

The OAH



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Director

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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

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

The process of unifying the administrative hearings function in OAH-style agencies began in 1945 with California. The current 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.

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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.

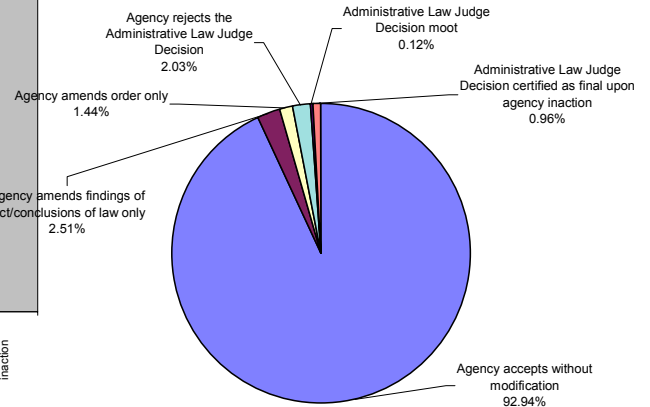
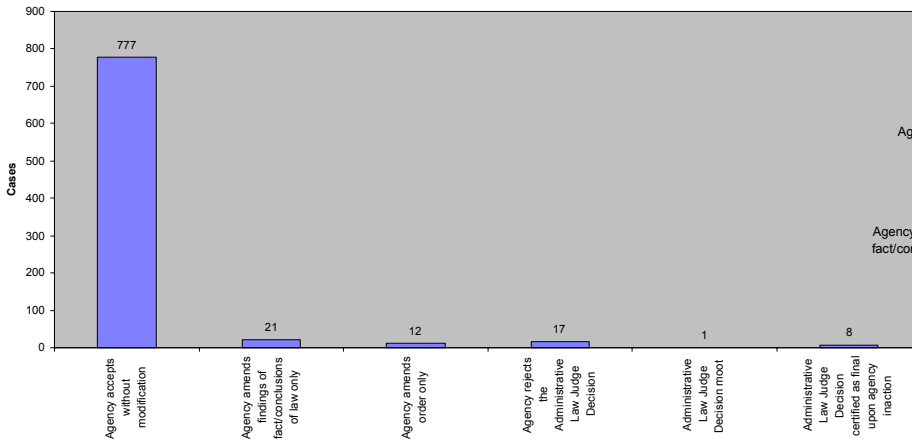
To decide impartially

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.

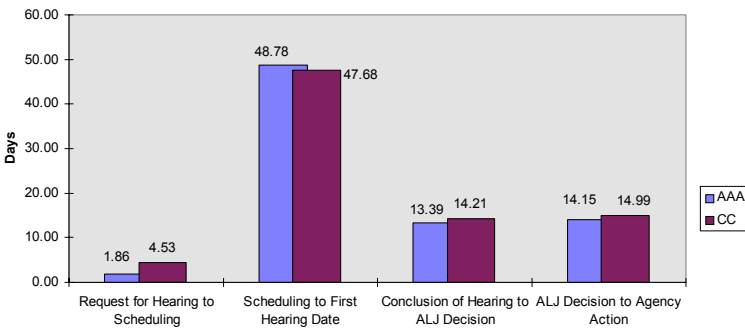
Consistent with these principles, you ask parties to reflect on your attentiveness, your effectiveness in explaining the hearing process, your use of clear and neutral language, your impartiality, and your effectiveness in dealing with the issues of the case. You ask whether they have been given sufficient 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.

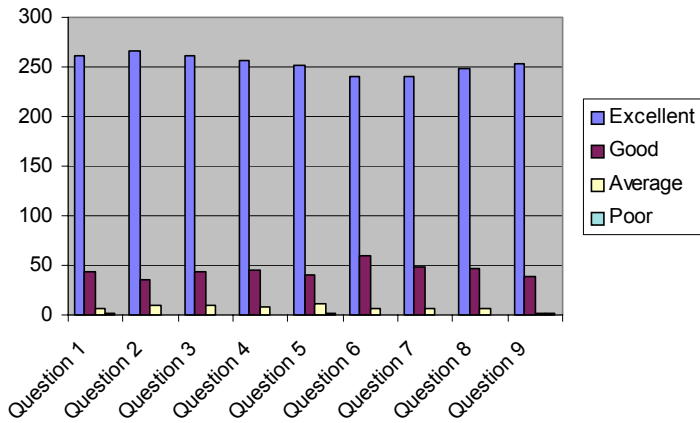
2042 Cases Filed October 1, 2004 - December 31, 2004

	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			

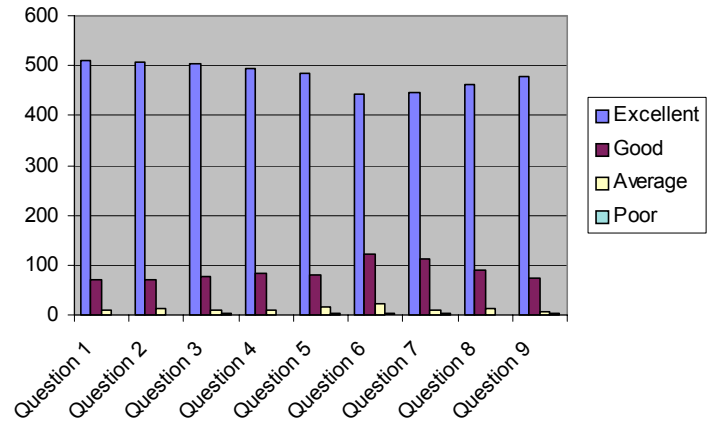
Evaluations of OAH Services

Note: The four major groups of those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing, and the evaluations are not disclosed to the ALJ involved. They are used by management to improve the OAH process and do not affect the decisions issued.

Unrepresented Responses 2nd Quarter



All Responses 2nd Quarter



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