

The Office of Administrative Hearings

The Twenty Seventh 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 18, 2022

Contents

I. Introduction and Overview.....	1
II. Continued Development of the Office.....	2
1. Mediation Option for Litigants.....	2
2. Agency and Private Training on Due Process.....	2
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	2
4. Technical Advances Saving Time and Money.....	2
5. Implementation and Increased Utilization of Video Conference Hearings to Prevent Interruption of Adjudication Services and Enhance Litigant Access to Hearing Processes.	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. Incidence of Continuance.....	7
2. Evaluation	11
a. Results of Public Evaluation	11
b. Incidence of Rehearing and Appeal.....	12
IV. Acceptance of Administrative Law Judge Decisions by Agencies.....	13
1. Agency Action	13
2. Agency Inaction With Subsequent OAH Certification of Finality.....	16
V. Motions for Change of Administrative Law Judge Granted Pursuant to A.R.S. § 41-1092.07.....	17
VI. Violations of A.R.S. § 41-1009	17
VII. Recommendations for Changes in the Administrative Procedures Act.....	17
1. Establish uniform standards for appeal rights notice.....	17
2. Establish uniform basis for rehearing.	17
3. Conform rehearing and appeal rules.....	17
VIII. Recommendation for Changes or Improvements in Agency Practice with Respect to the Administrative Procedures Act.....	18
Recoupment of Costs for Administrative Hearings.....	18

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 2022 the agency had 12 full-time positions, including the Director, the Office Manager, 6 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 2022 indicate agency acceptance of Administrative Law Judge Decisions without modification was 92.12%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 92.75%. Rehearings (2.49%) and Appeals (5.26%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 96.77% 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 2022 was 97.75%.

II. Continued Development of the Office

1. *Mediation Option for Litigants*

OAH implemented a voluntary mediation program in 2016 to provide litigants with alternative dispute resolution and OAH continues to expand its ability to provide mediation. As of November, 2022, all administrative law judges and one paralegal who are trained mediators. Dozens of cases each year have been successfully mediated under the program saving hundreds of hours of time. Litigants, including unrepresented litigants, continue in increasing numbers to utilize OAH's mediation program to resolve their disputes. By offering a mediation option, OAH substantially reduces costs and stress for litigants who choose the mediation option. This, in turn, creates a concomitant reduction in demands on state resources. OAH will continue to provide this effective and cost lowering alternative to traditional litigation for dispute resolution. .

2. *Agency and Private Sector Training on Due Process*

OAH continues to offer annual training for requesting agencies, state bar affiliated lawyer sections and other public and private entities 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, The Department of Public Safety, the Department of Real Estate, the 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 and the City of Scottsdale's Neighborhood College. The seminars are designed to provide useful information and instruction to Arizona citizens, 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 and accessibility 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 and practice pointers. In addition, seminars have now been developed and presented to agencies, federal regulatory associations and the state bar on due process considerations during the COVID 19 pandemic. OAH will continue to reach out annually to agencies, the state bar, and private sector entities to offer them continuing training on enhancing 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 continues to provide adjudication services for ADOSH cases arising under Title 23, Chapter 2, Article 10 is providing timely and efficient mediation and adjudication of these cases. In implementing the transfer of adjudication of these cases to OAH, OAH worked closely with both industry and agency representatives and their legal counsel to ensure the efficacy of the process. 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 in ADOSH.

Effective September 24, 2022, under A.R.S. §9-1451, the Arizona legislature gave OAH exclusive original jurisdiction to hear and determine disputes arising out of video service provider agreements between providers and local governments unless the dispute arises under federal law. 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. The parties to these cases will also benefit from OAH's 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 Time and 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.

In Fiscal Year 2021, OAH developed a proprietary method of automatically extracting and downloading audio hearing recordings to OAH's record retention platform. This saves substantial time both for judges and secretarial staff and provides a concomitant reduction in costs. It also enhances the integrity of record keeping processes.

5. *Implementation and Increased Utilization of Video Conference Hearings to Prevent Interruption of Adjudication Services and Enhance Litigant Access to Hearing Processes.*

Within three weeks of the advent of the March, 2020 COVID-19 pandemic restrictions placed upon in-person meetings, OAH implemented video conferencing for hearings via the Google Meet platform. This permitted parties to see and hear each other at hearing while at the same time protecting the health of litigants, witnesses and OAH staff. The ability to rapidly switch to video conferencing prevented case back logs and ensured timely adjudication of matters.

During Fiscal year 2022, OAH continued to expand access to hearings through video conferencing. In doing so, OAH provides increased convenience and cost savings to persons residing outside of Phoenix by permitting litigants and witnesses to appear through video conferencing, saving them time and travel costs. It also provides the public with an efficient means to view those hearings which are open to the public. As the state moves forward out of the pandemic, OAH will continue to utilize video conferencing to meet the needs of litigants, witnesses, and the public.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2022):

5,818 cases were filed with OAH in FY 2022. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

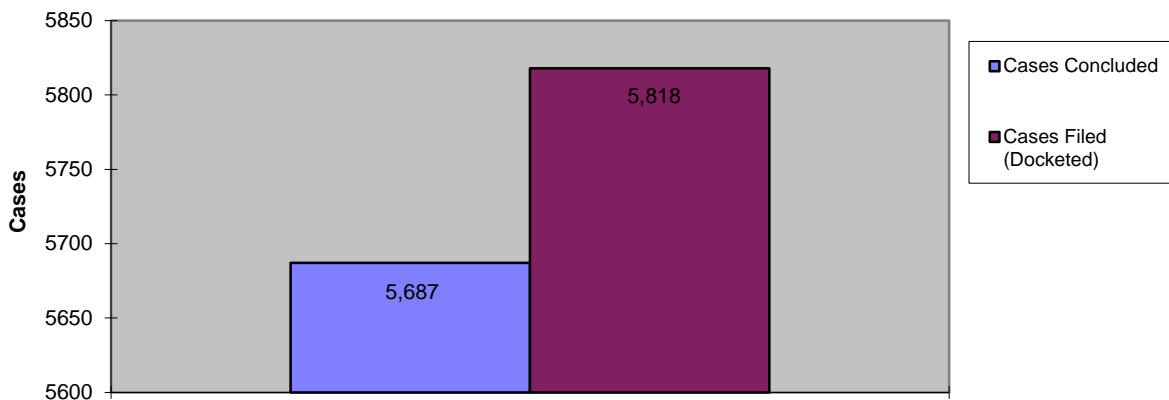
Arizona Health Care Cost Containment System - 19	4163
Registrar of Contractors	647
Department of Health Services	294
Department of Child Safety	205
Department of Real Estate - H/C	67
Department of Real Estate	57
Department of Economic Security	47
Arizona Department of Revenue	39
State Board of Education (ESA)	36
State Board of Nursing	34
State Board of Accountancy	33
Department of Education - Special Ed	33
Department of Public Safety - Fingerprint Clearance Cards	26
Arizona Division of Occupational Safety and Health	19
Arizona Health Care Cost Containment System - 21	19
Department of Insurance and Financial Institutions - Insurance	17
Peace Officers Standards and Training	13
Department of Insurance - Confidential	10
Arizona Medical Board	9
Arizona State Retirement System	7
Board of Technical Registration	6
Department of Gaming	5
State Board for Charter Schools	4
Arizona State Department of Housing - LTA	3
Arizona Board of Osteopathic Examiners In Medicine and Surgery	3
Arizona Game and Fish Department	3
Water Quality Appeals Board	3
Department of Environmental Quality	3
Department of Administration	2

Liquor Licenses and Control	2
Department of Insurance and Financial Institutions - Financial	2
Arizona Department of Veterans' Services	1
Department of Agriculture	1
Board of Behavioral Health Examiners	1
Department of Education	1
Naturopathic Physicians Medical Board	1
Arizona State Department of Housing	1
Pharmacy Board	1
Total	5,818

b. Number of Cases Concluded Versus Cases Filed:

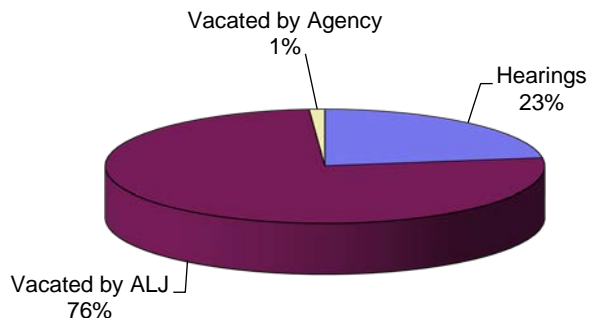
In FY 2022, the conclusion rate (defined as cases concluded divided by new cases filed) was 97.75%.

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 2022

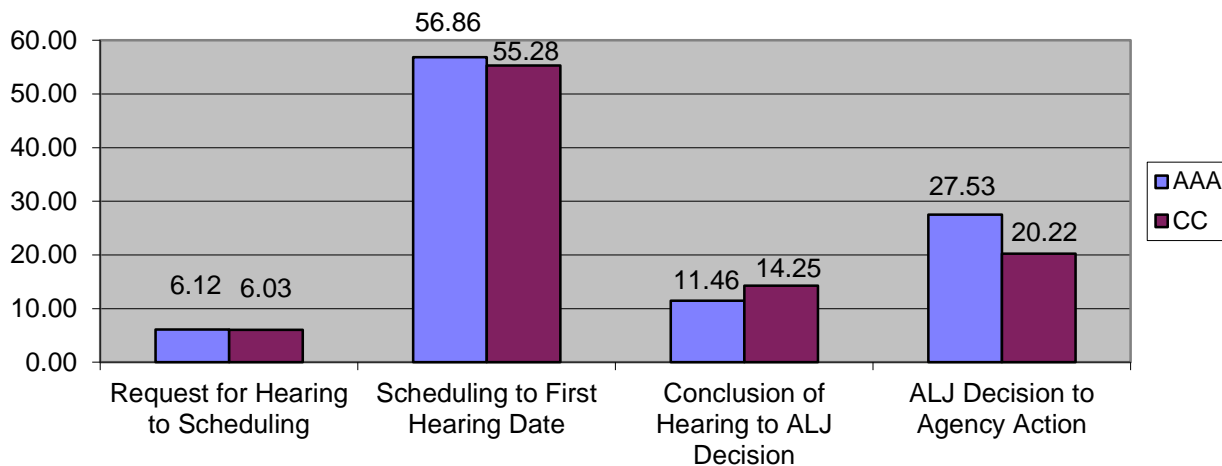


c. Timeline of Case Management:

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:

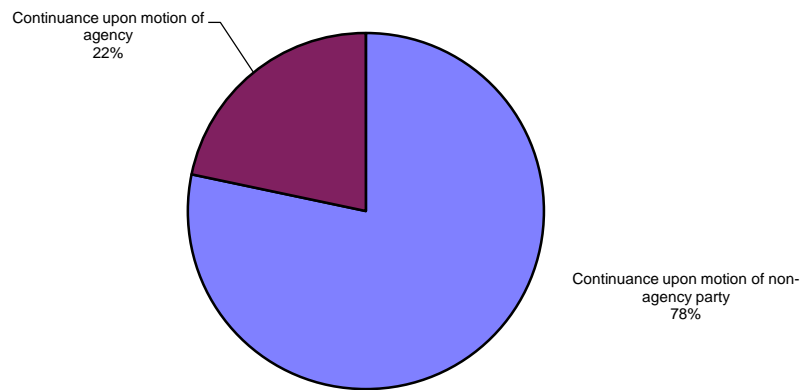
Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases



d. Incidence of Continuance:

A single continuance in FY 2022 added an average of 60.21 days to the total length of a case. Although 93.72% of all continuance requests were granted in FY 2022, OAH has developed a well-deserved reputation for discouraging “convenience” continuances. Instead, litigants must demonstrate good cause for the continuance before it will be granted. The frequency of continuances, defined as the number of continuances granted (2,446) divided by the total number of cases scheduled (5,818), was 42.0%.

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 2022 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 Board of Osteopathic Examiners In Medicine and Surgery	1	0	1
Arizona Department of Revenue	17	2	19
Arizona Division of Occupational Safety and Health	2	1	3
Arizona Health Care Cost Containment System	346	90	436
Arizona Medical Board	3	0	3
Arizona State Department of Housing - LTA	1	1	2
Arizona State Retirement System	5	0	5
City of Phoenix (NOV)	1	0	1
Department of Administration	2	0	2
Department of Child Safety	114	54	168
Department of Economic Security	43	8	51
Department of Education - ESA	3	7	10
Department of Education - Special Ed	15	1	16
Department of Environmental Quality	1	1	2
Department of Health Services	20	3	23
Department of Insurance - Arbitration	1	0	1
Department of Insurance - Confidential	2	1	3
Department of Insurance and Financial Institutions - Insurance	6	1	7
Department of Insurance and Financial Institutions -Financial	1	0	1
Department of Public Safety - Fingerprint Clearance Cards	2	0	2
Department of Real Estate	12	2	14

Department of Real Estate - H/C	38	7	45
Division of Racing	2	2	4
Peace Officers Standards and Training	3	1	4
Pharmacy Board	1	0	1
Registrar of Contractors	227	54	281
State Board of Accountancy	16	1	17
State Board of Nursing	6	3	9
Superstition Fire & Medical District	1	1	2
City of Phoenix (NOV)	0	1	1
Daisy Mountain Fire District	0	1	1
Department of Water Resources	0	2	2
Water Quality Appeals Board	0	2	2
Total	892	247	1,139

The following chart reflects the number of motions to continue that were entertained in FY 2022 and the percentage granted:

.....
fig. 2

Agency	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Board of Osteopathic Examiners In Medicine and Surgery	1	0	1	100
Arizona Department of Revenue	29	0	29	100
Arizona Division of Occupational Safety and Health	10	0	10	100
Arizona Health Care Cost Containment System	1451	101	1552	93.49
Arizona Medical Board	4	1	5	80
Arizona State Department of Housing - LTA	2	0	2	100
Arizona State Retirement System	7	0	7	100
Board of Dental Examiners	1	0	1	100
Board of Technical Registration	6	0	6	100

City of Phoenix (NOV)	2	0	2	100
Department of Administration	2	0	2	100
Department of Child Safety	176	5	181	97.24
Department of Economic Security	55	1	56	98.21
Department of Education	1	0	1	100
Department of Education - Special Ed	30	3	33	90.90
Department of Environmental Quality	5	1	6	83.33
Department of Gaming	3	0	3	100
Department of Health Services	164	4	168	97.62
Department of Insurance - Arbitration	1	0	1	100
Department of Insurance - Confidential	4	0	4	100
Department of Insurance and Financial Institutions - Insurance	7	0	7	100
Department of Insurance and Financial Institutions -Financial	1	0	1	100
Department of Public Safety - Fingerprint Clearance Cards	5	0	5	100
Department of Real Estate	9	0	9	100
Department of Real Estate - H/C	55	6	61	90.16
Department of Water Resources	1	0	1	100
Division of Racing	2	0	2	100
Peace Officers Standards and Training	6	0	6	100
Pharmacy Board	1	0	1	100
Registrar of Contractors	355	40	395	89.87
State Board for Charter Schools	5	0	5	100
State Board of Accountancy	25	0	25	100
State Board of Nursing	18	2	20	90
Superstition Fire & Medical District	2	0	2	100
Total	2,446	164	2,610	93.72

2. Evaluation¹

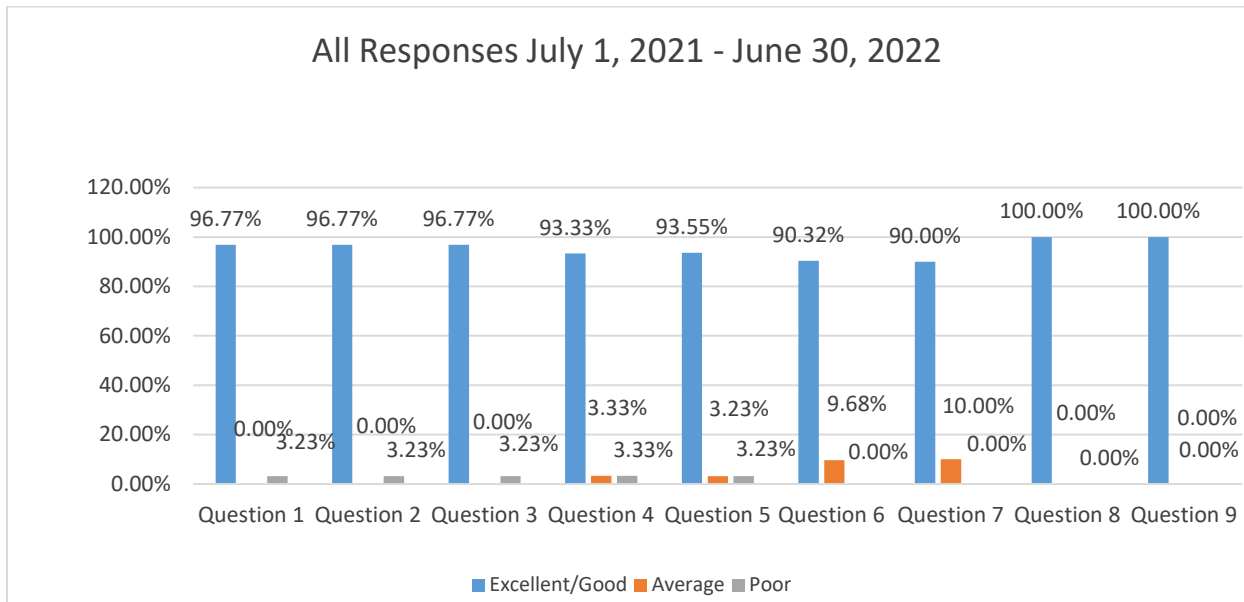
a. Results of Public Evaluation:

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:

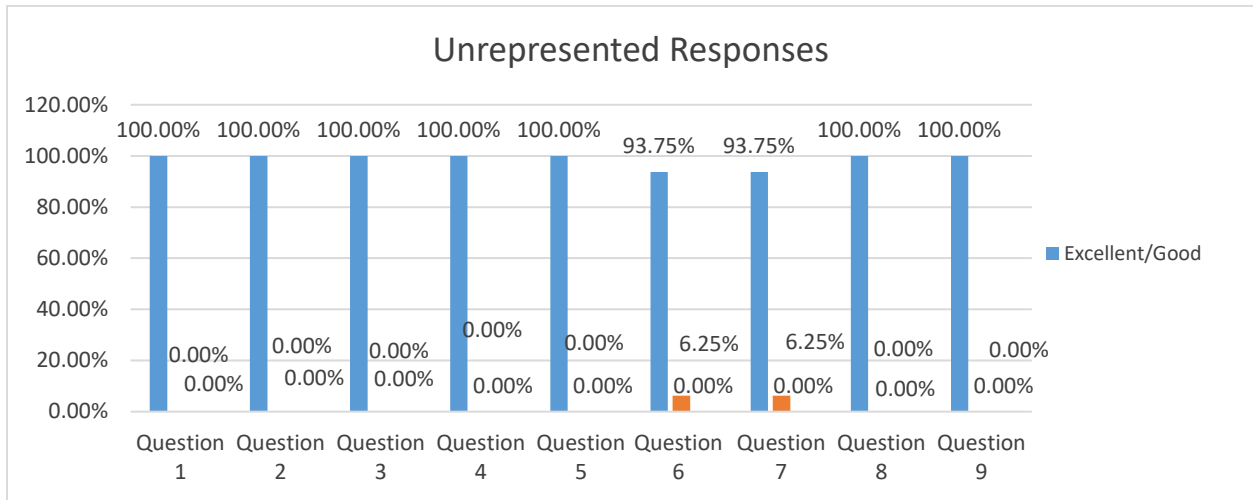
1. Attentiveness of the Administrative Law Judge
2. Effectiveness in explaining the hearing process
3. Administrative Law Judge's use of clear and neutral language
4. Impartiality
5. Effectiveness in dealing with the issues of the case
6. Sufficient space
7. Freedom from distractions
8. Questions responded 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 96.77% of responses.



¹OAH has received low percentage of participant evaluations during FY 2022 even though evaluation forms are available to hearing participants at hearing as well as on OAH's website so that persons participating remotely in hearings may provide evaluations electronically.

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 2022, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 2.49%.

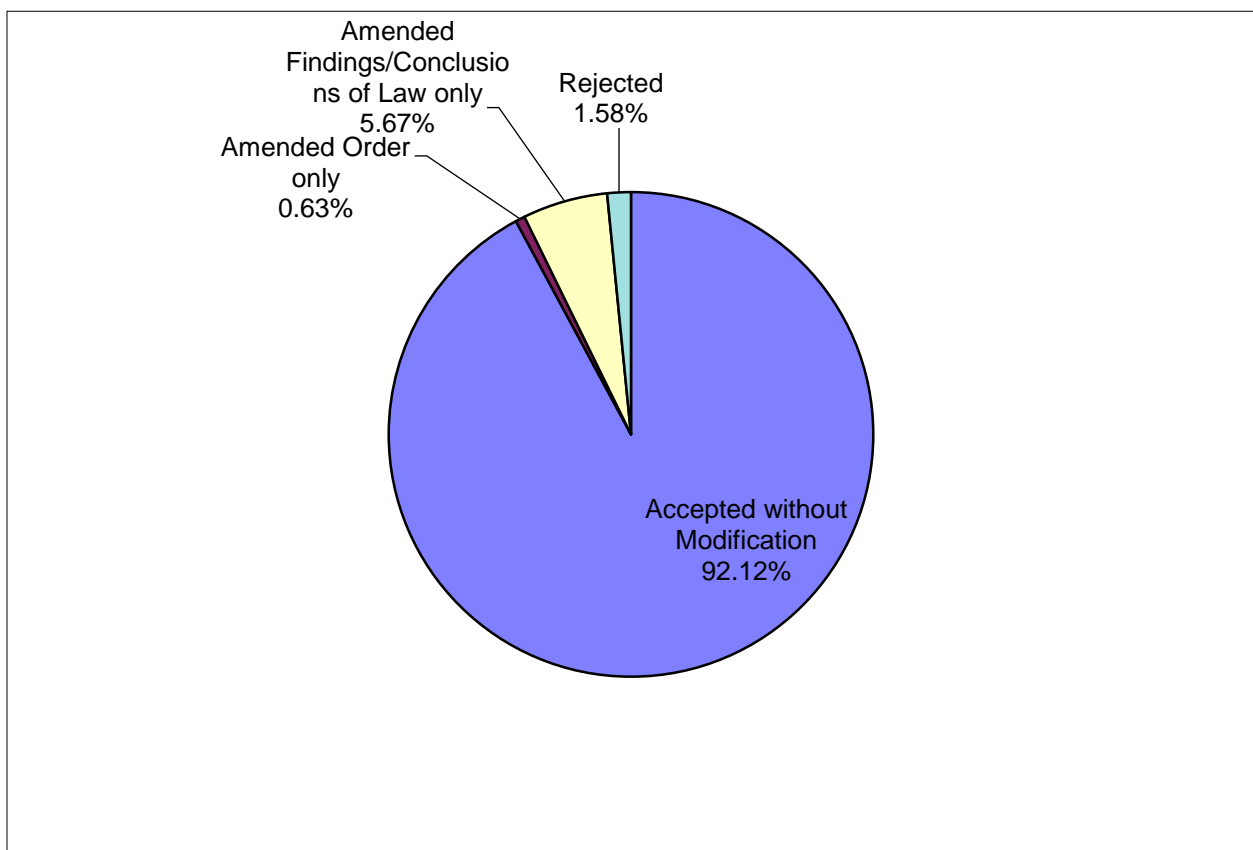
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2022, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 5.26%. As reflected in the following diagram, rehearings and judicial appeals in FY 2022 were relatively rare.

Agency	Rehearings	Appeals
Arizona Health Care Cost Containment System	5	6
Arizona Department of Revenue	0	1
Arizona Medical Board	0	2
Board of Dental Examiners	0	1
Department of Child Safety	3	11
Department of Economic Security	0	4
Department of Gaming	0	1
Department of Health Services	0	5
Department of Real Estate	1	1
Department of Real Estate - H/C	11	3
Liquor Licenses and Control	0	1
Peace Officers Standards and Training	0	0
Registrar of Contractors	7	19
State Board for Charter Schools	0	1
State Board of Nursing	0	1
Totals	27	57

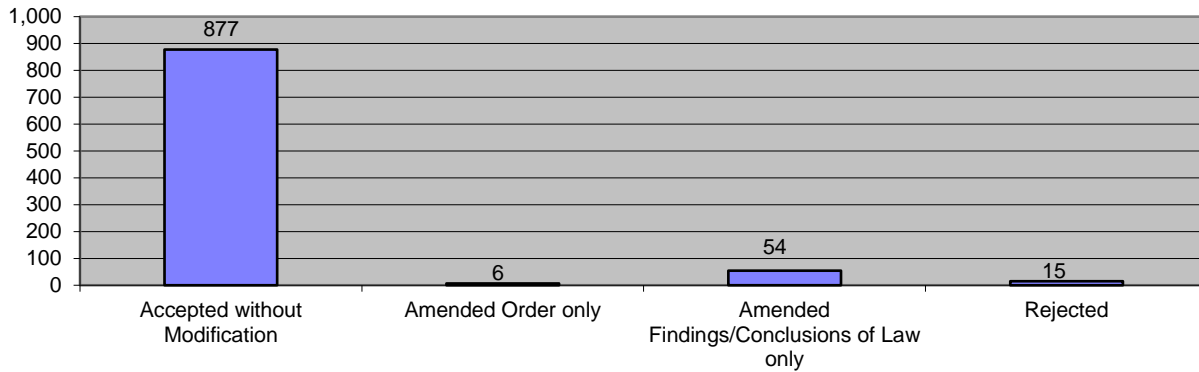
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 92.12% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 97.79% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge.



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

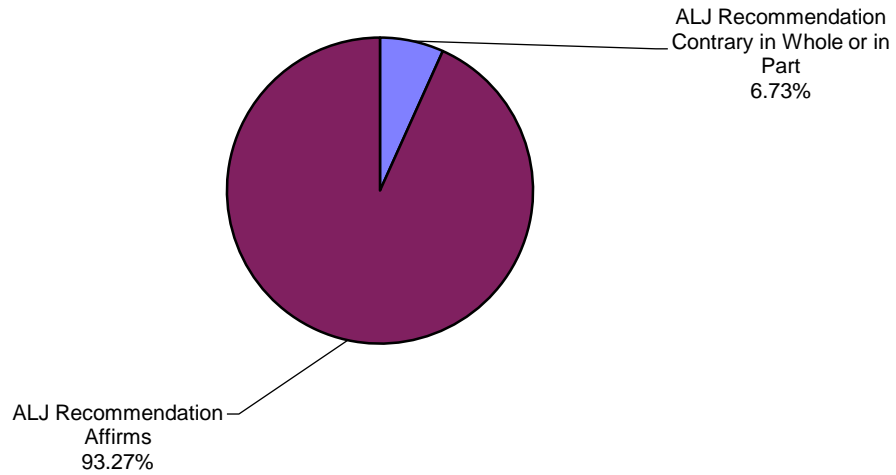


The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

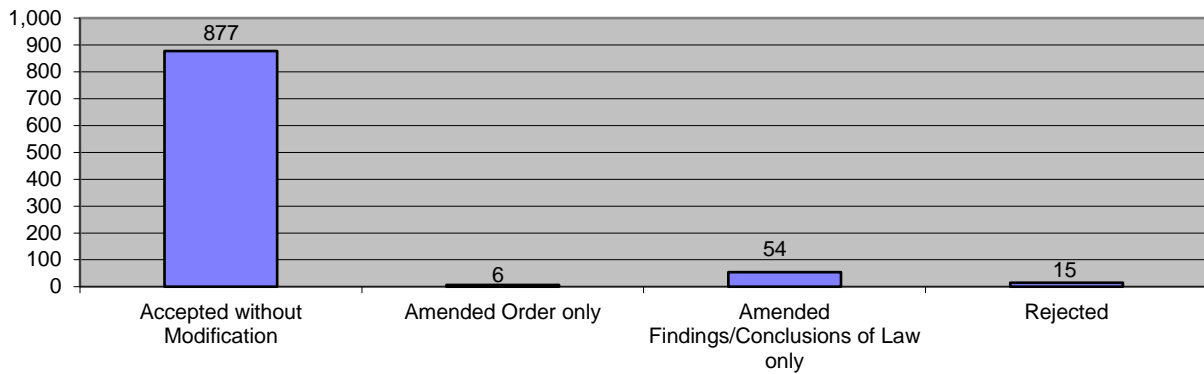
Agency	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy	6				6
ADE - Special Education	1				1
Department of Housing	3				3
Arizona Health Care Cost Containment System	422		14	7	443
Adult Protective Services	4		7	2	13
Retirement	2				2
Board of Charter Schools	1		1		2
Board of Technical Registration			1		1
Department of Child Safety			4	2	6
Board of Dental Examiners	1				1
Department of Health Services	17		2		19
Department of Public Safety - Fingerprint Clearing	17				17
Department of Insurance - Financial	2	1			3
Gaming	2				2
Game and Fish	1				1
Department of Insurance - Insurance	12				12
Department of Liquor	1				1
Medical Board	4		1		5
Nursing	7		5		12
Real Estate	25	1			26
Registrar of Contractors	338	4	19	4	365
State Board of Education	9				9
Water Quality Appeals Board	2				2
Total	877	6	54	15	952

In FY 2022, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 6.73% of cases.

Recommendations Contrary to Original Agency Action FY 2022



Agency acceptance of contrary decisions was high at 88.33%.



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

Agency	Accepted	Amended Order	Amended Findings	Rejected	Certified	Total
Adult Protective Services	2		4	2		8
Arizona Health Care Cost Containment System	1	2	2	1		6
Behavioral Health			1			1
Board of Charter Schools			1			1
Department of Child Safety			3	2	13	18
Department of Housing	1					1
Department of Insurance - Financial	1				0	1
Department of Insurance - Insurance	1				1	2
Nursing			1			1
Racing					2	2
Real Estate	2	1				3
Registrar of Contractors	5	3	6	2		16
Total	13	6	18	7	16	60

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 2022, 75 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Department of Child Safety	69
Department of Health Services	1
Department of Insurance and Financial Institutions - Insurance	1
Department of Real Estate	2
Division of Racing	2
Total	75

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 2022, 1 motion was 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 any person has violated this chapter or a rule adopted pursuant to this chapter, the board may assess the person with its reasonable costs and expenses, including attorney fees, 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 investigation related training, disciplinary investigations and hearings. Notwithstanding section 35-143.01, these monies may be spent without legislative appropriation.