

# MINNESOTA LAWYER

November 3, 2008

www.minnlawyer.com

**M** DOLAN MEDIA  
COMPANY

Vol. 12, No. 44

## From elections to electricity, the OAH touches every Minnesotan's life

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A case involving what may well be the largest fraud scheme in the state's history also had another distinction — it was the 20,000th matter docketed at the Office of Administrative Hearings.

The case involves a mortgage originator named Michael Prieskorn, who reportedly may have taken \$20 million in fees from real estate buyers in what Department of Commerce spokesman Brian Walsh described as a "classic Ponzi scheme."

Prieskorn allegedly convinced investors to purchase property and then lease it to his company, Blackstone Sales, for eight or nine months. Investors got an upfront fee of \$5,000 at the closing, and, at the end of the lease, the company was supposed to purchase the property from the investor. More than 200 houses were purchased this way, generating substantial origination fees. When Blackstone stopped making the lease payment and failed to purchase the properties from the investors, many of the homes went into foreclosure.

Prieskorn, who appears to have left the jurisdiction, is not only being sought by the police, the FBI and the IRS, he also stands to lose his mortgage originator license, which is why the OAH is involved.

The case perfectly illustrates how an

OAH matter can implicate issues of wide importance to the community, such as mortgage fraud.

"We're getting a lot of these and a lot of contractor cases," said Chief Administrative Law Judge Raymond Krause.

The OAH sees a variety of cases that involve people's everyday lives. If you eat in restaurants, have children in daycare, vote or use electricity, the OAH's administrative law section has an impact on your life. If you

work for a living, the workers' compensation section is important to you.

The two sections of the OAH are further subdivided. The workers' compensation section is divided into settlement and hearing divisions; the administrative law section includes contested cases and rulemaking functions. They all moved to new digs at the Harold Stassen Office Building at 600 N. Robert Street in St. Paul last year.

Most lawyers have at least a passing



Chief Administrative Law Judge Raymond Krause oversees the Office of Administrative Hearings, which deals with cases that touch many facets of life, from daycare to mortgage fraud. (Photo: Bill Klotz)

familiarity with workers' compensation, but the Administrative Procedures Act is a foreign country to many. There are scores of state agencies from accountancy to water and soil resources, and challenges involving all of them except unemployment compensation and driver's license revocation fall within the statute.

As in most states, the administrative law courts do most of the basic decision making for the state in significant-

# Chief ALJ Krause: OAH is very focused on customer satisfaction

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ly important areas, according to Hamline University School of Law Professor David Schultz. The court compares well in the scope of responsibility, professionalism and workload to other states, he said, adding that the OAH is taking on an increasingly important role in the state's business. "Minnesota is doing a much better job of drawing upon OAH's resources than we did 10 to 15 years ago. It shows how our government is maturing," he explained.

## A specialized area

The APA is a highly specialized area of law. "There's a reason why there is a small group of lawyers who get involved with APA cases," said Minneapolis attorney Todd Guerrero. "It's an arcane set of rules. You have to be a unique sort of person to love administrative law, and we're all sort of like that."

Schultz estimates that there are only about 30 to 40 lawyers in the state who intensely follow OAH.

An advantage of this small group of practitioners is a collegial relationship between the bench and the bar, Krause said. Most of the workers' compensation judges came from the work comp bar and already knew each other, he said. "The APA bar is more diverse, but the judges have been very active with the Minnesota State Bar Association administrative law section," he said.

The Office of Administrative Hearings is very focused on customer satisfaction, according to Krause. In the 2006 Judicial Development Survey, 86 percent of the respondents rated the judges' performance as "excellent" or "good." The judges were particularly highly rated for showing respect to the parties and lawyers, paying attention during proceedings, giving the party or lawyer an opportunity to speak, starting the proceedings on time and remaining even-tempered throughout the proceedings. In past years, the surveys have been similarly positive, Krause said.

Even the most negative survey results were not all that bad, with 23 per-

cent or fewer respondents faulting the OAH in handling settlement conferences or mediations skillfully, basing decisions on evidence, testimony and law, being open minded throughout the proceedings and assisting people in narrowing the issues.

"The bench at OAH is very, very well regarded by practitioners and peers nationally," said Minneapolis attorney David M. Aafedt, head of the MSBA Administrative Law Section. "They offer high-quality services at a good price for state agencies."

The office does not have a backlog of cases and schedules them for hearing immediately. Prieskorn's case is scheduled for a prehearing conference on Dec. 17 — assuming Prieskorn can be found.

Guerrero said the administrative law judges are all very concerned about protecting the due process rights of persons who appear before agencies. "You have an opportunity to have a meaningful hearing at a meaningful time," he said. When it comes to the rulemaking function, the office provides more due process rather than less, which sets Minnesota apart from other states, he added.

## An evolving entity

Before the OAH was established in 1976, agencies all conducted their own review procedures in their own ways. Similarly, the Legislature felt that agencies were conducting "informal rulemaking." In response, what was then called the Office of Hearing Examiners

lement functions were also transferred over.


For a time, the OAH administered the system for processing child support payments for recipients of public assistance or persons who wanted government assistance in collecting support. But the underlying legislation was challenged as unconstitutional and in 1999 in *In Re Holmberg v. Holmberg* the Supreme Court ruled that the administrative child support process violated the separation of powers doctrine by, among other things, infringing on the District Court's jurisdiction.

The next big change for the OAH came in 2004 when the Legislature created civil remedies and an administrative process for allegations of campaign violations. Under the law, no campaign violations can be referred for prosecution until the administrative process is complete. The office has heard about 20 complaints so far this year, and provides an expedited process that usually resolves problems prior to the election in question. In the most recent complaint, the matter was filed on Oct. 21, a finding of a prima facie violation was issued two days later, and a probable cause hearing was scheduled for five days after that.

The next adjustment to the OAH's boundaries came in 2005 when the governor transferred the functions of the Department of Administration's Municipal Boundary Adjustment Unit to the OAH.

The office has also begun to contract with municipalities, counties and school boards

to conduct their licensing hearings of various types, personnel due process hearings, and a variety of other administrative hearings.

This type of work has increased as cities have begun to do more licensing, Krause said. 

# OAH has heard 20 campaign violation complaints this year

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was established with a chief hearing examiner to be appointed by the governor.

In 1981, all the workers' compensation hearing functions were transferred from the Department of Labor and Industry to the by then renamed OAH. In 1997, the workers' compensation set-