

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

Budget Oversight Hearing Regarding the Office of Administrative Hearings

June 14, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the Mayor’s proposed Fiscal Year 2022 budget for the Office of Administrative Hearings (OAH). The COVID-19 pandemic reshaped how individuals address challenges impacting their livelihood and survival. We applaud OAH for pivoting the entirety of its services to remote operations while prioritizing cases impacting residents’ ability to survive the pandemic. OAH adjudicates a variety of critical public benefits cases, including unemployment compensation, the Supplemental Nutrition Assistance Program, and healthcare. As the District reemerges from the pandemic, we urge this Committee to make key investments in OAH programs affecting public benefits so that the District’s most vulnerable residents can have greater access to justice.

The District Should Continue to Make Technology Accessible to Litigants at OAH

The District must invest in technology that simplifies a litigant’s experience throughout the lifetime of a case — from filing a fair hearing request to appearing in court to receiving resolution through a Final Order or an appeal. User-friendly technology is no longer a luxury, but a necessity at OAH as it implicates litigant’s access to justice and OAH’s administrative efficiency. We recommend the District focus on three areas of accessibility: i) fund an electronic filing system, ii) invest in a robust searchable public portal for Final Orders, and iii) invest in user-friendly technology like a “Live Chat” function to reach the public.

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 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, and our blog, www.MakingJusticeReal.org.

Funding an Electronic Filing System

First, we applaud OAH's commitment to fund an electronic filing system as outlined in the FY22 budget.² Creating a functioning electronic filing system will streamline the filing process for litigants and representatives. Currently, the electronic filing process lacks transparency, and litigants struggle to understand what materials need to be emailed to OAH versus uploaded through the webpage. We hope the portal will allow litigants to access their documents and orders related to their case with greater ease. We also recommend that the filing system include a single comprehensive chronological docket for each case. Investing in an electronic filing system will allow litigants the ability to be self-sufficient without overloading the OAH frontline staff with calls or emails.

Investing in a Searchable Public Portal for Final Orders

In September 2017, OAH began uploading Final Orders for certain jurisdictions to a public portal.³ However, in Fiscal Year 2020, only 35.7% of Final Orders were uploaded to the public portal.⁴ Unfortunately, as of June 8, 2021, Final Orders for cases in jurisdictions like the Department of Human Services (DHS), the Department of Healthcare Finance (DHCF), and the Department of Employment Services (DOES) have not been uploaded to the portal.⁵ The District has an obligation to make "final opinions...as well as orders, made in adjudication of cases"⁶ public.

We recommend that OAH invest in a robust searchable public portal to allow litigants and the public to access Final Orders from all OAH jurisdictions. We understand OAH's legitimate confidentiality concerns. Legal Aid agrees that OAH should prioritize and mandate confidentiality and privacy. We also believe that OAH can provide public access to Final Orders while maintaining a litigant's privacy by investing in commonly used redaction software. Maryland's Office of Administrative Hearings provides a searchable portal for decisions by various government agencies, including Maryland's Department of Human Services and

² See FY 2022 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part I, C-162, May 27, 2021. Available at <https://app.box.com/s/6n8p0lxwd4yzppdpxpgynbsu8trmy3qm>.

³ *Public Portal*, <https://dcm.gov.app.box.com/v/OAHFinalOrders> (last visited June 10, 2021).

⁴ See FY 2022 Proposed Budget and Financial Plan, Vol. 2 Agency Budget Chapters – Part I, C-164, May 27, 2021. Available at <https://app.box.com/s/6n8p0lxwd4yzppdpxpgynbsu8trmy3qm>.

⁵ See *Public Portal*, *supra* note 2.

⁶ D.C. Code § 2-535(3), <https://code.dccouncil.us/dc/council/code/sections/2-536.html>.

Department of Health.⁷ Decisions in these jurisdictions are redacted to maintain the privacy of the litigant.

Providing access to Final Orders will allow *pro se* litigants and representatives to better understand government agency positions in cases. Accessing these orders will also help resolve disputes before they reach an administrative law judge.

Investing in User-Friendly Technology as a Means to Interface with Litigants

The District should also invest in user-friendly technology that removes communication barriers between OAH and litigants. Remote operations drove litigants to a limited number of entry points to OAH. Indeed, OAH experienced an influx of calls from litigants to its main phone line during the pandemic⁸ and, in response, OAH upgraded its phone tree capabilities. OAH staff reported that these changes have helped distribute calls to appropriate departments, however the main phone line remains one of the only ways litigants can reach OAH staff. One method to alleviate the call volume burden is to introduce a live chat function on the OAH website. The feature could be modeled after the D.C. Superior Court's Civil Division Live Chat feature which was launched in 2014. Superior Court's live chat allows litigants to specify which department they would like to send the chat, enter their first and last name, and send a message. The Court sets specific times in which litigants can interact with live court staff. We recommend a similar approach for OAH. Any live chat feature should also be available in the languages required by the D.C. Language Access Act.⁹

The District Should Expand Access to Remote Hearings

The COVID-19 pandemic changed the way government agencies interact with the public. Many of these changes expanded opportunities for residents to engage with their cases at OAH. One such change was the shift from in-person hearings to remote hearings. This change provided litigants the opportunity to be heard in a convenient manner during the PHE.

Currently, OAH is conducting its remote hearings by telephone.¹⁰ Telephonic hearings provide litigants the opportunity to attend their hearing with limited barriers. We recommend OAH continue to offer telephonic hearing options when OAH returns to in-person operations. As

⁷ See Maryland Office of Administrative Hearings, Search Decisions by Agency, Unit, and Case Type of Date, <https://decisions-oah.maryland.gov/Pages/search-hearings.aspx> (last visited June 10, 2021).

⁸ Through our advocacy at OAH, the Resource Center staff have indicated an influx of contacts with litigants during the PHE.

⁹ D.C. Mun. Regs. tit. 4, § 1205 (2014).

¹⁰ See Office of Administrative Hearings Chief Administrative Law Judge Order regarding the Health Emergency, May 20, 2021. Available at <https://oah.dc.gov/release/calj-extends-order-modifying-oah-deadlines-and-procedures-through-july-25-2021> (last visited June 10, 2021).

mentioned in the OAH Legal Assistance Network (OLAN)'s 2021 OAH Oversight Testimony, certain barriers exist to providing full and fair remote hearings.¹¹ Yet, we applaud OAH for responding to OLAN's concerns by posting WebEx hearing instructions on its webpage and including troubleshooting instructions with OAH staff contacts for pro se litigants who encounter challenges when trying to access their remote hearing. In addition to allowing OAH flexibility in using telephonic hearings post-PHE, OAH should expand its video hearing capacity. Video hearings increase the ability for the parties to connect and present necessary documents.

Anecdotally, OAH officials report that the hearing attendance of petitioners has increased during the PHE. Offering a wide range of hearing options to litigants will improve litigants' access to OAH and vice versa. We urge the District not to diminish hearing options when OAH resumes in-person services. OAH should continue to expand the hearing options for litigants.

Pro Se Assistance Should Remain a Priority at OAH

We commend OAH on its commitment to providing excellent service to litigants throughout the pandemic. By reformatting the entirety of its services to remote operations, OAH expanded its telephonic operations and language access options — both through its main phone line and its website. OAH invested staff time to update vital *pro se* materials through the Resource Center and continues to update its website to provide *pro se* litigants with up-to-date operations during the PHE and beyond.

We recommend *pro se* assistance remain a priority at OAH as the District reopens to the public. OAH should continue to provide accurate and updated information on its website as a means of providing tools and resources to *pro se* litigants. To achieve this goal, the District should fund a full-time employee as the Resource Center Coordinator position. Currently, the Resource Center Coordinator splits time between attorney advisor responsibilities and the Resource Center. When the Resource Center was created in 2012, the Resource Center Coordinator position was a full-time position.¹² Throughout the pandemic, the OAH's Resource Center remained an integral place of contact for *pro se* litigants. In early 2021, the Resource Center established a dedicated email address for litigants' use. The email address provides another entry point for litigants to reach OAH. The Resource Center also advocated for a clear phone tree which allows callers to reach the Resource Center in a more direct manner. Callers can choose Option 4 on the call tree to reach the Resource Center directly. Since those changes were implemented in March 2021, the Resource Center reports over 200 contacts with residents. These reported contacts do not include callers that were directly connected to a staff member, rather the number reflects only the calls and emails that were returned by staff members. The demand of these services is evident, but the Resource Center has limited staff and capacity to meet the needs of the community. We

¹¹ See Office of Administrative Hearings Legal Assistance Network Oversight Testimony Regarding the Office of Administrative Hearings, Feb. 25, 2021.

¹² See Legal Aid Testimony Regarding Performance Oversight for the Office of Administrative Hearings Feb. 19, 2019. Available at <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-OAH-Oversight-Testimony-FINAL.pdf>.

recommend more staffing to assist with the increased call volume to the Resource Center. As various moratoria are lifted in the coming months, we anticipate there will be an increased number of residents who will need access to the Resource Center's services. Thus far, the Resource Center has proven its worth to *pro se* litigants who need assistance navigating OAH. The District should fully fund this critical position.

With a fully funded Resource Center Coordinator position, the agency can focus its efforts on outreach in the District. A full time Coordinator could pursue increased community engagement through social, print, and other forms of media and attend both virtual town halls and community meetings. The Coordinator could also create a comprehensive campaign to raise awareness about the Resource Center to District residents.

The District Should Prioritize Language Access at OAH

We appreciate OAH's continued commitment to language access for District residents. OAH proactively sought status as a covered entity with major public contact prior to the 2014 Language Access Act amendment. Language access is an access to justice issue and during the pandemic OAH continued to respond to the needs of Limited English Proficient speakers by providing translations of webpages and resources like the "What to Expect at a Hearing" booklet. However, it is imperative that post-PHE, OAH continues to provide services that reflect the needs of the District's diverse population. We support OAH's efforts to provide translation of the various filing forms in Spanish and Amharic. We recommend that any updates OAH makes to its processes, webpages, or policies are in line with the requirements of the D.C. Language Access Act.

Conclusion

We appreciate the opportunity to testify before this Committee on OAH's budget. We commend the District for taking swift action to protect its residents throughout the pandemic. We look forward to continuing to work with this Committee to ensure that the FY22 budget provides litigants with access to justice at OAH. We will be happy to answer any questions you may have.