

**OVERSIGHT HEARING
COMMITTEE ON GOVERNMENT OPERATIONS AND FACILITIES**

**ADVISORY COMMITTEE TO THE OFFICE OF ADMINISTRATIVE
HEARINGS**

**FEBRUARY 10, 2022
12:00 P.M.**

THE HONORABLE ROBERT WHITE, CHAIRPERSON

**QUESTIONNAIRE PREPARED BY
BETSY CAVENDISH, CHAIRPERSON
ADVISORY COMMITTEE TO THE OFFICE OF ADMINISTRATIVE HEARINGS**

GENERAL QUESTIONS

1. Please provide the Committee's mission statement.

1. The mission statement is provided in statute: Under D.C. Official Code § 2-1831.17(e), the Advisory Committee shall
 - (1) Advise the Chief Administrative Law Judge in carrying out his or her duties;
 - (2) Identify issues of importance to Administrative Law Judges and agencies that should be addressed by the Office;
 - (3) Review issues and problems relating to administrative adjudication;
 - (4) Review and comment on the policies and regulations proposed by the Chief Administrative Law Judge; and
 - (5) Make recommendations for statutory and regulatory changes that are consistent with advancing the purposes of this chapter.

2. Please list all reporting requirements in the District of Columbia Code or Municipal Regulations that the Committee is required to complete in FY 21 and FY 22, to date. For each requirement, please list the date the report was required and the date it was produced. If the Committee did not produce the report on the mandated timeline, please explain why.

The Committee has no reporting requirements over and above those required by the Open Meetings Act.

3. What are the Committee's top five priorities? Please explain how the agency expects to address these priorities in FY 22.

1. Provide offers of help, actual help, and advice to the Chief ALJ on the topics of interest to her.
2. Fix systemic problems at agencies that ALJs may notice that may remain opaque to persons at the agencies with responsibility.
3. Look for ways to advance transparency to the public and to the government agencies about important rulings of OAH.
4. Making sure the technology available to OAH facilitates electronic filings and that interested persons can be made aware of proceedings electronically, easily, while not excluding the many pro se persons who may lack access to an electronic filing system.
5. Recover from the pandemic in a way that improves access to justice and makes participation in cases at OAH easier for all, particularly but not exclusively with respect to use of remote hearings and technology.

These goals will be advanced through our regular Advisory Committee meetings, offers of help, and informal advice provided to the Chief, and her actions that work towards the same goals.

4. Please describe any new initiatives or programs that the Committee implemented in FY 21 and FY 22, to date, to improve the operations of the Committee. Please describe any funding utilized for these initiative or program and the results, or expected results, of each initiative.

The Committee did not embark on any new initiatives or programs in FY 21 or FY 22 to date.

5. Please list all pending lawsuits that name the Committee as a party. Identify which cases on the list are lawsuits that potentially expose the District to financial liability or will result in a change in Committee practices and describe the current status of the litigation. Please provide the extent of each claim, regardless of its likelihood of success.

The Committee is not a party to any litigation.

6. Please list all settlements entered into by the Committee or by the District on behalf of the Committee in FY 21 or FY 22, to date, and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).

The Committee entered into no settlements.

7. Please provide the number of FOIA requests for FY 21, and FY 22, to date, that were submitted to your Committee. Include the number granted, partially granted, denied and pending. In addition, please provide the average response time, the estimate number of FTEs required to process requests, the estimated number of hours spend responding to these requests, and the cost of compliance.

No FOIA requests were submitted to the Committee.

8. Please list and describe any ongoing investigations, audits, or reports on the Committee or any employee of the Committee that were completed during FY 21 and FY 22, to date.

To our knowledge, there are no ongoing investigations of the Committee. There were no investigations, audits, or reports of the Committee completed in FY 21 or FY 22 to date. The Committee has no employees.

9. Please provide a list of all studies, research papers, reports, and analyses that the Committee prepared or funded during FY 21 and FY 22, to date. Please submit a hard copy to the Committee of any study, research paper, report, or analysis that is complete.

The Committee did not prepare or fund any study, research paper, report, or analysis.

10. Please provide a list of all current members of the Committee. Please include the following:

a. Their date of appointment or designation;

1. Elizabeth (Betsy) Cavendish, EOM Designee – Appt. Date: 4/24/15
2. Jed Ross, DC Gov't Agency Director – Appt. Date: 10/4/19
3. Ernest Chrappah, DC Gov't Agency Director – Appt. Date: 10/4/19
4. Chad Copeland, OAG Appointee – Appt. Date: 3/23/21
5. Mary Buckley, Public Member – Appt. Date: 6/30/17
6. Professor Alice Thomas, Lawyer Member – Appt. Date: 2/24/17
7. Aida Fitzgerald, Chair of Council Designee (Legal Aid)– Appt. Date: 9/27/21

b. Whether they are a District resident and, if they are, the ward in which they reside;

1. Elizabeth (Betsy) Cavendish – Ward 4
2. Jed Ross – Ward 2
3. Ernest Chrappah – Ward 4
4. Chad Copeland – Ward 2
5. Mary Buckley – Ward 8
6. Alice Thomas – Ward 4
7. Aida Fitzgerald – Ward 7

c. Their agency, if applicable;

1. Elizabeth (Betsy) Cavendish – Executive Office of the Mayor (EOM)
2. Jed Ross – Office of Risk Management (ORM)
3. Ernest Chrappah – Dept. of Consumer & Regulatory Affairs (DCRA)
4. Chad Copeland – Office of Attorney General (OAG)
5. Mary Buckley – N/A
6. Alice Thomas – N/A
7. Aida Fitzgerald – N/A

d. The number of meetings attended in FY 21 and FY 22, to date; and

1. Elizabeth (Betsy) Cavendish – FY 21: Meetings (4)
2. Jed Ross – FY 21: Meetings (4)
3. Ernest Chrappah – FY 21: Meetings (0)
4. Chad Copeland – FY 21: Meetings (3)
5. Mary Buckley – FY 21: Meetings (3)
6. Alice Thomas – FY 21: Meetings (2)
7. Aida Fitzgerald – FY 21: Meetings (2)

The FY 22 OAH Advisory Committee Meetings don't commence until March 17, 2022.

e. Whether there are any vacancies.

There is currently one (1) vacancy.

11. Pursuant to D.C. Code § 2-1831.17(d), please provide the amount of reimbursed travel expenses for the Advisory Committee in FY 21 and FY 22.

Committee members sought no money for travel reimbursements for Advisory Committee work in FY 21 or FY 22 to date.

12. Please provide the dates of any Commission meetings held in FY 21 and FY 22, to date, and the dates and times of any future scheduled Commission meetings.

OAH Advisory Committee Meetings for FY 21 were as follows:

March 18, 2021; June 17, 2021; September 15, 2021; and December 16, 2021

OAH Advisory Committee Meetings for FY 22 are as follows:

March 17, 2022; June 16, 2022; September 15, 2022; and December 8, 2022

13. For every meeting of the Committee in FY 21 and FY 22, to date, please provide the agenda, the minutes, a list of all members in attendance, and whether a quorum was present.

FY 21 – Please see DC Registers:

March 18, 2021 OAH Advisory Committee Meeting
N104403 – Posted 3/12/21 – Vol. 68/11

N104402 – Posted 3/5/21 – Vol. 68/10

Minutes

See <https://oah.dc.gov/release/2021-oah-advisory-committee-meeting-recordings>

Members in Attendance

Betsy Cavendish
Jed Ross
Toni Jackson
Chelsea Sharon
Mary Buckley
Alice Thomas

Quorum met.

June 17, 2021 OAH Advisory Committee Meeting

N108319 – Posted 5/28/21 – Vol. 68/22
N108321 – Posted 6/4/21 – Vol. 68/23
N108322 – Posted 6/11/21 – Vol. 68/24

Minutes

See <https://oah.dc.gov/release/2021-oah-advisory-committee-meeting-recordings>

Members in Attendance

Betsy Cavendish
Jed Ross
Mary Buckley
Alice Thomas
Chad Copeland
Paul Wolfson

Quorum met.

September 15, 2021 OAH Advisory Committee Meeting

N112328 – Posted 8/27/21 – Vol. 68/35
N112330 – Posted 9/3/21 – Vol. 68/36
N112331 – Posted 9/10/21 – Vol. 68/37

Minutes

See <https://oah.dc.gov/release/2021-oah-advisory-committee-meeting-recordings>

Members in Attendance

Betsy Cavendish
Jed Ross
Mary Buckley
Chad Copeland

Aida Fitzgerald

Quorum met.

December 16, 2021 OAH Advisory Committee Meeting
N116522 – Posted 12/10/21 – Vol. 68/50

Minutes

See <https://oah.dc.gov/release/2021-oah-advisory-committee-meeting-recordings>

Members in Attendance

Betsy Cavendish
Jed Ross
Chad Copeland
Aida Fitzgerald

Quorum met.

FY 22 Meetings don't commence until March 17, 2022.

14. Please provide any rules of procedure that have been adopted by the Committee.

The Committee has not adopted formal rules, but largely adheres to Roberts Rules of Order and fully complies with the District's Open Meetings Act.

15. Please provide any current recommendations of the Committee to improve the operations of the Office of Administrative Hearings, including any recommendations for statutory and regulatory changes.

The Committee does not have any recommendations for statutory or regulatory changes. We often applaud the Chief's efforts towards greater transparency in posting of opinions and technological upgrades generally, such as to facilitate e-filing. Thousands of opinions have been posted. Searchability of opinions remains a problem. If someone is looking, say, for all opinions arising out of a topic like "vaccination mandates" it remains impossible to find decisions.

Likewise, the Committee was keenly interested during the pandemic about how the central panel was continuing operations effectively and whether there were lessons being learned for access to administrative courts and for the efficient operations of agencies that might usefully hold over after the pandemic. The Advisory Committee routinely asked about whether more people were showing up for their hearings and whether audio and video hearings went smoothly. Agency inspectors, able to call into hearings, were very happy with remote operations as they could continue their work between their time to testify, and not wait around between hearings at the courtrooms at the Barry Building. The Committee was interested in the prospects for moving to more video conferences, going beyond audio hearings, for easier determinations that related to demeanor of witnesses and potentially easier sharing of documents and physical evidence. The

Chief advised that with the consent of the parties and if the judge wished, hearings could be on video.

Committee members were interested in making sure that there was a help line that litigants could call if they were having technological problems during their hearing.

Committee members expressed strong support for the judicial clerk program and encouraged the use of law students to help with the Resource Center. One of our Advisory Committee members is on the faculty at Howard University School of Law and the Committee is complimentary of efforts to have clerks from the range of local law schools and to have students help, *pro bono*, the litigants who lack lawyers.

Committee members have complimented the Chief for her success in attracting well-qualified Administrative Law Judges and filling vacancies quickly in conjunction with the COST, the Committee on Selection and Tenure of Administrative Law Judges.

The Committee is also supportive of OAH's efforts to support the many persons who litigate *pro se*, including through its Resource Center, and is in strong support of its programs to provide accessible interpretation services for its Limited English Proficient litigants, not just at hearings but also on the OAH website. The Chief informed the committee about hiring a lawyer this past year to staff the Resource Center and provide individual advice to hundreds of litigants.

The Committee was very interested in ways that the flood of cases from the Department of Employment Services could be addressed so as to provide quick relief to persons entitled to benefits, with OAH only being able to get involved once a final decision was made at the agency.

16. Please describe any issues of importance to Administrative Law Judges and agencies that the Committee identified as needing to be addressed by the Office in FY 21 and FY 22, to date.

The Committee stated that some agencies are eager to have hearings scheduled longer in advance, because the scheduling of a hearing can prompt settlement and remedial actions by parties, ultimately conserving both agency and OAH resources.

The Committee was concerned that even with the addition of administrative judges to handle Unemployment Insurance matters, clarification is welcome on the point that ALJs at OAH are generalists and their time and District resources are best spent if, as time permits, judges hired for one purpose can lend a hand on other cases as well. That would be consistent with the original idea of a central panel.

17. Please describe any policies or regulations proposed by the Chief Administrative Law Judge that the Committee reviewed or commented upon in FY 21 and FY 22, to date.

The Chief Administrative Law Judge did not formally propose any policies or regulations for review by the Committee but in keeping the Advisory Committee apprised on her efforts, such as to move towards electronic records, Committee members offered to help.

Committee members were supportive of multiple forms of service of process, and the Chief indicated that service is generally both by USPS and email. The US Postal Service is often very behind, or attorneys are not going into the office to collect mail; at the same time, electronic service of process can be difficult for persons without reliable computer access, or even for persons whose spam folders mistakenly caught important documents from OAH or agencies.

18. Please describe the Committee's achievements in FY 21 and FY 22, to date.

The Committee conducted its scheduled meetings and provided a forum for the Chief to take a big picture view and report out quarterly on key issues before the OAH, as well as provided a forum for judges, General Counsels, and members of the public to comment on the District's work at OAH.

To give some examples of issues brought to the public via the Advisory Committee meetings, our representative from Legal Aid presented to the Board on some of the issues that Legal Aid had raised at oversight hearings such as glitches in the system of providing real time technical assistance at hearings.

The Chief reported on the great rise in cases at OAH, without a concomitant increase in the number of judges.

The Chief reported on an important case, involving the necessity to prove actual fraud, not just "indicators of fraud."

19. Please describe any additional challenges that the Commission has faced that are impacting its ability to meet its goals.

It is very difficult to serve as a liaison from OAH Advisory Committee to agencies with respect to key decisions when those decisions are not highlighted on the OAH web site and the database of published cases is not searchable. The District's Chief Risk Officer sits as an Advisory Board member and we do not fully use his talents if we do not hear about cases where the District is found liable or where our affirmative cases fail, so that, if possible, we can fix the problems. The Chief highlighted a few key opinions at our meetings, but we can do better.

It's also hard to find a docket of what cases are upcoming for hearing. With easy to find dockets, especially if the docket identifies more than just the parties' names, members of the public who expect to soon have a hearing, or agency counsel, or anyone else, can hear how a similar case or a case of interest goes. This suggestion would only pertain to matters that are not private.