

**Testimony of Maggie Donahue
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**Before the Committee on Government Operations
Council of the District of Columbia**

Oversight Hearing Regarding the Office of Human Rights

January 22, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony to urge the Committee to push the Office of Human Rights (OHR) to improve its handling of discrimination complaints, and to use the budget process to ensure that OHR is funded sufficiently to effectively serve its purpose.

At the Performance Oversight Hearing in February 2019, Legal Aid reported that although OHR met with advocates in response to its 2018 testimony and offered to look into individual complaints in individual cases, OHR was refusing to implement any recommendations to address the systemic concerns raised by advocates and complainants. We appreciate the Committee's willingness to follow up with us after last year's hearing in order to learn more about problems with the agency's policies and practices.

This year, we are happy to report that OHR started a pilot project to address one of the issues advocates raised with regard to the intake process. This project was limited to changing part of the intake process for represented parties with employer discrimination claims so that the attorney, rather than OHR intake staff, drafts the official "charges" to move a case forward from the intake questionnaire to the investigation and mediation phases. This change is meant to limit the back and forth between the attorney and intake staff after OHR drafts charges that do not comport with the facts or legal claims in the complaint; a back and forth that both unnecessarily delays cases for complainants, and burdens the OHR staff with unnecessary work.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

While we are happy that OHR has taken this initial step to make improvements to the intake process, we believe that more can and should be done to improve both intake and the other systemic issues at OHR that we have identified in past years.

Complaint Processing

Expand the Pilot Project for the Drafting of Charges

We believe OHR should continue and expand its intake pilot project so that all complainants who make legally sufficient discrimination complaints can have their cases move immediately forward. OHR should conduct intake interviews and write “charges” only if it appears as if a *pro se* complainant may have missed legal claims arising out of the facts the complainant describes, or may need to add details or clarify issues to make out a legally sufficient claim. In those circumstances, the factual details and respondents listed in the original complaints should be supplemented with clarifications or additions only. These recommendations, as well as more details about the stories driving these recommendations, are detailed in Legal Aid’s previous performance oversight testimony.²

Legal Aid also recommends expanding the pilot project to cover other substantive areas (i.e. housing, language access complaints). There is no reason to distinguish between employer discrimination complaints and other types of complaints that OHR fields.

Change Intake Policies and Engage in Higher Quality Control So That Residents Are Not Turned Away Erroneously

Our past testimony also details instances where front desk staff and intake staff dismiss, discourage, or turn away complainants with meritorious cases, based on a misunderstanding of the law and what makes a complaint legally sufficient. We recommend now, as we have before, that OHR not allow either front desk or intake staff to make legal sufficiency determinations, and that all administrative dismissals be supported by clear and well supported legal memoranda.³ We also recommend that OHR ensures adequate oversight of front line staff so that these mistakes are not made in the future. *This may likely require hiring more higher-level and*

² See Legal Aid’s February 22, 2018 Performance Oversight Testimony at 4-5, *available at* <https://dev.legalaiddc.org/wp-content/uploads/2018/02/Legal-Aid-Performance-Oversight-Testimony-re-OHR-FINAL.pdf> (accessed 1/15/20);

Legal Aid’s February 28, 2019 Performance Oversight Testimony at 1-2; *available at* <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-OHR-Oversight-Testimony-FINAL.pdf> (accessed 1/15/20);

Legal Aid’s April 5, 2019 Budget Oversight Testimony at 2; *available at* <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-OHR-Oversight-Testimony-FINAL.pdf> (accessed 1/15/20).

³ For more specific context, see Legal Aid’s February 22, 2018 Performance Oversight Testimony at 4, FN2, *available at* <https://dev.legalaiddc.org/wp-content/uploads/2018/02/Legal-Aid-Performance-Oversight-Testimony-re-OHR-FINAL.pdf> (accessed 1/15/20).

attorney staff and we would support funding in OHR’s FY21 budget to cover the cost of such staffing.

Change The Regulations That Include Notarization Requirements for Complaints

We understand that OHR is in the process of a comprehensive updating of its regulations, and, through this process, intends to omit the notarization requirements for complaints and certain witness statements. We applaud OHR on taking this step toward decreasing unnecessary burdens on complainants and ask that the Committee encourage OHR to draft these regulations both in a timely manner and in a way which consistently and only expands, rather than restricts, complainants’ rights.

Immediately Implement a Policy to Allow Certain Witness Statements To Be Verified, Rather Than Notarized

Last year, we pointed out that not all witness statements need to be notarized under OHR’s current regulations; only those witness statements where the witness is “unable to attend the fact-finding conference” must be notarized. As a result, all witness statements submitted outside of the context of a fact-finding conference should simply be verified rather than notarized. This is a change that OHR can and should immediately make to lessen the burden on complainants.

Additional Complaint Processing-Related Recommendations

In our previous testimony, we also recommended that OHR ensure that it communicates with complainants in their preferred mode of communication,⁴ and that OHR ensure that complainants are given flexibility on deadlines, especially where OHR is not adhering to its own deadlines.⁵ We renew these recommendations and urge the Committee to push OHR to implement them.

Mediation

Train OHR Mediators In Both Fair Housing Law Penalties and in D.C. Landlord-Tenant Law

One of most problematic issues we at Legal Aid have highlighted in prior testimony is that the mediation process at OHR often leaves—especially *pro se* complainants—worse off than had they never filed a complaint in the first place. For example, tenants who filed housing

⁴ See, e.g., Legal Aid’s February 22, 2018 Performance Oversight Testimony at 5, available at <https://dev.legalaiddc.org/wp-content/uploads/2018/02/Legal-Aid-Performance-Oversight-Testimony-re-OHR-FINAL.pdf> (accessed 1/15/20) (detailing an issue with OHR emailing an elderly resident who asked to be communicated with by phone and then dismissing his matter when he did not respond).

⁵ See, e.g., *id.* at 5-6 (explaining how OHR will impose days-long deadlines on complainants during the investigation stage, or risk facing dismissal, after delaying in processing the matter for months).

discrimination complaints against their landlord should be getting significant monetary compensation if their landlords discriminated against them; instead, we've detailed deals approved by OHR where tenants have signed away their rights to the rent control units for what resulted in *losses* of tens of thousands of dollars in financial benefit to the complainant.

Our testimony from the past two years also highlighted severe specific problems with OHR-generated mediation agreements that we believe have their roots in the agency's standard mediation templates and a lack of proper training of OHR mediators. These include:

- Confidentiality clauses, which prevent others from learning about respondents' discriminatory behavior;
- Broad release clauses that are unnecessarily protective of respondents;
- Unnecessary and complicated clauses and legalese; and
- Language that places the obligation to take action on the complainant rather than the respondent.

Since 2018, we have offered specific recommendations to OHR to improve their mediation process, including offering line-edit changes to what we believe to be their standard mediation agreement templates. It is unclear if OHR has implemented any of these suggested changes in light of Legal Aid's 2018 testimony, Legal Aid's April 2018 memorandum containing line edits and other suggestions for OHR's standard mediation template agreements, and Legal Aid's 2019 testimony. We urge the Committee to put pressure on OHR to implement Legal Aid's suggested changes, which shift OHR's standard template from what is inexplicably favorable to those accused of discrimination, to one that is more neutral and protective of complainants rights. We are happy to share our more specific memorandum regarding OHR's mediation template with the Council upon request.

Systemic Bias Against Finding Non-Compliance or Discrimination and Failure to Engage In Substantive Enforcement

Past years' testimony recommended *more training* and *hiring more staff to lower caseloads* to address the issues of a systemic bias at OHR against finding non-compliance or discrimination, and a failure to engage in substantive enforcement. We renew these recommendations and urge the Committee to consider them, not just during oversight, but also when considering the agency's proposed FY21 budget later this spring.

DC Council Can Immediately Move Forward the Language Access for Education Amendment Act's Fine Structure to Improve Enforcement of the Language Access Act

Finally, we recommend that the Council fund a key policy change that it has already passed, which we believe will ensure that District agencies better serve District residents with limited English proficiency. Last year, we raised with the Committee that the Council should fund the

fine structure portion of the Language Access for Education Amendment Act. This modest step would lead to greater accountability for District agencies that do not meet their language access obligations. Unfortunately, to this point, the Council has not acted. We renew our request that the Council fund this provision of the Act, and urge the Committee to ensure that this is done as part of the FY21 budget.

Conclusion

We know that the Committee recognizes that there are serious changes that still need to be made at OHR and in our Language Access law so that the anti-discrimination laws we have on the books are enforced in an effective way, and in a way that does not further victimize those who have already been subject to discrimination. We hope that the Committee will review this years and past years' testimony and put pressure on OHR and the Council to take the steps we suggest so that residents experiencing discrimination in the District can find effective redress.