

The Office of Administrative Hearings

The Twenty Third Annual Report

To

Governor Douglas A. Ducey

Senator Steve Yarbrough, President of the Senate

Representative J.D. Mesnard, Speaker of the House

Pursuant to A.R.S. § 41-1092.01(C)(5)

and

A.R.S. § 41-1092.01(C)(9)



Greg Hanchett, Acting Director

November 19, 2018

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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 2018 the agency had 12 full-time positions, including the Director, the Office Manager, 7 Administrative Law Judges, and 3 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 2018 indicate agency acceptance of Administrative Law Judge Decisions without modification was 86.12%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 89.34%. Rehearings (2.15%) and Appeals (2.72%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 97.65% 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 2018 was 96.3%.

II. Continued Development of the Office

1. Mediation Option for Litigants

OAH has developed and implemented a voluntary mediation program to provide litigants with alternative dispute resolution in certain cases. As of November, 2018, OAH has five full time administrative law judges who are trained mediators and two additional contract trained mediators. OAH offers mediation services to litigants in Registrar of Contractors cases and Arizona Division of Occupational Safety and Health (ADOSH) cases and continues to expand mediation to other types of disputes that come before OAH (such as Mobile Home Landlord/Tenant cases). Dozens of case have already been successfully mediated under the program. By offering a mediation option, OAH will substantially reduce costs and stress for litigants who chose the mediation option. When cases are successfully mediated, there will be a concomitant reduction in demands on state resources as well.

2. Agency Training on Due Process

OAH has fully implemented annual training for requesting agencies and state bar affiliated lawyer sections regarding due process considerations under the Uniform Administrative Procedures Act, Title 41, Chapter 6, Article 10. Training has been presented to a diverse range of agencies and private sector entities including the Registrar of Contractors, the Department of Economic Security, Structural Pest Control Board, Department of Agriculture, the Department of Real Estate, Department of Child Safety, The Department of Revenue, various state boards and sections of the Arizona State Bar (such as the administrative law section and construction law section). The seminars are designed to provide useful information and instruction to agency personnel and lawyers about enhancing due process protections for citizens at all stages of administrative adjudications in order to enhance the quality of the appeal and hearing processes. Seminars continue to focus on topics such as statutory notice requirements to parties, appeal and hearing procedures under the Uniform Administrative Procedures Act, and practice pointers. This year, as in the preceding two years since implementing this training, state agency requests for the training have continued to grow. OAH will continue to reach out annually to agencies and private sector entities to offer them updated training on due process.

3. OAH adjudication of Arizona Division of Occupational Safety and Health (ADOSH) cases and Video Service Provider Cases.

OAH has successfully assumed adjudication responsibilities for ADOSH cases arising under Title 23, Chapter 2, Article 10 is providing timely and efficient mediation and adjudication of these cases. During the transition process, OAH worked closely with both industry and agency representatives and their legal counsel to ensure the efficacy of the process. In addition, OAH's already ongoing efforts to implement mediation worked to speed the transition of ADOSH cases as litigants in these matters frequently resort to mediation for dispute resolution. Going forward, OAH will continue to work closely with industry and agency representatives to ensure fair, impartial and expeditious dispute resolution of ADOSH cases and will continue to seek ways to promote adjudication and alternative dispute resolution efficiencies.

Effective August 3, 2018, under A.R.S. §9-1451 OAH has also been given original jurisdiction to hear and determine disputes arising out of video service provider agreements between video service providers and local governments. In furtherance of this legislative directive, OAH has

prepared its staff and case management system to meet the administrative and adjudicative demands of these cases which include preparing notices of hearing, holding hearings and issuing final decisions. As these cases come on line for adjudication, the parties will also benefit from OAH's already existing mediation program should the parties wish to pursue alternative dispute resolution.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2018):

5,798 cases were filed with OAH in FY 2018. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

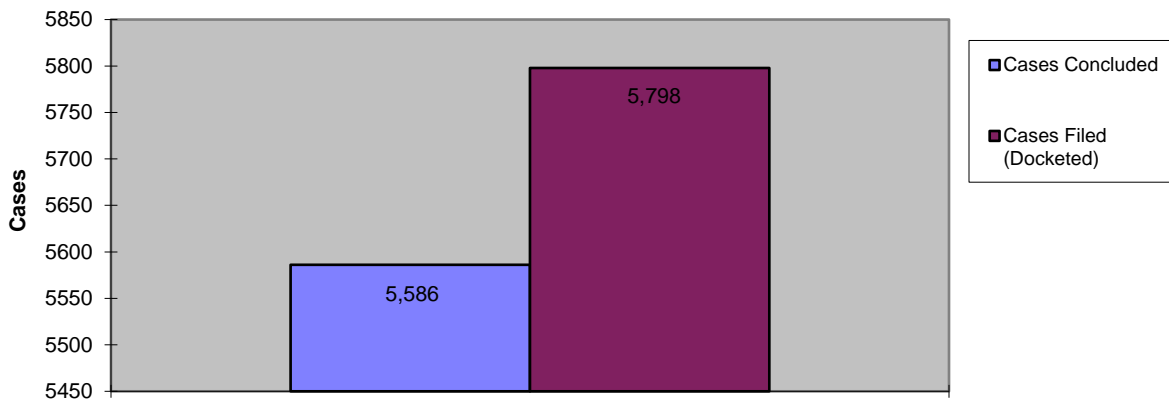
Arizona Health Care Cost Containment System	3997
Registrar of Contractors	717
Department of Child Safety	215
Department of Health Services	176
Department of Economic Security	88
State Board of Nursing	87
Arizona Division of Occupational Safety and Health	83
Department of Education - Special Ed	64
Department of Real Estate	62
Department of Real Estate - H/C	56
Department of Insurance	45
Arizona Department of Revenue	41
State Board of Accountancy	36
Arizona State Department of Housing	15
Peace Officers Standards and Training	11
Arizona Medical Board	9
Arizona State Department of Housing - LTA	9
Arizona State Retirement System	9
Department of Education	8
State Land Department	8
Board of Dental Examiners	7
Department of Gaming	7
City of Phoenix (TRIP)	5
Department of Environmental Quality	4
Liquor Licenses and Control	4
Board of Technical Registration	3
City of Phoenix	3
Department of Public Safety - Criminal History Records	3
Department of Public Safety - Student Transportation	3

Arizona School Facilities Board	2
City of Phoenix (NOV)	2
Department of Administration	2
Department of Water Resources	2
Radiation Regulatory Agency	2
State Board for Charter Schools	2
Arizona Department of Financial Institutions	1
Arizona Department of Housing	1
Arizona Department of Real Estate	1
Arizona Lottery	1
Board of Psychologist Examiners	1
Citizens Clean Elections Commission	1
Department of Agriculture	1
Department of Public Safety - Concealed Weapons Permit Unit	1
Golder Ranch Fire District	1
Secretary of State	1
Secretary of State - HAVA	1
Total	5798

b. Number of Cases Concluded Versus Cases Filed:

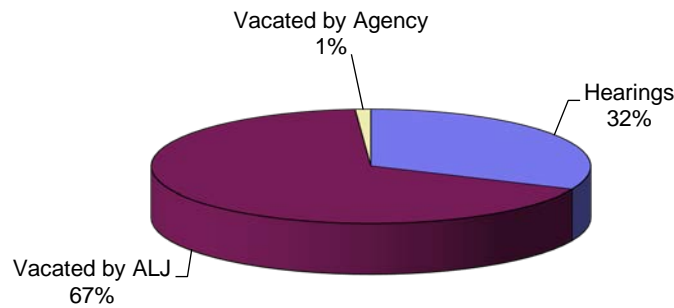
In FY 2018, the conclusion rate (defined as cases concluded divided by new cases filed) was 96.3%.

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 2018

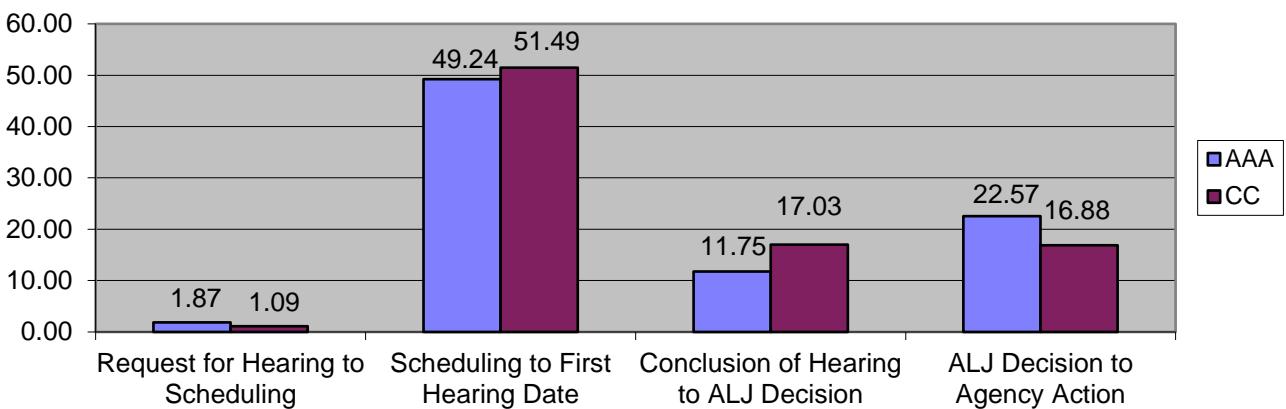


c. Timeline of Case Management:

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:

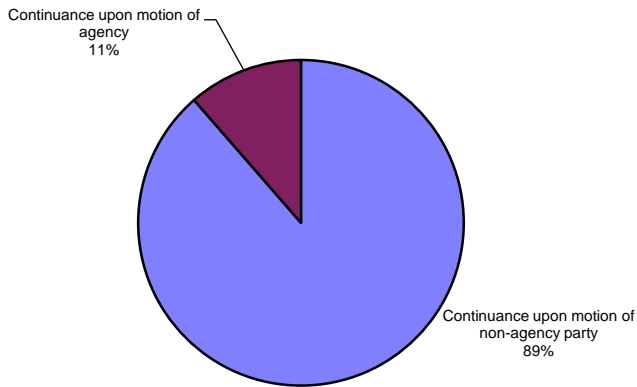
Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases



d. Incidence of Continuance:

A single continuance in FY 2018 added an average of 92.07 days to the total length of a case. Although 88.96% of all continuance requests were granted in FY 2018, OAH has developed a well-deserved reputation for discouraging “convenience” continuances in favor of those based on “good cause.” The frequency of continuances, defined as the number of continuances granted (1,410) divided by the total number of cases first scheduled (5,798), was 25%.

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 2018 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 of Osteopathic Examiners In Medicine and Surgery	-	2
Arizona Department of Revenue	17	1
Arizona Division of Occupational Safety and Health	18	2

Arizona Health Care Cost Containment System	334	56
Arizona Medical Board	4	1
Arizona School Facilities Board	-	1
Arizona State Department of Housing	14	-
Arizona State Department of Housing - LTA	1	-
Arizona State Retirement System	6	-
Board of Dental Examiners	3	2
Board of Psychologist Examiners	-	1
Board of Technical Registration	3	1
Department of Agriculture	-	1
Department of Child Safety	69	10
Department of Economic Security	47	8
Department of Education	2	-
Department of Education - Special Ed	28	-
Department of Environmental Quality	2	1
Department of Health Services	31	14
Department of Insurance	13	-
Department of Public Safety - Concealed Weapons Permit Unit	1	1
Department of Real Estate	21	1
Department of Real Estate - H/C	23	3
Department of Water Resources	2	-
Liquor Licenses and Control	1	-
Registrar of Contractors	344	15
State Board of Accountancy	4	2
State Board of Nursing	11	5
State Land Department	1	1
Water Quality Appeals Board	2	-
Total	1002	129

The following chart reflects the number of motions to continue that were entertained in FY 2018 and the percentage granted:

fig. 2

Agency	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Board of Osteopathic Examiners In Medicine and Surgery	2	-	2	100.0
Arizona Department of Financial Institutions	0	2	2	0.0
Arizona Department of Real Estate	1	-	1	100.0
Arizona Department of Revenue	27	-	27	100.0
Arizona Department Revenue	1	-	1	100.0
Arizona Division of Occupational Safety and Health	44	-	44	100.0
Arizona Health Care Cost Containment System	563	62	625	90.1
Arizona Medical Board	11	1	12	91.7
Arizona School Facilities Board	1	-	1	100.0
Arizona State Department of Housing	11	2	13	84.6
Arizona State Department of Housing - LTA	4	2	6	66.7
Arizona State Retirement System	8	-	8	100.0
Board of Dental Examiners	6	3	9	66.7
Board of Psychologist Examiners	1	-	1	100.0
Board of Technical Registration	5	-	5	100.0
City of Phoenix	1	-	1	100.0
Department of Agriculture	1	-	1	100.0
Department of Child Safety	85	9	94	90.4
Department of Economic Security	42	4	46	91.3
Department of Education	4	-	4	100.0
Department of Education - Special Ed	37	7	44	84.1
Department of Environmental Quality	1	-	1	100.0
Department of Fire Building and Life Safety - H/C	1	-	1	100.0
Department of Gaming	1	-	1	100.0
Department of Health Services	52	4	56	92.9
Department of Insurance	12	4	16	75.0
Department of Public Safety - Criminal History Records	2	-	2	100.0
Department of Real Estate	14	2	16	87.5
Department of Real Estate - H/C	26	4	30	86.7
Department of Water Resources	2	-	2	100.0
Liquor Licenses and Control	2	-	2	100.0
Peace Officers Standards and Training	1	2	3	33.3
Registrar of Contractors	388	55	443	87.6
Rio Rico Fire District	0	1	1	0.0
State Board of Accountancy	27	-	27	100.0
State Board of Nursing	11	11	22	50.0
State Land Department	15	-	15	100.0
Total	1410	175	1585	88.96%

2. Evaluation

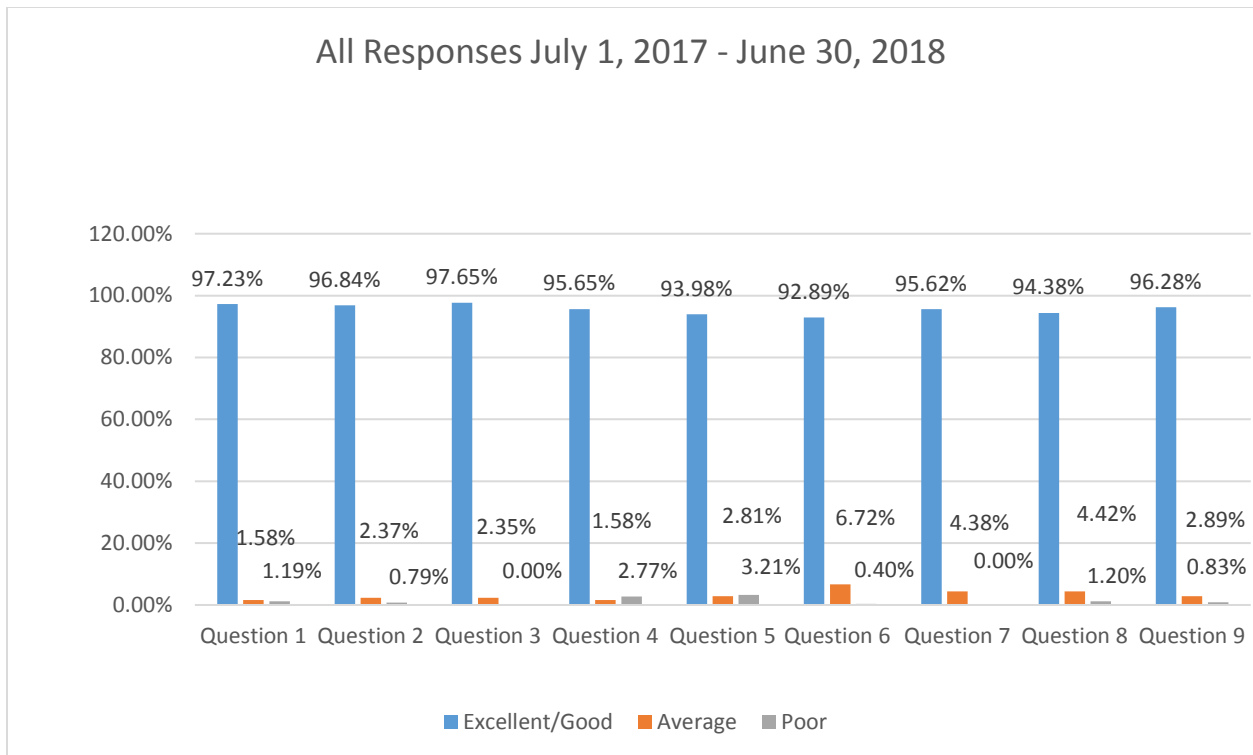
a. Results of Public Evaluation:

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

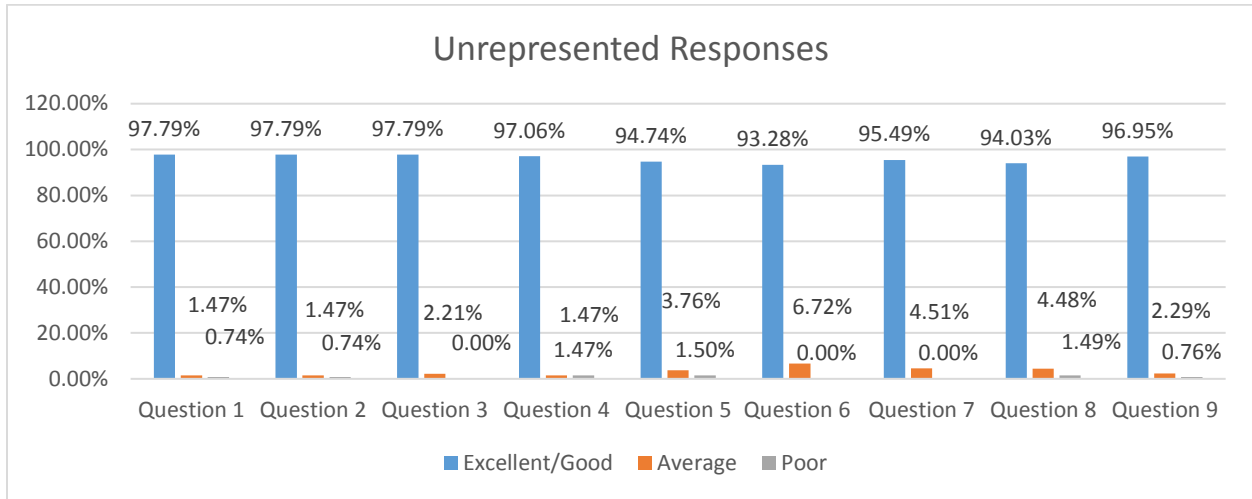
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

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 92.89% to 97.65% of 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 2018, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 2.15%.

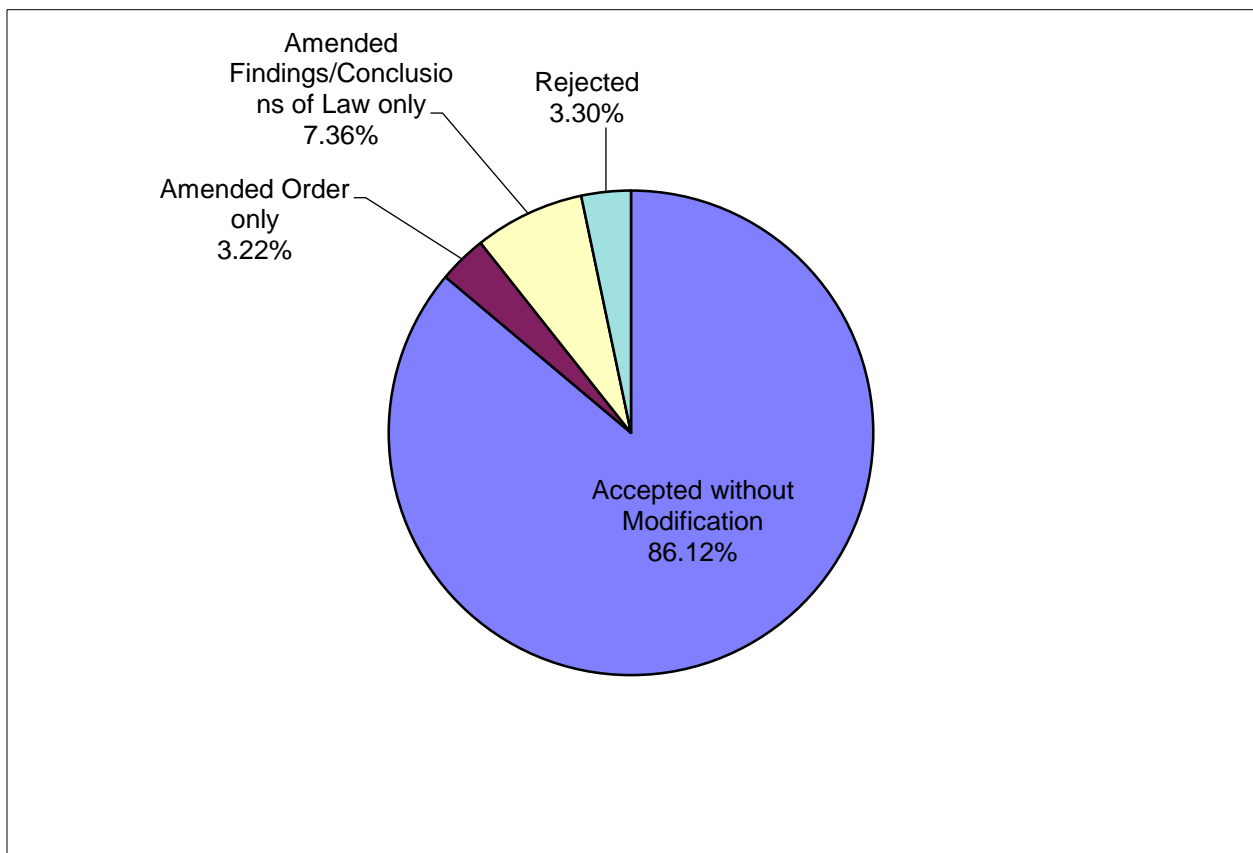
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2018, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 2.72%. As reflected in the following diagram, rehearings and judicial appeals in FY 2018 were relatively rare.

	Rehearings	Appeals
Arizona Health Care Cost Containment System	9	6
Department of Economic Security - APS	1	4
Department of Real Estate - H/C	10	-
Registrar of Contractors	10	12
Department of Child Safety	-	2
Department of Health Services	-	7
Funeral Board	-	1
Special Education	-	5
POST	-	1
Totals	30	38

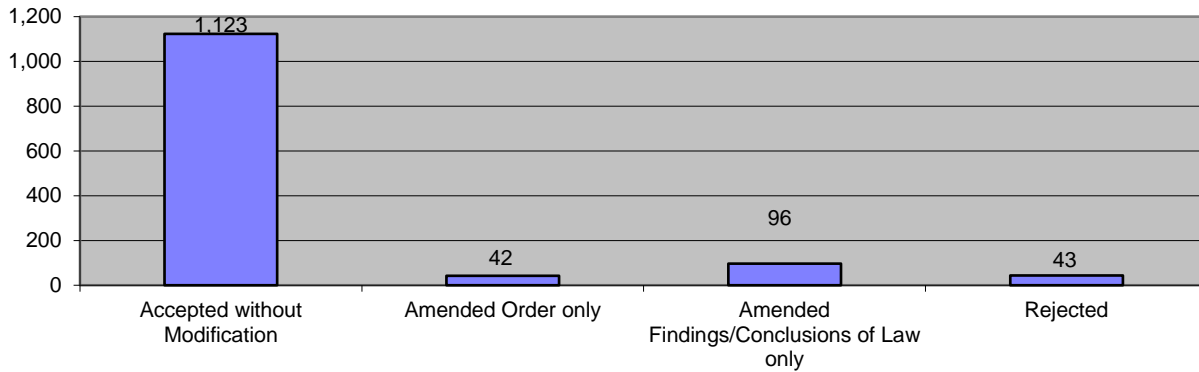
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 86.12% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 89.34% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 30.43% of modifications made by the agencies were in the Recommended Order (penalty portion).



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

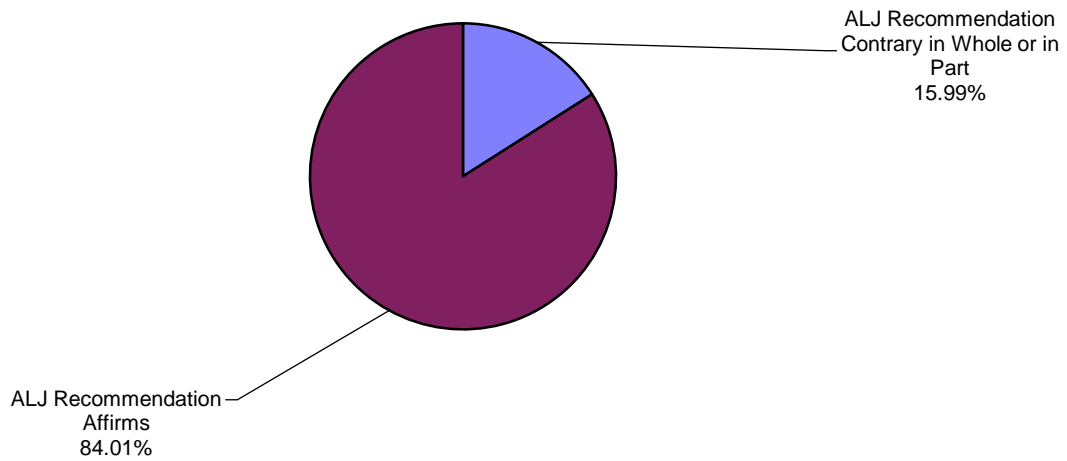


The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy	14	-	-	-	14
Department of Education	-	-	-	-	
Department of Housing	8	1	-	-	9
AHCCCS	637	1	44	19	701
Adult Protective Services	22	-	-	3	25
Arizona Retirement Board	2	-	3	-	5
Board of Charter Schools	-	1	-	-	1
Board of Technical Registration	-	-	1	-	1
Department of Public Safety	-	-	-	-	
Citizens Clean Elections Commission	1	-	-	-	1
Public Safety - Criminal History Records	1	-	-	-	1
Department of Child Safety	3	-	7	1	11
Board of Dental Examiners	1	-	1	-	2
Environmental Quality	1	-	-	-	1
Department of Health Services	10	4	14	1	29
Water Resources	-	-	1	-	1
Game and Fish	1	-	-	-	1
Department of Insurance	15	-	-	1	16
Liquor Licenses and Control	1	-	1	-	2
Medical Board	1	-	-	1	2
Secretary of State	1	-	-	-	1
Nursing	27	-	1	2	30
Board of Psychologist Examiners	1	-	-	-	1
Real Estate	38	-	4	2	44
Registrar of Contractors	338	35	19	13	405
Total	1123	42	96	43	1304

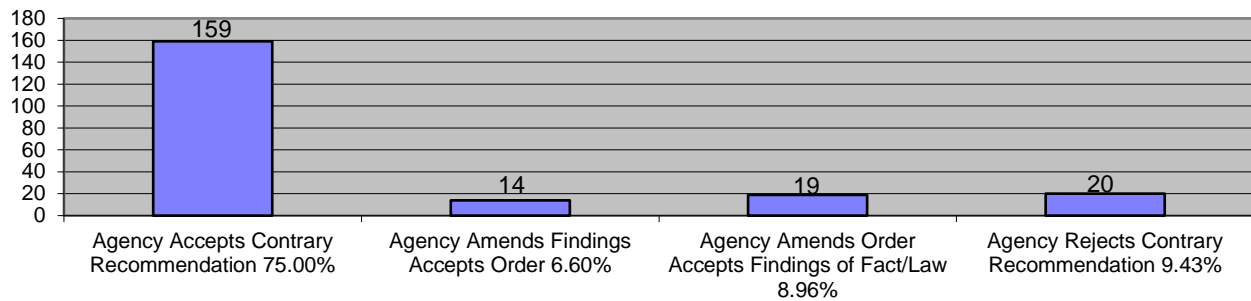
In FY 2018, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 15.99% of cases.

Recommendations Contrary to Original Agency Action FY 2018



Agency acceptance of contrary decisions was high at 90.56%.

Agency Response to Contrary Recommendations FY 2018



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

	Accepted	Amended Order	Amended Finding	Rejected	Certified	Total
Arizona Department of Housing	1	0	0	0	0	1
AHCCCS	35	1	6	5	0	47
Department of Economic Security - APS	8	0	0	1	0	9
Department of Public Safety-Bus	0	0	0	0	1	1
Dental Board	1	0	0	0	0	1
Department of Child Services	2	0	0	1	15	18
Health Services	0	2	0	1	0	3
Insurance	0	0	0	1	0	1
Medical Examiners	0	0	0	1	0	1
Nursing Board	2	0	0	1	0	3
Real Estate	7	2	3	4	0	16
Liquor Licenses	0	0	1	0	0	1
Registrar of Contractors	85	9	9	5	0	108
Arizona School Facilities Board	1	0	0	0	0	1
Secretary of State - HAVA	1	0	0	0	0	1
Total	143	14	19	20	16	212

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 2018, 57 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Arizona Game and Fish Department	1
Arizona Health Care Cost Containment System	10
Department of Child Safety	36
Department of Health Services	1
Department of Insurance	4
Department of Public Safety - Criminal History Records	2
Department of Public Safety - Student Transportation	1
Department of Real Estate - H/C	1
Registrar of Contractors	1
Total	57

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 2018, 2 motions were received 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.