

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

January 31, 2010

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 sixth such report.

This report covers OAH’s activities for calendar year 2009. OAH’s core function—conducting hearings—continued to dominate the agency’s work in 2009, but progress continued 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).

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 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 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
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 • PFD Execution

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

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 ³)
Revenue	<ul style="list-style-type: none"> • Tax (original jurisdiction⁴) • Child support • PFD Eligibility, Charitable Contribution & Fine/Forfeiture • Charitable Gaming • Unclaimed Property
University of Alaska	PFD Execution

1. Caseload

During 2009, OAH's active cases totaled 957, with 702 of those new cases that came in during the year and the rest cases carried forward. In the table below, OAH's active 2009 caseload is divided into nine groups. The first (Business, Professional & Occupational Licensing/Regulation) crosses several departments. The "other" group includes occupational safety and health; environmental conservation; substantiated child abuse/neglect; public offices commission; violent crime victim's compensation; and various education-related subjects, among others.

Number of active cases in 2009

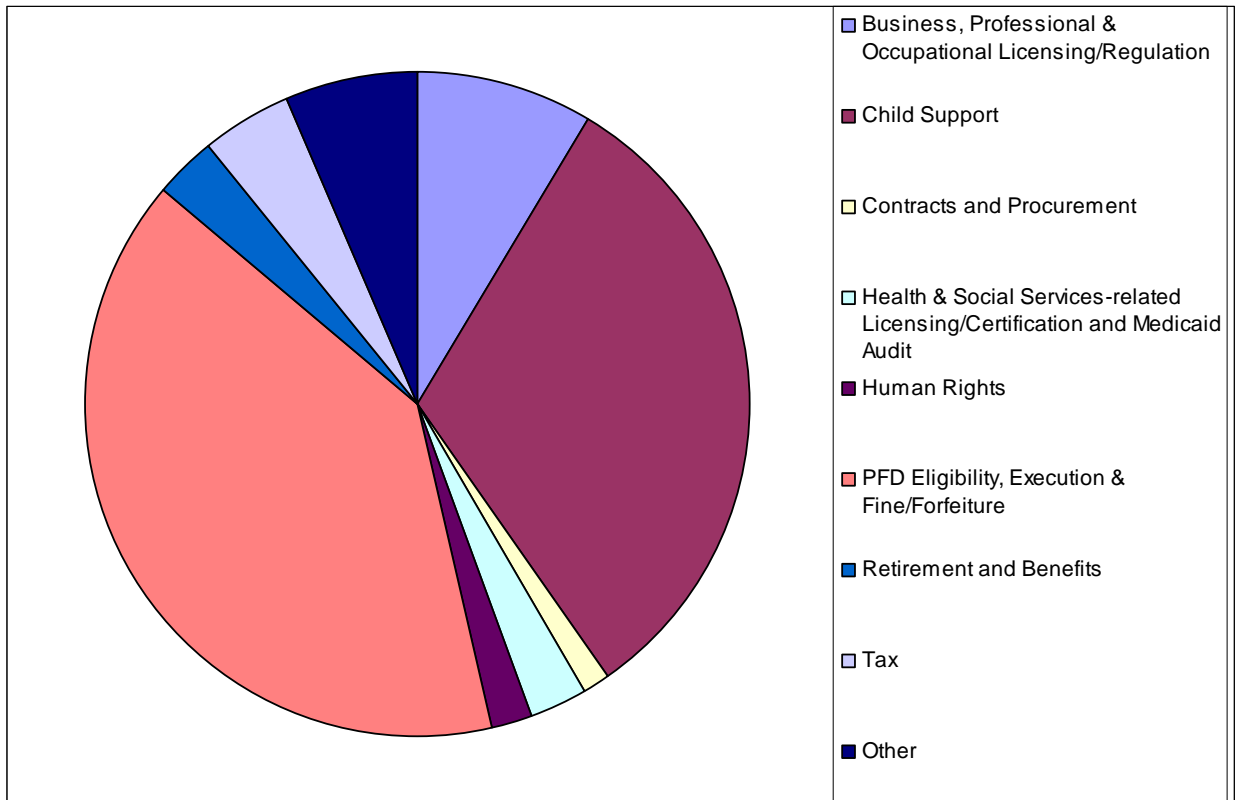
Business, Professional & Occupational Licensing/Regulation	82
Child Support	303
Contracts and Procurement	15
Health & Social Services-related Licensing/Certification & Medicaid Audit	26
Human Rights	18
PFD Eligibility, Charitable Contribution, Execution & Fine/Forfeiture	381
Retirement and Benefits	29
Tax	43
Other	60
Total	957

The chart below depicts the relative number of cases on which OAH actively worked in 2009, divided into the nine groups.

³ 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.

⁴ 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.

What we were working on in 2009

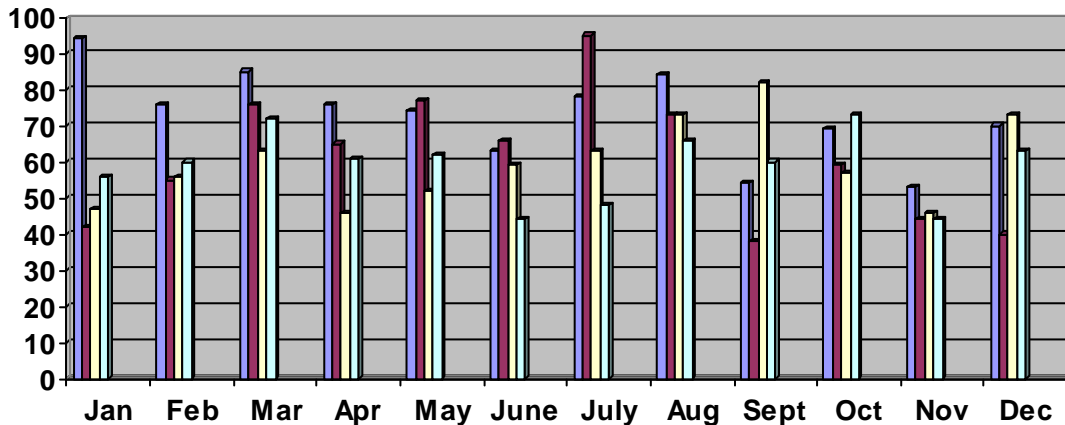


In addition to cases within OAH’s original jurisdiction and those required to be referred to OAH under AS 44.64.030(a) or under regulations, the 957 cases encompass cases referred voluntarily by

- Administration (public offices commission)
- Health and Social Services (Medicaid audit; grants)
- Labor and Work Force Development (workers’ compensation conflict cases)
- Public Safety (security guard licensing)
- Revenue (oil and gas property taxability and valuation)

New case referrals throughout 2009 averaged 58.5 per month. The chart below compares the pattern of new cases by month for 2006 through 2009. This comparison illustrates that spikes and dips occur in the rate at which new cases have to be added to the already-pending cases, but that the spikes were less extreme in 2009 (the far right, green columns) than in earlier years.

Comparison of when the new cases came in: 2006-2009



Compared to 2008, the number of new case referrals was slightly lower, with fifteen fewer new cases—a two percent reduction. This slight reduction can be attributed to increased agency use of the Notice of Denial tool provided by AS 44.64.060(b) to divert cases from the formal hearing track. Sixteen more cases were diverted from the hearing track using this tool in 2009 than in the prior year.⁵

During calendar 2009, OAH closed cases equal in number to 105 percent of the number of new cases. This was a ten percent increase over 2008. The number of cases diverted to formal ADR (usually mediation) increased by almost 200 percent, going from eleven in 2008 to 31 in 2009. The table below identifies by number and percentage the active cases closed in 2009 and those in which requests for further consideration or new appeals to the courts were filed. It also identifies the subset of closed cases resolved on motions and by settlement.

Case Resolution Data – 2009		
Cases Closed	738	77.1%
<i>Subset Resolved on Motions</i>	210	28.5%
<i>Subset Settled</i> ⁶	53	7.2%
Reconsideration Requested/Proposal for Action Filed ⁷	41	4.3%
Appeals Filed ⁸	11	1.1%

⁵ The Departments of Education and Early Development, Health and Social Services, and Revenue collectively reported issuing 78 Notices of Denial, mostly for PFD eligibility, charitable contribution, and execution matters. In some instances, the agencies determined that the party was not entitled to a hearing, but in most the agencies denied the hearing request because it was able to resolve the matter (e.g., by reversing the agency decision that had generated the hearing request).

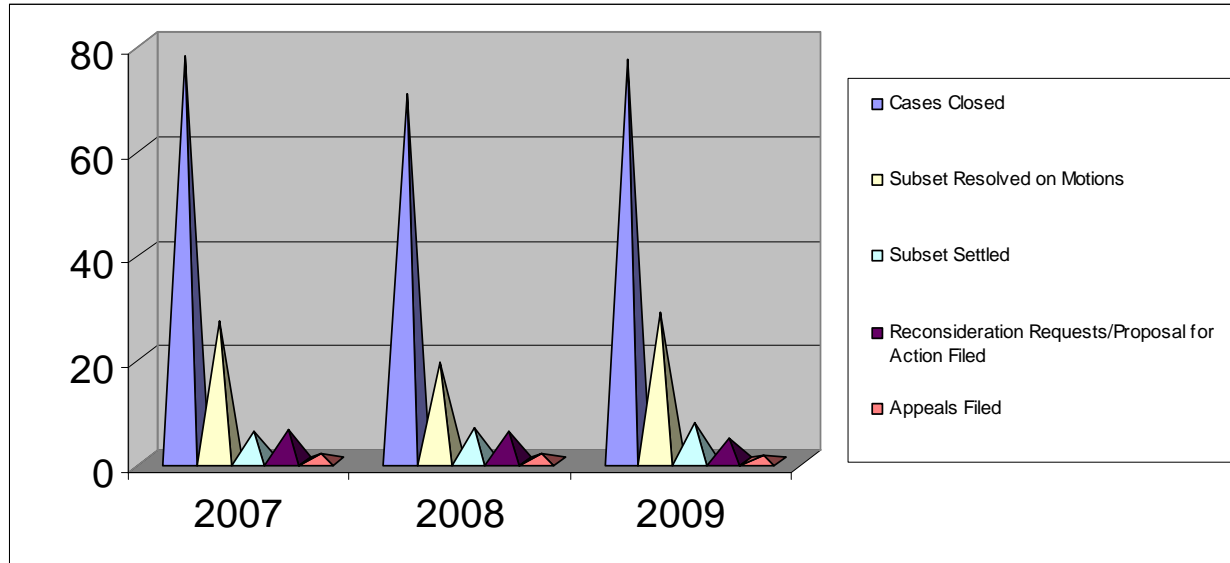
⁶ The “settled” subset of closed cases does not include the dozens of cases resolved through informal ADR efforts that led to entry of a final decision by the ALJ on the consent of the parties.

⁷ 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.

⁸ By subject matter, the eleven new superior court appeals filed in 2009 are follows: three business or professional licensing matters; two tax appeals; two retirement and benefits appeals; one PFD appeal; one child support appeal; one procurement protest appeal; and one human rights commission appeal. In addition, one older PFD matter that had been on appeal to the superior court was further appealed to the Alaska Supreme Court.

As the chart below illustrates, from 2008 to 2009 the relative percentages of cases in which reconsideration requests or proposals for action, or appeals to the courts, were filed went down, and the subset of cases resolved on motions or through settlements went up.

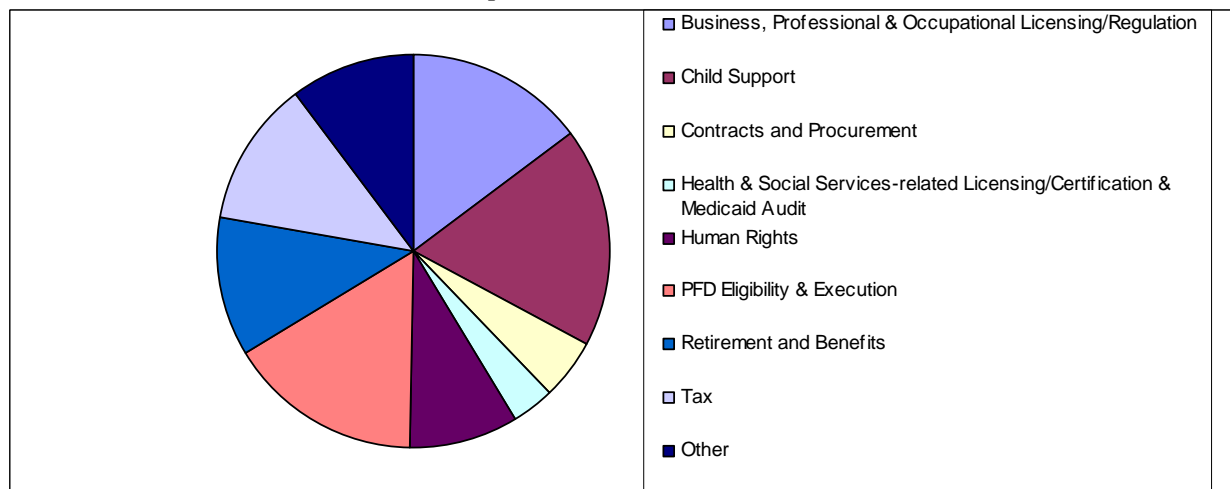
Comparison of Case Resolution Data: 2007 to 2009



2. *Time Devoted to Hearings and Related Work*

OAH's ALJs collectively devoted approximately 8,613 hours to hearing cases and related work such as decision writing, ruling on motions, and reviewing documents and submittals by the parties, or to resolving cases through ADR. As the chart below illustrates, though the child support and PFD cases dominate OAH's case docket by number of cases, they do not dominate the time spent on cases. Instead, the typically more complex cases in the rest of the docket consume much more time.

How we spent our time on cases in 2009

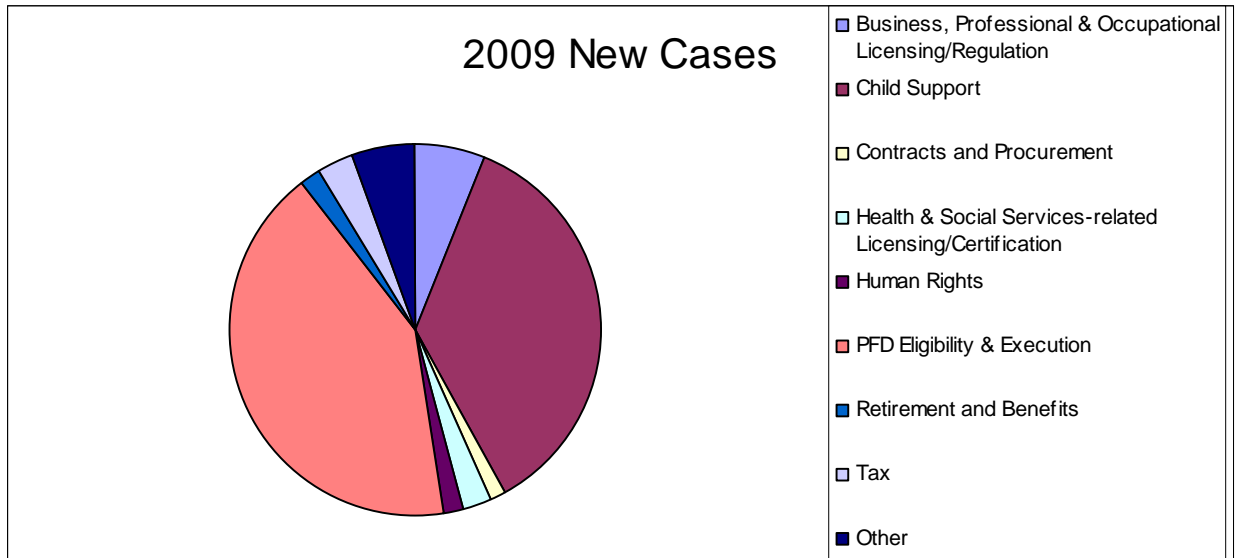


The approximately 8,613 hours devoted to cases in 2009 was a decrease of more than 1,300 hours compared to 2008. The decrease in hours required for the case work in 2009 allowed OAH to maintain a vacant ALJ position as vacant longer than normally optimal without losing ground on clearing the backlog of cases. This is reflected in the fact that the case closure rate increased by ten percent relative to 2008, even though the ALJ position remain vacant for most of 2009 and, when filled, was filled with a part-time ALJ to ensure that OAH has sufficient but not excessive capacity to handle spikes in the mandatory caseload and new voluntary referrals.

Factors contributing to the decrease in the number of hours spent on cases in 2009 include increases in use of motions and ADR to resolve cases. 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. Also, in many instances, the cases “resolved on motions” are ones in which the motion is uncontested—a formality to close a case dismissed on consent of the parties. Cases dismissed on consent, whether through informal ADR or due to settlements reached after formal mediation, consume less ALJ time, largely because little or no decision writing time is required.

Compared to the “*How we spent our time in 2009*” chart, the chart below highlights a disconnect between the numbers of new cases by category and the hours devoted to the categories for a given reporting period—i.e., a calendar year.

New cases by category and number for 2009



Three variables explain the disconnect: (1) when the cases arrive; (2) how long it takes to resolve them; and (3) 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.

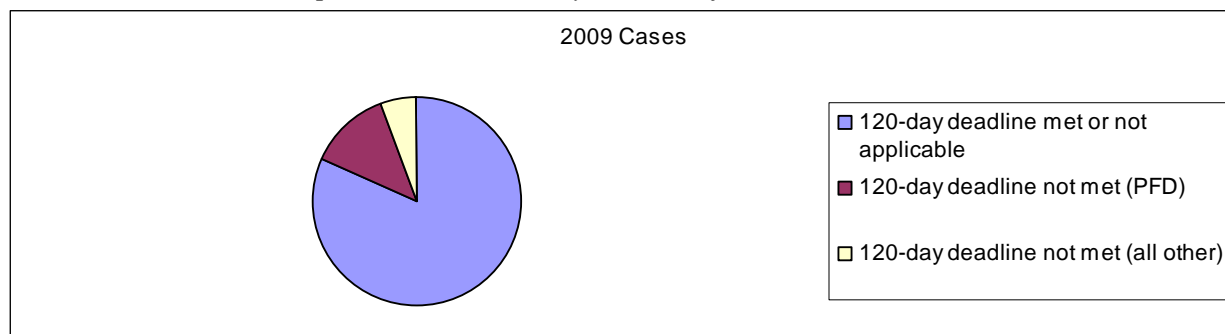
3. *Deadlines*

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.⁹ 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.¹⁰

The chart below shows the proportion of cases closed by OAH in 2009 in which the 120-day proposed decision deadline was not met.

Compliance with 120-day deadline for 2009 closed cases



⁹ 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.

¹⁰ In addition to complexity of a case, the unavailability 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 69 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 does not meet the 120-day deadline in all cases to which the deadline 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 eighteen percent (135) of the 738 cases closed in 2009 to which it or a shorter deadline applied. In many of these, the deadline was missed by just a few days. Moreover, a great many of the cases in which the deadline was met actually reached final resolution—not just a proposed decision—within 120 days, frequently within as little as 60 days. 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 2009, a formal peer review assignment was made in 63 of the 702 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 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). In 2009, OAH expanded 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 1,000 of its own decisions and provides links to on-line decisions posted by the Commercial Fisheries Entry Commission; Department of Health and Social Services (in-house fair hearings unit decisions); 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. Efforts are ongoing in 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 2009.

OAH routinely tracks notices of other state agencies’ proposed regulations and reviews those that have the potential “to govern procedures in administrative hearings.” In 2009, OAH reviewed 108 sets of proposed regulations. Most did not implicate hearing procedures or did not raise any concerns about how those procedures were addressed. OAH commented on six sets of proposed regulations:

- (1) Film Production Tax Credit regulations proposed by the Department of Commerce, Community and Economic Development;
- (2) Workers’ Compensation Board process regulations proposed by the Department of Labor and Workforce Development;
- (3) Integrated Behavioral Health Services regulations proposed by the Department of Health and Social Services;
- (4) Permanent Fund Dividend appeal regulations proposed by the Department of Revenue;

(5) Certificate of Need regulations proposed by the Department of Health and Social Services; and

(6) Public Employees' Retirement System regulations proposed by the Department of Administration.

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 process throughout 2009, sending surveys to parties in past OAH-heard cases and cases heard by the Workers' Compensation Appeals Commission, the Workers' Compensation Board, and the Department of Health and Social Services (in-house hearing unit that hears public benefits cases).

The number of responses increased in the OAH-heard cases, but this was largely due to one agency (the PFD division) self-initiating submittal of survey forms in many cases not randomly selected for survey distribution by OAH. As a result the data from the returned surveys is skewed by the high number of surveys from the agency representatives (lay advocates), with comparatively few responses being from private parties or attorneys representing private parties or agencies. Only three responses were received from parties/attorneys in cases not heard by OAH; all three were from Workers' Compensation Appeals Commission cases.

As with prior years, responses were overwhelmingly positive and narrative comments were generally constructive. By a ratio of seven to one, the persons returning the survey forms were happy with the outcome of the case. Without regard to satisfaction with the outcome, 94 percent of the people responding were satisfied with the adjudication process overall. The data from surveys returned January 1-December 31, 2009, is summarized in Appendix A.

The written survey process will continue in 2010 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 Labor and Workforce Development (employment security hearings);
- Division of Motor Vehicles;
- Regulatory Commission of Alaska.

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 2009, OAH provided training in process and procedures for the Big Game Commercial Services Board and procurement protest appeal process training for three groups of procurement officers. OAH also provided training to PFD division personnel on alternative dispute resolution methods specially adapted for PFD appeals.

In late 2009, OAH presented a short continuing legal education (CLE) course on the differences between administrative and civil adjudication, and began working with the Administrative Law Section of the Alaska Bar Association on ethics and best-hearing-practices components for a half-day CLE to be offered early in 2010.

OAH ALJs received formal training in a number of subjects relevant to the work of the office through attendance at CLE courses, including courses on legislative history research and employment law. One ALJ attended training courses on due process, avoiding bias, dealing with self-represented parties, complex case management, and expert evidence at the National Association of Administrative Law Judges annual meeting. The chief ALJ attended mediation and management courses offered by the National Judicial College.

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.¹¹ 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.¹² The chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

In 2009, two complaints of violation of the Code of Hearing Officer Conduct were filed with the chief ALJ. The chief ALJ fielded several questions about code requirements and issued three informal opinions, but no formal opinions were issued.

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 2009, the chief ALJ completed recruitment of applicants for a representative-of-employers commission seat with a term expiring in March of that year and conducted the recruitment for a replacement for the attorney-chair, whose term expires in March 2010. Recruitment was by direct mailing to past and present members of the Workers' Compensation Board for the representative-of-employers seat, because the commissioners (other than the chair) must have served on that board. For the attorney-chair, recruitment was by direct mailing to active in-state members of the Alaska Bar Association. Three individuals applied for the representative-of-employers seat and seven applied for the attorney-chair position. All applicants for the two vacancies met the minimum qualifications and their names were forwarded to the governor.

In 2009, OAH provided an ALJ to serve as *pro tempore* chair for two appeals in which the commission's chair had a conflict and provide *pro-tempore* chair oversight of day-to-day operations during a period in which the chair took leave.

¹¹ AS 44.64.050(c). Complaints alleging violations by the chief ALJ are considered by the attorney general. AS 44.64.050(e).

¹² 2 AAC 64.060(c).

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 recommend consideration of changes outlined below.

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 2009, OAH's activities continued to focus on its core function—adjudication of executive branch cases—but OAH also was able to turn more attention to the ancillary functions. The on-line publication project in particular is well underway. 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.

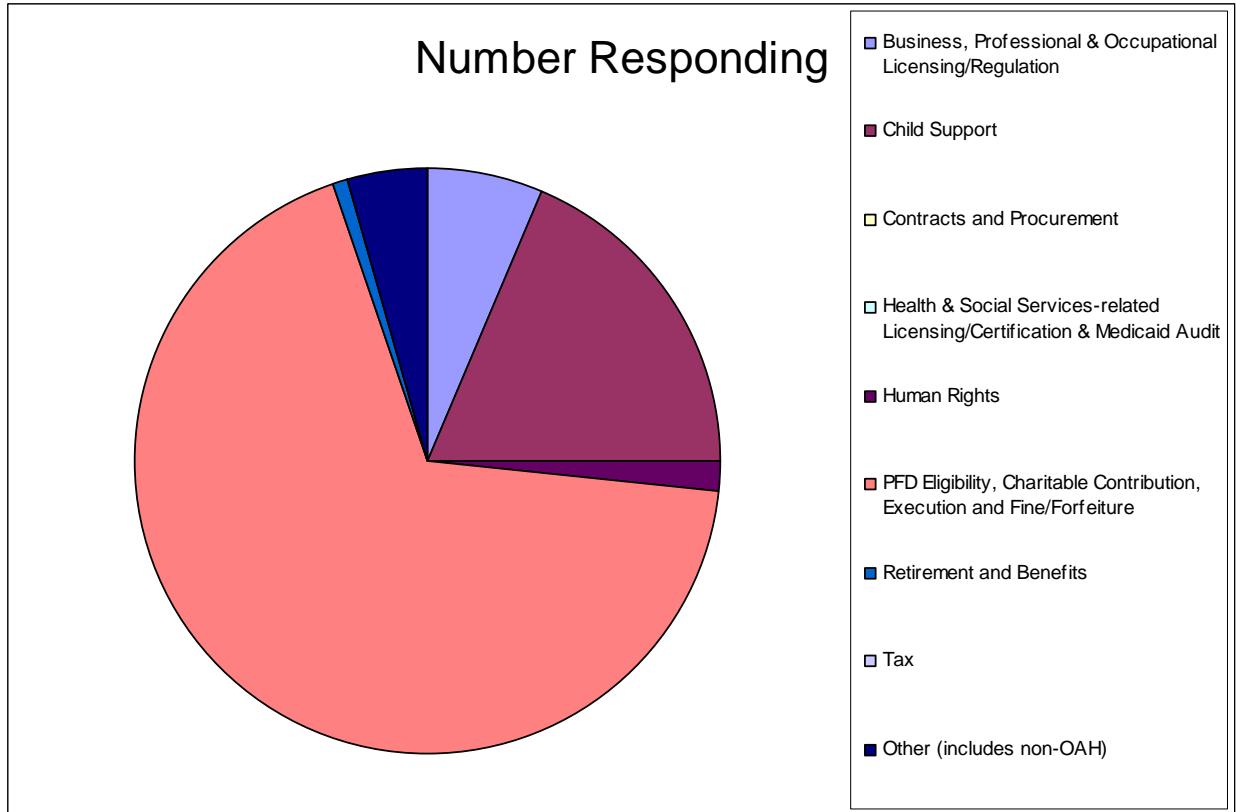
Submitted effective the 31st day of January, 2010.

_____[signed]_____
Terry L. Thurbon
Chief Administrative Law Judge

Appendix A

Survey Results: January 2009-December 2009

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	
	12		83		12
Where do you live?	Rural Alaska		City in Alaska		Outside Alaska
	2		79		3
Including this one, in how many hearings have you participated?	One	2-5	6-10	11-20	20 or more
	9	4	6	7	80

Administrative Law Judge/Hearing Officer	Yes	No	N/A
1. Did the judge/hearing officer start the proceedings on time?	95	3	14
2. Was the judge/hearing officer familiar with the issues in the case?	99	3	10

3. Did the judge/hearing officer pay attention during the proceedings?	95	2	15
4. Did the judge/hearing officer show you respect?	93	5	14
5. Did the judge/hearing officer remain even-tempered in the proceedings?	91	4	16
6. Did the judge/hearing officer give you (or your attorney) opportunities to speak?	95	1	16
7. Did the judge/hearing officer make clear decisions and rulings during the hearing, such as when objections were raised or requests were made?	86	6	20
8. Did the judge/hearing officer resolve problems that came up during the case fairly and efficiently?	85	6	20
9. Did the judge/hearing officer issue written decisions and orders in a timely fashion?	95	12	4

Written Documents	Yes	No	N/A
1. Was information provided in notices useful?	104	6	1
2. Were decisions and orders written in clear, understandable language?	105	4	2
3. Did the decision describe the facts clearly and accurately?	102	6	2
4. Did the decision and any orders include clear explanations of the law?	106	3	2
5. Did the decision's analysis include enough detail to explain the result?	105	4	2

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?	60	3	47
2. Was the location of the hearing room accessible?	36	0	74
3. For in-person hearings: was the hearing room (size, set up, temperature) suitable for the type of proceeding?	31	1	78
4. For telephone hearings: was the sound quality of the telephone connection good?	78	5	27
5. For participants who listened to a recording of the hearing or other proceedings: was the sound quality of the recording adequate?	4	0	106

Overall Satisfaction	Yes	No
Do you agree with the final result in the case?	95	13
Whether or not you agree with the final result, were you satisfied with the hearing process overall?	103	7