

The Office of Administrative Hearings

The Fifteenth Annual Report

to

Governor Janice K. Brewer

Senator Robert Burns, President of the Senate

Representative Kirk Adams, Speaker of the House

Pursuant to A.R.S. § 41-1092.01(C)(5)

and

A.R.S. § 41-1092.01(C)(9)



Cliff J. Vanell, Director

November 1, 2010

Contents

I. Introduction and Overview.....	1
II. Continued Development of the Office.....	2
1. Tucson Office Closed.....	2
2. Electronic Submission of Case Requests.....	2
3. Electronic Transmission of Administrative Law Judge Decisions	2
4. Expanded Use of Prehearing Conferences.....	2
III. Summary of Agency Use of OAH Services.....	2
1. Case Management.....	2
a. Breakdown of Cases Filed by Agency	2
b. Number of Cases Concluded Versus Cases Filed	3
c. Timeline of Case Management	4
d. Incidence of Continuance.....	5
2. Evaluation	8
a. Results of Public Evaluation	8
b. Incidence of Rehearing and Appeal.....	9
IV. Acceptance of Administrative Law Judge Decisions by Agencies.....	10
1. Agency Action.....	10
2. Agency Inaction With Subsequent Certification of Finality.....	13
V. Motions for Change of Administrative Law Judge Granted Pursuant to A.R.S. § 41-1092.07.....	14
VI. Violations of A.R.S. § 41-1009	14
VII. Recommendations for Changes in the Administrative Procedures Act.....	14
1. Right to settlement conferences in “contested cases”	14
2. Establish uniform standards for appeal rights notice.	14
3. Establish uniform basis for rehearing.....	14
4. Conform rehearing and appeal rules.....	14
VIII. Recommendation for Changes or Improvements in Agency Practice with Respect to the Administrative Procedures Act.....	15
Recoupment of Costs for Administrative Hearings	15

I. Introduction and Overview

The Office of Administrative Hearings (OAH) was created pursuant to Laws 1995, Chapter 251, adding Arizona Revised Statutes § 41-1092 *et seq.*, and commenced operation on January 1, 1996. Administrative hearings previously provided by regulatory agencies (except those specifically exempted) were transferred to the OAH for independent proceedings. In November 2009, OAH closed its Tucson office. The Phoenix office currently has 17 full-time positions, including the Director, the Office Manager, 9 Administrative Law Judges, and 6 support staff. In addition to having conducted hearings in Phoenix and Tucson (now closed), the OAH videoconferenced Registrar of Contractors hearings in Flagstaff, Kingman, Lake Havasu City, Show Low, and Yuma. Our statutory mandate is to “ensure that the public receives fair and independent administrative hearings.”

Responsibility:

The OAH understands its responsibility to create a system that is efficient and cost effective. The OAH statistics in FY 2010 indicate agency acceptance of Administrative Law Judge Decisions without modification was 84.35%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 92.71%. Rehearings (.76%) and Appeals (2.38%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and the OAH were rated excellent or good in 95.7% of all responses.

Integrity:

The OAH takes its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the executive branch, together with its client agencies, the OAH maintains a conscious detachment from political issues and the missions of those agencies. Procedures, rulings, and case assignments are at all times kept free of outside pressures to ensure that the parties can be assured that hearings are impartial and independent.

Commitment:

The OAH views commitment as a willingness to advance its mission, including improving the quality of decision-writing. While the Administrative Law Judges must render decisions according to the evidence before them and using their independent judgment, the OAH now requires that Administrative Law Judges review all decisions that have been modified or rejected by an agency in order to encourage them to identify any possible incorrect citations 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.

Efficiency:

Through careful case management the completion rate for cases in FY 2010 was 112%.

II. Continued Development of the Office

1. Tucson Office Closed

Due to budgetary pressures and decline in Registrar of Contractor cases, the Tucson office was closed. As a result, 4 positions (2 Administrative Law Judge and 2 support staff) were eliminated.

2. Electronic Submission of Case Requests

All case requests are now submitted electronically. The move permitted the reduction of 1 staff position in the Phoenix office.

3. Electronic Transmission of Administrative Law Judge Decisions

All Administrative Law Judge decisions are now transmitted electronically. The move permitted the reduction of 1 staff position in the Phoenix office.

4. Expanded Use of Prehearing Conferences

The expanded use of prehearing conferences has accelerated the disposition of cases, resulting in greater efficiencies for all parties.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2010):

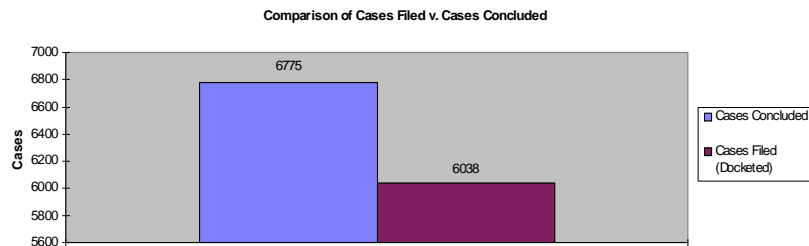
6,038 cases were filed with the OAH in FY 2010. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

Arizona Health Care Cost Containment System	2915
Registrar of Contractors	1480
Department of Health Services	492
Department of Weights and Measures	365
Department of Economic Security	125
Department of Real Estate	107
Arizona Department of Revenue	73
Department of Environmental Quality	57
Department of Education - Special Ed.	56
Arizona Department of Financial Institutions	46
Department of Fire, Building, and Life Safety	46
State Board of Nursing	43
Department of Insurance	41
Liquor Licenses and Control	32
Department of Public Safety	22
Department of Gaming	16

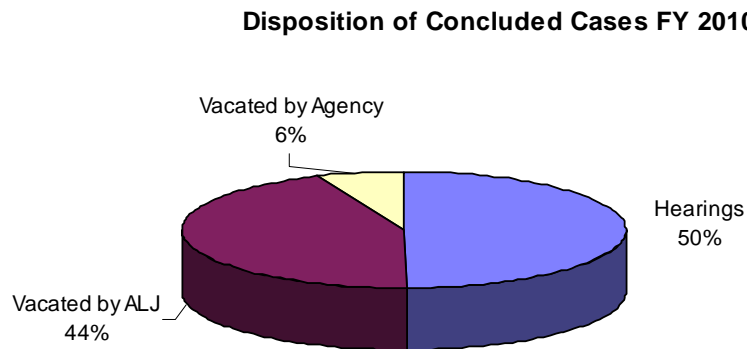
State Board of Accountancy	15
Arizona Medical Board	12
Arizona State Retirement System	9
Board of Appraisal	9
Peace Officers Standards and Training	9
Secretary of State	9
Department of Racing	8
Arizona State Department of Housing	7
Arizona Department of Commerce	6
Department of Administration	5
State Land Department	5
Arizona Lottery	3
State Board for Charter Schools	3
Arizona Board of Osteopathic Examiners In Medicine and Surgery	2
City of Scottsdale	2
Department of Agriculture	2
Department of Education	2
Physical Therapy	2
State Schools for the Deaf and the Blind	2
Arizona Commission for the Deaf and the Hard of Hearing	1
Board of Osteopathic Examiners	1
Board of Podiatry Examiners	1
Board of Psychologist Examiners	1
Department of Water Resources	1
Naturopathic Physicians Medical Board	1
Office of the Attorney General	1
Show Low Fire District	1
The Leafy Green Marketing Committee	1
Veterinary Medical Examining Board	1
Total	6038

b. Number of Cases Concluded Versus Cases Filed:

In FY 2010, the conclusion rate (defined as cases concluded divided by new cases filed) was 112%.



The following chart illustrates the proportion of cases that proceeded to full hearing:

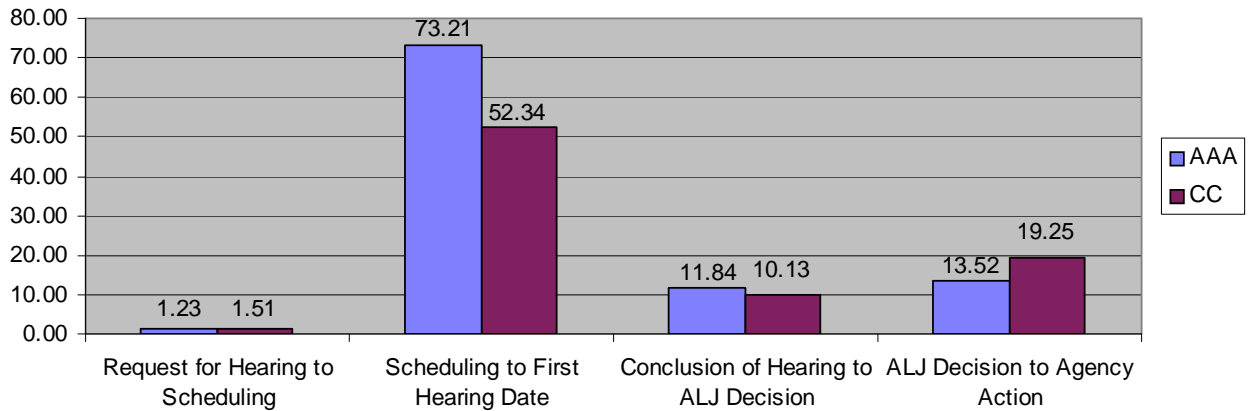


c. Timeline of Case Management:

A.R.S. § 41-1092.05(A) and § 41-1092.08(A) and (B) contemplate a rigorous timeline to expedite hearings and final agency actions. “Appealable agency actions” (defined as actions taken by an agency without a prior hearing) are required to be set for hearing within 60 days of a request by a party. “Contested cases” (defined as proposed actions for which a hearing is required) are required to be set within 60 days of an agency request. These requirements have been relaxed to allow cases to be set as soon as “reasonably possible.” See Laws 2009, Chapter 7, § 37. Administrative Law Judge Decisions must be transmitted to the agencies within 20 days of the conclusion of the hearing. The agency heads are required to take final action within 30 days of receipt. Boards and Commissions generally must take final action within 5 days of their next scheduled meeting.

The following diagram illustrates the average timelines:

Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases

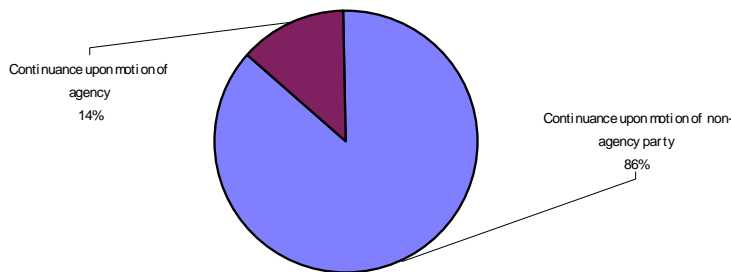


d. Incidence of Continuance:

A single continuance in FY 2010 added an average of 53.95 days to the total length of a case. Although 52.67% of all continuance requests were granted in FY 2010, the OAH has developed a well-deserved reputation for discouraging “convenience” continuances in favor of those based on “good cause.” This is especially important because of the decrease in the number of Administrative Law Judges due to budget constraints. The frequency of continuance, defined as the number of continuances granted (512*) divided by the total number of cases first scheduled (6,038), was 8.47%. The ratio of first hearing settings (6,620) to continued settings on the calendar (521*) was 1 to 0.08.

(*compare fig 1, page 6 and fig 2, page 7)

The following chart illustrates the source of continuances:



The following list is a breakdown of cases actually set for a continued hearing date on the FY 2010 calendar and their sources, by agency. (Note: the numbers in fig. 1, below, differ from those in fig. 2, page 7, because a motion for continuance granted in one fiscal year may result in the continued date being set in the following fiscal year.)

fig 1.

AGENCY	Continued - Motion by non- agency party	Continued - Motion by agency party
Arizona Department of Commerce	-	1
Arizona Department of Financial Institutions	2	-
Arizona Department of Revenue	6	-
Arizona Health Care Cost Containment System	102	40
Arizona State Retirement System	1	-
Board of Appraisal	7	3
Department of Agriculture	-	1
Department of Economic Security	8	2
Department of Education - Special Ed	13	-
Department of Environmental Quality	4	-
Department of Fire Building and Life Safety	3	-
Department of Gaming	2	1
Department of Health Services	37	7
Department of Insurance	4	-
Department of Public Safety - Student Transportation	1	-
Department of Racing	1	2
Department of Real Estate	4	1
Department of Revenue	8	-
Department of Weights and Measures	-	1
Liquor Licenses and Control	2	3
Naturopathic Physicians Medical Board	1	-
Peace Officers Standards and Training	3	-
Registrar of Contractors	232	8
Show Low Fire District	1	-
State Board for Charter Schools	1	-
State Board of Accountancy	1	-
State Board of Nursing	3	1
State Land Department	1	-
Veterinary Medical Examining Board	2	-
Total	450	71

The following chart reflects the number of motions to continue that were entertained in FY 2010 and the percentage granted:

.....
fig. 2.

	Continuance Granted	Continuance Denied	Total Motions	% Granted
AZ Commission Deaf and Hard of Hearing	-	1	1	-
Arizona Board of Osteopathic Examiners	1	1	2	50
Arizona Department of Commerce	1	-	1	100
Arizona Department of Financial Institutions	-	2	2	-
Arizona Department of Revenue	13	-	13	100
Arizona Health Care Cost Containment	152	103	255	60
Arizona Medical Board	1	3	4	25
Arizona State Department of Housing	-	1	1	-
Arizona State Retirement System	2	2	4	50
Board of Psychologist Examiners	-	1	1	-
Board of Appraisal	10	-	10	100
Department of Administration	-	1	1	-
Board of Dental Examiners	1	-	1	100
Board of Podiatry Examiners	1	-	1	100
Department of Agriculture	1	1	2	50
Department of Economic Security	7	8	15	47
Department of Economic Security - CPS	7	1	8	88
Department of Education - Special Ed	16	5	21	76
Department of Environmental Quality	10	5	15	67
Department of Fire Building and Life Safety	6	7	13	46
Department of Gaming	4	-	4	100
Department of Health Services	44	22	66	67
Department of Insurance	2	3	5	40
DPS- Student Transportation	1	1	2	50
Department of Racing	-	1	1	-
Department of Real Estate	2	-	2	100
Department of Revenue	4	2	6	67
Department of Water Resources	-	1	1	-
Department of Weights and Measures	1	1	2	50
Liquor Licenses and Control	7	2	9	78
Naturopathic Physicians Medical Board	1	-	1	100
Peace Officers Standards and Training	3	3	6	50
Registrar of Contractors	203	273	476	43
Secretary of State	-	2	2	-
Show Low Fire District	1	1	2	50
State Board for Charter Schools	1	1	2	50
State Board of Accountancy	1	-	1	100
State Board of Nursing	2	3	5	40
State Land Department	2	1	3	67
The Leafy Green Marketing Committee	1	-	1	100
Veterinary Medical Examining Board	2	1	3	67
Water Quality Appeals Board	1	-	1	100
Total	512	460	972	52.67%

2. Evaluation

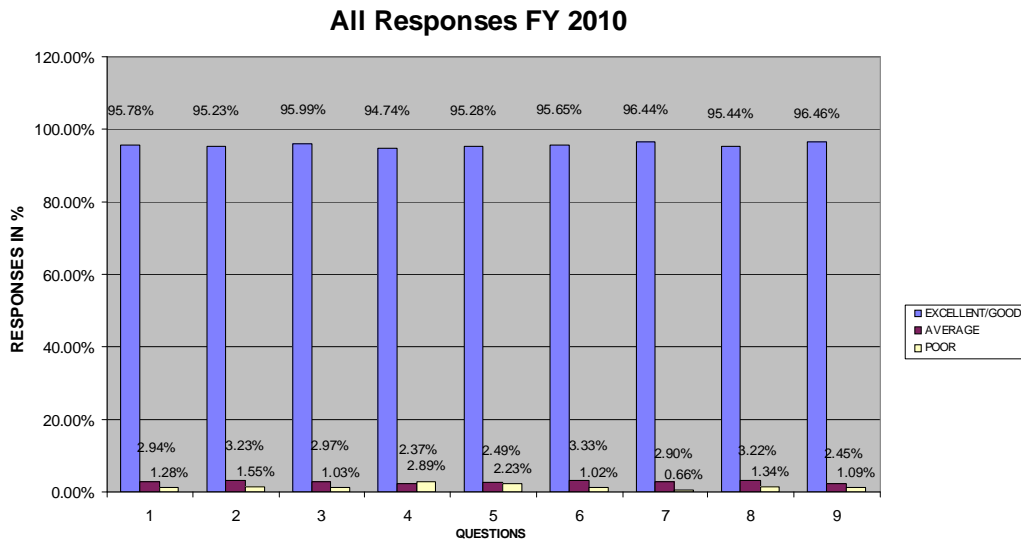
a. Results of Public Evaluation:

Since November 1996, the OAH has administered an evaluation procedure. The support staff provides a copy of the evaluation before the hearing in order to encourage all participants to respond. The evaluation form is idescribed in a video played before each hearing, or is otherwise addressed by the Administrative Law Judge. The results are not disclosed to the Administrative Law Judge. Hearing participants place completed evaluations in locked boxes located near the hearing rooms.

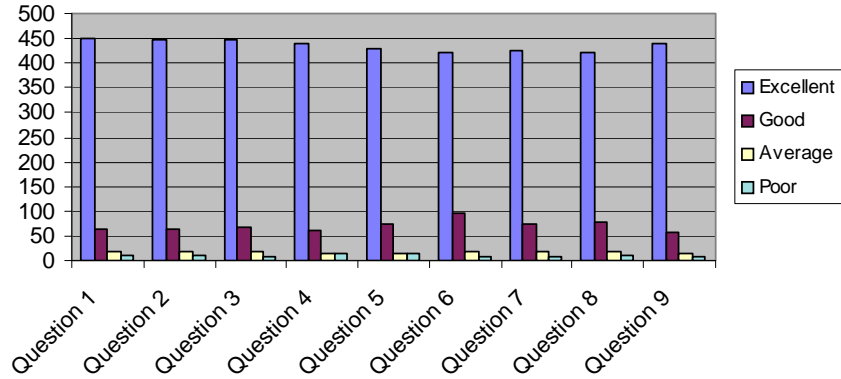
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

1. Attentiveness of the Administrative Law Judge
2. Effectiveness in explaining the hearing process
3. Administrative Law Judge'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

The results indicate that satisfaction is high among all groups, with those responding rating the OAH excellent to good in 94.74% to 96.46% of responses. An analysis of the unrepresented parties indicates that even among this most vulnerable group, the OAH is seen to be functioning extremely well.



Unrepresented Responses

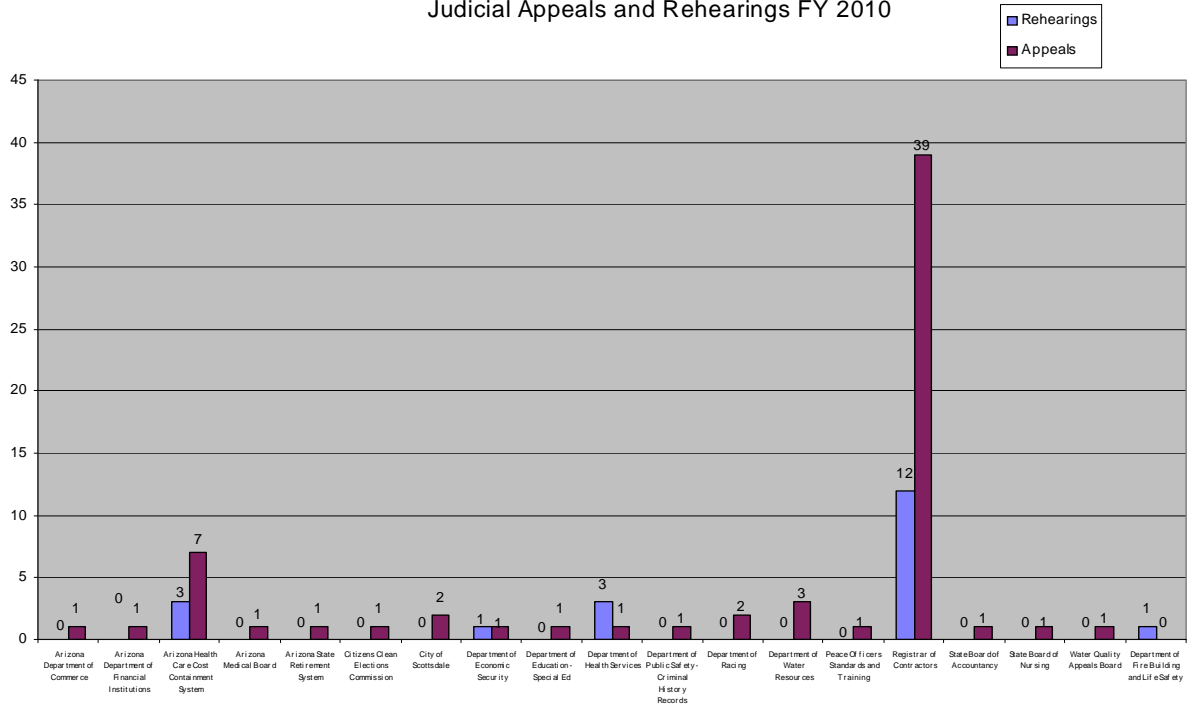


b. Incidence of Rehearing and Appeal:

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2010, the rehearing rate (defined as rehearings scheduled divided by cases heard) was .76%.

Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2010, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 2.38%. As reflected in the following diagram, rehearings and judicial appeals in FY 2010 were relatively rare. Both were concentrated at the Registrar of Contractors.

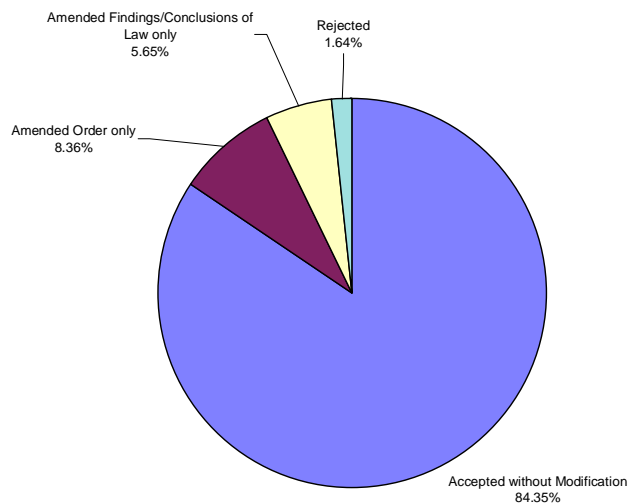
Judicial Appeals and Rehearings FY 2010



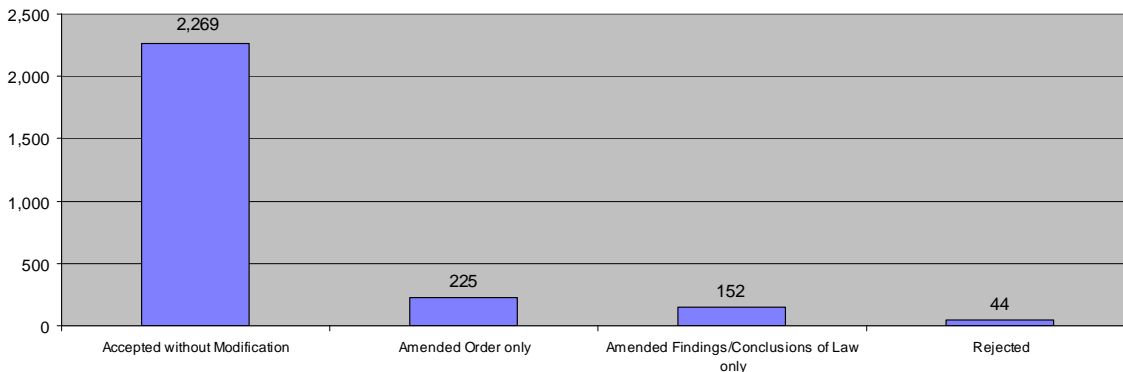
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is very high. 84.35% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 92.71% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 59.7% of modifications made by the agencies were in the Recommended Order (penalty portion).



The following chart reports the number of cases in the various categories of agency response.

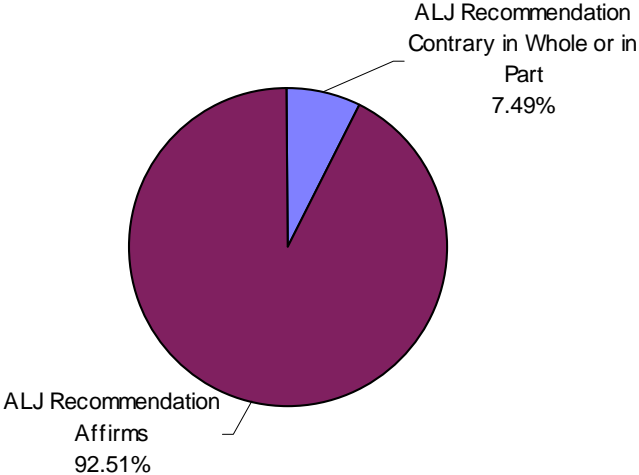


The following chart reports the breakdown of agency response by agency. This chart further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Moot	Reject	Certified	Total
Accountancy	5	2	-	-	-	-	7
AHCCCS	846	9	50	-	35	2	942
Appraisal	7	3	-	-	-	-	10
Arizona Lottery	2	-	-	-	-	-	2
Arizona Medical Board	1	1	2	-	-	-	4
Board of Dental Examiners	-	1	-	-	-	-	1
Charter Schools	1	-	-	-	-	-	1
Citizen's Clean Elections	-	-	1	-	-	-	1
City of Scottsdale	-	1	-	-	-	1	2
Department of Agriculture	-	-	-	-	-	1	1
Department of Racing	-	2	1	-	1	-	4
Department of Real Estate	8	1	1	1	-	1	12
Dept. Health Services	209	4	33	1	2	1	250
Dept. Insurance	8	-	-	-	-	10	18
Dept. of Administration	2	-	-	-	-	-	2
Dept. of Commerce	-	-	-	-	-	1	1
Dept. Water Resources	-	1	-	-	-	-	1
DES-APS	1	-	-	-	-	-	1
DES-CPS	75	-	6	-	-	-	81
DPS- Crim. History Rec.	11	-	-	-	-	-	11
DPS- Student Trans.	2	-	-	-	-	-	2
Financial Institutions	9	-	-	-	1	-	10
Fire, Bldg, Life Safety	12	1	-	-	-	28	41
Gaming	4	-	-	-	-	-	4
Liquor Licenses	3	1	-	-	-	1	5
Nursing	8	1	2	-	-	-	11
Registrar of Contractors	1046	197	56	13	4	17	1333
Secretary of State - Notary	3	-	-	-	-	-	3
State Land Department	2	-	-	-	-	-	2
State Retirement System	1	-	-	-	-	-	1
Veterinary Board	1	-	-	-	-	-	1
Weights and Measures	1	-	-	-	1	6	8
Total	2269	225	152	15	44	69	2774

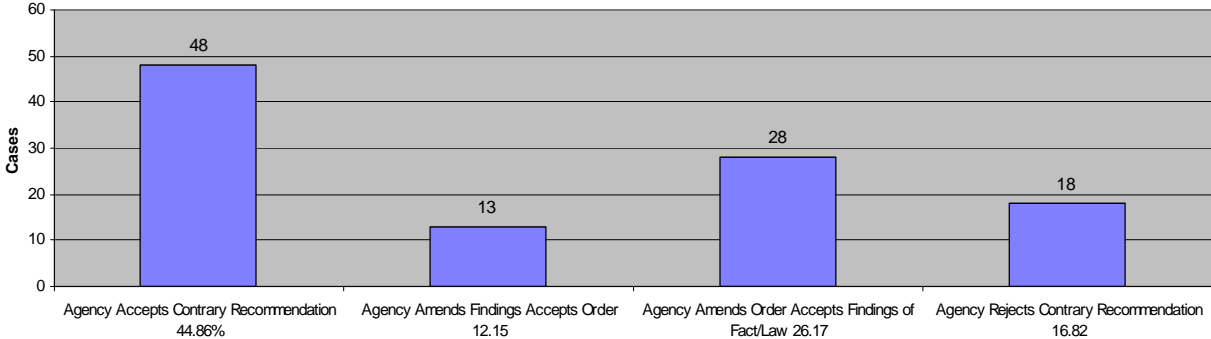
In FY 2010, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 7.49% of cases.

Recommendations Contrary to Original Agency Action FY 2010



Agency acceptance of contrary decisions was high at 83.18%.

Agency Response to Contrary Recommendations FY 2010



The following chart reports the breakdown of agency responses to contrary decisions.

Client	Accepted	Amended Order	Amended Findings	Rejected	Certified	Total
AHCCCS	21	7	19	16	0	63
Fire, Building, and Life Safety	0	0	0	0	2	2
Board of Appraisal	2	0	0	0	0	2
Citizen's Clean Elections	0	0	1	0	0	1
DPS-Concealed Weapons	1	0	0	0	0	1
DES-CPS	8	0	2	0	0	10
Department of Health Services	6	3	6	0	0	15
Weights and Measures	0	0	0	1	2	3
Department of Water Resources	0	1	0	0	0	1
Department of Gaming	1	0	0	0	0	1
Liquor Licenses and Control	2	1	0	0	1	4
State Board of Nursing	0	1	0	0	0	1
Department of Racing	0	0	0	1	0	1
Department of Real Estate	2	0	0	0	0	2
Total	43	13	28	18	5	107

2. Agency Inaction With Subsequent OAH Certification of Finality

Beginning August 21, 1998, the OAH was required to certify the Administrative Law Judge Decision as the final administrative decision if the OAH had not received the agency, board or commission's action accepting, modifying or rejecting the recommended decision within 30 days of transmission. Special rules apply if the board or commission meets monthly or less frequently. A.R.S. § 41-1092.08(D). In FY 2010, 69 Administrative Law Judge Decisions were certified by the OAH as final administrative decisions.

Agency	Certified
Arizona Department of Commerce	1
Arizona Health Care Cost Containment System	2
City of Scottsdale	1
Department of Agriculture	1
Department of Fire, Building, and Life Safety	28
Department of Health Services	1
Department of Insurance	10
Department of Real Estate	1
Department of Weights and Measures	6
Liquor Licenses and Control	1
Registrar of Contractors	17
Total:	69

V. Motions for Change of Administrative Law Judge Granted Pursuant to A.R.S. § 41-1092.07

A.R.S. § 41-1092.01(C)(9)(b) requires that the OAH report the number of motions for change of Administrative Law Judge for bias, prejudice, personal interest or lack of necessary expertise which were filed and the number granted. In FY 2010, 12 motions were filed and no motion was granted.

VI. Violations of A.R.S. § 41-1009

Pursuant to A.R.S. § 41-1092.01(C)(9)(c), the OAH reports that it has no knowledge of violations of A.R.S. § 41-1009 by any agency.

VII. Recommendations for Changes in the Administrative Procedures Act

The regulated community has long complained about inconsistent procedures among the various agencies. The following recommendations point to the areas where uniformity or greater consistency can be accomplished:

1. Right to settlement conferences in “contested cases.”

A.R.S. § 41-1092.03 provides that appellants to “appealable agency actions” be entitled to settlement conferences with an agency representative. No such right exists for “contested cases,” which include most disciplinary proceedings. Such a conference may be beneficial in expediting informal disposition of contested cases.

2. Establish uniform standards for appeal rights notice.

Currently there are no standards for how, and with what degree of specificity, appeal rights to Superior Court should be communicated to parties once the agency has acted.

3. Establish uniform basis for rehearing.

Parties must research the specific rules of each agency, board or commission to determine the bases for rehearing since there is little uniformity. Standardizing and recapitulating possible bases in Title 41 would make the process easier, particularly for the unrepresented.

4. Conform rehearing and appeal rules.

Currently parties have 30 days from service of an agency’s final action, which is presumed after 5 days of mailing to the party’s last known address, to request a rehearing under A.R.S. § 41-1092.09(A)(1) and (C). However, under A.R.S. § 12-904(A), parties have 35 days to file an appeal to Superior Court upon service, presumed after 5 days of mailing to the party’s last known address. Conforming the time limits for requesting rehearings and filing appeals will simplify the process by eliminating varying time limits for parties to act on final orders and will allow agencies to frame the effective dates of their final orders to a single date.

VIII. Recommendation for Changes or Improvements in Agency Practice with Respect to the Administrative Procedures Act

Recoupment of Costs for Administrative Hearings:

Billed costs to non-General Fund supported agencies, boards and commissions (ISA agencies), pursuant to A.R.S. § 41-1092.01(E) and (K), could be recouped by them by extending the statutory authority found in isolated statutes to all such ISA agencies.

An example of statutory authority for recoupment is found in A.R.S. § 32-128(H), which permits the Board of Technical Registration to recoup certain costs:

H. On its determination that a registrant or a home inspector has violated this chapter or a rule adopted pursuant to this chapter, the board may assess the registrant or the home inspector with its reasonable costs and expenses incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the technical registration fund established by section 32-109 and shall only be used by the board to defray its expenses in connection with disciplinary investigations and hearings. Notwithstanding section 35-143.01, these monies may be spent without legislative appropriation.

To avoid any appearance of impropriety by the ISA agencies, such recoupment might be limited to particular circumstances, such as settlements, cases where the ISA agency prevails before the independent Administrative Law Judge, or only as incident to disciplinary orders.