

THE OFFICE OF EMPLOYEE APPEALS

Before

THE COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON GOVERNMENT OPERATIONS

AND

THE ENVIRONMENT

The Honorable Mary M. Cheh, Chairperson

OVERSIGHT HEARINGS

Fiscal Year 2009 Performance Accountability Report
And
Fiscal Year 2010 Performance Accountability Report
October 1, 2009 to March 4, 2010

Testimony Submitted By

Warren M. Cruise, Esq., Executive Director
March 4, 2010

Good morning Chairperson Mary Cheh and members of the Committee on Government Operations and the Environment. My name is Sherri Beatty-Arthur, and I am the Chairman of the Board of the Office of Employee Appeals (“OEA”). I am joined by Warren Cruise, Executive Director; Sheila Barfield, General Counsel; and Rohulamin Quander, Senior Administrative Judge. Thank you for this opportunity to testify at today’s Oversight Hearing before you and the Committee regarding OEA’s performance for Fiscal Year 2009 and Fiscal Year 2010 to date.

The mission of OEA is to render impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia Government employees. OEA’s jurisdiction is limited to the following areas:

- Adverse actions for cause that result in removal,
- Reduction in force (RIF),
- Reduction in Grade,
- Placement on enforced leave for 10 days or more, and
- Suspensions for 10 days or more.

For the past several years, the office has suffered greatly and continues to suffer because of the reduction in our operating budget and staffing level. This has had an adverse effect on OEA's performance. Because OEA has not had enough staff to process the appeals, it has taken longer to resolve cases.

For example, in FY07 and FY08, it took an average of 7 ½ months for an appeal to be processed. Our staffing level during those fiscal years was 14.2 FTE's. In FY 09, it took an average of 9 months to process an appeal. Our staffing level in FY09 was reduced to 13.3 FTE's. Additionally, at the beginning of this fiscal year OEA was required to eliminate 1 FTE which was achieved by eliminating 2 part-time administrative judges. Even though the Executive Director was reluctant to eliminate the two part-time judges from the administrative judges unit, he had no choice but to do so because it was the only way to achieve the required savings. This brought our staffing level to 12 FTE's for this current fiscal year. As a result, we are now down to just 4 administrative judges, and we have a record number of appeals to process. In FY11 budget, it is being

recommended that OEA's staffing level be reduced yet again to just 11 FTE's.

Not only has the lack of adequate funding effected OEA, in reality it has also effected the District. Because it has taken longer to process the appeals, the District's liability for back pay has increased. To illustrate this point, we have calculated what we believe to be the District's potential liability when an employee is returned to work after we have processed his or her appeal.

Going back to FY07, OEA ordered the reinstatement of 20 employees which cost the city approximately \$2.6 million in back pay. In FY08, OEA ordered the reinstatement of 14 employees which cost the city just over \$2 million in back pay. In FY09, OEA ordered the reinstatement of 38 employees which cost the city approximately \$3.4 million in back pay. We are currently four months into FY10 and have already received 290 appeals. To date, OEA has ordered the reinstatement of 13 employees which has cost the city just over \$800,000 in back pay. With fewer judges to process the appeals in a

timely manner, we predict that the District's liability for back pay will only continue to grow.

Our challenge is to do more with significantly less. We must conduct evidentiary hearings and pay for court reporting services even though, as of today, the amount allotted for court reporting services has been totally depleted. We must render initial decisions within the statutory deadline, even though we are now down to just four administrative judges and the backlog continues to grow. The office must strive to operate as efficiently as possible, even though we lack the resources to upgrade our computer system. These are not the only challenges we face, but I mentioned these to illustrate the dire state of OEA. Despite all of these challenges, our staff is committed to issuing legally sound decisions as quickly as possible for the 533 appeals pending before our office. However, we need your assistance to increase our operating budget and staffing level.

This concludes my testimony. Mr. Cruise, Ms. Barfield, and Mr. Quander will be happy to answer any questions you may have.