

Issues for Further Discussion – Worksheet Responses

The worksheets provided to task force members were designed for the process of facilitating discussion and education on relevant study issues. The discussion during the October 5, 2009 meeting enabled members to identify significant issues. The completed worksheets are also intended to allow the Attorney General's Office to assess those significant issues where further education or deliberation is necessary.

The Attorney General's Office requested Jason Mercier from the Washington Policy Center to assist with reviewing the survey responses. Jason was asked to identify those areas where there was a split in the task force for significant or weighty issues. Based on the survey responses, Jason identified the following two issues:

Independent Director or Commission Structure

Summary – Survey responses were split between structuring the oversight agency under the direction of a single director or as a multi-member commission.

One example of an administrative process under a single director is the state Office of Administrative Hearings:

The Office of Administrative Hearings (OAH) is an independent state agency made up of 74 administrative law judges (ALJs) who conduct impartial administrative hearings for Washington citizens and governmental agencies. It is known as a "central-panel" ALJ agency.

In 1981, the Legislature created OAH to address two fundamental concerns in the state's administrative hearing process: 1) To improve the appearance of fairness issues caused by the adjudicator's employment by the agency responsible for the substantive decision in the dispute; and 2) To recognize the increasing complexity of agency procedural rules governing the hearing process. The result was passage of RCW Chapter 34.12, creating the Office of Administrative Hearings as an independent agency under the direction of a chief administrative law judge.

An example of a multi-member commission is the Public Disclosure Commission:

There is hereby established a "public disclosure commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party. The term of each member shall be five years. No member is eligible for appointment to more than one full term. Any member may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

Here are some of the task force member's comments from worksheets on this issue:

- “Can be both. Multi-member board hires chief of staff. Initial review and decision can be individual hearing officers with appeal to multi-member board.”
- “They are not mutually exclusive.”
- “A bi-partisan multiple member board (like PDC) should have public confidence that a single agency head may not.”

Exclusive or Dual Jurisdiction

Summary – Survey responses were split between structuring the oversight agency to have exclusive or dual jurisdiction over open government disputes. Exclusive jurisdiction would mean that no dispute could proceed to court until the administrative board takes action. Dual jurisdiction would make the use of the administrative board optional allowing a requester to proceed to court without having to first go through the administrative process.

Here are some of the survey comments:

- “Provide some incentive to go to agency first.”
- “Requesters should be able to go directly to court, especially in emergencies.”
- “Don’t allow agencies to go directly to court.”
- “Maybe allow the admin hearing board to pass to court to expedite.”
- “Exclusive unless complex case in which case commission can decline jurisdiction.”
- “If using the agency review is not required prior to going to court, then to cut access to penalties and attorney fees if perusing lawsuit directly is a good option.