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## OFFICE OF ADMINISTRATIVE HEARINGS

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### **Written Testimony of Chief Administrative Law Judge, Thomas E. Dewberry; and Administrative Law Judge, Georgia S. Brady, Maryland Office of Administrative Hearings, Before the Pennsylvania Senate State Government Committee on Senate Bill 413**

The Maryland Office of Administrative Hearings (OAH) conducts administrative hearings on behalf of state agencies. As such, it is an independent unit within the executive branch of State government.

The mission of the OAH is to provide due process for any person affected by the action or proposed action of State agencies. Additionally, OAH has a responsibility to provide this due process in a prompt and efficient manner. Due process means that each person has a fair opportunity to be heard and the complexity of the hearing varies according to the nature of the case.

The OAH is headed by Chief Administrative Law Judge Thomas E. Dewberry. A ten member State Advisory Council on Administrative Hearings advises the Chief Judge.

#### Legislative History and Background

The OAH commenced to function on January 1, 1990. It was created by Chapter 788 (SB 658) of the Laws of 1989. Its statute is codified in State Government Article, Title 9, Subtitle 16 of the Annotated Code of Maryland.

In the late 1980s, the Governor and the legislature created a Task Force to consider the then administrative hearing process within state agencies. This Task Force evaluated widespread concerns with the fairness, effectiveness and cost of the system. Its final report endorsed the creation of a centralized administrative hearing process and identified many problems with the non-centralized system. The final report found that within the non-centralized system, hearing officers lacked adequate training opportunities, suffered from poor salaries, often failed to write decisions that would withstand judicial scrutiny, were supervised by the agencies for which they issued

decisions, and were not subject to uniform procedures or codes of responsibility and ethics.

In late 1991, the Commission to Revise the Administrative Procedure Act (APA) was appointed to study and update Maryland's APA to reflect the creation of the OAH. The Commission included Chief Judge John Hardwicke, two Cabinet Secretaries, and representatives of the judiciary, business community, labor unions, bar associations, and the Maryland Attorney General's office. The Commission's recommended legislation, Chapter 59 of the Laws of 1993, became effective June 1, 1993. In 1994, revisions to the OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, were adopted incorporating the revisions to the APA.

Maryland is one of approximately half the states that has a centralized office handling administrative appeals and hearings. The Maryland OAH is one of the largest central panel agencies and has one of the broadest jurisdictions in the country. States contemplating the establishment of a central panel view the Maryland OAH as a model and often contact or visit the OAH for information, statistics, and guidance.

#### How the OAH Operates

The OAH conducts fair and timely hearings for over 30 State agencies in contested cases for over 200 different programs, with over 500 hearing types. Except for entities exempted by statute, a Board, Commission or agency head must hear a contested case personally or must delegate authority to hear the case to the OAH or, with the permission of the Chief Administrative Law Judge, a person not employed by the OAH. *See Md. Code Ann., State Gov't § 10-205 (2014).*

The OAH received roughly 44,000 new cases in FY 2015. Some of the case types are as follows:

#### Department of Transportation

##### Motor Vehicle Administration (MVA)

- Driving with alcohol concentration of .08 or more

- Refusal to submit to a chemical test for alcohol

- Violation of License Restrictions

- Medical Advisory Board

- False Certification of Insurance Coverage

- Post Conviction Cases

  - Driving under the influence

  - Driving while intoxicated

  - Points assessed against license

  - Miscellaneous cases

##### Maryland Transit Administration

- Minority Business Enterprises

State Aviation Administration  
Transportation Human Resource System

Department of Health & Mental Hygiene  
Involuntary admissions to mental health care facilities  
Medical assistance programs  
Not criminally responsible – release or revocation  
Developmental disabilities  
Board of Physicians  
Professional licensing boards  
Institutional licensing boards  
Miscellaneous cases

Department of Housing & Community Development  
Foreclosure Mediations

Department of Human Resources  
Tax Intercept and Lottery Intercept Appeals  
The Family Investment Program  
Supplemental Nutrition Assistance Program  
Social Services  
Child Care Licensing  
Child Abuse and Neglect  
Child Support Enforcement Administration  
Office of Home Energy Programs

Department of Education  
Board of Education  
Division of Rehabilitation Services  
Office of Child Care  
Special Education

Department of the Environment  
Air and Radiation Management Administration  
Local Health Departments  
Waste Management Administration

Department of Labor, Licensing & Regulation  
Home Improvement Commission  
Real Estate Commission  
Maryland Occupational Safety & Health  
Division of Labor and Industry

Maryland Insurance Administration (MIA)

Disciplinary action taken by the MIA against licensed insurance companies and agents

Natural Resources

Fisheries Service Administration  
Forests, Parks, Wildlife  
State Boat Act

Public Safety and Correctional Services

Inmate Grievance Office

Miscellaneous Agencies

Office of the Attorney General  
Department of Budget & Management  
Board of Public Works  
Maryland State Retirement & Pension System  
Office of the Secretary of State  
Public Information Act  
Department of Aging  
Department of Agriculture  
Higher Education Commission  
Commission on Civil Rights

All administrative law judges (ALJs) of the OAH are cross-trained to hear all of the different types of cases before the OAH. This permits OAH to consolidate regional dockets and to respond quickly to variations in volumes of case-types. This results in maximum utilization of our judges and savings to the people of Maryland.

In addition, the OAH employs various forms of Alternative Dispute Resolution to resolve contested cases in the most expeditious manner while minimizing litigation costs to the participants. The OAH conducted approximately 3,000 mediations and settlement conferences during FY 2015. All ALJs are certified mediators enabling them to provide mediation services. The OAH's mediation program for Special Education hearings is a prime example of the benefits of the mediation process. In addition, the OAH was delegated the responsibility to conduct mediations in mortgage foreclosure proceedings when requested by a homeowner.

The OAH operates with uniform rules of procedure and a code of ethics modeled on the Judicial Code of Ethics. All decisions are subject to peer review by a "subject matter specialist" and the OAH's Operations Division monitors an ALJ's timeliness in issuing decisions, as well as the docketing of cases to avoid backlogs.

The OAH's Division of Quality Assurance provides on-going training for the ALJs and oversees the quality of the written decisions. Quality Assurance conducts continuing legal education training one day each month of the year. A library is maintained for the judges and those who practice before the Office.

### Where Cases are Heard

Our building in Hunt Valley is accessible from I-83 North and has ample parking. There is a light rail station within walking distance of the building and bus service makes the building accessible via public transportation.

The Administrative Law Building houses twenty-one hearing rooms, two attorney-client meeting rooms, a clerk's office, ample public waiting areas, a law library accessible to the public during normal business hours, as well as offices and training rooms for the OAH staff.

Although the Administrative Law Building in Hunt Valley is the headquarters of the OAH, less than 30% of the hearings conducted by the ALJs are held at this location. The balance of the hearings are held at various locations used by the OAH around the State, including hospitals and nursing homes. Other hearings are held in government facilities such as courthouses and agency offices. The OAH operates satellite offices in Cumberland and Salisbury and has a dedicated hearing space in Montgomery County.

### Judges and Other Employees

The OAH began Fiscal Year 2016 on July 1, 2015, with 119 authorized positions, 52 of which are ALJ positions. ALJs are appointed by the Chief Administrative Law Judge. The Chief Administrative Law Judge is appointed by the Governor for a six-year term.

Prior to the creation of the OAH, 85 full-time and 5 contractual hearing examiners were employed by various State agencies to conduct administrative hearings.

Current qualifications require that ALJs be bar-admitted attorneys with a minimum of 5 years of legal experience. Most judges have many years of experience conducting hearings. As of January 1, 2016, the entry level salary for an ALJ is \$95,840 and the average ALJ salary is \$101,093.

Submitted by the Maryland Office of  
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