

# The OAH



Janet Napolitano  
Governor

Cliff J. Vanell  
Director

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[www.azoah.com](http://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 articles may be found at OAH's website at [www.azoah.com](http://www.azoah.com) along with all previous articles published in the OAH Newsletter.

## AFTER THE HEARING

Daniel G. Martin, Administrative Law Judge

This article outlines the events that occur (or may occur) after an administrative hearing.<sup>1</sup>

## WITNESS AND EXHIBIT LISTS AND MOTIONS FOR TELEPHONIC HEARINGS

Dorinda M. Lang, Administrative Law Judge

### Witness and Exhibit Lists

Witness and Exhibit Lists are part of pre-trial discovery and are generally expected of both parties in matters coming before judicial courts. Their purpose is to avoid unfairly surprising the other party during the hearing with evidence they did not know about beforehand. In Arizona, Witness and Exhibit Lists are required by the Rules of Civil Procedure, Rule 26.1, as part of the parties' duty to promptly disclose information related to the proceeding.

Administrative hearings, on the other hand, are exempt from the Rules of Civil Procedure. See Rule 1, Rules of Civil Procedure. Unlike judicial courts, the legislature provides by statute how administrative hearings shall be conducted. The Director of the Office of Administrative Hearings (OAH) has promulgated various rules to further delineate proper procedures for OAH hearings.

"Lists"

(continued page 2)

### One: The ALJ Prepares His or Her Decision

Upon the conclusion of the administrative hearing, the Administrative Law Judge ("ALJ") has twenty days to prepare a decision. In the great majority of cases, the ALJ's decision will consist of Findings of Fact, Conclusions of Law, and a Recommended Order. In some instances, such as in proceedings before the Arizona Peace Officer Standards and Training Board, the ALJ makes only Findings of Fact and Conclusions of Law. In other cases, such as Capitol Police parking citations, the ALJ issues a final Order. But generally speaking, the ALJ's role is to make Findings of Fact and Conclusions of Law, and then to recommend an Order to the agency from which the case arose. All ALJ decisions, whether recommended or final, are made in writing.

### Two: OAH Transmits the ALJ's Decision to the Agency from which the Case Arose

Once the ALJ has completed the decision, the Office of Administrative Hearings ("OAH") transmits that decision to the agency from which the case arose. Generally, the agency then has thirty days (with five additional days given for mailing) within which to accept, reject or modify the

"After the Hearing"

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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 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).

### 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 **91.55%** of all Administrative Law Judge Decisions acted upon by the agencies.\* ALJ Decisions, including orders, were accepted without modification in **87.7%** of all Administrative Law Judge Decisions acted upon by the agencies. **50.81%** 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 **0.58%**, defined as rehearings scheduled (6) over hearings concluded (1032)\*\*.

### Completion Rate:

The completion rate was **105.7%**, defined as cases completed (1689) over new cases filed (1598).

### 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 **30.48 days**. The frequency of continuance, defined as the number of continuances granted (203) over the total number of cases first scheduled (1602), expressed as a percent, was **12.67%**. The ratio of first settings (1707) to continued settings on the calendar (225) was **1 to 0.13**

### Dispositions:

Hearings conducted: **61.1%**; vacated prior to hearing: **35.6%**; hearings withdrawn by the agency: **3.3%**.

**Contrary Recommendations and Agency Response: 15%** of Administrative Law Judge Decisions were contrary to the original agency action where the agency took a position. Agency acceptance of contrary Administrative Law Judge Decisions was **47.06%**.

\*2.07% of Administrative Law Judge Decisions were certified as final by the OAH due to agency inaction or were rendered moot by settlement.  
\*\* Cases which were vacated are not included.

witness or document presents herself (or itself), the Administrative Law Judge still has the discretion to hear the witness' testimony and/ or admit the document into evidence.

Administrative hearings are not bound by the Judicial Court Rules of Evidence either. All relevant evidence may be admitted. Thus, an Administrative Law Judge may allow a witness to testify even if his or her name was erroneously omitted from a Witness and Exhibit List. In order to avoid unfair surprise to the other party, the Administrative Law Judge still has the option of granting a continuance or a further hearing to allow the other party to prepare a response.

### Motions for Telephonic Hearings

Generally, a party wishing to appear at a hearing is expected to appear in person. Because this can be a hardship for some people, an Administrative Law Judge may grant a Motion for Telephonic Hearing, if properly submitted and appropriate. Arizona Administrative Code (A.A.C.) R2-19-114 sets forth the factors taken into account by the Administrative Law Judge. They include whether there is an undue hardship to the party or witness to appear in person, whether telephonic testimony would cause

undue prejudice to any party, and, in some cases, an agreement that the proponent pays for any costs incurred thereby. Ordinarily, at OAH, such motions are referred to as Requests of a Party to Appear Telephonically or Requests for a Witness to Testify Telephonically.

Although other types of motions may be made orally, motions for telephonic hearings are generally required to be in writing. As such, they must include certain information that is required by rule, and they must be submitted at least 15 days prior to hearing unless good cause exists to submit them later. The requirements for OAH motions are set forth in A.A.C. R2-19-106. The earlier you can submit the motion, the better off you will be. If the motion is denied, you

will want to be prepared, either with another witness or by making different arrangements for your preferred witness to appear in person.

If the motion to appear telephonically is approved, you will want to keep the telephone line free at the time of the hearing and be sure that it is unblocked because our state government offices do not give a Caller ID number and this cannot be disabled. Failure to be available for testimony by telephone is essentially the same as a failure to appear in person. Most likely, the hearing will proceed without that party or the witness' testimony.

If you submit the motion late, you are at risk of having the motion denied shortly before the hearing with little time to make other arrangements. As with any other aspect of your case, you will want to plan ahead to ensure the proper attendance of all parties and witnesses.

## Audio Hearing Records Now in Digital Form

Commencing October 23, 2003, audio records produced in Phoenix will be in digital format and available on the OAH website through its Portal ([www.azoah.com/Portalinfo.htm](http://www.azoah.com/Portalinfo.htm)).

Parties will need to download a program to read the compressed format which is accessible via a link found at [www.azoah.com/Portalinfo.htm](http://www.azoah.com/Portalinfo.htm). The Portal is a secure site and all data is encrypted in route. Agencies with confidential hearings will receive a special password to view cases online. Non-agency parties in such cases can request in writing a CD version which will be provided free of charge. The CD will contain the necessary program to play the digital file.

### How to Listen to the Audio Record of Your Hearing

- In your internet browser, go to [www.azoah.com](http://www.azoah.com). Scroll down the opening page and click on the words 'Research Your Case (Portal)' in blue.
- This takes you to the page entitled 'The OAH Portal'. Scroll down to the second section called 'Digital Audio Records'. Click on the blue words 'download this program'. The player for the audio records will install on your computer.

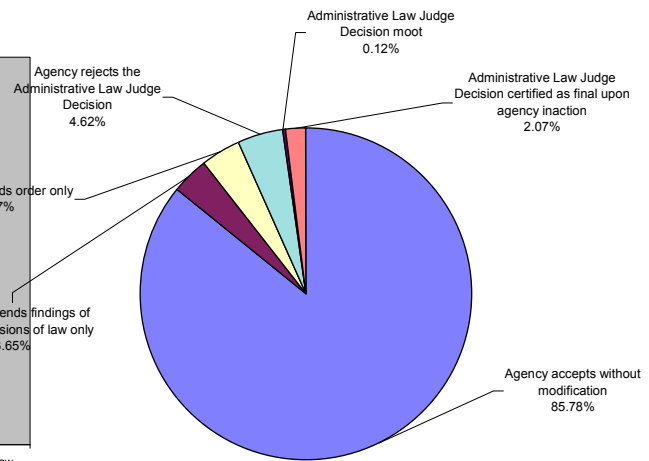
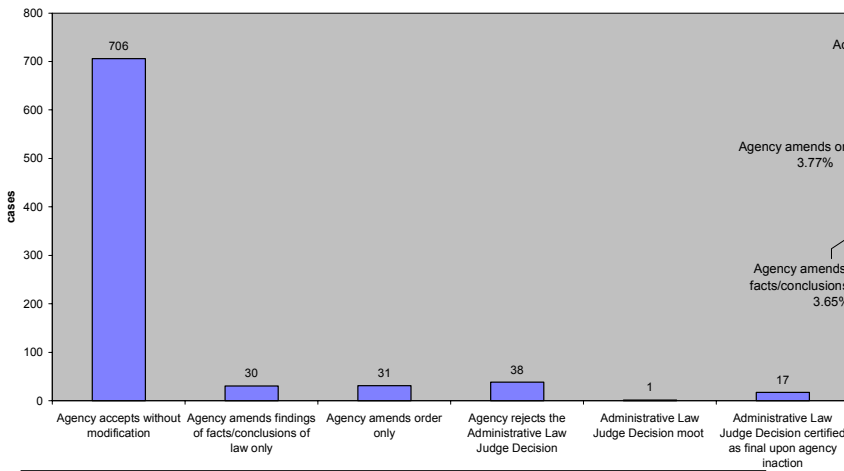
## "Lists"

### continued from page 1

The rules governing OAH hearings do not require Witness and Exhibit Lists. Many attorneys submit them voluntarily as a courtesy to the other party. And it is not uncommon in complicated cases for the Administrative Law Judge to request the parties to submit them in order to effect a more meaningful and efficient hearing. Unless requested by the Administrative Law Judge, however, you are not required to submit one.

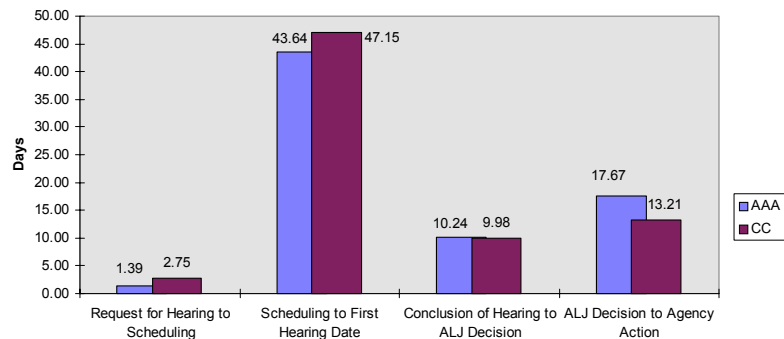
If you do submit a Witness and Exhibit List, it is best to be as accurate as possible, naming all the witnesses and documents you intend to produce at hearing. If, after attempting to give as complete notice as you can, a last-minute

Agency Response to Administrative Law Judge Decisions July 1 - September 30, 2003



- Scroll down to the next section and click on the words 'Enter the OAH Portal'.
- Type 'gen' for Login initials and 'general' for password; click OK or press Enter on your keyboard.
- At the next page click 'New Matter Search' or the file cabinet.
- Click in the Search for box and type the docket number of your matter.
- Click on the matter id that comes up.
- Click on the Document column heading. Find the audio file in the notes column. It will end in dss.
- Click click on View. The file will be downloaded to your computer. There may be a delay as the file is downloaded. Click on Open at the next pop up.
- The DSS Player Lite will start and play the audio file.

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases\*, July 1 - September 30, 2003



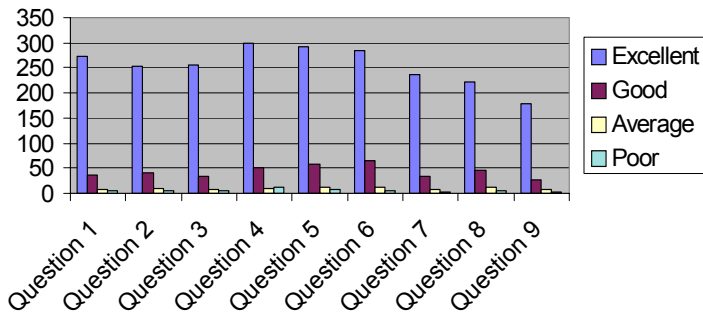
\*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An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

1598 Cases Filed July 1, 2003 - September 30, 2003

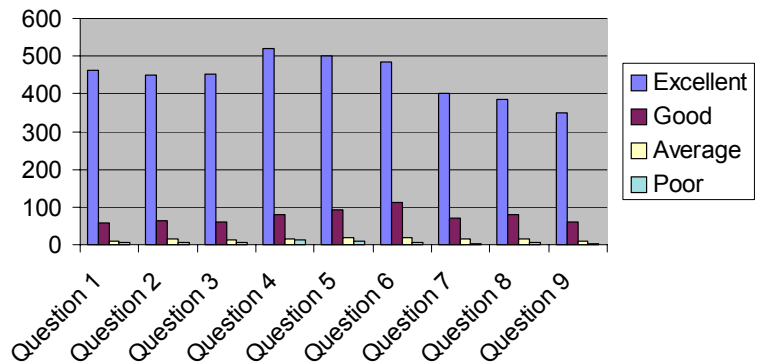
	1st Q	FY 2004		1st Q	FY 2004		1st Q	FY 2004
Accountancy	4	4	Dental	4	4	Peace Ofc. Standards	2	2
Acupuncture Board	0	0	Economic Security	0	0	Pest Control	2	2
Administration	3	3	Economic Security-CPS	59	59	Physical Therapy	1	1
Admin. Parking	19	19	Education	2	2	Podiatry	0	0
Agriculture	0	0	Environ. Quality	51	51	Psychologist Examiners	0	0
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	163	163	Public Safety - CW	2	2
AHCCCS	609	609	Funeral	0	0	Public Safety - Trans	2	2
Alternative Fuel	0	0	Gaming	3	3	Public Safety - Adult CC	0	0
Appraisal	1	1	Health Services	88	88	Pvt. Post. Ed.	26	26
Arizona Trial Courts	0	0	Insurance	15	15	Racing	2	2
Attorney General	2	2	Land	0	0	Radiation Regulatory	0	0
Arizona Works	0	0	Liquor	16	16	Registrar of Contr.	374	374
Athletic Board	0	0	Lottery	0	0	Real Estate	24	24
Banking	26	26	Maricopa Cty. Housing	0	0	Revenue	6	6
Behavioral Health Ex.	0	0	Medical Board	7	7	School - Deaf & Blind	1	1
Building/Fire Safety	23	23	Naturopathic	0	0	Secretary of State	8	8
Charter Schools	0	0	Nursing	17	17	Technical Registration	0	0
Chiropractic	1	1	Nursing Care Admin.	0	0	Veterinary Board	0	0
Clean Elections	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	0	1
Community Colleges	0	0	Osteopathic	0	0	Water Resources	1	1
Cosmetology	1	1	Parks	0	0	Weights and Measures	33	33

# 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

## “After the Hearing” continued from page 1

ALJ's decision.<sup>2</sup> After the agency has acted on the ALJ's decision, the agency's decision becomes the final administrative decision in the case and is transmitted to the parties.<sup>3</sup>

In some instances, an agency will not act on a decision within the required period. In these cases, the ALJ's decision becomes the final decision. See A.R.S. § 41-1092.08.

### Three: Requests for Rehearing

A party who is dissatisfied with a final agency decision has thirty days after service of the decision to file with that agency a request for rehearing.<sup>4</sup> Generally, a party should look to the rules of the agency from which the case arose to determine the grounds upon which a request for rehearing may be made. In some cases, the agency may request that the ALJ who conducted the hearing review the request for rehearing, and the response to the request, if any, and then make a recommendation to the agency as to whether the rehearing should be granted. In either case, the agency will make the final decision as to whether to grant the request for rehearing.

### Four: Appeals

A party who wishes to appeal an agency's final administrative decision may do so by filing a complaint for judicial review in Superior Court. A party who files a complaint for judicial review must, within ten days of filing in Superior Court, file a copy of the

complaint with OAH. OAH will then compile the hearing record and transmit that record to the Superior Court. Parties should be aware that OAH does not submit transcripts as part of the hearing record. A party who wants a transcript to be part of the record must arrange at his or her own expense to have the hearing tapes transcribed, and then submit a certified transcript to OAH for transmission to Superior Court.

<sup>1</sup> Parties or other persons interested in additional information should refer to Arizona's Uniform Administrative Hearing Procedures Act, A.R.S. § 41-1092 through 41-1092.12, and the procedural rules of the OAH, Arizona Administrative Code rules R2-19-101 through R2-19-122. Both the statutes and the rules may be viewed and downloaded from the OAH website, [www.azoah.com](http://www.azoah.com). The website also contains general information about the OAH and links to state agencies for which the OAH conducts hearings.

<sup>2</sup> In the case of a board or commission that meets monthly or less frequently, the board or commission must act on the Administrative Law Judge's decision within five days after its next meeting or, if the decision is sent less than thirty days before that meeting (with five additional days given for mailing), within five days after the board or commission's following meeting.

<sup>3</sup> OAH publishes a quarterly newsletter that contains, among other things, statistics on agency responses to ALJ decisions. The newsletters and statistics on agency decisions can be viewed on OAH's website.

<sup>4</sup> Unless otherwise directed by the agency. For example, the Registrar of Contractors informs parties that requests for rehearing should be filed with the OAH. Therefore, in those matters, it is appropriate to file a request for rehearing with OAH and send a courtesy copy to the Registrar of Contractors.