

The Office of Administrative Hearings

The Ninth Annual Report

to

Governor Janet Napolitano

Senator Ken Bennett, President of the Senate

Representative Jake Flake, 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
August 31, 2004

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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 31 full-time positions, including the Director, the Office Manager, 19 Administrative Law Judges, 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 OAH statistics in FY 2004 indicate agency acceptance of Administrative Law Judge Decisions without modification was 87.14%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 92.05%. Rehearings (.72%) and Appeals (2.6%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and the OAH were rated excellent or good in 95.21% to 97.25% 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 the parties can be assured that hearings are impartial and independent.

Commitment:

The OAH views commitment as a willingness to advance its mission, including improving the quality of decision-writing. While the Administrative Law Judges must render decisions according to the evidence before them and using their independent judgment, the OAH now requires that Administrative Law Judges review all decisions that have been modified or rejected by an agency in order to encourage them to identify any possible miscitations or other areas where quality can be improved. This commitment is in furtherance of the duty of the OAH to provide continuing education to its Administrative Law Judges.

Efficiency:

Through careful case management, the OAH enjoys a minimal backlog. The completion rate for cases in FY 2004 was 96.6%, despite an 11% increase in cases. Such efficiency is possible due to the creation of two divisions of Administrative Law Judges and the continuing refinement of case management procedures to maximize calendared hearing slots.

II. Continued Development of the Office

1. Newsletter

The OAH has completed publication of four editions of the OAH Newsletter on a quarterly basis during FY 2004. The Newsletters report various performance measures and discuss current issues. The Newsletters contain 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 2004 are included in Appendix A.

2. Streaming Video Production

The OAH began in-house pre-production on a digital video to assist parties in preparing for hearings. The subjects include direct and cross examinations, exhibits, objections, opening statements, closing arguments, and proper decorum. See Appendix B. OAH plans to create video tours of both its Phoenix and Tucson offices as well as video 'round tables' in which the Administrative Law Judges discuss their experiences during hearings and offer practice pointers.

3. Audit of Final Agency Actions

As part of the continuing education of its Administrative Law Judges, the OAH requires its Administrative Law Judges to review all agency actions modifying Findings of Fact or Conclusions of Law, or which reject the Administrative Law Judge Decisions. For the period April 1, 2003 through March 31, 2004, the combined substantive error rate (non typographical) for Administrative Law Judge Decisions was 1.24%. To look at it conversely, the combined substantive error-free rate for Administrative Law Judge Decisions for the time period was 98.76%. The reversal rate due to substantive error was only .58%. These results display the extremely high standards attained by the Administrative Law Judges.

4. Digital Recording Implementation

A.R.S. § 41-1092.07(E) requires that all hearings be electronically recorded. The OAH researched existing technology and after lengthy experimentation has developed a cost effective digital recording alternative that was fully implemented in early FY 2004. In addition to a better quality recording, the digital files are available through OAH's website Portal for easy downloading by parties and transcribers. The judges are able to retrieve the record easily from their desktops while drafting decisions. The digital files are backed up nightly for reliable retention.

5. Portal Searches of Administrative Law Judge Decisions

Substantial work was accomplished in upgrading the OAH Portal to give the public the ability to conduct full text searches of non-confidential Administrative Law Judge Decisions. Full text searching is expected to be available by the middle of FY 2005.

6. Business Continuity

The OAH began the process of creating a duplicate network housed in its Tucson office to counter any business disruption should its Phoenix office be unavailable to OAH personnel. OAH's duplicate business system will be fully operational by early FY 2005.

7. Archive Protocol

The OAH has drafted a protocol currently being evaluated by Library and Archives to secure and maintain the Administrative Law Judge Decisions and supporting documentation as required by A.R.S. § 41-1092. See Appendix C.

8. Public Presentations

Several Administrative Law Judges have presented on the subject of the OAH adjudicative process in various venues, including Phoenix College and private groups. Such public presentations cultivate public awareness of OAH's mission and increase understanding of the administrative process.

9. Professional Development

Administrative Law Judges continue to receive professional education in the subject matter of agencies as well as skills development. The OAH is attempting to implement an exchange program to host Administrative Law Judges from other states' central panels. In addition, Administrative Law Judges volunteer time as pro tem judges in the Superior court and elsewhere. Several Administrative Law Judges are active in the Administrative Law and Public Lawyers Sections of the Arizona State Bar and others were involved in presentations at the June 2004 Arizona Bar Convention which included a reenactment of the Aaron Burr trial illustrating the problems of proof and the interplay of political pressures in adjudication. One Administrative Law Judge continues to be active in the Arizona Bar Association, including giving presentations to youth regarding our system of government and organizing mock trials. Another Administrative Law Judge has presented on the subject of Health Insurance Portability & Accountability Act (HIPAA) and emerging Issues in Arizona health law for the National Business Institute.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2004):

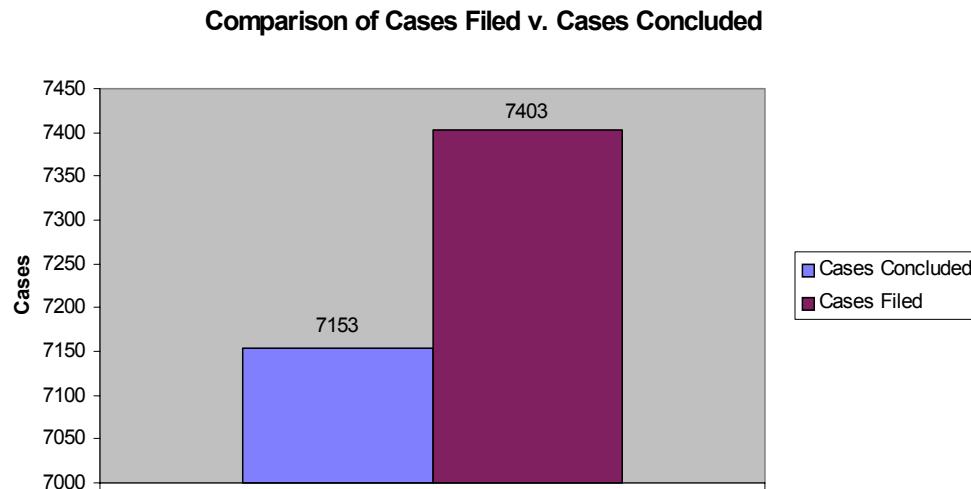
7,403 cases were filed with the OAH in FY 2004. The distribution among the agencies and boards are as follows (in descending order by number of cases filed):

Arizona Health Care Cost Containment System	3188
Registrar of Contractors	1714
Board of Fingerprinting	653
Department of Health Services	435
Department of Economic Security - CPS	218
Department of Environmental Quality	167
Department of Weights and Measures	123
Department of Administration - Capitol Police Parking	110
State Board of Nursing	92

Department of Real Estate	87
Department of Building and Fire Safety	76
Department of Insurance	76
State Banking Department	61
Department of Revenue	52
Liquor Licenses and Control	51
Department of Water Resources	42
Secretary of State	32
State Board for Private Postsecondary Education	26
Structural Pest Control Commission	24
Arizona Medical Board	23
Department of Public Safety - Student Transportation	15
Department of Gaming	12
State Board of Accountancy	12
Board of Dental Examiners	11
Department of Administration	10
State Board of Cosmetology	10
Board of Appraisal	8
Department of Racing	8
Peace Officers Standards and Training	8
Department of Education	7
State Land Department	7
Arizona State Retirement System	6
Department of Public Safety - Concealed Weapons Permit Unit	5
Board of Nursing Care Institution Administrators Examiners	4
Medical Radiologic Technology Board of Examiners	4
State Board for Charter Schools	4
Board of Behavioral Health Examiners	3
Board of Chiropractic Examiners	3
Board of Technical Registration	3
Office of the Attorney General	3
Physical Therapy Examiners	2
Water Quality Appeals Board	2
Arizona Lottery	1
Arizona State Board of Optometry	1
Department of Agriculture	1
Department of Economic Security - DCYF	1
Department of Revenue - Unclaimed Property	1
State Schools for the Deaf and the Blind	1

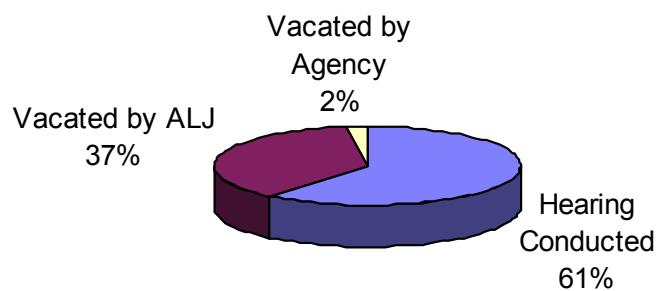
b. Number of Cases Filed Versus Cases Concluded:

In FY 2004, the conclusion rate (defined as cases concluded divided by new cases filed) was 96.6%.



The following diagram illustrates that, in most cases, matters proceed to hearing. A.R.S. § 41-1092.05 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 and does not take up a second hearing setting. Therefore, on the whole, statutory time limits are beneficial to the larger process of regulatory action.

Disposition of Concluded Cases FY 2004

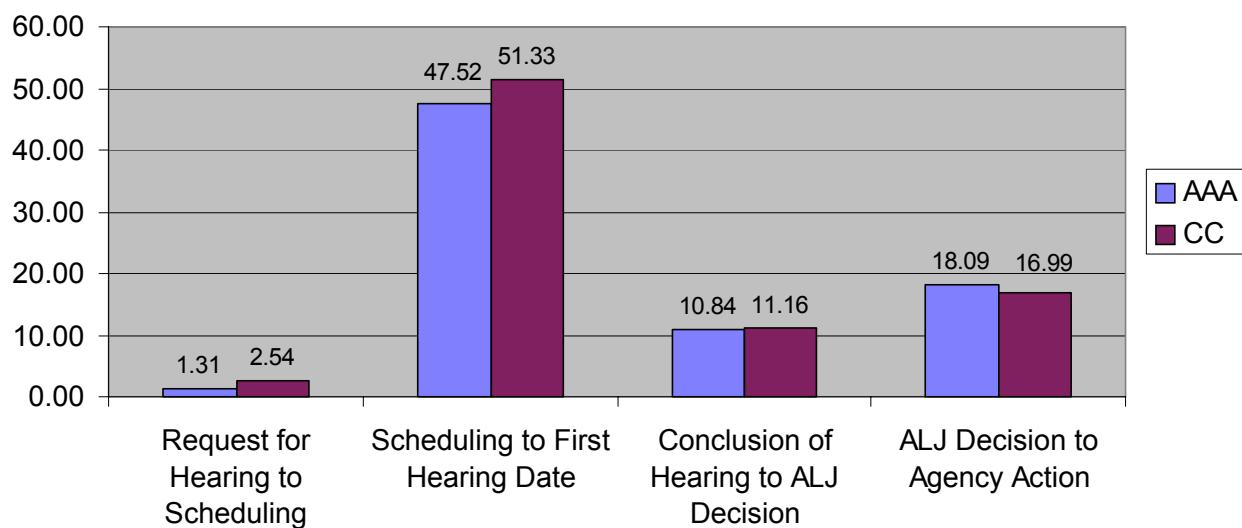


c. Timeline of Case Management:

A.R.S. § 41-1092.05(A) and § 41-1092.08(A) and (B) contemplate a rigorous timeline to expedite hearings and final agency actions. “Appealable agency actions” (defined as actions taken by an agency without a prior hearing) are required to be set for hearing within 60 days of a request by a party. “Contested cases” (defined as proposed actions for which a hearing is required) are required to be set within 60 days of an agency request. Administrative Law Judge Decisions must be transmitted to the agencies within 20 days of the conclusion of the hearing. The agency heads are required to take final action within 30 days of receipt. Boards and Commissions generally must take final action within 5 days of their next scheduled meeting.

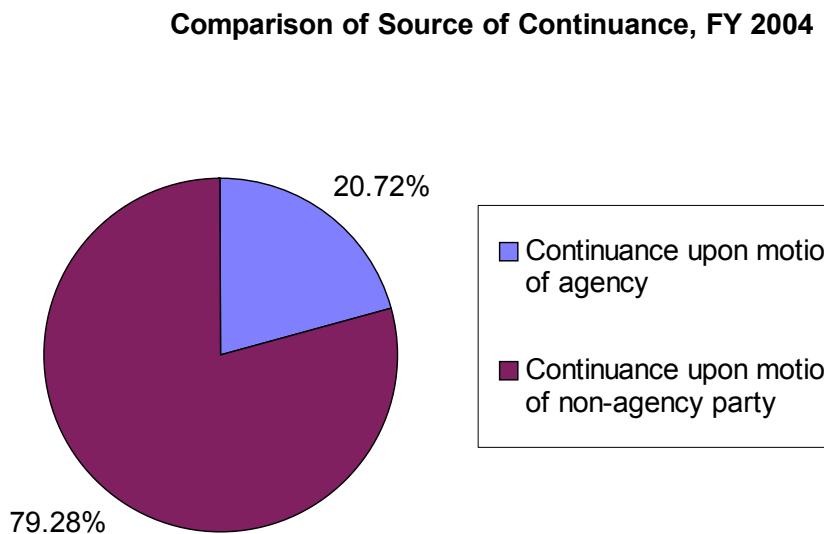
The following diagram illustrates the average timelines:

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



d. Incidence of Continuance:

A single continuance in FY 2004 added an average of 37.65 days to the total length of a case. Although 61.0% of all continuance requests were granted in FY 2004, 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 Administrative Law Judges due to budget constraints. The frequency of continuance, defined as the number of continuances granted (777) divided by the total number of cases first scheduled (7,350), was 10.58%. The ratio of first settings (7,130) to continued settings on the calendar (776) was 1 to 0.11. The following chart illustrates the source of continuances.



In FY 2004, non-agency parties requested 79.2% of the continuances filed with the OAH. The following list is a breakdown of FY 2004 continued settings and their sources, by agency.

AGENCY	Continued - Motion by non-agency party	Continued - Motion by agency party
Arizona Health Care Cost Containment System	199	101
Arizona Medical Board	3	1
Arizona State Retirement System	2	-
Board of Behavioral Health Examiners	-	1
Board of Dental Examiners	3	-
Board of Nursing Care Institution Administrators Examiners	-	1
Citizens Clean Elections Commission	3	-
Department of Administration	3	-
Department of Administration - Capitol Police Parking	4	4
Department of Building and Fire Safety	8	-
Department of Economic Security - CPS	26	6
Department of Education	1	-
Department of Environmental Quality	14	9
Department of Gaming	3	-
Department of Health Services	37	5
Department of Insurance	17	3
Department of Public Safety - Concealed Weapons Permit Unit	1	-
Department of Public Safety - Student Transportation	2	2
Department of Real Estate	11	2
Department of Revenue	5	-
Department of Water Resources	-	1
Liquor Licenses and Control	10	5
Medical Radiologic Technology Board of Examiners	1	-
Office of the Attorney General	1	2
Peace Officers Standards and Training	3	-
Registrar of Contractors	246	10
Secretary of State	3	1
State Banking Department	4	2
State Board for Charter Schools	-	2
State Board of Accountancy	2	-
State Board of Cosmetology	-	2
State Board of Nursing	2	1
Total	614	161

The following chart reflects the number of motions to continue that were entertained and the percentage granted:

	ODC	OGC	Total Motions	% Granted
AHCCCS	165	284	449	63
Arizona Medical Board	5	1	6	17
Arizona State Retirement System	2	4	6	67
Board of Appraisal	6	0	6	0
Board of Behavioral Health Examiners	0	1	1	100
Board of Dental Examiners	1	2	3	67
Board of Nursing Care Institution Administrators	0	1	1	100
Board of Technical Registration	2	1	3	33
Citizens Clean Elections Commission	5	3	8	38
Department of Administration	0	2	2	100
Department of Administration - Capitol Police Parking	6	6	12	50
Department of Building and Fire Safety	5	9	14	64
Department of Economic Security - CPS	12	35	47	74
Department of Education	1	1	2	50
Department of Environmental Quality	4	16	20	80
Department of Gaming	0	4	4	100
Department of Health Services	16	44	60	73
Department of Insurance	7	19	26	73
DPS - Concealed Weapons Permit Unit	0	1	1	100
DPS - Student Transportation	2	3	5	60
Department of Real Estate	10	15	25	60
Department of Revenue	3	4	7	57
Department of Water Resources	1	0	1	0
Department of Weights and Measures	2	0	2	0
Liquor Licenses and Control	7	14	21	67
Medical Radiologic Technology Board of Examiners	1	3	4	75
Office of the Attorney General	0	1	1	100
Peace Officers Standards and Training	2	2	4	50
Physical Therapy Examiners	1	0	1	0
Registrar of Contractors	210	273	483	57
Secretary of State	2	3	5	60
State Banking Department	2	7	9	78
State Board for Charter Schools	0	2	2	100
State Board of Accountancy	6	2	8	25
State Board of Cosmetology	0	2	2	100
State Board of Nursing	5	6	11	55
State Land Department	1	0	1	0
Structural Pest Control Commission	3	6	9	67
Water Quality Appeals Board	1	0	1	0
TOTAL	496	777	1273	61

2. Evaluation

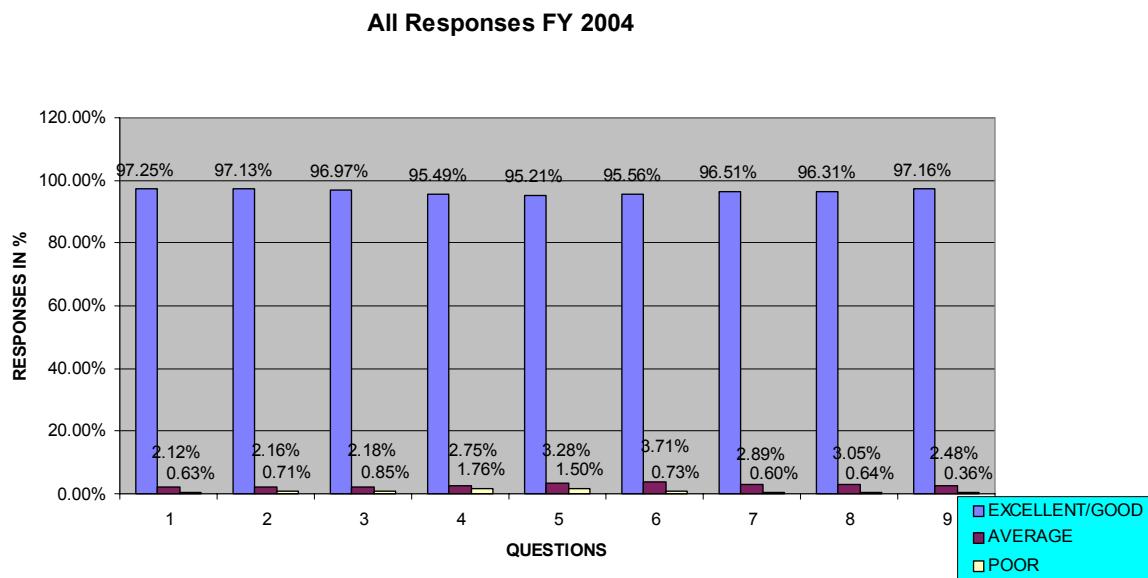
a. Results of Public Evaluation:

Since November 1996, the OAH has administered an evaluation procedure. The bailiff provides a copy of the evaluation before the hearing in order to encourage all participants to respond. In addition, the Administrative Law Judge is required to call the parties' attention to the evaluation on the record at the conclusion of the hearing. The results are not disclosed to the Administrative Law Judge.

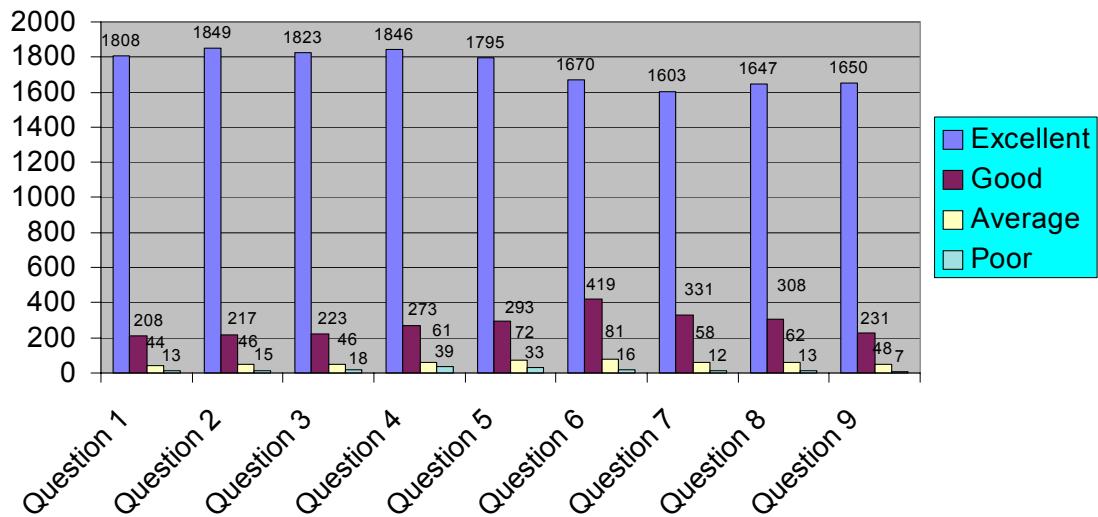
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

1. Attentiveness of the Administrative Law Judge
2. Effectiveness in explaining the hearing process
3. Administrative Law Judge'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 95.21% to 97.25% of responses.

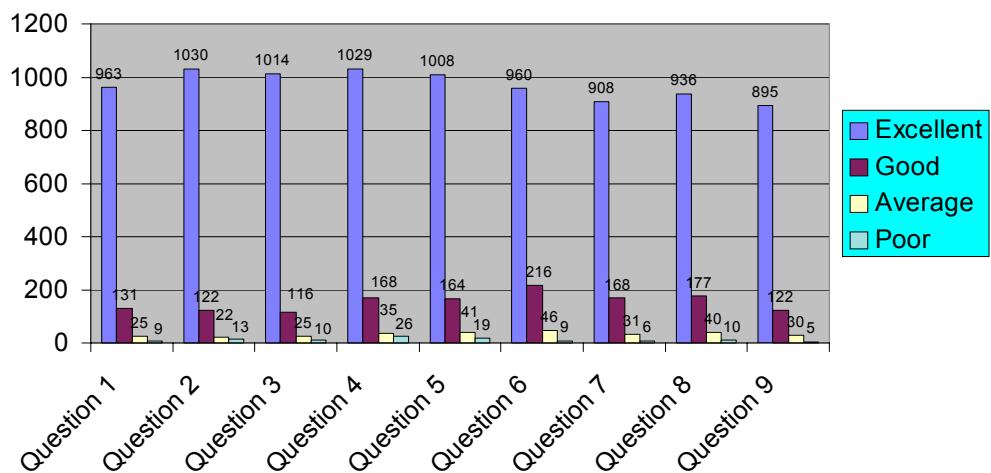


All Responses FY 2004



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.

Unrepresented Responses FY 2004

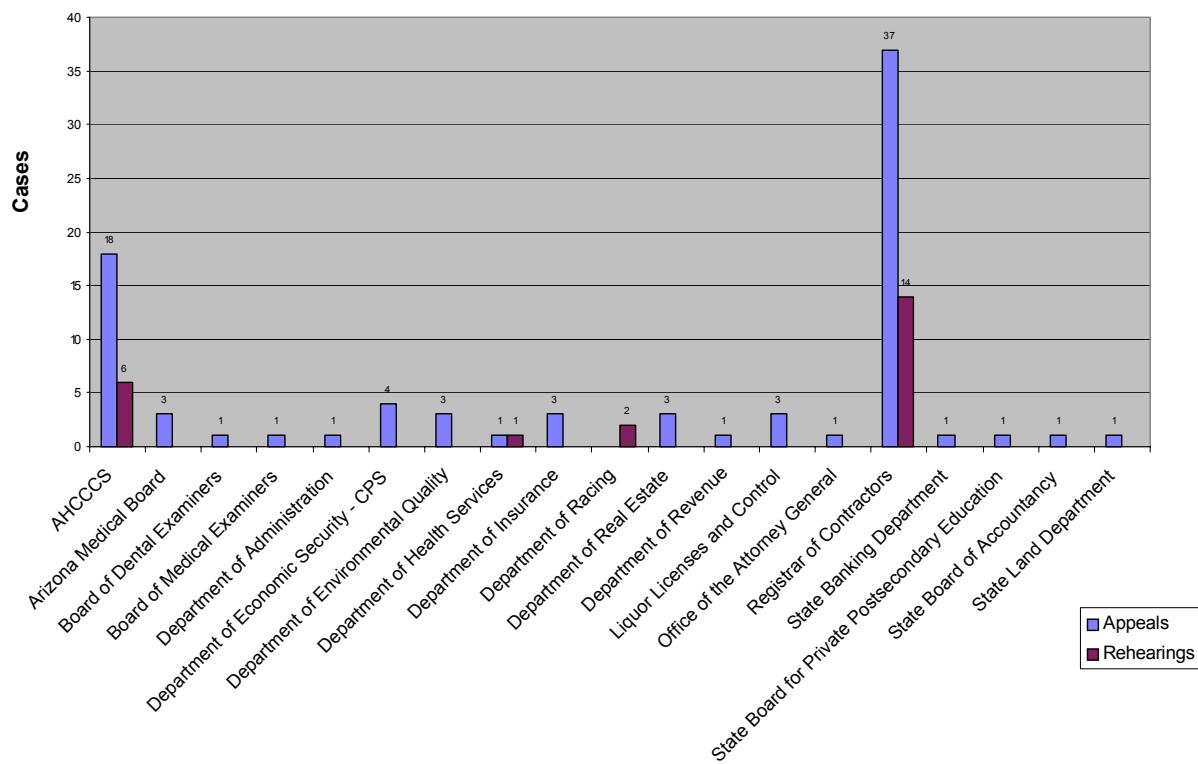


b. Incidence of Rehearing and Appeal:

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2004, the rehearing rate (defined as rehearsings scheduled divided by cases heard) was .72%.

Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2004, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 2.62%. As reflected in the following diagram, rehearsings and judicial appeals in FY 2004 were relatively rare. Both were concentrated at the Registrar of Contractors. Registrar of Contractors cases are primarily contests between two private litigants: homeowner versus contractor; and contractor versus subcontractor.

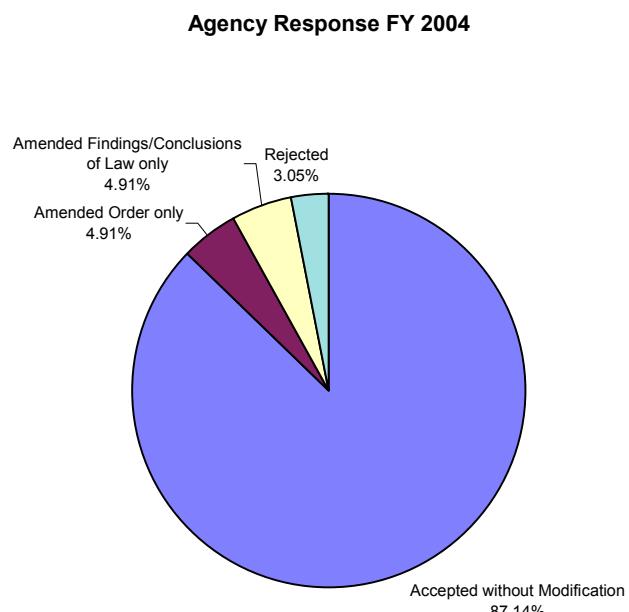
Judicial Appeals and Rehearings FY 2004



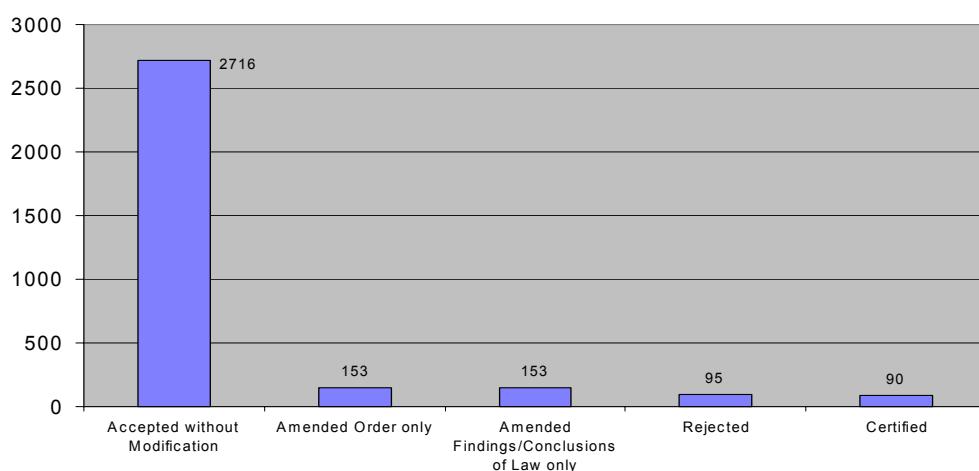
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is very high. 87.14% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 92.05% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 50.16% of modifications made by the agencies were in the Recommended Order (penalty portion).



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

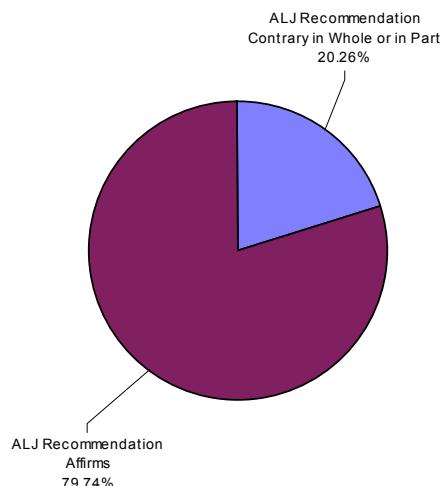


The following chart reports the breakdown of agency response. This chart further illustrates that modifications and rejections are few relative to the decisions accepted.

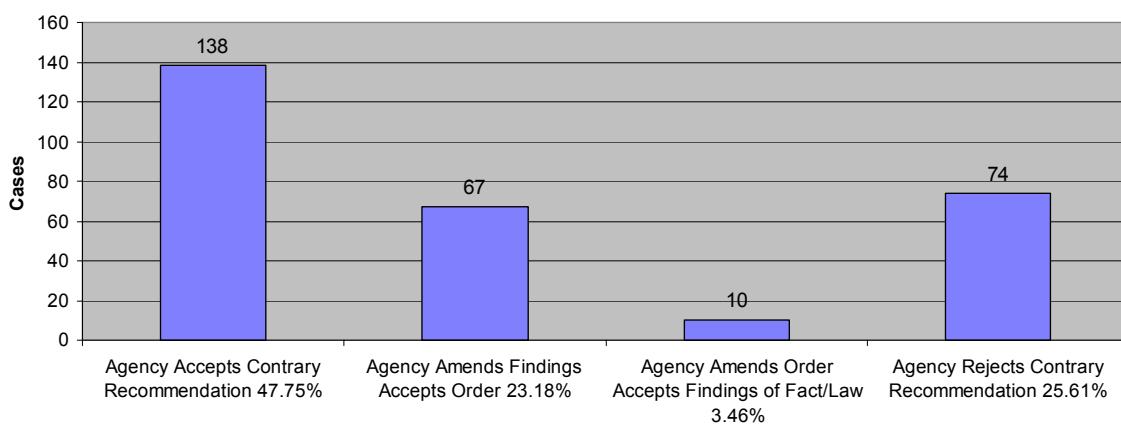
	Accept	Modify Penalty	Modify Fact/Law	Reject
Arizona Health Care Cost Containment System	1123	2	78	85
Arizona Medical Board	6	3	5	-
Board of Appraisal	2	-	4	-
Board of Chiropractic Examiners	1	1	-	-
Board of Dental Examiners	6	-	2	-
Board of Nursing Care Institution Administrators Examiners	1	-	1	-
Department of Administration	5	-	-	-
Department of Administration - Capitol Police Parking	58	-	-	-
Department of Agriculture	1	-	-	-
Department of Building and Fire Safety	49	1	-	-
Department of Economic Security - CPS	182	1	8	1
Department of Environmental Quality	13	-	3	1
Department of Gaming	2	-	-	1
Department of Health Services	177	-	1	-
Department of Insurance	26	-	3	-
Department of Public Safety - Concealed Weapons Permit Unit	2	-	-	-
Department of Public Safety - Student Transportation	9	-	-	-
Department of Racing	9	-	-	-
Department of Real Estate	24	5	6	1
Department of Revenue	-	-	1	1
Department of Water Resources	-	8	-	-
Liquor Licenses and Control	18	7	2	-
Medical Radiologic Technology Board of Examiners	1	-	-	-
Physical Therapy	1	-	-	-
Registrar of Contractors	943	119	5	2
Secretary of State	7	-	-	1
State Banking Department	3	-	-	1
State Board for Charter Schools	2	-	-	-
State Board of Accountancy	7	-	1	-
State Board of Cosmetology	1	2	5	-
State Board of Nursing	19	2	-	-
State Board for Private Postsecondary Education	-	-	26	-
State Land Department	3	-	-	-
State Schools for the Deaf and the Blind	1	-	1	-
Structural Pest Control Commission	13	2	1	1
Water Quality Appeals Board	1	-	-	-

In FY 2004, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 20.26% of cases. Agency acceptance of contrary decisions was high at 74.39%.

Recommendations Contrary to Original Agency Position FY 2004



Agency Response to Contrary Recommendations FY 2004



The following chart reports the breakdown of agency responses to contrary decisions.

	Accepts	Amends Findings/Law	Amends Order	Rejects
Arizona Health Care Cost Containment System	58	27	1	69
Arizona Medical Board	1	1	1	-
Board of Dental Examiners	1	-	-	-
Department of Administration	2	-	-	-
Department of Administration - Parking	4	-	-	-
Department of Building and Fire Safety	7	-	1	-
Department of Economic Security - CPS	25	4	-	1
Department of Environmental Quality	5	-	-	1
Department of Gaming	-	-	-	1
Department of Health Services	6	-	-	-
Department of Insurance	-	1	-	-
Department of Public Safety - Student Transportation	1	-	-	-
Department of Racing	1	-	-	-
Department of Real Estate	2	4	3	1
Department of Revenue	-	-	-	1
Liquor Licenses and Control	6	1	3	-
Registrar of Contractors	14	1	-	-
Secretary of State	3	-	-	1
State Banking Department	1	-	-	1
State Board of Accountancy	1	-	-	-
State Board of Nursing	-	-	1	-
State Board for Private Postsecondary Education	-	26	-	-
State Land Department	1	-	-	-
State Schools for the Deaf and the Blind	-	1	-	-

2. Agency Inaction With Subsequent OAH Certification of Finality

Beginning August 21, 1998, the OAH was required to certify the Administrative Law Judge Decision as the final administrative decision if the OAH had 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 2004, 90 Administrative Law Judge Decisions were certified by the OAH as final administrative decisions.

Medical Radiologic Technology Board of Examiners	1
Office of the Attorney General	1
Department of Revenue - Unclaimed Property	1
Department of Public Safety - Student Transportation	1
Board of Behavioral Health Examiners	2
Department of Gaming	3
Registrar of Contractors	5
Department of Environmental Quality	5
Department of Economic Security - CPS	9
Department of Building and Fire Safety	14
Department of Insurance	20
Arizona Health Care Cost Containment System	28

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

A.R.S. § 41-1092.01(C)(9)(b) requires that the OAH report the number of motions for change of Administrative Law Judge for bias, prejudice, personal interest or lack of necessary expertise which were filed and the number granted. In FY 2004, 20 motions were filed and no 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

The regulated community has long complained about inconsistent procedures among the various agencies. The following recommendations are meant to point to the areas where uniformity or greater consistency can be accomplished:

1. 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 informal disposition of contested cases.

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 possible bases in Title 41 would make the process easier, particularly for the unrepresented.

3. Establish uniform standards for appeal rights notice.

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

4. Conform Rehearing and Appeal Rules.

Currently parties have 30 days from service of an agency’s final action, which is 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 (C). However, under 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 requesting rehearsals and filing appeals 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.

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

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 limited to settlements or to cases where the ISA agency prevails before the independent Administrative Law Judge, or only as incident to disciplinary orders.

Appendices

A. Newsletters

B. Story Board

C. Archive Protocol

Exhibit A

Newsletters

The OAH



Janet Napolitano
Governor

Cliff J. Vanell
Director

Vol. 29

October 2003

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 along with all previous articles published in the OAH Newsletter.

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)

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-

AFTER THE HEARING

Daniel G. Martin, Administrative Law Judge

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

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"

(continued page 4)

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.

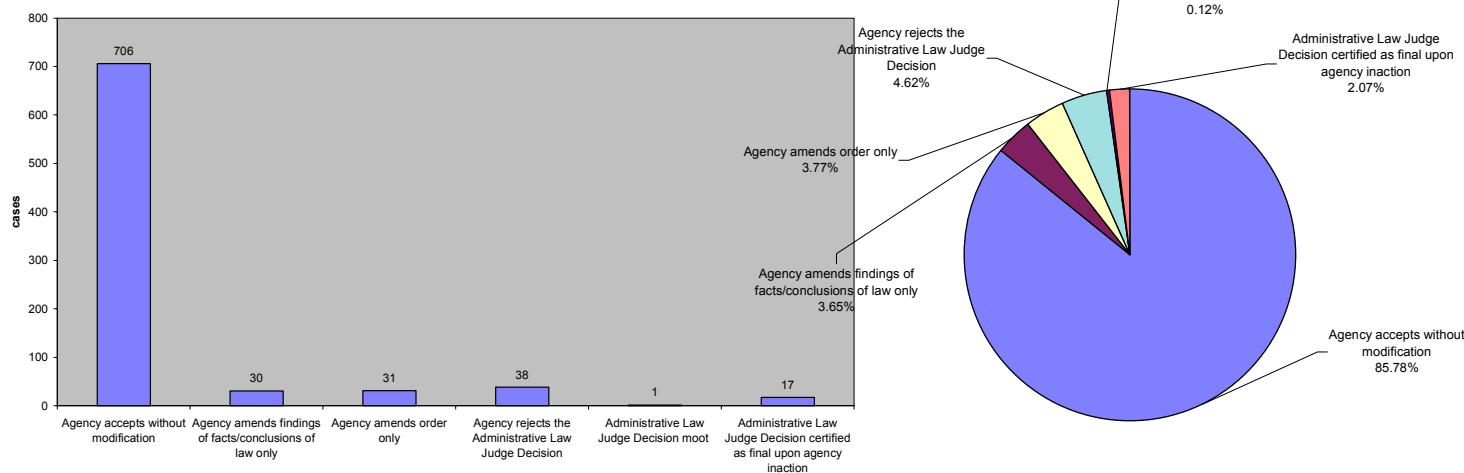
Audio Hearing Records Now in Digital Form

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).

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. 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.

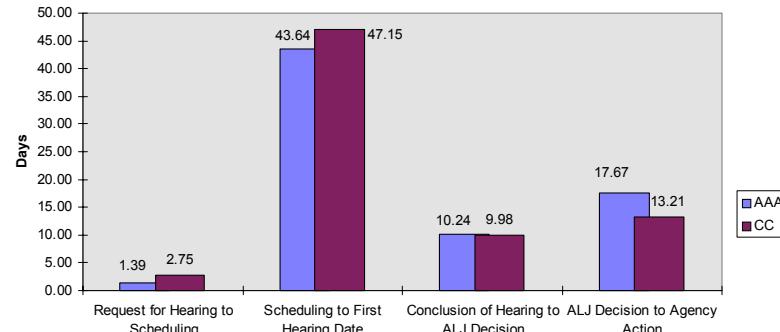
How to Listen to the Audio Record of Your Hearing

- In your internet browser, go to www.azoah.com. 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.



- 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 - Appellable Agency Actions v. Contested Cases*, July 1 - September 30, 2003



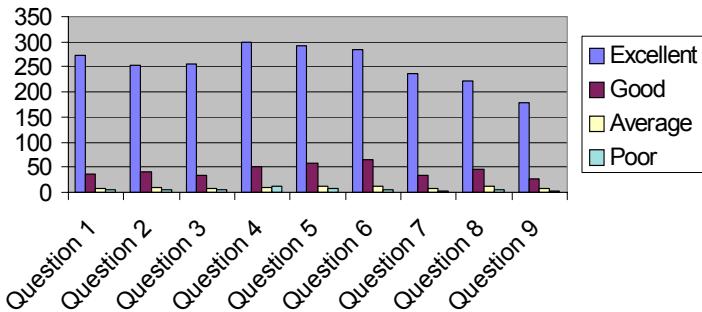
*Note: *Appellable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An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

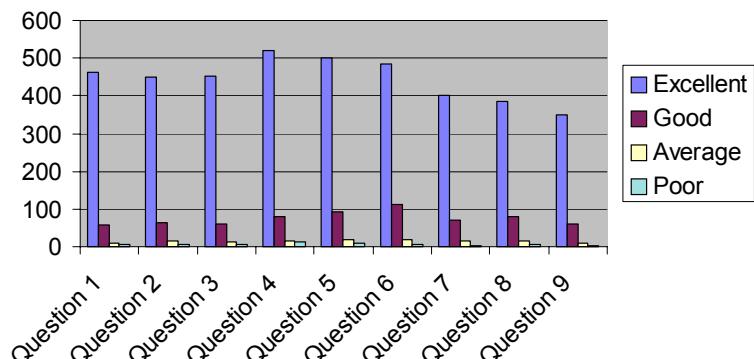
Unrepresented Responses 1st Quarter



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

All Responses 1st Quarter



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.² 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.³

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.⁴ 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.

¹ 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.azoha.com. The website also contains general information about the OAH and links to state agencies for which the OAH conducts hearings.

² 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.

³ 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.

⁴ 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.

The OAH



Janet Napolitano
Governor

Cliff J. Vanell
Director

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www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

Full, Fair, Impartial, Independent and Prompt

Cliff J. Vanell, Director

In the Second Century, the Roman Emperor Hadrian was passing through a town in the midst of a campaign to secure the northern border from the unremitting attacks of the barbarian tribes. An old woman called to him to hear a dispute. Not surprisingly, given the situation, he replied to her that he was too busy. Startling, however, was the old woman's response: "Then you are too busy to be Emperor." To the credit of the Emperor, or perhaps as an illustration of the essential need to be publicly seen to do justice, he stopped and heard the dispute.

In December 2001, I had the pleasure of attending a presentation by Former Chief Justice Thomas Zlaket at the Annual Convention of Central Panel Directors. He cited studies showing that Americans increasingly have the sense that justice is beyond their means because access to the courts had become too expensive and time-consuming. It can literally take years for a dispute to make its way through the civil process. As a result, a dangerous corrosive effect is being produced, estranging the citizenry from the government. To the extent that we are a government of fellow citizens, the effect can only be a debilitating cynicism.

Given these studies, has a call not been sounded in 21st Century America, akin to the old Roman woman's call to the Emperor Hadrian? Do we risk much in appearing to be too busy, too expensive, too inaccessible in addressing disputes? In creating the Office of Administrative Hearings (OAH) with its fast-track procedures and the emphasis on accessibility, the Arizona Legislature has responded to that call in the administrative arena.

Full and Fair:

The OAH process is designed to maximize accessibility. Individuals are not required to be represented by counsel and procedures are streamlined allowing the unrepresented to be effective in presenting their cases. The OAH website (www.azoah.com) is designed with a 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

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 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.

2nd Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **88.56%** of all Administrative Law Judge Decisions acted upon by the agencies.* ALJ Decisions, including orders, were accepted without modification in **84.58%** of all Administrative Law Judge Decisions acted upon by the agencies. **31.31%** 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.

Rehearings:

The rehearing rate was **0.12%**, defined as rehearsals scheduled (1) over hearings concluded (797).**

Completion Rate:

The completion rate was **93.95%**, defined as cases completed (1693) over new cases filed (1802).

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 **37.61 days**. The frequency of continuance, defined as the number of continuances granted (183) over the total number of cases first scheduled (1172), expressed as a percent, was **16.38%**. The ratio of first settings (1695) to continued settings on the calendar (153) was **1 to 0.09**.

Dispositions:

Hearings conducted: **66.3%**; vacated prior to hearing: **32.4%**; hearings withdrawn by the agency: **1.4%**.

Contrary Recommendations and Agency Response: 20% 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 **84.0%**.

*2.27% 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.

Continued from page 1

Judges allow parties to put a name to a face and learn about a judge's background. There are also articles written by the Administrative Law Judges designed to educate the public and parties about the hearing process. Along with links to the Arizona Revised Statutes, Arizona Administrative Code and OAH's procedural rules, the website includes 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 Act 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 to them.

The OAH Portal found on the OAH website 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. Other than in confidential cases, parties can not only research their cases on-line, they can listen to the audio record of their hearings over the internet within 24 hours of the hearing. Full text searching will be added to the OAH website that will allow parties to review other decisions similar to their own. In order to aid in the preparation for a hearing, videotaping will soon permit parties to watch and listen to a sample hearing.

The hearing rooms are designed to be pleasant and nonthreatening with attractive art and comfortable furnishings. Parties are escorted to the hearing room and encouraged to fill out questionnaires commenting on the process, including whether they were treated courteously and whether the judge was impartial and effective in the case.

Impartial and Independent:

The OAH is committed to the development of its Administrative

Law Judges. The OAH takes its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the Executive branch, the OAH maintains a conscious detachment from political issues and the missions of the other Executive agencies. Procedures, rulings, and case assignments are at all times kept free of outside pressures to ensure the parties that hearings are impartial and independent.

While the Administrative Law Judges must render decisions according to the evidence before them and use their independent judgment, the OAH now requires that Administrative Law Judges review all decisions which have been modified or rejected by an agency in order to encourage them to identify any possible miscites or other areas where quality can be improved. This commitment is in furtherance of the duty of the OAH to provide continuing education to its Administrative Law Judges.

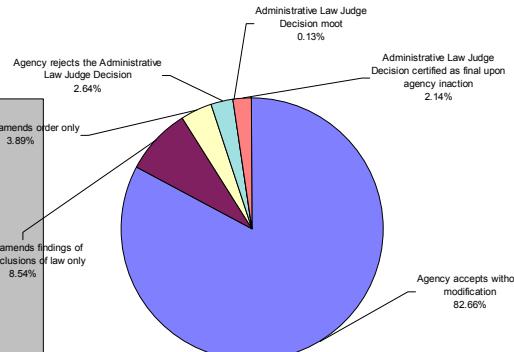
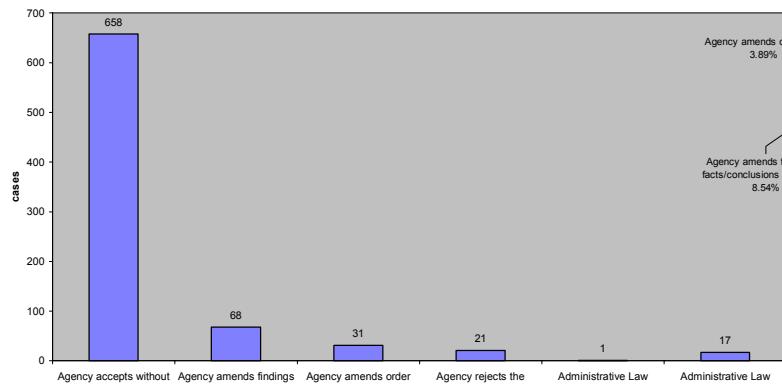
Prompt

Hearings at the OAH are to be set within 60 days of a request. Decisions must be issued by the Administrative Law Judges within 20 days of the conclusion of a hearing. Agencies must act with 30 days of the receipt of the Administrative Law Judge's decisions or the decision becomes final. Through adherence to these statutory mandates and careful case management, cases completed in a year equal the number of cases filed with the OAH. The lack of case backlog assures that parties are given hearings in a reasonable timeframe.

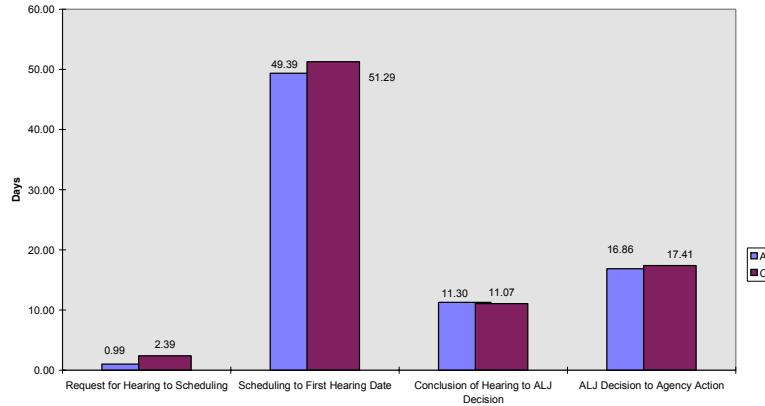
A Promise

The OAH mission statement summarizes our vision as "contributing to the quality of life in the State of Arizona." Mindful of the critique of

Agency Response to Administrative Law Judge Decisions October 1 - December 31, 2003



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

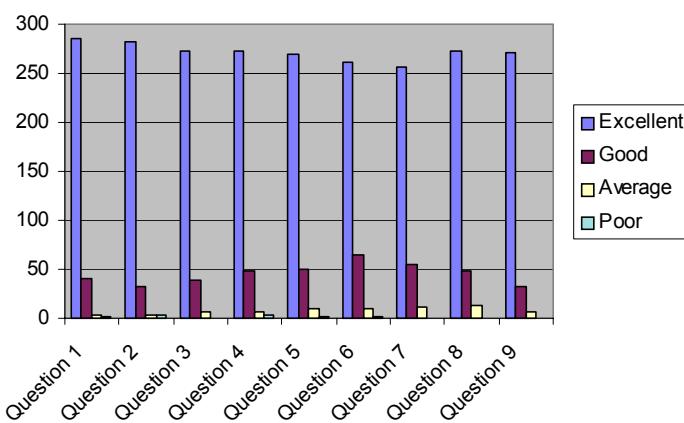
1693 Cases Filed October 1, 2003 - December 31, 2003

	2nd Q	FY 2004		2nd Q	FY 2004		2nd Q	FY 2004
Accountancy	3	7	Dental	3	7	Parks	0	0
Acupuncture Board	0	0	Economic Security	0	0	Peace Ofc. Standards	1	3
Administration	1	4	Economic Security-CPS	46	105	Pest Control	14	16
Admin. Parking	25	44	Education	2	4	Physical Therapy	1	2
Agriculture	0	0	Environ. Quality	43	94	Podiatry	0	0
Ag. Emply. Rel. Bd.	0	0	Fingerprinting	164	327	Psychologist Examiners	0	0
AHCCCS	675	1284	Funeral	0	0	Public Safety - CW	0	2
Alternative Fuel	0	0	Gaming	4	7	Public Safety - Trans	4	6
Appraisal	3	4	Health Services	124	212	Public Safety - Adult CC	0	0
Arizona Trial Courts	0	0	Insurance	26	41	Pvt. Post. Ed.	0	26
Attorney General	0	2	Land	4	4	Racing	0	2
Arizona Works	0	0	Liquor	10	26	Radiation Regulatory	0	0
Athletic Board	0	0	Lottery	0	0	Registrar of Contr.	464	837
Banking	16	42	Maricopa Cty. Housing	0	0	Real Estate	18	42
Behavioral Health Ex.	3	3	Medical Board	7	14	Revenue	27	33
Building/Fire Safety	23	46	Medical Radiologic	4	4	School - Deaf & Blind	0	1
Charter Schools	3	3	Naturopathic	0	0	Secretary of State	7	15
Chiropractic	1	2	Nursing	13	30	Technical Registration	0	0
Clean Elections	0	0	Nursing Care Admin.	2	2	Veterinary Board	0	0
Community Colleges	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	0	0
Cosmetology	5	6	Osteopathic	0	0	Water Resources	35	36
						Weights and Measures	21	54

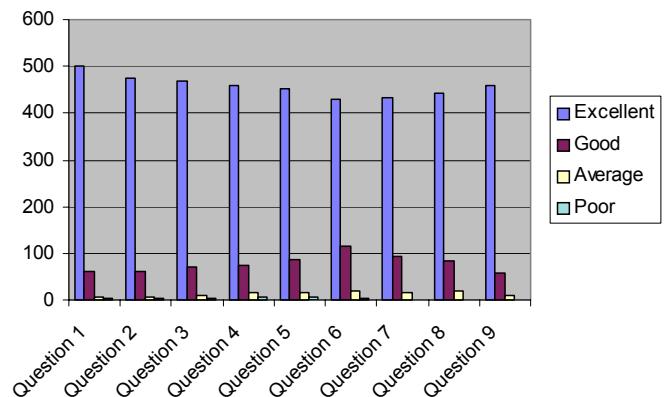
Evaluations of OAH Services

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

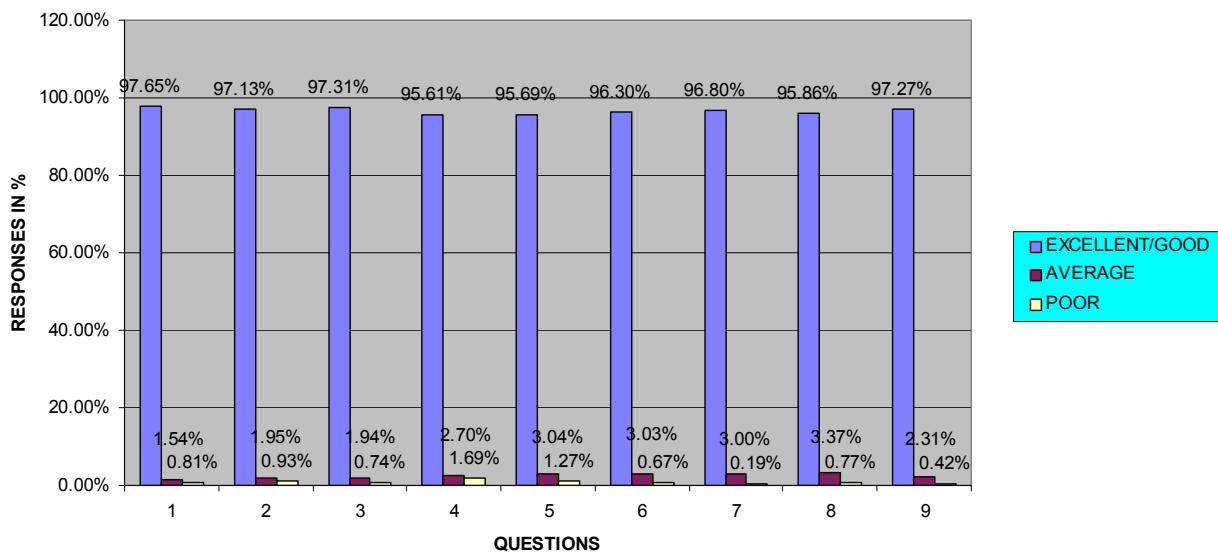
Unrepresented Responses 2nd Quarter



All Responses 2nd Quarter



All Responses FY 2004 To Date (July 1, 2003 - December 31, 2003)



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

The OAH



Janet Napolitano
Governor

Cliff J. Vanell
Director

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www.azoah.com

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

"Certification"

(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 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.

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

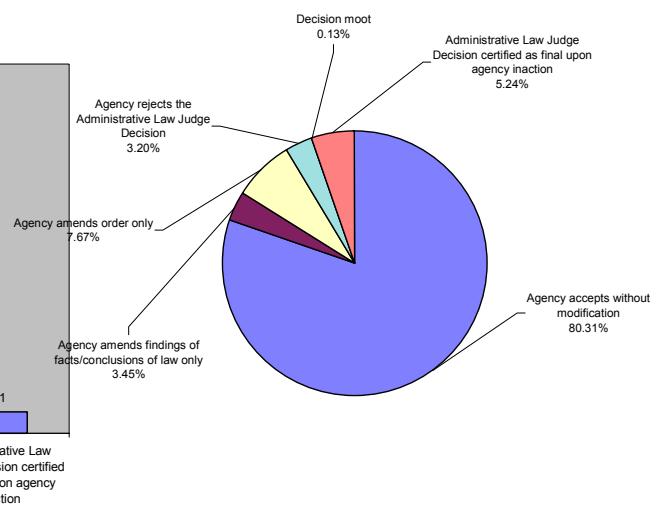
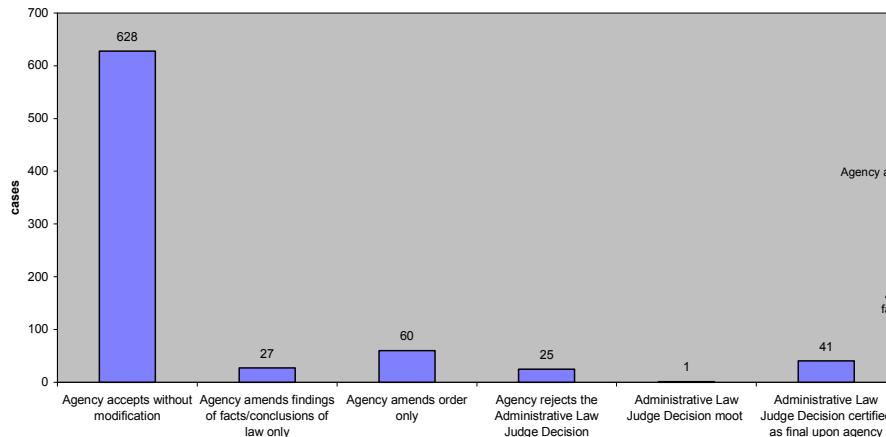
When an agency, board or commission action is received, a docket entry is made dated the same date as the date of receipt. If multiple submissions are made, the earliest action tolls the countdown to certification.

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.]

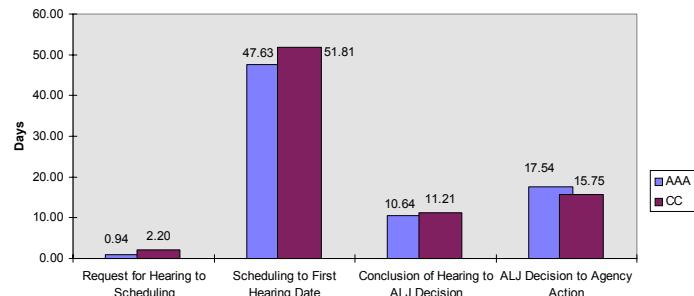
2. Pursuant to A.R.S. § 41-1092.08, and A.R.S. § 1-243 the [name of agency, board or commission] was required to accept, reject or modify the Administrative Law Judge Decision, as evidenced by receipt of such action by the Office of Administrative Hearings, on or before [date plus 30 for personal service;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

“Certification”

(continued page 4)

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.

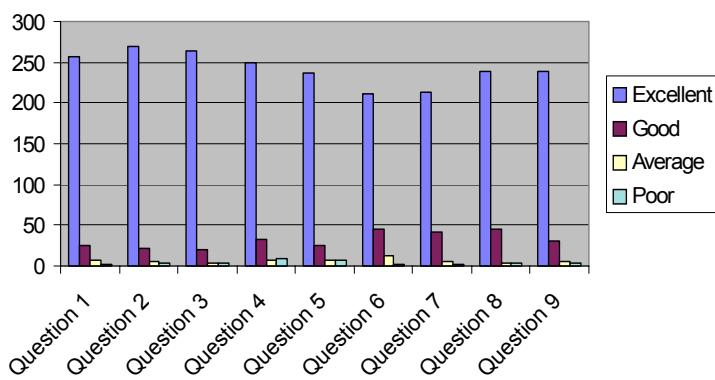
1918 Cases Filed January 1, 2004 - March 31, 2004

	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. Emply. 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			

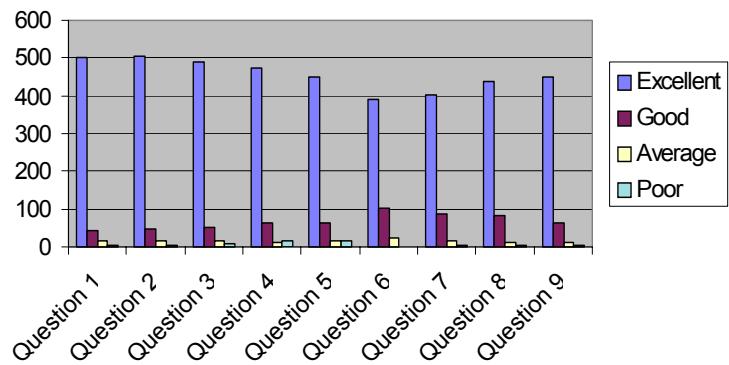
Evaluations of OAH Services

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. They 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

“Certification”

(continued from page 3)

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].

Footnotes

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>.

¹A.R.S. § 41-1092.08(A)

²A.R.S. § 41-1092(2)

³A.R.S. § 41-1092(5)

⁴The certification process became applicable to ALJ Decisions transmitted after August 21, 1998.

⁵A.R.S. § 41-1092.09(A)(1)

⁶A.R.S. § 12-904(A)

⁷A.R.S. § 41-1092.08(D) and (E)

⁸A.R.S. § 41-1092.08(D)

⁹A.R.S. § 41-1092.05(B)(1)

¹⁰A.R.S. § 41-1092.05(B)(2)

¹¹A.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."

¹²See footnote 11, above.

¹³A.R.S. § 41-1092.08(B)

¹⁴Facilitec, Inc. v. Hibbs, 80 P.3d 765 (2003)

¹⁵A.R.S. § 41-1092.08(D)

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%.

The OAH



Janet Napolitano
Governor

Cliff J. Vanell
Director

Vol. 32
July 2004

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

REHEARING AND APPEAL OF FINAL ADMINISTRATIVE ACTIONS

At the conclusion of an administrative hearing in the Office of Administrative Hearings ("OAH"), the Administrative Law Judge who presided over the case will prepare a written decision setting forth findings of fact, conclusions of law, and, in most cases, an order for the disposition of the matter. After the Administrative Law Judge completes the decision, the agency from which the case arose will review the decision and make a determination (with certain exceptions) to accept, reject or modify the decision. The agency will then issue its final administrative decision. See Arizona Revised Statutes ("A.R.S.") § 41-1092.08(B). [For further discussion of the post-hearing review process, see *After the Hearing*, THE OAH NEWSLETTER, Vol. 29 (October 2003)] Alternatively, an agency may fail to take action with respect to a decision, in which case the decision will be certified by OAH as the final administrative decision. See A.R.S. § 41-1092.08(D). [For further discussion of certification, see *Certification of Administrative Decisions*, THE OAH NEWSLETTER, Vol. 31 (May 2004)]

If a party disagrees with a final administra-

Daniel G. Martin, Administrative Law Judge

tive decision, that party may file a motion for rehearing or review of the decision. See A.R.S. § 41-1092.09. Motions for rehearing or review must be filed not later than thirty days after service of the decision (thirty-five days if the decision is served by mail). See A.R.S. § 41-1092.09(A)(1). Although specific grounds for rehearing or review vary from agency to agency, typical grounds include irregularity in the proceedings, error in the admission or rejection of evidence, newly discovered evidence that could not, with reasonable diligence, have been discovered prior to hearing, accident or surprise that could not have been prevented by ordinary prudence, and excessive or insufficient penalties. Motions for rehearing or review must be in writing, and should be submitted directly to the agency from which the case arose.

Upon receipt of a timely motion for rehearing or review, and after the opposing party has been given an opportunity to respond, the agency will make a determination to grant or deny the motion. See A.R.S. § 41-1092.09(D). In some

"Rehearing and Appeal" (continued page 2)

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.

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.

4th Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **95.23%** of all Administrative Law Judge Decisions acted upon by the agencies.* ALJ Decisions, including orders, were accepted without modification in **91.08%** of all Administrative Law Judge Decisions acted upon by the agencies. **55.9%** 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 **.81%**, defined as rehearings scheduled (8) over hearings concluded (987).**

Completion Rate:

The completion rate was **92.0%**, defined as cases completed (1907) over new cases filed (2072).

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 **38.85 days**. The frequency of continuance, defined as the number of continuances granted (191) over the total number of cases first scheduled (2080), expressed as a percent, was **9.2%**. The ratio of first settings (1895) to continued settings on the calendar (206) was **1 to .11**.

Dispositions:

Hearings conducted: **59.8%**; vacated prior to hearing: **38.5%**; hearings withdrawn by the agency: **1.6%**.

Contrary Recommendations and Agency Response: **13.4%** 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 **75%**.

5.24*1.97% of Administrative Law Judge Decisions were certified as final by the OAH due to agency inaction or were rendered moot by settlement.(corrected 08/04/04)

** Cases which were vacated or which settled on the day of hearing are not included.

“Rehearing and Appeal” *(continued from page 1)*

instances (such as is the case with the Registrar of Contractors), the agency will request that the Administrative Law Judge who heard the case submit a recommendation to grant or deny the motion, or to modify the decision.

If the agency grants a motion for rehearing or review, the agency may itself modify the decision or it may return the matter to OAH for further proceedings. If the agency denies a party's motion for rehearing or review, or if the party remains dissatisfied with the

agency's decision at the conclusion of the rehearing/review process, the party may appeal the agency's decision to the Arizona Superior Court. See A.R.S. § 41-1092.08(H). Generally speaking, a party is not required to file a motion for rehearing or review as a prerequisite to the filing of an appeal in Superior Court; nonetheless, a party considering an appeal of a final administrative decision should consult the statutes and rules specific to the agency from which the case arose to determine if the filing of a motion for rehearing or review is necessary. In most instances, a party may appeal a final administrative decision immediately after that decision is issued.

An appeal of a final administrative decision, more specifically referred to as a complaint for judicial review of an administrative decision, must be filed with the Arizona Superior Court not later than thirty-five days after the final administrative decision is served on the appealing party (forty days if the decision is served by mail). See A.R.S. § 12-904. Appeals of final administrative decisions are assigned to the Appeals Department of the Maricopa County Superior Court, which hears and decides all administrative appeals as well as appeals from the limited jurisdiction courts within Maricopa County. Maricopa County Superior Court Judge Michael D. Jones is the judge currently assigned to the Appeals Department, and presides

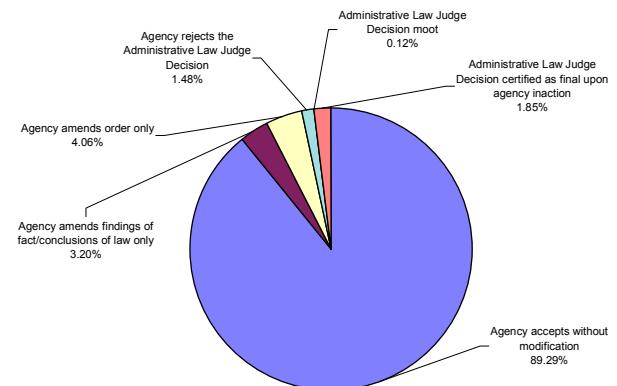
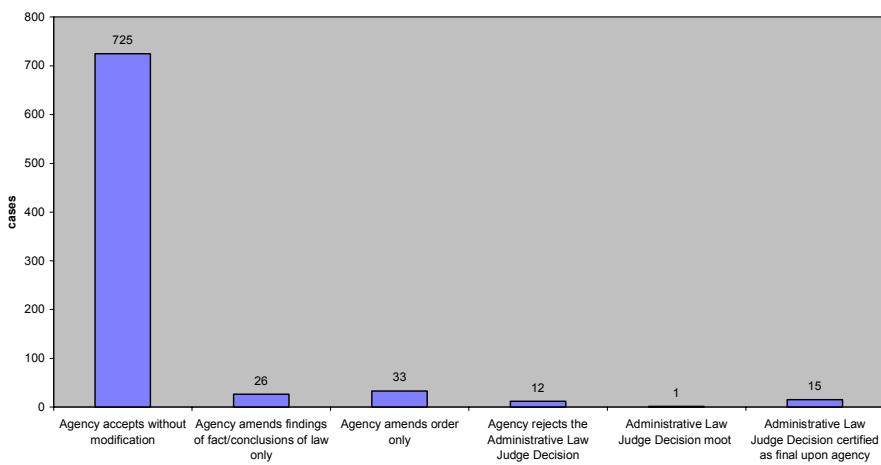
over all administrative appeals.

Not later than ten days after a complaint for judicial review of an administrative decision is filed with the Superior Court, the party who filed the complaint must file a notice of the action with OAH. See A.R.S. § 12-904(B); see also Arizona Administrative Code (“A.A.C.”) R2-19-122 (requiring that copy of complaint be filed with OAH). Failure to comply with this requirement may result in the dismissal of the appeal.

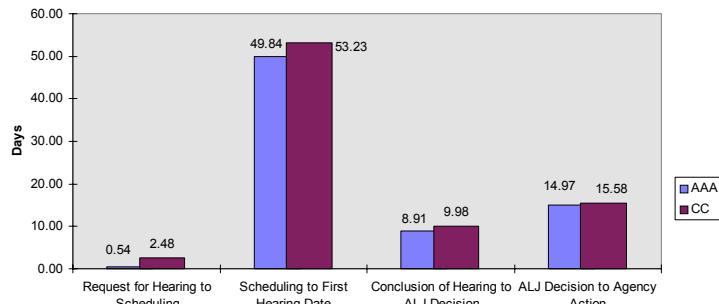
After the notice of the appeal is filed, OAH prepares the administrative record for transmission to Superior Court. The administrative record consists of (1) the original agency action from which review is sought, (2) any motions, memoranda or other documents submitted by the parties to the appeal, (3) any exhibits admitted as evidence at the administrative hearing, and (4) the decision by the administrative law judge and any revisions or modifications to the decision. See A.R.S. § 12-904(B)(1)-(4).

The administrative record does not automatically include a copy of the transcript of the administrative hearing. Although all administrative hearings are recorded (generally in a digital format), it is the responsibility of the appealing party, at that party's expense, to obtain a copy of the hearing record and to prepare a transcript for inclusion in the administrative record. See A.R.S. § 12-904(B)(5); see also A.A.C. R2-19-122(B). [For more information on downloading digital

“Rehearing and Appeal” *(continued page 4)*



Average Time Between Selected Events - Appellable Agency Actions v. Contested Cases*, April 1 - June 30, 2004



*Note: *Appellable 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.

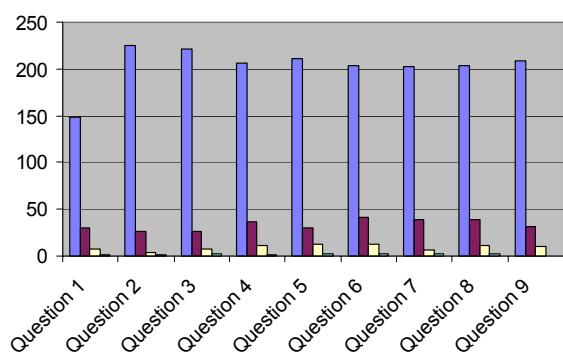
2072 Cases Filed April 1, 2004 - June 30, 2004

	4th Q	FY 2004		4th Q	FY 2004		4th Q	FY 2004
Accountancy	2	12	Dental	1	11	Parks	0	0
Acupuncture Board	0	0	Economic Security	0	1	Peace Ofc. Standards	2	8
Administration	5	10	Economic Security-CPS	52	218	Pest Control	5	24
Admin. Parking	29	110	Education	1	7	Physical Therapy	0	2
Agriculture	1	1	Environ. Quality	37	167	Podiatry	0	0
Ag. Emply. Rel. Bd.	0	0	Fingerprinting	179	653	Psychologist Examiners	0	0
AHCPCS	1039	3188	Funeral	0	0	Public Safety - CW	1	5
Alternative Fuel	0	0	Gaming	4	12	Public Safety - Trans	3	15
Appraisal	1	8	Health Services	119	435	Public Safety - Adult CC	0	0
Arizona Trial Courts	0	0	Insurance	16	76	Pvt. Post. Ed.	0	26
Arizona Retirement Sys	2	6	Land	1	7	Racing	2	8
Attorney General	1	3	Liquor	10	51	Radiation Regulatory	0	0
Arizona Works	0	0	Lottery	1	1	Registrar of Contr.	417	1714
Athletic Board	0	0	Maricopa Cty. Housing	0	0	Real Estate	22	87
Banking	10	61	Medical Board	4	23	Revenue	9	53
Behavioral Health Ex.	0	3	Medical Radiologic	0	4	School - Deaf & Blind	0	1
Building/Fire Safety	15	76	Naturopathic	0	0	Secretary of State	8	32
Charter Schools	21	4	Nursing	36	92	Technical Registration	1	3
Chiropractic	0	3	Nursing Care Admin.	2	4	Veterinary Board	0	0
Clean Elections	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	0	2
Community Colleges	0	0	Optometry	1	1	Water Resources	1	42
Cosmetology	3	10	Osteopathic	0	0	Weights and Measures	28	123

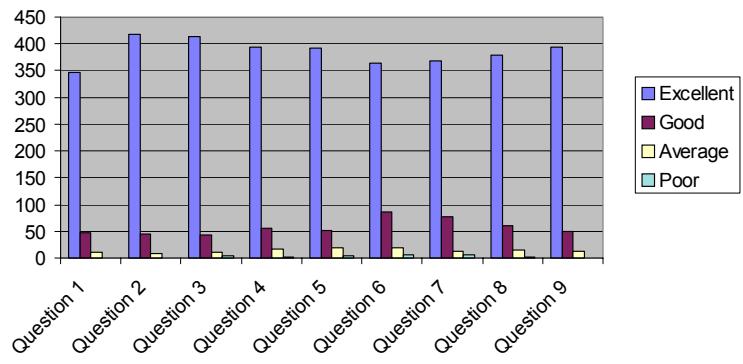
Evaluations of OAH Services

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Unrepresented Responses 4th Quarter



All 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

“Rehearings and Appeals”

(continued from page 3)

audio files from the OAH website, see How to Download a Digital Audio File, THE OAH NEWSLETTER, Vol. 29 (October 2003)]. If the appealing fails to prepare a transcript, any other party to the appeal may do so by filing a notice with OAH within ten days after receiving notice of the complaint and by providing for preparation of the transcript at that party's own expense. See A.R.S. § 12-904(B)(5).

Under A.R.S. § 12-910(E), the Superior Court Appeals Department may affirm, reverse, modify or vacate and remand the agency decision. A.R.S. § 12-910(E) states that the Court shall affirm the agency action unless the Court concludes “that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.” The Court may hold an evidentiary hearing in order to make the above determination. See A.R.S. § 12-910(A). However, the decision to do so is

in the discretion of the Court, and is not a matter of right. Often, parties will not be permitted to offer additional evidence, and will instead be limited to oral argument on the underlying record. Final decisions, orders, judgments or decrees of the Appeals Department may be appealed to the Arizona Supreme Court. A.R.S. § 12-913.

As can be seen from the foregoing, the rehearing and appeal process is comprised of a number of steps and is governed by relatively short deadlines. Parties who are considering filing a motion for rehearing or a complaint for judicial review of an administrative decision should fully acquaint themselves with the applicable statutes and rules to ensure that their filings are both timely and in compliance with the requirements of the law.

Exhibit B

Story Board

0



Preparing for Hearing

A Production of the
**Office of
Administrative
Hearings**

1/4

- Storyboard – Cliff speaks

It is important to us at the Office of Administrative Hearings that we make our process as accessible and non-threatening as possible.

- Our procedures are streamlined and common sense.
- Our staff is friendly and you will be welcomed when you come for your hearing.
- Our hearing rooms are comfortable and designed to put you at ease.

It is important to us that our process be as fair as possible.

- Our Administrative Law Judges are independent of any agency that appears before us.
- The Judge will decide a case based solely on the evidence presented by each party.
- The Judge will give you a full opportunity to present your case.

But it is up to you to present your case.

- It is natural to be nervous about appearing at a hearing.
- But following the pointers on this video WILL make your presentation more effective and your experience more enjoyable.

We have prepared segments dealing with

1. Direct Examination
2. Cross Examination
3. Opening Statement
4. Closing Argument
5. Exhibits
6. Making Objections
7. The Record
8. Your Experience at the OAH

- Review these segments often when you prepare your case.
- Also review the many articles that appear on our Website dealing with these and other points about the hearing process.

•0a

Let's begin...

1

**DIRECT
EXAMINATION**

HOW DO YOU KNOW WHAT
KINDS OF QUESTIONS TO
ASK IN YOUR CASE?

Make a list of everything
that you want the Judge to
know about your case.

- You should think about what your dispute is about.
- What do you have to prove or defend against?

Identify who you will bring to the hearing.

- Is there a witness who has seen, heard or done something in your case?
- Is there a witness with special expertise?
- Does the witness have an opinion that you want the Judge to hear?

Choose your best witnesses.

Having many people saying the same thing is not useful.

Decide which witness can give the Judge which piece of information.

Make a list matching the person with the facts that the person knows.

Write questions for each fact that you want that witness to testify about.

When in doubt, ask who, what, when, where, why and how.

•1 a1

Here is an example:

This witness is the building inspector.

The building inspector has made certain observations and formed an opinion based on what she saw.

Note how the party elicits responses to three basic questions:

- Who is the witness?
- What did the witness do?
- What is the opinion of the witness?

Story Board

- Video: Building Inspector
- Identify the witness
- What did the witness do
- What is your opinion

• 1 a

Here is another example:

This witness is a doctor.

This witness has an opinion that is based on her expertise and what she did in the case.

Note how the party sets up asking the witness her opinion by establishing

- Her expertise.
- The basis for the opinion, that is, what facts she examined or took into account.

Story Board

- Video: Ortho surgeon
- Expertise
- Basis for opinion
- opinion

• 1 b

AVOID TESTIFYING WHILE ASKING QUESTIONS

- You should never provide the answer to the witness.
- You should never testify when you should be asking questions.

Here is an example. Note closely

- When the party begins to testify.
- How an objection was made by the other party.
- How the judge rules.

Story Board

- Video:
- Chris is testifying during his questioning
- Jeff objects
- Judge rules

2

CROSS EXAMINATION

What is cross examination?

Cross examination is the chance to ask questions of the other side's witness.

In cross examination, you can challenge the witness'

- Knowledge
- Opinion
- Perception
- Motive
- Memory
- Bias
- Credibility

Here is an example. Note how the party

- Challenges the basis for the opinion.
- Challenges expertise.
- Challenges memory.
- Challenges opinion.

Story Board

- Video:
Dr for agency
Challenge basis for opinion
Challenge expertise
Challenge memory
Challenge opinion

•2a

What to Avoid In Cross Examination

**Don't repeat the
same type of
question.**

Story Board

- Video:
Chris is asking Dr. SAME TYPE of Q's about not meeting with his doctor.

•2b

**Don't interrupt the
witness**

Story Board

- Video:
Chris is interrupting the witness

•2c

Don't argue with
the witness

Story Board

- Video:
Chris argues with the witness

•2d

What if you disagree
with the witness'
testimony?

**Disagreement with a witness can
only come in the form of contrary
evidence.**

3

OPENING STATEMENTS

What is an opening statement?

- It's the chance to give the Judge a brief preview of your case.
- It's not the time to present evidence. Simply tell the Judge what your case is about.

This opening statement gives the Judge a brief preview of the case.

Story Board

- Video:
Proper opening statement

•3a

Compare this opening statement.

Does this tell the Judge anything about the case?

Story Board

Video:

RJ makes improper opening statement

4

CLOSING ARGUMENTS

What is a closing argument?

- It should briefly summarize the evidence presented during your hearing.
- It should explain why the Judge should decide the case in your favor.

Here is an example of a proper closing argument.

•4a

Story Board

- Video:
Proper Closing Argument

You may NOT
present new
evidence during your
closing argument.

Story Board

- Jeff tries to introduce new evidence in closing
- RJ makes objection
- Judge rules

•4b

In Closing....

After all is said and done...

Remind the Judge what
was said and done.

Here are two good
examples of a closing
argument

Story Board

- Video:
Jeff does proper closing argument
- Video:
RJ does proper closing argument

5

EXHIBITS

**It is ESSENTIAL that
you bring copies of
exhibits**

- for the Judge
- for the opposing party
- for yourself

**Note in this next example
that the party has copies for
the judge and the other party**

**Ask yourself how you would like it if
a party began referring to exhibits
without your having a copy to refer
to...**

Story Board

Video:

Chris has copies of exhibits like he's supposed to

•5a

Story Board

• Video:

Chris has no copies.

Here is a good example
of a bad example!

**Don't let what happens next
happen to you.**

•5b

Size of Exhibits

- Exhibits must fit into a standard 8 ½ x 11 folder.
- Large, unwieldy exhibits may not be accepted.
- Do not bring in exhibits which may be dangerous or which contain biohazardous materials.

In this next example the Judge is confronted with a slightly unwieldy exhibit...

Story Board

- Video:
Chris brings plank
Judge says oh no you don't

•5c

ORIGINAL EXHIBITS

- Do not submit original exhibits to the Judge.
- Do submit clear, legible copies.

In this next example, does the party really want to do what she says she does?

Story Board

- Video:
RJ tries to admit original check
Are you sure you want to do that? says Dan

•5d

INTRODUCING AN EXHIBIT

How do you know what exhibits to introduce?

Will it help decide the issues in dispute?

How should you choose exhibits?

- Choose the exhibit that best represents what you want the Judge to know.
- Avoid presenting multiple exhibits showing the same thing.

In this next example, the Judge explains the procedure for marking and admitting exhibits.

Story Board

- Video:
Judge explains Procedure for marking and admitting exhibits

•5e

Think of “foundation” like the foundation of a building.

- If you don’t build the foundation properly, the building will fall.
- Building the foundation for an exhibit is simple but very important.

Laying the foundation

You must lay the proper foundation for an exhibit in order to have it admitted into evidence.

How do you lay the foundation to have an exhibit admitted?

Answer 2 questions during the hearing:

- What is the exhibit?
- How does it relate to your case?

You Must Show the Exhibit to the Correct Witness

- Remember, you must show the exhibit to a witness who knows about the exhibit.
- A witness should be able to say what the exhibit is and how it relates to the case.
- If a witness doesn’t know about the exhibit, the witness can’t testify about it.

In this next example, the party properly lays the foundation for an exhibit.

Story Board

- Video:

Chris: Your honor, may I approach the witness?

Chris lays the proper foundation for exhibit

6

MAKING OBJECTIONS

The Judge will always ask the other party if there is any objection to an exhibit and the other side can object.

- You can object to either an exhibit or a question
- There must be a reason for your objection
- Disagreeing with the other party or disliking the exhibit is NOT a reason to object

You must have a legal reason for your objection

The most common legal objections are:

- Lack of foundation and
- Lack of relevance

What is wrong with this party's attempt to question the witness about the exhibit?

Story Board

- Video:

Chris shows exhibit

RJ has never seen it before and didn't write it

Jeff objects

•6a

In the last sequence, there was no foundation for the exhibit.

No evidence was presented to show

- ***what the exhibit is***

or

- ***how it relates to the case.***

•6b

Is the party in the next sequence making a proper objection?

Story Board

- Video: Any Objection?
Chris objects—I don't agree with anything
the letter says
Judge rules, that's not a proper objection

•6c

What is wrong with this party's attempt to move his exhibit into evidence?

Story Board

- Video: Chris trying to admit a photo to show that floor is hollow sounding
- Jeff makes proper objection

•6d

Irrelevant

- Could the exhibit offered in the last sequence have helped the Judge decide the case?
- Since it could not have, the exhibit was irrelevant and properly rejected.

•6e

In this example a party asks the judge to admit a letter dealing with the wood floor in a different home than in dispute.

•6f

Irrelevant

In the last sequence, the exhibit didn't have anything to do with the case.

•6g

In this next example a party asks the judge to admit a letter dealing with the wood floor in a different part of the home than in dispute.

Story Board

- Video: Chris objects based on relevance. Letter has to do with kitchen floor, not family room.

Story Board

- Judge rules on objection. Only floor in the family room is at issue in this case, therefore, the letter is not relevant.

•6h

Irrelevant

In the last sequence the exhibit had nothing to do with the issue in dispute.

7

The Record

What is ‘the record’?

The record has two parts:

- The audio recording of your hearing
- All of the exhibits that have been entered into evidence

How is the audio recording made?

The Judge records everything that is said during your hearing on a digital recorder.

This is a real-time digital recording and it is available to download on your computer.

Why is the audio record important?

- It reminds you what happened in your hearing.
- The audio record is important if you ever appeal your case. This is how another Judge will know what was said and done during your hearing.

How do you make a good audio record?

- Always give an audible response to a question. This means answering yes or no. Don’t simply shake your head or shrug your shoulders.
- Avoid using “uh-huhs” and “uh-uhs”.
- Don’t chew gum.

Story Board

- Chris asks RJ questions
- RJ gives inaudible responses
- Judge admonishes witness

•7a

- If you are making a gesture with your hand or pointing something out, make sure you describe what you are doing.
- Make sure your witnesses follow these same rules.

Close your eyes in this next sequence and ask yourself how effective the witness is in an audio record.

Story Board

- Witness uses hand gestures to describe floor
- Judge admonishes witness

8

Your Experience at the
Office of Administrative
Hearings

- The Office of Administrative Hearings will maintain a professional and pleasant environment.
- Each party will have its chance to be heard.
- The Judge will not allow any person to be abusive or disrespectful.

•8a

Story Board

BLUE SCREEN/How Impressed will the Judge be?

Video: Parties argue
Chris fades up full
Judge admonishes parties

But quite aside from just good manners, consider this next sequence, ask “How does this help a person’s case?”

•8b

DISRESPECTFUL OR DISRUPTIVE BEHAVIOR IS NOT TOLERATED

- If a person is disrespectful or disruptive, the person may be asked to leave the hearing room.
- If this occurs, the hearing will proceed in the person’s absence.

•9

In conclusion...

- Remember that preparation is key.
- Review this video while preparing.

- Remember to make copies of your exhibits for the Judge and the other party.
- Choose your best witnesses.
- Think about what questions you will need to ask your witnesses to allow them to testify or to admit an exhibit.

Treat others as you would want to be treated at hearing.

•10

Story Board

- Video:
C/U of CJV
“Good Luck!”

THE END

Credits

Administrative Law Judge Diane L. Mihalsky
Administrative Law Judge Sondra J. Vanella
Administrative Law Judge Daniel G. Martin
Administrative Law Judge Brian Brendan Tully

as themselves

Rosella Rodriguez.....as everybody else
Chris Fishleder.....as most other people
Jeffrey Sanchez.....as whoever we needed him
to be
Cruz Serrano.....as every other one of our
witnesses

Produced and Edited by Cliff J. Vanell, Director

Directed by Administrative Law Judge Wendy
S. Morton

Cameraman/Key Grip and Best
Boy.....Walter A. Morton

Thank you to everyone at OAH

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Exhibit C

Archive Protocol

Approved Standards for Retention of Permanent Records Described in A.R.S. § 41-1092.01(C)(6)

Comment:

Subject: REVISED DRAFT (Post 06/28/04 meeting)

By: Cliff J. Vanell, Director, Office of Administrative Hearings

1.0 Overview:

1.1 A.R.S. § 41-1092.01(C)(6) provides that the Director of the Office of Administrative Hearings shall: "...secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate."

1.2 A.R.S. § 39-101(A) provides that "[p]ermanent public records of the state... shall be transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state library, archives and public records" and A.R.S. § 39-101(B) provides that such records shall be "...be stored and maintained according to standards for the storage of permanent public records established by the director of the Arizona state library, archives and public records."

2.0 Agreement:

- 2.1** The Director of the Arizona State Library, Archives and Public Records (ASLAPR) hereby approves the methodology reflected in Section 3 as meeting the standards of A.R.S. § 39-101(A) for securing, compiling, keeping, storing and maintaining the public records to be preserved pursuant to A.R.S. § 41-1092.01(C)(6) in electronic form.
- 2.2** The Director of Office of Administrative Hearings (OAH) agrees to maintain the methodology reflected in Section 3 and to abide by the transfer and certification requirements of Section 4 and Section 5.
- 2.3** **Subject to the provisions of 5.2,** the agreement remains in force unless both parties mutual agree to substitution of another agreement.
- 2.4** This agreement can be modified only upon agreement of both parties in writing.

3.0 Methodology:

3.1 Public Records to be Preserved:

- 3.1.1** The phrase, “Reference materials,” is interpreted by the OAH Director as consisting solely of applicable statutes and rules. OAH will not separately maintain these documents as they are secured and maintained by ASLAPR.
- 3.1.2** The phrase, “all decisions, opinions and reports,” is interpreted by the OAH Director as meaning all orders, including, but not limited to, the Administrative Law Judge decisions as defined in A.R.S. § 41-1092.
- 3.1.3** The phrase, “supporting information as appropriate,” is interpreted by the OAH Director as docket event entries made contemporaneously reflecting actions taken by OAH Administrative Law Judges and Staff concerning cases and summarizing documents submitted by parties. ~~It does not include scanned copies of documents received or audio material or any kind.~~ It does not include docket event **entries** with a separate retention and disposition schedule approved by ASLAPR.

3.2 Method of Securing:

- 3.2.1** All relevant actions taken regarding a case are reflected in the OAH Case Management (OAH-CM) electronic docket as “docket event **entries**.”
- 3.2.2** All documents received in cases are summarized in docket event **entries** that become part of the OAH Case Management (OAH-CM) electronic docket;
- 3.2.3** All documents created are created, tracked and stored through the electronic case docket by document type.

3.3 Definition and Method of Compiling:

- 3.3.1** The term “compile” includes:

3.3.1.1 The ability to view all decisions, opinions, reports and supporting information by case number, also known as "matter id";

3.3.1.2 The ability to sort by date and type:

3.3.1.3 Cases;

3.3.1.4 Decisions, opinions and reports; and

3.3.1.5 Supporting information by docket event

3.3.1.6 The ability to text search all decisions, opinions and reports and supporting information.

3.3.2 The OAH-CM incorporates full case and docket sorting and text search capability of all supporting information and decisions, opinions and reports.

3.4 Method of Keeping and Storing:

3.4.1 The OAH-CM consists of:

3.4.1.1 The database

3.4.1.2 Stored documents

3.4.2 The database and stored documents are maintained on a server(s) with sufficient redundant hardware and software to assure business continuity.

3.5 Method of Maintaining:

3.5.1 The OAH-CM is backed up daily, Monday through Friday.

3.5.2 ~~The most recent Friday backup tape and three preceding Friday Daily~~ backup tapes are maintained offsite.

3.5.3 OAH-CM backup logs are checked daily.

3.5.4 A sample restoration is done to ensure reliability every two weeks.

- 3.5.5** Backup tapes are replaced annually to ensure that there is no degradation.
- 3.5.6** The OAH-CM system is updated annually to ensure that the technology remains current. Such updates will be documented. The preexisting version will be maintained until the validity of the updated system is established through agency use of the system.
- 3.5.7** The case created under the earliest version of the OAH-CM, 95F-F0123-ROC, is checked at least annually to ensure that all events remain accessible.
- 3.5.8** The OAH word processing program will be updated to a program and version supported by the manufacturer.
~~Documents will be converted as necessary to ensure that they remain retrievable.~~
- 3.5.9** The earliest identifiable document created with the earliest version of word processing software, Doc 64211463, accessible through 95F-S0106-ROC, is checked at least annually to test retrievability using existing version of software. All documents will be converted as necessary to ensure long-term accessibility. The preexisting versions will be maintained until the validity of the documents is established through random the opening and comparison of 10 original and converted documents. All conversions will be documented.
- 3.5.10** Any conversion from the existing OAM-CM must incorporate the features described in section ~~2.4~~ **3.3** and import all items described in Section ~~2.2~~ **3.2**.

4.0 Transfer of OAH-CM Upon Termination or Sunset

- 4.1 Upon notice of the elimination of the OAH through sunset or other termination, the OAH-CM and all necessary hardware and software to access the OAH-CM will be transferred to ASLAPR.

5.0 Annual certification

- 5.1 The Director of the OAH, **after personal inquiry**, will certify to ASLAPR on an annual basis that the items listed in Section 3 are true **upon personal inquiry**. The certification will include the name of the Director, a contact address and telephone number.
- 5.2 At least once every three years, the Director of the OAH will review this agreement and report to ASLAPR any recommendations for modification of this agreement that are deemed appropriate due to changes in legislation, technology and work flow processes. In the absence of such report, the agreement will terminate. Any new agreement must then be signed at that time by both parties.

FOR AND ON BEHALF OF THE ARIZONA STATE LIBRARY, ARCHIVES AND STATE RECORDS

GLADYSANN WELLS
Director

Date

FOR AND ON BEHALF OF THE ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS

CLIFF J. VANELL
Director

Date