

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

January 31, 2016

Office of Administrative Hearings
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I. Introduction

The Office of Administrative Hearings (OAH) is an independent agency within the Department of Administration charged with providing administrative adjudication services, regulatory review, and training. *See* AS 44.64.010 – AS 44.64.020. OAH is the state executive branch’s central hearing panel. It was created “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 twelfth such report. It covers OAH’s activities for calendar year 2015.

II. Activities of the Office of Administrative Hearings

For reporting purposes, OAH’s activities are grouped into eight categories drawn from the statutory duties of OAH and the chief ALJ. The first is OAH’s core function, and the rest are its ancillary duties. The activities are:

- 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; and
- 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).

A. Adjudication Services

OAH’s adjudication services range from preparing proposed decisions based on written submittals of the parties in simple administrative appeals to conducting multi-day trial-like evidentiary hearings in complex matters. The services do not stop at conducting hearings and writing decisions. They also 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, engage in motion practice, and prepare for detailed presentation of highly technical evidence and argument on complex legal issues. Most cases fall somewhere between these two extremes.

The OAH ALJs are, by law, the final decisionmakers in only a few case categories. 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.¹

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 nonetheless 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 | <ul style="list-style-type: none"> • Human Rights Commission |
| Office of the Lieutenant Governor | <ul style="list-style-type: none"> • 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 • Alcoholic Beverage Control • Marijuana |
| Education and Early Development | <ul style="list-style-type: none"> • Teacher Certification • PFD Execution |
| 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 Protection² |

¹ 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.

² 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 facility or foster care licensing or other decisions

| | |
|--------------------------------------|---|
| | <ul style="list-style-type: none"> • Medicaid benefits, audits & rates • Public assistance benefits • PFD Execution |
| 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 | <ul style="list-style-type: none"> • Construction Procurement (portion³) |
| Revenue | <ul style="list-style-type: none"> • Tax (original jurisdiction⁴) • Child Support • PFD Eligibility, Charitable Contribution & Fine/Forfeiture • Charitable Gaming • Unclaimed Property • Film Tax Credits⁵ |
| University of Alaska | <ul style="list-style-type: none"> • PFD Execution |

1. *Caseload*

During 2015, OAH’s active cases—that is, the number of cases that were open or being managed in some fashion at some point during the year—totaled approximately 2,435. New cases that came in during the year totaled 1,656.

Growth in overall case intake had been the central theme of the 2012-2014 period in OAH’s history, driven largely by an enormous surge in Medicaid services appeals. This trend reversed shortly after the beginning of 2015, with case *intake* falling back to a little below the 2013 level. The office’s workload remained extremely high during 2015—indeed, work production was higher than in any prior year—because of the need to work through the backlog of cases that had built up in the frenetic last months of calendar year 2014.

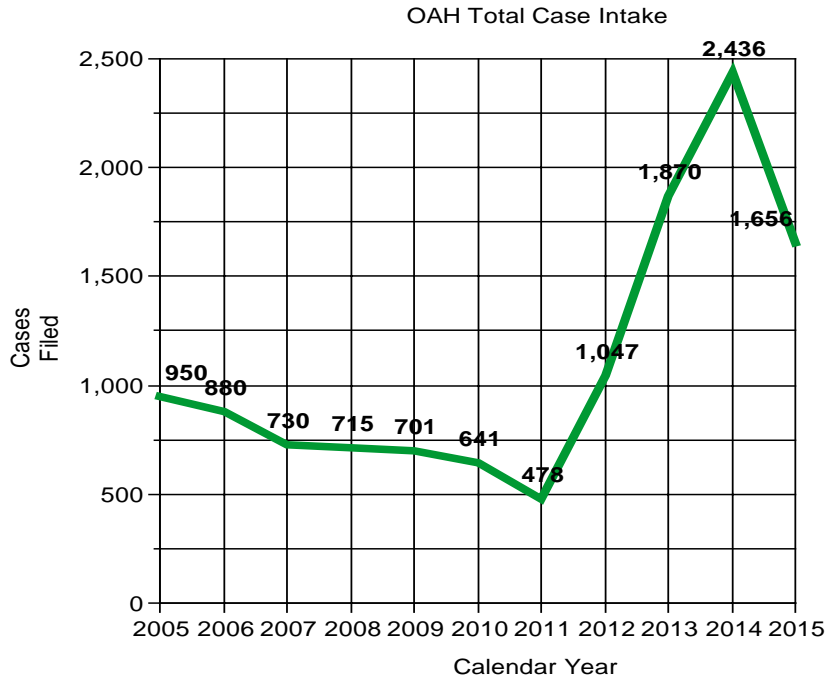
The graph which follows shows the case intake trend over the eleven years since OAH’s creation:

concerning children. These adjudications serve a purpose different from that of child protection cases heard by the courts.

³ OAH 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. DOT&PF sends some additional cases to OAH on a voluntary basis.

⁴ Under AS 43.05.405, OAH has original jurisdiction over most tax appeals. In this area, OAH functions as the approximate state equivalent of the United States Tax Court.

⁵ Although SB 39 repealed most of the film tax credit statutory provisions, there is still litigation arising out of appeals instituted prior to the effective date of SB 39 and appeals under the surviving statutory provisions of this program.



The table below focuses on OAH’s overall active 2015 caseload (which is a larger universe than case intake, graphed above), to give a sense of the distribution of our effort over the course of the year. However, one must remember that not all cases are equal: a typical procurement, human rights, or professional licensing case requires about five times as much ALJ time as a typical Medicaid services case, which in turn requires about five times as much ALJ time as a typical Food Stamps case. More specifically, the substantiation of abuse and neglect cases and the licensing/certification cases in the Health and Social Services sector that have grown dramatically in volume in 2015 are far more demanding on ALJ time than the Medicaid and public assistance benefits cases, which have declined during the year. That being said, staff resources (as opposed to ALJ resources) are burdened approximately equally regardless of the case type. The table below is divided into eleven groups. The first (Business, Professional & Occupational Licensing/Regulation) crosses several departments. The “Other” group does as well. It includes occupational safety and health, environmental conservation, Public Offices Commission, violent crime victim’s compensation, and workers’ compensation, among others. The column on the right shows percentage growth or decrease over one year (since 2014).

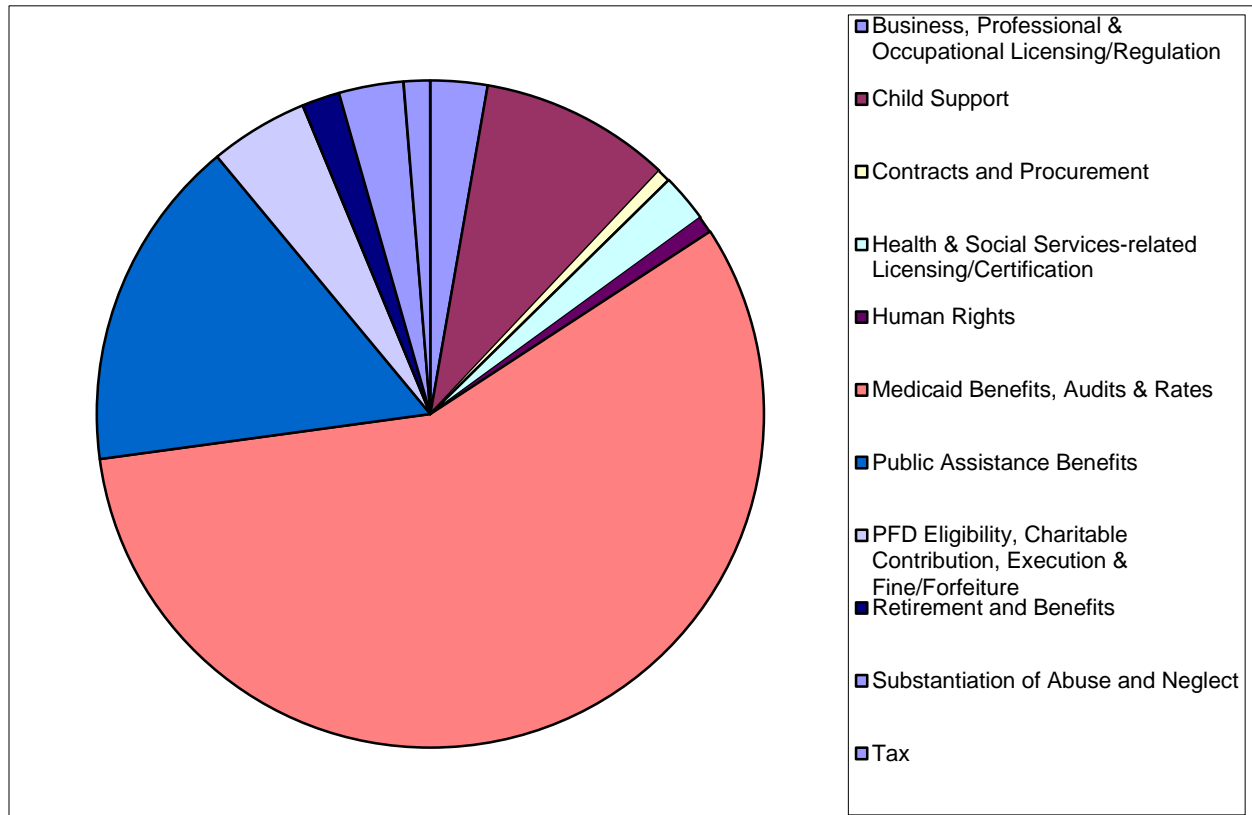
Number of active cases in 2015

| | | |
|---|-------|------|
| Business, Professional & Occupational Licensing/Regulation | 66 | -8% |
| Child Support | 223 | -17% |
| Contracts and Procurement | 15 | -32% |
| Health & Social Services-related Licensing/Certification | 56 | +33% |
| Human Rights | 20 | -17% |
| Medicaid Benefits, Audits & Rates | 1,371 | -22% |
| Public Assistance Benefits | 388 | -24% |
| PFD Eligibility, Charitable Contribution, Execution & Fine/Forfeiture | 115 | +8% |

| | | |
|---|--------------|-------------|
| Retirement and Benefits | 44 | +29% |
| Substantiation of Child Abuse and Neglect | 75 | +178% |
| Tax | 31 | +38% |
| Other ⁶ | 21 | -42% |
| Total | 2,425 | -18% |

The chart below depicts the relative number of cases on which OAH actively worked in 2015, divided into the eleven groups. The chart is derived from the data in the above table.

What OAH was working on in 2015



During calendar year 2015, OAH closed approximately 2,171 cases, a figure that is 131 percent of new cases accepted. The fact that OAH closed more cases than it opened reflects the fact that 2015 was a year of clearing the backlog that developed in the prior year; indeed, OAH had to engage two temporary administrative law judges whose primary role was to resolve outstanding cases.

Approximately 100 cases were diverted to formal ADR (usually mediation) supervised or presided over by an administrative law judge. Many others were resolved through efficient case

⁶ The “Other” category has been reduced in 2015 to exclude substantiation of abuse and neglect (“SAN”) cases, which are now treated as an independent category. If SAN cases were included in this category as they were in the past, the number of cases would be 111, and the change since 2014 would be +76%.

management techniques, including informal ADR used to reach agreement on consent orders or stipulations, as well as through voluntary dismissal due to agency concession or private party withdrawal. Six hundred sixty-seven full-dress decisions were issued (in addition to thousands of lesser orders).

Few OAH decisions are appealed to the courts. Court appeals were filed in 22 of OAH's cases during 2015. OAH staff assembled the records for these appeals.

2. *Time Devoted to Hearings and Related Work*

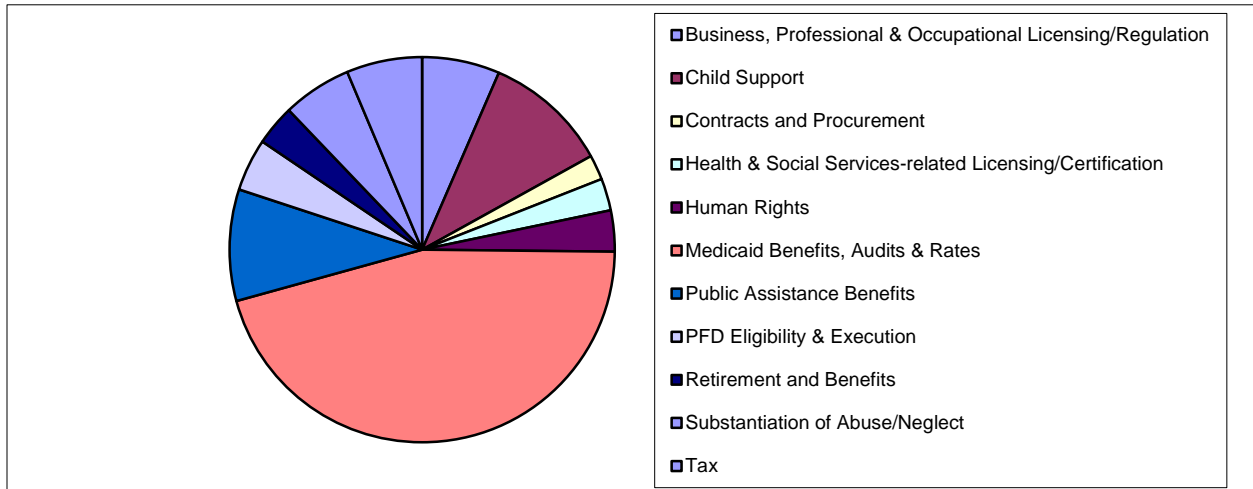
OAH's ALJs collectively devoted 15,253 hours to hearing or mediating cases and to related work, such as reviewing evidence, researching the law, ruling on motions, and writing decisions.

The commitment of hours is broken out below into twelve areas; these are the same as the groupings used in the case intake data in the preceding section. In some respects, the trends do not track the case intake and active cases trends shown above. Some of this difference in the trends relates to working through the backlog from the explosion of our caseload in 2014; thus, we had to devote even more hours to Medicaid work in 2015 than in 2014, even though the amount of *new* Medicaid work coming into the office was declining in 2015.

| Grouping | 2015 Hours | Change |
|--|-------------------|---------------|
| Business, Professional & Occupational Licensing/Regulation | 977 | +24% |
| Child Support | 1,567 | -17% |
| Contracts and Procurement | 314 | -40% |
| Health & Social Services-related Licensing/Certification | 401 | -18% |
| Human Rights | 520 | +202% |
| Medicaid Benefits, Audits and Rates | 6,835 | +28% |
| Public Assistance Benefits | 1405 | -29% |
| PFD Eligibility & Execution | 662 | +86% |
| Retirement and Benefits | 510 | -1% |
| Substantiation of Child Abuse and Neglect | 869 | +118% |
| Tax | 952 | +48% |
| Other | 241 | -59% |
| Total | 15,253 | +12% |

A pie chart depicting the same data follows:

How we spent our time on cases in 2015



3. *Deadlines*

OAH cases are subject to many deadlines. OAH-specific deadlines imposed by AS 44.64.060 apply to most, but not all.⁷ The most important of these is the 120-day time limit to take a case from hearing request all the way to issuance of a proposed decision. In addition to 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 matters, child support appeals, 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 when the case is heard or for issuing the decision, or for both.

Final decision deadlines usually are calculated relative to a triggering event, such as issuance of a proposed decision or the date the record closes following the hearing. Tax appeals, for instance, are subject to a final decision deadline 180 days after record closure.

Nearly all of the Health and Social Services case categories transferred to OAH under Executive Order 116 are subject to short timelines for reaching a **final**, not just proposed, decision. For Medicaid benefits and most public assistance benefits cases, the final decision is due 90 days after the hearing request is filed. For Food Stamps, it is even shorter, at 60 days. This is driven in large part by federal program requirements.

Historically, the key deadline OAH monitored for purposes of this report has been the 120-day deadline from hearing request to issuance of a proposed decision. With the addition of the high-volume Health and Social Services “Fair Hearings” cases and the short final decision deadlines they bring, OAH has also monitored these final decision deadlines.

⁷ 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.

Under AS 44.64.060(d), the 120-day deadline to proposed decision can be extended only by agreement of the parties, together 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 issued.⁸

In 2014, the 120-day deadline was met or not applicable in 95 percent of the 2,093 cases OAH closed. The 120-day deadline was exceeded in five percent of cases closed, which corresponded to 17.8 percent of the 601 full decisions issued during that year. In 2014, final decisions were issued after the applicable deadline in four percent of cases closed, which corresponded to 13.8 percent of the 601 cases brought to closure through a full decision.

It was not possible to generate a timeliness statistic for 2015. This is because OAH transitioned from an essentially manual system to an automated case management system in 2015, and it was not practical to migrate the data in a way that would make accurate statistics possible during this transition year. However, there is no question that the timeliness statistics, if they could be generated, would be lower than normal for 2015 as a whole. During the surge in Medicaid services referrals in late 2014 and early 2015, the referring agency was sending over the majority of the referrals after much, if not all, of the prescribed period to decide the case had already expired. It would not have been possible to complete the cases within the deadline. Moreover, OAH was overwhelmed with the volume of cases, and processing times were higher than normal since multiple hearings each day meant that there was little time available to write decisions.

To resolve this crisis, OAH hired two temporary administrative law judges during the summer, and regular ALJs worked extra hours. The number of overdue cases declined from nearly 100 in late June to eleven as of December 31, 2015.

A great many of the cases reached final resolution—not just a proposed decision—within much less than 120 days, frequently within fewer than 50 days for fast-track cases such as child support and public assistance benefits.

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 feedback to the reviewed ALJ. The reviewing ALJ also is available for consultations on questions of law or procedure.

In 2015, a formal peer review assignment was made in 411 of the 1,656 new cases. Formal peer review assignments are made with the goal of ensuring that an ALJ venturing into a

⁸ In addition to the complexity of a case, the unavailability of the parties, witnesses or legal counsel, 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.

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.

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 periodically 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). The publication function was largely suspended during the first half of 2015 due to the crisis in OAH’s caseload. During the summer, unpaid interns were used to prepare a large number of cases for publication, and the publication process has recently resumed. Unfortunately, posting cases to our website remains a labor-intensive process involving significant time commitments by both OAH staff and DOA-ETS staff, with multiple, alternating “touches” by both staffs before a case is on-line. We have a project underway with DOA-ETS to eliminate virtually all reliance on their resources for publishing and to make publishing a one-step process for our own staff.

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 2015. A comprehensive regulations project is anticipated in 2016.

OAH routinely tracks notices of other state agencies’ proposed regulations, looking for those that have the potential “to govern procedures in administrative hearings.” In 2015, OAH reviewed all proposed regulations by all executive branch agencies. The vast majority did not implicate hearing procedures. OAH formally commented in detail on the proposed marijuana regulations, and provided informal (pre-promulgation) feedback prior to issuance of public comment drafts in other cases.

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.

Late in 2014, OAH revamped the format of its survey and put the survey on-line. The objective was to streamline the processes of submitting comments and collating the comments received. Regrettably, the on-line format has led to a significantly reduced response rate in 2015. We are concerned about the low response rate and are instituting reforms in 2016 to generate a higher rate of interest in responding to our survey.

Responses were generally positive and narrative comments were more often than not constructive. Even if not satisfied with the outcome of the case, the majority of people responding were satisfied with the adjudication process overall. The data from the 2015 on-line surveys is summarized in Appendix A.

F. Training

OAH's training mandate extends beyond providing training to OAH ALJs and state employed or retained 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, conferences among the ALJs on a periodic basis, 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.

In 2015, OAH held an in-service day for its ALJs one weekend in September and several ALJs gave presentations on ethics, mediation, and effective case management. Also during 2015, two new OAH ALJs attended the basic ALJ training course presented by the National Judicial College. Six ALJs furthered their training by attending webcast seminars presented by one of the following entities: the National Judicial College, the American Bar Association, the

University of Washington, the Alaska Bar Association, and the California Bar Association. Two ALJs attended Department of Education and Early Development training for conducting special education hearings, and five ALJs attended Alaska Bar-sponsored programs. In conjunction with the annual central hearing panel directors' conference, the chief and deputy chief attended education sessions covering a variety of tribunal management issues. In response to the State's fiscal crisis, one ALJ attended the National Conference of State Tax Judges at his own expense, another ALJ attended the National Association of ALJs conference at his own expense, and the chief ALJ attended a course for presiding judges at the National Judicial College and the Alaska Bar Conference at her own expense.

The chief ALJ in 2015 presented a program about OAH to the Alaska Bar Association's Administrative Law section. OAH ALJs also provided training to new agency representatives at the Department of Health and Social Services, to the Commissioners of the Local Boundary Commission, and to employees in the State's Child Support Services Division.⁹ In addition, one ALJ made a presentation about TAPS (pipeline valuation) to the National Conference of State Tax Judges.

G. Administration of Code of Hearing Officer Conduct

The chief ALJ plays a role in administering the Code of Hearing Officer Conduct. 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.¹⁰ 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.¹¹ The chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

In 2015, five complaints of violations of the Code of Hearing Officer Conduct by hearing officers were filed with the chief ALJ, but four fell below the standard for referral to the attorney general. No formal ethics opinions were issued; however, one informal advisory opinion was provided.

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.

⁹ This training session focused on evidentiary issues in hearings before OAH, and was conducted by a long-time ALJ who retired shortly before the training session took place.

¹⁰ AS 44.64.050(c). Complaints alleging violations by the chief ALJ are considered by the attorney general. AS 44.64.050(e).

¹¹ 2 AAC 64.060(c).

In 2015, the chief ALJ conducted recruitment of applicants for one vacancy on the commission. A slate of qualified applicants was referred to the governor's office.

I. Innovations

1. Program Innovations

After learning from another state that an early mediation program in Medicaid services cases could result in substantial savings to the State of Alaska and better address the needs of Medicaid recipients, OAH initiated a mediation pilot project in December of 2015. To run the pilot, OAH recruited an unpaid law clerk, who is a talented individual with a prior career in state government. The pilot consisted of 30 cases, and generated net savings to the state within that set of 30 cases of more than \$35,000, comprised of approximately \$17,000 in avoided legal costs and \$18,000 in reduced Medicaid program costs due to faster termination of unneeded services.¹² OAH hopes to implement the pilot on a program-wide basis in the Medicaid services docket, but doing so will require some additional investment, since relying on donated labor and training on a large scale, long-term basis is not feasible. Despite the additional costs of training and paying a mediator, if OAH is able to apply the pilot methodology to 720 eligible Medicaid services cases per year, there is potential net savings to the state of about \$ 1 million.

OAH finished the first phase of its pilot program known as "calendar call" in 2015. The calendar call project, which began in late December of 2014, developed a new system for more expedient handling of the high volume of Medicaid services appeals. Collaboration between the Department of Health and Social Services (DHSS) and OAH during the first half of 2015 resulted in changes to the initial concept. During the initial phase of this pilot project, which ended during the summer of 2015, DHSS realized cost savings of \$15,000 to \$17,000 a month. The calendar call project was so successful that it has been continued through FY 2016. A long-term non-perm employee, who is funded through an RSA between OAH and DHSS, provides the part-time assistance needed to run the weekly calendar call program.

OAH began an unpaid intern and law clerk program in 2015 in order to handle certain aspects of its increased caseload without the addition of paid staff. To date, four individuals have taken part in this program: two were law students, one was a law school graduate, and the fourth was a junior in college. The interns have provided legal research, have assisted with the indexing and publication of OAH's decisions, and have proofread decisions for the ALJs. The law clerk has been instrumental in developing and implementing OAH's mediation pilot project.

2. Technological Innovations

To increase efficiency and to better manage the exploding caseload, in 2014 OAH worked with a contractor to design and implement new case management software. The new system went live on January 1, 2015. Although it has taken time for everyone to become

¹² There were additional savings, including significant reductions in staff time for these cases at both DHSS and OAH, that could not be quantified easily and have not been counted in these figures. The cost to run the pilot was \$345 for a mediation training course. Additional training and program design assistance was provided, free of charge, by the North Carolina Mediation Network.

efficient with the complexities of the new software, the system has reduced the need for paper files in most of OAH's cases, has permitted staff to more quickly generate forms in routine matters, such as notices of dismissals, and has simplified monthly billing through its time-keeping function for the ALJs.

OAH initiated a procurement in 2015 for a sound system that would enable telephonic hearings to be recorded with greater clarity, reduce the possibility of recordings being erased inadvertently, and standardize the recording system used in the Anchorage and Juneau offices. The sound system, known as Notewise, was installed during the summer.

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 is embarking on a comprehensive review of the statutes and regulations affecting administrative hearings. It is anticipated that OAH's next annual report will contain a number of new recommendations for statutory changes. In the meantime, OAH continues to recommend consideration of changes outlined below.

A. 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' subpoena power was repealed when the boards were eliminated, but due to an oversight the legislation giving OAH jurisdiction to hear these cases did not include subpoena power. New statutory authority is necessary for OAH to issue subpoenas in these cases. In addition to the PERS and TRS appeals, statutory subpoena power should be provided for substantiation of child abuse and neglect cases.

B. Recommendation: Fix the Issues in AS 44.64 that Have Been Identified by Experience

Eleven years of experience with OAH's organic statute, AS 44.64, have shown it to be a well-crafted piece of legislation. However, experience has shown that a few improvements could be made. The issues to be addressed include:

- The final decision deadline applicable to agency heads, though reasonable in concept, is counted from the wrong event. This has caused some agency heads to have less than a reasonable time to consider proposals for action and deliberate on their final action;

- Final decisionmakers have no deadline at all to act on revised proposed decisions submitted to them after a case has been returned to the ALJ for supplemental proceedings. This can lead to long delays that frustrate the parties.
- The lack of provision for allowing parties to respond to one another's proposals for action, in appropriate cases, has led to due process concerns in some instances.

IV. Conclusion

In 2015, OAH's activities continued to focus on its core function—adjudication of executive branch cases—and especially on resolving disputes between agencies and private parties using alternative dispute resolution techniques. OAH was primarily occupied with working its way out of the backlog created by an enormous but temporary spike in the Medicaid services case load, although growth in most other case categories also caused stresses on the tribunal. Although two temporary ALJs were hired for a portion of the year, OAH added no new capacity at the ALJ level.

OAH continued making progress on its ancillary functions, particularly e-publishing and indexing decisions. OAH looks forward to expanding the training and monitoring functions in the coming years, while maintaining high standards for the delivery of fair, efficient and cost effective hearings and alternative dispute resolution processes.

Submitted effective the 31st day of January, 2016.

Signed

Kathleen A. Frederick
Chief Administrative Law Judge

Appendix A

Survey Results: January 2015-December 2015

Demographics of Hearing Participants Responding

| Question | Number Responding | | | |
|---|---------------------------|-----------------------|------------------------------|---------------------|
| <i>Define your participation</i> | <i>Attorney</i> | <i>Party</i> | <i>Agency Representative</i> | <i>Other</i> |
| | 4 | 9 | 48 | 2 |
| <i>Did you attend in person or by telephone?</i> | <i>Attended in person</i> | | <i>Attended by telephone</i> | |
| | 14 | | 45 | |
| <i>Where do you live?</i> | <i>Rural Alaska</i> | <i>City in Alaska</i> | <i>Outside Alaska</i> | |
| | 4 | 57 | 1 | |
| <i>What was the final ruling of your hearing?</i> | <i>In your favor</i> | | <i>Not in your favor</i> | <i>Other</i> |
| | 41 | | 17 | 5 |
| <i>Including this one, how many hearings at the Office of Administrative Hearings have you participated in?</i> | <i>One</i> | | <i>2 to 10</i> | <i>More than 10</i> |
| | 6 | | 15 | 42 |

| Hearing Evaluation for Administrative Law Judge (ALJ) | Excellent | Adequate | Poor |
|--|------------------|-----------------|-------------|
| ALJ's preparation for the case | 49 | 7 | 3 |
| ALJ's courtesy toward both parties | 51 | 7 | 1 |
| ALJ's impartiality toward both parties | 47 | 9 | 2 |
| ALJ's efficiency | 46 | 7 | 6 |
| ALJ explained the hearing process | 49 | 8 | 2 |

| Written Decision Evaluation | Excellent | Adequate | Poor |
|--|------------------|-----------------|-------------|
| ALJ's promptness issuing order | 48 | 7 | 11 |
| Decision clearly explained the issues and ruling | 49 | 8 | 5 |

| Overall Evaluation | Agree | Disagree | No Comment |
|---|--------------|-----------------|-------------------|
| Office of Administrative Hearing Clerks were courteous and helpful | 60 | 3 | 0 |
| Overall, I was satisfied with the hearing process and felt it was a positive experience | 53 | 8 | 0 |