D.C. Association of Administrative Law Judiciary

Spring 2011

Inside this Issue

President Paul Handy's Comments

It is my pleasure to serve as president of DCAALJ. In our second year, we have built on the successes we achieved under the leadership of President Joan Davenport. Our goals are to provide meaningful educational programs for our members, to foster connections with our fellow judges as we face many daunting challenges together, to build our membership, and to support the great work of the NAALJ.

To those ends, in September 2010, at our annual meeting, Professor Faith Mullen shared her findings from the Bellow Project. In November 2010, Deputy Chief Judge Mark Poindexter presented his program on Self-Represented Litigants. In January 2010, Celeste Valente of University Legal Services led a panel discussion on litigants who have mental disorders. In April 2011, we will continue our educational series with "Judicial Independence," offered by Federal Administrative Law Judge Ann Young. We have a great and active Board. Special thanks go out to Judge Melissa Jones, for her work in coordinating the Mental Disorders program, and for all her other work, and to Judge Davenport for assisting with this program and for working with Judge Young.

As helpful as these programs are, we also intend to create events where we can network and meet to discuss our common issues. We live in difficult financial times, and the economic problems impact both our caseload and our resources available to provide due process to the public. Thank you all for supporting DCAALJ. Let us know how the organization can better serve our needs as administrative adjudicators. ₪

D.C. ALJ's Compare Systems of Administrative Adjudication

Mr. Chen Biwen is responsible for administrative review with the Legislative Affairs Office of the State Council of China. As part of his research on how to improve China's administrative reconsideration system, Mr. Chen sat down with several local administrative law judges at a round table discussion.

According to Mr. Chen, "In China, a citizen or a legal person or any other organization can apply for administrative reconsideration to relevant administrative organizations when he/she/it considers that his/her/its lawful rights and interests have been infringed by a specific administrative act. In recent years, under the strong promotion of the Chinese government, the system of Administrative Reconsideration has made rapid progress and great achievement. It solves lots of administrative disputes in China, and plays a very important role in maintaining the harmonious society and promoting Chinese administrative organizations to perform according to the law.

"Recently, the Chinese economy and society has entered onto a new development stage, so the current system of Administrative Reconsideration also needs to be adjusted accordingly to meet the requirements of the new situation in China. Hence, how to use the successful experience of other countries

Continued on Page 2

Continued from Page 1

based on Chinese actual situation to improve the Chinese system of Administrative Reconsideration has become to be the most important and urgent task.

"In the United States, there are a range of mechanisms similar to the administrative review system with the purpose to solve administrative disputes at the states and federal level, such as the ALJs system, which is very distinctive and constantly develops in recent years in practice. Through this visit, I want to have a deep understanding of the administrative review mechanisms of the United States and their latest development, and to conduct a special research on the topic that how to improve the system of Administrative Reconsideration in China."

As a result, Mr. Chen was interested in issues concerning

- Requesting and conducting administrative hearings;
- Burdens of proof;
- The scope of administrative and judicial review; and
- Judicial independence.

Accompanying Mr. Chen was Jamie P. Horsley, Deputy Director of the China Law Center at Yale Law School. Director Horsely focuses on issues of administrative law and regulatory reform and was instrumental in bringing Mr. Chen to the District of Columbia for the round table discussion.

Presenters, including several members of the DCAALJ, offered detailed perspectives on multiple aspects of administrative adjudication, resolution, and review. Their efforts actually may help to bring about improvements to the current system of administrative reconsideration in China.

From left to right Seena Foster, Senior Attorney (U.S. Department of Labor); Melissa Lin Jones, Administrative Appeals Judge (D.C. Department of Employment Services); John Dean, Principal Administrative Law Judge (D.C. Office of Administrative Hearings); Mr. Biwen Chen (Department of Administrative Review Legislative Affairs Office State Council, People's Republic of China); Joan Davenport, Administrative Law Judge (D.C. Office of Administrative Hearings); Ann Young, Administrative Judge (U.S. Nuclear Regulatory Commission); John R. Rooney, Administrative Law Judge (D.C. Office of Administrative Hearings); Jamie P. Horsley, Senior Research Scholar in Law and Lecturer in Law (Deputy Director, The China Law Center at Yale Law School). ₪Melissa Lin Jones

Court of Appeals Issues Homeless Services Reform Act Opinion

By Judge John P. Dean

In *Baltimore v. District of Columbia,* No. 09-CV-759 (January 6, 2011), the District of Columbia Court of Appeals issued its first decision interpreting the Homeless Services Reform Act of 2005, D.C. Code §4-751.01 *et seq.* (the HSRA). The HSRA has been a significant source of cases for the Office of Administrative Hearings (OAH), with more than 1,000 cases filed since October 2005 when it became effective. In *Baltimore*, the Court concluded that, with one narrow exception, the HSRA does not grant an enforceable right to shelter to homeless persons and that there is no right to a hearing to challenge a provider's decision to close a shelter or other facility providing services under the Act.

Baltimore arose out of the District's decision to close the Franklin School Shelter in September 2008. The Franklin Shelter was a low barrier shelter for homeless men that provided overnight accommodations. Prospective residents went through intake for the night's bed space every day at 4 PM. Those who received a bed had to leave by 7 AM the next morning, but were permitted to leave their belongings at the shelter during the day.

The plaintiffs in *Baltimore* included men who had lived at the Franklin Shelter before it was closed. They primarily argued that the closing of the shelter violated their rights under the HSRA and the Due Process Clause to receive continued shelter and other services at the Franklin Shelter. The Court of Appeals rejected those arguments. It found that the HSRA authorized the District to provide services for homeless persons through a "Continuum of Care," a comprehensive system of services, but that several different provisions of the HSRA made those services discretionary. By specifying in D.C. Code §§4-751.01(8) and 4-753.01(b) that the Continuum of Care "may include" a wide range of services, the Council made it clear that there was no absolute right to any of the specified services, including shelter. The HSRA also states that, with one exception, nothing in the HSRA "shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any services within the Continuum of Care." D.C. Code §4-755.01(a). Slip op. at 10.

The only exception is found in D.C. Code §4-753.01(c); the District must make appropriate space available to any homeless person in the District who cannot access other shelter if the actual or forecasted temperature falls below 32 degrees (including the wind chill factor) or rises above 95 degrees (including the

Continued on Page 3

Continued from Page 2

heat index).[1] Because the plaintiffs were not seeking severe weather shelter, the Court concluded that they had no right to continue to receive the services that they had been receiving at the Franklin Shelter, including shelter, medical care and mental health services. Slip op. at 17-21.

The court also considered whether the plaintiffs had been deprived of any procedural rights granted by the HSRA, including notice of any transfer or termination of services and the right to an administrative hearing at OAH to challenge any termination or transfer. The Court expressed doubt that there was any right to notice, because the closing of the shelter (whether viewed as a termination of shelter services or a transfer of the plaintiffs to other shelters in the District) was not for any of the disciplinary reasons specified in the HSRA (*e.g.,* possessing a weapon, assault, endangering the safety of the client or someone else or repeatedly violating program rules). Slip op. at 23, citing D.C. Code §4-7554.36(2) (A) through (G). Alternatively, it held that the record showed that the plaintiffs had received adequate notice of the closing. The Court found no evidence that any plaintiff asked for a hearing at OAH to challenge the closing, so there was no basis to conclude that any of them had been deprived of any statutory right to a hearing.

The court also briefly considered the plaintiffs' claims of due process violations. Based on its holding that the HSRA did not grant them a right to continued services at the Franklin Shelter, the Court concluded that the plaintiffs had not been deprived of any constitutionally protected liberty or property interest. Slip op. at 25. It also concluded that the HSRA did not grant them a statutory right to a hearing before a shelter is closed. Slip op. at 27.[2]

Several broad pronouncements in the Court's opinion that may give one pause. Although the Court identified the right to shelter in severe weather conditions as the only right granted by the HSRA, those statements must be read in context. After all, the HSRA enacts a number of client rights and provider standards, D.C. Code §§4-754.11, 4-754.12, 4-754.21 through .25, and authorizes OAH, after a hearing, to award a remedy to a client if a provider violates any of those rights or standards. D.C. Code §4-754.41(b)(3). And the HSRA also grants a client the right to a hearing if a provider terminates services provided through the Continuum of Care, including shelter itself.[3] Most likely, the Court meant that homeless person have no right to any particular service under the HSRA, and that a provider can cease operations at any time. If the provider continues to offer a service, however, the detailed provisions of the HSRA require the provider to do so in accordance with the standards set forth in the Act. If the provider does not do so, clients will continue to have the right to a hearing at OAH and an order from an Administrative Law Judge awarding the proper remedy, as provided in D.C. Code § 4-754.41. ₪

[1] In December 2010, the Council passed legislation to modify that requirement to give priority to District residents. As of this writing, the legislation is not effective because the Congressional review period has not ended.

[2] When it considered the plaintiffs' HSRA claims, the Court ruled that there was no evidence that plaintiffs had asked for an administrative hearing. In ruling on their constitutional claims, however, it held that the statute did not grant them a hearing right to challenge the closure of the shelter, suggesting that any request for an administrative hearing would have been futile.

[3] The original text of the HSRA is perhaps not as clear about the right to a hearing when shelter itself is terminated, but that right is presupposed throughout the HSRA. *M.H. v. CCNV*, 2007 D.C. Off. Adj. Hear. LEXIS 75 (Final Order, August 2, 2007). The recent amendments to the HSRA discussed above clarify the hearing rights under the HSRA to leave no doubt that such hearings are authorized.

Upcoming Events

Judicial Independence

April 21, 2011, 4:00 p.m.
Mayor's Conference Room at 441 – 4th Street, N.W.
Administrative Law Judge Ann Marshall Young will speak about the interrelation between judicial ethics and judicial independence in the context of administrative law.

NAALJ Mid-Year Meeting and Conference

May 2 – 4, 2011
Atlanta, Georgia
"Back to Basics: Building Blocks for Effective Administrative Adjudication" will take place at the Georgia Conference Center. The complete conference brochure is available online at http://www.naalj.org/assets/documents/2011_Midyear_Brochure.pdf.

Personal Safety for You and Your Family

May/June 2011
TBA
Threats against public officials plague the news. Learn safety tips for you and your family from the federal marshal who is the executive producer of *Project 365: Security Starts With You.*

U.S. Supreme Court Admission Ceremony and Celebration

Fall 2011
The Marble Palace
1 First Street, N.E.
A group of DCAALJ members will be sworn in to admission to the Bar of the Supreme Court of the United States.

A Fair Hearing For All

The media often portrays persons with mental illnesses in negative and derogatory terms; as we know, sound bite generalizations tend to present inaccurate information. In an attempt to heighten the judiciary's awareness of the very real challenges faced by litigants with mental health issues, on February 23, 2011, Ms. Celeste Valente, Mary Ann Parker, Esquire, and Ms. Dorothy Adams presented the DCAALJ with techniques and strategies for addressing those challenges in the context of affording everyone a fair hearing.

There may be more than meets the eye for the adjudicator presiding over a hearing involving a person with a mental illness. If a litigant is responding to the voices in his head, he simply cannot focus on completing forms or on the proceedings. These, and similar, symptoms create barriers to accessing justice; therefore, the panel urged adjudicators to appreciate the overwhelming nature of symptoms of mental illness.

While maintaining judicial neutrality, the panel suggested looking beyond the obvious to devise accommodations on a case-by-case basis whenever possible. After all, "People are individuals, and so are the solutions to their problems." For example, when faced with a seemingly incomprehensible barrage of testimony, slow down; ask probing questions; listen carefully; and evaluate that testimony for the kernel of truth in the seeming jumble of words. Then, upon evaluation, remain flexible to develop accommodations such as allowing extra time for the hearing, permitting an advocate to attend the hearing, or changing the location of the hearing; because symptoms wax and wane, simply granting a continuance may resolve many of the problems apparent on any given hearing date.

Perhaps most important, all litigants (including litigants with mental illnesses) must be afforded respect- in word and deed. An adjudicator would never consider referring to a person with cancer as "A Cancer," yet that same adjudicator may refer to a person with a mental illness as "A Schizophrenic." Remembering that a person is not their illness is the first step toward understanding the person as opposed to the symptoms, and such an understanding can foster the fairness required of every adjudicator. ₪Melissa Lin Jones

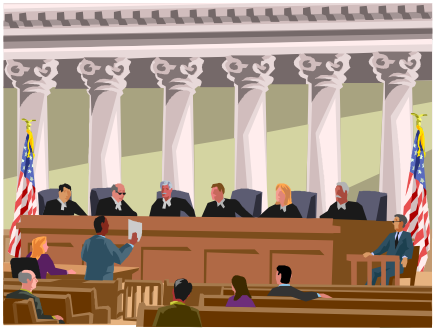
Oyez, Oyez

Did you know that as a member of the Bar of the Supreme Court of the United States, you are eligible to sit in a reserved section of the Courtroom during oral argument? In addition, membership entitles you to use public areas of the law library located on the third floor of the Marble Palace.

If you are interested in becoming a member of the Bar of the Supreme Court of the United States, the DCAALJ is interested in sponsoring you! The admission fee is $200.00, and applicants must include a personal application statement and a certificate of good standing from the highest state court of your current bar admission. Complete instructions are available at http://www.supremecourt.gov/bar/barinstructions.pdf.

In order to gauge interest in this offering, please e-mail Judge Melissa Lin Jones, a current Supreme Court Bar member, at Melissa.Jones@dc.gov no later than April 29, 2011. Judge Jones will contact all interested participants in preparation for a fall ceremony and celebration.

Don't wait, the application process is time consuming- start yours today! ₪Melissa Lin Jones



In the News

Mayor Vincent C. Gray has appointed Dr. Rochelle L. Webb the Acting Director for DC's Department of Employment Services. As the Administrator of the Employment Administration within the Arizona Department of Economic Security, Dr. Webb was responsible for administering the state's employment and training programs including

- TANF Employment and Training (Jobs Program),
- Alien Employment Certification,
- Veterans' Programs,
- Supplemental Nutrition Assistance Program Employment and Training,
- Migrants Seasonal Farm Worker Outreach,
- Trade Adjustment Assistance,
- Workforce Investment Act- Adult, Youth and Dislocated Worker Programs,
- Work Opportunity Tax Credit, and
- the Federal Bonding Program.

District of Columbia Association of Administrative Law Judiciary, Inc.

AN AFFILIATE OF THE NATIONAL
ASSOCIATION OF ADMINISTRATIVE LAW JUDICIARY

2010 - 2011 MEMBERSHIP APPLICATION AND DUES INVOICE

Dues for **DCAALJ /NAALJ** membership year 2010 – 2011 are now payable for the period from October 1, 2010 - September 30, 2011. Please remit your payment as soon as possible. The annual payment of $50.00 includes membership dues for both the **DCAALJ and NAALJ**. ($100.00 for sustaining member.)

NAME: _____

Last Name First Name Middle Name

HOME ADDRESS: _____

CITY, STATE, ZIP CODE: _____

HOME PHONE: ( ) _____ WORK PHONE: ( ) _____

AGENCY NAME: _____

BUSINESS ADDRESS: _____

PLEASE SEND MAIL TO: HOME WORK

EMAIL ADDRESS(ES): _____

ARE YOU AN ATTORNEY?: YES NO

REFERRED BY: _____

ARE YOU INTERESTED IN SERVING ON AN **DCAALJ** OR **NAALJ** COMMITTEE SUCH AS MEMBERSHIP, PROGRAM DEVELOPMENT, LOGISTICS, CONTINUING EDUCATION, COMMUNICATIONS OR CHARTER REVIEW?

YES I AM INTERESTED IN: _____

NO

SIGNATURE: _____ DATE: _____

THANKS FOR YOUR INTEREST!

Send Payment to:

District of Columbia Association of Administrative Law Judiciary, Inc.
c/o Hon. William L. England, Jr., Treasurer
P.O. BOX 77203
Washington, DC 20013-7203