

# **The Office of Administrative Hearings**

**The Twentieth Annual Report**

**To**

**Governor Douglas A. Ducey**

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

**Representative David M. Gowan Sr., Speaker of the House**

**Pursuant to A.R.S. § 41-1092.01(C)(5)**

**and**

**A.R.S. § 41-1092.01(C)(9)**



**Greg Hanchett, Acting Director**

**October 28<sup>th</sup>, 2015**

# Contents

<b>I. Introduction and Overview.....</b>	<b>1</b>
<b>II. Continued Development of the Office.....</b>	<b>2</b>
<b>1. Mediation Option for Litigants .....</b>	<b>2</b>
<b>2. Agency Training on Due Process .....</b>	<b>2</b>
<b>III. Summary of Agency Use of OAH Services.....</b>	<b>2</b>
<b>1. Case Management.....</b>	<b>2</b>
a. Breakdown of Cases Filed by Agency .....	2
b. Number of Cases Concluded Versus Cases Filed .....	4
c. Timeline of Case Management .....	4
d. Incidence of Continuance.....	5
<b>2. Evaluation .....</b>	<b>8</b>
a. Results of Public Evaluation .....	8
b. Incidence of Rehearing and Appeal.....	9
<b>IV. Acceptance of Administrative Law Judge Decisions by Agencies.....</b>	<b>10</b>
<b>1. Agency Action .....</b>	<b>10</b>
<b>2. Agency Inaction With Subsequent OAH Certification of Finality.....</b>	<b>14</b>
<b>V. Motions for Change of Administrative Law Judge Granted Pursuant to     A.R.S. § 41-1092.07 .....</b>	<b>14</b>
<b>VI. Violations of A.R.S. § 41-1009 .....</b>	<b>14</b>
<b>VII. Recommendations for Changes in the Administrative Procedures Act.....</b>	<b>14</b>
<b>1. Establish uniform standards for appeal rights notice .....</b>	<b>15</b>
<b>2. Establish uniform basis for rehearing.....</b>	<b>15</b>
<b>3. Conform rehearing and appeal rules.....</b>	<b>15</b>
<b>VIII. Recommendation for Changes or Improvements in Agency Practice     with Respect to the Administrative Procedures Act.....</b>	<b>15</b>
<b>Recoupment of Costs for Administrative Hearings .....</b>	<b>15</b>

# 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. In fiscal year 2015 the agency had 13 full-time positions, including the Director, the Office Manager, 7 Administrative Law Judges, and 4 support staff. 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 2015 indicate agency acceptance of Administrative Law Judge Decisions without modification was 81.74%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 85.28%. Rehearings (.68%) and Appeals (3.05%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 90.18% 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 2015 was 105%.

## II. Continued Development of the Office

### 1. Mediation Option for Litigants

With the assistance of the Department of Fire, Building and Life Safety and the Registrar of Contractors, OAH is developing a pilot program to provide mediation services for parties to contested case hearings which emanate from those two agencies. OAH has hired an experienced mediator and has put in place a program which will result in all of the OAH administrative law judges being trained as mediators within 12 months. Mediation services will offer litigants the option of substantially reducing or even eliminating the very costly process of contested case hearing litigation. When cases are successfully mediated, there will be a concomitant reduction in demands on state resources.

### 2. Agency Training on Due Process

OAH has now implemented training for requesting agencies regarding due process considerations under the Uniform Administrative Procedures Act, Title 41, Chapter 6, Article 10. This training consists of a continuing legal education seminar and has been presented to a diverse range of agencies including the Registrar of Contractors, the Structural Pest Control Board and Animal Services Division of the Department of Agriculture, certain divisions of the Department of Public Safety, and the Game and Fish Department.

## III. Summary of Agency Use of OAH Services

### 1. Case Management

#### a. Breakdown of Cases Filed by Agency (FY 2015):

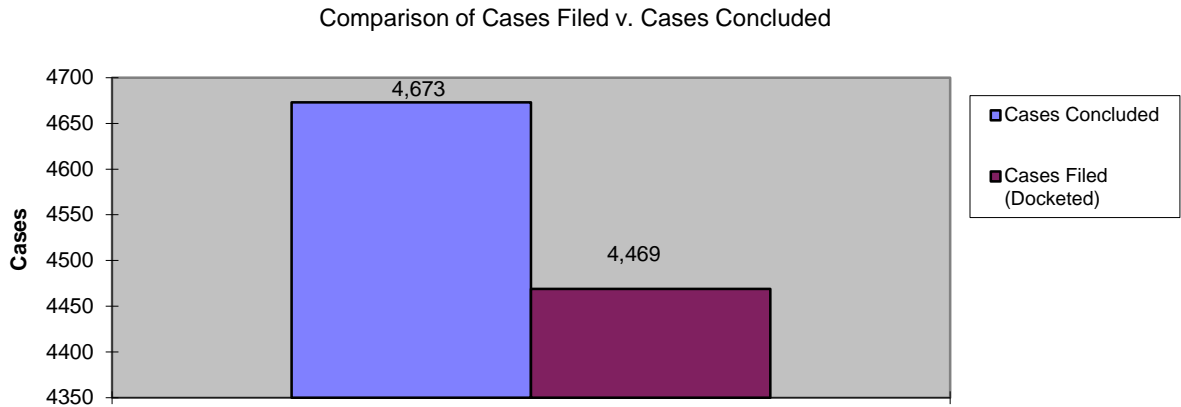
4,469 cases were filed with OAH in FY 2015. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

Arizona Health Care Cost Containment System	3,126
Department of Health Services	253
Department of Child Safety	237
Department of Weights and Measures	232
Registrar of Contractors	174
Arizona Department of Revenue	69
Department of Real Estate	63
State Board of Nursing	57
Department of Education - Special Ed	51
Department of Insurance	26
Arizona Department of Financial Institutions	22
Department of Fire Building and Life Safety - H/C	18

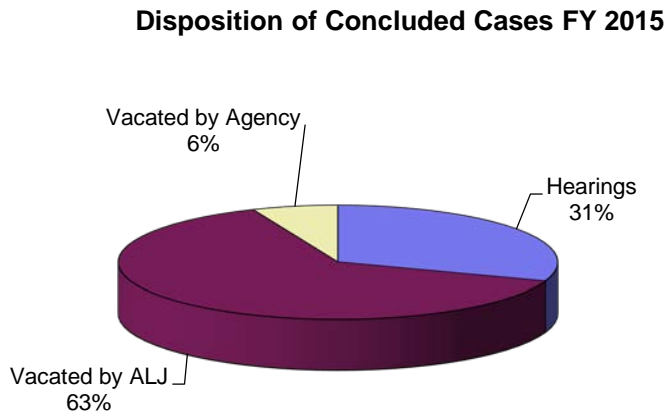
Department of Fire Building and Life Safety	14
Arizona State Retirement System	13
Department of Education	12
Department of Environmental Quality	12
Peace Officers Standards and Training	11
Department of Economic Security	11
Arizona Medical Board	10
Department of Gaming	8
Arizona Health Care Cost Containment System - 21	7
Liquor Licenses and Control	4
State Board of Accountancy	4
Board of Podiatry Examiners	3
Department of Public Safety - Student Transportation	3
Board of Behavioral Health Examiners	3
Department of Water Resources	3
Golden Valley Fire District	2
Arizona Board of Osteopathic Examiners In Medicine and Surgery	2
Arizona State Department of Housing	2
State Board for Charter Schools	2
Board of Dental Examiners	2
Board of Technical Registration	2
Secretary of State	2
Arizona Game and Fish Department	1
Naturopathic Physicians Medical Board	1
Citizens Clean Elections Commission	1
Arizona Early Childhood Development and Health Board	1
Board of Psychologist Examiners	1
Department of Agriculture	1
Department of Public Safety - Concealed Weapons Permit Unit	1
Secretary of State - HAVA	1
Department of Public Safety - Criminal History Records	1
<b>Total</b>	<b>4469</b>

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

In FY 2015, the conclusion rate (defined as cases concluded divided by new cases filed) was 105.00%.



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

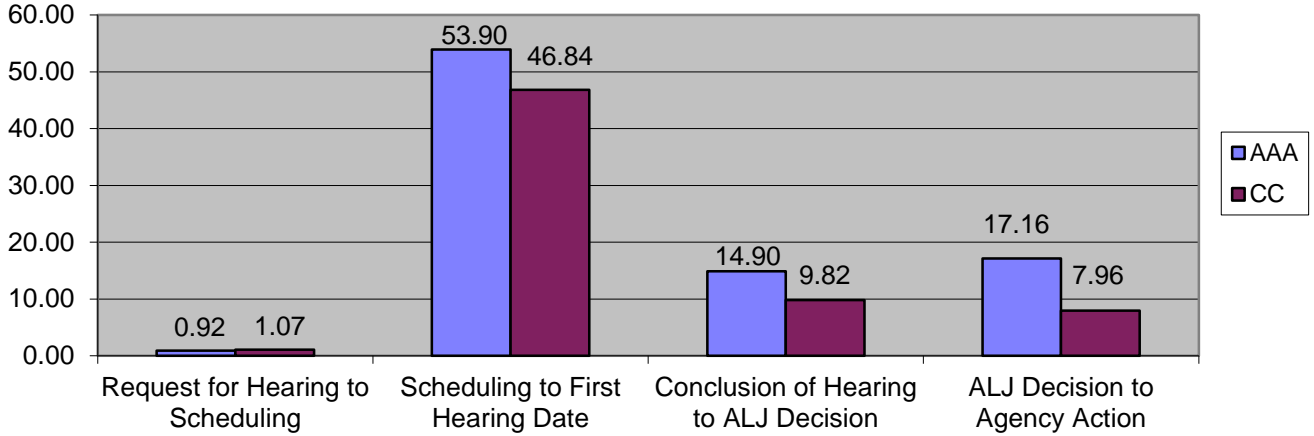


**c. Timeline of Case Management:**

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. 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:

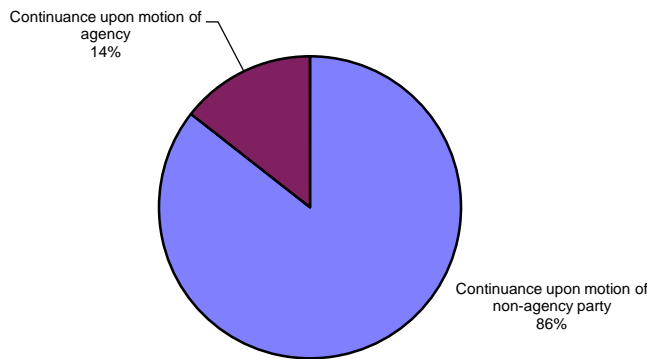
**Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases**



**d. Incidence of Continuance:**

A single continuance in FY 2015 added an average of 42.57 days to the total length of a case. Although 85.76% of all continuance requests were granted in FY 2015, 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 (735) divided by the total number of cases first scheduled (4,469), was 16.5%. The ratio of first hearing settings (5,654) to continued settings on the calendar (735) was 1 to 0.13.

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 2015 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

<b>AGENCY</b>	<b>Continued - Motion by non- agency party</b>	<b>Continued - Motion by agency party</b>
Arizona Board of Osteopathic Examiners In Medicine and Surgery	1	-
Arizona Department of Financial Institutions	9	1
Arizona Department of Real Estate	4	-
Arizona Department of Revenue	22	-
Arizona Health Care Cost Containment System	244	38
Arizona Medical Board	3	2
Arizona State Retirement System	2	-
Board of Appraisal	7	-
Board of Behavioral Health Examiners	1	-
Board of Podiatry Examiners	2	2
Board of Technical Registration	1	-
Department of Agriculture	1	-
Department of Child Safety	44	2
Department of Economic Security	2	-
Department of Education	4	1
Department of Education - Special Ed	15	1
Department of Environmental Quality	1	-
Department of Fire Building and Life Safety	1	-
Department of Fire Building and Life Safety - H/C	6	-
Department of Gaming	-	1
Department of Health Services	50	15
Department of Insurance	7	3
Department of Racing	1	-
Department of Real Estate	12	4
Department of Water Resources	3	-
Department of Weights and Measures	19	5
Golden Valley Fire District	2	-
Liquor Licenses and Control	2	-
Naturopathic Physicians Medical Board	2	-
Peace Officers Standards and Training	7	-
Registrar of Contractors	78	10
State Board of Nursing	11	10
<b>Total</b>	<b>564</b>	<b>95</b>



The following chart reflects the number of motions to continue that were entertained in FY 2015 and the percentage granted:

fig. 2

<b>Agency</b>	<b>Continuance Granted</b>	<b>Continuance Denied</b>	<b>Total Motions</b>	<b>% Grant ed</b>
Arizona Board of Osteopathic Examiners In Medicine and Surgery	1	-	1	100
Arizona Department of Financial Institutions	10	-	10	100
Arizona Department of Real Estate	2	-	2	100
Arizona Department of Revenue	28	4	32	88
Arizona Health Care Cost Containment System	331	61	392	84
Arizona Medical Board	5	1	6	83
Arizona State Retirement System	2	-	2	100
Board of Appraisal	6	-	6	100
Board of Behavioral Health Examiners	3	-	3	100
Board of Podiatry Examiners	4	-	4	100
Department of Agriculture	1	-	1	100
Department of Child Safety	54	8	62	87
Department of Economic Security	3	1	4	75
Department of Education	1	-	1	100
Department of Education - Special Ed	17	1	18	94
Department of Environmental Quality	2	-	2	100
Department of Fire Building and Life Safety	3	-	3	100
Department of Fire Building and Life Safety - H/C	6	6	12	50
Department of Gaming	1	-	1	100
Department of Health Services	84	16	100	84
Department of Public Safety - Student Transportation	0	1	1	0
Department of Insurance	7	-	7	100
Department of Racing	1	-	1	100
Department of Real Estate	18	1	19	95
Department of Water Resources	1	-	1	100
Department of Weights and Measures	14	6	20	70
Golden Valley Fire District	3	1	4	75
Liquor Licenses and Control	5	-	5	100
Naturopathic Physicians Medical Board	5	-	5	100
Peace Officers Standards and Training	7	3	10	70
Registrar of Contractors	78	5	83	94
State Board for Charter Schools	1	1	2	50
State Board of Nursing	31	6	37	84
<b>Total</b>	<b>735</b>	<b>122</b>	<b>857</b>	<b>86</b>

## 2. Evaluation

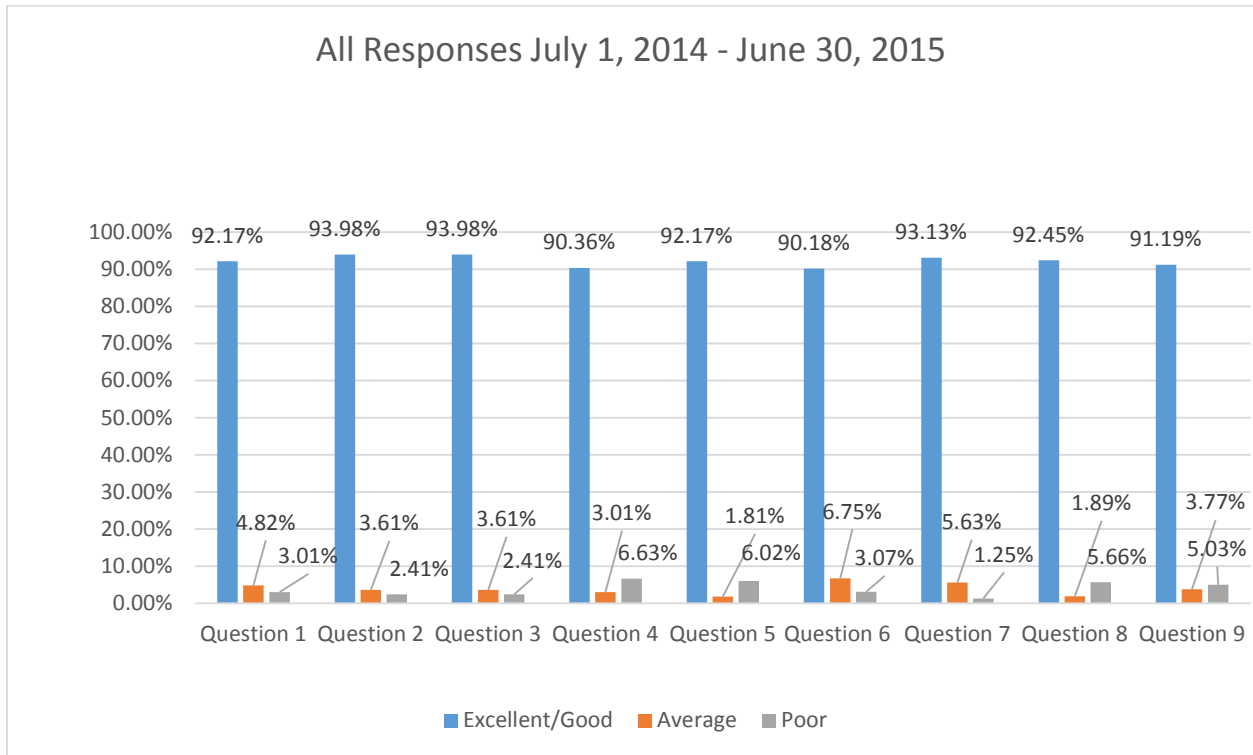
### a. Results of Public Evaluation:

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.

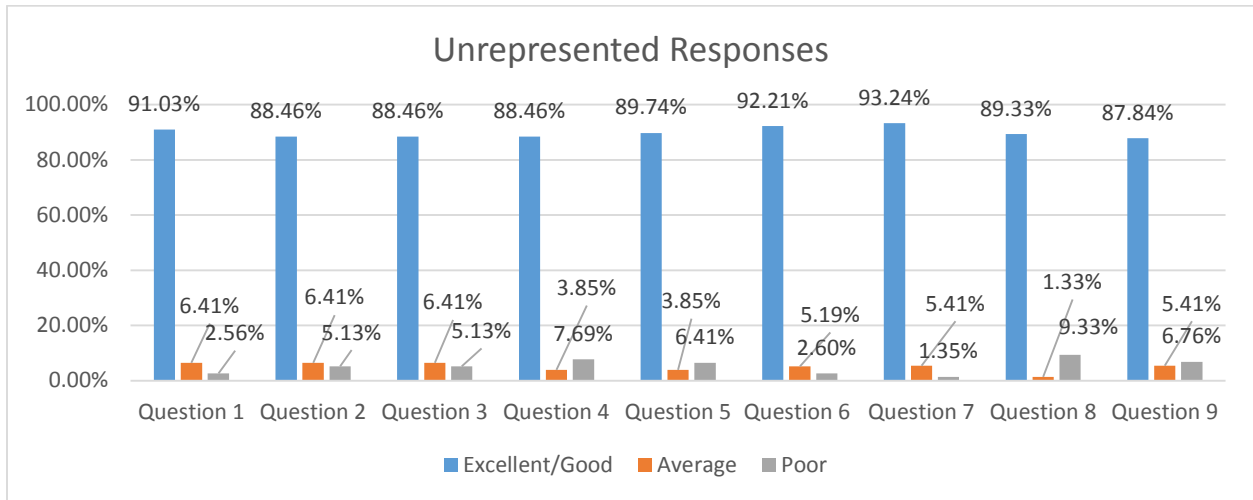
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

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 90.18% to 93.98% of responses.



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



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

Rehearings are permitted pursuant to A.R.S. § 41-1092.09 under certain conditions. In FY 2015, the rehearing rate (defined as rehearings scheduled divided by cases heard) was .68%.

Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2015, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 3.05%. As reflected in the following diagram, rehearings and judicial appeals in FY 2015 were relatively rare.

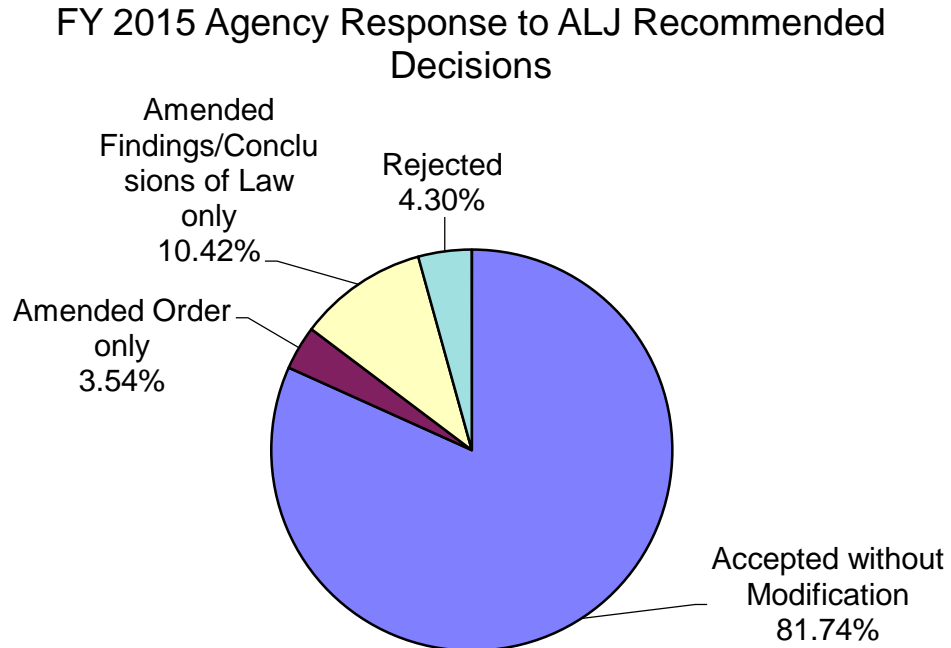
	Rehearings	Appeals
AHCCCS	3	1
Medical Board	-	1
Behavioral Health	-	1
Board of Nursing	-	1
Charter Schools	1	1
Clean Elections	-	1
Dental Board	-	2
Dept. of Child Safety	-	2
Fire Building and Life Safety	1	1
Health Services	2	7
Real Estate	-	2
Water Resources	-	2

Weights and Measures	-	4
Registrar of Contractors	1	5
Special Education	-	4
State Retirement	-	1
<b>Totals</b>	<b>8.0</b>	<b>36.0</b>

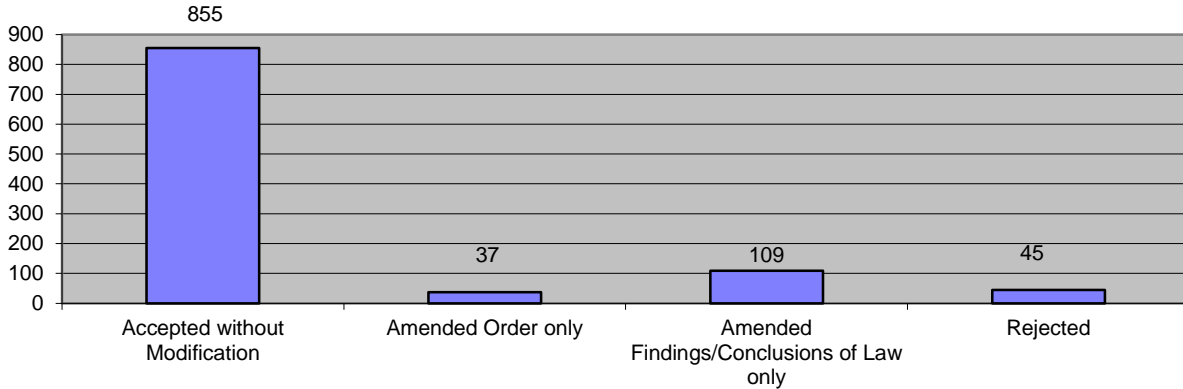
## IV. Acceptance of Administrative Law Judge Decisions by Agencies

### 1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 81.74% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 85.28% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 25.34% 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.



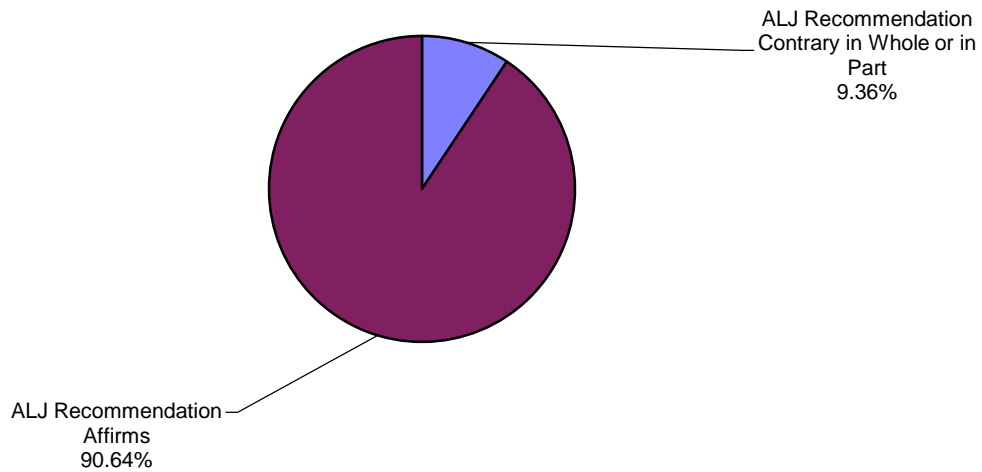
The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy Board	2	1	0	0	3
AHCCCS	609	10	41	18	678
Board for Charter Schools	0	1	0	0	1
Board of Behavioral Health	0	0	0	1	1
Bord of Technical Registration	2	0	0	0	2
Citizens Clean Elections	0	0	0	1	1
Dental Examiners	2	0	0	2	4
Department of Environmental Quality	1	0	0	0	1
Department of Fire Building and Life Safety	2	2	0	0	4
Department of Revenue	0	0	0	0	0
Department of Water Resources	0	1	1	1	3
Dept. of Child Safety	58	1	7	10	76
DES-APS	2	0	3	0	5
DPS- Bus	1	0	0	0	1
DPS-Crim. History Rec.	0	0	0	0	0
Financial Institutions	0	1	0	0	1
First things First	1	0	0	0	1
Gaming	1	0	0	0	1
Health Services	57	2	45	8	112
Insurance	11	0	0	0	11
Liquor Licenses	1	0	0	0	1
Medical Board	5	1	0	0	6
Naturopathic Physicians Medical Board	1	0	0	0	1

Notary	1	0	0	0	1
Nursing	20	1	1	0	22
Osteopathic Examiners	0	0	1	0	1
Podiatry	0	0	0	0	0
Racing	0	0	0	0	0
Real Estate	17	2	0	0	19
Registrar of Contractors	58	13	9	2	82
Secretary State	1	0	0	0	1
Special Education	0	0	0	0	0
State Retirement	2	0	1	0	3
Water Quality Appeals Board	0	1	0	0	1
Weights and Measures	0	0	0	2	2
<b>Total</b>	<b>855</b>	<b>37</b>	<b>109</b>	<b>45</b>	<b>1046</b>

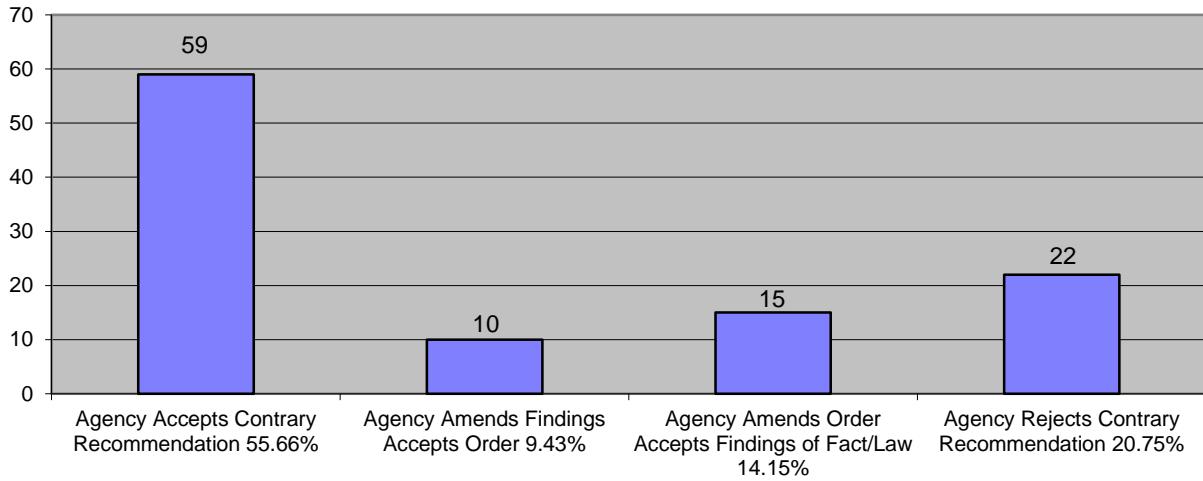
In FY 2015, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 9.36% of cases.

**Recommendations Contrary to Original Agency Action FY 2015**



Agency acceptance of contrary decisions was high at 79.25%.

**Agency Response to Contrary Recommendations FY 2015**



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

	Accepted	Amended Order	Amended Finding	Rejected	Certified	Total
AHCCCS	10	3	6	4	-	23
DES-APS	-	-	2	-	-	2
State Retirement	-	-	-	-	1	1
Behavioral Health	-	-	-	1	-	1
Financial Institutions	-	1	0	-	-	1
Citizens Clean	-	-	-	1	-	1
Department of Child	16	-	1	7	-	24
Dental	-	-	-	1	-	1
Health Services	-	1	6	5	-	12
Weights and	-	-	-	2	8	10
Department of Water	-	-	-	1	0	1
Insurance	-	-	-	-	1	1
Liquor Licenses	1	-	-	-	-	1
Nursing	-	1	-	-	-	1
Podiatry	-	-	-	-	1	1
Water Quality	-	1	-	-	-	1
Department of Racing	-	-	-	-	1	1
Real Estate	2	2	-	-	-	4
Registrar of	14	1	-	-	3	18
Secretary of State -	1	-	-	-	0	1
<b>Total</b>	<b>44</b>	<b>10</b>	<b>15</b>	<b>22</b>	<b>15</b>	<b>106</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 2014, 85 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Registrar of Contractors	37
Department of Weights and Measures	26
Department of Fire Building and Life Safety - H/C	10
Department of Insurance	6
Arizona State Retirement System	2
Arizona Health Care Cost Containment System - 19	1
Department of Child Safety	1
Department of Public Safety - Criminal History Records	1
Department of Public Safety - Student Transportation	1
<b>Total</b>	<b>85</b>

## 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 2015, 8 motions were filed and none were 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.