

The Office of Administrative Hearings

The Twenty Eighth Annual Report

To

Governor Katie Hobbs

Senator Warren Petersen, President of the Senate

Representative Ben Toma, 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 21, 2023

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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 2022 the agency had 13 full-time positions, including the Director, the Office Manager, 7 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 2023 indicate agency acceptance of Administrative Law Judge Decisions without modification was 93.87%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 90.51%. Rehearings (2.30%) and Appeals (5.20%) were rare.

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 2023 was 92.62%.

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 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. OAH provides 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 matters.

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.

OAH continues to provide arbitration services for the Arizona Department of Insurance 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 service 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.

In FY 2024, OAH will update its electronic case portal technology to optimize user friendliness and enhance security. Upon implementation, both litigants and public users will encounter a more intuitive and streamlined program for researching case information.

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 2023, 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. 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 2023):

5,352 cases were filed with OAH in FY 2023. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

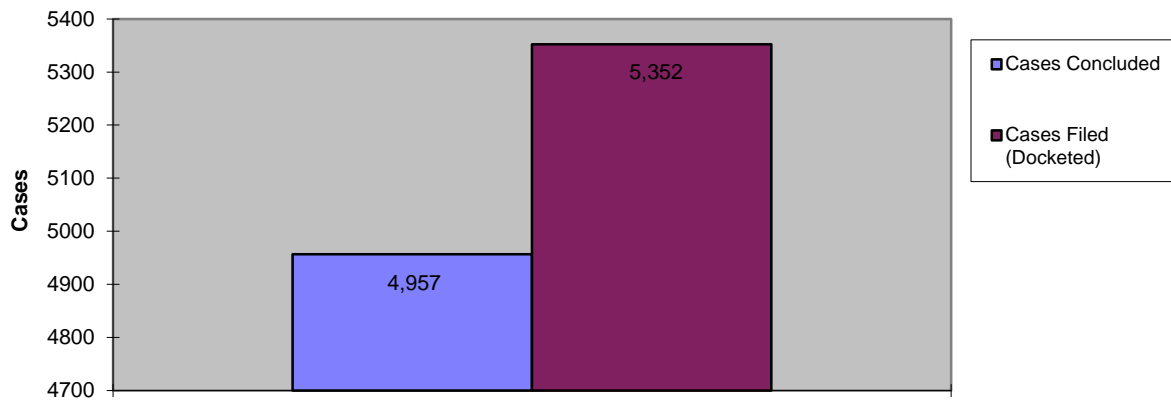
Arizona Health Care Cost Containment System	3,552
Registrar of Contractors	832
Department of Health Services	321
Department of Child Safety	208
Department of Education - Special Ed	73
Department of Real Estate - H/C	65
Department of Real Estate	43
Department of Economic Security	39
Department of Public Safety - Fingerprint Clearance Cards	38
State Board of Nursing	27
State Board of Accountancy	21
Arizona Medical Board	17
Arizona Division of Occupational Safety and Health	16
Department of Insurance and Financial Institutions - Insurance	12
Arizona Department of Revenue	10
Board of Technical Registration	8
Secretary of State	7
Peace Officers Standards and Training	7
Department of Gaming	7
Arizona State Department of Housing	5
Department of Public Safety - Student Transportation	4
Department of Agriculture	4
Department of Insurance - Confidential	4
Department of Insurance and Financial Institutions - Financial	4
Department of Administration	3
Department of Insurance - Arbitration	3
Arizona Board of Osteopathic Examiners In Medicine and Surgery	3
State Land Department	2
Liquor Licenses and Control	2
Board of Psychologist Examiners	2
Pharmacy Board	2

Department of Economic Security - APS	1
State Board of Nursing	1
Department of Public Safety - Criminal History Records	1
Arizona Department of Health Services	1
Division of Racing	1
State Schools for the Deaf and the Blind	1
Board of Dental Examiners	1
Arizona Game and Fish Department	1
Water Quality Appeals Board	1
Arizona Commission for the Deaf and the Hard of Hearing	1
Department of Environmental Quality	1
Total	5,352

b. Number of Cases Concluded Versus Cases Filed:

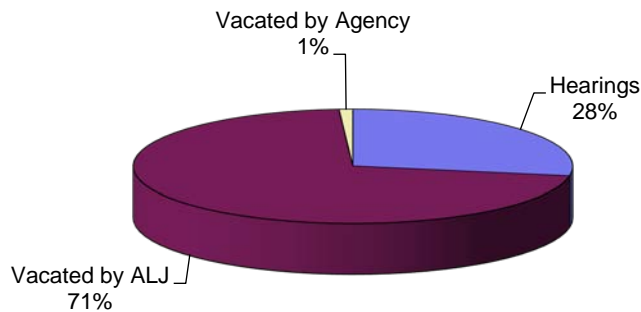
In FY 2023, the conclusion rate (defined as cases concluded divided by new cases filed) was 92.62%.

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 2023

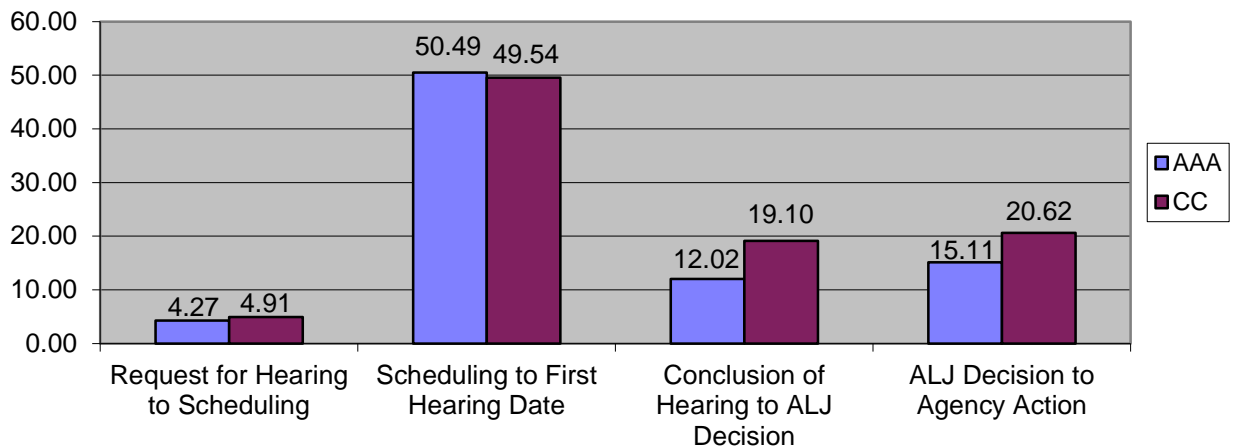


c. Timeline of Case Management:

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:

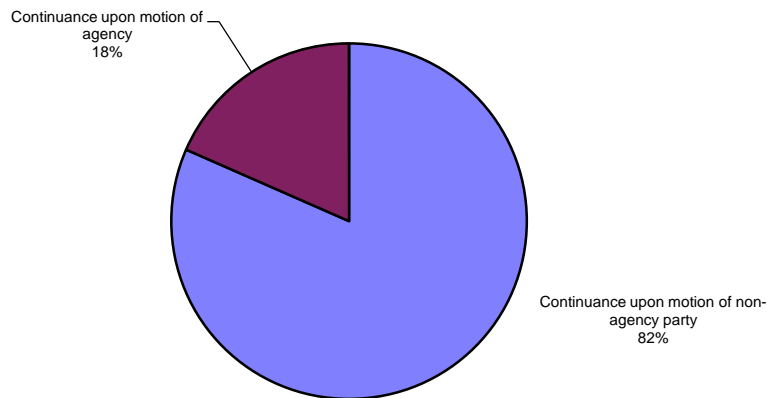
Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases



d. Incidence of Continuance:

A single continuance in FY 2023 added an average of 66.68 days to the total length of a case. Although 94.96% of all continuance requests were granted in FY 2023, 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 (3,225) divided by the total number of cases scheduled (5,352), was 60.57%.

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 2023 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 Revenue	10	9	19
Arizona Department of Veterans' Services	1		1
Arizona Division of Occupational Safety and Health	1		1
Arizona Game and Fish Department		2	2
Arizona Health Care Cost Containment System - 19	460	73	533
Arizona Medical Board	3	1	4
Arizona State Department of Housing	6		6
Arizona State Department of Housing - LTA		1	1
Arizona State Retirement System	3		3
Board of Behavioral Health Examiners	1		1
Board of Psychologist Examiners	1		1
Board of Technical Registration	2	6	8
Department of Administration	6		6
Department of Child Safety	162	63	225
Department of Economic Security	24	15	39
Department of Education	3	3	6
Department of Education - Special Ed	14		14
Department of Health Services	24	2	26
Department of Insurance - Confidential	4		4
Department of Insurance and Financial Institutions - Insurance	6	1	7
Department of Public Safety - Fingerprint Clearance Cards	4	5	9
Department of Public Safety - Student Transportation	1		1
Department of Real Estate	7		7
Department of Real Estate - H/C	21	12	33
Department of Water Resources	1	1	2
Peace Officers Standards and Training	1		1
Pharmacy Board	2		2
Registrar of Contractors	314	48	362
Secretary of State	1		1
State Board of Accountancy	8		8
State Board of Nursing	3	2	5
State Land Department		2	2
State Schools for the Deaf and the Blind		1	1
			0
Total	1,094	247	1,341

The following chart reflects the number of motions to continue that were entertained in FY 2023 and the percentage granted:

.....
fig. 2

Agency	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Board of Osteopathic Examiners In Medicine and Surgery	8	0	8	100.00
Arizona Department of Revenue	19	1	20	95.00
Arizona Division of Occupational Safety and Health	18	0	18	100.00
Arizona Game and Fish Department	2	0	2	100.00
Arizona Health Care Cost Containment System	2122	94	2216	95.76
Arizona Medical Board	12	1	13	92.31
Arizona State Department of Housing	9	0	9	100.00
Arizona State Retirement System	1	0	1	100.00
Board of Behavioral Health Examiners	1	0	1	100.00
Board of Dental Examiners	1	0	1	100.00
Board of Technical Registration	9	0	9	100.00
Department of Administration	8	0	8	100.00
Department of Child Safety	214	10	224	95.54
Department of Economic Security	48	0	48	100.00
Department of Education	5	0	5	100.00
Department of Education - Special Ed	56	4	60	93.33
Department of Environmental Quality	3	0	3	100.00
Department of Gaming	4	0	4	100.00
Department of Health Services	99	1	100	99.00
Department of Insurance - Confidential	5	1	6	83.33
Department of Insurance and Financial Institutions - Insurance	11	0	11	100.00
Department of Public Safety - Fingerprint Clearance Cards	11	0	11	100.00
Department of Public Safety - Student Transportation	1	0	1	100.00
Department of Real Estate	16	3	19	84.21
Department of Real Estate - H/C	44	6	50	88.00
Peace Officers Standards and Training	2	0	2	100.00
Pharmacy Board	2	0	2	100.00
Registrar of Contractors	456	50	506	90.12
Secretary of State	1	0	1	100.00
State Board for Charter Schools	5	0	5	100.00
State Board of Accountancy	9	0	9	100.00
State Board of Nursing	17	0	17	100.00
State Land Department	3	0	3	100.00
State Schools for the Deaf and the Blind	2	0	2	100.00
Water Quality Appeals Board	1	0	1	100.00
Total	3,225	171	3,396	94.96

2. Rehearings and Appeals

a. Incidence of Rehearing and Appeal:

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2023, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 2.30%.

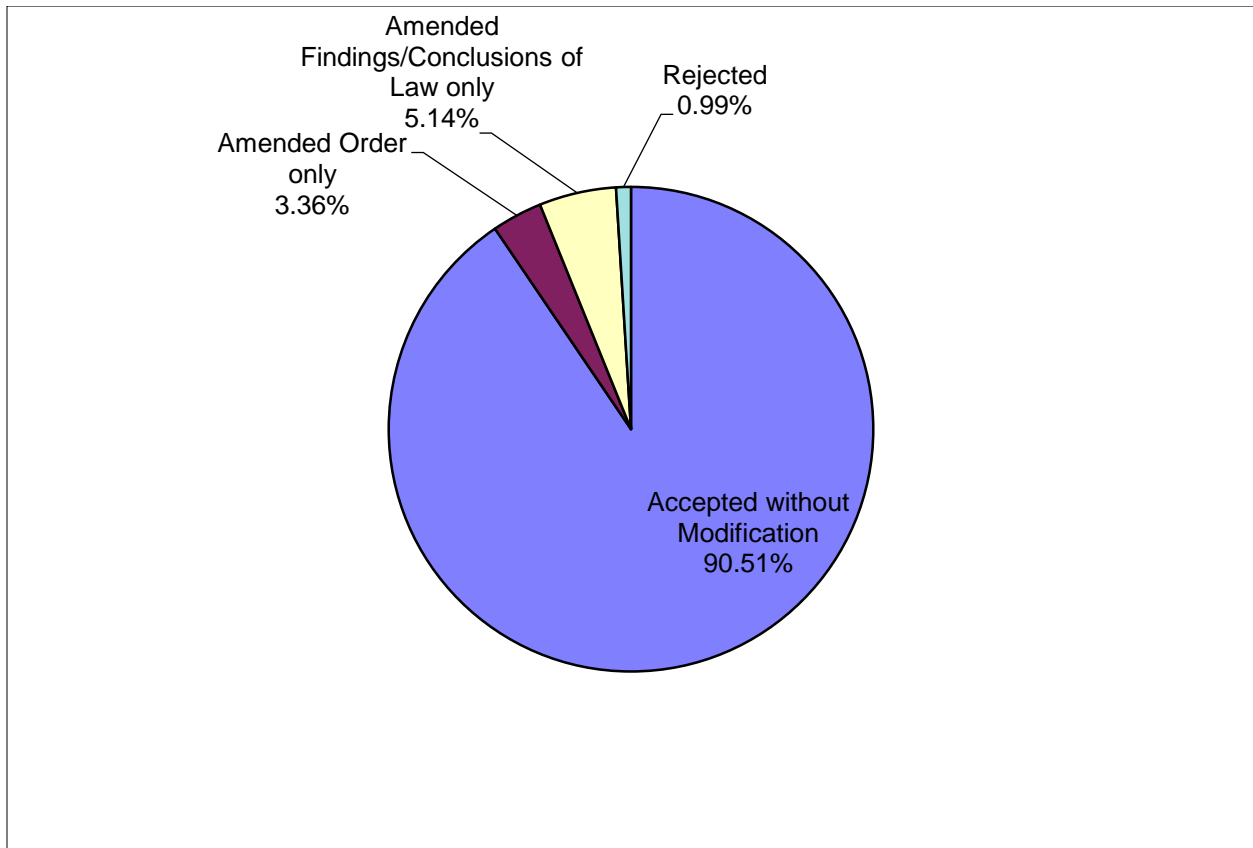
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2023, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 5.20%. As reflected in the following diagram, rehearings and judicial appeals in FY 2023 were relatively rare.

Agency	Rehearings	Appeals
Arizona Health Care Cost Containment System	17	4
Arizona Department of Revenue	0	1
Arizona State Retirement System	0	1
Board of Behavioral Health Examiners	0	1
Department of Child Safety	1	5
Department of Health Services	0	6
Department of Real Estate	0	1
Department of Real Estate - H/C	1	6
Registrar of Contractors	7	27
State Board of Nursing	1	1
Department of Education - Special Ed	0	1
Department of Public Safety - Criminal History Records	0	1
Department of Water Resources	0	1
Naturopathic Physicians Medical Board	0	1
Water Quality Appeals Board	0	4
Totals	27	61

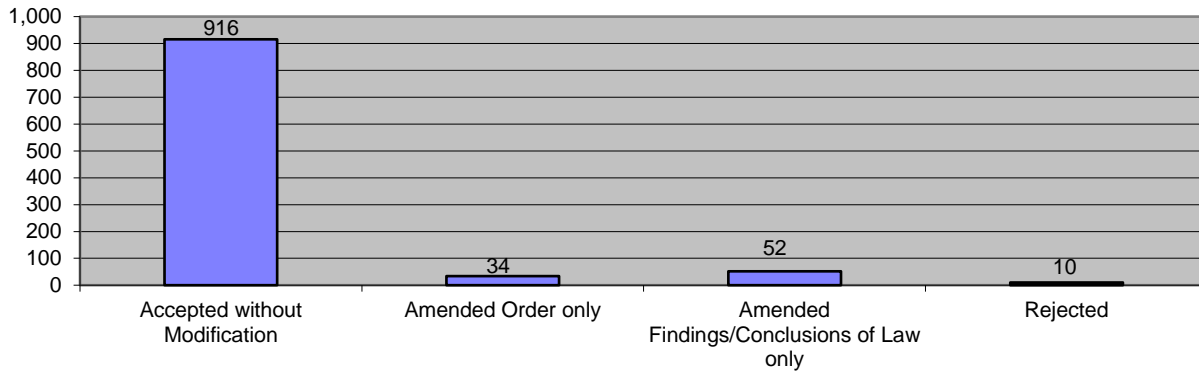
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 90.51% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 93.87% 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.



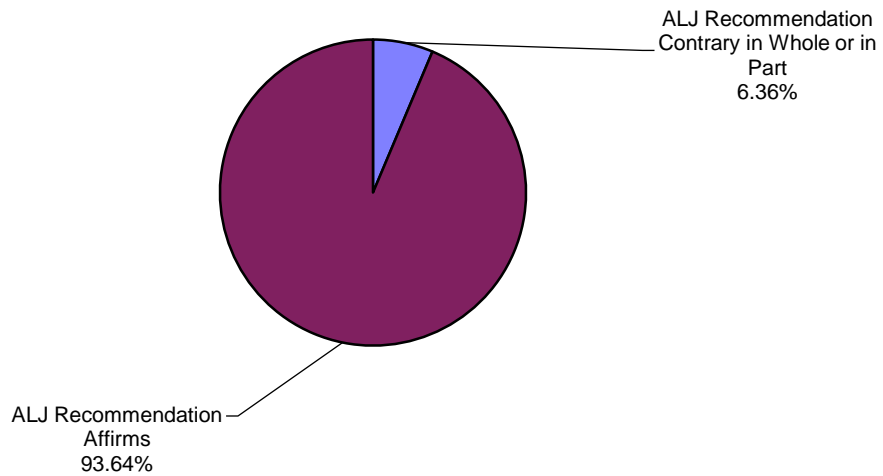
The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

Agency	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy	2	0	0	0	2
Adult Protective Services	7	3	6	0	16
Agriculture	1	0	0	0	1
AHCCCS	431	15	24	2	472
Arizona Commission for the Deaf and the Hard of Hearing	1	0	0	0	1
Behavioral Health	0	0	1	0	1
Department of Public Safety-BUS	1	0	0	0	1
Department of Child Safety	0	0	0	4	4
Department of Administration	1	0	0	0	1
Department of Education- Special Education	0	0	0	0	0
Department of Health Services	14	3	1	0	18
Department of Housing	3	0	0	0	3
Department of Insurance and Financial Institutions - Insurance	1	0	0	0	1
Department of Insurance and Financial Institutions - Financial	2	0	0	0	2
Department of Public Safety-CHR	1	0	0	0	1
Department of Real Estate	19	0	0	0	19
Department of Real Estate-HOA	0	0	0	0	0
Department of Revenue	0	0	0	0	0
Department of Water Resources	0	0	1	1	2
Fingerprint Clearance	31	0	2	0	33
Game and Fish	2	0	0	0	2
Medical	6	0	1	0	7
Naturopathic	1	0	0	0	1
Notary	1	0	0	0	1

Nursing	7	1	1	0	9
Registrar of Contractors	383	12	12	3	410
Retirement	0	0	2	0	2
Technical Registration	1	0	1	0	2
Total	916	34	52	10	1012

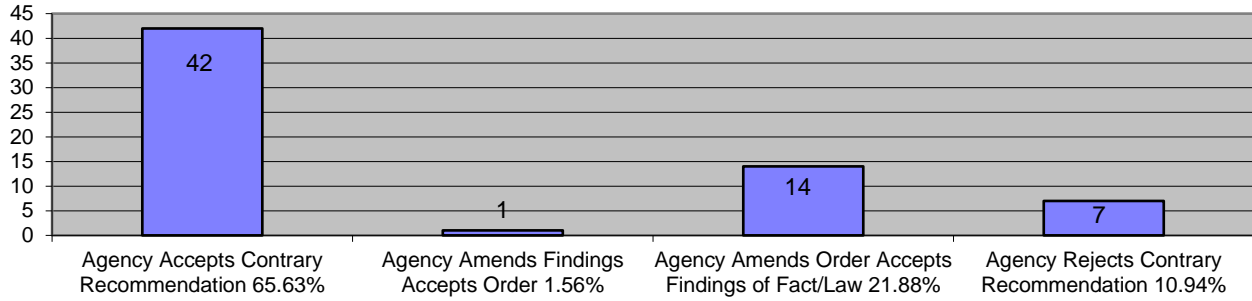
In FY 2023, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 6.36% of cases.

Recommendations Contrary to Original Agency Action FY 2023



Agency acceptance of contrary decisions was high at 89.06%.

Agency Response to Contrary Recommendations FY 2023



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

Agency	Accepted	Amended Order	Amended Findings	Rejected	Certified	Total
Accountancy	1	0	0	0	0	1
Department of Housing-LTA	0	0	0	0	1	1
AHCCCS	1	0	4	0	0	5
Adult Protective Services	2	0	2	0	0	4
Department of Public Safety-BUS	0	0	0	0	1	1
Department of Child Safety	0	0	0	4	28	32
Department of Water Resources	0	0	0	1	0	1
Fingerprint Clearance	0	0	2	0	0	2
Nursing	0	0	1	0	0	1
Real Estate	0	0	0	0	1	1
Registrar of Contractors	4	1	5	2	3	15
Total	8	1	14	7	34	64

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 2023, 106 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Arizona State Department of Housing - LTA	1
Department of Child Safety	86
Department of Public Safety - Student Transportation	1
Department of Real Estate	1
Department of Real Estate - H/C	1
Registrar of Contractors	16
Total	106

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 2023, 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.