



Summer 2013

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# D.C. Association of Administrative Law Judiciary

## Presidential Ponderings

I cannot believe this is my last column as president. My tenure is passing by with unimagined speed, and I am very proud of the events the DCAALJ Board has put together over the last year to prove we are setting the gold standard for administrative adjudication. I extend my thanks to the Board members for all of the assistance they have provided and my thanks to you for all the support you have shown.

Early this year, Judge Kathryn A. Oberly provided us with helpful suggestions and concrete examples of how to be better administrative adjudicators. The turnout for this event was our largest in years, but if you missed it, check out “Affirmed” in this edition of the newsletter.

In April, Professor Rachel D. Godsil, Eleanor Bontecou Professor of Law at Seton Hall University School of Law, taught us how to recognize our implicit biases so they become less likely to influence our decisions. Adjudicators want to be fair, but context matters so unless we are willing to probe how we evaluate credibility and other issues, we risk acting on bias rather than on reality.

Next, just in time for “Clerkship Season,” Ms. Brianne Paugh offered us suggestions for creating a mutually beneficial clerkship. Her tips reminded us of things we take for granted and offered us new ideas for improvement. Of particular assistance is her chronological checklist. If you did not receive one, feel free to [email me](#) for a copy.

Called away by an emergency, Chief Judge Lee F. Satterfield was unable to

speak in June, but Presiding Judge Melvin R. Wright was an outstanding substitution. Judge Wright addressed judicial demeanor, self-represented litigants, and stress management. His personable delivery made the attendees quite receptive to his practical suggestions, some of which are summarized in “It’s a Marathon, Not a Sprint” on page 4.

The last program that will take place during my tenure as President is scheduled for August 29, 2013. Judge Arthur Burnett, Sr. is going to share with us “Administrative Law Judges: Striving for the Gold Standard in Adjudication - Making Explicit and Detailed Findings of Facts and Stating Applicable Conclusions of Law Which Will Withstand Appellate Scrutiny.” Judge Burnett has much to offer based upon his 55 years of experience as an attorney and 40 years of experience as a judge. I am saving you a seat at this event.

I has been an honor to lead the DCAALJ as its president. I hope you have appreciated the work the entire Board has done on your behalf, and I hope something that has happened in the last year will encourage you to become more involved with the organization so we can continue to ride this wave of success.



Thank you for the opportunity to have been President of the DCAALJ. ☺



# Affirmed

Making a judge on the D.C. Court of Appeals happy is about more than just being able to read the word “affirmed” at the end of an opinion. On February 6, 2013, Judge Kathryn A. Oberly shared 5 tips for making cases easier for both the D.C. Court of Appeals and the issuing adjudicator.



## Make Sure the Case has Been Filed Timely

Timely filing is an issue of jurisdiction. If there are any doubts about adequate notice or other jurisdictional requirements, Judge Oberly encourages you to explain the facts and why there is or is not a right to a hearing on the merits. Jurisdiction is the starting point so start there. See *Marsden v. D.C. Department of Employment Services*, 58 A.3d 472 (D.C. 2013) (In a workers’ compensation case, the Court could not accept the claimant’s interpretation of pertinent timing provisions in the statute and the regulations because that interpretation effectively nullified “the carefully drawn time limits reflected in the regulatory scheme” as interpreted by the Compensation Review Board when it held the Office of Hearings and Adjudication did not have jurisdiction to decide the merits of an untimely challenge to the denial of a claim.)



## Address All Issues and Claims

While an issue or claim may seem tedious or frivolous to the presiding adjudicator, when the case is on appeal, the Court may not be able to affirm your

decision if there is an issue “lurking.” (By that, Judge Oberly means the Court is unable to determine if the question was considered by the presiding adjudicator.) Because the Court cannot make a ruling in the first instance, a remand may be required by law. On the other hand, the Court can afford incredible deference if it can follow your resolution of an issue. See *Georgetown University Hospital v. D.C. Department of Employment Services*, 916 A.2d 149, 151 (D.C. 2007) (quoting *Dietrich v. D.C. Board of Zoning Adjustment*, 293 A.2d 470, 473 (D.C. 1972)) (“[The Court’s] principal function ‘in reviewing administrative action is to assure that the agency has given full and reasoned consideration to all material facts and issues;’” therefore, if the adjudicator neglects to address a critical issue in the case or fails to resolve a material issue of law, the matter cannot be affirmed.)



## Explain Your Reasoning

Similarly, in order to follow your resolution of an issue, Judge Oberly recommends you thoroughly explain what you find and why because “[i]n the absence of exceptional circumstances, the Court of Appeals will not entertain a claim that was not raised before the administrative agency.” *Hensley v. D.C. Department of Employment Services*, 49 A.3d 1195 (D.C. 2012).



## Set Out the Law – Statutory and Regulatory

Although the Court exercises *de novo* review of issues of law, input from the administrative adjudicator in the

appealed decision is “extremely important.” The Court will acknowledge agency expertise if the adjudicator provides an explanation as to how the interpretation of the relevant law was reached. See *Howard University Hospital v. D.C. Department of Employment Services*, 94 A.2d 375 (D.C. 2010) (“We defer to an agency’s interpretation of a statute it administers unless the ‘interpretation is unreasonable or in contravention of the language or legislative history of the statute....’” *Watergate East Comm. Against Hotel Conversion v. District of Columbia Zoning Comm’n*, 953 A.2d 1036, 1043 (D.C. 2008) (quotations and citations omitted). “[W]e must sustain the agency’s interpretation even if a petitioner advances another reasonable interpretation of the statute or if we might have been persuaded by the alternate interpretation had we been construing the statute in the first instance.” *Howard University Hosp. v. District of Columbia Dep’t of Employment Servs. (Tommy Ambrose)*, 952 A.2d 168, 173-74 (D.C. 2008) (internal quotation marks and citation omitted).”)



## Provide Appropriate Help to Self-Represented Litigants

Self-represented litigants must comply with procedural rules, but there is room for the adjudicator to assist if that assistance will avoid giving the other party an unfair advantage. For example, the adjudicator may

- Ask questions to elicit necessary information or to obtain clarification;
- Modify the traditional order of taking evidence;
- Refrain from using legal jargon;

- Explain the basis for a ruling in a way that the losing party still feels you paid attention;
- Make referrals to resources available to assist with preparation for the hearing.

See D.C. Code of Judicial Conduct (2012) Comment 4 to Rule 2.2 Impartiality and Fairness (“It is not a violation of this Rule for a judge to make reasonable accommodations to ensure litigants who do not have the assistance of counsel the opportunity to have their matters fairly heard. See Comment [1A] to Rule 2.6, which describes the judge’s affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard.”)<sup>1</sup>

Judge Oberly recognized that the work administrative adjudicators do is part of “the life of the City.” Her suggestions were designed to assist administrative adjudicators in a way that, in turn, helps the Court reach the appropriate result in an appeal. None of what adjudicators do is clear cut, but with these suggestions D.C. administrative adjudicators certainly have “5 Tips for Making Appellate Judges Happy.”

Melissa Lin Jones 

## Mutually Beneficial

*Webster’s New World Dictionary* defines “symbiosis” as “the intimate living together of two kinds of organisms, especially if such association is of mutual advantage.” During May’s DCAALJ event, Ms. Brianne Paugh explained how administrative adjudicators and clerks can achieve symbiosis quickly to create a mutually beneficial clerkship.

<sup>1</sup> Judge Oberly recognized that the D.C. Office of Administrative Hearings has its own code of conduct similar to the D.C. Code of Judicial Conduct, but because OAH’s version does not have comments, she suggested looking to the comments to the D.C. Code of Judicial Conduct for guidance.

First, law schools work tirelessly to teach a student “how to think like a lawyer.” Those skills may serve an advocate well, but when a law student works as a clerk, you need to help teach “how to think like a judge.” In order to facilitate such thinking, Ms. Paugh suggests contacting the clerk before the clerkship begins. When you assign specific readings such as ethical codes, statutes, regulations, and cases from your agency not only do you assist the clerk with learning the substantive law you interpret, you give the clerk an opportunity to begin assessing judicial reasoning, stylistic preferences, and formatting before the start of the clerkship.



Shortly after the clerkship begins, an entrance interview sets the goals and expectations for both the adjudicator and the clerk. This interview also sets the precedent for ongoing meetings to discuss performance considerations and achievements. Effective communication facilitates better time management and increased productivity.

Of course, there is more to a clerkship than drafting decisions. Lunchtime networking, observing hearings and other proceedings, and field trips enhance the clerkship experience. As an added bonus, sharing one of the District of Columbia’s many legal landmarks gives you an opportunity to remember why the work we do is so important.

At the end of the clerkship, hold a frank exit interview. This summit is an opportunity not only for you to provide to the clerk positive feedback and constructive criticism, it is an opportunity for the clerk to suggest how you can improve the clerkship experience for your next clerk.

Adjudicators have tremendous knowledge to offer clerks. With

## Upcoming Events

**August 29, 2013, 4:00 p.m.**  
**441 – 4<sup>th</sup> Street, NW**  
**Room 1117**

**Judge Arthur Burnett, Sr.**  
**“Administrative Law Judges: Striving for the Gold Standard in Adjudication - Making Explicit and Detailed Findings of Facts and Stating Applicable Conclusions of Law Which Will Withstand Appellate Scrutiny”**

**September 15 - 18, 2013**  
**NAALJ Annual Conference**  
**Chicago, Illinois**  
**Details at**  
<http://www.naalj.org/upcoming-conferences>

**September 26, 2013,**  
**4:30 p.m.**  
**441 – 4<sup>th</sup> Street, NW**  
**DCAALJ Annual General Membership Meeting**



attentive communication before, during, and after the clerkship, the experience can be rewarding for everyone involved.

Melissa Lin Jones

## It's a Marathon, Not a Sprint

The law is meant to be thoughtful, not rushed, and in June, Presiding Judge Melvin R. Wright reminded us that people expect judges to act a certain way. In order to maintain an appropriate judicial presence, Judge Wright offered several practical suggestions. At the core of all those suggestion is – Know Yourself.

In order to avoid escalating demanding situations, you must understand who you are. Only when you know your limits can you tell if you are about to

lose control. Taking breaks like lunch (not a working-lunch but a real lunch) and getting a good night's sleep also facilitate self-control which, in turn, helps you conduct a fair proceeding.

Win or lose, all parties must feel as though they have been heard, particularly when a case involves a self-represented litigant. When one or more parties are not represented by counsel, there is a delicate balance between jurist and advocate. Although you cannot give legal advice, you can give procedural guidance; although you cannot help, you can remove impediments procedurally.

Inevitably, cases involving self-represented litigants will take more time than cases involving counsel, but take the time to do what needs to be done to keep the hearing focused and to figure out all the facts needed to make a reasonable ruling. There is no hard and

fast rule, but trust yourself to feel your way to a resolution of the issues while still promoting procedural fairness.

Finally, judges have difficult jobs, and the public does not always recognize the challenges we face. Take the time you need to do your job well and to focus on this case, not the next one. There will always be a next case so treat your responsibilities like a marathon, not a sprint.



Melissa Lin Jones



### ***In the Spotlight – Contract Appeals Board***

The mission of the DC Contract Appeals Board (CAB) is to provide an impartial, expeditious, inexpensive, and knowledgeable forum for hearing and resolving contractual disputes, protests, debarments, and suspensions involving the District and its contracting communities. CAB is a statutorily created independent agency pursuant to the Procurement Practices Reform Amendment Act of 2010, D.C. Code §2-360.08 et seq. (2011). CAB was first established on September 17, 1953, pursuant to Reorganization Order No. 29, Part VII. The FY13 CAB trial docket includes 28 cases. There are three Administrative Judges on the CAB, one of whom is appointed by the Mayor to serve as Chief Administrative Judge. All CAB Judges are appointed by the Mayor and confirmed by the Council of the District of Columbia. Each CAB case is assigned to a Presiding Judge, and referred to a three-judge panel for final disposition (except for small claims matters valued at under \$10,000). Discovery is permitted in all CAB disputes cases, and is allowed in protests at the discretion of the Presiding Judge. CAB receives over 40,000 pages annually in case materials. All CAB decisions and case files are searchable on our website, and accessible to parties, members of the public and the media. CAB cases are adjudicated in a largely digital environment, with 97% of all litigants pursuing claims/protests digitally. CAB also accepts new cases by mail, fax, or in person. All CAB trial and pre-trial proceedings are open to the public unless subject to a protective order. For more information visit [www.cab.dc.gov](http://www.cab.dc.gov).

Marc D. Loud

# District of Columbia Association of Administrative Law Judiciary, Inc.

AN AFFILIATE OF THE NATIONAL  
ASSOCIATION OF ADMINISTRATIVE LAW JUDICIARY



## 2013 - 2014 MEMBERSHIP APPLICATION AND DUES INVOICE

Dues for **DCAALJ /NAALJ** membership year 2013–2014 are now payable for the period from October 1, 2013 - September 30, 2014. Please remit your payment as soon as possible. The annual payment of \$50.00 (\$100.00 for sustaining members) includes membership dues for both the **DCAALJ and NAALJ**.

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 A DCAALJ OR NAALJ COMMITTEE SUCH AS MEMBERSHIP, PROGRAM DEVELOPMENT, LOGISTICS, CONTINUING EDUCATION, COMMUNICATIONS, OR CHARTER REVIEW?

YES I AM INTERESTED IN: \_\_\_\_\_

No

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

### THANK YOU FOR YOUR INTEREST!

Send Application with 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