

The Office of Administrative Hearings

The Nineteenth Annual Report

to

Governor Janice K. Brewer

Senator Andy Biggs, President of the Senate

Representative Andy Tobin, 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
October 31, 2014**

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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 OAH for independent proceedings. In fiscal year 2014 the agency had 16 full-time positions, including the Director, the Office Manager, 10 Administrative Law Judges, and 4 support staff. Our statutory mandate is to “ensure that the public receives fair and independent administrative hearings.”

Responsibility:

OAH understands its responsibility to create a system that is efficient and cost effective. OAH statistics in FY 2014 indicate agency acceptance of Administrative Law Judge Decisions without modification was 87.74%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 91.33%. Rehearings (1.4%) and Appeals (2.23%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 92.04% of all responses.

Integrity:

OAH takes its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the executive branch, together with its client agencies, 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:

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, OAH 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 incorrect citations or other areas where quality can be improved. This commitment is in furtherance of the duty of OAH to provide continuing education to its Administrative Law Judges.

Efficiency:

Through careful case management the completion rate for cases in FY 2014 was 104%.

II. Continued Development of the Office

1. Electronic Appeals

The Maricopa County Superior Court now accepts OAH's appeal records in electronic form. See appendix A..

2. Submission of Electronic Exhibits

Previously, the filing of electronic exhibits by parties was limited to "web-based" cases. As a result of appeal records now being transferred to the Maricopa County Superior Court electronically, OAH now actively encourages all parties to submit exhibits electronically. OAH has issued a standing order allowing the submission of electronic exhibits in the absence of an order issued by the Administrative Law Judge. See Appendix B. In addition, OAH presented a continuing legal education seminar on the electronic submission of documents for all practitioners. See Appendix C.

3. Sunset Review

The Office of the Auditor General began its field work in anticipation of OAH's sunset review. OAH prepared its response to A.R.S § 41-2954: "Factors to be Considered." See Appendix D.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2014):

6,069 cases were filed with OAH in FY 2014. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

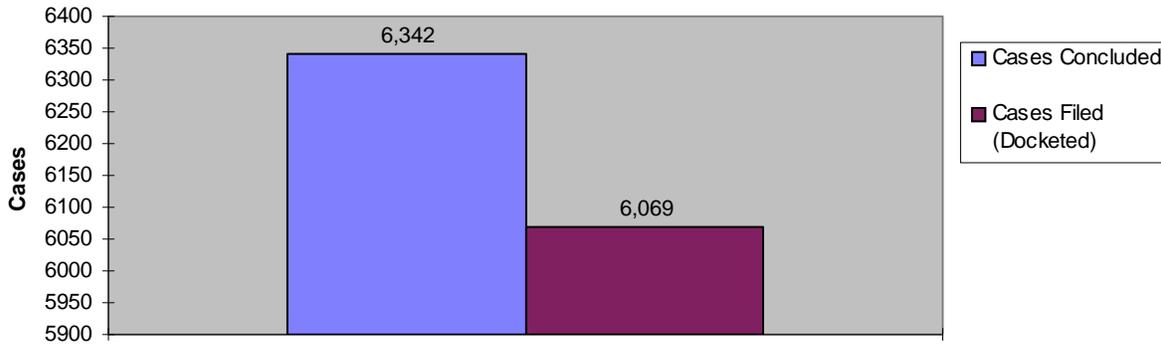
Arizona Health Care Cost Containment System	4309
Registrar of Contractors	358
Department of Weights and Measures	337
Department of Health Services	325
Department of Economic Security - CPS	210
State Board of Nursing	83
Department of Education - Special Ed	68
Arizona Department of Revenue	65
Department of Real Estate	63
Department of Insurance	49
Department of Fire Building and Life Safety - H/C	17
Arizona Department of Financial Institutions	14
Peace Officers Standards and Training	13
State Board of Accountancy	13
Department of Economic Security	13
Board of Appraisal	13

Department of Fire Building and Life Safety	11
Arizona Medical Board	10
Board of Technical Registration	10
Arizona State Retirement System	9
State Board for Charter Schools	7
Department of Racing	5
Department of Gaming	5
Liquor Licenses and Control	5
Board of Dental Examiners	5
Department of Public Safety - Student Transportation	4
Department of Education	4
Department of Environmental Quality	4
Office of Pest Management	3
Department of Public Safety - Criminal History Records	3
Department of Water Resources	3
Board of Behavioral Health Examiners	2
Arizona Commerce Authority	2
Secretary of State	2
Department of Agriculture	2
Arizona Health Care Cost Containment System	2
Arizona Board of Osteopathic Examiners In Medicine and Surgery	2
State Land Department	2
Naturopathic Physicians Medical Board	2
Arizona State Department of Housing	2
Camp Verde Fire District	1
Board of Podiatry Examiners	1
Arizona Department of Transportation	1
La Paz County Health Department	1
Radiation Regulatory Agency	1
Office of the Attorney General	1
State Schools for the Deaf and the Blind	1
Arizona Division of Emergency Management	1
Arizona Game and Fish Department	1
Water Quality Appeals Board	1
Mayer Fire District	1
Department of Economic Security - Child Welfare/Residential Agency	1
Citizens Clean Elections Commission	1
Total	6,069

b. Number of Cases Concluded Versus Cases Filed:

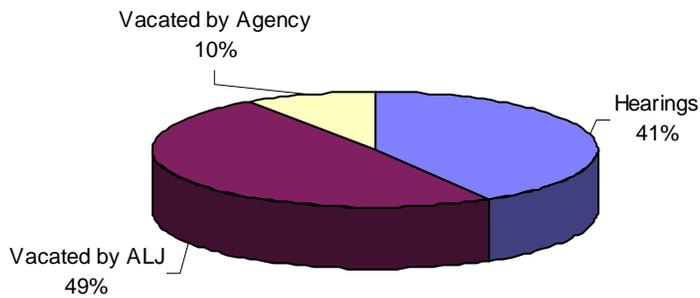
In FY 2014, the conclusion rate (defined as cases concluded divided by new cases filed) was 104.00%.

Comparison of Cases Filed v. Cases Concluded



The following diagram illustrates the proportion of cases that proceeded to full hearing:

Disposition of Concluded Cases FY 2014

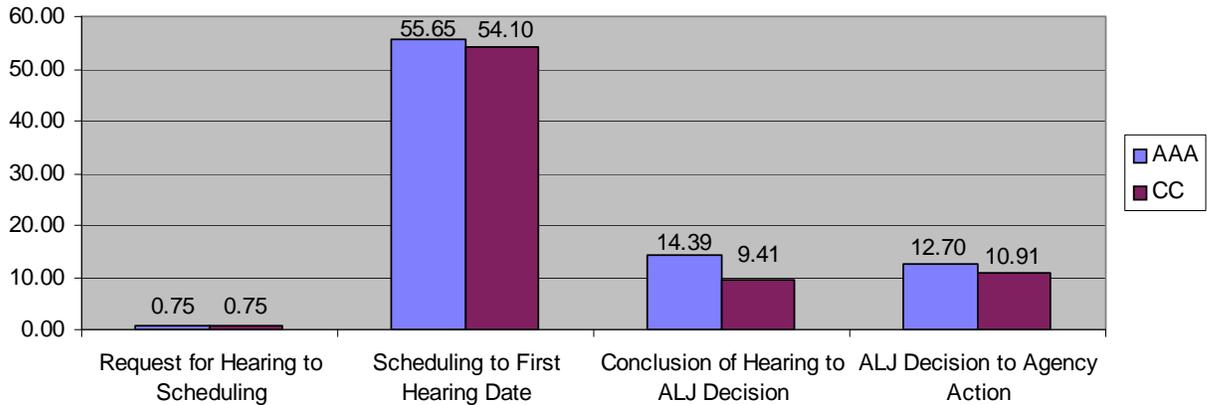


c. Timeline of Case Management:

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

The following diagram illustrates the average timelines:

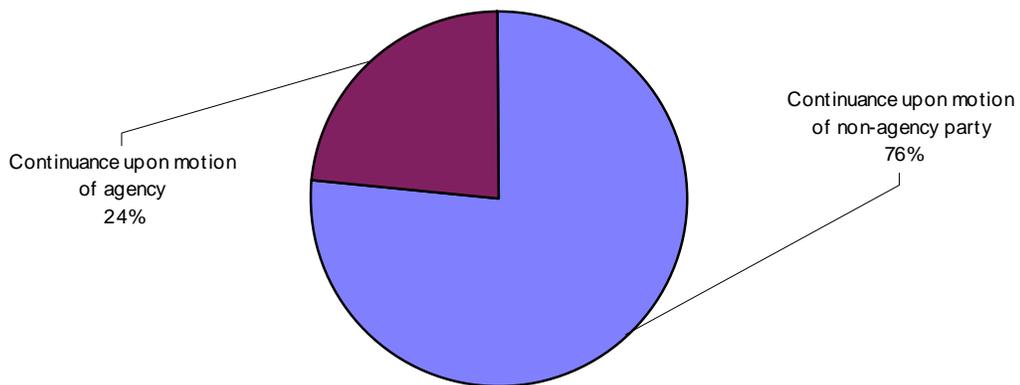
Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases



d. Incidence of Continuance:

A single continuance in FY 2014 added an average of 51.79 days to the total length of a case. Although 82.53% of all continuance requests were granted in FY 2014, 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 continuances, defined as the number of continuances granted (756) divided by the total number of cases first scheduled (7,596), was 12.5%. The ratio of first hearing settings (6,441) to continued settings on the calendar (756) was 1 to 0.12.

The following diagram illustrates the source of continuances:



The following chart is a breakdown of cases actually set for a continued hearing date on the FY 2014 calendar and their sources, by agency. (Note: the numbers in fig. 1, below, differ from those in fig. 2, page 8, because a motion for continuance granted in one fiscal year may result in the continued date being set in the following fiscal year.)

fig. 1

AGENCY	Continued - Motion by non- agency party	Continued - Motion by agency party
Arizona Board Osteopathic Examiners	1	-
Arizona Department of Revenue	16	-
Arizona Division of Emergency Management	1	-
Arizona Health Care Cost Containment System	267	109
Arizona Medical Board	2	-
Arizona State Retirement System	7	-
Arizona Department of Revenue		4
Board of Appraisal	2	5
Board of Behavioral Health Examiners	1	-
Citizens Clean Elections Commission	1	-
Department of Administration	2	-
Department of Economic Security	7	-
Department of Economic Security - CPS	28	6
Department of Education	1	-
Department of Education - Special Ed	33	3
Department of Environmental Quality	5	-
Department of Fire Building and Life Safety	3	-
Department of Fire Building and Life Safety - H/C	4	-
Department of Health Services	70	18
Department of Insurance	5	1
Department of Public Safety- Criminal History Records	-	1
Department of Racing	1	-
Department of Real Estate	15	-
Department of Water Resources	-	1
Department of Weights and Measures	16	20
Office of the Attorney General	1	-
Peace Officers Standards and Training	1	-
Registrar of Contractors	75	8
Secretary of State	2	-
State Board of Nursing	23	7
State Schools for the Deaf and the Blind	1	-
Water Quality Appeals Board	2	-
Total	593	183

The following chart reflects the number of motions to continue that were entertained in FY 2014 and the percentage granted:

fig. 2

AGENCY	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Board of Osteopathic Examiners	1	0	1	100.0
Arizona Department of Financial Institutions	1	0	1	100.0
Arizona Department of Revenue	14	0	14	100.0
Arizona Division of Emergency Management	1	0	1	100.0
Arizona Health Care Cost Containment	333	92	425	78.4
Arizona Medical Board	5	1	6	83.3
Arizona State Retirement System	4	2	6	66.7
Board of Appraisal	7	0	7	100.0
Board of Behavioral Health Examiners	1	0	1	100.0
Board of Technical Registration	1	0	1	100.0
Citizens Clean Elections Commission	1	0	1	100.0
Department of Administration	1	0	1	100.0
Department of Economic Security	6	2	8	75.0
Department of Economic Security - CPS	37	2	39	94.9
Department of Education	4	0	4	100.0
Department of Education - Special Ed	23	6	29	79.3
Department of Fire Building and Life Safety	3	2	5	60.0
Department of Fire Building and Life - H/C	6	3	9	66.7
Department of Health Services	94	7	101	93.1
Department of Insurance	10	0	10	100.0
Department of Racing	2	0	2	100.0
Department of Real Estate	17	3	20	85.0
Department of Water Resources	2	0	2	100.0
Department of Weights and Measures	43	7	50	86.0
Naturopathic Physicians Medical Board	1	0	1	100.0
Peace Officers Standards and Training	2	0	2	100.0
Registrar of Contractors	90	24	114	78.9
Secretary of State	2	0	2	100.0
State Board for Charter Schools	1	1	2	50.0
State Board of Nursing	42	3	45	93.3
State Schools for the Deaf and the Blind	1	0	1	100.0
Department of Revenue	0	3	3	0.00
Department of Environmental Quality	0	1	1	0.00
La Paz County Health Department	0	1	1	0.00
Total	756	160	916	82.5%

2. Evaluation

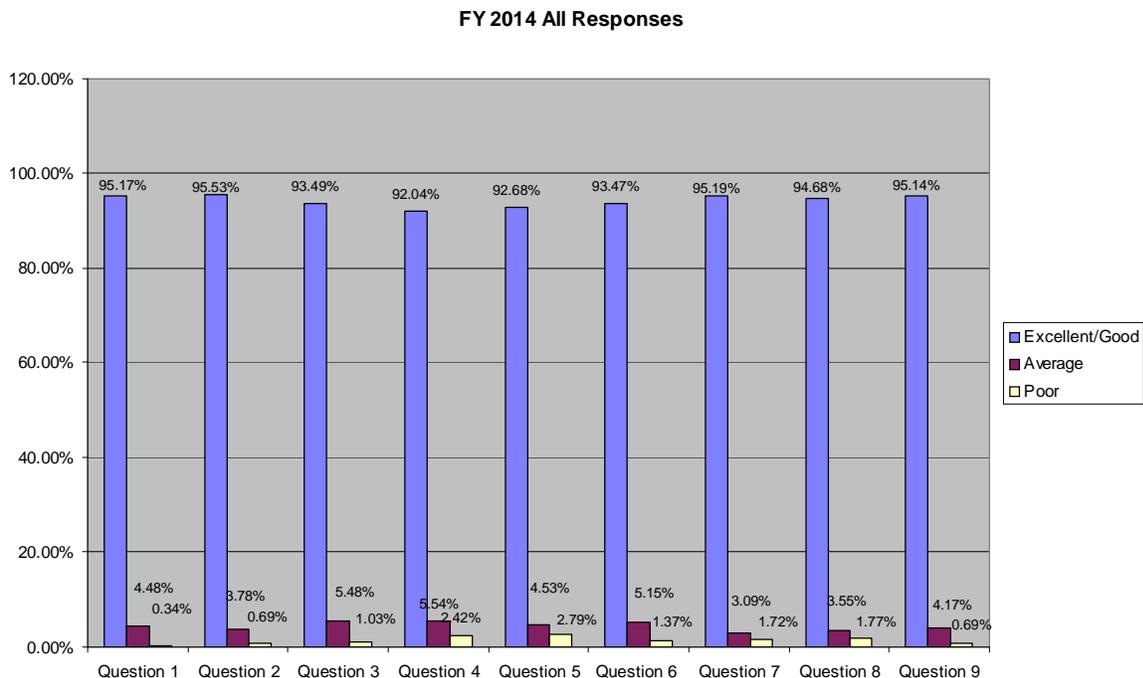
a. Results of Public Evaluation:

Since November 1996, OAH has administered an evaluation procedure. A copy of the evaluation is provided to all participants before the hearing. The evaluation form is described in a video played before each hearing, or is otherwise addressed by the Administrative Law Judge. The results are not disclosed to the Administrative Law Judge. Hearing participants place completed evaluations in locked boxes located near the hearing rooms.

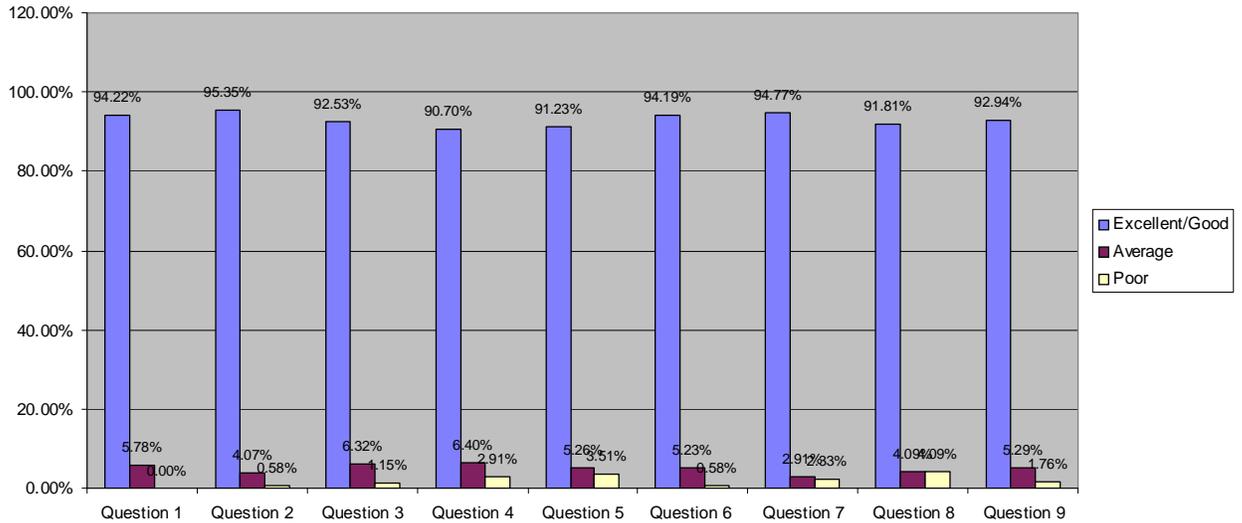
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

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 OAH excellent to good in 92.04% to 95.53% of responses.



FY 2014 Unrepresented Responses



An analysis of the unrepresented parties indicates that even among the most vulnerable group, OAH is seen to be functioning extremely well.

b. Incidence of Rehearing and Appeal:

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2014, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 1.40%.

Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2014, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 2.23%. As reflected in the following diagram, rehearings and judicial appeals in FY 2014 were relatively rare.

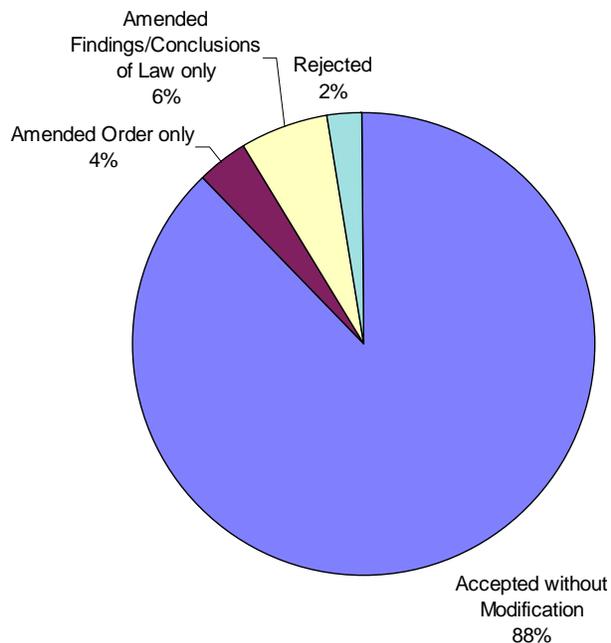
	Rehearings	Appeals
Arizona Health Care Cost Containment System	19	4
Attorney General	-	1
Behavioral Health	-	1
Dental Examiners	-	1
Department of Administration	-	1
Department of Environmental Quality	-	3
Department of Fire Building and Life Safety	1	-
Department of Health Services	-	5
Department of Insurance	-	2
Department of Real Estate	-	1
Department of Water Resources	-	2
Department of Weights and Measures	3	-
DES-CPS	-	1
Liquor Licenses	-	2
Peace Officers Standards and Training	-	2
Psychologist Examiners	-	1
Registrar of Contractors	7	16
Special Education	-	2
State Retirement	-	1
Water Quality Appeals Board	-	2
Totals	30.0	48.0

IV. Acceptance of Administrative Law Judge Decisions by Agencies

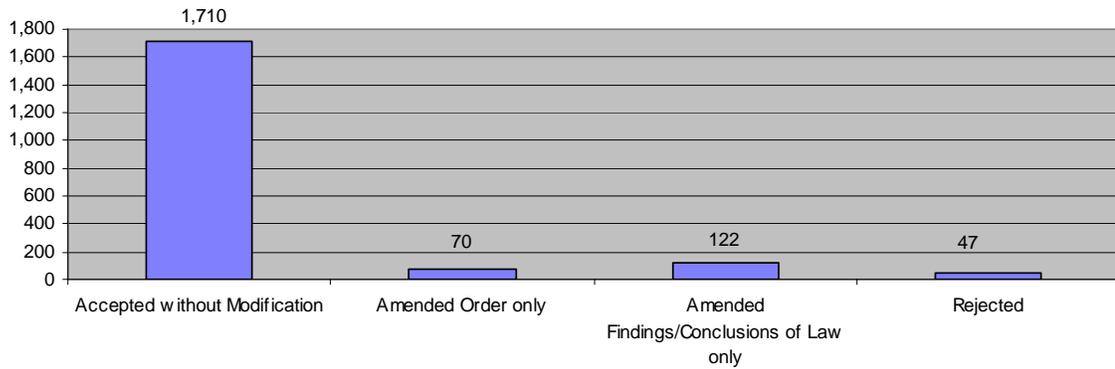
1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 87.74% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 91.33% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 36.46% of modifications made by the agencies were in the Recommended Order (penalty portion).

FY 2014 Agency Response to ALJ Recommended Decisions



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



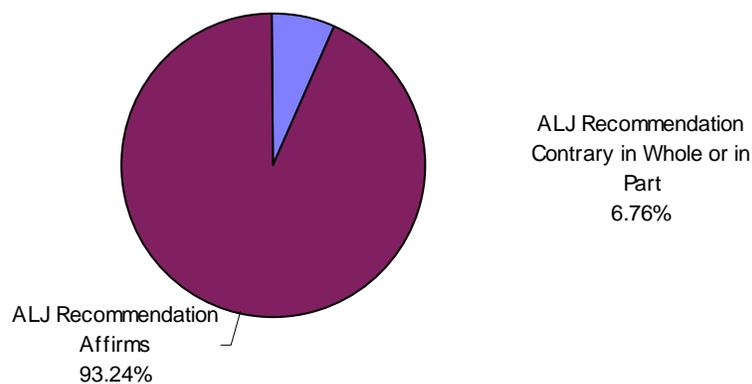
The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy Board	5	3	2	-	10
AHCCCS	1386	7	56	31	1480
Arizona Commerce Authority	-	-	-	-	0
Attorney General	-	-	-	1	1
Behavioral Health	-	-	-	-	0
Board for Charter Schools	2	-	2	-	4
Board of Appraisal	3	-	6	-	9
Bord of Technical Registration	6	-	-	-	6
Citizens Clean Elections	1	-	-	-	1
Department of Administration	1	-	-	-	1
DEQ	3	-	-	-	3
Dept.Fire Building and Life - H/C	4	2	-	-	6
Department of Revenue	-	-	-	-	0
Department of Water Resources	-	-	1	-	1
DES -CW/RA	-	-	-	-	0
DES-APS	5	-	1	-	6
DES-CPS	64	-	6	-	70
DPS- Bus	2	-	-	-	2
DPS-Crim. History Rec.	1	-	-	1	2
Gaming	2	-	-	-	2
Health Services	114	8	35	5	162

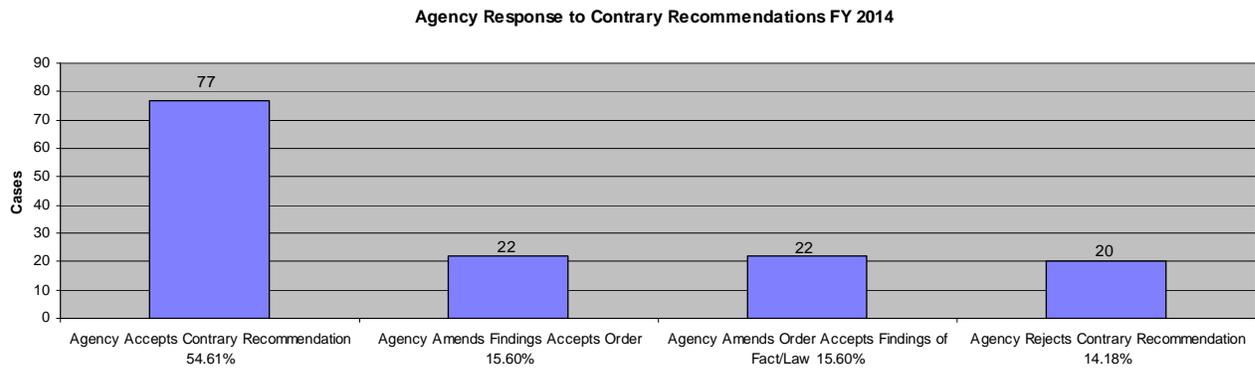
Insurance	17	1	1	-	19
La Paz County	-	-	-	-	0
Liquor Licenses	3	-	-	-	3
Medical Board	3	-	1	-	4
Secretary of State-Notary	2	-	-	-	2
Nursing	25	2	1	-	28
Office of Pest Management	-	-	-	-	0
Racing	2	-	-	-	2
Radiation Regulatory	1	-	-	-	1
Real Estate	22	5	-	1	28
Registrar of Contractors	28	38	9	3	78
Special Education	-	-	-	-	0
State Retirement	8	-	-	1	9
Weights and Measures	-	4	1	4	9
Total	1,710	70	122	47	1,949

In FY 2014, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 6.76% of cases.

Recommendations Contrary to Original Agency Action FY 2014



Agency acceptance of contrary decisions was high at 85.81%.



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

Client	Accepted	Amended Order	Amended Findings	Rejected	Certified	Total
AHCCCS	29	9	12	11	-	61
Appraisal	-	-	6	-	-	6
Attorney General	-	-	-	1	-	1
Charter Schools	-	-	-	-	1	1
DES-APS	1	-	-	-	1	2
DES-CPS	20	-	-	-	-	20
Fire, Bldg, Life Safety	2	-	-	-	1	3
Health Services	1	3	3	1	-	8
Liquor Licenses	2	-	-	-	-	2
Medical Board	1	-	-	-	-	1
Nursing	5	1	-	-	-	6
Real Estate	-	3	-	1	-	4
Registrar of Contractors	1	2	-	2	3	8
State Retirement System	1	-	-	-	-	1
Weights and Measures	-	4	1	4	8	17
Total	63	22	22	20	14	141

2. Agency Inaction With Subsequent OAH Certification of Finality

Beginning August 21, 1998, OAH was required to certify the Administrative Law Judge Decision as the final administrative decision if 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. A.R.S. § 41-1092.08(D). In FY 2014, 156 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Registrar of Contractors	87
Department of Weights and Measures	31
Department of Fire Building and Life Safety - H/C	11
Department of Insurance	6
Arizona Health Care Cost Containment System	4
Arizona State Retirement System	3
State Board of Nursing	2
Arizona Commerce Authority	1
Board of Behavioral Health Examiners	1
Board of Psychologist Examiners	1
Board of Technical Registration	1
Department of Economic Security	1
DES- Child Welfare/Residential Agency	1
Department of Fire Building and Life Safety	1
Department of Health Services	1
Department of Public Safety - Criminal History Records	1
La Paz County Health Department	1
Office of Pest Management	1
State Board for Charter Schools	1

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 2014, 5 motions were filed and none were granted.

VI. Violations of A.R.S. § 41-1009

Pursuant to A.R.S. § 41-1092.01(C)(9)(c), 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. 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.

2. Establish uniform basis for rehearing.

Parties must research the specific rules of each agency, board or commission to determine the bases for rehearing since there is little uniformity. Standardizing and recapitulating possible bases in Title 41 would make the process easier, particularly for the unrepresented.

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

Appendices

- A. Administrative Order No. 2014-014
- B. Standing Order (Electronic Exhibits)
- C. First Annual CLE Presentation
- D. A.R.S. § 41-2954: Factors

A. Administrative Order No. 2014-014

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF ELECTRONIC)
ADMINISTRATIVE RECORDS ON REVIEW)
ON APPEAL FROM THE ARIZONA STATE)
OFFICE OF ADMINISTRATIVE HEARINGS)
_____)

ADMINISTRATIVE ORDER
NO. 2014-014

WHEREAS, the original case records in the Arizona State Office of Administrative Hearings are maintained electronically and judicial efficiency supports maintaining an electronic court record,

IT IS ORDERED that the following provisions are enacted by this administrative order to govern cases on appeal to this court from the Arizona State Office of Administrative Hearings:

1. The Office of Administrative Hearings shall maintain, according to Arizona Code of Judicial Administration section 1-507, the original case documents and index constituting the Administrative Record on Review on its website, to remain unchanged for the duration of the appeal process to facilitate access by the Superior Court, and, in the case of further appeal, to facilitate access by the Arizona Court of Appeals and the Supreme Court of Arizona.
2. The Office of Administrative Hearings shall deliver the complete Administrative Record on Review to the Clerk of the Superior Court on media and in an electronic format to be specified by the Clerk.
3. The Office of Administrative Hearings shall deliver an electronic copy of the original case documents and index of the Administrative Record on Review to the superior court judge assigned to the case.
4. The Clerk of the Superior court shall allow public access to the Administrative Record on Review except as closed by law.

Dated this 14th day of February, 2014.

/s/ Norman J. Davis

Norman J. Davis
Presiding Judge

Original: Clerk of the Superior Court

Copies: Hon. John Rea, Presiding Civil Judge
Hon. Crane McClennen, Judge, Lower Court and Administrative Appeals
Hon. Michael K. Jeanes, Clerk of the Court
Raymond L. Billotte, Judicial Branch Administrator
Richard Woods, Deputy Court Administrator
Cheri Clark, Family Court Administrator
Becky Magana, Deputy Director, Office of the Clerk of the Court
Richard McHattie, Deputy Director, Office of the Clerk of the Court

B. Standing Order (Electronic Exhibits)

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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<p>Standing Order Permitting Filing of Electronic Exhibits and Setting Standard for Submission</p> <p>Required Form of Submission</p> <p>Required Due Date</p>

In the absence of a specific order issued by the Administrative Law Judge assigned to a particular matter, **IT IS ORDERED** :that exhibits may be filed in electronic form with the Office of Administrative Hearing (OAH) on CD, DVD, or thumb drive (non-returnable), labeled by case number and name.¹ If so submitted, no paper copy is to be filed with OAH or the Administrative Law Judge. The judge, parties, and witnesses will view the submitted exhibits through monitors stationed throughout the hearing room.

IT IS FURTHER ORDERED setting the following standard for filing electronic exhibits:

- A. Electronic exhibits must be in Portable Document Format (.pdf). **Note:** No pdf may be submitted as a pdf “package” or “portfolio” combining separate pdfs.
- B. No pdf may embed an audio or video file. However, audio or video files may be separately submitted, if they are referenced by a pdf exhibit listing the audio or video file. **Note:** The following formats are presumptively acceptable: **audio:** mp*, wav; **video:** avi, flv, mov, mpg*, wmv. See F. (below) for inquiries to the OAH webmaster.
- C. Each pdf electronic exhibit must be named by using **ONLY** the sequential number of the exhibit, followed by a dash and the name or description of the exhibit (125 character limit). **Do not use any party identification. See examples of correct and incorrect naming of pdfs:**

Correct:

1-Letter from Smith dated September 26 2012.pdf

¹ The exhibits may also be sent by ftp. Requests to use that service must be directed the OAH webmaster at webmaster@azoah.com .

2-Email Smith-Jones 8-14-12.pdf
3-Video of Playground.pdf

Incorrect (error of use of party identification crossed out):

~~Smith~~ 1-Letter from Smith dated September 26 2012.pdf
~~Smith~~ 2-Email Smith-Jones 8-14-12.pdf
~~Smith~~ 3-Video of Playground.pdf

Incorrect (error of use of leading zeros crossed out):

0001-Letter from Smith dated September 26 2012.pdf
0002-Email Smith-Jones 8-14-12.pdf
0003-Video of Playground.pdf

Incorrect (failure to use dash between number and description):

1 Letter from Smith dated September 26 2012.pdf
2 Email Smith-Jones 8-14-12.pdf
3 Video of Playground.pdf

D. Exhibits containing confidential information as set forth under legal authority must be submitted electronically in redacted form. Substitution of any submitted electronic exhibit may be made at a later date, as for example if additional redaction of information is ordered, or a party determines that a submitted exhibit is partial, or otherwise defective. Such substituted exhibits must be delivered in a manner otherwise acceptable for an original exhibit, and the revised exhibit must be named using the same name as previously submitted with some indication that it is a substituted exhibit. For example:

Original: 2-Email Smith-Jones 8-14-12.pdf

Substituted: 2-Email Smith-Jones 8-14-12 (**redacted**).pdf

E. A short plain written statement referencing the exhibits and the party submitting the exhibits shall accompany the CD/DVD, thumbdrive, or ftp'd documents, e.g. "Appellant Davis hereby submits exhibits 1-29 in matter 2012-12345-ABC."

F. Technical questions regarding this order may be referred to the OAH webmaster at webmaster@azoah.com .

1 **IT IS FURTHER ORDERED** that the CD or DVD, or thumb drive containing the
2 pdf files, and all referenced audio and video files, be submitted by no later than 3
3 business days prior to the hearing date.

4 Done this day: May 30, 2014

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6 /s/ Cliff J. Vanell
7 Chief Administrative Law Judge/Director
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C. First Annual CLE Presentation

**First Annual CLE Presentation
Office of Administrative Hearings**

**“Practicing Before the Office of Administrative Hearings in the
Electronic World”**

Tuesday, June 3, 2014

First Session
11:00 am – 12:30 pm

Second Session
1:30 pm– 3:00 pm

100 N. 15th Avenue, Phoenix, Arizona 85007

Presenters:

Cliff J. Vanell, Director
Hon. Thomas Shedden, ALJ
Jeff Sanchez, Webmaster
Jan Bacich, Records Clerk

Attending:

Hon. Lewis Kowal, Asst. Presiding ALJ
Hon. Diane Mihalski, ALJ

First Annual CLE Presentation
Office of Administrative Hearings
"Mandatory and Discretionary Submission and Use of Electronic Documents At Hearing"

Tuesday, June 3, 2014

First Session

11:00 am - 12:30 pm

Second Session

1:30 pm - 3:00 pm

100 N. 15th Avenue, Phoenix, Arizona 85007

Presenters:

Cliff J. Vanell, Director
Hon. Thomas Sheddin, ALJ
Jeff Sanchez, Webmaster
Jan Bacich, Records Clerk

Attending:

Hon. Lewis Kowal, Asst. Presiding ALJ
Hon. Diane Minalski, ALJ



Cliff J. Vanell
Director

An Overview

[14A-SeminarSession1-OAH](#)

[14A-SeminarSession2-OAH](#)

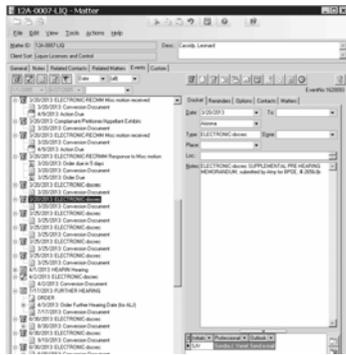
OAH's Website

<http://www.AZOAH.COM>

Submitting Motions and Other Documents Electronically

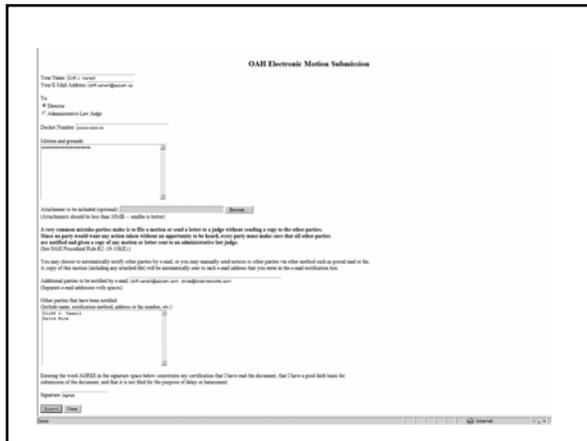
- By FAX
 - A fax is a pdf
- E-Mail with attachments to motions (hopefully as pdfs, so no conversion is necessary)
- OAH's motion program (attachments must be pdf)
 - Advantage of using the motion program:
 - real time verification

Electronic Drop and Drag to OAH's Case Management System



OAH instituted electronic filing of documents

- **Motions**



OAH instituted Web-based cases

- <http://azoah.com/electronic.html>




Electronic Case File
2014A-EMJ-0167-DEIS
In the Matter of: Town of Kearny Ambulance Service dba Kearny Ambulance Service

Document Number	Filing Date	Document Type	Description	Filed By
1	10/31/2013, posted by Webmaster 11/20/2013	Request for Hearing	Request for Hearing	J. Escoto - Agency
2	11/8/2013, posted by Webmaster 11/20/2013	Notice of Hearing	Notice of Hearing	J. Escoto - Agency
3	11/8/2013, posted by Webmaster 11/20/2013	Request for Subpoena	Subpoena for Laura L. Soren, RN, RACIS	William "Bud" Paine - Paid Rural Fire Service
3a	11/21/2013, posted by Webmaster 11/22/2013	Request for Subpoena	Subpoena for Jeff Chermak	William "Bud" Paine - Paid Rural Fire Service
4	11/22/2013	Pre-Hearing Order	CASE MANAGEMENT ORDER No. 1	Thomas Sheldon on behalf of Self - Administrative Law Judge
5	11/22/2013	Pre-Hearing Order	CASE MANAGEMENT ORDER No. 2	Thomas Sheldon on behalf of Self - Administrative Law Judge
6	11/22/2013	Misc. Order	CASE MANAGEMENT ORDER No. 3	Thomas Sheldon on behalf of Self - Administrative Law Judge
6a	11/22/2013, posted by Webmaster 11/22/2013	Misc. Motion (specified in description)	Request to be a Party	William "Bud" Paine - Paid Rural Fire Service
7	11/25/2013	Pre-Hearing Order	CASE MANAGEMENT ORDER No. 4	Thomas Sheldon on behalf of Self - Administrative Law Judge

- Instituted electronic filing of case requests and Administrative Law Judge decisions, the receipt of final agency actions and certification, if any.

OAH Electronic Decision Transmission

- **OAH Recommended Decisions** in blue
- **Agency Action** in red
- **OAH Certification** in green

Do you want Google Chrome to save your password? Save password Never for this site

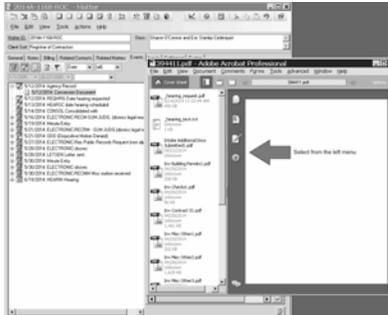
Document Number	Document Type	Filing Date	Description	Filed By	Transmission Date
3710014	ALJ Decision	2013A-5753-BOC	OAH - Eureka Firefighters	NEA	
3730014	ALJ Decision	2013A-5623-BOC	OAH - Eureka Firefighters	5/5/2014	
4730014	Final Agency Action	2013A-5695-BOC	Agency - BOC Legal	NEA	
4730014	ALJ Decision	2013A-5166-BOC	OAH - Eureka Firefighters	5/6/2014	
4730014	Final Agency Action	2013A-6817-BOC	Agency - BOC Legal	NEA	
4400014	Final Agency Action	2013A-4253-BOC	Agency - BOC Legal	NEA	
4400014	ALJ Decision	2013A-6840-BOC	OAH - Eureka Firefighters	5/9/2014	
4800014	Final Agency Action	2013A-6880-BOC	OAH - Eureka Firefighters	5/13/2014	
4900014	ALJ Decision	2013A-114-BOC	OAH - Eureka Firefighters		
4790014	ALJ Decision	2013A-5566-BOC	OAH - Eureka Firefighters	5/15/2014	
4110014	ALJ Decision	2013A-5428-BOC	OAH - Eureka Firefighters	5/16/2014	
4110014	ALJ Decision	2013A-5937-BOC	OAH - Eureka Firefighters	5/16/2014	
4740014	Final Agency Action	2013A-6840-BOC	Agency - BOC Legal	NEA	
4740014	ALJ Decision	2013A-5195-BOC	OAH - Eureka Firefighters	5/19/2014	
4150014	Certification of ALJ Decision	2013A-6228-BOC	OAH - Eureka Firefighters	NEA	
4150014	Certification of ALJ Decision	2013A-4320-BOC	OAH - Eureka Firefighters	NEA	
4150014	Certification of ALJ Decision	2013A-6816-BOC	OAH - Eureka Firefighters	NEA	
4150014	ALJ Decision	2013A-667-BOC	OAH - Eureka Firefighters	5/20/2014	
4180014	Certification of ALJ Decision	2013A-4778-BOC	OAH - Eureka Firefighters	NEA	
4210014	ALJ Decision	2013A-5873-BOC	OAH - Jeff Stueben	5/27/2014	

A Note About Avoiding OAH Certification

- OAH's transmission program counts 35 days from the transmission and excludes Sundays and holidays, which are excluded by virtue of A.R.S. § 1-243(A). The date that is reflected on OAH's transmission e-mail, and repeated on the agency webpage, is therefore, the last date by which OAH must actually receive the Director's decision.
- A.R.S. § 41-1092.08(E) specifically provides for a mailbox rule in transmission to an agency. However, A.R.S. § 41-1092.08(D) specifically excludes any concept of a "mailbox rule" when transmitting the Director's decision to OAH.

- Demonstration of uploading of ALJ Decision, agency action
- <https://portal.azoah.com/ALJDEC>

OAH accepts electronic filing of agency records that are routinely utilized at hearing from the Registrar of Contractors and AHCCCS



Electronic Certifications of Record are posted to OAH's website

- http://azoah.com/Certifications_of_Records_on_Appeal.html



- OAH Now sends all appeal to Superior Court
- <http://www.AdminOrder2014-014.pdf>azoah.com/

AdminOrder2014-014.pdf



- With appeals records being acceptable in electronic form, the last vestige of any reason to retain paper, i.e., exhibits, has finally given way.
- OAH is poised to become virtually paperless with consequent savings in resources for both OAH, agencies, and parties .

- This seminar is designed to explain how you as agency personnel, advocates and support staff can efficiently make the transition to paperless submission of all documents associated with a case, from inception of a case with the request for hearing, through notice of appeal to Superior Court.

- You will receive practice pointers from staff that receives and processes electronic documents, both for use at hearing and in the creation of the Certification of Record on Appeal.
- Importantly, you will receive a hands on demonstration on how you can best use electronic exhibits at hearing.

Thomas Shedden
Administrative Law Judge

- Advantages of Web-Based Case (v. non-web-based case)
 - All filing through the internet; exhibits separately submitted
 - No separate service to parties
 - Real-time notification and access to documents

Negotiating The
Web-Based Case

- Case Management Order setting requiring e-filing
 - <http://www.azoah.com/Sample Order Designating Case as Web-Based.pdf>
- Motion to Designate Case as Web-based:
<http://www.azoah.com/Web-based.html>

- Alert your staff as soon as the case has been designated as web based; make sure that they understand the filing requirements and that they have the password for filing.

Demonstrating web-based filing:
<https://portal.azoah.com/oedf/>

Taking a look around a web-based case

- <https://portal.azoah.com/oedf/documents/13A-SW001-DWR/index.html>

Demonstration of Uploading of Documents in Web-Based Case

14A-SeminarSession1-OAH

14A-SeminarSession2-OAH

- Requirements for Submission of Electronic Exhibits
 - Protocol is the same for web-based, non-web-based
 - Judge may issue order, or party may use standing order.
- Web-based Order
- Non-Web-Based Order
- Standing Order

Kinds Of Exhibits That May Be Submitted

- Must be in PDF format
- Each PDF must be independent, and may not comprise a "package" of pdfs (aka a pdf "portfolio")
- Audio and video files may be separately submitted, **but a pdf placeholder referencing the audio and video must be submitted with the appropriate naming protocol**, e.g. a video entitled "video of mine demolition" will be represented in the exhibits as "11-video of mine demolition.pdf"
- The PDF may not have audio or video embedded.

Naming Your Exhibits

- Use sequential numbers, beginning with 1, using no party identifier e.g. "1" (not "ADOA1", JONES 1, or the like).
- Follow each number with a dash, i.e. "1-" (not 1, followed by a space)
- Follow the dash with a description of the exhibit, i.e. "1-Curriculum Vitae John Smith"
- Subsequently filed exhibits should recommence with the next sequential number e.g. if exhibits 1-10 were previously submitted, the next exhibit will begin with "11-"

Using electronic documents at hearing

- Web-based – html with live links
- Non-web-based – PDF package

Advantages of Electronic Exhibits include:

- Better at hearing because everyone is looking at the same exhibit every time;
- Parties can zoom in on maps;
- No need to make color copies of maps etc.;

- Unlimited access to the exhibits outside the hearing: client, attorneys and witnesses (even when in different locations), and staff can all access any exhibit anytime or at the same time (say for witness prep);
- Everything fits on a laptop or iPad.

- There are hiccups, but these are quickly overcome and are no more troublesome than looking through multiple volumes of huge binders.

- Some exhibits (e.g., maps and graphics) can be slow to open on the internet; downloading to a thumb-drive can be a big time saver (and frustration avoider).

- The pdf page numbers do not always match the page number on the document. At the hearing, it is much more efficient to reference the pdf numbers, so it is recommended that you prepare questions using the pdf numbers. Also, pdfs are better for the ALJ when decision writing, and I believe better for the Agency head and Superior Court during their reviews. (I suspect a sophisticated user could get the pdf to be identical to the documents.)

- If a transcript is to be the official record, the court reporter must agree to have it posted to the internet in a web-based case.

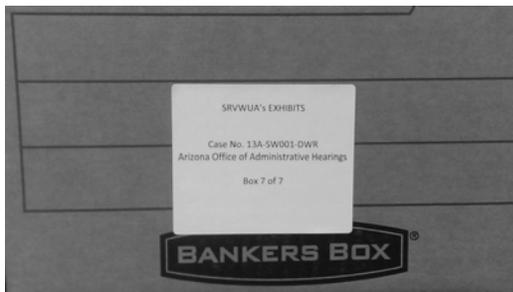
Demonstration of Use of Electronic Exhibits

Jeff Sanchez
Webmaster

- Submitting electronic exhibits
- Naming Protocol for Exhibits
- How to FTP

Submitting electronic exhibits:

- CD, DVD, thumb drives or FTP?

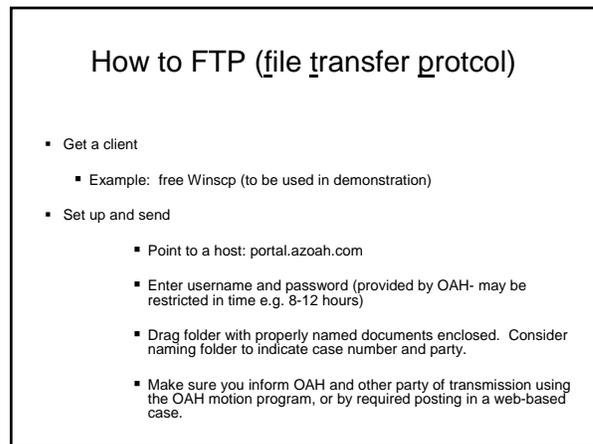
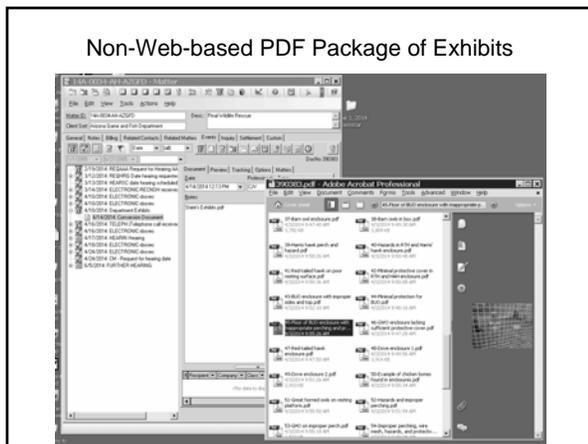
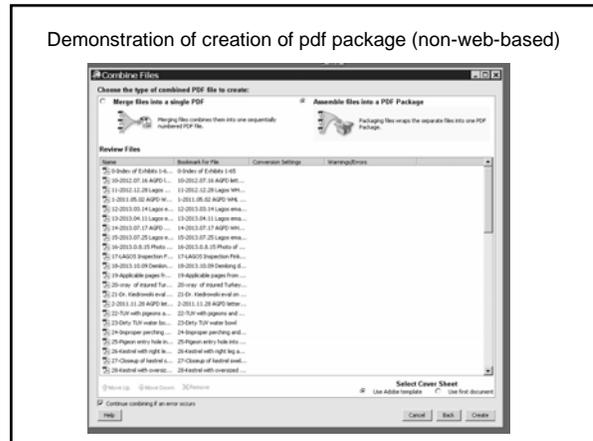
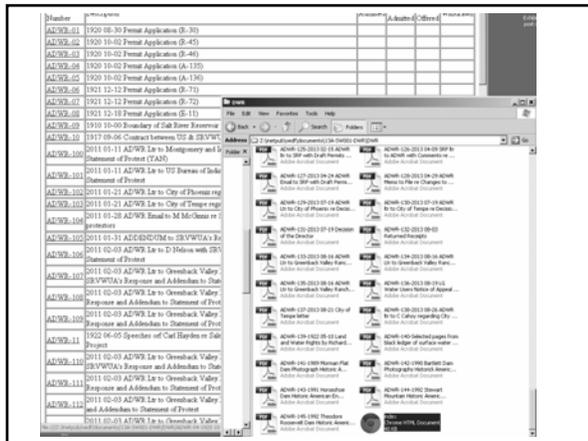
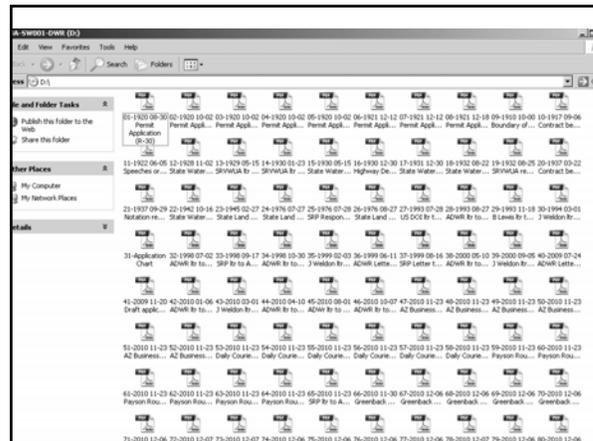


Proper Naming Protocol for Exhibits

- Necessary to create html exhibit lists or PDF packages for hearing and, if necessary, to create the electronic record on appeal
- Failure to properly name will result in rejection of submission
- Simple: numerical order, followed by dash followed by description.

- Demonstration of creation of html file (web-based)

- The HTML file will have live link to audio video inserted following the pdf "placeholder" for use at hearing.
- The HTML version of the Certification of Record on Appeal (given to the Superior Court Judge and posted to OAH's website) will have the live link.
- The audio and video files will be submitted to the Clerk of the Superior Court as a separate exhibits on a separate disk from that used by the clerk to upload the electronic documents associated with the Certification of Record on Appeal



Questions?

- Webmaster@azoah.com

Jan Bacich
Records Clerk

- Naming filings sent electronically, either by e-mail, or through motion program – Doing it “Right”
 - Incomplete/No descriptions
- Creation of Certification of Records on Appeal (web-based)
- Creation of Certification of Records from OAH case management system

Comments apply to both

- e-mail submissions (document as attachment)
- and
- the motions link on OAH's website. (<https://portal.azoah.com/oahmotion/>)

- How a document is named is how it will be entered into OAH's case Management system. That document will have the name you give it for life.
- OAH Staff determines what entry to use by how it is named or described.
- OAH Staff creates the appropriate entry, copies what YOU named it, drags the e-mail into the entry, then pastes the description/name into the notes section of the entry, which, as you know, is viewable by the public in non-confidential cases.

- Name or describe the filing so that it is easily recognizable at a glance. What you name it may eventually become a link for a Superior Court Judge to open

Evaluations. Please take the time
now...

Transmission of Certificate of Attendance

14A-SeminarSession1-OAH
14A-SeminarSession1-OAH
14A-SeminarSession2-OAH

14A-SeminarSession2-OAH

D. A.R.S. § 41-2954: Factors

Office of Administrative Hearings

1400 West Washington, Suite 101 - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

APPENDIX D

Janice K. Brewer
Governor

Cliff J. Vanell
Director

October 15, 2013

Debra K. Davenport, CPA, Auditor General
Office of the Auditor General
State of Arizona
2910 N. 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport,

Please find attached my written response to the first 12 statutory factors prescribed in A.R.S. § 41-2954.D, as requested. I have also posted this document to www.azoah.com/SunsetReview.html for your convenience.

The Office of Administrative Hearings looks forward to continuing to work with you in evaluating our agency.

Sincerely,

/s/ Cliff J. Vanell
Director

Attachment: Sunset Review 12 Factors Report, October 15, 2013

Cc Jeremy Weber, Performance Audit Manager
Jeff Gove, Performance Auditor
Jennifer Allen, Performance Auditor



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.

Office of Administrative Hearings Sunset Review

A.R.S. § 41-2954: Factors To Be Considered

1. The objective and purpose in establishing the agency and the extent to which the objective and purpose are met by private enterprises in other states

a. Statutory Mandate

OAH is one of 22 state central panels existing nationwide to conduct independent proceedings. In addition, New York City, the City of Chicago, the District of Columbia, and the Province of Quebec have likewise instituted such centralized panels.

Prior to January 1996, parties contesting regulatory actions of Arizona State agencies, boards and commissions ("agencies") were provided administrative hearings by the agencies themselves.

Laws 1995, Ch. 251 § 16, provides:

Sec 16. Purpose

"The purpose of the office of administrative hearings is to ensure that the public receives fair and independent administrative hearings."

OAH's statutory mandate is restated in its 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."

b. Private Enterprise Alternative

Prior to the creation of OAH, various agencies that now must contract with OAH contracted for hearing services. The master-servant relationship between the agencies and contractors creates the appearance of control that is antithetical to a perception of independence.

Various governmental subdivisions, such as the City of Phoenix, contract for hearing officers who preside over administrative proceeding involving the City. Likewise, agencies exempted from OAH, such as the Personnel Board, may use exclusively contracted services. The use of such a contracted hearing officer is a function of the sporadic need for services which would militate against a full time or part time state employee. The Department of Economic Security contracts for hourly hearing officers as

necessary to address sporadic increases in demand, such as occurred in the recent economic downturn in 2007 and beyond, for unemployment insurance eligibility. OAH currently is empowered to contract for hearing services only if it is unable to respond in a timely manner for requests for hearing. [A.R.S. §§ 41-1092.01\(H\) and \(I\)](#)¹ Contracted hearing services are unnecessary, and they have not been used since 1996.

OAH itself is authorized to contract for its services for any state hearing not covered by the Uniform Administrative Hearing Procedures that also establish OAH, or any governmental subdivision. [A.R.S. § 41-1092.01\(J\)](#).²

OAH is unaware of any central panel employing contracted hearing officers, except possibly part time, as necessary, similar to what is done at the Department of Economic Security, and what OAH may do should it be unable to meet demand.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated

OAH measures its performance in terms of five categories: Efficiency; Integrity; Commitment; Accessibility; and Self-Audit. The measures of its performance, both statutory or otherwise, the methods by which it ensures compliance with statute where applicable, the policies, procedures and processes put in place to establish reliable benchmarks, and methods for delivery of service are discussed by category.

a. Efficiency

OAH has created a system that is efficient and cost effective.

Through careful case management, OAH enjoys a minimal backlog. The completion rate for cases in FY 2013 was 101.5%. Such measurement is derived from data tracked in OAH's case management system and is reported annually in OAH's [annual report](#)³ to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

[A.R.S. § 41-1092.05](#)⁴ requires that hearings be scheduled within 60 days of the request for hearing. In FY 2013, the average hearing was held within 58.89 days of the request. 49.68% of hearings were scheduled within the 60 day mandate. 82.43% of hearings were scheduled by the 70th day, with 96.80% scheduled by the 90th day. Most cases scheduled beyond 60 days were matters identified as requiring prehearing conferences that were held within the 60 days. Such measurement is derived from data [tracked](#)⁵ in OAH's case management system and is reported annually in OAH's [annual report](#)⁶ to the Governor, the President of the Senate, and the Speaker of the House of Representatives. [A.R.S. § 41-1092.08](#) requires that decisions be issued within 20 days of the conclusion of hearing. In FY 2013, 91.1% of all decisions were transmitted within the 20 days mandate (1,510/1,658 decisions). The average decision was transmitted 9.16 days after the conclusion of hearing. Such measurement is derived from data [tracked](#)⁷ in OAH's case management system and is reported annually in OAH's [annual report](#)⁸ to the Governor, the President of the Senate, and the Speaker of the House of Representatives. In addition, compliance with this statutory mandate is [tracked](#)⁹ monthly and is the basis of evaluation under the State's MAPP system for [Administrative Law Judge evaluation](#).¹⁰

OAH receives and responds to requests for hearing electronically, and transmits its recommended Administrative Law Judge decisions to the agencies, and receives the agencies' final agency actions through secured web pages.

OAH has created a program to build [web-based dockets](#)¹¹ that allow parties to exchange pleadings in real time and for the Administrative Law Judge to issue orders in paperless form. A second program extracts the electronic data to create paperless appeals records for eventual transmission to superior court in the event of an administrative appeal.

b. Integrity

OAH has taken its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the executive branch, together with its client agencies, OAH maintains a conscious detachment from political issues and the missions of other agencies. Procedures, rulings, and case assignment are at all times kept free of outside pressures to ensure that hearings are impartial and independent. 94.5% of all those completing evaluations in FY 2013 (363/384) evaluated OAH Administrative Law Judges as excellent or good in the category of "impartiality." 93.0% of those completing evaluations in the most vulnerable of all groups, the unrepresented (186/200), evaluated our Administrative Law Judges as excellent or good in impartiality. In FY 2013, agency acceptance of Administrative Law Judge Decisions without modification was 85.22%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 90.6%. Rehearings (.87%) and Appeals (1.2%) were rare. As more fully described below in section 2(c), the substantive error-free rate for Administrative Law Judge Decisions for October 2012 through October 1, 2013 was 98.44%. In FY 2013, OAH Administrative Law Judges have held contrary in whole or in part to the original agency position in 7.3% of cases. Agency acceptance of such contrary decisions was 93.2%. These statistics demonstrate both a true process of independent adjudication, the competence of the Administrative Law Judges, and the acceptance of the independent process by agencies. Such measurement is derived from data [tracked](#)¹² in OAH's case management system and is reported annually in OAH's [annual report](#)¹³ to the Governor, the President of the Senate, and the Speaker of the House of Representatives or [internally](#)¹⁴ as a basis of [Administrative Law Judge evaluation](#)¹⁵ under the State's MAPP system .

Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 92.51% to 97.47% of responses. Such measurement is derived from surveys taken at the conclusion of each hearing and is reported annually in OAH's [annual report](#)¹⁶ to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

c. Commitment

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 use their independent judgment, OAH requires that Administrative Law Judges review all decisions which have been modified or rejected by an agency in order to encourage them to identify any possible inaccurate citations or other areas where quality can be improved. This commitment is in furtherance of OAH's duty to provide continuing education to its Administrative Law Judges. For the latest period evaluated, October 1, 2012 through October 1, 2013, the combined substantive error rate (non-typographical) for Administrative Law Judge Decisions was 1.56%. To look at it conversely, the combined substantive error-free rate for Administrative Law Judge Decisions for the time period was 98.44%. The reversal rate due to substantive error was only .85%. These results display the extremely high standards attained by the Administrative Law Judges. Compliance with this strategy of internal continuing education is [tracked monthly](#)¹⁷ and is the basis of evaluation under the State's MAPP system for [Administrative Law Judge evaluation](#).¹⁸

d. Accessibility

An important mandate for OAH is to provide accessibility to citizens, particularly the unrepresented. OAH has designed its rules of procedure to make the process easier to understand and for people to effectively participate. OAH has paid attention to the atmosphere of its [hearing rooms](#)¹⁹ in order to minimize the understandable discomfort that many may feel in being involved in the hearing process. Interesting artwork, comfortable chairs, arrangement of hearing furniture conducive to inclusiveness rather than confrontation, and adequate space all contribute to an environment conducive to resolution or at least the “safe space” where conflict can be channeled to understanding.

The [OAH website](#)²⁰ (www.azoah.com) is organized to allow visitors to find information as quickly and easily as possible. The [background of OAH](#),²¹ including its mission statement, logo, management philosophy and views of the hearing rooms give parties a sense of the “feel” of OAH. [The biographies of the Administrative Law Judges](#)²² allow parties to put a name to a face and learn about a judge’s background. The OAH website contains articles written by the Administrative Law Judges designed to educate the public and parties about the hearing process. Along with [links](#)²³ to the Arizona Revised Statutes, Arizona Administrative Code and OAH’s procedural rules, the website includes extensive cross referencing to allow non-lawyers to quickly pick up [practice pointers](#)²⁴ and be able to put the law together with a minimum of searching. For example, if a person goes to OAH’s procedural rules, any rule that references another rule will have a link to it, as well as any statute in the Uniform Administrative Hearings Procedures Act that deals with the same issue. Likewise, any reference in articles dealing with practice pointers or any response to a frequently asked question that refers to any rule or statute will have links to them. OAH has produced a [video-streamed presentation](#)²⁵ illustrating important points of presentations to assist parties. [OAH’s web Portal](#)²⁶ is an important asset to parties because it allows parties to directly access OAH’s docket to view case settings, rulings, receipt of documents and other information. Other than in confidential cases, parties can not only research their cases on-line, they can listen to the audio record of their hearings over the internet within 24 hours of the hearing. Likewise, [web-based dockets](#),²⁷ used for document intensive and/or high profile cases, allow easy access to all filings, orders, hearing records and transcripts. In addition, parties may research non-confidential [Administrative Law Judge decisions](#)²⁸ through OAH’s website.

e. Self-Audit

OAH does not tolerate under-performance or non-performance. [Daily, weekly](#)²⁹, [monthly](#),³⁰ and [annual audits](#)³¹ of key measures, time limits and completeness of all recordkeeping preclude cumulative errors or significant variance from best practices and policies and procedures.

In addition, Administrative Law Judges are [required to review](#)³² decisions which are substantively amended by an agency. Review of these decisions and ALJ comment are used to determine substantive error rate. Both the requirement of self audit by the Administrative Law Judges and a review of any identified deficiencies are used as a basis of [Administrative Law Judge evaluation](#)³³ under the State’s MAPP system.

Both [staff](#)³⁴ and [administrative law judges](#)³⁵ have queries that allow them to monitor outstanding work to avoid missing deadlines or failing to review pleadings in a timely manner.

3. The extent to which the agency serves the entire State rather than specific interests

All state administrative hearings are held pursuant to the Uniform Administrative Hearing Procedures, except those exempted [A.R.S. §§ 41-1092.02\(A\) and \(C\)](#),³⁶ and the rules of the OAH apply unless waived by all parties. [A.R.S. § 41-1092.02\(B\)](#).³⁷

Providing full, fair, independent, and prompt hearings serves not only the interests of the parties in administrative proceedings, but also cultivates public confidence in the integrity of the administrative process in particular and government in general.

The OAH website permits easy access to its electronic docket as do Web-based dockets. Parties may appear telephonically under [A.A.C. R2-19-114](#),³⁸ and [videoconferencing](#)³⁹ allows appearance in various locations for Registrar of Contractors hearings. OAH maintains a hearing room in Tucson to service the southern part of the State.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate

[A.R.S. § 41-1092.01\(C\)\(4\)](#)⁴⁰ provides that rules be adopted as necessary including a rule regarding *ex parte* communications. OAH adopted its rules on February 3, 1999: [Arizona Administrative Code R2-19-101 et seq.](#)⁴¹ The rules adopted by OAH are streamlined and based on best practices. They are uniform throughout all administrative proceedings and provide the necessary mechanics to allow timely setting and disposition of hearings. [A.A.C. R2-19-105](#)⁴² specifically deals with *ex parte* communications.

No public comment has been received indicating that any rule required amendment or clarification. OAH has recently [completed its second 5 year review](#)⁴³ pursuant to [A.R.S. § 41-1056](#).⁴⁴

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public

Public comment was invited during initial rulemaking in 1998, including the State Bar, the agencies, and private practitioners. No comment has been received since initial rulemaking culminating in adoption of OAH's rules on February 3, 1999.

OAH has [completed its second 5 year review](#).⁴⁵

OAH has not adopted any new rules, nor made changes to its rules within the past 5 years.

[A.A.C. OAH proposes to amend R2-19-122](#).⁴⁶ Prior to July 1, 2013, A.R.S. § 12-904(A) provided for judicial review of an administrative decision by the filing of a complaint with the Superior Court. A.R.S. § 12-904(B) provides that a party file a notice of the action with the Office of Administrative Hearings, and that the Office thereupon transmit the record. In furtherance of A.R.S. § 12-904(A) and (B), R2-19-122 directed parties to file a copy of the complaint filed with the Superior Court with the Office within 10 days of the filing of the complaint. Effective July 1, 2013, A.R.S. § 12-904 substituted "notice of appeal" for "complaint." The Office proposes to amend R2-19-122(A) to substitute "notice of appeal" for

“complaint” to conform to the statutory change. The Office also proposes to distinguish an appeal resulting from an administrative hearing held before the Office from that of an agency, board or commission acting as an administrative law judge. Additionally, the Office proposes to amend R2-19-122(B) to distinguish a transcript of an appeal resulting from an administrative hearing held before the Office from that of an agency, board or commission acting as an administrative law judge. As this is strictly to conform rule with statutory language change, no outreach will be done, other than to post the proposed rule change on OAH’s website.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction

The resolution of complaints, whether of process or personnel, is ultimately a function of recognition of a failure or shortcoming, procedural changes as needed, continuing training of staff, and accountability.

Administrative Law Judges

OAH’s primary quality control and management strategy has been to provide continuous feedback to the Administrative Law Judges which can be grouped as: 1) comment; 2) monitoring of compliance with policies and procedures; 3) self-critique; 4) motions of change of judge; and 5) evaluation by parties.

Comment:

All parties are provided an opportunity to complete an evaluation form at each hearing and each judge, on the record, must call attention to the opportunity for comment. Such comments are compiled and generalized so as not to influence an Administrative Law Judge’s decision. Such measurement is derived from data tracked in OAH’s case management system and is reported annually in OAH’s [annual report](#)⁴⁷ to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Parties may also complain directly to the Director. Such complaints and responses are tracked in OAH’s case management system as events in the docket. All parties are provided copies and asked for response, and to the extent applicable, treated as motions for change of judge if a hearing or request for rehearing is pending. Eight such letters were issued during the period October 1, 2012 through October 1, 2013.

Monitoring:

OAH does not tolerate under-performance or non-performance. [Daily, weekly](#),⁴⁸ [monthly](#),⁴⁹ and [annual audits](#)⁵⁰ of key measures, time limits and completeness of all recordkeeping preclude cumulative errors or significant variance from best practices and policies and procedures.

Administrative Law Judges have [queries](#)⁵¹ that allow them to monitor outstanding work to avoid missing deadlines or failing to review pleadings in a timely manner.

Self Critique:

In addition, Administrative Law Judges are [required to review](#)⁵² decisions which are substantively amended by agencies. Review of these decisions and ALJ comment are used to determine substantive error rate. Both the requirement of self audit by the Administrative Law Judges and a review of any identified deficiencies are used as a basis of [Administrative Law Judge evaluation](#)⁵³ under the State’s MAPP system.

Request for Change of Judge:

In creating OAH, the Legislature envisioned highly trained judges who can provide full, fair, independent, and prompt hearings and decisions. To ensure that goal, the Legislature has mandated that OAH's Director make appropriate appointments of judges to preside over cases, provide for training in technical expertise, solicit comment from parties and set up and maintain a system to evaluate the Administrative Law Judges.

Requests for change of judge and responsive orders by the Director pursuant to [A.R.S. § 41-1092.07\(A\)](#)⁵⁴ are tracked in OAH's case management system and is reported annually in OAH's [annual report](#)⁵⁵ to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Documentation of such requests are maintained in OAH's case management system according to its record retention for electronic records.

Evaluation by Parties:

Evaluations by participants from surveys taken at the conclusion of each hearing is reported annually in OAH's [annual report](#)⁵⁶ to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such evaluations are reported in aggregate form monthly to allow staff to self access and adopt strategies that are commented on favorably and reconsider those that resulted in negative comment.

Staff

OAH's primary quality control and management strategy has been to provide continuous feedback to staff which can be grouped as: 1) comment; 2) monitoring of compliance with policies and procedures; and 3) evaluation by parties.

Comment:

Parties may also complain directly to the Director. Such complaints and responses are tracked in OAH's case management system as events in the docket.

Monitoring:

[Staff](#)⁵⁷ uses search queries that allow them to monitor outstanding work to avoid Administrative Law Judges missing deadlines or failing to review pleadings in a timely manner. Such evaluations are reported in aggregate form monthly to allow staff to self access and adopt strategies that are commented on favorably and reconsider those that resulted in negative comment.

Evaluation by Parties:

Evaluations by participants from surveys taken at the conclusion of each hearing is reported annually in OAH's [annual report](#)⁵⁸ to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

7. The extent to which the Attorney General or any applicable agency of state government has the authority to prosecute actions under the enabling legislation

Neither the Attorney General nor any agency of state government has authority to prosecute actions under the enabling legislation.

8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate

The original enabling statutes of Laws 1995, Chapter 251 were amended by Laws 1996, Chapter 102; Laws 1997, Chapter 221; Laws 1998, Chapter 57; Laws 2000, Chapter 112; Laws 2002, Chapters 254 and 277; and Laws 2003, Chapter 202.

Laws 1995, Chapter 251 established OAH and the duties of the Director and mandated use of its personnel and services. Laws 1996, Chapter 102 elaborated the distinction between “contested case” and “appealable agency action” and outlined the essential structure of the administrative process, including the setting of time limits for scheduling hearings and transmitting decisions. Laws 1997, Chapter 221 and Laws 1998, Chapter 57 incorporated certain provisions of the Administrative Appeals Act of Title 41, Chapter 6, Article 6. In addition, the provision for certification of decisions not timely acted upon by agencies was established. Laws 2004, Chapter 288, § 4], elaborated the burden of persuasion under various situations with the exception of license renewals. Laws 2012, Ch.322, § 16 extended settlement conferences to contested cases as well as appealable agency actions.

No deficiencies existed in OAH’s enabling statutes as amended from time to time that have prevent it from fulfilling its statutory mandate.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with these factors [listed in the sunset law]

No changes are necessary in the laws of the agency to address any current deficiency.

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare

Hearings would have to be devolved to agencies, boards and commissions who are now required to use the services of OAH. The cost of hearings would increase due to the loss of economies of scale.

Although the uniform rules that currently exist could be legislated, it is likely that so-called “local rules” of practice will develop over time, eliminating the streamlined and uniform practices of OAH.

With the elimination of OAH, there would be no entity to certify decisions that are not timely acted upon by the agencies under [A.R.S. § 41-1092.08\(D\)](#).⁵⁹ There would be no independent entity to award attorney fees in the event of agency prosecution of administrative proceedings that are not substantially based under [A.R.S. § 41-1007](#),⁶⁰ or an independent adjudicative actions taken in light of violations of [A.R.S. § 41-1009](#).⁶¹ Likewise, with the elimination of OAH, there would be no entity to provide education to the public, evaluate the competency of judges, or supply comprehensible and uniform performance measures to the Legislature.

11. The extent to which the level of regulation exercised by the agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate

OAH is not a regulatory agency.

12. The extent to which the agency has used private contractors in the performance of its duties as compared to other states and how effective use of private contractors could be accomplished

[A.R.S. §§ 41-1092.01\(H\) and \(I\)](#)⁶² provides that OAH shall employ full-time administrative law judges and use private contractors only if OAH can not meet the needs of conducting hearing in a timely manner. Contract hearing officers have not been used since 1996. Because the average billed hourly rate of salary of OAH Administrative Law Judges is 1/3 of the cost of private contractors, effective use of private contractors would not be cost effective.

OAH is unaware of any central panel employing contracted hearing officers, except possibly part time, as necessary, similar to what is done at the Department of Economic Security, and what OAH may do should it be unable to meet demand.

¹ <http://www.azleg.state.az.us/ars/41/01092-01.htm>

² <http://www.azleg.state.az.us/ars/41/01092-01.htm>

³ <http://azoah.com/stats.html>

⁴ <http://www.azleg.state.az.us/ars/41/01092-05.htm>

⁵ <http://www.azoah.com/SunsetReviewSupp/StatisticalMeasurements.html>

⁶ <http://azoah.com/stats.html>

⁷ <http://www.azoah.com/SunsetReviewSupp/StatisticalMeasurements.html>

⁸ <http://azoah.com/stats.html>

⁹ <http://www.azoah.com/SunsetReviewSupp/ALJ%20MAPP%20scripts.html>

¹⁰ <http://www.azoah.com/SunsetReviewSupp/SmaartMeasuresALJ.pdf>

¹¹ <http://www.azoah.com/electronic.html>

¹² <http://www.azoah.com/SunsetReviewSupp/StatisticalMeasurements.html>

¹³ <http://azoah.com/stats.html>

¹⁴ <http://www.azoah.com/SunsetReviewSupp/ALJ%20MAPP%20scripts.html>

¹⁵ <http://www.azoah.com/SunsetReviewSupp/SmaartMeasuresALJ.pdf>

¹⁶ <http://azoah.com/stats.html>

¹⁷ <http://www.azoah.com/SunsetReviewSupp/ALJ%20MAPP%20scripts.html>

¹⁸ <http://www.azoah.com/SunsetReviewSupp/SmaartMeasuresALJ.pdf>

¹⁹ http://www.azoah.com/Phoenix_views.html

²⁰ <http://www.azoah.com/>

²¹ <http://www.azoah.com/background.html>

²² <http://www.azoah.com/alj.html>

²³ <http://www.azoah.com/research.html>

²⁴ <http://www.azoah.com/practice.html>

²⁵ <http://www.azoah.com/video.html>

²⁶ <http://www.azoah.com/portal.html>

²⁷ <http://www.azoah.com/electronic.html>

²⁸ <http://www.azoah.com/search.html>

²⁹ <http://azoah.com/SunsetReviewSupp/ProcessAudits.html>

30 <http://www.azoah.com/SunsetReviewSupp/ALJ%20MAPP%20scripts.html>
31 <http://www.azoah.com/SunsetReviewSupp/StatisticalMeasurements.html>
32 http://www.azoah.com/SunsetReviewSupp/Review_of_Agency_Actions.htm
33 <http://www.azoah.com/SunsetReviewSupp/SmaartMeasuresALJ.pdf>
34 <http://www.azoah.com/SunsetReviewSupp/staff%20queries.html>
35 <http://www.azoah.com/SunsetReviewSupp/Personal%20%20scripts.html>
36 <http://www.azleg.state.az.us/ars/41/01092-02.htm>
37 <http://www.azleg.state.az.us/ars/41/01092-02.htm>
38 <http://www.azoah.com/Rules.html>
39 <http://www.azoah.com/video15.html>
40 <http://www.azleg.state.az.us/ars/41/01092-01.htm>
41 <http://www.azoah.com/Rules.html>
42 <http://www.azoah.com/Rules.html>
43 <http://www.azoah.com/SunsetReviewSupp/04022013%20Action%20Report.pdf>
44
<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/41/01056.htm&Title=41&DocType=ARS>
45 <http://www.azoah.com/SunsetReviewSupp/04022013%20Action%20Report.pdf>
46 <http://www.azoah.com/SunsetReviewSupp/Notice%20of%20Proposed%20Rulemaking.pdf>
47 <http://azoah.com/stats.html>
48 <http://azoah.com/SunsetReviewSupp/ProcessAudits.html>
49 <http://www.azoah.com/SunsetReviewSupp/ALJ%20MAPP%20scripts.html>
50 <http://www.azoah.com/SunsetReviewSupp/StatisticalMeasurements.html>
51 <http://www.azoah.com/SunsetReviewSupp/Personal%20%20scripts.html>
52 http://www.azoah.com/SunsetReviewSupp/Review_of_Agency_Actions.htm
53 <http://www.azoah.com/SunsetReviewSupp/SmaartMeasuresALJ.pdf>
54 <http://www.azleg.state.az.us/ars/41/01092-07.htm>
55 <http://azoah.com/stats.html>
56 <http://azoah.com/stats.html>
57 <http://www.azoah.com/SunsetReviewSupp/staff%20queries.html>
58 <http://azoah.com/stats.html>
59 <http://www.azleg.state.az.us/ars/41/01092-08.htm>
60
<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/41/01007.htm&Title=41&DocType=ARS>
61
<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/41/01009.htm&Title=41&DocType=ARS>
62 <http://www.azleg.state.az.us/ars/41/01092-01.htm>