

The Office of Administrative Hearings

The Third Annual Report

to

Governor Jane Dee Hull

Senator Brenda Burns, President of the Senate

Representative Jeff Groscost, 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
November 1998

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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 OAH locations, Phoenix and Tucson, with 24 full-time positions, including the Director, the Case Management Supervisor, the Office Manager, 14 Administrative Law Judges (ALJ) and 7 support staff. In addition to conducting hearings in Phoenix and Tucson, the OAH travels nearly three weeks per month to remote locations. Our statutory mandate is to "ensure that the public receives fair and independent administrative hearings."

Responsibility:

The OAH understands its responsibility to create a system that is efficient and cost effective. The statistics of the OAH in FY 1998 indicates Agency acceptance of ALJ recommended orders, without modification was 86%. Acceptance of findings of fact and conclusions of law without modification was 96%. Rehearings (1.3%) and appeals (4.0%) were rare. Evaluations by participants indicate that ALJ's were consistently rated excellent or good during hearings.

The first quarter statistics of this fiscal year 1999 show that the agency acceptance of the administrative law judge recommended orders without modification increased to 92%. Acceptance of findings of fact and conclusions of law without modification was 99%. Rehearings were rare (.5%) and no appeals were taken. Evaluations by hearing participants continue to indicate that the administrative law judges are consistently rated excellent or good during hearings.

Integrity:

The OAH takes its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the Executive branch, together with its client agencies, the OAH maintains a conscious detachment from political issues and the missions of the other agencies. Procedures, rulings, and case assignment are at all times kept free of outside pressures to ensure that all parties can be assured that hearings are impartial and independent. Rules have been submitted to the Governor's Rules Review Committee on November 2, 1998. These rules were the product of comment taken over more than a year period. In particular, drafts were sent to all State agencies that would be affected, various private attorneys, the Arizona Bar Association, the Office of the Attorney General, the Chamber of Commerce and others.

Commitment:

The OAH views commitment as a willingness to advance its mission. The OAH may on occasion take a position that conflicts with the predisposition of a client agency. Although the OAH works to accommodate legitimate needs of an agency, the OAH does so only in a way consistent with the fairness, impartiality, independence and efficiency of its hearings. Certain statutory processes have been designed to facilitate the relationship between the OAH and fellow agencies: the right of all parties to challenge assignments based on objective standards dealing with the fairness, impartiality and competence of the administrative law judges, and the ability of agencies to review the recommended decisions of the OAH and to modify or reject them.

Efficiency:

Cross-training of judges continues to result in real benefits to taxpayers and parties alike. First, ALJ time can be leveled out to avoid one ALJ assigned in a single area to be underutilized while

an ALJ assigned in another area cannot meet existing challenges. A classic example of the effectiveness of cross training is in the new Department of Economic Security hearings, heard pursuant to A.R.S. § 8-811. Cross-training among 14 judges allowed the OAH to absorb a projected 800-1000 hearings with only the addition of two administrative law judges which were originally predicated on the assumption that only 300 cases would be filed. Second, cross-training benefits the administrative law judges in that it allows for professional growth. The collegiality and larger focus encourages more creativity and better problem-solving. New statutory language in A.R.S. § 41-1092.01, effective August 21, 1998, makes explicit the training requirements of administrative law judges.

Through careful case management, the OAH enjoyed a minimal backlog. In FY 1998, the OAH conclusion rate was 94.3% (5.7% more cases filed than concluded).

I. Continued Development of the Office

1. Incorporation of Existing Hearing Departments and Functions

Commencing July 1, 1999, a total of 9 positions will be transferred to the OAH, including 7 hearing officers from the AHCCCS. Thereupon, OAH will be responsible for conducting all appeals for that department. The OAH has identified substantial potential for reallocation of administrative law judge time as the result of the transfer which will result in greater governmental efficiency. The OAH has begun creation of a training curriculum for administrative law judges in the AHCCCS area. Additional space and requests for expenditures attributable to the transfer have been requested for the FY 2000-2001 budget.

2. Development of Administrative Law Judge Cadres

A.R.S. § 41-1092.01 was amended effective August 21, 1998 to make explicit the requirement that the OAH provide technical training to administrative law judges. In addition, A.R.S. § 41-1092.07 created a statutory right to file a nonperemptory motion with the OAH Director to disqualify an administrative law judge for bias, prejudice, personal interest or lack of technical expertise necessary for a particular hearing.

The OAH has a well-developed cadre system that maximizes technical expertise while allowing for significant cross-training. The OAH sends administrative law judges to Bar sponsored continuing legal education, or privately presented courses, as well as contracts for presentations as necessary. For example, the OAH recently conducted in-house education in the area of hydrology, presented by Dr. Larry W. Mays of the University of Arizona.

3. Upgrade of Cases Management System and Office Automation

The OAH has enhanced its integrated case management system and office automation system by incorporating scanned copies of all final agency actions modifying or rejecting administrative law judge decisions. In addition, administrative law judges may search all former decisions of the OAH as a research tool. The OAH has added legal software to its research tools.

4. Newsletter

The OAH has completed publication of four editions of the OAH Newsletter on a quarterly basis during FY 1998. The Newsletter reports various performance measures and discusses current issues. See Appendix 1.

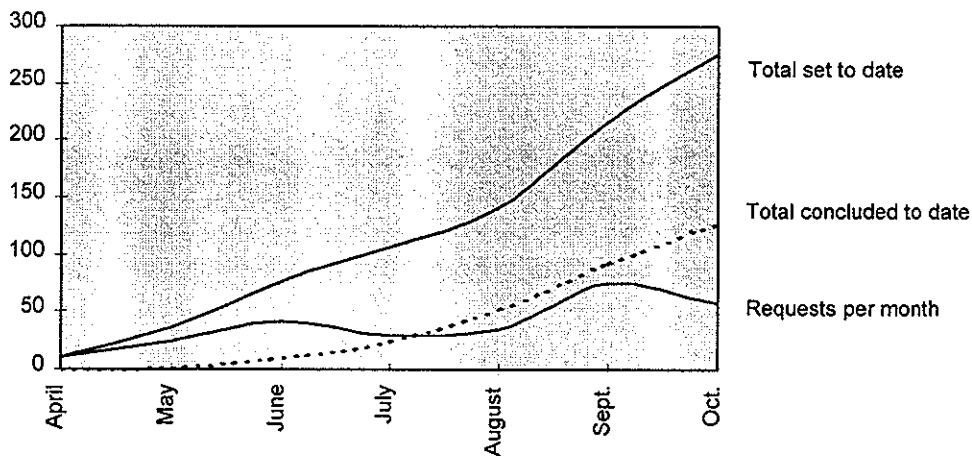
5. Externship

Mindful of our responsibility to aid in the advancement of justice, the Office of Administrative Hearings applied for and received an ASU Law Student Externship for one first year law student. The goals of that program require that the Externship enhance and supplement the ASU College of Law's educational program in such a way as to involve advanced law work not generally available through the rest of the curriculum. The externship was created to be 180 hours of education and skill building within the particular field of Arizona Taxation Administrative Law. One Administrative Law Judge supervises the law student in addition to normal case load processes.

6. Department of Economic Security Appeals

Commencing January 1, 1998, the Office of Administrative Hearings began hearing cases arising from A.R.S. § 8-811. Under that section, the Department of Economic Security is required to advise individuals that they are entitled to a hearing to determine whether probable cause exists to substantiate a report of abuse or neglect in the central registry. Initially thought to result in an estimated increase of 300 cases per year, the revised estimate is now 800 -1000 per year. A review of the requested cases indicates a steady increase in monthly requests. Cross-training across the spectrum of administrative law judges has permitted absorption of the unexpected increase. The OAH has requested an additional ALJ for the Tucson office to allow more timely setting of cases in that location and to accommodate travel to Flagstaff for those hearings.

**Analysis of Monthly Sets, Total Caseload and Number of Cases
Concluded, April 1, 1998 - October 31, 1998**



III. Summary of Agency Use of OAH Services

1. Case Management

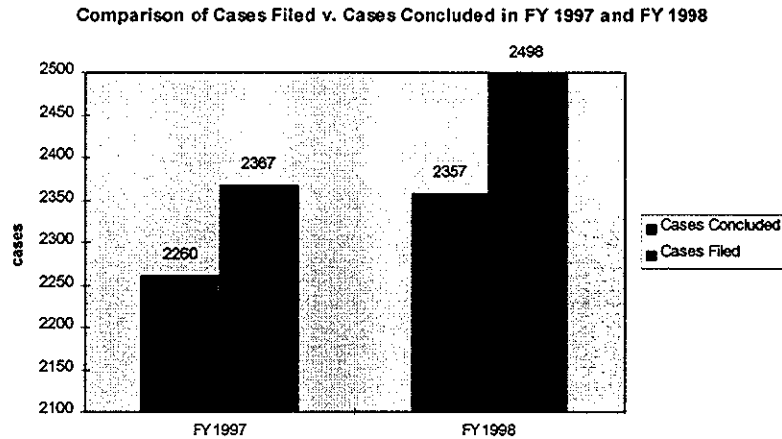
a. Breakdown of Cases Filed by Agency (FY 1998)

A total of 2,498 case were filed with the OAH in FY 1998. The distribution among the agencies and boards are as follows (in descending order by number of cases filed):

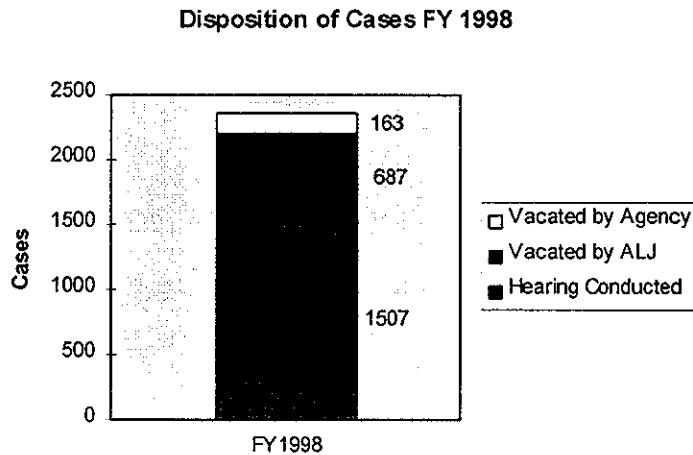
Registrar of Cont.	1,240	Radiation Regulatory	5
Health Services	181	Water Resources	4
Revenue	166	Board of Appraisal	3
Insurance	149	Public Safety - Trans	3
Building/Fire Safety	88	Administration	2
Environ. Quality	86	Nursing Care Admin.	2
Economic Security	79	Behavioral Health Ex	1
Accountancy	71	Funeral	1
Liquor	69	Osteopathic	1
Cosmetology	62	Parks	1
Pest Control	58	Physical Therapy	1
Nursing	53	Podiatry	1
Real Estate	24	Public Safety - CW	1
Land	23	Veterinarian	1
Attorney General	20	ADA	0
Gaming	15	Charter Schools	0
Banking	12	Community Colleges	0
Weights and Measures	12	Private Post Ed.	0
Police Standards	10	Psychology	0
Dental	9	Water Quality Appeals	0
Education	8		
Chiropractic	7		
Agriculture	6		
Racing	6		
Technical Registration	6		
Lottery	5		
Medical Examiners	5		

b. Number of Cases Filed versus Cases Concluded

The number of cases filed increased in FY 1998. The OAH was able to increase its conclusion rate to accommodate the increase. Despite the 5.5% increase in cases, the OAH suffered only a 1.7% increase in differential of cases concluded versus cases scheduled. The OAH current completion rate is 94.35%



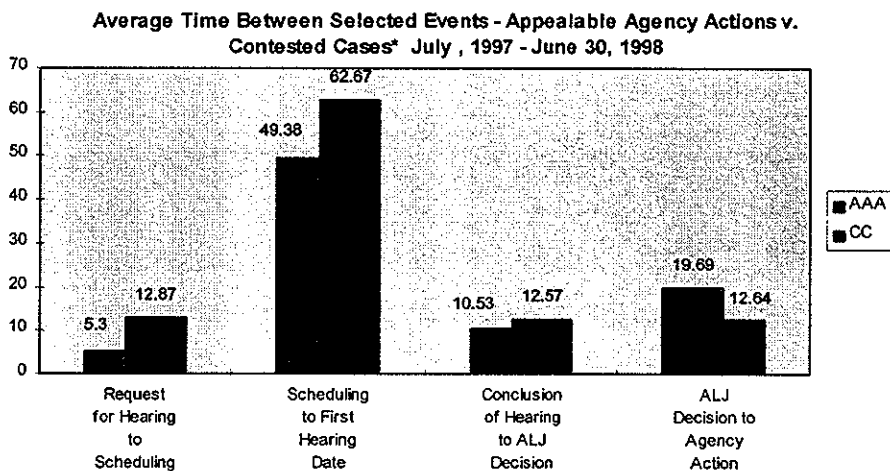
The following diagram illustrates that, in most cases, matters proceed to hearing. Matters which are vacated indicate that some portion of the OAH hearing calendar is taken up unnecessarily. Statute calls for the setting of hearings within 60 days of a request for hearing by an agency in a "contested 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 from the first hearing setting as the result of settlement. Therefore, on the whole, statutory time limits are beneficial to the larger process of regulatory action.



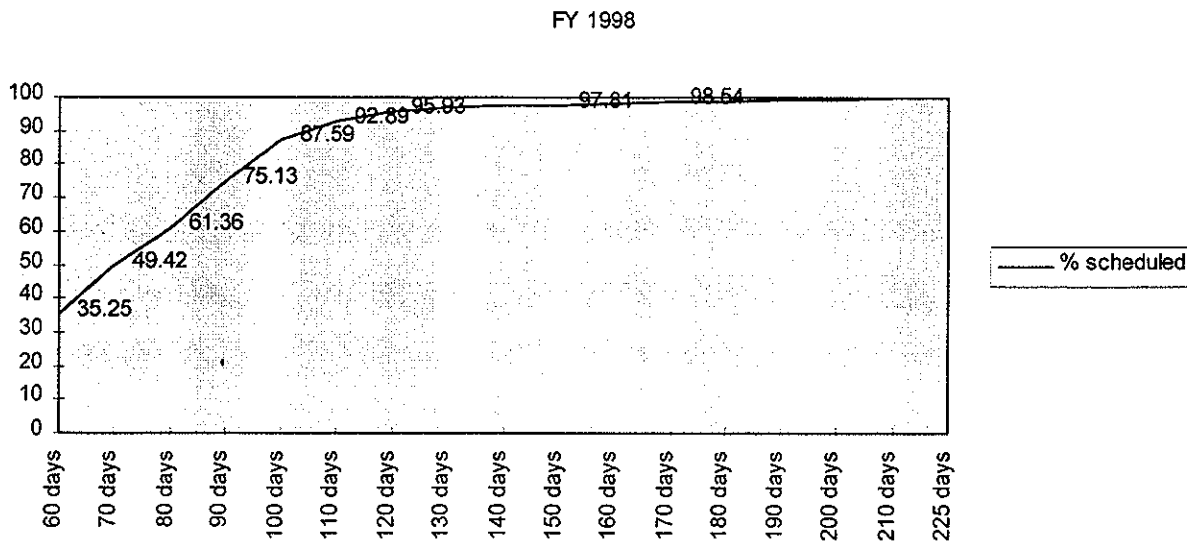
c. Timeline of Case Management

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 the average timelines:

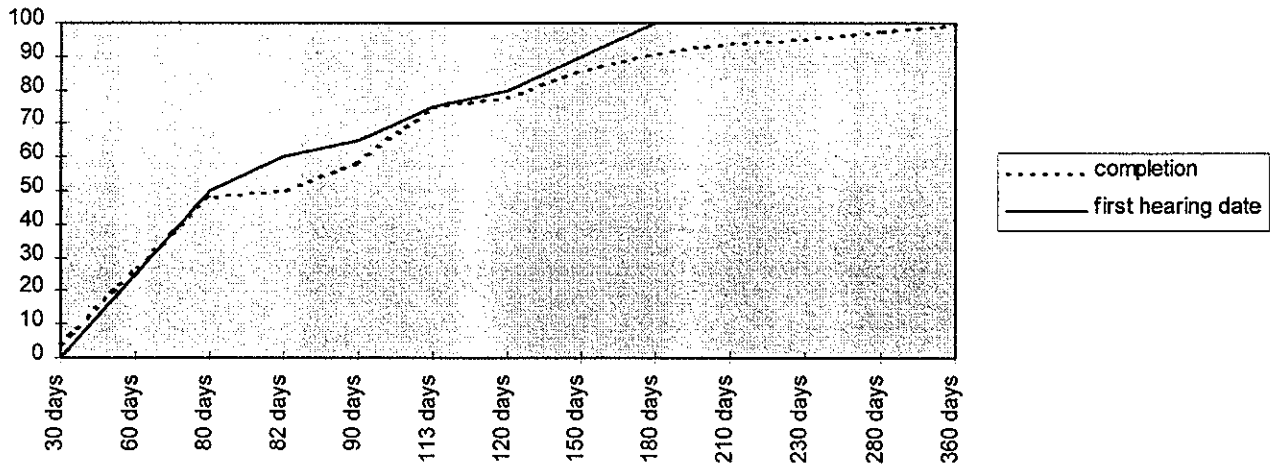


Although timelines are met consistently regarding the transmission of cases after hearing, the existing staff of administrative law judges is insufficient to allow scheduling within 60 days of a request. In fact only 35.25% are scheduled by that date. Much of the difficulty lies with out-of town travel. The OAH has requested additional travel funding in its FY 2000-2001 budget.



This graph illustrates completion of cases in directly proportional to the scheduling of the first hearing, underscoring the need for adequate ALJ staff. The OAH has requested an additional administrative law judge in its FY 2000-2001 budget.

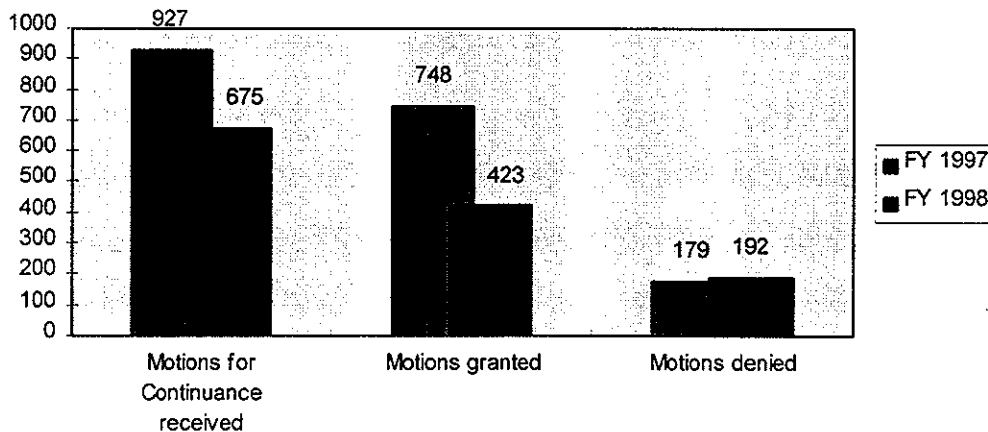
**Analysis of Cases Concluded v. First Hearing Date
January 1, 1996 - June 30, 1998**



d. Incidence of Continuance

Roughly 62.66% of all continuance requests are granted, down from 80.7% in FY 1997. 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 (94.35%), despite a 5.5% increase in caseload.

Motions to Continue



2. Evaluation

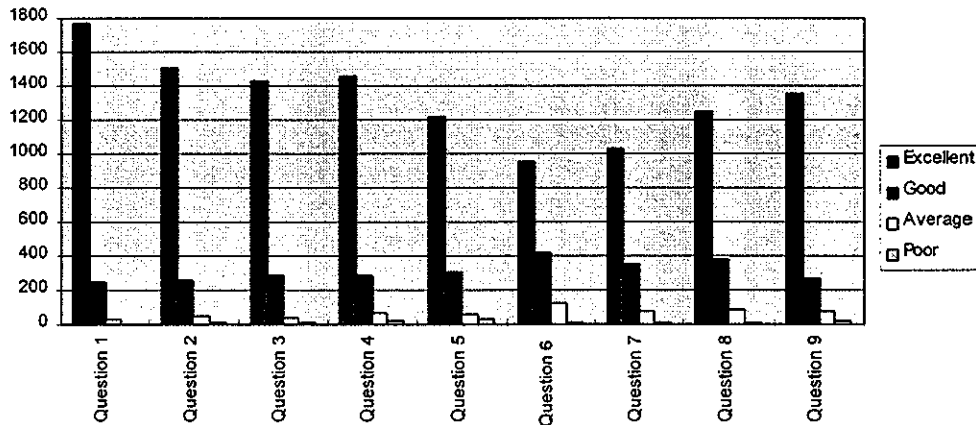
a. Results of Public Evaluation

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 categories, on a scale of excellent, good, satisfactory, poor:

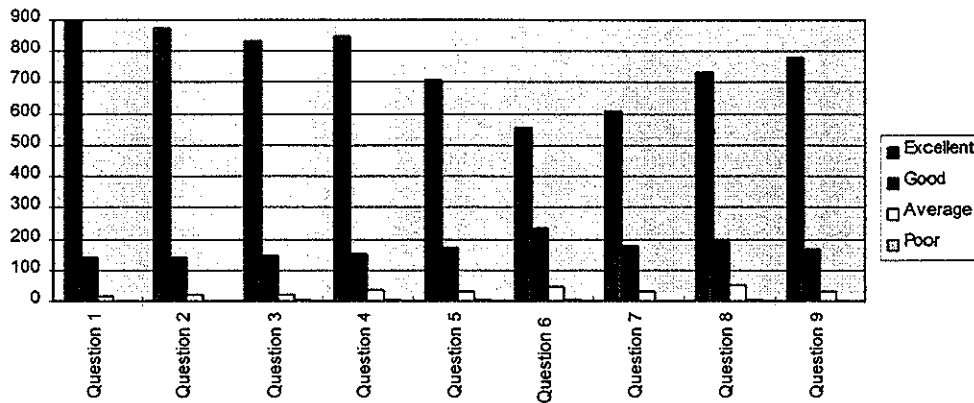
1. Attentiveness of ALJ
2. Effectiveness in explaining the hearing process
3. ALJ's use of clear and neutral language
4. Impartiality
5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded to promptly and completely
9. Treated courteously

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.

All Responses July 1, 1997 - June 30, 1998



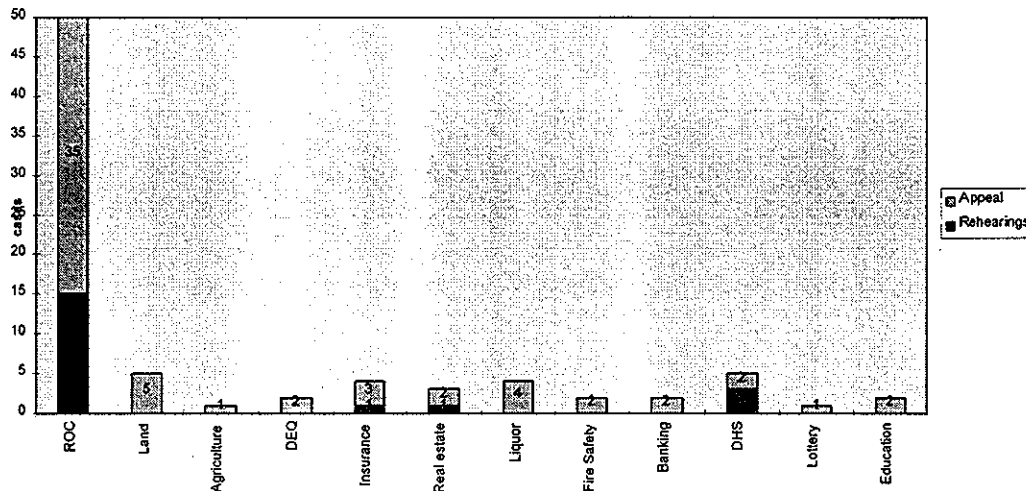
**Unrepresented Parties
July 1, 1997 - June 30, 1998**



b. Incidence of Rehearing/Appeal

Rehearings at 1.9% and appeals at (3.9%) in FY 1998 were relatively rare. Both are concentrated at the Registrar of Contractors. Registrar cases are primarily contests between two private litigants (homeowner/contractor; contractor/subcontractor). In the first quarter of FY 1999, the appeals rate was 0% and rehearings was .5%.

Appeal and Rehearings by Agency FY 1998

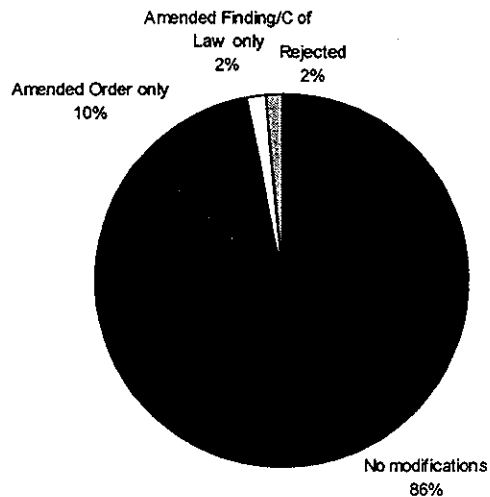
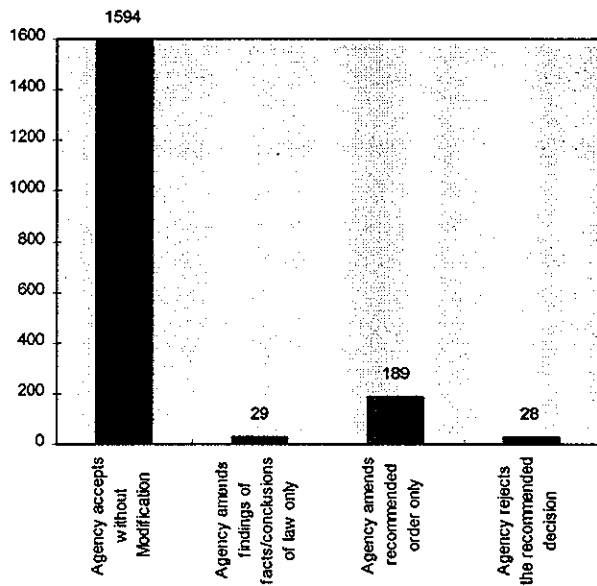


IV. Acceptance of ALJ Decisions by Agencies

1. Agency Action

Agency acceptance of OAH decisions is very high. 86% of all decisions are accepted without modification. If viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the administrative law judge, acceptance was 96%. This illustrates that the vast majority (10%) of modifications were in the Recommended Order (penalty portion).

The first quarter statistics of FY 1999 show that the agency acceptance of the administrative law judge recommended orders without modification increased to 92%. Acceptance of Findings of Fact and Conclusions of law without modification was 99%.

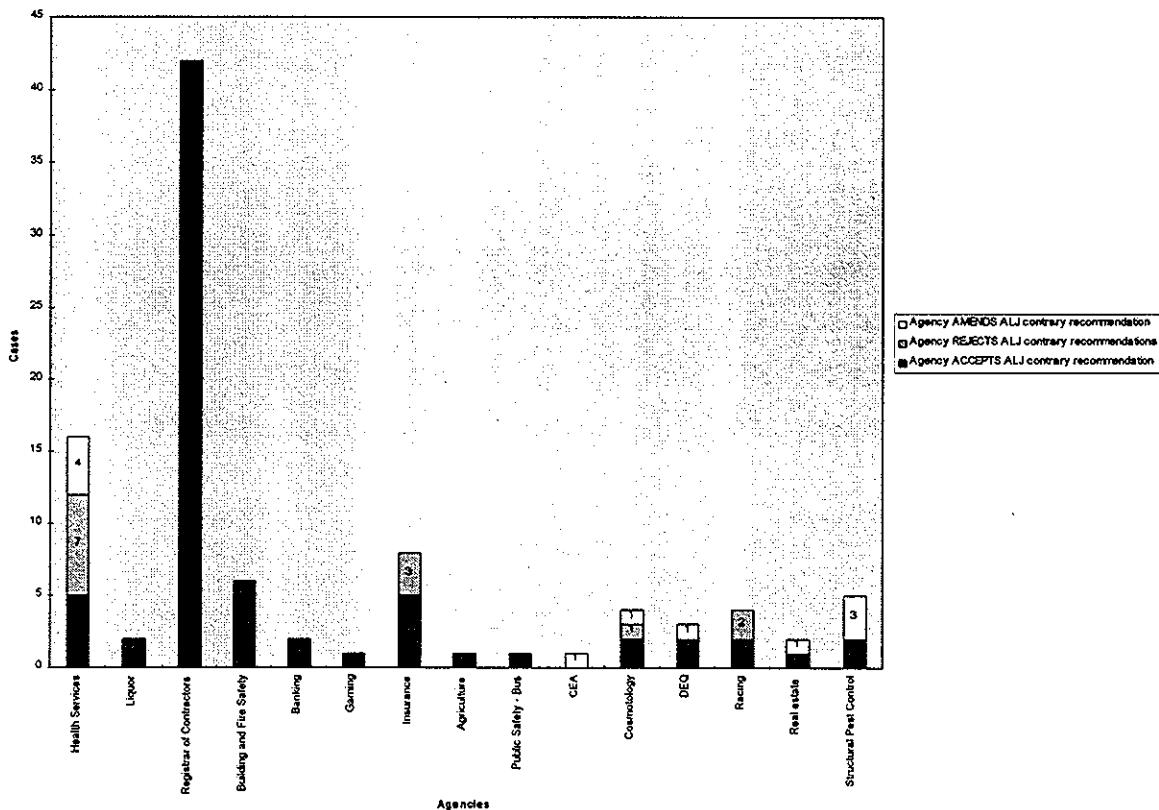


The following diagram and accompanying chart reports the breakdown by agency. This illustrates that modifications and rejections are few relative to the decisions accepted.

	Accepts	Modify Penalty	Modifies FF/CL	Rejects
Registrar of Cont.	914	86	17	6
Health Services	159	4	4	11
Insurance	114		2	5
Building/Fire Safety	75	1		
Environ. Quality	97	3	1	
Economic Security	1			
Accountancy	45	2		
Liquor	46	8		
Cosmetology	34	5		1
Pest Control	19	8		
Nursing	12			
Real Estate	11	5	3	1
Land	12		1	
Attorney General	5			
Gaming	19			
Banking	9			
Police Standards	3			
Dental	1	1		
Education	1			
Chiropractic	3	1		
Agriculture	4			1
Racing	4			2
Technical Registration	2			
Lottery	2			1
Medical Examiners	1			
Water Resources			1	
Public Safety - Trans	4			
Administration	1			
Behavioral Health Ex	2			
Psychology	2			
Podiatry	1			

In FY 1998, OAH rendered a decision contrary in whole or in part to an agency's original position in 20% of cases. Agency acceptance of contrary decisions is high (75%). The following diagram indicates the breakdown by agency.

Agency Response to ALJ Decisions Contrary to Original Agency Action July 1, 1997 - June 30, 1998



2. Agency Inaction With Subsequent OAH Certification of Finality

Beginning August 21, 1998, the OAH was required to certify its recommended order as the final administrative decision if OAH has not received the agency, board or commission's action accepting, modifying or rejecting the recommended decision within 30 days of transmission. (A.R.S. § 41-1092.08(D)) There are special rules that apply if the board or commission meets monthly or less frequently. (A.R.S. § 41-1092.08(D)) From August 21, 1998 through October 31, 1998, 26 recommended decisions have been certified as final administrative decisions.

V. Development of Rules

The OAH filed its Notice of Final Rulemaking with Governor's Regulatory Review Council (GRRC) on November 2, 1998. The rules reflect existing practice before the OAH which has been found to work well. The OAH actively solicited comments about these rules in their drafting phase. In particular, drafts were sent to all State agencies that would be affected, various private attorneys, the Arizona Bar Association, the Office of the Attorney General, the Chamber of Commerce and others. Written comments were received and considered. A copy of the rules submitted to GRRC is included as Appendix 2.

VI. Recommended 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. Establish uniform standards for appeal rights notice.

Currently there are no standards for how, and with what degree of specificity, appeal rights should be communicated to parties once the agency has finally acted.

b. Establish uniform basis for rehearing.

Parties must research the specific rules of each agency, board or commission to determine the bases for rehearing since there is little uniformity. Standardizing and recapitulating bases in Title 41 would make the process easier, particularly for the unrepresented.

c. Expand the right to settlement conferences to include "contested cases".

A.R.S. § 41-1092.03 provides that appellants to "appealable agency actions" be entitled to settlement conferences with an agency representative. No such right exists for "contested cases", which include most disciplinary proceedings. Such a conference may be beneficial in expediting disposition of cases.

d. Require notices of hearing to include an agency contact and phone number for the purpose of setting up a settlement conference.

A.R.S. § 41-1092.03 provides that appellants to "appealable agency actions" be entitled to settlement conferences with an agency representative. Effective use of such a procedure may be increased by the requirement that the right to such a settlement conference and a contact name and number be included in notices of hearing.

e. Review the statutes of agencies, boards and commissions predating the creation of the Office of Administrative hearings inconsistent language.

Agency statutes predating the Office of Administrative Hearings should have language that authorizes the "appointment of hearings officers" amended to excise such references.

APPENDICES

1. Newsletter
2. Rules submitted to GRRC

The OAH



Vol. 9

November 1998

Official Newsletter of the Arizona Office of Administrative Hearings

OAH Values

by Cliff J. Vanell, Director

The Office of Administrative Hearings (OAH) began operations on January 2, 1996. As the OAH approaches its third year of existence, I begin this quarter's message by quoting from portions of our website:

"To achieve a goal, one must define it. Our mission statement (below right) is designed to reflect our core values. We display it prominently on our stationery, our business cards, our offices and hearing rooms. It reminds us of what we should be striving for. It also is an expression of what those who come to us have a right to expect. Regulatory reform was born of the belief that government must respect the economic needs and independence of those engaged in creating the wealth that in turn forms the basis of our general economic well-being. By explicitly recognizing that we are a government of fellow-citizens, we take very seriously our legislative mandate of providing fair, impartial and independent hearings. At the conclusion of each hearing we ask our fellow citizens, be they private citizens or their attorneys or attorneys for the regulating agencies, to tell us whether we have succeeded in providing an accessible and respectful forum for truth. We ask them to grade our administrative law judges, our support staff and all contacts."

Again, from our website, the management philosophy of the Office:

"There is no limit to what we can contribute if we are properly selected, well-trained, appropriately supported and committed."

We must constantly identify and eliminate unneces-

sary procedures and paperwork.

We must never allow our policies and procedures to demean human dignity or stifle creativity.

Our management positions must always be considered positions of service.

We must invest in our human capital as much as hardware. Training and retraining must be provided to ensure our personal and professional growth so that we can better serve the public.

We must listen constantly, share ideas and information, and recognize achievement.

We all must be evaluated on our contributions, sense of teamwork and love of change.

We will always remember that each case is the most important case to the parties.

Everyone is entitled to respect and courtesy.

We are here to serve."

see Values, page 2

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.

TITLE 2. ADMINISTRATION

CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

- Article 1 Prehearing and Hearing Procedures**
- R2-19-101. Definitions**
- R2-19-102. Applicability**
- R2-19-103. Request for Hearing**
- R2-19-104. Assignment of Administrative Law Judge; Setting the Hearing**
- R2-19-105. Ex Parte Communications**
- R2-19-106. Motions**
- R2-19-107. Computing Time**
- R2-19-108. Filing Documents**
- R2-19-109. Consolidation or Severance of Matters**
- R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing**
- R2-19-111. Vacating a Hearing**
- R2-19-112. Prehearing Conference**
- R2-19-113. Subpoenas**
- R2-19-114. Telephonic Testimony**
- R2-19-115. Rights and Responsibilities of Parties**
- R2-19-116. Conduct of Hearing**
- R2-19-117. Failure of Party to Appear for Hearing**
- R2-19-118. Witnesses; Exclusion from Hearing**
- R2-19-119. Proof**
- R2-19-120. Disruptions**
- R2-19-121. Hearing Record**
- R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript**

Article I. Prehearing and Hearing Procedures

R2-19-101. Definitions

The following definitions apply unless otherwise stated:

1. "Agency" means the department, board, or commission from which a matter originates.
2. "Matter " means a contested case or appealable agency action.

R2-19-102. Applicability

- A. These rules apply to any matter heard by the Office of Administrative Hearings.
- B. An administrative law judge may waive the application of any of these rules to further administrative convenience, expedition, and economy if:
 1. The waiver does not conflict with law, and
 2. The waiver does not cause undue prejudice to any party.
- C. If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.

R2-19-103. Request for Hearing

- A. An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:
 1. Caption of the matter, including the names of the parties;
 2. Agency matter number;
 3. Identification of the matter as a contested case or appealable agency action;
 4. In an appealable agency action, the date the party appealed the agency action;
 5. Estimated time for the hearing;
 6. Proposed hearing dates;
 7. Any request to expedite or consolidate the matter; and
 8. Any agreement of the parties to waive applicable time limits to set the hearing.
- B. The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

R2-19-104. Assignment of Administrative Law Judge: Setting the Hearing

A. Within 7 days of the Office's receipt of a request for hearing, the Office shall provide the agency in writing with:

1. The name of the administrative law judge assigned to hear the matter;
2. The date, time, and location of the hearing; and
3. The docket number assigned by the Office.

R2-19-105. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

R2-19-106. Motions

A. **Purpose.** A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:

1. Consolidation or severance of matters pursuant to R2 -19-109;
2. Continuing or expediting a hearing pursuant to R2 -19-110;
3. Vacating a hearing pursuant to R2 -19-111;
4. Prehearing conference pursuant to R2 -19-112;
5. Quashing a subpoena pursuant to R2 -19-113;
6. Telephonic testimony pursuant to R2 -19-114; and
7. Reconsideration of a previous order pursuant to R2 -19-115.

B. **Form.** Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.

C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

D. Response to Motion. A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.

E. Oral Argument. A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.

F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

R2-19-107. Computing Time

A. In computing any time period, the Office shall exclude the day from which the designated time period begins to run. The Office shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Office shall exclude Saturdays, Sundays, and legal holidays.

B. When service of a document is made by mail, 5 days shall be added to the time period.

R2-19-108. Filing Documents

A. **Docket.** The Office shall open a docket for each matter upon receipt of a request for hearing. All documents filed in a matter with the Office shall be date stamped on the day received by the Office and entered in the docket.

B. **Definition.** "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.

- C. Form.** A party shall state on the document the name and address of each party served and how service was made pursuant to subsection E. A document shall contain the agency's caption and the Office's docket number.
- D. Signature.** A document filed with the Office shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. Service.** A copy of a document filed with the Office shall be served on all parties. Service shall be completed by personal delivery; first-class, certified or express mail; or facsimile.
- F. Date of Filing.** A document is filed with the Office on the date it is received by the Office, as established by the Office's date stamp on the face of the document.

R2-19-109. Consolidation or Severance of Matters

- A. Standards for consolidation.** An administrative law judge may order consolidation of pending matters, if:
1. There are substantially similar factual or legal issues, or
 2. All parties are the same.
- B. Determination.** When different administrative law judges are assigned to the matters that are the subject of the motion for consolidation, the motion shall be filed with the administrative law judge assigned to the matter with the earliest pending hearing date.
- C. Order.** The administrative law judge shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The administrative law judge shall designate the controlling docket number and caption to be used on all future documents.
- D. Severance.** The administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own review, or a party's motion.

R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing.

A. Continuing or Expediting a Hearing. When ruling on a motion to continue or expedite, the administrative law judge shall consider such factors as:

1. The time remaining between the filing of the motion and the hearing date;
2. The position of other parties;
3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and
5. The status of settlement negotiations.

B. Reconvening a Hearing. The administrative law judge may recess a hearing and reconvene at a future date by a verbal ruling.

R2-19-111. Vacating a Hearing

An administrative law judge shall vacate a calendared hearing and return the matter to the agency for further action, if :

1. The parties agree to vacate the hearing;
2. The agency dismisses the matter;
3. The non-agency party withdraws the appeal; or
4. Facts demonstrate to the administrative law judge that it is appropriate to vacate the hearing.

R2-19- 112. Prehearing Conference

A. Procedure. Upon motion of a party, or on the administrative law judge's own review, the administrative law judge may hold a prehearing conference. The conference may be held telephonically. The administrative law judge may issue a prehearing order outlining the issues to be discussed.

B. Record. The administrative law judge may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

R2-19-113. Subpoenas

A. **Form.** A party shall request a subpoena in writing from the administrative law judge and shall include:

1. The caption and docket number of the matter;
2. A list or description of any documents sought;
3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.

B. An Administrative Law Judge may require a brief statement of the relevance of testimony or documents.

C. **Service of Subpoena.** Any person who is not a party and is at least eighteen years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.

D. **Objection to Subpoena.** A party, or the 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 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.

E. **Quashing, Modifying Subpoenas.** The administrative law judge shall quash or modify the subpoena if:

1. It is unreasonable or oppressive, or
2. The desired testimony or evidence may be obtained by an alternative method.

R2-19-114. Telephonic Testimony

The administrative law judge may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

R2-19-115. Rights and Responsibilities of Parties

- A. **Generally.** A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross-examine witnesses.
- B. **Preparation.** A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. **Exhibits.** A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the administrative law judge, unless it was previously provided through discovery.
- D. **Responding to Orders.** A party shall comply with an order issued by the administrative law judge concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the administrative law judge to reconsider the order.

R2-19-116. Conduct of Hearing

- A. **Public access.** 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, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. **Stipulations.** The administrative law judge shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- 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 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 or appropriate, and would not prejudice any other party.
- F. Examination.** A party shall conduct direct and cross examination of witnesses in the order and manner determined by the administrative law judge to expedite and ensure 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. Closing argument.** When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the administrative law judge. The administrative law judge may permit or require closing oral argument to be supplemented by written memoranda. The administrative law judge may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the administrative law judge may prescribe.
- H. Conclusion of hearing.** Unless otherwise provided by the administrative law judge, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

R2-19- 117. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and remand the matter to the agency for any further action.

R2-19-118. Witnesses; Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the administrative law judge, the administrative law judge may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

R2-19- 119. Proof

A. **Standard of proof.** Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.

B. **Burden of Proof.** Unless otherwise provided by law:

1. The party asserting a claim, right, or entitlement has the burden of proof;
2. A party asserting an affirmative defense has the burden of establishing the affirmative defense;
and
3. The proponent of a motion shall establish the grounds to support the motion.

R2-19-120. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the administrative law judge may order the disruptive person to leave or be removed.

R2-19-121. Hearing Record

A. **Maintenance.** The Office shall maintain the official record of a matter.

B. **Transfer of record.** Before an agency takes final action, the agency may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.

C. **Release of exhibits.** Exhibits shall be released:

1. Upon the order of a court of competent jurisdiction; or
2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

A. **Notification to the Office.** Within 10 days of filing a complaint for judicial review of an agency action resulting from an administrative hearing before the Office, the party shall file a copy of the complaint with the Office. The Office shall then transmit the record to the Superior Court.

B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with one unbound copy.

