

**HB 186 – POLICE DISCIPLINE – TRIAL BOARD COMPOSITION
BEFORE THE HOUSE JUDICIARY COMMITTEE
ON FEBRUARY 25, 2025**

**WRITTEN TESTIMONY OF THE OFFICE OF ADMINISTRATIVE HEARINGS
POSITION - OPPOSE**

HB 186 would change the Trial Board Composition from an “actively serving or retired administrative law judge or a retired judge of the District Court or a circuit court” to “an attorney who meets the qualifications in Subsection (C) of this Section.” HB 186 further provides that the “attorney who meets the qualifications in Subsection (C) of this Section be appointed by the Chief Administrative Law Judge of the Maryland Office of Administrative Hearings.”

The Office of Administrative Hearings (OAH) was created by the Maryland General Assembly in 1990 to guarantee fundamental fairness in the administrative hearing process. Prior to the creation of OAH, hearing officers were employees of the agency whose contested cases they adjudicated. This fostered a public perception that it was not possible to receive a fair and impartial administrative hearing. To combat this perception, the General Assembly required that, in most instances, an agency or board must delegate its hearing authority to OAH.

Md. Code Ann., State Gov’t § 9-1604 provides the following:

Chief Administrative Law Judge – Powers and duties.

(a) Duties generally. — The Chief Administrative Law Judge shall:

- (1) supervise the Office of Administrative Hearings;
- (2) establish qualifications for administrative law judges;
- (3) appoint and remove administrative law judges in accordance with §9-1605

of this subtitle.

An Administrative Law Judge (ALJ) appointed by the Chief Administrative Law Judge (CALJ) is a defined term, notably, the ALJ shall be a special appointment in the State Personnel and Management System (SPMS) and receive compensation provided in the State Budget. Md. Code Ann., State Gov't § 9-1605(a). Including the CALJ and other management ALJs, the OAH has 52 ALJs. The OAH is in the process of hiring 4 new ALJs, which would bring the number to 56 total ALJs. New ALJs are hired at a starting annual salary of \$123,679.

The CALJ does not have the authority to appoint attorneys, who are not OAH administrative law judges, to serve on a Trial Board. OAH recommends that "AN ATTORNEY WHO MEETS THE QUALIFICATIONS IN SUBSECTION (C) OF THIS SECTION, **appointed by the Chief Administrative Law Judge of the Maryland Office of Administrative Hearing;**" (emphasis added) be deleted from HB 186 since, as drafted, HB 186 would remove administrative law judges from the Police Discipline – Trial Board Composition.

The OAH conducts an extensive hiring and interview process for Administrative Law Judge candidates. The positions are advertised on the Maryland Jobs website and require candidates to be a lawyer in good standing for at least five (5) years and licensed to practice law in the State of Maryland. In addition, candidates must possess strong interpersonal skills; outstanding analytical skills; and excellent writing, legal research, computer, and time management skills to successfully perform the duties of an ALJ. Additionally, all applicants must submit a resume, two (2) writing samples,

contact information for three (3) professional references, and a Certificate of Good Standing from the Supreme Court of Maryland. Applications are reviewed and individuals are selected to interview before the OAH Hiring Committee comprised of the Deputy Director of Operations (Chair of the Hiring Committee), Deputy Director of Quality Assurance, two (2) non-management ALJs, and a non-ALJ. The applicant answers typical interview questions focused on judicial temperament, decision making ability, and ethics. The applicant also answers two (2) case hypotheticals during the interview and completes a timed writing prompt after the verbal interview. After this first step, the list is narrowed down and presented to the CALJ for a final interview and consideration. The CALJ, along with the Director of Operations and Director of Quality Assurance, conduct a final interview. The CALJ makes a final decision, references are verified, and conditional offers are made pending completion of a criminal background check.

All new ALJs are required to complete intensive new ALJ training that extends over an approximately ten (10) month period. ALJs learn how to conduct an effective contested case hearing, learn about various subject areas, become trained mediators, and learn how to write an effective administrative decision.

In 2022, the Maryland General Assembly passed the Maryland Police Accountability Act of 2021 (Act) (HB670 & Ch. 59) and its 2022 amendments (SB763 and Ch. 141). The Act repealed the Law Enforcement Officers' Bill of Rights (LEOBR), currently found at Title 3, Subtitle 1 of the Public Safety Article. In place of LEOBR, the Act calls for, among other things, the establishment of:

- Police accountability boards for each county (section 3-102);
- Administrative charging committees for each county (section 3-104);
- A model uniform disciplinary matrix, to be developed by the Maryland Police Training and Standards Commission (MPTSC) and adopted by law enforcement agencies (LEAs) around the state (section 3-105);
- Trial board processes, developed by LEAs (section 3-106), including the required two-day training as offered by the MPTSC.

The Act created Trial boards for each LEA, which consist of one (1) active or retired ALJ of either a county or the OAH, one (1) civilian who is not already a member of an administrative charging committee, and one (1) police officer of equal rank to the officer subject to disciplinary proceedings (section 3-106).

Since the passage of the MPAA, the OAH has actively engaged with the LEAs and the MPTSC to have all ALJs trained and ready to serve as the Trial board Chair. To date, the OAH has signed nineteen (19) MOUs with various LEAs and the OAH has received 126 MPAA cases and completed 85 cases. Sixty-two (62) of those cases are from Prince George's County.

Contrary to the bill Fiscal and Policy Note, the OAH does not have a shortage of available administrative law judges to sit on the trial boards. The OAH stands ready and able to negotiate additional MOUs with LEAs for administrative law judges to be available to sit on trial boards.

In addition to training the ALJs, the OAH has established a transmittal process for all incoming MPAA cases. This process is rather involved as each case must include the following components: the OAH-created case transmittal form, Civilian Trial Board Member Information, Hearing Date and Start Time, and Notice of Hearing, and Trial Board Rules and Procedure Manual. Once this information is received, the OAH Chief Clerk processes the request, assigns an OAH case number, and requests either one (1) ALJ or a list of three (3) ALJs from the OAH Operations Division. Once an ALJ is selected, the LEA notifies the OAH Chief Clerk and the matter is scheduled. Pursuant to the MOU, the LEA is responsible for securing a court reporter. At the conclusion of the hearing, the assigned ALJ is charged with issuing a written final decision within forty-five (45) days. This decision shall reflect the findings, conclusions, and recommendations of the majority of the trial board. All decisions are drafted by ALJs and issued by OAH staff.

HB 186 as drafted would completely remove the OAH from the trial board process. The CALJ cannot appoint attorneys who are not also ALJs of the OAH to solely hear these cases because the attorneys would not be full-time State employees and would not be fully trained in conducting an effective contested case hearing or issuing an administrative decision. Lastly, the OAH budget does not account for the additional attorneys to be appointed.

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