

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



July 27, 2011

The Honorable Vincent C. Gray
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20005

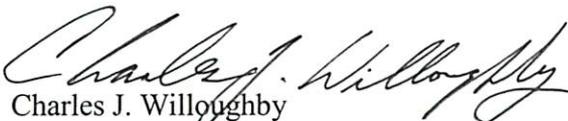
Dear Mayor Gray:

Enclosed please find a copy of a Management Alert Report (MAR 11-I-002), entitled *District Government Agency Representatives' Failure to Appear at Office of Administrative Hearings Proceedings May Result in Rulings Unfavorable to the District*, that the Office of the Inspector General issued to the Office of Administrative Hearings (OAH) on June 15, 2011. OAH's June 30, 2011, response to the MAR is also enclosed. These documents will be posted to www.oig.dc.gov.

The MAR is an assessment of District agencies' failures to send representatives to OAH hearings. An agency's failure to attend OAH hearings may result in rulings unfavorable, both monetarily and otherwise, to the District, delays in services to citizens, or inefficient rescheduling. The MAR presents a brief analysis of data from the first quarter of fiscal year 2010, and through dialogue with OAH and agencies that frequently attend proceedings at OAH, the OIG learned that inter- and intra-agency communication regarding OAH proceedings had improved. The OIG will periodically request reports from OAH to monitor the frequency with which District agency representatives do not attend OAH proceedings, and disseminate this information to the directors of the corresponding agencies and other stakeholders. The OIG will also update information posted to www.oig.dc.gov pertaining to this MAR as necessary.

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

Sincerely,


Charles J. Willoughby
Inspector General

CJW/ef

Enclosures

cc: See distribution list

DISTRIBUTION:

The Honorable Vincent C. Gray, Mayor, District of Columbia
Mr. Allen Y. Lew, City Administrator, District of Columbia (via email)
Mr. Victor L. Hoskins, Deputy Mayor for Planning and Economic Development, District of Columbia
The Honorable Kwame R. Brown, Chairman, Council of the District of Columbia (via email)
The Honorable Muriel Bowser, Chairperson, Committee on Government Operations, Council of the District of Columbia (via email)
The Honorable Phil Mendelson, Chairperson, Committee on the Judiciary, Council of the District of Columbia (via email)
Mr. Brian Flowers, General Counsel to the Mayor (via email)
Mr. Paul Quander, Interim Chief of Staff, Office of the Mayor (via email)
Ms. Janene Jackson, Director, Office of Policy and Legislative Affairs (via email)
Dr. Linda Wharton Boyd, Director, Office of Communications
Mr. Eric Goulet, Director, Office of Budget and Finance, Office of the City Administrator
Ms. Nyasha Smith, Secretary to the Council (1 copy and via email)
Mr. Irvin B. Nathan, Attorney General for the District of Columbia (via email)
Dr. Natwar M. Gandhi, Chief Financial Officer
Mr. William DiVello, Executive Director, Office of Integrity and Oversight, Office of the Chief Financial Officer (via email)
Ms. Yolanda Branche, Acting D.C. Auditor
The Honorable Mary Oates Walker, Chief Administrative Law Judge, Office of Administrative Hearings
Mr. Phillip Lattimore, Director and Chief Risk Officer, Office of Risk Management (via email)
Ms. Shawn Stokes, Director, D.C. Department of Human Resources
Mr. Terry Bellamy, Director, District Department of Transportation
Mr. William O. Howland, Jr., Director, Department of Public Works
Ms. Lisa Maria Mallory, Director, Department of Employment Services
Mr. Robert Mancini, Chief Technology Officer, Office of the Chief Technology Officer
Ms. Jeanette M. Franzel, Managing Director, FMA, GAO, Attention: Norma J. Samuel (via email)
The Honorable Eleanor Holmes Norton, D.C. Delegate, House of Representatives, Attention: Bradley Truding (via email)
The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform, Attention: Howie Denis (via email)
The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform, Attention: Yvette Cravins (via email)
The Honorable Trey Gowdy, Chairman, House Subcommittee on Health Care, the District of Columbia, the Census and the National Archives, Attention: Anna Ready (via email)
The Honorable Danny Davis, Ranking Member, House Subcommittee on Health Care, the District of Columbia, the Census, and the National Archives, Attention: Yul Edwards (via email)
The Honorable Joseph Lieberman, Chairman, Senate Committee on Homeland Security and Governmental Affairs, Attention: Holly Idelson (via email)

The Honorable Susan Collins, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs, Attention: Daniel Jenkins (via email)

The Honorable Daniel K. Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Attention: Christine Khim (via email)

The Honorable Ron Johnson, Ranking Member, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

The Honorable Harold Rogers, Chairman, House Committee on Appropriations, Attention: Julia Casey (via email)

The Honorable Norman D. Dicks, Ranking Member, House Committee on Appropriations, Attention: Laura Hogshead (via email)

The Honorable Jo Ann Emerson, Chairman, House Subcommittee on Financial Services and General Government, Attention: John Martens (via email)

The Honorable José E. Serrano, Ranking Member, House Subcommittee on Financial Services and General Government, Attention: Laura Hogshead (via email)

The Honorable Daniel K. Inouye, Chairman, Senate Committee on Appropriations, Attention: Charles Houy

The Honorable Thad Cochran, Ranking Member, Senate Committee on Appropriations

The Honorable Richard Durbin, Chairman, Senate Subcommittee on Financial Services and General Government, Attention: Marianne Upton (via email)

The Honorable Jerry Moran, Ranking Member, Senate Subcommittee on Financial Services and General Government, Attention: Dale Cabaniss (via email)



DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL
CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION
MANAGEMENT ALERT REPORT

OFFICE OF ADMINISTRATIVE HEARINGS

**DISTRICT GOVERNMENT AGENCY
REPRESENTATIVES' FAILURE TO APPEAR AT
OFFICE OF ADMINISTRATIVE HEARINGS
PROCEEDINGS MAY RESULT IN RULINGS
UNFAVORABLE TO THE DISTRICT**

MAR 11-I-002
JUNE 15, 2011

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's goals are to help ensure compliance with applicable laws, regulations, and policies, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



June 15, 2011

The Honorable Mary Oates Walker
Chief Administrative Law Judge
Office of Administrative Hearings
441 4th Street, N.W., 1030 South
Washington, D.C. 20001

Dear Judge Walker:

This is a Management Alert Report (MAR 11-I-002) to inform you that subsequent to our 2008 inspection of the Office of Administrative Hearings (OAH), the Office of the Inspector General (OIG) became aware of a number of instances in which District agency representatives failed to appear for scheduled OAH proceedings. Such absences may result in rulings unfavorable to and potential monetary loss for the District. The OIG issues MARs when it believes a matter requires the expeditious attention of District government officials.

Background

OAH is an independent administrative tribunal that hears administrative litigation involving over 25 different agencies, boards, and commissions of the District of Columbia.¹ OAH creates CDs and recordings of its hearings, prepares case files for appellate courts or commissions when OAH decisions are appealed, and conducts mediation in certain cases. OAH interacts with many District entities, and the Government Accountability Office's (GAO) report entitled *Internal Control Management and Evaluation Tool* (GAO-01-1008G, August 2001) contains guidance for communicating with other agencies and maintaining and implementing internal controls. According to the GAO, management should ensure that "effective external communications occur with groups that can have a serious impact on programs, projects, operations, and other activities ..." and that "[a]ppropriate policies, procedures, techniques, and mechanisms exist with respect to each of the agency's activities."²

¹ See http://oah.dc.gov/oah/cwp/view.a.3,q.593274.oahNav_GID.1856.oahNav.%7C34118%7C...asp (last visited May 9, 2011).

² *Id.* at 34 & 54.

Title 1 DCMR § 2811.3 establishes how OAH must serve orders on parties. It states, “[u]nless otherwise ordered by an Administrative Law Judge or agreed by the parties, service shall be delivering a copy, mailing a copy, faxing a copy, or sending a copy by commercial carrier.” OAH provided the following description of its internal procedures for notifying District agencies of OAH proceedings:

OAH sends a notice of a scheduled hearing to each party to a case. Each notice (called a “Case Management Order” or “Scheduling Order” depending on the jurisdiction) is sent by first class mail or inter-agency mail to the agency involved, at the agency’s designated address. When OAH cannot identify an individual agency, as in certain DOES cases ... the address provided on the decision being appealed is used. Each notice is accompanied by a certificate of service that is a signed, sworn statement of when and how the notice was sent. In the [past], as now, certain agencies picked up orders directly from OAH offices.

Observations

In July 2010, the OIG contacted OAH and requested a list of government agencies that failed to attend a scheduled hearing between October and December 2009. OAH responded to the OIG’s letter on August 27, 2010, and cited 42 instances where 8 District agencies failed to appear for a hearing (see Table below). Four of the 8 agencies (the Department of Human Resources, District Department of Transportation, Department of Employment Services, and Department of Public Works) accounted for 85 percent of these instances.

Table: Number of Instances Agency Representatives Were Not Present During an OAH Proceeding (October 2009 – December 2009)	
Agency	Number of Instances
1. D.C. Department of Human Resources (DCHR)	6
2. Department of Consumer and Regulatory Affairs (DCRA)	2
3. District Department of the Environment (DDOE)	1
4. District Department of Transportation (DDOT)	5
5. Department of Employment Services (DOES)	8
6. Department of Health (DOH)	3
7. Department of Public Works (DPW)	16
8. Metropolitan Police Department (MPD)	1
Total	42

In January 2011, the OIG contacted DCHR, DDOT, DOES, and DPW about these instances and requested the following information:

- a brief summary of the issues being adjudicated by OAH;

- agreement/disagreement with OAH's assertion that the agency failed to attend the scheduled hearing;
- in those instances where a representative from the agency failed to attend the scheduled hearing, an explanation of the reason(s) for the employee's absence from the hearing as well as, if appropriate, what corrective action will be taken to prevent any improper failure to appear in the future; and
- any other information that would aid the OIG's understanding of these issues.

All of the agencies responded and, in most instances, agreed that an agency representative should have been present. Of significant note is that three of the four agencies attributed the lack of agency representation, in part, to a failure to: 1) receive notification of the hearing from OAH; or 2) receive notice far enough in advance to allow a representative to make proper arrangements to attend. The following is a summary of information provided by DDOT, DPW, DOES, and DCHR in response to the OIG's request for information.

DDOT: DDOT inspectors within the System Inspection Oversight Division (SIOD)³ issue notices of violation (NOV)⁴ when individuals or businesses violate D.C. Municipal Regulations (DCMR) governing the occupation of public space. One can request a hearing through OAH to contest the violation. A DDOT representative was not present during five such hearings, and the agency reported that this occurred in one instance because the inspector voided the NOV and failed to notify OAH that the hearing was no longer necessary. In the remaining four cases, employees did not receive notification of the scheduled hearing date or documentation of receipt of the orders from OAH could not be located. DDOT reported that it has "continuously notified OAH that it often does not receive notices of hearings and/or scheduling conferences." The Appendix to this report lists corrective actions that DDOT stated it would implement regarding processing voided NOVs, informing OAH of voided NOVs, and notifying employees of scheduled OAH hearings.

DPW: DPW enforces violations of the Litter Control Administration Act (Act), which governs solid waste storage and disposal in public space. DPW reported that 15 of the 16 cases lacking DPW representatives involved violations of the Act and 1 case was an appeal of a DOES Claims Examiner's Determination that a former employee was not entitled to receive unemployment compensation. All but 1 of the inspectors who issued the 15 litter control violations reported that they did not receive notification of the hearing from OAH, and one inspector did not appear for a hearing due to extended disability leave. DPW reported that notice of scheduled hearings is usually sent by mail, but occasionally it receives a meeting request by email indicating that a hearing has been scheduled. DPW stated that this can be problematic

³ "The System Inspection and Oversight Division (SIOD) is the investigative and enforcement arm of the District Department of Transportation and monitor[s] all activities which may impact the public space. The SIOD conducts inspections of the work for which permits are issued to assure that permit holders adhere to permit conditions [and] requirements[,] and are in compliance with D.C. laws. The SIOD also investigates and initiates enforcement actions in cases of work performed in public space without a permit." [Http://ddot.dc.gov/DC/DDOT/On+Your+Street/Public+Space+Management/ci.Public+Space+Management.print](http://ddot.dc.gov/DC/DDOT/On+Your+Street/Public+Space+Management/ci.Public+Space+Management.print) (last visited May 5, 2011).

⁴ Title 1 DCMR § 2803.2 provides that "[w]hen the [District] is seeking a civil fine, it must file a Notice of Infraction or a Notice of Violation, as authorized by law, at OAH."

because the email or meeting request is not directed to the inspector who issued the NOV or is sent either the day before or day of the hearing.

With respect to the DOES unemployment insurance (UI) appeals case referenced above, DPW replied that “[w]hen the hearing was scheduled, notice was sent to the Department of Public Works, c/o [care of] the District of Columbia Government Personnel Office [now DCHR], 441 4th Street NW....” DCHR’s address was listed on the notice rather than DPW’s, and DPW writes: “The mailing of the notice of scheduled hearing [to DCHR] was not designed to give the Department of Public Works notice of the scheduled hearing.”

The Appendix to this MAR lists corrective actions that DPW will implement to: 1) improve internal procedures to ensure inspectors are timely notified of scheduled hearings; 2) document why inspectors are absent from hearings; and 3) impose disciplinary action on inspectors when warranted.

DOES: DOES issues Claims Examiner’s Determinations that state whether a former District employee is qualified to receive UI benefits. DOES also seeks repayment of benefits incorrectly paid to claimants. In the latter situation, DOES must appear before OAH to prove the existence and amount of UI overpayments. When a DOES representative does not appear, the claimant does not have to repay any of the benefits in dispute.

DOES reported that based on the circumstances of the eight cases in question, a DOES representative should have been present in four cases but a representative was not necessary for two other cases. DOES “tentatively agreed” with one case and “failed to attend the hearing scheduled in this matter due to DOES’s appearance at a scheduled hearing taking place simultaneously....” DOES, in conjunction with OAH, could not locate the eighth cited case.

DOES stated that limited human resources impacted employees’ abilities to attend OAH proceedings. Furthermore, improved cooperation with OAH with respect to scheduling hearings and greater efficiency in the appeals process are needed. DOES stated that it is working with OAH to better coordinate hearing scheduling and implement video conferencing for hearings.⁵ As of April 2011, DOES reported that OAH orders are sent to designated DOES points-of-contact and there has been a decrease in the number of lost notices. A DOES employee goes to OAH each day to pick up any mail for DOES, and OAH promptly addresses instances in which claims examiners are scheduled for multiple hearings occurring simultaneously. OAH reported that once the Department of Real Estate Services finishes construction of OAH’s new office space at 441 4th Street, N.W., video conferencing will be available in 5 of its 21 hearing rooms.

DCHR/DOES: As previously noted, DOES claims examiners determine whether former District employees (claimants) qualify to receive UI benefits upon separation from the employer. If a claimant appeals the Claims Examiner’s Determination, a hearing is scheduled, and the District agency that employed the claimant has the burden of proof to demonstrate why the former employee is not qualified to receive benefits. OAH reported that when DOES Claims Examiner’s Determinations are issued, they regularly “identify the former employer as ‘Any

⁵ DOES’s recommendations for improvement are located at the Appendix to this report.

Government Agency' or 'DC Government Personnel,' with a generic address for the District's Department of Human Resources." Consequently, determinations do not specify the name and address of the District agency that should receive the hearing notice.

DCHR maintains personnel records for all D.C. government employees, and OAH reported that it consulted with DCHR on how to handle DOES determinations that do not identify the former employer. The two agencies agreed that OAH would send scheduling orders and final orders to the attention of a designated DCHR employee who would then transmit the orders to the appropriate agency.

When DCHR responded to the OIG's request for information regarding six DOES proceedings that DCHR was responsible for transmitting to the appropriate agency, DCHR reported that there was no indication of receiving prior written notice of the identified proceedings, and the non-appearances were due to lack of notification. The Appendix to this report contains DCHR's recommendations, which include improving internal policies and procedures for disseminating orders to D.C. government agencies and ensuring that the employer-agency is listed on certificates of service so that future correspondence is mailed directly to the employer-agency.

Conclusions

Based on the accounts of these four agencies, it appears that the following may have occurred:

- OAH failed to appropriately notify agencies of scheduled proceedings;
- notices were transmitted to the agency, but the appropriate party did not receive notification due to inadequate internal controls; or
- notices were transmitted and received by the agency but not far enough in advance to allow agency representatives to make proper arrangements to attend OAH proceedings.

During subsequent dialogue with OAH and the four agencies cited above, the OIG learned that inter- and intra-agency communication regarding OAH proceedings had improved.

The OIG's assessment of District agencies' failure to send representatives to OAH hearings presents a brief analysis of data from the first quarter of fiscal year 2010. The OIG is concerned that subsequent to our review, additional D.C. government agencies may have exhibited similar patterns of absence from OAH hearings. An agency's failure to attend OAH hearings may result in rulings unfavorable to the District, delays in services to citizens, or inefficient rescheduling. Accordingly, the OIG recommends that OAH take further action to address this issue.

Recommendations:

1. That the Chief ALJ run quarterly reports to monitor the frequency with which agency representatives do not attend OAH proceedings and share these reports with corresponding agency heads and the OIG care of the Assistant Inspector General for Inspections and Evaluations.

2. That the Chief ALJ communicate periodically with DCHR, DDOT, DOES, and DPW agency directors to evaluate the effectiveness of the corrective actions reported to the OIG and amend them as needed.
3. That the Chief ALJ collaborate with DOES's Director to determine whether DOES information technology systems can be updated so that Claims Examiner's Determinations specify the District agency involved rather than using the term "District of Columbia Government Personnel Office."
4. That the Chief ALJ transmit unemployment insurance appeals directly to the appropriate agency and no longer use DCHR as a conduit, in the event that Claims Examiner Determinations can be modified to specify the pertinent District agency.

Please provide your comments to this MAR by July 1, 2011. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any disagreements 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 prior to preparing your response, please contact Alvin Wright, Jr., Assistant Inspector General for Inspections and Evaluations at (202) 727-2540.

Sincerely,


Charles J. Willoughby
Inspector General

CJW/ldm

cc: Mr. Allen Y. Lew, City Administrator, District of Columbia
The Honorable Mary M. Cheh, Chairperson, Committee on Government Operations and the Environment
The Honorable Phil Mendelson, Chairperson, Committee on Public Safety and the Judiciary
Ms. Shawn Stokes, Acting Director, D.C. Department of Human Resources
Mr. Terry Bellamy, Acting Director, District Department of Transportation
Mr. William O. Howland Jr., Director, Department of Public Works
Ms. Lisa Maria Mallory, Acting Director, Department of Employment Services
Mr. Robert Mancini, Acting Chief Technology Officer, Office of the Chief Technology Officer

Appendix

**Appendix to MAR 11-I-002: Corrective Actions Reported to the OIG by
DCHR, DDOT, DOES, and DPW**

DCHR	<p>1) The DCHR General Counsel will immediately confer with the Chief Administrative Law Judge and propose that he/she direct that all parties and administrative law judges to include the name of the employer agency's director AND its general counsel in all case captions in matters before the OAH; and</p> <p>2) The DCHR General Counsel will also request that the Chief Judge modify the certificate of services used by the tribunal to ensure that the Office of the Director for the employer-agency is listed in the certificate of service. These modifications will ensure that all correspondence from the OAH is mailed to the pertinent employer-agency for immediate action and response.</p> <p>In addition to the above corrective measure, we will follow-up with the appropriate DCHR personnel to ensure that all mail from the OAH is logged in upon receipt and then forwarded to the DCHR General Counsel's Office of the appropriate District agency on the date it is received.</p>
DDOT	<p>DDOT's corrective actions entail modifying internal policies and procedures to improve internal review processes and external communication with OAH, and ensuring that proper notification of scheduled hearings is communicated to inspectors. DDOT identified the following actions:</p> <p>[1.] All future notices of violations that are voided will be signed off by the immediate supervisor and an email notification will be sent to the administrative staff with a copy to the division chief. The administrative staff will then provide proper notification to OAH.</p> <p>[2.] Our managers, inspectors, and administrative staff receive scheduled hearing dates via electronic transmission of hearings at OAH. The hearing dates for the entire month are posted in the Division Office at the time clock. The Inspectors have been instructed to review the monthly postings for hearing dates. If the inspector is on scheduled leave or absent on the date of the hearing(s), the immediate supervisor will notify the administrative staff to reschedule the hearing. If an inspector fails to appear after given proper notification, the immediate supervisor will take appropriate action(s).</p>
DOES	<p>DOES writes that there is a need for "better alignment with OAH with respect to scheduling of hearings and efficiency improvements in the appeals process [and] DOES is working with OAH to "design and implement videoconferencing options for hearing participation.</p>
DPW	<p>DPW has been working with OAH to resolve this issue since 2009 and has "adopted additional internal procedures to ensure that inspectors are timely notified of scheduled hearings. Currently, DPW prepares excel spreadsheets to track scheduled hearings. The spreadsheets are updated daily and track scheduled hearings for several months. The spreadsheets are emailed to each inspector after an update." DPW also requires a written explanation from inspectors when they miss a hearing, and inspectors who routinely miss hearings will receive counselling or disciplinary action.</p>



**Government of the
District of Columbia**

Office of the Inspector General

*Report Fraud, Waste,
Abuse, or Mismanagement to:*

**Charles J. Willoughby
Inspector General**

Toll Free Hotline:

**1-800-521-1639
or 202-724-TIPS (724-8477)
or hotline.oig@dc.gov**

All calls are confidential.

Address:

**Office of the Inspector General
717 14th Street, NW
Suite 500
Washington, D.C. 20005**

Web Page: www.oig.dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS



June 30, 2011

Via E-Mail and First-Class Mail

The Honorable Charles J. Willoughby
Inspector General
District of Columbia Office of the
Inspector General
717 14th Street, N.W.
Washington, DC 20005

RE: Response to June 15, 2011 Management Alert Report 11-I-002

Dear Inspector General Willoughby:

This letter is in response to your Management Alert Report (MAR) dated June 15, 2011, regarding the Office of Inspector General's (OIG) evaluation of the failure of certain agencies of the District Government to appear at hearings before the District of Columbia Office of Administrative Hearings (OAH) and the potential adverse impact of the same on the District. We appreciate the efforts of your office to outline its concerns in this regard.

In the MAR, you outlined your findings in instances where agency representatives of DDOT, DPW, DOES and DCHR/DOES have failed to appear at hearings before OAH. The MAR also outlined specific recommendations for actions to be taken by OAH to address the issues raised in the MAR. These recommendations include the following:

1. That the Chief ALJ run quarterly reports to monitor the frequency with which agency representatives do not attend OAH proceedings and share these reports with corresponding agency heads and the OIG care of the Assistant Inspector General for Inspections and Evaluations.
2. That the Chief ALJ communicate periodically with DCHR, DDOT, DOES, and DPW agency directors to evaluate the effectiveness of the corrective actions reported to the OIG and amend them as needed.
3. That the Chief ALJ collaborate with DOES's Director to determine whether DOES information technology systems can be updated so that Claims Examiner's Determinations specify the District agency involved rather than using the term "District of Columbia Government Personnel Office."

4. That the Chief ALJ transmit unemployment insurance appeals directly to the appropriate agency and no longer use DCHR as a conduit, in the event that Claims Examiner Determinations can be modified to specify the pertinent District Agency.

June 15, 2011 MAR, at 5-6.

Background.

As you are aware, OAH is a neutral, impartial and independent tribunal that holds hearings and decides appeals from various agency decisions. Our mission is to “enhance the quality of life in our city by providing residents with a fair, efficient and effective system to manage and resolve administrative litigation arising under District of Columbia law.” To this end, OAH must take great efforts to treat all parties, both Government agencies and the general public alike, in a fair and equitable manner. In addition, OAH must avoid taking any actions which may have the appearance of giving preferential treatment of one party over another. Consequently, in every stage of the processing and hearing of cases coming before OAH, we must be careful to treat all parties equally.

OAH strives to balance its mission with its duties as an independent agency of the District of Columbia. As such, it is our mutual priority to ensure that the District Government is operating efficiently in serving the citizens of the District of Columbia. To the extent that enforcement actions are inconsistently enforced and the interests of District Government are not adequately represented due to the failure of agency employees to appear at hearings, OAH will take whatever actions are just and appropriate under the law to ensure that the District Government’s rights are being protected, just as we are charged to do for any party before us.

With the above as background, please find our responses to OIG’s recommendations below:

Recommendation #1

That the Chief ALJ run quarterly reports to monitor the frequency with which agency representatives do not attend OAH proceedings and share these reports with corresponding agency heads and the OIG care of the Assistant Inspector General for Inspections and Evaluations.

Response:

We do not believe it is appropriate for OAH to monitor the frequency with which agency representatives do not attend OAH proceedings. We must avoid the appearance that OAH is in some manner favoring District Government agencies in order to increase their likelihood of success in hearings before OAH. Such actions could undermine the public’s confidence that OAH is in fact “independent,” but rather simply an extension of other agencies.

Notwithstanding the foregoing, in the normal course of processing cases involving various agencies, including the agencies which are the subject of the MAR, OAH has significant contact with various staff members of such agencies. As the MAR indicates, various corrective measures, many of which were internal to these agencies, have taken place since the commencement of this investigation and has resulted in improved communications between OAH and the subject agencies. During the current fiscal year, OAH has been proactive in requesting and scheduling task force meetings with the directors, general counsels and enforcement division personnel of the subject agencies to address any issues related to cases brought before OAH involving these agencies. These issues have included: 1) OAH providing suggestions as to the agency routing of Scheduling Orders, Final Orders and other correspondence from OAH; 2) Verification of appropriate parties receiving correspondence from OAH within the agencies; 3) Exploring new technology and means of processing cases more efficiently; 4) Offering and/or providing access and training to agency staff on OAH's case management system eCourt to enable agency access to case information; and 5) Emphasizing ongoing communication among agency enforcement staff and OAH Legal Assistant staff to address issues as they arise. OAH is committed to continuing this dialogue with all agencies and to making any changes necessary in our operations to ensure that agencies have adequate notice, just as we do for the general public.

Recommendation #2

That the Chief ALJ communicate periodically with DCHR¹, DDOT, DOES, and DPW agency directors to evaluate the effectiveness of the corrective actions reported to the OIG and amend them as needed.

Response:

OAH agrees with OIG's recommendation that the Chief ALJ or her designee communicate periodically with DDOT, DOES and DPW to evaluate the effectiveness of the corrective actions reported to the OIG and amend them as needed. As stated above, OAH has already begun initiating periodic communication with these and other agencies through task force meetings as well as ongoing communication with enforcement officials at these agencies to address issues as they arise and implement new procedures to improve communication going forward. OAH will continue to request task force meetings or status reports on a quarterly basis to maintain open lines of communication with these agencies.

¹ It should be noted that OAH does not hear cases on behalf of DCHR. The extent of our interaction with DCHR has previously been limited to serving DCHR as "DC Government Personnel" named in DOES cases where a DC Government agency was the employer but the specific agency was not named on the Claims Examiner's Determination. See MAR at 4-5. OAH has no means of ascertaining the appropriate Government agency to serve if the employer is not named on the Claims Examiner's Determination. OAH will ensure that the proper employer and agency contact is named in all case captions in DOES matters before OAH in which a Government agency is the employer to the extent that accurate information is received from DOES.

Recommendation #3

That the Chief ALJ collaborate with DOES's Director to determine whether DOES information technology systems can be updated so that Claims Examiner's Determinations specify the District agency involved rather than using the term "District of Columbia Government Personnel Office."

Response:

OAH is willing to continue to work with DOES to ensure that upon receipt of accurate information on the Claims Examiner's Determinations from DOES, such information is reflected in all case captions and correspondence generated by OAH in DOES matters where a District Government agency is the named employer. It should also be noted that OAH and DOES have had substantive discussions during the current fiscal year regarding the use of video teleconferencing technology (VTC) in DOES matters to alleviate the burden of frequent in-person appearances by DOES personnel at OAH hearings. It is anticipated that OAH will have VTC capacity upon relocation to its new consolidated facilities beginning August 1, 2011. OAH will work with DOES to implement the use of this technology in DOES cases as soon as both agencies have the necessary technical capabilities.

Recommendation #4

That the Chief ALJ transmit unemployment insurance appeals directly to the appropriate agency and no longer use DCHR as a conduit, in the event that Claims Examiner Determinations can be modified to specify the pertinent District Agency.

Response:

OAH is in agreement with this recommendation and will work with DOES to achieve this objective.

Please contact me if you have any further questions or comments.

Sincerely,



Mary Oates Walker
Chief Administrative Law Judge