The Office of Administrative Hearings

The Second Annual Report

to

Governor Jane Dee Hull

Senator Brenda Burns, President of the Senate

Representative Donald Aldridge, Speaker of the House

Pursuant to A.R.S. §41-1092.01(C)(5)
and
A.R.S. §41-1092.01(C)(9)

Cliff J. Vanell, Director
September 8, 1997

Contents

I. Introduction and Overview

The Office of Administrative Hearings (OAH) was created pursuant to Laws 1995, Chapter 251, adding new Arizona Revised Statutes §41-1092 et seq., and commenced operation on January 1, 1996. Administrative hearings previously provided by regulatory agencies (except those specifically exempted) are now transferred to OAH for independent proceedings. There are two locations, Phoenix and Tucson, with 22 full-time positions, including the Director, the Case Management Supervisor, the Office Manager, 12 Administrative Law Judges (ALJ) and 7 support staff. In addition to conducting hearings in Phoenix and Tucson, the OAH travels two weeks per month to remote locations. Our statutory mandate is to "ensure that the public receives fair and independent administrative hearings."

In fiscal year 1997 (July 1, 1996 - June 30, 1997), 2,376 cases were filed involving 40 agencies. Agency acceptance of ALJ decisions without modification is 92%. Rehearings (1.9%) and appeals (3.9%) are rare. Evaluations by participants indicate that ALJ's are consistently rated excellent or good during hearings. Through careful case management, the OAH enjoys a minimal backlog. In FY 1997, the OAH conclusion rate was 96% (4% more cases filed than concluded). As required by statute, all appealable agency actions are scheduled for a date no later than 60 days from the request of a party, except where otherwise requested. Most contested cases, with the exception of Registrar of Contractor cases scheduled in remote locations, are scheduled within 60 days of the request of the agency.

II. Continued Development of the Office

1. Upgrade of Cases Management System and Office Automation

The OAH has an fully integrated case management system and office automation system. Recently, the OAH upgraded its software to create an enhanced platform to permit expansion and interconnectivity with remote offices statewide.

2. Development of Administrative Law Judge Cadres

The mandate of the OAH is to provide fair and independent hearings. In addition, the statute creating the OAH envisions sections which are attuned to the subject matter of the various agencies on whose behalf administrative hearings are conducted. The OAH is fully committed to these principles.

The OAH in its first 18 months has necessarily been involved in a gestation process. As is true of any developing being, the cells which begin the process are naturally undifferentiated. Only with time and development do the cells begin distinguishing themselves as heart cells, bone cells, etc. Likewise, the OAH has moved from a relatively undifferentiated assignment of administrative law judges to assignment from distinct cadres assigned to agencies according to the expertise of the administrative law judges. This process has moved through three distinct phases:

Phase 1: Cross-Training

Commencing January 2, 1996, administrative law judges were actively cross-trained in order to conform to statutory mandates for scheduling cases and transmitting decisions. Administrative law judges who had previously been employed by agencies in a particular subject matter acted as resources and advisors. Administrative law judges were required to conduct extensive self-study in the applicable rules and statutes governing the subject matter.

The cross-training was limited to the general funded agencies, and the Registrar of Contractors. The Department of Gaming, the Police Officer Standards and Training and the so-called "90-10's" remained serviced by contract administrative law judges previously procured by those agencies.

Phase 2: Phaseout of Contract Administrative Law Judges
Commencing July 1, 1996, the contract administrative law judges were phased out in favor of assignment to full-time administrative law judges of the OAH. The decision to do so was based on the following considerations:

(1) the expertise of the OAH administrative law judges met or exceeded that of the contract administrative law judges;
(2) scheduling and case management was facilitated;
(3) in-house and sponsored continuing education could be better monitored;
(4) substantial cost savings was possible (60%);
(5) possible conflicts of interest were eliminated, such as contract ALJ's appearing before the Office as attorneys.

Phase 3: The Development of Cadres.
Commencing with the assignment of full-time administrative law judges to the "90-10" agencies, and in response to much constructive comment, the OAH implemented agency sections, dubbed "cadres". The advantages are obvious:

(1) greater consistency in interpretation of agency law and application of facts;
(2) accelerated development and refinement of expertise;
(3) predictability on the part of parties.

Agency assignments are based on the previous experience of the administrative law judge, including formal education, former employment, self-study, hearings previously conducted, interest and willingness to undertake continuing education in the subject matter.

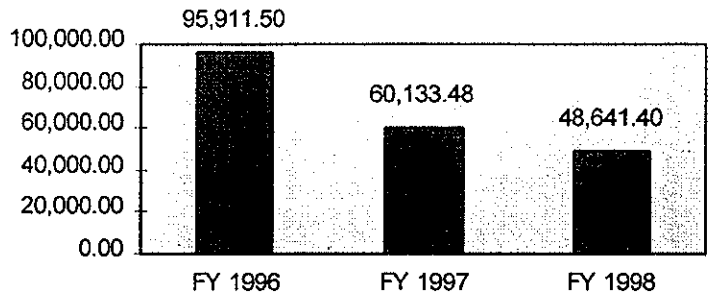
Phase 4 (prospective)
With the elimination of exempted status from various agencies, personnel, including administrative law judges with expertise in the respective subject matter, will be transferred. Large existing organizations will be restructured. Personnel will be reduced as the result of case management and office automation. The OAH contemplates recreating the organizations as OAH sections, with the administrative law judges assigned solely to the subject matter of the previous agency. Smaller staff will be consolidated and the former administrative law judges largely will be assigned to cadres servicing their former agencies. In the case of the Personnel Board, the contract hearing officers will be replaced with full-time administrative law judges of the OAH.

3. Fee structure for contracted OAH Services

Prior to the creation of the OAH, many agencies procured contract hearing officers. A typical contract called for an hourly fee, set from $60 - 90.00. In addition, a hearing might be set at $250.00/day. From January 1, 1996 - June 30, 1996, the OAH continued to assigned previously procured hearing officers to the non-general funded agencies, consisting largely of the so-called "90-10's", or professional licensure boards. This category also includes the Department of Gaming, Police Officers Standards and Training Board.

Commencing July 1, 1996, all hearings were assigned to the full-time administrative law judges of the OAH. The following diagram illustrates a 38% decline in cost to the affected agencies. In FY 1998, the expected savings is 50% of former costs due to further reductions in administrative costs charged to the agencies and boards.

Comparison of Costs to Non-General Fund Agencies for Hearings



4. Website

The OAH has created and maintains an Internet website, which can be found at **azoah.com**. The site permits parties to research the status of their cases, find biographies of the assigned administrative law judge, communicate with the Director, Case Management Supervisor and others and review rules.

The website was created and is maintained in-house.

5. Newsletter

The OAH has completed publication of four editions of the OAH on a quarterly basis. The Newsletter reports various performance measures and discusses current issues. See Appendix 1.

6. Management of Motor Vehicle Division Executive Hearing Office

Pursuant to an interagency memo of understanding, the OAH and the Department of Transportation are in the process of transferring the management of the Motor Vehicle Division Executive Hearing Office to the OAH commencing September 2, 1997. The undertaking represents the model for absorbing established large hearing organizations. The original core organization remained intact, with non-hearing aspects ceded to the DOT. The OAH technology (case management and office automation) were adopted, along with the OAH mission and protocols.

The agreement called for the transfer of 21 full-time employees and computer equipment, the restructuring of the existing hearing department into hearing and non-hearing functions, and the complete upgrade of hardware and software.

7. Prospective Incorporation of Existing Hearing Departments and Functions

A number of agencies continue to conduct hearings in-house. The Office of Administrative Hearings offers the following advantages over an agency internal hearing:

a. detachment and independence of the process;
b. flexibility in scheduling;
c. consistency of rules applicable to the hearing process;
d. cost savings in personnel (economy of scale and automation); and
e. tracking and reporting capability

Active participation is vital from the affected agencies to make sure that only the necessary personnel are transferred. The OAH case management and office automation system typically results in a decreased need for staff. Also, certain personnel, formerly a part of the hearing department, may need to remain with the agency as a liaison group to process requests for hearing and the transmittal of orders. Thought should be given to allowing existing hearing rules for large groups (such as the Industrial Commission) to be designated as "local rules" to avoid needless disruption or confusion to the regulated community.

The following agencies/agency divisions are currently exempted from the purview of the OAH which have no apparent impediment exists for inclusion. Existing large organizations could be established as freestanding units of the OAH. Smaller units would be recombined into a single viable organization or merged with the existing OAH.

a. Department of Transportation;
b. Department of Revenue, income tax matters;
c. Industrial Commission;
d. Department of Economic Security;
e. Arizona Health Care Cost Containment System;
f. State Personnel Board;
g. Department of Corrections;
h. Board of Executive Clemency;
i. Department of Juvenile Corrections; and
j. State Board of Equalization.

The following agencies should likely remain exempt for incorporation under the OAH:

a. The Arizona Board of Regents
   The Arizona Board of Regents is a constitutionally distinct portion of the executive branch and any mandatory incorporation of the their function under the supervision of the Governor is problematical. In light of these concerns, the OAH recommends against its inclusion.

b. Corporation Commission
   The Corporation Commission is a constitutionally distinct portion of the executive branch and any mandatory incorporation of the their function under the supervision of the Governor is problematical. In light of these concerns, the OAH recommends against its inclusion.

c. Board of Tax Appeals

The Board of Tax Appeals should remain exempt since it acts as an appellate step after the OAH hearing for Revenue matters.

d. Department of Economic Security Appeals Board

Should DES cases come under the purview of the OAH, the DES Appeals Board will act as appellate step after the OAH hearing.

III. Summary of Agency use of OAH Services

1. Case Management

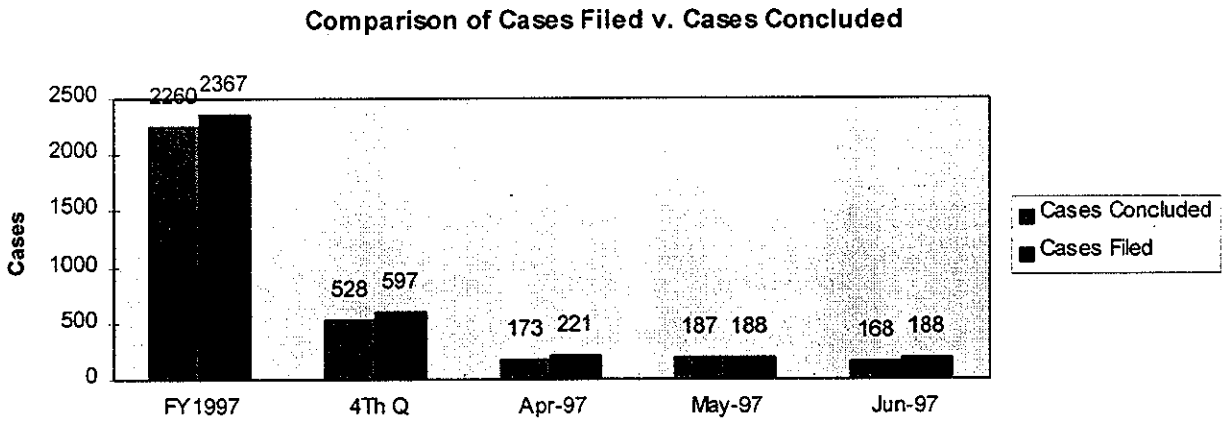
a. Breakdown of Cases Filed by agency (FY 1997)

A total of 2,376 case were filed with the OAH in fiscal year 1997. The distribution among the agencies and boards are as follows (in descending order by number of cases filed):

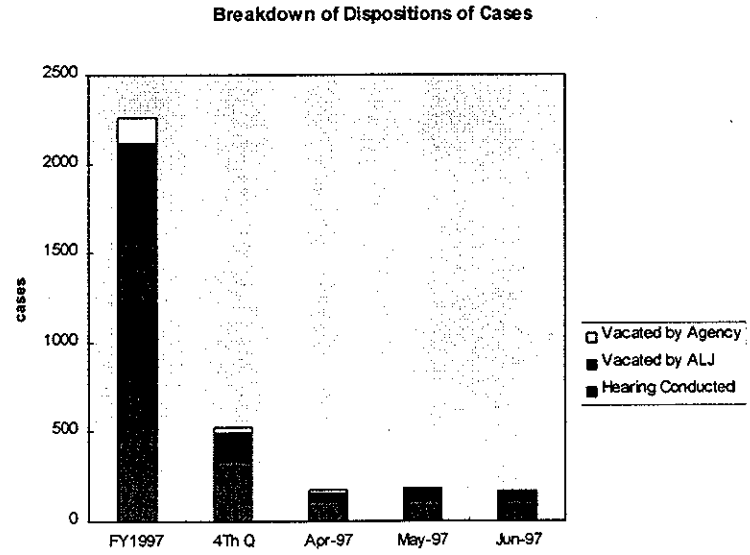
Registrar of Cont.	1,131
Revenue	200
Health Services	173
Insurance	162
Liquor	121
Environ. Quality	108
Building/Fire Safety	77
Accountancy	75
Pest Control	52
Real Estate	37
Cosmetology	34
Nursing	34
Gaming	31
Land	29
Banking	22
Medical Examiners	14
Racing	15
Police Standards	9
Water Resources	8
Agriculture	6
Weights and Measures	6
Behavioral Health Ex	4
Education	4
Administration	3
Psychology	3
Technical Registration	3
Dental	2
Lottery	2
Motor Vehicles	2
Public Safety - Trans	2
Charter Schools	1
Chiropractic	1
Community Colleges	1
Economic Security	1
Osteopathic	1
Veterinarian	1
Water Quality Appeals	1
ADA	0
Funeral	0
Pvt. Post. Ed	0

b. Number of Cases Filed v. Cases Concluded

The OAH enjoys a minimal backlog due to careful case management, including the discouragement of unnecessary continuances. The follow diagram illustrates the experience of the OAH at relevant time periods. Overall, only 4% more cases were filed than concluded in FY 1997.



The following diagram illustrates that, in most cases, matters proceed to hearing. Matters which are vacated indicate that some portion of the OAH hearing calendar is taken up unnecessarily. Statute calls for the setting of hearings within 60 days of a request for hearing by an agency in "contested case" and within 60 days of an appeal of an "appealable agency action". Although an argument could be made that such timelines inevitably result in unnecessary hearing settings, case management at the OAH discourages cases being "on hold" or riding the calendar. Generally a matter is vacated at the first hearing setting as the the result of settlement. Therefore, on the whole, statutory time limits are beneficial to the larger process of regulatory action.

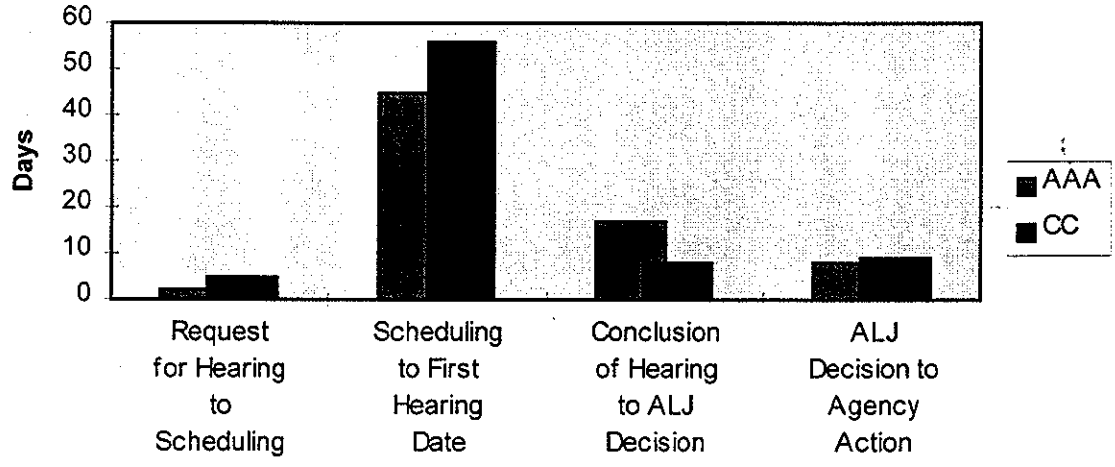


c. Timeline of Case Management

A.R.S. 41-1092.05(A) and 41-1092.08(A) and (B) contemplate a rigorous timeline to expedite hearings and final agency actions. "Appealable agency actions" (defined as actions taken by an agency without a prior hearing) are required to be set for hearing within 60 days of a request by a party. "Contested cases" (defined as proposed actions for which a hearing is required) are required to be set within 60 days of a request of an agency request. Administrative decisions must be transmitted to the agencies with 20 days of the conclusion of the hearing. The directors and boards are required to take final action within 30 days of receipt.

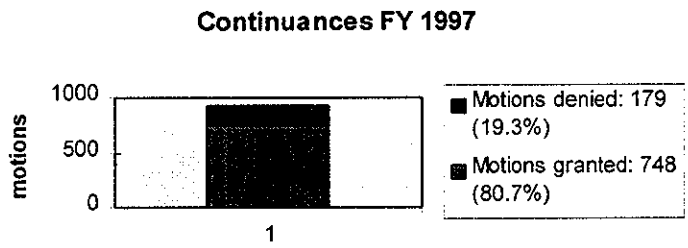
The following diagram illustrates that, on average, all timelines are being met. With the exceptions of Registrar of Contractor cases scheduled out-of town, for which an administrative law judge must ride the circuit, virtually all contested cases are set with 60 days of the request by the agency. All appealable agency actions are set within the required 60 days. Transmission of decision and final agency actions are within guidelines.

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, April 1 - June 30, 1997



d. Incidence of Continuance

Roughly 80% of all continuance request are granted. However, the OAH has developed a well-deserved reputation for discouraging "convenience" continuances in favor of those based on "good cause". This accounts for the high conclusion rate versus new settings (96%).



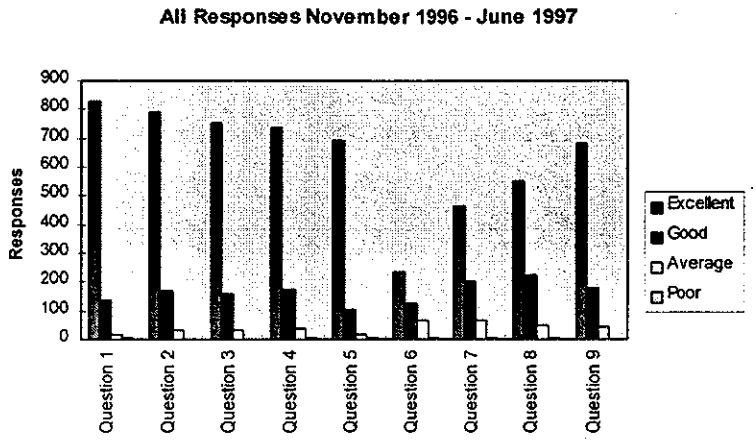
2. Evaluation

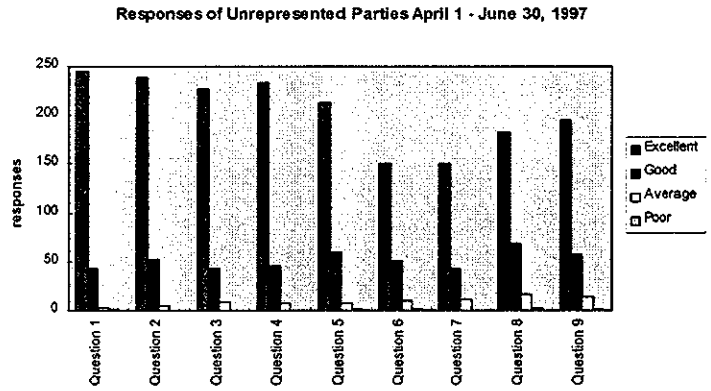
a. Results of Public Evaluation

Since November 1996, the OAH has administered an evaluation procedure. At the conclusion of every hearing, evaluations are handed out to four major groups of respondents: Represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The results are not disclosed to the administrative law judge. The respondents are asked to rate the following, on a scale of excellent, good, satisfactory, poor:

1. Attentiveness of ALJ
2. Effectiveness in explaining the hearing process
3. ALJ's use of clear and neutral language
4. Impartiality
5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded to promptly and completely
9. Treated courteously

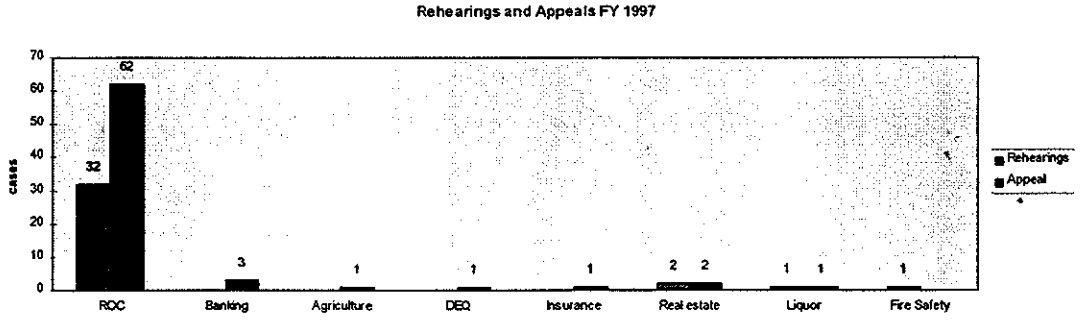
The results indicate that satisfaction is high among all groups, with those responding rating the OAH excellent to good in all categories. An analysis of the unrepresented parties for a sample quarter indicates that even among this most vulnerable group, the OAH is seen to be functioning well.





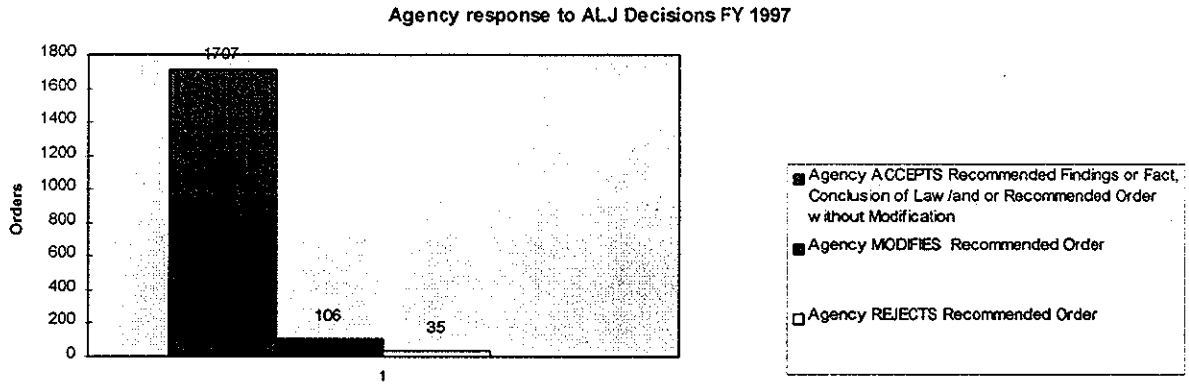
b. Incidence of Rehearing/Appeal

Rehearings at 1.9% and appeals at (3.9%) are relatively rare. Both are concentrated at the Registrar of Contractors. Registrar case are primarily contests between two private litigants (homeowner/contractor; contractor/subcontractor).

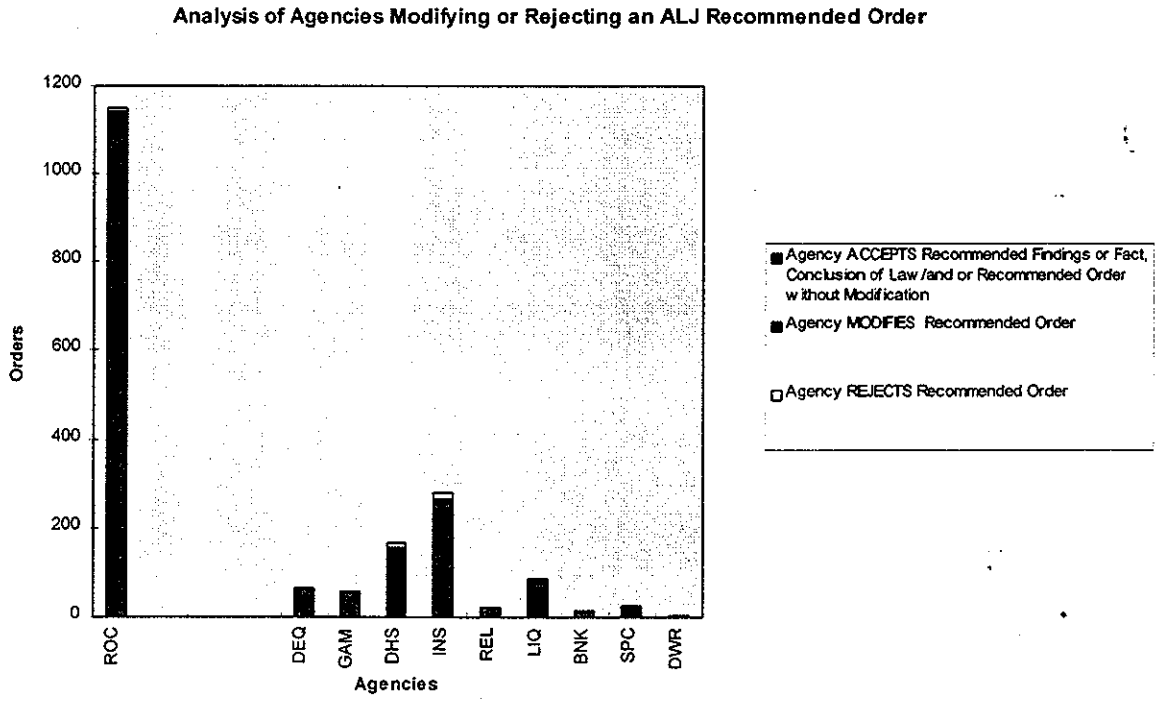


IV. Acceptance of ALJ Decisions by Agencies

Agency acceptance of OAH decisions is very high. 92% of all decisions are accepted without modification. Only 2% are rejected, and the remaining 6% are modified.



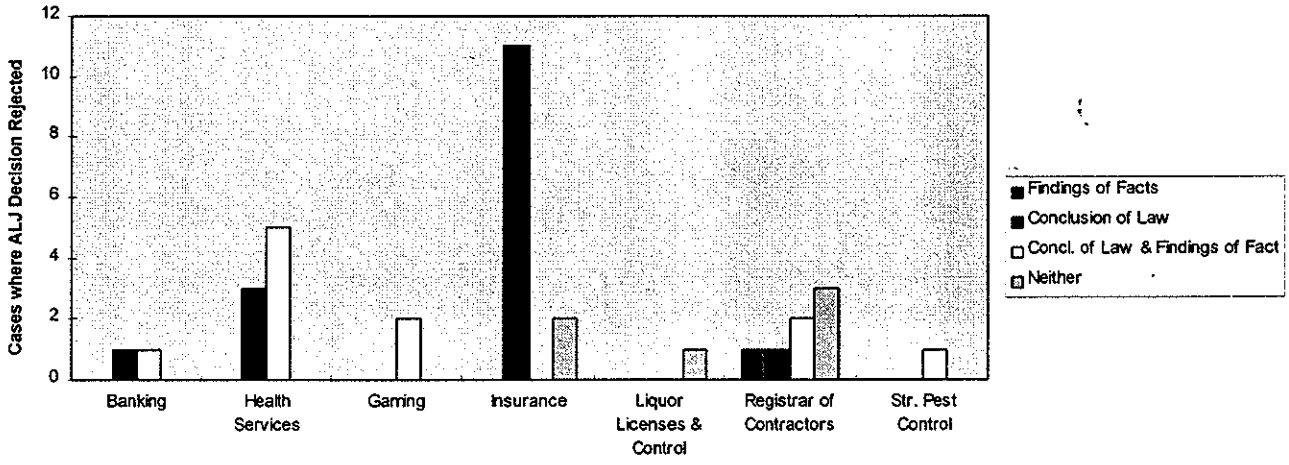
The following diagram and accompanying chart reports the breakdown by agency.



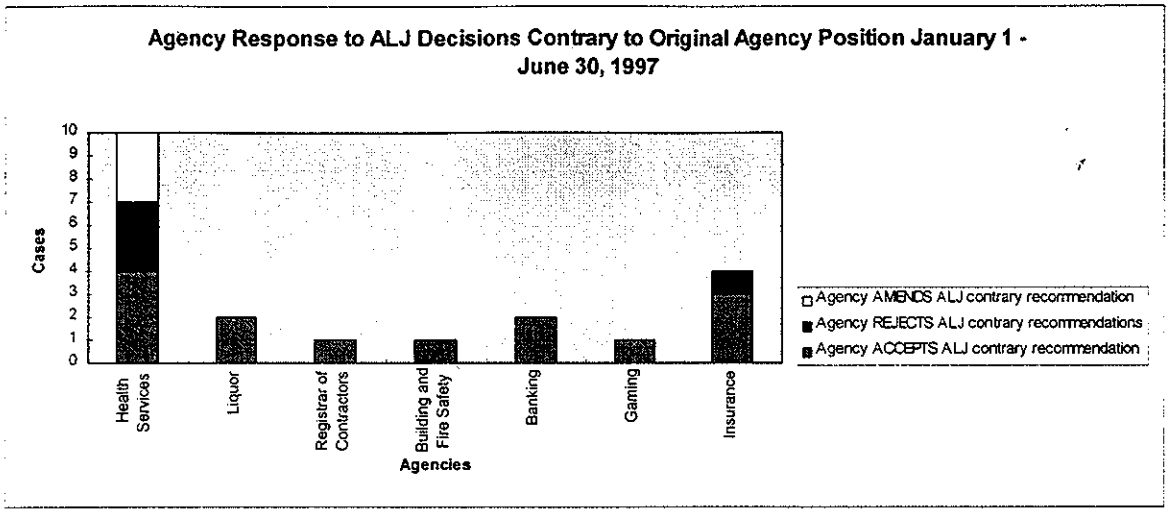
	Accepts	Modifies	Rejects
ROC	1084	59	7
DEQ	62	3	0
GAM	56	1	2
DHS	147	10	9
INS	254	11	13
REL	21	2	0
LIQ	76	9	1
BNK	10	3	2
SPC	15	8	1
DWR	1	1	0
ACY	45	1	0

An analysis of the decisions rejected indicates what portion of the decision was rejected. The "neither" category would indicate that the "recommended action" (suspension, etc.) was rejected. In the case of the Department of Insurance, the vast majority of rejected "conclusions of law" centered on the Director's interpretation of the degree to which an administrative law judge should recommend that the Director exercise his discretion, and not otherwise a conflict with analysis.

Analysis of Whether the Findings of Fact and/or Conclusions of Law were Modified/Rejected When the ALJ Recommendations were Rejected (FY 1997)



All in all, the agencies and boards have deferred to the administrative law judge decision, even when the decision has been contrary to the agency's original position, as illustrated below.



V. Development of Rules

Rules can be a double- edged sword. If not well thought out, they can easily become ends unto themselves, straightjacketing everyone into rigid procedures. On the other hand, rules offer guidance to those unfamiliar with the process and provide predictability. With 20 months of experience, the OAH is now confidently drafting rules to reflect and encourage the practices which have been found to work well. Its latest draft is available upon request or can be found on the Internet at www.azoah.com under "Pending Projects". The OAH is making every effort to limit the number of rules and avoid unnecessary complexity. The draft rules pending filing with the Secretary of State are found in Appendix 2.

VI. Recommendations for Changes in the Administrative Procedures Act

1. Uniformity:

The regulated community has long complained about inconsistent procedures among the various agencies. The following recommendations are meant to point to the areas where greater consistency can be accomplished:

a. Eliminate all exemptions to OAH procedures from 90-10 Boards.

There seems little justification for continuing the exemption of the 90-10 boards from the procedures of A.R.S. §41-1092 et seq. A.R.S. §41-1092.08 (B) must be amended to allow 30 days from the time a board meets for the board to act, rather than 30 days from the transmission of the administrative law judge decision to the board. This will accommodate boards that meet infrequently.

b. Establish uniform standards for notices of hearing and answers.
There is a broad variance among the agencies as to what is included within the notice of hearing. Although statute requires that the particular statute or rule alleged to have been violated be cited, there is no obligation to reproduce the relevant portion in the notice. This alone would be an great assistance to the unrepresented parties. Likewise, a method to facilitate answers, such as a preprinted form affixed to the notice might be considered. Greater attention could be given to formats that facilitate understanding of the agency's action or proposed action. A committee should be established to review these issues.

c. Establish uniform standards for appeals notice.
Currently there are no standards for how, and with what degree of specificity, appeals rights should communicated to parties once the agency has finally acted.

d. Establish uniform basis for rehearing.
The bases for rehearing are as varied as are the various agencies. Parties must research the specific rules of the agency to determine the basis for rehearing. Recapitulating the standard bases in Title 41 would make the process easier, particularly for the unrepresented.

2. Interaction with the OAH

a. Require agencies to notify OAH of appealable agency actions within 5 days of a request for hearing.

A.R.S. §41-1092.05(A) requires that in appealable agency actions OAH schedule a hearing within 60 days of the request for the hearing by the appealing party. The request for hearing is made to the regulating agency pursuant to A.R.S. §41-1092.03(B). Often agencies receive an appeal from a party but do not transmit the case to OAH for several weeks. It becomes difficult or impossible for OAH to schedule hearings for the cases within the remaining time.

> The agency should affirmatively be required to promptly transmit cases to avoid scheduling problems. Transmittal within 5 days should be sufficient. Alternatively, the appealable agency action should be conformed to the procedure for contested cases and provide that hearings be scheduled within 60 days of the agency request rather than the request of the appealing party.

b. Make explicit that all adjudicative decisions are to be made by the OAH after transmission of the matter to the

In one instance, an agency director ordered the ALJ to grant a continuance. In another, a party filed a motion to an agency director to reschedule a matter and reassign the administrative law judge. A clear statement that the OAH is responsible for all adjudicative decision upon transmission will make the lines of responsibility clear for parties.

c. Require the administrative law judge decision to be transmitted with the final agency action.

Current statute only require the administrative law judge decision to be transmitted if the agency

modifies or rejects the decision. However, requiring the agency to transmit the original administrative law judge decision will allow parties to determine whether any modification or rejection has been made. In certain boards, the original ALJ decision is reformatted in an order signed by the Board, leaving no frame of reference.

d. Increase the time for the agency to act on an outstanding motion for rehearing in order to permit a non-agency party to be heard in opposition.
A.R.S. §41-1092.09 provides that the agency head rule on a motion for rehearing within 15 days of receipt. This does not allow time for the opposing party to respond. Normally that is not a consideration in cases where the agency is acting on its own motion. However, in cases such as the Registrar of Contractor where two private parties are involved, due process requires notice to the other party and an opportunity to be heard prior to the agency acting. An extension to 30 days in such cases would likely be sufficient.

e. Reallocate money appropriated to DES for 1.5 hearing officer positions to the OAH.
H.B. 2258 has created a new appeal to the OAH to determine whether there is probable cause to sustain a finding by the Department of Economic Security that a person has abused or neglected a child prior to substantiating the allegations in the central Registry. Monies for 1.5 hearing officers was appropriated to the DES for this purpose.

Since the OAH schedules from administrative law judge "cadres" or pools, transfer of the money and positions to the OAH without restriction would allow maximum efficiency in such determinations.

APPENDICES

1. Newsletter

2. Draft Rules

The OAH

Vol. 4
July 1997

Official Newsletter of the Arizona Office of Administrative Hearings

Fiscal Year Ends, A Look Back (and Forward...)

--- Cliff J. Vanell, Director

The Office of Administrative Hearings (OAH) in its first 18 months has necessarily been involved in a gestation process. Over time the constituent parts have become refined and functions more developed. As the OAH moves forward, it is good to pause and assess what has been accomplished.

First the statistics...A look back

The OAH commenced operation on January 2, 1996. Pursuant to A.R.S. 41-1092.01, all agencies, unless exempted, were required to use the personnel and services of the OAH in affording parties administrative hearings, either to appeal an agency action, or as required before the agency could take an action. The OAH currently has 12 administrative law judges located in two offices. In addition to conducting hearings in Phoenix and Tucson, the OAH travels two weeks per month to remote locations. In fiscal year 1997 (July 1, 1996 - June 30, 1997), 2,376 cases were filed involving 40 agencies.

Agency acceptance of ALJ decisions without modification is 92%. Rehearings (1.9%) and appeals (3.9%) are rare. Evaluations by participants indicate that ALJ's are consistently rated excellent or good during hearings. Through careful case management, the OAH enjoys a minimal backlog. In FY 1997, the OAH conclusion rate was 96% (4% more cases filed than concluded). As required by statute, all appealable agency actions are scheduled for a date no later than 60 days from the request of a party, except where otherwise requested. Most contested cases, with the exception of ROC cases scheduled in remote locations, are scheduled within 60 days of the request of the agency.

Now a look to where we are going...

ALJ Assignment

Each administrative law judge is assigned to various types of cases. Each is required to conduct extensive self-study in the applicable rules and statutes governing the subject matter, as well as attend continuing legal education. The OAH has recently implemented agency sections, dubbed "cadres". The cadres are composed of a pool of judges to allow flexibility in scheduling and make the best use of ALJ time, while encouraging accelerated development and refinement of expertise as necessary in certain cases. Agency assignments are based on the previous experience of the administrative law judge, including formal education, former employment, self-study, hearings previously conducted, interest and willingness to undertake continuing education in the subject matter.

Rules

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Expansion

The OAH has planned for the inclusion of now-exempted agencies should the Legislature move in that direction. Rather than modify its current structure, which has worked well, the OAH proposes to create free-standing mirrors of itself connected by a common mission and protocols. In cases where there is a large preexisting hearing department, the plan would be to reconfigure, applying OAH case management and standards, rather than disband and absorb. In other cases, smaller units would be combined to create viable organizations. In any case, the OAH would plan to enhance current practice consistent with the mission of the OAH.

Lastly...

Many people have contributed to the success of regulatory reform this last fiscal year. It is fitting to end the year with a thank you.

Mission Statement:
We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of state regulation.

This publication is available in alternative formats.

Introducing...

Brian Brendan Tully is an Administrative Law Judge assigned to the Arizona Office of Administrative Hearings. He previously had been assigned to the Arizona Registrar of Contractors as an Administrative Law Judge.

Originally from Brooklyn, New York, Judge Tully earned his Bachelor of Arts in Political Science with a minor in Psychology from The University of New Mexico and his Juris Doctorate from The University of Tulsa College of Law. He is licensed to practice law in Arizona, Oklahoma, the U.S. District Courts for the Northern, Eastern and Western Districts of Oklahoma, the U.S. Tenth Circuit Court of Appeals and the U.S. Court for International Trade. Judge Tully has held positions as Municipal Judge, City Prosecutor, City Attorney, general practitioner, senior oil and gas landman/attorney and senior arbitrator. His real life experiences also include having been an assistant director of a city/county pre-trial release project and a steamfitter. Judge Tully has taught oil and gas contracts law at the junior college level and real estate transactions at a private paralegal school, and also worked as a nursing skills laboratory technician in a university baccalaureate of nursing science program.

Eric Bryant joined the Arizona Office of Administrative Hearings on May 5, 1997. He is a graduate of the University of Utah (BA, English, 1985) and the University of Arizona College of Law (1988). Since then, he has served the State of Arizona in several different capacities. In 1988, he was a law clerk for Division One of the Arizona Court of Appeals. Following that, from 1989 to 1996, he was an Assistant Attorney General for the State of Arizona in the Criminal Appeals Section, the Administrative Law Section, and the Licensing Enforcement Section. After about two years in the criminal law arena, he moved to the Civil Division, handled a variety of regulatory matters, mostly in the health care area, and distinguished himself in the administrative law field. In 1996, he moved to the Arizona Department of Revenue, working as a tax analyst in Arizona transaction privilege and use tax. Also, he has taught legal assisting courses, including Administrative Law, at Phoenix College since 1990. He has been a presenter for Arizona CLE programs and has also edited Language Arts home school curricula for a small publisher.

Statistics

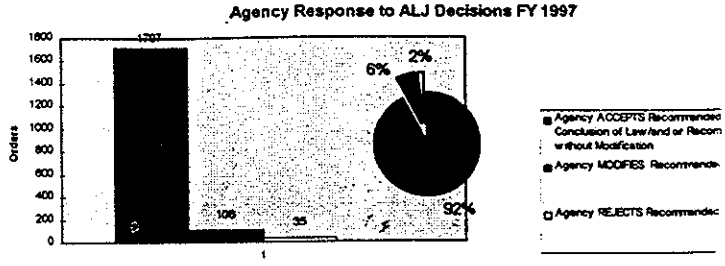


fig. 1

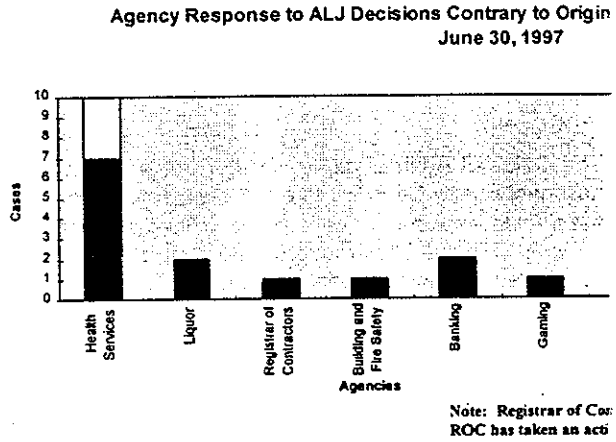


fig 4.

Bob Worth currently serves as an Administrative Law Judge for the Arizona Office of Administrative Hearings, presiding ove a full calendar of matters forwarded b several different State agencies. Receiv ing his undergraduate bachelor's degree from Stanford University and his Docto of Jurisprudence degree from Stanfor Law School, Mr. Worth subsequently be came a member of the State Bars of Cal fornia, New York and Arizona. During hi period of military service, he served as a Army Judge Advocate, primarily engaged in court martial tr als. he conducted a general law practice in New York as pa of a firm and, subsequently, as a sole practitioner. After mov ing to Arizona, and after a period during which he conducted general law practice in Scottsdale, he joined the staff of th Registrar of Contractors as a hearing officer, ultimately hol ing the position of the Registrar's Chief Administrative La Judge for twelve years.

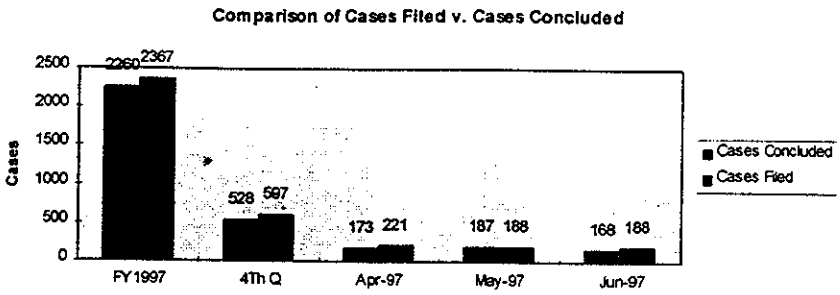


fig. 2

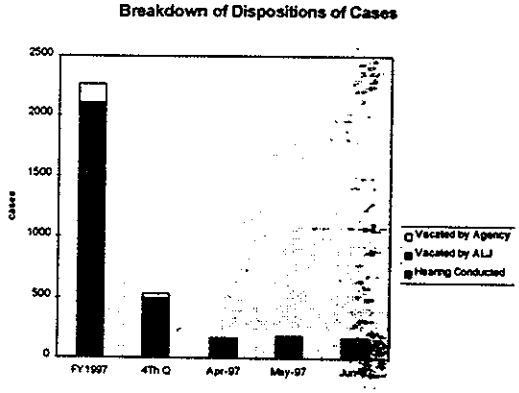
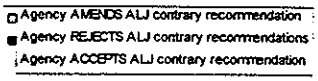


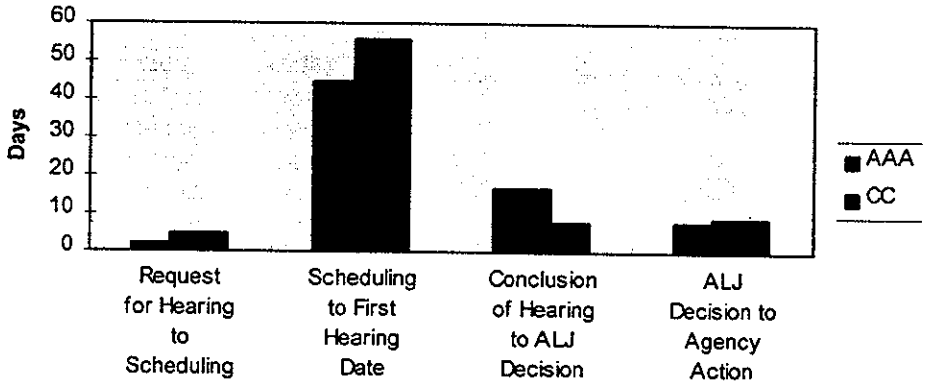
fig. 3

ncy Position January 1 -



s: quarter data reanalyzed to reflect only cases where the

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, April 1 - June 30, 1997



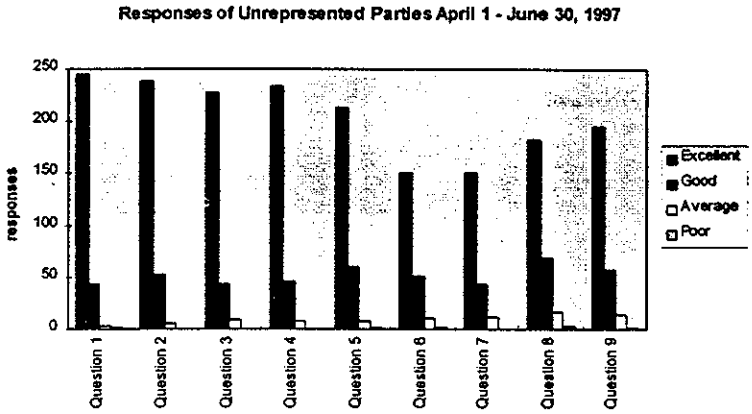
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An example would be possible discipline on a professional license with the possibility of suspension or revocation. Parties are entitled to a hearing before the OAH prior to the agency acting.

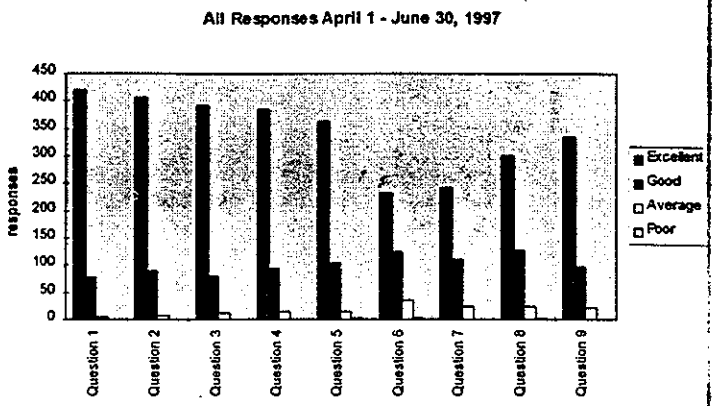
fig.5

2,376 Cases Filed July 1, 1996 - June 30, 1997

	FY 97	4th Q		FY 97	4th Q		FY 97	4th Q
Accountancy	75	14	Environ. Quality	108	38	Medical Examiners	14	2
ADA	0	0	Economic Security	1	0	Nursing	34	5
ducation	4	3	Motor Vehicles	2	2	Osteopathic	1	0
Administration	3	0	Charter Schools	1	0	Police Standards	9	2
Agriculture	6	2	Chiropractic	1	0	Pvt. Post. Ed	0	0
uilding/Fire Safety	77	29	Health Services	173	54	Psychology	3	2
ehavioral Health Ex.	4	1	Weights and Measures	6	2	Racing	15	4
Banking	22	5	Water Resources	8	1	Real Estate	37	12
osmetology	34	5	Funeral	0	0	Revenue	200	38
ental	2	0	Gaming	31	6	Registrar of Cont.	1,131	284
Community Colleges	1	0	Insurance	162	31	Pest Control	52	10
ottery	2	0	Land	29	5	Technical Registration	3	1
ublic Safety - Trans	2	2	Liquor	121	24	Veterinarian	1	0
						Water Quality Appeals	1	0

Evaluations of OAH Services





Questions:

1. **Attentiveness of ALJ**
2. **Effectiveness in explaining the hearing process**
3. **ALJ's use of clear and neutral language**
4. **Impartiality**
5. **Effectiveness in dealing with the issues of the case**
6. **Sufficient space**
7. **Freedom from distractions**
8. **Questions responded to promptly and completely**
9. **Treated courteously**

Note: The four major groups of respondents are: Represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The respondents fill out the evaluations immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

Office Of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, Arizona 85007

August 13, 1997

TITLE 2. ADMINISTRATION

CHAPTER 17. OFFICE OF ADMINISTRATIVE HEARINGS

(Authority: A.R.S. § 41-1092 et seq.)

ARTICLE 1 PRE-HEARING AND HEARING PROCEDURES

R2-17-101 DEFINITIONS.

"Agency" means the agency out of which a matter arises.

"Matter " means a contested case or appealable agency action.

"Office" means the Office of Administrative Hearings.

R2-17-102 REQUEST FOR HEARING.

Any agency requesting the scheduling of an administrative hearing in a matter with the Office pursuant to A.R.S. Title 41, Chapter 6 and 10, shall do so in writing supplying the following information:

1. caption;
2. number assigned to the case within the agency;
3. designation of the hearing as a contested case or appealable agency action;
4. date party appeals agency action;
5. number of witnesses, if known;
6. approximate duration of the hearing if known; and
7. proposed dates.

R2-17-103 ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE; SETTING OF THE HEARING.

Within ten days of the receipt of a request for hearing, the Office shall advise the agency of the assignment of administrative law judge to hear the matter, and the date, time, and location

of the hearing, and assign a docket number incorporating the internal agency number together with an agency code.

R2-17-104 MOTION FOR REASSIGNMENT OF ADMINISTRATIVE LAW JUDGE; BASIS; RECUSAL.

A. Basis. A party may request a reassignment of the administrative law judge on the grounds of actual bias.

B. Motion. The party requesting a reassignment shall file a motion with the Director of the Office stating with specificity the facts supporting the motion. Such motion shall be filed with the Office within 10 days of receiving notice of the administrative law judge, or of having knowledge of facts relevant to the issue of actual bias, whichever is later. The Director shall rule on the motion at least 5 days before the commencement or continuation of the hearing.

C. Recusal. An administrative law judge shall recuse himself or herself when for any reason the administrative law judge feels unable to render a fair and impartial decision.

R2-17-105 COMPUTING TIME.

A. Computation. In computing any period of time prescribed by these rules, the day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday.

B. Extra time for service by mail. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon a party, or whenever service is required to be made within a prescribed period before a specified event, and the notice or paper is served by non-certified mail, five days shall be added to the prescribed period.

R2-17-106 VACATING OF HEARINGS.

A. Motion. A party may request that a hearing be removed from the calendar of the Office by filing a written motion to vacate to the assigned administrative law judge specifying the basis of the motion. Upon a finding of good cause, the administrative law judge shall vacate the matter from the calendar of the Office and return the matter to the original agency for further action.

B. Basis. Good cause includes, but is not limited to:

1. settlement of the matter by the parties.
2. an order by the agency Director or Board dismissing the action giving rise to the hearing.
3. agreement of the parties.

R2-17-107 DUTIES OF THE ADMINISTRATIVE LAW JUDGE.

The administrative law judge shall:

A. grant or deny requests for discovery;

B. receive and grant requests for subpoenas where appropriate;

C. rule on motions;

D. preside at the hearing;

E. administer oaths and affirmations;

F. rule on continuances;

G. prepare findings of fact, conclusions of law, and recommendations, or a final order where required by law.

R2-17-108 EX PARTE COMMUNICATIONS.

There shall be no contact between a party (or agency director, commissioner, or board member charged with making the final decision in any contested case or appeallable agency

action according to agency rule or applicable statute) and the administrative law judge assigned to the case in any substantive matter, except in the presence of all parties, or upon written motion with copies to all parties. This rule shall not apply to proceedings in which a party fails to appear after proper notice.

R2-17-109 FILING AND SERVING DOCUMENTS.

A. Filing Date. A document shall be deemed filed with the Office when it is received by the Office.

B. Other Parties. Parties shall file original documents with the Office, and send copies to all other parties, and the agency if the agency is not a party. The original document shall reflect the names and addresses of all other parties, or the agency if not a party, to whom copies have been sent.

C. Signatures. Every document filed with the Office shall be signed by the party filing it or by the party's attorney.

D. Captions. All documents shall contain a caption that states that the matter is before the Office, and shall include the names and identification of parties, the agency if the agency is not a party, and matter number assigned by the Office.

E. Facsimiles. Facsimiles shall be accepted by the Office to meet any filing deadlines. The original document need not be subsequently filed with the Office.

F. Service. Service upon a party or an attorney shall be made by personal delivery or by first-class mail, postage prepaid, in the United States mail, addressed to the party to be served or the party's attorney, at the last address of record.

R2-17-110 CONSOLIDATION OF CASES.

A. Standards for Consolidation. An administrative law judge may order consolidation of any matters if:

1. the same persons are parties in all of the matters;

2. there are substantially similar issues of fact and law in all of the matters;
3. rulings and decisions in one matter may affect a party's rights in another matter;
4. the same witnesses and evidence may be used in all matters; and
5. consolidation would not prejudice any party.

B. Agency Consolidation. An agency may request that the matters be consolidated at the time it requests a matter be set for hearing.

C. Requests for Consolidation. A party may request consolidation by filing a motion for consolidation with the Office, copying all parties to that matters for which the consolidation is requested and the agency if the agency is not a party. Parties may file a stipulated motion for consolidation, signed by all the parties to the matters for which consolidation is requested. Objections by a party to a motion for consolidation may be filed within ten days of service of the motion.

D. Determination. When more than one administrative law judge is assigned to the matters which are the subject of the motion for consolidation, the motion shall be determined by the administrative law judge assigned to the matter with the latest pending hearing date. If matters are consolidated, the docket number assigned by the consolidating administrative law judge shall be the controlling number of the consolidated matters, and all further pleadings or papers shall be filed and docketed under that number.

E. Order. Upon determining whether cases should be consolidated, the administrative law judge shall send a written order to all parties, and the agency if the agency is not a party. The order shall contain a description of the cases for consolidation, the reasons for the decision, and notification of a consolidated prehearing conference if one is being scheduled, or consolidated hearing. The administrative law judge shall designate the docket number and caption to be used in all future pleadings or documents.

F. Motion for Severance If matters have been consolidated by the agency at the time the agency requested the Office to set a hearing, any party may file a motion for severance of the

matters. The motion shall be filed with the administrative law judge at least ten days prior to the first scheduled hearing date, with copies served on all other parties, and the agency if the agency is not a party. If the administrative law judge finds that consolidation prejudices any party, the administrative law judge shall order the severance or other relief which shall prevent the prejudice from occurring.

R2-17-111 PREHEARING CONFERENCE.

A. Purpose. Prehearing conferences may be held to:

1. clarify or limit procedural, legal or factual issues;
2. consider amendments to any pleadings;
3. identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
4. obtain stipulations or rulings regarding testimony, exhibits, facts, or law;
5. schedule deadlines, hearing dates, and locations if not previously set;
6. Allow the parties opportunity to discuss settlement.

B. Procedure. Upon the request of any party, or if otherwise deemed advisable, the administrative law judge may hold a prehearing conference. The administrative law judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference.

C. Informal. A prehearing conference shall be an informal proceeding conducted expeditiously by the administrative law judge.

D. Record. The administrative law judge may record the prehearing conference. Agreements from a prehearing conference may be electronically or mechanically recorded, memorialized in an order by the administrative law judge, or entered on the record at the time of the hearing.

R2-17-112 MOTIONS.

A. Filing. Any request for a ruling from the administrative law judge shall be by motion. Unless made during a hearing, a motion shall be in writing, state the specific grounds, and set forth the relief sought.

B. Response to Motions. Any party may file a written response to the motion within five calendar days of receipt of the motion, unless otherwise directed by the administrative law judge. For purposes of this rule, receipt is presumed five days after mailing to the party's last known address. The response shall set forth the non-moving party's objections, if any.

C. Oral Argument. Any party desiring oral argument on a motion may make the request when submitting a motion or response. Oral argument on a motion shall be ordered by the administrative law judge only if it is determined that it is necessary to the development of a full and complete record on which a proper decision can be made.

D. Rulings. Rulings on motions, other than those made during the course of the hearing, shall be in writing and shall be sent to all parties of record and the agency, if it is not a party.

R2-17-113 CONTINUANCES.

A motion for continuance shall be in writing stating the specific reasons justifying a continuance, and shall be filed with he Office at least five days before the hearing. If known, a party requesting a continuance shall state the position of the other parties in the request for continuance. The administrative law judge shall determine whether to continue the hearing, and shall issue an order accordingly.

R2-17-114 SUBPOENAS.

A. Written Request. Requests for subpoenas for the attendance of witnesses or the production of documents, either at a hearing or for discovery, shall be made in writing to the

administrative law judge. The request shall include the caption and docket number of the matter, a brief statement demonstrating the potential relevance of the testimony or evidence sought, identify any documents sought with specificity, the full name and home or business address of all persons to be subpoenaed, the date, time, and place for responding to the subpoena, and the name address and telephone number of the party requesting the subpoena or the party's attorney.

B. Time. Requests for subpoenas shall be submitted at least ten days before the hearing.

C. Service of Subpoena. The administrative law judge shall determine whether to issue a subpoena. Service by the party requesting the subpoena.

D. Objection to Subpoena. A person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within five days of service of the subpoena, or at or before the time specified in the subpoena for compliance, whichever comes first. The administrative law judge shall quash or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs of compliance when compared with the value of the testimony or evidence sought, and whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible items.

R2-17-115 RIGHTS AND RESPONSIBILITIES OF PARTIES.

A. Generally. All parties shall have the right to present evidence and argument with respect to the issues and to cross-examine witnesses.

B. Necessary Preparation. A party shall have all evidence to be presented, both oral and written, available on the date set for hearing.

C. Exhibits. Parties shall have enough copies of exhibits so that they can provide a copy to each other party at the time the exhibits are introduced.

D. Requests for Subpoenas, Depositions, or Continuances. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party.

E. Responding to Orders. The parties shall comply with orders issued by the administrative law judge. If any party objects to an order, the objection shall be made in writing unless circumstances do not permit a written objection.

R2-17-116 WITNESSES; EXCLUSION FROM HEARING.

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon the administrative law judge's motion, the administrative law judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

R2-17- 117 EVIDENCE.

A. Admissible Evidence. The administrative law judge may admit evidence which possesses probative value, and as otherwise provided by law, including hearsay that is reliable, probative, and relevant. The administrative law judge may apply the rules of privilege as recognized by law. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.

B. Documents. Documentary evidence in the form of copies or excerpts may be admitted or incorporated by reference in the discretion of the administrative law judge or upon agreement of the parties. A copy of a document shall be admitted to the same extent as the

original document, unless a genuine question is raised as to the accuracy or authenticity of the copy or if, under the circumstances, it would be unfair to admit the copy in place of the original.

C. Notice of Facts. The administrative law judge may take notice of judicially cognizable facts, but shall do so on the record and with the opportunity for any party to contest the fact so noticed.

D. Burden of proof. The standard of proof shall by a preponderance of the evidence, unless the substantive law provides a different standard. A party asserting an affirmative defense shall have the burden of going forward to establish the affirmative defense.

R2-17-118 CONDUCT OF HEARING.

A. Public Hearings. Unless otherwise provided by law all hearings are open to the public.

B. Opening. The administrative law judge shall begin the hearing by reading the caption of the matter, stating the nature and scope of the hearing, and having the parties, counsel, and witnesses that are present identify themselves for the record.

C. Stipulations. Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

D. Opening Statements. The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the administrative law judge.

E. Order of Presentation. After any opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious and would not prejudice any other party.

F. Examination. Direct and cross examination of witnesses shall be conducted in a sequence and in a manner determined by the administrative law judge to expedite the hearing

while ensuring a fair hearing. The administrative law judge shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.

G. Final Summaries. When all evidence has been taken, parties shall have the opportunity to present oral final summaries, in a sequence determined by the administrative law judge. Final summaries may, in the discretion of the administrative law judge, be in the form of written memoranda or oral summaries, or both. Written memoranda may, in the discretion of the administrative law judge, be submitted simultaneously or sequentially, and within time periods as the administrative law judge may prescribe.

H. Conclusion of Hearing. The hearing shall be concluded upon adjournment or upon receipt of the final written memorandum, responsive pleadings, or late filed evidence if any, permitted by the administrative law judge, whichever occurs last.

R2-17-119 DISRUPTION OF THE HEARING.

No person shall interfere with the free and lawful access or egress from the hearing room, nor interfere with the conduct of, or threaten interference with the hearing. In the event of interference, disruption, or threat, the administrative law judge shall proceed as deemed appropriate, which may include ordering the disruptive person to leave or be removed from the hearing.

R2-17-120 TELEPHONIC CONFERENCES; TESTIMONY.

A. Prehearing conferences and witness testimony at hearings may be taken by telephone. A party requesting a telephonic proceeding shall notify the administrative law judge before the proceeding.

B. A witness testifying telephonically shall be placed under oath, after the administrative law judge verifies the identity of the witness.

R2-17-121 HEARING RECORD.

A. Content. The Office shall maintain the official record of the matter until the issuance of the administrative law judge's decision. The record shall be transmitted in full to any agency that retains the obligation to transmit the record on any judicial appeal, unless such agency requests that the Office retain the record. In any other case, the record shall be available upon the request of the agency for its duplication. The original tape recording of the hearing shall be retained by the Office for one year from the date the time for judicial appeal expires. Unless an agency requests a longer retention period for a specific case, the Office may erase or otherwise destroy the tape recordings at the end of the one year period unless an appeal of the matter is still pending. The documentary record shall be retained for three years after a matter has been closed, unless an appeal of the matter is still pending.

B. Release of Exhibits. Exhibits shall be released upon the order of a court of competent jurisdiction. Exhibits may be released to the party that furnished or submitted them if the matter is not on appeal. Application by a party for release of an exhibit shall be by motion to the assigned administrative law judge with notice to the non-moving party and the agency if the agency is not a party.

R2-17-122 NOTIFICATION OF APPEAL; TRANSMISSION OF RECORD

A. Notice to the Office. Any party appealing an administrative hearing in Superior Court shall notify the Office within 10 days of filing the complaint in the Superior Court.

B. Transmission of Record on Appeal. Upon notification to the Office, the Office will transmit the record of the administrative proceedings as defined in A.R.S. 41-1092.10(C).

C. Transcript. Any party to the administrative hearing may request that a transcript be included in the record to be transmitted to Superior Court. The request shall be in writing to the

Office. The party requesting the transcript shall arrange for transcription at the party's expense. The Office will make copies of its taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified under oath to be a true and accurate transcription of the administrative record, to the Office, together with one unbound copy. The transcribing party shall permit the opposing party to make copies of the transcript at the opposing party's expense.