

The OAH



Janet Napolitano
Governor

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Director

Vol. 37
November 2005

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

Interview with the Director

What follows is the text of an imaginary interview with the Director of the Office of Administrative Hearings.

You have been Director of the Office of Administrative Hearings for ten years. Looking back, what life experiences prepared you most for your position?

Cliff Vanell: Certainly having been a pro tem judge gave me insights into the demands of adjudication. But I would have to say that being a prosecutor and having to present cases before a variety of judges was invaluable. Even now, the occasional appearance before a judge, as I had to do before a probate judge when establishing my father's death after his disappearance at sea, reminds me how important it is to have a kind and compassionate judge.

I was heavily involved with the Drug Recognition Expert (DRE) Program (a police investigatory tool to identify the drugged driver) as it developed in Arizona. I presented numerous seminars to judges, prosecutors and defense attorneys and edited the DRE Newsletter, published by the Phoenix Prosecutor's Office. This experience convinced me how important it is to constantly disseminate the accomplishments of an organization as a way to constantly challenge it to always be better, faster and smarter.

I often relate how I inadvertently came upon my mother in the early hours of the morning before she had to appear at a Justice Court on a dispute with a merchant. My mother was a very strong woman and seeing her visibly worried

was startling. As soon as she saw me, she displayed her typical iron lady routine. I have never forgotten how frightening going to court or a hearing can be to a lay person.

I also have shared how as a law student I found myself at the county library surrounded by law books puzzling out an issue for a brief. At the same table was a young man who looked like he had just come off a workshift at some factory. He too was surrounded by law books and must have been trying to do his own legal work. I remember thinking that if this was such a challenge to one who had legal training, what must it seem like to him. That image has stuck with me.

Lastly, three years working in a copper smelter and acid plant taught me that there is never an excuse to interrupt services (even if the furnace is leaking molten copper like an upside down volcano), there is always a solution (even if you have to figure out a pneumatic pump on the fly), and that constant monitoring is essential to keep a process working smoothly.

What do you do when different judges have differing interpretations of a statute, or view issues in different ways?

The judges must decide cases and independently reach their best judgments. To that extent I see my most important function as protecting that independence, I am careful not to impugn it myself. Collegiality is the

"Interview"

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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 American states and cities, and Canadian

provinces, having adopted the model, with year of inception are: Alabama (1998); Alaska (2004); Arizona (1996); California (1961); City of Chicago (1997); Colorado (1976); Florida (1974); Georgia (1995); 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); Wyoming (1987); and Province of Quebec ().

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 **86.33%** of all Administrative Law Judge Decisions acted upon by the agencies.* ALJ Decisions, including orders, were accepted without modification in **80.51%** of all Administrative Law Judge Decisions acted upon by the agencies. **39.1%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were **39** appeals filed in Superior Court.

Rehearings:

The rehearing rate was **1.8%**, defined as rehearings scheduled (12) over hearings concluded (668).**

Completion Rate:

The completion rate was **103.6%**, defined as cases completed (2006) over new cases filed (1936).

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 **44.85 days**. The frequency of continuance, defined as the number of continuances granted (329) over the total number of cases first scheduled (2046), expressed as a percent, was **16%**. The ratio of first settings (2088) to continued settings on the calendar (283) was **1 to 0.135**

Dispositions:

Hearings conducted: **47%**; vacated prior to hearing: **50%**; hearings withdrawn by the agency: **3%**.

Contrary Recommendations and Agency Response: 15% 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 **68.9%**.

* 4.77% 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.

“Interview”

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medium in which we reach consensus if it is possible. I have transmitted decisions that I disagreed with. The ability of the agencies to reject or modify a decision is a better way of dealing with inconsistencies than establishing OAH-wide positions that are not based on true consensus.

Why do parties not have peremptory strikes like in Superior Court?

I know that peremptory strikes in Superior Court can have real tactical value to litigants. For instance, a judge with a reputation for lenient sentencing could be preferable to a

defendant than one with a reputation for harsh sentencing. However, since agencies can reject or modify the decision of the Administrative Law Judge, the tactical value of a peremptory strike is greatly reduced and is now attempted only as a motion to continue by other means.

What do you do when you receive a complaint about a judge?

I will not act until all other parties have had an opportunity to likewise comment. I limit my review to the audio record of the hearing and will not revisit procedural rulings or substitute my judgment for that of the judge. If parties disagree with a judge's decision, the party may request a rehearing or appeal to Superior Court. My focus is on any complaint that parties were not treated with respect or given a full, fair opportunity to present their evidence. I have found that complaints can be invaluable teaching tools.

How do you handle motions for change of judge?

Such motions require a showing of bias, prejudice, personal interest or lack of necessary expertise. Often the motion will amount to a disagreement with how the judge viewed the evidence, or sometimes be predicated on the failure of the judge to grant a procedural motion. I will not allow a motion for a change of judge to be used as a motion to reconsider a judge's rulings and I will not substitute my judgment for that of the judge. This goes back to protecting the judges' independence.

Who assigns the Administrative Law Judges?

I make the assignments, either personally, or as delegated to the case management team. Judges are assigned according to cadres which I have created, matching judges to needs, interest, education and experience.

Why is OAH so hard on continuances?

More than 60% of motions to continue are granted, which I am sure is not the impression of many parties. It is true that parties must establish good cause, and

mere agreement of the parties to continue will be met largely with a denial of a continuance. Ours is a scarce resource. With more than 8,500 cases filed before 18 administrative law judges, each case set within 60 days of the agency's request, or an appeal by a party, and each requiring a minimum of 30 days notice, we cannot afford to have wasted hearing time. It isn't fair to other parties who must wait for their first hearing date to have continued settings erode the available time. When the Legislature created the OAH, they intended to implement a "fast-track" system. The OAH strives to maintain the spirit and intent of our enabling statutes.

Do you warn agencies when the time to accept, reject or modify is looming?

The OAH views its decisions as the final decision unless the agency accepts, rejects or modifies. From that point of view, there is nothing to "warn" the agency about.

Does the OAH take positions on pending legislation?

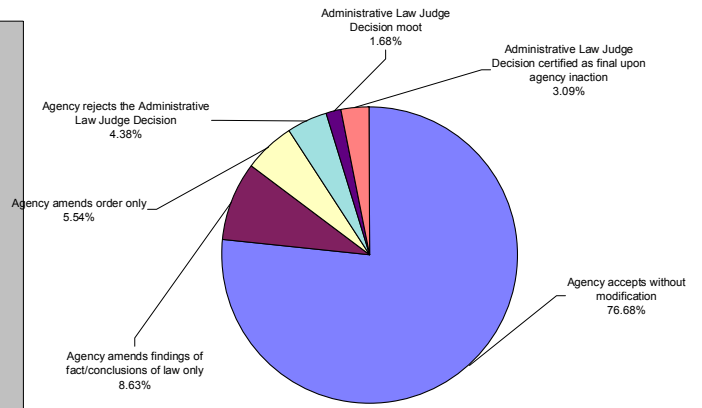
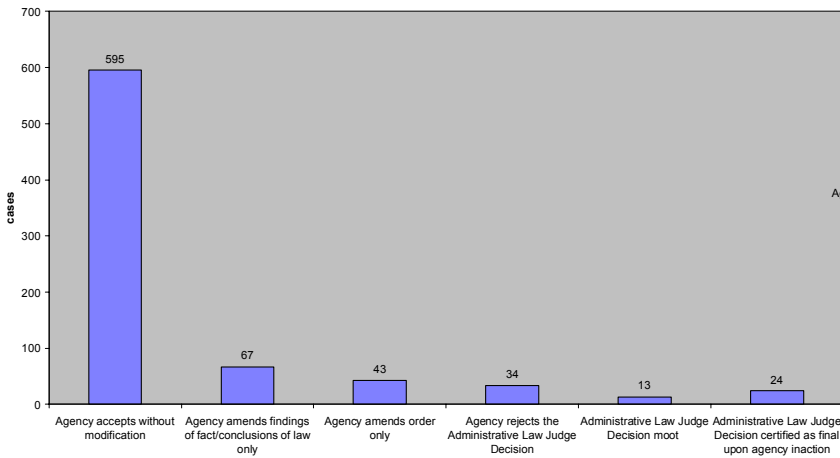
The OAH does not speak in favor of, or in opposition to, legislation. The OAH will comment as to whether a proposal is consistent with our mission as currently defined, and whether there are unintended consequences to a proposal. We will recommend language that we think will better effectuate the intent of a proposal.

What do you look for in an Administrative Law Judge?

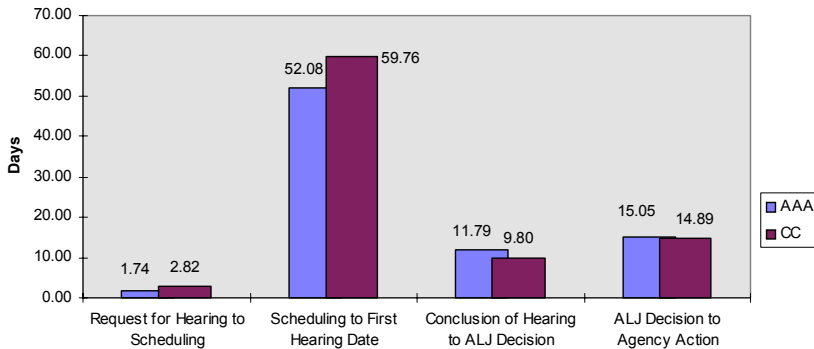
Any candidate must be hardworking and have significant recent trial or hearing experience. I look for someone who is both intelligent and compassionate. I have used the image of two matched horses pulling a cart. If one is too strong, the cart will topple or be unstable. We have to get the facts right, be able to write concise decisions that justify our decisions. However, we must also do so in a way that assures parties they have been fully heard. Someone is going to lose. That is the nature of adjudication. People can accept a negative outcome if they have been given a fair shot before someone that they have confidence in.

“Interview”

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Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, July 1 - September 30, 2005



*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.

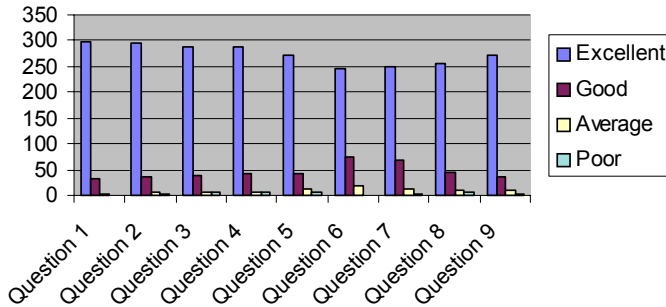
1936 Cases Filed July 1, 2005- September 30, 2005

	1st Q	FY 2006		1st Q	FY 2006		1st Q	FY 2006
Accountancy	3	3	Economic Security	0	0	Peace Ofc. Standards	9	9
Acupuncture Board	0	0	Economic Security-CPS	45	45	Pharmacy Board	3	3
Administration	1	1	Education (Board)	0	0	Physical Therapy	0	0
Admin. Parking	32	32	Education (Department)	7	7	Podiatry	0	0
Agriculture	0	0	Environ. Quality	17	17	Psychologist Examiners	0	0
Ag. Empl. Rel. Bd.	0	0	Fingerprinting	0	0	Public Safety - CW	0	0
AHCCCS	897	897	Funeral	0	0	Public Safety - Trans	3	3
Alternative Fuel	0	0	Gaming	3	3	Public Safety - Adult CC	0	0
Appraisal	7	7	Health Services	114	114	Pvt. Post. Ed.	0	0
Arizona Trial Courts	0	0	Insurance	21	21	Racing	2	2
Arizona RetirementSys.	12	12	Land	5	5	Radiation Regulatory	0	0
Attorney General	0	0	Liquor	12	12	Registrar of Contractors	454	454
Arizona Works	0	0	Lottery	1	1	Real Estate	128	128
Athletic Board	0	0	Maricopa Cty. Housing	0	0	Revenue	16	16
Banking	12	12	Massage Therapy	0	0	School - Deaf & Blind	0	0
Behavioral Health Ex.	0	0	Medical Board	7	7	Secretary of State	3	3
Fire/Building/Life Safety	13	13	Medical Radiologic	5	5	State Board of Education	0	0
Charter Schools	0	0	Naturopathic	0	0	Structural Pest Control	0	0
Chiropractic	0	0	Nursing	32	32	Technical Registration	0	0
Clean Elections	3	3	Nursing Care Admin.	0	0	Veterans Home	0	0
Community Colleges	0	0	Occupation Therapy	0	0	Veterinary Board	0	0
Cosmetology	1	1	Optometry	0	0	Water Qual. App. Bd.	0	0
Criminal Justice	2	2	Osteopathic	0	0	Water Resources	2	2
Dental	7	7	Parks	0	0	Weights and Measures	47	47

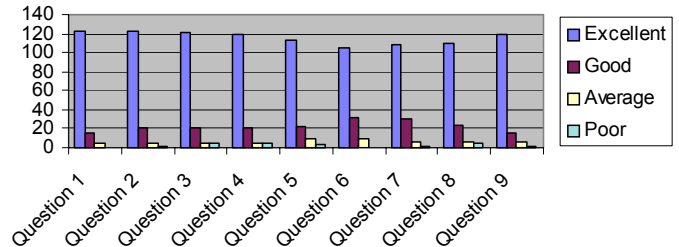
Evaluations of OAH Services

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.

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

Why does the OAH seem so statistically driven?

The Legislature has mandated certain timetables and requires the OAH to report statistical measures. In addition, the Legislature has identified specific performance measures. Statistical measures are essential to identifying problems early. My constant monitoring of the OAH process is akin to the monitoring I did at the smelter and acid plant. Many times I prevented real damage by being alert. I recall that occasionally the bolts that held the large ore chains together would come loose causing days of delay. I decided to make a point of taking a flashlight and watching the chains for a full cycle at least four times a shift. The one time that I spied a loose bolt made it all worthwhile. Likewise at the OAH, the sooner I can determine that cases are taking longer to schedule or that the flow in hearing and writing is being compromised, the sooner I can take steps to rectify the situation.

What new technical advances does the OAH have planned?

The OAH has moved to digital recording of hearings with the non-confidential records being available on-line the next day. We now conduct hearings by videoconference to seven remote locations throughout the State. In both cases, we have made our process more accessible to everyone. We plan to have a brief introduction to the OAH process played in each hearing room before every hearing by the end of the year. This is an extension of our efforts to educate the parties, particularly the unrepresented, so that they can feel they have done a good job in presenting their case. I think of my mother and that young man when I consider this and hope that we are doing every-

thing we can to make our hearing process as accessible and non-threatening as possible.

Where do you see the OAH in 2015?

Well, I am working on gene splicing and teletransporting... Seriously, I see us as working hard to continue to provide full, fair, impartial, independent and prompt hearings. I see us contributing to Arizona's quality of life.

How have you changed?

I have become more peaceful. I have come to appreciate opposition as a gift.

What do you like most about the OAH?

The OAH is a human institution and is all about people and their relationships. I really enjoy listening to the collegial banter among the Administrative Law Judges. I am always impressed by the wealth of experience and commitment they bring to their task. The support staff is creative and works very hard to maintain both the atmosphere of total customer service while still managing to maintain a highly efficient workflow. I like most what obviously everyone at the OAH likes the most: we are all proud to be part of an important mission and enjoy public service.