

**Testimony of Christina Jackson, Executive Director
Washington Council of Lawyers
Before the D.C. Council Committee on Public Works & Operations
Budget Oversight Hearing: Office of Administrative Hearings
April 10, 2024**

Introduction

The Washington Council of Lawyers¹ appreciates the opportunity to testify about the FY 2025 budget for the D.C. Office of Administrative Hearings (“OAH”). We express our appreciation for the Council’s past support of civil legal services in the District of Columbia and emphasize the importance of continued consistent funding to protect the legal rights of our most vulnerable residents. In particular, we wish to call attention to the critical need for increased funding for urgently required OAH staffing and technology upgrades. At the same time, we applaud OAH for significant progress in the operation and staffing of the OAH Resource Center

OAH is an essential resource for District of Columbia residents who receive vital support from D.C. government agencies. While the D.C. courts are often the focus of access-to-justice discussions in our city, it is at OAH where District residents generally must first go to address and resolve disputes regarding basic human needs and access to vital government services like food stamps, economic assistance, healthcare benefits, unemployment insurance, education, rental assistance, and shelter. It is designed to provide a fair and efficient means of resolving legal controversies in these fundamental areas of daily life. The volume of cases presented at OAH each year is staggering – over 26,000 in FY23. To meet residents’ needs, there should be no delays in the adjudication of cases. Access to justice at OAH requires sufficient funding levels to promote the most efficient resolution of the cases before it.

¹ Washington Council of Lawyers was founded in 1971 and today remains the only voluntary bar association in the District of Columbia solely dedicated to promoting pro bono service and public-interest law. We have over 500 dues-paying members and connect with nearly 5,000 other public-interest-minded legal professionals and law students through our communications, events, and trainings. Our members work at small and large law firms, corporate legal offices, local and federal government agencies, law schools, legal services providers, and policy organizations. Together we strive to ensure that our legal system treats everyone fairly, regardless of money, position, or power.

Thus, we are deeply disappointed that the Mayor’s proposed FY 2025 budget fails to take into account the need for increased staffing for OAH. As we explain below, both OAH leadership and an objective staffing study have stated that additional staff are needed to keep up with the growing OAH caseload. Specifically, the study authors concluded that at least ten more full-time employees should be added. We therefore urge the Council to increase OAH funding levels to permit it to hire and retain the staff it requires to adequately serve the District’s residents.

OAH Staffing

In her testimony at this Committee’s FY 2023 Performance oversight Hearing, OAH Chief Judge M. Colleen Currie acknowledged that OAH is understaffed for its current caseload. She noted that OAH has experienced a 70% increase in the number of cases filed between 2021 (15,400 cases filed) and 2023 (26,111 cases filed).² Chief Judge Currie testified that in the first quarter of FY 2024, 8,678 new cases were filed, and that at this rate approximately 34,700 new cases were projected to be filed in FY 2024.³ This represents more than a 30% increase from FY 2023 and the highest number of cases ever filed with OAH.⁴ The Chief Judge emphasized that to manage this increasing caseload, the number of full- time employees at OAH must be increased (coupled with much-needed technology upgrades).⁵

In her testimony, Chief Judge Currie stated that despite vigorous recruitment efforts, it has been difficult for OAH to recruit and retain new staff, particularly support staff. She added that at the end of FY 2022 OAH had vacancies in 17% of its locally funded FTE positions. Notably, at the end of FY 2023, 24 of OAH’s 96 locally funded FTE positions were vacant, which represents a 25% vacancy rate, or an astounding one quarter of the workforce.⁶

² *FY 2023 Performance Oversight Hearing, Office of Administrative Hearings Before Committee on Public Works & Operations*, Feb. 8, 2024 (Statement of Chief Administrative Law Judge M. Colleen Currie, Office of Administrative Hearings) at 2.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2-3.

⁶ *Id.* at 3-4.

Moreover, in its response to this Committee’s pre-hearing questions in conjunction with last month’s Performance oversight hearing, OAH calculated that it had a case backlog of 21,076 cases.⁷ It recognized that outstanding barriers for the agency to address the backlog include staffing levels, vacancies, and turnover.

A recent study, conducted at the direction of the D.C. Council and performed by B. McNamee Consulting, LLC (“BMC”), concerning OAH operations confirms the Agency’s glaring staffing problems. The study⁸ concluded that the agency lacks sufficient staff to timely process its current caseload. The BMC Report noted that:

Given the current and predicted future case volume coming to OAH from the agencies they serve, OAH believes they have neither the staffing capacity nor process efficiency to handle it. BMC’s study and subsequent findings capture the extent that these assumptions are true. . . . Vacant positions have increased the workload on employees, particularly those working directly on cases. Further exasperating workload is the increasing caseloads from the district agencies served by OAH.⁹

The report emphasized that the vacant positions and increased caseloads have:

created the conditions where employees are unable to maintain standardized processes, provide necessary training and professional development, adopt and properly incorporate technology into operations, and an overall breakdown in working relationships. BMC believes that the longer these conditions persist, employee retention and court operational efficiency will worsen.¹⁰

The BMC Report concluded that OAH must increase the number of staff working directly on cases from 61 to 71 full-time equivalent employees and recommended that OAH increase staff

⁷ According in its response to the Committee, OAH defines a backlog as “the number of cases and/or the rate at which cases are filed in a particular jurisdiction exceeds the capacity of staff to process or ALJs to adjudicate those cases within applicable statutory deadlines or, absent specific statutory deadlines, within timelines identified in the agency’s KPIs [key performance indicators].” Office of Administrative Hearings, Performance Oversight, FY 2023-2024 Pre-Hearing Questions at 40.

⁸ See B. McNamee Consulting LLC, *DC Office of Administrative Hearing: Court Feasibility Study* (2023), <https://lims.dccouncil.gov/Hearings/hearings/278> (ATTACH~1.DOC).

⁹ *Id.* at 4.

¹⁰ *Id.*

who do not work directly on cases by 3.25 FTE.¹¹ The report stated that the number of FTEs needed to build capacity might be reduced through process improvements and the adoption of readily available technology.¹²

Taken together, this makes a persuasive case for increased staffing at OAH. However, under the Mayor's proposed budget, with the net reduction in funding for personnel services, OAH will not be able to hire much-needed staff. In fact, in the testimony Chief Judge Currie submitted for this hearing, she specifically highlighted that "OAH will need to maintain vacancies in 10% of its FTEs – 10 positions – to meet its budget."¹³ Further, funding for contractual services has been eliminated from the proposed budget, meaning OAH will be unable to use temporary workers to fill the gaps. We urge this Committee and the Council to further examine and increase the FY25 proposed budget for OAH to ensure it addresses the concerns raised by the Chief Judge and the BMC study. Without such funding, this critical administrative tribunal will not have the resources to provide timely adjudications to the litigants who come before it.

Recruitment and Retention of Legal Assistants

The problem of numerous vacant legal assistant positions at OAH is particularly acute. According to OAH, as of January 2024, 9 out of approximately 25 legal assistant positions were vacant¹⁴—five of which have been vacant for over a year. Under the Mayor's proposed budget, the net decrease in funding in Administrative Adjudication Services means that even if OAH were to fill vacancies in FY24, there would be no guarantee of funding in FY25. We strongly urge this

¹¹ *Id.* at 6

¹² *Id.*

¹³ *FY 2025 Budget Oversight Hearing, Office of Administrative Hearings Before Committee on Public Works & Operations*, April 10, 2024 (Statement of Chief Administrative Law Judge M. Colleen Currie, Office of Administrative Hearings) at 2.

¹⁴ Committee on Public Works and Operations, Council Hearings and Meetings, Office of Administrative Hearings Performance Oversight Hearing, February 8, 2024, Attachment 5 (FY24 Schedule A); and Attachment 6 (OAH Vacancy Report), <https://lims.dccouncil.gov/Hearings/hearings/278>.

Committee and the Council to further probe the FY25 proposed budget to determine if OAH will have the ability to address current vacancies.

The high percentage of legal assistant vacancies has demonstrably derailed the timely and efficient adjudication of cases and should be understood in the context of increases in case filing at OAH. Also, just recently the Council passed emergency legislation increasing OAH's jurisdiction. As a result, the practical implications of this additional work must be viewed as making more urgent the understaffing at OAH. Currently, due to the lack of legal assistants, judges must spend an inordinate amount of time on administrative duties (such as case scheduling). As caseloads increase, judges will have even less time to preside over hearings and trials and issue decisions.

During BMC's listening sessions with employees, the issue of legal assistant vacancies was a common concern. The report stated that:

Most employees highlighted that there was a major need for more Legal Assistants as well as Law Clerks and Paralegals. Employees identified a need for a higher ratio of Legal Assistant to Judges. . . . Every group cited that the lack of Legal Assistants across OAH has impacted workload. For the existing Legal Assistants, they have found that they are unable to keep up with the work as they are expected to lead the administrative tasks while also researching/managing the hearings. In the end, the Legal Assistants are stretched, and issues are sliding through the cracks.¹⁵

The report explained how the lack of legal assistants was taking its toll on administrative law judges:

The ALJ's [sic] noted that they have taken on more administrative tasks, e.g., scheduling and setting up Webex hearings and meetings, which takes away from hearing and researching cases. They feel that they do not have enough time to properly research, set legal precedent, and manage their case load (which varies by area). Beyond these issues, the ALJ's also noted that some of their work (e.g. filings, initial motions, and other basic tasks above administrative tasks) could be further alleviated if they had mid-level professionals such as Paralegals, Law Clerks, or a seasoned Legal Assistant who could assist in drafting motions. One PALJ [Principal ALJ] noted 'Because of the lack of staff, it is time

¹⁵ B. McNamee Consulting LLC, *DC Office of Administrative Hearing: Court Feasibility Study* 34 (2023), <https://lims.dccouncil.gov/Hearings/hearings/278> (ATTACH~1.DOC).

consuming. I'm finding that I have [to] jump in as a Legal Assistant and as an admin.¹⁶

A major obstacle in recruiting and retaining legal assistants is in large part due to the low salaries at OAH.¹⁷ Administrative law judges, as well as current legal assistants, pointed to this problem.

One judge told the BMC Report authors:

The compensation of our support staff certainly needs to be looked at in order to retain our employees. I looked at the staff supporting me, and they make \$40,000 a year which is equivalent to making a DC McDonald's employee salary.¹⁸

According to the Report, OAH employees appear to believe that they are the lowest paid legal assistants across D.C. agencies and note the difficulties surviving on such low salaries. In addition, some stated that they must arrive to work early in order to acquire a free parking spot or they would not be able to afford to park their vehicles.¹⁹

Given these findings, we urge the Council to provide OAH with the funding it requires to fill vacancies and to assess and adjust the current pay scales for legal assistants. Investing in legal assistants is a cost-effective way to improve staff morale, retain institutional efficiency, and ensure that judges need not spend an inordinate amount of time on administrative tasks allowing them to focus on their judicial duties.

Technology Upgrades at OAH

D.C. law requires that OAH provide public access to case filings. Specifically, D.C. Code § 2-1831.13 states that "all documents filed in any case before the Office [OAH] shall be available to the public for review unless a statute, protective order, or other legal requirement prohibits disclosure." This is a critical access to justice issue for D.C. residents. A searchable database of

¹⁶ *Id.*

¹⁷ According to the OAH Schedule A chart, the starting salary for legal assistants appears to be at a Grade 7. Although we recognize the difficulty in making cross-agency comparisons, we note that it appears that legal assistant positions in the D.C. Office of the Attorney General are Grade 9. OAG Schedule A Report, January 20, 2024.

¹⁸ B. McNamee Consulting LLC, *DC Office of Administrative Hearing: Court Feasibility Study* 36 (2023), <https://lims.dccouncil.gov/Hearings/hearings/278> (ATTACH~1.DOC).

¹⁹ *Id.* at 37.

OAH final orders, published on the Agency's website, is necessary for litigants and their advocates to properly prepare their cases. Similarly, litigants and advocates need access to an electronic docket system for OAH cases so that they can easily review their case status and confirm hearing dates. While we understand OAH is working on these issues, this standard practice has not yet been achieved at OAH.

In addition to public-facing technology upgrades, OAH's inability to fill current vacancies will also impact OAH's abilities to bring greater efficiencies to its technology practices. Those efficiencies were identified in the BMC study.²⁰ Further, Judge Currie testified at this Committee's FY23 Performance oversight Hearing about some technology augmentation that OAH would like to explore (i.e., rebuilding hearing rooms, interfacing with other agency systems, etc.).²¹ Under the Mayor's proposed budget, capacity to do that new work does not appear to be. We implore this Committee and the Council to address these areas with OAH and explore the barriers to achieving these important access to justice goals. To the extent there are budget implications – either for staffing or technology upgrades – we ask the Council to provide OAH with the fiscal resources it needs to have these services available to litigants immediately. There is no reason why the District should lag behind other jurisdictions in the implementation and use of this type of technology to improve access to essential case information.

OAH Resource Center

We commend OAH for the attention it has given to making concrete and important improvements to the OAH Resource Center. As we have noted in previous testimony before the Council, upwards of 90% of litigants at OAH have no lawyer and navigate the complex legal

²⁰ B. McNamee Consulting LLC, *DC Office of Administrative Hearing: Court Feasibility Study* 36 (2023), <https://lms.dccouncil.gov/Hearings/hearings/278> (ATTACH-1.DOC) at 9.

²¹ *FY 2023 Performance Oversight Hearing, Office of Administrative Hearings Before Committee on Public Works & Operations*, Feb. 8, 2024 (Oral Testimony of Chief Administrative Law Judge M. Colleen Currie, Office of Administrative Hearings) (Statement of Chief Administrative Law Judge M. Colleen Currie, Office of Administrative Hearings) at 4-5.

procedures by themselves. As the D.C. Access to Justice Commission found in its *Delivering Justice* report, the majority of individuals in cases at OAH involving public benefits, housing, unemployment, and school discipline lack counsel.²² These litigants need information and support to understand both the procedural and substantive issues in their cases. They need guidance in understanding legal terminology and reviewing legal documents issued by OAH or filed by opposing parties.

This is where the OAH Resource Center plays a critical role. The Resource Center helps these litigants maneuver through the complicated legal territory they face in OAH matters. It is a lifeline for these individuals, knowing that success at OAH is often required to ensure they receive the adequate level of food, financial, healthcare, housing, and educational benefits they seek.

We applaud Chief Judge Currie and her colleagues for their attention to strengthening the Resource Center. Recent OAH reorganization moved the position of Resource Center Manager from the Office of General Counsel to the Operations Division, ensuring consistent and dedicated support for the Resource Center and affording the manager greater autonomy to make continued improvements. This was a critical development.

We are pleased that within the last few months OAH posted announcements to fill additional positions that will enhance Resource Center services (a Resource Center Program Analyst and a Resource Center Coordinator).²³ These additional staff members will report to the Resource Center Manager and will focus on legal self-help programs and initiatives. This includes developing and implementing a new Resource Center intake process and helping build and coordinate Resource Center volunteer programs. The latter is an area for which the Washington

²² D.C. Access to Justice Commission, *Delivering Justice: Addressing the Civil Legal Needs in the District of Columbia* 210 (2019), https://dcaccesstojustice.org/files/Delivering_Justice_2019.pdf.

²³ We have been informed that a new Program Analyst was scheduled to start in March.

Council of Lawyers, as the District's voluntary bar association for pro bono and public interest lawyers, is anxious to provide support.

The Resource Center assisted more than 800 litigants in 2023. With the aforementioned improvements, we expect a steady increase in the number of D.C. residents using the Resource Center. The Resource Center will be able to continue its virtual support, while also supplementing its in-person presence in dedicated space that can also accommodate pro bono volunteers. These recent changes are significant steps in ensuring that the Resource Center and OAH as a whole have the capacity to help litigants who must handle their cases without the assistance of counsel.

Conclusion

The Office of Administrative Hearings affects the day-to-day lives of thousands of D.C. residents. Funding for increased staffing is needed to ensure that the Agency can adjudicate disputes in a thoughtful and efficient manner. In particular, financing to support vigorous efforts to recruit and retain qualified legal assistants is essential. Improvements in technology are also needed so that litigants and their advocates can easily access necessary case-related information and OAH can efficiently adjudicate cases. Finally, the agency's Resource Center plays an important role in assisting the numerous pro-se litigants with cases before OAH, and we look forward to seeing continued progress in the revitalization of that office.

The Washington Council of Lawyers is grateful for the D.C. Council's work in providing vital support for the legal services community and D.C. residents. The commitment to providing funding and ensuring that there are meaningful resources and access to D.C. residents is a noble and worthwhile endeavor. We applaud the work that supports equal justice for all.

Thank you for the opportunity to present this testimony today.