

The OAH



Janet Napolitano
Governor

Cliff J. Vanell
Director

Vol. 40
(Final)

August 2006

www.azoah.com

Official Newsletter of the Arizona Office of Administrative Hearings

The Administrative Law Judge

Cliff J. Vanell, Director

Who are they?

Prior to the creation of the Office of Administrative Hearings (OAH), administrative hearings were conducted at the state agencies, boards and commissions by hearing officers who were employees or contractors of the agencies whose actions were at issue. The relationship between the agency and the hearing officer understandably made it difficult for the public to assume the impartiality of the hearing officer. The OAH was created to address the inherent problem of perception involved in such in-house proceedings. Transferring hearings to an independent agency for adjudication by Administrative Law Judges (ALJs) with no relationship to the agencies has enhanced public confidence in the fairness of the process.

In creating the OAH, the Arizona Legislature envisioned highly trained ALJs to provide full, fair, independent, and prompt hearings and decisions.¹ To ensure that goal,

the Legislature mandated that the OAH Director make appropriate appointments of judges to preside over cases, provide training, solicit comment from parties, and set up and maintain a system to evaluate the ALJs. In addition, the Legislature provided a method by which a party may have an ALJ removed from a case by filing a motion with the Director when there is evidence of bias, prejudice, personal interest or lack of necessary expertise.

Where do they come from?

In light of these mandates, great weight is placed in assessing candidates for the position on commitment to the OAH mission of fairly and impartially deciding cases. Each candidate is assessed for his or her spirit of collegiality, ability to master a variety of specialties among a wide range of subjects, creativity, openness to peer review, and willingness to undertake continuing education to enhance his or her legal reasoning and writing skills.

The ALJs come from a variety of backgrounds. Brief statements of the ALJs' professional backgrounds are available on the OAH website (<http://www.azoah.com/ALJ.htm>). Regardless of background and experience, certain skills and values have been identified which are at the core of who the ALJ becomes. The very fact that hearings are called "hearings" establishes the pivotal nature of listening. The very act of listening involves the

"The ALJ"

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Final Edition

This marks the 40th and final edition of the OAH Newsletter. For over 10 years, the Newsletter has been a format for publishing statistics and informative articles. The website www.azoah.com is now both the repository of past editions of the Newsletter and the location for future reporting. Subscribers will now receive an e-mail link to the appropriate website pages.

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.

4th Quarter Statistics At A Glance

Acceptance Rate:

ALJ findings of fact and conclusions of law were accepted in **89.13%** of all Administrative Law Judge Decisions acted upon by the agencies.* Administrative Law Judge Decisions, including orders, were accepted without modification in **80.88%** of all Administrative Law Judge Decisions acted upon by the agencies. **50.4%** of all agency modification was of the order only (i.e. penalty assessed).

Appeals to Superior Court:

There were 26 appeals filed in Superior Court.

Rehearings:

The rehearing rate was **1.47%**, defined as rehearings scheduled (9) over hearings concluded (611).**

Completion Rate:

The completion rate was **98.07%**, defined as cases completed (1780) over new cases filed (1815).

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 **49.87 days**. The frequency of continuance, defined as the number of continuances granted (218) over the total number of cases first scheduled (1808), expressed as a percent, was **12.06%**. The ratio of first settings (1760) to continued settings on the calendar (212) was **1 to 0.12**

Dispositions:

Hearings conducted: **48%**; hearings vacated prior to hearing: **48.8%**; hearings withdrawn by the agency: **3.2%**.

Contrary Recommendations and Agency Response:

14.1% 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 **86.8%**.

* 3.07% 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.

conscious of the forces that can distract them, be they unguarded presuppositions, routine, professional pride, annoyance with an unruly witness or party, or personal problems. Lastly, dispassion is not to be mistaken for impartiality. The ideal ALJ is one who is impartial, not because dispassionate or uninterested, but because he or she is equally passionate for and interested in the needs of both parties.

What do they want?

The ALJs want to decide cases fully and fairly. Full participation by parties is essential to that task. Parties must develop the evidentiary record. No expertise of the ALJ can substitute for relevant testimony or evidence. Therefore, the ALJs have acted affirmatively to assist all parties in preparing and presenting their cases. First, the OAH rules were designed by the ALJs to simplify the administrative process. In addition, the ALJs have written dozens of articles, available online (<http://www.azoah.com/OAHArticles.htm>) to assist parties in preparing for hearing and presenting evidence. In addition, the ALJs have participated in training videos, also available online, which discuss and demonstrate opening state-

ments and closing arguments, and direct and cross examinations. ALJ decisions are searchable online (<http://www.azoah.com/DecisionSearch.htm>). Researching an ALJ's approach in similar cases is useful in knowing what an ALJ might need to best understand your case.

Maintaining Integrity and Quality.

The ALJ presides over cases coming before the OAH. Interim orders, the conduct of the hearing, and the resulting decision are within the ALJ's sound discretion. In light of the need to protect the ALJ's independence, OAH's primary quality control and management strategy has been to provide continuous feedback to the ALJs.

Such feedback has taken various forms. All parties are given an evaluation form at the beginning of each hearing and are given the opportunity to submit it for comment to the Director's attention. Such comments are compiled and generalized so as not to influence an ALJ's decision. Since November 1996, evaluations are handed out to four major groups of hearing participants: represented private party; unrepresented private party; counsel for a private party; and counsel for the agency. The results are not disclosed to the ALJs. To make sure that all participants are encouraged to respond, the bailiff provides a copy of the evaluation to parties before the beginning of the hearing. The essential function of the evaluations is to determine whether OAH has provided an accessible and respectful forum for the determination of the truth. Evaluation results indicate that satisfaction is high among all groups, as is illustrated in the quarterly statistics reported in the OAH Newsletters, available online (<http://www.azoah.com/NewslettersPDF.htm>). An analysis of the unrepresented parties for any sample quarter indicates that even among this most vulnerable group, the OAH is seen to be functioning extremely well.

The ALJs are monitored for compliance with the 20 day statutory mandate for issuing decisions. In addition, the annual evaluation of ALJs focuses on ensuring that the ALJs' written decisions and orders are clear and complete, displaying good knowledge of statutes and rules governing assigned hearings, and that cases are managed effectively, including holding prehearing conferences to expedite the proceedings when appropriate, and ruling on motions and issuing appropriate orders in a timely manner. ALJs necessarily receive feedback by way of complaints that are fielded as well as through motions for change of ALJ. Each ALJ is required to review final administrative decisions by the agencies which modify facts, conclusions of law, or which reject the ALJs' decisions to determine if errors were made and as a means for improving writing skills.

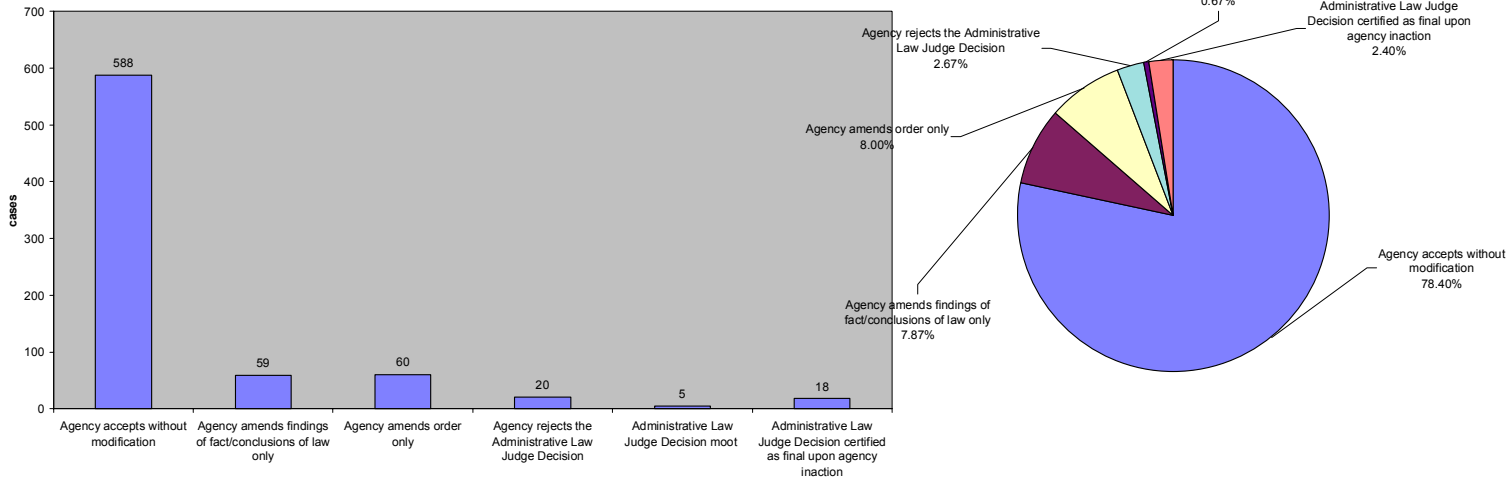
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“The ALJ”

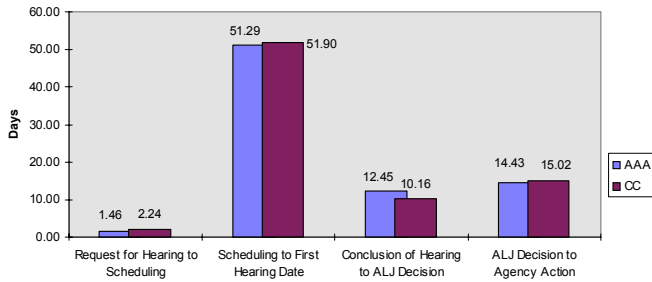
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need for patience. At hearing, the ALJ must be willing to give great latitude for personal style, choice of words, cadence and volume in speaking, and how the parties choose to approach their cases. The ALJ must be able to effectively explain the procedures that will be employed at hearing and be able to rule on objections in a way that helps parties know what was objectionable and how to proceed. Because every case is the most important for the parties, the ALJ must be willing to give each case the attention it deserves, without distraction and with as much understanding as the ALJ can muster. ALJs must therefore be

Agency Response to Administrative Law Judge Decisions April 1, 2006 - June 30, 2006



Average Time Between Selected Events - Appealable Agency Actions v. Contested Cases*, April 1 - June 30, 2006



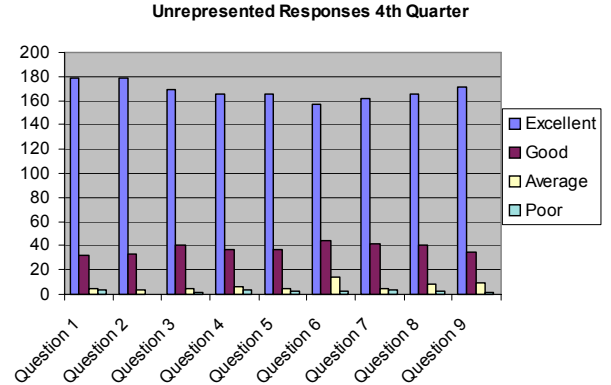
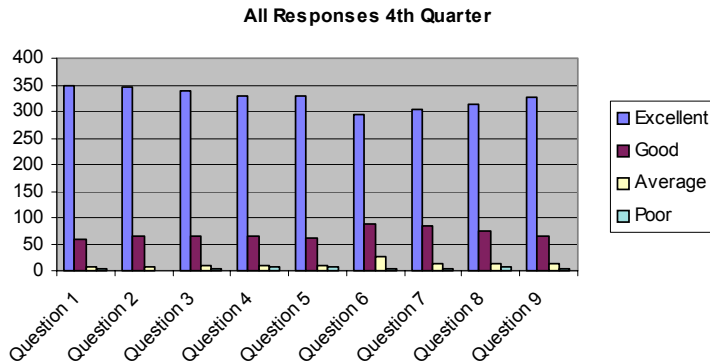
*Note: *Appealable Agency Actions* are agency actions taken before an opportunity for a hearing. A typical example would be the denial of a license. A party is entitled to a hearing before the OAH before the action becomes final. *Contested Cases* involve actions yet to be determined by an agency. An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

1815 Cases Filed April 1, 2006 - June 30, 2006

	4thQ	FY 2006		4th Q	FY 2006		4thQ	FY 2006
Accountancy	6	18	Economic Security	0	0	Peace Ofc. Standards	1	20
Acupuncture Board	1	2	Economic Security-CPS	30	137	Pharmacy Board	0	5
Administration	1	5	Education (Board)	0	0	Physical Therapy	0	5
Admin. Parking	29	126	Special Education	16	46	Podiatry	0	0
Agriculture	0	0	Environ. Quality	27	70	Psychologist Examiners	0	1
Ag. Empl. Rel. Bd.	0	0	Financial Institutions	15	60	Public Safety - CW	1	6
AHCCCS	875	3364	Fingerprinting	0	100	Public Safety - Trans	4	15
Alternative Fuel	0	0	Funeral	0	0	Public Safety - Adult CC	0	0
Appraisal	2	26	Gaming	3	10	Pvt. Post. Ed.	0	0
Arizona Trial Courts	0	0	Health Services	80	353	Racing	1	12
Arizona Retirement Sys.	6	32	Insurance	30	93	Radiation Regulatory	0	0
Attorney General	0	0	Land	2	12	Registrar of Contractors	448	1881
Arizona Works	0	0	Liquor	15	54	Real Estate	31	251
Athletic Board	0	0	Lottery	0	5	Revenue	8	41
Behavioral Health Ex.	4	5	Maricopa Cty. Housing	0	0	School - Deaf & Blind	1	1
Fire, Bldg & Life Safety	35	103	Massage Therapy	0	2	Secretary of State	2	23
Charter Schools	1	2	Medical Board	2	19	State Board of Education	0	0
Chiropractic	1	4	Medical Radiologic	3	13	Structural Pest Control	2	11
City of Phoenix	1	1	Naturopathic	0	0	Technical Registration	0	0
Clean Elections	0	5	Nursing	26	128	Veterans Home	0	0
Commerce	0	1	Nursing Care Admin.	3	5	Veterinary Board	0	0
Community Colleges	0	0	Occupation Therapy	0	1	Water Qual. App. Bd.	0	0
Cosmetology	0	1	Optometry	0	0	Water Resources	0	2
Criminal Justice	0	2	Osteopathic	0	1	Weights and Measures	99	246
Dental	3	36	Parks	0	0			

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.



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

In addition to training, which includes State Bar sponsored continuing legal education, privately presented courses, as well as contracted presentations, the OAH provides 40 hours per year of continuing education opportunities to each ALJ to ensure professional development.

Most importantly, the OAH is a collegial organization and the interplay among the ALJs is the greatest source of learning. The give and take, having their thoughts challenged, seeking advice and second opinions, having to justify positions and first takes on a subject – these are all invaluable processes to achieve and maintain quality.

Where have they gone?

One of our numbers has left us in death, and I take this time to recall ALJ Neal Jordan. Others have gone on to take positions with the judiciary, or other positions of esteem, such as with the Arizona State Bar. Some have

left to pursue private professions. Our alumni are available online (<http://www.azoah.com/Alumni.htm>). Such esteemed alumni attest to the quality of the ALJ cadre.

Footnotes

¹ A.R.S. § 41-1092.01 mandates that ALJs possess necessary technical expertise. A.R.S. § 41-1092.07 requires that the ALJs allow all parties the opportunity to respond and present evidence and argument on all relevant issues, and exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make them effective for ascertaining the truth. A.R.S. § 41-1092.05 provides that continuances are to be granted only for good cause. The ALJs must base any findings of fact exclusively on the evidence and on matters officially noticed. A.R.S. § 41-1092.08 mandates that written decisions contain a concise explanation of the reasons supporting the decision and that the decision, which may become the final administrative decision upon agency inaction, be transmitted to the agencies, boards, and commissions within 20 days.