



OFFICE OF ADMINISTRATIVE HEARINGS NEWSLETTER

Last Updated
April, 2004

Topics of Interest:

- **Articles**
 - **Governor Signs HB 22526**
 - **Welcome**
 - **OAH Training**
 - **Employee Highlights**
 - **OAAJ Lunch**
 - **Customer Satisfaction Survey**

Questions or comments? Contact us, we want to hear from you.

Call or email -

Rema Bergin, Editor 503.378.5070

Rema.a.bergin@state.or.us

Website: <http://oah.state.or.us>

Governor Signs House Bill 2526

by Rep. Lane Shetterly

In a quiet ceremony on May 22, 2003, Governor Kulongoski signed HB 2526. This bill repealed the sunset provision of HB 2525 (1999), and made permanent the Office of Administrative Hearings (formerly the Hearing Officer Panel).

It has been a long journey. Beginning in the early 1980s, there were repeated but unsuccessful attempts to create an independent central panel to hear state agency contested cases. These efforts gained new momentum in 1997, when Senator Neal Bryant and I sponsored House Bill 2948, which would have created an office of administrative hearings as a separate and independent state agency.



Governor Kulongoski signing House Bill 2526. From left to right, Thomas E. Ewing, Chief Administrative Law Judge, Rep. Lane Shetterly, Governor Kulongoski, and Judge David Schuman.

That bill, although passed overwhelmingly by both chambers of the Oregon Legislature, was vetoed by the Governor. Nevertheless, he authorized a work group to study the idea. In a remarkable exercise of legislative and executive cooperation, David Schuman of the Department of Justice, Chip Lazenby of the Governor's Office, and I worked to craft new legislation, HB 2525. That bill created the Hearing Officer Panel as a pilot project, due to sunset on January 1, 2004. It proved to be a solid compromise between the aspirations of citizens for fairness on the one hand, and the fears of agencies for loss of control on the other. When the Panel began operations on

January 1, 2000, there was a great deal of agency foreboding. Many agency heads feared—some perhaps hoped—that this pilot would fail. In retrospect, it may have been good fortune that the Panel began with such low expectations. When auditors from the Legislative Fiscal Office (LFO) reviewed Panel operations at the end of 2002, one agency director said that it “has been more successful than we thought it would be.” In 1999, agency heads and trade associations lined up either to oppose HB 2525 or, at a minimum, to request exemption. In 2003, by contrast, there was not a single voice of dissent in testimony before the House or the Senate Judiciary Committees. Indeed, LFO's audit, adopted by the Joint Legislative Audit Committee, reported that agencies had seen significant improvement in the quality of hearings over the last three years. It is no surprise, then, that the House passed HB 2526 by a vote of 53 to 2, and the Senate by 21 to 1.

HB 2525 had established an Oversight Committee to review Panel operations, and to make recommendations to the Legislature and the Governor. It was comprised of Senators Peter Courtney and Roger Beyer; Representative Phil Barnhart; Assistant Attorneys General Philip Schradle and Kelly Knivila; gubernatorial appointees Peter Bragdon and Chess Trethewy; Chief Hearing Officer Thomas Ewing (serving *ex officio*); and me as Chair. The Committee met occasionally between 2000 and 2002. In December 2002, after considering the LFO audit, it engaged in closer discussions on the Panel's future.

Out of those discussions emerged the following recommendations: (1) Repeal the sunset provision. (2) Change the name “Hearing Officer Panel” to “Office of Administrative Hearings” (a name that has gained currency in other states' central panels). (3) Keep the OAH in the Employment Department, at least for the next two years. (4) Change the title “hearing officer” to “administrative law judge,” and “chief hearing officer” to “chief administrative law judge.” (5) Restructure the position of the chief ALJ from being an appointee at-will of the Director of the Employment Department to an appointee for a four-year term, terminable only for cause. The com-

SIGNING OF HB 2526 (CONTINUED)

mittee felt that additional protection for the chief was necessary because of the potential conflicts of interest created by the OAH remaining in the Department, which is the largest user of its hearing services. And, (6), retain the present number of agencies subject to the OAH.

Looking to the future, the Oversight Committee will continue to play an important role. Much work has yet to be done. For example, the OAH was left in the Employment Department; however, some committee members expressed concern that this creates perceptual problems of independence. There is the question whether other agencies should be included in the OAH, and whether some agencies now in it should be exempted. There is also the question whether agencies should meet a tougher standard when changing OAH proposed orders.



This has been a very difficult legislative session. But, for me, one of the brightest moments has been passage of HB 2526. After three years of operation, the OAH has proven itself. Citizens of our state now have a level playing field in their disputes with state agencies. The OAH is significantly more efficient, and less costly, than the previous system of seven separate hearings units. There has been new emphasis on training and professionalism for administrative law judges.

Finally, I would be remiss not to signal the contributions of the Administrative Law Section and Janice Krem. On the passage of House Bill 2525, Krem pushed for the creation of this section. Over the last three years, its executive committee has provided valuable counsel both to me and to the Chief Administrative Law Judge Thomas Ewing. I hope that the section will continue to promote the objectives of the OAH and of administrative law in Oregon generally. This article appeared in the Summer 2003 Administrative Law Newsletter, OSB



★ Appointment of Chief Administrative Law Judge ★

On September 10, 2003, Deborah Lincoln, Director of the Employment Department, appointed Thomas Ewing as the Chief Administrative Law Judge for a term of four years, effective May 22, 2003 (date the Governor signed House Bill 2526). This appointment was made in consultation with the Oversight Committee, chaired by Representative Lane Shetterly. The letter of appointment states, in part: "Thank you for your excellent work. I appreciate your contribution to the success of the Employment Department and its operations, as well as, the other state government agencies that you and your staff support so adeptly." Lincoln's message emphasizes that the appointment is the reflection of the tremendous efforts of everyone—operational support staff and administrative law judges alike. **Congratulations to us all!**

WELCOME

I am very pleased to present the first issue of the *Office of Administrative Hearing's Newsletter*. With staff dispersed throughout the state—from Portland to Medford, from Salem to Bend—communication has been difficult and unsatisfactory. Hopefully, this *Newsletter* will serve as a sort of "communication highway," linking all of us in our different locations. It will report on the activities of different divisions within the OAH, legislative issues, employee awards and significant life events, Management Team decisions, strategic directions, and so on.

In the beginning, the *Newsletter* was published only on our intranet and we are now able to get it on our website as well—the outside world should see the extraordinarily fine work you do. There is one important thing you must understand. This *Newsletter* will not be a periodical, appearing on some regular schedule (for example, every quarter). Rather, I want to report on things happening now; and, as articles become stale, they will be taken off. So, if you want to keep in touch with our OAH, you'll need to be a frequent reader. I promise, however, to update the *Newsletter* no more than once a week, and to notify all of you via e-mail when I do.

If you have any suggestions either for content or to improve the appearance and organization of the newsletter, please let me know. This is a work-in-progress, so I can use all the helpful advice you may want to give me.

Rema Bergin, Editor

ALL OAH TRAINING

On October 13, 2003, administrative law judges and operational staff of the Office of Administrative Hearings met for an all-OAH training. This was the first since June 2001. There was a nice mix of serious learning and a little fun. The morning began with a welcome by **Thomas E. Ewing**, Chief Administrative Law Judge. Following that, Ewing gave a presentation on legal resources on the internet, specifically Loislaw, panel casenotes in the intranet, and the OAH website (<http://oah.state.or.us>).



Dee Anna Hassanpour, Deputy Chief ALJ, then guided the remainder of the morning's session, entitled "Conduct of Hearing." For ALJs, the focus was on dealing with the difficult situations that can occur at hearing. For operational staff, it was on dealing with difficult people over the telephone. There were remarkable theatrical performances from **Cathy Coburn, Rick Barber, Greg Naugle, Michelle Morales, Dove Gutman, Micki Warrick, Stacey Silbernagel, Shannon DeMello, Gus Bedwell, Judy Tucker, Lucy Garcia** and **Victoria Medina**.

OAH Training (continued)



At the end of the morning, and before lunch, Ewing brought several retirees to the front to award them certificates of appreciation for their service to both the OAH and the State of Oregon. Those honored were: **Jim Averill, David Hurd, Michael Kalberg, Sandy Stevens, Dwight Apple, Jack Youngers, Karlene Hegstrom, Heidi Folliard, Tom Hebert and Karl Krueger.**

The afternoon was structured a bit differently. ALJs and operational staff separated into different rooms to focus on matters of particular interest to each. The operational staff's portion opened with an "ice breaker," in which staff at each table tried to identify at least one thing they had in common. Then representatives from each division presented portions of operational processes specific to their division. **Denise Lewis, Suly Soto, Karen Apiado and Maureen Brinkmann** presented for the Employment Hearings Division. **Jennifer Sabrowski** assisted by **Lai Saetern** and **Sidney Shuptrine** presented for the Transportation Hearings Division. **Shannon DeMello, Joanne Call and Karen Snyder** presented for the Social Services Hearings Division. A video on change was viewed, followed by an overview and group discussion of operational short-term and long-term goals lead by **Jon Debban.**



The ALJs' afternoon session began with a panel discussion on statutory construction. Participating in the Panel were Lead ALJs **Cathy Coburn, Ella Johnson, Alison Webster,** and Presiding ALJ **Skip Russell.** **Kevin Anselm,** Deputy Chief ALJ, then briefly spoke on the newly proposed procedural rules. The day ended with a recognition and awarding of state service pins to **Sandra Stevens, 25 years; Sebastian Mekkadath, 15 years; Steve Elmore, 10 years; and Todd Ainsworth, Anthony Behrens, Jean Bennett and Maria Sandoval, each 5 years.**

Employee Highlights

Kyle Hoppa and Ron Bockendorf



Ron and Kyle have both been awarded a National Highway Traffic Safety Administration (NHTSA) scholarship to attend the National Judicial College for the program "Traffic Issues in the 21st Century" to be held next year.

In 1995 Kyle graduated from Willamette University College of Law with a Juris Doctor and a certificate in Dispute Resolution. During law school he was a law clerk for the Oregon Department of Justice and continued to work there until being hired as an ALJ for the Transportation Division in February 1996. Kyle currently holds a variety of transportation hearings as well as "405" hearings for the Building Codes Division, PERS and the Real Estate Agency.

Ron (no photo available), attended college at Western Washington State in Bellingham, Washington. He was with the Oregon State Police from 1973 through 1983. Ron was hired in 1984 as an ALJ in the Transportation Division and appointed Lead ALJ in 1997. Ron currently presides over Implied Consent Hearings, Access Management and Motor Carrier Hearings as well as conducting hearings for various boards and commissions throughout Oregon.

David Marcus



David Marcus is an Administrative Law Judge, Arbitrator and Mediator, serving in the Social Services Division and specializing in construction contract disputes and contractor licensing and disciplinary cases referred to the OAH by the Oregon Construction Contractors Board.

David was recently appointed to the American Arbitration Association's (AAA) National Roster of Neutrals. The Association has made a nationwide effort over the last several years to streamline its regional panels. Its roster, now significantly smaller and more select, is comprised of the finest group of neutrals in the history of the Association. Consequently, openings on the Roster are extremely limited and are based primarily on caseload needs and user preferences. Even candidates with strong credentials do not always gain admission. Candidates are screened using an intensive, two-tiered process which evaluates management skills, substantive expertise, commitment, ethics, training and suitability to the regional caseload. Neutrals are required to have achieved academic and professional honors which mark them as leaders in their fields. Qualifications include a minimum of ten (10) years of senior level business experience or legal practice, honors and awards indicating leadership in your field, and training and experience in arbitration or other forms of dispute resolution.

David received his B.A. magna cum laude from the University of Cincinnati; has completed the "Administrative Law: Advanced" course at the National Judicial College in Reno, Nevada; and, completed Mediation Training for Professional and Community Mediators through the University

Employee Highlights (continued)

of Oregon School of Law. Over the past six years, he has mediated settlements in over 350 construction claim cases and has served as arbitrator in over 150 cases that would otherwise have been heard as contested cases under the Oregon APA. His is a past president and an active member of the Oregon Association of Administrative Law Judges (OALJ), an active member of the National Association of Hearing Officials (NAHO), the Oregon Mediation Association (OMA), and is a non-lawyer member of the Oregon State Bar Administrative Law Section and the Construction Law Section. David currently serves on the Board of Directors for the National Association of Administrative Law Judges (NAALJ), and is the chair of NAALJ's Education Committee. He previously served two years as chair of the ADR Committee, and was involved in the development of the partnership with the National Judicial College (NJC) for the "Mediation for ALJ's" training program. He currently serves as a mediator in the Marion County Circuit Court Small Claims mediation program.

Hardwicke Visits Salem



From left to right: Chief ALJ Thomas Ewing, former Chief ALJ John Hardwicke, Judge David Marcus

On November 6, 2003 the Oregon Association of Administrative Law Judges had John Hardwicke, former Chief Administrative Law Judge of Maryland's Office of Administrative Hearings, as its guest for the Association's monthly luncheon. Judge Hardwicke was in Oregon to attend the wedding of his son in Portland. He spoke informally to the group of about 20 ALJs about his experiences with the Maryland central panel. He emphasized the important role played by ALJs, who serve as an impartial administrative judiciary, a role which he predicts will become even more vital in the future. He stressed too the need for professional organization, and the promotion of national standards to guide the work of administrative law. "This is the largest growth and change in jurisprudence that has occurred in 50 or 60 years." A lively discussion followed Hardwicke's remarks.

Chief ALJ Ewing commented later: "John is such an extraordinary advocate for administrative law judges generally, and for central panels in particular. He inspires everyone, and me especially, who hears him."

This was a very informative and learning experience. We thank you, Judge Hardwicke, for your time, and we would like to have you back again. (Special thanks to David Marcus for bringing Hardwicke down from Portland and then taking him back.)



OFFICE OF ADMINISTRATIVE HEARINGS
CUSTOMER SATISFACTION SURVEY
SUMMARY¹

OAH AGENCY RESULTS

		Not Satisfied	Satisfied	Very Satisfied
1.	Was our clerical support staff professional in handling your request for hearing?	3	108	127
2.	Did the ALJ conduct the hearing in a professional manner?	5	76	161
3.	How would you rate the level of knowledge/expertise of the ALJ?	8	96	136
4.	Did our order clearly explain the decision in light of applicable statute, rule, and precedential court cases?	13	84	142
5.	What was your overall level of satisfaction with our service?	6	95	142

OAH CUSTOMER RESULTS

		Not Satisfied	Satisfied	Very Satisfied
1.	Was our clerical support staff professional in handling your request for hearing?	8	32	74
2.	Were you able to fully present your case at hearing?	13	28	62
3.	Did we complete the hearing and issue the order in a timely manner?	16	35	51
4.	Did you understand our decision and how that decision was reached?	20	26	55
5.	What was your overall level of satisfaction with our service?	21	30	54

¹Summarizes responses to specific questions. Not everyone responded to all questions.