

That the Chief ALJ ensure that employees and agency EEO Counselors are knowledgeable of and abide by EEO rules and guidelines governing the complaint process and complainant confidentiality.

APPENDIX 2

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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

cc: See Distribution List

717 14th Street, N.W., Washington, D.C. 20005 (202) 727-2540

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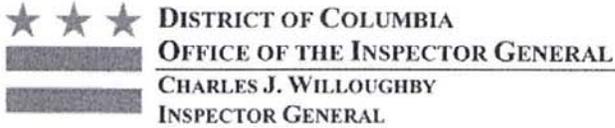
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APPENDICES



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.

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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.

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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/obcmission.cfm (last visited 12/11/07).

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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.

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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.

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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 Deputy Assistant Inspector General for Inspections and Evaluations, at

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

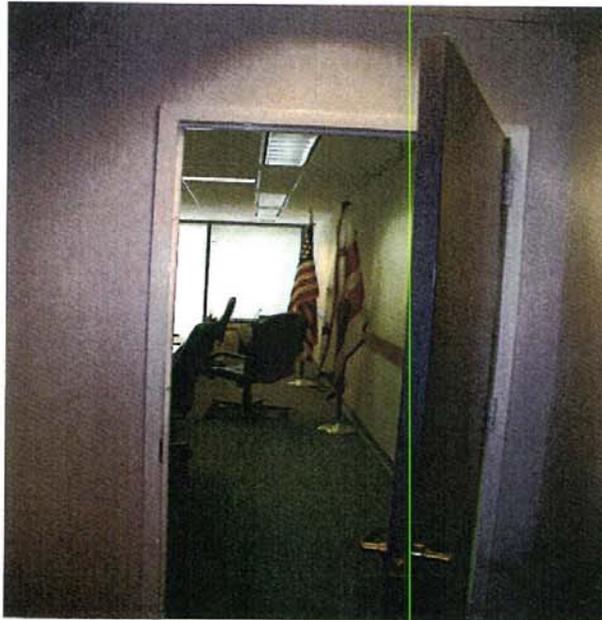
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Attachment 1: OAH hearing room located at 441 4th Street N.W., Suite 870N. ALJ bench (i.e., desk) is in close proximity to where litigants and lawyers are seated.



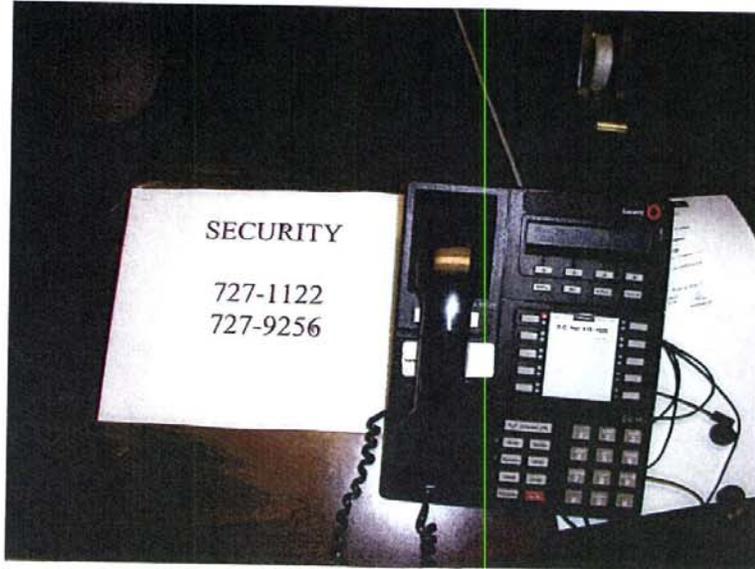
Attachment 2: Private entrance for ALJs in hearing room located at 441 4th Street N.W., Suite 540S.



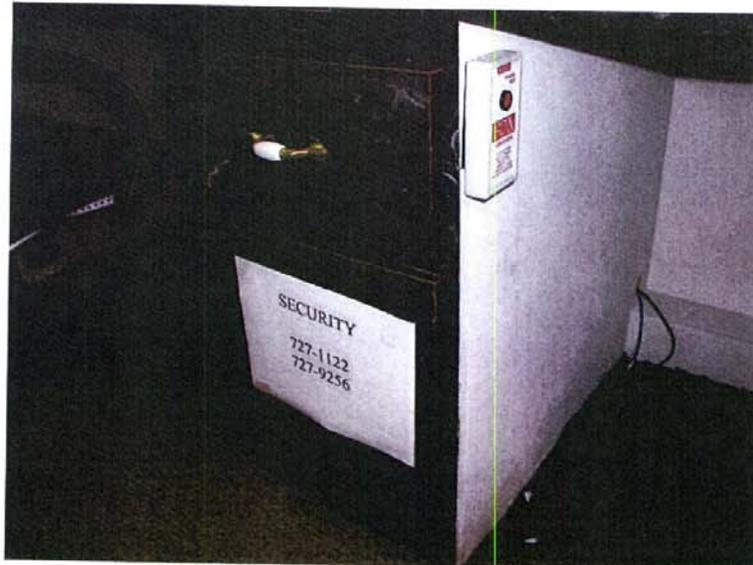
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Attachment 3: Example of telephone with building security telephone numbers.



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).



APPENDICES

RECEIVED
JAN 23 2008

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

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)

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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.

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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

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

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Charles J. Willoughby
January 25, 2008
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cc: Daniel M. Tangherlini, City Administrator
Councilmember Phil Mendelson, Chair, Committee on public Safety and the Judiciary
Councilmember Carol Schwartz, Chair, Committee on Workforce Development and
Government Operations
Kelly Valentine, Director of Risk Management
Peter J. Nickles, EOM General Counsel/Office of the Attorney General

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OAH Employee Survey

1. General Information

1. Please check your work location:

- 441 4th Street Suite 540 S
- 441 4th Street Suite 870 N
- 825 North Capitol Street Suite 4150
- 941 North Capitol Street Suite 9100
- I choose not to respond

2. Please check your division:

- Judicial Program
- Court Counsel
- Clerk of Court
- Administrative
- Agency Management
- I choose not to respond

2. Organization

3. I have a clear understanding of OAH's strategic goals.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

4. I understand and agree with the organizational structure of OAH.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

5. OAH's organizational structure supports its mission.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

6. OAH's facilities are satisfactory.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

7. My workspace is adequate and conducive to high productivity.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

3. Management

8. I think management is responsive to my needs.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

9. The reporting structure allows me to effectively communicate with management.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

10. Lines of authority and responsibility are clearly defined.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

11. Management keeps me adequately informed about issues that affect my job functions.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

12. Management has clearly defined goals and priorities for my work.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

13. Management provides useful and constructive feedback when reviewing my work.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

14. Management plays an active role in my professional development and advancement.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

15. I can disagree with management without fear of retribution.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

16. There are vacancy announcements for all open positions.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

4. Work Environment/Job Satisfaction

17. High ethical standards are maintained throughout OAH.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

18. Favoritism is not an issue at OAH.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

19. I receive recognition when my performance exceeds management's expectations.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

20. The salary and benefits I receive are comparable to other independent administrative tribunals.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

5. Communication

21. OAH has effective communication between and among all levels of personnel.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

22. I am satisfied with the information I receive from management regarding what is going on in my division.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

23. I am satisfied with the information I receive from management regarding what is going on in OAH.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

24. OAH has done an adequate job of educating the public about its mission and purpose.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

25. OAH has done an adequate job of educating District agencies about its mission and purpose.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

6. Policies and Procedures

26. There are written policies and procedures to cover all aspects of my duties and responsibilities.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

27. Decisions affecting employees are made according to established policies and procedures.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

28. All employees adhere to current procedures for reporting time and attendance.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

29. Absenteeism is not a problem at OAH.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

7. Duties and Responsibilities

30. My job description adequately reflects what I do on a daily basis.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

31. I am given adequate authority to do my job.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

32. I am allowed to make decisions that should be made at my level in OAH without undue influence.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

33. The amount of work I am asked to do is reasonable.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

34. The time frames established for most assignments are reasonable.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

35. Assignments are fairly distributed and are manageable.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

36. I have the tools and resources I need to do my job well.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

8. Work Standards and Performance Evaluations

37. There are written policies and procedures in place that outline how performance evaluations are carried out.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

38. I understand how I am evaluated.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

39. There are written work standards and performance measures in place for my job duties.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

40. I receive an annual performance evaluation from my supervisor.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

45. The training I receive is effective.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

10. Information Technology

46. ProLaw adequately manages cases.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

47. ProLaw adequately captures and reports information required to monitor court operations.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

48. I have received adequate training on how to use all of OAH's data systems.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

49. I have the IT tools I need to carryout my job duties.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to rate

Comments

11. Other

50. What is done well at OAH?

51. What is not done well at OAH?

52. What would you like to see improved at OAH?

53. Do you have any recommendations that will improve OAH's efficiency and effectiveness?

54. Identify any private, District government, and federal agencies that you believe are not fully cooperative with OAH and explain why you believe this is so.

55. Did you receive any instruction or coaching on how to respond to or address a particular question or topic of this inspection?

APPENDICES

56. Are you aware of any fraud, waste, abuse, favoritism, or other illegalities in any area of OAH? If so, please explain.

57. Please provide any other information that you believe may be relevant to our inspection or that you believe we should consider.

OAH Stakeholder Survey

1. General Information

1. I work for:

- | | | |
|--|--|---|
| <input type="checkbox"/> Office of Tax and Revenue | <input type="checkbox"/> Department of Public Works | <input type="checkbox"/> Metropolitan Police Department |
| <input type="checkbox"/> Department of Health | <input type="checkbox"/> Department of Transportation | <input type="checkbox"/> Department of Community Housing and Development |
| <input type="checkbox"/> Department of Mental Health | <input type="checkbox"/> Department of Insurance, Securities and Banking | <input type="checkbox"/> District Department of the Environment |
| <input type="checkbox"/> Department of Human Services | <input type="checkbox"/> Department of Employment Services | <input type="checkbox"/> D.C. Office of Energy (Now integrated with DDOE) |
| <input type="checkbox"/> Department of Consumer and Regulatory Affairs | <input type="checkbox"/> Taxicab Commission | <input type="checkbox"/> Department of Corrections |
| <input type="checkbox"/> Board of Appeals and Review | <input type="checkbox"/> Fire and Emergency Medical Services | <input type="checkbox"/> I choose not to respond |
| <input type="checkbox"/> Child and Family Services Agency | <input type="checkbox"/> Office of Planning | Comments |
-

2. I am a(n):

- Agency Director
 - Deputy/Assistant Director
 - General Counsel
 - Agency Lawyer
 - Supervisor
 - Inspector/Investigator
 - I choose not to respond
- Other (please specify)
-

3. I interact with OAH:

- Daily
 - Weekly
 - Monthly
 - Semi-annually
 - Annually
 - Never
- Comments
-

4. OAH is critical to my agency's mission.

- Strongly Agree
- Agree
- Neutral

Disagree
 Strongly Disagree
 Unable to comment
Comments

2. Communication

5. There is clear communication between my office and OAH.

Strongly Agree
 Agree
 Neutral
 Disagree
 Strongly Disagree
 Unable to rate
Comments

6. OAH is responsive to my questions and concerns.

Strongly Agree
 Agree
 Neutral
 Disagree
 Strongly Disagree
 Unable to Comment
Comments

7. The OAH employees I interact with are knowledgeable and helpful.

Strongly Agree
 Agree
 Neutral
 Disagree
 Strongly Disagree
 Unable to comment
Comments

8. The OAH employees I interact with are courteous and professional.

APPENDICES

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to comment

Comments

9. I have contacted Administrative Law Judges and discussed questions and concerns regarding pending cases.

- Yes
- No

Comments

10. Court forms developed by OAH are easily understandable and readily available.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to comment

Comments

3. Community Outreach

11. OAH does a good job of informing the public about its adjudicatory process.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to comment

Comments

12. OAH does a good job of informing my agency of changes in laws and regulations.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to comment

Comments

13. The OAH website is easy to use, well organized, and contains helpful information.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to comment

Comments

4. OAH Performance

14. OAH schedules hearings in a timely manner.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to Comment

Comments

15. OAH notifies parties of their upcoming hearing in a timely manner.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to Comment

Comments

16. OAH issues final orders that are clearly written and well-reasoned.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to Comment

Comments

17. OAH issues final orders in a timely manner.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to Comment

Comments

18. When requested, OAH provides my agency with accurate reports in a timely manner.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Unable to Comment

Comments

5. Open Questions

19. Please describe how the transfer of funding, office space, and full time employees impacted your agency when OAH assumed responsibility for conducting administrative hearings.

20. What is done well at OAH?

21. What is not done well at OAH? How has this impacted your agency?

APPENDICES

22. What is your opinion of OAH locations and facilities?

23. Do you have any recommendations that might improve OAH's efficiency and effectiveness?

24. Are there additional stakeholders who should participate in this survey on OAH functioning. Please provide names, e-mail addresses, and agency affiliations when possible.

25. Are there any other issues or concerns you would like addressed during the inspection of OAH?

26. Are you aware of any fraud, waste, abuse, favoritism or other illegalities within OAH?