

The OAH



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Vol. 32
July 2004

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

REHEARING AND APPEAL OF FINAL ADMINISTRATIVE ACTIONS

Daniel G. Martin, Administrative Law Judge

At the conclusion of an administrative hearing in the Office of Administrative Hearings ("OAH"), the Administrative Law Judge who presided over the case will prepare a written decision setting forth findings of fact, conclusions of law, and, in most cases, an order for the disposition of the matter. After the Administrative Law Judge completes the decision, the agency from which the case arose will review the decision and make a determination (with certain exceptions) to accept, reject or modify the decision. The agency will then issue its final administrative decision. See Arizona Revised Statutes ("A.R.S.") § 41-1092.08(B). [For further discussion of the post-hearing review process, see *After the Hearing*, THE OAH NEWSLETTER, Vol. 29 (October 2003)] Alternatively, an agency may fail to take action with respect to a decision, in which case the decision will be certified by OAH as the final administrative decision. See A.R.S. § 41-1092.08(D). [For further discussion of certification, see *Certification of Administrative Decisions*, THE OAH NEWSLETTER, Vol. 31 (May 2004)]

If a party disagrees with a final administra-

tive decision, that party may file a motion for rehearing or review of the decision. See A.R.S. § 41-1092.09. Motions for rehearing or review must be filed not later than thirty days after service of the decision (thirty-five days if the decision is served by mail). See A.R.S. § 41-1092.09(A)(1). Although specific grounds for rehearing or review vary from agency to agency, typical grounds include irregularity in the proceedings, error in the admission or rejection of evidence, newly discovered evidence that could not, with reasonable diligence, have been discovered prior to hearing, accident or surprise that could not have been prevented by ordinary prudence, and excessive or insufficient penalties. Motions for rehearing or review must be in writing, and should be submitted directly to the agency from which the case arose.

Upon receipt of a timely motion for rehearing or review, and after the opposing party has been given an opportunity to respond, the agency will make a determination to grant or deny the motion. See A.R.S. § 41-1092.09(D). In some

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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 articles may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

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.

4th Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **95.23%** of all Administrative Law Judge Decisions acted upon by the agencies.* ALJ Decisions, including orders, were accepted without modification in **91.08%** of all Administrative Law Judge Decisions acted upon by the agencies. **55.9%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were 21 appeals filed in Superior Court.

Rehearings:

The rehearing rate was **.81%**, defined as rehearings scheduled (8) over hearings concluded (987).**

Completion Rate:

The completion rate was **92.0%**, defined as cases completed (1907) over new cases filed (2072).

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 4th quarter) was **38.85 days**. The frequency of continuance, defined as the number of continuances granted (191) over the total number of cases first scheduled (2080), expressed as a percent, was **9.2%**. The ratio of first settings (1895) to continued settings on the calendar (206) was **1 to .11**

Dispositions:

Hearings conducted: **59.8%**; vacated prior to hearing: **38.5%**; hearings withdrawn by the agency: **1.6%**.

Contrary Recommendations and Agency Response: 13.4% 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 **75%**.

5.24*1.97% of Administrative Law Judge Decisions were certified as final by the OAH due to agency inaction or were rendered moot by settlement.(corrected 08/04/04)

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

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instances (such as is the case with the Registrar of Contractors), the agency will request that the Administrative Law Judge who heard the case submit a recommendation to grant or deny the motion, or to modify the decision.

If the agency grants a motion for rehearing or review, the agency may itself modify the decision or it may return the matter to OAH for further proceedings. If the agency denies a party’s motion for rehearing or review, or if the party remains dissatisfied with the

agency’s decision at the conclusion of the rehearing/review process, the party may appeal the agency’s decision to the Arizona Superior Court. See A.R.S. § 41-1092.08(H). Generally speaking, a party is not required to file a motion for rehearing or review as a prerequisite to the filing of an appeal in Superior Court; nonetheless, a party considering an appeal of a final administrative decision should consult the statutes and rules specific to the agency from which the case arose to determine if the filing of a motion for rehearing or review is necessary. In most instances, a party may appeal a final administrative decision immediately after that decision is issued.

An appeal of a final administrative decision, more specifically referred to as a complaint

for judicial review of an administrative decision, must be filed with the Arizona Superior Court not later than thirty-five days after the final administrative decision is served on the appealing party (forty days if the decision is served by mail). See A.R.S. § 12-904. Appeals of final administrative decisions are assigned to the Appeals Department of the Maricopa County Superior Court, which hears and decides all administrative appeals as well as appeals from the limited jurisdiction courts within Maricopa County. Maricopa County Superior Court Judge Michael D. Jones is the judge currently assigned to the Appeals Department, and presides

over all administrative appeals.

Not later than ten days after a complaint for judicial review of an administrative decision is filed with the Superior Court, the party who filed the complaint must file a notice of the action with OAH. See A.R.S. § 12-904(B); see also Arizona Administrative Code (“A.A.C.”) R2-19-122 (requiring that copy of complaint be filed with OAH). Failure to comply with this requirement may result in the dismissal of the appeal.

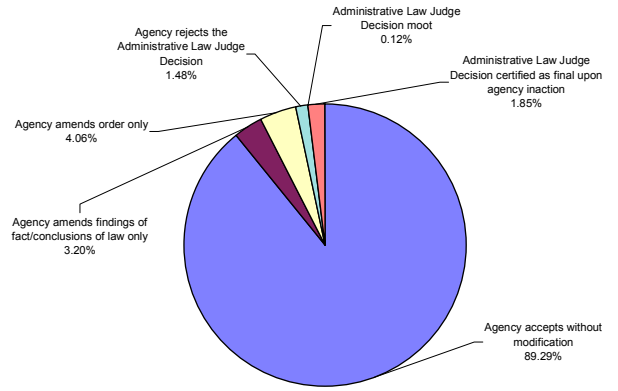
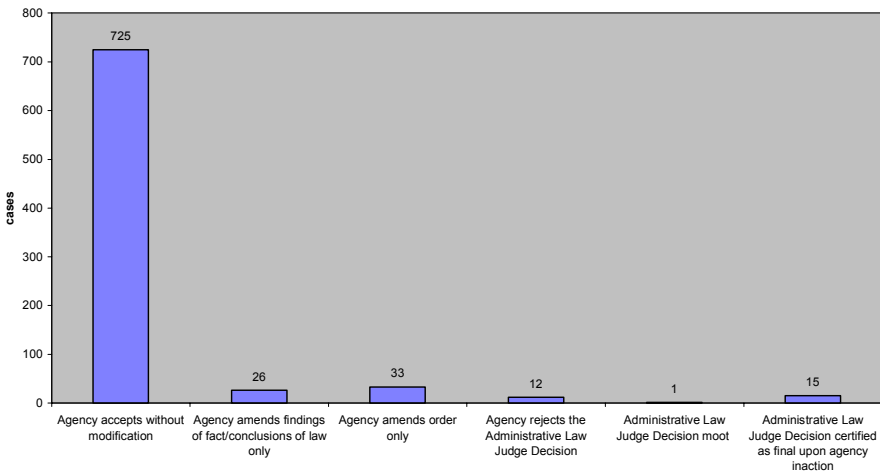
After the notice of the appeal is filed, OAH prepares the administrative record for transmission to Superior Court. The administrative record consists of (1) the original agency action from which review is sought, (2) any motions, memoranda or other documents submitted by the parties to the appeal, (3) any exhibits admitted as evidence at the administrative hearing, and (4) the decision by the administrative law judge and any revisions or modifications to the decision. See A.R.S. § 12-904(B)(1)-(4).

The administrative record does not automatically include a copy of the transcript of the administrative hearing. Although all administrative hearings are recorded (generally in a digital format), it is the responsibility of the appealing party, at that party’s expense, to obtain a copy of the hearing record and to prepare a transcript for inclusion in the administrative record. See A.R.S. § 12-904(B)(5); see also A.A.C. R2-19-122(B). [For more information on downloading digital

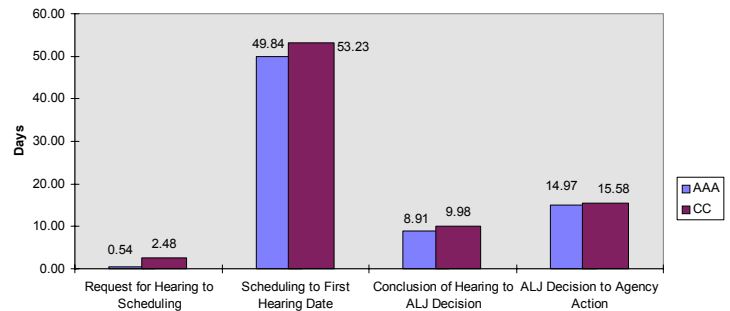
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Agency Response to Administrative Law Judge Decisions April 1, 2004 - June 30, 2004



Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, April 1 - June 30, 2004



*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.

Videostreaming

The OAH is preparing digital streaming files that will be placed on its website illustrating important points of effective presentation. These will include how to prepare for hearing, the introduction of exhibits, the questioning witnesses and the presentation of opening statements and closing arguments. The files will be available for online viewing on August 15, 2004.

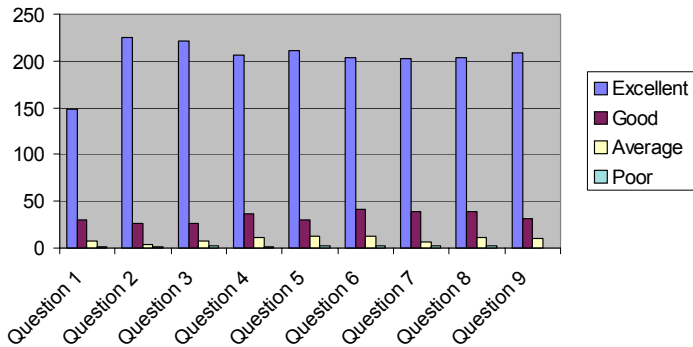
2072 Cases Filed April 1, 2004 - June 30, 2004

	4th Q	FY 2004		4th Q	FY 2004		4th Q	FY 2004
Accountancy	2	12	Dental	1	11	Parks	0	0
Acupuncture Board	0	0	Economic Security	0	1	Peace Ofc. Standards	2	8
Administration	5	10	Economic Security-CPS	52	218	Pest Control	5	24
Admin. Parking	29	110	Education	1	7	Physical Therapy	0	2
Agriculture	1	1	Environ. Quality	37	167	Podiatry	0	0
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	179	653	Psychologist Examiners	0	0
AHCCCS	1039	3188	Funeral	0	0	Public Safety - CW	1	5
Alternative Fuel	0	0	Gaming	4	12	Public Safety - Trans	3	15
Appraisal	1	8	Health Services	119	435	Public Safety - Adult CC	0	0
Arizona Trial Courts	0	0	Insurance	16	76	Pvt. Post. Ed.	0	26
Arizona Retirement Sys	2	6	Land	1	7	Racing	2	8
Attorney General	1	3	Liquor	10	51	Radiation Regulatory	0	0
Arizona Works	0	0	Lottery	1	1	Registrar of Contr.	417	1714
Athletic Board	0	0	Maricopa Cty. Housing	0	0	Real Estate	22	87
Banking	10	61	Medical Board	4	23	Revenue	9	53
Behavioral Health Ex.	0	3	Medical Radiologic	0	4	School - Deaf & Blind	0	1
Building/Fire Safety	15	76	Naturopathic	0	0	Secretary of State	8	32
Charter Schools	21	4	Nursing	36	92	Technical Registration	1	3
Chiropractic	0	3	Nursing Care Admin.	2	4	Veterinary Board	0	0
Clean Elections	0	0	Occupation Therapy	0	0	Water Qual. App. Bd.	0	2
Community Colleges	0	0	Optometry	1	1	Water Resources	1	42
Cosmetology	3	10	Osteopathic	0	0	Weights and Measures	28	123

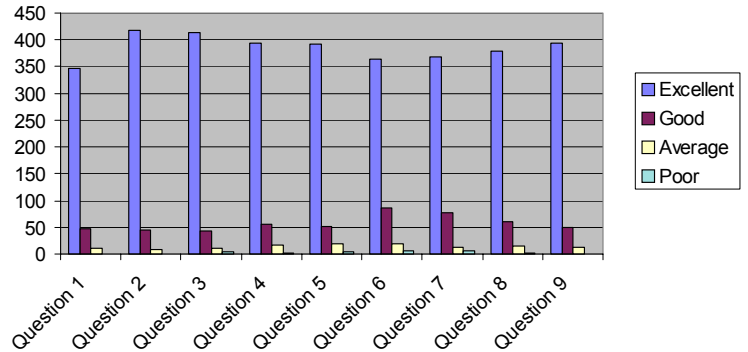
Evaluations of OAH Services

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

Unrepresented Responses 4th Quarter



All Responses 4th 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

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audio files from the OAH website, see How to Download a Digital Audio File, THE OAH NEWSLETTER, Vol. 29 (October 2003)]. If the appealing fails to prepare a transcript, any other party to the appeal may do so by filing a notice with OAH within ten days after receiving notice of the complaint and by providing for preparation of the transcript at that party's own expense. See A.R.S. § 12-904(B)(5).

Under A.R.S. § 12-910(E), the Superior Court Appeals Department may affirm, reverse, modify or vacate and remand the agency decision. A.R.S. § 12-910(E) states that the Court shall affirm the agency action unless the Court concludes “that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.” The Court may hold an evidentiary hearing in order to make the above determination. See A.R.S. § 12-910(A). However, the decision to do so is

in the discretion of the Court, and is not a matter of right. Often, parties will not be permitted to offer additional evidence, and will instead be limited to oral argument on the underlying record. Final decisions, orders, judgments or decrees of the Appeals Department may be appealed to the Arizona Supreme Court. A.R.S. § 12-913.

As can be seen from the foregoing, the rehearing and appeal process is comprised of a number of steps and is governed by relatively short deadlines. Parties who are considering filing a motion for rehearing or a complaint for judicial review of an administrative decision should fully acquaint themselves with the applicable statutes and rules to ensure that their filings are both timely and in compliance with the requirements of the law.