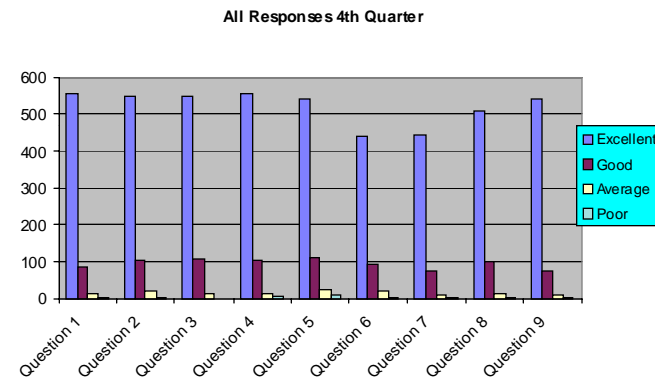
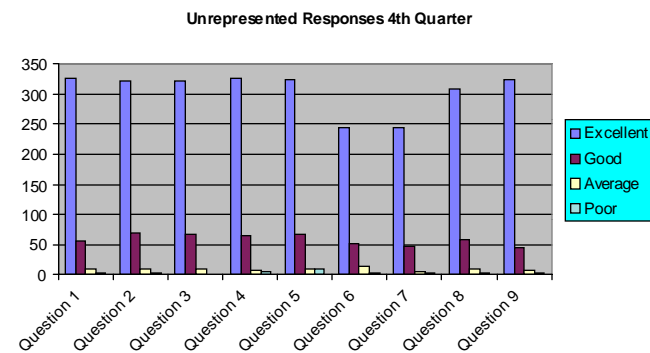


# Evaluations of OAH Services



## Questions:

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

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

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

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



Jane Dee Hull  
Governor

Cliff J. Vanell  
Director

Vol. 20

July 2001

www.azoah.com

## Official Newsletter of the Arizona Office of Administrative Hearings

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

## HEARING PREPARATION

Mark Silver, Administrative Law Judge

Most people have either limited or no experience with courtroom type proceedings. Therefore, the need to be properly prepared for your hearing is of the utmost importance. If you feel that you have very little idea what is expected of you at the hearing, then you must take a proactive course of action to properly prepare for the hearing.

The single most important advice for the untrained or inexperienced litigant is to make time to come down to the Office of Administrative Hearings and observe other hearings involving the same area of the law as your case, prior to the date of your hearing. It is further recommended that you observe hearings before the same judge that has been assigned to your case, since various judges may conduct their hearings in slightly different ways. It is advisable that you call the Office of Administrative Hearings in order to determine the best available day and time to observe a hearing. Some hearings are confidential and generally closed to the public.

Be sure and visit the Office of Administrative Hearings website at [www.azoah.com](http://www.azoah.com) for information regarding OAH's promulgated rules, sample forms, including subpoenas and motions, as well as read a biography of your assigned judge.

Although every case and area of law may vary slightly in the type of preparation required, the following general guidelines are offered to assure proper preparation for your presentation:

## Scope of the Administrative Hearing

Lewis D. Kowal, Administrative Law Judge

At the commencement of an administrative hearing, it is important to determine whether the parties understand the scope of the hearing, i.e., what issues will be addressed during the hearing. It has been my experience that even in an appealable agency action, the party requesting the hearing may not necessarily understand what is going to be addressed at the hearing. Or, to put it another way, what issues the Administrative Law Judge will determine as a result of the hearing.

The Administrative Law Judge, as well as the parties, can gain insight as to what really needs to be addressed during the hearing by having a brief discussion at the beginning of the hearing as to what the parties believe is the scope of the hearing. Issues that were not mentioned in the Notice of Hearing may be addressed if the Administrative Law Judge believes it to be appropriate and the parties agree, with a proper waiver of the required notice.

When a person appeals an agency action, it is the state agency that specifies in the Notice of Hearing what issues are being appealed. Because the agency generates the Notice of Hearing, the Notice should be read very carefully. If there is any question as to what facts or issues are going to be addressed

“Scope”

*continued page 2*

“Preparation”

*continued page 2*

The Office of Administrative Hearings (OAH) began operations on January 1, 1996. Administrative Hearings previously provided by regulatory agencies (except those specifically exempted) are now transferred to the OAH for independent proceedings. Our statutory mandate is to “ensure that the public receives fair and independent administrative hearings.”

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

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

### Mission Statement:

**We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of state regulation.**

## 4rd Quarter Statistics At A Glance

### Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **97.85%** of all recommended decisions acted upon by the agencies.\* ALJ decisions, including recommended orders, were accepted without modification in **95.45%** of all recommended decisions acted upon by the agencies. **68.76%** of all agency modification was of the order only (i.e. penalty assessed).

### Appeals to Superior Court:

The appeal rate was **1.26%**, defined as appeals taken (24) over hearings concluded (1897\*\*).

### Rehearings:

The rehearing rate was **.31%**, defined as rehearings scheduled (6) over hearings concluded (1897\*\*).

### Completion Rate:

The completion rate was **147.13%**, defined as cases completed (2569) over new cases filed (1746).

### 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 **44.67 days**. The frequency of continuance, defined as the number of continuances granted (184) over the total number of cases first scheduled (1734), expressed as a percent, was **10.61%**. The ratio of first settings (1650) to continued settings on the calendar (159) was **1 to 0.09**.

### Dispositions:

Hearings conducted: **73.8%**; vacated prior to hearing: **25.1%**; hearings withdrawn by agency: **1.1%**.

**Contrary Recommendations and Agency Response: 69.16%** of recommendations were contrary to the original agency action where the agency took a position. Agency acceptance of contrary recommendations was **98.96%**.

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

\*\* Cases which were vacated are not included

date of the hearing. Recently, in a Registrar of Contractors case, a complaint was filed against a contractor alleging certain construction deficiencies and overcharging by the contractor. By the time the matter came on for hearing, the only issue of concern to the Complainant was the overcharging issue. After an on the record discussion with the parties as to the scope of the hearing and the presentation of some evidence, the parties settled the matter. Settlement was facilitated by the Respondent contractor having learned that the sole issue to be addressed was the alleged overcharge even though construction deficiencies were originally alleged in the complaint.

Law Judge at the beginning of an administrative hearing as to the scope of the hearing provides the parties with a realistic understanding as to what will be considered during the hearing as well as a reasonable expectation as to what each party may accomplish as a result of the hearing. Getting the parties together to discuss what they believe the hearing is about can narrow the issues and facts to be addressed during the hearing. This enhances the administrative process by providing for a more efficient and meaningful hearing.

### “Preparation”

*continued from page 1*

a. Know your case. You have “lived” with the facts surrounding the issues of your case and need to be ready to speak extemporaneously about these issues. Although you may bring notes or an outline regarding what you need to say, most judges will not permit you to read prepared statements into the record as sworn testimony.

b. Be organized. If you intend to submit documents or photographs into evidence, have the originals or copies of them ready to be submitted to the judge, with copies for the opposing side. Photographs should also be organized to assure that there are no duplicates or extraneous pictures submitted to the judge.

Of particular importance in Registrar of Contractors' cases involving numerous issues of alleged construction deficiencies, if the Complainant does not feel that the Agency Corrective Work Order adequately addressed all of the enumerated items of the complaint, then the Complainant should prepare a pre-printed and numbered list of all of the items of the complaint. Sufficient copies of the list should be made for the judge and opposition to use. Having such a list will greatly facilitate the orderly and complete presentation of the issues of the case.

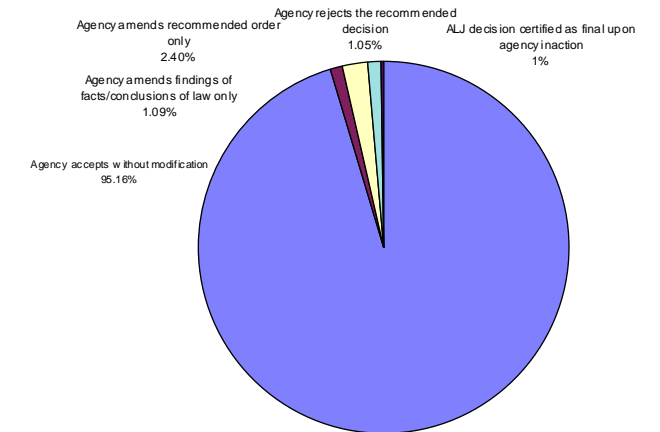
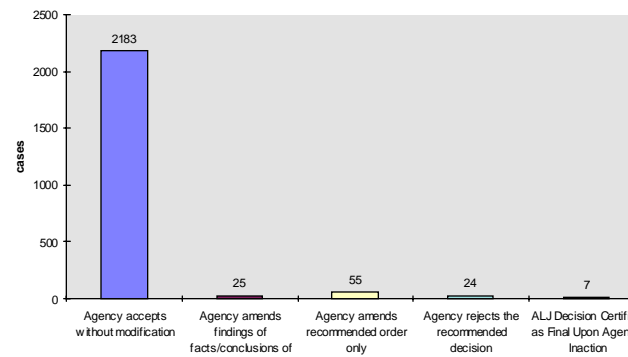
c. Witnesses. If you need to have others testify on your behalf, make sure they are available for the hearing. It is not helpful to tell the judge that you could have had a certain individual testify to relevant issues, but that person is not at the hearing. It is advisable to seek subpoenas for witnesses, well in advance of your hearing date, to assure their attendance at the hearing.

Another point of inquiry that, as an Administrative Law Judge, I like to make at the beginning of the hearing is to have an understanding what each party is seeking as a result of the hearing. In some cases, the person who requested the hearing did so because the process was available without fully understanding what issues can be addressed or what relief may be obtained.

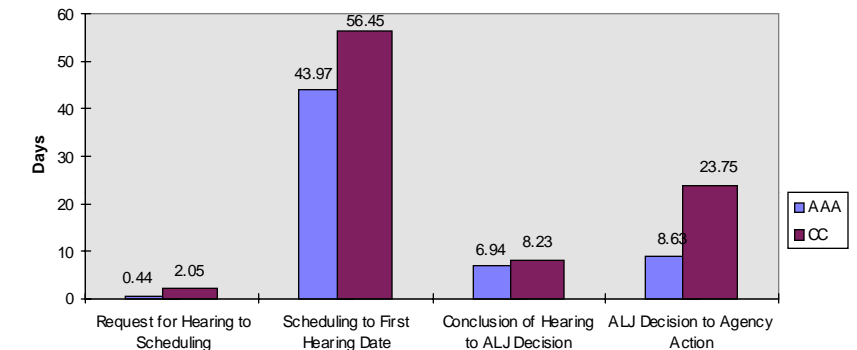
For example, in an appeal of a denial of an application for a professional license based upon prior felony convictions, a party cannot re-litigate those convictions. That process, if available, would have to occur in a different forum. An Administrative Law Judge cannot overturn a prior criminal conviction nor can the judge ignore or overrule a civil judgment.

An inquiry by the Administrative

### Agency Response to Recommended Decisions April 1 - June 30, 2001



### Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases\*, April 1 - June 30, 2001



\*Note: Appealable Agency Actions are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. Contested Cases involve actions yet to be determined by an agency. An example would be proposed discipline on a professional license with the possibility of suspension or revocation. Parties are entitled to a hearing before the OAH prior to the agency acting.

### Substantive Policy Statement adopted

<http://www.azoah.com/Rules.htm> contains a link to a new substantive policy statement indicating the limitation of the OAH procedural rules. The full text is as follows:

Inapplicability of A.A.C. R2-19-107 in computing statutory time limits of A.R.S. §41-1092 et seq.; Reference Number PS - 2.0

The statutory time limits of the Uniform Administrative Appeals Procedures, Title 41, Chapter 6, Article 10, A.R.S. §41-1092 et seq., are governed by A.R.S. §1-243. These include the setting of hearings, A.R.S. §41-1092.05(A); prior notice of hearing, A.R.S. §41-1092.05(D); issuance of administrative law judge decisions, A.R.S. §41-1092.08(A); and subsequent agency action in lieu of certification of the recommended decision as the final administrative decision, A.R.S. §41-1092.08(D). A.R.S. §1-243(A) provides that "...the time in which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a holiday, and then it is also excluded." A.R.S. §1-301 enumerates specific State holidays, which includes Sundays.

In light of A.R.S. §1-243(A), for time computation purposes A.A.C. R2-19-107 is necessarily limited in scope to the time limits prescribed in prehearing and hearing procedures and does not impact the statutory time calculations.

## 1746 Cases Filed April 1, 2001 - June 30, 2001

	4th Q	FY 2001		4th Q	FY 2001		4th Q	FY 2001
Accountancy	5	54	Cosmetology	10	23	Peace Ofc. Standards	2	11
Acupuncture Board	0	1	Dental	2	9	Pest Control	15	32
ADA	0	0	Economic Security	0	0	Physical Therapy	0	0
Administration	2	23	Economic Security-CPS	63	208	Podiatry	0	1
Admin. Parking	35	345	Education	1	2	Psychologist Examiners	0	3
Agriculture	1	1	Environ. Quality	40	147	Public Safety - CW	6	11
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Trans	0	7
AHCCCS	827	4016	Gaming	1	10	Public Safety - Adult CC	0	3
Alternative Fuel	24	31	Health Services	64	207	Pvt. Post. Ed.	0	0
Appraisal	1	5	Insurance	32	119	Racing	4	14
AZ Commission on the Arts	0	0	Land	2	9	Radiation Regulatory	0	0
Attorney General	1	1	Liquor	22	100	Registrar of Contr.	396	1566
Arizona Works	0	1	Lottery	0	3	Real Estate	29	76
Banking	9	32	Maricopa Cty. Housing	0	0	Revenue	33	116
Behavioral Health Ex.	0	4	Medical Examiners	3	11	School - Deaf & Blind	0	1
Building/Fire Safety	66	200	Naturopathic	0	0	Secretary of State	0	1
Charter Schools	0	0	Nursing	7	19	Technical Registration	2	7
Chiropractic	7	11	Nursing Care Admin	1	1	Water Qual. App. Bd.	0	0
Clean Elections	0	2	Osteopathic	0	0	Water Resources	2	13
Community Colleges	0	0	Parks	0	0	Weights and Measures	31	55

### “Scope”

*continued from page 1*

during the hearing, a party may wish to address the Administrative Law Judge by submission of a written motion to clarify the scope of the hearing.

If the parties disagree as to the scope of the hearing, the Administrative Law Judge may hear oral argument from the parties and rule on the scope of the hearing. Once that ruling is made, the parties will have an understanding as to the road map to be followed concerning the nature of the facts and issues to be presented and addressed during the hearing.

In a number of administrative matters that go to hearing, situations change since the filing of a complaint, issuance of the Notice of Hearing, and the