

GOVERNOR –ELECT CHARLIE CRIST  
CITIZEN REVIEW  
DIVISION OF ADMINISTRATIVE HEARINGS  
AND  
OFFICE OF THE JUDGES OF COMPENSATION  
CLAIMS

Conducted November 27-December 13, 2006

## **INTRODUCTION**

This report summarizes findings in regard to the ongoing operations of the Florida Division of Administrative Hearings (DOAH) and the Office of The Judges of Compensation Claims (OJCC). This Report was generated at the request of Governor-elect Charlie Crist and Lieutenant Governor-elect, Jeff Kottkamp, under the supervision of Transition Deputy Directors Paul Huck and Lori Rowe between November 27 and December 13, 2006.

This report is focused upon the areas of inquiry set forth as guidance in the November 14, 2006, memorandum for Citizen Review Group Leaders promulgated by Paul Huck and Lori Rowe, Transition Deputy Directors.

This fact-finding exercise was conducted by: (1) reviewing documents and reports generated by the agency; (2) reviewing and analyzing pertinent sections of Florida Statutes; and (3) interviewing agency personnel and stakeholders.

Copies of all pertinent documents are either attached as an Appendix to this report and/or are accessible via hyperlink within the report.

Within the Division, I interviewed Chief Judge Robert Cohen, Deputy Chief Judge of Compensation Claims, David Langham, and Deputy Chief Judge for DOAH, Harry Hooper. Also, I interviewed Ms. Lisa Mustian, Director of Administrator Services, Ms. Anne Cole, Clerk of the Division, Ms. Susan Brown, Chief Information Officer, Ms. Marilyn Lawrence, Budget Director, and Ms. Cindy Wingler, Assistant Budget Director.

Outside of the Agency, those interviewed included Mr. Victor Marrero, Chair of the Statewide Nominating Commission, Mr. G. Bart Billbrough, Past Chair of the Statewide Nominating Commission, and a number of attorneys in and out of government who practice in the area of workers' compensation or administrative law. The administrative lawyers interviewed specialized in health care, environmental law, bid procurement, and licensing. I spoke with general counsels, assistant general counsels, and Assistant Attorney Generals as well as private practitioners. For compensation claims input, I spoke to lawyers for both individual claimants and for businesses.

I want to acknowledge the assistance each one of them lent to this project and thank them for providing me the opportunity to learn more about these two important programs. The views expressed herein, unless otherwise noted, are strictly those of the author.

Submitted January 11, 2007.

Richard E. Doran  
Ausley & McMullen, P. A.

## **I. FAST FACTS**

1. **Agency reviewed:** Division of Administrative Hearings (DOAH) and Office of The Judges of Compensation Claim (OJCC).
2. **Agency headquarters:** 1230 Apalachee Parkway, DeSoto Building, Tallahassee, FL 32399.
3. **Office Locations:**
  - (a) DOAH: 1230 Apalachee Parkway, DeSoto Building, Tallahassee, FL 32399.
  - (b) OJCC: District offices located in: Pensacola (Office of Deputy Chief Judge), Panama City, Tallahassee, Jacksonville, Daytona Beach, Gainesville, Lakeland, Melbourne, Sarasota, St. Petersburg, Orlando, Tampa, Port St. Lucie, West Palm Beach, Fort Lauderdale, Fort Myers, and Miami.
4. **Agency Leadership:** The Honorable Robert Cohen, Director and Chief Administrative Law Judge. The Honorable David Langham, Deputy Chief Judge of Compensation Claims and the Honorable Harry Hooper, Deputy Chief Administrative Law Judge.
5. **\*Annual Budget for Fiscal Year 2005-2006:** \$25,679,219.00
  - (a) DOAH: \$7,742,230.00
  - (b) OJCC: \$17,574,120.00\* As directly provided by DOAH
6. **FTEs in Fiscal Year 2005-2006:** 265
  - (a) DOAH: 71
  - (b) OJCC: 194
7. **Constitutional and statutory authorization:**
  - (a) DOAH: Chapter 120.65, Florida Statutes
  - (b) OJCC: Chapter 440.45, Florida Statutes
8. **Relationships to the Executive Office of the Governor:**
  - (a) Chief Administrative Law Judge and Director of the Division is appointed by the Administration Commission and subject to Senate confirmation.
  - (b) The Judges of Compensation Claims are direct gubernatorial appointments garnered from a list of nominees forwarded to the Governor by the Statewide Judicial Nominating Commission.

## **II. BACKGROUND**

The Division of Administrative Hearings (DOAH) was created in 1974. Nominally attached to the Department of Management Services, DOAH is effectively a stand-alone governmental entity. The Office of the Judges of Compensation Claims (OJCC) dates to 1965 when the Florida Legislature created the Florida Industrial Commission that included a Division of Workers' Compensation. In October 2001, the OJCC was moved from the Department of Labor and Employment Security to DOAH. Therefore, the DOAH currently administers two separate and distinct programs: adjudication of disputes (i.e. DOAH) and workers' compensation claims (i.e. OJCC). As noted in DOAH's long-range program plan, 2007-08 through 2011-12, "[t]hese programs are mutually exclusive and equally important to the State." The Division's role is judicial where judges hear evidence, review written and oral argument and issue written orders according to the specific authority afforded them by the under Florida law.

The Administrative Procedures Act, Chapter 120, Florida Statutes, created DOAH. The authority for DOAH's Judges, known as Administrative Law Judges (ALJs), is set forth in Section 120.65, Florida Statutes and empowered under sections 120.569 and 120.57(1), Florida Statutes, to take evidence, conduct hearings and issue written orders with findings of fact and conclusions of law.

OJCC's authority is set forth in Section 440.45, Florida Statutes. The Judges of Compensation Claims are empowered to take evidence and hear arguments on claims for worker's compensation and to render orders awarding or rejecting such claims.

DOAH ALJs and the OJCC Judges are selected in very different fashions and afforded different status under Florida law. ALJs are selected by the Chief Administrative Judge and employed as career service employees of the state. The entry-level salary amount for an ALJ is \$120,320.

In contrast, the Governor appoints the Judges of Compensation Claims. Applicants are initially subject to review by the Statewide Nominating Committee established in Section 440.45 (2), Florida Statutes. The Committee forwards to the Governor three names to be considered for each vacant position. Once appointed, these judges take office. They serve a term of four years and then must resubmit themselves for nomination. Unlike ALJs, judges in the OJCC must "abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court." §440.442, Florida Statutes. They are paid \$122,564 per year.

ALJs are located in Tallahassee and report administratively to the Director of the Division, Chief Judge Robert Cohen, and his principal deputy, Administrative Law Judge Harry Hooper. In many cases, they travel throughout the state and hear

matters at the venue of the dispute. In contrast, the Judges of Compensation Claims are housed in seventeen different cities throughout the state. Some are the sole occupant of their office. Other offices such as the Miami office may house up to five judges and their staff. Administratively, the Judges of Compensation Claims report to Deputy Chief Judge of Compensation Claims, David Langham. Chief Judge Langham works in the Pensacola office.

Each program area is independently funded. The DOAH program, known in budget terms as “adjudication of disputes,” is trust funded principally from payments made by various state agencies that use its services in conjunction with Chapter 120 proceedings. Contracts with other state, local and regional government bodies to handle dispute resolution generate additional funds. For fiscal year 2005-2006, the budget for the adjudication of disputes program was \$7,742,230.

The budget for the Office of the Judges of Compensation Claims is also trust funded. Monies from this trust fund are drawn from the Workers’ Compensation Trust Fund, §440.50, Florida Statutes. For fiscal year 2005-2006, the budget for the OJCC was \$17,547,120.

Each program maintains control of its own personnel. In fiscal year 2005-2006, the adjudication of dispute program had 71 FTEs, of which 34 were employed as Administrative Law Judges. The OJCC had 194 FTES, of which 31 were Judges of Compensation Claims.

### **III. AGENCY MISSION AND GOALS AND OBJECTIVES IN PRIORITY ORDER**

As stated in the Long Range Program Plan, the mission of the Division of Administrative Hearings is:

“To provide a uniform and impartial forum for the trial and resolution of disputes between private citizens and organizations and agencies of the State in an efficient and timely manner.

Likewise, the mission of the Office of The Judges of Compensation Claims is:

To maintain a statewide mediation and adjudication system for the efficient and timely resolution of disputed workers’ compensation claims.

The Division has prioritized its goals and objectives in the following manner:

Goal 1: Improve the statewide adjudication and mediation process.

This goal is broken down into two specific objectives, the first being to increase the number of administrative law cases that can reasonably be closed within 120 days after filing to a rate greater than the baseline year rate and maintain that rate increase throughout the planning period. The second objective is to “increase the number of Petition for Benefits that can reasonably be closed within the statutory time frame to a rate greater than the baseline year rate and increase that rate throughout the planning period.” The Long Range Report for 2006-2011 and the past three annual reports are available at the DOAH website at <http://www.doah.state.fl.us/internet/annualReports.cfm>. The OJCC reports are found at: <http://www.jcc.state.fl.us/JCC/notices.asp>

#### **IV. SUBSTANTIVE LEGISLATIVE PRIORITIES FOR 2007**

The Division has only one substantive legislative priority at this time. The Division is proposing an exemption from the provisions of Chapter 119 in order to protect the home addresses and telephone numbers of the Judges of Compensation Claims from publication.

#### **V. DIVISION BUDGET PRIORITIES FOR 2007**

The Budget priorities are outlined in an October 2006 memo attached to this report. In sum, the priorities are:

1.	Alleviate Security Risks at District Offices	\$89,098 TF
2.	Information Technology Infrastructure Replacement	\$91,036 TF
3.	Eliminate Disparity in Judge’s Pay Package	\$234,556 TF
4.	Pay Plan Transfer (Executive Secretaries)	\$88,338 TF
5.	Trust Fund Realignment –from Administrative Trust Fund to Operating Trust Fund	\$27,665,703 TF 269 FTE

#### **VI. USE OF PERFORMANCE BASED BUDGETING MEASURES**

The Division utilizes performance based budgeting measures to analyze and report on its performance for both its program areas. A detailed analysis of this effort can be found in the Division’s Long Range Performance Plan.

#### **VII. POTENTIAL AREAS WHERE AGENCY REORGANIZATION MIGHT IMPROVE PERFORMANCE**

Due to the unique responsibilities and duties of the two program areas within the Division, it is the view of the Division’s management that no significant reorganization requiring legislative action is necessary at this time. The 2001 movement of the OJCC program from the Department of Labor Employment Security to DOAH is perceived by the Division’s management and stakeholders interviewed as a positive step toward improved performance for OJCC.

In June 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report No. 04-37, which addressed the viability of merging the Commission on Human Relations, DOAH, Public Employees Relations Commission, State Retirement Commission and Unemployment Appeals Commission. OPPAGA concluded "There are no compelling reasons for merging [these agencies]" The report can be found at OPPAGA's website: <http://www.oppaga.state.fl.us>.

**VIII. UTILIZATION OF PERFORMANCE-BASED INCENTIVES FOR AGENCY EMPLOYEES**

Due to strict controls on its budget, the Division does not use performance-based incentives for agency employees except in rare instances. If and when authorized by the Legislature, and based upon availability of funds, individual employees may be rewarded for enhanced performance. DOAH encourages employee involvement in the annual Davis Productivity program and its employees have won monetary prizes for effecting performance enhancements in the past several years. The OJCC has not been involved in the Davis Productivity program in the past.

**VIII. EMPLOYEE TURNOVER RATES**

Turnover rates vary between DOAH and the OJCC. Within DOAH, for the past three years, turnover rates for ALJs have been virtually non-existent. Additionally, turnover rate for DOAH staff is also reported to be very low. Similarly, for the OJCC, the turnover rate for Judges is very low. Indeed, Judges usually only leave their positions for promotion to other judicial posts within the state. In sharp contrast, with regard to the OJCC staff, there is significant staff turnover due to cost of living concerns and market forces. Turnover is particularly high in Miami-Dade where salaries are not competitive with the private sector. This is reported to be a significant concern for OJCC. (See Budget Priority discussion above).

**X. PERCENTAGE OF WOMEN AND MINORITIES EMPLOYED BY THE AGENCY**

**JCC Women and Minorities\***

Women	Minorities
146	74
*as of 12/12/06 based on 189 employees (10 vacancies)	

**DOAH Women and Minorities\***

Women	Minorities
39	11
*as of 12/12/06 based on 65 employees (5 vacancies)	

**JCC-CS, SES, SMS, Elected/Appointed\***

CS	SES	Appointed	SMS
86	48	65	0
*based on 199 positions			

**DOAH-CS, SES, SMS\***

CS	SES	SMS
51	18	1
*based on 70 positions		

## **XI. PENDING INSPECTOR GENERAL INVESTIGATIONS, AUDITOR GENERAL REPORTS, OR OPPAGA REPORTS**

Chief Judge Cohen reports that there are no pending Inspector General investigations, Auditor General reviews or OPPAGA reviews or reports forthcoming in regard to its operations.

## **XII. AGENCY PROCEDURES FOR SOLICITING, RECEIVING AND MANAGING NEW IDEAS AND INPUT FROM STAFF AND THE AGENCIES' CUSTOMERS**

DOAH management indicates that there is no formal written procedure for soliciting, receiving and managing new ideas and input from staff or agency customers. Instead, "constant, regular feedback" is built into the agency's work practices. Further, routine interaction among DOAH's management, judges and staff with lawyers, state agency senior management and members of the public provides an effective mechanism for obtaining such information.

According to Chief Judge Cohen, he and his principal deputies maintain an open door policy that fosters a culture receptive to feedback from agency staff. Additionally, Deputy Chief Judge Langham recently used a client satisfaction survey within the OJCC for judges and staff in an effort to solicit their views on performance of the administration of the office in regards to technology, administration and the clerk's office. All three managing judges stated that they maintain regular interaction with the local bar associations, specialty bar associations and practice sections of the Florida Bar. Also, it was reported that judges participate in educational seminars and other training conferences which allows for feedback from practitioners and other stakeholders on the performance of the two programs.

## **XIII. IMPACT OF FEDERAL POLICIES ON THE AGENCIES' PROGRAMS**

DOAH did not report that Federal policies have an impact on its adjudication of disputes program performance. However, it was noted that there exists an increased work load due to Federal laws that mandate certain student educational matters be heard by a state level administrative law judge.

In contrast, the OJCC indicates significant impact on its ability to close cases, particularly when settlements are proposed, because of Medicare regulations and procedures. The OJCC reports that shifting targets for Federal program eligibility can delay the closing of cases. For example, in certain situations, the Federal government may need to approve a settlement. This can cause cases to languish in the system for appreciable periods of time. The OJCC is looking to upgrade its web page in order to create a central repository for information on social security disability standards in an effort to assist claimants and their counsel in addressing these concerns.

#### **XIV. DOES THE AGENCY FACE ANY CONTROVERSIAL ISSUES AT THE CURRENT TIME**

Senior management did not report the existence of any controversial issues for either DOAH or OJCC at the current time.

While not necessarily controversial in so far as the operation of the program, Deputy Chief Judge Langham reported that a bill, HB 45, has been prefiled that would provide law enforcement, firefighters and other defined “first responders” with a legislatively-created presumption of entitlement to benefits in certain circumstances. House Bill 45 is available for review at:

<http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=34183&>

#### **XV. WHAT, IF ANY, “CUTTING EDGE” POLICIES HAVE BEEN IMPLEMENTED BY THE AGENCY IN THE PAST TWO YEARS**

DOAH’s response to this inquiry was to direct us to its upgraded websites: <http://www.doah.state.fl.us/internet/default.cfm> and <http://www.jcc.state.fl.us/jcc/>.

DOAH management reported that significant upgrades have been made on both web pages, including broader document depository ability, better search engine functionality, and enhanced security. Also, additions were recently made to emergency preparedness measures to protect information against catastrophic loss.

DOAH’s efforts in this regard have been well received by stakeholders interviewed. Everyone outside the agency who was interviewed stated that the website enhancements provided a more efficient and less costly tool to assist them in representing their clients.

#### **XVI. AGENCY PROGRAM GOALS**

In their most recent long range planning report and in the separate 2006 OJCC Annual Report, the Division reported that while program goals remain valid, measurements and standards to determine whether the agency’s mission and goals were being met for OJCC were being revised.

When asked about these proposed changes, attorneys who practice before OJCC indicated that they felt that the new standards were much more reliable and would provide more value to the Legislature in measuring OJCC’s performance.

## **XVII. WHAT WOULD THE MANAGEMENT OF DOAH LIKE THE GOVERNOR-ELECT AND LIEUTENANT GOVERNOR-ELECT TO KNOW ABOUT THE AGENCY**

Senior management for the Division emphasized that both programs have become much more efficient in the delivery of services over the past several years. They point to the Florida Supreme Court's recognition of their website and use of electronic filing protocols and their use of technology to speed the efficient progress of cases. Management stated that a priority in creating a better web platform was to ensure that pro-se litigants and members of the public would find it easier to obtain information regarding their cases. To that end, the technology staff of the Division continues to work on improvements that will make the system more user-friendly for pro-se litigants. Technology replacement is a Budget priority, as discussed above. The Division's management also emphasized that the judges in both programs are aware that they need to be accountable to the public and that they embrace the challenge and responsibilities that these positions grant them.

## **XVIII. STAKEHOLDER INPUT ON THE OPERATION OF DOAH**

Within the truncated time period for this review, interviews were held with lawyers who practiced in areas including healthcare, environmental law, bid protests and professional licensing and from lawyers in government and the private sector. Likewise, workers' compensation claims lawyers who represented both business and individual claims were interviewed. Finally, the current and past chairs of the Statewide Nominating Commission were interviewed.

Overall, stakeholders reported a generally favorable attitude toward the performance of both DOAH and the OJCC. Where there were disagreements, they were more in the nature of law and policy rather than any concern with the judicial process or the capabilities of the judges.

Lawyers practicing at DOAH indicated some frustration with the end of the process; namely, the ability to obtain closure from state agencies once a recommended order was issued. Additionally, lawyers practicing in the area of workers' compensation noted marked improvement in the process since the program was moved from the Department of Labor and Employment Security to DOAH. Regional differences in procedures and case management were also expressed.

One area of common concern was the quality of venues for hearings outside of Tallahassee, particularly in larger urban areas. Several practitioners did not feel that these venues were secure enough or that they exuded the appropriate atmosphere of decorum one normally thinks of for a judicial setting. As previously noted, the OJCC is aware of these concerns and has made improved security a budget priority.

All interviewees were generally satisfied with the overall quality of judging. Interviewees commented that the ALJs and the Judges of Compensation Claims were qualified to perform this important work.

## **RESOURCES**

1. Legislative Budget Request 2007-2008
2. Legislative Budget Request Schedule IV-C
3. Organizational Chart
4. Budget Priority Issues 2007-2008
5. Summary of Appropriations, Approved Budget, Expenditures and FTE, Fiscal Year 1987-1988 through 2005-2006
6. Fiscal Year 2006-2007 Total Costs Recovery Methodology (DOAH)
7. Analysis of Agency Request for Administrative Law Judges' Services 2006
8. Statement of Agency Organization and Operation (on website)
9. Long Range Program Plan, Fiscal Years 2007-2008 through 2011-2012
10. Division of Administrative Hearings 32<sup>nd</sup> Annual Report, February 1, 2006 (on website)
11. Chapter 28 of the Florida Administrative Code (Uniform Rules) (on website)
12. Chapter 440.422 and 440.45, Florida Statutes (on website)
13. Chapters 120.51, 120.52, 120.57, 120.65, 120.651 and 120.569 Florida Statutes (on website)
14. 2004 Central Panel Directors Conference Results of Diversity Survey
15. OPPAGA Report Number 04-37-Merging DMS Quasi-Judicial Entities Would Not Result in Savings or Increased Efficiencies
16. Response of DOAH to OPPAGA Information Request of March 18, 2004 on Feasibility of Merging Selected Quasi-Judicial Entities.
17. DOAH 2006 Clerk Office Manual
18. Administrative Law Judge Manual