

The OAH



Janet Napolitano
Governor

Cliff J. Vanell
Director

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Official Newsletter of the Arizona Office of Administrative Hearings

CERTIFICATION OF ADMINISTRATIVE LAW JUDGE DECISIONS

Cliff J. Vanell, Director

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 along with all previous articles published in the OAH Newsletter.

What is "Certified"

Cases scheduled with the Office of Administrative Hearings (OAH) either proceed to hearing or are vacated on motion of one or both of the parties. If a case proceeds to hearing, the Administrative Law Judge will issue a document entitled "Administrative Law Judge Decision" within twenty days of the conclusion of the hearing.¹ The Administrative Law Judge Decision (ALJ Decision) consists of findings of fact, conclusions of law and recommended order² and is written by the Administrative Law Judge to be self-operative in adjudicating the matter in the event the ALJ Decision is certified as the final administrative decision.³ The ALJ Decision will be certified as the final administrative decision if the agency, board or commission which transferred the case to the OAH does not accept, reject or modify the ALJ Decision within certain prescribed time periods of receipt of the ALJ Decision.⁴

The Meaning of Certification

Certification of the ALJ Decision as the final administrative decision means that the OAH 'accepts' the decision as if the agency, board or commission had. The effect is that certain other time limits begin to run, including the time by which a party may request a rehearing⁵ or appeal to superior court.⁶

Time Period – Agencies/ Boards or Commissions Meeting More than Once a Month

The usual time period by which agencies, boards or commissions must act is within thirty days of personal service (actual receipt) or within thirty-five days of mailing (thirty days plus 5

days which statutorily establishes receipt), whichever comes first.⁷

As an example, if an ALJ Decision were personally served on a representative of the agency on Day 1 and also mailed on Day 1, the agency would have to act by Day 31, even though, had the decision only been mailed, the agency would have had until Day 36. As will be explained later, the actual day of personal service or mailing is not counted.

Time Period –Boards or Commissions Meeting Monthly or Less Frequently

There is another rule for boards or commissions that meet monthly or less frequently.⁸ The essential rule is that a board or commission must act within five days of its next meeting after receipt of the ALJ Decision IF the ALJ decision was received more than 30 days before the meeting. If the ALJ Decision is received less than 30 days before its next meeting, then the board or commission has until five days after the following meeting in which to act on the ALJ Decision.

For example, if an ALJ Decision was personally served on a board or commission on Day 1 and also mailed on Day 1, and the next meeting of the board or commission was held on Day 32, the board or commission would have to act within 5 days of that meeting. However, had the decision only been mailed, it would not have to act at that meeting because it was held within 35 days of mailing (remembering that 5 days is added to statutorily establish receipt). The board or commission would be able to forego acting at its next meeting and address it at

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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 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).

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.

3rd Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **92.97%** of all Administrative Law Judge Decisions acted upon by the agencies.* ALJ Decisions, including orders, were accepted without modification in **84.86%** of all Administrative Law Judge Decisions acted upon by the agencies. **68.96%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were 37 appeals filed in Superior Court.

Rehearings:

The rehearing rate was **1.00%**, defined as rehearings scheduled (7) over hearings concluded (697).**

Completion Rate:

The completion rate was **93.12%**, defined as cases completed (1786) over new cases filed (1918).

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 **43.90 days**. The frequency of continuance, defined as the number of continuances granted (199) over the total number of cases first scheduled (1895), expressed as a percent, was **11.52%**. The ratio of first settings (1728) to continued settings on the calendar (202) was **1 to 0.12**.

Dispositions:

Hearings conducted: **60.4%**; vacated prior to hearing: **37.1%**; hearings withdrawn by the agency: **2.5%**.

Contrary Recommendations and Agency Response: 17.81%

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 **82.19%**.

5.24% 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 or which settled on the day of hearing are not included.

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the following meeting. Thus, if the ALJ decision is mailed on October 1 and the next two board or commission meetings are scheduled for October 15 and November 15, the board or commission need not consider the matter until November 15. The board or commission would have until November 20 to act on the ALJ Decision.

Time Period – Boards or Commissions Meeting Quarterly or Less Frequently

The essential rules are the same as for boards or commissions meeting monthly or less frequently.⁹ However, such boards or commissions may continue the meeting upon a finding of “good cause.”¹⁰

Time Period – The First Day

The countdown for action by an agency, board or commission begins the day after personal service or mailing.¹¹ So, if an ALJ

Decision is sent on Day 1, the thirtieth day for personal service is Day 31. Likewise, the thirty-fifth day for mailing is Day 36.

Time Period – The Last Day

If the due date for action by an agency, board or commission is on a Sunday or other holiday, the Sunday or holiday is excluded and the due date extended to the next non-holiday.¹² For example, if the agency, board or commission action due date were on Sunday, May 30, 2004 and the next day is Memorial Day, the agency action would be due the next day, Tuesday, June 1, 2004.

OAH Methods of Tracking Agency Due Dates

When an ALJ Decision is mailed, a docket entry is created that counts thirty-five days from the entry of the docket event. In the cases of boards or commissions meeting monthly or less frequently, the next meeting date of the board or commission is established and five days are added. That date is substituted for the thirty-five day docket entry. If the next meeting date, however, is less than 30 days from receipt of the ALJ Decision, the date of the following meeting is established and 5 days are added. In both cases, the due date is adjusted if the day falls on a Sunday or other holiday.

In the event of personal service, the due dates created above will be modified to reflect a sooner date if personal service is completed within five days of mailing. If personal service is later than 5 days after mailing, the thirty-five days after mailing will control as being the sooner of the two dates.

These due dates are tracked and, should the due date for agency, board or commission action pass without the OAH's receipt of an acceptance, rejection or modification, a certification document will be generated.

In the case of boards or commissions meeting quarterly or less frequently, the due date will be adjusted for any continuances granted for good cause.

The Form of Agency, Board or Commission Acceptance, Rejection or Modification

When accepting an ALJ Decision, the agency head, board or commission must

send a copy of the original ALJ Decision to all parties.¹³ The agency, board or commission cannot remand a matter. In the event of a rejection or modification, the agency, board or commission must send the original ALJ Decision to all parties along with the reasons for any modification or rejection.

Beyond verifying receipt of an action by the agency, board or commission, the OAH has viewed its certification solely as a ministerial act and has generally declined to adjudicate the sufficiency of the form except in extreme cases, as for instance, where no reason is given for modification or rejection. Insufficiency, however, has been raised on appeal. At least one court has been urged to substitute the ALJ Decision for the action of the agency, board or commission action on the basis that the formal requirements of agency action had not been met.¹⁴

Methods of Transmission to the OAH

Agencies, boards or commissions can use any method as long as the action is actually received on the due date. Fax transmissions are stamped the date of the transmission, even if received after business hours. E-mails are stamped the date posted to the Internet.

Receipt by the OAH

The action of the agency, board or commission accepting, rejecting or modifying the ALJ Decision must actually be received by the OAH on the due date.¹⁵ Therefore, an agency action which is mailed on Day 28 after personal service, but not received by the OAH until Day 32 will not serve to avoid certification of the ALJ Decision by the OAH.

OAH Method of Tracking Receipt

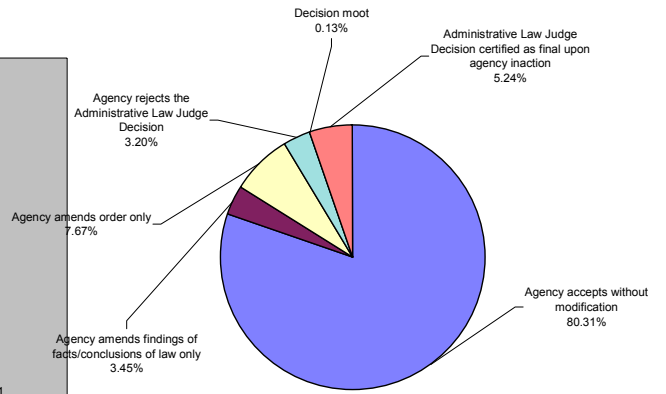
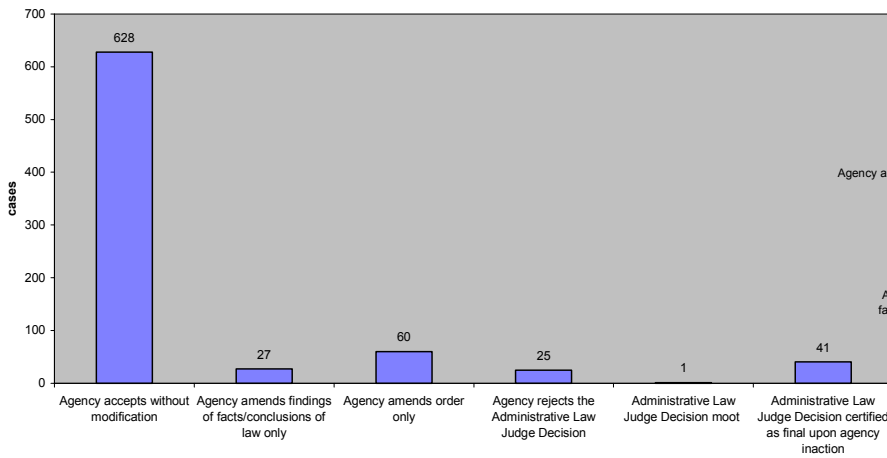
When an agency, board or commission action is received, a docket entry is made dated the same date as the date of receipt. If multiple submissions are made, the earliest action tolls the countdown to certification.

Standard form of Certification

The following operative language is used in the OAH's certification document:

I [the Director] have reviewed the records of the Office and as co-custodian of such records have determined:

1. On [date] the Administrative Law Judge Decision in the above entitled



matter was transmitted to the [name of agency, board, or commission] by [personal service or mail.]

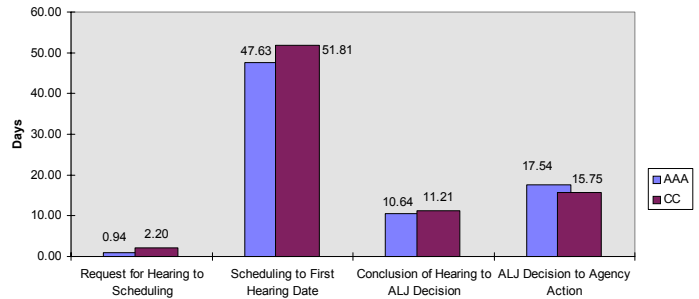
2. Pursuant to A.R.S. § 41 -1092.08, and A.R.S. § 1-243 the [name of agency, board or commission] was required to accept, reject or modify the Administrative Law Judge Decision, as evidenced by receipt of such action by the Office of Administrative Hearings, on or before [date plus 30 for personal service; date plus 35 for mailing; date of meeting of board or commission plus 5 days].

3. No action by [name of agency, board or commission] was received by the Office of Administrative Hearings as of [date plus 30 for personal service; date plus 35 for mailing; date of meeting of board or commission plus 5 days].

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Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, January 1 - March 31, 2004



*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.

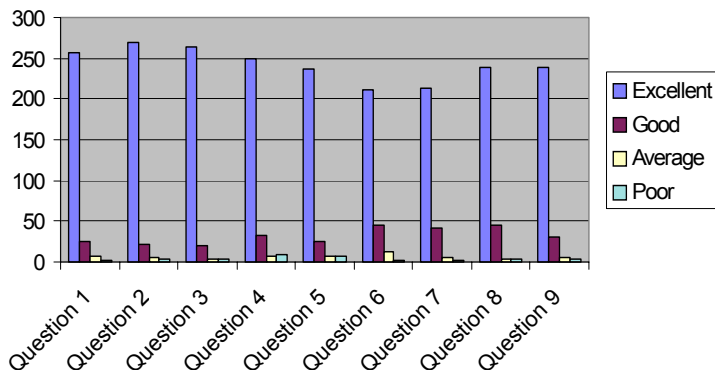
1918 Cases Filed January 1, 2004 - March 31, 2004

	3rd Q	FY 2004		3rd Q	FY 2004		3rd Q	FY 2004
Accountancy	2	10	Dental	3	10	Peace Ofc. Standards	3	6
Acupuncture Board	0	0	Economic Security	1	1	Pest Control	3	19
Administration	1	5	Economic Security-CPS	61	166	Physical Therapy	0	2
Admin. Parking	37	81	Education	2	6	Podiatry	0	0
Agriculture	0	0	Environ. Quality	36	130	Psychologist Examiners	0	0
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	147	474	Public Safety - CW	2	4
AHCCCS	865	2149	Funeral	0	0	Public Safety - Trans	6	12
Alternative Fuel	0	0	Gaming	1	8	Public Safety - Adult CC	0	0
Appraisal	3	7	Health Services	104	316	Pvt. Post. Ed.	0	26
Arizona Trial Courts	0	0	Insurance	19	60	Racing	4	6
Arizona Retirement Sys	4	4	Land	2	6	Radiation Regulatory	0	0
Attorney General	0	7	Liquor	15	41	Registrar of Contr.	459	1296
Arizona Works	0	0	Lottery	0	0	Real Estate	23	65
Athletic Board	0	0	Maricopa Cty. Housing	0	0	Revenue	11	44
Banking	9	51	Medical Board	5	19	School - Deaf & Blind	0	1
Behavioral Health Ex.	0	3	Medical Radiologic	0	4	Secretary of State	9	24
Building/Fire Safety	15	61	Naturopathic	0	0	Technical Registration	2	2
Charter Schools	0	3	Nursing	26	56	Veterinary Board	0	0
Chiropractic	1	3	Nursing Care Admin.	0	2	Water Qual. App. Bd.	1	2
Clean Elections	0	0	Occupation Therapy	0	0	Water Resources	5	41
Community Colleges	0	0	Osteopathic	0	0	Weights and Measures	30	84
Cosmetology	1	7	Parks	0	0			

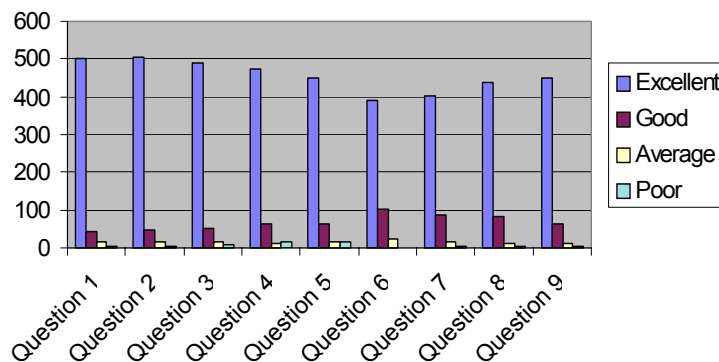
Evaluations of OAH Services

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. The are used by management to improve the OAH process and do not affect the decisions issued.

Unrepresented Responses 3rd Quarter



All 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

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Therefore, pursuant to A.R.S. § 41-1092.08(D), the attached Administrative Law Judge Decision is certified as the final administrative decision of the [name of agency, board or commission].

You have the right to request a rehearing from the [agency, board or commission] pursuant to A.R.S. § 41-1092.09(A). In addition, you have the right to appeal your action to the Superior Court, pursuant to A.R.S. § 41-1092.08(H) although you may be required to seek a rehearing from the [agency, board or commission] before you appeal (see A.R.S. § 41-1092.09(B)). Your further rights will be lost if you do not act in a timely manner. You may wish to review these sections as quickly as possible after receipt of this notice. They can be located at your local library or on the internet at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>.

Frequency of Certification

The following number of ALJ Decisions have been certified by the OAH, reported by fiscal year:

FY 1999	73
FY 2000	53
FY 2001	28
FY 2002	34
FY 2003	84
FY 2004 (through April 2004)	72

The certification rate for ALJ Decisions in FY 2003 was 1.95%. As of April 30, 2004, the certification rate for ALJ Decisions in FY 2004 is 2.7%.

Footnotes

- ¹ A.R.S. § 41-1092.08(A)
- ² A.R.S. § 41-1092(2)
- ³ A.R.S. § 41-1092(5)
- ⁴ The certification process became applicable to ALJ Decisions transmitted after August 21, 1998.
- ⁵ A.R.S. § 41-1092.09(A)(1)
- ⁶ A.R.S. § 12-904(A)
- ⁷ A.R.S. § 41-1092.08(D) and (E)
- ⁸ A.R.S. § 41-1092.08(D)
- ⁹ A.R.S. § 41-1092.05(B)(1)
- ¹⁰ A.R.S. § 41-1092.05(B)(2)
- ¹¹ A.R.S. § 1-243(A) provides that "...the time in which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a holiday, and then it is also excluded." A.R.S. § 1-301 enumerates specific State holidays, which includes Sundays. See also OAH's Substantive Policy Statement found at <http://www.azoah.com/Substantive2.htm>: "Inapplicability of A.A.C. R2-19-107 in computing statutory time limits of A.R.S. § 41-1092 et seq.; Reference Number PS - 2.0."
- ¹² See footnote 11, above.
- ¹³ A.R.S. § 41-1092.08(B)
- ¹⁴ *Facilitec, Inc. v. Hibbs*, 80 P.3d 765 (2003)
- ¹⁵ A.R.S. § 41-1092.08(D)

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