

May 20, 2010

The Honorable Vincent C. Gray
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Gray:

I write on behalf of the Council for Court Excellence (“CCE”) to express its strong support for not reducing the scope of cases under the DC Office of Administrative Hearings (“OAH”), including the pending proposal to return cases to the jurisdiction of the DC Department of Public Works. Our rationale - based on the CCE September 1999 study for the District of Columbia Government entitled *A Final Report on Creating a Unified Administrative Hearings Agency in the District of Columbia* and whose major findings are embedded in the OAH Establishment Act – follows in this letter.

Contrary to the recent proposals to reduce the case jurisdiction of OAH, the District of Columbia’s interest should be in expanding the scope of OAH’s jurisdiction, because OAH and the central hearing panel model provide residents with:

- An established platform of services and economies of scale that provide for more efficient and effective case processing, as well as a quality control process that provides for more accurate and consistent decisions.
- Increased perceptions of fairness and decisional independence.
- An administrative law judge cadre with higher professional qualification standards than in other DC Executive Branch agencies.

The transfer of unemployment insurance, DPW or other cases from OAH to an Executive Branch agency strikes at these core concepts and, at minimum, we strongly urge the DC Council to keep intact and unaltered the jurisdiction of OAH. Momentary budgetary considerations should not be the driving force or even a significant factor in the decision as to the type of cases that OAH should handle.

It is important to recall the serious problems that existed in the District’s administrative adjudicatory system prior to OAH’s establishment in 2002, and the high level and serious efforts made in the mid to late 1990’s by the District of Columbia government and then-DC Corporation Counsels Charles Ruff and John

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Ferren – who both endorsed and supported CCE to undertake a thorough review of the administrative adjudicatory system with the goal of examining areas of improvement.

Among other important findings, the CCE 1999 report found that, prior to OAH, there was little certainty that litigants, including residents and businesses, would receive prompt, efficient, and consistent decisions perceived by them to be fair. Also at the time, there was wide variance in the qualifications for administrative hearing officers; in fact, some District agencies did not require a hearing officer to have passed a state bar exam. The administrative hearing units of most DC Government agencies were seriously underfunded and undersupported, in terms of hearing officer pay, availability of support staff, and case management systems and office technology. Several agencies reported difficulties in attracting and retaining hearing officers because of very low pay, according to documents from an earlier DC Government effort in the mid-1990s to centralize the administrative hearings function.

In addition, in the 1990's there were reports of high backlog at many of the DC agencies whose function was later folded into the OAH jurisdiction. While there have been occasional reports of isolated, case-specific backlogs at OAH, it does not appear to be the widespread delay that existed at the Executive Branch agencies at the time of the CCE study. As suggested above, economies of scale at OAH means that it can devote resources to promote public understanding and transparency, such as performance measures and meaningful time to disposition standards, while smaller, understaffed offices do not have the resources to devote to this important function.

Taken together, the underlying premise of our 1999 study and of the central hearing panel movement generally, is that when certain adjudication functions are embedded within an Executive Branch agency, the adjudication function takes a back seat to the agency's more extensive and immediately demanding law enforcement functions. When this happens, it is the litigants – residents and businesses – and the administration of justice that suffer the ill effects.

All this is not to suggest that OAH is without challenges. CCE and other organizations have testified recently and clearly about current concerns with OAH. But these concerns are indicative of a system that is far more transparent, accessible and has far greater capacity than during the earlier, fragmented scheme.

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The Council for Court Excellence is a local nonpartisan civic organization founded in 1982 to improve the administration of justice in the courts and related justice agencies in the District of Columbia. For 28 years, CCE has been a unique resource that brings together members of the civic, legal, business, and judicial communities to work in common purpose to identify and promote court reforms, improve public access to justice, and increase public understanding and support of our justice system. CCE has worked closely with the DC Council on many issues, including the Office of Administrative Hearings Establishment Act of 2001 and subsequent amendments. **No judicial member of CCE participated in the formulation of this testimony.**

Thank you for your consideration of this statement. Please feel free to contact June B. Kress, Executive Director, at (202) 785-5917 if you have any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Earl J. Silbert". The signature is written in a cursive, flowing style.

Earl J. Silbert
President

Cc: The Honorable Jack Evans
The Honorable David Catania
The Honorable Phil Mendelson
The Honorable Michael A. Brown
The Honorable Kwame R. Brown
The Honorable Jim Graham
The Honorable Mary M. Cheh
The Honorable Muriel Bowser
The Honorable Harry Thomas, Jr.
The Honorable Tommy Wells
The Honorable Yvette Alexander
The Honorable Marion Barry