

**Potential Integration Between the Office of Administrative Hearings and the
Workers' Compensation Appeals Commission**

Meeting/Activity Scheduled: --

Date & Time: --

Attendees: --

Issue: Whether to seek cost savings by co-locating the Workers' Compensation Appeals Commission (WCAC) with the Office of Administrative Hearings (OAH), consolidating administration, support, and physical facilities. The decisionmaking functions of the WCAC would remain independent of the OAH.

Summary: The WCAC is an independent board currently housed within the Department of Labor and Workforce Development (DOL). It performs adjudicatory functions that are unique, but that require support and administrative services similar to those used by the OAH. The OAH is already designated by statute to play a role in selecting the WCAC chair and commissioners, as well as to provide pro tem (substitute) WCAC chairs from the ranks of the OAH administrative law judges (ALJs).

The current WCAC chair will retire in March 2015. By means of an executive order similar to EO 116 (the 2012 order that consolidated OAH with DHSS's Office of Hearings and Appeals), the transition in leadership could be made to coincide with elimination of the freestanding WCAC office and a merger of the support staffs of the two organizations. Upon integration with the OAH, there is potential for the WCAC to become less expensive to operate, and service to the public could be maintained or improved.

Both the current WCAC chair and the Chief Administrative Law Judge believe that, intuitively, an integration of staff functions and space consolidation ought to produce savings in the medium to long term. With regard to immediate savings in FY 16, there no question that "paper" savings can be achieved, in that the budget authorization associated with the WCAC could be reduced after a consolidation. Consolidation would also maximize the productive use of existing staff. However, it is possible that the achievement of real reductions in spending would not occur before FY 18.

Recommendations: Authorize drafting of an executive order for possible delivery to the Legislature at the opening of the 2015 session. Authorize further feasibility discussions between the leadership of the Departments of Administration and Labor. At this stage, these discussions should expand to encompass discussions with the Alaska Labor Relations Agency about a shared space issue, addressed below.

Factual Basis for Recommendation:

1. The WCAC was created in 2005. It operates as a specialized intermediate appellate panel, reviewing cases from the Workers' Compensation Board. The WCAC consists of four lay members and a professional attorney-chair, all appointed by the governor. Two of the lay members come from the labor side and two from management, and that balance has to be preserved in creating three-member panels that hear individual appeals. The chair sits on all the panels.

2. The WCAC opens about 25 cases per year. It produces about 100 substantive orders and 17 full-dress decisions per year.¹

3. The OAH is Alaska's central panel of administrative law judges (ALJs). The OAH opens about 2350 cases per year in a wide variety of formats, from simple public benefit appeals to oil and gas taxation cases involving hundreds of millions of dollars. OAH issues about a thousand case decisions per year, and an uncounted but larger number of substantive orders. The OAH also conducts a large number of mediations and performs a variety of statewide training and monitoring functions relating to administrative adjudication.

4. By statute, the OAH already has a significant role in the WCAC, consisting of: (1) recruiting and evaluating candidates for WCAC chair; (2) recruiting and evaluating candidates for WCAC commissioner slots; and (3) providing ALJs to serve as pro tem chairs to fill in when the regular chair is on leave. The third role has given the OAH some insight into the way the WCAC operates and its resource needs. It has also given two OAH ALJs some WCAC chair experience.

5. The staff functions and space needs of the two organizations are similar. Both staffs must be highly skilled at working with self-represented litigants. Both staffs must maintain meticulous case records and must prepare records for court appeal. Both staffs must comply with exacting notice and service requirements, and must be able to work well with legal professionals. As to space, both organizations require hearing space, waiting areas, conference areas for collective deliberations, and extra offices that can be scheduled for use by visiting ALJs or commissioners.

6. As presently housed, the WCAC has a relatively large budget authorization in light of the size of its caseload. Its FY 15 budget authorization was \$584,600. For its larger caseload, the OAH has an FY 15 budget authorization of \$2,773,800, a little more than four times that of WCAC.

7. The current chair of the WCAC has managed its budget very conservatively, and actual expenditures are far below the commission's authorization. For example, two full time staff members are authorized, but the chair has left one of the positions vacant, with

¹ WCAC, *Annual Report for Calendar Year 2013* (March 3, 2014), at 5, 7. The figures for the two preceding years, found in the annual reports for those years, are similar. The last three annual reports are collected at: <http://labor.state.ak.us/wccomm/>.

resulting savings of about \$66,000. The commission is also permitted to employ a part-time staff attorney on contract, but the chair permitted that contract to lapse earlier this year, and he has no plans to use a staff attorney in the future. Actual expenditures in FY 14 were \$401,982.

8. This white paper explores a limited integration between the OAH and WCAC, with the objective of reducing the WCAC's annual cost without affecting the substance of the WCAC's work. The overall concept would be to fold all the support functions for WCAC into OAH, while leaving the commission itself essentially untouched, complete with its political balance and independent chair. The chair would retain independence but would reside in the OAH office.

9. Efficiency would be achieved by allowing the OAH to handle all the case file administration along with its thousands of other cases. The OAH would also furnish a hearing room for the rare live proceedings the WCAC conducts, and offices for the occasional visits of WCAC board members to Anchorage. Because of dual use of offices and hearing space, the combined space footprint of the two organizations would shrink.

10. *Staffing:* The unfilled staff position at the WCAC would be deleted. The single filled staff position presently in use at the WCAC would transfer to the OAH as part of the consolidation. As part of efficient management, the OAH anticipates that some WCAC work would be handled by existing, dedicated OAH docketing and file management staff, and that, conversely, the transferred staff person would no longer work exclusively on WCAC matters. This would be similar to the 2012 OAH-OHA merger, which resulted in improved service to the public and improved productivity overall by allowing certain functions to be performed "in bulk" by staff who were best suited to those functions, and by providing more complete staff coverage during all working hours than can be provided by a single employee working alone. The WCAC would also be able to take advantage of the OAH's new, custom-designed computerized case management system.

11. *Space:* The WCAC occupies 1,839 total square feet at the 6th & K building. This includes 1,039 square feet in Suite 405 (Office), 353 square feet in Suite 404 (Files) and 50% of 994 square feet (*i.e.*, 447 square feet) for their share in Suite 402 (Hearing Room). The Hearing Room is shared equally with ALRA. The current lease rate for this space is approximately \$2.26 per square foot. The WCAC will incur lease costs of \$49,816 for FY15.

The current WCAC space is very lightly used. WCAC uses the 994-square-foot hearing room for relatively short proceedings approximately twice a month. Its co-tenant, ALRA, has reportedly used that space only twice in five years. The 353-square-foot file room is about one-third full, even though WCAC has never archived or destroyed any files since its inception. The 1,039 square feet of main office space is occupied by two people, with two of the three large offices and one large staff area left unoccupied.

Taking into account opportunities for dual use, the OAH anticipates that it would need approximately 700 square feet of space in its Atwood location to accommodate the WCAC functions without any reduction in the ability to host proceedings and part-time work by the commissioners. The cost of this space would be approximately \$13,000 per year. State Leasing and Facilities Manager Tanci Mintz indicates that this space need could likely be accommodated in the Atwood Building.

A complication is that the existing WCAC space is leased until July 31, 2017. Achievement of space reduction savings would likely depend, therefore, on whether a substitute state tenant could be found for that space.² Tanci Mintz has inspected the space and thinks this may be possible.

A second complication is that the ALRA might be left with sole responsibility to pay for a hearing facility is currently shares with the WCAC. We have not been authorized to talk with the ALRA about its needs and how they might best be accommodated if the WCAC were to move. The potential adverse budget impact on the ALRA, if no mitigation measures are found, is \$12,123. However, the information we have from other sources familiar with the space is that even ALRA's existing half-interest in the space would be extremely hard to justify under the state's current space-usage philosophy. ALRA apparently uses the space less than once a year and its usage has been for activities (such as vote-counting) that could be better and more inexpensively accommodated in other space, such as the new Atwood Conference Center.

12. Mechanism for integration: Art. III, Sec. 23 of the Alaska Constitution allows the governor to reassign functions within the executive branch, making direct statutory changes as necessary, as was done with EO 116. The legislature has 60 days to veto any such change. The changes needed appear to be well within the traditional EO authority as exercised by this and past governors. The provisions of the EO would be extremely simple and could be drafted in a matter of hours. They consist of the following:

- a. Alter AS 23.30.009(a) so that "general supervision over the office" and most administrative functions (1, 2, 4, and 5 in the statute) go to the Chief Administrative Law Judge, not the WCAC chair.
- b. Alter AS 23.30.127(c) and/or associated definitions so that appeals would be filed with OAH.
- c. Consider altering AS 23.30.007(a) so that the commission is "in" DOA rather than DOL. This is an optional change; the commission could also be left "in" DOL.³

² There is a release clause in the lease relating to changes in law that terminate a section or division, which might allow the state to relinquish the space before the lease term expires, but we assess this possibility as unlikely.

³ If the commission is left "in" DOL, funds could be RSA'd to the OAH to cover the WCAC's allocated share of space and to cover the cost of one staff position.

Other Comments:

Interim Integration by Using the Pro Tem Function: If the chair position, which becomes vacant next March, is allowed to go unfilled for a period, the WCAC can continue to function under the existing pro tem option. An OAH ALJ with workers' compensation experience is permitted by current law to fill the chair's role indefinitely. Up to 1000 hours of billable OAH time could be charged per annum to this function before the personnel cost of the WCAC chair would be exceeded. OAH believes that 1000 of its billable hours would accomplish all of the adjudicative work of the chair in a year (of course, the chair does a great deal of other work, but the other work is administrative). The pro tem expedient could be used to bridge the gap between departure of the old chair and the likely effective date of any EO for long-term integration, which would be July 1.

Further potential change by means of legislation: The WCAC chair and the Chief Administrative Law Judge believe that additional efficiencies might be available through legislation in a future year. For example, the WCAC chair notes that the commission's decisionmaking function could be assigned to three-judge panels that would include OAH ALJs with appropriate workers' compensation experience, rather than to a commission that must assemble periodically. Reforms of this kind should not be attempted until there has been an opportunity to implement the staff-level integration proposed in this paper.

Attached Supporting Materials:

None.

Prepared by: Christopher Kennedy, Deputy Chief Administrative Law Judge

Phone: 269-8170

Department: Administration/Office of Administrative Hearings

Date: December 10, 2014