

The Office of Administrative Hearings

The Twenty Fourth Annual Report

To

Governor Douglas A. Ducey

Senator Karen Fann, President of the Senate

Representative Russell Bowers, 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

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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 2019 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 2019 indicate agency acceptance of Administrative Law Judge Decisions without modification was 85.04%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 87.48%. Rehearings (1.42%) and Appeals (2.92%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 95.45 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 2019 was 105.85%.

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, 2019, OAH has five full time administrative law judges who are trained mediators and one additional contract trained mediator. 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 cases each year have been successfully mediated under the program saving hundreds of hours of time. Litigants in increasing numbers continue to utilize OAH's mediation program to resolve their disputes. By offering a mediation option, OAH substantially reduces costs and stress for litigants who chose the mediation option. Mediation has resulted in 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 three 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 and provision of arbitration services for Department of Insurance.

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 was 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.

In February, 2019, OAH and the Arizona Department of Insurance entered into an Interganecy Service Agreement (ISA) for OAH to provide arbitration services for surprise billing disputes pursuant to A.R.S § 20-3111. These matters arise between medical service providers and insurance companies from disputed insurance coverage for medical services claims.

4. Technical Advances Saving Money.

OAH has worked to enhance efficiency and productivity by automating routine clerical tasks such as filing documents in OAH's docketing system and providing notice of the filing of such documents to parties. To this end, OAH has developed a proprietary computer program to automate the docketing of the several thousand motions and other documents filed with OAH each year. This has virtually eliminated time and costs associated with staff manually docketing such entries.

In addition, OAH has implemented its integration with Google Mail and Google calendaring in conformity with ADOA requirements. To this end, OAH developed methodologies to make Google compatible with OAH's existing docketing system, saving tens of thousands of dollars that would have otherwise been required to purchase and deploy new docketing system software to interface with Google.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2019):

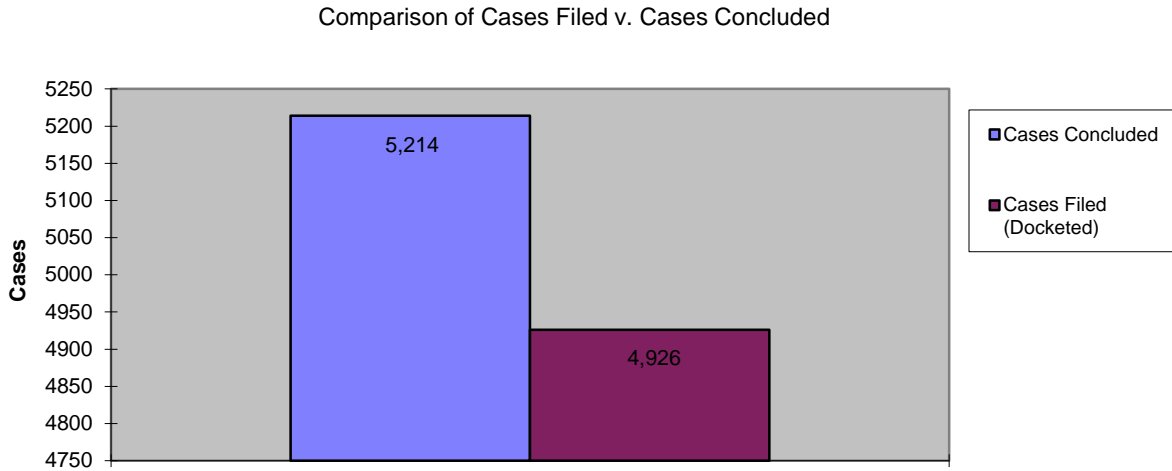
4,926 cases were filed with OAH in FY 2019. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

Arizona Health Care Cost Containment System	2910
Registrar of Contractors	674
Department of Child Safety	405
Department of Health Services	218
Department of Economic Security	105
Department of Real Estate	95
Department of Insurance	83
State Board of Nursing	79
Department of Real Estate - H/C	66
Department of Education - Special Ed	63
Arizona Division of Occupational Safety and Health	34
Arizona Department of Revenue	31
State Board of Accountancy	22
Department of Education	17
Peace Officers Standards and Training	16
Arizona State Department of Housing - LTA	13
Arizona Medical Board	12
Arizona Department of Financial Institutions	11
Department of Gaming	11
Arizona State Department of Housing	9
Arizona State Retirement System	8
Liquor Licenses and Control	6
Secretary of State	5
City of Phoenix (NOV)	4
Arizona Department of Insurance	3
Board of Behavioral Health Examiners	3
Board of Technical Registration	3
Department of Administration	3
Board of Dental Examiners	2
State Board for Charter Schools	2
Arizona Board of Osteopathic Examiners In Medicine and Surgery	1
Arizona Commission for the Deaf and the Hard of Hearing	1
Arizona Fire Medical Authority	1
Department of Environmental Quality	1
Department of Insurance	1
Department of Public Safety - Concealed Weapons Permit Unit	1
Department of Public Safety - Criminal History Records	1
Department of Public Safety - Student Transportation	1

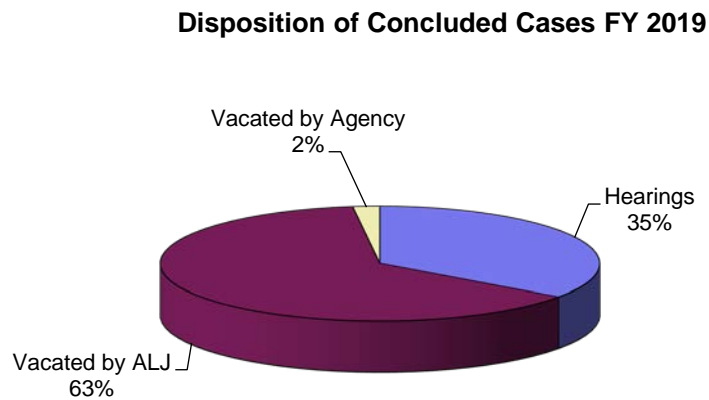
Department of Weights and Measures	1
Eloy Fire District	1
Office of the Attorney General	1
Pharmacy Board	1
Williamson Valley Fire District	1
Total	4926

b. Number of Cases Concluded Versus Cases Filed:

In FY 2019, the conclusion rate (defined as cases concluded divided by new cases filed) was 105.85%.



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

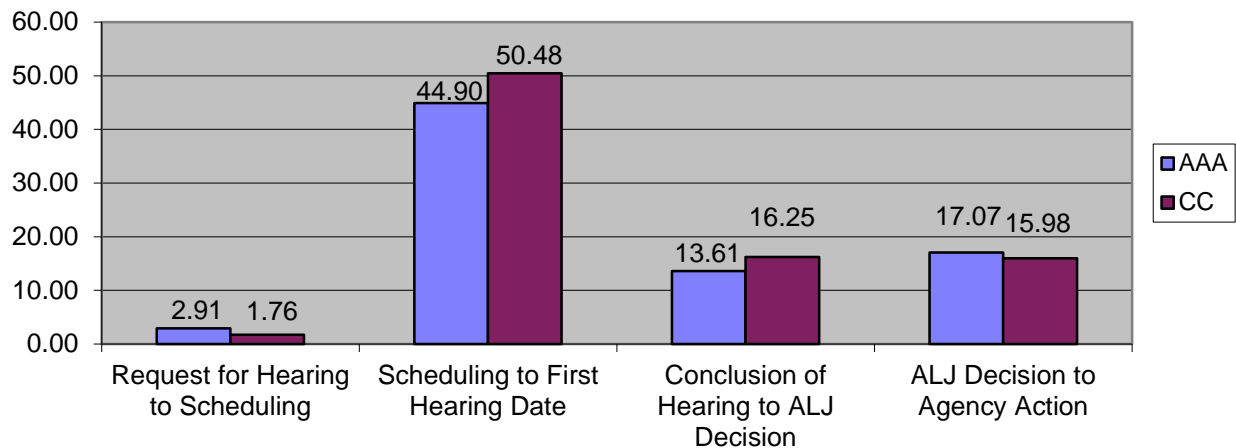


c. Timeline of Case Management:

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:

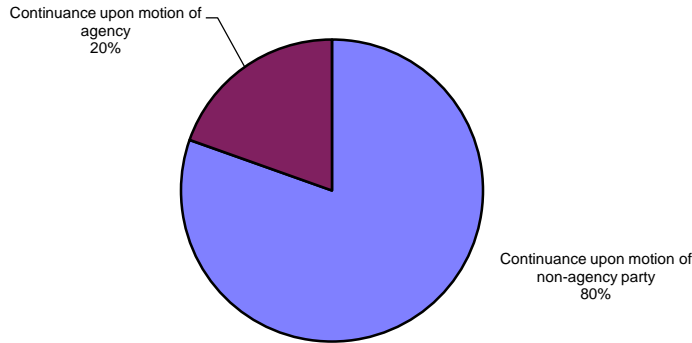
Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases



d. Incidence of Continuance:

A single continuance in FY 2019 added an average of 48.18 days to the total length of a case. Although 91% of all continuance requests were granted in FY 2019, 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 (1,989) divided by the total number of cases first scheduled (4,926), was 41%.

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 2019 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 Commission for the Deaf and the Hard of Hearing	1	-
Arizona Department of Financial Institutions	-	2
Arizona Department of Revenue	21	2
Arizona Division of Occupational Safety and Health	1	1
Arizona Health Care Cost Containment System	443	64
Arizona Medical Board	4	1
Arizona State Department of Housing	1	-
Arizona State Department of Housing - LTA	7	-
Arizona State Retirement System	5	3
Board of Technical Registration	-	1
City of Phoenix (NOV)	2	1
Department of Administration	1	-
Department of Child Safety	127	108
Department of Economic Security	51	15
Department of Education	4	1
Department of Education - Special Ed	14	-

Department of Environmental Quality	3	-
Department of Health Services	25	6
Department of Insurance	5	3
Department of Real Estate	12	-
Department of Real Estate - H/C	42	4
Eloy Fire District	1	-
Liquor Licenses and Control	4	-
Peace Officers Standards and Training	2	-
Pharmacy Board	2	-
Registrar of Contractors	317	46
Secretary of State	2	-
State Board of Accountancy	13	8
State Board of Nursing	11	6
State Land Department	-	1
Williamson Valley Fire District	1	-
Total	1122	273

The following chart reflects the number of motions to continue that were entertained in FY 2019 and the percentage granted:

.....
fig. 2

Agency	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Commission for the Deaf and the Hard of Hearing	2	-	2	100.0
Arizona Department of Financial Institutions	6	1	7	85.7
Arizona Department of Revenue	21	1	22	95.5
Arizona Division of Occupational Safety and Health	15	-	15	100.0
Arizona Health Care Cost Containment System	903	92	995	90.8
Arizona Medical Board	6	1	7	85.7
Arizona State Department of Housing	1	1	2	50.0
Arizona State Department of Housing - LTA	9	3	12	75.0
Arizona State Retirement System	8	1	9	88.9
Board of Behavioral Health Examiners	1	-	1	100.0
Board of Dental Examiners	2	-	2	100.0
City of Phoenix (NOV)	1	-	1	100.0
Department of Administration	4	-	4	100.0
Department of Child Safety	249	8	257	96.9
Department of Economic Security	71	8	79	89.9
Department of Education	8	-	8	100.0
Department of Education - Special Ed	55	-	55	100.0
Department of Health Services	75	4	79	94.9
Department of Insurance	6	1	7	85.7

Department of Public Safety - Criminal History Records	1	-	1	100.0
Department of Public Safety - Student Transportation	0	1	1	0.0
Department of Real Estate	16	4	20	80.0
Department of Real Estate - H/C	42	14	56	75.0
Department of Weights and Measures	1	-	1	100.0
Eloy Fire District	2	-	2	100.0
Liquor Licenses and Control	4	-	4	100.0
Office of Administrative Hearings	2	-	2	100.0
Peace Officers Standards and Training	5	2	7	71.4
Pharmacy Board	2	1	3	66.7
Registrar of Contractors	404	46	450	89.8
State Board for Charter Schools	1	-	1	100.0
State Board of Accountancy	26	-	26	100.0
State Board of Nursing	38	7	45	84.4
State Land Department	1	-	1	100.0
Williamson Valley Fire District	1	1	2	50.0
Total	1989	197	2186	90.99

2. Evaluation

a. Results of Public Evaluation:

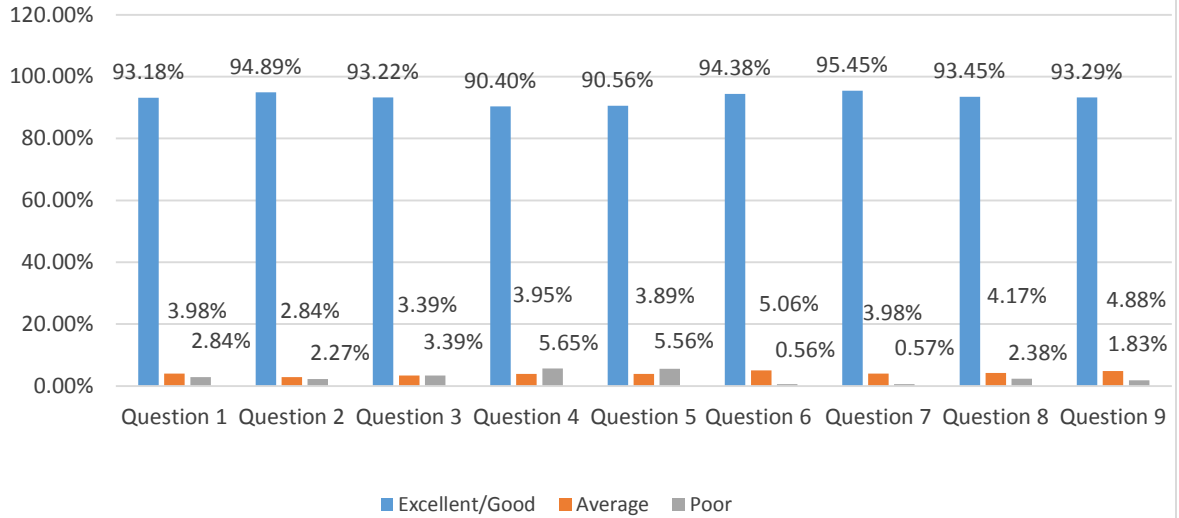
Since November 1996, OAH has administered an evaluation procedure. A copy of the evaluation is provided to all participants before the hearing. The results are not disclosed to the Administrative Law Judge. Hearing participants place completed evaluations in locked boxes located near the hearing rooms.

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

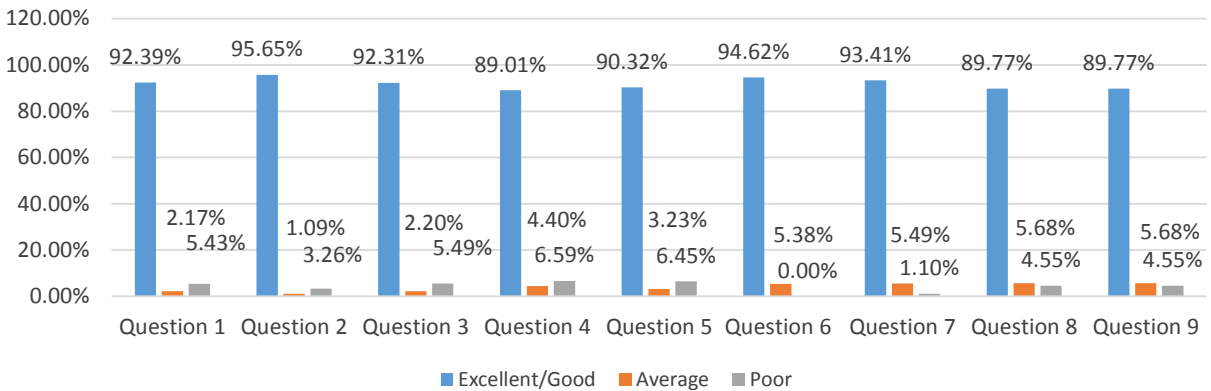
The results indicate that satisfaction is high among all groups, with those responding rating OAH excellent to good in 90.40% to 95.45% of responses.

All Responses July 1, 2018 - June 30, 2019



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

Unrepresented Responses



b. Incidence of Rehearing and Appeal:

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2019, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 1.42%.

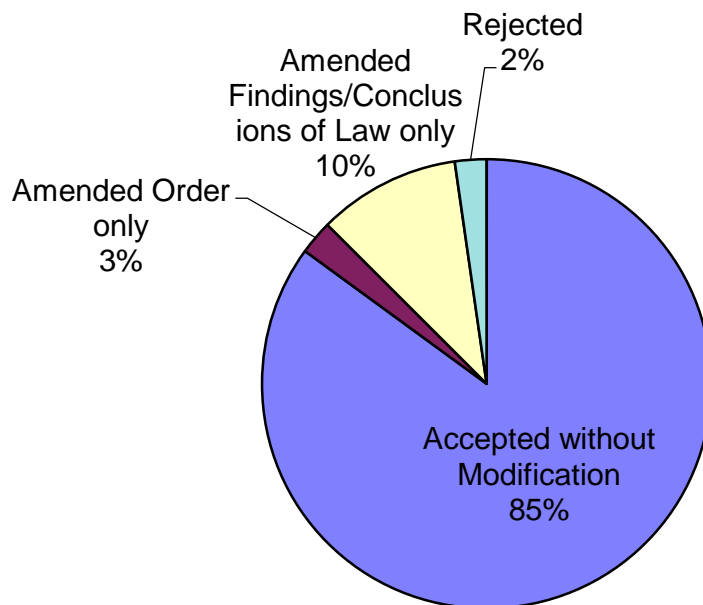
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2019, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 2.92%. As reflected in the following diagram, rehearings and judicial appeals in FY 2019 were relatively rare.

	Rehearings	Appeals
Arizona Health Care Cost Containment System	2	3
Arizona State Retirement System	-	2
Department of Administration	-	1
Department of Child Safety	2	2
Department of Economic Security	-	3
Department of Education - Special Ed	-	3
Department of Environmental Quality	-	2
Department of Health Services	-	2
Department of Insurance	-	3
Department of Real Estate - H/C	14	6
Liquor Licenses and Control	-	2
Peace Officers Standards and Training	-	1
Registrar of Contractors	2	7
State Board of Accountancy	-	1
State Board of Nursing	-	3
Totals	20.0	41.0

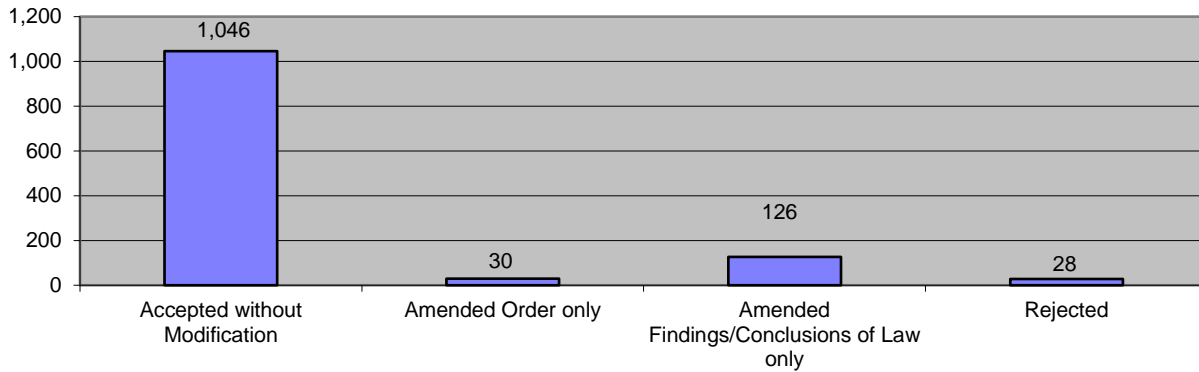
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 85% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 88% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 19.23% 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.

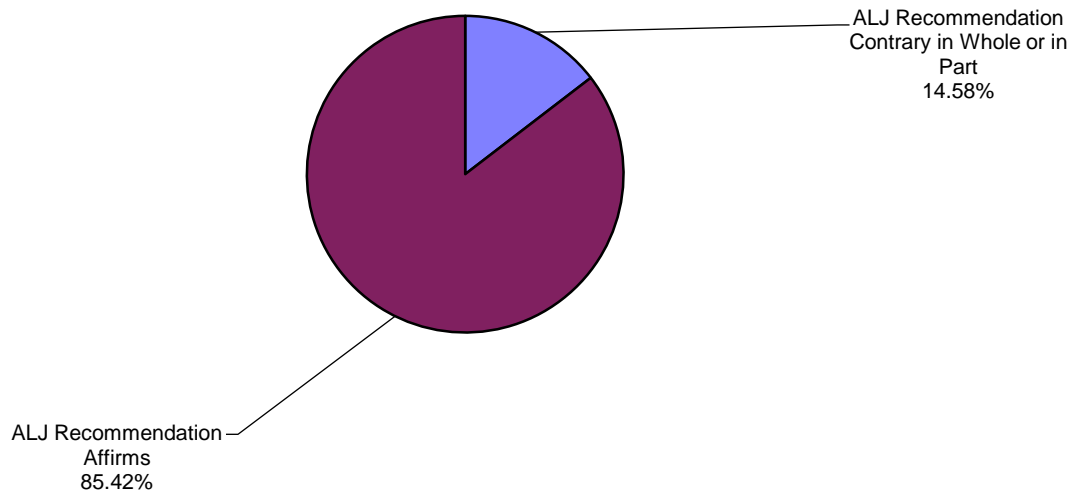


The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy	7	1	4	-	12
Department of Education	-	-	2	1	3
Department of Housing	10	-	1	-	11
Arizona Health Care Cost Containment System	606	5	56	11	678
Adult Protective Services	16	3	3	4	26
Arizona Retirement Board	5	-	-	-	5
Department of Financial Institutions	2	-	-	-	2
Board of Technical Registration	1	-	-	-	1
Department of Public Safety - Concealed Weapons Permit Unit	1	-	-	-	1
Department of Child Safety	-	2	4	5	11
Environmental Quality	2	-	-	-	2
Department of Health Services	21	4	12	1	38
Gaming	1	-	-	-	1
Insurance	27	-	2	-	29
Medical Board	1	1	4	-	6
Secretary of State	3	-	-	-	3
Nursing	18	-	3	-	21
Medical Board - PAB	-	-	1	-	1
Pharmacy Board	-	-	1	-	1
Real Estate	28	-	4	1	33
Registrar of Contractors	297	14	29	5	345
Total	1046	30	126	28	1230

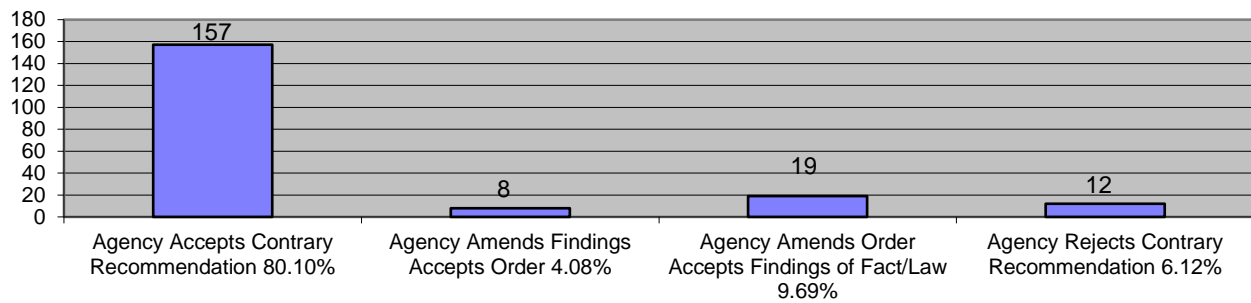
In FY 2019, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 14.58% of cases.

Recommendations Contrary to Original Agency Action FY 2019



Agency acceptance of contrary decisions was high at 93.87%.

Agency Response to Contrary Recommendations FY 2019



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

	Accepted	Amended Order	Amended Finding	Rejected	Certified	Total
Accountancy	1	1	2	-	-	4
Department of Education - Special Education	-	-	2	-	1	3
AHCCCS	17	1	2	3	-	23
DES-APS	3	1	1	-	1	6
State Retirement System	2	-	-	-	-	2
Department of Child Safety	-	2	1	4	29	36
Dental Board	-	-	2	-	-	2
Health Services	2	-	-	1	-	3
Nursing	-	-	1	-	-	1
Real Estate	2	-	3	1	1	7
Registrar of Contractors	98	3	5	3	-	109
Total	125	8	19	12	32	196

2. Agency Inaction With Subsequent OAH Certification of Finality

OAH is required by statute 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 2019, 103 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Arizona Health Care Cost Containment System	3
Arizona State Retirement System	1
Department of Child Safety	90
Department of Economic Security	1
Department of Education	5
Department of Insurance	3
Total	103

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 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 2019, 5 motions were filed, none were granted and one was deemed moot because the ALJ recused herself prior to a ruling on the motion being issued.

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.