

***Testimony of Jen Jenkins
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***Before the Committee on Public Works and Operations
Council of the District of Columbia***

Performance Oversight Hearing Regarding Office of Administrative Hearings

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Legal Aid DC¹ appreciates the opportunity to share our views on how to improve the Office of Administrative Hearings ("OAH") so that District residents have increased access to justice. Notably, a majority of the types of cases that OAH hears involve parties from Legal Aid's client community – District residents living at or under 200% of the federal poverty level and face significant systemic barriers and often lack access to resources.

The Office of Administrative hearings is a vital administrative body for District residents. OAH decides cases involving unemployment compensation, Medicaid and other public benefits administered by the DC Department of Human Services

¹ Legal Aid of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

The Office of Administrative Hearings Should Improve its Resource Center, the E-filing Portal, and Language Access

OAH Resource Center

OAH is often unnavigable for *pro se* litigants without legal assistance or representation, the precise population that OAH is designed to serve. Unrepresented litigants face myriad barriers due to challenges with English proficiency, poverty, disabilities, literacy, gender, being unhoused, or being a returning a citizen and navigating a system with which they are unfamiliar.⁵ Unfortunately, unrepresented litigants account for a large percentage of cases handled by OAH. According to the 2019 Access to Justice Report, of the over 2,000 unemployment insurance cases in FY 2017 91% had no party represented; in public benefits appeals, 86% of the over 1,100 cases had no party represented; and 88% of the over 200 student discipline cases had no party represented.⁶ District residents with access to assistance and full representation tend to achieve better outcomes in legal proceedings than those without representation.⁷ Because the majority of OAH litigants are *pro se*, the Council should assist OAH in addressing these significant gaps in representation by expanding the OAH Resource Center and improving service delivery to increase accessibility for all litigants.

As the number of OAH cases increases beyond pre-pandemic levels, an expanded OAH resource center is needed because the current resources are insufficient.⁸ For example, the Legal Assistance Hotline (OLAN), a group of four legal services organizations, including our organization, Bread for the City, Legal Counsel for the Elderly, and the Washington Legal Clinic for the Homeless, attempts to fill the current gaps that *pro se* litigants and ESL/EFL face.⁹ But unfortunately, we are not

⁵ D.C. Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia*, 21 https://dcaccesstojustice.org/assets/pdf/Delivering_Justice_2019.pdf (2019).

⁶ *See id.* at 80.

⁷ *See id.* at 2.

⁸ Office of Administrative Hearings, *Performance Oversight FY2022-2023 Pre-Hearing Questions Question 54*, 31.

⁹ OAH Legal Assistance Hotline, https://oah.dc.gov/sites/default/files/dc/sites/oah/page_content/attachments/OLAN_Final_Flyer.pdf.

able to help everyone that needs assistance (due to income limits and overall capacity versus demand for services) and OLAN is designed to assist people who already have an active fair hearing request an OAH, when many individuals face barriers to filing a fair hearing request in the first place or getting information about their cases.

Expanding the OAH resource center as soon as possible is critical because DC residents face increasing service delays and lack of access to DHS to resolve issues related to their public benefits. Applicants and recipients with public benefits issues are frequently unable to effectively resolve their issues in person at Service Centers or by calling the DHS Call Center, leaving the fair hearing process as their only option for effective resolution in a DHS case.

For example, Legal Aid recently escalated a case to DHS via the advocate email process regarding a Spanish-speaking Alliance recipient who submitted a recertification in person at the H Street Service Center in September before their deadline of September 30, 2022. The Service Centers no longer give receipts to consumers, so the client had no proof that they were there that day. DHS responded that the recertification was not shown as processed or received in their system until November 9, 2022, over two months later, even though the client never went to the Service Center that month. Without a receipt from DHS as proof, or acknowledgment from DHS of the significant delays in processing paperwork, the client required a fair hearing to ensure that they obtained Alliance coverage without delays. Legal Aid filed a fair hearing request and represented the client to obtain continuous Alliance coverage, something that would have been very difficult for the client to navigate without assistance.

An expanded resource center would help ensure that other District residents, like our client, do not fall through the cracks or miss out on services because they do not know where or how to file and litigate a fair hearing request.

To ensure better outcomes for *pro se* litigants at OAH, the following recommendations should be prioritized:

- Hire a full-time, permanent Resource Center Coordinator.
- Find a permanent home for the Resource Center and all its staff in a specific place on the OAH organizational chart.
- Bring on additional staff to expand the types of services provided.

As a model, the OAH Resource Center could function similarly to the Family Court Self-Help Center at DC Superior Court

While there are a variety of resource centers throughout the court system, each focused on particular areas of court practice, the Family Court Self-Help Center at

DC Superior Court offers a sound example for a court-based resource center. The Family Court Self-Help Center offers same-day assistance to unrepresented litigants that require assistance navigating the court system. The Council should approve funding for OAH to expand the Resource Center in order to:

- Assist people with filling out fair hearing request forms or other filings for their cases;
- Provide information about the fair hearing process, including the timeframe involved, how to file any exhibits or evidence and serve the opposing party, and what to expect for an evidentiary hearing;
- Provide contact information for serving or contacting the opposing parties in cases when a DC agency is involved;
- Work with the clerk's office to obtain any status orders or other orders for a party's case
- Provide language access and translation services to assist ESL/EFL litigants with filings and the fair hearing process; and
- Work with lawyers and Law School legal clinics to provide referrals and facilitate same-day advice and representation.

The Family Court Self-Help Center is strategically located at the courthouse in order to maximize usage and create easy access to assistance. The Self-Help Center started as a joint project between the Pro Bono Center and the Superior Court with two staffers and the rest volunteers. Today, the Self-Help Center is comprised of one family law attorney, three facilitators (paralegals trained in family law and procedure) and one deputy clerk (front desk check in). The facilitators are the ones who provide the services, which include providing legal information about family law matters and court procedures, helping complete form pleadings and motions, and referring people to legal services, other court services and community resources. The five staff members are all full-time court employees.

The Family Court Self-Help Center does not have income eligibility requirements and will serve any unrepresented party as capacity allows. Clients and litigants typically receive help with pleadings, court forms, brief services and referrals for their particular legal issue or for an extended representation. In 2021, the Family Court Self-Help Center served 6,849 people, a 19% increase over 2020, attributable to staff returning to provide services on-site midway through the year.¹⁰ The vast

¹⁰ Superior Court of the District of Columbia, 2021 Family Court Annual Report, 92 https://www.dccourts.gov/sites/default/files/divisionspdfs/Family_Court_2021_Annual_Report_Final.pdf (2021)

majority sought general information or needed assistance with forms in areas like custody, visitation, divorce, and child support.¹¹

The Self-Help Center has four shifts per day for volunteers – two slots from 10am-1pm and two slots from 1pm-4pm. The Self-Help Center also has pro bono attorneys who are trained by the DC Bar Pro Bono Center as volunteers. Five pro bono attorneys volunteer with the Self-Help Center on a weekly basis and have been doing so for years. The Self-Help Center is also assisted by students from the area law school clinics. They currently have incoming students from Georgetown and George Washington University – they take up all the volunteer shifts on Mondays, Wednesdays, and Thursdays. Finally, the Self-Help Center has two local service providers, DC Kincare (third party caregivers) and Mothers Outreach Network (parents at risk of DC Child and Family Services Agency involvement), who come on site one day a week and meet with any customers who qualify for their services.

The Family Court Self-Help Center offers a valuable model for OAH. In order for the OAH Resource Center to be as effective as the Self-Help Center of the Family Court, or even better, the Council and OAH need to work together. Without drastic improvements, numerous *pro se* litigants at OAH will not receive the support they require.

E-filing Portal

In addition to investments in the OAH Resource Center, OAH's E-filing Portal requires improvements. OAH launched the E-filing Portal Project in 2022, and it is currently limited to filing only certain cases related to Unemployment benefits.¹² The E-filing portal must be expanded to permit electronic filing in all case types. Additionally, the E-filing Portal requires language access improvements. The E-filing Portal main page is accessible in Amharic and Spanish; however, the clickable guides need to be translated as well.¹³ In addition to these changes, OAH should accept email filings from litigants without requiring them to complete specific forms that must be downloaded from the website. For example, if a person emails OAH "I want to start a case against DHS for stopping my Food Stamps even though I recertified." The OAH clerk should contact the person to have them submit any additional required information, such as their address and contact information, by

¹¹ See *Id.*

¹² See E-filing Portal Launch, <https://oah.dc.gov/release/e-filing-portal-launch>.

¹³ See OAH E-Filing Portal Project, <https://oah.dc.gov/page/oah-e-filing-portal-project>.

email and accept the case for filing rather than directing them to complete a specific form. Litigants who only have limited access to email or smart phones that do not allow for PDF-editing will be able to initiate cases much more easily this way. With these improvements, *pro se* and low-income litigants are more likely to have positive outcomes.

Language Access

Language access is an access to justice issue. OAH must continue to provide and improve upon services that reflect the needs of the District's diverse population. The fair hearing request forms¹⁴ include a section regarding language access that asks whether the claimant requires language access and, if so, for which language. However, even when claimants indicate they require interpretation services for a specific language, OAH frequently fails to process the language access request to ensure that an interpreter is at each hearing. Claimants face additional delays in resolution of their cases when a hearing is continued because OAH did not make proper arrangements for an interpreter and the claimant cannot participate without one. Claimants should not have to take the additional step of confirming before the hearing that an interpreter will be available after they have indicated that they require language access. While we appreciate OAH's efforts to provide translation of the various filing forms in Spanish and Amharic; we strongly recommend that any further updates OAH makes to its processes, webpages, or policies align with the requirements of the D.C. Language Access Act.

Conclusion

To effectively serve District residents, OAH needs enough staff and resources to improve its resource center, the E-filing portal, and to meet its responsibilities under the Language Access Act. In turn, the Council must do its part by providing funding and passing legislation to ensure that OAH effectively carries out its mandate. We look forward to working with members of the Committee on Departments of Public Works, staff, court personnel, and other advocates on these and related proposals to ensure OAH's success.

¹⁴ See, e.g., Request to Appeal a Department of Human Services (DHS) Action, https://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/PB-007 - Hearing Request Form - DHS_0.pdf .