

# **The Office of Administrative Hearings**

**The Eighteenth Annual Report**

**to**

**Governor Janice K. Brewer**

**Senator Andy Biggs, President of the Senate**

**Representative Andy Tobin, 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, 2013**

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## 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 OAH for independent proceedings. The Phoenix office currently has 17 full-time positions, including the Director, the Office Manager, 10 Administrative Law Judges, and 5 support staff. In addition to having conducted hearings in Phoenix, 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:**

OAH understands its responsibility to create a system that is efficient and cost effective. OAH statistics in FY 2013 indicate agency acceptance of Administrative Law Judge Decisions without modification was 85.22%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 90.60%. Rehearings (0.81%) and Appeals (1.13%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 92.51% of all responses.

### **Integrity:**

OAH takes its statutory mandate to provide fair, impartial and independent hearings seriously. Although part of the executive branch, together with its client agencies, 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:**

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, OAH 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 OAH to provide continuing education to its Administrative Law Judges.

### **Efficiency:**

Through careful case management the completion rate for cases in FY 2013 was 101%.

## **II. Continued Development of the Office**

### **1. Certifications in ROC Cases**

In FY 2013, the Registrar of Contractors (ROC) determined to make greater use of the certification process provided in A.R.S. § 41-1092.08(D) in order to streamline its process. OAH agreed to modify its certification language to include the effective date and the resulting applicable rehearing and appeal time limits in order to eliminate the need for a post-certification final order by the ROC. The modification had no cost, but greatly accelerates the ROC process.

### **2. Entry of ROC Final Orders**

ROC and OAH entered into an Intragovernmental Service Agreement whereby OAH Administrative Law Judges enter ROC's final order incident to vacating a matter. This agreement has virtually no cost, but greatly accelerates the ROC process.

### **3. Automation in Exhibit Indexing in Web-Based Dockets**

All exhibits submitted in OAH's web-based electronic dockets are now indexed automatically, relieving parties of the need to create index files in html. This automation also allows the rapid creation of electronic appeals records for future planned submission to Superior Court.

### **4. Implementation of Personnel Reform**

OAH has implemented measures to conform to personnel reform pursuant to Laws 2012, Chapter 321.

### **5. Consultation with Superior Court Regarding Submission of Electronic Appeals Records**

OAH continues to consult with the Maricopa County Superior Court regarding the technical and legal feasibility of transferring OAH's appeal records in electronic form.

### **6. Five-Year Rule Review**

OAH completed its third five-year rule review pursuant to A.R.S. § 41-1056.

### **7. Proposed Rulemaking**

Prior to July 1, 2013, A.R.S. § 12-904(A) provided for judicial review of an administrative decision by the filing of a complaint with the Superior Court. A.R.S. § 12-904(B) provides that a party file a notice of the action with OAH, and that OAH thereupon transmit the record. In furtherance of A.R.S. § 12-904(A) and (B), A.A.C. R2-19-122 directed parties to file a copy of the complaint filed with the Superior Court with OAH within 10 days of the filing of the complaint. Effective July 1, 2013, A.R.S. § 12-904 substituted "notice of appeal" for "complaint." OAH proposes to amend A.A.C. R2-19-122(A) to substitute "notice of appeal" for "complaint" to conform to the statutory change. OAH also proposes to distinguish an appeal resulting from an administrative hearing held before OAH from that of an agency, board or commission acting as an administrative law judge. Additionally, OAH proposes to amend A.A.C. R2-19-122(B) to distinguish a transcript of an appeal resulting from an administrative hearing held before OAH from that of an agency, board or commission acting as an administrative law judge.

### III. Summary of Agency Use of OAH Services

#### 1. Case Management

##### a. Breakdown of Cases Filed by Agency (FY 2013):

7,596 cases were filed with OAH in FY 2013. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

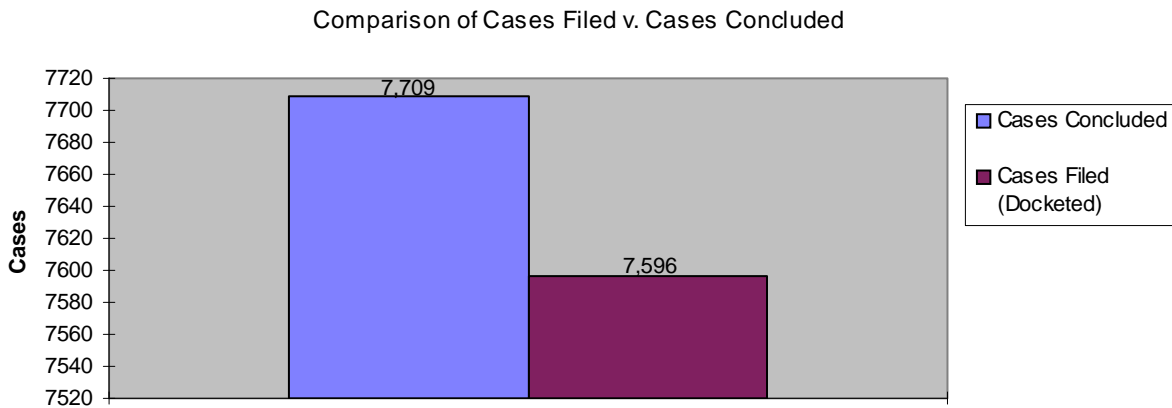
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Arizona Health Care Cost Containment System - 19	5,647
Registrar of Contractors	394
Department of Weights and Measures	389
Department of Health Services	354
Department of Economic Security - CPS	188
Department of Real Estate	168
Department of Education - Special Ed	82
Arizona Department of Revenue	53
State Board of Nursing	50
Department of Insurance	44
State Board of Accountancy	23
Department of Fire Building and Life Safety - H/C	19
Department of Economic Security	17
Department of Public Safety - Criminal History Records	15
Department of Environmental Quality	15
Board of Appraisal	14
Arizona State Retirement System	14
Peace Officers Standards and Training	12
Arizona Medical Board	9
Arizona Department of Financial Institutions	8
Department of Fire Building and Life Safety	7
Department of Administration	6
Department of Public Safety - Student Transportation	5
State Board for Charter Schools	5
Board of Technical Registration	5
Liquor Licenses and Control	5
Department of Gaming	5
Department of Water Resources	5
Board of Behavioral Health Examiners	4
Arizona Department of Transportation	3
Board of Chiropractic Examiners	2
Pinal County Elections Department	2
State Board of Cosmetology	2
Board of Dental Examiners	2
Secretary of State	2
Board of Psychologist Examiners	2
Maricopa County Attorney's Office	2
Office of Pest Management	2
Arizona Commerce Authority	1

Department of Racing	1
State Land Department	1
Arizona Board of Osteopathic Examiners In Medicine and Surgery	1
Arizona State Department of Housing	1
Department of Education	1
Maricopa County Procurement	1
Palominas Fire District	1
Pinetop Fire District	1
Radiation Regulatory Agency	1
Arizona Lottery	1
Office of the Attorney General	1
Rio Rico Fire District	1
Department of Public Safety - Concealed Weapons Permit Unit	1
Secretary of State - HAVA	1
<b>Total</b>	<b>7,596</b>

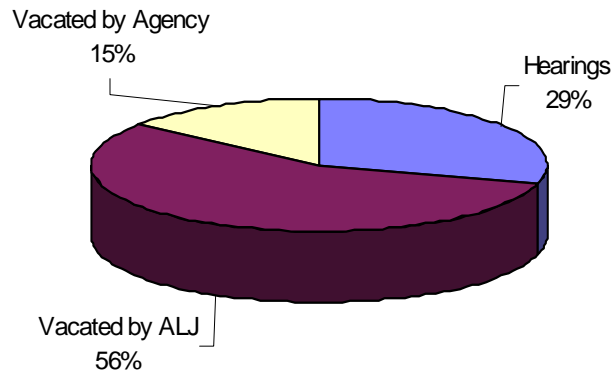
**b. Number of Cases Concluded Versus Cases Filed:**

In FY 2013, the conclusion rate (defined as cases concluded divided by new cases filed) was 101.49%.



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

### Disposition of Concluded Cases FY 2013

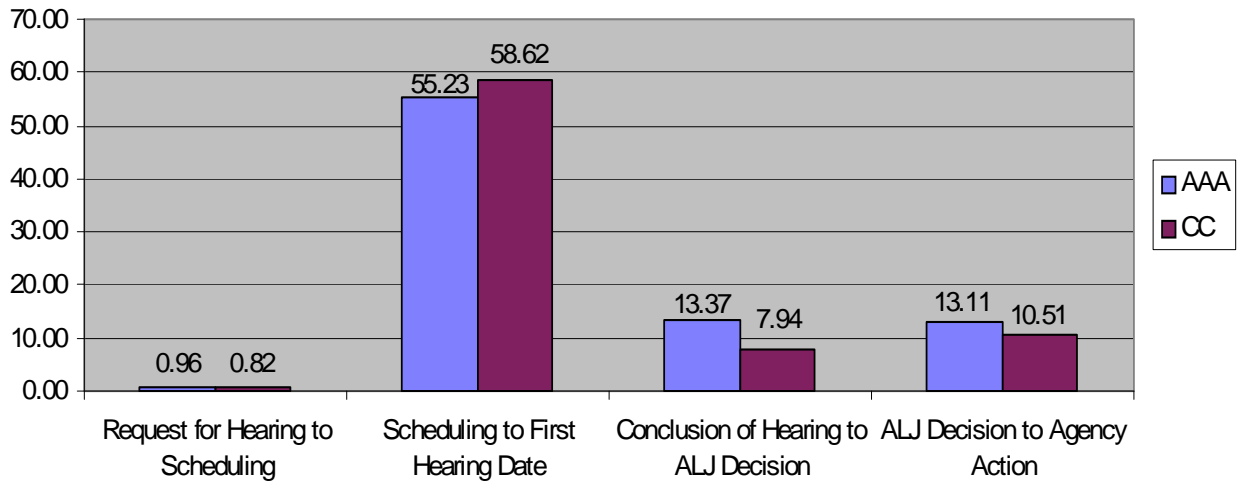


#### c. Timeline of Case Management:

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. 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**



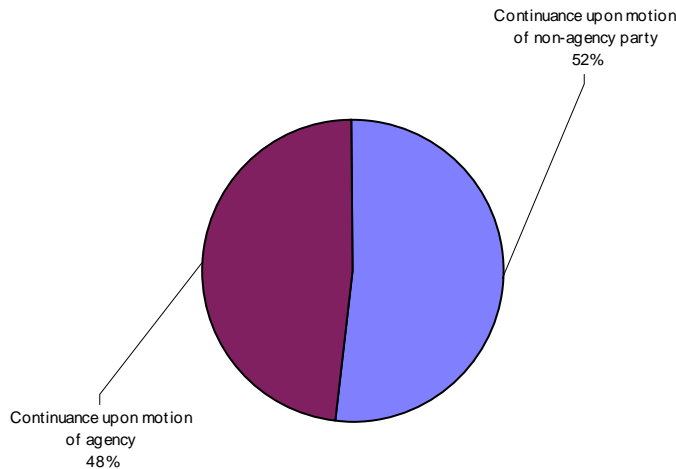
**d. Incidence of Continuance:**

A single continuance in FY 2013 added an average of 57.57 days to the total length of a case. Although 81.77% of all continuance requests were granted in FY 2013, 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 continuances, defined as the number of continuances granted (888\*) divided by the total number of cases first scheduled (7,596), was 11.7%. The ratio of first hearing settings (7,315) to continued settings on the calendar (888\*) was 1 to 0.12.

(\*compare fig. 1, page 7 and fig. 2, page 8)



The following diagram illustrates the source of continuances:



The following chart is a breakdown of cases actually set for a continued hearing date on the FY 2013 calendar and their sources, by agency. (Note: the numbers in fig. 1, below, differ from those in fig. 2, page 8, 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

<b>AGENCY</b>	<b>Continued - Motion by non-agency party</b>	<b>Continued - Motion by agency party</b>
Arizona Department of Financial Institutions	2	-
Arizona Department of Revenue	9	-
Arizona Health Care Cost Containment System	234	522
Arizona Medical Board	2	1
Arizona State Retirement System	2	-
Board of Appraisal	1	1
Board of Behavioral Health Examiners	3	-
Board of Dental Examiners	1	-
Board of Psychologist Examiners	1	-
Department of Administration	2	-
Department of Economic Security	4	-
Department of Economic Security - CPS	39	13
Department of Education - Special Ed	61	6
Department of Fire Building and Life Safety	2	-
Department of Fire Building and Life Safety - H/C	6	1
Department of Health Services	65	15
Department of Insurance	10	3
Department of Public Safety - Criminal History Records	3	-

Department of Public Safety - Student Transportation	-	2
Department of Real Estate	9	1
Department of Weights and Measures	1	-
Department of Water Resources	-	5
Drexel Heights Fire District	-	4
Liquor Licenses and Control	1	-
Maricopa County Attorney's Office	2	-
Palominas Fire District	-	1
Peace Officers Standards and Training	2	-
Pinal County Elections Department	2	-
Registrar of Contractors	148	4
Secretary of State	1	-
State Board of Cosmetology	2	-
State Board for Charter Schools	-	1
State Board of Nursing	4	2
State Schools for the Deaf and the Blind	1	-
Water Quality Appeals Board	3	-
<b>Total</b>	<b>623</b>	<b>582</b>

The following chart reflects the number of motions to continue that were entertained in FY 2013 and the percentage granted:

.....  
fig. 2

<b>AGENCY</b>	<b>Continuance Granted</b>	<b>Continuance Denied</b>	<b>Total Motions</b>	<b>% Granted</b>
Arizona Department of Revenue	17	4	21	81
Arizona Health Care Cost Containment	460	109	569	81
Arizona Medical Board	5	1	6	83
Board of Technical Registration	0	1	1	0
Arizona State Retirement System	4	0	4	100
Board of Appraisal	4	0	4	100
Board of Behavioral Health Examiners	4	0	4	100
Board of Psychologist Examiners	1	0	1	100
Department of Administration	2	0	2	100
Department of Economic Security	5	1	6	83
Department of Economic Security - CPS	40	7	47	85
Department of Education - Special Ed	51	4	55	93
Department of Environmental Quality	4	0	4	100
Department of Fire Building and Life Safety	0	1	1	0
Department of Fire, Building and Life - H/C	8	1	9	89
Department of Health Services	91	10	101	90
Department of Insurance	9	6	15	60
Department of Public Safety - CHR	3	0	3	100
Department of Public Safety - ST	2	0	2	100
Department of Real Estate	16	2	18	89
Department of Weights and Measures	2	0	2	100
Drexel Heights Fire District	2	0	2	100

Liquor Licenses and Control	1	0	1	100
Maricopa County Attorney's Office	2	0	2	100
Office of Pest Management	0	1	1	0
Palominas Fire District	1	0	1	100
Peace Officers Standards and Training	4	0	4	100
Pinal County Elections Department	2	0	2	100
Registrar of Contractors	138	43	181	76
Secretary of State	3	0	3	100
State Board for Charter Schools	1	2	3	33
State Board of Accountancy	0	1	1	0
State Board of Nursing	6	4	10	60
<b>Total</b>	<b>888</b>	<b>252</b>	<b>1,086</b>	<b>81.77%</b>

## 2. Evaluation

### a. Results of Public Evaluation:

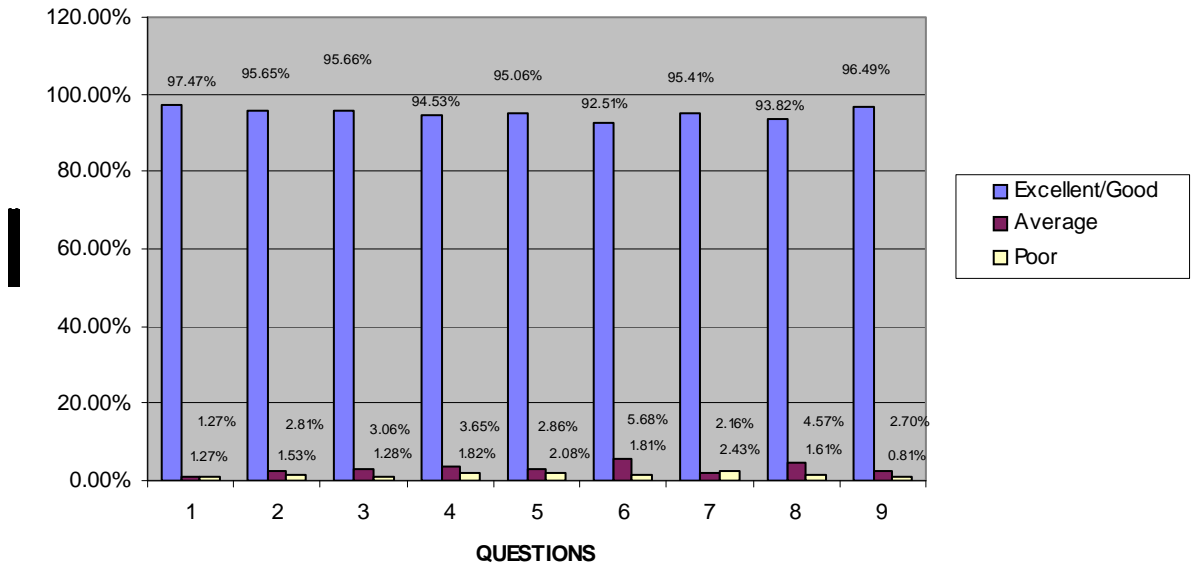
Since November 1996, OAH has administered an evaluation procedure. A copy of the evaluation is provided to all participants before the hearing. The evaluation form is described in a video played before each hearing, or is otherwise addressed by the Administrative Law Judge. The results are not disclosed 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

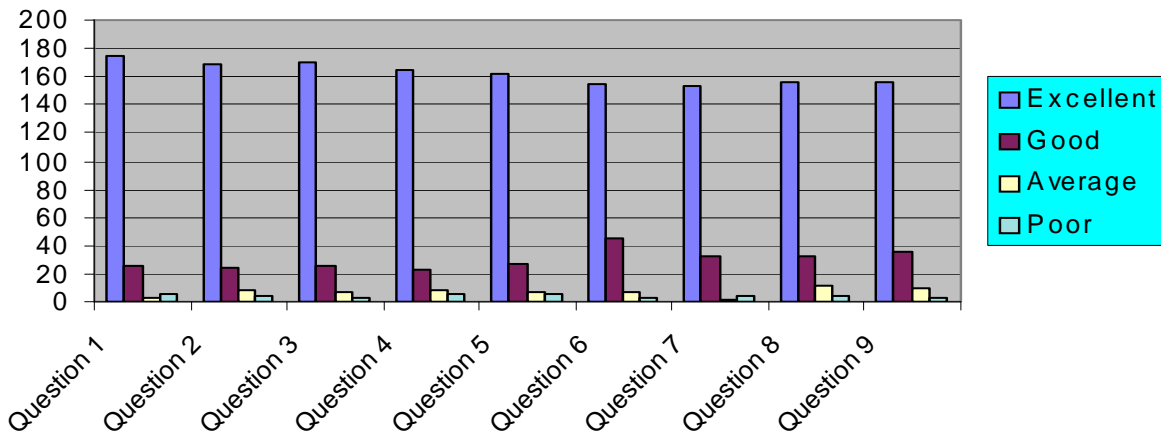
The results indicate that satisfaction is high among all groups, with those responding rating OAH excellent to good in 92.51% to 97.47% of responses.

### All Responses FY 2013



An analysis of the unrepresented parties indicates that even among the most vulnerable group, OAH is seen to be functioning extremely well.

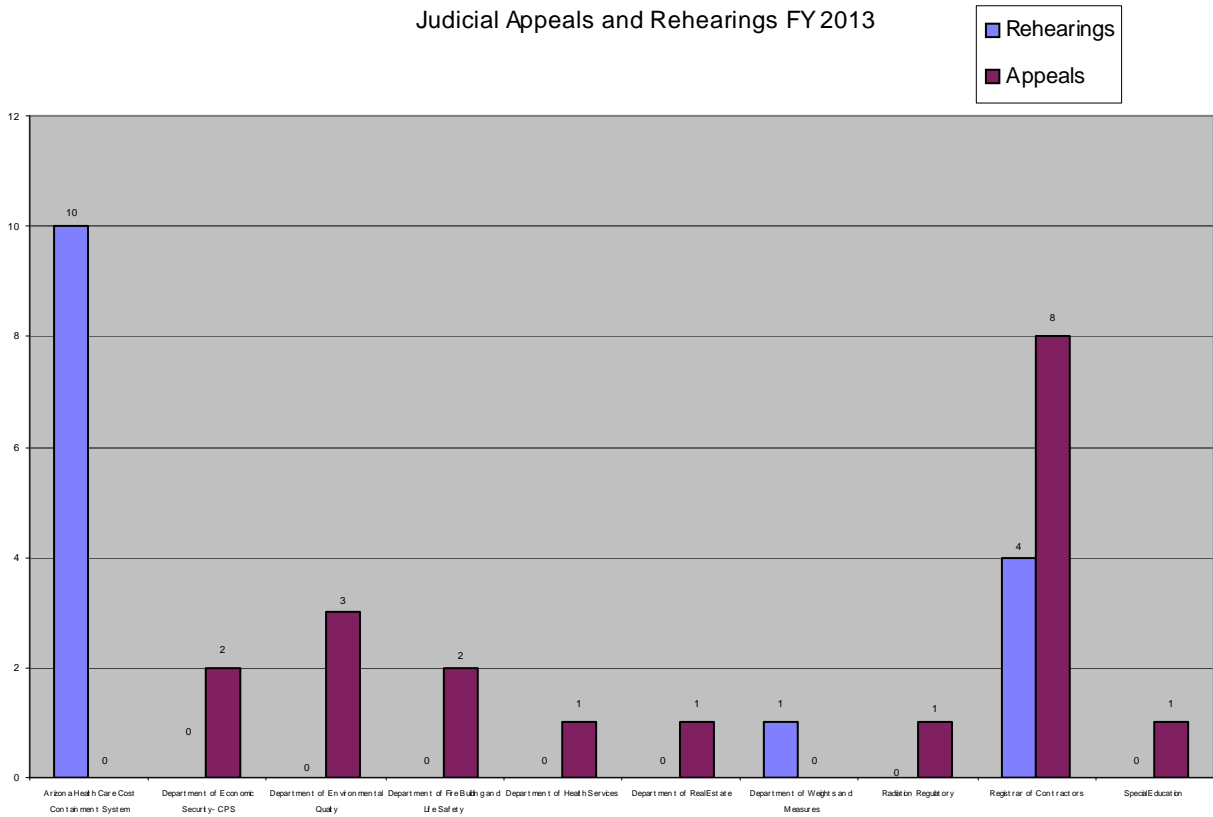
### Unrepresented Responses



**b. Incidence of Rehearing and Appeal:**

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2013, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 0.81%.

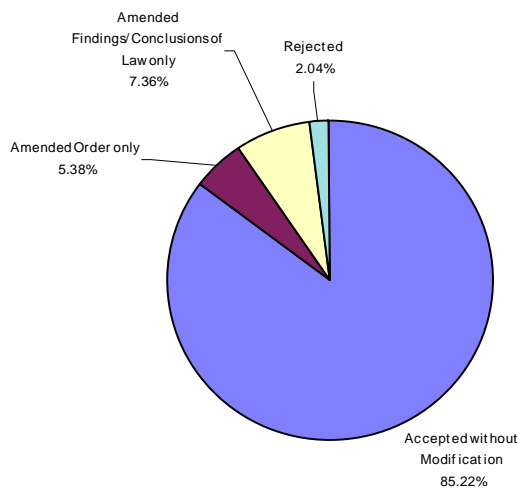
Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2013, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 1.13%. As reflected in the following diagram, rehearings and judicial appeals in FY 2013 were relatively rare.



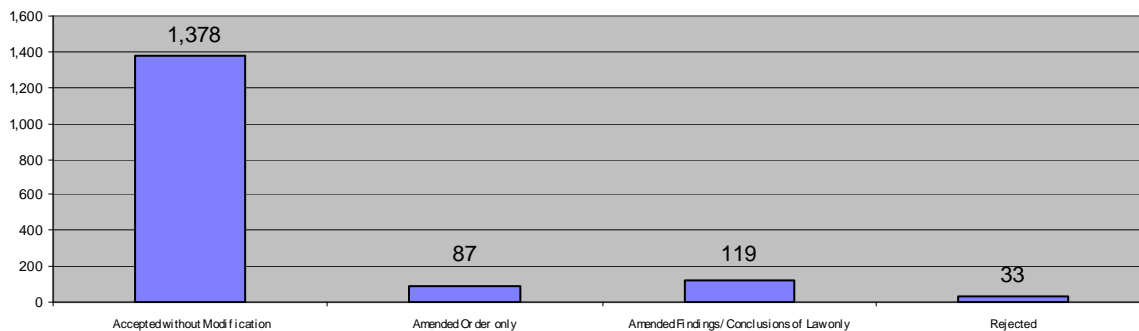
# IV. Acceptance of Administrative Law Judge Decisions by Agencies

## 1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 85.22% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 90.6% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 42.23% 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.

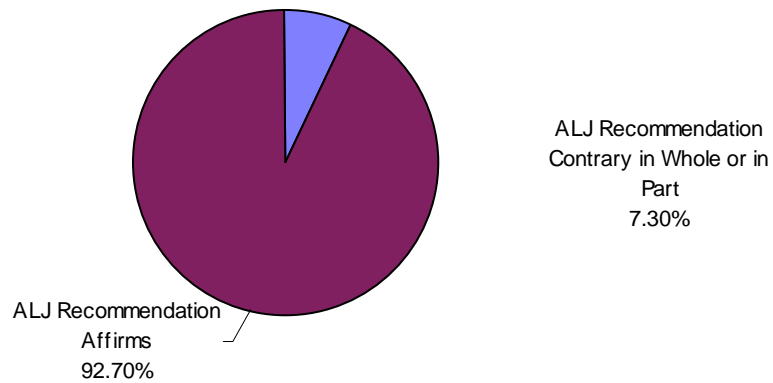


The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy Board	3	6	1	-	10
AHCCCS	970	14	46	19	1,049
Board for Charter Schools	1	-	-	-	1
Board of Cosmetology	-	2	-	-	2
Chiropractic Examiners	2	-	-	-	2
Dental Examiners	-	1	-	-	1
Department of Administration	1	-	-	-	1
Dept. of Environmental Quality	2	2	-	-	4
Dept. of Fire, Bldg, Life Safety	8	1	-	-	9
Department of Housing	-	-	-	1	1
Department of Water Resources	-	-	1	-	1
DES-APS	4	-	-	-	4
DES-CPS	64	1	14	4	83
DPS- Bus	4	-	-	-	4
DPS-Crim. History Rec.	10	-	-	-	10
Financial Institutions	1	-	-	-	1
Gaming	1	2	-	-	3
Health Services	125	3	29	4	161
Insurance	4	1	1	-	6
Land	1	-	-	-	1
Liquor Licenses	3	-	-	-	3
Lottery	1	-	-	-	1
Medical Board	2	1	1	-	4
Notary	1	-	-	-	1
Nursing	16	5	1	-	22
Office of Pest Management	1	-	-	-	1
Osteopathic Examiners	1	-	-	-	1
Psychologist Examiners	-	-	-	1	1
Racing	1	-	-	-	1
Radiation Regulatory	1	-	-	-	1
Real Estate	27	-	-	1	28
Registrar of Contractors	112	48	24	2	186
State Retirement	8	-	-	-	8
Water Quality Appeals Board	3	-	-	-	3
Weights and Measures	-	-	1	1	2
<b>Total</b>	<b>1,378</b>	<b>87</b>	<b>119</b>	<b>33</b>	<b>1,617</b>

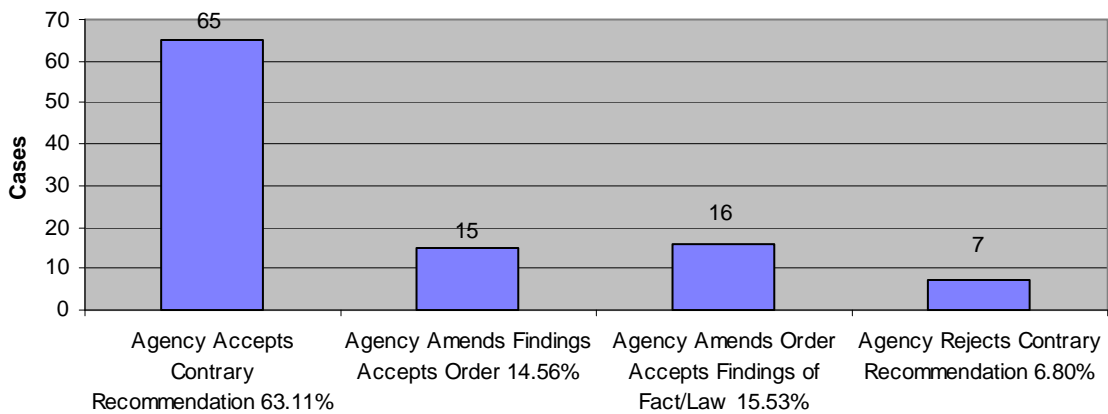
In FY 2013, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 7.30% of cases.

**Recommendations Contrary to Original Agency Action FY 2013**



Agency acceptance of contrary decisions was high at 93.20%.

**Agency Response to Contrary Recommendations FY 2013**





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

<b>Client</b>	<b>Accepted</b>	<b>Amended Order</b>	<b>Amended Findings</b>	<b>Rejected</b>	<b>Certified</b>	<b>Total</b>
Accountancy Board	-	1	-	-	-	1
Department of Housing	-	-	-	1	-	1
AHCCCS	31	5	10	2	1	49
Board of Appraisal	1	-	-	-	-	1
DPS-Bus	1	-	-	-	1	2
DPS-Crim. History Rec.	3	-	-	-	-	3
DES-CPS	15	1	4	-	-	20
Dental Board	-	1	-	-	-	1
Dept. of Environmental Quality	-	3	-	-	-	3
Dept. of Health Services	-	-	-	1	-	1
Weights and Measures	-	-	1	1	3	5
Gaming	1	2	-	-	-	3
Dept. of Insurance	-	-	-	-	1	1
Liquor Licenses	1	-	-	-	-	1
Nursing Board	-	1	1	-	-	2
Radiation Regulatory	1	-	-	-	-	1
Real Estate	5	-	-	1	-	6
Registrar of Contractors	-	1	-	-	-	1
Psychologist Examiners.	-	-	-	1	-	1
<b>Total</b>	<b>59</b>	<b>15</b>	<b>16</b>	<b>7</b>	<b>6</b>	<b>103</b>

## 2. Agency Inaction With Subsequent OAH Certification of Finality

Beginning August 21, 1998, OAH was required to certify the Administrative Law Judge Decision as the final administrative decision if 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 2013, 185 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

<b>Agency</b>	<b>Certified</b>
Registrar of Contractors	121
Department of Fire Building and Life Safety - H/C	22
Board of Appraisal	11
Department of Weights and Measures	11
Department of Insurance	10
Arizona Health Care Cost Containment System	2

Department of Fire Building and Life Safety	2
Arizona Commerce Authority	1
Arizona Department of Financial Institutions	1
Board of Technical Registration	1
City of Douglas	1
Department of Public Safety - Student Transportation	1
Maricopa County Procurement	1

## 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 2013, 8 motions were filed and one motion was granted.

## VI. Violations of A.R.S. § 41-1009

Pursuant to A.R.S. § 41-1092.01(C)(9)(c), 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. 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.

### 2. 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.

### **3. 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.