

The Office of Administrative Hearings

The Twenty Second Annual Report

To

Governor Douglas A. Ducey

Senator Steve Yarbrough, President of the Senate

Representative J.D. Mesnard, 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 26, 2017

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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. In fiscal year 2017 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 2017 indicate agency acceptance of Administrative Law Judge Decisions without modification was 87.66%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 90.84%. Rehearings (.70%) and Appeals (2.53%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 97.78% 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 2017 was 98.7%.

II. Continued Development of the Office

1. Mediation Option for Litigants

OAH has developed and implemented a voluntary mediation program to provide litigants with alternative dispute resolution in certain cases. As of November, 2017, all administrative law judges have become trained mediators. In addition, OAH has access to two additional law trained mediators who are available to assist OAH with mediation needs. OAH offers mediation services to litigants in Registrar of Contractors cases and Arizona Division of Occupational Safety and Health (ADOSH) cases and is actively seeking to expand mediation to other types of disputes that come before OAH (such as Mobile Home Landlord/Tenant cases). Mediation services will continue to offer litigants the option of substantially reducing or even eliminating the 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 annual training for requesting agencies and state bar affiliated lawyer sections regarding due process considerations under the Uniform Administrative Procedures Act, Title 41, Chapter 6, Article 10. Training has been presented to a diverse range of agencies and private sector entities including the Registrar of Contractors, the Structural Pest Control Board, and Animal Services Division of the Department of Agriculture, the Department of Real Estate and the Department of Child Safety as well as sections of the Arizona State Bar (such as the administrative law section and construction law section). The seminars are designed to provide useful information and instruction to agency personnel and various state bar sections of lawyers about providing due process to citizens at all stages of administrative adjudications in order to enhance the quality of the appeal and hearing processes for our state's citizens. Seminars focus on topics such as statutory notice requirements to parties and appeal and hearing procedures under the Uniform Administrative Procedures Act. OAH will continue to reach out to agencies and private sector entities to offer them updated training on due process.

3. OAH adjudication of Arizona Division of Occupational Safety and Health (ADOSH) cases.

Effective July 1, 2016, OAH assumed adjudication responsibilities for cases arising under Title 23, Chapter 2, Article 10. OAH has successfully completed the transition and is providing timely and efficient mediation and adjudication of these cases. During the transition process, OAH worked closely with both industry and agency representatives and their legal counsel to ensure the efficacy of the process. In addition, OAH's already ongoing efforts to implement mediation worked to speed the transition of ADOSH cases as litigants in these matters frequently resort to mediation for dispute resolution. Going forward, OAH will continue to work closely with industry and agency representatives to ensure fair, impartial and expeditious dispute resolution of ADOSH cases and will continue to seek ways to promote adjudication and resolution efficiencies.

III. Summary of Agency Use of OAH Services

1. Case Management

a. Breakdown of Cases Filed by Agency (FY 2017):

5,426 cases were filed with OAH in FY 2017. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

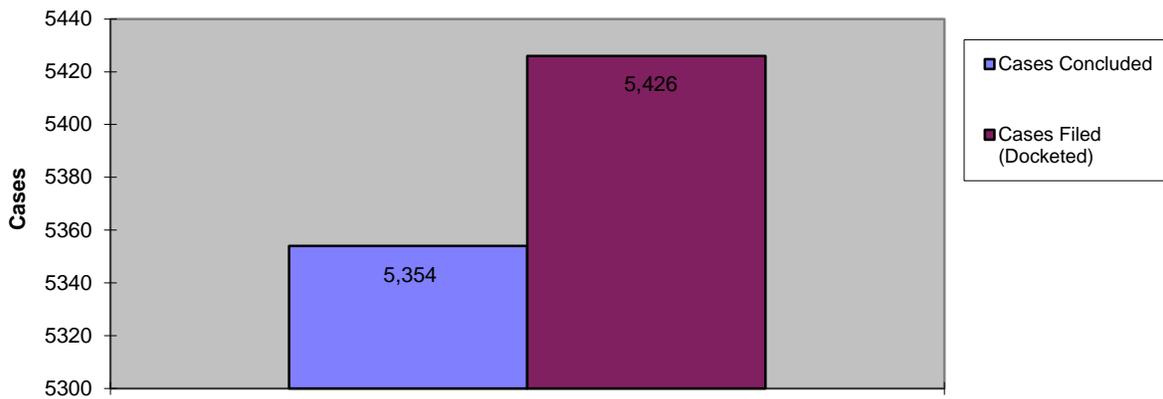
Arizona Health Care Cost Containment System	3739
Registrar of Contractors	664
Department of Child Safety	195
Department of Health Services	121
Arizona Division of Occupational Safety and Health	118
Department of Insurance	91
Department of Economic Security	79
Department of Education - Special Ed	76
Department of Real Estate	75
State Board of Nursing	58
Arizona Department of Revenue	49
Department of Real Estate - H/C	31
Arizona Health Care Cost Containment System	12
State Board of Accountancy	11
Department of Gaming	11
Peace Officers Standards and Training	9
Arizona State Department of Housing - LTA	9
Arizona Medical Board	8
Department of Public Safety - Student Transportation	6
Department of Education	6
Arizona State Retirement System	6
State Land Department	5
Arizona State Department of Housing	5
Department of Administration	4
Liquor Licenses and Control	3
Department of Environmental Quality	3
City of Phoenix (NOV)	3
Board of Technical Registration	3
Arizona Game and Fish Department	3
Arizona Board of Osteopathic Examiners In Medicine and Surgery	3
Water Quality Appeals Board	2
Division of Real Estate Appraisal	2
Board of Psychologist Examiners	2
Arizona Lottery	2

Arizona Department of Financial Institutions	2
State Board for Charter Schools	1
Rio Rico Fire District	1
Pinetop Fire District	1
Physical Therapy	1
Funeral Directors and Embalmers Board	1
Division of Racing	1
Department of Public Safety - Criminal History Records	1
City of Phoenix	1
Arizona State Board of Podiatry Examiners	1
Arizona Commerce Authority	1
Total	5426

b. Number of Cases Concluded Versus Cases Filed:

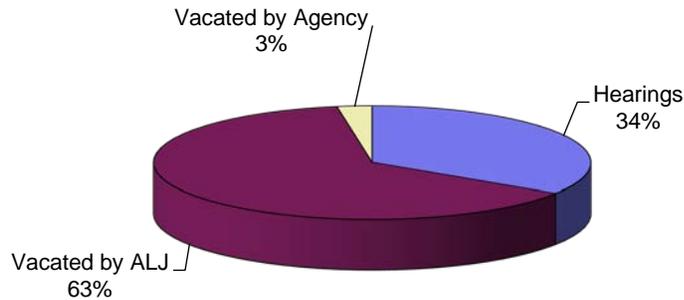
In FY 2017, the conclusion rate (defined as cases concluded divided by new cases filed) was 98.67%.

Comparison of Cases Filed v. Cases Concluded



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

Disposition of Concluded Cases FY 2017

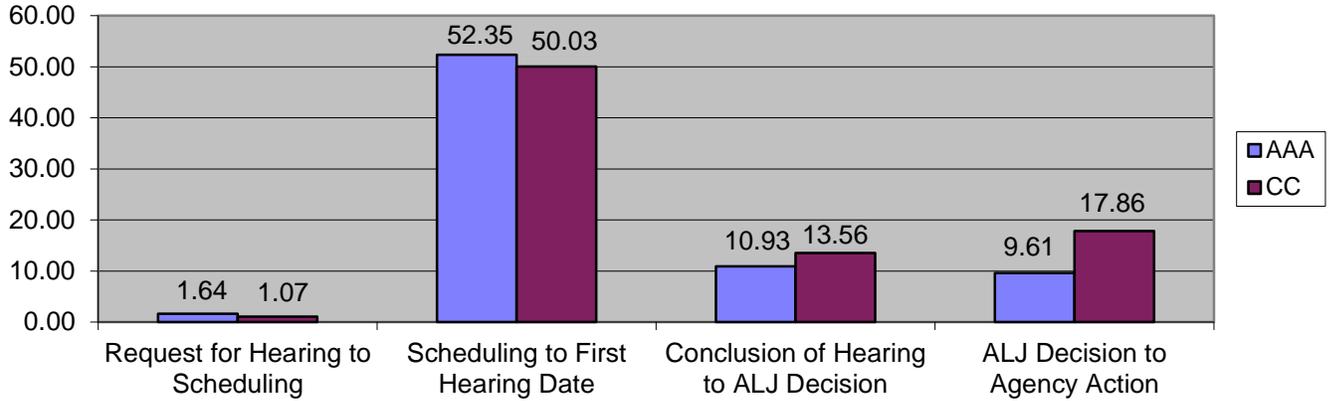


c. Timeline of Case Management:

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:

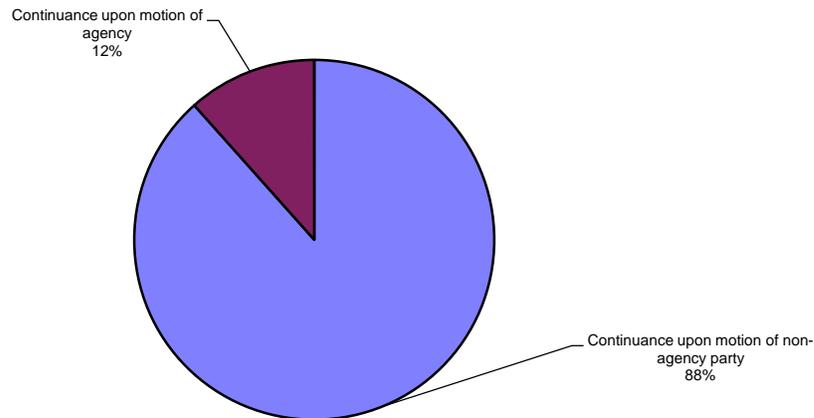
**Average Days Between Selected Events - Appealable Agency Actions
v. Contested Cases**



d. Incidence of Continuance:

A single continuance in FY 2017 added an average of 43.39 days to the total length of a case. Although 89.17% of all continuance requests were granted in FY 2017, OAH has developed a well-deserved reputation for discouraging “convenience” continuances in favor of those based on “good cause.” The frequency of continuances, defined as the number of continuances granted (1,186) divided by the total number of cases first scheduled (5,426), was 21.9%.

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 2017 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 Board of Osteopathic Examiners In Medicine and Surgery	2	2
Arizona Department of Financial Institutions	2	-
Arizona Department of Revenue	23	2
Arizona Division of Occupational Safety and Health	8	2
Arizona Health Care Cost Containment System	263	36
Arizona Medical Board	5	-
Arizona State Board of Podiatry Examiners	1	-
Arizona State Department of Housing - LTA	1	-
Arizona State Retirement System	1	-
Board of Psychologist Examiners	1	-
Board of Technical Registration	2	1
Department of Administration	7	-
Department of Child Safety	52	7
Department of Economic Security	21	6
Department of Environmental Quality	-	2
Department of Education	3	-
Department of Education - Special Ed	18	-
Department of Fire Building and Life Safety	1	-
Department of Fire Building and Life Safety - H/C	1	-
Department of Health Services	31	12
Department of Insurance	6	2
Division of Racing	-	1
Department of Real Estate	17	-
Department of Real Estate - H/C	14	-
Department of Water Resources	2	-
Funeral Directors and Embalmers Board	2	-
Liquor Licenses and Control	2	1
Peace Officers Standards and Training	4	1
Physical Therapy	2	-
Pinetop Fire District	-	1
Registrar of Contractors	276	14
State Board for Charter Schools	1	-
State Board of Accountancy	2	6
State Board of Nursing	15	7
Total	786	103

The following chart reflects the number of motions to continue that were entertained in FY 2017 and the percentage granted:

.....

fig. 2

Agency	Continuance Granted	Continuance Denied	Total Motions	% Granted
Arizona Board of Osteopathic Examiners In Medicine and Surgery	3	-	3	100
Arizona Commerce Authority	1	-	1	100
Arizona Department of Financial Institutions	2	1	3	67
Arizona Department of Revenue	26	1	27	96
Arizona Division of Occupational Safety and Health	37	1	38	97
Arizona Health Care Cost Containment System	477	66	543	88
Arizona Medical Board	6	-	6	100
Arizona State Board of Podiatry Examiners	2	-	2	100
Arizona State Department of Housing	1	-	1	100
Board of Psychologist Examiners	2	-	2	100
Board of Technical Registration	3	1	4	75
Department of Administration	3	-	3	100
Department of Child Safety	60	10	70	86
Department of Economic Security	35	4	39	90
Department of Education	2	-	2	100
Department of Education - Special Ed	46	6	52	88
Department of Environmental Quality	3	-	3	100
Department of Fire Building and Life Safety - H/C	2	1	3	67
Department of Health Services	66	1	67	99
Department of Insurance	17	-	17	100
Department of Real Estate	16	2	18	89
Department of Real Estate - H/C	19	3	22	86
Division of Racing	1	-	1	100
Division of Real Estate Appraisal	1	-	1	100
Funeral Directors and Embalmers Board	2	-	2	100
Liquor Licenses and Control	4	-	4	100
Peace Officers Standards and Training	4	-	4	100
Physical Therapy	2	-	2	100
Pinetop Fire District	1	-	1	100
Registrar of Contractors	297	38	335	89
Rio Rico Fire District	1	-	1	100
State Board for Charter Schools	2	-	2	100
State Board of Accountancy	9	-	9	100
State Board of Nursing	28	8	36	78
State Land Department	5	-	5	100
Arizona State Department of Housing	0	1	1	0
Total	1186	144	1330	89%

2. Evaluation

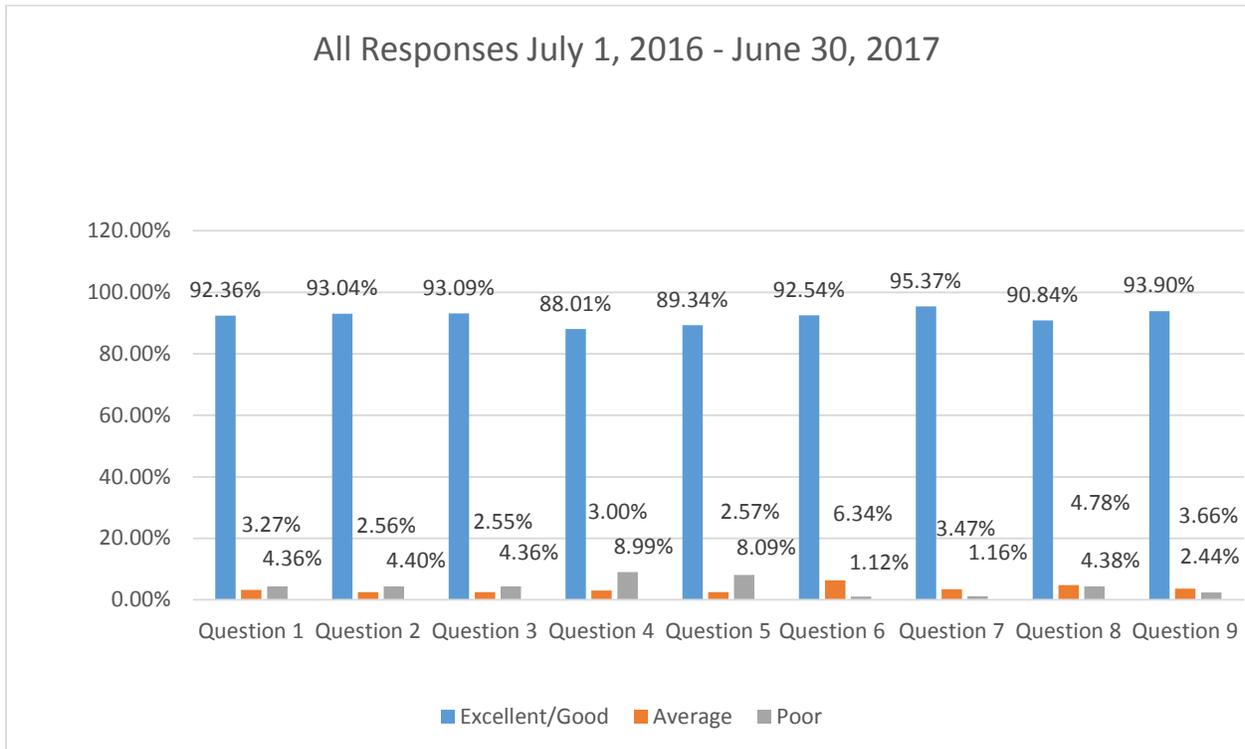
a. Results of Public Evaluation:

Since November 1996, OAH has administered an evaluation procedure. A copy of the evaluation is provided to all participants before the hearing. The results are not disclosed to the Administrative Law Judge. Hearing participants place completed evaluations in locked boxes located near the hearing rooms.

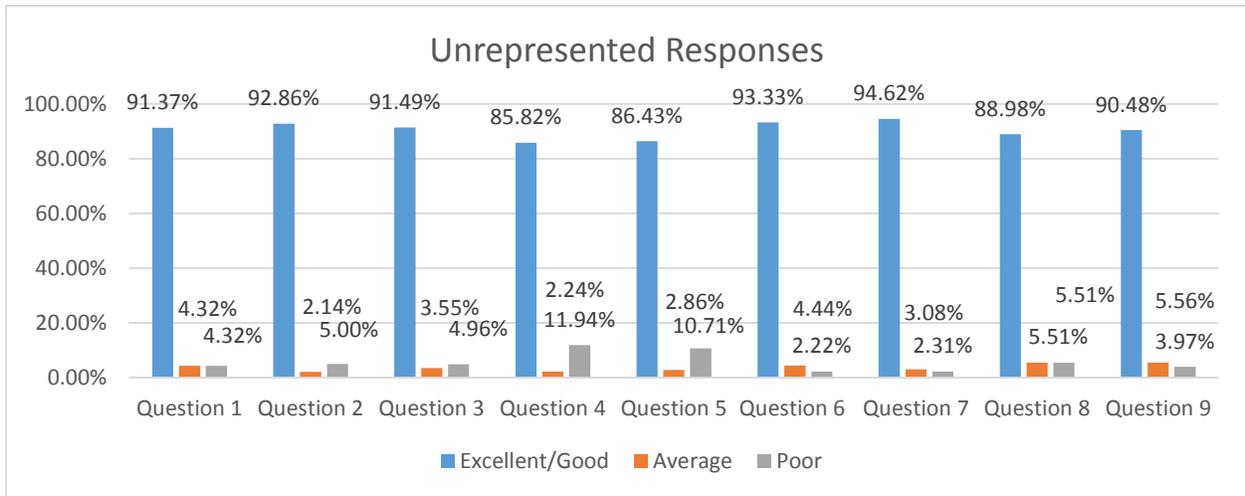
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

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 88.01% to 95.37% 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 2017, the rehearing rate (defined as rehearings scheduled divided by cases heard) was .70%.

Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2017, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 2.53%. As reflected in the following diagram, rehearings and judicial appeals in FY 2017 were relatively rare.

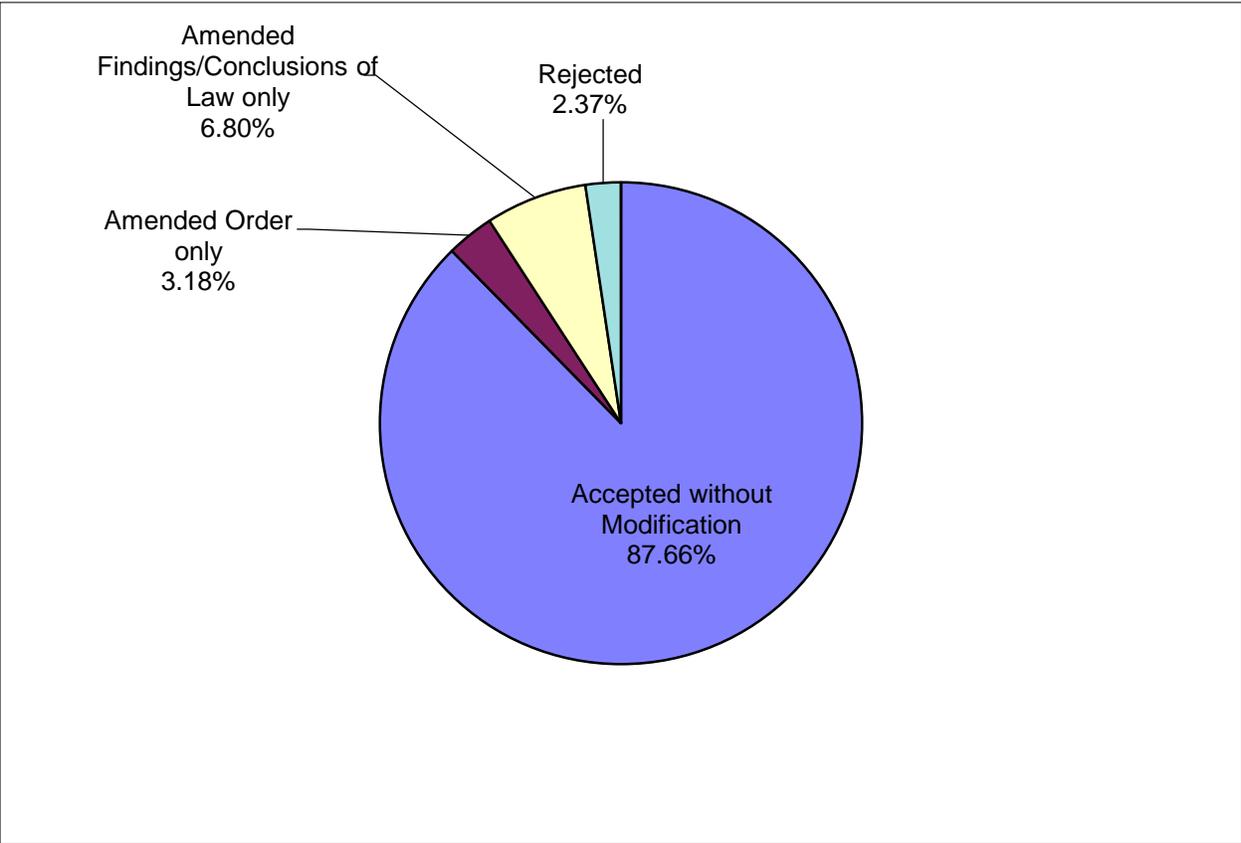
	Rehearings	Appeals
Arizona Health Care Cost Containment System	3	2
Department of Real Estate	1	2
Department of Real Estate - H/C	2	2
Registrar of Contractors	4	10
Arizona State Retirement	-	1
Department of Child Safety	-	2
Department of Economic Security - APS	-	1
Department of Environmental Quality	-	1
Department of Health Services	-	8
Department of Water Resources	-	1
Funeral Board	-	1

Special Education	-	2
State Board of Nursing	-	3
Totals	10	36

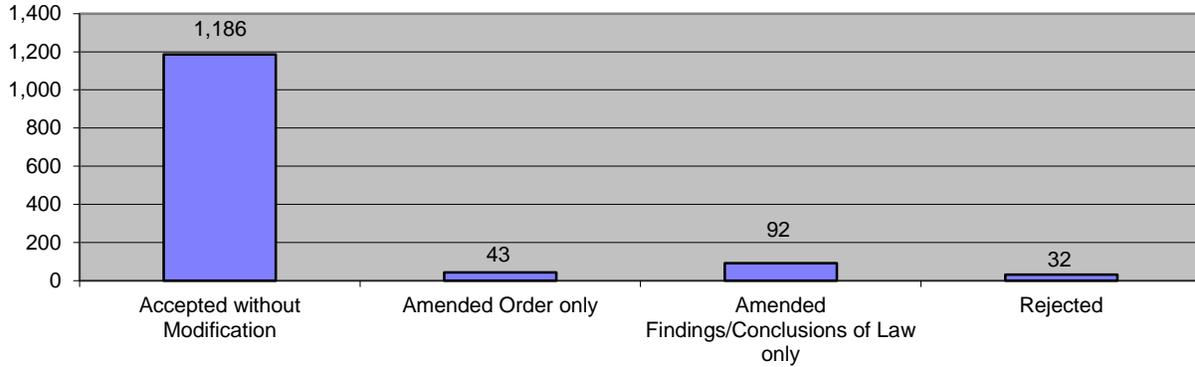
IV. Acceptance of Administrative Law Judge Decisions by Agencies

1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 87.66% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 90.84% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 31.85% 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.



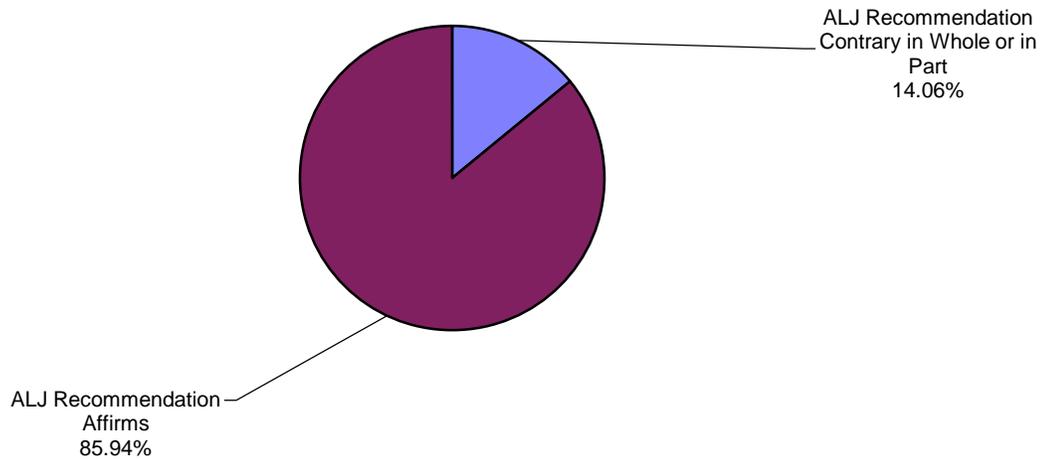
The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Accountancy	1	1	-	-	2
Department of Education	-	-	-	-	0
Department of Housing	2	1	-	-	3
AHCCCS	670	8	59	18	755
Adult Protective Services	17	-	-	2	19
Arizona Retirement Board	2	-	-	-	2
State Board for Charter Schools	-	-	1	-	1
Building Fire Life and Safety	1	-	-	-	1
Board of Appraisal	1	-	-	-	1
Board of Technical Registration	3	1	1	-	5
Department of Public Safety	2	-	-	-	2
Department of Child Safety	13	-	5	-	18
Environmental Quality	1	-	-	-	1
Department of Health Services	48	3	17	1	69
Water Resources	-	-	1	-	1
Funeral Board	-	1	1	-	2
Gaming	4	-	-	-	4
Game and Fish	1	-	-	-	1
Insurance	28	-	2	1	31
Medical Board	2	-	-	-	2
Nursing	20	-	-	2	22
Osteopathic Examiners	3	-	1	-	4

Medical Board	1	-	-	-	1
City of Phoenix	-	-	-	-	0
Real Estate	56	-	-	2	58
Department of Revenue	-	-	-	-	0
Registrar of Contractors	310	28	4	6	348
Total	1186	43	92	32	1353

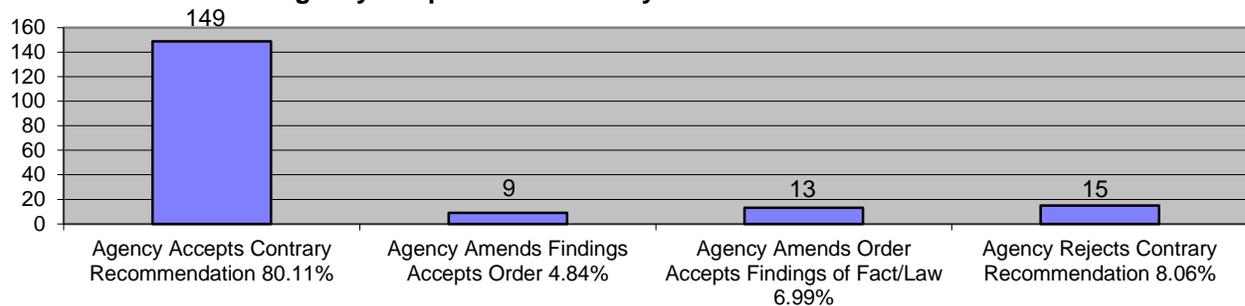
In FY 2017, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 14.06% of cases.

Recommendations Contrary to Original Agency Action FY 2017



Agency acceptance of contrary decisions was high at 91.94%.

Agency Response to Contrary Recommendations FY 2017



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

	Accepted	Amended Order	Amended Finding	Rejected	Certified	Total
Department of Housing	1	1	-	-	-	2
AHCCCS	15	3	12	6	-	36
DES-APS	4	-	-	-	-	4
Fire, Bldg, Life Safety	2	-	-	-	1	3
Technical Registration	-	1	-	-	-	1
DPS-Bus	1	-	-	-	-	1
Department of Child	3	-	-	-	8	11
Health Services	2	-	-	1	3	6
Funeral Board	-	1	-	-	-	1
Insurance	2	-	-	1	3	6
Arizona Medical Board	1	-	-	-	-	1
Real Estate	8	-	-	2	-	10
Nursing	-	-	-	1	-	1
Registrar of Contractors	93	3	1	4	2	103
Total	132	9	13	15	17	186

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 2017, 46 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Arizona Health Care Cost Containment System - 19	6
Department of Child Safety	23
Department of Education	1
Department of Fire Building and Life Safety - H/C	6
Department of Health Services	3
Department of Insurance	4
Department of Public Safety - Student Transportation	1
Department of Real Estate - H/C	1
Division of Real Estate Appraisal	1
Total	46

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 2017, 4 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.