

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

**Performance Oversight Testimony Regarding the Office of Administrative Hearings**

**February 10, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony regarding the performance of the Office of Administrative Hearings (OAH) for Fiscal Year 2022. As we enter the third year of the COVID-19 pandemic, Legal Aid recognizes and appreciates OAH efforts to ensure that unrepresented litigants are able to participate in the fair hearing process during this period of uncertainty. We are grateful for our collaborative relationship with OAH including our ongoing partnerships through the OAH Legal Assistance Network (OLAN).<sup>2</sup>

Though OAH has risen to various challenges this fiscal year, we believe OAH can continue to improve litigants' access to justice by addressing two areas of concern: 1) OAH Remote Operations and 2) Public Access to OAH.

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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 90 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).

<sup>2</sup> The Office of Administrative Hearings Legal Assistance Network (OLAN) was created in response to the COVID-19 pandemic. OLAN is a referral hotline that connects unrepresented litigants with pending cases at OAH with an attorney in the network. OLAN consists of five legal service organization members: Bread for the City, the Legal Aid Society of D.C., Legal Counsel for the Elderly, Neighborhood Legal Services Program, and the Washington Legal Clinic for the Homeless.

## 1) OAH Remote Operations

The COVID-19 pandemic drastically changed the way OAH interacts with litigants. We believe OAH should continue to:

1. Provide litigants with a choice of hearing options-- regardless of the status of OAH's in-person operations; and
2. Publicize the availability of video hearings to allow unrepresented litigants access to the fair hearing of their choice.

### OAH Should Ensure Maximum Flexibility for Litigants in Selecting a Fair Hearing Option

At the start of the pandemic, OAH replaced in-person hearings with telephonic hearings via the WebEx platform. OAH has provided litigants with the option to request video hearings, and more recently, in-person hearings. We commend OAH for using a multiple-prong strategy for hearings during COVID-19, and we recommend that OAH continue to provide litigants with maximum flexibility by making remote hearings an option on a permanent basis. Remote telephonic hearings should remain the default hearing option and video and in-person hearings should be available at the request of the parties. Legal Aid clients have expressed gratitude for remote hearings as they've juggled the demands of participating in these hearings with virtual learning with children, care for sick family members, and other responsibilities.

### OAH Should Ensure Litigants Are Aware of the WebEx Video Fair Hearing Option

Although OAH has stated that video hearings using the WebEx platform are available by request, litigants are often unaware of this option. Litigants with access to video streaming technology should be able to easily request a video hearing at the onset of their case. Some litigants may prefer video hearings in cases like personal care aide cases to ensure the Administrative Law Judge can fully appreciate the litigants' physical needs. To ensure litigants are aware that video hearings are an option for their fair hearing, OAH should include step-by-step instructions on how a litigant can request a video hearing when they file. This information should be prominently displayed on the OAH website and added to filing forms as a checkbox for litigants to choose when they file a fair hearing request.

### OAH Should Ensure Litigants and Representatives Understand the Factors Used to Determine the Availability of Video Hearings

Knowing that video hearings are an available option is the first step for litigants to meaningfully participate in their case. However, Legal Aid knows of at least one case in which an individual requested a video hearing, only for an Administrative Law Judge (ALJ) to reject the representatives' motion. We understand that ALJs must balance several factors when determining the appropriateness of a video hearing, however, these factors have not been broadly shared with litigants or their representatives. We believe that ALJs should consider factors like a litigant's capacity to stream videos. However, without clear guidance as to the other factors ALJs

consider in adjudicating a video hearing request, litigants, particularly *pro se* litigants, are in the dark as to what information they should present to an ALJ when requesting a video hearing. To ensure that litigants and their representatives understand the factors ALJs use to determine whether a video hearing is appropriate, OAH should make clear in notices, the website, and within the OAH Consolidated Rules what factors are used to determine whether a video hearing is a viable option for a litigant.

## **2) Public Access to OAH**

The COVID-19 pandemic continues to highlight the importance of the public's access to pertinent case-related documents. OAH must provide litigants with a more accessible way to receive information about their cases and provide the public with access to final decisions. Such improvements will increase transparency and potentially result in greater consistency in decision-making at OAH. We commend OAH for taking steps in FY 2021 to move the electronic court platform projects forward. However, there is more work to do, and we urge OAH to keep these items at the forefront of its agenda to promote access to justice for unrepresented litigants.

### OAH Should Prioritize an Electronic Portal that Provides Litigants Access to Case-Related Documents

With limited access to in-person services at OAH, unrepresented litigants must have a way to easily access case-related materials. Reports of delayed mail delivery make mailing documentation such as notices of hearings, which include vital information like the date and time of the hearing, a less than ideal method for obtaining information about one's case. Using email to share case-related documents, though a helpful tool for advocates and litigants alike, can also be difficult for some litigants to use and organize if they do not use email regularly.

We recommend OAH expand the electronic portal to allow litigants the ability to view case-related materials online. It would allow litigants access to case-related documents located in one place. The electronic court platform would allow litigants the ability to log into the portal on OAH's website, find relevant case documents, access information about the hearing process, as well as file any documents related to their case. We also recommend that the filing system include a comprehensive chronological docket for each case.<sup>3</sup> OAH is currently conducting beta tests on a public filing portal that will allow individuals to file electronically, however, we urge OAH to consider an expansion of the portal to provide litigants access to information about their respective cases in one location. Our proposed portal will help modernize OAH's operations by

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<sup>3</sup> Legal Aid Society, "Budget Oversight Hearing Regarding the Office of Administrative Hearings" February 25, 2021, available at <https://www.legalaiddc.org/wp-content/uploads/2021/06/Legal-Aid-FY22-OAH-Budget-Testimony-FINAL.pdf>

cutting down the administrative burden of additional phone calls and emails to OAH's frontline staff.

### OAH Should Finalize the Searchable Portal for Final Orders on OAH's Website

As highlighted in the OLAN's OAH Oversight Performance Hearing last year, OAH has uploaded a limited number of Final Orders for a few government agencies.<sup>4</sup> There are no Final Orders uploaded to the website for agencies like the Department of Human Services, the Department of Health Care Finance, and the Department of Employment Services.<sup>5</sup> Without access to Final Orders, unrepresented litigants and legal service representatives are limited in their ability to pursue their legal claims. For unrepresented parties, Final Orders may help shed light on how they can resolve a dispute before reaching an ALJ. In addition, publication of Final Orders will increase the transparency of the agency as to how ALJs render decisions and will build public trust and confidence. It will also help the public keep OAH accountable to its mission.

OAH should prioritize posting Final Orders on the website in all jurisdictions. We recognize the need for privacy and confidentiality for litigants, however, as explained in OLAN's 2021 hearing testimony, we believe OAH can both protect an individual's confidentiality and provide the public access to redacted Final Orders like many other jurisdictions.<sup>6</sup> OAH should finalize the project to include a searchable portal for Final Orders in all types of cases heard by OAH, available on OAH's website this fiscal year as remote operations are likely to become a fixture at the OAH.

### **Conclusion**

We appreciate OAH's tremendous efforts during the COVID-19 pandemic to provide access to justice. We would be happy to answer any questions you have for us today. We look forward to working with the Committee and OAH following today's hearing to achieve these goals.

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<sup>4</sup> See Testimony of Darien Wynn, Bread for the City on behalf of the Office of Administrative Hearings Legal Assistance Network Regarding OAH Oversight Testimony (February 25, 2021).

<sup>5</sup> Public Portal, <https://dcgov.app.box.com/v/OAHFinalOrders> (last visited Feb. 9, 2022).

<sup>6</sup> *Id.*