

# The OAH



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[www.azoah.com](http://www.azoah.com)

Official Newsletter of the Arizona Office of Administrative Hearings

## Full, Fair, Impartial, Independent and Prompt

Cliff J. Vanell, Director

In the Second Century, the Roman Emperor Hadrian was passing through a town in the midst of a campaign to secure the northern border from the unremitting attacks of the barbarian tribes. An old woman called to him to hear a dispute. Not surprisingly, given the situation, he replied to her that he was too busy. Startling, however, was the old woman's response: "Then you are too busy to be Emperor." To the credit of the Emperor, or perhaps as an illustration of the essential need to be publicly seen to do justice, he stopped and heard the dispute.

In December 2001, I had the pleasure of attending a presentation by Former Chief Justice Thomas Zlaket at the Annual Convention of Central Panel Directors. He cited studies showing that Americans increasingly have the sense that justice is beyond their means because access to the courts had become too expensive and time-consuming. It can literally take years for a dispute to make its way through the civil process. As a result, a dangerous corrosive effect is being produced, estranging the citizenry from the government. To the extent that we are a government of fellow citizens, the effect can only be a debilitating cynicism.

Given these studies, has a call not been sounded in 21st Century America, akin to the old Roman woman's call to the Emperor Hadrian? Do we risk much in appearing to be too busy, too expensive, too inaccessible in addressing disputes? In creating the Office of Administrative Hearings (OAH) with its fast-track procedures and the emphasis on accessibility, the Arizona Legislature has responded to that call in the administrative arena.

### Full and Fair:

The OAH process is designed to maximize accessibility. Individuals are not required to be represented by counsel and procedures are streamlined allowing the unrepresented to be effective in presenting their cases. The OAH website ([www.azoah.com](http://www.azoah.com)) is designed with a minimum of frills and organized to allow visitors to find information as quickly as possible. The background of the OAH, including its mission statement, logo, management philosophy and views of the hearing rooms give parties a sense of the "feel" of the OAH. The biographies of the Administrative Law

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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.

## 2nd Quarter Statistics At A Glance

### Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **88.56%** of all Administrative Law Judge Decisions acted upon by the agencies.\* ALJ Decisions, including orders, were accepted without modification in **84.58%** of all Administrative Law Judge Decisions acted upon by the agencies. **31.31%** of all agency modification was of the order only (i.e. penalty assessed).

### Appeals to Superior Court:

There were 15 appeals filed in Superior Court.

### Rehearings:

The rehearing rate was **0.12%**, defined as rehearings scheduled (1) over hearings concluded (797).\*\*

### Completion Rate:

The completion rate was **93.95%**, defined as cases completed (1693) over new cases filed (1802).

### 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 **37.61 days**. The frequency of continuance, defined as the number of continuances granted (183) over the total number of cases first scheduled (1172), expressed as a percent, was **16.38%**. The ratio of first settings (1695) to continued settings on the calendar (153) was **1 to 0.09**.

### Dispositions:

Hearings conducted: **66.3%**; vacated prior to hearing: **32.4%**; hearings withdrawn by the agency: **1.4%**.

**Contrary Recommendations and Agency Response:** 20% 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 **84.0%**.

\*2.27% of Administrative Law Judge Decisions were certified as final by the OAH due to agency inaction or were rendered moot by settlement.

\*\* Cases which were vacated or which settled on the day of hearing are not included.

references another rule will have a link to it, as well as any statute in the Uniform Administrative Hearings Procedures Act that deals with the same issue. Likewise, any reference in articles dealing with practice pointers or any response to a frequently asked question that refers to any rule or statute will have links to them.

The OAH Portal found on the OAH website is an important asset to parties since it allows parties to directly access OAH's docket to view case settings, rulings, receipt of documents and other information. Other than in confidential cases, parties can not only research their cases on-line, they can listen to the audio record of their hearings over the internet within 24 hours of the hearing. Full text searching will be added to the OAH website that will allow parties to review other

decisions similar to their own. In order to aid in the preparation for a hearing, videostreaming will soon permit parties to watch and listen to a sample hearing.

The hearing rooms are designed to be pleasant and nonthreatening with attractive art and comfortable furnishings. Parties are escorted to the hearing room and encouraged to fill out questionnaires commenting on the process, including whether they were treated courteously and whether the judge was impartial and effective in the case.

### Impartial and Independent:

The OAH is committed to the development of its Administrative

Law Judges. The OAH takes its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the Executive branch, the OAH maintains a conscious detachment from political issues and the missions of the other Executive agencies. Procedures, rulings, and case assignments are at all times kept free of outside pressures to ensure the parties that hearings are impartial and independent.

While the Administrative Law Judges must render decisions according to the evidence before them and use their independent judgment, the OAH now requires that Administrative Law Judges review all decisions which have been modified or rejected by an agency in order to encourage them to identify any possible miscites or other areas where quality can be improved. This commitment is in furtherance of the duty of the OAH to provide continuing education to its Administrative Law Judges.

### Prompt

Hearings at the OAH are to be set within 60 days of a request. Decisions must be issued by the Administrative Law Judges within 20 days of the conclusion of a hearing. Agencies must act with 30 days of the receipt of the Administrative Law Judge's decisions or the decision becomes final. Through adherence to these statutory mandates and careful case management, cases completed in a year equal the number of cases filed with the OAH. The lack of case backlog assures that parties are given hearings in a reasonable timeframe.

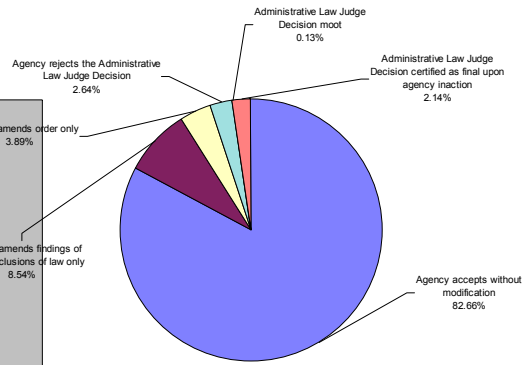
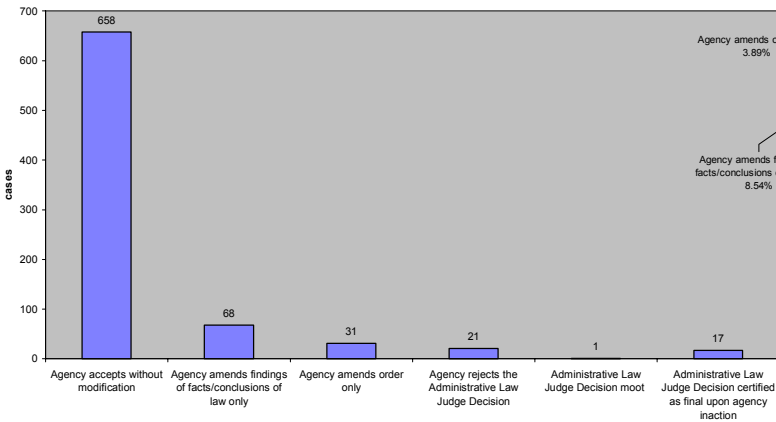
### A Promise

The OAH mission statement summarizes our vision as "contributing to the quality of life in the State of Arizona." Mindful of the critique of

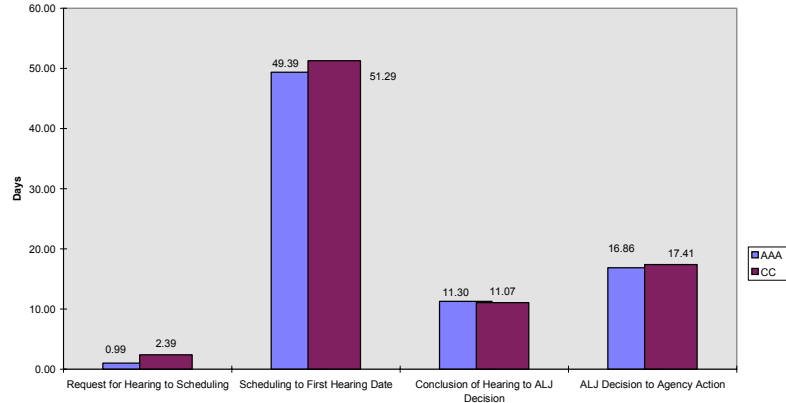
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Judges allow parties to put a name to a face and learn about a judge's background. There are also articles written by the Administrative Law Judges designed to educate the public and parties about the hearing process. Along with links to the Arizona Revised Statutes, Arizona Administrative Code and OAH's procedural rules, the website includes extensive cross referencing to allow non-lawyers to quickly pick up practice pointers and be able to put the law together with a minimum of searching. For example, if a person goes to OAH's procedural rules, any rule which

Agency Response to Administrative Law Judge Decisions October 1 - December 31, 2003



Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases\*, October 1 - December 31, 2003



\*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.

the old Roman woman, that means that we must never be too busy or distracted to give each party the attention necessary to foster confidence in our system of justice. As the OAH begins its ninth year of service, we again pledge our best efforts in responding to the call of parties who come before us to be fully, fairly, impartially and promptly heard.

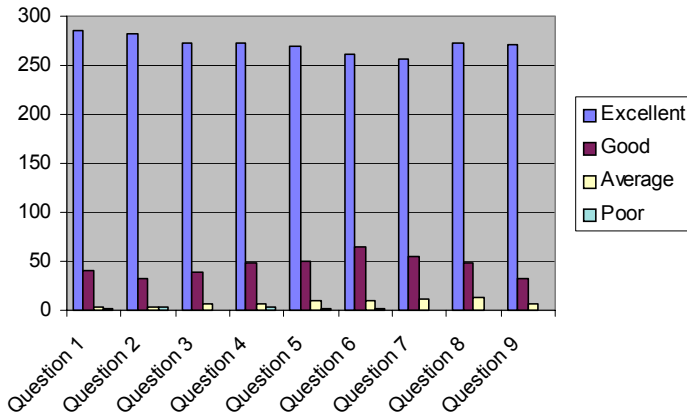
## 1693 Cases Filed October 1, 2003 - December 31, 2003

	2nd Q	FY 2004		2nd Q	FY 2004		2nd Q	FY 2004
Accountancy	3	7	Dental	3	7	Parks	0	0
Acupuncture Board	0	0	Economic Security	0	0	Peace Ofc. Standards	1	3
Administration	1	4	Economic Security-CPS	46	105	Pest Control	14	16
Admin. Parking	25	44	Education	2	4	Physical Therapy	1	2
Agriculture	0	0	Environ. Quality	43	94	Podiatry	0	0
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	164	327	Psychologist Examiners	0	0
AHCCCS	675	1284	Funeral	0	0	Public Safety - CW	0	2
Alternative Fuel	0	0	Gaming	4	7	Public Safety - Trans	4	6
Appraisal	3	4	Health Services	124	212	Public Safety - Adult CC	0	0
Arizona Trial Courts	0	0	Insurance	26	41	Pvt. Post. Ed.	0	26
Attorney General	0	2	Land	4	4	Racing	0	2
Arizona Works	0	0	Liquor	10	26	Radiation Regulatory	0	0
Athletic Board	0	0	Lottery	0	0	Registrar of Contr.	464	837
Banking	16	42	Maricopa Cty. Housing	0	0	Real Estate	18	42
Behavioral Health Ex.	3	3	Medical Board	7	14	Revenue	27	33
Building/Fire Safety	23	46	Medical Radiologic	4	4	School - Deaf & Blind	0	1
Charter Schools	3	3	Naturopathic	0	0	Secretary of State	7	15
Chiropractic	1	2	Nursing	13	30	Technical Registration	0	0
Clean Elections	0	0	Nursing Care Admin.	2	2	Veterinary Board	0	0
Community Colleges	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	0	0
Cosmetology	5	6	Osteopathic	0	0	Water Resources	35	36
						Weights and Measures	21	54

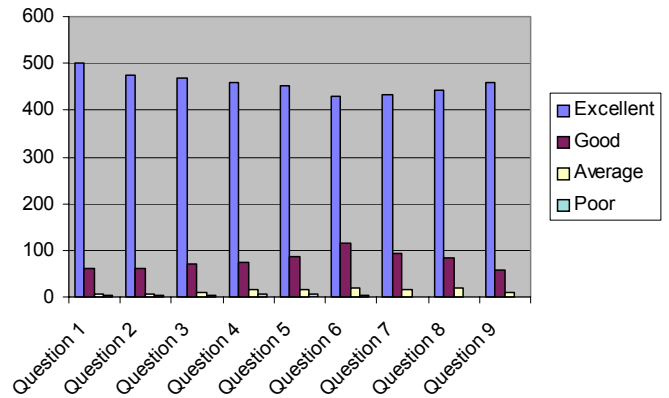
# Evaluations of OAH Services

**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. The are used by management to improve the OAH process and do not affect the decisions issued.

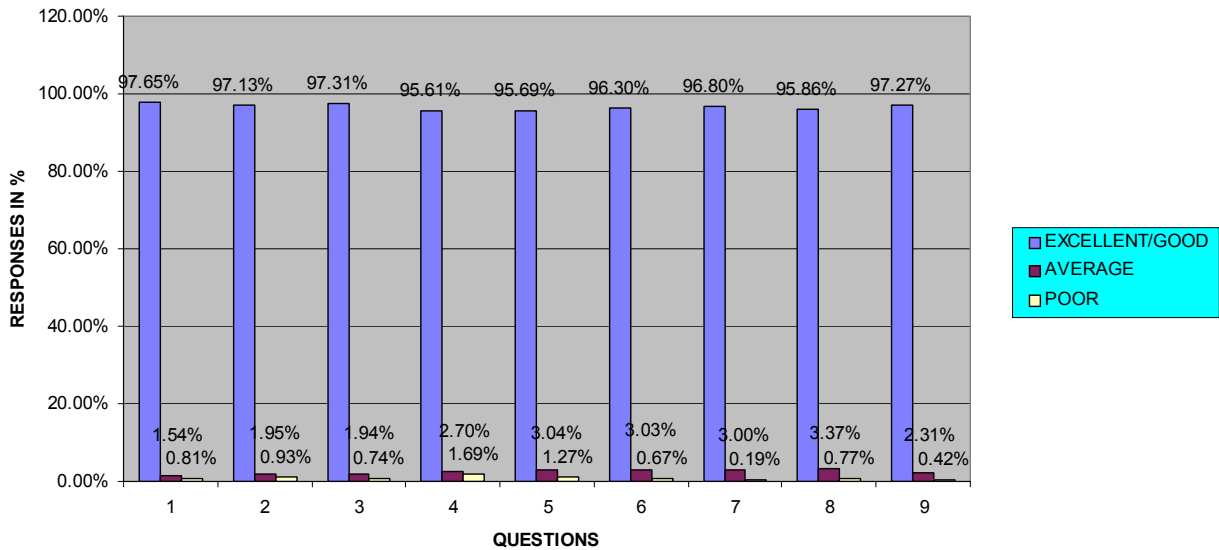
**Unrepresented Responses 2nd Quarter**



**All Responses 2nd Quarter**



**All Responses FY 2004 To Date (July 1, 2003 - December 31, 2003)**



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