

OFF THE RECORD

OAALJ

Summer 2004

Conference 2004 — Not to Be Missed!

By David Marcus, Conference Committee Chair

OAALJ's biennial conference, co-sponsored this year by the Willamette University College of Law (WUCL) and the OSB Administrative Law Section, will be held on Saturday, October 30, 2004 at Willamette University College of Law. "*Delivering Justice in Administrative Decision-making in Oregon*" has been designed to attract Administrative Law Judges, Hearing Officers and Attorneys, as well as

government managers and administrative staff at all levels -- state, county and city.

From the keynote address by Justice W. Michael Gillette to the closing session, "Promoting Public Confidence: Ethics, Fairness, and the Appearance of Fairness in the Administrative Justice System," this year's conference is packed with timely and relevant topics and presentations. The program has been accredited for 9.5 hours of MCLE, including 1 hour of ethics and one hour of eliminating bias; 5.5 hours are earned on the day of the conference and an additional 4 hours can be earned, based on participants listening to audio recordings of concurrent breakout sessions not attended in person (all participants will receive audio CDs and written materials for all the concurrent breakout sessions).

In addition, the co-sponsors are also holding the first ever

"Administrative Law Day" at the law school on Friday, October 29. Justice Rives Kistler will be the keynote speaker and will address *The Role of Administrative Law in the Modern Lawyer's Life*. There will also be a panel presentation on *Career Opportunities in Administrative Law*. A new law student essay competition, with a \$1,000.00 prize (funded through conference proceeds) will also be introduced. There is no fee for these presentations, which are targeted to law students but are open to the public.

Space for the Saturday conference is limited to 150, so interested persons are encouraged to register early (there is also a discount for registration completed before October 8). Additional discounts are available for OAALJ members and for members of the Administrative Law Section (practitioners only, ALJs must be OAALJ members to qualify for the discount). The OAALJ an-

nual membership meeting will be held during the lunch break at the conference, so if you have been considering joining the OAALJ (or haven't yet submitted your renewal for this year), becoming a member now will entitle you to the conference fee discount and allow you to participate fully at the annual meeting. The membership application can be found on page 9 of this edition of *Off The Record*. A copy of the conference brochure/registration form can be downloaded from the OAALJ website. Administrative Law Section membership forms and the conference brochure can also be downloaded at the Section's website www.osbadmin.homestead.com.

This year's conference offers perhaps the best program in the 18-year history of the conference, and we anticipate that it will be the most well attended conference to date. Credit for this goes

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OAALJ BOARD OF DIRECTORS 2004

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News From National

By David Marcus, NAALJ Board Member

The biggest item of news from The National Association of Administrative Law Judges (NAALJ), our parent organization, is the upcoming Annual Meeting and Conference, scheduled for November 3-7 in Baltimore. The program is now finalized and the conference brochure may be downloaded from the NAALJ website, www.naalj.org.

My term on the Board will be expiring and I will not be seeking re-election. Serving on the Board has been a great experience and has provided me with the opportunity to form lasting professional relationships with ALJs all over the country. Attending the conference (and on occasion serving as a presenter) has been especially rewarding. I hope to attend future NAALJ conferences, and encourage my Oregon colleagues to make every effort to also experience an NAALJ conference. These gatherings provide an opportunity like no other, for learning and improving ourselves as professionals, and for es-

ablishing relationships with colleagues from a number of states and administrative systems. If you are considering attending this year's conference, please let me know-- ddtmarcus@netzero.net.

Executive Director John W. Hardwicke, former Chief Administrative Law Judge for the Maryland Office of Administrative Hearings, will be attending the Central Panel Directors' Meeting, which will be held in Seattle, Washington, in early September. He will pull extra duty when he attends a specially arranged meeting of the Washington Administrative Law Judges' Association (WALJA) on September 9. WALJA has recently revived as a professional organization, and I have had the pleasure of working with its new president, Brian Watkins, ALJ in the WA OAH, to promote affiliation of WALJA with NAALJ. The WALJA Board has unanimously recommended affiliation, and a vote of the membership will be taken at the September 9

meeting. I am looking forward to welcoming WALJA as the 14th and newest affiliate of NAALJ.

OAJL members should have recently received the newest *Manual for Administrative Law Judges*, revised and updated this year by Professor Morrell Mullins. If you are a member and did not receive this excellent resource, please let me know. And finally, watch for email notification that the Fall issue of the NAALJ newsletter is available on the NAALJ website. Projected release is September. If you want to be sure, just check the NAALJ website.

Seeking Nominations for Bruce A. Black Award

The Board is currently accepting nominations for the 2004 recipient of the Bruce A. Black Award, honoring an individual who exemplifies "outstanding public service in the advancement of Oregon's administrative justice system." This annual award was created to honor Bruce A. Black, who died suddenly in April 2003.

The Board welcomes your input. Please submit your nomination, in writing, with an explanation for why your nominee should be considered for this award. Submit your nominations to: OAJL, PO Box 3626, Salem, Oregon 97302. Or, you can email to board@oalj.com. Nominations must be received by September 30, 2004 for consideration. The recipient will be honored at the Annual Meeting on October 30, 2004. Thank you.

New OAJL Website Now On Line

By Gregory J. Naugle

OAJL is excited to announce a new website and an additional URL. You can find it at <http://www.oalj.com>.

The website has been completely redesigned and features a membership form, newsletters, member listings, links to legal and administrative websites, meeting minutes, scholarship information, dedicated email, and much more. We hope to have the .org domain transferred soon. Until then, visit us at our website, found at www.oalj.com. Let us know what you think about the new look.

A Day in the Life: Profile on CCB Hearings

By Peter Rader

The Construction Contractors Board (CCB) is charged with regulating contractors and residential home inspectors in the State of Oregon. The definition of contractor is quite broad and generally includes anyone who alters, improves, demolishes, or inspects real property for compensation. ORS chapter 701 and OAR chapter 812 allow the CCB to take enforcement action against licensees who violate the rules or statutes, but in addition, the CCB accepts cases involving monetary damage claims against contractors filed by other contractors, homeowners, employees, owners of small commercial structures, building material suppliers or certain employee trusts, such as union pension funds. The CCB may also accept cases where the parties contractually agree to have disputes resolved by the CCB (rather than through circuit court or commercial arbitration), and from circuit court referrals.

A typical claim may involve as many as 30 items of construction, such as a poorly installed roof, defective siding, concrete failure, failure to pay wages earned on a project, or failure to properly inspect a home prior to purchase. As decision makers, we are often required to interpret the parties' contract or whether the work was properly done and the appropriate remedy, if any. To assist us, we rely on agency investigations, trade publications, expert witness testimony, and our own knowledge of industry standards. Claims for monetary damages arising from alleged con-

tractor error have no jurisdictional limit and frequently reach six figures. With three full time arbitrators (David Marcus, Gregory Naugle and myself), we process between 300 – 400 cases annually.

Contested Case Hearings vs. Arbitrations

Historically, monetary damage claims over \$1,000 were always heard as contested case hearings, but in July of 2002, the board began referring almost all cases to the OAH as arbitrations pursuant to legislative authority. Although the parties can elect to have the claim heard as a contested case (or file in circuit court), over 80% of the cases we hear are arbitrations.

There are many differences between the two types of proceedings, but a major distinction is that contested cases are appealable to the CCB, and ultimately to the Court of Appeals, whereas arbitration awards are final decisions that are not subject to agency review. Parties may request an arbitrator to correct or modify an award on the limited grounds permitted in ORS chapter 36, but the merits of an award cannot be successfully challenged absent proof of fraud or arbitrator misconduct.

Another significant difference is that arbitrators have authority to conduct the hearing in the manner the arbitrator deems most appropriate for a fair and expeditious disposition of the proceeding.

The Administrative Procedures Act does not apply to arbitrations. For example, in a contested case hearing, if a claimant proves that improper work was performed, the ALJ has little discretion to adjust the amount claimed if the contractor does not overcome the liability issue. Arbitrators, however, have the authority to award an amount that achieves the fairest result.

The Mediation Alternative

Cases can be complex and hearings with counsel can last for several days. One reason we're able to process as many cases as we do is that a settlement program we developed over the past four years allows us to dispose of many cases early on. Typically, a pre-hearing conference is set with the parties to discuss procedural aspects of the case. If the parties are interested in settlement, the arbitrator will assign the case to another ALJ for mediation prior to hearing. Participation is voluntary and the parties drive the process since they must live with the results. If a settlement is reached we draft an agreement on the spot and when the terms are complied with, either the settlement judge, or the agency, issues a final order. If the case doesn't settle, the hearing proceeds as originally scheduled.

Our success rate for cases referred for settlement is around 83%, which results in significant savings to the CCB from having to otherwise conduct lengthy, and ex-

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Member Profile: Lawrence Smith

By Andrea Sloan



If the OAH had to pick one person to be the designated "Jack [or Jane] of All Trades," Larry Smith would be at the top of the list. He has been at this job for 22 years and has conducted almost every type of hearing we do.

Larry hails from the Southside of Chicago (I don't think he knew Leroy Brown), and he is still a White Sox fan. He played drums in a rock band and was active in sports. Larry graduated from the University of Illinois with a degree in psychology (pre-med), and then moved west to attend law school at the University of Oregon. He's been here ever since.

Larry started his legal career with the Douglas County Legal Aid office. He then moved north and was an investigator for the State Dental Board. Since 1982, Larry has been conducting hearings. He's taken job rotations through the Workers' Compensation Board and the Workers' Compensation Division. He is also trained to do Implied Consent and other hearings for the Transportation Division of the OAH. Larry is regularly assigned to hold hearings for the OLCC, and Employment Department, and he is currently cross-training with DHS. Larry has also conducted hearings for medical li-

censing boards, the Lottery, Building Codes, DEQ and DPSST.

Larry has made presentations for the State Bar's Continuing Legal Education program on unemployment compensation topics and other issues.

Larry has been a member of the OAALJ for years, and has been on the Board for the past two years. His goal as a board member is to make the OAALJ relevant to those in the admin law field. Larry believes that there is strength in numbers and that OAALJ can accomplish more for its members if we have a larger membership base.

Now comes the interesting part. Larry is an avid traveler, and saves up his vacation time to take long trips each year. He particularly loves traveling in Mediterranean countries. Larry's maternal grandfather was from the island of Milos in Greece (that is where the Venus de Milo statue was found). Larry's most memorable trip, however, was to Mali, in West Africa. This is one of the poorest countries in the world, but Larry noticed that the Malians seemed happier and more generous than many living in this country. Larry's favorite memory is when he was pulled out to dance, following the performance of a very athletic dancer. Larry wowed the crowd by doing a modified "surf frug." The crowd of about 1,000 went wild and Larry was dubbed "Danke" (the dancer) by the villagers. He's been back since then and hopes to visit again this December.

Locally, Larry stays active with sports. He has also written several plays, some of which have been produced in Portland (including a dark play about Richard Ramirez, the Night Stalker — this play received critical acclaim). His plays are mostly dark comedy/satire pieces. Larry has also produced some short music videos. Every year he produces a polka music video in conjunction with the annual Polka Party. Larry reminds us not to miss the Polka Party Convention this October. He reports that the Polka Party is still developing its platform! Someday, Larry plans to write a movie that is produced. I'll be one of the first to buy a ticket to Larry's movie!

The OAALJ Board Wants You!

OAALJ is currently accepting applications from ALJs interested in joining the Board. We will be accepting nominations for new Board members, and electing a new slate of officers at the Annual Meeting on October 30, 2004. To be considered, nominations must be received **before** October 15, 2004. To be eligible, you must be a member of OAALJ. If you can spare a couple of hours each month and want to contribute to enhancing the practice of administrative law in Oregon, please send your nomination to board@oaalj.com before October 15th. Thank you.

Announcing Annual Meeting — 2004

The OAALJ Board is pleased to announce that the 2004 Annual Meeting will coincide with the Fall Conference on Saturday, October 30, 2004, at Willamette University College of Law, in Salem, Oregon. The Annual Meeting will be held during the noon hour. All current members, and those interested in joining OAALJ, are invited to attend this annual business meeting. We will elect new members to fill Board vacancies, review the budget and bylaws, and present the Bruce A. Black Award. For more details, please check our website, www.oaalj.com (or .org). We look forward to seeing you at the Annual Meeting and we welcome your participation in this important organization.

Review of Annual Meeting — 2003

By Steve Rissberger

Justice Durham Headlines OAALJ Annual Meeting

Noting dramatic progress in administrative law with the creation of a central panel in Oregon, Supreme Court Justice Robert Durham headlined OAALJ's 2003 annual meeting on December 11, 2003. The dinner meeting also featured the introduction of the Bruce Black Award for excellence in administrative law and a changing of the guard among members of OAALJ's governing board.

Justice Durham stated that establishment of a central panel in Oregon represented a landmark development in the evolution of administrative law in Oregon. He lauded ALJs for high quality work in conducting and deciding a wide range of hearings, based on his perspective as a member of the state's highest appellate court. Justice Durham served as Chair of the Oregon Commission on Administrative Hearings from 1988 through 1989. The Commission

eventually recommended the establishment of an independent central panel in Oregon, but the Oregon legislature failed to act on the commission's proposal for nearly a decade.

The meeting featured the introduction of a new institution for OAALJ—the annual Bruce Black Award for excellence in administrative law. The first award was given to Bruce Black's widow, Ruth, during a ceremony near the end of the annual meeting. David Marcus, a founding member of OAALJ, noted that the award would be given each year “to a member of administrative law profession who best represented the qualities that made Bruce such a positive force in the community.”

Black died suddenly in April 12, 2003 while jogging. He was a former president of the organization, the founding editor of OAALJ's newsletter “Off the Record” and a sitting board member at the time of his death.

Three long-term board members, Dee Anna Hassanpour, Maurice Russell and Daina Upite, retired from the board at the conclusion of the meeting. Hassanpour and Russell elected not to seek new terms on the board after accepting management-level positions with OAH's Social Services Section earlier this year. Upite, a veteran board member, accepted an appointment to the remainder of Bruce Black's term, but chose not to continue further on the Board. Peter Rader, Greg Naugle and David Marcus were elected to fill the resulting vacancies on the Board.

The Board was expanded from seven to nine members in 2002. The Board has elected to continue to operate with nine members in order to strengthen ties with the membership, increase the board's ability to take on multiple projects and to allow a larger pool of members to remain involved in the organization's day-to-day activities.

President's Message

By Alison G. Webster, OAALJ Board President

It's September already, yipes! The time for summer vacations and staying up late to watch the Olympics has passed. Fall sweaters, football season and OAALJ's Annual Meeting and Award Presentation loom ahead. Hopefully, you have all received the brochure and registration form for OAALJ's Fall Conference, *Delivering Justice in Administrative Decisionmaking*, set for Saturday, October 30, 2004 at Willamette University College of Law in Salem. We are looking forward to this event and encourage all administrative law professionals, including attorneys, ALJs, hearing officers and state, county and city administrators and staff to attend. Justice Michael Gillette of the Oregon Supreme Court will be giving the keynote address in the morning. As many of you know, Justice Gillette is a wise, interesting and inspirational speaker.

OAALJ is co-sponsoring the Conference with the Oregon State Bar Administrative Law Section and Willamette University College of Law. The Conference agenda includes a panel discussion on effective hearing processes and procedures, with views from both bench and bar. In the afternoon, attendees may chose among a series of breakout sessions, ranging from prehearing discovery and motions, evidence issues, alternative dispute resolution, a legislative update, recognizing bias and finally, tips for better writing. The Conference will close with a presentation on ethics, fairness and the appearance of fairness in the administrative justice system. During the lunch hour, OAALJ will hold its annual business meeting and present the Bruce Black Award to a well-deserving administrative law professional.

On Friday, October 29, 2004, OAALJ, the OSB Administrative Law Section, and the Center for Law and Government at Willamette University College of Law are also co-sponsoring the first ever Administrative Law Day at the College of Law. This program, designed primarily for law students, will include a keynote address by Justice Rives Kistler of the Oregon Supreme Court and a panel presentation on career opportunities in administrative law. We are also sponsoring a student essay competition with a \$1,000 prize in connection with Administrative Law Day.

As my tenure as OAALJ President comes to a close (we will be electing the 2004-2005 Board at the Annual Meeting on October 30th), I want to thank the current board members for all their hard work this past year. David Marcus deserves huge kudos for spearheading the planning of the Fall Conference. First year board members Greg Naugle and Peter Rader, our Vice President and Treasurer respectively, brought creative ideas and lots of enthusiasm to the Board. Greg has also done a great job overseeing the website renovation. Be sure to check out what's new at www.oaalj.com. We now have new email addresses affiliated with the our OAALJ website. To reach any OAALJ Board member, write to board@oaalj.com. To comment on or contribute to *Off The Record*: newsletter@oaalj.com. Finally, special thanks to Andrea Sloan, the editor of this fine publication, as well as Steve Rissberger, Monica Smith, Larry Smith and Cathy Coburn. It was a pleasure working with you all.

Fall Conference News

continued

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to a diligent committee of 12 diverse members, whose work began back in March and will continue through the day of the conference to assure a satisfying experience for all attendees. They are: David Lackey, retired ALJ; Gretchen Miller, Presiding ALJ for the OAH; Steve Demarest, Charles Smith,

Bernadette Janet, Gregory Naugle and Alison Webster, ALJs for the OAH; Abbie Herman and Steve Rissberger, ALJ's for the WCB; Linda Lohr, ALJ for the BOLI; Warren Foote, AAG; and, Ann Fisher, Attorney.

Credit is also due Linda Pyle, Assistant Director, Willamette Uni-

versity Scheduling, Events and Conferences. Without her invaluable professional and administrative support, this conference would simply not be possible.

WHAT'S NEW IN THE TRANSPORTATION DIVISION OF OAH?

By: Steve Tegger, Presiding ALJ, Office of Administrative Hearings-Transportation Division

Integration and efficiencies have been the watchwords in the 2003-05 biennium for the Office of Administrative Hearings as a whole, and particularly so for the Transportation Division.

When the Central Panel was created as a pilot in January 2000, the hearing officers and operations staff from the "sending" agencies, including ODOT and OLCC, became employees of the Employment Department. But many of the support items categorized in the budget under Services and Supplies remained the responsibility of the sending agencies. The pilot could be successfully supported through a partnership with the sending agencies without needing to address the logistics of transferring computers and equipment, networks and technical support, fleet ownership and maintenance, and the like. If the pilot proved unsuccessful, it would be a lot easier to undo the personnel actions than to transfer Services and Supplies back to the sending agencies.

All this changed with the passage of HB 2526 in 2003. The Legislature made the Central Panel permanent and renamed it the Office of Administrative Hearings. For most ALJs, other than having to get used to a different name, the change from pilot to permanent status was virtually invisible. But behind the scenes, the biennium started in July 2003 with a flurry of activity to begin transferring Services and Supplies from the sending agencies to the Employment Department, completing the integration of hearings services for most state agen-

cies, boards and commissions into a single Office of Administrative Hearings.

The task is ongoing and may stretch into the next biennium and beyond. Leases for the Beaverton, Portland (Halsey), Springfield, Bend and Medford offices were formally transferred by ODOT to Employment along with the office furniture and equipment. The facilities staff at Employment is now fully responsible for our satellite office locations, but ODOT remains responsible for the space at DMV Headquarters on Lana Avenue in Salem. That will remain true so long as OAH occupies a portion of an ODOT-owned building.

Computer and network transfers have been a far more daunting task. OLCC transferred ownership of computers and office equipment to Employment last summer. We are finishing work on the upgrade for our two out-stationed ALJs in Transportation, Charlotte Rutherford and Larry Smith. ODOT upgraded all of the computers used by Transportation staff in April and May of 2004, but maintains ownership.

As of this date, the Transportation Division is still on the ODOT network. , Transportation ALJs can access the Employment Department network for many functions, including access to EDWEB and , the time system. However, Transportation staff is on a different e-mail system than the rest of OAH and has no com-

mon access to documents that the rest of OAH can access. We have been able to work around many of the difficulties, but over the next few months, OAH, ODOT and Employment will be working together to migrate the Transportation Division onto the Employment network. While ownership of computer equipment will not change, responsibility for computer and network support will be primarily with Employment. Being on the same network and having a common e-mail system will be a big step towards OAH becoming a single organization.

Fleet ownership and the costs of maintenance will remain with ODOT. In general, Employment uses vehicles out of the motor pool and does not maintain its own fleet. While OAH could go out and lease or purchase its own vehicles, this would have a major impact to both the OAH and ODOT budgets. ODOT vehicle costs associated with OAH are documented in the OAH budget to ensure the total cost of OAH is captured. ODOT recently has focused attention on documenting fleet maintenance and assuring that all vehicles are receiving regular servicing. OAH is cooperating in this effort.

Gaining efficiencies in the way we conduct our hearings business has also been a focal point of activity for the Transportation Division. The number of Implied Consent hearings being requested has remained relatively static since the central panel was formed (4185 in 2003, 4366 in 2002, 4110 in 2001, and 4436 in 2000), but we are doing the same level of business with fewer ALJs. OAH lost a total of ten po-

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OREGON ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

P.O. BOX 3626

Salem, Oregon 97302-0626

e-mail: www.oaalj.org

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Work phone: _____ Home phone: _____

The board plans to offer our newsletter electronically. Please provide your preferred e-mail address for this purpose.

e-mail (work) _____ e-mail (home) _____

Employing Agency or Employer: _____ Full Time: _____ Part Time: _____

Business Address: _____
street city state zip

Are you willing to serve on the board or a committee? _____

Issues that concern you: _____

Please make your check payable to the Oregon Association of Administrative Law Judges in the amount of \$65.00 and send it to P.O. Box 3626, Salem Oregon 97302-0626. We appreciate your support.

Signature: _____ Date: _____

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The Board welcomes submissions, news items and subject matter suggestions. Please send your ideas, comments and suggestions to: newsletter@oalj.com

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