



**COMMISSION ON SELECTION AND TENURE OF ADMINISTRATIVE
LAW JUDGES OF THE OFFICE OF ADMINISTRATIVE HEARINGS**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

October 25, 2013

HAND-DELIVERED

Honorable Vincent C. Gray
Mayor, District of Columbia
1350 Pennsylvania Avenue, N.W. - Room 316
Washington, D.C. 20004

Honorable Phil Mendelson
Chair, District of Columbia Council
1350 Pennsylvania Avenue, N.W. - Room 504
Washington, DC 20004

Dear Mayor Gray and Chairman Mendelson:

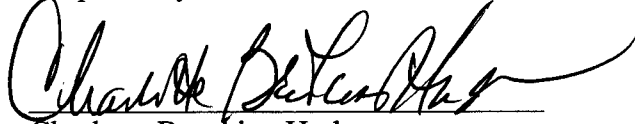
The Commission on the Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings ("COST") is in receipt of your letter dated October 23, 2013 concerning the investigation authorized by the COST. While we agree with your assessment that the issue of whether the 15 Administrative Law Judges are whistleblowers is a matter of law, to the extent that your letter suggests that the investigation authorized by COST has anything to do with retaliation for unionization activities by OAH Administrative Law Judges we strongly disagree. After receiving the June 12, 2013, letter from the Office of the Mayor, forwarded to COST for our "appropriate review," COST began to meet and discuss the contents of the redacted version of the Leftwich and Ludaway Report ("Report") sent to us by the Office of the Mayor. We delayed having in-depth discussions of the Report until late August/early September to include the Mayor's August 2013 appointee in our discussions.

We also disagree with any implication that the claims in the June 13, 2012 letter authored by 15 Administrative Law Judges in the Office of Administrative Hearings may be protected by the Whistleblower Protections Amendment Act of 1998, codified at D.C. Official Code § § 1-615.51 - 615.59. As stated in your letter, the Office of the Mayor "specifically asked COST to conduct such an investigation when the letter was received." However, because COST waited until it had information which fell within its jurisdiction -- the judicial temperament of Administrative Law Judges -- primarily received from a Report also sent to COST by letter dated June 12, 2013 from the Office of the Mayor, now you posit that the COST investigation should not occur because it may expose the District to liability under the Whistleblower Protections Amendment Act of 1998.

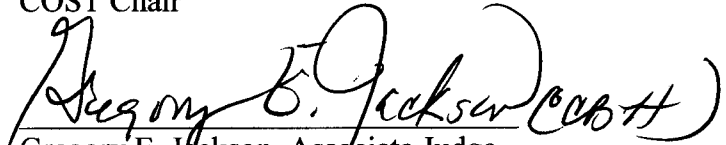
The voting members of COST are deeply saddened and disappointed that you have tied our hands, and the hands of future COST members, with respect to its ability to conduct an investigation to determine if there has been any misconduct on the part of any administrative law judge. Rather than to minimize the District's exposure to liability under the Whistleblower

Protection Amendment Act of 1998, your letter does quite the opposite. It increases the "prospect for protracted litigation," and may possibly leave COST members without legal representation and exposed to personal liability when a lawsuit arises. As a result of your letter, any disciplinary action or denial of reappointment by current COST members, particularly against any of the 15 administrative law judges, regardless of merit, will be subject to a claim of retaliation or viewed as a pretext for retaliation. Due to the letter, COST has been reduced to serving as a hiring authority-- we can hire, but we cannot discipline, deny reappointment, or remove administrative law judges (especially with respect to any of the 15 administrative law judges at issue), in contrast to what is prescribed by current law. D.C. Official Code § 2-1831.06. We appreciate that you recognize there is a problem in the Office of Administrative Hearings. This is why COST had hoped to undertake an investigation in the first place. However, absent the ability to perform our full statutory responsibilities, you leave us with no choice other than to resign. Effective immediately, we the undersigned voting members of the COST resign.

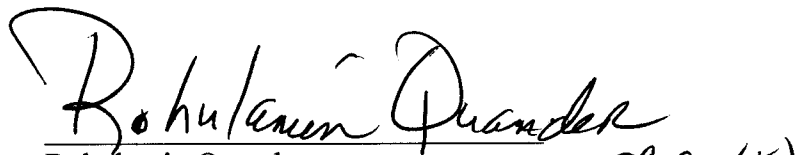
Respectfully submitted,



Charlotte Brookins-Hudson
COST Chair



Gregory E. Jackson, Associate Judge
Superior Court of the District of Columbia
COST Member



Rohulamin Quander
COST Member

cc: Hon. Lee F. Satterfield, Chief Judge, Superior Court of the District of Columbia
Hon. Tommy Wells, Chair, Council Committee on the Judiciary and Public Safety
Hon. Mary Oates Walker, Chief Judge, Office of Administrative Hearings
James C. McKay, Jr., Assistant Attorney General
Brian F. Flowers, General Counsel, EOM
Darryl Gorman, Director, Boards and Commissions EOM
Christopher Murphy, Chief of Staff, EOM
Denise Tolliver, Chief of Staff, Office of the Chairman, D.C. Council
David Zvenyach, General Counsel to the D.C. Council