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TO: Senate Budget and Taxation Committee
Subcommittee on Public Safety, Transportation
and Environment (Hearing Date: 02/06/15)
Schweinhaut Suite, Miller Senate Office Building
Annapolis, Maryland 21401

House Appropriations Committee
Subcommittee on Public Safety and Administration
Room 145, House Office Building (Hearing Date: 02/09/15)
Annapolis, Maryland 21401

FROM: Thomas E. Dewberry
Chief Administrative Law Judge

REF: Agency Code D99A11
Fiscal Year 2016 Budget

Discussion Items

OAH should comment on how it plans to address the increasing time to dispose for DHR, DPSCS, MVA, and DLLR cases.

As noted in the analysis, OAH's Managing for Results (MFR) tracks goals and measures which center around efficiency and quality.

Efficiency is tracked by a standard measurement that calculates the average number of days from "date appeal received" to "disposition date" as defined in the Data Definition

section of the MFR. Based upon trends from previous years, OAH tries to project estimates for the upcoming two-year period. In an effort to motivate its employees, OAH has always set goals that called for greater efficiency. In FY 2014, OAH saw increases in this efficiency measure in four of ten case types, while efficiency in one case type remained the same as the previous year, and in the remaining five case type areas (**DHR, DLLR, DPSCS, MVA, Foreclosure Mediation**) the efficiency measure decreased.

Quality is measured through the use of participant surveys that quantify the satisfaction with such elements of the hearing process as preparation, organization and fairness of the administrative law judge (ALJ). Overall satisfaction with the hearing process continued to rise in FY 2014. In addition, quality is also measured by the timeliness of the almost 3,000 written decisions issued by the ALJs in each fiscal year. In FY 2014, OAH achieved a timeliness rate of 99.4%, an all-time high for this metric.

OAH has been asked to comment on how it plans to address the increasing time to dispose of cases that occurred in FY 2014 in cases from DHR, DPSCS, MVA and DLLR.

First, it must be noted that there are a number of case types where OAH has no control over scheduling. Each year in its MFR, the OAH adds the following footnote:

There are certain case types where the Office of Administrative Hearings does not control the scheduling of the hearing; rather, the agency schedules the hearing and forwards the case to the Office of Administrative Hearings along with the hearing date. These include cases from the **Inmate Grievance Office**, the Retirement and Pension Systems, Occupational Safety and Health cases from the **Department of Labor, Licensing and Regulation** and Involuntary Admission cases. (emphasis added).

DPSCS cases are Inmate Grievance Office cases. So scheduling in two of the four case types where the efficiency measure decreased is controlled by the agency and not the OAH.

Second, both DHR dockets and MVA dockets contain multiple cases. MVA dockets can contain up to 16 cases and DHR dockets can sometimes even exceed that number. OAH's inclement weather policy provides that when the State is placed on Liberal Leave, all dockets are cancelled statewide. When a MVA or a DHR docket is cancelled due to Liberal Leave, it requires that the OAH reschedule all of the cases scheduled for that date. Many times, because cases are scheduled weeks in advance because of due process concerns, it is months before these cancelled cases can be rescheduled. During FY 2014, over 1,100 cases were postponed as a result of State Government inclement weather closings. Each of those cases had to be rescheduled, with many not able to be rescheduled for periods ranging from 60-90 days. While every winter brings the possibility of severe weather resulting in potential closings, last winter was exceptionally challenging. In fact, there was even a rare snow storm on March 17th that resulted in the State being closed.

As noted above, OAH has estimated in its MFR that over the next 2-year period, that it will increase the efficiency measure in these case types. As to whether it is realistic to expect such an increase in these case types, OAH would state that while it is always difficult to forecast future events, it remains committed to continuing to strive to achieve such increases. As such, it continues to set its goals with the expectation that each and every employee of the OAH will do his/her best to achieve the stated goal of providing the citizens of this State with a prompt, fair and impartial hearing.

The agency should comment on the role of the mediation program in generating positive outcomes for homeowners and lenders, the challenges the program faces in light of the number of foreclosure filings and mediation requests, what fiscal impact the foreclosure mediations have had on operating expenses, and the overall outlook for mortgage default and foreclosure.

Since OAH implemented the foreclosure mediation program in July of 2010, it has closed over 14,000 cases. The report includes a notation that the “foreclosure sale proceeded” in 80.2% of the cases. OAH believes that many cases avoid foreclosure after the mediation session based upon productive negotiations that begin during the session. Often agreements in principle are reached in mediation, but those agreements are based upon future contingencies – for example – finding a buyer in a short sale or successfully completing a trial period on a loan modification. Since OAH is not able to keep the case in mediation beyond 60 days, absent good cause or consent, often there is not time for these contingencies to resolve before OAH is required to return the case to Circuit Court. OAH believes that the Circuit Court data concerning the rate of Orders to Docket Dismissed after mediation would support this statement although OAH does not have access to that data. Moreover, when examining the “foreclosure sale proceeds” category, it is clear that, over the life of the program, 23% of the cases in this category could not go forward because one of the parties, almost always the homeowner, did not appear for the mediation. Obviously OAH cannot hold a mediation session under those circumstances. In addition, there are recurring factors that negatively impact the settlement rate, including, (1) homeowners lacking the documentation needed to process their requests for loss mitigation, (2) the significant amount of the arrearage (due to the mediation process occurring post-file and the backlog in the industry that was exacerbated by the robo-signing controversy, many homeowners opting into mediation are several years behind in their payments), and (3) unemployment and underemployment. It is also important to note that many, many homeowners who participate in mediation are not seeking to stay in the home. They enter the mediation session prepared to move out and are seeking alternatives other than resolution of the foreclosure. Many homeowners successfully negotiate graceful exits or “friendly foreclosures.”

ALJs universally report that homeowners receive a great deal of information from the servicers and the mediator at the mediation table. As a result, even when the mediation session does not result in a written agreement that immediately prevents the sale from proceeding, homeowners leave the mediation armed with the knowledge of what comes next and a plan for how to proceed. Many homeowners, especially those represented by counsel, continue to negotiate with their servicers outside of the mediation process. Many homeowners, including those who reach no agreement with their lenders, have expressed gratitude to individual mediators. OAH believes that the high level of satisfaction with the mediation process is consistent for both homeowners and servicers.

Changes that went into effect in July and October of 2011 have resulted in more homeowners accessing housing counselors or legal services prior to mediation. ALJ mediators report that homeowners who access such services are better prepared and the mediation sessions are significantly more productive. In addition, as of July 2011, OAH was given the ability to extend the time for mediation beyond 90 days when all of the parties are in agreement. In practice, this allows for an interim agreement and a follow-up mediation session.

Based on prior years as well as on information provided by DLLR and DHCD, OAH believes that the volume of foreclosure mediations will grow over the next year. DHCD and DLLR are engaged in intensive outreach efforts designed to increase the opt-in rate. Moreover, DLLR reports that the number of homeowners in default who have received Notices of Intent continues to grow. OAH remains committed to engaging homeowners and lenders in productive mediation sessions.

Recommended Actions

1. Add the following section:

SECTION XX. AND BE IT FURTHER ENACTED, That the authorization to expend \$605,743 in reimbursable funds in the Office of Administrative Hearings is deleted. The Governor shall develop a schedule for allocating this reimbursable fund reduction across the departments as appropriate. The reduction under this section shall equal at least the amounts indicated for the budgetary types listed:

<u>Fund</u>	<u>Amount</u>
General	\$363,446

Special	\$121,149
Federal	\$121,149

Explanation: This action extends the back of the bill reductions to the Office of Administrative Hearings to reduce employee salaries by 2%, to eliminate increments and merit increases in fiscal 2016, and to extend the general 2% reduction.

The agency respectfully disagrees with the analyst's recommended action to reduce the agency's budget by 2% across-the-board. The Office of Administrative Hearings budget is approximately 96% nondiscretionary funding (salaries and wages, rent, utilities, statewide allocated surcharges, etc.). The remaining funding is required for OAH to fulfill its mission (postage, travel, IT equipment maintenance, etc.). To meet this recommendation, the agency would have no choice but to lay off staff / leave positions vacant; this would result in fewer staff available to process and hear cases, and thereby further increase the time to disposition as noted by the analyst which negatively impacts the State and its citizens. The Office of Administrative Hearings prides itself on running a lean office. Any ATB reductions will have a negative impact on its mission. The agency requests that the subcommittee accept the Administration's allowance.