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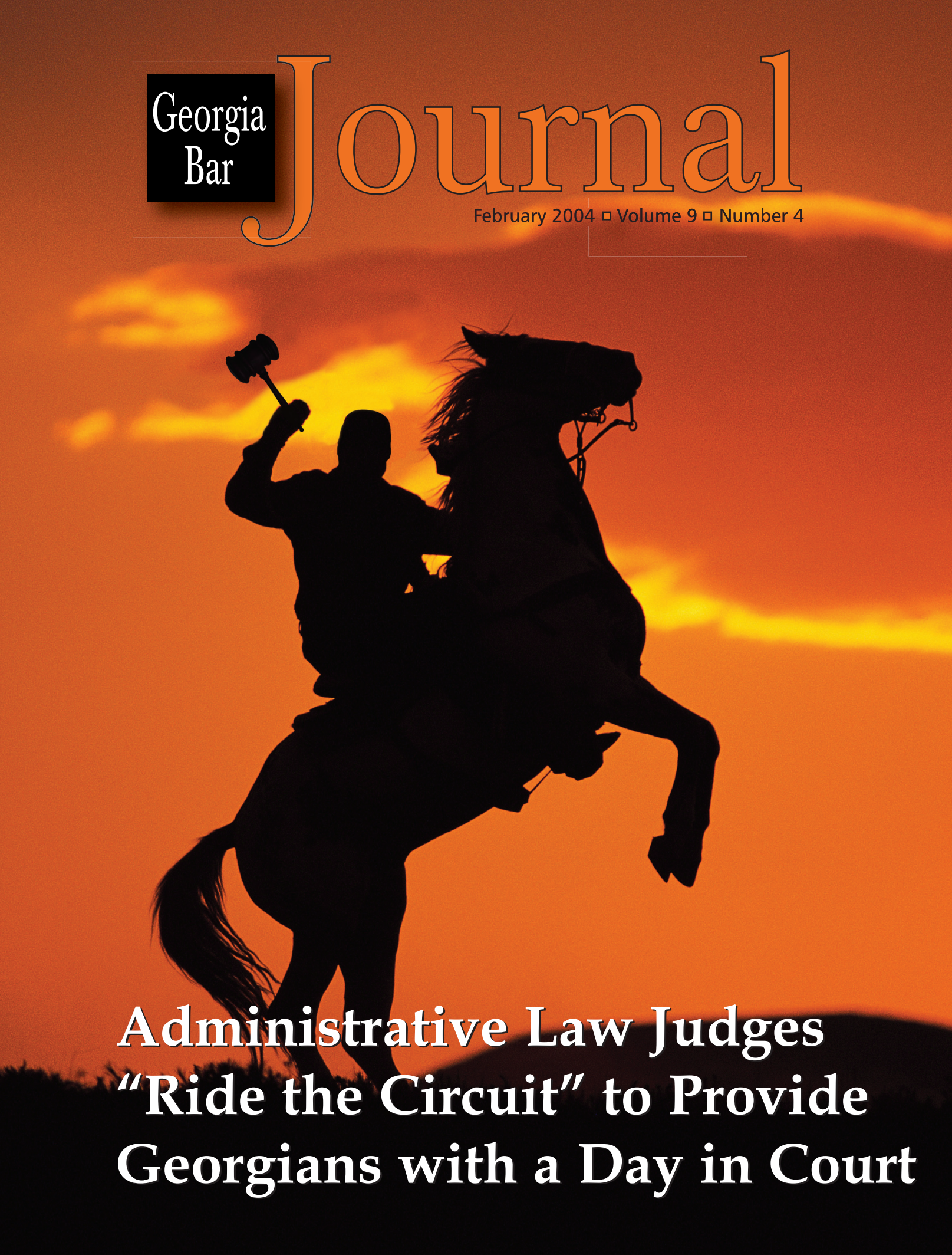

Administrative Law Judges "Ride the Circuit" to Provide Georgians with a Day in Court

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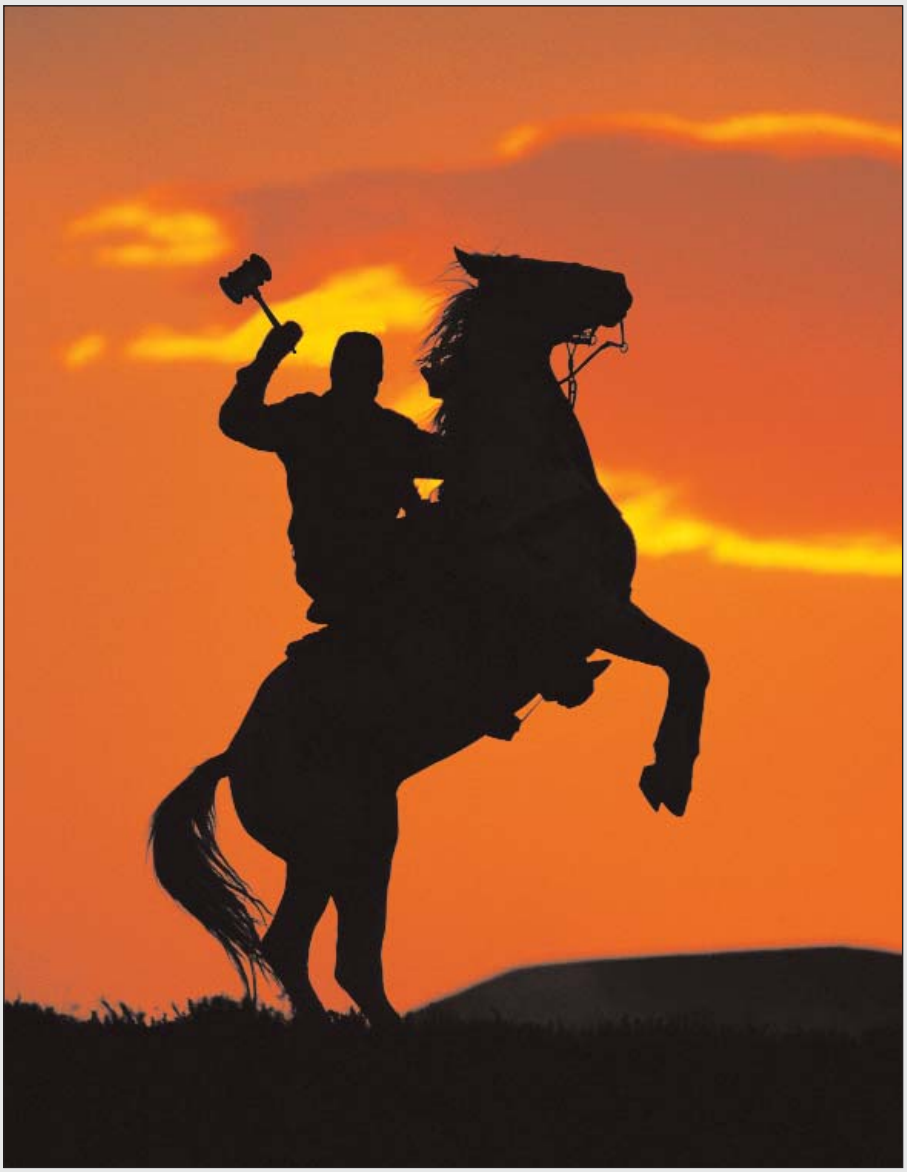
By Judge Lois F. Oakley



Imagine, if you will, the situation of the mother of a ventilator-dependent child. This mother is in disagreement with a proposal to reduce the skilled nursing care authorized for her child by a state agency. As is her right, and in the interest of her child's health, the mother files an administrative appeal of the agency's decision. Unfortunately, the child's health is precarious, and the mother is uncomfortable leaving the bedside to voice her concerns at the administrative hearing.

In special circumstances such as these, administrative law judges, employed by the Georgia Office of State Administrative Hearings, bring a forum to the litigants. At

times, an unconventional location is required to provide Georgians with a "day in court." Whether the courtroom is a living room or a nursing home bedside, OSAH judges go the distance to provide Georgians with an impartial and efficient forum to resolve disputes involving state government.

ORIGIN OF OSAH

OSAH judges travel throughout the state to preside over administrative hearings. This practice is reminiscent of those judges who "rode the circuit" in days past. Interestingly, OSAH and its cadre of administrative law judges is a relatively modern creation.

In 1994, OSAH was created by the legislature as a quasi-judicial body within the executive branch of state government. Prior to this innovative legislation, many state agencies provided due process internally. Agency employees were charged with reviewing the decisions of their coworkers.

With the establishment of OSAH, the legislature provided Georgians with an independent entity for the review of disputed agency decisions. This central panel of administrative adjudicators was created to provide a structural and physical separation between agency decision makers and the review of those decisions.

Widely perceived as fostering impartiality, accountability and efficiency, the "central panel" model of administrative adjudication has been adopted by 26 states. Enabling legislation is pending in two additional states. Steve Gottlieb, the executive director of the Atlanta Legal Aid Society, has remarked, "Many of our clients appeal actions of state agencies. Atlanta Legal Aid feels that it is far preferable for the administrative law judges at OSAH to conduct hearings on these appeals rather than employees of the very agency whose action is being contested."

OSAH CASES

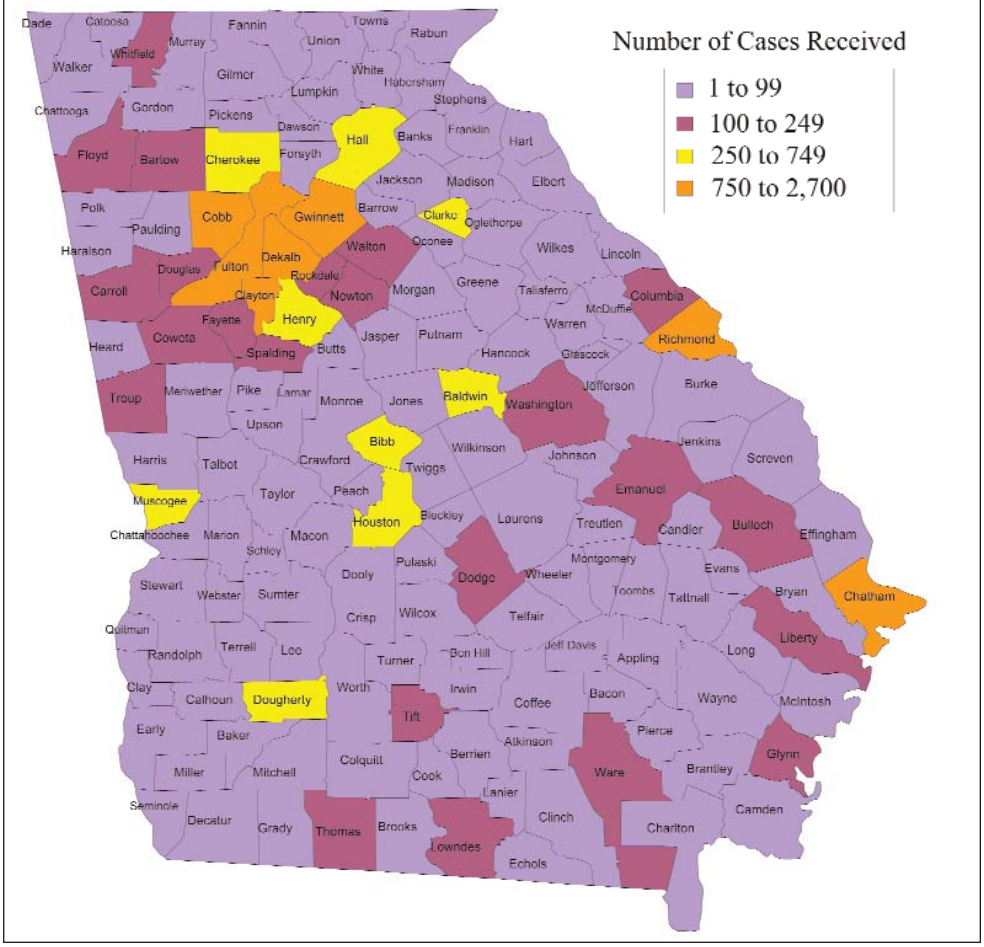
Throughout the state, OSAH judges adjudicate disputed agency decisions. The provision of accessible, neutral hearing sites in the state's 159 counties is a daunting challenge. OSAH continues to benefit from the use of generously donated courtrooms throughout Georgia in which its traveling judges conduct hearings.

Efficiency, as well as impartiality, is a hallmark of administrative adjudication in Georgia. At any one time, only a fraction of OSAH's pending cases have been awaiting disposition for more than 90 days. Moreover, the average case is adjudicated in less than six weeks.

Much of OSAH's case load involves pro se litigants. These cases challenge OSAH judges with the dual tasks of active listening and full development of the record. OSAH judges are vested with an important responsibility — that is, the creation and maintenance of a hearing environment in which the smallest, most inarticulate voice is respectfully heard.

Each OSAH judge is responsible for a vast array of cases. At last

Office of State Administrative Hearing
Geographic Distribution of fiscal year 2003 Cases



count, OSAH was referred over 300 types of cases. Much of the case load consists of administrative appeals of license suspensions, public assistance determinations, and child support commitments.

OSAH judges routinely adjudicate contentious matters involving complex and sensitive issues. These cases include resolution of environmental issues, professional licensing complaints, special education matters, labor and employment concerns, and election disputes, as well as real estate, tax and consumer fraud matters. These cases typically involve extensive prehearing practice, extended hearings and lengthy written decisions.

MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION

Parties appearing before OSAH are encouraged to participate in alternative dispute resolution. Mediations and other alternative dispute resolution techniques are less formal and are imbued with the flexibility to produce meaningful resolution of disputes. OSAH employs several administrative law judges who are certified as mediators by the Georgia Office of Dispute Resolution.

OSAH JUDGES

OSAH judges bring many talents to the task of administrative adjudication.

OSAH provides a structure for ensuring that state agencies operate in accordance with established laws, rules and procedures.

The diversity of professional experiences shared by OSAH administrative law judges is a valuable resource. As you may imagine, the analytical approach of a former prosecutor is, at times, quite different from the perspective of a former defense attorney. The dialogue between a former legal aid attorney and a retired private practitioner can prove insightful to both. Provocative exchanges among OSAH judges strengthen the thoughtfulness of the administrative adjudication process in Georgia.

OSAH judges mirror the cultural and ethnic diversity of the state. The diversity among the OSAH judges is an important facilitator of empathetic listening. The relational skills that develop from this diversity benefit those Georgians who voice grievances about their state government to OSAH judges. OSAH employs both judges and staff who are competent Spanish speakers.

While administrative law judges are sometimes referred to as the "hidden judiciary," OSAH judges have implemented nationally recognized programs to improve administrative adjudication in Georgia. In 2002, OSAH piloted a program to expedite the establishment of paternity and child support orders. The program has met with enormous success and has been recognized in the local press as an innovative process benefiting hundreds of children without placing a burden on the judicial system.

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Judicial outreach to communities across the state is an expectation of each OSAH judge. Recently, OSAH launched a collaborative effort with the assistance of the Governor's Office of Highway Safety to combat the destructiveness of drinking and driving. Georgia middle school students will benefit from an entertaining program about the dangerous consequences of destructive driving decisions.

PRACTICE TIPS

Hearings held by OSAH judges are governed by the Georgia Administrative Procedures Act and OSAH rules. OSAH rules provide for a practice similar to that provided by the Civil Practice Act, and are available for review at OSAH's Web site, www.ganet.org/osah. These rules are designed to provide uniformity, flexibility and ease of use for litigants. Model forms are also available at the OSAH Web site, and answers to frequently asked questions appear in both English and Spanish.

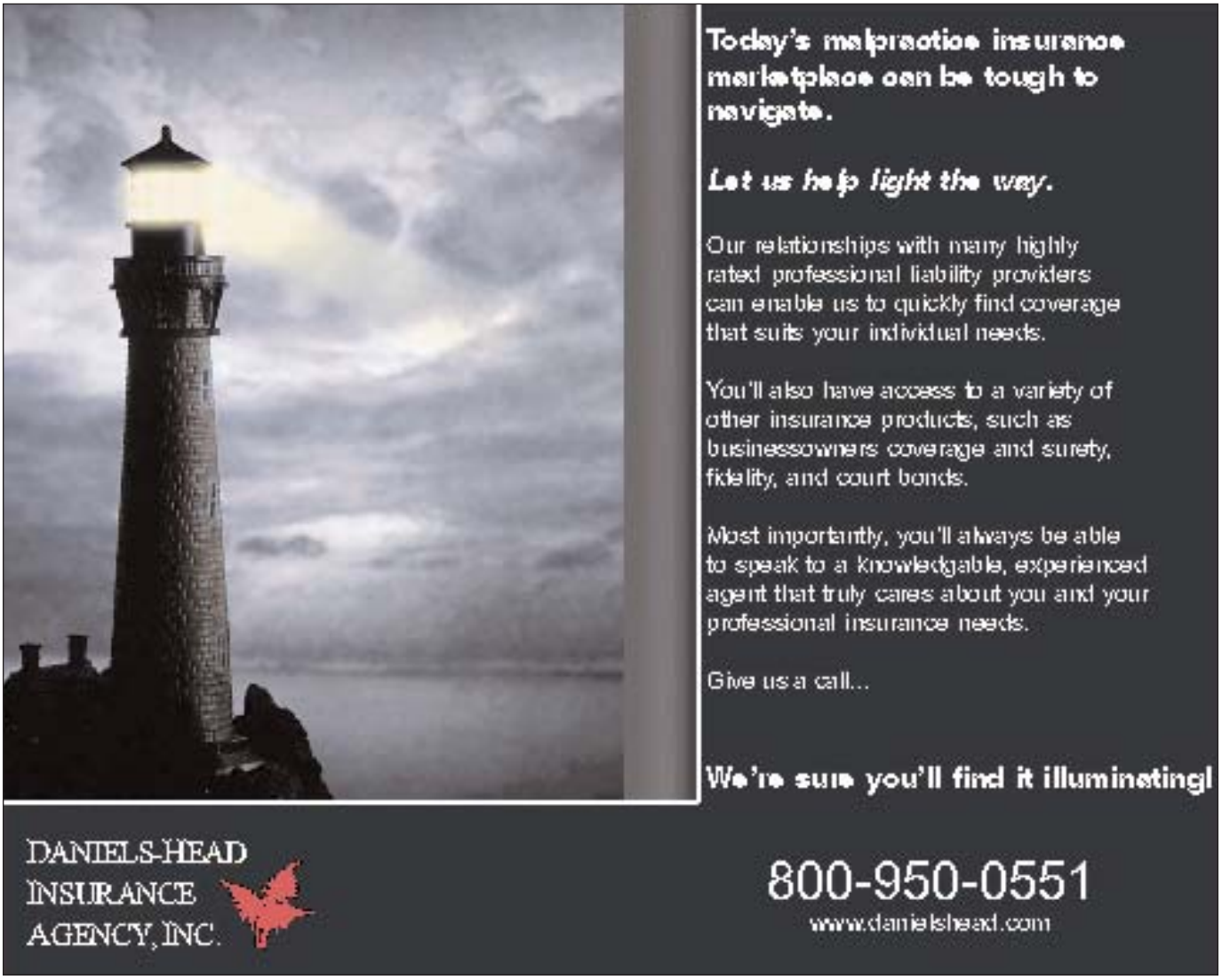
Complex cases may produce extensive prehearing motions. In certain circumstances, OSAH judges require the exchange of documents and witness lists prior to an evidentiary hearing. Subpoenas are avail-

able to compel attendance at OSAH hearings. The rules of evidence applied in OSAH hearings are similar to those in non-jury civil trials.

NATIONAL RECOGNITION

The Office of State Administrative Hearings has attracted national recognition. Its novel approaches to case management were the topic of a continuing judicial education seminar at the Seattle University School of Law in July 2003. In September 2003, OSAH hosted a national conference for chief state administrative judges to share its innovative case management practices. Plans are under way for the presentation of a workshop at the 2004 annual meeting of the American Bar Association in Atlanta next August.

FULFILLING ITS MISSION

In 1994, the Georgia General Assembly created a mechanism to provide Georgia citizens with confidence in the integrity of state government. OSAH provides a structure for ensuring that state agencies operate in accordance with established laws, rules and procedures. Also, OSAH provides an impartial forum in which parties may contest actions taken by state agencies in a fair, respectful, timely and professional manner.

Judge Lois Oakley has served as the chief state administrative law judge for the Georgia Office of State Administrative Hearings since 2000. Under her direction, this state agency has become a high-performing organization providing excellence in customer service to Georgia. She has 30 years of practical legal experience in the private and public sectors — 20 years of which have been in the field of administrative adjudication. She has served as both an attorney in private practice as well as an assistant attorney general for the state.