

MEMORANDUM

TO: House Judiciary Committee

FROM: Kathleen A. Frederick, Chief Administrative Law Judge

RE: HB 69 (Abolition of Workers' Compensation Appeals Commission)

DATE: March 18, 2017

On March 10, 2017, I was contacted by Representative Claman's office while public testimony was being taken about HB 69 and was asked to testify. Since I was not prepared to testify on such short notice, this memo will supplement my testimony and respond to questions asked by the committee. The questions I was asked centered around whether workers' compensation appeals could be handled by the Office of Administrative Hearings (OAH) and what costs might be involved.

Questions Asked By the Committee

1. *Would OAH be able to handle appeals that are currently heard by the WCAC?*

Answer: Yes. OAH is an independent office for adjudicating administrative disputes. We are required to hear 66 different administrative case types involving disputes ranging from \$40 to \$800,000,000. In addition, OAH hears cases that are voluntarily referred to it from State agencies, municipalities, and other public entities.

2. *Would OAH's Current Judges Have the Expertise to Handle WCAC cases?*

Answer: If OAH is assigned this caseload, we would need to develop the expertise required. We assign judges to cases based on expertise. Although OAH has had judges with workers' compensation experience in the past, none of our current judges have that expertise.¹ If we used current judges for this caseload, therefore, OAH would need to obtain training for them from a source such as the National Judicial College. Alternatively, OAH would fill its current vacancy with an attorney who has extensive workers' compensation experience, and assign the WCAC cases to that person.

3. *Would OAH need additional staff to handle WCAC cases?*

Answer: Based on the current workload of the WCAC, OAH believes that the workload could be absorbed by its existing staff, which consists of three Law Office Assistants, a Paralegal, and an Administrative Assistant III who serves as the office manager.

¹ See Exhibit 1, which lists OAH's current roster of judges and their respective backgrounds. Retired WCAC Chair Andrew Hemenway was formerly an Administrative Law Judge (ALJ) at OAH.

4. *Would OAH need additional ALJs to handle WCAC cases?*

Answer: OAH currently has ten ALJs, and one vacant ALJ position.² Given the current downturn in the economy, OAH believes it has enough PCNs to cover this work.

5. *Would there be a fiscal note from OAH if it was the body that heard the appeals from the Workers' Compensation Board?*

Answer: Yes. OAH funds itself through inter-agency receipts. If the Department of Labor used OAH to handle workers' compensation appeals, this work would need to be funded through an RSA with the Department of Labor. The adjudication and mediation services would be billed to the Department of Labor at OAH's hourly rate.³ The cost would depend on the number of cases. Note that because OAH would be able to provide both adjudication *and* effective mediation services at the appellate level for WCAC cases, the costs could be less than our estimate if cases are settled by mediation rather than adjudication.⁴

The I/A fiscal note relating to the cost of hearing these cases would be based on the estimated time needed to handle the caseload. The WCAC's annual reports to the legislature covering 2010 through 2016 show that during this seven-year period, 191 new cases were filed with the WCAC. During this same seven-year period, the WCAC issued 98 decisions.⁵ In addition, the WCAC issued 767 orders during this seven-year period.

Depending on the staffing model selected, there could also be a GF fiscal note related to ensuring that OAH ALJs were familiar with this specialized area of law.

6. *Are there any matters handled by OAH where there is a direct appeal to the Alaska Supreme Court, rather than an appeal from the Superior Court decision?*

Answer: No.

7. *Does OAH have any matters where they hear appeals from an administrative agency rather than a due process hearing?*

Answer: Yes, on occasion OAH hears appeals from an administrative agency. The most recent occasion involved an appeal from the Fairbanks North Star Borough Planning Commission; the decision was issued last week.

If you have other questions about OAH, we can provide additional information upon request.

² The vacant ALJ position is currently located in Juneau.

³ OAH's hourly rate is calculated annually using a required federal methodology. This hourly rate must be charged to all agencies using OAH's services. Because the federal methodology is applied to certain prescribed factors that can vary each year, the rate has ranged from \$145 an hour to \$192 an hour.

⁴ OAH's innovative mediation program for DHSS cases won the Denali Award for cost-savings initiatives in 2016.

⁵ Not all cases that are filed proceed to a final decision. Some will be settled or abandoned during the appeal phase.

Exhibit 1

Kathleen A. Frederick, Chief Administrative Law Judge. Prior to joining OAH in 2014, ALJ Frederick litigated cases statewide for Alaska's Office of Elder Fraud and Assistance, after spending 27 years in private practice. While in private practice, Chief ALJ Frederick focused on administrative law, real estate, business law, litigation, and employment law and was AV-rated by Martindale Hubbell. Chief ALJ Frederick is a Phi Beta Kappa graduate of Gettysburg College, has an M.S. *cum laude* from Drexel University, and a J.D. *cum laude* from Villanova University School of Law, where she served as Research/Projects Editor of the *Villanova Law Review*.

Christopher Kennedy, Deputy Chief Administrative Law Judge. ALJ Kennedy joined OAH in 2005. He manages the Anchorage office and is a tax-qualified ALJ. Prior to joining OAH, Deputy Chief Kennedy was a Senior Assistant Attorney General at the Department of Law. In his 11 years the Department of Law, ALJ Kennedy worked in the Environmental, Torts, and Oil, Gas & Mining Sections. He previously served as a law clerk for U.S. District Judge James A. von der Heydt, and spent five years in private practice where he handled energy, procurement, and utilities litigation, corporate restructuring, and commercial transactions. Deputy Chief Kennedy is a *magna cum laude* graduate of Harvard University and a graduate of Berkeley Law, where he served on the *California Law Review*.

Neil Slotnick, Tax-Qualified Administrative Law Judge and Juneau Lead ALJ. ALJ Slotnick came to OAH in 2013, after serving for ten years as a Senior Assistant Attorney General at the Department of Law, where he represented the Alaska Department of Education and Early Development. Previously, ALJ Slotnick was Deputy Commissioner of Revenue, supervising the Tax and Treasury Divisions. He law clerked for Alaska Supreme Court Chief Justice Rabinowitz. He is a graduate of Reed College and Stanford University Law School. ALJ Slotnick is in OAH's Juneau office.

David J. Mayberry, Tax-Qualified Administrative Law Judge. ALJ Mayberry joins OAH in February of 2017. He has been a leading in Anchorage in the oil and gas and environmental fields, practicing with Crowell & Moring LLP and Patton Boggs LLP. He has also served on the Alaska Oil and Gas Conservation Commission and as a law clerk for U.S. District Judge James K. Singleton. He is a UAA graduate and received his J.D. from Lewis & Clark College, Northwestern School of Law. He holds a certificate in Natural Resources and Environmental Law. ALJ Mayberry will be based in OAH's Anchorage office.

Cheryl Mandala, Administrative Law Judge. ALJ Mandala joined OAH in 2015 and is based in the Anchorage office. Prior to joining OAH, she was an Assistant Attorney General in the Torts Section of the Alaska Department of Law. She also spent seven years in private practice, where she handled a variety of employment, tort, and administrative matters at the trial and appellate level for clients throughout Alaska. ALJ Mandala graduated *magna cum laude* from Macalester College, holds a master's degree in Public Policy, and graduated Order of the Coif from Stanford Law School. She served as a law clerk for Alaska Supreme Court Justice Alexander Bryner.

Kathryn A. Swiderski, Administrative Law Judge. ALJ Swiderski joined OAH in 2015 in a temporary position, and she became a permanent ALJ in the Anchorage office in 2016. Prior to OAH, she served as an Assistant Attorney General at the Department of Law for seven years, where she represented the Alaska Departments of Fish & Game and Natural Resources. She also worked in private practice, for two years in a large Colorado law firm and for three years as a solo contract attorney. ALJ Swiderski is a *summa cum laude* graduate of the University of Notre Dame and a member of Phi Beta Kappa. She received her J.D. *cum laude* from the University of Michigan. She law clerked two years for Alaska Supreme Court Justice Daniel A. Moore.

Kathryn L. Kurtz, Administrative Law Judge. ALJ Kurtz joined OAH in 2015. Prior to joining OAH, she worked for over 16 years as an attorney for the Legislative Affairs Agency, including two years as Revisor of Statutes. She spent two years in private practice, and one year as a Superior Court law clerk for Judge Walter Carpeneti. ALJ Kurtz received her undergraduate degree from Harvard University, and a J.D. from the University of Chicago. She is based in the Juneau office.

Andrew M. Lebo, Administrative Law Judge. ALJ Lebo joined OAH in 2014 with extensive prior experience as a private hearing officer for special education cases. His background includes 17 years as a solo practitioner, four years as an Assistant Ombudsman for the State of Alaska, four years as an associate focusing on business and employment litigation, and one year as a Superior Court law clerk. ALJ Lebo is a graduate of the University of California Santa Cruz, has an M.A. from University of California Davis, and a J.D. from King Hall, University of California Davis. He works in the Anchorage office.

Lawrence A. Pederson, Administrative Law Judge. Based in Anchorage, ALJ Pederson joined OAH in 2012 as part of a merger with the Office of Hearings and Appeals of Alaska's Department of Health and Social Services. He had been the senior hearing officer in that office, serving for seven years. Prior to that time, he was in private practice for 22 years, handling a wide range of civil and administrative law matters and appearing in state and federal trial and appellate courts. ALJ Pederson attended the University of Alaska Fairbanks and received his J.D. from Williamette University College of Law.

Bride A. Seifert, Administrative Law Judge. ALJ Seifert came to OAH in 2013 from the Department of Law, where she was an Assistant Attorney General representing the Department of Health and Social Services. She law clerked for Superior Court Judge Louis Menendez. Before attending law school, ALJ Seifert managed energy policy for the Minnesota Chamber of Commerce, was a clinic coordinator for the Minnesota Women Lawyers, and managed her own business. ALJ Seifert is a graduate of The Ohio State University and received her J.D. *magna cum laude* from the William Mitchell College of Law. She is in OAH's Juneau office.