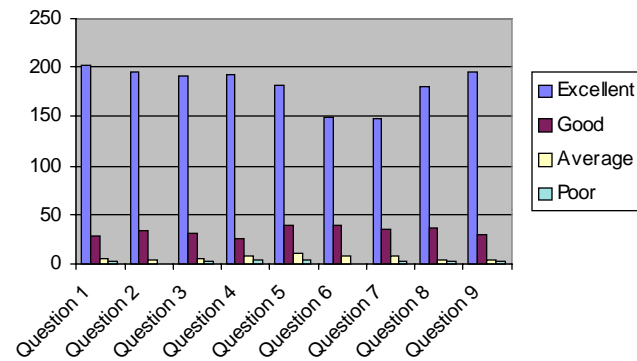
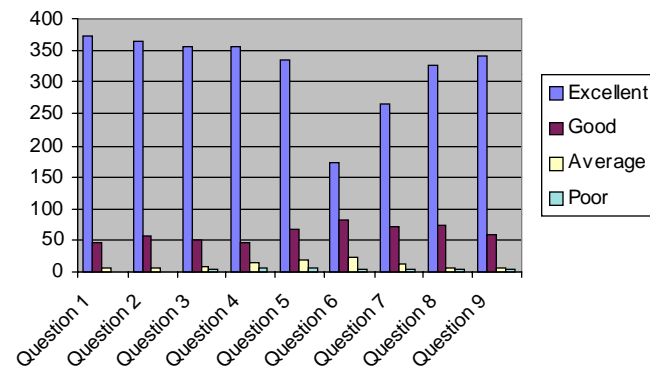


Evaluations of OAH Services

Unrepresented Responses 2nd Quarter



All Responses 2nd Quarter



Questions:

1. **Attentiveness of ALJ**
2. **Effectiveness in explaining the hearing process**
3. **ALJ'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**

Note: The four major groups of respondents are: Represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The respondents fill out the evaluations immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

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Jane Dee Hull
Governor

Cliff J. Vanell
Director

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Official Newsletter of the Arizona Office of Administrative Hearings

THE PRE-HEARING CONFERENCE - IT WORKS

George A. Schade, Jr., Administrative Law Judge

Director's note: OAH is committed to fairness and making hearings accessible to all. This article is the fourth in what we at OAH plan to be a series of informational articles to educate the public and parties who appear before us about the hearing process and how to better present their cases. The following article may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

date is filed with the Office of Administrative Hearings, the parties can expect a setting within a quick and short time, leaving a precious minimum of adequate time for pre-hearing discovery and preparation.

Although pre-hearing conferences are permitted under the statutes and rules of the Office of Administrative Hearings, it is the most underutilized effective procedure available for the resolution of administrative cases.

A pre-hearing conference will help counsel and parties to get around these two obstacles. Both discovery and a reasonable timeline - which will insure better preparation for an effective hearing - can be obtained through a pre-hearing conference. Early settlement discussions can also be triggered.

Two limitations in the current practice of administrative case resolution highlight the usefulness of pre-hearing conferences, first, the very limited availability of formal means of discovery and, second, the deliberate speed with which the system now moves.

Not all contested cases or appealable agency actions require or lend themselves to a pre-hearing conference. Some cases can be settled quickly, others do not present complex or difficult issues, and some cases do not merit the investment of legal resources associated with a pre-hearing conference.

The administrative arena has no provisions for the use of interrogatories, requests for admissions, inspection of premises, and physical and mental examinations. A deposition is restricted to a witness who cannot be subpoenaed or who is unable to attend the hearing, and then in the manner and on the terms designated by the administrative law judge. Even subpoenas for production of documents are subject to a showing to the Administrative Law Judge that the party seeking discovery demonstrates that the party has a reasonable need for the discovery sought.

But a pre-hearing conference can be quite effective in cases that:

A central mandate of the regulatory reform brought about during recent years is a speedy resolution process. Hearings must be held within a certain number of days following an appeal, and recommended decisions must be submitted and acted upon within strict time deadlines. Once a request for a hearing

1. Present scientific or technical issues such as environmental, land or water resources matters.
2. Involve voluminous documents such as public procurement or education matters.
3. Promise a strongly contested adversarial proceeding such as professional disciplinary matters or money disputes.
4. Have experienced or specialized legal counsel who by their presence elevate the dynamics of a case.

“Pre-hearings”

continued page 2

The Office of Administrative Hearings (OAH) began operations on January 1, 1996. Administrative Hearings previously provided by regulatory agencies (except those specifically exempted) are now transferred to the OAH for independent proceedings. Our statutory mandate is to "ensure that the public receives fair and independent administrative hearings."

The process of unifying the administrative hearings function in OAH-style agencies began in 1961 with California. The current states having adopted the model, with year of inception are: Arizona (1996), California (1961), Colorado (1976), Florida (1974), Georgia (1995), Illinois (1997), Iowa (1986), Kansas (1998), Louisiana (1996), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), North Carolina (1986), North Dakota (1991), Oregon (1999), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington (1981), Wisconsin (1978) and Wyoming (1987).

Mission Statement:
We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of state regulation.

2nd Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **96.26%** of all recommended decisions acted upon by the agencies.* ALJ decisions, including recommended orders, were accepted without modification in **92.82%** of all recommended decisions acted upon by the agencies. **81%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

The appeal rate was **1.71%**, defined as appeals taken (26) over hearings concluded (1516).

Rehearings:

The rehearing rate was **0.33%**, defined as rehearings scheduled (5) over hearings concluded (1516).

Completion Rate:

The completion rate was **89.28%**, defined as cases completed (1516) over new cases filed (1698).

Continuance:

The average length of a first time continuance based on a sample of cases (first hearing setting and first continuance both occurred in the 2nd quarter) was **34 days**. The frequency of continuance, defined as the number of continuances granted (1119) over the total number of cases first scheduled (1788), expressed as a percent, was **62.58%**. The ratio of first settings (2418) to continued settings on the calendar (1147) was **1 to 0.47**.

Dispositions:

Hearings conducted: **62%**; vacated prior to hearing: **35%**; hearings withdrawn by agency: **3%**.

Contrary Recommendations and Agency Response:

20.99% of recommendations were contrary to the original agency action where agency took a position. Agency acceptance of contrary recommendations was **83.49%**.

1% of ALJ recommended decisions were certified as final by the OAH due to agency inaction.

Although not required to do so, generally the Administrative Law Judges of the Office of Administrative Hearings issue a pre-hearing order outlining the issues to be discussed. In your request for a pre-hearing conference, feel free to suggest issues, subjects or themes for the judge's pre-hearing order.

A.R.S. § 41-1092.05(F) specifies the areas that can be explored at a pre-hearing conference. They are:

1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

These objectives are clear. The benefits of all are self-evident. But some objectives are generally more productive than others and deserve pursuit.

First, consider the use of substantive pre-hearing motions. Draft and request a schedule for filing and briefing pre-hearing motions to address specific legal issues. Focus on the key issues of law which the case presents, rather than on simply procedural issues or issues which can be resolved at hearing.

Pre-hearing motions serve to address key legal issues, to assess the level of factual preparation and knowledge of the applicable law existing on the other side, and to update the administrative law judge's knowledge of the applicable statutes, case law and agency policies.

Second, ask for an early exchange of proposed exhibits and witnesses. This effort will accelerate discovery and enhance your preparation for hearing. It may also move settlement talks or possibly lead to a mutual resolution.

Third, for a complex case, discuss the use of a certified court reporter. The main issues to be addressed would be (1) who will pay for the reporter and (2) will the court reporter's transcript be the official record of the hearing for purposes of decision-making and judicial review. The hearings at the Office of Administrative Hearings are taped, but a court reporter's transcript is easier and faster to generate and will greatly facilitate the Administrative Law Judge's analysis and drafting. For the complex or lengthy hearing, a court reporter's transcript is invaluable.

Fourth, consider an infrequently mentioned but potentially very useful action, namely, a request to visit or inspect premises or other facilities which could help your preparation for the hearing. Visits to construction sites, homes and water sources have been made with very effective results.

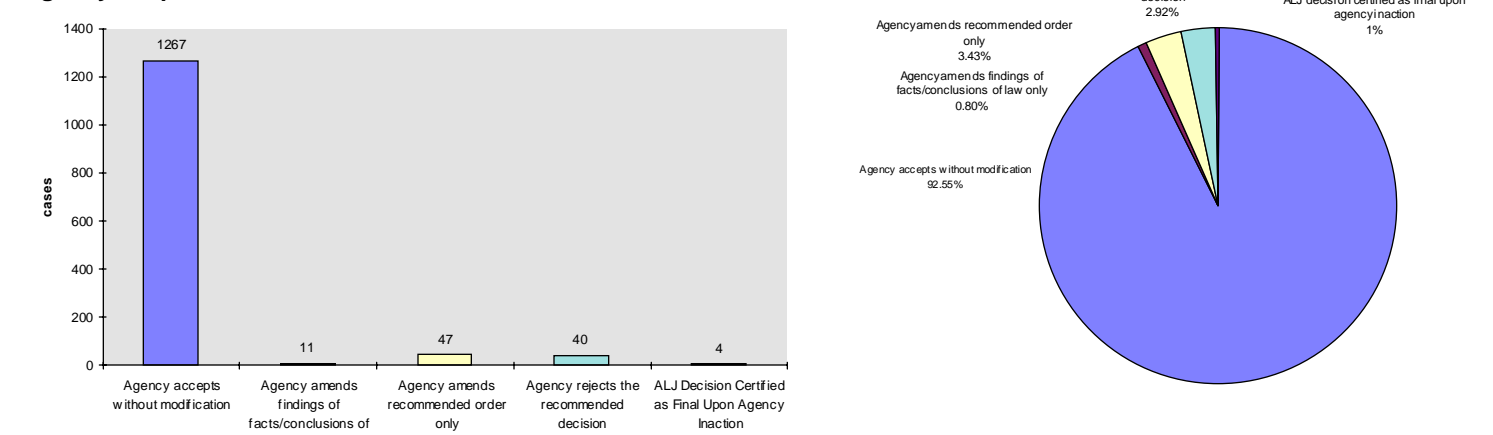
If a visit or inspection of a particular location would benefit either your presentation or the Administrative Law Judge's understanding of factual issues, request making a visit or inspection. Granting the request, however, is within the discretion of the Administrative Law Judge.

Under the rules of the Office of Administrative Hearings, the Administrative Law Judge is not required to memorialize the outcome of a pre-hearing conference. Therefore, the best practice is to request that the Administrative Law Judge issue a written pre-hearing order memorializing all directives and agreements.

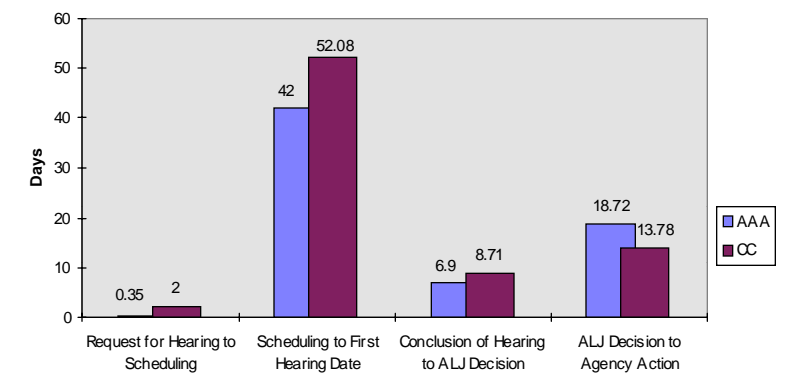
The conclusion of a pre-hearing conference does not necessarily mean the end of this procedure. The progeny of the pre-hearing conference are the Status Conference and the Telephonic Conference. An Administrative Law Judge has discretion to schedule pre-hearing and status conferences. The rules of the Office of Administrative Hearings provide that a pre-hearing conference may be held telephonically.

Consider asking the Administrative Law Judge to direct the submission of a written status report at an appropriate time in the future (a useful procedure in highly technical cases or in matters requiring a course of action over a designated or prolonged period of time), or to schedule a status conference or even another pre-hear-

Agency Response to Recommended Decisions October 1 - December 31, 2000



Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, October 1 - December 31, 2000



*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An example would be proposed discipline on a professional license with the possibility of suspension or revocation. Parties are entitled to a hearing before the OAH prior to the agency acting.

ing conference. Request that the Administrative Law Judge make himself or herself available for a telephonic conference to discuss issues encountered following the initial pre-hearing conference. A telephonic conference can be very effective to resolve last minute "flare-ups."

Once a pre-hearing conference has been held, the Administrative Law Judge and counsel will know each other better. Subsequent status or telephonic conferences are easier to have once everyone knows each other better. Therein lies a powerful but not always evident benefit of an early pre-hearing conference - positive rapport and trust can be established among the participants.

4,075 Cases Filed July 1, 2000 - December 31, 2000

"Pre-hearings"

continued from page 1

A pre-hearing conference is not automatic; it must be requested. Consider filing a request for a pre-hearing conference as soon as a hearing date is obtained from the Office of Administrative Hearings. Due to the calendar demands upon the Office of Administrative Hearings, the Administrative Law Judge may not be able to schedule a pre-hearing conference for possibly two weeks after a request is made. The sooner a request for a pre-hearing conference is made, the earlier one can be set, and consequently, more time can be gained for case preparation and hearing strategy.

One possible negative of an early request, however, is that the other side may not be fully prepared, but this exposes a situation that you may wish to know early.

	2nd Q	FY 2001		2nd Q	FY 2001		2nd Q	FY 2001
Accountancy	20	35	Dental	1	3	Pest Control	0	0
ADA	0	0	Economic Security	0	0	Physical Therapy	0	0
Administration	15	19	Economic Security-CPS	41	112	Podiatry	0	0
Admin. Parking	141	202	Education	1	1	Psychologist Examiners	2	3
Agriculture	0	0	Environ. Quality	29	53	Public Safety - CW	0	1
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - Trans	1	5
AHCCCS	797	2434	Gaming	3	5	Public Safety - Adult CC	0	3
Appraisal	4	4	Health Services	42	95	Pvt. Post. Ed.	0	0
AZ Commission on the Arts	0	0	Insurance	32	56	Racing	1	5
Attorney General	0	0	Land	1	4	Radiation Regulatory	0	0
Arizona Works	0	1	Liquor	21	50	Registrar of Contr.	440	756
Banking	7	13	Lottery	2	3	Real Estate	6	28
Behavioral Health Ex.	3	4	Maricopa Cty. Housing	0	0	Revenue	25	47
Building/Fire Safety	36	72	Medical Examiners	5	6	School - Deaf & Blind	0	0
Charter Schools	0	0	Naturopathic	0	0	Secretary of State	0	0
Chiropractic	0	4	Nursing	4	8	Technical Registration	0	5
Clean Elections	2	2	Osteopathic	0	0	Water Qual. App. Bd.	0	0
Community Colleges	0	0	Parks	0	0	Water Resources	5	9
Cosmetology	4	8	Peace Ofc. Standards	1	5	Weights and Measures	6	13