

# The Office of Administrative Hearings

The Tenth Annual Report

to

Governor Janet Napolitano

Senator Ken Bennett, President of the Senate

Representative James P. Weiers, Speaker of the House

Pursuant to A.R.S. § 41-1092.01(C)(5)

and

A.R.S. § 41-1092.01(C)(9)



Cliff J. Vanell, Director

November 1, 2005

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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 videoconferences 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 2005 indicate agency acceptance of Administrative Law Judge Decisions without modification was 84.51%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 90.62%. Rehearings (1.2%) and Appeals (3.66%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and the OAH were rated excellent or good in 94.9% to 98.1% 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 those agencies. Procedures, rulings, and case assignments 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 2005 was 97.4%, despite an 15% increase in cases.

## **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 2005. 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 2005 are included in Appendix A.

### **2. Streaming Video Productions**

The OAH completed in-house production on a digital video to assist parties in preparing for hearings. The video subjects include direct and cross examinations, exhibits, objections, opening statements, closing arguments, and proper decorum. In addition, the OAH completed a streaming video explaining the use of videoconferencing in Registrar of Contractors' cases in the outlying areas.

### **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 Decision. For the period April 1, 2004 through March 31, 2005, the combined substantive error rate (non typographical) for Administrative Law Judge Decisions was .89%. To look at it conversely, the combined substantive error-free rate for Administrative Law Judge Decisions for the time period was 99.42%. The reversal rate due to substantive error was only .33%. These results display the extremely high standards attained by the Administrative Law Judges.

### **4. Videoconference Implementation**

In June 2005, the OAH began conducting ROC hearings in outlying areas by videoconference. The OAH implemented videoconferencing to these areas in the following order: Kingman, Show Low, Prescott, Lake Havasu City, Flagstaff, Sierra Vista, and Yuma. As a result, the 79 travel weeks of FY 2005 will be replaced in FY 2006 with 104 week-long videoconference dockets devoted to those outlying areas. Original case settings and continued settings for the outlying areas are now comparable to the metropolitan areas. The time normally lost to travel and vacated hearings in a travel situation has been reallocated to the setting of an estimated 110 additional hearings in FY 2006.

### **5. Reduction in In-State Travel**

Due to the implementation of videoconferencing, in-state travel will be reduced by an expected 90% in FY 2006.

### **6. Portal Searches of Administrative Law Judge Decisions**

Work continues to upgrade the OAH Portal to give the public the ability to conduct full text searches of non-confidential Administrative Law Judge Decisions.

## **7. Business Continuity**

The OAH completed a duplicate network, housed in its Tucson office, to counter any business disruption should its Phoenix office be unavailable to OAH personnel. Twice daily mirroring of OAH's databases is expected to be implemented in early FY 2006.

## **8. Archive Protocol**

The OAH has entered into an agreement with 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 B.

## **9. Public Presentations**

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

## **10. Professional Development**

Administrative Law Judges continue to receive professional education in the subject matter of agencies as well as skills development. In FY 2005, the OAH implemented an exchange program to host Administrative Law Judges from other states' central panels. Arizona's Judge Daniel Martin presented a seminar in legal writing to Minnesota Administrative Law Judges. In exchange, Minnesota's Judge Beverly Heydinger presented a seminar to the Arizona Administrative Law Judges on the subject of difficult hearing situations and ethics.

Administrative Law Judges Brian Tully and Casey Newcomb volunteered time as pro tem judges in the Maricopa County Superior Court and elsewhere. Judge Casey Newcomb was appointed as a Maricopa County Superior Court Commissioner in the Spring of 2005.

Judge Wendy Morton designed a presentation for the June 2005 Arizona State Bar Convention which involved reenactments of closing arguments in the 20th Century's most notorious civil and criminal trials. She continues to be active in the Arizona Bar Association, including giving presentations to youth regarding our system of government and organizing mock trials. Her coloring book, "Court Story," designed to assist children in understanding their participation in the court process is used nationally. More than 10,000 have been distributed. It is being prepared for its 4th edition.

Judge Daniel Martin was president of the Public Lawyers Section of the Arizona State Bar.

Administrative Law Judges Kay Abramsohn and Eric Bryant attended the 4th Annual National Academy for IDEA (Individuals with Disabilities Education Act) in support of OAH's new Special Education venue.

## **11. Special Education Hearings**

Laws 2005, Chapter 277 created a single-tier Special Education Due Process Hearing before the OAH commencing August 12, 2005. In the previous two-tier process, OAH provided second-tier review only.

## **12. Sunset Review:**

Laws 2005, Chapter 34 extended the OAH to November 2015.

### III. Summary of Agency Use of OAH Services

#### 1. Case Management

##### a. Breakdown of Cases Filed by Agency (FY 2005):

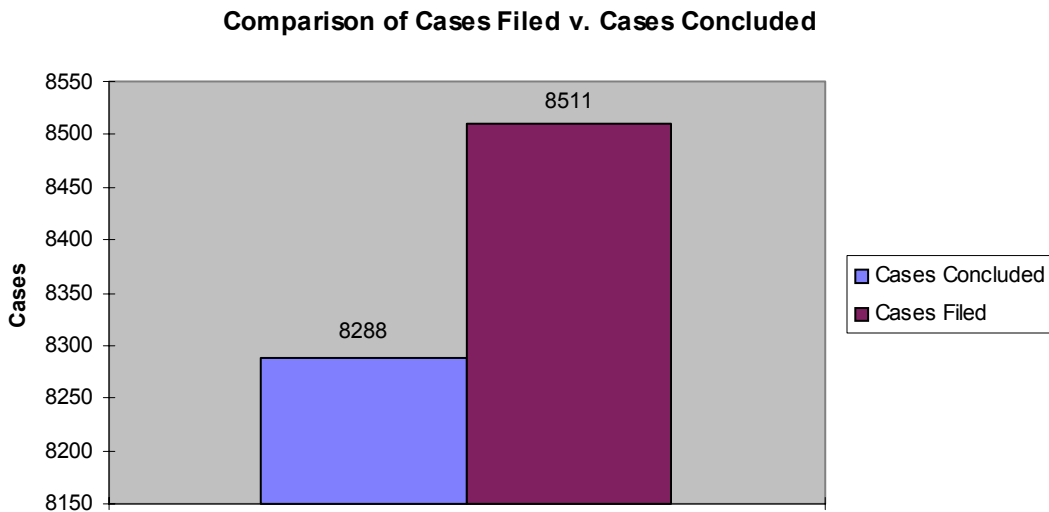
8,511 cases were filed with the OAH in FY 2005. The distribution among the agencies and boards are as follows (in descending order by number of cases filed):

Arizona Health Care Cost Containment System	4050
Registrar of Contractors	2065
Department of Health Services	346
Department of Administration - Capitol Police Parking	335
Board of Fingerprinting	218
Department of Weights and Measures	213
Department of Economic Security - CPS	195
Department of Environmental Quality	163
Department of Real Estate	161
State Board of Nursing	110
Department of Building and Fire Safety	86
Department of Revenue	80
Department of Insurance	71
Liquor Licenses and Control	61
State Banking Department	46
Board of Appraisal	44
Department of Public Safety - Student Transportation	25
Structural Pest Control Commission	19
Arizona State Retirement System	19
Board of Dental Examiners	18
Peace Officers Standards and Training	15
Secretary of State	14
Arizona Medical Board	14
State Board for Charter Schools	13
State Board of Accountancy	12
Board of Chiropractic Examiners	12
State Board of Cosmetology	11
Department of Gaming	10
Board of Nursing Care Institution Administrators Examiners	9
Department of Public Safety - Concealed Weapons Permit Unit	9
Department of Administration	8

Board of Massage Therapy	8
Department of Education	7
Department of Water Resources	6
State Land Department	6
Water Quality Appeals Board	5
Board of Technical Registration	4
Board of Behavioral Health Examiners	4
Citizens Clean Elections Commission	3
Arizona State Board of Optometry	3
Office of the Attorney General	2
Department of Agriculture	2
Board of Psychologist Examiners	2
Naturopathic Board of Medical Examiners	2
Arizona State Board of Education	1
Peace Officers Standards Training	1
Department of Racing	1
Arizona State Veterans Home	1
Department of Economic Security - DCYF	1

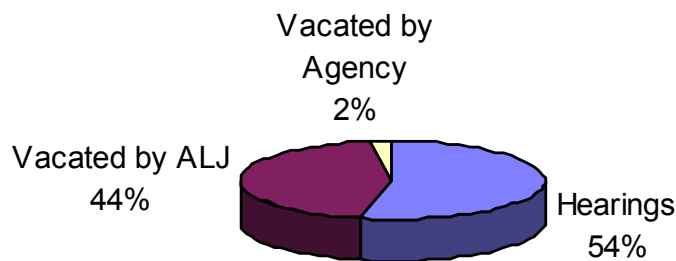
**b. Number of Cases Filed Versus Cases Concluded:**

In FY 2005, the conclusion rate (defined as cases concluded divided by new cases filed) was 97.37%.



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 2005

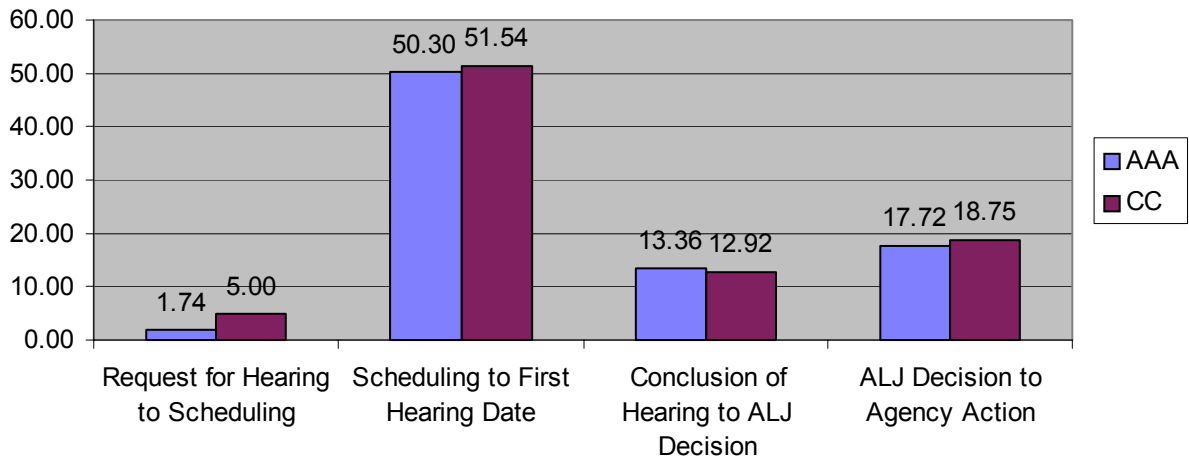


#### c. Timeline of Case Management:

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 head 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:

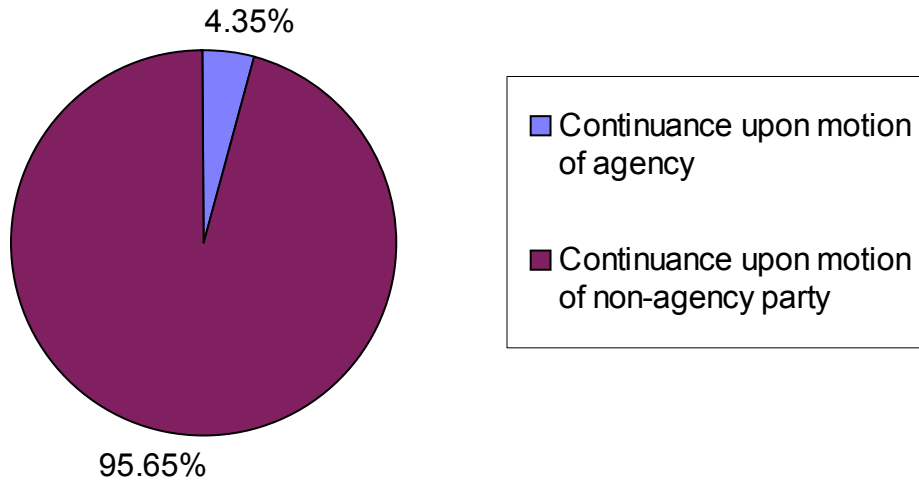
**Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases**



**d. Incidence of Continuance:**

A single continuance in FY 2005 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 2005, 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 hearing settings (7,130) to continued settings on the calendar (776) was 1 to 0.11. The following chart illustrates the source of continuances.

### Comparison of Source of Continuance, FY 2005



In FY 2005, non-agency parties requested 69% of the continuances filed with the OAH. The following list is a breakdown of FY 2005 continued settings and their sources, by agency.

<b>AGENCY</b>	<b>Continued - Motion by non-agency party</b>	<b>Continued - Motion by agency party</b>
Arizona Health Care Cost Containment System	220	3
Arizona Lottery	2	0
Arizona State Retirement System	1	1
Board of Appraisal	12	0
Board of Behavioral Health Examiners	2	0
Board of Dental Examiners	1	0
Board of Technical Registration	1	0
Citizens Clean Elections Commission	1	0

Department of Administration	4	0
Department of Administration - Capitol Police Parking	4	0
Department of Building and Fire Safety	11	0
Department of Economic Security - CPS	27	4
Department of Education	1	0
Department of Environmental Quality	32	5
Department of Gaming	1	0
Department of Health Services	54	8
Department of Insurance	13	0
Department of Public Safety - Concealed Weapons	1	0
Department of Public Safety - Student Transportation	5	0
Department of Real Estate	13	1
Department of Revenue	8	3
Liquor Licenses and Control	11	1
Peace Officers Standards and Training	3	1
Registrar of Contractors	358	6
Secretary of State	3	0
State Banking Department	4	1
State Board for Charter Schools	1	0
State Board of Nursing	12	3
State Land Department	2	0
Structural Pest Control Commission	6	0
<b>Total</b>	<b>814</b>	<b>37</b>

The following chart reflects the number of motions to continue that were entertained in FY 2005 and the percentage granted:

<b>Client</b>	<b>ODC</b>	<b>OGC</b>	<b>Total Motions</b>	<b>% Granted</b>
Arizona Health Care Cost Containment System	70	223	293	76
Arizona Lottery	0	1	1	100
Arizona Medical Board	5	0	5	0
Arizona State Board of Optometry	2	0	2	0
Arizona State Retirement System	0	1	1	100
Board of Accountancy	1	2	3	67
Board of Appraisal	17	4	21	19
Board of Behavioral Health Examiners	2	1	3	33
Board of Cosmetology	2	0	2	0
Board of Dental Examiners	3	2	5	40
Board of Massage Therapy	2	1	3	33
Board of Psychologist Examiners	0	1	1	100
Citizens Clean Elections Commission	0	1	1	100
Dept. of Administration - Capitol Police Parking	10	4	14	29

Department of Administration	1	3	4	75
Department of Building and Fire Safety	1	10	11	91
Department of Economic Security - CPS	7	19	26	73
Department of Education	1	0	1	0
Department of Environmental Quality	4	43	47	91
Department of Gaming	2	0	2	0
Department of Health Services	8	45	53	85
Department of Insurance	3	7	10	70
Department of Real Estate	5	12	17	71
Department of Revenue	0	22	22	100
DPS - Concealed Weapons	1	1	2	50
DPS - Student Transportation	1	10	11	91
Liquor Licenses and Control	6	15	21	71
Peace Officers Standards and Training	0	5	5	100
Registrar of Contractors	214	381	595	64
Secretary of State	1	0	1	0
State Banking Department	1	5	6	83
State Board for Charter Schools	2	1	3	33
State Board of Nursing	5	17	22	77
State Land Department	2	2	4	50
Structural Pest Control Commission	5	0	5	0
<b>Total</b>	<b>384</b>	<b>839</b>	<b>1223</b>	<b>69</b>

## 2. Evaluation

### a. Results of Public Evaluation:

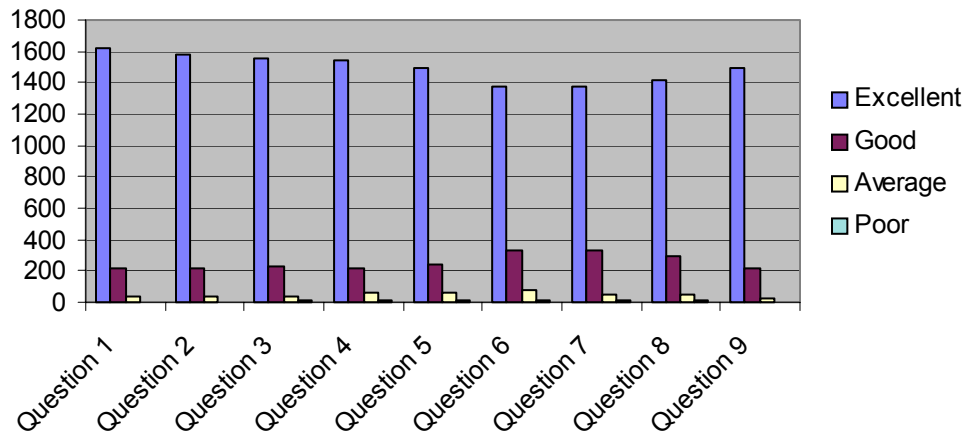
Since November 1996, the OAH has administered an evaluation procedure. The support staff provides a copy of the evaluation before the hearing in order to encourage all participants to respond. In addition, the Administrative Law Judge is required to call the parties' attention to the evaluation on the record at the conclusion of the hearing. The results are not disclosed to the Administrative Law Judge. Hearing participants place completed evaluations in locked boxes located near the hearings rooms.

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

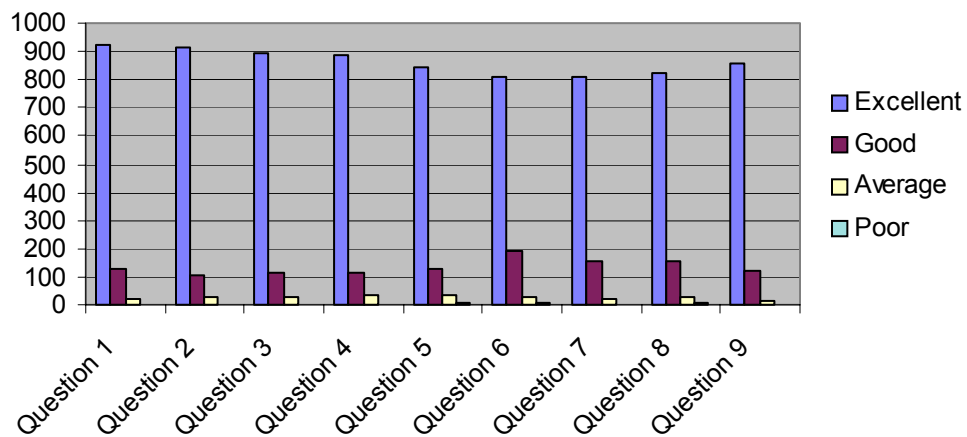
The results indicate that satisfaction is high among all groups, with those responding rating the OAH excellent to good in 95.21% to 97.25% of responses.

### All Responses FY 2005



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.

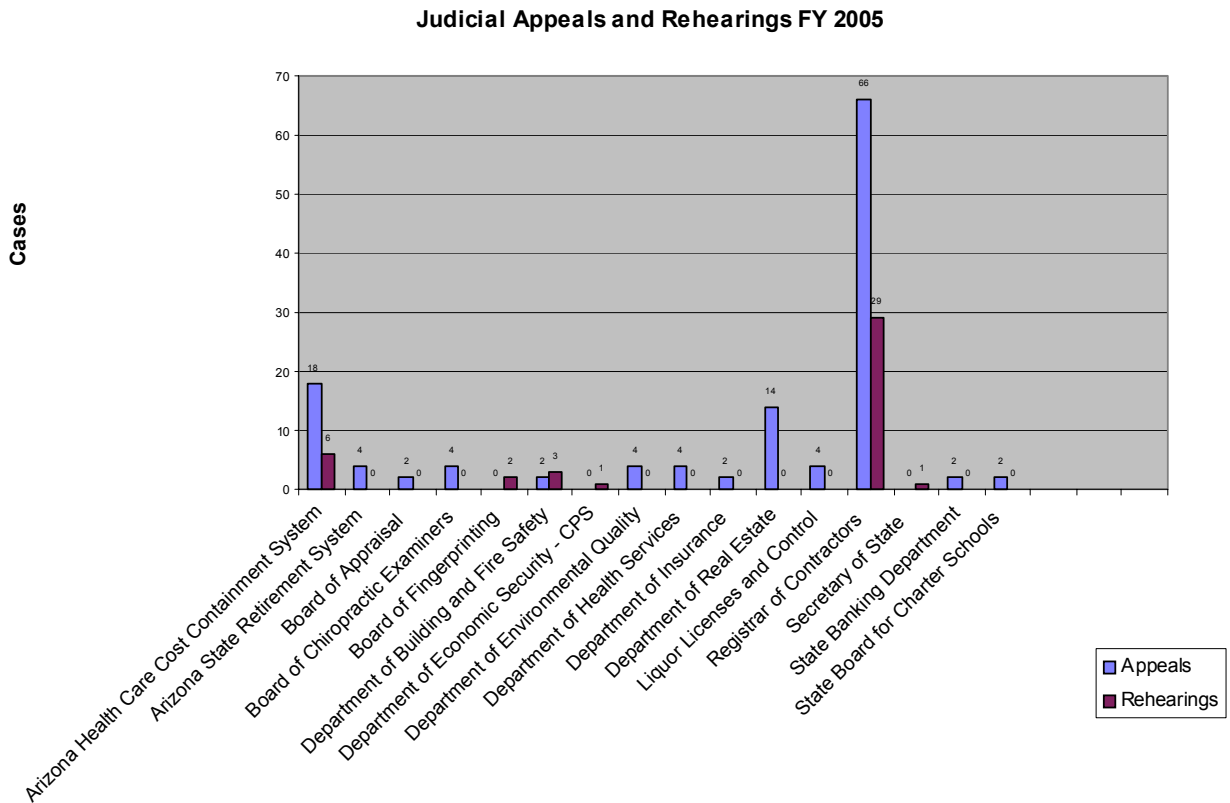
### Unrepresented Responses FY 2005



**b. Incidence of Rehearing and Appeal:**

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2005, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 1.2%.

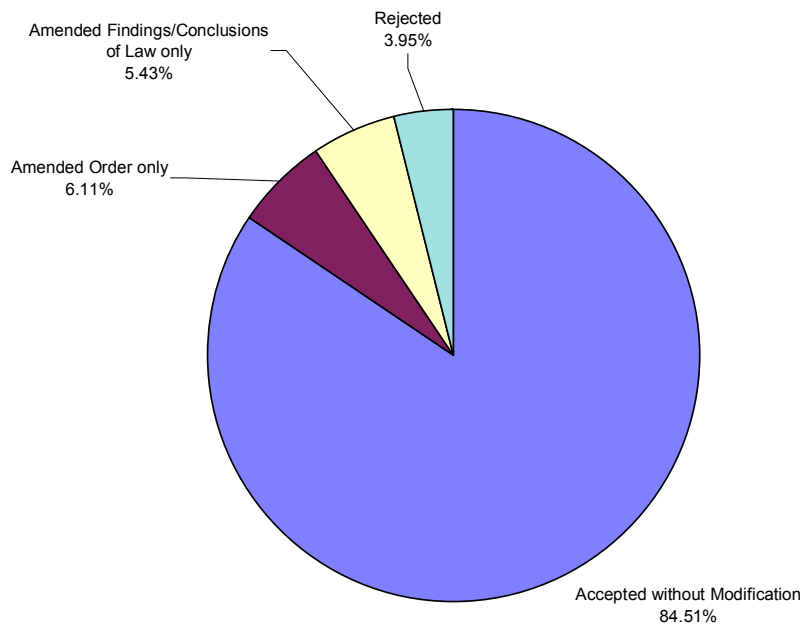
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2005, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 3.66%. As reflected in the following diagram, rehearings and judicial appeals in FY 2005 were relatively rare. 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.



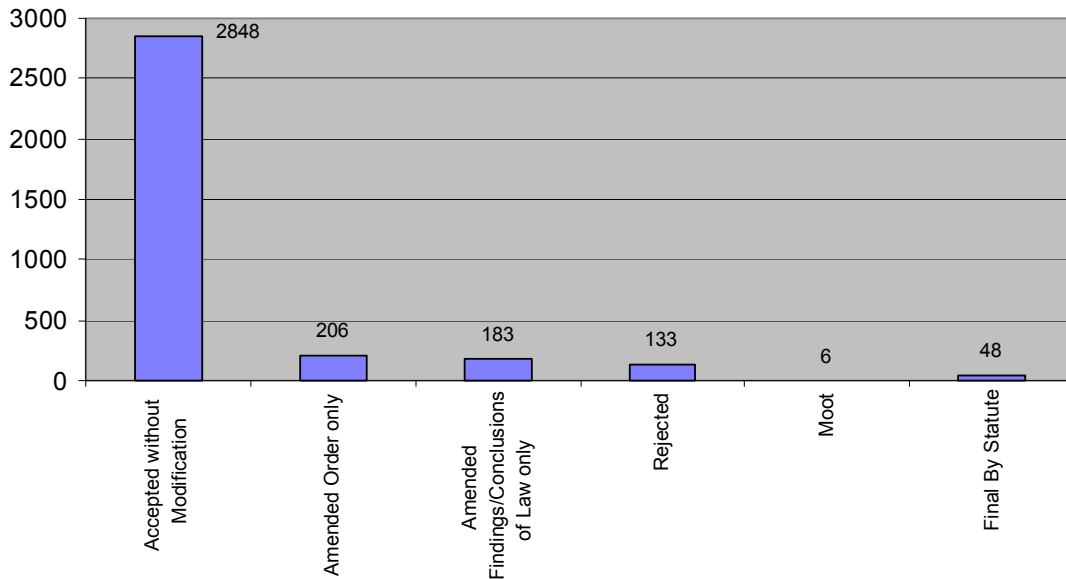
## IV. Acceptance of Administrative Law Judge Decisions by Agencies

### 1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is very high. 84.51% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 90.62% 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.



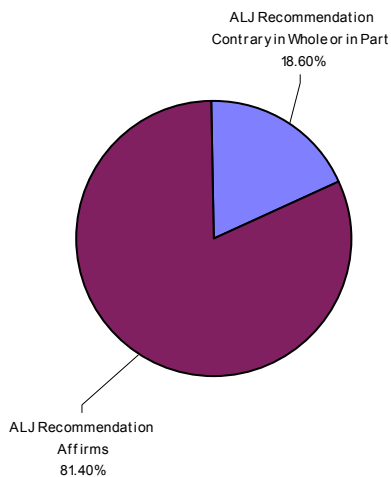
The following chart reports the breakdown of agency response. This chart further illustrates that modifications and rejections are few relative to the decisions accepted.

	Accept	Amend	Amendf	Reject	Cert	Moot	Final	Total
Agriculture Department	0	1	0	0	0	0	0	1
AHCCCS	1068	20	68	79	6	3	0	1244
Arizona Medical Board	4	0	3	0	1	0	0	8
Arizona Retirement Bd.	9	0	0	1	2	1	0	13
AZ. Veteran's Home	0	0	0	0	1	0	0	1
Bd. of Cosmetology	2	4	0	4	0	0	0	10
Bd. of Dental Examiners	2	1	1	0	0	0	0	4
Bd. of Technical Reg.	1	0	0	0	0	0	0	1
Behavioral Health Ex.	2	0	1	0	0	0	0	3
Board of Accountancy	3	1	0	0	0	0	0	4
Board of Appraisal	5	24	0	3	0	0	0	32
Board of Nursing	14	4	1	0	0	0	0	19
Building and Fire Safety	38	0	0	0	15	0	0	53
Capitol Police Parking	238	0	0	0	0	0	0	238
Charter Schools	1	1	0	1	0	0	0	3
Child Protective Services	150	2	8	0	0	0	0	160
Citizen's Clean Elections	4	2	0	0	0	0	0	6
Department of Banking	2	0	0	0	0	0	0	2
Department of Education	2	0	0	0	0	0	1	3

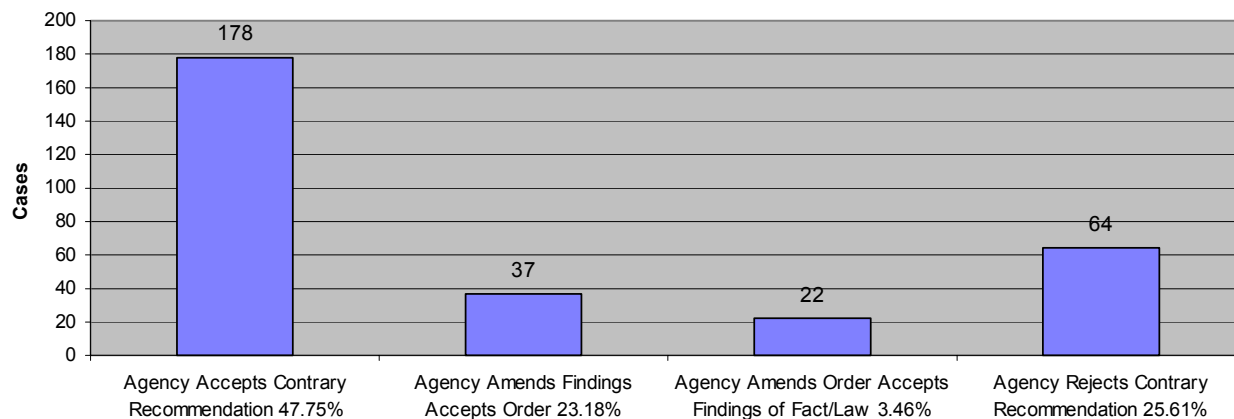
Department of Gaming	3	0	0	0	2	0	0	5
Department of Insurance	24	0	0	0	20	0	0	44
Dept. of Administration	1	0	0	0	1	0	0	2
Dept. of Environ. Quality	18	1	0	3	1	0	0	23
Dept. of Health Services	195	0	2	2	0	0	0	199
Dept. of Real Estate	53	7	5	12	1	0	0	78
Dept. of Revenue	0	0	0	0	0	0	47	47
DPS - Std. Transportation	7	1	0	1	1	0	0	10
DPS - Weapons	6	0	0	0	1	0	0	7
Liquor Licenses/Control	5	3	0	0	1	0	0	9
Massage Therapy	1	2	0	0	0	0	0	3
Naturopathic Board	1	0	0	0	0	0	0	1
Optometry Board	2	1	0	0	0	0	0	3
Pharmacy Board	0	1	0	0	0	0	0	1
POST	11	0	0	0	0	0	0	11
Registrar of Contractors	964	124	94	26	8	2	0	1218
Secretary of State	6	1	0	0	4	0	0	11
Structural Pest Control	4	4	0	1	0	0	0	9
Water Quality Appls. Bd.	0	1	0	0	0	0	0	1
Weights and Measures	0	0	0	0	4	0	0	4
<b>TOTAL</b>	<b>2848</b>	<b>206</b>	<b>183</b>	<b>133</b>	<b>69</b>	<b>6</b>	<b>48</b>	<b>3493</b>

In FY 2005, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 18.60% of cases. Agency acceptance of contrary decisions was high at 78.74%.

Recommendations Contrary to Original Agency Position FY 2005



### Agency Response to Contrary Recommendations FY 2005



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

Client	Accept	Amend	Amendf	Reject	Cert	Moot	Final	Total
AHCCCS	102	3	31	42	3	0	0	181
Arizona Retirement Board	2	0	0	0	0	1	0	3
Bd. of Dental Examiners	0	0	0	1	0	0	0	1
Board of Appraisal	0	1	0	2	0	0	0	3
Board of Cosmetology	0	3	0	3	0	0	0	6
Board of Nursing	3	2	0	0	0	0	0	5
Building and Fire Safety	9	0	0	0	1	0	0	10
Capitol Police Parking	8	0	0	0	0	0	0	8
Charter Schools	0	1	0	1	0	0	0	2
Child Protective Services	24	2	2	0	0	0	0	28
Department of Gaming	0	0	0	0	1	0	0	1
Department of Insurance	0	0	0	0	5	0	0	5
Department of Real Estate	8	5	3	9	1	0	0	26
Department of Revenue	0	0	0	0	0	0	8	8
Dept. of Environ. Quality	1	0	0	3	0	0	0	4
Dept. of Health Services	10	0	0	1	0	0	0	11
DPS - Std. Transportation	0	0	0	1	0	0	0	1
Liquor Licenses/ Control	1	1	0	0	1	0	0	3
Massage Therapy	1	0	0	0	0	0	0	1
Optometry Board	0	1	0	0	0	0	0	1
Osteopathic Board	2	0	0	0	0	0	0	2
Registrar of Contractors	6	1	1	1	0	0	0	9
Secretary of State	1	1	0	0	0	0	0	2
Water Quality Appls. Bd.	0	1	0	0	0	0	0	1
<b>TOTAL</b>	<b>178</b>	<b>22</b>	<b>37</b>	<b>64</b>	<b>12</b>	<b>1</b>	<b>8</b>	<b>322</b>

## 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 2005, 65 Administrative Law Judge Decisions were certified by the OAH as final administrative decisions.

Department of Administration	1
Department of Environmental Quality	1
Department of Public Safety - Student Transportation	1
Department of Gaming	1
Arizona Medical Board	1
Liquor Licenses and Control	2
Arizona State Retirement System	2
Department of Health Services	3
Secretary of State	4
Department of Weights and Measures	4
Arizona Health Care Cost Containment System - 19	6
Registrar of Contractors	9
Department of Building and Fire Safety	11
Department of Insurance	19

## 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 2005, 12 motions were filed and one 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 point to the areas where uniformity or greater consistency can be accomplished:

### **1. Right to settlement conferences in “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 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.

### **3. 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.

### **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 rehearings 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. Archive Protocol

# The OAH



Janet Napolitano  
Governor

Cliff J. Vanell  
Director

Vol. 33

October 2004

[www.azoah.com](http://www.azoah.com)

Official Newsletter of the Arizona Office of Administrative Hearings

## Lights...Camera...Action...At Studio OAH

by Wendy S. Morton, Administrative Law Judge

The Office of Administrative Hearings ("OAH") is proud to announce the blockbuster hit video "Preparing for Hearing", a critically acclaimed, star-studded...CUT!

Not to worry, "Hollywood" has not gone to our heads.

At OAH, our mission has always been to provide fair and impartial hearings to parties in an atmosphere where everyone is treated with respect. Now, with a little "Hollywood" and a touch of technology, we are even better able to help serve those who appear before us. Unsure what to expect from your administrative hearing? Log on to our website ([www.azoah.com](http://www.azoah.com)) and access our new video, "Preparing for Hearing."

"Preparing for Hearing" introduces you to real-life scenarios from administrative hearings. "Ripped from the headlines" of our newsletter, you will have an opportunity to hear the answers to the

most commonly asked questions about appearing at OAH. You will get a chance to experience what an administrative hearing is like from the comfort of your own home.

"Preparing for Hearing" is an in-house production that was created using our local (and often hidden) talents. We shot "on-location," without a set dresser or any special effects. The scenes you will see take place in an actual OAH hearing room, so you will have a chance to sit in the seat you may sit in during your hearing. The parties and Administrative Law Judges you will see are not stunt doubles. They are the people that you may actually meet at OAH; in some cases, you may see the very judge you will appear before in your case. While all Judges have different personalities, you will get a feel for what it is like to appear before a Judge at hearing.

The video tracks the hearing process itself; from your initial preparation (writing direct and cross examination questions, and deciding what to bring to your hearing) to what to expect on the day

**"Lights, Camera, Action"**  
(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 current article may be found at OAH's website at [www.azoah.com](http://www.azoah.com) along with all previous articles published in the OAH Newsletter.

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 American states and cities, and Canadian

provinces, having adopted the model, with year of inception are: Alabama (1998); Alaska (2004); Arizona (1996); California (1961); City of Chicago (1997); Colorado (1976); Florida (1974); Georgia (1995); 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); Wyoming (1987); and Province of Quebec ( ).

### 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 **95.9%** of all Administrative Law Judge Decisions acted upon by the agencies.\* ALJ Decisions, including orders, were accepted without modification in **91.2%** of all Administrative Law Judge Decisions acted upon by the agencies. **64.8%** of all agency modification was of the order only (i.e. penalty assessed).

### Appeals to Superior Court:

There were 20 appeals filed in Superior Court.

### Rehearings:

The rehearing rate was **1.07%**, defined as rehearings scheduled (8) over hearings concluded (747).\*\*

### Completion Rate:

The completion rate was **94.4%**, defined as cases completed (2051) over new cases filed (2172).

### 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 **52.09 days**. The frequency of continuance, defined as the number of continuances granted (257) over the total number of cases first scheduled (2127), expressed as a percent, was **12.1%**. The ratio of first settings (2121) to continued settings on the calendar (196) was **1 to .0924**

### Dispositions:

Hearings conducted: **54.6%**; vacated prior to hearing: **43.9%**; hearings withdrawn by the agency: **1.5%**.

**Contrary Recommendations and Agency Response: 12.8%** 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 **68.6%**.

\*1.85% 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.

## “Lights, Camera, Action”

*(continued from page 1)*

of your hearing. Learn how to present opening statements and closing arguments by watching “parties” demonstrate what to do (and what not to do). Watch direct and cross examinations and making objections “risk free” and see if you can spot the most effective and least effective techniques.

Unsure about how to get a piece of evidence admitted? Observe the hearing process in a simplified, step-by-step demonstration and learn what pitfalls to avoid in your own hearing.



“Preparing for Hearing” can be viewed in its entirety (39:01 minutes) or in 10 different individual segments. They include Direct Examination, Cross Examination, Opening Statements, Closing Arguments, Exhibits, Objections, The Record, and Your Experience at OAH. We had so much fun “movie-making” that we also created a humorous review in a separate segment entitled “Don’t Do What *Denise Don’t Does*” (1:49).

For computer viewing, various formats (from broadband and cable to DSL to dialup) are available. You may also obtain a free DVD of “Preparing for Hearing” by contacting the OAH. Coming soon to our lobby, “Preparing for Hearing” will be played in an interactive kiosk so that you can select and review segments of interest as you await the start of your hearing.



The OAH staff and Judges enjoyed the creative process in bringing “Preparing for Hearing” to you. The process challenged us to think about each important segment of the hearing, and to explain and demonstrate each segment in a simple and entertaining way so that, by watching, parties can become more informed and more comfortable with the hearing



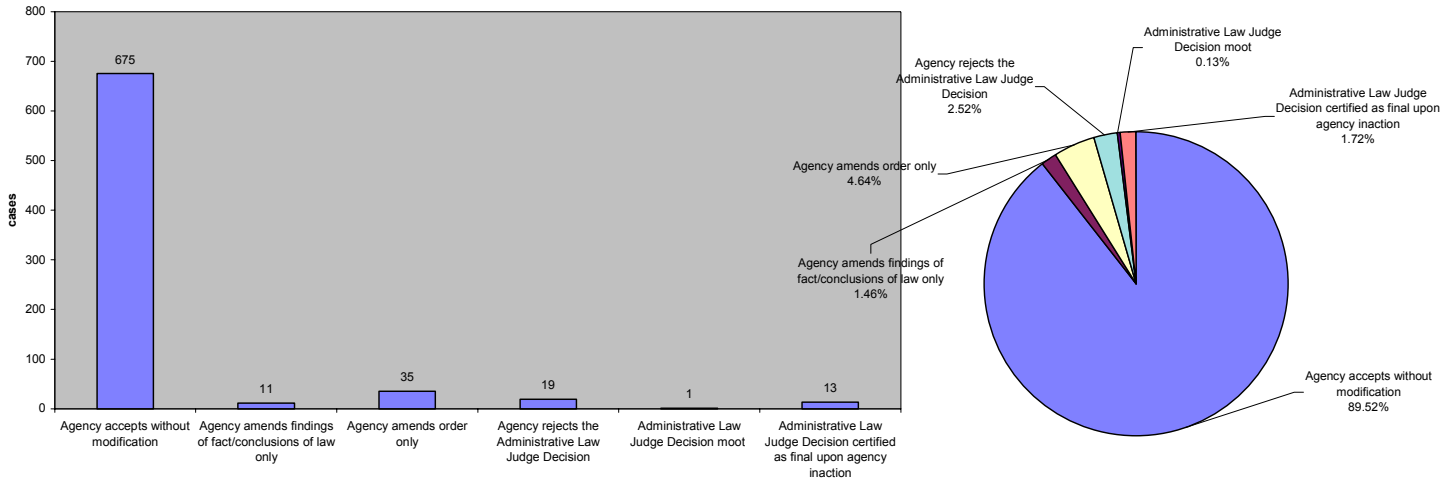
process. We want everyone who appears before us to understand what to expect and what will be expected of them. We believe that nothing ensures success like preparation. We hope that “Preparing for Hearing” assists you and that your hearing at OAH is a pleasant experience.

*“Just know your lines and don’t bump into the furniture.”*

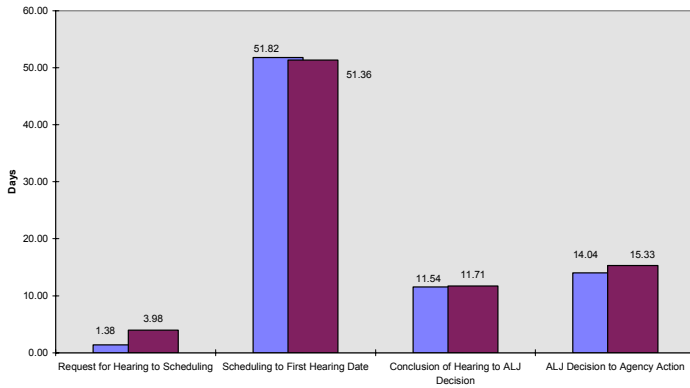
- Spencer Tracy

*“Acting is the most minor of gifts. After all, Shirley Temple could do it when she was four.”*

- Katherine Hepburn



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

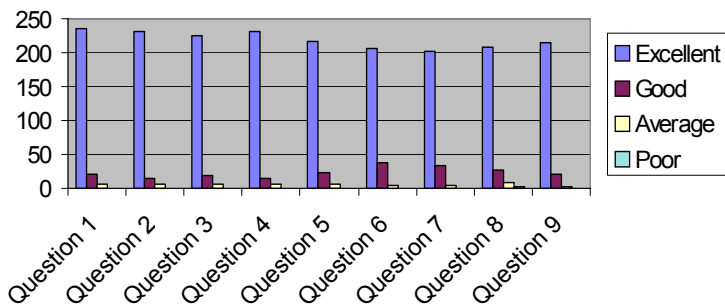
## 2,172 Cases Filed July 1, 2004 - September 30, 2004

	1st Q FY 2005			1st Q FY 2005			1st Q FY 2005	
Accountancy	2	2	Dental	5	5	Parks	0	0
Acupuncture Board	0	0	Economic Security	0	0	Peace Ofc. Standards	7	7
Administration	4	4	Economic Security-CPS	52	52	Physical Therapy	0	0
Admin. Parking	59	59	Education	1	1	Podiatry	0	0
Agriculture	0	0	Environ. Quality	32	32	Psychologist Examiners	0	0
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	113	113	Public Safety - CW	0	0
AHCCCS	826	826	Funeral	0	0	Public Safety - Trans	5	5
Alternative Fuel	0	0	Gaming	3	3	Public Safety - Adult CC	2	2
Appraisal	15	15	Health Services	115	115	Pvt. Post. Ed.	0	0
Arizona Trial Courts	0	0	Insurance	18	18	Racing	0	0
Arizona Retirement Sys	1	1	Land	3	3	Radiation Regulatory	0	0
Attorney General	1	1	Liquor	12	12	Registrar of Contractors	522	522
Arizona Works	0	0	Lottery	0	0	Real Estate	41	41
Athletic Board	0	0	Maricopa Cty. Housing	0	0	Revenue	32	32
Banking	13	13	Medical Board	2	2	School - Deaf & Blind	0	0
Behavioral Health Ex.	2	2	Medical Radiologic	0	0	Secretary of State	6	6
Building/Fire Safety	18	18	Naturopathic	0	0	Structural Pest Control	0	0
Charter Schools	1	1	Nursing	21	21	Technical Registration	0	0
Chiropractic	2	2	Nursing Care Admin.	3	3	Veterinary Board	0	0
Clean Elections	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	1	1
Community Colleges	0	0	Optometry	1	1	Water Resources	2	2
Cosmetology	3	3	Osteopathic	0	0	Weights and Measures	32	32

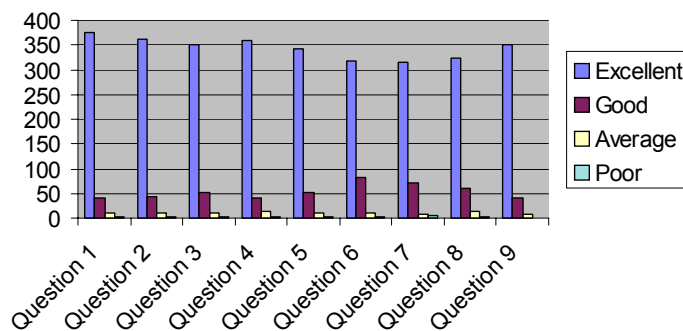
# Evaluations of OAH Services

**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 1st Quarter**



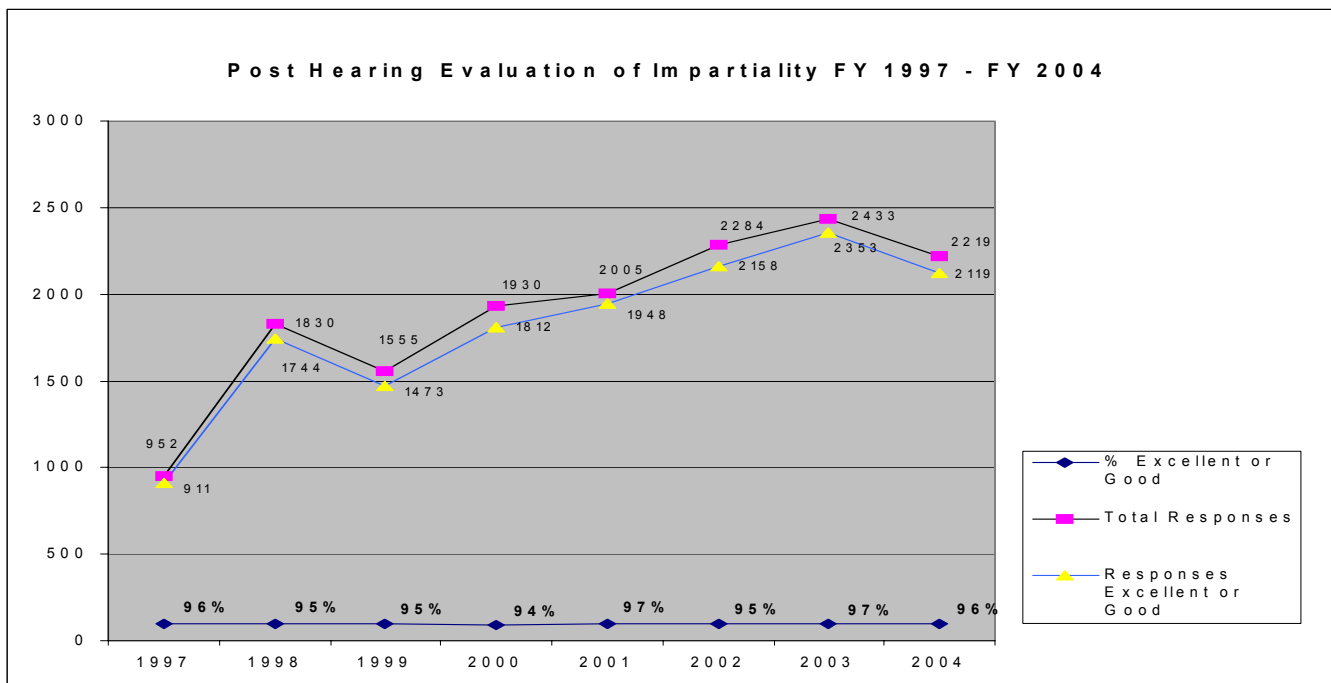
**All Responses 1st Quarter**



Questions:

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Attentiveness of ALJ</li> <li>2. Effectiveness in explaining the hearing process</li> <li>3. ALJ's use of clear and neutral language</li> <li>4. Impartiality</li> </ol> | <ol style="list-style-type: none"> <li>5. Effectiveness in dealing with the issues of the case</li> <li>6. Sufficient space</li> <li>7. Freedom from distractions</li> <li>8. Questions responded to promptly and completely</li> <li>9. Treated courteously</li> </ol> |
|--|---|

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. The following graph illustrates how we have been perceived by parties in regard to our core function of impartiality.



This publication is available in alternative formats. The OAH is an equal opportunity employer.

# The OAH



Janet Napolitano  
Governor

Cliff J. Vanell  
Director

Vol. 34  
January 2005

[www.azoah.com](http://www.azoah.com)

Official Newsletter of the Arizona Office of Administrative Hearings

## An Open Letter to the Administrative Law Judges

by Cliff J. Vanell, Director

As we begin our ninth year at the OAH, I can only thank you for the efforts you have given to your cases and the parties who have come before you. My words are in many ways distillations of what I have seen in you. We can never be too mindful of the effect we can have on

parties. We can never know enough, there will never be an end to the refinement that only experience, and yes, mistakes, can give us. We must be less distressed about an incorrect citation to the law, or a mistaken finding of fact. Those can be cured. It has been said that people will often not remember what we say, but they will remember how we made them feel. Let our greatest distress be for those times that we could have been more patient, chosen our words a little better, explained something yet again to a confused party.

A man is woken up at 2:00 am, dragged from his bed by strangers and carted off into another room when he is rendered unconscious, his body exposed and cut open. Eventually he regains consciousness to painfully heal over weeks and months. A crime scene? Yesterday's news?

This is surgery from the patient's point of view.

I first heard this take on a patient's experience from a faculty member of the Arizona Medical Center as she addressed first year medical students. The purpose was to sensitize them about how vulnerable patients can feel and how important it is to relieve stress and minimize trauma.

Surgery and the legal system have much in common. Both can be traumatic, both are necessary and must be endured, one to cure an illness, one to redress a grievance.

The creation of the OAH to a certain extent was designed to do for administrative hearings what the faculty member was exhorting future doctors to do. The OAH was designed to be user-friendly, accessible to the unrepresented, efficient, so that whatever ill could be addressed with the minimum of stress and trauma, personal, financial or otherwise.

Central to OAH's effort in this regard is the attention that we place on the character and demeanor of the Administrative Law Judge. It is with this in mind that I address my comments in this issue to the Administrative Law Judges of the OAH.

When I was a pro tem judge appearing in various courts throughout the Phoenix area, I created a simple ceremony of sorts that I used when I put on the black robe. I reminded myself that putting on that robe was a small death, a temporary setting aside of myself: my needs, my wants or preferences, my prejudices. I reminded myself that I had an obligation to the parties to do nothing, by word or by deed, to undermine the trust that the robe represented. It didn't matter how I felt, who I liked, what I was used to, or how sophisticated the parties were.

This moment of recollection was born not out of innate judging skills so much as the desire to measure up to the standards that I had seen in judges that I had

**"Open Letter"**

*(continued on page 2)*

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The process of unifying the administrative hearings function in OAH-style agencies began in 1945 with California. The current American states and cities, and Canadian

provinces, having adopted the model, with year of inception are: Alabama (1998); Alaska (2004); Arizona (1996); California (1961); City of Chicago (1997); Colorado (1976); Florida (1974); Georgia (1995); 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); Wyoming (1987); and Province of Quebec ( ).

### 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 **95.4%** of all Administrative Law Judge Decisions acted upon by the agencies.\* ALJ Decisions, including orders, were accepted without modification in **93.95%** of all Administrative Law Judge Decisions acted upon by the agencies. **33.36%** of all agency modification was of the order only (i.e. penalty assessed).

### Appeals to Superior Court:

There were **13** appeals filed in Superior Court.

### Rehearings:

The rehearing rate was **1.07%**, defined as rehearings scheduled (10) over hearings concluded (936).\*\*

### Completion Rate:

The completion rate was **101.2%**, defined as cases completed (2066) over new cases filed (2042).

### 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 **48.58 days**. The frequency of continuance, defined as the number of continuances granted (239) over the total number of cases first scheduled (2010), expressed as a percent, was **11.89%**. The ratio of first settings (2105) to continued settings on the calendar (230) was **1 to .109**

### Dispositions:

Hearings conducted: **56.8%**; vacated prior to hearing: **41.3%**; hearings withdrawn by the agency: **1.9%**.

### Contrary Recommendations and Agency Response: 13.8%

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 **85.45%**.

\*1.08% 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.

## “Open Letter”

*(continued from page 1)*

appeared before for many years as a prosecutor. It was born of the knowledge that I could be abrupt if I was not careful. That I could wrongly assume that the parties knew more about the process than they did; that I could forget that the parties often were less comfortable than they appeared, that judges can look very scary, and that people want to believe that win, lose or draw, they were given a fair shake to explain their side before someone they could respect. Therefore, I must speak more slowly, react less frequently, take a little more time to explain, express compassion, and be aware of my expressions.

As Administrative Law Judges of the Office of Administrative Hearings, you do not wear robes. Instead, you hold yourselves accountable through the evaluations that you bring to the attention of the parties at your hearings. Even more so than any symbolic representation of your positions, they flatly challenge you to measure up to explicit expectations of a judge.

Socrates said that there are four things important for a judge: to listen patiently, to speak wisely, to deliberate soberly and to decide impartially.

### To listen patiently

The very fact that hearings are called “hearings” establishes the pivotal nature of listening. But the very act of listening involves the need for patience. We all approach explaining things in different ways. The very fact that some people can tell jokes and some can’t, demonstrates that presentation can sometimes be everything. Yet at hearing, great latitude must be given for personal style, choices of words, cadence and volume in speaking and the choices people make in what to approach first. Failure to allow the

necessary latitude results in frustration in the parties and consequently the judge saying more and more and the parties saying less.

### To speak wisely

To speak wisely is to say what is necessary and useful. For a judge, speech should be primarily to encourage others to speak about their positions. This is done by explaining the procedures that will be employed at hearing. It consists of ruling on objections in a way to help parties know what was objectionable and how to proceed.

### To deliberate soberly

Every case is the most important to the parties. Thus, every case must be given the attention it deserves, without

distraction and with as much understanding as we can muster. We must be conscious of the forces that can distract us, be they unguarded presuppositions, routine, professional pride, annoyance with an unruly witness or party, or personal problems.

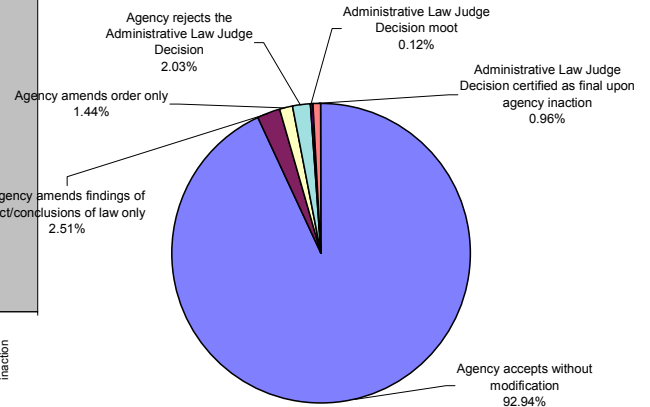
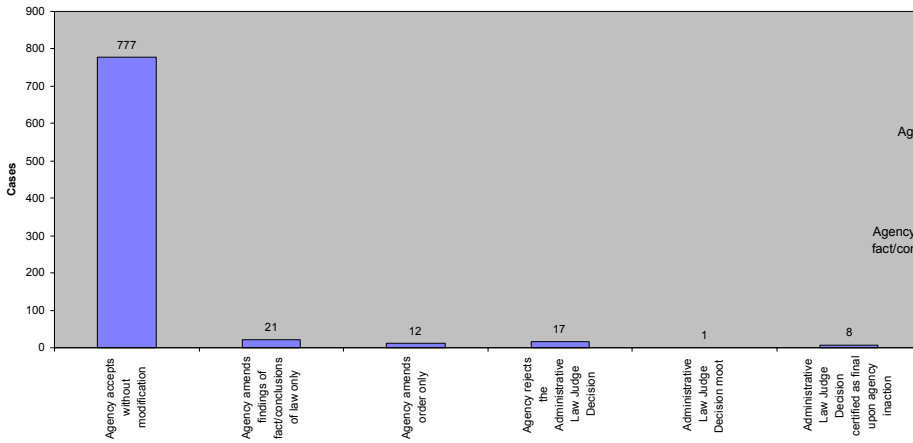
### To decide impartially

It has been said that the opposite of love is not hate, but disinterest. Dispassion should not be mistaken for impartiality, since excessive bloodlessness can rob the judge of the necessary impetus to word a decision so as to respect all parties as people with real live interests, emotions and sensitivities. The ideal judge is one who is impartial, not because dispassionate or uninterested, but because equally passionate for and interested in the needs of both parties.

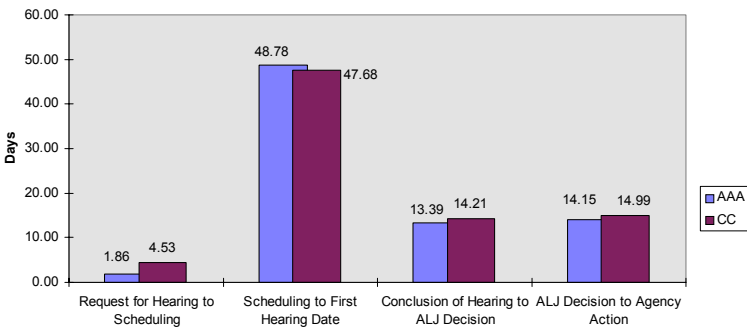
Consistent with these principles, you ask parties to reflect on your attentiveness, your effectiveness in explaining the hearing process, your use of clear and neutral language, your impartiality, and your effectiveness in dealing with the issues of the case. You ask whether they have been given sufficient space, free from distractions, and whether they have had their questions responded to promptly and completely. You want to know whether they have been treated courteously by all.

As any judge must necessarily admit, we do not always measure up to our standards. We are a human institution. However, we become increasingly refined as we remain open, approachable and teachable. Citizens would be heartened to know how vigorously we strive to receive comment and how seriously we take it when we receive it. Let us all renew our commitment to provide full, fair, impartial, independent and prompt hearings to all who come before us. For my part, I promise to support you in your continuing education, listen when you have concerns, and challenge you to meet the highest levels of public service that you can provide.

Agency Response to Administrative Law Judge Decisions October 1, 2004 - December 31, 2004



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

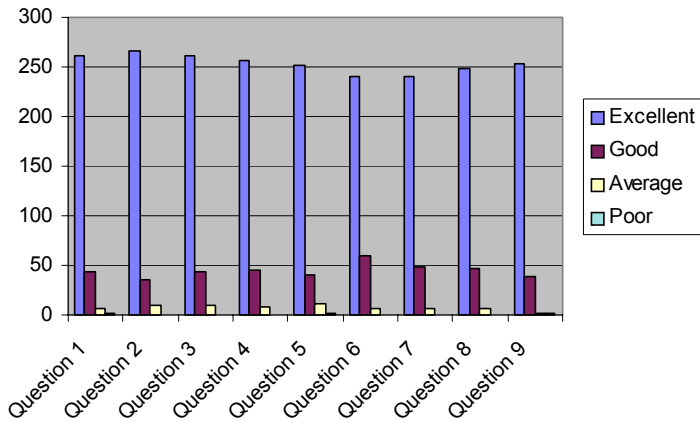
## 2042 Cases Filed October 1, 2004 - December 31, 2004

	2nd Q	FY 2005		2nd Q	FY 2005		2nd Q	FY 2005
Accountancy	1	3	Economic Security	0	0	Peace Ofc. Standards	2	9
Acupuncture Board	0	0	Economic Security-CPS	62	115	Physical Therapy	0	0
Administration	0	4	Education (Department)	4	5	Podiatry	0	0
Admin. Parking	85	144	Environ. Quality	39	71	Psychologist Examiners	1	1
Agriculture	1	1	Fingerprinting	80	193	Public Safety - CW	3	5
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Trans	6	11
AHCCCS	975	1992	Gaming	1	4	Public Safety - Adult CC	0	0
Alternative Fuel	0	0	Health Services	89	204	Pvt. Post. Ed.	0	0
Appraisal	15	30	Insurance	22	40	Racing	0	0
Arizona Trial Courts	0	0	Land	1	4	Radiation Regulatory	0	0
Arizona Retirement Sys.	3	4	Liquor	12	24	Registrar of Contractors	467	989
Attorney General	0	1	Lottery	0	0	Real Estate	41	82
Arizona Works	0	0	Maricopa Cty. Housing	0	0	Revenue	11	43
Athletic Board	0	0	Massage Therapy	4	4	School - Deaf & Blind	0	0
Banking	7	20	Medical Board	5	8	Secretary of State	3	9
Behavioral Health Ex.	1	2	Medical Radiologic	0	0	State Board of Education	1	1
Building/Fire Safety	14	32	Naturopathic	0	0	Structural Pest Control	2	9
Charter Schools	5	6	Nursing	21	42	Technical Registration	1	1
Chiropractic	3	5	Nursing Care Admin.	3	6	Veterinary Board	0	0
Clean Elections	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	3	4
Community Colleges	0	0	Optometry	0	1	Water Resources	2	4
Cosmetology	0	3	Osteopathic	0	0	Weights and Measures	40	72
Dental	6	11	Parks	0	0			

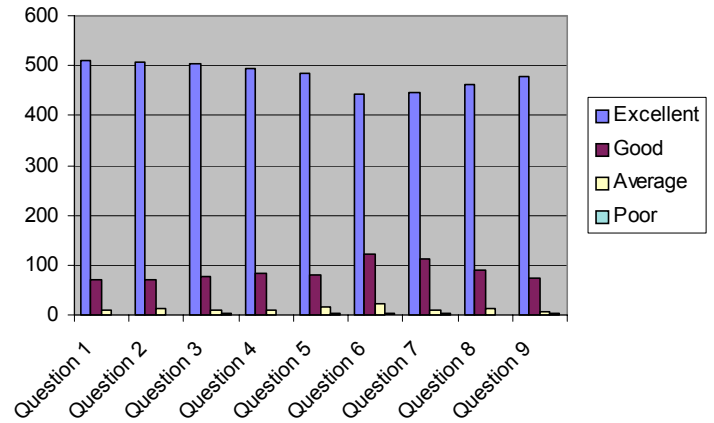
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**Unrepresented Responses 2nd Quarter**



**All Responses 2nd Quarter**



Questions:

1. Attentiveness of ALJ
2. Effectiveness in explaining the hearing process
3. ALJ's use of clear and neutral language
4. Impartiality

5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded to promptly and completely
9. Treated courteously

# The OAH



Janet Napolitano  
Governor

Cliff J. Vanell  
Director

Vol. 35

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www.azoah.com

## Official Newsletter of the Arizona Office of Administrative Hearings

# Representation in ROC Disciplinary Proceedings

by Daniel G. Martin, Administrative Law Judge

### Introduction

One of the first questions that confronts a contractor facing a Registrar of Contractors ("ROC") disciplinary proceeding is the question of representation. Contractors often choose to retain legal counsel in such proceedings, but many contractors choose to represent themselves. The following article provides a brief overview of who may represent a contractor in a disciplinary proceeding, and under what circumstances.

### ROC Disciplinary Proceedings: A Brief Overview

When a complaint is filed with the ROC against a licensed contractor, the ROC initiates an investigation. If, after completion of its investigation, the ROC believes that grounds exist that may support the imposition of discipline against the contractor, the ROC will issue a Citation and Complaint against the contractor's license. The ROC may also issue a Citation and Complaint at the request of the complaining party. Generally, the Citation and Complaint will allege one or

more violations of Arizona Revised Statutes ("A.R.S.") § 32-1154(A), which sets forth the grounds upon which a contractor's license may be suspended or revoked.

If the ROC issues a Citation and Complaint against a contractor's license, the contractor is required to file a written answer within ten (10) days (an additional five (5) days are permitted if the answer is sent by mail). If the contractor fails to answer within the required time period, the ROC deems such failure an admission of the charges set forth in the complaint, and may take disciplinary action against the contractor's license without any further proceedings. Typically, however, a contractor against whom a Citation and Complaint has been issued files a written answer, and the case is thereafter referred for hearing to the Office of Administrative Hearings ("OAH").

ROC hearings are conducted before OAH Administrative Law Judges. ROC hearings are adversarial, and are conducted in a manner similar to judicial proceedings. Attendance is required, and all parties must be prepared to present evidence in support of their position.

If after hearing a contractor is found to have violated one or more provisions of A.R.S. § 32-1154(A) (or other statutory provisions, as applicable), the ROC may impose

**Director's note:** OAH is committed to fairness and making hearings accessible to all. The above article, originally written for and published in the January 2003 ROC Newsletter, 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 article may be found at OAH's website at [www.azoah.com](http://www.azoah.com) along with all previous articles published in the OAH Newsletter.

**"Representation "**

*(continued on 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 American states and cities, and Canadian

provinces, having adopted the model, with year of inception are: Alabama (1998); Alaska (2004); Arizona (1996); California (1961); City of Chicago (1997); Colorado (1976); Florida (1974); Georgia (1995); 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); Wyoming (1987); and Province of Quebec ( ).

### 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 **93.13%** of all Administrative Law Judge Decisions acted upon by the agencies.\* ALJ Decisions, including orders, were accepted without modification in **86.59%** of all Administrative Law Judge Decisions acted upon by the agencies. **67.04%** of all agency modification was of the order only (i.e. penalty assessed).

### Appeals to Superior Court:

There were **28** appeals filed in Superior Court.

### Rehearings:

The rehearing rate was **1.06%**, defined as rehearings scheduled (10) over hearings concluded (944).\*\*

### Completion Rate:

The completion rate was **107.8%**, defined as cases completed (2128) over new cases filed (1973).

### 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 **48.02 days**. The frequency of continuance, defined as the number of continuances granted (209) over the total number of cases first scheduled (2031), expressed as a percent, was **10.29%**. The ratio of first settings (2029) to continued settings on the calendar (246) was **1 to 0.12**.

### Dispositions:

Hearings conducted: **53.5%**; vacated prior to hearing: **43.8%**; hearings withdrawn by the agency: **2.7%**.

### Contrary Recommendations and Agency Response:

**18.46%** 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 **83.53%**.

\* 2.49% 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.

## “Representation”

*(continued from page 1)*

one or more disciplinary penalties against the contractor, up to and including revocation of the contractor’s license. Therefore, the manner in which a contractor chooses to represent himself, herself or itself at hearing can have significant ramifications, and is not a decision to be lightly or hastily made.

### Who May Represent a Contractor in an ROC Disciplinary Proceeding?

Although the general rule is that only an attorney may represent a contrac-

tor in an ROC disciplinary proceeding before the OAH, there are a number of exceptions to this rule. The scope and extent of these exceptions depend on whether the licensee is an individual (sole proprietor) or a legal entity (corporation, limited liability company, general partnership, limited partnership or limited liability partnership); therefore, this article addresses each different type in turn.

### Individual (Sole Proprietor)

If the licensee is an individual person (i.e., a sole proprietor or sole owner), then the only person who can represent the licensee at an ROC disciplinary hearing, other than an attorney, is the licensee himself. No other person may represent the licensee, including the licensee’s qualifying party or an employee of the licensee. The only time that a qualifying party will be permitted to represent a sole proprietor is when the qualifying party and the sole proprietor are the same person.

### Corporation

If the licensee is a corporation, it may be represented at an ROC disciplinary hearing by a full-time officer or an employee (including the

qualifying party), provided that: (1) the corporation has specifically authorized such person to represent it in the particular matter; (2) such representation is not the person’s primary duty to the corporation, but is secondary or incidental to other duties relating to the management or operation of the corporation; and (3) the person is not receiving separate or additional compensation from the corporation (other than reimbursement for costs) for such representation.

A director of a corporation may not represent the corporation solely by virtue of his or her position as a director. The only time that a director may represent a corporation is when such director is also a full-time officer or an employee of the corporation.

### Limited Liability Company

If the licensee is a limited liability company (LLC), it may be represented at an ROC disciplinary hearing by a member, manager, full-time officer or employee (including the qualifying party), subject to the rule described above for corporations, i.e., the member, manager, full-time officer or employee must be specifically authorized, the representation must be a secondary or incidental duty, and the member, manager, full-time officer or employee must not receive additional compensation from the limited liability company other than reimbursement for costs.

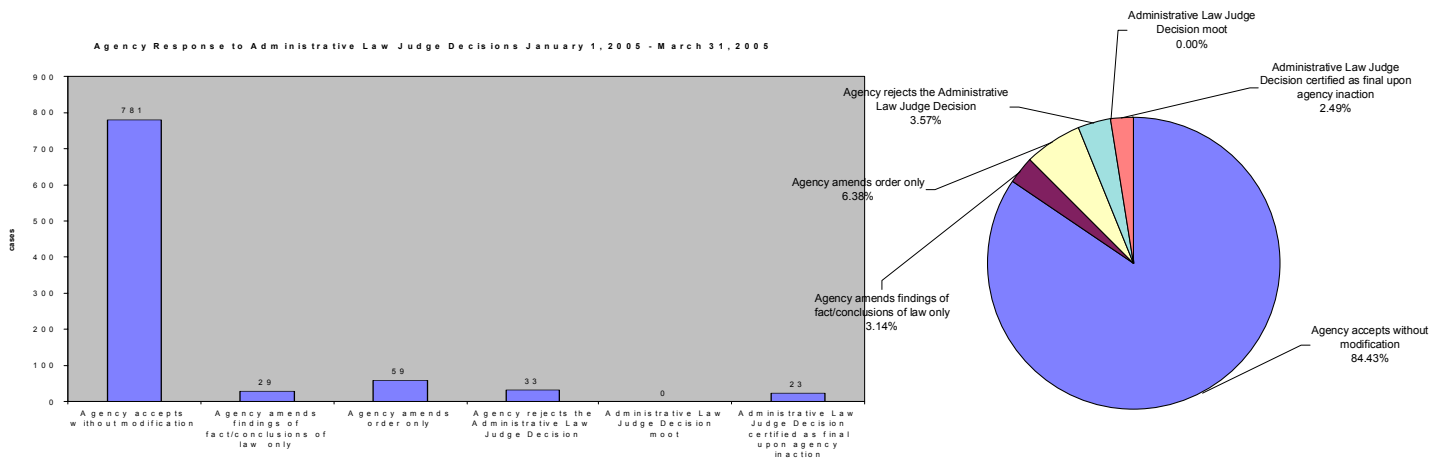
The terms “member” and “manager”, when used in reference to limited liability companies, are specialized terms defined by Arizona’s Limited Liability Company Act (the “Act”). A “member” is a person who has been admitted as a member in a limited liability company pursuant to the Act. A “manager” is a person in whom authority for management of the limited liability company is specifically vested by the limited liability company’s articles of organization.

### General Partnership

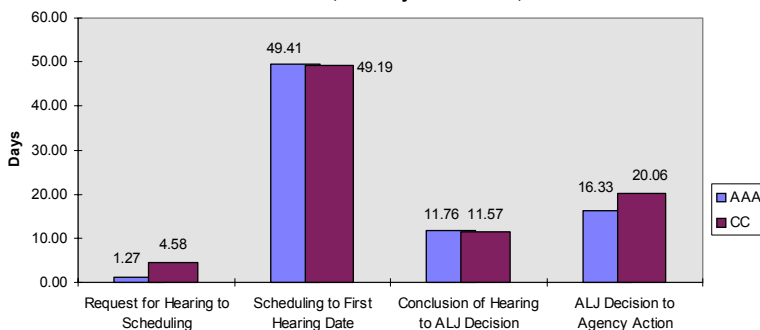
If the licensee is a general partnership (including a limited liability general partnership), it may be represented at an ROC disciplinary hearing by a partner or an employee (including the qualifying party), subject to the rule described above for corporations, i.e., the partner or employee must be specifically authorized, the representation must be a secondary or incidental duty, and the partner or employee must not receive additional compensation from the partnership other than reimbursement for costs.

### Limited Partnership

If the licensee is a limited partnership (including a limited liability limited partnership), it may be represented at an ROC disciplinary hearing by a general partner or an employee (including the qualifying party), subject to the rule described above for corporations, i.e., the general partner or employee must be specifically authorized, the representation must be a secondary or incidental duty, and the general partner or employee must



**Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases\*, January 1 - March 31, 2005**



\*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.

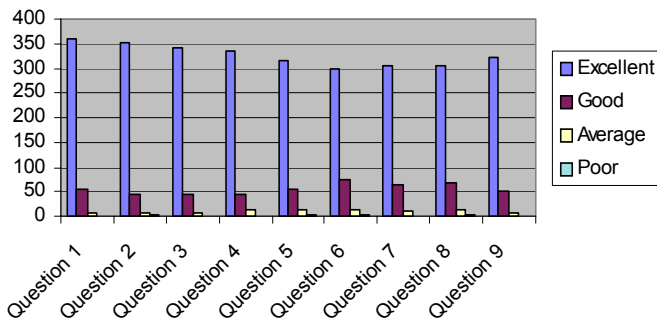
## 1973 Cases Filed January 1, 2005- March 31, 2005

	3rd Q	FY 2005		3rd Q	FY 2005		3rd Q	FY 2005
Accountancy	5	8	Economic Security	0	0	Parks	0	0
Acupuncture Board	0	0	Economic Security-CPS	35	150	Peace Ofc. Standards	4	13
Administration	3	9	Education (Board)	0	1	Physical Therapy	0	0
Admin. Parking	101	245	Education (Department)	0	5	Podiatry	0	0
Agriculture	1	2	Environ. Quality	52	123	Psychologist Examiners	1	2
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	20	213	Public Safety - CW	4	9
AHCCCS	888	2880	Funeral	0	0	Public Safety - Trans	10	21
Alternative Fuel	0	0	Gaming	3	7	Public Safety - Adult CC	0	0
Appraisal	8	38	Health Services	75	279	Pvt. Post. Ed.	0	0
Arizona Trial Courts	0	0	Insurance	17	57	Racing	0	0
Arizona Retirement Sys.	7	11	Land	2	6	Radiation Regulatory	0	0
Attorney General	0	1	Liquor	20	44	Registrar of Contractors	510	1499
Arizona Works	0	0	Lottery	0	0	Real Estate	36	118
Athletic Board	0	0	Maricopa Cty. Housing	0	0	Revenue	17	60
Banking	15	35	Massage Therapy	0	4	School - Deaf & Blind	0	0
Behavioral Health Ex.	0	2	Medical Board	7	14	Secretary of State	3	12
Building/Fire Safety	22	54	Medical Radiologic	0	0	State Board of Education	0	0
Charter Schools	5	11	Naturopathic	1	1	Structural Pest Control	6	15
Chiropractic	1	6	Nursing	34	76	Technical Registration	2	3
Clean Elections	0	0	Nursing Care Admin.	3	9	Veterinary Board	0	0
Community Colleges	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	1	5
Cosmetology	7	10	Optometry	2	3	Water Resources	0	4
Dental	2	13	Osteopathic	0	0	Weights and Measures	43	115

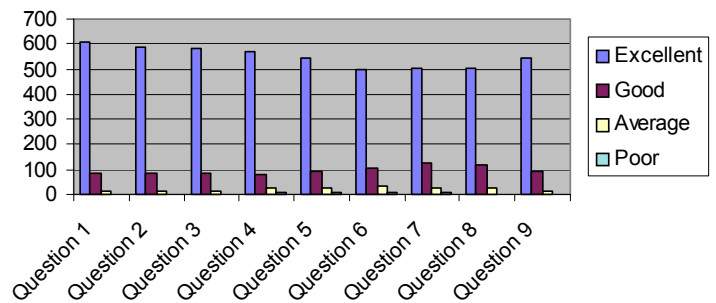
# Evaluations of OAH Services

**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
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8. Questions responded to promptly and completely
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not receive additional compensation from the partnership other than reimbursement for costs.

## Authorization for Representation

The OAH does not ordinarily require representatives of legal entities to produce written proof of their authority to represent the entity at hearing. However, a person claiming to be so authorized may be required to swear to such authorization under oath.

## Compliance with Hearing Procedures

One common question that arises in ROC disciplinary proceedings is that of the non-lawyer who asks how he or she can be expected to comply with the statutes, rules and procedures that govern hearings before the OAH. Although the OAH strives to make the hearing process as easy and straightforward as possible, certain rules do apply, and all participants in the hearing are expected to be familiar with and to follow those rules.

Parties to an ROC disciplinary proceeding should prepare themselves by thoroughly reviewing the ROC Citation and Complaint and other correspondence or documentation issued by the ROC, by

gathering evidence that supports their claim or defense, by arranging for the attendance of witnesses, either voluntarily or by subpoena, and by familiarizing themselves with the OAH's statutes and procedural rules by visiting the OAH personally or logging on to the OAH's website ([www.azoah.com](http://www.azoah.com)). Parties may also view streaming videos from the website designed to assist parties in preparing for hearing, or obtain a copy of the CD, "Preparing for Hearing," by contacting the OAH. Because ROC proceedings before the OAH are open to the public, parties may also attend and view hearings in separate cases in front of their assigned Administrative Law Judge in order to see firsthand how the hearing process works.

## Conclusion

As can be seen from the above discussion, the question of who may represent a contractor at an ROC disciplinary proceeding depends on a number of factors. Contractors who are facing a disciplinary proceeding should give careful consideration to who they choose to represent them, and pay close attention to the legal requirements for representation to ensure that the person they choose to represent them at hearing will be able to do so.

# The OAH



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Official Newsletter of the Arizona Office of Administrative Hearings

## Videoconferencing in Registrar of Contractors Hearings

by Cliff J. Vanell, Director

The mission of the Office of Administrative Hearings (OAH) is to provide full, fair, impartial, independent and prompt hearings to parties appearing before us. Government is a scarce resource and must be managed to find efficiencies so that more people can be served in a timely way. With the increased level of home construction, there has been a corresponding increase in the number of complaints filed with the Registrar of Contractors (ROC) and, therefore, an increase in hearings referred to the OAH. In FY 2003 (July 1, 2002 - June 30, 2003), the number of ROC cases set for hearing was 1648. By FY 2005 (July 1, 2004 - June 30, 2005), the number had risen to 2065, representing a 25% increase.

### The Need to Increase the Frequency of Hearings Convened Outside of the Phoenix and Tucson Metropolitan Areas

The OAH convenes hearings in seven areas outside of the metropolitan areas of Phoenix and Tucson: Flagstaff, Kingman, Lake Havasu City, Prescott, Show Low, Sierra Vista, and Yuma. From January 1996 through July 2005, hearings were conducted by 8 Administrative Law Judges traveling for week-long dockets in these outlying areas. From FY 2003 to FY 2005, the number of requests for hearing rose from 356 to 535, representing a 50% increase. The number of travel weeks increased from 57 to 79.

In FY 2004, the hearing date for the average ROC case in the metropolitan areas was set 68 days after receipt of a request for hearing. Because of the logistics of travel, the hearing date for the average case in the outlying areas was set 108 days from the request for hearing. By FY 2005, the hearing date setting had remained 68 days for the average case in the metropolitan areas, but had risen to 111 days in the outlying areas.

In FY 2004, when an ROC case was continued, it could be restored to the calendar in an average of 48 days in the metropolitan areas, but required 70 days for the



**"Videoconferencing"**  
(continued on page 2)

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The process of unifying the administrative hearings function in OAH-style agencies began in 1945 with California. The current American states and cities, and Canadian

provinces, having adopted the model, with year of inception are: Alabama (1998); Alaska (2004); Arizona (1996); California (1961); City of Chicago (1997); Colorado (1976); Florida (1974); Georgia (1995); 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); Wyoming (1987); and Province of Quebec ( ).

#### Mission Statement:

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## 4th Quarter Statistics At A Glance

### Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **83.13%** of all Administrative Law Judge Decisions acted upon by the agencies.\* ALJ Decisions, including orders, were accepted without modification in **71.69%** of all Administrative Law Judge Decisions acted upon by the agencies. **50.7%** of all agency modification was of the order only (i.e. penalty assessed).

### Appeals to Superior Court:

There were **30** appeals filed in Superior Court.

### Rehearings:

The rehearing rate was **1.82%**, defined as rehearings scheduled (13) over hearings concluded (714).\*\*

### Completion Rate:

The completion rate was **87.38%**, defined as cases completed (2028) over new cases filed (2321).

### Continuance:

The average length of a first time continuance based on a sample of cases (first hearing setting and first continuance both occurred in the 4th quarter) was **48.02 days**. The frequency of continuance, defined as the number of continuances granted (241) over the total number of cases first scheduled (2278), expressed as a percent, was **10.57%**. The ratio of first settings (1953) to continued settings on the calendar (215) was **1 to 0.11**

### Dispositions:

Hearings conducted: **49%**; vacated prior to hearing: **47.5%**; hearings withdrawn by the agency: **3.6%**.

### Contrary Recommendations and Agency Response:

**20.65%** 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 **78.20%**.

\* 2.32% 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.



outlying areas. By FY 2005, 104 days were required to reset a case in the outlying areas, versus 54 days in the metropolitan areas.

### More Travel Not a Solution

Aside from the tremendous personal burden on the 8 Administrative Law Judges assigned to preside over all ROC cases, the amount of time lost in transit and the increasing amount of delay in scheduling and hearing cases in the outlying areas made increasing the number of travel weeks an untenable solution.

In FY 2003, 733 hours were spent in travel preparation, transit time to the various sites, and down time due to settled cases. In FY 2004, the total climbed to 777.8 hours and in FY 2005, that

number continued to increase to 881.7 hours. Those hours equate to 18.3 weeks in FY 2003, 19.5 weeks in FY 2004 and 22 weeks in FY 2005. That time could have been used in productive hearing and writing time. Such hidden costs of travel illustrate that increasing the number of travel weeks would not be efficient.

### The Videoconferencing Solution

The explosion in ROC cases in the outlying areas and the delay and inefficiencies occasioned by travel dockets required a rethinking of how services could be better supplied to the outlying areas.

In June 2005, the OAH began implementing ROC hearings by videoconferencing in the following order: Kingman, Show Low, Prescott, Lake Havasu City, Flagstaff, Sierra Vista, and Yuma. As a result, the 79 travel weeks of FY 2005 will be replaced in FY 2006 with 104 week-long videoconference dockets devoted to those outlying areas. Settings and continued settings for the outlying areas are now comparable to the metropolitan areas. The time normally lost to travel and vacated hearings in a travel situation has been reallocated to the setting of an estimated 110 additional hearings in FY 2006.

Videoconference technology has allowed the OAH to level the field in providing efficient services to both the metropolitan and outlying areas. The OAH will continue to look for ways to further refine its processes to better contribute to the quality of life in Arizona.

## The Nuts and Bolts of Videoconferencing

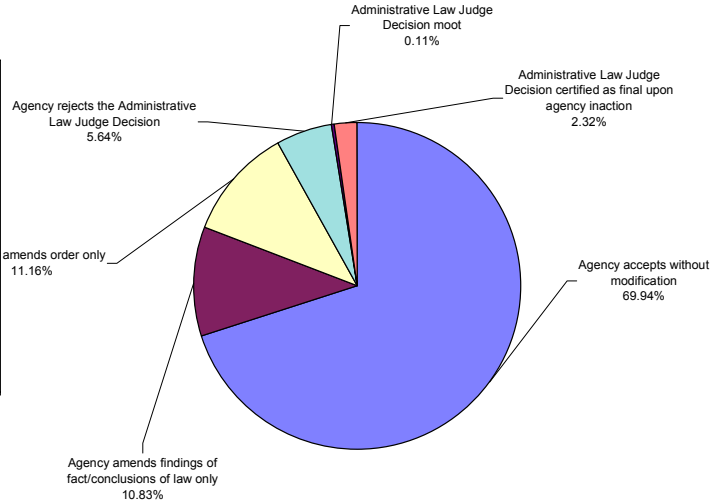
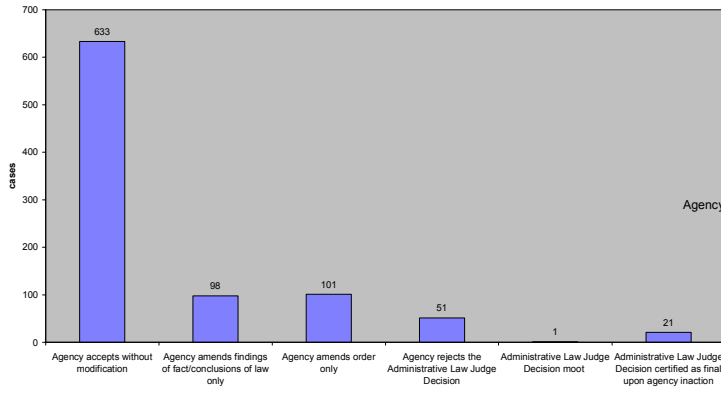
Hearings continue to be held in the outlying areas, and all parties, witnesses and counsel must appear at those ROC offices. The ALJ appears at those locations via videoconference from either Phoenix or Tucson. The ALJ views the parties, witnesses and counsel on a 32" monitor set up in the ALJ's chambers. A camera and monitor is also located at the various ROC offices permitting the parties to see the ALJ. Although the parties' view of the ALJ remains static, the ALJ has the ability to move the camera to permit closer observation of parties, witnesses and exhibits. A document camera is also set up in the hearing rooms to allow closer inspection of physical evidence.

Because the ALJ is not physically present, parties are informed by Minute Entry prior to the hearing that they must presubmit documents to the ALJ. Parties are also informed that they must have copies available for all other parties at the time of the hearing. Although documents are presubmitted, opposing parties may still make objections to their admission.

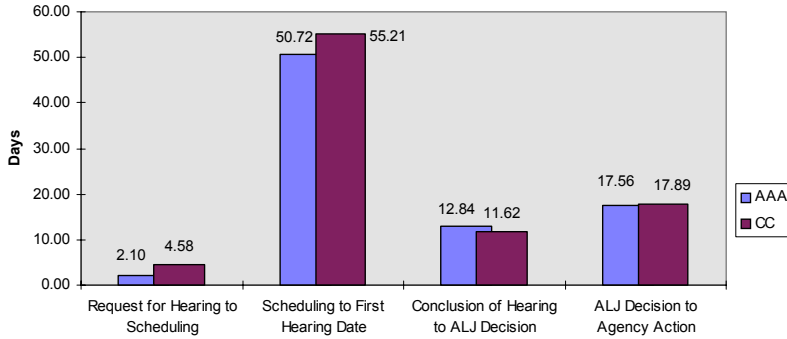
A digital recorder preserves the audio record. The video portion is not recorded or preserved.

To view a streaming video demonstrating videoconferencing, visit our website at <http://www.azoah.com/Video2.htm>

Agency Response to Administrative Law Judge Decisions April 1, 2005 - June 30, 2005



Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases\*, April 1 - June 30, 2005



\*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.

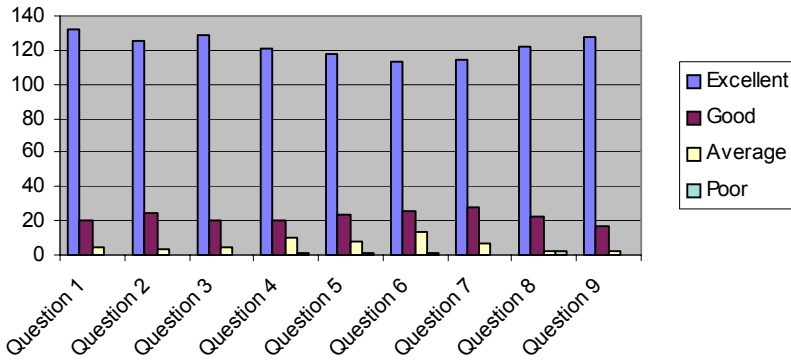
## 2321 Cases Filed April 1, 2005- June 30, 2005

	4th Q	FY 2005		4th Q	FY 2005		4th Q	FY 2005
Accountancy	4	12	Economic Security-CPS	45	195	Physical Therapy	0	0
Acupuncture Board	0	0	Education (Board)	0	1	Podiatry	0	0
Administration	2	8	Education (Department)	2	7	Psychologist Examiners	0	2
Admin. Parking	90	335	Environ. Quality	40	163	Public Safety - CW	0	9
Agriculture	0	2	Fingerprinting	2	218	Public Safety - Trans	4	25
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Adult CC	0	0
AHCCCS	1170	4050	Gaming	3	10	Pvt. Post. Ed.	0	0
Alternative Fuel	0	0	Health Services	67	346	Racing	1	1
Appraisal	6	44	Insurance	14	71	Radiation Regulatory	0	0
Arizona Trial Courts	0	0	Land	0	6	Registrar of Contractors	566	2065
Arizona Retirement Sys.	8	19	Liquor	17	61	Real Estate	43	161
Attorney General	1	2	Lottery	0	0	Revenue	20	80
Arizona Works	0	0	Maricopa Cty. Housing	0	0	School - Deaf & Blind	0	0
Athletic Board	0	0	Massage Therapy	4	8	Secretary of State	2	14
Banking	11	46	Medical Board	0	14	State Board of Education	0	0
Behavioral Health Ex.	2	4	Medical Radiologic	0	0	Structural Pest Control	8	19
Building/Fire Safety	32	86	Naturopathic	1	2	Technical Registration	1	4
Charter Schools	2	13	Nursing	34	110	Veterans Home	1	1
Chiropractic	6	12	Nursing Care Admin.	0	9	Veterinary Board	0	0
Clean Elections	3	3	Occupation Therapy	0	0	Water Qual. App. Bd.	0	5
Community Colleges	0	0	Optometry	0	3	Water Resources	2	6
Cosmetology	1	11	Osteopathic	0	0	Weights and Measures	98	213
Dental	5	18	Parks	0	0			
Economic Security	1	1	Peace Ofc. Standards	3	16			

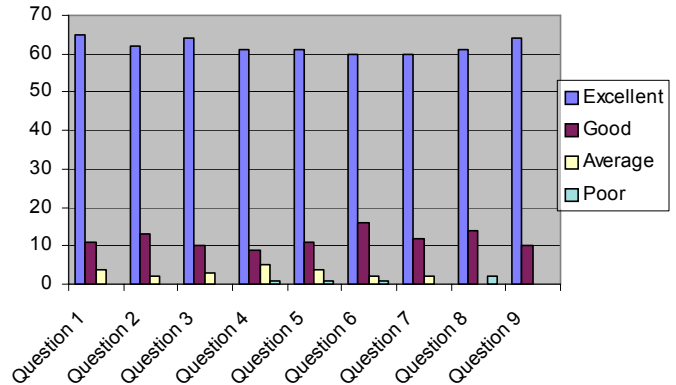
# Evaluations of OAH Services

**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.

**All Responses 4th Quarter**



**Unrepresented Responses 4th Quarter**



**Questions:**

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

## Our Thanks

The support of Israel G. Torres, Director of the Registrar of Contractors, was essential to the OAH's rapid conversion to Videoconferencing. Each ROC remote office made room for OAH's videoconference equipment, and made time for setup and training. The ROC made the necessary technical adjustments, including installing high speed internet access in its remote offices. The ROC is in the process of making further technical changes to permit full control of the remote cameras by the ALJs. Each videoconference hearing day, ROC staff members in the outlying areas take the necessary steps that allow the hearing to take place. We recognize the degree of coordination and interagency cooperation by the ROC, and in particular the following individuals:

Israel G. Torres, Director of the Registrar of Contractors.

Phoenix: Nancy Kyser, Information Technology Manager; Ken Roundtree, Information Technology Specialist.

Kingman: Shelly Stein, Support Staff; Bill Redman, Inspector; Jim Stull, Investigator.

Prescott: Mary Rondinara, Support Staff; Dan LaFond, Inspector; John Prince, Inspector; Gary Fell, Investigator.

Flagstaff: Stella Ousley, Support Staff; Mark Schweiger, Inspector; Dan Fishel, Investigator.

Show Low: Sparkey Snyder, Support Staff; Tom Sandoval, Inspector; Dawn Wilson, Investigator.

Sierra Vista: Renee Knoll, Support Staff; Mike Nieves, Inspector; Doc Moore, Investigator.

Lake Havasu City: Linda Giesen, Support Staff; Don Herman, Inspector; Cliff Corlett, Investigator.

Yuma: Rosie Lucero, Support Staff; Luis Rodriguez, Inspector; Jeff Cedar, Investigator.

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

## **1.0 Overview:**

**1.1** A.R.S. § 41-1092.01(C)(6) provides that the Director of the Office of Administrative Hearings (OAH) 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 the 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 mutually 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 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 captured, 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:

3.3.1.2.1 Cases.

3.3.1.2.2 Decisions, opinions and reports.

**3.3.1.3** The ability to text search all decisions, opinions and reports.

**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** 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.
- 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 the 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 by opening and comparing a statistically significant, random sample of the 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 3.3 and import all items described in Section 3.2.
- 3.5.11** All documents and data will be maintained on-line. At such time that the OAH determines to transfer portions of the OAH-CM to off-line or near-line storage, ASLAPR will be notified and these inactive portions will be copied or exported and transferred to the State Archives in a format approved by ASLAPR that is appropriate for long-term preservation as negotiated at the time of transfer.

#### **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.
- 4.2** The system shall include the ability to export permanently valuable documents to a format approved by ASLAPR that is appropriate for long-term preservation and is sufficient for use as historical (rather than operational) records, including any indices necessary to find records. This functionality must be operational before the system can be certified.

**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. 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 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