
AGENCY OVERVIEW

140 OFFICE OF ADMINISTRATIVE HEARINGS

Date: 12/14/2006

Time: 08:17:11

STATUTORY AUTHORITY

North Dakota Century Code sections 54-57-03, 61-03-22, 12-59, 37-19.1, 28-32-31.

AGENCY DESCRIPTION

The Office of Administrative Hearings is an executive branch agency that provides independent administrative law judges to preside over state and local administrative hearings and related proceedings.

Hearings are conducted under authority from the Administrative Agencies Practices Act (NDCC Chapter 28-32), specific agency statutes, agency procedural rules, and the Uniform Rules of Administrative Procedure for Adjudicative Proceedings (ND Admin. Code Article 98-02).

AGENCY MISSION

The Office of Administrative Hearings ("OAH") is an executive branch agency that provides independent administrative law judges ("ALJs") to preside as hearing officers over state and local administrative hearings and related proceedings. The mission is to:

- provide ALJs for all state ch. 28-32 agencies required to use OAH services.
- provide ALJs for those state agencies not under ch. 28-32 and units of local government that are required to use OAH services.
- provide ALJs, upon request, for those state agencies that are not required to use OAH services.
- provide ALJs, upon request, for state agency rules hearings.
- provide ALJs, upon request, for any unit of local government.
- provide ALJs, upon request, for any tribal government in this state.
- provide ALJs, upon request, for the judicial branch.

OAH ALJs preside as procedural or substantive ALJs for all state agencies required to use OAH services. A procedural ALJ conducts the hearing and related proceedings, but the agency head, who must be present at the hearing, issues the findings of fact, conclusions of law, and order. A substantive ALJ conducts the hearing and related proceedings and issues recommended findings of fact and conclusions of law, and a recommended order. The agency head issues the final order. For some agency matters OAH ALJs conduct the hearing and issue the final order. OAH ALJs also preside as procedural or substantive ALJs for those state agencies and units of local government that are not required to use OAH services. They also preside at agency rules hearings, conducting the hearing only.

OAH ALJs conduct hearings under authority from the Administrative Agencies Practices Act (N.D.C.C. ch. 28-32), specific agency statutes, agency procedural rules, and the Uniform Rules of Administrative Procedure for Adjudicative Proceedings (N.D. Admin. Code art. 98-02).

AGENCY PERFORMANCE MEASURES

Effective July 1, 2006, performance measures have been implemented on a trial basis for Workforce Safety and Insurance cases only. Essentially, they are case processing guidelines, measuring the length of time to "process" various components of administrative proceedings. OAH will shortly begin developing similar performance measures/case processing guidelines for its other agency caseloads, too. Of course, results from the WSI case processing guidelines are not available yet. Although performance measures for conducting administrative hearings are a helpful management tool, because of the inherent variability in hearings, they should be considered as guidelines and not strict performance measures.

MAJOR ACCOMPLISHMENTS

Completed agency reorganization on July 1, 2004 and continued to refine it throughout 2005 and 2006. The reorganization was aimed at better conducting of hearings, particularly Workforce Safety and Insurance and Department of Human Service hearings.

Established performance measures, effective July 1, 2006, for WSI hearings and will develop performance measures for other agency hearings during the remainder of the 2005 - 2007 biennium.

Co-sponsored the National Association of Hearing Officials 2006 Annual Professional Development Conference in Bismarck. The Department of Transportation and the Department of Human Services also lent assistance. The 89 attendees were from North Dakota, 32 other U.S. states and the Virgin Islands.

FUTURE CRITICAL ISSUES

Costs to continue in the payroll column:

The increased salary for the 2007-2009 biennium results from the two year rather than one year funding of the second 4 percent raise granted by the Legislative Assembly for the 2005-2007 biennium. Only one raise, the first 4 percent raise, was funded for the full biennium. Accordingly, to continue the second raise for two years, OAH is required to increase its salaries by \$15,350 to cover the extra year in the 2007-2009 biennium, and increase its fringe benefits amount accordingly (\$2,576). The increased salary change also results from merit increases given to four ALJs and three support staff. Also one new ALJ received a probationary raise. The impact of these raises for the full biennium totals the increase in salary, when benefits are included. The total cost of increases due to merit raises is \$16,800 when funded over a two year period.

REQUEST SUMMARY

Date: 12/14/2006

140 OFFICE OF ADMINISTRATIVE HEARINGS

Bill#: HB1017

Time: 08:17:11

Biennium: 2007-2009

| Description | Expenditures 2003-2005 Biennium | Present Budget 2005-2007 | Budget Request Change | Requested Budget 2007-2009 Biennium | Optional Budget Request |
|--------------------------------------------|---------------------------------------|--------------------------------|-----------------------------|-------------------------------------------|-------------------------------|
| BY MAJOR PROGRAM | | | | | |
| OFFICE OF ADMINISTRATIVE HEARINGS SERVICES | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |
| TOTAL MAJOR PROGRAMS | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |
| BY LINE ITEM | | | | | |
| SALARIES AND WAGES | 896,040 | 1,042,927 | 26,897 | 1,069,824 | 120,528 |
| OPERATING EXPENSES | 274,910 | 366,917 | 0 | 366,917 | 57,500 |
| TOTAL LINE ITEMS | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |
| BY FUNDING SOURCE | | | | | |
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| SPECIAL FUNDS | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |
| TOTAL FUNDING SOURCE | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |
| TOTAL FTE | 8.00 | 8.00 | .00 | 8.00 | .00 |

REQUEST DETAIL

Date: 12/14/2006

140 OFFICE OF ADMINISTRATIVE HEARINGS

Bill#: HB1017

Time: 08:17:11

Biennium: 2007-2009

| Description | Expenditures 2003-2005 Biennium | Present Budget 2005-2007 | Budget Request Change | Requested Budget 2007-2009 Biennium | Optional Budget Request |
|--------------------------------|---------------------------------------|--------------------------------|-----------------------------|-------------------------------------------|-------------------------------|
| SALARIES AND WAGES | | | | | |
| SALARIES - PERMANENT | 691,397 | 786,586 | 30,612 | 817,198 | 0 |
| SALARIES - OTHER | 21 | 5,000 | -5,000 | 0 | 120,528 |
| TEMPORARY SALARIES | 1,619 | 0 | 5,000 | 5,000 | 0 |
| FRINGE BENEFITS | 203,003 | 251,341 | -3,715 | 247,626 | 0 |
| SALARY INCREASE | 0 | 0 | 0 | 0 | 0 |
| BENEFIT INCREASE | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 896,040 | 1,042,927 | 26,897 | 1,069,824 | 120,528 |
| SALARIES AND WAGES | | | | | |
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| SPECIAL FUNDS | 896,040 | 1,042,927 | 26,897 | 1,069,824 | 120,528 |
| TOTAL | 896,040 | 1,042,927 | 26,897 | 1,069,824 | 120,528 |
| OPERATING EXPENSES | | | | | |
| TRAVEL | 20,714 | 22,000 | 0 | 22,000 | 0 |
| SUPPLIES - IT SOFTWARE | 9,889 | 9,000 | 0 | 9,000 | 3,000 |
| SUPPLY/MATERIAL-PROFESSIONAL | 870 | 2,244 | 0 | 2,244 | 0 |
| MISCELLANEOUS SUPPLIES | 488 | 5,235 | -2,000 | 3,235 | 0 |
| OFFICE SUPPLIES | 5,392 | 7,283 | 0 | 7,283 | 0 |
| POSTAGE | 10,597 | 10,000 | 1,400 | 11,400 | 0 |
| PRINTING | 2,505 | 3,000 | 0 | 3,000 | 0 |
| IT EQUIP UNDER \$5,000 | 17,025 | 7,500 | 1,500 | 9,000 | 4,500 |
| OFFICE EQUIP & FURN SUPPLIES | 4,996 | 11,450 | -1,500 | 9,950 | 0 |
| UTILITIES | 272 | 400 | 0 | 400 | 0 |
| INSURANCE | 1,645 | 1,443 | 0 | 1,443 | 0 |
| RENTALS/LEASES-EQUIP & OTHER | 4,320 | 6,725 | -886 | 5,839 | 0 |
| RENTALS/LEASES - BLDG/LAND | 42,709 | 46,890 | 1,486 | 48,376 | 0 |
| REPAIRS | 156 | 3,000 | -1,000 | 2,000 | 0 |
| IT - DATA PROCESSING | 25,796 | 48,747 | 0 | 48,747 | 0 |
| IT-COMMUNICATIONS | 10,680 | 14,000 | 1,000 | 15,000 | 0 |
| IT CONTRACTUAL SERVICES AND RE | 455 | 1,000 | 0 | 1,000 | 0 |
| PROFESSIONAL DEVELOPMENT | 9,111 | 15,000 | 0 | 15,000 | 0 |
| OPERATING FEES AND SERVICES | 76 | 2,000 | 0 | 2,000 | 0 |
| FEES - PROFESSIONAL SERVICES | 107,214 | 150,000 | 0 | 150,000 | 50,000 |
| TOTAL | 274,910 | 366,917 | 0 | 366,917 | 57,500 |

REQUEST DETAIL

Date: 12/14/2006

140 OFFICE OF ADMINISTRATIVE HEARINGS

Bill#: HB1017

Time: 08:17:11

Biennium: 2007-2009

| Description | Expenditures 2003-2005 Biennium | Present Budget 2005-2007 | Budget Request Change | Requested Budget 2007-2009 Biennium | Optional Budget Request |
|------------------------------|---------------------------------------|--------------------------------|-----------------------------|-------------------------------------------|-------------------------------|
| OPERATING EXPENSES | | | | | |
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| SPECIAL FUNDS | 274,910 | 366,917 | 0 | 366,917 | 57,500 |
| TOTAL | 274,910 | 366,917 | 0 | 366,917 | 57,500 |
| FUNDING SOURCES | | | | | |
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 |
| SPECIAL FUNDS | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |
| TOTAL FUNDING SOURCES | 1,170,950 | 1,409,844 | 26,897 | 1,436,741 | 178,028 |

CHANGE PACKAGE SUMMARY**140 OFFICE OF ADMINISTRATIVE HEARINGS**
Biennium: 2007-2009**Bill#: HB1017****Date: 12/14/2006****Time: 08:17:11**

| Description | FTE | General Fund | Federal Funds | Special Funds | Total Funds |
|-------------------------------------------------|------------|--------------|---------------|----------------|----------------|
| AGENCY BUDGET CHANGES | | | | | |
| Cost To Continue | .00 | 0 | 0 | 26,897 | 26,897 |
| Agency Total | .00 | 0 | 0 | 26,897 | 26,897 |
| OPTIONAL REQUEST | | | | | |
| 3 Optional Increase - Salaries & Benefits | .00 | 0 | 0 | 120,528 | 120,528 |
| 5 Optional Increase - Professional Services | .00 | 0 | 0 | 50,000 | 50,000 |
| 6 Optional Increase - Digital Recording Project | .00 | 0 | 0 | 7,500 | 7,500 |
| Optional Total | .00 | 0 | 0 | 178,028 | 178,028 |

BUDGET CHANGES NARRATIVE

140 OFFICE OF ADMINISTRATIVE HEARINGS

Date: 12/14/2006

Time: 08:17:11

| | | | |
|------------------------|-----------------------|----------------------|------------------|
| Change Group: A | Change Type: A | Change No: 20 | Priority: |
|------------------------|-----------------------|----------------------|------------------|

OMB Salary Equity -

Provides \$120,528 for equity adjustments to attorney salaries that are significantly below market.

| | | | |
|------------------------|-----------------------|----------------------|------------------|
| Change Group: A | Change Type: A | Change No: 21 | Priority: |
|------------------------|-----------------------|----------------------|------------------|

OMB Professional Services -

Increases professional fees by \$50,000 to cover anticipated caseloads that will require additional contracted ALJ services.

| | | | |
|------------------------|-----------------------|----------------------|------------------|
| Change Group: A | Change Type: A | Change No: 22 | Priority: |
|------------------------|-----------------------|----------------------|------------------|

OMB Digital Recording Project -

Adds \$7,500 for digital recording equipment and software to enable digital recording of hearing proceedings.

| | | | |
|------------------------|-----------------------|---------------------|--------------------|
| Change Group: O | Change Type: A | Change No: 3 | Priority: 3 |
|------------------------|-----------------------|---------------------|--------------------|

Optional Increase - Salaries & Benefits - Optional increase in salaries (and corresponding benefits) for administrative law judges. See narrative for complete explanation.

The Office of Administrative Hearings proposes, as an optional salary expense for OAH's budget, the following salaries for its administrative law judges and its director/administrative law judge beginning July 1, 2007, in addition to whatever general salary increase is passed by the Legislative Assembly for state employees for the 2007-2009 biennium. This proposal will increase salaries by an amount of \$102,786 for the biennium, and will increase benefits by an amount of \$17,742 for the biennium. The total

increase for salaries and benefits for the biennium for this optional salary expense is \$120,528. Since OAH's inception in 1991, salaries for OAH's ALJs have been increased only when the Legislative Assembly granted state employees salary increases, and, in some of those years, OAH ALJs also got very small merit increases, when OAH had moneys available from saved salary. ALJ salaries have not kept pace with the classification schedule for ALJs, the market for attorneys in North Dakota, or the market for ALJs nationally.

During its last hiring process, when OAH filled a vacant position, OAH became especially aware of how far it had fallen behind. With available salary moneys from its vacant position, OAH was only able to offer new ALJ applicants a maximum of \$54,000. OAH interviewed 12 applicants. All but one asked if more money were available. Three applicants told OAH that it was not offering enough for them to remain in consideration. The first two applicants offered the position turned OAH down, citing low salary. The third applicant offered the position accepted but only after again inquiring about whether more money was available. As can be seen from the analysis below, OAH is not competitive anymore, and it needs to upgrade salaries to be able to retain and replace ALJs.

PROPOSAL

The current salary for the director and all ALJs listed in this proposal include salary increases effective July 1, 2006. In other parts of this memorandum, stated salaries may not include increases effective July 1, 2006, but if not, that fact will be noted.

Allen Hoberg - Director/Administrative Law Judge - 26 years experience as a state employee, 3 years experience as an attorney with the Legislative Council, 7 years experience as an assistant attorney general, 16 years experience as the director/ALJ of OAH, 28 years total legal experience - current salary \$6,482 per month (\$77,777 per year) - proposed salary \$7,084 per month (\$85,000 per year).

Bonny Fetch - Lead Administrative Law Judge - 34 years experience as a state employee, 6.5 years experience as a Central Personnel Division hearing officer, 16 years experience as an ALJ for OAH - current salary \$5,412 per month (\$64,941 per year) - proposed salary \$6,250 per month (\$75,000 per year). ALJ Fetch is the lead ALJ for Department of Human Services cases.

Al Wahl - Lead Administrative Law Judge - 12 years experience as a state employee, 12 years as an ALJ for OAH - 37 years in legal profession (25 in private practice) - current salary \$5,109 per month (\$61,301 per year) - proposed salary \$6,250 per month (\$75,000 per year). ALJ Wahl is the lead ALJ for Workforce Safety and Insurance cases.

Rosellen Sand - Administrative Law Judge - 25 years experience as a state employee - 4 years as an ALJ for OAH, 21 years mostly as an assistant attorney general - current salary \$4,823 per month (\$57,888 per year) - proposed salary \$5,833 per month (\$70,000 per year).

Susan Bailey - Administrative Law Judge - 16 months experience as state employee - 16 months as an ALJ for OAH; 5 years as a Cass County assistant states attorney; 8 years total legal experience - current salary \$4,725 per month (\$56,700 per year) - proposed salary \$5,417 per month (\$65,000 per year).

Lead ALJs supervise and review the work of other ALJs. Years of experience given are as of June 30, 2007.

ANALYSIS

OAH looked at a number of factors before proposing these salaries. Although these may seem like substantial raises, and in hard numbers they are, when compared in state, regionally, and nationally, they are only what is necessary for OAH to catch up with the market. OAH primarily looked and compared its salaries with the salaries of attorneys in state government in North Dakota and the salaries of attorneys elsewhere in North Dakota, but also with the salaries of administrative law judges in North Dakota's region and nationwide, and the salaries of district judges in North Dakota. A key point to remember in reading this proposal is that an OAH ALJ is required by law to be a licensed attorney in North Dakota and is also required under the classification system to have at least 5 years of judicial or hearing officer experience, or hearings or trial experience as an attorney.

Attorneys in North Dakota State Government

In 2006 HRMS conducted a salary survey of all attorneys in state government in North Dakota. The survey lists annual salaries of all attorneys in various positions in state government with their salaries effective before the 4 percent increases occurred on July 1, 2006. The salaries of all or most of these individuals were likely increased at least 4

percent on July 1, 2006. Therefore, an even higher salary probably should be used when comparing these salaries to the salaries listed for OAH ALJs that show the July 1, 2006, increase. But, the salaries listed below show the salaries actually given in the survey, without a 4 percent adjustment. In summary, this survey found the following:

1. For attorneys with 25 years or more of total legal experience (13 attorneys), the salaries ranged from a low of \$51,000 per year to a high of \$75,948 per year. State legal experience for these attorneys ranged from 5.2 years to 35.3 years. There were six attorneys being paid at or above \$70,000. (For example, adding a 4 percent raise would increase the high salary to \$78,985.)
2. For attorneys with 15-25 years of total legal experience (20 attorneys), the salaries ranged from a low of \$43,152 per year to a high of \$79,248 per year. State legal experience for these attorneys ranged from .3 years to 23.4 years. There were three attorneys being paid at or above \$70,000.
3. For attorneys with 10-15 years of total legal experience (22 attorneys), the salaries ranged from a low of \$37,224 per year to a high of \$77,124 per year. State legal experience for these attorneys ranged from .1 years to 14.2 years. There were two attorneys at or above \$70,000.
4. For attorneys with 5-10 years of total legal experience (10 attorneys), the salaries ranged from a low of \$44,892 per year to a high of \$70,536 per year. State legal experience for these attorneys ranged from 1.7 years to 7.2 years. There was one attorney at or above \$70,000.
5. For attorneys with 0-5 years of total legal experience (7 attorneys), the salaries were from a low of \$40,000 per year to a high of \$49,500 per year. The attorney in this group with the most total legal experience had 3.3 years of total legal experience. State legal experience for these attorneys ranged from .3 years to 2.0 years.
6. For a group of attorneys who are directors, supervisors, or general counsel, or in non-attorney positions in state government (22 attorneys - this group includes OAH's four ALJs and its director), the salaries ranged from a low of \$54,000 per year (OAH ALJ) to a high of \$105,371 per year. The state legal experience for these individuals ranged from 0.2 years to 38.8 years. The total legal experience for these individuals ranged from 9.3 years to 40.8 years. There were 3 attorneys at or above \$100,000, 10 attorneys at or above \$80,000, and 17 attorneys at or above \$70,000.

In summary, the survey shows there are 94 attorneys working in state government in North Dakota, mostly in attorney, ALJ, or hearing officer positions. The salaries of these individuals range from a low of \$37,222 to a high of \$105,371. Years of legal experience or years of experience in state government appears to not always be a factor in the amount of salary paid to an individual. In total, 29 attorneys are paid at or above \$70,000 per year; 10 are paid at or above \$80,000; and 3 are paid at or above \$100,000. The number of attorneys at or above these three levels would increase with 4 percent salary added in July 2006.

Other attorneys in North Dakota

There appears to be no recent comprehensive salary survey of attorneys in North Dakota. Some anecdotal information is helpful, however.

1. The North Dakota Association of Counties advertised in July 2006 for an "executive-level staff attorney" at a salary ("negotiable") of "\$75,000 plus." A comprehensive benefits package was also provided. The advertisement does not list legal experience as a requirement for this position.
2. The North Dakota court system advertised in August 2006 for a judicial referee in Fargo at a salary of \$4,290 per month (\$51,480 per year) with a state benefits package. A license to practice law and three years experience is required for the position.
3. In June 2006, Burleigh County advertised for an assistant state's attorney-child support at a salary of from \$3,451 - \$3,762 per month (\$39,012 - \$45,144 annually) with only a license to practice law in North Dakota required, no experience.
4. In June 2006, Stark County advertised for an assistant state's attorney at a salary of from \$35,000 per year to \$50,000 per year with only a license to practice law in North Dakota required, no experience.
5. In June 2006, Morton County advertised for an Attorney II position in the State's Attorney Department at a salary of from \$4,051 - \$4,512 per month (\$48,612 - \$54,144 per year) with a Morton County benefit package, and with only a license to practice law in North Dakota required, no experience.
6. In May 2006, a Minot law firm advertised for two associate attorneys with 0-5 years of legal experience to start at \$50,000 with no legal experience and only a license to practice in North Dakota required. The advertisement said a higher salary would be paid for experienced attorneys.
7. In 2006, seven new attorneys began as public defenders with the Commission on Legal Council for Indigents at salaries ranging from \$47,000 to \$60,000, depending upon experience. The positions were advertised in January 2006 at \$3,287 per month to \$5,478 per month (\$39,444 per year to \$65,736 per year, and only one year of legal experience was required. The new director is paid \$80,000 per year. Although the director has 28 years legal experience, she has only a few months of legal experience with the state.
8. In August 2005, the North Dakota Supreme Court advertised for two staff attorneys on their central legal staff at a salary of \$4,125 per month (\$49,500 per year) with a requirement of a license to practice in North Dakota and two years of legal research or trial experience.

Administrative Law Judges or Hearing Officers in the Region and Nationwide

The last comprehensive nationwide survey of ALJs and hearing officers was conducted by the National Association of Administrative Law Judges in 2001. ALJ salaries have gone up substantially around the nation since that time. Only a partial update on that survey has been recently completed. The partial survey results were provided to OAH by an NAALJ officer in July 2006. That updated survey shows incomplete survey results from the states of Illinois, Iowa, Nebraska, Wyoming, Montana, Wisconsin, and Minnesota.

Like North Dakota, Minnesota has a central panel. Minnesota's central panel ALJs get paid \$104,756 per year. This is not a range but an actual salary. Minnesota ALJ salaries are required by statute to be a percentage of a district judge's salary (88.67 percent). Minnesota's director is paid \$117,686 per year. Other non-central panel hearing officer salaries in Minnesota vary from an actual salary of \$44,683 to \$71,410.

The salary range for an ALJ under the Wisconsin classification system for the Wisconsin Division of Hearings and Appeals, also a central panel, is from \$41,562 to \$105,571, depending upon experience. No experience is required for a beginning ALJ. The Wisconsin director's salary can range from \$41,562 to \$112,579, depending upon experience. The director is in a classified position.

Iowa also has a central panel. Its ALJs are paid in a range from \$66,394 to \$92,185, depending upon experience. Its director is paid in a range from \$76,460 to \$106,080.

In Wyoming's central panel, the salaries of its ALJs are in a range from \$54,000 per year to \$71,000 per year, depending upon experience. The salary of its director is in a range from \$60,000 per year - \$77,000 per year.

Montana does not have a central panel and it provided information only about their tax and unemployment insurance hearing officers. Tax hearing officers salaries range from \$46,530 per year to \$55,415 per year, depending upon experience. Unemployment hearing officers range from \$35,110 per year to \$54,038 per year depending upon experience.

Nebraska does not have a central panel. All of its hearing officers work for and in an agency. The hearing officer salaries range from a low of \$38,740 for unemployment insurance hearing officers to high of \$110,330 for workers compensation hearing officers.

Illinois does not have a central panel. Its hearing officers and ALJs working for different agencies are paid in a range from a low of \$34,116 per year, without any legal experience, to a high of \$116,460, with greater legal experience.

In the NAALJ 2001 complete survey of all states, of those that had a central panel like North Dakota, only Maine, Louisiana, Kentucky, Oregon, and South Dakota of the 28 listed central panel states had lower salary ranges in their classification systems than North Dakota. Actual salaries were not provided in the survey. In the 2001 survey, the salary ranges for all central panel states' ALJs were from a low of \$34,914 - \$57,000 per year in Louisiana to a high of \$102,873 - \$116,590 per year in New Jersey. In some states. *e.g.*, New Jersey, North Carolina, Minnesota, and Missouri, all central panel ALJs are paid the same, in three of those states the amount is a fixed percentage of a trial (district) court judge.

In 2005, Louisiana conducted an unofficial survey of central panel state salaries. It showed the mid-level salaries (not actual, but from the mid-level salary range of the state's classification system) for ALJs' salaries from a low \$50,500 in Oregon to a high of \$116,816 in Florida. North Dakota's mid-level salary range in its Grade 16 pay grade for OAH ALJs in 2005 was \$65,688 (again, this is not actual salary but the possible mid-level salary in the classification range). The mid-level range for supervisor ALJs (*e.g.*, "lead" ALJs) was from a low of \$56,390 in Oregon to a high of \$122,350 in New Jersey. The mid-level range for directors was from a low of \$64,200 in Oregon to a high of \$123,699 in New Jersey. Many central panel directors are classified and, therefore, are paid in a classified salary range. North Dakota's director and five other central panel states' directors are not classified.

State Trial Court Judges

The work of central panel ALJs, such as OAH's ALJs, is often compared to the work of a trial court judge. Although ALJs do not conduct jury trials, OAH ALJs have conducted many, many hearings every bit as complex and as long as trials conducted by district court judges. Like district court, the rules of evidence and rules of procedure apply. All of OAH's ALJs conduct a variety of different types of hearings, much like a district court judge, but OAH ALJs also concentrate in specialty areas. Three OAH ALJs conduct mostly workers compensation hearings. One OAH ALJ conducts mostly human services and professional licensing cases. One OAH ALJ conducts mostly human services and personnel

cases. Arguably, the typical decision written by OAH ALJs is more difficult to write than a district court judge's decision. Frequently, attorneys write proposed findings of fact and conclusions of law and a proposed order for the district judge but an ALJ writes all of his or her own findings of fact, conclusions of law, and order. ALJ decisions are usually much longer than a district judge's decision. ALJ decisions are frequently reviewed by the parties, agency heads, district judges, and supreme court justices. Thus, they must be well written.

In North Dakota, district court judges salaries are fixed by statute. N.D.C.C. section 27-05-03 provides that effective after June 30, 2006, a district court judge is paid \$98,070 per year. A presiding district judge (comparable to OAH's director) is paid \$100,960. An ALJ salary of \$75,000 would be 76 percent of the salary of a district court judge. A director's salary of \$85,000 would be 84 percent of the salary of a presiding district judge. Again, in Minnesota, all central panel ALJs are paid 88.67 percent of a district court judge's salary. In New Jersey, all ALJs are paid 100 percent of a district court judge's salary. In North Carolina, all ALJs are paid 90 percent of a district court judge's salary, and the director is paid 100 percent.

In conclusion, the facts indicate that the current salaries of OAH ALJs and its director are low, and that the salaries proposed by OAH are reasonable, indeed, modest by many comparisons. Under the state classification system (effective July 1, 2006), OAH ALJs salaries can range in Grade 16 from a minimum of \$51,240 per year to a maximum of \$85,392 per year. OAH simply cannot offer beginning salaries of \$51,240 to someone with five years of hearings or trial experience in today's market and compete. A salary of \$85,392 is not too much to pay a highly experienced ALJ, but none of OAH's highly experienced ALJs are even close to being paid that much. OAH proposes to pay its newest ALJ with eight years of legal experience at a level of \$65,000/yr. It proposes to pay an ALJ with 25 years of legal experience at a level of \$70,000. It proposes to pay its two lead ALJs with 22.5 and 37 years of ALJ or legal experience at a level of \$75,000. It proposes to pay its director who has 28 years of legal experience at a level of \$85,000.

ADDENDUM TO CHANGE 1, PART B OF OAH'S EXPLANATION OF BUDGET CHANGE - OPTIONAL SALARY AND BENEFITS EXPENSE FOR PROPOSED INCREASES IN ALJ AND DIRECTOR SALARIES (AUGUST 18, 2006)

On August 15, 2006, OAH submitted its budget request for the 2007-2009 biennium. In its Change 1, Part B explanation of salaries, its optional request, OAH stated that it used an HRMS salary survey "of all attorneys in state government in North Dakota." OAH did use that survey information, but the information it used was at that time in raw data form. On August 15, 2006, The Office of Management and Budget issued HRMS's final report, under cover of an OMB memorandum entitled "Equity Review of Salaries for Attorneys and Paralegals." The survey report is titled, "Survey Report - Equity Review of Attorney & Paralegal Salaries" ("Survey Report"). The Survey Report was issued pursuant to directive from the Legislative Assembly in Section 14 of 2005 House Bill 1003. That legislation required OMB to "conduct an equity review of the salaries of all attorneys and paralegals employed as full-time employees with all branches of government within the state of North Dakota, including attorneys and paralegals employed by the state board of higher education and workforce safety and insurance."

In its narrative, the Survey Report identified 87 attorneys "employed in the various entities of state government," but one of the Survey Report tables identifies 88 attorneys. The raw data used by OAH identified 93 attorneys. OAH's narrative states there are 94 attorneys, but upon closer review one attorney was listed twice in the raw data. Therefore, OAH's narrative relating statistics for attorneys with more than 25 years of experience and more than \$70,000 in salary was partially incorrect because of double-counting that one attorney. The difference in numbers from the Survey Report and the raw data, without double-counting that one attorney (the difference between 88 and 93), appears to be the result of the Survey Report not including 5 attorneys working in state government who were reported in the raw data, but who apparently were not included in the final report because they were not in attorney positions. But, they certainly were "attorneys in state government."

The Survey Report identifies nine categories of attorneys while OAH's analysis identified six categories. Five categories identified are the same, five attorney categories with different levels of experience, but the Survey Report divided OAH's sixth category into four separate categories (division directors, deputies, agency heads, and ALJs), and some of the attorneys listed elsewhere in the raw data were included in these four separate categories. Unlike the Survey Report, OAH's analysis, and the raw data upon which it was based, did not place OAH's ALJs and its director in a separate category.

OAH's analysis of the raw data is still valid based on that raw data. Yet, it is helpful to analyze the Survey Report. An analysis of the Survey Report data shows that there are four categories where OAH has employees similar to those in the Survey Report, at least in terms of years of legal experience and supervisory responsibility: Agency Heads - OAH Director; Division Directors - two OAH Lead ALJs; Attorneys with 25 years of legal experience - one OAH ALJ; and Attorneys with 5-10 years legal experience - one OAH ALJ. The relevant information in the four categories pertaining to OAH ALJs and its director is as follows:

Agency Heads - The average salary for the four agency heads identified is \$83,718, with a low salary of \$73,630 and a high salary of \$103,584. OAH's director was included in this category rather than in the ALJ category and his salary was the lowest of the four.

Division Directors - The average salary for the 13 division directors identified is \$80,038, with a low salary of \$63,210, and a high salary of \$91,008. OAH's two lead ALJs were not listed as division directors but in the separate ALJ category. In reality, however, OAH lead ALJs are division directors for OAH. OAH's Lead ALJs are the experienced experts in their subject matter area and they supervise not only permanent ALJs and support staff, but also OAH's four temporary, part-time ALJs. OAH's Lead ALJs are currently paid \$64,941 and \$61,301 (after the 4% increase July 1, 2006).

Attorneys with 25 or more years of experience - The average salary for the 10 attorneys in this category, who all have considerable legal experience and considerable legal experience with the state, is only \$66,503. The salaries range from a low of \$60,624 to a high of \$75,948. OAH's ALJ who has this much experience was not placed in this category, but could have been placed there. She is paid only \$57,888 after the 4% increase July 1, 2006.

Attorneys with 5-10 years of experience - The average salary for the 8 attorneys with this much experience is \$54,017, with a low salary of \$44,892 and a high salary of \$70,536. OAH's ALJ who could be placed in this category is paid \$56,700, after completing her probation on August 15, 2006.

In OAH's analysis it states that "there appears to be no recent comprehensive salary survey of attorneys in North Dakota." Accordingly, OAH provides anecdotal information from various actual advertisements for attorneys in 2006 in North Dakota, including information about the attorneys for the Commission on Legal Counsel for Indigents. However, the Commission's attorneys are attorneys classified in state government and are included in the Survey Report. The Survey Report gives information about North Dakota attorneys from "a simple review of Job Service Labor Market Information." That information is not a comprehensive salary survey of North Dakota attorneys, such as the State Bar Association of North Dakota might prepare and report, yet it is interesting and informative.

The Job Service information in the Survey Report shows the following:

- Average Entry Salary for North Dakota Attorneys (with no experience) - \$42,375
- Overall Average Salaries of North Dakota Attorneys - \$75,422
- Median Salary for North Dakota Attorneys - \$64,890
- Average Experienced Salary of North Dakota Attorneys - \$91,944

The Survey Report does not state what the experience level is for the average experienced salary for North Dakota attorneys. However, none of the nine state groups average salaries in the Survey Report is near the Average Experienced Salary for North Dakota Attorneys. Agency Heads would be the closest at an average of \$83,718. The average salary for the state's attorneys with 25 or more years of legal experience is only \$66,503.

In summary, with reference to the Survey Report, and the above analysis of the report now included, OAH's ALJs and director still appear to be significantly underpaid. The information added in this addendum does not change OAH's optional salary and benefits proposal as previously stated.

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| Change Group: O | Change Type: A | Change No: 5 | Priority: 5 |
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Optional Increase - Professional Services - Optional increase in professional services due to increased in OAH caseload. See narrative for complete explanation.

OAH proposes as an optional operating expense in its operating expense line item, an increase of \$50,000 for professional services. In 2006, OAH requested Emergency Commission approval of an increase of \$100,000 for professional services in its operating expense line item to cover the increased cost of temporary ALJ services, resulting from an unanticipated increased caseload in the 2005-2007 biennium. The emergency commission granted that request. Coupled with other operating expense savings in the 2005-2007 biennium, \$100,000 should be enough to cover the total cost of additional temporary ALJ services in 2005-2007. But, OAH believes that an additional \$50,000 may be necessary in 2007-2009 to completely cover temporary ALJ costs within the professional services portion of OAH's operating expenses line item. The remainder of OAH's operating expense line item is rather thin. There should be little accumulated savings in this line item by the end of the 2007-2009 biennium. Also, any additional increase in OAH caseload will require additional moneys for temporary ALJ services. But, if OAH's caseload does not increase, its expenditures for professional services will not increase and the additional spending authority will not be used. In other words, OAH believes it will need another \$50,000 authority for professional services in its 2007-2009 operating expenses line item, but if OAH does not need it, it will not be spent because there will be no additional cases and no additional revenues from additional cases.

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| Change Group: O | Change Type: A | Change No: 6 | Priority: 6 |
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Optional Increase - Digital Recording Project - Optional increase in IT software and IT equipment to purchase digital recording equipment for OAH hearings.

In late August 2006, after some preliminary discussions, Workforce Safety and Insurance informed OAH that it wished to switch from using court reporters to report and transcribe WSI hearings to digital recording of its hearings. WSI plans to provide OAH with two digital recording systems on a trial basis in October 2006. If use of the trial systems is successful, WSI will likely provide two or three more systems to OAH for use at WSI hearings. Because of WSI's actions and because OAH had previously given consideration to making a switch from conventional tape recording of hearings, when court reporters are not used, to digital recording, it is wise to add an optional budget item in OAH's operating budget to allow expenditures for digital recording systems so that OAH may make a complete switch to digital recording in the 2007-2009 biennium. OAH anticipates that besides the 4-5 systems purchased by WSI for OAH it will require three more digital recording systems so that all of its permanent and temporary ALJs will have access to a digital recording system for recording hearings. By using digital recording systems in place of court reporters, recording and transcription should be cheaper. Better access to transcripts should also result. Also, the technological advances of digital recording over conventional recording may mean time savings and technological help in decision writing for ALJs.