

Fifth Annual Report to
the Governor of Alaska and the Alaska Legislature
from the Office of Administrative Hearings

January 31, 2009

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I. Introduction

Legislation passed in 2004 created the Office of Administrative Hearings (OAH), an independent office within the Department of Administration charged with providing administrative adjudication services, regulatory review and training. *See* AS 44.64.010 – AS 44.64.020. The purpose was “to increase the separation between the adjudicatory functions of executive branch agencies and the agencies’ investigatory, prosecutory, and policy-making functions.” Sec. 1, ch. 163, SLA 2004.

OAH operates under the supervision of a chief administrative law judge (ALJ) for whom the law prescribes certain duties and goals. *See* AS 44.64.020. One of the chief ALJ’s duties is to

submit to the governor and the legislature on January 31 of each year the results of the survey [of hearing participants used to monitor the quality of hearings conducted by OAH and other state agencies] along with a report that includes a description of the activities of the office and recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies[.]

AS 44.64.020(a)(7). This is the fifth such report.

This report covers OAH’s activities for calendar year 2008, which was OAH’s fourth year in existence and third year of normal (not transitional) operations. During the year, OAH’s jurisdiction did not expand significantly as a result of legislation.¹ OAH’s core function—conducting hearings—continued to dominate the agency’s work in 2008, but progress was made on ancillary functions, especially on publication of decisions in electronic, searchable form.

II. Activities of the Office of Administrative Hearings

For reporting purposes, the activities of the OAH are grouped into eight categories drawn from the statutory duties of OAH and the chief ALJ:

- Adjudication services;
- Peer review for OAH ALJs;
- Publication of decisions;
- Regulations review and development;
- Monitoring hearing processes (includes surveying hearing participants);
- Training of administrative adjudicators;
- Code of Hearing Officer Conduct administration;
- Recruitment for Workers’ Compensation Appeals Commission.

See AS 44.64.020(a)(4)-(8), AS 44.64.050, AS 44.64.090 & AS 23.30.007(d).

¹ Two new case categories were added (breach of security involving personal information hearings; PFD charitable check off appeals); a third category (real estate surety fund claims) was eliminated effective in 2010.

A. Adjudication Services

The adjudication services provided by OAH range from preparing proposed decisions based on written submittals of the parties in simple administrative appeals to conducting trial-like evidentiary hearings in complex matters. The services do not stop at conducting hearings and writing decisions. They can include use of alternative dispute resolution (ADR) methods. Using formal or informal ADR, or simply through good case management, OAH can resolve many cases within a matter of weeks. Others may remain active for many months, as the parties develop their positions and prepare for detailed presentation of highly technical evidence and argument on complex legal issues. Most fall somewhere between these two extremes.

The OAH ALJs are, by law, the final decisionmakers in only a few categories of cases. When the final decisionmaker is a board or commission, or a principal agency head, the adjudication services can include functioning as a legal adviser to that decisionmaker for the specific case.²

The table below illustrates the reach of OAH's adjudication services under its mandatory jurisdiction. That reach extends to most executive branch departments. The departments for which OAH does not provide services directly may be parties to disputes such as procurement protests that OAH hears on behalf of a separate executive branch decisionmaker.

Office of Administrative Hearings Mandatory Jurisdiction	
<i>Executive Branch Office, Agency or Entity</i>	<i>Case Category</i>
Office of the Governor	Human Rights Commission
Office of the Lieutenant Governor	Notaries
Departments of	
Administration	<ul style="list-style-type: none"> • Retirement and Benefits • Contract and Procurement • Claims for Reimbursement • Violent Crime Compensation • Breach of Security Involving Personal Information
Commerce, Community and Economic Development	<ul style="list-style-type: none"> • Licensing (Corporations, Businesses and Professions) • Banking and Securities • Insurance
Education and Early Development	<ul style="list-style-type: none"> • Teacher Certification • Permanent Fund Dividend (PFD) Execution

² OAH ALJs do not provide general legal advice to the decisionmaker but rather address legal questions for the decisionmaker only in the context of the specific case under consideration. The attorney general is the legal adviser to state agencies under most circumstances.

Environmental Conservation	<ul style="list-style-type: none"> • Environmental Permitting • Food Safety
Health and Social Services	<ul style="list-style-type: none"> • Facilities Licensing • Child Protection³ • PFD Execution
Public Safety	Alcoholic Beverage Control
Labor and Workforce Development	<ul style="list-style-type: none"> • Occupational Safety and Health • PFD Execution
Natural Resources	<ul style="list-style-type: none"> • Land Sale Contracts • Water Rights
Transportation and Public Facilities	Construction Procurement (portion ⁴)
Revenue	<ul style="list-style-type: none"> • Tax (original jurisdiction⁵) • Child support • PFD Eligibility & Fine/Forfeiture • Charitable Gaming • Unclaimed Property
University of Alaska	PFD Execution

1. Caseload

During 2008, OAH's active cases totaled 965, with 717 of those new cases that came in during the year and the rest cases carried forward. The chart below depicts the relative number of cases, divided into nine groups, on which OAH actively worked in 2008.⁶

³ The administrative child protection cases OAH hears for the Department of Health and Social Services relate to substantiation of abuse or neglect findings that may affect licensing or other decisions concerning children. These adjudications serve a purpose different from that of child protection cases heard by the courts.

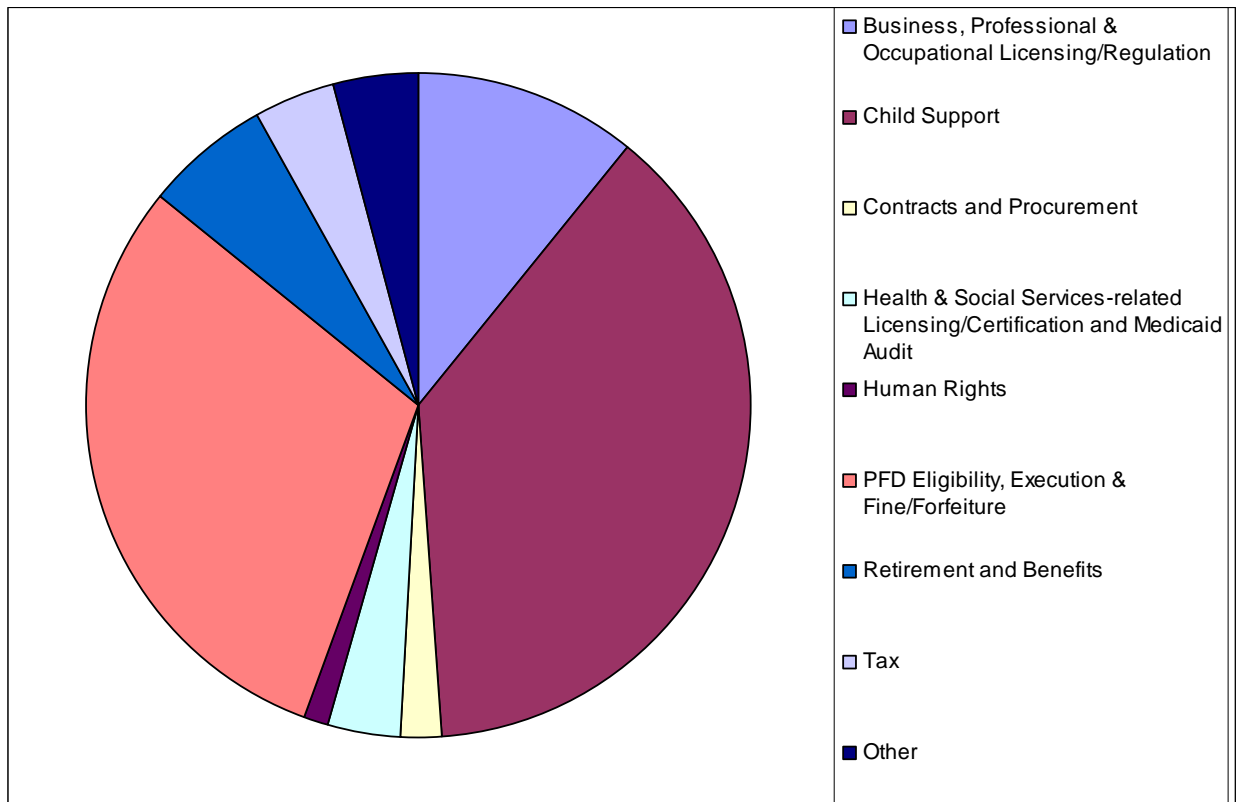
⁴ OAH's hears only some of the Department of Transportation and Public Facilities construction-related procurement cases under its mandatory jurisdiction. Construction cases subject to arbitration are exempted from OAH's mandatory jurisdiction.

⁵ Under AS 43.05.405, OAH has original jurisdiction over most tax appeals. This means that taxpayers dissatisfied with most tax enforcement decisions by the Department of Revenue can appeal directly to OAH.

⁶ OAH's caseload is divided into the nine groups listed in the table below, which provides the numbers-of-cases data for the chart on the next page. The first (Business, Professional & Occupational Licensing/Regulation) crosses several departments. The "other" group includes occupational safety and health; environmental conservation; post-secondary education; and violent crime victim's compensation, among others.

Business, Professional & Occupational Licensing/Regulation	104
Child Support	368
Contracts and Procurement	18
Health & Social Services-related Licensing/Certification & Medicaid Audit	35
Human Rights	12
PFD Eligibility, Execution & Fine/Forfeiture	291
Retirement and Benefits	60
Tax	38
Other	39
Total	965

What we were working on in 2008

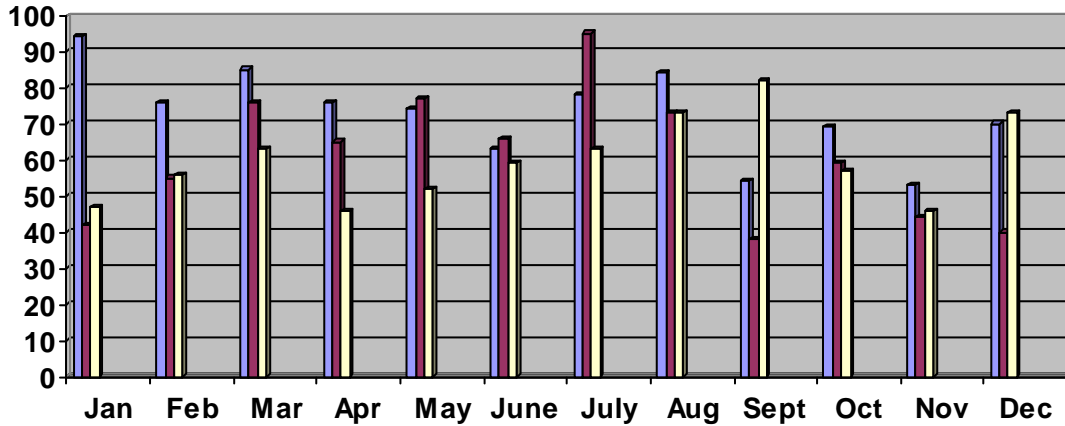


In addition to cases within OAH's original jurisdiction and required to be referred to OAH under AS 44.64.030(a), or referred under regulations designating OAH to hear them, the 965 cases encompass cases referred voluntarily by

- Administration (retirement and benefits waiver and coverage issues)
- Commerce, Community and Economic Development (insurance)
- Health and Social Services (certificate of need; Medicaid audit)
- Labor and Work Force Development (vocational rehabilitation)
- Public Safety (police officer certification and security guard licensing)
- Revenue (oil and gas property taxability and valuation)

New case referrals throughout 2008 averaged 60 per month. The chart below compares the pattern of new cases by month for 2006 (left columns), 2007 (middle columns) and 2008 (right columns). This comparison illustrates that spikes and dips occur in the rate at which new cases have to be added to the already-pending cases. These variations affect the timing of getting cases to hearing and final resolution.

Comparison of when the new cases came in: 2006, 2007 and 2008



Compared to 2007, the number of new case referrals was slightly lower, with 14 (or two percent) fewer new cases. Half of this small reduction is attributable to a 13 percent increase in agency use of the Notice of Denial tool provided by AS 44.64.060(b) to divert cases from the formal hearing track.⁷

The number of new cases in 2008 increased or decreased significantly in five groups compared to new cases in 2007.

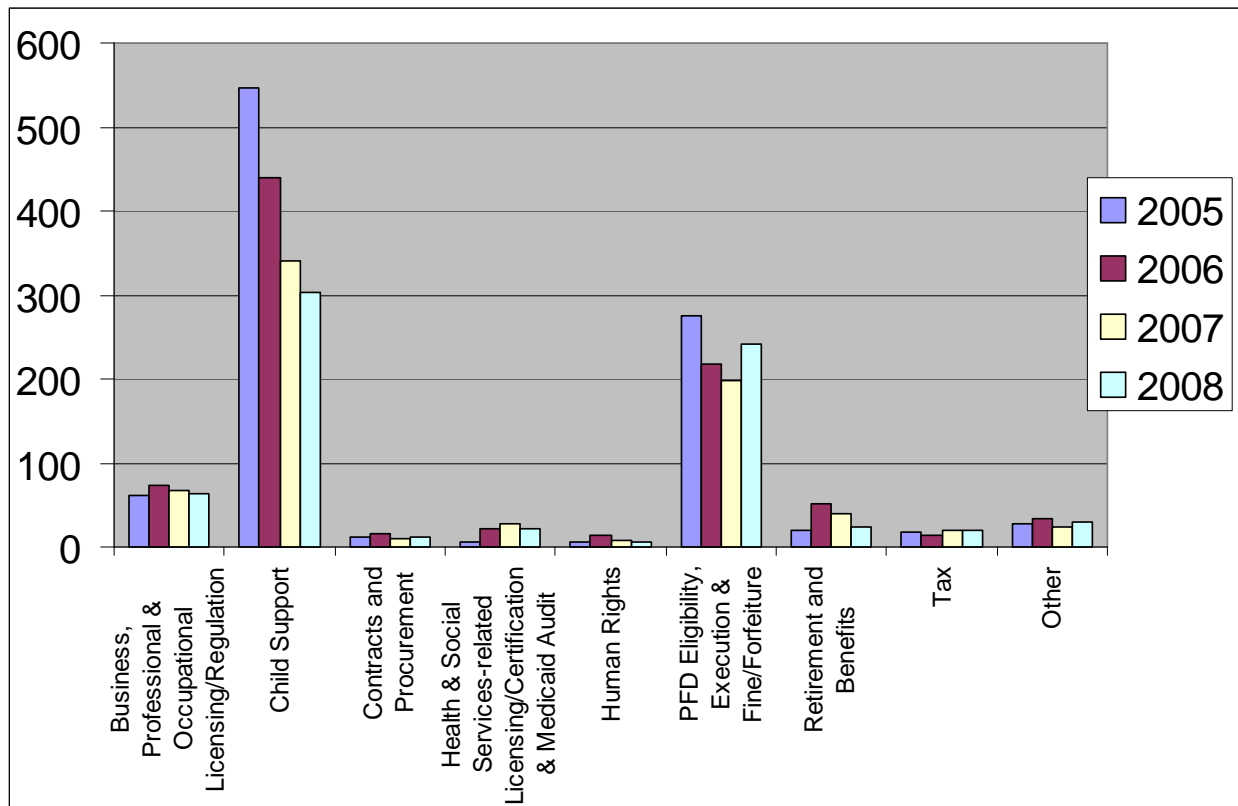
Category	Increase	Category	Decrease
PFD Eligibility, Execution & Fine/Forfeiture	22%	Child Support	11%
Other	26%	Health and Social Services-related Licensing and Certification	22%
		Retirement and Benefits	41%

Within the “other” group, the increase is largely attributable to several more occupational safety and health cases and a few more child protection (substantiated finding of abuse or neglect) cases coming in during 2008 compared to 2007. The number of “other” cases for 2008 is similar to the numbers for 2005 and 2006. This suggests that 2007 was atypical for this diverse grouping.

The sharp decrease in the number of retirement and benefits appeals is consistent with the trend since 2006, as shown in the comparison chart below. Similarly, the decrease in new child support cases is consistent with the trend since 2005, but the long history of Department of Revenue data from pre-OAH years suggests this is part of a natural cycle of ups and downs, similar to the cycle evident in the four-year comparison for PFD cases in the chart below, which shows that after a three-year downward trend, the number of those cases is increasing again.

⁷ The Departments of Education and Early Development, Health and Social Services, and Revenue collectively reported issuing 62 Notices of Denial, mostly for PFD eligibility and execution matters. This was an increase of seven cases diverted from the hearing track compared to 2007.

Comparison of New Cases: 2005-2008



During calendar 2008, OAH closed cases equal in number to 95 percent of the number new cases. The table below identifies the percentage of cases closed that were resolved on motions and by settlement, as well as what percentage led to requests for further consideration or appeals.

Case Resolution Data – 2008		
Cases Closed	679	70.4%
<i>Subset Resolved on Motions</i>	129	19%
<i>Subset Settled</i> ⁸	42	6.2%
Reconsideration Requested/Proposal for Action Filed ⁹	53	5.5%
Appeals Filed ¹⁰	14	1.5%
Cases carried over to 2009 (excluding cases on appeal to the courts)	259	26.8

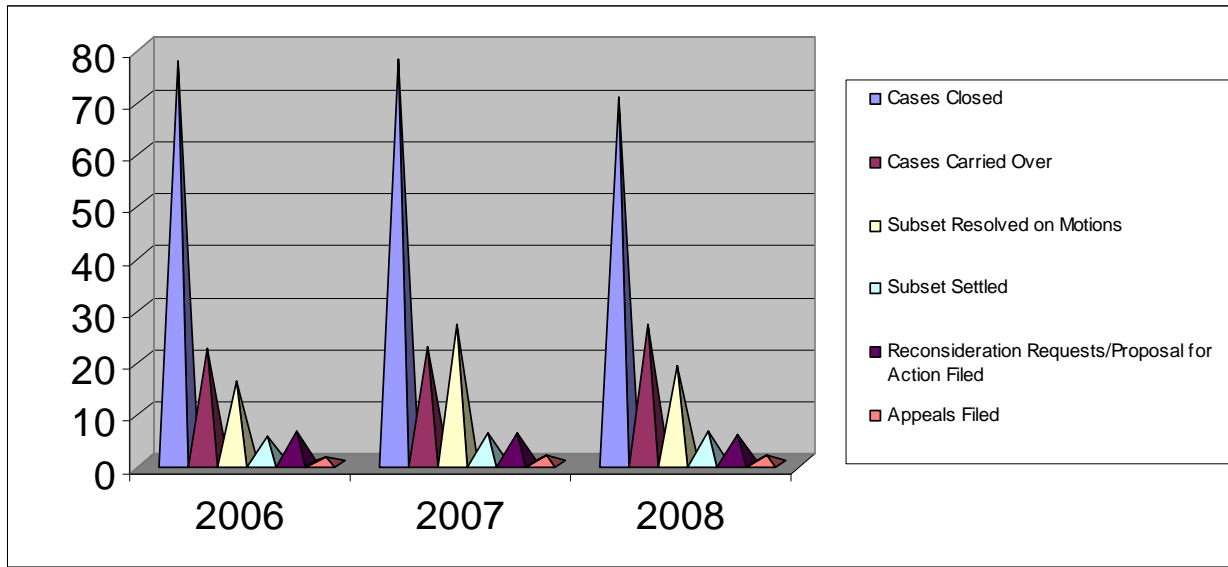
⁸ Eleven case were formally diverted for alternative dispute resolution (ADR) in 2008, a dramatic increase over the three cases diverted the prior year. The “settled” subset of closed cases does not include the dozens of cases resolved through informal ADR efforts that led to entry of a final decision by the ALJ on the consent of the parties.

⁹ For post-July 1, 2005 cases that are subject to AS 44.64.060, the option to file a “proposal for action” before the decision is made final functions as a substitute for requesting reconsideration, unless a separate statute continues to provide for post-final-decision reconsideration. 2 AAC 64.350.

¹⁰ By subject matter, the fourteen new superior court appeals filed in 2008 are follows: four retirement and benefits appeals; four PFD appeals; two professional licensing matters; two child support appeals; one contract claim; one tax appeal. In addition, one older professional licensing matter that had been on appeal to the superior court was further appealed to the Alaska Supreme Court.

As the following chart illustrates, the relative percentages of cases in which reconsideration requests or proposals for action were filed, cases appealed and cases carried over, as well as the subset of cases settled, remained fairly constant from 2006 to 2008. The percentage of cases closed was down about seven percent in 2008 compared to both 2006 and 2007. The percentage of cases resolved on motions returned almost to the 2006 low, suggesting that 2007 may have been an atypical year for resolving cases on motion.

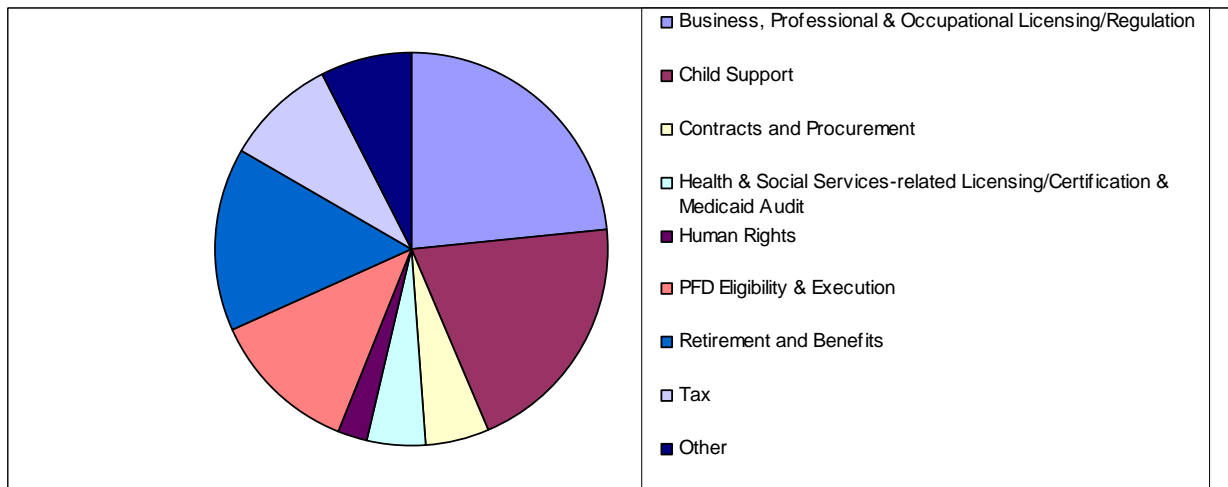
Comparison of Case Resolution Data: 2006 to 2008



2. *Time Devoted to Hearings and Related Work*

Though the total number of active cases in 2008 was smaller than 2007 (965 versus 1,006), this did not equate to a reduction in the time required to hear cases. OAH's ALJs collectively devoted over 9,930 hours to hearing cases and related work such as decision writing, ruling on motions, and reviewing record documents and submittals by the parties.

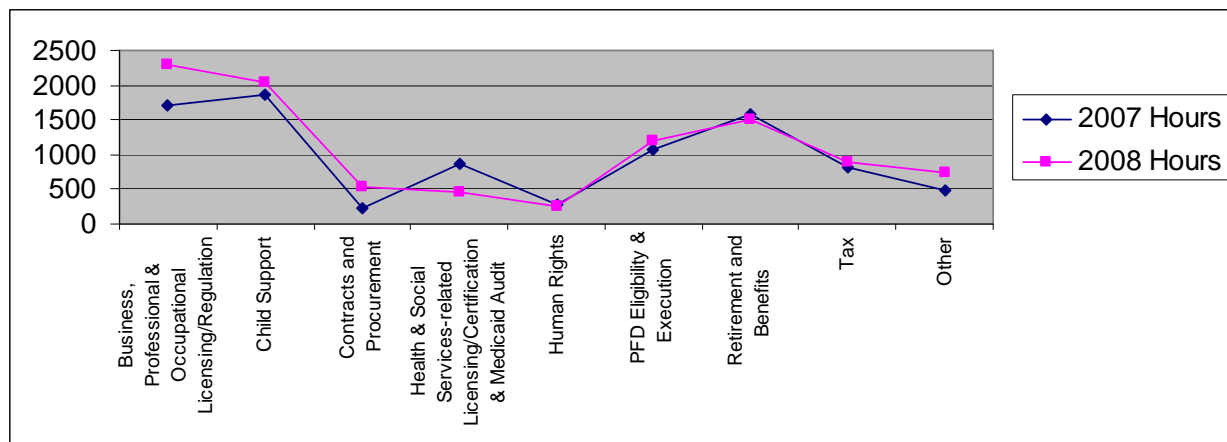
How we spent our time on cases in 2008



As the chart above illustrates, though the child support and PFD cases dominate OAH’s case docket in terms of the number of cases heard each year, they do not dominate the time spent on cases. Instead, the typically more complex cases in the licensing, retirement and benefits, and tax categories, though significantly fewer in number, typically consume much more time.

The more than 9,930 hours devoted to cases in 2008 is an increase of almost 1,000 hours compared to 2007. One factor contributing to the comparative increase was the dramatic reduction in cases resolved through motions. A case resolved through a motion (on purely legal issues or a combination of legal and factual issues but using the existing record) typically requires fewer hours. In a motion case, no time is required to prepare for and conduct a hearing, which can save several to dozens, and occasionally hundreds, of hours for a single case.

The following chart compares the relative amounts of time the ALJs collectively devoted to work on cases by group in 2007 and 2008.



This chart underscores the point that the number of cases coming in during any particular time period does not drive how much time is required to handle the cases during the same time period.

For instance, the number of new retirement and benefits cases in 2008 was down 41 percent, but the chart above shows that the hours spent on cases in this category was almost the same as in 2007. Another example is the PFD appeals: the number of new cases in 2008 was up 22 percent, but only a relatively small increase in hours devoted to those appeals resulted. The first group, which includes business and professional licensing, provides yet another example: new cases were down just slightly (from 67 to 64) from 2007 to 2008, but the hours devoted to handling the cases in the group was up by almost 600 hours in 2008.

Three variables explain this disconnect between the number of new cases in a category and the hours devoted to the category in a given reporting period: when the cases arrive; how long it takes to resolve them; and how complex they are. Except fast-track cases, a significant amount of the most time-consuming work (decision writing) for a case that comes in during the last two or three months of the calendar year is likely to be performed the following calendar year. Similarly, a case that comes in much earlier in a calendar year but which must be handled on a slower track (for instance, to allow for an attempt at alternative dispute resolution or to consider

motions before reaching the hearing stage) may see a significant amount of work performed the following calendar year. Finally, no matter when it comes in or how quickly it can be brought to resolution, a complex case typically will require many more hours of work than a less complex one, unless resolved by settlement.

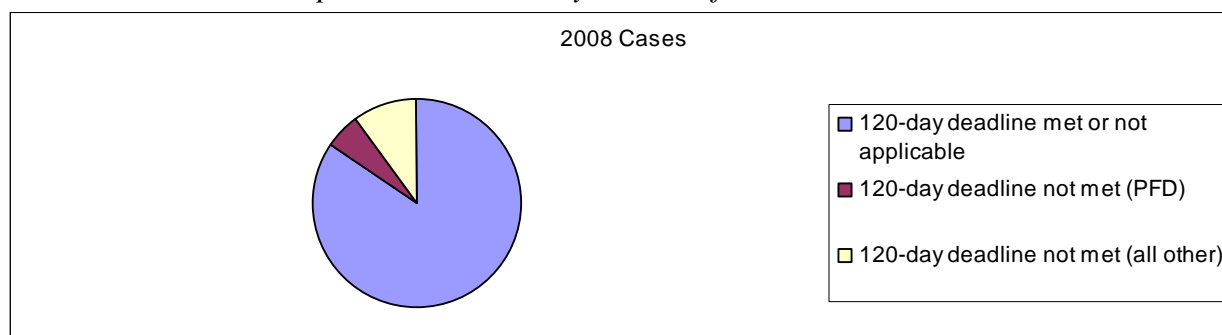
3. *Deadlines*

The cases OAH hears are subject to many deadlines. The OAH-specific deadlines imposed by AS 44.64.060 apply to most cases OAH hears.¹¹ In addition to the deadlines imposed by the OAH-specific statute, other statutes and regulations establish deadlines that apply to several case types. For instance, cease and desist order cases, summary suspension actions, some insurance cases, securities cases, child support cases, and education-related facility grant cases all are subject to shorter deadlines than those imposed by AS 44.64.060. Some case types have shorter or different deadlines for getting the cases heard or for issuing the decision, or for both.

The key deadline for OAH to monitor for purposes of this report, both as a measure of performance and to assess whether it realistically can be met or should be revised, is the 120-days-from-hearing-request deadline for issuance of a proposed decision. Under AS 44.64.060(d), that deadline can be extended only by agreement of the parties, with the consent of the chief ALJ. This extension-on-consent tool is used in the more complex or unusual cases in which 120 days from filing of the hearing request does not allow adequate time for the case to be heard and a proposed decision to be drafted.¹²

The chart below shows the proportion of cases closed by OAH in 2008 in which the 120-day proposed decision deadline was not met.

Compliance with 120-day deadline for 2008 closed cases



¹¹ The following categories of cases were exempted from the AS 44.64.060 deadlines: tax appeals, Human Rights Commission cases, occupational safety and health cases, Violent Crime Compensation Board cases, and Professional Teaching Practices Commission cases. Voluntary referrals from agencies not required to send cases to OAH may be exempted from the AS 44.64.060 deadlines if the referral agreement between the chief ALJ and the referring agency so provides.

¹² In addition to complexity of a case, the unavailable of the parties, witnesses or legal counsel due to medical conditions and emergencies, the need to await conclusion of a related case to make for a more efficient or consistent result, and late referral of cases have led to use of the extension-on-consent tool.

The cases in which the deadline was not met are separated into PFD and all-other categories to illustrate that 36 percent of the missed deadline cases are PFD cases. This reflects the relative priority given to the more time-sensitive cases and the history of a longer decision track for PFD cases. Before the AS 44.64.060 deadlines began to apply to them, PFD cases were on an eight to nine month decision track under Department of Revenue rules. OAH has reduced the previous eight to nine month track for PFD cases to a three to five month track in most instances.

OAH manages its cases with the goal of meeting all applicable deadlines to the greatest extent possible. This is challenging, particularly when the need to meet the shorter deadlines in large numbers of cases competes for ALJ time required to keep the rest of the cases on track for the 120-day proposed decision deadline. The goal of meeting that deadline in each case to which it applies sometimes must give way to the priority of resolving time-sensitive cases first.

Case assignments are managed to spread the work among the ALJs as evenly as possible. Because it is not possible to predict reliably how much time a case will require and because OAH has no control over the rate at which the cases come in, efforts to balance the workloads of individual ALJs to enable them to meet deadlines are not always successful.

That OAH cannot yet meet the 120-day deadline in all cases in which it applies and is not extended on consent should not be viewed as evidence that this statutory deadline is unrealistic and needs to be changed. The deadline was not met in just fifteen percent (105) of the 679 cases closed in 2008 to which it or a shorter deadline applied. A great many of the cases in which the deadline was met actually reached final resolution—not just a proposed decision—with 120 days. Also, the number of PFD appeals in which the deadline was not met drop to less than 50 percent of the number in 2007 (from 89 down to just 38). Further improvement in meeting the deadline can be expected going forward, except during any periods in which caseload spikes or ALJ vacancies halt or reverse the progress made on clearing the case backlog.

B. Peer Review

Peer review serves two purposes: it promotes consistency in decisionmaking and it provides informal training opportunities (for both the reviewed and the reviewing ALJ). OAH's peer review system consists of selectively assigning an ALJ to review the proposed decision and/or to observe the hearing conducted by another ALJ on a case-specific basis. The reviewing ALJ provides written or oral feedback to the reviewed ALJ. The reviewing ALJ also is available for consultations on questions of law or procedure.

Formal peer review assignments are made with the goal of ensuring that an ALJ venturing into a new subject area receives the benefit of informal training from a peer who has already worked in the subject area. This type of peer review has been and continues to be a key part of the training process for new ALJs. In 2008, a formal peer review assignment was made in 73 of the 717 new cases.

Group peer review of decisions or case management strategy is conducted when appropriate, such as when an ALJ faces an issue of first impression. Group peer review can be a

good tool to promote consistency among ALJs on such issues. Additionally, discussion sessions involving all of the ALJs are conducted one to two times each month on a variety of issues as part of the effort to promote consistency.

C. Publication

OAH is required to “make final agency decisions reached after administrative hearings available online through an electronic data base.” AS 44.64.090(a). In 2008, OAH launched its on-line publication project through which decisions are posted in a user-friendly, keyword searchable format on OAH’s web page. OAH has web posted more than 400 of its own decisions and provides links to on-line decisions posted by the Commercial Fisheries Entry Commission, the Regulatory Commission of Alaska, the Workers’ Compensation Appeals Commission and the Workers’ Compensation Board.

The publication project is well underway with OAH’s own decisions. OAH soon will begin the second phase of the project: obtaining and web posting administrative adjudication decisions from other agencies and the courts.

D. Regulations

OAH’s chief ALJ was given authority to “adopt regulations ... to carry out the duties of the office” as well as to “review and comment on regulations proposed by state agencies to govern procedures in administrative hearings.” AS 44.64.020(a)(8)&(11). In particular, the chief ALJ was required to adopt a hearing officer code of conduct, which applies to hearing officers of all agencies, not just to OAH ALJs. Regulations on procedures for OAH cases and for the Code of Hearing Officer Conduct have been adopted and took effect July 2, 2006. No amendments to the 2006 regulations were proposed in 2008.

OAH routinely tracks notices of other state agencies’ proposed regulations and reviews those that have the potential “to govern procedures in administrative hearings.” In 2008, OAH reviewed 109 sets of proposed regulations (an increase of 21 percent over 2007). Most did not implicate hearing procedures or did not raise any concerns about how those procedures were addressed. OAH commented on four sets of proposed regulations:

- (1) workers’ compensation hearing ethics regulations proposed by the Department of Labor;
- (2) hydropower project hearing process regulations proposed by the Regulatory Commission of Alaska;
- (3) regulations to implement the legislation concerning mortgage lenders and brokers proposed by the Department of Commerce, Community and Economic Development; and
- (4) PFD regulations proposed by the Department of Revenue.

E. Monitoring and Surveys

OAH is required to “survey administrative hearing participants and use other methods to monitor the quality of administrative hearings held by the office and other state agencies[.]” AS 44.64.020(a)(7). The purpose of the surveys and other monitoring is to enable the chief ALJ to include in the annual report recommendations for statutory changes.

OAH continued the written survey throughout 2008, sending surveys to parties in past OAH-heard cases and adding Workers’ Compensation Appeals Commission cases to the survey effort. From the context it was clear that some responses to the surveys for the appeals commission cases were really directed at the underlying Workers’ Compensation Board proceedings.

Responses were overwhelmingly positive and narrative comments were generally constructive, but by a ratio of almost two to one, the persons returning the survey forms were happy with the outcome of the case. This may have influenced the perception of the responding participants. Without regard to satisfaction with the outcome, however, 82 percent of the people responding were satisfied with the adjudication process overall. The data from surveys returned as of December 31, 2008, is summarized in Appendix A.

The written survey process will continue in 2009 and, resources permitting, will expand to include parties in cases heard by some or all of the following executive branch adjudicatory agencies:

- Commercial Fisheries Entry Commission
- Department of Education and Early Development (special education hearings)
- Department of Health and Social Services (public benefits hearings)
- Department of Labor and Workforce Development (employment security hearings)
- Division of Motor Vehicles
- Regulatory Commission of Alaska
- Workers Compensation Board

In 2008, the chief ALJ continued to conduct informal, oral surveys of counsel who regularly represent parties in administrative hearings and of parties in OAH-heard cases who contact the office about the process.

F. Training

OAH’s training mandate extends beyond providing training to OAH employed or retained ALJs and hearing officers. It requires that OAH

make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication, substantive law, alternate dispute resolution, and technical matters for administrative law judges *and other administrative adjudicators*[.]

AS 44.64.020(a)(6) (emphasis added). To satisfy this mandate, OAH's training plan consists of the following components:

- Informal training for OAH ALJs through peer review assignments, periodic conferences among the ALJs, and circulation of case decisions and other materials of interest;
- Formal training for OAH ALJs by attendance at continuing education courses offered by professional associations and the National Judicial College;
- Informal training for state administrative adjudicators by email circulation or web posting of periodic electronic bulletins/newsletters reporting on developments of interest in administrative law;
- Formal training for non-OAH administrative adjudicators through participation by OAH representatives in periodic, agency-specific conferences;
- Formal training for administrative adjudicators in the form of course offerings made available by OAH.

During 2008, OAH provided formal training for its ALJs and for the following adjudicatory boards/commissions and agency personnel who participate in the adjudication process:

- Board of Pharmacy (February);
- National Judicial College on-line evidence course for two ALJs (March & April);
- Several subjects covered in an all-ALJs' two-day training meeting (August);
- Agency Record training course for Department of Environmental Conservation employees (December).

The deputy chief ALJ presented a continuing legal education (CLE) course on ethical issues and time management appearing before OAH for the Alaska Bar Association's administrative law section.

Alaska was the venue for the annual conference of state central hearing panel directors. Five of OAH's ALJs contributed to the training provided and received some training as a result. Subjects included case management systems, ethics, and administrative procedures, among others. Training was provided to an adjudicator from the Regulatory Commission of Alaska, who was an invited guest for one session. In connection with the conference, OAH facilitated meetings about training opportunities between a representatives of the National Judicial College and five agencies: (1) Alaska Labor Relations Board; (2) Alaska Public Offices Commission; (3) Division of Motor Vehicle; (4) Workers' Compensation Appeals Commission; and (5) Workers' Compensation Board.

G. Code of Hearing Officer Conduct Administration

In addition to developing the Code of Hearing Officer Conduct, the chief ALJ plays an on-going role in administering the code. By statute, complaints alleging violation of the code must be considered by the chief ALJ, who determines whether they meet the standard for referral to the attorney general for investigation.¹³ Under the code, mitigation of an alleged violation may exist if the accused hearing officer relied upon a written opinion from the chief ALJ or the attorney general.¹⁴ The chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

In 2008, one complaint of violation of the Code of Hearing Officer Conduct was filed with the chief ALJ. The chief ALJ fielded several informal questions about code requirements and issued one formal written opinion.

H. Workers' Compensation Appeals Commission Recruitment

Under AS 23.30.007, the chief ALJ has the duty to recruit for vacancies on the Workers' Compensation Appeals Commission and to appoint persons to serve as the *pro tempore* chair of that commission if the chair is absent or cannot hear an appeal due to a conflict. The chief ALJ reviews the qualifications of the applicants for commission positions and must forward to the Governor at least three names for consideration when the attorney-chair position is vacant and at least two names for each commissioner vacancy.

In 2008, the chief ALJ completed recruitment of applicants for a representative of employee commission seat with a term expiring in March of that year and began recruitment for a representative of employers commission seat for which the term expires in March 2009. Recruitment was by direct mailing to past and present members of the Workers' Compensation Board, because the commissioners (other than the chair) must have served on that board. All applicants for the 2008 vacancy met the minimum qualifications and their names were forwarded to the governor.

No *pro tempore* chair appointments were required in 2008.

III. Recommendations of the Chief Administrative Law Judge

In addition to the description of activities, OAH's annual report is to include "recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies[.]" AS 44.64.020(a)(7). OAH continues to examine the need for changes in a variety of subject areas, as described below.

¹³ AS 44.64.050(c). Complaints alleging violations by the chief ALJ are considered by the attorney general. AS 44.64.050(e).

¹⁴ 2 AAC 64.060(c).

A. Recommendation: Amend OAH's Statutes

A few provisions in AS 44.64 should be amended to address issues OAH has identified in working with the procedural and other requirements in effect for more than two full reporting periods. Examples of such issues include:

(1) limitations posed by the deadline for final decisionmaker action being triggered by distribution of the proposed decision, which

(a) can leave the final decisionmaker with inadequate time to consider the parties' proposals for action, especially if transmittal of the proposals is delayed due to mail service problems, and

(b) can restrict the ability to permit responses to proposals for action even in cases in which an opportunity to respond is necessary to provide due process;

(2) lack of a deadline for final decisionmaker action on a revised proposed decision issued following a return of the case to the ALJ for supplemental work under AS 44.64.060(e)(2);

(3) lack of a provision authorizing an ALJ or chief ALJ override of a party's refusal to consent to an extension of the AS 44.64.060(d) deadline if an override is necessary to provide due process.

B. Recommendation: Amend the Administrative Procedures Act (APA)

The APA adjudication provisions (44.62.330 – AS 44.62.630) should be amended to modernize the antiquated provisions on (1) initiation of proceedings; (2) amendment of accusations; (3) default hearing procedures; (4) hearing notice requirement; (5) hearing venue; (6) hearsay limitations; (7) distribution of proposed decisions; and (8) reconsideration. The amendments also should harmonize APA adjudication requirements with those of OAH, and provide more flexibility in hearing processes, whether the hearings are conducted by OAH or by agencies directly.

C. Recommendation: Provide Specific Statutory Subpoena Power

Appropriate provisions should be added in AS titles 14 and 39 to give OAH subpoena power in retirement and benefits cases. OAH hears Public Employees' Retirement System (PERS) and Teachers' Retirement System (TRS) cases under a grant of broad jurisdiction in those two titles, as the successor to the adjudicatory role of the former PERS and TRS boards. The former boards had subpoena power under regulations subsequently repealed by the Department of Administration following changes to the underlying statutory authority. New statutory authority is necessary for OAH to issue subpoenas in these cases.

D. Recommendation (contingent): Remove PFD Execution Appeals from APA

AS 43.23 should be amended to remove the PFD execution appeals from the requirement for an APA hearing, in favor of a simpler, more flexible hearing process, better suited to these narrowly-focused appeals. This recommendation is contingent upon the outcome of Recommendation B. If the APA adjudication provisions are amended, as suggested in that recommendation, to include more flexibility to conduct hearings less formally, it likely will be unnecessary to remove the PFD execution appeals from APA coverage.

IV. Conclusion

In 2008, OAH's activities continued to focus on its core function—adjudication of executive branch cases. Having reached the end of its fourth year of operations, OAH has arrived at the point at which it is no longer a start-up agency. Case management practices are working well. Much of the previously persistent backlog of cases has been cleared. The first phase of the on-line publication project is successfully launched. OAH looks forward to working on the second phase of that project, and to turning more attention to the training and monitoring functions, in the coming years, while maintaining high standards for the delivery of fair, efficient and cost effective hearings.

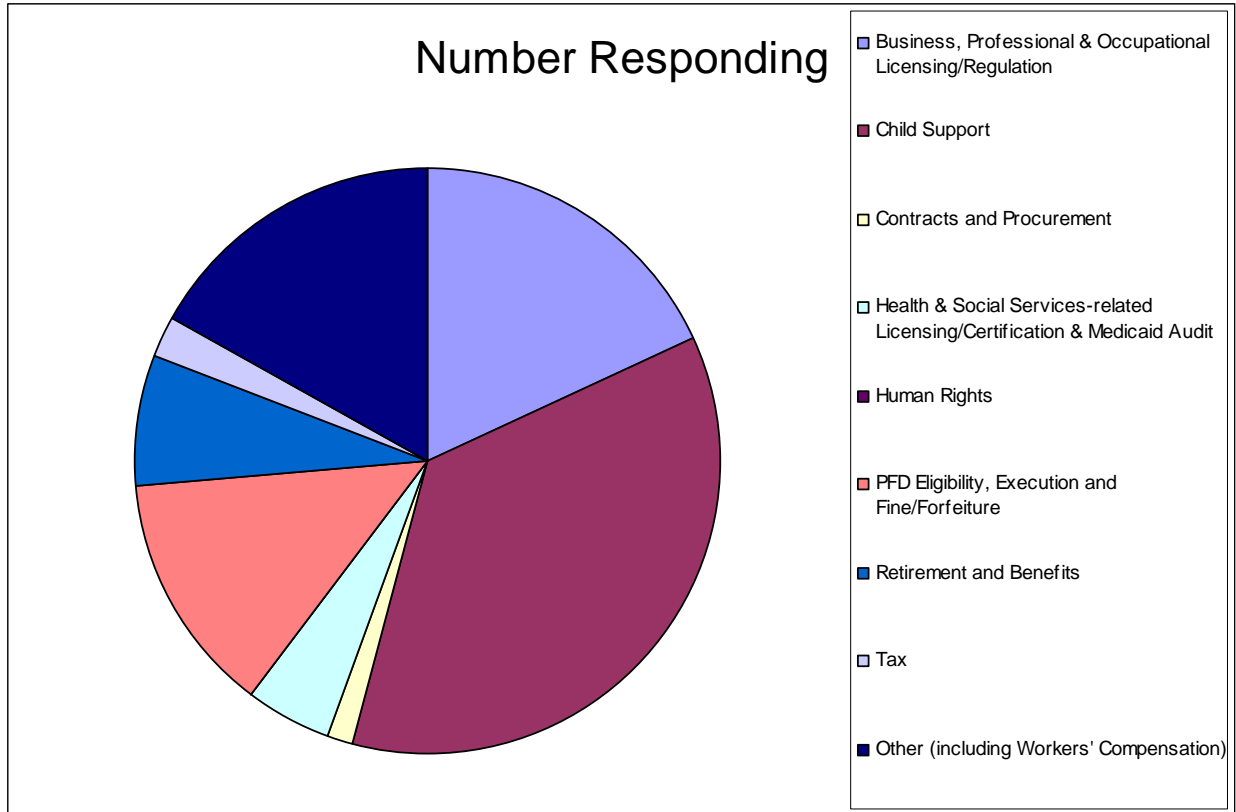
Submitted this 31st day of January, 2009.

Terry L. Thurbon
Chief Administrative Law Judge

Appendix A

Survey Results: January 2007-December 2008

Number of Responses by Case Group



Demographics of Hearing Participants Responding

Question	Number Responding				
	What was your role in this case?	Private Party		Agency Party	
	39		19		16
Where do you live?	Rural Alaska		City in Alaska		Outside Alaska
	4		63		4
Including this one, in how many hearings have you participated?	One	2-5	6-10	11-20	20 or more
	27	17	7	2	19

Administrative Law Judge/Hearing Officer	Yes	No	N/A
1. Did the judge/hearing officer start the proceedings on time?	77	1	3
2. Was the judge/hearing officer familiar with the issues in the case?	74	5	1

3. Did the judge/hearing officer pay attention during the proceedings?	77	2	2
4. Did the judge/hearing officer show you respect?	78	0	2
5. Did the judge/hearing officer remain even-tempered in the proceedings?	77	2	2
6. Did the judge/hearing officer give you (or your attorney) opportunities to speak?	75	1	4
7. Did the judge/hearing officer make clear decisions and rulings during the hearing, such as when objections were raised or requests were made?	70	4	6
8. Did the judge/hearing officer resolve problems that came up during the case fairly and efficiently?	66	7	7
9. Did the judge/hearing officer issue written decisions and orders in a timely fashion?	62	11	5

Written Documents	Yes	No	N/A
1. Was information provided in notices useful?	65	2	2
2. Were decisions and orders written in clear, understandable language?	62	4	2
3. Did the decision describe the facts clearly and accurately?	66	8	3
4. Did the decision and any orders include clear explanations of the law?	67	6	3
5. Did the decision's analysis include enough detail to explain the result?	65	7	3

Facilities and Staff	Yes	No	N/A
1. Were hearing support staff helpful in answering general (non-legal) questions or redirecting calls to others who could answer them?	58	6	15
2. Was the location of the hearing room accessible?	57	1	21
3. For in-person hearings: was the hearing room (size, set up, temperature) suitable for the type of proceeding?	56	2	21
4. For telephone hearings: was the sound quality of the telephone connection good?	49	2	28
5. For participants who listened to a recording of the hearing or other proceedings: was the sound quality of the recording adequate?	20	1	54

Overall Satisfaction	Yes	No
Do you agree with the final result in the case?	48	25
Whether or not you agree with the final result, were you satisfied with the hearing process overall?	64	14