

# **The Office of Administrative Hearings**

**The Twenty First Annual Report**

**To**

**Governor Douglas A. Ducey**

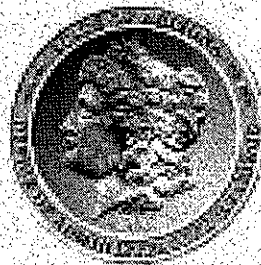
**Senator Andy Biggs, President of the Senate**

**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>
1. Mediation Option for Litigants.....	2
2. Agency Training on Due Process.....	2
3. OAH adjudication of Arizona Division of Occupational Safety and Health (ADOSH) cases.....	2
<b>III. Summary of Agency Use of OAH Services</b> .....	<b>3</b>
<b>1. Case Management</b> .....	<b>3</b>
a. Breakdown of Cases Filed by Agency .....	3
b. Number of Cases Concluded Versus Cases Filed .....	4
c. Timeline of Case Management .....	5
d. Incidence of Continuance.....	6
<b>2. Evaluation</b> .....	<b>9</b>
a. Results of Public Evaluation .....	9
b. Incidence of Rehearing and Appeal.....	10
<b>IV. Acceptance of Administrative Law Judge Decisions by Agencies</b> .....	<b>11</b>
1. Agency Action .....	11
2. Agency Inaction With Subsequent OAH Certification of Finality.....	14
<b>V. Motions for Change of Administrative Law Judge Granted Pursuant to A.R.S. § 41-1092.07</b> .....	<b>15</b>
<b>VI. Violations of A.R.S. § 41-1009</b> .....	<b>15</b>
<b>VII. Recommendations for Changes in the Administrative Procedures Act</b> .....	<b>15</b>
1. Establish uniform standards for appeal rights notice.....	15
2. Establish uniform basis for rehearing.....	15
3. Conform rehearing and appeal rules.....	15
<b>VIII. Recommendation for Changes or Improvements in Agency Practice with Respect to the Administrative Procedures Act</b> .....	<b>16</b>
Recoupment of Costs for Administrative Hearings .....	16

## **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 2016 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 2016 indicate agency acceptance of Administrative Law Judge Decisions without modification was 79.49%. Agency acceptance of Findings of Fact and Conclusions of Law without modification was 84.17%. Rehearings (2.02%) and Appeals (3.53%) were rare. Evaluations by participants continue to indicate that Administrative Law Judges and OAH were rated excellent or good in 94.95% 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 2016 was 92.7%.

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

### **1. Mediation Option for Litigants**

With a positive response from citizens and agencies, OAH has developed and implemented a mediation program to provide litigants with alternative dispute resolution in certain cases. OAH now has four trained mediators offering mediation services to litigants in Registrar of Contractors cases and Arizona Division of Occupational Safety and Health (ADOSH) cases. Mediation services will continue to 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. Training has been presented to a diverse range of agencies and private sector entities including the Registrar of Contractors, the Structural Pest Control Board, Animal Services Division of the Department of Agriculture, and the Arizona Department of Real Estate. The seminars are designed to provide useful information and instruction to agency personnel 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 all client agencies 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, pursuant to Senate Bill 1500 promulgated during the 2016 Arizona legislative Session, 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.

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

#### **1. Case Management**

##### **a. Breakdown of Cases Filed by Agency (FY 2016):**

5,152 cases were filed with OAH in FY 2016. The distribution among the agencies, boards, commissions, or political subdivisions (Agencies) are as follows (in descending order by number of cases filed):

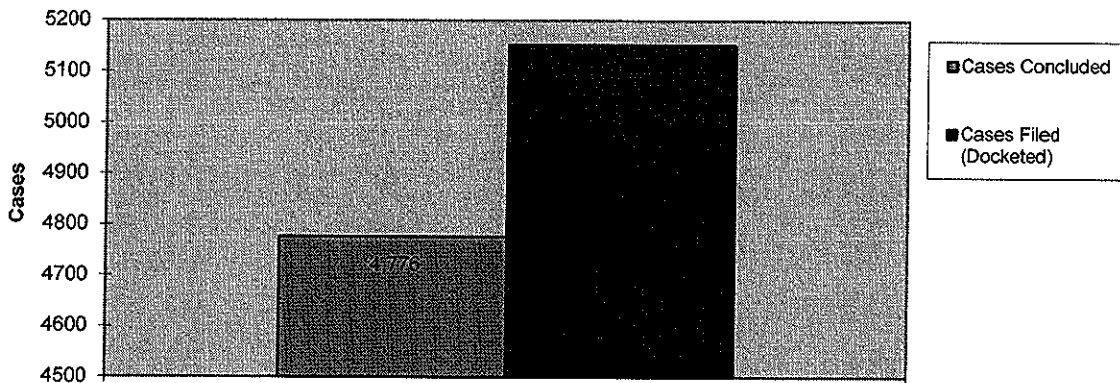
Arizona Health Care Cost Containment System	3131
Registrar of Contractors	768
Department of Health Services	428
Department of Child Safety	275
Department of Insurance	106
Department of Real Estate	69
Department of Education - Special Ed	67
State Board of Nursing	47
Arizona Department of Revenue	42
Department of Weights and Measures	41
Department of Fire Building and Life Safety - H/C	23
Department of Economic Security	23
Department of Fire Building and Life Safety	17
Department of Education	14
Department of Gaming	12
Arizona State Retirement System	12
Peace Officers Standards and Training	11
Department of Public Safety - Student Transportation	7
Arizona Medical Board	7
Arizona Department of Financial Institutions	7
Board of Technical Registration	5
Liquor Licenses and Control	4
Department of Environmental Quality	4
Arizona Board of Osteopathic Examiners In Medicine and Surgery	4
Board of Appraisal	3
Secretary of State	2
Office of Pest Management	2
Department of Agriculture	2
Department of Administration	2
Arizona State Department of Housing	2
Arizona Lottery	2
Superstition Fire & Medical District	1
State Land Department	1
State Board of Accountancy	1

State Board for Charter Schools	1
Secretary of State - HAVA	1
Gilbert Unified School District	1
Funeral Directors and Embalmers Board	1
Division of Real Estate Appraisal	1
Department of Water Resources	1
Department of Public Safety - Concealed Weapons Permit Unit	1
City of Phoenix	1
Board of Psychologist Examiners	1
Board of Dental Examiners	1
<b>Total</b>	<b>5152</b>

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

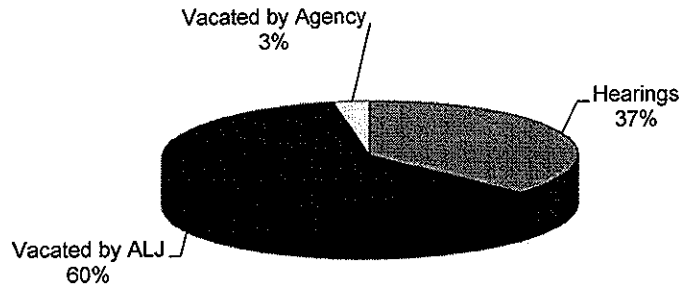
In FY 2016, the conclusion rate (defined as cases concluded divided by new cases filed) was 92.70%.

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 2016**

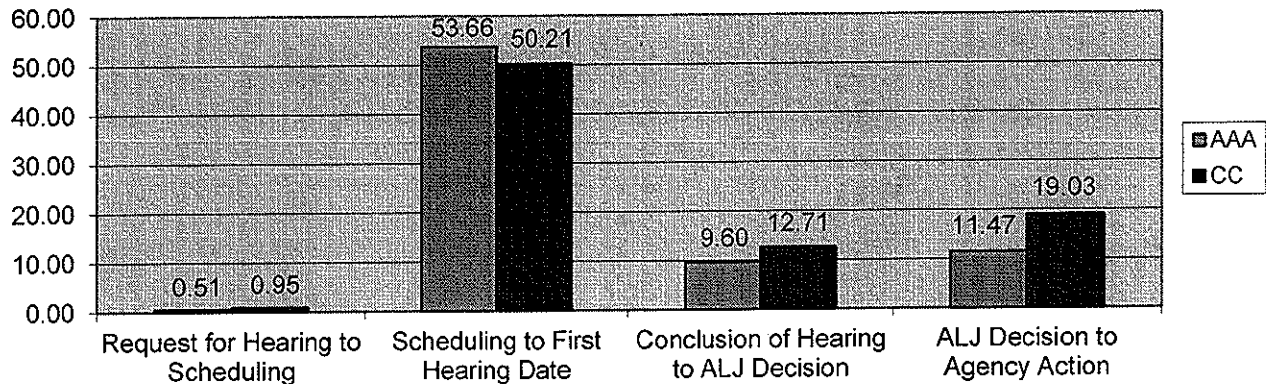


**c. Timeline of Case Management:**

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:

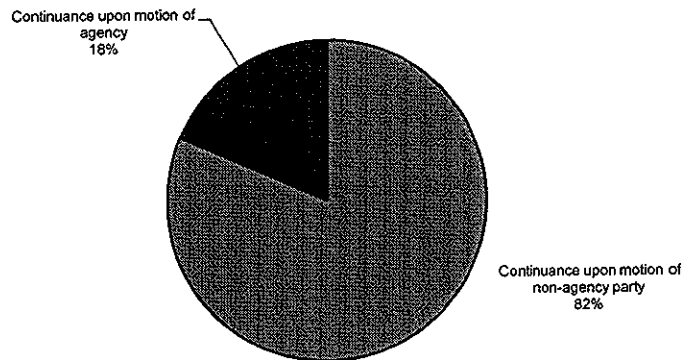
**Average Days Between Selected Events - Appealable Agency Actions v. Contested Cases**



**d. Incidence of Continuance:**

A single continuance in FY 2016 added an average of 43.87 days to the total length of a case. Although 87.20% of all continuance requests were granted in FY 2016, 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 (872) divided by the total number of cases first scheduled (4,776), was 18.3%. The ratio of first hearing settings (5,738) to continued settings on the calendar (872) was 1 to 0.15.

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 Department of Financial Institutions	1	1
Arizona Department of Revenue	19	1
Arizona Health Care Cost Containment System	168	46
Arizona Medical Board	-	2
Arizona State Department of Housing	1	-
Arizona State Retirement System	3	2
Board of Dental Examiners	2	1
Board of Technical Registration	6	1
Department of Child Safety	63	8
Department of Economic Security	3	2
Department of Education	1	1
Department of Education - Special Ed	21	-
Department of Environmental Quality	2	-
Department of Fire Building and Life Safety	7	-
Department of Fire Building and Life Safety - H/C	5	1
Department of Health Services	73	24
Department of Insurance	8	1
Department of Real Estate	12	3
Gilbert Unified School District		1
Liquor Licenses and Control	3	-
Naturopathic Physicians Medical Board	2	-
Office of Pest Management	1	1
Peace Officers Standards and Training	5	-
Registrar of Contractors	176	25
State Board for Charter Schools	1	-
State Board of Nursing	18	14
State Land Department	0	1
<b>Total</b>	<b>601</b>	<b>136</b>

The following chart reflects the number of motions to continue that were entertained in FY 2016 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	100.0
Arizona Department of Financial Institutions	2	-	2	100.0
Arizona Department of Revenue	15	3	18	83.3
Arizona Health Care Cost Containment System	264	40	304	86.8
Arizona Medical Board	4	-	4	100.0
Arizona State Retirement System	5	-	5	100.0
Board of Appraisal	1	-	1	100.0
Board of Dental Examiners	3	-	3	100.0
Board of Psychologist Examiners	1	-	1	100.0
Board of Technical Registration	8	-	8	100.0
Department of Administration	0	1	1	0.0
Department of Child Safety	64	9	73	87.7
Department of Economic Security	7	1	8	87.5
Department of Education	5	-	5	100.0
Department of Education - Special Ed	25	9	34	73.5
Department of Environmental Quality	5	1	6	83.3
Department of Fire Building and Life Safety	6	2	8	75.0
Department of Fire Building and Life Safety - H/C	7	3	10	70.0
Department of Health Services	112	14	126	88.9
Department of Insurance	10	1	11	90.9
Department of Real Estate	12	4	16	75.0
Gilbert Unified School District	1	-	1	100.0
Liquor Licenses and Control	1	-	1	100.0
Naturopathic Physicians Medical Board	4	-	4	100.0
Office of Pest Management	3	1	4	75.0
Peace Officers Standards and Training	3	-	3	100.0
Registrar of Contractors	269	35	304	88.5
Secretary of State	1	1	2	50.0
State Board for Charter Schools	1	-	1	100.0
State Board of Nursing	28	2	30	93.3
State Land Department	1	1	2	50.0
Superstition Fire & Medical District	1	-	1	100.0
<b>Total</b>	<b>872</b>	<b>128</b>	<b>1000</b>	<b>87.20%</b>

## 2. Evaluation

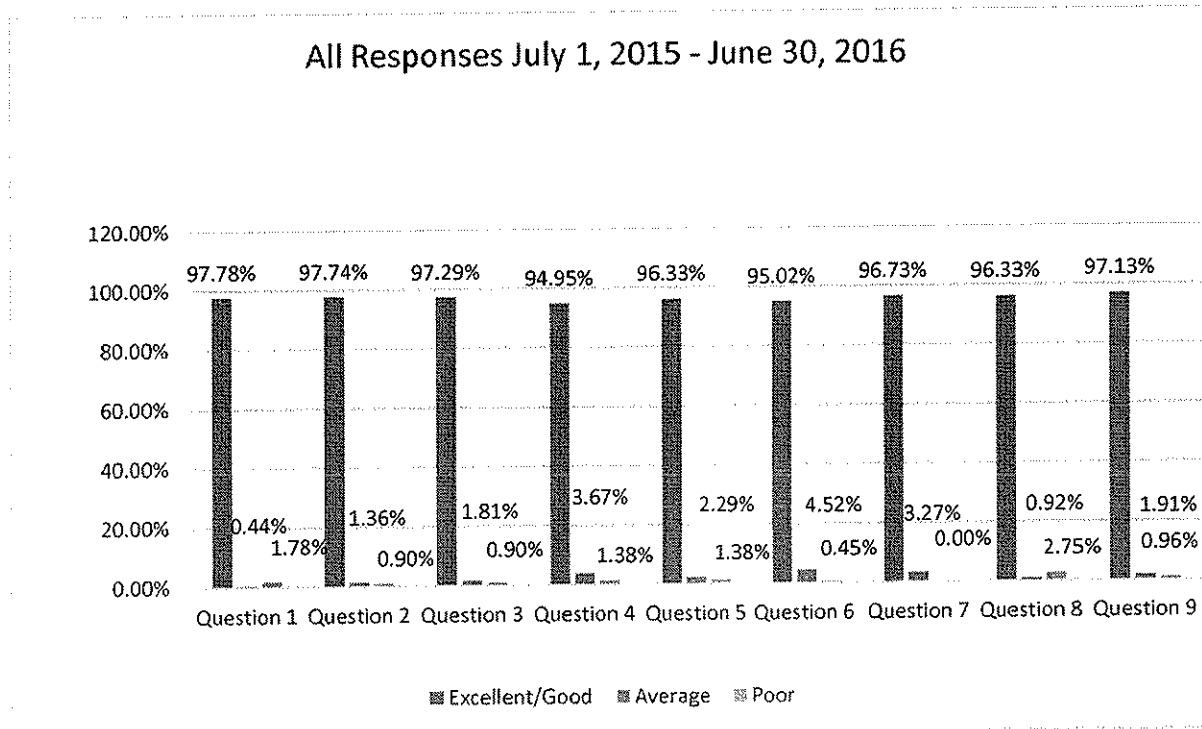
### a. Results of Public Evaluation:

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

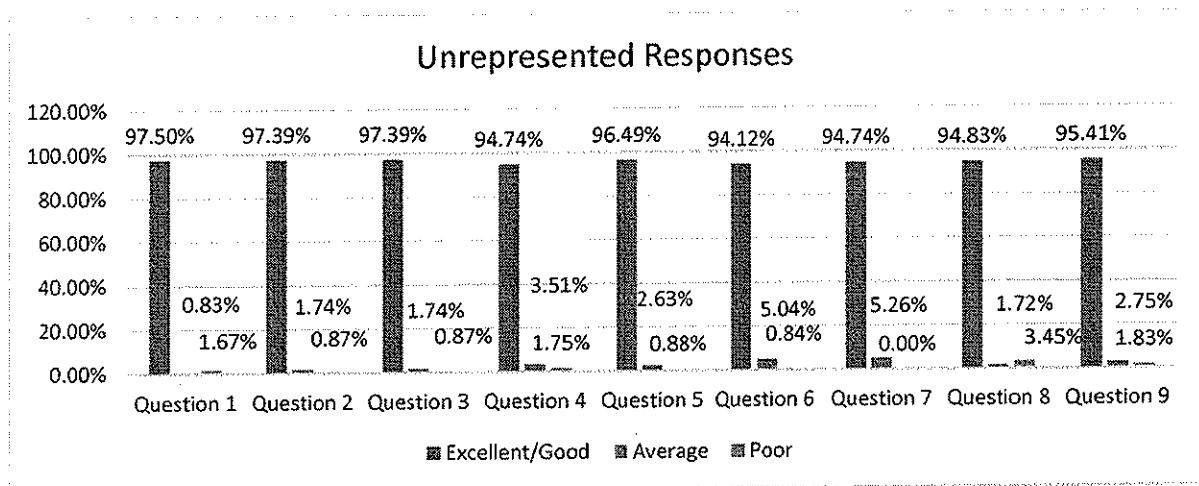
Those responding are asked to rate the following categories, on a scale of excellent, good, satisfactory, or poor:

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 94.95% to 97.78% 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 2016, the rehearing rate (defined as rehearings scheduled divided by cases heard) was 2.02%.

Appeals to Superior Court are provided for pursuant to A.R.S. § 41-1092.08(H). In FY 2016, the judicial appeal rate (defined as judicial appeals taken divided by cases decided on the merits) was 3.53%. As reflected in the following diagram, rehearings and judicial appeals in FY 2016 were relatively rare.

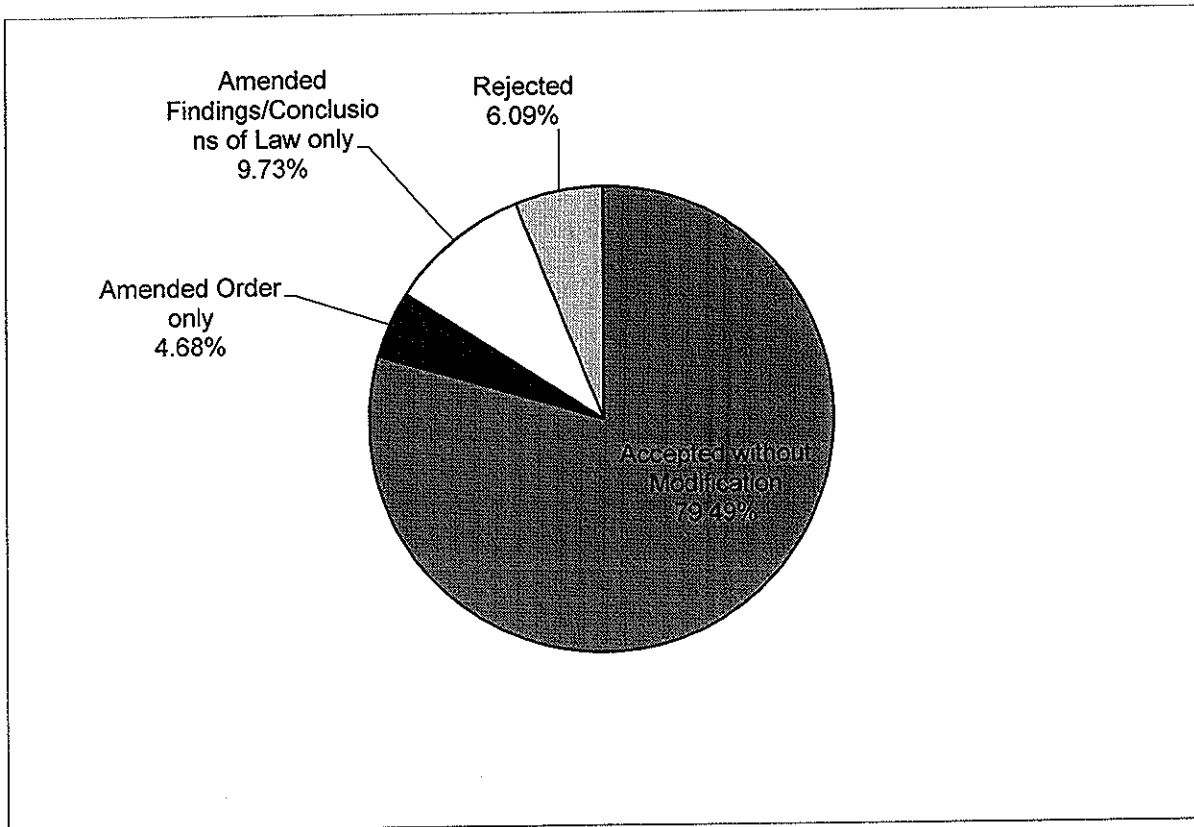
	Rehearings	Appeals
Arizona Health Care Cost Containment System	6	1
Arizona Medical Board	1	1
Behavioral Health	-	1
Department of Child Safety	1	5
Department of Fire Building and Life Safety	4	1
Department of Fire Building and Life Safety - H/C	3	-
Department of Health Services	2	-
Department of Liquor	-	1
Department of Real Estate	1	2
Department of Revenue	-	1

Health Services	-	15
POST	-	1
Registrar of Contractors	10	13
Special Education	-	3
State Board of Nursing	-	3
State Retirement	-	1
<b>Totals</b>	<b>28</b>	<b>49</b>

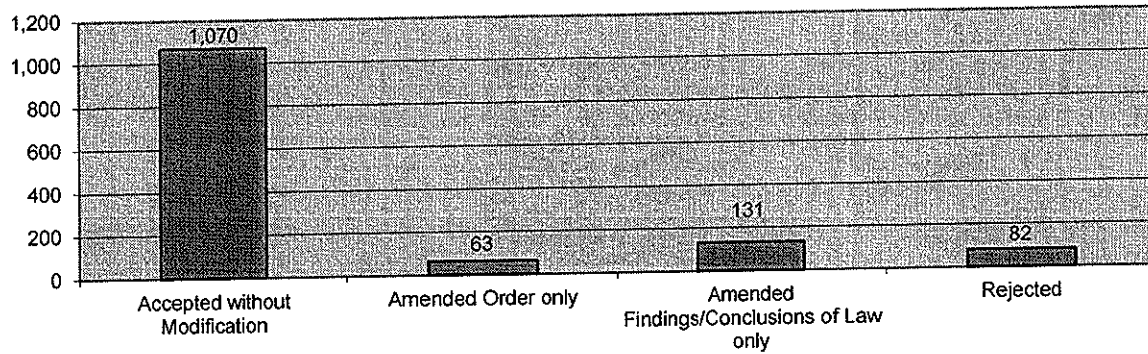
## IV. Acceptance of Administrative Law Judge Decisions by Agencies

### 1. Agency Action

Agency acceptance of the Administrative Law Judge Decisions is high. 79.49% of all decisions acted upon by the agencies were accepted without modification. Agency acceptance was 84.17% if viewed from the vantage point of acceptance of Findings of Fact and Conclusions of Law, the core function of the Administrative Law Judge. 32.47% 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.

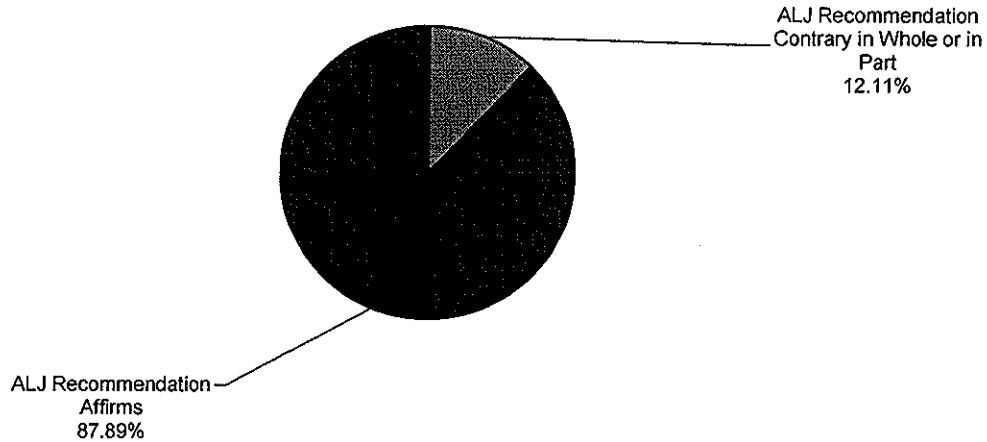


The following chart reports the breakdown of agency response by agency. This list further illustrates that amendments and rejections are few relative to the decisions accepted.

	Accept	Amend Order	Amend Findings	Reject	Total
Arizona Healthcare Cost Containment	527	10	37	25	599
DES-APS	6	-	2	-	8
State Retirement	5	-	1	-	6
Department of Fire Building and Life Safety	13	5	-	12	30
Division of Real Estate Appraisal	2	-	-	-	2
DPS- Bus	3	-	-	-	3
DPS- Concealed Weapons Permit	1	-	-	-	1
Dept. of Child Safety	36	-	9	16	61
Department of Environmental Quality	2	-	-	-	2
Department of Health Services	107	3	67	9	186
Department of Water Resources	-	-	-	3	3
Gaming	1	-	-	-	1
Insurance	35	-	-	15	50
State Land Department	1	-	-	-	1
Liquor Licenses	2	-	-	-	2
Lottery	1	-	-	-	1
Medical Board	1	1	-	-	2
Secretary State	1	-	-	-	1
Nursing	18	2	2	-	22
Real Estate	23	4	1	1	29
Registrar of Contractors	285	38	12	1	336
<b>Total</b>	<b>1070</b>	<b>63</b>	<b>131</b>	<b>82</b>	<b>1346</b>

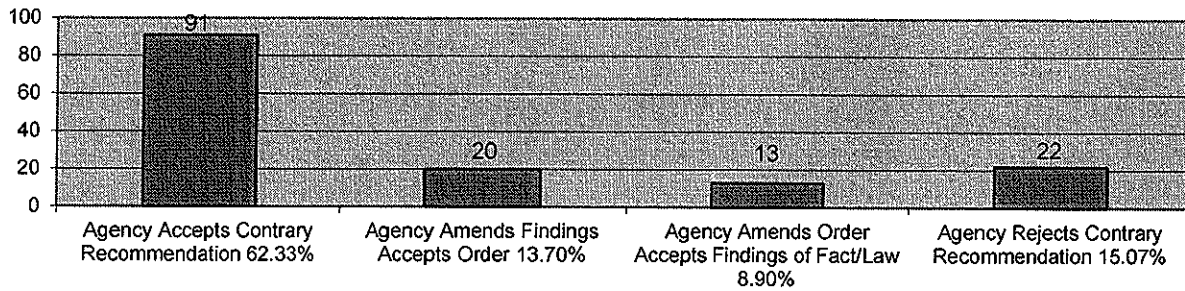
In FY 2016, Administrative Law Judges rendered decisions that were contrary in whole or contrary in part to agencies' original positions in 12.11% of cases.

**Recommendations Contrary to Original Agency Action FY 2016**



Agency acceptance of contrary decisions was high at 84.93%.

**Agency Response to Contrary Recommendations FY 2016**



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

	Accepted	Amended Order	Amended Finding	Rejected	Certified	Total
AHCCCS	12	4	2	8	1	27
DES-APS	0	0	1	0	0	1
Fire, Bldg, Life Safety	1	2	0	0	0	3

Board of Appraisal	1	0	0	0	0	1
Department of Child	4	0	2	8	4	18
Health Services	1	1	7	4	1	14
Weights and Measures	0	0	0	0	1	1
Insurance	1	0	0	0	2	3
Arizona Medical Board	1	1	0	0	0	2
Nursing	0	0	1	0	0	1
Real Estate	4	3	0	1	0	8
Registrar of Contractors	57	9	0	1	0	67
<b>Total</b>	<b>82</b>	<b>20</b>	<b>13</b>	<b>22</b>	<b>9</b>	<b>146</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 2016, 51 Administrative Law Judge Decisions were certified by OAH as final administrative decisions.

Agency	Certified
Arizona Health Care Cost Containment System - 19	2
Board of Podiatry Examiners	1
Department of Child Safety	1
Department of Child Safety	7
Department of Fire and Life Safety - H/C	1
Department of Fire Building and Life Safety - H/C	15
Department of Health Services	2
Department of Insurance	16
Department of Racing	1
Department of Weights and Measures	4
Registrar of Contractors	1
<b>Total</b>	<b>51</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 2016, 11 motions were filed and two 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.

