

MEMORANDUM

TO: Sixty-seventh Legislative Assembly
State of North Dakota
Senate Appropriations Committee

FROM: Timothy J. Dawson, Director
Office of Administrative Hearings

RE: OAH 2021-2023 Operating Budget Request
Senate Bill No. 2017

DATE: January 21, 2023

There have been many changes in recent history at the Office of Administrative Hearings ("OAH"), especially during this and the last biennium. What has stayed the same is our mission to conduct orderly, fair, and impartial hearings and to issue prompt, reasoned recommended or final decisions. If a person receives a benefit or license from the state, the person is entitled to a hearing under the Due Process Clause of the Constitution. There is procedural due process and substantive due process. We provide substantive due process by deciding justly with well-reasoned decisions based on the law. We also provide real and perceived procedural due process, we hear the "other side" and are independent from the governmental entity that provides the benefit or

Timothy J. Dawson DIRECTOR

2911 North 14th Street - Suite 303 | Bismarck, North Dakota 58503

PHONE 701-328-3200 | FAX 701-328-3254 | oah@nd.gov | nd.gov/oah

license. If the governmental entity that provides the benefit or license makes the determination, there is the perception of bias.

There have been many changes in the staff in the last few years. The present permanent administrative law judges (“ALJs”) are Jeanne McLean, Hope Hogan, and me. I began as director in December 2015, when the previous director of OAH, Wade C. Mann, resigned. He was followed closely in early 2016 by Rosey Sand. Both went into private practice. Jeanne Steiner started about a year before me. She resigned in September 2018 for a position in Arizona. I hired Jeanne McLean, who started in March 2016, and Hope Hogan, who started in November 2018. Jeanne McLean plans on retiring in at the end of March 2021.

OAH has five permanent FTEs - three ALJs and two support staff – and nine part-time, contract ALJs. (See attached organizational chart, Attachment “A.”) Of OAH's contract ALJs, five are in Fargo, three in Bismarck, and one in Dickinson. The bulk of hearings conducted by contract ALJs are for WSI hearings. One contract ALJ focuses on Public Service Commission (“PSC”) hearings, and the other eight focus on WSI hearings.

OAH's three full-time permanent ALJs conduct a mixture of different agency hearings but, primarily, DHS, PSC, WSI, Human Resource Management Services state employee grievance hearings, and occupational licensing hearings. One permanent ALJ has a workload of at least half WSI hearings and the remainder of other hearings. The other two full-time ALJs conduct the other hearings that are not WSI hearings. The bulk of these hearings are DHS hearings. OAH will go forward into the 2021-2023 biennium with the same structure.

OAH conducts administrative hearings for state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03(1), 40-51.2-12, 40-47-01.1, and 15.1-15-08); for state agencies that voluntarily use OAH, *e.g.*, the PSC, the Insurance Department, the Industrial Commission, the Department of Transportation for dealer licensing hearings, Student Loans of North Dakota for student loan hearings, colleges and universities for personnel hearings, and occasionally Job Service North Dakota for conflict unemployment compensation hearings; and for local entities such as cities or counties that voluntarily use OAH to conduct such hearings as employee discipline, tobacco sales enforcement, or public nuisance abatement hearings.

Over the years, OAH has conducted hearings for over 85 different state and local government agencies or entities. Some agencies make many requests for hearing each

year, while others have made only a few requests for hearing since OAH was established.

The table below shows the number of requests by year.

<u>Year</u>	<u>Hearing Requests</u>
2013	576
2014	571
2015	671
2016	717
2017	663
2018	646
2019	482
2020	432

In calendar year 2019, 25 different agencies or entities made 482 requests for hearing. In calendar year 2020, 23 different agencies or entities made 432 requests for hearing. In those two years, we had 914 requested hearings from 37 different agencies or entities. (See Attachment “B.”) This is about 30 percent less hearing requests from the previous two years in which we had 1,309 requested hearings from 33 different agencies or entities.

Attachment “C” shows the number of hearings held for calendar years 2019 and 2020. This shows about 69 percent of the hearing requests went to hearing in those two

years. In the previous two years, 69 percent of the hearing requests went to hearing. Historically, between 45 percent and 55 percent of hearing requests have gone to hearing. In short, the number of hearing requests has increased dramatically and peaked in 2016 with a 28 percent increase from 2011, plateaued at approximately 650 in 2017 and 2018, and now has returned to 2011 levels.

Attachment "D" shows the number of prehearing conferences held for calendar years 2019 and 2020. Prehearing conferences are usually held for the more complex hearings. There were 457 prehearing conferences held during those two years, up from 442 for the previous two years. In 2015 and 2016 there were 403 prehearing conferences. In short, over time we are having more complex hearings and more requests for hearing that go to hearing. The hearing requests have normalized.

For the first 18 months of this biennium (July 1, 2019, through December 31, 2020), 29 different agencies or entities have made 675 requests for hearing. (See Attachment "E.") As you can see from the attachments, the bulk of requests for hearing this biennium have come from two agencies, DHS and WSI; that is typical for most biennia. Another increasingly frequent OAH user in the last few years is the PSC.

BUDGET

- The OAH budget was done with little or no change from last biennium except for the required 5 percent reprioritization. As part of the reprioritization and budget request, our budget was reduced by removing \$5,000 from travel and \$136,533 from professional services in the operating line for a total of \$141,533. There was \$31,723 reallocated to other operating expenditures and Office 365 upgrade funding of \$551 for a net operating line reduction of \$109,259. This amount is the difference between the base level/appropriation and the Governor's recommendation. There was the addition of \$20,811 to the salaries and wages line for the cost to continue resulting in a net budget reduction of \$88,999. If the Governor's compensation changes are added to the cost to continue, the total of \$61,012 is the difference between the base level/appropriation and the Governor's recommendation.
- The OAH budget is two lines; one for salaries and benefits for the 5 FTEs and one for operating. Of the operating line, 77 percent is to pay contract ALJs for work completed, 7.5 percent for IT, 5.7 percent for office space, and 2.4 percent for travel to hearings. These four items make up 92.6 percent of the operating line.
- The OAH budget is funded completely through special funds and with no federal funds.

- OAH charges a fee for service. The rate of \$175 per hour. The rate will stay in place until July 1, 2021. At that time, the rate may be raised \$20 per hour.
- OAH has a continuing appropriation under N.D.C.C. § 54-57-07.

ACCOMPLISHMENTS AND CHALLENGES

Last session House Bill No. 1064 was enacted into law and codified in N.D.C.C. § 54-57-09. This section provides:

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.
3. The office of administrative hearings and workforce safety and insurance shall report statistical information regarding results under the case processing

standards and policies to the legislative management and the state advisory council each quarter. The reports must include the information required under subsection 1.

Appendix "F" shows how OAH responded to this challenge. We have reduced the average number of days from 290 to between 157 and 170 in the last 6 months. This is a reduction of at least 120 days or 40 percent and is below the goal of under 215 days by at least 20 percent.

With Cares Act money we have equipped our hearing rooms with the technology required to conduct video conferences for hearings. We will be able to conduct touchless hearings that are in person using the same technology. As challenges, there are the typical training and technical issues surrounding any technology project. There is the challenge that some people participating in administrative hearings are not technology savvy and do not have access to the proper technology equipment and services. In addition, the challenge with the new technology is deciding which hearings should be in person and which hearings can be by video.

Some hearings contain issues related to credibility and these hearings are better in-person. It is easier to judge demeanor and credibility in-person. We sometimes are the first time anyone in government has heard the concerns of the person wanting the hearing. In some hearings, having an ALJ who takes a concern seriously enough to show

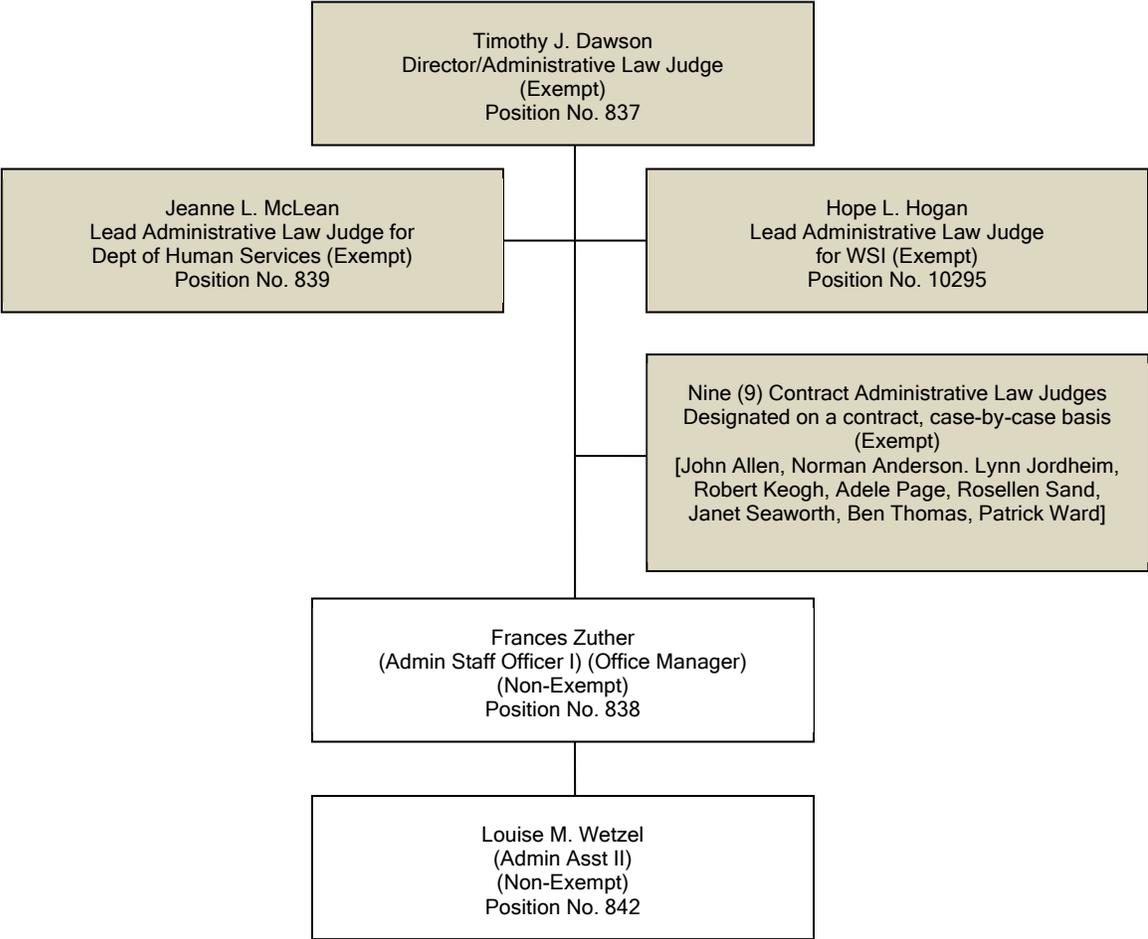
up in-person reflects well on the accessibility of government, and this value exceeds the increase cost and inconvenience to the ALJ and involved agency. In addition to issues of credibility, we may continue to conduct in-person hearings when the interests at stake are important: the right to maintain a professional licensure or parental rights.

CONCLUSION

OAH continues to perform a vital task for state and local agencies, boards, commissions, and other governmental entities, both for mandatory and voluntary users of OAH's services, holding a wide variety of types of administrative hearings for these users. Having a separate entity such as OAH for conducting administrative hearings allows for the fair and impartial conduct of these hearings for state and local government and for the citizens of North Dakota. OAH's current structure will allow us to continue to meet the administrative hearing requirements of all users who depend on OAH to conduct their hearings.

OFFICE OF ADMINISTRATIVE HEARINGS
ORGANIZATIONAL CHART

January 1, 2021



Hearing Request Comparison

Requests Received Between 01-01-2019 and 12-31-2020

Office of Administrative Hearings

Agency	2019		2020		Total	
1 Accountancy, State Board of Public	1	0.21%	0	0.00%	1	0.11%
2 Addiction Counseling Examiners, Board of	0	0.00%	1	0.23%	1	0.11%
3 Attorney General, Office of	1	0.21%	0	0.00%	1	0.11%
4 Belcourt Public School District	1	0.21%	1	0.23%	2	0.22%
5 Chiropractic Examiners, State Board of	1	0.21%	0	0.00%	1	0.11%
6 Dakota College at Bottineau	0	0.00%	1	0.23%	1	0.11%
7 DEQ, Environmental Quality, Department of	1	0.21%	0	0.00%	1	0.11%
8 DHS, Human Services, Department of	246	51.04%	185	42.82%	431	47.16%
9 Dickinson State University	1	0.21%	1	0.23%	2	0.22%
10 Education Standards & Practices Board	0	0.00%	1	0.23%	1	0.11%
11 Electrical Board, N.D. State	1	0.21%	0	0.00%	1	0.11%
12 Fargo Public School	0	0.00%	1	0.23%	1	0.11%
13 FI, Financial Institutions, Department of	0	0.00%	1	0.23%	1	0.11%
14 Fort Yates Public School District	1	0.21%	0	0.00%	1	0.11%
15 Game and Fish Department	0	0.00%	2	0.46%	2	0.22%
16 Grenora Public School District	1	0.21%	0	0.00%	1	0.11%
17 Health, Department of	0	0.00%	2	0.46%	2	0.22%
18 Human Resource Management Services	2	0.41%	1	0.23%	3	0.33%
19 IC, Insurance Commissioner	2	0.41%	2	0.46%	4	0.44%
20 Industrial Commission	4	0.83%	5	1.16%	9	0.98%
21 Job Service North Dakota	1	0.21%	0	0.00%	1	0.11%
22 Labor, Dept. of	1	0.21%	1	0.23%	2	0.22%
23 Mandaree Public School District #36	1	0.21%	0	0.00%	1	0.11%
24 Medicine, Board of	2	0.41%	0	0.00%	2	0.22%
25 Physical Therapy, North Dakota Board of	0	0.00%	2	0.46%	2	0.22%
26 Private Investigative and Security Board	1	0.21%	1	0.23%	2	0.22%
27 PSC, Public Service Commission	16	3.32%	17	3.94%	33	3.61%
28 Public Employees Retirement Board	1	0.21%	0	0.00%	1	0.11%
29 Public Instruction, Department of	10	2.07%	6	1.39%	16	1.75%
30 Real Estate Commission	0	0.00%	1	0.23%	1	0.11%
31 RIO, Retirement & Investment Office	1	0.21%	1	0.23%	2	0.22%
32 Tax Commissioner, State	2	0.41%	1	0.23%	3	0.33%
33 Valley City State University	0	0.00%	1	0.23%	1	0.11%
34 Veterans Affairs, Department of	2	0.41%	0	0.00%	2	0.22%

Hearing Request Comparison

Requests Received Between 01-01-2019 and 12-31-2020

Office of Administrative Hearings

<i>Agency</i>	<i>2019</i>		<i>2020</i>		<i>Total</i>	
35 Water Commission, State/State Engineer	0	0.00%	1	0.23%	1	0.11%
36 Wing Public School District	1	0.21%	0	0.00%	1	0.11%
37 Workforce Safety & Insurance	180	37.34%	196	45.37%	376	41.14%
	482		432		914	

Hearings Held

Hearings Held Between 01-01-2019 and 12-31-2020

Office of Administrative Hearings

Agency	2019		2020		Total	
1 Belcourt Public School District	1	0.3%	0	0.0%	1	0.2%
2 DHS, Human Services, Department of	164	47.5%	128	44.4%	292	46.1%
3 Education Standards & Practices Board	0	0.0%	1	0.3%	1	0.2%
4 Electrical Board, N.D. State	1	0.3%	0	0.0%	1	0.2%
5 Game and Fish Department	0	0.0%	2	0.7%	2	0.3%
6 Human Resource Management Services	1	0.3%	1	0.3%	2	0.3%
7 IC, Insurance Commissioner	1	0.3%	0	0.0%	1	0.2%
8 Job Service North Dakota	1	0.3%	0	0.0%	1	0.2%
9 Labor, Dept. of	1	0.3%	0	0.0%	1	0.2%
10 Mandaree Public School District #36	1	0.3%	0	0.0%	1	0.2%
11 Private Investigative and Security Board	2	0.6%	1	0.3%	3	0.5%
12 PSC, Public Service Commission	14	4.1%	10	3.5%	24	3.8%
13 Public Employees Retirement Board	0	0.0%	1	0.3%	1	0.2%
14 Public Instruction, Department of	5	1.4%	7	2.4%	12	1.9%
15 Racing Commission	2	0.6%	0	0.0%	2	0.3%
16 RIO, Retirement & Investment Office	0	0.0%	2	0.7%	2	0.3%
17 Veterans Affairs, Department of	1	0.3%	0	0.0%	1	0.2%
18 Water Commission, State/State Engineer	1	0.3%	0	0.0%	1	0.2%
19 Wing Public School District	1	0.3%	0	0.0%	1	0.2%
20 Workforce Safety & Insurance	148	42.9%	135	46.9%	283	44.7%
	345		288		633	

Prehearing Conferences Held

Prehearing Conferences Held Between 01-01-2019 and 12-31-2020

Office of Administrative Hearings

<i>Agency</i>	<i>2019</i>		<i>2020</i>		<i>Total</i>	
1 Addiction Counseling Examiners, Board of	0	0.0%	1	0.4%	1	0.2%
2 Belcourt Public School District	1	0.5%	1	0.4%	2	0.4%
3 Chiropractic Examiners, State Board of	1	0.5%	0	0.0%	1	0.2%
4 Dakota College at Bottineau	0	0.0%	1	0.4%	1	0.2%
5 DEQ, Environmental Quality, Department of	1	0.5%	0	0.0%	1	0.2%
6 DHS, Human Services, Department of	73	32.9%	89	37.9%	162	35.4%
7 Dickinson State University	3	1.4%	1	0.4%	4	0.9%
8 Education Standards & Practices Board	0	0.0%	1	0.4%	1	0.2%
9 Electrical Board, N.D. State	1	0.5%	0	0.0%	1	0.2%
10 Fargo Public School	0	0.0%	1	0.4%	1	0.2%
11 FI, Financial Institutions, Department of	0	0.0%	1	0.4%	1	0.2%
12 Fort Yates Public School District	1	0.5%	0	0.0%	1	0.2%
13 Grenora Public School District	1	0.5%	0	0.0%	1	0.2%
14 Health, Department of	0	0.0%	2	0.9%	2	0.4%
15 Human Resource Management Services	3	1.4%	3	1.3%	6	1.3%
16 IC, Insurance Commissioner	4	1.8%	2	0.9%	6	1.3%
17 Industrial Commission	5	2.3%	8	3.4%	13	2.8%
18 Job Service North Dakota	1	0.5%	0	0.0%	1	0.2%
19 Labor, Dept. of	2	0.9%	2	0.9%	4	0.9%
20 Mandaree Public School District #36	3	1.4%	0	0.0%	3	0.7%
21 Physical Therapy, North Dakota Board of	0	0.0%	3	1.3%	3	0.7%
22 Private Investigative and Security Board	1	0.5%	1	0.4%	2	0.4%
23 PSC, Public Service Commission	6	2.7%	8	3.4%	14	3.1%
24 Public Employees Retirement Board	1	0.5%	0	0.0%	1	0.2%
25 Public Instruction, Department of	3	1.4%	4	1.7%	7	1.5%
26 Racing Commission	2	0.9%	0	0.0%	2	0.4%
27 RIO, Retirement & Investment Office	1	0.5%	3	1.3%	4	0.9%
28 Tax Commissioner, State	1	0.5%	0	0.0%	1	0.2%
29 Valley City State University	0	0.0%	2	0.9%	2	0.4%
30 Veterans Affairs, Department of	2	0.9%	0	0.0%	2	0.4%
31 Wing Public School District	3	1.4%	0	0.0%	3	0.7%
32 Workforce Safety & Insurance	102	45.9%	101	43.0%	203	44.4%
	222		235		457	

Total Requests Received by Agency

Files Received Between 07-01-2019 and 12-31-2020

Office of Administrative Hearings

Agency	# of Files Received	
Accountancy, State Board of Public	1	0.15%
Addiction Counseling Examiners, Board of	1	0.15%
Belcourt Public School District	2	0.30%
Dakota College at Bottineau	1	0.15%
DEQ, Environmental Quality, Department of	1	0.15%
DHS, Human Services, Department of	310	45.93%
Dickinson State University	1	0.15%
Education Standards & Practices Board	1	0.15%
Fargo Public School	1	0.15%
FI, Financial Institutions, Department of	1	0.15%
Fort Yates Public School District	1	0.15%
Game and Fish Department	2	0.30%
Health, Department of	2	0.30%
Human Resource Management Services	2	0.30%
IC, Insurance Commissioner	2	0.30%
Industrial Commission	7	1.04%
Labor, Dept. of	1	0.15%
Medicine, Board of	2	0.30%
Physical Therapy, North Dakota Board of	2	0.30%
Private Investigative and Security Board	1	0.15%
PSC, Public Service Commission	25	3.70%
Public Employees Retirement Board	1	0.15%
Public Instruction, Department of	9	1.33%
Real Estate Commission	1	0.15%
RIO, Retirement & Investment Office	2	0.30%
Tax Commissioner, State	3	0.44%
Valley City State University	1	0.15%
Water Commission, State/State Engineer	1	0.15%
Workforce Safety & Insurance	290	42.96%
Grand Total:	675	

Average Days to ALJ Decision Decisions Issued from 10/01/2018 - 12/31/2020							
	Number of Matters	Request for ALJ to ALJ Decision Issued			Hearing Held to ALJ Decision Issued		
		Average	Median	Range	Average	Median	Range
October 1, 2018 - March 31, 2019	54	290	231	64 - 808	34	28	3 - 156
November 1, 2018 - April 30, 2019	60	278	230	64 - 808	32	29	3 - 156
December 1, 2018 - May 31, 2019	63	263	206	64 - 976	28	26	3 - 105
January 1, 2019 - June 30, 2019	62	259	205	64 - 976	27	25	3 - 105
February 1, 2019 - July 31, 2019	64	244	198	64 - 976	27	25	3 - 105
March 1, 2019 - August 31, 2019	72	246	186	69 - 976	25	25	3 - 99
April 1, 2019 - September 30, 2019	79	229	169	69 - 976	24	24	3 - 99
May 1, 2019 - October 31, 2019	75	215	159	69 - 976	24	24	4 - 99
June 1, 2019 - November 30, 2019	71	214	171	69 - 834	26	25	4 - 99
July 1, 2019 - December 31, 2019	64	196	159	57 - 481	26	26	6 - 99
August 1, 2019 - January 31, 2020	71	197	158	57 - 481	27	25	1 - 99
September 1, 2019 - February 29, 2020	63	187	154	57 - 428	26	24	7 - 93
October 1, 2019 - March 31, 2020	63	184	148	57 - 428	26	24	7 - 93
November 1, 2019 - April 30, 2020	55	176	147	57 - 428	28	24	3 - 93
December 1, 2019 - May 31, 2020	56	168	147	57 - 491	28	24	3 - 89
January 1, 2020 - June 30, 2020	64	165	147	46 - 491	27	23	2 - 89
February 1, 2020 - July 31, 2020	60	159	147	46 - 491	25	23	2 - 83
March 1, 2020 - August 31, 2020	60	157	147	46 - 491	27	25	2 - 83
April 1, 2020 - September 30, 2020	61	164	155	46 - 491	27	23	2 - 83
May 1, 2020 - October 31, 2020	62	165	156	46 - 491	25	22	2 - 81
June 1, 2020 - November 30, 2020	65	164	154	46 - 338	26	24	2 - 63
July 1, 2020 - December 31, 2020	61	170	155	40 - 362	28	27	3 - 63

*Includes initial decisions for workers benefits only; does not include reconsiderations, settlements, dismissals, stipulations.
Consolidated files are counted as one unit, not separate units.*