

The Office of Administrative Hearings

The Fourth 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 1, 1999

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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) were transferred to the OAH for independent proceedings. There are two OAH locations, Phoenix and Tucson, with 34 full-time positions, including the Director, the Chief Executive Assistant, 2 Case Management Supervisors, the Office Manager, 18 Administrative Law Judges (ALJ), 2 Hearing Officers, and 9 support staff. In addition to conducting hearings in Phoenix and Tucson, the OAH travels nearly four 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 1999 indicates Agency acceptance of ALJ recommended orders without modification was 90%, a 4% increase over FY 1998. Acceptance of findings of fact and conclusions of law without modification was 97%, a 1% increase over FY 1998. Rehearings (1.17%) and appeals (2.7%) were rare, reflecting a .13%, and 1.3% decline respectively over FY 1998. Evaluations by participants continued to indicate that ALJ's and the OAH were consistently rated excellent or good.

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. The OAH promulgated its procedural rules on February 3, 1999, culminating a process of widespread solicitation and careful review of comments by the regulated community, agencies, boards and commissions and the public.

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. The OAH worked closely with the Arizona Health Care Cost Containment System (AHCCCS) to ensure a smooth transition of the AHCCCS hearing function to the OAH commencing on July 1, 1999.

Efficiency:

Through careful case management, the OAH enjoys a minimal backlog. In FY 1999, the OAH conclusion rate was 92.6% (7.4% more cases filed than concluded). The first quarter of FY 2000 indicates a 98% conclusion rate, illustrating the effectiveness of the cross-training of the former AHCCCS hearing officers since July 1, 1999. 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. Personal and professional growth, collegiality and a larger focus encourages more creativity and better problem-solving.

II. Continued Development of the Office

1. Incorporation of AHCCCS Hearing Function

Commencing July 1, 1999, a total of 9 positions were transferred to the OAH, including 7 hearing officers from the AHCCCS. Thereupon, the OAH was responsible for conducting all appeals for that department. In FY 1999, the OAH secured additional space, adequate budget resources, and appropriate rule changes, to ensure the full integration of the AHCCCS practice without delay to the public.

2. Development of Administrative Law Judge Cadres

A.R.S. § 41-1092.01 makes 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. In FY 1999, in addition to training, which included Bar sponsored continuing legal education, or privately presented courses, as well as contracted presentations, the OAH provided 40 hours of continuing education opportunities to each administrative law judge to ensure professional development.

3. Upgrade of Cases Management System and Office Automation

The OAH has incorporated an audit review of electronic docket events to ensure accuracy and completeness.

4. Newsletter

The OAH has completed publication of four editions of the OAH Newsletter on a quarterly basis during FY 1999. The Newsletter reports various performance measures and discusses current issues. Copies of the four editions published in FY 1999 are included in Appendix 1.

5. Externship

Mindful of our responsibility to aid in the advancement of justice, the Office of Administrative Hearings applied and was again approved for an ASU Law Student Externship. 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 trained and supervised the law student in addition to normal case load processes.

6. Reclassification of Administrative Law Judges

A new state personnel classification was created at grade 25 to properly reflect the Administrative Law Judge (ALJ) function. The multidisciplinary function distinguishes the ALJ class from the hearing officer class.

7. Contract with Maricopa County Housing Department

The Maricopa County Housing Department has contracted with the OAH to have its due process hearings conducted prior to eviction from public housing, pursuant to A.R.S. § 41-1092.01 (J). One hearing was conducted in FY 1999.

III. Summary of Agency use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 1999)

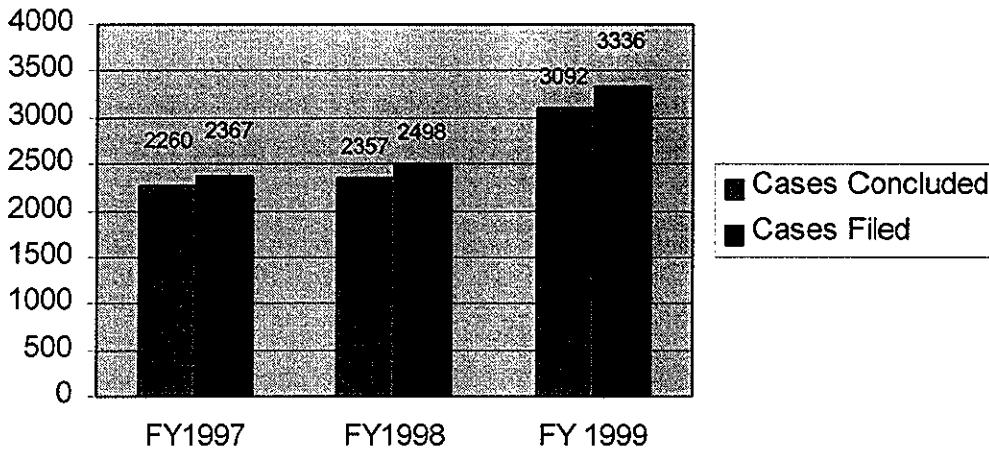
A total of 3,336 cases were filed with the OAH in FY 1999. The distribution among the agencies and boards are as follows (in descending order by number of cases filed):

Registrar of Contractors	1275
Department of Economic Security - CPS	410
Department of Health Services	259
Arizona Health Care Cost Containment System (AHCCCS) (filed in anticipation of FY 2000)	216
Department of Environmental Quality	197
Department of Revenue	152
Department of Building and Fire Safety	128
Department of Insurance	126
Accountancy Board	65
Arizona State Board of Cosmetology	63
State Board of Nursing	62
Department of Real Estate	59
Structural Pest Control Commission	59
Liquor Licenses and Control	55
Department of Weights and Measures	20
Department of Gaming	19
Board of Medical Examiners	18
State Land Department	17
Arizona Attorney General's Office	16
Department of Economic Security	15
Department of Water Resources	12
State Banking Department	11
Department of Administration	10
Department of Public Safety - Student Transportation	9
Peace Officers Standards and Training	9
Arizona Department of Education	7
Board of Dental Examiners	7
Department of Agriculture	7
Arizona Lottery	5
Board of Technical Registration	4
Arizona State Schools for the Deaf and the Blind	3
Department of Public Safety - Concealed Weapons Permit Unit	3
Department of Racing	3
Arizona State Banking Department	2
Board of Chiropractic Examiners	2
Radiation Regulatory Agency	2
Arizona Department of Health Services	1
Arizona Health Care Cost Containment System Administration	1
Behavioral Health Examiners	1
Board of Appraisal	1
Board of Nursing Care Institution Administrators Examiners	1
Maricopa County Housing Department	1
Naturopathic Board of Medical Examiners	1
Veterinary Medical Examining Board	1
Water Quality Appeals Board	1

b. Number of Cases Filed versus Cases Concluded

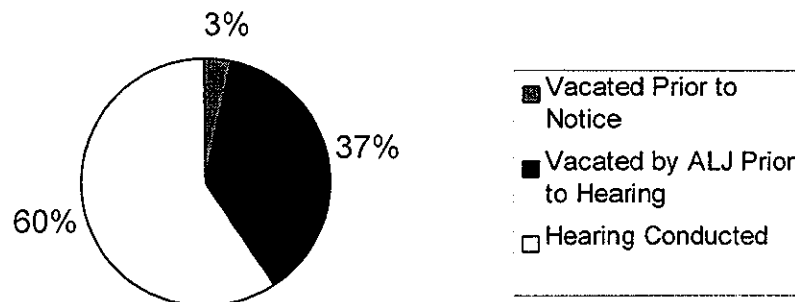
The number of cases filed increased in FY 1999 as it has in FY 1998 and FY 1997. The OAH was able to increase its conclusion rate to accommodate the increase. The completion rate for FY 1999 was 92.6%.

Cases Filed v Cases Concluded FY 1999



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.

Disposition of Cases FY 1999

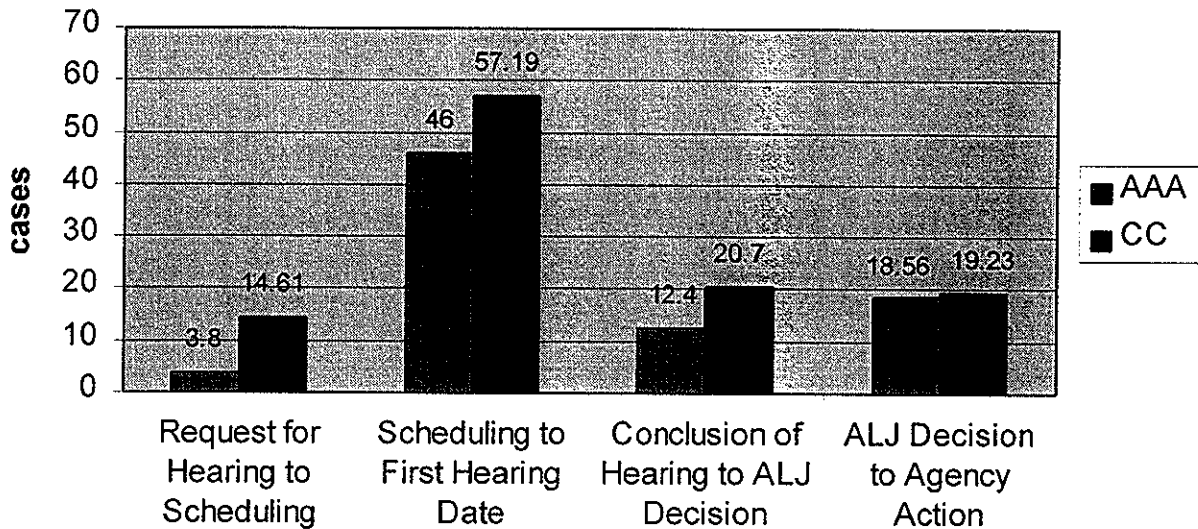


c. Timeline of Case Management

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 an agency request. Administrative decisions must be transmitted to the agencies within 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:

Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases FY 1999



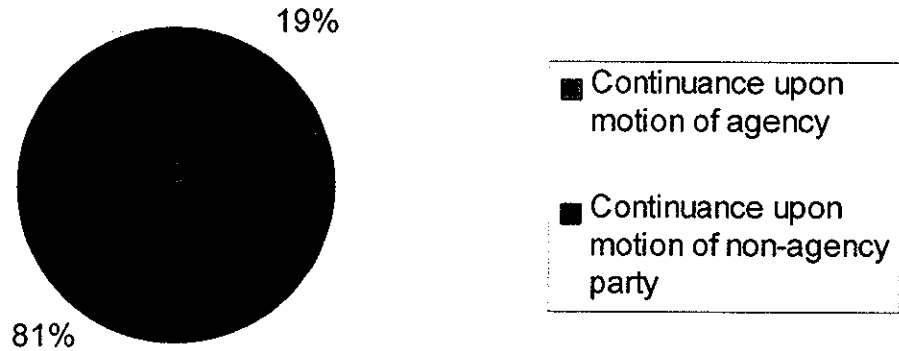
d. Incidence of Continuance

Roughly 70.68% of all continuance requests were granted in FY 1999, up from 62.66% in FY 1998, but substantially lower than the 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 (92.6%), despite a 33% increase in caseload.

The follow list indicates the number of continuances made by agency. Indicated also are the continued settings in FY 1999, divided by those made by a non-agency party and those made by the agency. Note that the total number of continued settings does not equal the number of continuances since motions to continue and resulting continued settings may occur in different fiscal years.

AGENCY	Motions filed	Continued - Motion by non- agency party	Continued - Motion by agency party
Accountancy Board	19	4	6
AHCCCS	6		
Arizona Attorney General's Office	3	1	
Arizona School Deaf/Blind	2		
Board of Cosmetology	2		
Board of Chiropractic Examiners	1		1
Board of Dental Examiners	2		1
Board of Medical Examiners	7	1	
Board of Technical Registration		1	
Department of Administration	9	5	
Department of Agriculture	2	1	
Department of Building/Fire Safety	22	13	1
DES	1		
DES - CPS	106	49	6
Department of Environmental Quality	24	11	3
Department of Gaming	7	2	2
Department of Health Services	82	64	7
Department of Insurance	31	23	3
DPS - Concealed Weapons	2	1	
DPS - Student Transportation	2		
Department of Racing	1	1	
Department of Real Estate	17	7	2
Department of Revenue	45	26	1
Department of Water Resources	7	2	1
Department of Weights and Measures	1		
Liquor Licenses and Control	14	7	2
Maricopa County Housing Department	1	1	
Peace Officers Standards/Training	1	1	
Registrar of Contractors	404	196	11
State Banking Department	4	3	
State Board of Nursing	6	2	4
State Land Department	8	1	1
Structural Pest Control Commission	10	6	

Comparison of Source of Continuance FY 1999



2. Evaluation

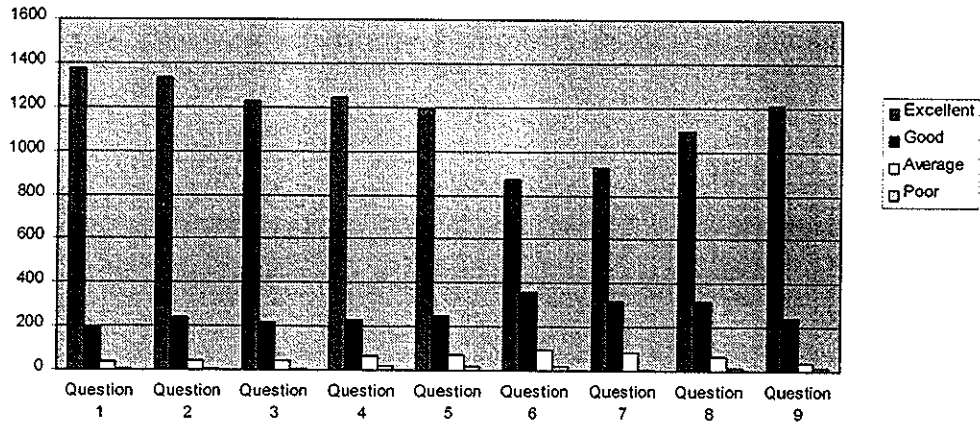
a. Results of Public Evaluation

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:

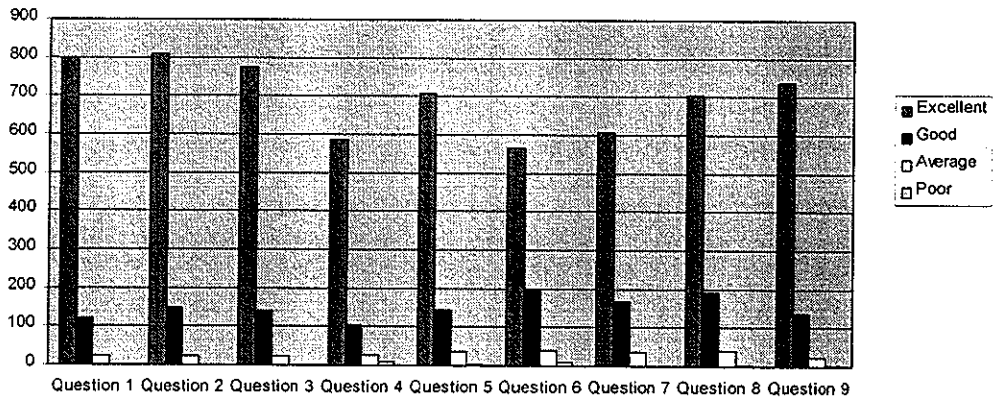
1. Attentiveness of ALJ
2. Effectiveness in explaining the hearing process
3. ALJ's use of clear and neutral language
4. Impartiality
5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded to promptly and completely
9. Treated courteously

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.

F/Y 99 - RESPONSE OF ALL PARTIES

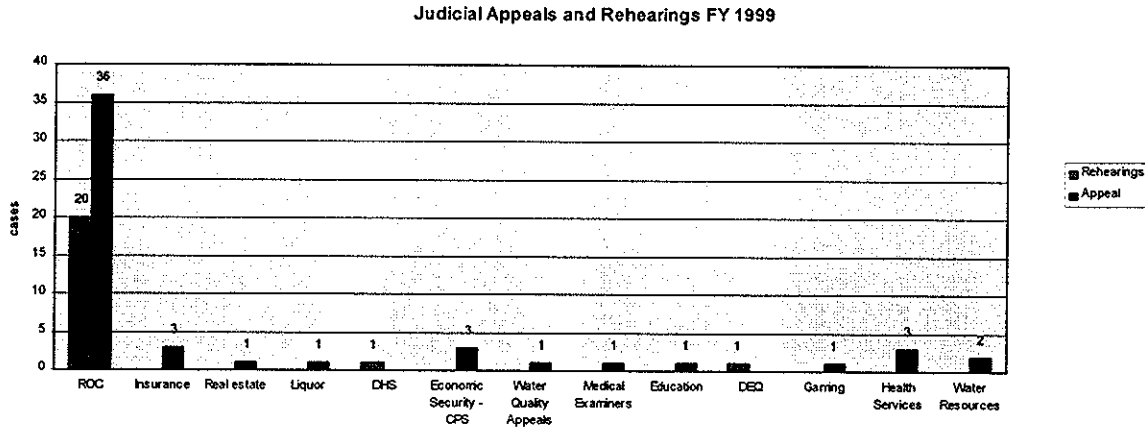


F/Y 99 - UNREPRESENTED PARTIES



b. Incidence of Rehearing/Appeal

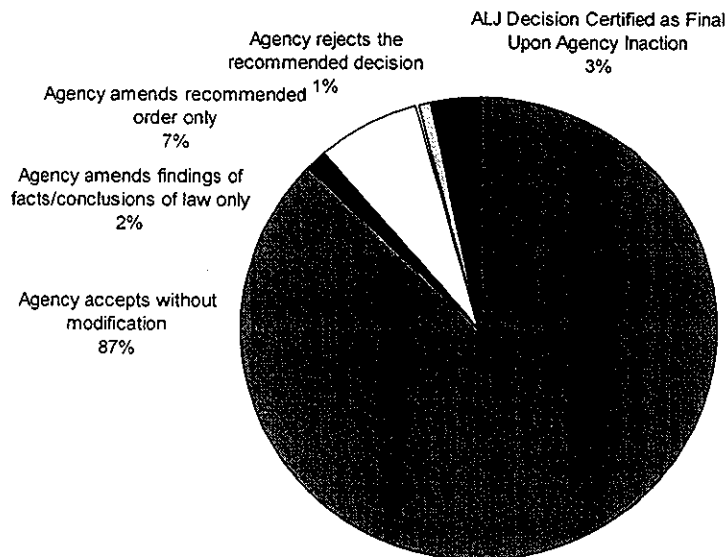
Rehearings at 1.17% and judicial appeals at (2.7%) in FY 1999 were relatively rare. Both are concentrated at the Registrar of Contractors. Registrar cases are primarily contests between two private litigants (homeowner/contractor; contractor/subcontractor). FY 1999 reflected a .13%, and 1.3% decline of hearings and judicial appeals respectively over FY 1998.



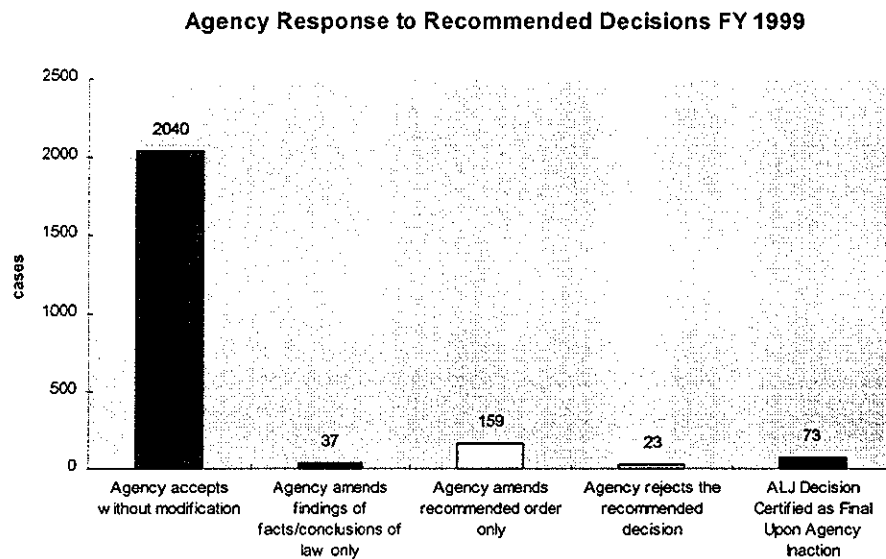
IV. Acceptance of ALJ Decisions by Agencies

1. Agency Action

Agency acceptance of the OAH decisions is very high. 90% of all decisions acted upon by the agencies (that is, excluding 3% of decisions certified as final due to agency inaction) 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, agency acceptance was 97%. This illustrates that the vast majority (7%) of modifications were in the Recommended Order (penalty portion).



The following chart reports the number of cases in the various categories of agency response.



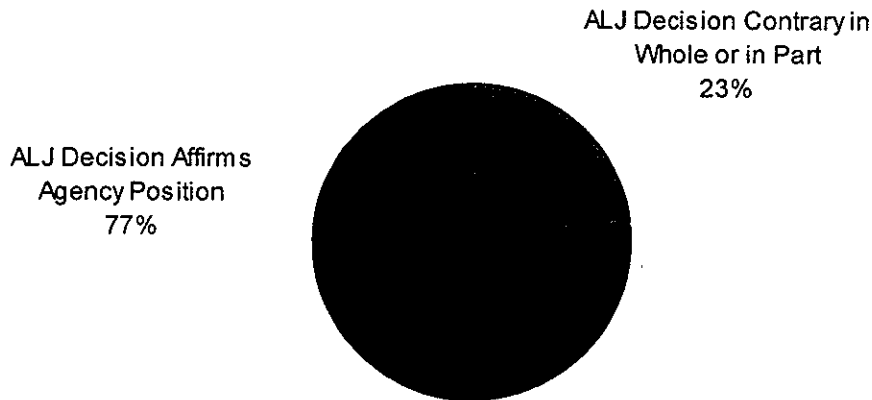
The chart reports the breakdown by agency. This illustrates that modifications and rejections are few relative to the decisions accepted.

	Accepts	Modify Penalty	Modifies FF/C	Rejects
Accountancy Board	57			
Arizona Attorney General's Office	1		1	
Arizona Lottery	1			
Arizona State Banking Department	1			
Arizona State Board of Cosmetology	48	9		
Arizona State Schools Deaf /Blind	1			
Board of Appraisal		3		
Board of Chiropractic Examiners				1
Board of Dental Examiners		10	2	
Board of Medical Examiners	1	2		
Board of Technical Registration	2			
Department of Administration	1			
Department of Agriculture	1			
Department of Building and Fire Safety	108			
Department of Economic Security	1			
Department of Economic Security - CPS	300	2	9	4
Department of Environmental Quality	134	1	1	1
Department of Gaming	13	2		2
Department of Health Services	200	2	5	3
Department of Insurance	90	4	6	1
DPS - Concealed Weapons Permit Unit	3			
DPS-Student Transportation	8			
Department of Racing	2			

	Accepts	Modify Penalty	Modifies FF/C	Rejects
Department of Real Estate	25		2	4
Department of Water Resources	4		1	
Department of Weights and Measures	2			
Liquor Licenses and Control	40	3		
Peace Officers Standards and Training	1			
Radiation Regulatory Agency	2			
Registrar of Contractors	953	109	7	6
State Banking Department	2			
State Board of Nursing	24		5	
State Land Department	3			
Structural Pest Control Commission	11	12		1
Water Quality Appeals Board			1	

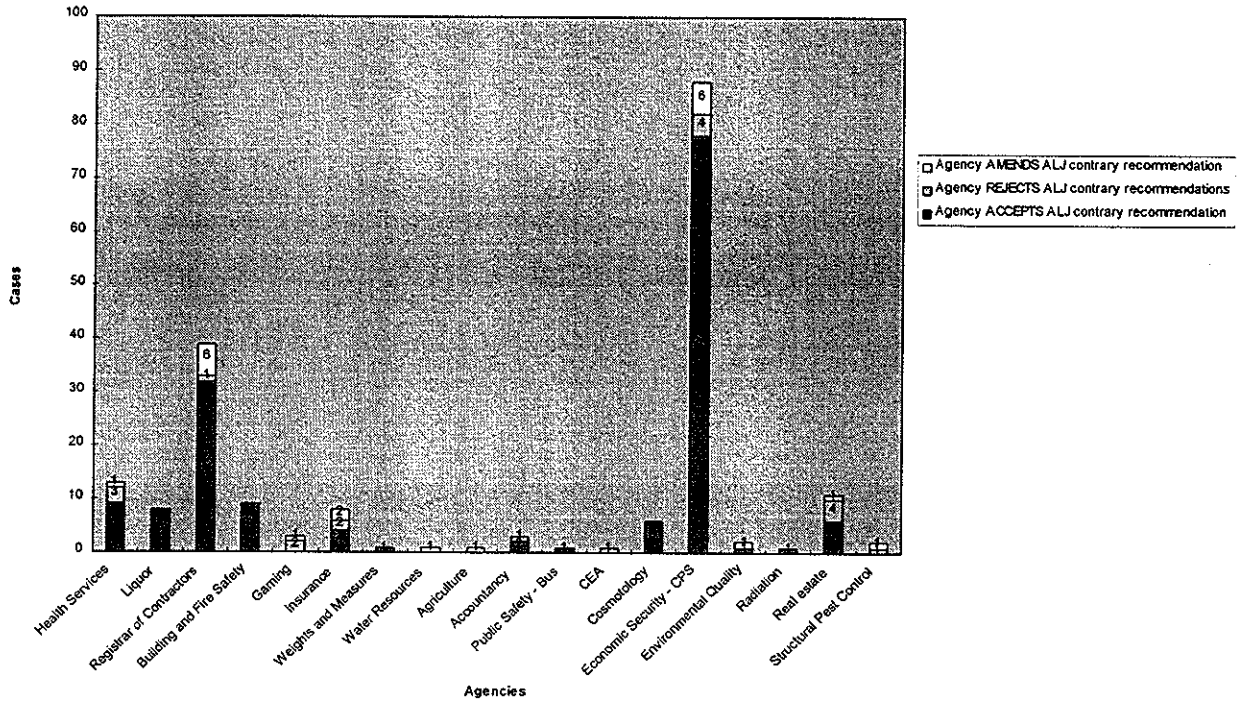
In FY 1999, OAH rendered a decision contrary in whole or in part to an agency's original position in 23% of cases. Agency acceptance of contrary decisions is high (79.8%). The following diagram indicates the breakdown by agency.

ALJ Response to Original Agency Position - FY 1999

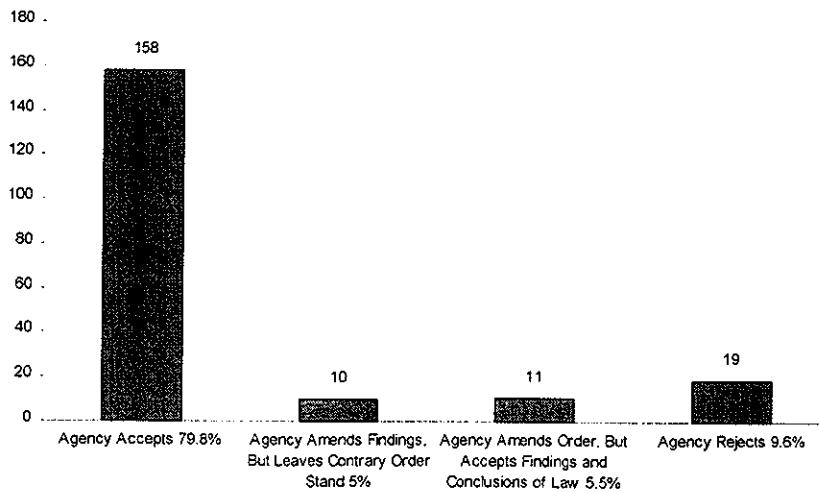


The following two charts show a breakdown by agency of its response to contrary decisions and the relative numbers and percentages of the responses.

Agency Response to ALJ Decisions Contrary to Original Agency Action FY 1999



Agency Response to ALJ Decisions Rendered Contrary to Original Agency Position FY 1999



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. see A.R.S. § 41-1092.08(D) Special rules apply if the board or commission meets monthly or less frequently. (A.R.S. § 41-1092.08(D)) In FY 1999, 73 recommended decisions were certified as final administrative decisions.

Department of Economic Security - CPS	39
Structural Pest Control Commission	8
Accountancy Board	6
Arizona Attorney General's Office	3
Department of Building and Fire Safety	3
Department of Environmental Quality	3
Department of Real Estate	3
Department of Administration	2
Department of Health Services	2
Department of Gaming	1
Department of Public Safety - Student Transportation	1
Department of Water Resources	1
Registrar of Contractors	1

V. Development of Rules

The OAH promulgated its procedural rules on February 3, 1999. 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. A copy of the promulgated rules is included as Appendix 2.

VI. Motions For Change of Administrative Law Judge Granted Pursuant to A.R.S. §41-1092.07

Pursuant to A.R.S. §41-1092.01(C)(9) (b), the OAH reports that 6 motions for change of judge were filed pursuant to A.R.S. §41-1092.07(A) for bias or prejudice. No motion was granted.

VII. Violations of A.R.S. §41-1009.

Pursuant to A.R.S. §41-1092.01(C)(9) (c), the OAH reports that it has no knowledge of violations of A.R.S. §41-1009 by any agency.

VIII. Recommendations for Changes in the Administrative Procedures Act

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:

1. 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 acted.

2. 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.

3. 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.

APPENDICES

1. Newsletters
2. Rules Promulgated February 3, 1999.

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.

The OAH



Vol. 10
January 1999

Official Newsletter of the Arizona Office of Administrative Hearings

OAH Progress

by Cliff J. Vanell, Director

OAH Relocation:

The Office of Administrative Hearings will be relocating its Phoenix office from 1700 West Washington, Suite 602, Phoenix, Arizona 85007 to 1400 West Washington on February 18, 1999. The move will accommodate the expansion of OAH and the relocation of the new School Facilities Board. There will be no disruption of OAH service due to the relocation.

AHCCCS:

Mario Guevara has been designated Special Liaison to AHCCCS to facilitate the transfer of the AHCCCS appeals division to the OAH on July 1, 1999. Mr. Guevara has worked with over 30 agencies, boards and commissions since the OAH's inception and brings to the position his experience and his customary enthusiasm. The OAH office automation and case management will be expanded to include the AHCCCS case-load. Currently, 9 staff members, including 7 administrative law judges, are slated to be trans-

ferred. OAH's new administrative law judges bring with them not only their solid expertise in AHCCCS matters, but a wealth of personal and professional credentials. As the OAH expands, it recommitments itself to its continuing mission to provide fair, impartial and independent hearings.

Statistics:

The OAH continues to work to make its operation more efficient. In the last quarter the completion rate for FY 1999 increased from 95% to 96%, defined as cases completed over new cases filed. This equals the completion rate of FY 1998. This was achieved despite a 29% increase in cases.

The last quarter saw a decrease in the average time needed to schedule cases from 4.3 days to 3.5 days in appealable agency actions, and from 11.1 days to 10.77 days in contested cases. First settings were set an average of five days sooner in contested cases. Agency acceptance of recommended de-

see **Progress, page 2**

The Office of Administrative Hearings (OAH) began operations on January 1, 1996. Administrative Hearings previously provided by regulatory agencies (except those specifically exempted) are now transferred to the OAH for independent proceedings. Our statutory mandate is to ensure that the public receives fair and independent administrative hearings.

The process of unifying the administrative hearings function in OAH-style agencies began in 1961 with California. The current states having adopted the model, with year of

inception are: Arizona (1996), California (1961), Colorado (1976), Florida (1974), Georgia (1995), Illinois (1997), Iowa (1986), Louisiana (1996), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), North Carolina (1986), North Dakota (1991), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington (1981), Wisconsin (1978) and Wyoming (1987). To date there are 316 years of cumulative experience with 281,127 administrative hearings being conducted by OAH-style agencies every year.

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.

The OAH



Vol. 11
April 1999

Official Newsletter of the Arizona Office of Administrative Hearings

Recognition of Excellence

by Cliff J. Vanell, Director

The Department of Administration, because of its direct impact on so many governmental operations, is a popular target for criticism. After all, it has limited resources and virtually unlimited responsibility. And everyone understandably considers his or her project the most important. I would like to take this opportunity to recognize the excellence of the Department of Administration in the recent relocation of the Office of Administrative Hearings.

On February 19, 1999, at 9:00 a.m., I stood in the lobby of the newly relocated Office of Administrative Hearings at 1400 West Washington. I watched as parties were escorted to newly constructed, comfortable and attractive hearing rooms, completely unaware of the herculean efforts that were behind that accomplishment. I suppose it should be taken for granted that there should never be disruption in government services. On the other hand, it must be said that what it takes to deliver those services often requires a degree of commitment and skill that can too often be taken for granted. Being a government "of the people" means, at the very minimum, that it is composed of "people", not machines, not personnel classifications or assignments. Without personal commitment, the "fire in the belly" to do a good job, government does not work any better than any other human institution.

The critical task was to move the newly created School Facilities Board into space occupied by the Office of Administrative Hearings in the Capitol Tower at 1700 West

Washington, where the Board would have the necessary support for its important mission. Accomplishing the move of the OAH to nearby 1400 West Washington, a central location necessary to its mission, required the relocation of a large section of the Department of Health Services (DHS). The task of finding appropriate space for an operation the size of DHS normally would have taken 90-120 days. It was accomplished in 30 days. The task of planning and moving people, furniture and equipment that ordinarily would have taken 60-90 days again took less than 30 days. Planning, designing and reconfiguring 25,000 square feet of office space was completed in 45 days. For the first time ever, DHS's state telephone prefixes were relocated off the capitol mall so its office would not be disrupted.

On March 5, 1999, I received a letter signed by J. Elliott Hibbs, Director of the Department of Administration, Robert Teel, Assistant Director of DOA General Services Division, and Tim Brand, General Manager of the General Services Division. This letter commended the efforts of representatives of the affected agencies as well as each and every person, from supervisors to crew, who contributed to the success of the construction and move.

During construction I noticed that prisoners were used to extend the capabilities of the Department of Administration construction crew. These prisoners are no-risk detainees, generally held for DUI offenses. While helping with routine chores, such

Excellence (continued page 2)

The Office of Administrative Hearings (OAH) began operations on January 1, 1996. Administrative Hearings previously provided by regulatory agencies (except those specifically exempted) are now transferred to the OAH for independent proceedings. Our statutory mandate is to ensure that the public receives fair and independent administrative hearings.

The process of unifying the administrative hearings function in OAH-style agencies began in 1961 with California. The current states having adopted the model, with year of

inception are: Arizona (1996), California (1961), Colorado (1976), Florida (1974), Georgia (1995), Illinois (1997), Iowa (1986), Kansas (1998), Louisiana (1996), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), North Carolina (1986), North Dakota (1991), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington (1981), Wisconsin (1978) and Wyoming (1987). To date there are 316 years of cumulative experience with 281-127 administrative hearings being conducted by OAH-style agencies every year.

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.

The OAH



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Official Newsletter of the Arizona Office of Administrative Hearings

The OAH at the Threshold of the New Millennium

by Cliff J. Vanell, Director

There comes a time when every new agency isn't. That is to say, every agency has to pass from being "new", to just "being." Whereas the Office of Administrative Hearings has existed only three and a half years, in just a few months we will be a "twentieth century" agency, something not only of the last century, but of the prior millennium. I feel older just thinking about that.

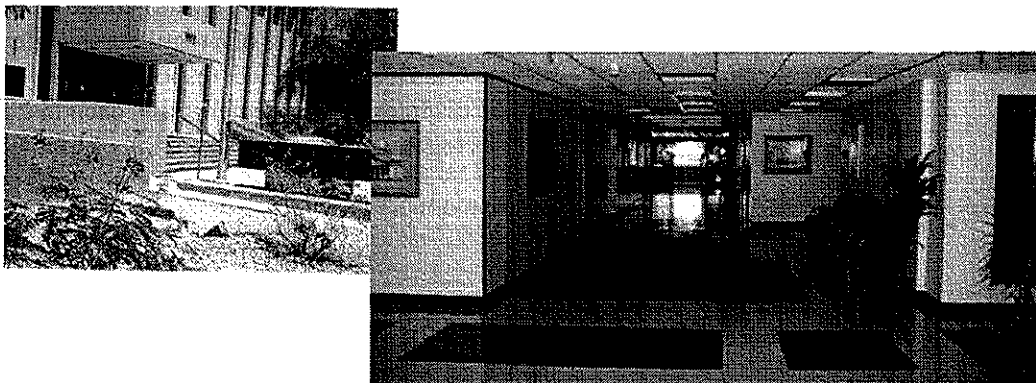
Since January 2, 1996, 9,254 cases have been scheduled and 7,998 cases concluded. Other statistics of interest can be reviewed on page 2. What I want to share in this edition of the OAH Newsletter is the "feel" of the OAH,

much of which can be gleaned from its physical space and furnishing.

An important mandate for the OAH is to provide accessibility to citizens, particularly the unrepresented. The OAH has designed its rules of procedure to make the process easier to understand and for people to effectively participate. In that same vein, the OAH has paid attention to the atmosphere of 1400 West Washington and its hearing rooms in order to minimize the understandable discomfort that many may feel in being involved in the hearing process. Interesting art work, comfortable chairs and adequate space all contribute to an environment conducive to resolution or at least the "safe space" where conflict can be channeled to understanding.

Hearing Rooms

The OAH currently has 9 hearing rooms at 1400 West Washington. There are two styles of



Millennium
(continued page 2)

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RULES FOR THE 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

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

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.

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. Filing and Service. A copy of a document filed with the Office shall be served on all parties. Filing with the Office and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile.
- F. Date of Filing and Service. 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. A copy of a document is served on a party as follows:
 1. On the date it is personally served.
 2. 5 days after it is mailed by express or first class mail.
 3. On the date of the return receipt if it is mailed by certified mail.
 4. On the date indicated on the facsimile transmission.

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

