

The Office of Administrative Hearings

The Seventh Annual Report

to

Governor Jane Dee Hull

Senator Randall Gnant, President of the Senate

Representative Jim Weiers, 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 2002

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I. Introduction and Overview

The Office of Administrative Hearings (OAH) was created pursuant to Laws 1995, Chapter 251, adding 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, 1 Case Management Supervisor, the Office Manager, 20 Administrative Law Judges (ALJ), and 10 support staff. In addition to conducting hearings in Phoenix and Tucson, the OAH travels nearly four weeks per month on rotation to Flagstaff, Kingman, Lake Havasu City, Prescott, Show Low, Sierra Vista, and Yuma. 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 2002 indicate agency acceptance of ALJ recommended orders without modification was 92.13%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 96.32%. Rehearings (0.72%) and appeals (1.88%) were rare. Evaluations by participants continue to indicate that ALJs and the OAH were rated excellent or good in 93.37% to 96.9% of responses.

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.

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. In that spirit, the OAH recommends that A.R.S. §8-201 better define “physical injury” as it relates to abuse in hearings conducted by the OAH pursuant to A.R.S. §8-811 due to the range of reasonable interpretations and the resulting inconsistency in our adjudication. A detailed analysis of the problem may be found in the “Recommendations” section of this report.

Efficiency:

Through careful case management, the OAH enjoys a minimal backlog. The completion rate for cases in FY 2002 was 96.0%, despite a 9.7% increase in cases over FY 2002* and the loss of one Administrative Law Judge due to budget constraints**. This illustrates the effectiveness of cross-training of judges. 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. Secondly, personal and professional growth, collegiality and a larger focus encourages more creativity and better problem-solving.

* as corrected for the new method of counting certain consolidated matters for statistical purposes that has been adopted for FY 2002 data.

** However, the completion rate declined from 99.9% in FY 2001.

Cost Effectiveness:

The total cost of conducting hearings for the General Fund agencies has decreased since the function was transferred to the OAH. The following amounts, which represented the amount appropriated to the agencies for hearings for the second half of FY 1996, were transferred to the OAH when it was created: Department of Administration: \$8,750; Building and Fire Safety: \$35,600; Banking: \$2,450; Education: \$12,950; Department of Environmental Quality: \$6,000; Department of Health Services: \$17,450; Insurance: \$88,000; Liquor: \$44,100; Racing: \$4,250; Real Estate: \$43,550; Revenue: \$47,800; Water Resources: \$36,700. The annualized amounts of these appropriations were: Department of Administration: \$17,500; Building and Fire Safety: \$71,200; Banking: \$2,450; Education: \$25,900; Department of Environmental Quality: \$12,000; Department of Health Services: \$34,900; Insurance: \$176,000; Liquor: \$88,200; Racing: \$8,500; Real Estate: \$87,100; Revenue: \$95,600; Water Resources: \$73,400. By dividing these amounts by the cases filed for these agencies in 1995, the average cost per case prior to the creation of the OAH was \$1,040.72. By 2002, despite a 57% increase in the number of cases for these agencies, the interjection of an independent process and more timely hearings, and the increased costs due to employee merit raises and overhead, the cost per case declined 63% to \$384.98.

II. Continued Development of the Office

1. Implementation of Cost Allocation Methodology

As mandated by the Legislature, a new cost allocation method was adopted in FY 2001 to fairly distribute costs to each 90-10 agency, board and commission (ISA agency) for services rendered by the OAH.

Commencing FY 2002, OAH entered into Intergovernmental Service Agreements (ISA) with the ISA agencies which involve the quarterly transfer of funds by each to the OAH ISA fund. As described in Appendix A, OAH ensures that the revenues from the ISA agencies are tracked, as well as how these revenues are allocated to the total expenditures of OAH. Attached as Exhibit 1 to Appendix A is a typical ISA agreement that reflects the cost allocation plan, and OAH's method for accounting to the ISA agencies and FY end reconciliation.

2. Newsletter

The OAH has completed publication of four editions of the OAH Newsletter on a quarterly basis during FY 2002. The Newsletter reports various performance measures and discusses current issues. The Newsletter includes a series of articles written by Administrative Law Judges that include practice pointers. All articles appear on the OAH website, along with the OAH performance measures. Copies of the four editions published in FY 2002 are included in Appendix B.

3. Website

The OAH website was redesigned and upgraded in FY 2002. The OAH website is designed with the minimum of frills and organized to allow visitors to find information as quickly as possible. The background of the OAH, including its mission statement, logo, management philosophy and views of the hearing rooms give parties a sense of the "feel" of the OAH. The biographies of the Administrative Law Judges allow parties to put a name to a face and learn about a judge's background. Along with links to the Arizona Revised Statutes, Arizona Administrative Code and OAH's procedural rules, the OAH has included extensive cross referencing to allow non-lawyers to quickly pick up practice pointers and be able to put the law together with a minimum of searching. For example, if a person goes to OAH's procedural rules, any rule which references another rule will

have a link to it, as well as any statute in the Uniform Administrative Hearings Procedures that deals with the same issue. Likewise, any reference in articles dealing with practice pointers or any response to a frequently asked question that refers to any rule or statute will have links. An average of 2,226 requests were made weekly from the website in FY 2002 from 300 unique domains. The two most visited webpages is the OAH Portal (described below) and articles written by the Administrative Law Judges regarding practice pointers and procedure. All OAH informational brochures included with the Notices of Hearing mailed by the agencies, boards and commissions now include a flyer describing the OAH website.

4. OAH Portal

The OAH Portal is an important asset to parties since it allows parties to directly access OAH's docket to view case settings, rulings, receipt of documents and other information. The Portal allows the general public to view all non-confidential cases. Each agency is given a password to view its otherwise non-accessible matters.

5. 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 2002, in addition to training, which included State Bar sponsored continuing legal education, 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.

6. National Central Panel Directors Conference

The annual National Conference of Central Panel Directors was held at the Hyatt Regency Hotel in downtown Phoenix from December 5-8, 2001, hosted by the Arizona Office of Administrative Hearings. Representatives attended from Alabama, Arizona, Chicago, Colorado, Florida, Georgia, Iowa, Louisiana, Maryland, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Texas, Washington, Washington DC, Wisconsin, and Wyoming. The agenda included refining approaches to case management and technology, attracting and retaining administrative law judges, increasing public accessibility to the administrative process, and procedural rules. Chief Justice Thomas Zlaket addressed the gathering regarding judicial ethics and commitment to the fair, impartial and prompt administration of justice.

In preparation for its hosting of the conference, the OAH created a "cyber conference" of resource materials accessible through the OAH website for use by the national conference. The resource materials included questionnaires completed by all states and cities with central panels that compare each according to its development in technology, including the ability of the public to retrieve information regarding cases on the web, statistical accountability, and independence.

III. Summary of Agency use of OAH Services

1. Case Management

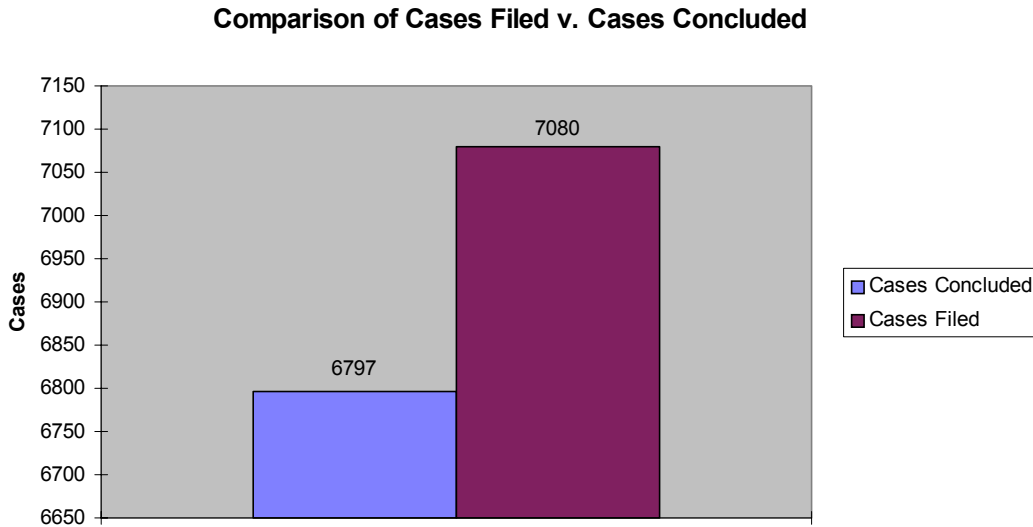
a. Breakdown of Cases Filed by Agency (FY 2002):

7,080 cases were filed with the OAH in FY 2002. The distribution among the agencies and boards are as follows (in ascending order by number of cases filed):

Arizona Board of Occupational Therapy Examiners	1
Arizona Works-Maximus-(DES)	1
State Schools for the Deaf and the Blind	1
Department of Agriculture	2
Board of Nursing Care Institution Administrators Examiners	3
Department of Education	3
Secretary of State	3
Department of Gaming	5
Maricopa County Housing Department	5
Board of Technical Registration	6
Office of the Attorney General	7
Board of Chiropractic Examiners	9
Board of Medical Examiners (Arizona Medical Board)	9
Department of Administration	9
Office of Alternative Fuel Recovery	10
Department of Public Safety - Concealed Weapons Permit Unit	11
Peace Officers Standards and Training	12
Board of Appraisal	13
Department of Public Safety - Student Transportation	13
State Land Department	14
Board of Behavioral Health Examiners	15
Department of Water Resources	18
Department of Racing	23
Board of Dental Examiners	26
Structural Pest Control Commission	26
State Board of Accountancy	27
State Board of Nursing	36
State Banking Department	52
State Board of Cosmetology	52
Liquor Licenses and Control	68
Department of Revenue	69
Department of Real Estate	90
Department of Environmental Quality	107
Department of Insurance	113
Department of Weights and Measures	132
Department of Building and Fire Safety	235
Department of Health Services	238
Department of Economic Security - CPS	240
Department of Administration-Capitol Police Parking	327
Registrar of Contractors	1645
Arizona Health Care Cost Containment System	3404

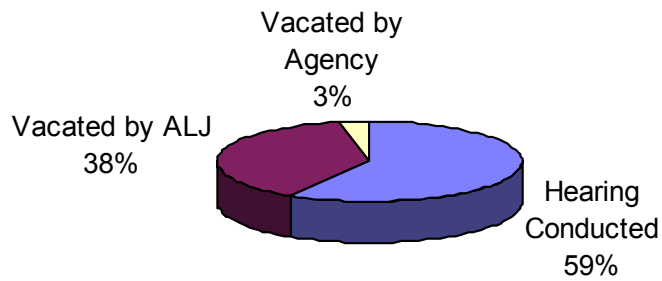
b. Number of Cases Filed versus Cases Concluded

In FY 2002, the conclusion rate, defined as cases concluded divided by new cases filed was 96%.



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 Concluded Cases FY 2002

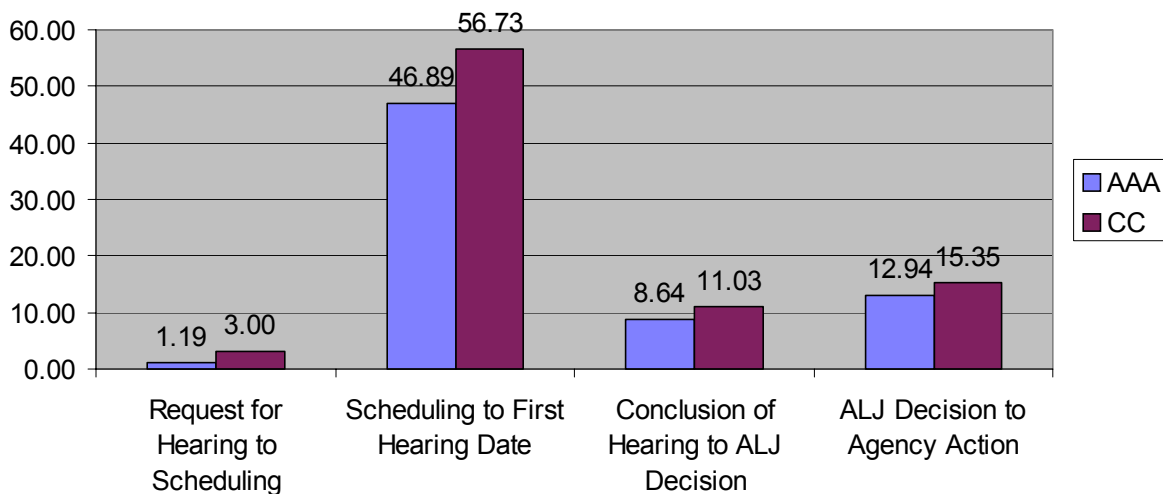


c. Timeline of Case Management:

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” (AAA: 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” (CC: 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:

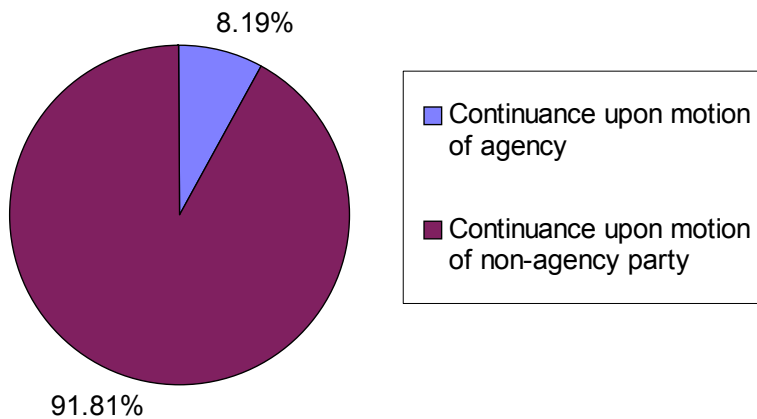
Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases



d. Incidence of Continuance:

A single continuance adds an average of 46.21 days to the length of a case. 55.37% of all continuance requests were granted in FY 2002. The OAH has developed a well-deserved reputation for discouraging “convenience” continuances in favor of those based on “good cause”. This is especially important because of the decrease in the number of ALJ’s due to budget constraints. The frequency of continuance, defined as the number of continuances granted (675) over the total number of cases first scheduled (7,049), expressed as a percent, was 9.57%. The ratio of first settings (5,712) to continued settings on the calendar (607) was 1 to 0.11.

Comparison of Source of Continuance, FY 2002



The following list indicates the number of continuances by agency. Indicated also are the continued settings in FY 2002, divided by those granted on motion of a non-agency party and those on motion of the agency.

AGENCY	Continued - Motion by non- agency party	Continued - Motion by agency party
Arizona Health Care Cost Containment System	182	0
Attorney General	0	1
Board of Chiropractic Examiners	3	1
Board of Nursing	4	0
Department of Administration	1	2
Department of Administration-Capitol Police Parking	0	14
Department of Building and Fire Safety	18	0
Department of Economic Security - CPS	18	4
Department of Environmental Quality	9	3
Department of Gaming	2	0
Department of Health Services	28	13
Department of Insurance	14	1
Department of Public Safety - Concealed Weapons	2	1
Department of Public Safety - Student Transportation	2	0
Department of Racing	2	0
Department of Real Estate	5	2
Department of Revenue	13	1
Department of Water Resources	3	0
Department of Weights and Measures	4	0
Liquor Licenses and Control	9	1
Office of Alternative Fuel Recovery	9	0
Peace Officers Standards and Training	3	0
Registrar of Contractors	208	1
Secretary of State - Business Services Division	1	0
State Banking Department	3	1
State Board of Accountancy	1	0
State Board of Cosmetology	1	0
State Land Department	2	1
Structural Pest Control Commission	2	2

2. Evaluation

a. Results of Public Evaluation:

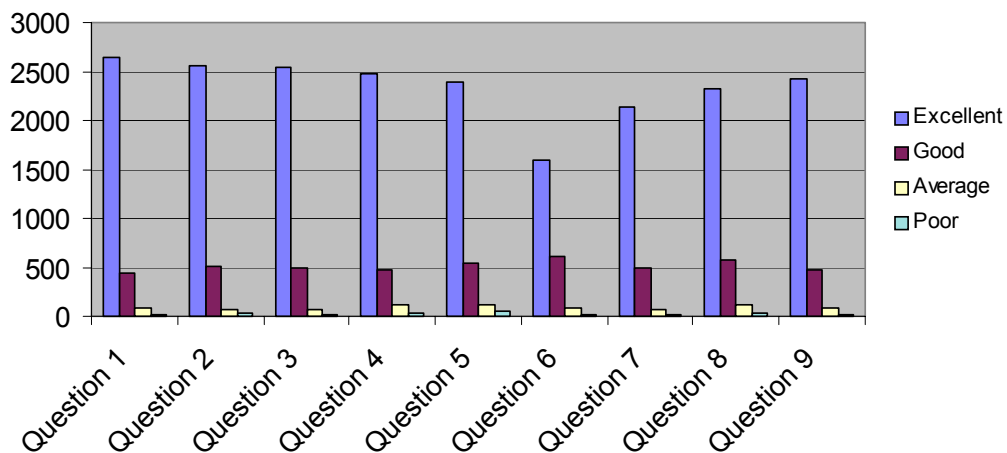
Since November 1996, the OAH has administered an evaluation procedure. At the conclusion of every hearing, evaluations are handed out to four major groups of respondents: Represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The results are not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

Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, poor:

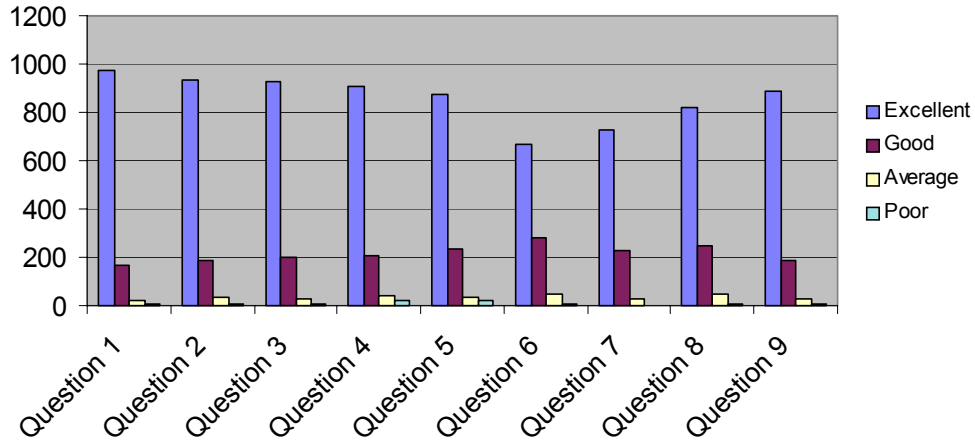
1. Attentiveness of ALJ
2. Effectiveness in explaining the hearing process
3. ALJ's use of clear and neutral language
4. Impartiality
5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded to promptly and completely
9. Treated courteously

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 extremely well.

All Responses FY 2002

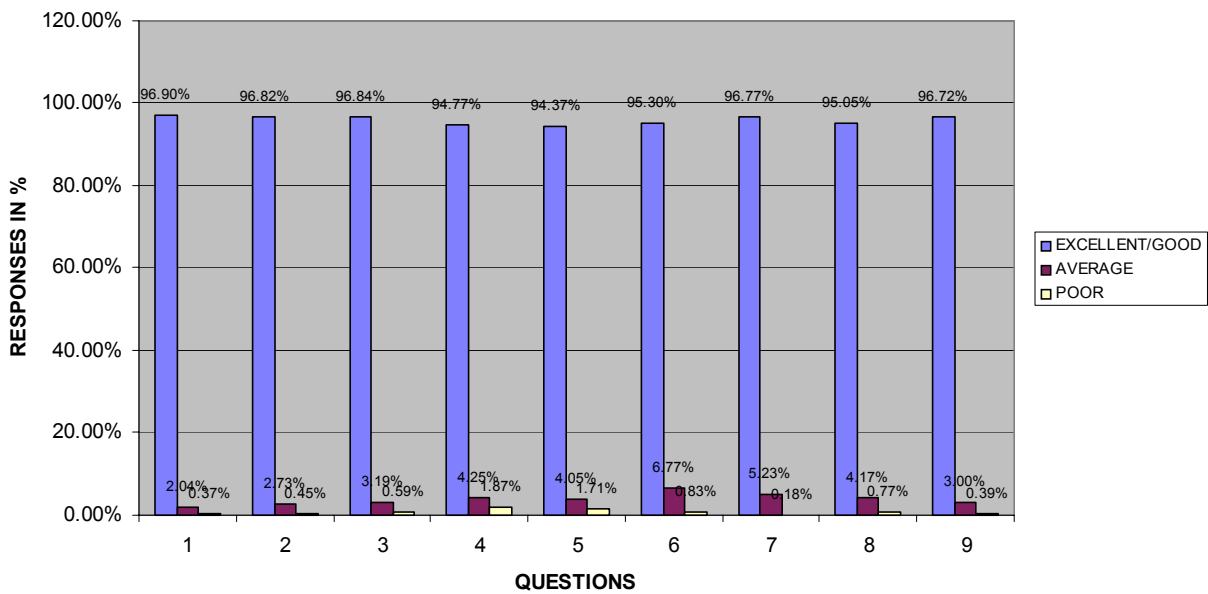


Unrepresented Responses FY 2002



The following diagram illustrates that 94.37% to 96.9% of participants evaluating the OAH process responded that the OAH was excellent or good in all categories.

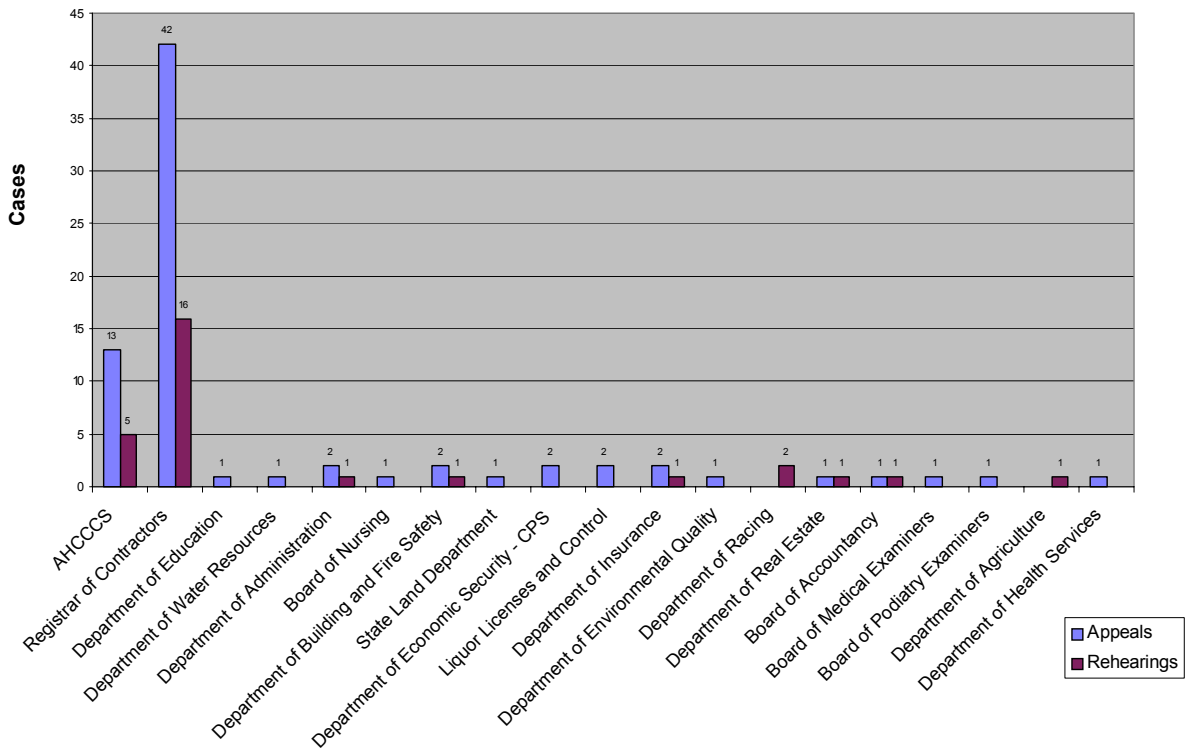
EVALUATION FY 2002



b. Incidence of Rehearing/Appeal:

In FY 2002, the rehearing rate (defined as rehearings scheduled divided by cases heard) was .72%. The judicial appeal rate (defined as judicial appeals taken divided by cases heard) was 1.88%. As reflected in the following diagram, rehearings and judicial appeals in FY 2002 were relatively rare. Both were concentrated at the Registrar of Contractors. Registrar cases are primarily contests between two private litigants (homeowner/contractor; contractor/subcontractor).

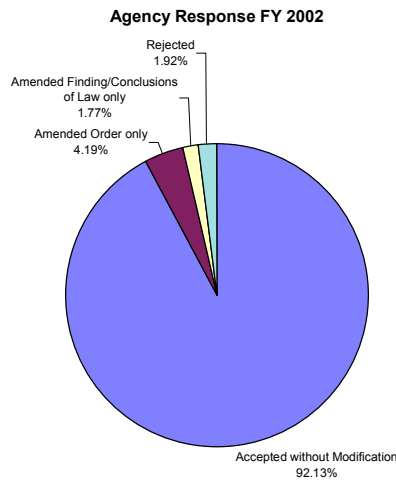
Judicial Appeals and Rehearings FY 2002



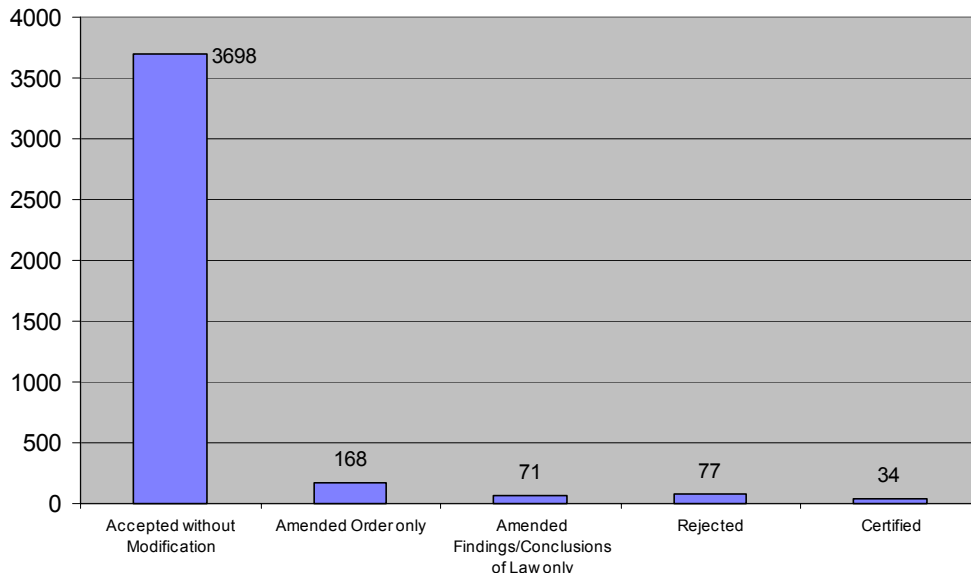
IV. Acceptance of ALJ Decisions by Agencies

1. Agency Action

Agency acceptance of the OAH decisions is very high. 92.13% of all decisions acted upon by the agencies (that is, excluding .84% of decisions certified as final due to agency inaction) are accepted without modification. Agency acceptance was 96.32% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the administrative law judge. The vast majority (70.29%) of modifications were in the Recommended Order (penalty portion).



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

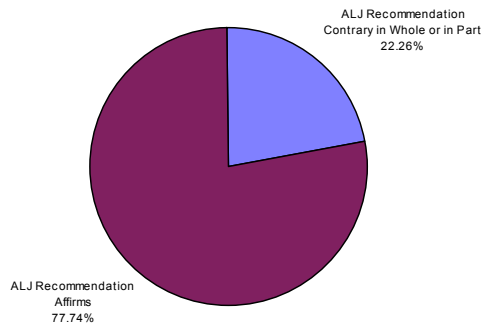


The following chart reports the breakdown by agency. This illustrates that modifications and rejections are few relative to the decisions accepted.

	Accept	Modify Penalty	Modify Fact/law	Reject
Arizona Board of Occupational Therapy Examiners	1	0	0	0
Arizona Health Care Cost Containment System	1,725	20	38	58
Arizona Medical Board	5	2	0	0
Arizona Works-Maximus-(DES)	1	0	0	0
Board of Behavioral Health Examiners	5	1	0	1
Board of Accountancy	2	1	0	0
Board of Appraisal	0	2	1	0
Board of Chiropractic Examiners	2	0	0	0
Board of Dental Examiners	2	1	1	0
Board of Nursing	19	1	1	1
Board of Nursing Care Institution Administrators Examiners	1	0	0	0
Board of Podiatry Examiners	1	0	0	0
Board of Technical Registration	1	0	0	0
Department of Administration	7	0	0	0
Department of Administration - Capitol Police Parking	208	0	0	0
Department of Agriculture	1	0	0	0
Department of Building and Fire Safety	177	1	0	0
Department of Economic Security - CPS	172	4	16	1
Department of Environmental Quality	13	0	1	0
Department of Gaming	2	0	0	0
Department of Health Services	111	2	1	3
Department of Insurance	64	0	1	2
Department of Public Safety - Concealed Weapons Permit Unit	7	0	0	0
Department of Public Safety - Student Transportation	9	0	0	0
Department of Racing	6	1	1	0
Department of Real Estate	29	4	0	0
Department of Water Resources	4	0	0	0
Department of Weights and Measures	0	0	0	0
Liquor Licenses and Control	33	2	0	1
Office of Alternative Fuel Recovery	15	0	0	0
Office of the Attorney General	1	0	0	0
Registrar of Contractors	1,054	124	10	7
State Banking Department	10	0	0	1
State Board of Cosmetology	3	0	0	0
State Land Department	4	0	0	0
Structural Pest Control Commission	3	2	0	2

In FY 2002, OAH rendered a decision contrary in whole or in part to an agency's original position in 22.26% of cases. Agency acceptance of contrary decisions was high (86.49%).

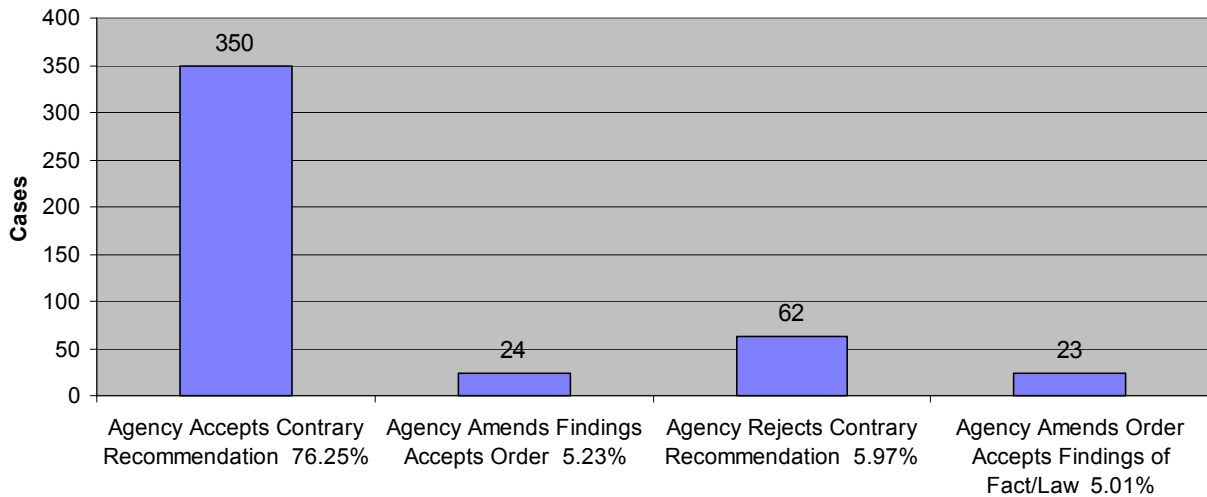
Recommendations Contrary to Original Agency Position FY 2002



The following two charts show a breakdown by agency of its response to contrary decisions.

	Accepts	Amends Order	Amends Findings/Law	Rejects
AHCCCS	131	15	57	11
Alternative Fuel Recovery	2	0	0	0
Banking	3	0	1	0
Board of Accountancy	0	1	0	0
Board of Behavioral Health Examiners	0	0	1	1
Board of Cosmetology	1	0	0	0
Board of Dental Examiners	1	0	0	1
Board of Medical Examiners	0	0	0	1
Board of Nursing	1	0	0	0
Building and Fire Safety	16	0	0	0
Capitol Police Parking	151	0	0	0
Department of Economic Security - CPS	1	3	0	2
Department of Environmental Quality	2	0	0	0
Department of Health Services	2	1	2	1
Department of Insurance	9	0	1	0
Department of Public Safety - Concealed Weapons	2	0	0	0
Department of Racing	2	3	0	0
Department of Real Estate	5	0	0	0
Podiatry	0	0	0	1
Registrar of Contractors	21	1	0	5

Agency Response to Contrary Recommendations FY 2002



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 the OAH has not received the agency, board or commission's action accepting, modifying or rejecting the recommended decision within 30 days of transmission. Special rules apply if the board or commission meets monthly or less frequently. See A.R.S. §41-1092.08(D). In FY 2002, 34 recommended decisions were certified as final administrative decisions.

Arizona Health Care Cost Containment System	2
Board of Accountancy	1
Board of Behavioral Health Examiners	1
Board of Cosmetology	1
Department of Building and Fire Safety	12
Department of Economic Security - CPS	1
Department of Insurance	1
Department of Public Safety - Concealed Weapons	2
Department of Racing	1
Department of Water Resources	1
Office of Alternative Fuels	6
Office of the Attorney General	1
Registrar of Contractors	1
Structural Pest Control	3

V. 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 12 motions to the OAH Director for change of judge were filed pursuant to A.R.S. §41-1092.07(A) for bias or prejudice. 1 motion was granted.

VI. 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.

VII. 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.

4. Conform Rehearing and Appeal Rules.

Currently parties have 30 days from service of an agency’s final action, presumed after 5 days of mailing to the party’s last known address, to request a rehearing under A.R.S. §41-1092.09(A)(1) and A.R.S. §41-1092.09(C). However, pursuant to A.R.S. §12-904(A), parties have 35 days to file an appeal to Superior Court upon service, presumed after 5 days of mailing to the party’s last known address. Conforming the time limits for filing appeals and requesting rehearings will simplify the process by eliminating varying time

limits for parties to act on final orders and will allow agencies to frame the effective dates of their final orders to a single date.

5. Recoupment of Costs for Administrative Hearings:

Billed costs to non-General Fund supported agencies, boards and commissions (ISA agencies), pursuant to A.R.S. §41-1092.01(E) and (K) could be recouped by them by extending the statutory authority found in isolated statutes to all such ISA agencies. An example of statutory authority for recoupment is found in A.R.S. §32-128(H) which permits the Board of Technical Registration to recoup certain costs:

H. On its determination that a registrant or a home inspector has violated this chapter or a rule adopted pursuant to this chapter, the board may assess the registrant or the home inspector with its reasonable costs and expenses incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the technical registration fund established by section 32-109 and shall only be used by the board to defray its expenses in connection with disciplinary investigations and hearings. Notwithstanding section 35-143.01, these monies may be spent without legislative appropriation.

To avoid any appearance of impropriety by the ISA agencies, such recoupment might be narrowly tailored to settlements or to cases where the ISA agency prevails before the independent Administrative Law Judge, or only as incident to disciplinary orders.

VIII. Recommendation for Changes or Improvements in Agency Practice with Respect to the Administrative Procedures Act

Statutory Guidance in Definition of “Physical Injury” under A.R.S. §8-201

As of June 30, 2002, the OAH has concluded in excess of 1,200 cases under A.R.S. §8-811. The statutory scheme provides that those who are facing substantiation of reports of child abuse or neglect, and therefore deposit of these reports in the State’s Central Registry for 25 years, be accorded the right to have the State demonstrate “probable cause” before the OAH’s independent tribunals. Experience has shown that the current scheme is inadequate or uncertain in a key area requiring statutory clarification.

Title 8 does not define “physical injury” as it applies to abuse under A.R.S. §8-201. One position is that the statute is one of strict liability. Under that viewpoint, any physical injury, if observable, constitutes abuse. This is true regardless of how minimal, or whether it is sustained by a child as a consequence of parental discipline or attempts to control the behavior of a child, or even as the result of accident. Another viewpoint sees the terms, “infliction of or allowing” physical injury found in A.R.S. §8-201 as requiring some minimal bad intent, thus allowing reasonable mitigation

in cases of manifest accident. Still another position applies the defenses to assault found in A.R.S. §13-403 to the concept of “physical injury” to recognize some leeway in parental discipline.

In the absence of clear standards, some Administrative Law Judges apply the definition of “physical injury” found in A.R.S. §13-3623(A)(4), or use it for guidance. These judges are generally uncomfortable using the Title 13 statute, but at the same time feel obligated to have at least some statutory foundation for their determinations as to when there has been “abuse” as defined in Title 8. In either of these situations, Administrative Law Judges may or may not apply the defenses of A.R.S. §13-403, depending on whether abuse is considered strict liability. Other Administrative Law Judges, finding the use of the criminal statutes inappropriate, because of lack of notice to the appellant, do not apply either A.R.S. §13-3623(A)(4) or A.R.S. §13-403. In many cases physical injury is so manifest, and so obviously the result of intentional unjustified acts, that the lack of definition presents no difficulty. However, many situations which are not obvious cases of abuse can become subjective ad hoc decisions. Likewise, similar facts may be viewed differently by different Administrative Law Judges, resulting in opposing orders.

APPENDICES

1. Cost Allocation Methodology

2. Newsletters

3. Agenda: National Conference of Central
Panel Directors

Appendix A

Cost Allocation Methodology

As mandated by the Legislature, a new cost allocation method was adopted beginning FY 2001 to fairly distribute costs to each 90-10 agency, board and commission (ISA agency) for services rendered by the Office of Administrative Hearings (OAH).

Overview

OAH has entered into Intergovernmental Service Agreements with the ISA agencies which involve the quarterly transfer of funds by each to the OAH ISA fund. As described below, OAH ensures that the revenues from the ISA agencies are tracked, as well as how these revenues are allocated to the total expenditures of OAH. Attached as exhibit 1 is a typical ISA agreement that reflects the cost allocation plan, and OAH's method for accounting to the ISA agencies and FY end reconciliation.

Methodology for Tracking ISA Revenues and Usages:

Step One (data entry):

On a monthly basis, OAH enters the following information into an excel workbook (designated as "Global"), divided into 12 worksheets by month:

1. The cases filed by each ISA agency as well as the hours billed by administrative law judges for ISA agency. The same information is entered all general funded agencies as a group.
2. The amount expended for each ISA agency for travel or interpreters. The same information is for all general funded agencies as a group.
3. The adjusted billable rate (PS with ERE included) for each ALJ and staff member as well as the hours in pay status.
4. The non salary costs for the month (minus travel and interpreters) entered by object code.

Step Two (propagation to monthly spreadsheets):

This information is propagated in separate excel workbook for each month, divided into separate worksheets for each ISA agency and for the general fund agencies as a group. Each worksheet automatically determines the fractional allocation of the total operational costs of OAH for the month by pool to each ISA agency according to the cost allocation plan which is attached as Attachment A of exhibit 1. Each monthly workbook is audited to make sure that the total expenditures for each month total all allocations made to each ISA agency and to the general funded agencies as a group.

Step Three (generation of monthly statements):

A monthly statement showing the relevant data propagated from “Global” and the ISA agency’s allocation is sent to the ISA agency. An example and discussion follows for a hypothetical board:

Billed Hour Pool

Billed Hours (ALJ Salary)	Monthly Salary	Total Billed Hours	Agency Billed hrs	Agency Pool Cost
Grant Winston	6,311.20	129.60	0.00	0.00
George Schade	6,603.76	133.70	0.00	
Kay Abramsohn	6,552.24	108.95	0.00	0.00
Casey Newcomb	6,322.24	111.40	0.00	0.00
Allen Reed	5,474.00	128.80	0.00	0.00
	0.00	0.00	0.00	
Gary Strickland	6,322.24	117.60	14.10	758.02
Sondra Vanella	5,726.08	105.20	0.00	0.00
Daniel Martin	6,097.76	147.90	0.00	0.00
Dorinda Lang	6,313.04	102.77	0.00	0.00
Maurice McWhirter	5,757.36	0.00	0.00	0.00
	0.00	0.00	0.00	
Bob Worth	6,800.64	127.96	0.00	0.00
Lewis Kowal	6,309.36	143.10	0.00	0.00
Brian Tully	6,311.20	88.40	5.30	378.39
Mark Silver	5,312.08	109.60	0.00	0.00
Eric Bryant	6,513.60	112.70	0.00	0.00
Mike Douglas	6,460.24	165.71	0.00	0.00
Diane Mihalsky	6,200.80	137.80	0.00	0.00
Anthony Halas	6,081.20	170.60	0.00	0.00
Gregory Hanchett	6,309.36	101.75	0.00	0.00
TOTAL			19.40	1,136.41

Percentage Pool

Percentage of Cases (Indirect Costs)	Total Cases Filed	Total Agency Cases Filed	Total Operating Expenses *	Agency Pool Cost
	788.00	2.00	88,028.86	\$223.42

* Staff PS and ERE Plus Other Operating expense minus travel and interpreters

Actual Cost Pool

Actual expenses	Interpreters	Travel	Agency Pool Cost
	0.00	0.00	0.00

Total Costs

Percentage Pool	223.42		
Billed Hour Pool	1,136.41		
Actual Expense Pool	0.00		
Total Pool Costs	1,359.83		

The “Billed Hours Pool” reflects the number of hours expended by each administrative law judge for the hypothetical board. Each hour is divided by the total hours billed by that judge to all agencies, boards and commissions (including general funded) and multiplied by the total personal services (PS) and employee related expenses (ERE) of the judge for the month. The “Percentage Pool” reflects the number of cases filed by the hypothetical board. The total number of cases filed by the hypothetical board is divided by the total number of cases filed by all agencies, boards and commissions (including

general funded) and multiplied by the total operating costs of the OAH (minus PS and ERE for judges, travel and interpreters). The “Actual Expenses Pool” reflects the costs for travel or interpreters expended for the hypothetical board. The “Total Costs” section summarizes and adds together the total costs to the hypothetical board based on these three pools. These costs are reflected in the running monthly ledger statement (discussed below). Each monthly statement is accompanied by details of the exact cases filed by the board or commission and the exact hours expended by each judge for specific cases for that month. The number of cases detailed will equal the number cases filed by the board in the monthly billing statement. The total hours detailed will equal the hours totaled for the board.

Step Four (generation of monthly cumulative ledgers):

As discussed above, accompanying the monthly statement is a monthly ledger statement which summarizes each monthly billing and each quarterly deposit, together with a running balance of billings versus deposits. As of March 1, 2002, the hypothetical agency deposited \$20,550 in three installments of \$6,850, with a total of \$6,540.43 in assessed costs (\$882.34 for cases assessment and \$5,658.08 for billed administrative law judge time), with a running positive balance of \$14,009.57. Note the January entry which reflects the monthly billing statement discussed above.

Costs	July	August	September	October	November	December	January	February	March	April	May	June
Percentage Pool (Charge for case settings)	282.99	0.00	0.00	258.29	0.00	117.64	223.42	0.00	0.00	0.00	0.00	0.00
Billed Hour Pool (ALJ hourly billing)	152.58	664.59	745.65	56.68	682.70	1,273.11	1,136.41	946.37	0.00	0.00	0.00	0.00
Actual Expense Pool (travel/interpreters)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Pool Costs	435.57	664.59	745.65	314.97	682.70	1,390.75	1,359.83	946.37	0.00	0.00	0.00	0.00
Quarterly Contributions	6,850.00			6,850.00			6,850.00			6,850.00		
Balance	6,414.43	5,749.84	5,004.19	11,539.22	10,856.52	9,465.77	14,955.94	14,009.57	14,009.57	20,859.57	20,859.57	20,859.57

Summary:

The Office of Administrative Hearings through its integrated system of spreadsheets is able to track all revenues and uses for its ISA’s with the 90-10 boards and commissions consistent with the Legislature’s mandate and sound accounting principles.

EXHIBIT 1

INTERAGENCY SERVICE AGREEMENT: ISA NUMBER XXX

The following Agreement is entered into by Hypothetical Board (Hypothetical Board) and the Arizona Office of Administrative Hearings (OAH). This reflects the sole agreement between the parties.

1.0 TERM OF AGREEMENT

The term of this Agreement shall begin on July 1, 2002.

2.0 AUTHORITY

This Agreement is entered into pursuant to A.R.S. §41-1092.01(E)

3.0 PURPOSE OF AGREEMENT

This Agreement is entered into pursuant to A.R.S. §41-1092.01(E) Hypothetical Board is to contract for services to be provided by OAH in conducting administrative hearings.

4.0 MANNER OF FINANCING

Hypothetical Board shall send to the OAH the total sum of \$27,400 in quarterly installments of \$6,850.00. These quarterly amounts will be sent to OAH within 5 business days of the commencement of the quarter by means of a companion transaction form to be prepared by OAH and submitted to Hypothetical Board for approval.

OAH shall calculate the costs of providing services on a monthly basis in accordance with actual, allowable costs incurred consistent with the Billing Allocation Plan attached as appendix A. The OAH will reconcile total FY 2003 costs and payments on the next business day following July 1, 2003, crediting quarterly installments to monthly costs. In the event of underpayment, Hypothetical Board will be responsible for the payment of any deficiency upon receipt of a companion transaction form prepared by OAH. In the event of overpayment, OAH will return unearned payment in a companion transaction prepared by OAH. Final reconciliation and the appropriate companion transaction will be transmitted to Hypothetical Board by the next business day following July 4, 2003.

Notwithstanding the above, the OAH will project the costs of June 2003 and present a projected reconciliation by the next business day following June 15, 2003. If on such date, after accounting for projected June costs, Hypothetical Board has a projected

positive balance, OAH will return the projected balance to Hypothetical Board. Final reconciliation will then be effected as provided by the previous paragraph.

5.0 REPORTING

Except as provided in Paragraph 4.0 regarding final reconciliation, OAH shall submit monthly expenditure reports and supporting documentation to Hypothetical Board s Financial Administrator within 15 business days after the end of each month. These reports shall further detail and certify the costs incurred for hearing activities and account for quarterly amounts deposited, year to date monthly costs credited against year to date quarterly deposits, the balance remaining in quarterly deposits, and year to date deficiencies.

6.0 AMENDMENT OF AGREEMENT

Any amendments to this Agreement shall be in writing and signed by both parties.

7.0 TERMINATION OF AGREEMENT

This Agreement shall terminate upon the repeal of A.R.S. §41-1092.01(E) requiring Hypothetical Board to contract with the OAH for services or June 30, 2003.

8.0 NOTICES

OAH and the Hypothetical Board shall address all correspondence relative to this Agreement through individuals that shall be designated in writing from time to time by each agency.

FOR AND ON BEHALF OF THE HYPOTHETICAL BOARD

Name:
Title:

(Date)

FOR AND ON BEHALF OF THE ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS

CLIFF J. VANELL
Director

(Date)

APPENDIX A: BILLING ALLOCATION PLAN

The Hypothetical Board Hypothetical Board (Hypothetical Board) will be billed on a quarterly basis for its use of the personnel and services of the Office of Administrative Hearings in the following manner:

1. Percentage pool:

The total (1) operating expenses, and (2) personal services and employee related expenses of the management and case management support teams will be determined on a monthly basis. One time sweeps for state-owned building rent, risk management charges, health dental, life insurance premiums, etc. will be amortized over the twelve month fiscal year. This amount will be multiplied by a fraction whose numerator is the number of cases for Hypothetical Board filed for the same monthly period, and whose denominator is the total number of OAH cases filed in the same monthly period. This amount will be billed to Hypothetical Board.

2. Billed hour pool:

The total personal services and employee related expenses of each administrative law judge will be determined and converted to an hourly rate. This hourly rate will be multiplied by the hours in pay status. This product will be multiplied by a fraction whose numerator is the number of hours billed to Hypothetical Board for the same monthly period, and whose denominator is the total hours billed by the administrative law judge to all other agencies participating in the Billing Allocation Plan in the same monthly period. This amount will be billed to Hypothetical Board.

3. Actual expense pool:

The actual expense for travel, outside consultants and other specific case expenditures will be determined on a monthly basis and billed to Hypothetical Board.

The OAH



Jane Dee Hull
Governor

Cliff J. Vanell
Director

Vol.
21
October 2001

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

Director's note: OAH is committed to fairness and making hearings accessible to all. This article is part of a series of informational articles to educate the public and parties who appear before us about the hearing process and how to better present their cases. The following article may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

DISCOVERY-THE KEY TO UNLOCKING THE "MYSTERY" BEHIND AN ADMINISTRATIVE HEARING

By Sondra J. Vanella, Administrative Law Judge

Discovery is a pre-hearing device that can be used by each party to obtain facts and information about the case from the opposing party, in order to prepare for an administrative hearing. There are no formal rules governing the discovery process in an administrative hearing. However, discovery should be calculated to lead to reliable and probative information. In some cases, parties may have another related matter pending in court. The administrative forum should not be viewed as an opportunity to obtain information solely for use in another court proceeding. Discovery must be relevant to the issues that will be addressed at the hearing.

Generally, discovery is limited in administrative proceedings. However, there are several methods accessible to both represented and unrepresented parties, which can facilitate the gathering of relevant information. Perhaps the easiest and most often overlooked tool is a review of the case file. Parties are encouraged to examine the case file forwarded to the Office of Administrative Hearings by the referring agency, prior

"Discovery"

continued page 2

Pre-Hearing and Post-Hearing Memoranda

by Dorinda Lang, Administrative Law Judge

Written memoranda are not always requested or necessary in hearings before the Office of Administrative Hearings ("OAH"). If the Administrative Law Judge requests one, however, he or she expects the parties to submit them and in a timely manner (the time for submission being set by the Administrative Law Judge).

Arizona Administrative Code R2-19-116(G) specifically allows the Administrative Law Judge to "permit or require" written memoranda to be submitted after the close of a hearing. The Administrative Law Judge may also permit or require the parties to submit one before the hearing, particularly as a result of a pre-hearing conference under A.A.C. R2-19-112.

If a party wishes to submit a memorandum for consideration by the Administrative Law Judge without having been requested to do so, the best time to submit it is at least a couple of days prior to the hearing. The OAH staff files documents received in the course of business pursuant to A.A.C. R2-19-108. This rule merely allows the OAH staff to file documents in the appropriate case file. It states that "documents" that can be filed may include briefs, which are essentially the same thing as memoranda. The rule also requires that a copy be served on all parties.

"Memoranda"

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 1945 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), Oregon (1999), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington (1981), Wisconsin (1978) and Wyoming (1987).

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.

1st Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **97.67%** of all recommended decisions acted upon by the agencies.* ALJ decisions, including recommended orders, were accepted without modification in **94.62%** of all recommended decisions acted upon by the agencies. **70.60%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

The appeal rate was **1.58%** defined as appeals taken (16) over hearings concluded (1010**).

Rehearings:

The rehearing rate was **.40%**, defined as rehearings scheduled (4) over hearings concluded (1010**).

Completion Rate:

The completion rate was **62.04%**, defined as cases completed (1759) over new cases filed (1010).

Continuance:

The average length of a first time continuance based on a sample of cases (first hearing setting and first continuance both occurred in the 1st quarter) was **60.35 days**. The frequency of continuance, defined as the number of continuances granted (1370) over the total number of cases first scheduled (2821), expressed as a percent, was **48.56%**. The ratio of first settings (2863) to continued settings on the calendar (239) was **1 to 0.08**.

Dispositions:

Hearings conducted: **57.4%**; vacated prior to hearing: **40.3%**; hearings withdrawn by agency: **2.3%**.

Contrary Recommendations and Agency Response: 23.99% of recommendations were contrary to the original agency action where the agency took a position. Agency acceptance of contrary recommendations was **89%**.

*1.05% of ALJ recommended decisions were certified as final by the OAH due to agency inaction.

** Cases which were vacated are not included

notifying the opposition of such request. Subpoenas for the production of documents may be issued by the ALJ if the party seeking documents demonstrates that they are relevant to the issues in dispute. The ALJ may require a brief statement supporting the necessity of a particular witness to appear, or the relevancy of the documents being sought. Documents may be subpoenaed from individuals, businesses, and governmental agencies.

The deposition is a limited discovery technique that can be exercised when a witness is unavailable to attend the hearing. Should a witness be unavailable to testify at the hearing, either party may petition the assigned ALJ to permit a deposition to be taken to be used as evidence at the hearing. This is because the person being deposed is under oath and subject to cross examination during the deposition.

The pre-hearing conference is not a discovery tool per se, but parties seeking assistance with discovery, or who seek clarification of issues,

may request a pre-hearing conference. On occasion, an ALJ may order a pre-hearing conference without a request from either party. The pre-hearing conference may be used to clarify or limit procedural, legal, and factual issues, thereby alleviating a degree of uncertainty about the proceeding. The ALJ may order the parties to exchange documents and/or lists of witnesses and exhibits intended to be used during the hearing. It also affords the parties an opportunity to discuss settlement.

Discovery, if utilized appropriately, promotes a meaningful and efficient hearing, with both parties prepared to present and address relevant evidence and legal arguments.

“Memoranda”

continued from page 1

Once the hearing is over, however, the only documents accepted by the Administrative Law Judge are those already requested prior to the end of the hearing and for which the record was specifically held open. Memoranda submitted after the close of the hearing, if not previously requested by the Administrative Law Judge, will be returned in the mail with a letter stating that the record in the matter has been closed.

A party or representative appearing at an OAH hearing may be faced with writing a pre-hearing or post-hearing memorandum at the request of the Administrative Law Judge when they had no intention of doing anything so technical for the case. Those without legal experience may feel a bit overwhelmed by the prospect and be concerned about what to submit.

But a memorandum is nothing more than a very short position paper. A brief statement of the case and why the party believes it should prevail, clearly stated and amenable to reason, should suffice. If the party is relying on a particular statute or rule, a proper citation is appropriate. If referencing an agency policy or other document, attach a copy of it to the memorandum.

Organization of points into separate headings, formulation of clear thoughts and use of appropriate sentence structure may make the party's case more clear and memorable to the Administrative Law Judge, possibly increasing the chances of receiving a favorable recommendation. Thus, the task of writing a memorandum is usually viewed as an opportunity rather than a chore.

If, for any of the above reasons, you are submitting a memorandum for a hearing at the Office of Administrative Hearings, keeping the above points in mind will help you make your case.

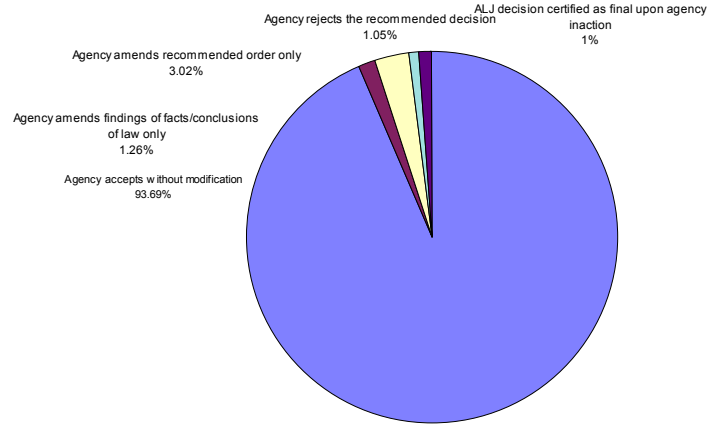
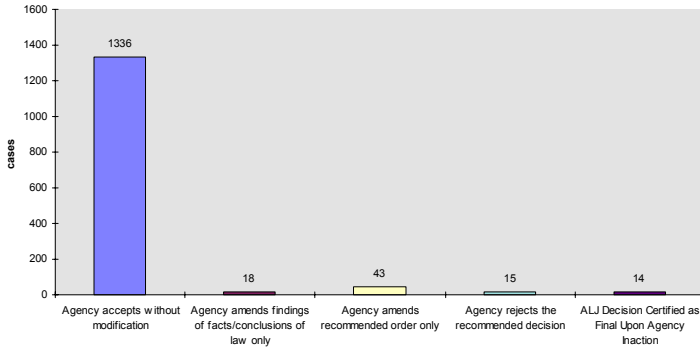
“Discovery”

continued from page 1

to the hearing. This enables the parties to become familiar with the documents that the agency (assuming the agency is a party) or other party may use during the hearing, and affords the opportunity to gather whatever documentation the party feels is necessary in order to present the case to the Administrative Law Judge (“ALJ”). Parties may obtain copies of the case file at their own expense.

The most common form of discovery is the issuance of subpoenas to compel the attendance of witnesses and the production of documents. This may be requested by either or both parties without

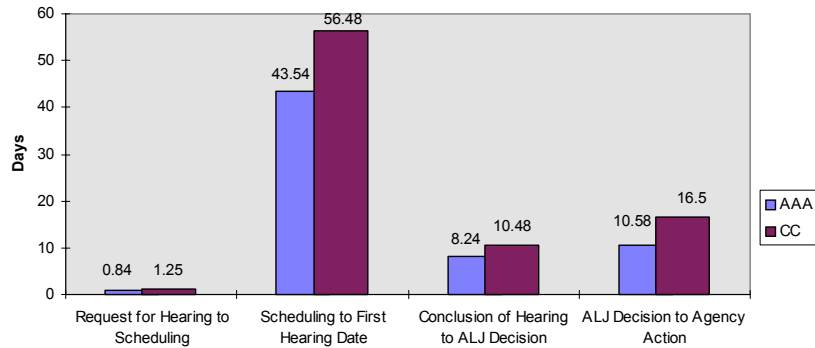
Agency Response to Recommended Decisions July 1 - September 30, 2001



Arizona Hosts Central Panel Directors Meeting

The annual conference of Central Panel Directors will be held at the Hyatt Regency Hotel in downtown Phoenix from December 5-8, 2001. Cliff J. Vanell, the Director of the Office of Administrative Hearings for the State of Arizona ("OAH"), will host several functions during the conference. Representatives are expected from Alabama, Arizona, California, Chicago, Colorado, Florida, Georgia, Iowa, Louisiana, Maryland, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York City, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Texas, Washington, Washington DC, Wisconsin, and Wyoming. The agenda will include refining approaches to case management and technology, attracting and retaining administrative law judges, increasing public accessibility to the administrative process, and procedural rules.

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, July 1 - September 30, 2001



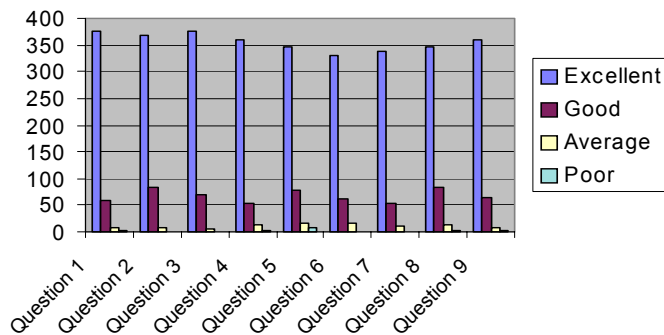
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An example would be proposed 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.

2835 Cases Filed July 1, 2001 - September 30, 2001

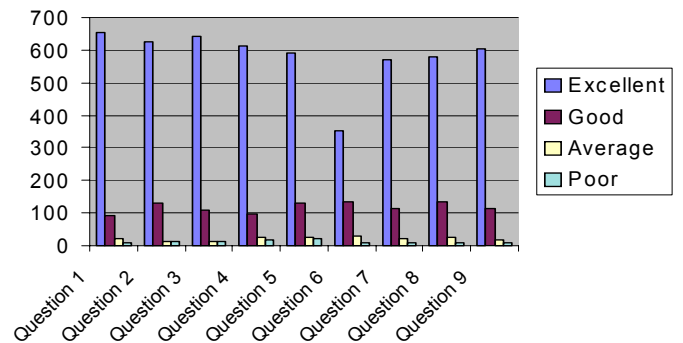
	1st Q	FY 2002		1st Q	FY 2002		1st Q	FY 2002
Accountancy	1	1	Cosmetology	8	8	Peace Ofc. Standards	2	2
Acupuncture Board	0	0	Dental	4	4	Pest Control	0	0
ADA	0	0	Economic Security	0	0	Physical Therapy	0	0
Administration	4	4	Economic Security-CPS	51	51	Podiatry	0	0
Admin. Parking	50	50	Education	2	2	Psychologist Examiners	0	0
Agriculture	2	2	Environ. Quality	14	14	Public Safety - CW	3	3
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Trans	2	2
AHCCCS	2011	2011	Gaming	0	0	Public Safety - Adult CC	0	0
Alternative Fuel	5	5	Health Services	46	46	Pvt. Post. Ed.	0	0
Appraisal	0	0	Insurance	22	22	Racing	4	4
AZ Commission on the Arts	0	0	Land	3	3	Radiation Regulatory	0	0
Attorney General	3	3	Liquor	17	17	Registrar of Contr.	409	409
Arizona Works	0	0	Lottery	0	0	Real Estate	30	30
Banking	10	10	Maricopa Cty. Housing	1	1	Revenue	12	12
Behavioral Health Ex.	7	7	Medical Examiners	2	2	School - Deaf & Blind	0	0
Building/Fire Safety	64	64	Naturopathic	0	0	Secretary of State	0	0
Charter Schools	0	0	Nursing	11	11	Technical Registration	3	3
Chiropractic	1	1	Nursing Care Admin	0	0	Water Qual. App. Bd.	0	0
Clean Elections	0	0	Osteopathic	0	0	Water Resources	5	5
Community Colleges	0	0	Parks	0	0	Weights and Measures	26	26

Evaluations of OAH Services

Unrepresented Responses 1st Quarter



All Responses 1st Quarter



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 those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

Office of Administrative Hearings
 1400 West Washington, Suite 101
 Phoenix, Arizona 85007

The OAH



Jane Dee Hull
Governor

Cliff J. Vanell
Director

Vol.
22

January 2002

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

Helping us help you: www.azoah.com **MAKING THE MOST OF THE OAH WEBSITE**

There are two images that often come to my mind as I think about how people must feel about coming to a hearing. One is the image of my mother sitting alone on the couch in my living room in the very early morning before the sun was up. She was staying at my house in Gilbert, Arizona, visiting from Globe where she lived. She had a small claims matter in a nearby justice court. She had been taken from pillar to post and although she would never say so, I know she was worried. She was expected to present her case before a perfect stranger, in an unfamiliar place with no experience. Even though my mother has been dead for almost ten years, my heart still goes out to her. The other image is of a man I saw at the public library years ago asking the librarian where the Arizona law was. After he was shown the large set of books comprising the Arizona Revised Statutes and after watching him puzzle through the index, I couldn't help but think what incredible barriers are set up for people who are not lawyers, but who are nonetheless expected to know and obey the law. These two people probably have no idea how they have affected the spirit of the OAH in its formative years. It is to these two people, my mother and that nameless man, that I dedicate our web page. May serving people like them always be a focus of the "quality of life" that we proclaim in our mission statement as being OAH's reason for existing.

The OAH website is designed with the minimum of frills and organized to get people to the right place as quickly as possible. An outline of the homepage can be found on page 2.

The **background of the OAH**, including its mission statement, logo, management philosophy and views of the hearing rooms give parties a sense of the "feel" of the OAH. **The biographies of the Administrative Law Judges** allow parties to put a name to a face and learn about a judge's background. Along with links to the Arizona Revised Statutes, Arizona Administrative Code and OAH's procedural rules, the OAH has included **extensive cross referencing** to allow non-lawyers to quickly pick up practice pointers and be able to put the law together with a minimum of searching. For example, if a person goes to OAH's procedural rules, any rule which references another rule will have a link to it, as well as any statute in the Uniform Administrative Hearings Procedures that deals with the same issue. Likewise, any reference in articles dealing with practice pointers or any response to a frequently asked question that refers to any rule or statute will have links.

The OAH Portal is an important asset to parties since it allows parties to directly access OAH's docket to view case settings, rulings, receipt of documents and other information. Parties can also quickly research any important considerations regarding **attorney representation**. Parties also have the ability to **file motions on line** and

"Website Overview"

continued page 3

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 agen-

cies began in 1945 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), Maine (1992), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), New York City (1979), North Carolina (1986), North Dakota (1991), Oregon (1999), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington (1981), Wisconsin (1978) and Wyoming (1987).

Mission Statement:

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2nd Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **97.54%** of all recommended decisions acted upon by the agencies.* ALJ decisions, including recommended orders, were accepted without modification in **94.5%** of all recommended decisions acted upon by the agencies. **68.85%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were 15 appeals filed in Superior Court. 3 appeals involved 1086 consolidated cases; 12 appeals involved separate cases.

Rehearings:

The rehearing rate was **.415%**, defined as rehearings scheduled (4) over hearings concluded (965**).

Completion Rate:

The completion rate was **90.31%**, defined as cases completed (1622) over new cases filed (1796).

Continuance:

The average length of a first time continuance based on a sample of cases (first hearing setting and first continuance both occurred in the 2nd quarter) was **45.7 days**. The frequency of continuance, defined as the number of continuances granted (198) over the total number of cases first scheduled (1804), expressed as a percent, was **10.98%**. The ratio of first settings (1641) to continued settings on the calendar (1322) was **1 to 0.806**.

Dispositions:

Hearings conducted: **59.5%**; vacated prior to hearing: **37.7%**; hearings withdrawn by agency: **2.8%**.

Contrary Recommendations and Agency Response: 19.71% of recommendations were contrary to the original agency action where the agency took a position. Agency acceptance of contrary recommendations was **88.32%**.

*1% of ALJ recommended decisions were certified as final by the OAH due to agency inaction.

** Cases which were vacated are not included

OAH Website Structure at a Glance (underlines indicate links)

BACKGROUND OF THE OFFICE

[Our Mission Statement](#)
[Our Logo](#)
[Our Newsletter](#)
[The Director](#)
[Views of the Office](#)

FREQUENTLY ASKED QUESTIONS

[What is an Administrative Law Judge?](#)
[What is a hearing like?](#)
[Do I need a lawyer?](#)
[How do I know what rules to follow?](#)
[Will there be a record?](#)
[Where do I send requests?](#)
[What if I need a delay?](#)
[How do I ask the judge to do something?](#)
[How do I subpoena witnesses?](#)
[What if I need special accommodations?](#)
[Are there forms I can use?](#)
[How can I appeal my decision?](#)

YOUR ASSIGNED ADMINISTRATIVE LAW JUDGE

You can find a biography and a picture of the assigned judge as well as former judges who are our distinguished alumni.

RESEARCH PROCEDURES, STATUTES AND RULES AFFECTING YOUR CASE

[OAH Procedural Rules](#)

[Uniform Administrative Hearings Procedures](#) These are statutory provisions establishing the OAH and outlining the appeals process. For specific procedures involving your case, see the OAH Procedural Rules (above).

[Link to Arizona Administrative Code](#) Here you can research the rules promulgated by the agency that may impact your case.

[Link to Arizona Revised Statutes \(A.R.S.\) by title.](#)

Notices of Hearing provided by agencies will refer to these statutes. The number appearing immediately after the "A.R.S." refers to the title.

RESEARCH YOUR CASE (PORTAL)

The OAH portal allows you to research your case by matter number (certain cases will not appear due to confidentiality requirements).

ATTORNEY ISSUES

See [Do I need a lawyer?](#)

[Rule 31, Rules of the Supreme Court](#) This rule provides exceptions to the general rule regarding attorney representation before the OAH.

[Rule 33\(d\), Rules of the Supreme Court - Out of State Attorneys: Application Process to Appear Pro Hac Vice](#) (Note: This on-line application is consistent with the Order of the Supreme Court suspending the amendments to Rule 33(d), as adopted on October 9, 2001.)

OAH NEWSLETTER

[Articles from the OAH Newsletter](#) The OAH newsletter is published quarterly. It contains informative articles and statistics as well as practice pointers.

[Newsletters in PDF format](#)

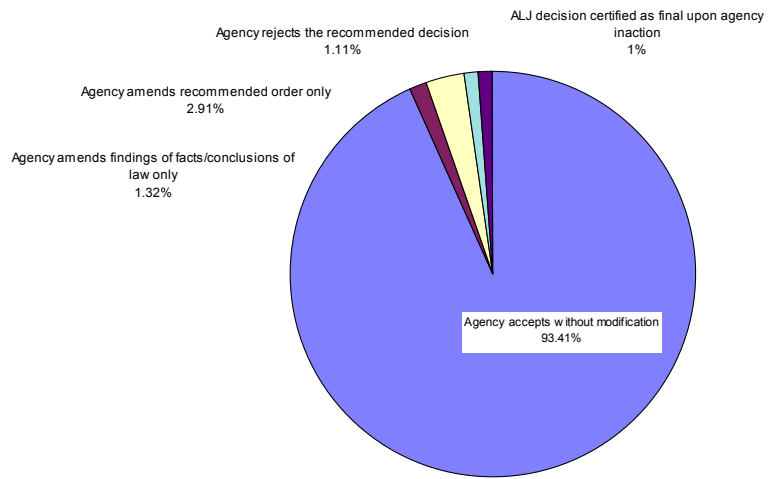
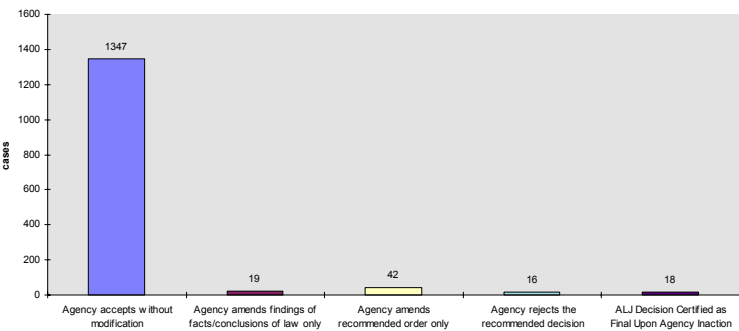
[Previous Quarter Statistics](#) Performance measures as reported in the OAH Newsletter.

MOTIONS

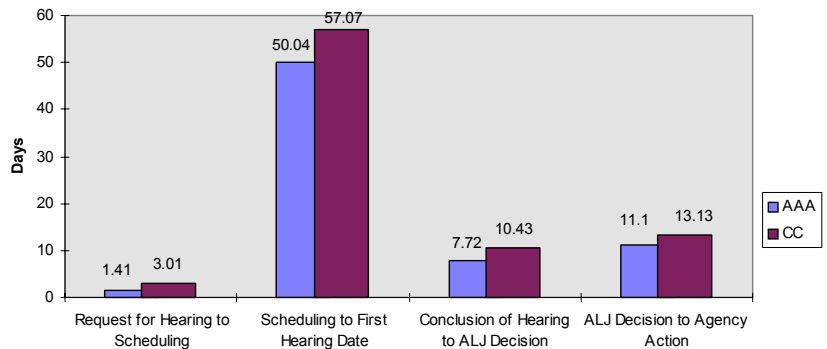
[Sample subpoena form](#)

[Compose motions or respond to motions online](#)

Agency Response to Recommended Decisions October 1 - December 31, 2001



Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, October 1 - December 31, 2001



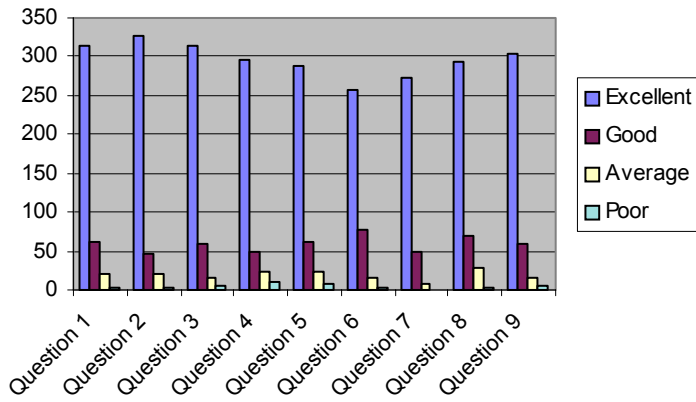
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An example would be proposed 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.

1796 Cases Filed October 1, 2001 - December 31, 2001

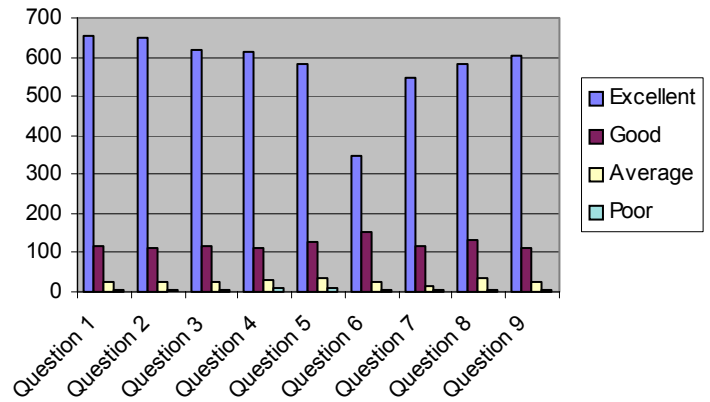
	2nd Q	FY 2002		2nd Q	FY 2002		2nd Q	FY 2002
Accountancy	5	6	Cosmetology	11	19	Peace Ofc. Standards	3	5
Acupuncture Board	0	0	Dental	8	12	Pest Control	11	11
ADA	0	0	Economic Security	0	0	Physical Therapy	0	0
Administration	2	6	Economic Security-CPS	63	114	Podiatry	0	0
Admin. Parking	22	72	Education	0	2	Psychologist Examiners	0	0
Agriculture	0	2	Environ. Quality	28	42	Public Safety - CW	2	5
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Trans	4	6
AHCCCS	899	2910	Gaming	3	3	Public Safety - Adult CC	0	0
Alternative Fuel	1	6	Health Services	72	118	Pvt. Post. Ed.	0	0
Appraisal	3	3	Insurance	47	69	Racing	6	10
AZ Commission on the Arts	0	0	Land	2	5	Radiation Regulatory	0	0
Attorney General	0	3	Liquor	19	36	Registrar of Contr.	408	819
Arizona Works	0	0	Lottery	0	0	Real Estate	26	56
Banking	6	16	Maricopa Cty. Housing	1	2	Revenue	28	40
Behavioral Health Ex.	5	12	Medical Examiners	3	5	School - Deaf & Blind	0	0
Building/Fire Safety	61	125	Naturopathic	0	0	Secretary of State	0	0
Charter Schools	0	0	Nursing	8	19	Technical Registration	0	3
Chiropractic	2	3	Nursing Care Admin	1	1	Water Qual. App. Bd.	0	0
Clean Elections	0	0	Osteopathic	0	0	Water Resources	5	10
Community Colleges	0	0	Parks	0	0	Weights and Measures	31	57

Evaluations of OAH Services

Unrepresented Responses 2nd Quarter



All Responses 2nd Quarter



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 those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

Office of Administrative Hearings
 1400 West Washington, Suite 101
 Phoenix, Arizona 85007

The OAH



Jane Dee Hull
Governor

Cliff J. Vanell
Director

Vol.
23

April 2002

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

MOTION PRACTICE AT THE OFFICE OF ADMINISTRATIVE HEARINGS

Gary B. Strickland, Administrative Law Judge

Director's note: OAH is committed to fairness and making hearings accessible to all. This article is part of a series of informational articles to educate the public and parties who appear before us about the hearing process and how to better present their cases. The following article may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

A motion is an application to receive a ruling or order directing that something be done favorable to the applicant. Parties appearing before the Office of Administrative Hearings have available to them several motions that they may utilize in an effort to obtain a favorable outcome. The following discussion identifies the more typical motions utilized in administrative adjudication. The use of such motions is limited to: (1) the timing requirements of the Office of Administrative Hearings procedural rules set forth in the Arizona Administrative Code, Title 2, Chapter 19 (A.A.C. R2-19-101 *et seq.*), and (2) the substantive requirements of administrative law generally.

Motions filed concerning threshold (meaning, before the Administrative Law Judge has convened the hearing on the record) matters must be submitted to the Office of Administrative Hearings in writing at least fifteen (15) days prior to the date upon which the hearing is scheduled to begin, or, with "leave" supported by a showing of good cause (meaning, with the Administrative Law Judge's permission) to file at another time. A.A.C. R2-19-106(C). If the opposing party chooses to object to the motion, the responsive argument must be filed with the Office within five

(5) days of service, or as directed by the Administrative Law Judge. A.A.C. R2-19-106(D). An otherwise appropriate oral motion will be considered by the Administrative Law Judge, however, if made during a prehearing conference or during the hearing itself. A.A.C. R2-19-106(B) and (C). The Administrative Law Judge will typically issue a written ruling on the motion, without delay, unless the motion is made orally and the Judge determines to render a ruling from the bench. In either case, the Administrative Law Judge will state sufficient grounds for the denial of or granting of the motion to advise the parties of the basis for the ruling.

Any motion that is presented to the Administrative Law Judge, whether written or oral, is required to be argued by the proponent (the one making the motion) with specific knowledge of the facts and the law [where necessary] upon which the motion is based. In other words, the proponent should never blindly "throw up" an application to the Judge hoping only that "something may stick." Integrity and good faith are presumed in the submission of all motions.

While a "lay" person (i.e., a non-attorney) may represent herself or an entity (where permitted by Rule 31 of the Arizona Rules of the Supreme Court) before the Office of Administrative Hearings in certain contexts, there is one context where it is absolutely necessary

"Motions"

continued page 2

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cies began in 1945 with California. The current states or cities having adopted the model, with year of inception are: Arizona (1996), California (1961), Colorado (1976), Florida (1974), Georgia (1995), Chicago (1997), Iowa (1986), Kansas (1998), Louisiana (1996), Maine (1992), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), New York City (1979), North Carolina (1986), North Dakota (1991), Oregon (1999), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington (1981), Wisconsin (1978) and Wyoming

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3rd Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **97.8%** of all recommended decisions acted upon by the agencies.* ALJ decisions, including recommended orders, were accepted without modification in **95.17%** of all recommended decisions acted upon by the agencies. **70.51%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were 21 appeals filed in Superior Court.

Rehearings:

The rehearing rate was **.17%**, defined as rehearings scheduled (2) over hearings concluded (1162**).

Completion Rate:

The completion rate was **97.99%**, defined as cases completed (1996) over new cases filed (2037).

Continuance:

The average length of a first time continuance based on a sample of cases (first hearing setting and first continuance both occurred in the 3rd quarter) was **42 days**. The frequency of continuance, defined as the number of continuances granted (1335) over the total number of cases first scheduled (2032), expressed as a percent, was **65.7%**. The ratio of first settings (3125) to continued settings on the calendar (1326) was **1 to 0.425**

Dispositions:

Hearings conducted: **58.2%**; vacated prior to hearing: **38.2%**; hearings withdrawn by agency: **3.6%**.

Contrary Recommendations and Agency Response: 17.95% of recommendations were contrary to the original agency action where the agency took a position. Agency acceptance of contrary recommendations was **84.87%**.

*.6% of ALJ recommended decisions were certified as final by the OAH due to agency inaction or rendered moot by settlement.

** Cases which were vacated are not included

“Motions”

continued from page 1

that a licensed Arizona attorney participate in the process. That occurs when an attorney who is licensed and in good standing in another jurisdiction, but not in Arizona, desires to represent a party. Before the out-of-state attorney is permitted to represent the party, he or she must be admitted *pro hac vice* (“for this case only”) to practice before this Arizona tribunal. The Office of Administrative Hearings’ web site, www.azoah.com, provides the proper form and style for the submission of a motion *pro hac vice*.

Another threshold motion concerns the date upon which the matter will be heard. Sometimes, a party will seek to have the hearing *continued* to a later date because some problem is anticipated. More infrequently, a party will seek to have the date upon which the hearing is scheduled be advanced to an earlier date, the hearing *accelerated*, because it is thought that a need has arisen to have a ruling on the issue(s) presented as early as possible. In either case, A.R.S. § 41-1092.05 (C) and A.A.C. R2-19-110 require that the party who requests the change in the date for hearing demonstrate *good cause* to have the matter moved to an earlier or later day on the calendar. The motion should be filed only in support of a legitimate purpose. Illegitimate reasons for the filing of such a motion would include that of delay or merely to frustrate the opposing party. It should be noted that, generally, there is a presumption that the calendar should not be disturbed. There are many other citizens and public entities whose cases are awaiting a time slot within which to air their grievances.

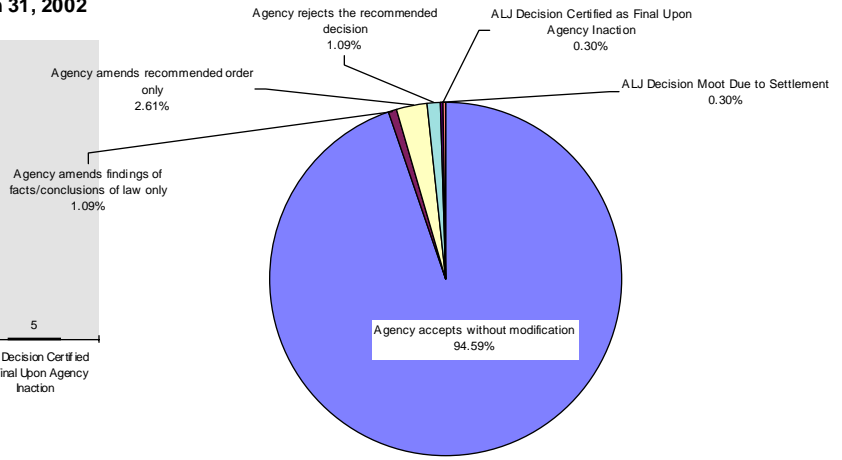
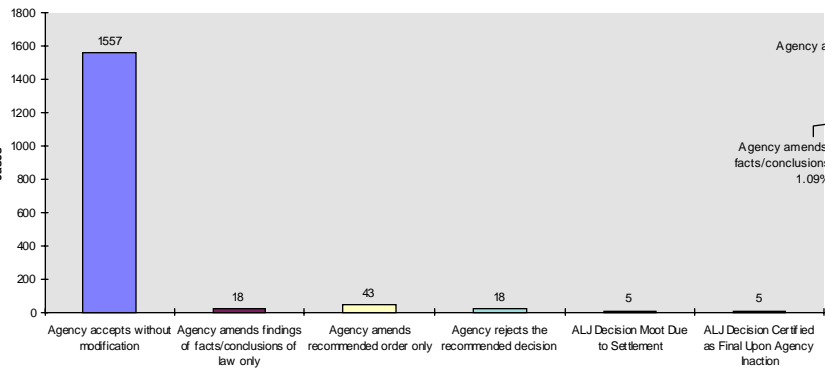
Therefore, in consideration of the motion, in addition to observance of the clearly stated requirements of statute and rule, the Administrative Law Judge will weigh the unfairness to the other party of delay or expedition, should the request be granted, against the particulars of the asserted hardship that a denial of postponement or advancement would create. In preparation of the motion, a party should be very careful (1) to familiarize itself with the rule, (2) ensure that it has *good cause* for the request before it asks for a calendar reassignment, and (3) not to expect that the request will be granted as of right. This last point holds fast even if the opposing party does not object to the motion.

Still further as a threshold matter, a party may move to have a *change of venue*, i.e., request that the hearing be conducted at what the moving party considers a more convenient setting. However, in cases other than those involving *Registrar of Contractor* or *Child Protective Services* matters, venue is generally strictly confined to either Phoenix or Tucson. It may occasionally be appropriate to move a hearing between those two locations due to the number of witnesses situated in an area whereby Tucson would be closer for travel as opposed to Phoenix, or *vice versa*. OAH’s procedural rules do not explicitly provide for the filing of a venue motion. However, such a motion will be nonetheless considered, balancing private interests with administrative efficiency.

It may also be true that a party might want to have the Administrative Law Judge render a ruling on an offer of evidence that it intends to make at the hearing or to limit or prevent the production of prejudicial and irrelevant matter that the other side may plan on raising. The *in limine* motion should be used with an intent to shorten the hearing and to simplify the issues that will be addressed.

Occasionally, a party will assert a motion for a *directed verdict* in an administrative case. This is inappropriate. There is no place for a *directed verdict* at an administrative hearing. The more correct motion is one to *dismiss*. Here, the moving party asserts that the party who has the overall burden of persuasion has failed to set forth evidence on every element of the case necessary to sustain a ruling in that party’s favor. The opposing party feels it unnecessary to put on a rebuttal case because, legally speaking, there is nothing to rebut or to defend against. However, even should the Administrative Law Judge be inclined to agree with the party that has submitted the motion, it is improbable that he or she will grant a *dismissal motion* (or, more correctly in most cases, recommend that the Agency with jurisdiction grant the motion) so as to make a complete record for review by the Agency Director

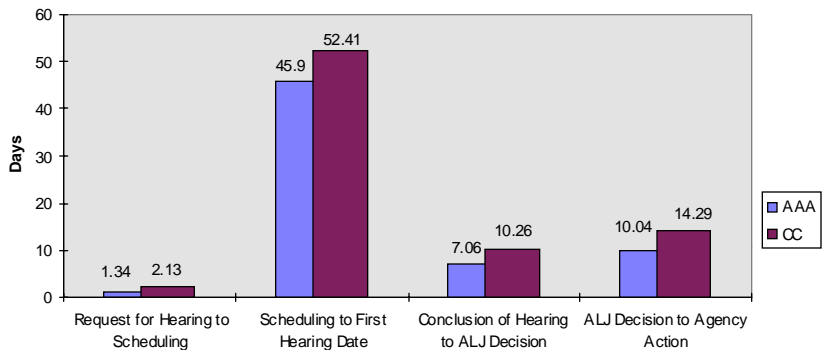
Agency Response to Recommended Decisions January 1 - March 31, 2002



or Board who will render the Final Order. In effect, while denying the motion, the Administrative Law Judge may nevertheless ultimately recommend that the Agency head dismiss the matter.

In conclusion, a party has the right to petition the Administrative Law Judge by motion to obtain a ruling on the request and to be provided a brief statement of the reasons for the granting or denial of a motion recognized appropriate in the administrative forum. The overriding considerations of the Administrative Law Judge in rendering a ruling are those of fairness to the parties and expedition and efficiency in the process. If a filing party has observed the rules and has set forth a good faith, arguably sound legal position, the party will likely receive a ruling that is satisfactory to all under the circumstances of the case.

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, January 1 - March 31, 2002



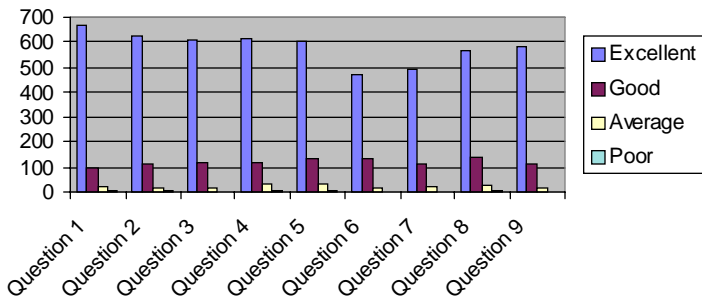
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An example would be proposed 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.

2037 Cases Filed January 1, 2002 - March 31, 2002

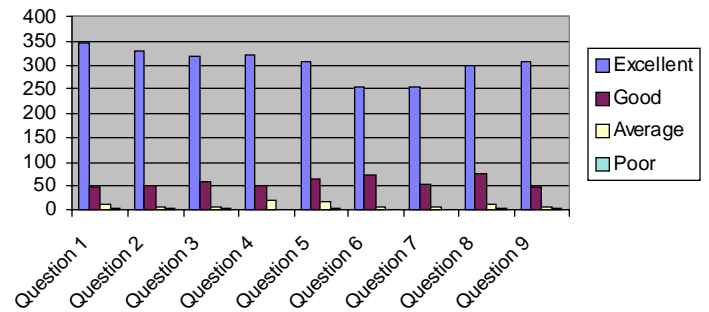
	3rd Q	FY 2002		3rd Q	FY 2002		3rd Q	FY 2002
Accountancy	1	7	Cosmetology	22	41	Peace Ofc. Standards	4	9
Acupuncture Board	0	0	Dental	0	12	Pest Control	13	21
ADA	0	0	Economic Security	0	0	Physical Therapy	0	0
Administration	0	6	Economic Security-CPS	57	171	Podiatry	0	0
Admin. Parking	176	248	Education	1	3	Psychologist Examiners	0	0
Agriculture	0	2	Environ. Quality	43	85	Public Safety - CW	4	9
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Trans	7	13
AHCCCS	1025	3937	Gaming	2	5	Public Safety - Adult CC	0	0
Alternative Fuel	2	8	Health Services	58	176	Pvt. Post. Ed.	0	0
Appraisal	5	8	Insurance	20	89	Racing	8	18
AZ Bd. Occup'l Therapy	1	1	Land	4	9	Radiation Regulatory	0	0
Attorney General	0	3	Liquor	19	55	Registrar of Contr.	397	1233
Arizona Works	1	1	Lottery	0	0	Real Estate	22	79
Banking	22	38	Maricopa Cty. Housing	2	4	Revenue	12	52
Behavioral Health Ex.	3	15	Medical Examiners	2	7	School - Deaf & Blind	0	0
Building/Fire Safety	58	181	Naturopathic	0	0	Secretary of State	1	1
Charter Schools	0	0	Nursing	0	30	Technical Registration	4	6
Chiropractic	2	5	Nursing Care Admin	1	2	Water Qual. App. Bd.	0	0
Clean Elections	0	0	Osteopathic	0	0	Water Resources	4	14
Community Colleges	0	0	Parks	0	0	Weights and Measures	23	80

Evaluations of OAH Services

All Responses 3rd Quarter



Unrepresented Responses 3rd Quarter



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 those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

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The OAH



Jane Dee Hull
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Director

Vol. 24

July 2002

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

Director's note: OAH is committed to fairness and making hearings accessible to all. This article is part of a series of informational articles to educate the public and parties who appear before us about the hearing process and how to better present their cases. The following article may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

Order of Presentation, Manner of Presentation and Conduct During Proceedings

Casey J. Newcomb, Administrative Law Judge

The Administrative Law Judge begins a hearing by (1) reading the caption of the case; (2) stating the nature and scope of the hearing; and (3) identifying the parties, counsel and witnesses for the record. See Arizona Administrative Code ("A.A.C.") R2-19-116(B). The parties should address the Administrative Law Judge as "Your Honor" or "Judge" and treat the Administrative Law Judge with courtesy, respect and deference.

The parties may present opening statements. An opening statement is voluntary. Generally, the party with the burden of proof makes the initial opening statement. In most cases, it is the Complainant or the Appellant who has the burden of proof. All other parties may make an opening statement in a sequence determined by the Administrative Law Judge. See A.A.C. R2-19-116(D).

At the conclusion of the opening statements, the party with the burden of proof shall initiate the presentation of evidence, unless the parties agree otherwise. However, the Administrative Law Judge may require another party to initiate the presentation of evidence. See A.A.C. R2-19-116(E).

"Presentation"

continued page 2

"Oh the Burden We Bear!"

*Gregory L. Hanchett, Administrative Law Judge**

Lawyers frequently banter about the term "burden of proof" as though it needs no explanation and is well known to even a lay person. But what does it mean for a litigant to "bear the burden of proof?" Which party to a case has the burden? The failure to fully understand what it means to "bear the burden of proof" can have dire consequences for a litigant. It can mean losing the case. The purpose of this short missive is to shed light on the burden of proof and which party bears that burden.

When a litigant is saddled with the burden of proof, that litigant really has two burdens. The first is the "burden of going forward," also known as the "burden of producing evidence." The second is called the "burden of persuasion." The burden of going forward is just what the name implies: The party who has this burden is required to present evidence to prove his or her claim before the opposing party has any requirement to present evidence. The runner who never leaves the starting line is akin to the litigant who fails to meet the burden of going forward. Like the runner who never leaves the blocks, the litigant who fails in the burden of going forward can never hope to win his case because he is never "in the race."

The burden of persuasion, on the other hand, entails more than the burden of putting on some evidence. The burden of persuasion requires a party to persuade the decision maker that the party is entitled to the relief or benefits sought. It is possible for a party to meet the burden of production, yet

* Formerly with the OAH, now an ALJ in Montana

"Burden"

continued page 2

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The process of unifying the administrative hearings function in OAH-style agencies

began in 1945 with California. The current states or cities having adopted the model, with year of inception are: Arizona (1996), California (1961), Colorado (1976), Florida (1974), Georgia (1995), Chicago (1997), Iowa (1986), Kansas (1998), Louisiana (1996), Maine (1992), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), New York City (1979), North Carolina (1986), North Dakota (1991), Oregon (1999), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington D.C. (1999); Washington (1981), Wisconsin (1978) and Wyoming (1987).

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4th Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **97.64%** of all Administrative Law Judge decisions acted upon by the agencies.* ALJ decisions, including orders, were accepted without modification in **94.16%** of all Administrative Law Judge decisions acted upon by the agencies. **78.37%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were **29** appeals filed in Superior Court.

Rehearings:

The rehearing rate was **.45%**, defined as rehearings scheduled (5) over hearings concluded (1101).

Completion Rate:

The completion rate was **112.91%**, defined as cases completed** (1933) over new cases filed (1712).

Continuance:

The average length of a first time continuance based on a sample of cases (first hearing setting and first continuance both occurred in the 4th quarter) was **48.35 days**. The frequency of continuance, defined as the number of continuances granted (235) over the total number of cases first scheduled (1888), expressed as a percent, was **12.45%**. The ratio of first settings (2043) to continued settings on the calendar (1385) was **1 to 0.678**

Dispositions:

Hearings conducted: **56.96%**; vacated prior to hearing: **39.06%**; hearings withdrawn by the agency: **3.98%**.

Contrary Recommendations and Agency Response: Administrative Law Judge decisions were contrary to the original agency action in **26.97%** of cases where the agency took a position. Agency acceptance of such contrary Administrative Law Judge decisions was **86.78%**.

*.78% of Administrative Law Judge decisions certified as final by the OAH due to agency inaction or rendered moot by settlement.

** Cases which were vacated are not included.

“Presentation”

continued from page 1

A party initiates the presentation of evidence by testifying on his/her own behalf or by the direct examination (i.e., questioning) of a witness. An opposing party may cross-examine or ask questions of any witness. The parties shall conduct the 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. See A.A.C. R2-19-116(F).

A party should remember the following tips when questioning a witness during direct and cross-examination:

- a. A party must ask relevant and informative questions;
- b. A party must ask questions that will assist the Administrative Law Judge in making an informed decision;
- c. A party cannot argue with a witness or make statements or comments in response to a witness' answer;
- d. A party cannot ask prejudicial questions;
- e. A party cannot ask questions that are designed solely to harass a witness;
- f. A party cannot repeatedly ask a witness the same question;
- g. A party must allow a witness a reasonable amount of time to answer a question;
- h. A party cannot interrupt a witness during the witness' answer; and
- i. A party should refrain from asking multiple or compound questions within one question.

Each party must treat all other parties and witnesses with courtesy, respect and dignity. The Administrative Law Judge will not tolerate animosity, angry outbursts or threats of hostility directed towards any party or witness. A disruptive person may be removed from the hearing room and the hearing will proceed in that person's absence. See A.A.C. R2-19-120.

After the parties have concluded the presentations of their evidence, the parties may make a closing argument in a sequence determined by the Administrative Law Judge. See A.A.C. R2-19-116(G). A closing argument is voluntary. It allows the parties to summarize the evidence presented during the hearing and to argue their positions based on the evidence presented during the hearing. The Administrative Law Judge may allow the parties to supplement their closing arguments with written memoranda. See A.A.C. R2-19-116(G). However, the parties cannot present new evidence during the closing argument or via the written memoranda. If that occurs, the

Administrative Law Judge may reopen the record to include the new evidence. However, in most instances, the Administrative Law Judge will not reopen the record and will ignore the new evidence.

Unless otherwise provided by the Administrative Law Judge, a hearing is concluded upon the submission of all evidence, the presentation of all closing arguments, or the submission of all post hearing written memoranda, whichever occurs last. See A.A.C. R2-19-116(H). The parties are encouraged to complete an evaluation of the hearing process at the conclusion of the hearing.

“Burden”

continued from page 1

still lose the case because the party failed to meet the burden of persuasion. Returning to the runner analogy, the litigant who fails to meet his or her burden of persuasion is like the runner who loses the race because he has not trained sufficiently to run faster than the other runners. While he is obviously ahead of the runner who never left the starting block, he nevertheless fails to reach his goal of winning the race.

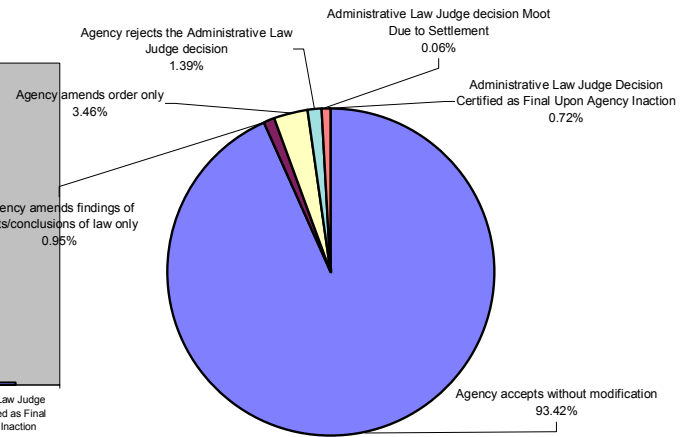
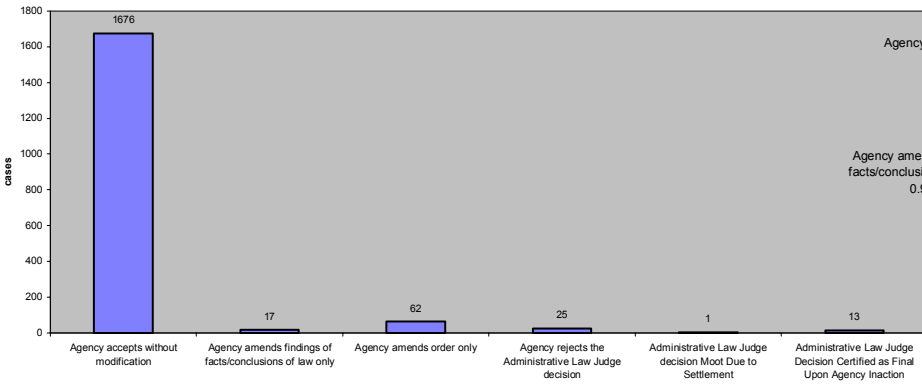
In order to meet the burden of persuasion, the litigant bearing that burden must, in most cases, prove his or her case by a “preponderance of the evidence.” This standard of proof basically requires the litigant to demonstrate to the decision maker that the existence of the fact in question is more likely than not.

Which party to an administrative hearing bears the burden of proof? As a general rule, where a hearing involves the denial of an application for a license or the denial of a benefit that is sought, the burden is on the person who applied for the license or benefit. Where the proceeding involves disciplinary action against a license, the burden is on the agency seeking such action.

As a practical matter, how does a party meet the burden of proof? First, appear at the hearing and be ready to proceed with evidence. Some litigants make the mistake of believing that an appeal can be won by simply filing the notice of appeal or perhaps sending a letter without appearing for the hearing. When a party bears the burden of going forward and persuasion, his or her failure to appear for the hearing results in an obvious failure to meet either burden and ensures that the party will lose.

Second, be prepared. To meet the burden of production, a party who bears that

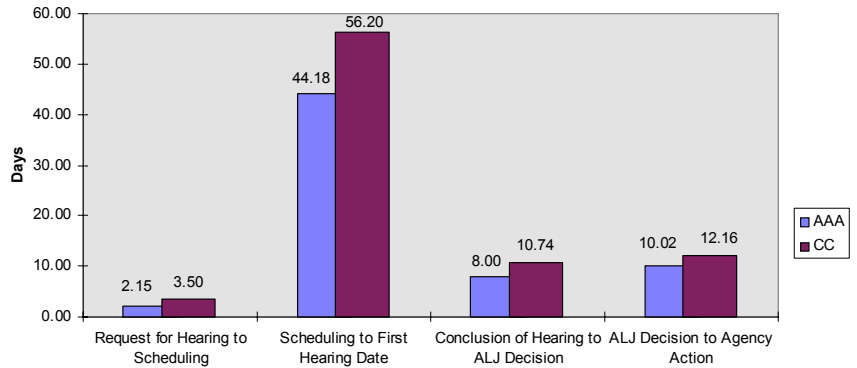
Agency Response to Administrative Law Judge Decisions April 1 - June 30, 2002



burden must be prepared to go forward with his or her evidence at the time of the hearing. It does no good to tell the decision maker that you have a document that you wish to have placed in evidence but that you forgot to bring it with you. Make sure that every document that you wish to have admitted into evidence is with you and available at the time of the hearing. Remember that A.A.C. R2-19-115 requires you to provide a copy to other parties when you present it at the hearing, if not done so beforehand. Likewise, have all witnesses available and ready to testify.

Like the runner who trains, the litigant who understands the burden of proof puts himself or herself in the best position to reach the goal of winning.

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, April 1 - June 30, 2002



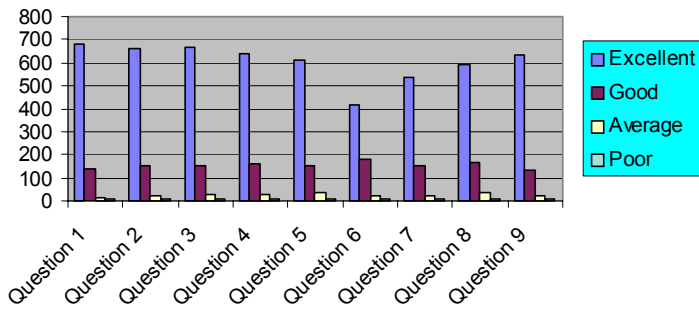
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An example would be proposed 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.

1712 Cases Filed April 1, 2002 - June 30, 2002

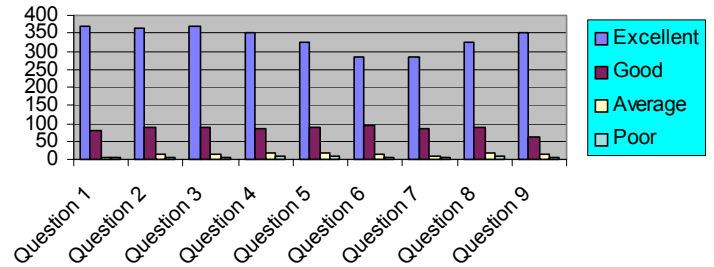
	4th Q	FY 2002		4th Q	FY 2002		4th Q	FY 2002
Accountancy	20	27	Dental	14	26	Peace Ofc. Standards	3	12
Acupuncture Board	0	0	Economic Security	0	0	Pest Control	4	24
Administration	4	10	Economic Security-CPS	69	240	Physical Therapy	0	0
Admin. Parking	79	327	Education	0	3	Podiatry	0	0
Agriculture	0	2	Environ. Quality	22	107	Psychologist Examiners	0	0
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - CW	2	11
AHCCCS	779	3404	Gaming	0	5	Public Safety - Trans	0	13
Alternative Fuel	2	10	Health Services	62	238	Public Safety - Adult CC	0	0
Appraisal	5	13	Insurance	24	113	Pvt. Post. Ed.	0	0
AZ Bd. Occup'l Therapy	0	0	Land	5	14	Racing	5	23
Attorney General	4	7	Liquor	13	68	Radiation Regulatory	0	0
Arizona Works	0	1	Lottery	0	0	Registrar of Contractors	410	1645
Banking	14	52	Maricopa Cty. Housing	1	5	Real Estate	11	90
Behavioral Health Ex.	0	15	Medical Examiners	2	9	Revenue	17	69
Building/Fire Safety	57	238	Naturopathic	0	0	School - Deaf & Blind	1	1
Charter Schools	0	0	Nursing	6	36	Secretary of State	2	3
Chiropractic	4	9	Nursing Care Admin	1	3	Technical Registration	0	6
Clean Elections	0	0	Occupation Therapy	0	1	Water Qual. App. Bd.	0	0
Community Colleges	0	0	Osteopathic	0	0	Water Resources	4	18
Cosmetology	11	52	Parks	0	0	Weights and Measures	55	135

Evaluations of OAH Services

All Responses 4th Quarter



Unrepresented Responses 4th Quarter



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 those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

Office of Administrative Hearings
 1400 West Washington, Suite 101
 Phoenix, Arizona 85007

Exhibit C:

Agenda National Conference of Central Panel Directors

Wednesday Dec. 5th

6:00 - 8:00 Reception

Thursday Dec. 6th

9:00 - 9:10 Greeting

9:10 - 9:45 Introducing the Cyber Conference Cliff J. Vanell

10:00 - 10:45 Leadership Conference Overview John Hardwicke

11:00 - 11:45 Ethics Rules for ALJ's Art Wang

12:00 - 1:00 LUNCH

1:15 - 2:00 ALJ Selection and Salaries Paul Klein

2:15 - 3:00 ALJ Training Thomas Ewing

3:15 - 4:00 Final Decision-Making
v. Recommended Decisions Cliff J. Vanell
Julian Mann

5:00 - 10:00 Dinner - Western style

Friday Dec. 7th

9:00 - 9:45 Status of States Without Central Panels:
The establishment of Sister State Initiatives Ed Rodgers

10:00 - 10:45 "If I'd Only Known...": Hard-Earned
Lessons From the Front David Schwarz

11:00 - 11:45 A Comparison of Rules Mike Zimmer

12:00 - 1:00 LUNCH

1:15 - 1:45 Arizona OAH Technology and
Organization Cliff J. Vanell

2:00 - 2:45 New Developments Chris Connolly

3:00 - 3:45 New Developments (cont.) Chris Connolly

Saturday Dec. 8th

9:00 - 9:45 Breakfast

10:00 - 10:45 Planning Meeting