

The OAH



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Official Newsletter of the Arizona Office of Administrative Hearings

WHAT TO PACK FOR YOUR ADMINISTRATIVE HEARING: THE EVIDENCE TO PRESENT

Kay Abramsohn, Administrative Law Judge

Director's note: OAH is committed to fairness and making hearings accessible to all. This article is part of 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.

When you come to your administrative hearing, you will be asked to present your case. The information you present for your case may be slightly different, depending on the type of case you are involved in. Generally, you are presenting to the Administrative Law Judge (ALJ) your disagreement with a determination that was made against you or the information being used against you. Perhaps you will be presenting your information about problems with the way something was done, why something should be done differently, or why something should now happen or be completed for you. The following descriptions are generally the types of hearings that you may be involved in.

Type 1. You are a licensed individual or company and the regulating agency wants to take some action against your license either because a complaint was filed against you by another person, or because the agency has made some investigation and found some factual information it believes to be important. Generally, you are presenting your disagreement with the agency's action and why it should not happen.

Type 2. You are trying to become licensed or qualified for something or some benefits and the regulating agency has denied your application. Generally, you are presenting an explanation of the information the agency used against you or additional information in your favor which you feel the agency did not, but should, take into account.

Type 3. You are the person who filed the complaint against a licensed person or company and are presenting your version about what has happened. Generally, you are presenting why you think your complaint has merit and what you believe should happen next on your behalf.

Type 4. You are a person against whom an agency has made a determination with which you disagree and want reconsidered. Generally, you are presenting why you disagree, your reasons for your disagreement and the supporting law, facts, documents or witness testimony supporting your position.

In all of these cases you must present information to the ALJ. You may be aware that in the judicial courts

"What to Pack"

continued on 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 1945 with California. The current states or cities having adopted the model, with year of inception are: Arizona (1996), California (1961), Colorado (1976), Florida (1974), Georgia (1995), Chicago (1997), Iowa (1986), Kansas (1998), Louisiana (1996), Maine (1992), Maryland (1990), Massachusetts (1974), Michigan (1996), Minnesota (1976), Missouri (1965), New Jersey (1979), New York City (1979), North Carolina (1986), North Dakota (1991), Oregon (1999), South Carolina (1994), South Dakota (1994), Tennessee (1975), Texas (1991), Washington D.C. (1999), 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.

1st Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **95.51%** of all Administrative Law Judge decisions acted upon by the agencies.* ALJ decisions, including orders, were accepted without modification in **91.74%** of all Administrative Law Judge decisions acted upon by the agencies. **67.39%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were 11 appeals filed in Superior Court.

Rehearings:

The rehearing rate was **1.12%**, defined as rehearings scheduled (10) over hearings concluded (891)**.

Completion Rate:

The completion rate was **103%**, defined as cases completed (1694) over new cases filed (1644).

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 1st quarter) was **46.73 days**. The frequency of continuance, defined as the number of continuances granted (242) over the total number of cases first scheduled (1661), expressed as a percent, was **14.57%**. The ratio of first settings (1661) to continued settings on the calendar (208) was **1 to 0.13**.

Dispositions:

Hearings conducted: **53.5%**; vacated prior to hearing: **43.6%**; hearings withdrawn by the agency: **2.9%**.

Contrary Recommendations and Agency Response: 16.87%

of Administrative Law Judge decisions were contrary to the original agency action where the agency took a position. Agency acceptance of contrary Administrative Law Judge decisions was **85.71%**.

*2.26% of Administrative Law Judge decisions were certified as final by the OAH due to agency inaction or rendered moot by settlement.

** Cases which were vacated are not included

“What to Pack”

continued from page 1

Arizona, there are specific and detailed rules of evidence which must be followed, but in this quasi-judicial administrative tribunal, the rules about what evidence may be presented and admitted are more relaxed. The key thing to keep in mind about your presentation is to present the information and documents which are directly relevant to the issues in your case and which would be of assistance to the ALJ in making a determination in the case. The ALJ may deny admission of testimony or documents which are irrelevant or repetitious.

Testimony

You and all witnesses are required to be sworn in and testify under oath. You should be prepared to tell your version of events. You may have kept or made notes or a list of what happened first and next, etc. Do not expect to just read your list into the record. You are there to tell the ALJ your information and to answer questions to the best of your ability and recollection, if the ALJ or the other side has questions for you. Every person who presents testimony at a hearing may be asked questions by the ALJ or by the other side.

If you feel another person can supplement your own testimony with additional, technical or expert information about what happened or about a portion of what happened, you should make sure that person comes with you or attends the hearing to present that information to the ALJ. It is always better to have that person testify in person, rather than bring a letter or affidavit from that person.

Documents

Agencies which send cases over to the OAH for hearing typically provide a certain amount of information so that the ALJ has some background about your case. This may include copies of things you have already provided to the referring agency or to the other side.

All along, you should have kept copies of documents or letters you received from the agency or other side about your case. It will help you present your case if you take the time to put them in chronological order and review them before

the hearing. This will enable you to sort out which documents are the important ones that you want the ALJ to review in making determinations. The ALJ does not know exactly what happened. It is up to you to make sure that you point out or highlight for the ALJ what is important in those documents to review.

If you plan to present a copy of something to the ALJ, you must also have and present a copy to the other side. Do not expect OAH to make copies for you and do not expect the ALJ to take time out from the hearing to make copies for you.

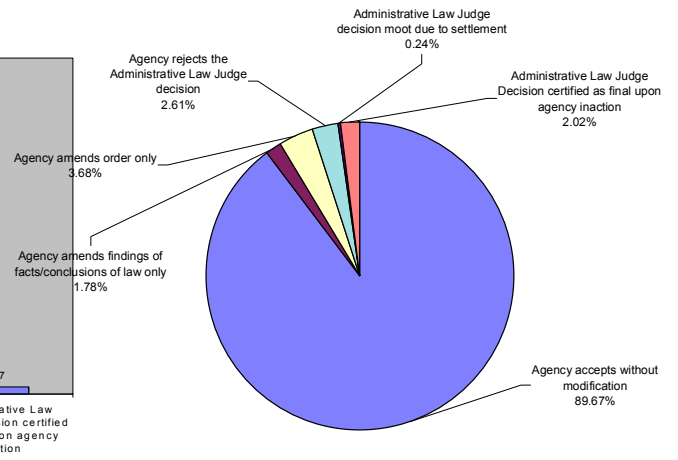
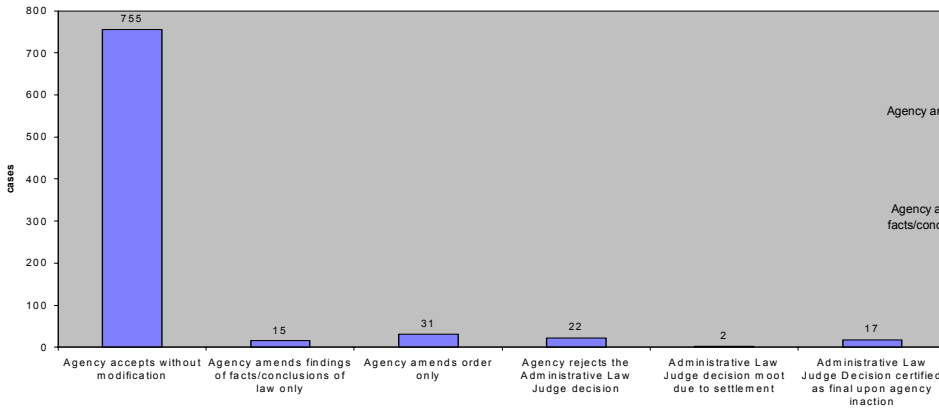
When you ask the ALJ to admit your document into the record, you should tell the ALJ what the document is and why it is important or what it shows. Sometimes the other side objects to the admission of a document. The ALJ will listen to the objection, and often make a decision on his or her own judgment about whether or not to admit the document. If the ALJ asks you for a response, you should tell the ALJ why you believe the document should be considered.

The ALJ will take your document and mark it as an exhibit. These exhibits become and remain a part of the hearing file in your case. After the case is over (no more appeals), you can request in writing that your exhibits be returned. Typically, you come back to the OAH to pick them up after the exhibits are inventoried; you must sign a release form.

Shape and Size

The OAH maintains a hearing case file for your matter. This case file holds standard 8 1/2" by 11" papers. All documentary evidence that you bring to the hearing should ideally fit into that case file or expansion folders which can be maintained with the file. Sometimes you may have a larger item, such as charts, graphs or maps. It is best if these larger items can be folded so they will fit in the case file.

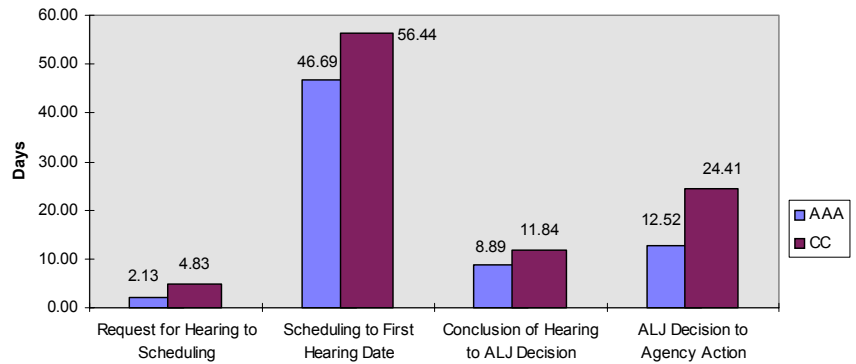
Agency Response to Administrative Law Judge Decisions July 1 - September 30, 2002



Demonstrative Evidence

In certain cases a person may be tempted to bring in large or bulky physical objects or items for the ALJ to review. It is unlikely that this sort of item would be maintained in the administrative hearing case file. Anytime you bring along such an item, you should be prepared to completely describe to the ALJ what the item is and why it is important to review it during the hearing. The ALJ may then make additional comments on the record with regard to his or her observation of such an item and you, rather than the ALJ, will retain that item.

Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, July 1 - September 30, 2002



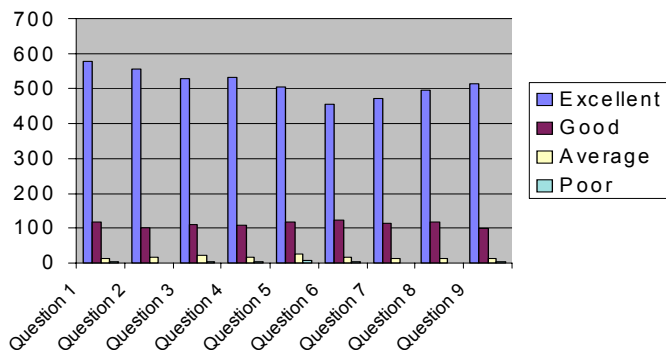
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An 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.

1644 Cases Filed July 1, 2002 - September 30, 2002

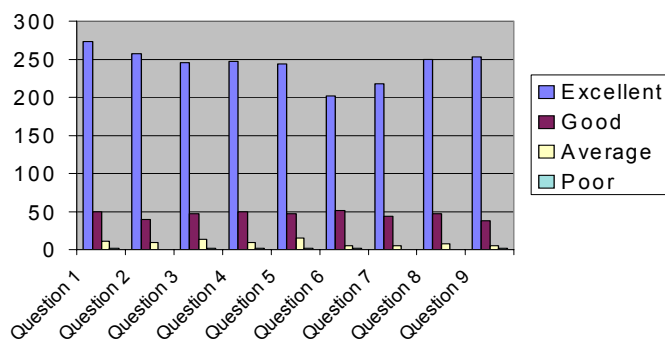
	1st Q	FY 2003		1st Q	FY 2003		1st Q	FY 2003
Accountancy	2	2	Cosmetology	0	0	Parks	0	0
Acupuncture Board	0	0	Dental	2	2	Peace Ofc. Standards	3	3
ADA	0	0	Economic Security	0	0	Pest Control	5	5
Administration	4	4	Economic Security-CPS	68	68	Physical Therapy	0	0
Admin. Parking	49	49	Education	2	2	Podiatry	0	0
Agriculture	0	0	Environ. Quality	30	30	Psychologist Examiners	0	0
Ag. Empl. Rel. Bd.	0	0	Funeral	0	0	Public Safety - CW	2	2
AHCCCS	831	831	Gaming	2	2	Public Safety - Trans	6	6
Alternative Fuel	0	0	Health Services	81	81	Public Safety - Adult CC	0	0
Appraisal	2	2	Insurance	27	27	Pvt. Post. Ed.	0	0
AZ Bd. Occup'l Therapy	0	0	Land	7	7	Racing	1	1
Attorney General	1	1	Liquor	18	18	Radiation Regulatory	0	0
Arizona Works	1	1	Lottery	0	0	Registrar of Contr.	384	384
Banking	10	10	Maricopa Cty. Housing	0	0	Real Estate	20	20
Behavioral Health Ex.	1	1	Medical Board	5	5	Revenue	19	19
Building/Fire Safety	34	34	Naturopathic	1	1	School - Deaf & Blind	1	1
Charter Schools	0	0	Nursing	12	12	Secretary of State	4	4
Chiropractic	0	0	Nursing Care Admin	0	0	Technical Registration	0	0
Clean Elections	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	0	0
Community Colleges	0	0	Osteopathic	0	0	Water Resources	3	3
						Weights and Measures	6	6

Evaluations of OAH Services

All Responses 1st Quarter



Unrepresented Responses 1st 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 those who responded are: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The evaluations are filled out immediately after the hearing and the evaluations are not disclosed to the ALJ involved.

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