

The Office of Administrative Hearings

The Twenty Fifth 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

November 17, 2020

Contents

I. Introduction and Overview.....	1
II. Continued Development of the Office.....	2
1. Mediation Option for Litigants.....	2
2. Agency Training on Due Process.....	2
3. OAH adjudication of Arizona Division of Occupational Safety and Health (ADOSH) cases and Video Service Provider Cases.	2
4. Technical Advances Saving Money.....	3
5. Implementation of Video Conference Hearings to Prevent Interruption of Adjudication Services During COVID-19 Pandemic.....	3
III. Summary of Agency Use of OAH Services.....	4
1. Case Management.....	4
a. Breakdown of Cases Filed by Agency	4
b. Number of Cases Concluded Versus Cases Filed	5
c. Timeline of Case Management	6
d. Efficient Scheduling Despite Advent of COVID-19.....	6
e. Incidence of Continuance.....	6
2. Evaluation	9
a. Results of Public Evaluation	9
b. Incidence of Rehearing and Appeal.....	11
IV. Acceptance of Administrative Law Judge Decisions by Agencies.....	11
1. Agency Action	11
2. Agency Inaction With Subsequent OAH Certification of Finality.....	14
V. Motions for Change of Administrative Law Judge Granted Pursuant to A.R.S. § 41-1092.07.....	15
VI. Violations of A.R.S. § 41-1009	15
VII. Recommendations for Changes in the Administrative Procedures Act.....	15
1. Establish uniform standards for appeal rights notice.....	15
2. Establish uniform basis for rehearing.....	15
3. Conform rehearing and appeal rules.....	16
VIII. Recommendation for Changes or Improvements in Agency Practice with Respect to the Administrative Procedures Act.....	16
Recoupment of Costs for Administrative Hearings	16

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 2020 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 2020 indicate agency acceptance of Administrative Law Judge Decisions without modification was 84.97%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 86.93%. Rehearings (2.09%) and Appeals (3.14%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 93.07% 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 2020 was 98.74%.

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 and Private Sector 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, various sections of the Arizona State Bar (such as the administrative law section) and to other private organizations such as the Arizona Paralegal Association. The seminars are designed to provide useful information and instruction to agency personnel, agency lawyers, private sector lawyers and paralegals about enhancing due process protections for citizens at all stages of administrative adjudications in order to enhance the quality of the appeal and hearing process. Seminars continue to focus on topics such as statutory notice requirements to parties, appeal and hearing procedures under the Uniform Administrative Procedures Act, practice pointers. This year, as in the preceding four 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 Interagency 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.

5. *Implementation of Video Conference Hearings to Prevent Interruption of Adjudication Services During COVID-19 Pandemic*

With the advent of the COVID-19 pandemic in the spring of 2020 and the state wide restrictions placed upon in-person meetings, OAH was able to quickly pivot to provide hearings through video conferencing via the Google Meet platform. This permitted parties to see each other in the hearings while at the same time protecting the health of litigants and OAH staff. The ability to rapidly switch to video conferencing prevented case back logs and ensured timely adjudication of matters. Going forward, OAH will continue to expand access to hearings and provide an increased measure of convenience to litigants residing outside of Phoenix by permitting litigants and witnesses to appear through video conferencing.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2020):

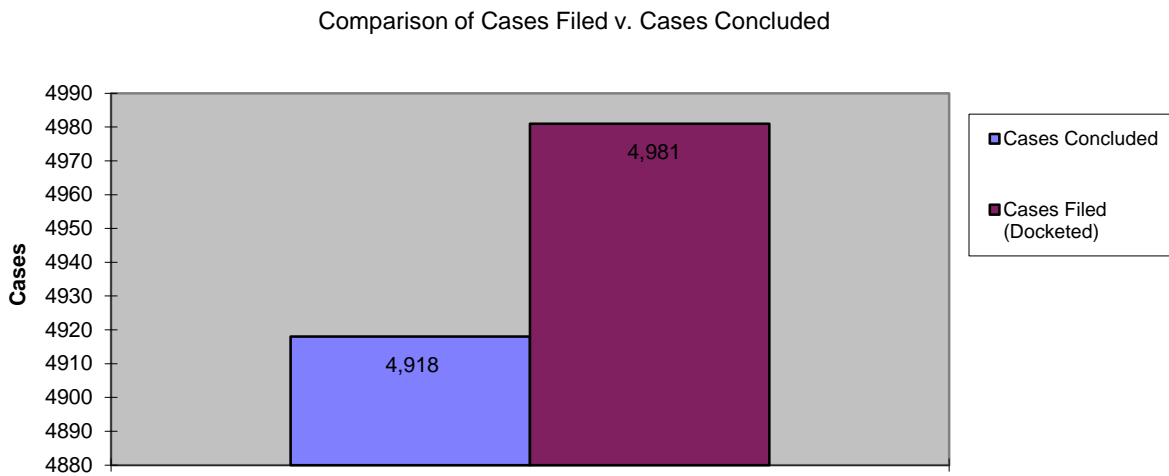
4,981 cases were filed with OAH in FY 2020. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

Arizona Health Care Cost Containment System	3125
Registrar of Contractors	662
Department of Health Services	333
Department of Child Safety	237
Department of Education - Special Ed	87
Department of Real Estate	70
Department of Real Estate - H/C	70
Department of Economic Security	60
State Board of Nursing	53
Department of Insurance	40
Arizona Division of Occupational Safety and Health	37
Arizona Department of Revenue	32
State Board of Accountancy	31
Board of Technical Registration	20
Arizona Medical Board	17
Department of Education	14
Arizona State Department of Housing	14
Arizona State Retirement System	10
Department of Insurance - Arbitration	10
Peace Officers Standards and Training	9
Arizona State Department of Housing - LTA	8
Department of Insurance - Confidential	5
Department of Administration	4
Department of Environmental Quality	4
Department of Gaming	3
Liquor Licenses and Control	3
Board of Psychologist Examiners	3
Department of Economic Security - APS	2
Arizona Department of Financial Institutions	2
Arizona Board of Osteopathic Examiners In Medicine and Surgery	2
Board of Dental Examiners	2
Arizona Game and Fish Department	2
Department of Agriculture	1
Arizona Department of Insurance	1
Department of Public Safety - Criminal History Records	1
Veterinary Medical Examining Board	1
State Board for Charter Schools	1
City of Phoenix	1

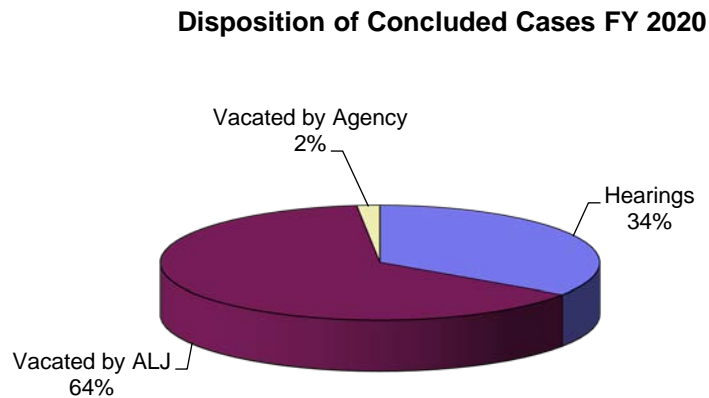
Verde Valley Fire District	1
Arizona Department of Economic Security	1
Daisy Mountain Fire District	1
Department of Water Resources	1
Total	4981

b. Number of Cases Concluded Versus Cases Filed:

In FY 2020, the conclusion rate (defined as cases concluded divided by new cases filed) was 98.74%.



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

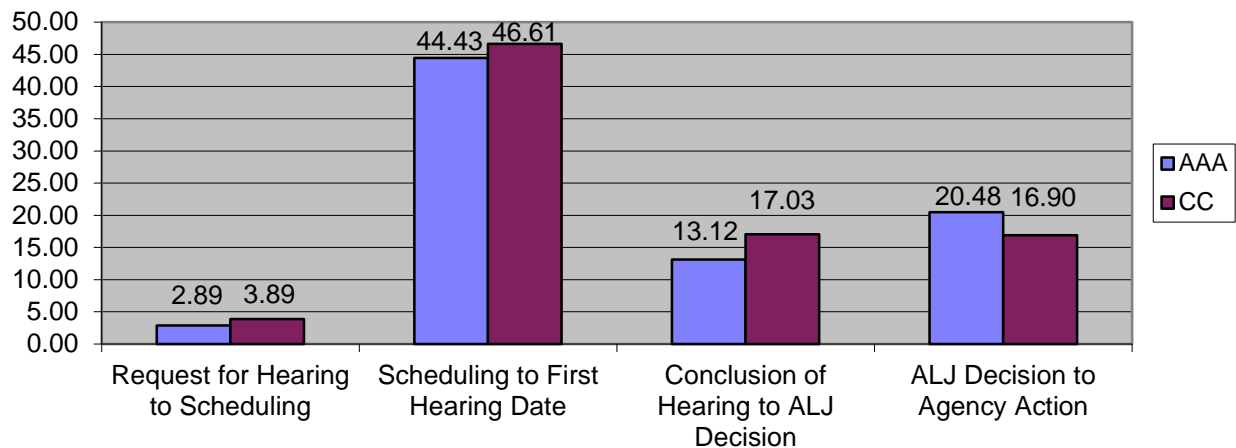


c. Timeline of Case Management:

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. Efficient Scheduling Despite Advent of COVID-19:

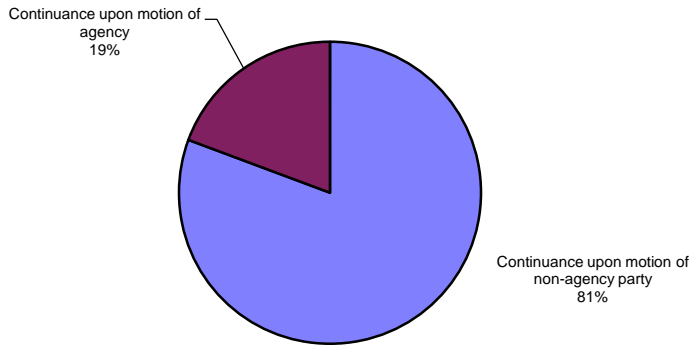
As noted in Section II, paragraph 5 above, the ability to rapidly switch to video conferencing prevented case back logs and ensured timely adjudication of matters. Despite having to respond to COVID affected litigation for almost four full months of FY 2020 and a slightly increased number of cases filed (FY 2019: 4921 / FY 2020: 4981), OAH managed not only to avert any case back log but actually shortened the time between scheduling and the first hearing date. Scheduling to the first hearing date for both contested case hearings and appealable agency actions **decreased** compared to FY 2019 statistics (FY 2019: Appealable Agency Actions 44.90 days, Contested cases 50.48).

e. Incidence of Continuance:

A single continuance in FY 2020 added an average of 52.46 days to the total length of a case. Although 92.59% of all continuance requests were granted in FY 2020, 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 (1,625) divided by the total number of cases first scheduled (4,981), was 32.6%.

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 2020 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	TOTAL
Arizona Department of Financial Institutions	1	1	2
Arizona Department of Revenue	29	-	29
Arizona Fire Medical Authority	1	-	1
Arizona Game and Fish Department	-	2	2
Arizona Health Care Cost Containment System	263	76	339
Arizona Medical Board	5	2	7
Arizona State Department of Housing	4	3	7
Arizona State Department of Housing - LTA	7	1	8
Arizona State Retirement System	6	2	8
Board of Behavioral Health Examiners	1	-	1
Board of Dental Examiners	2	2	4
Board of Technical Registration	6	5	11

Department of Administration	2	-	2
Department of Child Safety	109	32	141
Department of Economic Security	24	9	33
Department of Economic Security - APS	1	1	2
Department of Education	8	-	8
Department of Education - Special Ed	25	2	27
Department of Environmental Quality	3	3	6
Department of Health Services	36	13	49
Department of Insurance	14	6	20
Department of Public Safety - Criminal History Records	1	1	2
Department of Real Estate	13	3	16
Department of Real Estate - H/C	29	5	34
Department of Water Resources	-	1	1
Department of Weights and Measures	1	-	1
Peace Officers Standards and Training	5	1	6
Registrar of Contractors	333	47	380
State Board for Charter Schools	2	-	2
State Board of Accountancy	8	1	9
State Board of Nursing	20	9	29
Verde Valley Fire District	2	2	4
Total	961	230	1191

The following chart reflects the number of motions to continue that were entertained in FY 2020 and the percentage granted:

.....
fig. 2

Agency	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Department of Insurance	1	-	1	100.0
Arizona Department of Revenue	41	-	41	100.0
Arizona Division of Occupational Safety and Health	27	-	27	100.0
Arizona Game and Fish Department	2	-	2	100.0
Arizona Health Care Cost Containment System	535	47	582	91.9
Arizona Medical Board	12	1	13	92.3
Arizona State Department of Housing	8	-	8	100.0
Arizona State Department of Housing - LTA	6	1	7	85.7
Arizona State Retirement System	8	-	8	100.0
Board of Dental Examiners	3	-	3	100.0
Board of Psychologist Examiners	1	1	2	50.0
Board of Technical Registration	21	-	21	100.0
Daisy Mountain Fire District	1	-	1	100.0
Department of Administration	2	-	2	100.0
Department of Child Safety	147	1	148	99.3

Department of Economic Security	36	2	38	94.7
Department of Economic Security - APS	3	-	3	100.0
Department of Education	13	-	13	100.0
Department of Education - Special Ed	68	4	72	94.4
Department of Environmental Quality	8	-	8	100.0
Department of Health Services	108	1	109	99.1
Department of Insurance	12	1	13	92.3
Department of Insurance - Arbitration	3	-	3	100.0
Department of Public Safety - Criminal History Records	1	-	1	100.0
Department of Real Estate	17	-	17	100.0
Department of Real Estate - H/C	38	5	43	88.4
Department of Water Resources	3	-	3	100.0
Peace Officers Standards and Training	9	1	10	90.0
Registrar of Contractors	427	55	482	88.6
State Board for Charter Schools	1	-	1	100.0
State Board of Accountancy	24	-	24	100.0
State Board of Nursing	35	10	45	77.8
Verde Valley Fire District	3	-	3	100.0
Veterinary Medical Examining Board	1	-	1	100.0
Total	1625	130	1755	92.59

2. Evaluation

a. Results of Public Evaluation:

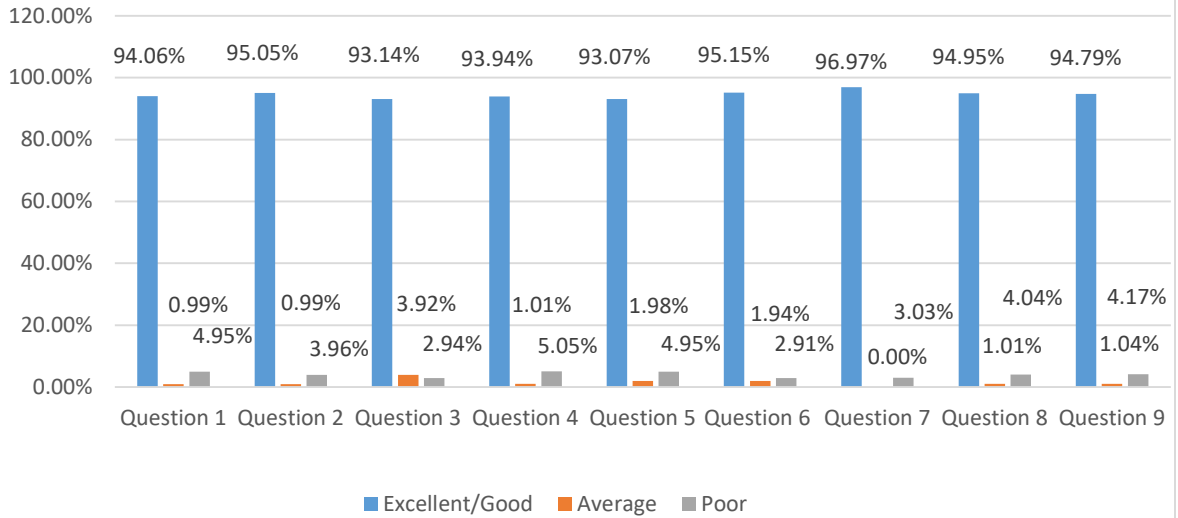
Since November 1996, OAH has administered an evaluation procedure. A copy of the evaluation is provided to all participants before the hearing. The results are not disclosed to the Administrative Law Judge. Hearing participants place completed evaluations in locked boxes located near the hearing rooms.

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

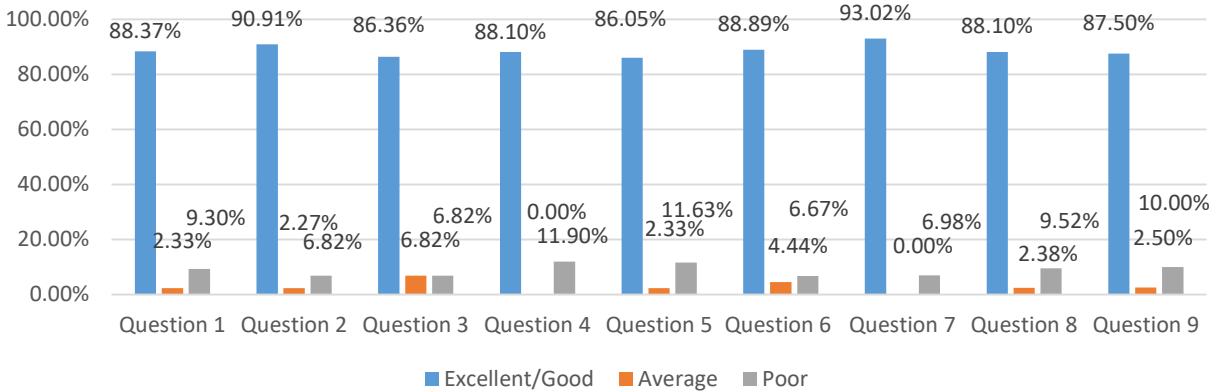
The results indicate that satisfaction is high among all groups, with those responding rating OAH excellent to good in 93.07% to 96.97% of responses.

All Responses July 1, 2019 - June 30, 2020



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 2020, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 2.09%.

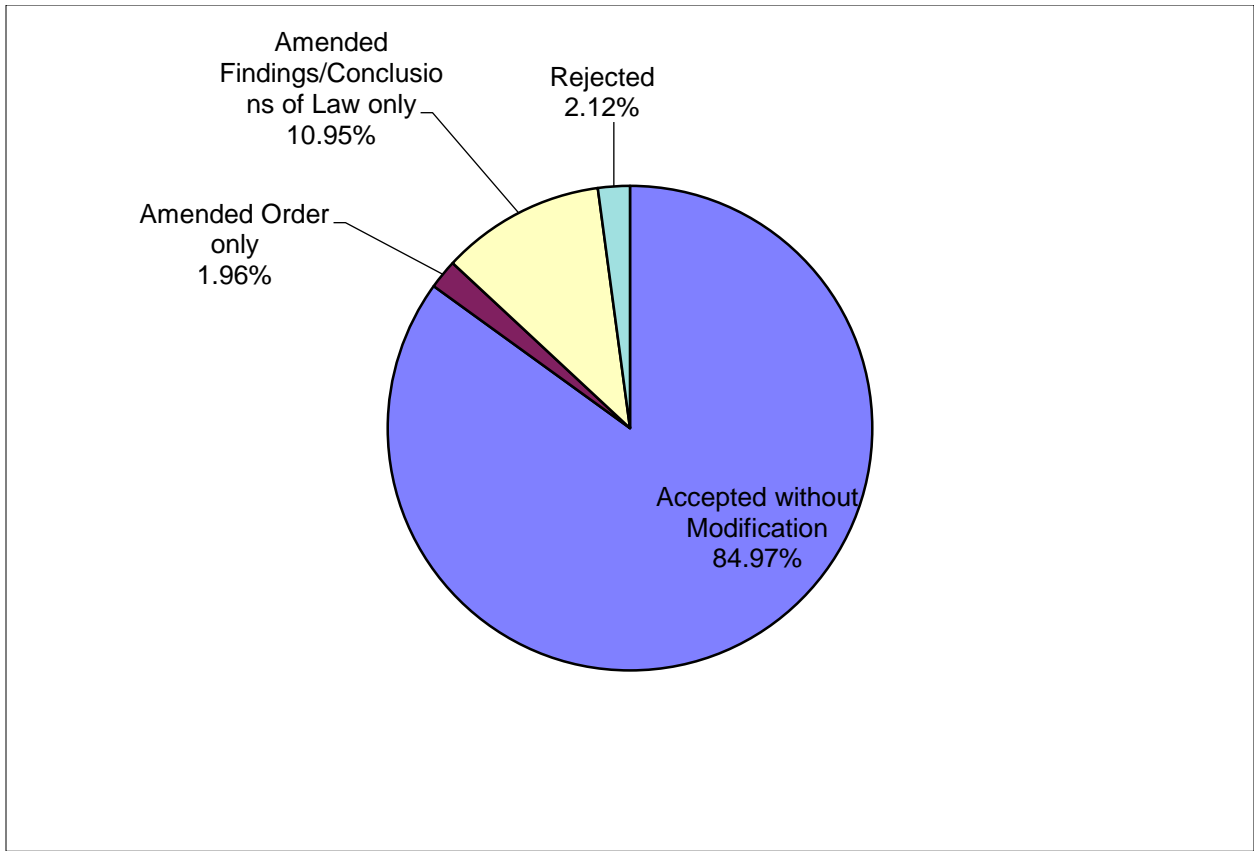
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2020, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 3.14%. As reflected in the following diagram, rehearings and judicial appeals in FY 2020 were relatively rare.

Agency	Rehearings	Appeals
Arizona Department of Financial Institutions	-	1
Arizona Health Care Cost Containment System	2	5
Arizona State Retirement System	-	1
Board of Technical Registration	-	1
Department of Child Safety	2	7
Department of Education - Special Ed	-	1
Department of Health Services	-	4
Department of Real Estate	-	1
Department of Real Estate - H/C	15	2
Liquor Licenses and Control	-	1
Peace Officers Standards and Training	-	1
Registrar of Contractors	7	13
State Board of Accountancy	2	2
Water Quality Appeals Board	-	2
Totals	28.0	42.0

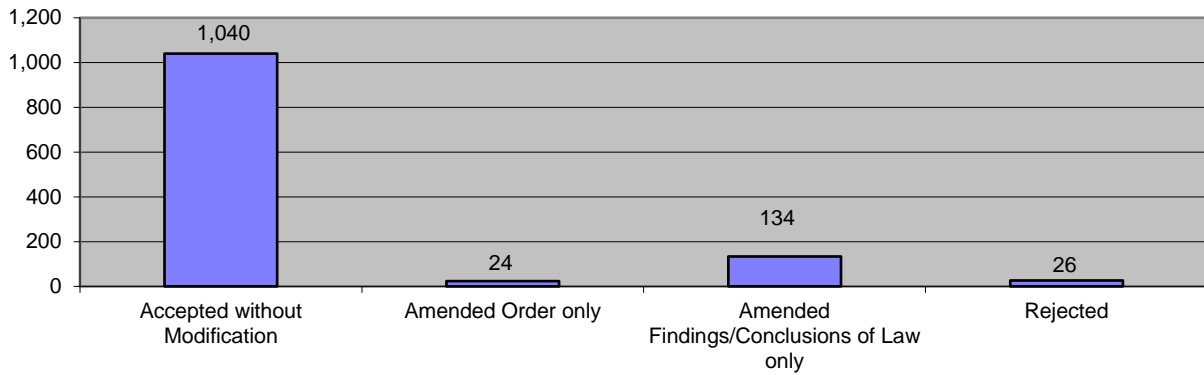
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 84.97% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 86.93% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 15.19% 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.



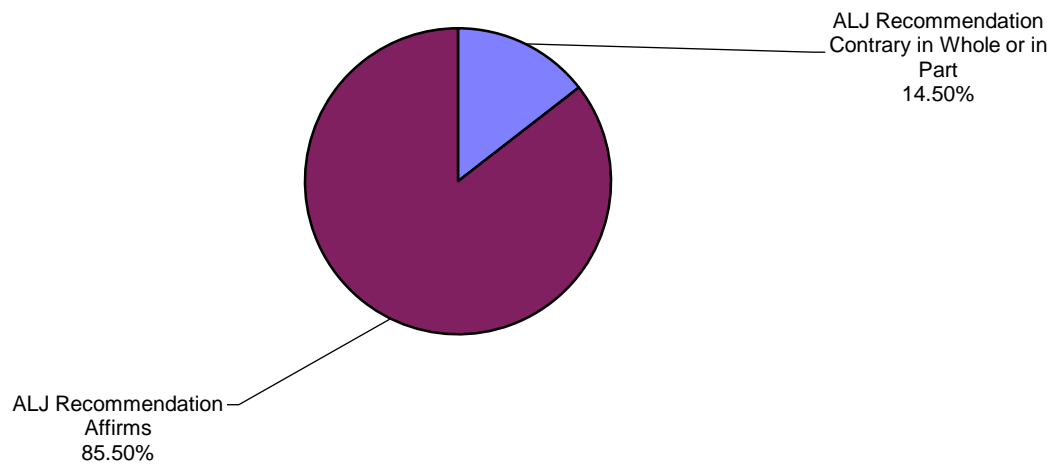
The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

Agency	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy	8	0	0	0	8
Department of Education	0	0	0	0	0
Department of Housing	4	1	3	0	8
Arizona Health Care Cost Containment System	615	5	36	14	670

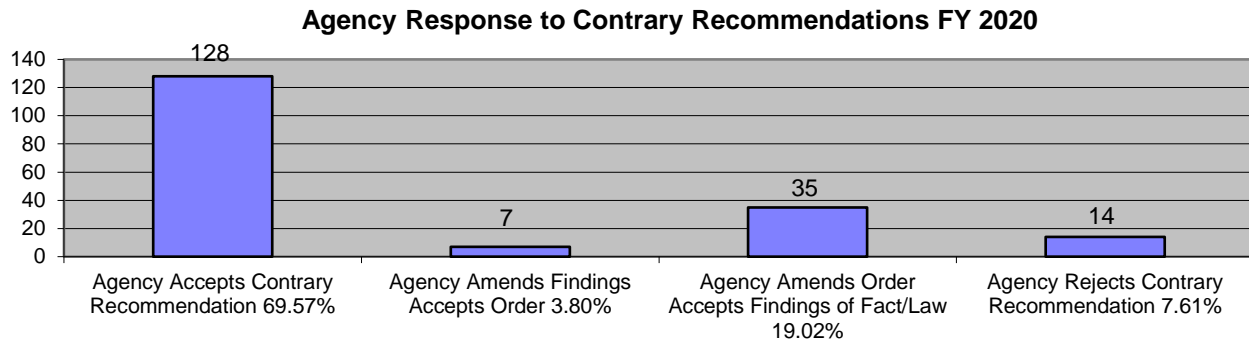
Adult Protective Services	1	2	14	0	17
Arizona Retirement Board	2	0	0	1	3
Financial Institutions	2	1	0	0	3
Board of Technical Registration	2	0	1	0	3
Department of Public Safety	0	0	1	0	1
Department of Child Safety	0	0	4	5	9
Department of Health Services	17	0	18	1	36
Gaming	1	0	2	0	3
Game and Fish	1	0	0	0	1
Insurance	22	0	3	1	26
Liquor Licenses and Control	0	0	1	0	1
Medical Board	2	0	2	0	4
Nursing	20	3	1	2	26
Real Estate	41	0	3	0	44
Real Estate (HOA)	0	0	0	0	0
Department of Revenue	0	0	0	0	0
Registrar of Contractors	301	12	45	2	360
Williamson Valley Fire District	1	0	0	0	1
Total	1040	24	134	26	1224

In FY 2020, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 14.50% of cases.

Recommendations Contrary to Original Agency Action FY 2020



Agency acceptance of contrary decisions was high at 92.39%.



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

Agency	Accepted	Amended Order	Amended Findings	Rejected	Certified	Total
Accountancy	1	-	-	-	-	1
Arizona Department of Housing	1	-	3	-	-	4
Arizona Health Care Cost Containment System	18	1	5	6	-	30
Department of Economic Security-APS	2	2	4	-	-	8
Department of Child Safety	-	-	4	6	19	29
Health Services	-	-	3	1	2	6
Real Estate	4	-	3	-	-	7
Registrar of Contractors	80	4	13	1	1	99
Total	106	7	35	14	22	184

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 2020, 87 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Arizona Health Care Cost Containment System	1
Arizona State Department of Housing	1
Arizona State Retirement System	1
Department of Child Safety	73
Department of Education	3

Department of Health Services	2
Department of Insurance	1
Department of Insurance - Confidential	1
Department of Public Safety - Criminal History Records	1
Department of Real Estate	2
State Board of Accountancy	1
Total	87

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 2020, 6 motions were filed, 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.