State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

November 20, 2014

Mr. Ken Levine
Director
Sunset Advisory Commission
1501 North Congress Avenue
6th Floor, Robert E. Johnson Building
Austin, Texas 78701

Hand Delivery

Dear Mr. Levine:

On behalf of the State Office of Administrative Hearings, thank you for the thoughtful work and unfailing courtesy of your staff during their review of our agency. They were consummate professionals and a pleasure to work with.

We appreciate too the report's recognition that SOAH performs its mission well and on time, and that it does so with fewer resources than it did during its last Sunset review in 2002. While we are very grateful for those acknowledgments, we are likewise grateful for the report's identification of areas in which we can improve. We want to be good stewards of our resources – not only the financial ones, but also the fine and dedicated employees who comprise our workforce.

We accept all of the recommendations for management action set out in the report, and we agree with all of the proposed statutory changes. The report's recommendations will, we believe, improve SOAH, and we welcome the opportunity they present. On Issues 2 through 6, there are some matters of individual detail on which we could offer argument, but it would be unproductive hairsplitting on our part. We do wish to offer some comments regarding Issue 1 and the fiscal implications of Recommendation 4.1, and they are below.

Issue 1 - *"SOAH's Budget Planning and Billing Processes Do Not Effectively Target and Fund the Agency's Needs, Jeopardizing the Agency's Operations"*

The challenges associated with SOAH's funding are many and varied, and we appreciate the effort of the Sunset staff to delve into them and to offer recommendations to address them.

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SOAH agrees with the statement on page 14 of the report that SOAH's current billing process for interagency contracts lends itself to an appearance that SOAH may do the bidding of the referring agencies that reimburse SOAH by interagency contract, although we emphasize that the manner in which casework is funded has never had, and will not have, any influence on the way SOAH handles, hears, or decides cases. Replacing SOAH's interagency contract funding with general revenue may not mean SOAH never has to bill again, but general revenue is the mechanism by which the appearance of that funding as an instrument of potential influence is eliminated.

SOAH respects that the Sunset staff has chosen to recommend that interagency contracts remain a part of our funding structure. We understand that the LBB could well make the same recommendation to the Legislature. However, we believe that general revenue comes closer to resolving SOAH's funding and billing issues than the staff report allows (*cf.*, general revenue is "no silver bullet" for SOAH, page 14 of the staff report). SOAH acknowledges that it would still need some interagency contracts for the SDSI agencies and for one-time case referrals such as from the groundwater conservation districts. Appendix D of the report reflects six permanent referring agencies that must pay SOAH by contract. These six agencies comprise approximately 10 percent of the total number of referring agencies. They accounted for a total of $96,409 in reimbursements in FY 2013, less than 1 percent of SOAH's total FY 2013 budget, and just less than 3 percent of the FY 2013 interagency contract budget. SOAH's budgetary fortunes do not rise or fall with this group of agencies and entities, and the administrative resources their billing requires of SOAH are minimal.

Recommendation 4.1 – "*Transfer docketing responsibilities for ALR hearings from DPS to SOAH*"

The recommendation proposes that SOAH also be responsible for five-day continuance requests. The volume of those requests is significant, perhaps on the order of 18,000 or 19,000 per year in an annual ALR caseload of 35,000 cases. To handle those effectively and to address the inefficiencies discussed in the report, we believe we will need another two full-time equivalent employees in addition to the three contemplated by the report.

SOAH will of course appear at the Sunset Commission's public hearing on our report on December 10. In the meantime, if you have any questions or need additional information, we would be happy to be of assistance.

Thank you for allowing us to comment on the report, and thank you again for the work and courtesy of the Sunset staff.

Yours very truly,

Cathleen Parsley
Chief Administrative Law Judge