

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

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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 fourth such report.

This report covers OAH’s activities for calendar year 2007, which was OAH’s third year in existence but only the second year of normal (not transitional) operations. It was also the first year in which OAH had a full complement of eight administrative law judges available to work on the caseload. During the year, OAH’s jurisdiction expanded to include several new case categories.¹ OAH’s core function—conducting hearings—continued to dominate the agency’s work in 2007, but progress continued on ancillary functions as well.

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.

¹ *See* AS 44.64.030(a)(24)-(27) (adding four retirement benefits categories that had not been included in earlier legislation establishing OAH as the successor to the adjudicatory functions of the former Public Employees’ Retirement System and Teachers’ Retirement System boards); AS 44.64.030(a)(37) (adding water, air, energy, and environmental conservation adjudications, subject to some exceptions, to OAH’s mandatory jurisdiction through a delayed effective date in the original legislation creating OAH).

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

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 even 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.

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.

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 • Violent Crime Compensation
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
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 • Charitable Gaming • Unclaimed Property
University of Alaska	PFD Execution

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

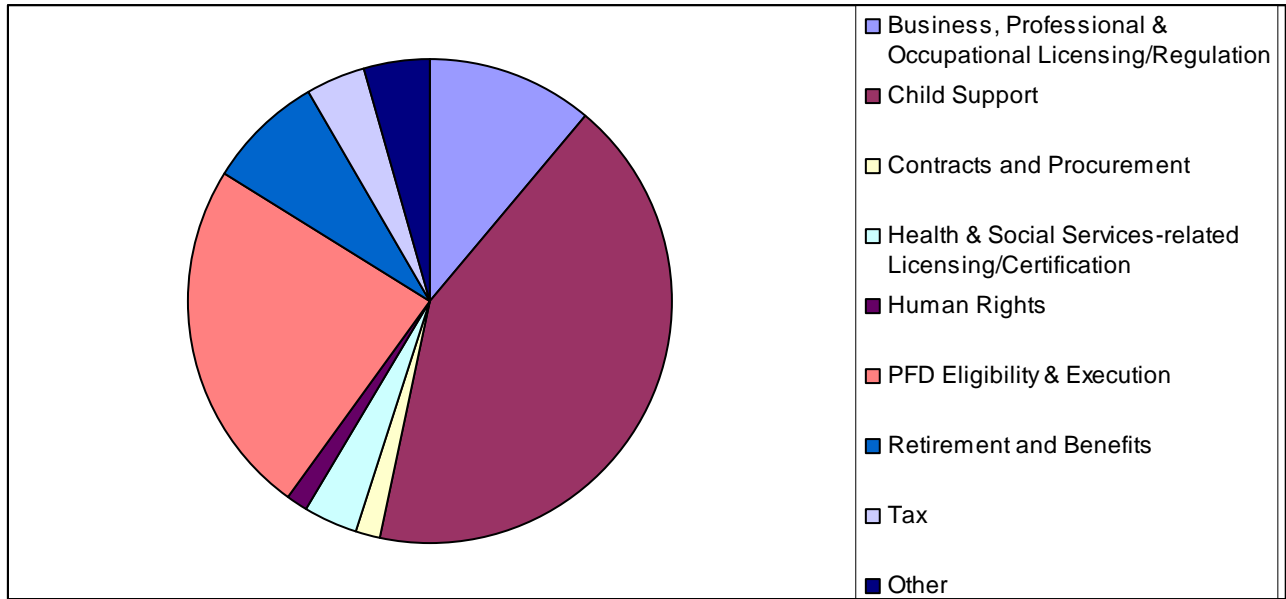
⁴ OAH's hears only some of the Department of Transportation and Public Facilities construction-related procurement cases under its mandatory jurisdiction. Construction cases subject to arbitration are exempted from OAH's mandatory jurisdiction.

⁵ Under AS 43.05.405, OAH has original jurisdiction over most tax appeals. This means that taxpayers dissatisfied with most tax enforcement decisions made by the Department of Revenue can appeal directly to OAH, as the successor agency to the former Office of Tax Appeals.

1. *Caseload*

During 2007, OAH’s active cases totaled 1,006, with 731 of those being new cases that came in during the year and the rest being cases carried forward. The chart below depicts the relative number of cases, divided into nine groups, on which OAH actively worked in 2007.⁶

What we were working on in 2007



⁶ In this report, OAH’s caseload is divided into the nine groups listed in the following table, which provides the numbers-of-cases data for the chart above. The first group (Business, Professional & Occupational Licensing/Regulation) crosses several departments, covering cases from Commerce, Community and Economic Development; Education and Early Development; and Public Safety. The “other” group includes occupational safety and health; environmental conservation; post-secondary education; violent crime victim’s compensation; and several small categories.

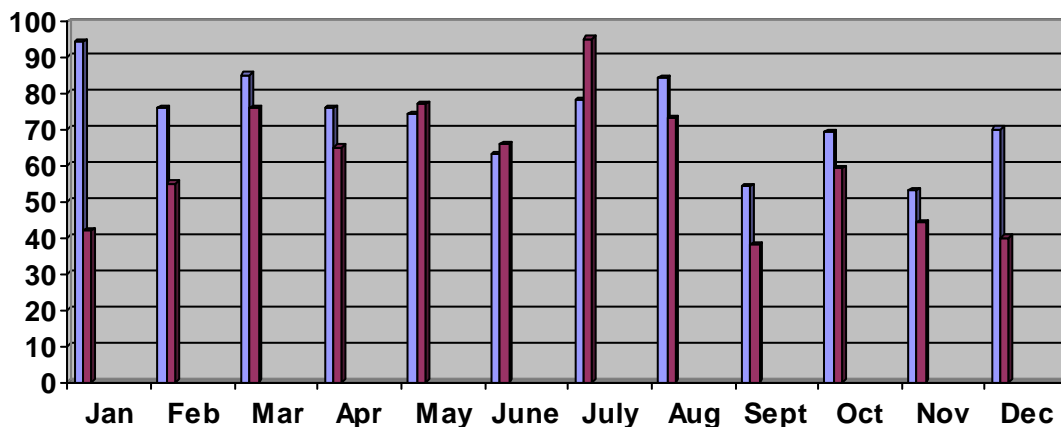
Business, Professional & Occupational Licensing/Regulation	111
Child Support	426
Contracts and Procurement	15
Health & Social Services-related Licensing/Certification	38
Human Rights	14
PFD Eligibility & Execution	239
Retirement and Benefits	79
Tax	40
Other	44
Total	1006

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 1006 cases encompass cases referred voluntarily by

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

New case referrals throughout 2007 averaged 61 per month. The chart below compares the pattern of new cases by month for 2006 (left columns) and 2007 (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 and 2007



The chart also illustrates that the number of new cases was down compared to the prior year in all but three months in 2007.

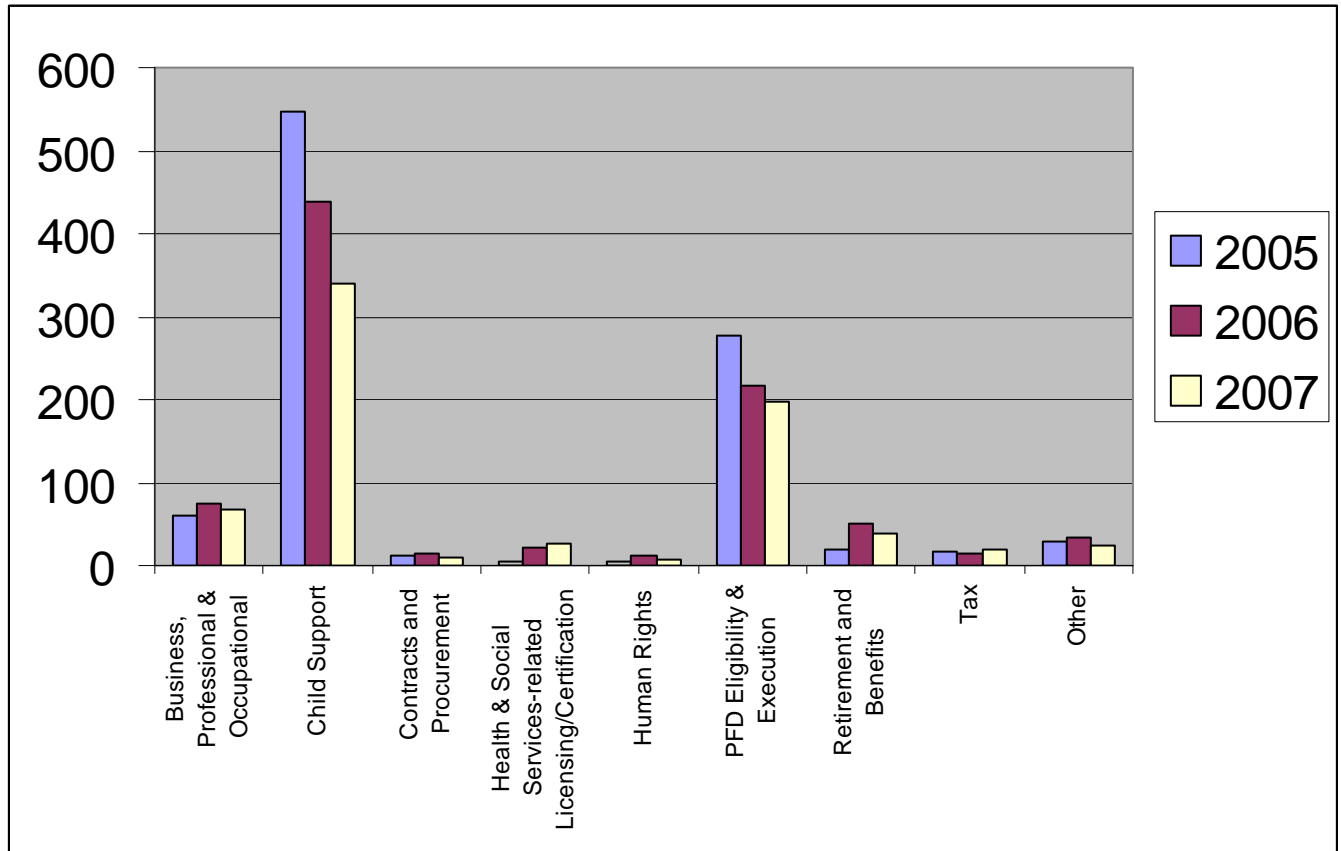
Compared to 2006, the overall number of new cases was down by 147. A large reduction in the number of new child support referrals accounted for 99 of the 147-case reduction. No increase occurred in agency use of the Notice of Denial tool provided by AS 44.64.060(b) to divert cases from the formal hearing track.⁷

The number of new cases increased in two parts of the complex case docket that account for some of the more time-intensive cases: (1) tax appeals (up by 43%) and (2) health and social services-related licensing and certification cases (up by 29%). This is consistent with the fact that

⁷ The Departments of Commerce, Community and Economic Development, Education and Early Development, and Revenue, and the University of Alaska collectively reported issuing 55 Notices of Denial, mostly for PFD eligibility and execution matters.

since 2005 one or more of the complex case categories increases each year while the numbers of new cases in the typically less complex (less time-intensive) child support and PFD categories decrease, as the following chart illustrates.

Comparison of New Cases: 2005-2007



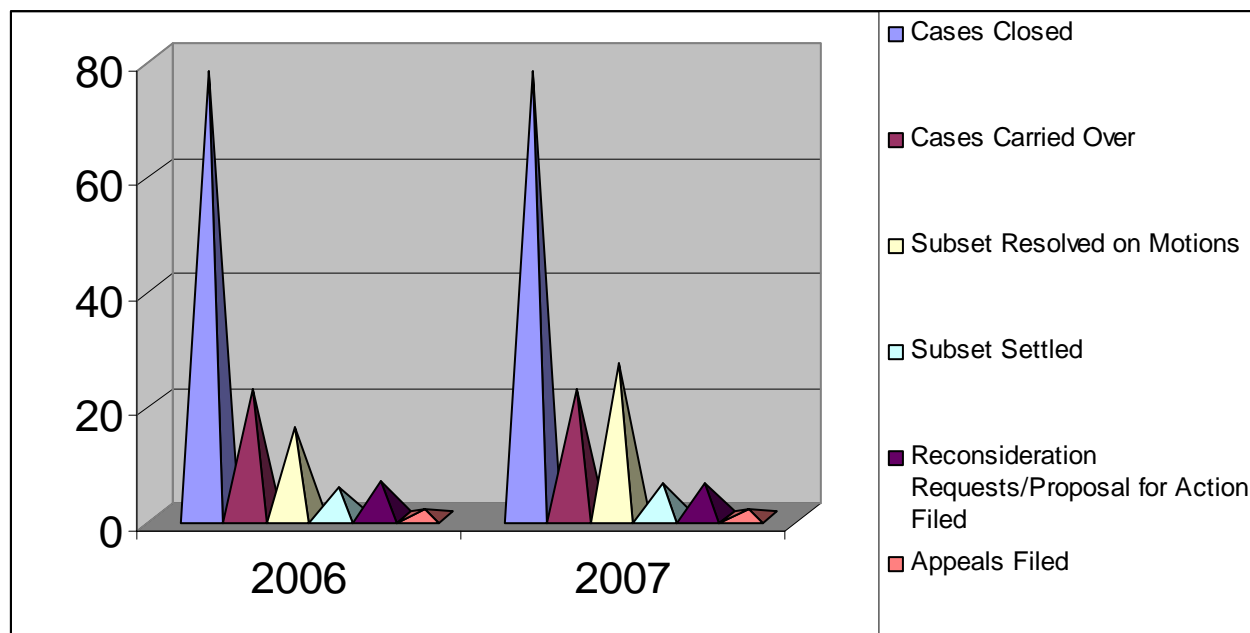
This comparison illustrates that the numbers of new child support and PFD cases have dropped each year while all of the other categories except tax increased from 2005 to 2006, and both tax and health and social services-related cases increased from 2006 to 2007, though the number of new cases in the other complex case categories dropped slightly.

The reduction in new child support and PFD cases enabled OAH to work toward clearing up the backlog of cases in those and other categories, and to focus on the more time-intensive and longer duration complex cases. During calendar 2007, OAH closed 50 more cases than it took in as new mandatory jurisdiction or voluntary referral cases. As a result, OAH carried over into 2008 fewer open cases than it carried forward at the start of 2007. The table below shows what percentage of the cases closed in 2007 were resolved on motions and through settlement, as well as what percentage led to requests for further consideration or appeals.

Case Resolution Data		
	Number	% of Total
Cases Closed	781	77.6
<i>Subset Resolved on Motions</i>	210	26.9
<i>Subset Settled</i> ⁸	45	5.8
Reconsideration Requested/Proposal for Action Filed ⁹	59	5.9
Appeals Filed ¹⁰	15	1.5
Cases carried over to 2008	225	22.4

As the following chart illustrates, the relative percentages of cases closed, 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 2007, but the percentage of cases resolved on motions increased significantly (by more than ten percent).

Comparison of Case Resolution Data: 2006 to 2007



⁸ Only three case were formally diverted for alternative dispute resolution (ADR) in 2007. Most of the “settled” cases were resolved through stipulated agreements. The “settled” subset of closed cases does not include the ones effectively resolved through informal ADR efforts that led to entry of a final decision by the ALJ on the consent of the parties.

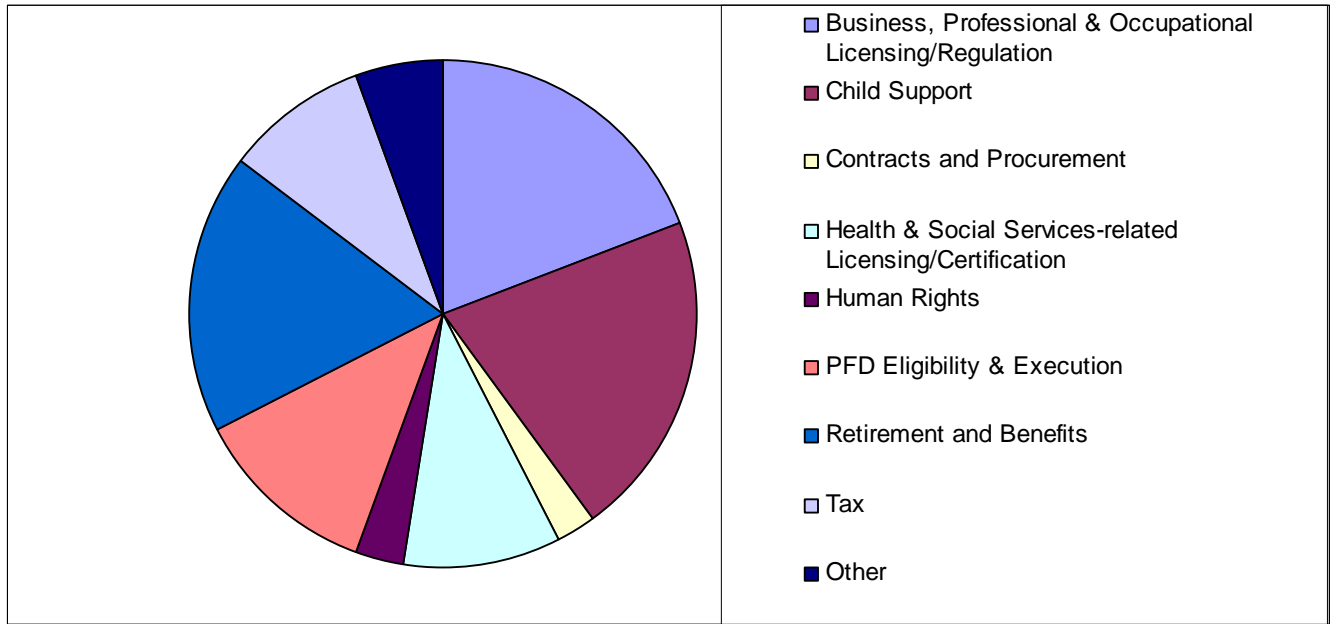
⁹ For post-July 1, 2005 cases that are subject to AS 44.64.060, the option to file a pre-final decision “proposal for action” functions as a substitute for requesting reconsideration, unless a separate statute continues to provide for post-final-decision reconsideration.

¹⁰ By subject matter, the 2007 appeals break down as follows: four certificate of need cases; two each professional licensing, child support and PFD cases; and one each tax, retirement benefits, insurance, charitable gaming, and violent crime compensation cases.

2. Time Devoted to Hearings

The reduction in the total number of new cases referred in 2007 did not equate to a reduction in the time required to hear cases. OAH's ALJs collectively devoted over 8,910 hours to hearing cases and related work such as decision writing, ruling on motions, and reviewing record documents and submittals by the parties. This is an increase of more than 500 hours over the time devote to hearing cases in 2006. The following chart illustrates the relative amounts of time the ALJs collectively devoted to work on cases by group.

How we spent our time on cases in 2007



This chart shows that though the child support and PFD cases dominate OAH's case docket in terms of case numbers, they do not dominate the time spent on cases. Instead, the typically more complex cases in the licensing, retirement and benefits, and tax cases require more time.¹¹

¹¹ The following table provides the hours data for the case work by group showing in the chart above:

Business, Professional & Occupational Licensing/Regulation	1713.4
Child Support	1859.7
Contracts and Procurement	220.7
Health & Social Services-related Licensing/Certification	873.5
Human Rights	277.8
PFD Eligibility & Execution	1076.5
Retirement and Benefits	1577.1
Tax	825.1
Other	486.4
Total	8910.2

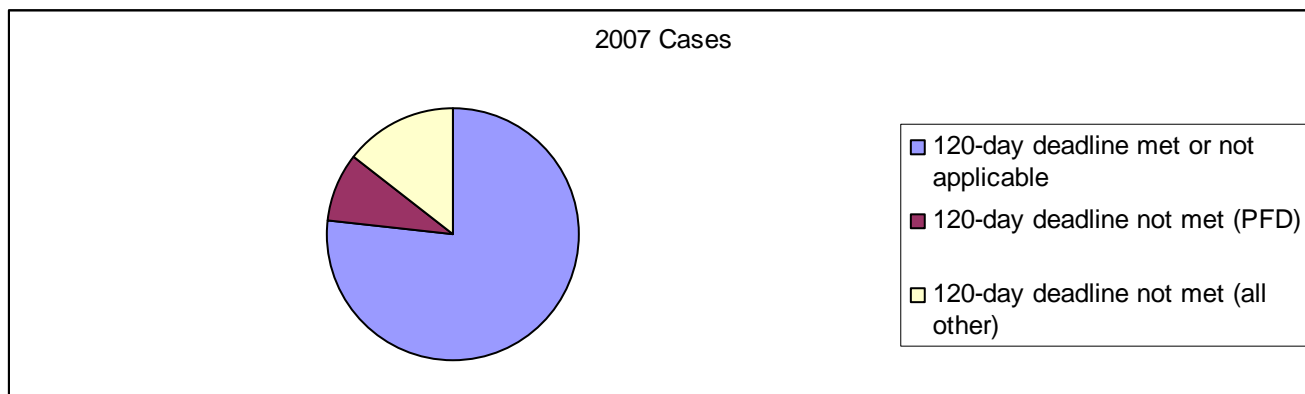
3. Deadlines

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.¹² 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, insurance cases, securities cases, and child support 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 the ALJ to issue 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 for 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.¹³

The chart below illustrates the relative proportions of the cases closed by OAH in 2007 that were subject to the 120-day deadline and closed within it versus closed after that deadline.

Compliance with 120-day deadline for 2007 closed cases



The cases in which the deadline was not met are separated into PFD and all-other categories to illustrate that 39 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

¹² 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.

¹³ In addition to complexity of a case, factors such as 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, which cuts into the 120 period, have led to use of the extension-on-consent tool.

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 when it comes in 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 of the 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 met in more than three-quarters of the cases in which it applied in 2007, which was the first year OAH had a full complement of ALJs on board and was able to continue reducing the backlog of cases while working efficiently on many of the new cases. Sixty percent (466) of the 781 cases closed in 2007 were completely resolved (not just brought to the proposed decision point) in fewer than 120 days after referral to OAH. Proposed decisions in those cases, if required, usually will have been issued at least fifteen days before a final decision was entered and in many cases much sooner—often immediately following a hearing or prehearing conference occurring within the first 30 days.

Now that OAH is fully staffed and the backlog of cases has been reduced, it should not be much longer until the 120-day deadline becomes attainable in virtually all cases to which it applies, including PFD cases, absent unforeseen changes in caseload and staffing levels. Unusual cases will continue to be addressed on a case-specific basis, using the tools provided by AS 44.64.060 and OAH's regulations. Unusual circumstances such as unplanned vacancies and irregular spikes in the case load will continue to be addressed through case management strategies.

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 2007, a formal peer review assignment was made in 195 of the 731 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). With assistance from another state agency, in late 2007 OAH identified a combination of equipment and software that will allow scanned decisions from various sources and of different types to be web posted in a user-friendly, keyword searchable format. This answers the first challenge OAH had faced in satisfying its publication requirement.

The second challenge has been accommodating legal requirements for confidentiality of certain types of decisions or information contained in them without simply refraining from publishing whole categories of decisions. To address this challenge with respect to its own decisions, OAH has developed the following system of priorities:

1. web post non-confidential decisions in case categories for which the public and parties have expressed the most interest, as shown by requests for copies (tax appeals; procurement protests and contract claims; professional, occupational and facilities licensing cases; retirement and benefits appeals);
2. pseudonym and web post confidential decisions covering unique issues or subjects of interest to the public and parties;
3. pseudonym and web post a representative sampling of decisions that address recurring issues from the child support and PFD cases.

As soon as OAH staff have been trained to use the equipment and software (anticipated to be in February 2008), the first priority decisions will begin appearing on the OAH webpage decisions link, which currently contains only decisions from OAH’s predecessor agency, the former Office of Tax Appeals. Pseudonyming of the second priority decisions and identification of the representative decisions for the third priority has begun and will continue as resources permit. Web posting of decisions in those two priorities will occur after the pseudonymed document has been subjected to a quality control review.

When the publication project is well underway with OAH’s own decisions, OAH 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 2007.

OAH routinely tracks notices of other state agencies' proposed regulations and reviews those that have the potential "to govern procedures in administrative hearings." In 2007, OAH reviewed 90 sets of proposed regulations (an increase of 20 percent over 2006). 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, recommending changes on the procedural aspects of the following:

- (1) the Children with Disabilities (Phase II) regulations proposed by the Department of Education and Early Development;
- (2) certificate of need regulations proposed by the Department of Health and Social Services;
- (3) regulations to implement the Revised Alaska Trust Company Act proposed by the Department of Commerce, Community and Economic Development; and
- (4) alternative dispute resolution regulations proposed by the Regulatory Commission of Alaska.

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 launched the written survey project in December 2006 and continued it throughout 2007, by sending surveys to parties in past OAH-heard cases. The responses were overwhelmingly positive and the narrative comments were generally constructive, but by a ratio of about five 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. The data from surveys returned as of December 31, 2007, is summarized in Appendix A.

The written survey process will continue in 2008 and, resources permitting, will expand to include parties in cases heard by the following executive branch adjudicators:

- 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
- Workers Compensation Appeals Commission

In 2007, 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/webposting 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 2007, OAH provided informal training for staff members of agencies that appear in OAH-heard cases and formal training for the following adjudicatory boards and commissions and agency personnel who participate in the adjudication process:

- Alaska Commission on Post-secondary Education staff (January);
- Board of Nursing (March);
- Workers' Compensation Appeals Commission (May);
- Violent Crimes Compensation Board staff (May);
- Agency Record training course for 92 executive branch employees in sessions held in Anchorage, Fairbanks and Juneau (September).

The deputy chief ALJ presented a continuing legal education (CLE) course on appearing before OAH for the Alaska Bar Association's administrative law section and the chief ALJ presented as similar, shorter CLE for a local bar association. Two of OAH's ALJs participated in an on-line evidence course offered by the National Judicial College. The chief ALJ and deputy chief ALJ participated in training at a national meeting of central hearing panel directors.

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.¹⁴ 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.¹⁵ The chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

In 2007, no complaints of violation of the Code of Hearing Officer Conduct were filed with the chief ALJ. The chief ALJ fielded approximately a dozen 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 2007, the chief ALJ recruited applicants for a representative of employers commission seat with a term expiring in March of that year, and began recruitment for a representative of employees commission seat for which the term expires in March 2008. Recruitment was by

¹⁴ AS 44.64.050(c). Complaints alleging violations by the chief ALJ are considered by the attorney general. AS 44.64.050(e).

¹⁵ 2 AAC 64.060(c).

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 2007 vacancy met the minimum qualifications and their names were forwarded to the governor.

In 2007, OAH provided an ALJ to serve as *pro tempore* chair for one case in which the commission's chair had a conflict.

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. Because of the timing challenges posed by first 90 day legislative session in 2008, all recommendations below are for action in the Twenty-sixth Legislature in 2009.

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 response 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: Amend Statutory Procedures for Child Support Disclosure Cases

Provisions in AS 25.27 should be amended to address practical, and possible due process, concerns raised by procedures used to protect contact information from disclosure in administrative child support proceedings in which a party asserts that disclosure poses a risk to the child(ren) or a parent.

D. Recommendation (contingent): 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. This recommendation is contingent upon either (1) a legal determination that the department cannot adopt a regulation providing OAH with the necessary subpoena power or (2) a decision by the department that it will not adopt a regulation.

E. 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 2007, OAH's activities focused on its core function—adjudication of executive branch cases. Good progress was made on clearing up the persistent backlog of cases. OAH also made progress on its non-hearing functions. By the end of its third year of operations, OAH had conquered most of the challenges associated with the start up of a new state agency and is now looking forward to turning more attention to the non-hearing functions (especially the training, monitoring and publication functions) in the years to come, while maintaining high standards for the delivery of fair, efficient and cost effective hearings.

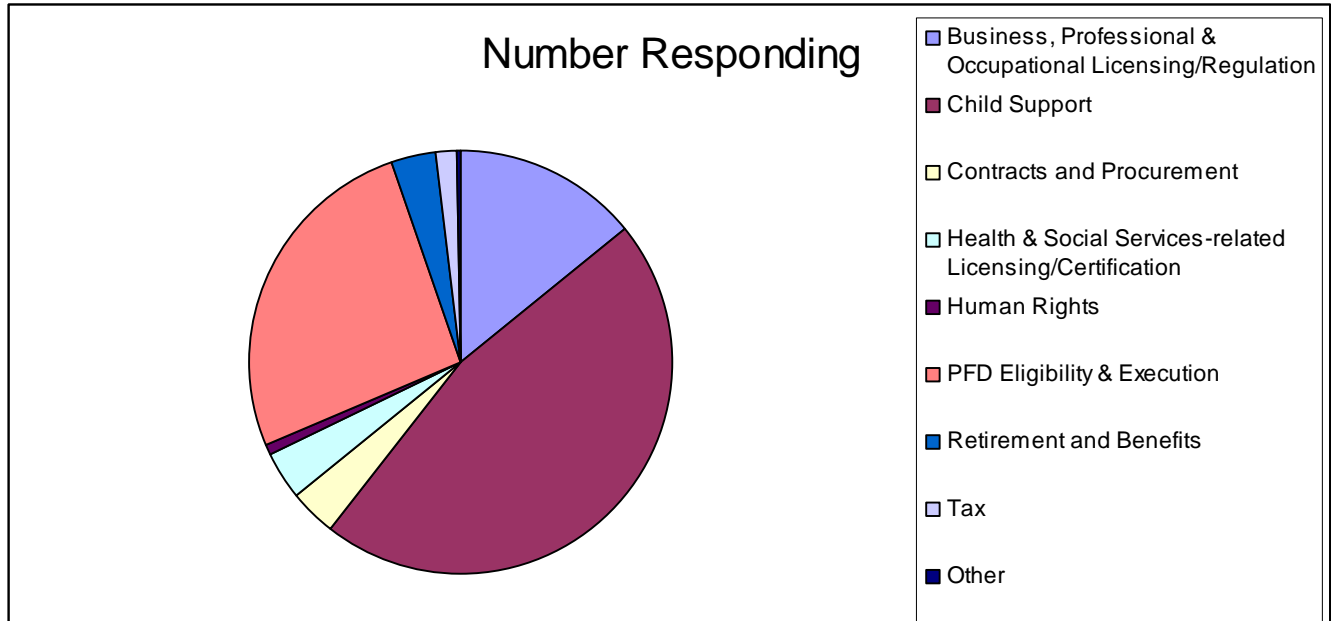
Submitted this 31st day of January, 2008.

Terry L. Thurbon
Chief Administrative Law Judge

Appendix A

Survey Results: December 2006-December 2007

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	
	64		180		59
Where do you live?	Rural Alaska		City in Alaska		Outside Alaska
	14		268		14
Including this one, in how many hearings have you participated?	One	2-5	6-10	11-20	20 or more
	43	42	21	5	188

Administrative Law Judge/Hearing Officer	Yes	No	N/A
1. Did the judge/hearing officer start the proceedings on time?	259	11	49
2. Was the judge/hearing officer familiar with the issues in the case?	250	21	48
3. Did the judge/hearing officer pay attention during the proceedings?	256	10	53
4. Did the judge/hearing officer show you respect?	260	10	45
5. Did the judge/hearing officer remain even-tempered in the	265	4	50

proceedings?			
6. Did the judge/hearing officer give you (or your attorney) opportunities to speak?	267	3	49
7. Did the judge/hearing officer make clear decisions and rulings during the hearing, such as when objections were raised or requests were made?	234	14	71
8. Did the judge/hearing officer resolve problems that came up during the case fairly and efficiently?	232	19	68
9. Did the judge/hearing officer issue written decisions and orders in a timely fashion?	215	73	31

Written Documents	Yes	No	N/A
1. Was information provided in notices useful?	275	14	30
2. Were decisions and orders written in clear, understandable language?	281	14	24
3. Did the decision describe the facts clearly and accurately?	268	20	31
4. Did the decision and any orders include clear explanations of the law?	275	14	30
5. Did the decision's analysis include enough detail to explain the result?	266	19	34

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?	200	11	108
2. Was the location of the hearing room accessible?	140	7	172
3. For in-person hearings: was the hearing room (size, set up, temperature) suitable for the type of proceeding?	129	8	182
4. For telephone hearings: was the sound quality of the telephone connection good?	213	5	101
5. For participants who listened to a recording of the hearing or other proceedings: was the sound quality of the recording adequate?	123	5	191

Overall Satisfaction	Yes	No
Do you agree with the final result in the case?	246	43
Whether or not you agree with the final result, were you satisfied with the hearing process overall?	262	33