

**Testimony of Jonathan Levy  
Director of the Barbara McDowell Appellate Advocacy Project  
Legal Aid Society of the District of Columbia**

**Before the Committee on Government Operations and Facilities  
Council of the District of Columbia**

**Performance Oversight Hearing Regarding the Office of Risk Management**

**March 5, 2021**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony to this Committee as it oversees the Office of Risk Management (ORM). We write to share our experiences with ORM, and specifically, to highlight the agency’s failure to disburse funds at required by law.

Legal Aid is the largest general legal services organization in the District of Columbia. Each year, we provide legal assistance affecting more than ten thousand low-income District residents with a variety of legal problems including housing, family issues, public benefits, and consumer issues. While Legal Aid does not generally handle workers’ compensation matters, we have litigated a handful of appeals, starting over the last five years, through our Barbara McDowell Appellate Advocacy Project. This came about not because Legal Aid expanded its practice to encompass workers’ compensation, but because the D.C. Court of Appeals asked Legal Aid to participate as an *amicus curiae* or “friend of the court” in a public-sector workers’ compensation case. In that particular case, the Compensation Review Board had failed to follow its own precedent placing the burden of proof with respect to the cessation of disability on the employer. The Court of Appeals agreed with our position and remanded for further consideration.

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<sup>1</sup> 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 89 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

Since that time, although lacking the capacity to handle routine workers' compensation claims at the administrative level, we have taken several cases at the Court of Appeals level to attempt to ensure fair and proper application of the workers' compensation laws. While our experience is not broad enough to comment on every aspect of ORM operations, it has provided us with enough experience to suggest to this Committee that greater oversight is necessary.

### **The District's Private and Public Workers' Compensation Systems**

Under the current workers' compensation scheme, awards in both the public and private sector are made through "compensation orders" issued by Administrative Law Judges. Either party can seek review of a compensation order through administrative appeal to the Compensation Review Board and then, if necessary, a petition for judicial review by the D.C. Court of Appeals. If the compensation order requires the employer to pay benefits and the employer does not appeal, the employer must pay. Effective enforcement mechanisms – including a stiff penalty for late payments and an easy enforcement – mean that employers pay as ordered; it is very rare for a private employer to fail to appeal a compensation order and then refuse to comply with that order.

The public-sector version of the statute does not have effective enforcement mechanisms, presumably because the Council typically and properly assumes that the agencies of the District government will follow the law. Unfortunately, that assumption is not warranted with respect to ORM.

### **The District's Failure to Pay Benefits Required by Law**

Legal Aid is currently involved in a case in which a former employee of the District obtained a Compensation Order from an Administrative Law Judge in 2017 ordering the District to pay our client several years of back benefits and ongoing benefits. The District could have sought further review of this decision but chose not to do so, and the decision became final. *But the District has yet to pay a dime.* Why? Because ORM disagrees with the Compensation Order and simply refuses to comply with it. ORM is acting as if it is above the law, with the result that an individual who has a final compensation order entitling her to a significant sum due to her work-related injury, remains unpaid. That is grossly inappropriate and undermines the confidence that this Council has placed in the agency to follow the law and provide benefits to District workers when an Administrative Law Judge has ordered it to do so.

### **Implications for the Public Sector Workers' Compensation System**

We share our experience, not just because ORM's handling of this specific matter is deeply problematic, but also because we believe that the combination of ORM's willingness to disregard a valid order and a lack of an enforcement mechanism may have broader implications for how workers can interact with the public sector workers' compensation system and, when necessary, hold it accountable. Legal Aid routinely reviews civil cases filed in the Court of Appeals and we receive and review all decisions of the Compensation Review Board. We have also spoken with many workers' compensation claimants who come to Legal Aid looking for advice or representation. Based on this information and these experiences, we have noticed an absence of

attorneys – whether with legal services organizations, law firms, solo practitioners, or others – who are qualified and willing to represent current or former District employees in these matters. When individuals come to Legal Aid with such cases, we frequently cannot even refer such individuals to another attorney because we are not aware of any attorney who is likely to take their cases. While it is not always easy for private-sector workers’ compensation claimants to obtain representation; it is much easier for them to do so and they are represented at much higher rates than their counterparts who were injured while working for the District government.

While we do not know all of the causes of this public-sector workers’ compensation attorney shortage, one likely contributing factor is that ORM’s lawless actions make it so unlikely that claimants will recover benefits or that attorneys will recover fees, and therefore attorneys are unlikely to take these cases. That is not the way the system is supposed to work.

### **Conclusion**

Thank you for the opportunity to testify regarding this important agency. We are happy to try to answer any questions you may have.