

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

January 31, 2022

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I. Introduction

The Office of Administrative Hearings (OAH) is an independent agency housed in the Department of Administration and charged with providing administrative adjudication services, regulatory review, and training.¹

OAH is the state executive branch's central hearing panel. A central panel is an independent adjudicative agency which hears executive branch appeals. As described by the National Judicial College, central panels are "panels of administrative law judges who, instead of being attached to a single administrative agency, are assigned to a 'central,' 'independent' panel that supplies administrative law judges to conduct contested case hearings for a variety of agencies."² The main role of a central panel "is to provide fair adjudications and due process to both the litigating agencies and the public."³ Alaska's OAH is one of roughly 35 central panels nationwide, although the scope of such panels can vary greatly between states.

OAH was created "to increase the separation between the adjudicatory functions of executive branch agencies and the agencies' investigatory, prosecutory, and policy-making functions."⁴ In addition, by consolidating adjudicatory functions in a central panel, the creation of OAH has improved efficiency for agency hearings, resulting in overall cost savings to departments, boards, and commissions. By making OAH's services available to municipalities, school districts, and other government agencies on a cost-reimbursement basis, the legislature has also made these savings available to other state-related governmental units.⁵

OAH operates under the supervision of the Chief Administrative Law Judge (Chief ALJ) for whom the law prescribes certain duties and goals.⁶ 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[.]⁷

This eighteenth such report covers OAH's activities for calendar year 2021 which was, despite the global pandemic and its effects, OAH's second busiest year since its inception.

¹ See AS 44.64.010 – AS 44.64.020.

² Hon. W. Michael Gillette. *ALJ Central Panels: How's it Going Out There?* The Judicial Edge (National Judicial College, Sept. 17, 2015). Available online at: <https://www.judges.org/alj-central-panels-how-is-it-going-out-there/> (last visited Jan. 20, 2022).

³ Larry J. Craddock, *Final Decision Authority and the Central Panel ALJ*, 33 J. Nat'l Ass'n Admin. L. Judiciary Iss. 2 (2013). Available online at: <http://digitalcommons.pepperdine.edu/naalj/vol33/iss2/1> (last visited Jan. 20, 2022).

⁴ Sec. 1, ch. 163, SLA 2004.

⁵ See AS 44.64.055.

⁶ See AS 44.64.020.

⁷ AS 44.64.020(a)(7).

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.⁸ The activities are:

- Adjudication services;
- Peer review for OAH Administrative Law Judges (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.

A. Adjudication Services

1. Overview

OAH's adjudication services range from preparing proposed decisions based on parties' written submissions in simple administrative appeals to conducting multi-day or multi-week trial-like evidentiary hearings in complex matters. Some cases are narrow, single-issue disputes; others are wide-ranging, and involve complicated legal and factual disputes.

Using formal or informal alternative dispute resolution (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 referred to OAH fall somewhere between these two extremes.

By law, the OAH ALJs are the final decisionmakers in only a few case categories.⁹ When the final decisionmaker is a board or commission, or a principal agency head, OAH's adjudication services can include functioning as a legal adviser to that decisionmaker for the specific case.¹⁰ Whether the final decisionmaker is the ALJ or an agency head, a final decision in an OAH appeal may be appealed to the Superior Court.

The table below illustrates the reach of OAH's adjudication services under its mandatory jurisdiction, which extends to most executive branch departments. Agencies may also become parties before OAH by voluntarily referring a dispute or class of disputes to OAH. Additionally, agencies not referring cases to OAH may nonetheless be parties to disputes, such as procurement protests that OAH hears on behalf of a separate executive branch decisionmaker.

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

⁹ In addition to the statutory categories in which OAH makes the final decision, OAH can receive final decision authority by delegation. See 44.64.030(c).

¹⁰ 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.

Table 1. 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
Department of Administration	<ul style="list-style-type: none"> • Retirement and Benefits • Contract and Procurement • Claims for Reimbursement • Breach of Security Involving Personal Information
Department of Commerce, Community and Economic Development	<ul style="list-style-type: none"> • Licensing (Corporations, Businesses and Professions) • Banking and Securities • Insurance • Alcoholic Beverage Control • Marijuana Control
Department of Education and Early Development	<ul style="list-style-type: none"> • Teacher Certification • PFD Execution
Department of Environmental Conservation	<ul style="list-style-type: none"> • Environmental Permitting • Food Safety
Department of Health and Social Services	<ul style="list-style-type: none"> • Facilities Licensing • Child Protection¹¹ • Medicaid Benefits, Audits & Rates • Public Assistance Benefits • PFD Execution
Department of Labor and Workforce Development	<ul style="list-style-type: none"> • Occupational Safety and Health • PFD Execution
Department of Natural Resources	<ul style="list-style-type: none"> • Land Sale Contracts • Water Rights
Department of Public Safety	<ul style="list-style-type: none"> • Violent Crime Compensation
Department of Transportation and Public Facilities	<ul style="list-style-type: none"> • Construction Procurement¹²
Department of Revenue	<ul style="list-style-type: none"> • Tax (original jurisdiction¹³) • Child Support • PFD Eligibility, Charitable Contribution & Fine/Forfeiture • Charitable Gaming • Unclaimed Property
University of Alaska	<ul style="list-style-type: none"> • PFD Execution

¹¹ The administrative child protection cases OAH hears for DHSS relate primarily to substantiation of child maltreatment allegations, and serve a purpose different than child protection cases heard by the court system.

¹² 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 also sends some additional cases to OAH on a voluntary basis.

¹³ 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.

2. Caseload

OAH saw an unprecedented increase in its caseload during 2021 when it assisted another Department’s hearing tribunal with a backlog of pandemic-related cases. Specifically, at the request of the Department of Labor and Workforce Development, OAH developed a small pilot project to assist in clearing a backlog of Pandemic Unemployment Assistance (PUA) appeals. The success of the initial pilot led to an agreement under which OAH took over the entire remaining PUA docket – a case load which, all told, exceeded 1,350 individual first-level appeals and 60 second-level appeals.

To put this number into context, over the prior five years, OAH’s active case load – that is, the number of cases that were open or being managed in some fashion at some point during the year – ranged from roughly 1,300 to 1,800 open cases.

Table 2. OAH case load 2016-2021

	Active cases	New cases
2016	1,870	1,519
2017	1,709	1,336
2018	1,686	1,339
2019	1,534	1,216
2020	1,341	1,009
2021	2,853	2,579

During 2021, OAH’s active cases totaled approximately 2,853. New cases that came in during the year totaled 2,579 – more than twice the number of new cases the previous year, and roughly 150 more than at OAH’s previous case intake peak in 2014.

a. Raw active case numbers

The table below focuses on OAH’s overall active caseload (which is a larger universe than case intake), to give a sense of the distribution of our case types over the course of the year. The “active cases” table below is divided into thirteen groups of case types. The first -- Business, Professional, and Occupational Licensing/Regulation” – crosses several departments, as does the catch-all “Other” group.

The chart below shows the number of active cases in each category during 2021, and that number as a percentage of all open cases that calendar year.

Table 3. OAH Active Cases 2021

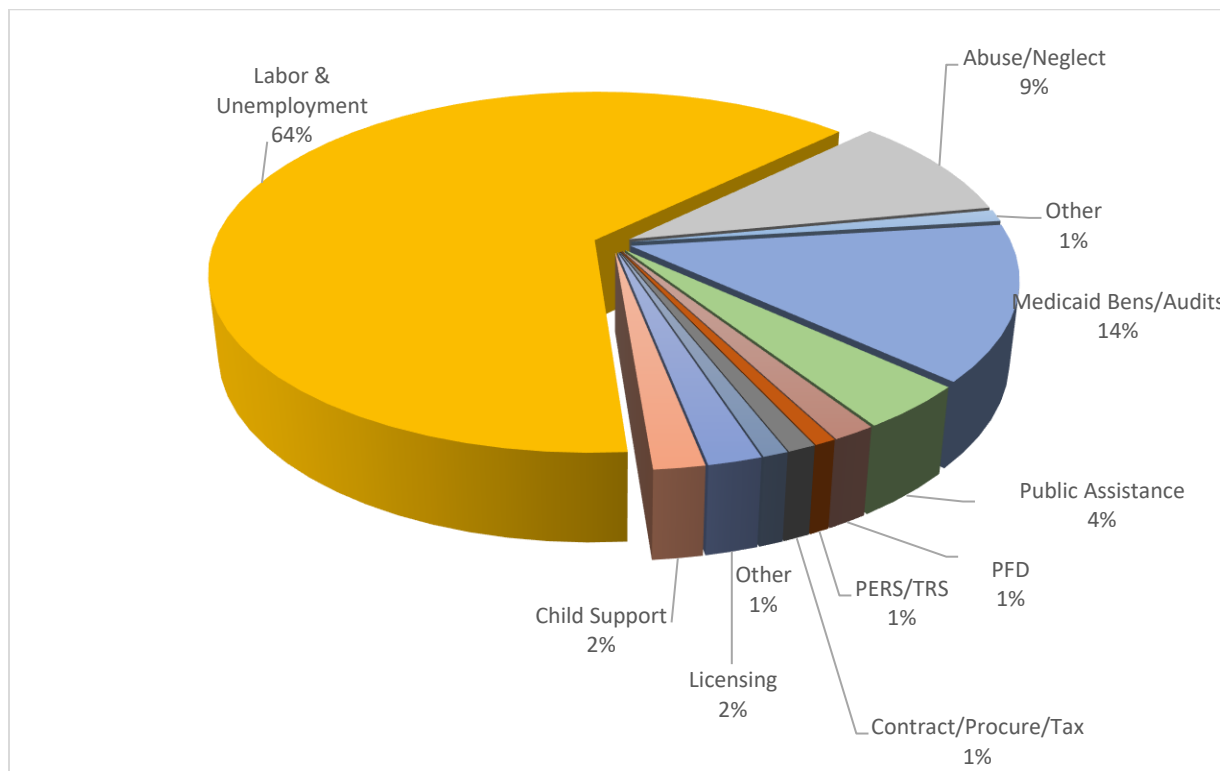
Case Type	Active cases	% of total number of active cases
Business, Professional, & Occupational Licensing ¹⁴	55	2%

¹⁴ In addition to cases arising out of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, this category includes peace officer certification cases from the Alaska Police Standards council, teacher and administrator licensing matters from the Professional Teaching Practices Commission, and licensing cases brought by the Alcohol and Marijuana Control Office.

Child Support	52	2%
Contracts and Procurement	13	< 1%
Health & Social Services-related Licensing/ Certification	8	< 1%
Human Rights	6	< 1%
Department of Labor & Workforce Development	1,837	64 %
Medicaid Benefits, Audits & Rates	395	14 %
Public Assistance Benefits	114	4 %
PFD Eligibility, Charitable Contribution, Execution, and Fine	44	2%
Retirement and Benefits	22	< 1%
Substantiation of Child Abuse and Neglect	266	9 %
Tax	15	<1 %
Other ¹⁵	26	< 1%
Total	2,853	

The chart below depicts the relative number of cases on which OAH actively worked in 2021, divided into general subject areas groups. The chart is derived from the data in the above table.

OAH Active Cases 2021

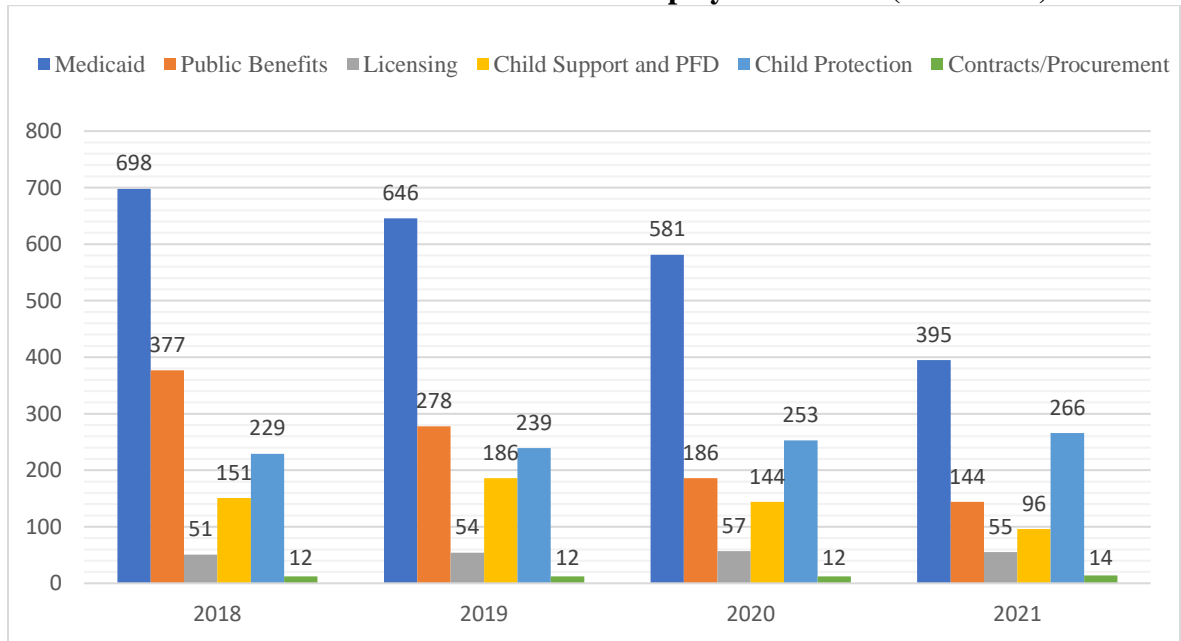


¹⁵ The catch-all “Other” category includes hearings on behalf of municipalities and the University of Alaska, Violent Crimes Compensation Board cases, special education hearings, and some smaller DOT&PF cases.

As apparent from the charts above, the labor and unemployment docket – particularly, the pandemic-related cases – made up a large part of OAH’s caseload in 2021. At the same time, OAH continued to see a decline in certain other dockets that, outside the pandemic, have historically been significant parts of OAH’s caseload.

The chart below looks at changes in case distribution outside of the DOLWD docket on types of cases that have historically been a significant part of OAH’s work.

Sample OAH Case Load Variation in non-Labor/Unemployment Cases (2018-2021)



Some OAH dockets – such as occupational licensing and child protection cases – have remained relatively steady despite the pandemic. Others – most notably Medicaid and public benefits cases – have declined sharply from pre-pandemic numbers. Looking ahead, OAH anticipates that these case numbers will rebound as pandemic-related protections on these programs are removed.

Another metric OAH tracks is how many cases were closed in a given calendar year. Case closures occur when a matter settles or when a final decision is issued. In 2021 OAH closed 2,292 cases. This is 1,219 more cases than were closed in 2020, 1,033 more than were closed in 2019, and 199 more cases than were closed in OAH’s busiest year to date, 2014.

b. Alternative dispute resolution

As in the court system, OAH seeks to promote the use of alternative dispute resolution (ADR) where appropriate. Of cases active during 2021, approximately 316 were diverted to ADR, including 279 cases diverted to the fast-track Medicaid mediation program, and 37 other matters diverted to formal ADR with an administrative law judge. Excluding the fast-track labor and unemployment cases, for which mediation is not available, 30% of OAH’s other active cases were provided some form of formal ADR in 2021.

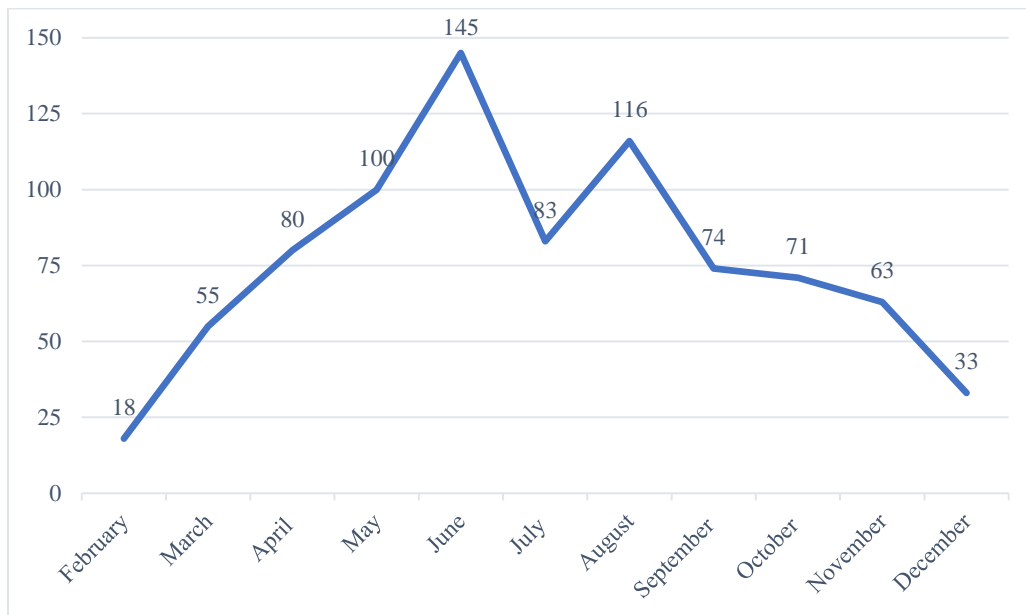
In addition to cases resolved through formal ADR, many others were resolved through efficient case management techniques, including informal ADR used to reach agreement on consent orders or stipulations, as well as through voluntary dismissal due to agency concession or private party withdrawal.

c. Decisions and other orders

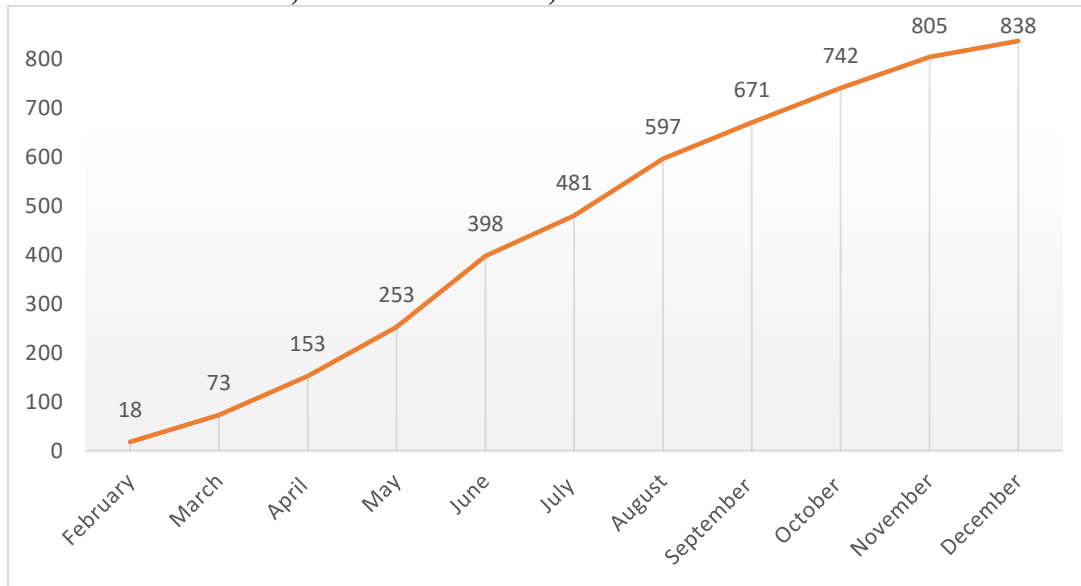
Of those cases that did not resolve through mediation or dismissal, a total of 1,132 full-dress decisions were issued. The lion’s share of these – 960 – were issued in labor and unemployment cases. In 2021, OAH issued 838 first-level Pandemic Unemployment Assistance (PUA) decisions, 73 regular unemployment insurance decisions, and 47 commissioner-level PUA appeal decisions.

OAH’s involvement in the Pandemic Unemployment Assistance appeals program began in February 2021, and grew from a small pilot program to, eventually, the entire PUA appeals docket. The trajectory of PUA decisions issued from February through December 2021 is depicted in the charts below.

OAH PUA Decisions Issued, Monthly, in 2021



OAH PUA Decisions, Cumulative Total, in 2021



Outside of the busy DOLWD docket, OAH issued 172 full-dress decisions in 2021 in addition to thousands of lesser orders. This number in particular often understates the work done by OAH during the year. Because this number only tracks full decisions that result in a case closure, it fails to capture those often large and complex OAH matters handled in which a significant decisional document is prepared, and the parties then resolve the case. Many of the most complex and time-consuming matters heard and managed by OAH do not ultimately result in a full decision measured by this metric.

This year, however, the very high number of total decisions issued reflects the significant differences between OAH's more standard dockets and those cases OAH handled in pandemic-related unemployment matters.¹⁶

d. Appeals

Very few OAH decisions are appealed to the courts, and the affirmance rate for such appeals is generally high.

Seventeen OAH decisions were appealed to the Superior Court in 2021. This represents just 1.5% percent of the total number of decisions by OAH issued in 2021. In addition, one appeal was filed in the Alaska Supreme Court arising out of an OAH decision.

Eight Superior Court appeals of OAH decisions were closed in 2021. Of these, two were affirmed on the merits, and four were dismissed before being decided on the merits; the remaining two were partial affirmances and partial reversals.

¹⁶ Some such differences include that OAH had final decisionmaking authority in the first-level pandemic-related unemployment appeals, and that the nature of that docket calls for a far more streamlined hearing and decision process than in other dockets.

In the Alaska Supreme Court, four appeals of OAH matters were closed in 2021. Of these, one was affirmed, one was dismissed, one was remanded back to the Superior Court, and one was a partial reversal and partial affirmance.

3. Time Devoted to Hearings and Related Work

The previous section detailed the distribution of new and open cases across case categories. In considering this distribution, however, one must remember that not all cases are equal in terms of the ALJ time and effort required. A typical procurement, contracting, 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.

And even within a case category, an atypically complicated case can require five times as much ALJ time as a more routine matter. At the same time, a matter from a typically time-intensive case category might resolve quickly, and another matter from a typically straightforward case category might become unexpectedly complex and time consuming.

All of these factors contribute to some degree of uncertainty in ALJ workload. Staff resources – as opposed to ALJ resources – are burdened approximately equally regardless of the case type.

OAH's ALJs collectively devoted 12,224 hours in 2021 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 in the charts below is broken out below in the same groupings used in the case intake data in the preceding section.

The first chart shows how the number of active cases compares with the number of ALJ hours spent in different case categories. Some case categories take a larger percentage of ALJ hours than others. Thus, while Labor and Unemployment cases were 64% of OAH's active cases by sheer number, they accounted for a much smaller percentage of case billings – 44%. Medicaid-related cases, 14% of all OAH cases by numbers, accounted for 10% of case billings. Professional licensing cases, by contrast, represent only 2% of active cases, but 8% of billings, because they tend to involve lengthy hearings and complex legal and factual issues. Tax, contracts, and procurement cases are, on average, similarly more involved.

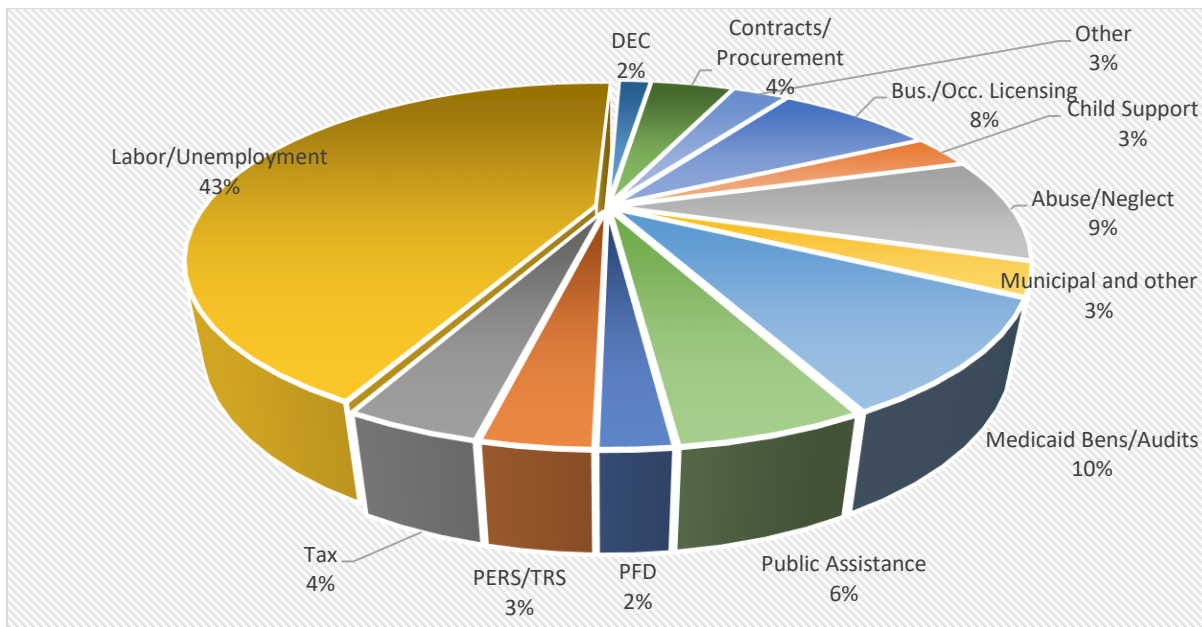
While there are exceptions on both sides of this general rule, the overall picture is represented in Table 4, below.

Table 4: OAH Case Distribution and ALJ Hours, 2021

Case Type	2021 Active OAH cases	% of active cases	2021 ALJ Hours	% of all ALJ hours
Licensing	55	2%	980	8%
Child Support	52	2%	363	3%
Contracts and Procurement	14	1%	530	4%
Department of Env. Conservation	3	0.1%	201	2%
Health & Social Services-related Licensing/ Certification	8	0.3%	108	1%
Labor and Unemployment	1,837	64%	5,264	44%
Medicaid Benefits, Audits, Rates	395	14%	1,207 ¹⁷	10%
Public Assistance Benefits	144	5%	678	6%
PFD Eligibility & Execution	44	2%	266	2%
Retirement and Benefits	22	0.8 %	398	3%
Child Protection	266	9%	1,154	10%
Tax	15	0.5%	487	4%
Other ¹⁸	30	1%	348	3%
Total	2,853		12,224	

With some simplification, the distribution of OAH ALJs' 2021 work time across case types is shown on the following chart:

OAH ALJ Time 2021



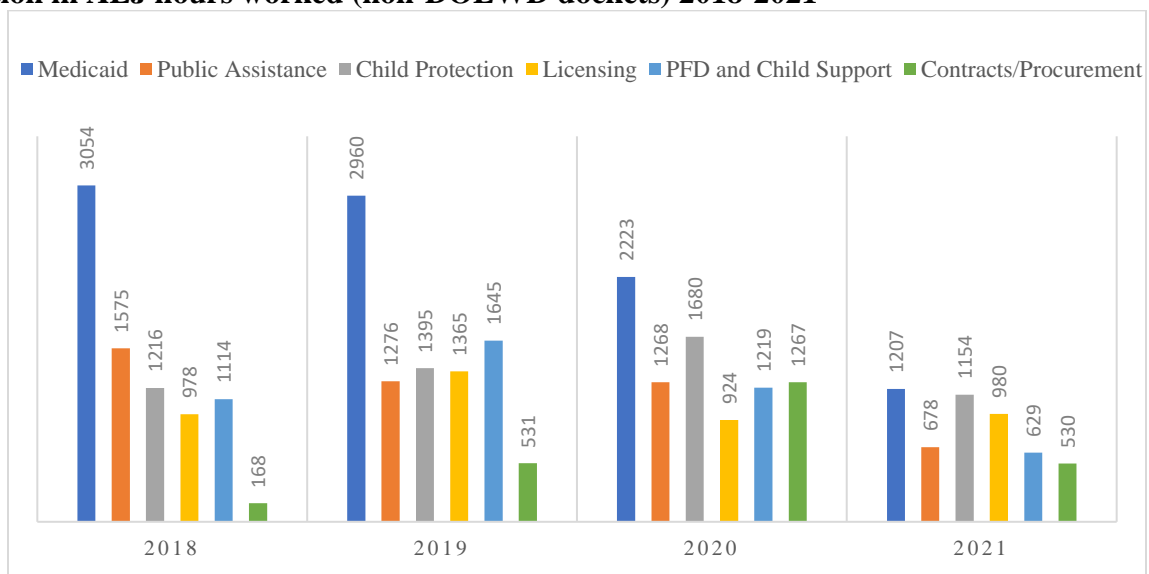
¹⁷ This figure includes 679 hours on program eligibility cases; 280 hours on Medicaid benefits coverage cases; and 248 hours on Medicaid audit and rate cases.

¹⁸ This category includes hearings held on behalf of municipalities and the University of Alaska, Human Rights Commission cases, special education hearings, and some smaller DOT&PF cases.

Looking at ALJ time over the past year provides an incomplete picture of OAH’s overall operations and distribution of resources. An earlier chart looked at changes in the distribution of OAH’s non-Labor/Unemployment cases since 2018, and observed that the sheer number of cases referred in Medicaid and Public Assistance case categories has dropped significantly since the start of the pandemic. Thus, while OAH received almost 700 Medicaid case referrals in 2018 and 650 in 2019, in 2021, fewer than 400 Medicaid cases were referred to OAH. Public benefits cases, similarly, dropped from nearly 400 cases in 2019 to fewer than 150 in 2021.

Predictably, ALJ hours in these dockets have likewise dropped significantly, as reflected in the chart below.

Variation in ALJ hours worked (non-DOLWD dockets) 2018-2021



This view over time again underscores the extent to which OAH’s workload distribution varies from year to year. Variation in the number of matters referred, or the complexity of those matters, can lead to significant variability of workload distribution and dedication of ALJ time from year to year.

4. Deadlines

Swift resolution is a key goal in administrative adjudication. Parties have an interest in obtaining a timely final agency decision resolving their dispute. Because this important principle is recognized in both state and federal law, OAH cases are subject to many deadlines.

The OAH-specific deadlines imposed by AS 44.64.060 apply to most, but not all, of OAH cases.¹⁹ The most important of these is the 120-day time limit to take a case from hearing request

¹⁹ 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 Crimes Compensation Board cases, and Professional Teaching Practices Commission cases. In addition, 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.

all the way to issuance of a proposed decision. This time frame is substantially shorter than the amount of time it takes a matter to be heard and resolved in the trial courts.

In addition to deadlines imposed by the OAH statute, other statutes and regulations establish deadlines that apply to certain types of cases. For instance, cease and desist order cases, summary license suspension actions, some insurance cases, securities matters, some procurement matters, child support appeals, and education-related facility grant cases are subject to shorter deadlines than those imposed by AS 44.64.060. Some case types have shorter or different deadlines for bringing the case to hearing, for issuing the decision, or for both.

Additionally, public benefits cases under the Department of Health and Social Services are subject to short timelines for the agency to reach its final decision. These final decision deadlines are generally driven by federal program requirements, which set short timeframes from the filing of an appeal to issuance of a final agency decision. In Food Stamps cases, the agency's final decision is due 60 days after the appeal is filed; for Medicaid benefits and most other public assistance benefits cases, the final decision is due 90 days after the hearing request is filed. Within this time frame, the OAH ALJ must hear the case and issue a proposed decision, the parties must be allowed an opportunity to comment, and the final decisionmaker must then decide the case. In these cases, the 120-day state deadline for proposed decision still applies but is almost always subsumed in the shorter federal deadline unless the latter is extended by special circumstances.

Historically, the key deadline OAH monitored for purposes of this report has been the 120-day deadline from the date of the hearing request to the issuance of a *proposed decision*. Under AS 44.64.060(d), the 120-day deadline to proposed decision can be extended only by agreement of both 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.²⁰

In 2021, the 120-day deadline was met or not applicable in more than 98% percent of the total number of cases OAH closed. The 120-day deadline statistic is a less sensitive measure for 2021 because that deadline did not apply to the majority of OAH cases closed in 2021. Specifically, it did not apply to the labor and unemployment cases OAH took on for DOLWD. Excluding the entire DOLWD docket, however, OAH still met its statutory deadline the lion's share of the time. In terms of all cases closed (*i.e.*, whether by decision or dismissal), the 120-day decision deadline was exceeded in just 2% of all non-DOLWD cases closed by OAH in 2021. In terms of decisions issued, the 120-day decision deadline was exceeded in fewer than 10 percent of non-DOLWD full decisions issued in 2021, despite the doubling of OAH's caseload in 2021.

Many cases reached final resolution — not just a proposed decision — within much less than 120 days, often within fewer than 50 days for fast-track cases such as child support and public assistance benefits. For cases resolved prior to hearing, the average time to final resolution was under 90 days (and was often considerably shorter); for cases resolved through a full decision, the

²⁰ In addition to the complexity of a case, other factors that have led to use of the extension-on-consent tool are 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 the case by the referring agency.

average time to resolution was just over 120 days, with many cases still resolving in under 90 days or less.²¹

In OAH's 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. For such a case to meet its final decision deadline, the agency must refer it without delay, OAH must process it on an expedited basis, and the Commissioner's Designee in the Department of Health and Social Services must act swiftly once the proposed decision is transmitted. In 2021, final decisions were issued after the applicable deadline in just 18 cases, an amount that represents fewer than 2.5 percent of all cases closed in which a final decision deadline applied. This was a remarkable achievement considering the enormous surge in case referrals in 2021 and the fact that OAH's full-time staff remained at the same level.

Lastly, in the PUA docket, like the DHSS "Fair Hearings" cases, the federal deadlines are based on the amount of time between the hearing request and the agency decision. While these cases came to OAH after those deadlines had passed, OAH was able to provide an exceptionally quick turnaround in the vast majority of PUA cases. Among the 838 PUA decisions issued in 2021, 62% were issued within five days of the hearing ending or record closing, and 89% were issued within 14 days. All told, the average time between record closure and decision issuance in PUA cases was less than 8 days, again a remarkable achievement that helped close the case backlog and bring resolution and certainty to thousands of Alaskans affected by the pandemic.

5. *Work for Additional Governmental Units*

In addition to its broad mandatory jurisdiction outlined at the outset of this report, OAH is permitted by statute to offer adjudication services to other executive branch agencies that are not required to route their cases to OAH, as well as to municipalities and other governmental agencies.

In addition to the extensive work on DOLWD's pandemic-related appeals, OAH also provided adjudication services in multiple complex matters for agencies such as the Department of Transportation and Public Facilities (in connection with construction matters) and the Alaska Police Standards Council in 2021. OAH also continued to provide services to other governmental agencies this year, providing adjudication services to several municipalities, boroughs, and school districts, and to the University of Alaska.

B. Fast-Track Medicaid Mediation Program

Since 2016, OAH has offered an award-winning fast-track mediation program to parties in Medicaid Fair Hearings cases. The success of that program continued this year.

In 2021, 284 Medicaid Services cases were entered into the fast-track mediation program. Of these, over 98% went to mediation, with 85% of fast-track mediations then resolving through either a settlement agreement or a withdrawal by the participant.

²¹ This timeframe involves cases whose time to final decision was extended significantly either by a time that the parties were engaged in ADR efforts, or, in the case of matters heard on behalf of boards or commissions, a period of months between when the OAH proposed decision was issued and when the next board or commission meeting was held. Both of these factors can extend the period of time that a case is technically open before OAH.

The success of the fast-track mediation program continues to contribute significantly to speedy resolution of Medicaid Services appeals, while yielding considerable cost savings to the Medicaid program. The fast-track mediation program continues to be well received by recipients, care providers, and agency personnel. The program is valued by parties for its expediency and the ability of parties on both sides to come together in an informal and transparent setting.

The program's one-hour mediation sessions are conducted by a contract mediator under OAH supervision. While not all Medicaid Services appeals are amenable to resolution through a fast-track mediation and some ultimately must be resolved through the hearing process, the availability of the mediation program enables speedy resolution of many cases without ALJ involvement. The program has resulted in a notable reduction in OAH's billings to the Department of Health and Social Services (DHSS), as well as providing additional program savings for DHSS because disputed services are resolved more quickly.

C. Peer Review

OAH's ALJs seek to promote excellency in the adjudication of disputes, including the preparation of proposed decisions. OAH employs a peer review process to assist newer ALJs as they become familiar with the range of the OAH case load, and to assist all ALJs in improving their work product.

Peer review at OAH serves two purposes: it promotes consistency in decision-making 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, and 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 addition to peer review serving a valuable training function, OAH also employs peer review for ALJs handling particularly complex cases. Again, one of the benefits of a central panel of administrative law judges as opposed to isolated or siloed hearing officers is the ability to share knowledge, skills, and resources. Peer review occurs in complex cases to enhance the quality of the final product. The peer reviewer may point out analytical or legal weak spots, suggest structural or language changes, or assist the assigned ALJ in reasoning through a complex problem. However, the assigned ALJ retains complete decisional autonomy.

In 2021, a formal peer review assignment was made in roughly 36% of new cases outside the labor/unemployment docket. However, not all peer review assignments lead to time spent or billed conducting peer reviews, since many cases resolve through mediation or other pre-hearing means.

In addition to formal peer review assignments made as part of the training process or for complex decisions, 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 promotes consistency among ALJs on both legal issues as well as best practices in case management.

D. 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 2021, OAH added 123 new OAH decisions to our online publications database. As DOLWD publishes its decisions on its own electronic database, OAH also provided all 1,012 DOLWD decisions issued in a format for that tribunal to publish accordingly.

E. 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 on July 2, 2006. No amendments to the 2006 regulations were proposed in 2021. It is anticipated that when OAH’s proposed statutory changes are adopted by the legislature, a comprehensive regulations review project will commence.

OAH is also tasked by statute with tracking notices of other state agencies’ proposed regulations, looking for those that have the potential “to govern procedures in administrative hearings.” In 2021, OAH submitted comments on hearing provisions contained in regulations proposed by the Alaska Police Standards Council.

F. 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 sends a survey to all hearing participants when a final decision in a case is issued, and surveys can be completed online or returned in the mail.²² As in prior years, survey responses during 2021 were broadly positive, and narrative comments were more often than not constructive. Even when a litigant was not satisfied with the outcome of the case, the vast majority respondents were satisfied with the adjudication process overall.

²² Because the DOLWD docket cases were significantly different from typical OAH hearings and were undertaken pursuant to a memorandum of agreement specifying that DOLWD hearing procedures would be applied, and because of the considerable extra workload this docket already generated for OAH staff, OAH did not survey the participants from this docket in 2021.

G. 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*[.]²³

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;
- Formal training for non-OAH administrative adjudicators through participation by OAH representatives in periodic, agency-specific conferences; and
- Formal training for administrative adjudicators in the form of programs made available by OAH.

OAH's newest ALJ completed the National Judicial College's introductory training for Administrative Law Judges; this program is the only comprehensive training course for administrative law judges in the country. Two of OAH's ALJs also were able to attend an online tax law seminar at the University of California/Davis.

During 2021, OAH continued its successful in-house training program for ALJs. While this program is not a replacement for formal judicial training through the National Judicial College, it is a useful mechanism for continuing education and for training focused with particularity on issues germane to OAH. OAH has obtained continuing education credit approval by the Alaska Bar Association for these trainings, approximately four of which were held in 2021.

OAH also took the lead in developing a statewide training for attorneys who practice before OAH, which was presented at the 2021 Bar Convention.

In addition to the above, a number of ALJs used their own funds to take part in continuing education, or took advantage of free courses presented by various groups, including: attending webinars offered by the National Association of Administrative Law Judges in conjunction with the National Judicial College; attending webinars offered by the National Center for State Courts; participating in the Central Panel Director's Conference, a national conference of central panels like OAH; and taking part in webinars offered by the American Bar Association.

²³ AS 44.64.020(a)(6) (emphasis added).

In addition, the OAH management team also provided training to other administrative adjudicators and to final decisionmakers during 2021, including developing a video training for professional licensing board members who may render final decisions in matters heard by OAH.

H. Administration of the Code of Hearing Officer Conduct

By statute, complaints alleging violation of the Code of Hearing Officer Conduct must be considered by OAH's Chief ALJ, who determines whether they meet the standard for referral to the Attorney General for investigation.²⁴ 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.²⁵ The Chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

One informal ethics opinion was issued during 2021 but no formal opinions were issued. The Chief ALJ received no complaints of violations of the Code of Hearing Officer Conduct that met the criteria for consideration under 2 AAC 64.070.

I. 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.

The Chief ALJ issued one *pro tempore* chair appointment in 2021. There were no vacancies on the Workers' Compensation Appeals Commission that needed to be filled in 2021.

III. Recommendations of the Chief Administrative Law Judge

In addition to the description of activities, the Legislature has directed OAH to include in its annual report "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).

A. Recommendation: Adopt legislative revisions to OAH's statute

In the fall of 2016, OAH embarked on a comprehensive review of the statutes and regulations affecting administrative hearings. Based on this review, OAH recommended certain specific statutory changes, with sample language offered in an Appendix to the 2017 annual report. In 2019, Senator Micciche introduced SB 88, encompassing many of those proposed changes. The bill was scheduled to be heard in the Finance Committee in March 2020 but was unable to have a hearing before the pandemic-related end of the legislative session. This bill was not introduced during the 2021 legislative session. However, OAH continues to strongly believe that legislative adoption of the changes identified in prior annual reports and in SB 88 would improve both

²⁴ AS 44.64.050(c). Complaints alleging violations by the Chief ALJ are considered by the Attorney General. AS 44.64.050(e).

²⁵ 2 AAC 64.060(c).

efficiency and due process; a substantially similar draft of prior legislation is attached hereto as Appendix B.

In brief, the major improvements in SB 88 and as set out in Appendix B would be to address the following:

- OAH's statute has a deadline for proposed decisions, and a deadline for agency heads to then make final decisions. The final decision deadline applicable to agency heads, though reasonable in concept, is counted from the wrong event – namely, it is counted from the date the proposed decision is issued, instead of the date that the matter is transmitted to the agency head. This has caused some agency heads to have less than a reasonable time to consider proposals for action and deliberate on their final action. SB 88 addresses this in Section 14 by starting the decision clock for final decisionmakers from the point at which the proposed decision is actually transmitted to them.
- The lack of a provision allowing parties to respond to one another's proposals for action, in appropriate cases, has led to due process concerns in some instances. SB 88 addresses this concern in Section 14.
- The lack of opportunity for the ALJ to revise a proposed decision based on errors pointed out in proposals for action has led to delay and inefficiency in a number of cases. SB 88 addresses this in Section 14 with a time-saving mechanism for ALJs to correct proposed decisions before transmitting them to the final decisionmaker.
- The current statute provides a one-size-fits-all period of 45 days for remanded cases. This timeline is simultaneously too relaxed in instances of simple clarifications or redrafts, and too tight for more complex remands. In Section 14, SB 88 provides a mechanism whereby the final decisionmaker can set deadlines appropriate to the circumstances of a case.
- Although the Chief ALJ can employ administrative staff, the statute inadvertently was written in such a way that an Associate Attorney I (law clerk) cannot be hired by OAH even though such a hire might result in cost-savings to OAH. SB 88 addresses this in Sections 2 and 4 by allowing the hiring of professional staff.
- OAH currently has subpoena power of some kind in the great majority of its cases, drawn from a patchwork of dozens of sources scattered across many statutory titles. At the same time, there is no subpoena power in a few important case categories. It is time for OAH subpoena authority to be consolidated into a single, uniform provision of AS 44.64. The patchwork of subpoena authorities causes uncertainty, inefficiency, and extra cost. Although subpoenas are issued in only a very small percentage of cases, situations in which the authority to issue them is absent or questionable disrupt orderly and effective adjudication, and can lead to waste and injustice. The modified draft legislation in Appendix B addresses this issue in Section 16 by providing more uniform subpoena authority except in a narrow and clearly identified category of cases.

- At the time OAH’s statute was enacted, there was debate over how much experience an ALJ should have before being hired by OAH. Given the complexity of some of the cases now before OAH, having at least four years of practice overall as the minimum standard for hiring now makes sense. (In actuality, OAH ALJs average closer to twenty years of law practice experience). However, experience in other jurisdictions should be countable. The inability to count experience in other jurisdictions has caused severe recruiting difficulties in the tax docket. SB 88 addresses this in Section 7 by allowing OAH to count legal practice in other jurisdictions towards the tax-qualified ALJ position’s practice requirements.
- Like the court system, OAH needs to have a means of reopening decisions that were entered in error, such as when a party failed to appear but the failure later turns out to be because the party was incapacitated, or because the agency sent the notice to the wrong person. OAH currently has no mechanism that allows a case to be reopened, even in the presence of frank and obvious error. SB 88 addresses this in section 16 by allowing OAH to reopen cases for the same reasons allowed in the court system.

The Chief Administrative Law Judge recommends that the legislature enact legislation to fix the issues in AS 44.64 that have been identified by experience.

B. Recommendation: Consolidate the Workers Compensation Appeals Commission’s Function Under OAH

The Chief ALJ, in conjunction with Boards and Commissions, is involved in the recruitment and vetting of applicants for the labor and management members of the Commission and for the Chair position. Final selection of the candidates is made by the Governor. During the five-year period from calendar years 2016 through 2020, the Commission has averaged between 16 and 26 new cases a year. In terms of total case load (new cases plus cases carried over from a prior year and cases that have been remanded), the Commission has had between 43 and 49 cases on its docket each year. Currently, the Commission has two full-time employees: the Chair and a staff member.

Since 2014, there have been on-and-off discussions between the Department of Labor and the Department of Administration and, more particularly, between OAH and past Chairs of the Commission concerning consolidating the Commission under OAH so that the Chair would have a full-time docket consisting of OAH cases and cases for the Commission. Certain cost savings would result from such a consolidation given the small docket of the Commission.

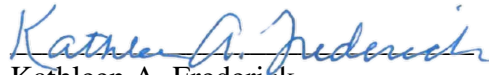
IV. Conclusion

In 2021, OAH’s activities continued to focus on its core function — adjudication of executive branch cases — in the unique circumstances of the pandemic. This has included adjustments to the conduct of hearings – for example, offering a wide variety of proceedings via videoconference to replace in-person hearings and mediations. It has also included a shift in OAH caseload as the adjudicative needs of Alaskans and state agencies have shifted during the pandemic.

OAH's ability to successfully pivot to handle a large case load of pandemic-related appeals showcases the value of the central panel system. Having trained and skilled adjudicators and the agency infrastructure for an adjudication system enabled OAH to rapidly assume responsibility for working through these important cases.

In the coming year, OAH will continue to search for opportunities to improve the delivery of fair, efficient, and cost-effective hearings and alternative dispute resolution processes for the benefit of all Alaskans.

Submitted effective the 31st day of January 2022.


Kathleen A. Frederick
Chief Administrative Law Judge

Appendix A

Post-Hearing Survey Results: January 2021-December 2021

Demographics of Hearing Participants Responding²⁶

Question	Number Responding			
	Attorney	Party	Agency Representative	Other
<i>Define your participation</i>	3	8	44	2
<i>Did you attend in person or by telephone?</i>	<i>Attended in person</i>		<i>Attended by telephone</i>	
	0		53	
<i>Where do you live?</i>	<i>Rural Alaska</i>	<i>City in Alaska</i>	<i>Outside Alaska</i>	
	17	38	2	
<i>What was the final ruling of your hearing?</i>	<i>In your favor</i>	<i>Not in your favor</i>	<i>Other</i>	
	31	10	17	
<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>	
	7	9	10	

Hearing Evaluation for Administrative Law Judge (ALJ)	Excellent	Adequate	Poor
ALJ's preparation for the case	39	10	4
ALJ's courtesy toward both parties	41	10	2
ALJ's impartiality toward both parties	42	9	2
ALJ's efficiency	41	10	2
ALJ explained the hearing process	41	11	1

Written Decision Evaluation	Excellent	Adequate	Poor
ALJ's promptness issuing order	40	14	1
Decision clearly explained the issues and ruling	42	10	3

Overall Evaluation	Agree	Disagree	No Comment
Office of Administrative Hearings Clerks were courteous and helpful	52	2	1
Overall, I was satisfied with the hearing process and felt it was a positive experience	51	5	1

²⁶ Note: not all respondents answered every question.

APPENDIX B

SB ___: "An Act relating to the office of administrative hearings; relating to the types of proceedings handled by the office of administrative hearings; relating to the entities that may use the services of the office of administrative hearings; relating to the duties of the chief administrative law judge, including the power to hire professional staff; relating to the qualifications and powers of administrative law judges, including subpoena power; relating to the compensation of the chief administrative law judge; relating to complaints against administrative law judges and hearing officers; relating to reimbursement for costs incurred by the office of administrative hearings; relating to procedures for requesting and conducting proceedings of the office of administrative hearings; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** [AS 18.80.120](#)(b) is amended to read:

(b) The commission shall request the chief administrative law judge to appoint, under [AS 44.64.020](#), an administrative law judge employed or retained by the office of administrative hearings to preside over a hearing conducted under this section. [AS 44.64.040 and 44.64.050](#) [[AS 44.64.040](#) - 44.64.055], 44.64.070 - 44.64.200, and the procedures in [AS 44.62.330](#) - 44.62.630 (Administrative Procedure Act) apply to the hearing except as otherwise provided in this chapter.

* **Sec. 2.** [AS 39.25.120](#)(c)(20) is amended to read:

(20) the chief administrative law judge, [AND] administrative law judges, **and professional staff** of the office of administrative hearings;

* **Sec. 3.** [AS 44.64.010](#)(d) is amended to read:

(d) The chief administrative law judge shall receive a monthly salary that is **equal to a step in** [NOT LESS THAN STEP A NOR MORE THAN STEP F,] Range 27 [,] of the salary schedule in [AS 39.27.011](#)(a) [FOR JUNEAU, ALASKA]. The chief administrative law judge is in the partially exempt service.

* **Sec. 4.** [AS 44.64.020](#) is amended to read:

Sec. 44.64.020. Powers and duties of chief administrative law judge. (a)

The chief administrative law judge shall

- (1) supervise the office;
- (2) employ administrative staff, who shall be in the classified service;
- (3) employ administrative law judges **and professional staff**, who shall be in the partially exempt service;
- (4) preside over administrative hearings **and other proceedings** handled by the office or, based **on** [UPON] the qualifications and expertise of the administrative law judges, assign administrative law judges to preside over hearings **or other proceedings handled by the office**, and protect, support, and enhance the decisional independence of the administrative law judges;
- (5) establish and implement performance standards, including provision for timeliness, and peer review programs for administrative law judges employed or retained by the office;
- (6) make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication, substantive law, **alternative** [ALTERNATE] dispute resolution, and technical matters for administrative law judges and other administrative adjudicators;
- (7) survey administrative hearing participants and use other methods to monitor the quality of administrative hearings held by the office and other [STATE] agencies, and submit to the governor and the legislature on January 31 of each year the results of the survey 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;
- (8) review and comment on regulations proposed by [STATE] agencies to govern procedures in administrative hearings;
- (9) enter into contracts as necessary to carry out the functions of the office;
- (10) annually prepare and submit to the commissioner of administration a budget for the office for the next fiscal year that **must** [SHALL] include and separately identify funding for training and continuing education; a copy of the budget submitted to the commissioner under this paragraph shall also be submitted to the **finance committee** [FINANCE COMMITTEE] of each house of the legislature;
- (11) after consulting with affected agencies, adopt regulations under [AS 44.62](#) (Administrative Procedure Act) to carry out the duties of the office and implement this chapter;
- (12) receive and review applications from individuals seeking appointments to the Workers' Compensation Appeals Commission and submit the names of individuals to the governor for appointment as provided in [AS 23.30.007\(d\)](#); and

(13) appoint a chair pro tempore for the Workers' Compensation Appeals Commission as provided in [AS 23.30.007\(m\)](#).

(b) In carrying out the responsibilities of the office, the chief administrative law judge shall seek to accomplish the following goals:

- (1) provide for the delivery of high-quality adjudication **and alternative dispute resolution** services in a timely, efficient, and cost-effective manner;
- (2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated and protect them from threats, intimidation, and harassment;
- (3) foster open and clearly explained agency decisions and improve public access to the process of administrative adjudication;
- (4) guarantee protection of all parties' due process rights, increase the public parties' perception of fairness in administrative adjudication, and foster acceptance of final administrative decisions by the public and affected parties;
- (5) protect the integrity of the process of administrative adjudication and decisional independence of administrative adjudicators; and
- (6) increase consistency in administrative procedures and decisions.

* **Sec. 5.** [AS 44.64.030\(b\)](#) is amended to read:

(b) An agency **or entity** may request the office to conduct an administrative hearing, **arbitration**, or **alternative dispute resolution** [OTHER PROCEEDING] of **the requesting** [THAT] agency **or entity** or to conduct several administrative hearings, **arbitrations**, or **alternative dispute resolutions** [OTHER PROCEEDINGS] under statutes **or ordinances** not listed in (a) of this section. The office may provide the service after entering into a written agreement with the **requesting** agency **or entity** describing the services to be provided **and procedures, which must be consistent with applicable law, to be applied** and providing for reimbursement by the **requesting** agency **or entity** to the office of the costs incurred by the office in providing the services.

* **Sec. 6.** [AS 44.64.030\(c\)](#) is amended to read:

(c) To the extent otherwise permitted by law, the agency **or entity** may delegate to the administrative law judge assigned to conduct the hearing on behalf of the agency **or entity** the authority to make a final agency **or entity** decision in the matter. The final decision may be appealed to the superior court by any party.

* **Sec. 7.** AS 44.64.040(a) is amended to read:

(a) An administrative law judge must be admitted to practice law in this state and must have been admitted to practice in this state for at least **four** [TWO] years before being employed or retained with the office, **except that, if the duties of an administrative law judge who is employed or retained by the office will include conducting a proceeding under AS 43.05.405 - 43.05.499, the administrative law judge must be admitted to practice law in this state and must have been admitted to practice in this state or another state for four years before being employed or retained with the office.** The chief administrative law judge shall establish additional qualifications for administrative law judges employed or retained by the office and for those administrative law judges that may be assigned to particular types of cases. An administrative law judge is in the partially exempt service. Notwithstanding AS 39.25.120(b), full-time administrative law judges employed by the office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and (16).

* **Sec. 8.** AS 44.64.040(b) is amended to read:

(b) An administrative law judge employed or retained by the office may, in conducting an administrative hearing **or other proceeding** for an agency **or entity**, exercise the powers authorized by law for exercise by that agency **or entity** in the performance of its duties in connection with the hearing **or other proceeding**. An administrative law judge may

- (1) engage in alternative dispute resolution under regulations adopted by the chief administrative law judge that is in addition to any **alternative** [ALTERNATE] dispute resolution procedure used by an agency **or entity** before the case is referred to the office;
- (2) order a party, a party's attorney, or another authorized representative of a party to pay reasonable expenses, including attorney fees, incurred by another party as a result of actions done in bad faith or as a result of tactics used frivolously or solely intended to cause unnecessary delay;
- (3) perform other necessary and appropriate acts in the performance of official duties.

* **Sec. 9.** AS 44.64.040(c) is amended to read:

(c) An administrative law judge employed by the office must devote full time to the duties of the office unless **servicing** [APPOINTED TO A POSITION THAT IS] less than **full time** [FULL-TIME]. An administrative law judge employed by the office may not perform duties inconsistent with the duties and responsibilities of an administrative law judge.

* **Sec. 10.** [AS 44.64.050](#)(c) is amended to read:

(c) Except as provided in (e) of this section, the chief administrative law judge shall receive and consider all complaints against administrative law judges or hearing officers employed or retained by the office or another agency alleging violations of (a) of this section or of the code of hearing officer conduct. The chief administrative law judge shall deliver the complaint to the attorney general when the chief administrative law judge determines that

(1) the complaint alleges a violation that occurred

(A) not more than three years before the complaint was filed; or

(B) in connection with an adjudication or other proceeding, and the complaint was filed not more than two years after conclusion of the adjudication or other proceeding, including resolution of all appeals; and

(2) the conduct alleged, if true, would constitute a violation of

(A) [(1) SUBSECTION] (a) of this section; or

(B) [(2)] the code and would warrant disciplinary action under the regulations adopted under (b) of this section.

* **Sec. 11.** [AS 44.64.060](#)(a) is amended to read:

(a) The chief administrative law judge shall, by regulation, establish procedures for administrative hearings conducted by the office. Each administrative hearing under the jurisdiction of the office or that has been transferred to the office by an agency **or entity** shall be conducted in accordance with statutes **or ordinances** that apply to that hearing, including, if applicable, [AS 44.62](#) (Administrative Procedure Act). In case of conflict between this section and another applicable statute **or ordinance** establishing procedures for administrative hearings, the other statute **or ordinance** prevails. However, **except as otherwise provided in AS 44.64.030(b)**, to the extent regulations adopted by an agency for the conduct of an administrative hearing conflict with regulations adopted by the chief administrative law judge under this subsection, the regulations adopted by the chief administrative law judge control to the maximum extent possible without conflicting with applicable statutes.

* **Sec. 12.** [AS 44.64.060](#)(b) is amended to read:

(b) When an agency receives a request for a hearing that is subject to [AS 44.64.030](#), the agency shall, within 10 days and in writing, deny the request for reasons provided by law or grant the request and refer the case to the office **with a copy of the request for a hearing, the names, addresses, electronic mail addresses, and telephone numbers of all parties and their**

representatives, and the document containing the decision or other matter under review.

The agency shall immediately give notice of the denial or referral to the requesters and the office. If the request is denied, the denial may be appealed to the **office or** [SUPERIOR COURT] as provided by other [law] statute or regulation. If the request is granted, the agency shall within **20** [15] days after receiving the request, compile and transmit to the office a copy of the [REQUEST FOR A HEARING, THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PARTIES AND THEIR REPRESENTATIVES, AND THE AGENCY'S DECISION, IF ANY, TOGETHER WITH THE] record relied on to support the decision **or other matter.** Any information provided to the office that is confidential by law shall be identified by the agency as confidential and shall be kept confidential by the office.

* **Sec. 13.** [AS 44.64.060](#)(d) is amended to read:

(d) An administrative law judge employed or retained by the office shall, within 120 days after the date the agency received the request for a hearing, prepare a proposed decision, unless another [TIME] period is provided by law or agreed to by the parties and the chief administrative law judge. **With the approval of the chief administrative law judge, an administrative law judge may stay a proceeding to allow related criminal prosecutions or civil litigation to proceed first. The running of the 120-day deadline under this subsection is suspended during a stay** [THE ADMINISTRATIVE LAW JUDGE SHALL IMMEDIATELY SUBMIT THE PROPOSED DECISION TO THE AGENCY].

* **Sec. 14.** [AS 44.64.060](#)(e) is amended to read:

A proposed decision in an administrative hearing **must** [SHALL] be in a form that may be adopted as the final decision by the agency with authority to make the final decision. The proposed decision is a public record, except as otherwise provided by statute. A copy of the proposed decision shall be served by the office on each party in the case or on the attorneys representing those parties in the hearing. Unless the office has established a shorter [TIME] period **or, for good cause and with the consent of all parties to the hearing, a longer period,** or **unless** another statute has established a different [TIME] period, within 30 days after the proposed decision is served, a party may file with the **office** [AGENCY] a proposal for action under (1) - (5) of this subsection. **The administrative law judge may permit a party to reply to a proposal for action and shall, within 15 days after the final date for submission of proposals for action, transmit the proposed decision and any proposals for action and replies to the final decision maker or return the matter to the administrative law judge to**

prepare within 30 days a revised proposed decision under (d) of this section. The agency with authority to make a final decision in the case retains **the** [AGENCY] discretion in the final disposition of the case and shall, within [45] **20** days after the date the **office transmits to the agency the proposed decision or revised** proposed decision [IS SERVED] or at **or before** the next regularly scheduled meeting that occurs at least **20** days after the **office transmits to the agency the proposed decision or the revised proposed decision** [PROPOSED DECISION IS SERVED], do one or more of the following:

- (1) adopt the proposed decision as the final agency decision;
- (2) return the case to the administrative law judge to take additional evidence or make additional findings or for other specific proceedings, in which case the administrative law judge shall complete the additional work and return the revised proposed decision to the agency within 45 days after the original decision was returned under this paragraph **or within another period prescribed in the order returning the case to the administrative law judge;**
- (3) exercise its discretion by revising the proposed enforcement action, determination of best interests, order, award, remedy, sanction, penalty, or other disposition of the case, and adopt the proposed decision as revised;
- (4) in writing, reject, modify, or amend a factual finding in the proposed decision by specifying the affected finding and identifying the testimony and other evidence relied on by the agency for the rejection, modification, or amendment of the finding, and issue a final agency decision;
- (5) in writing, reject, modify, or amend an interpretation or application in the proposed decision of a statute or regulation directly governing the agency's actions by specifying the reasons for the rejection, modification, or amendment, and issue a final agency decision.

* **Sec. 15.** [AS 44.64.060](#)(f) is amended to read:

(f) If a final decision is not issued timely in accordance with (e) of this section, the administrative law judge's proposed decision **or, if the proposed decision has been revised under (e) of this section, the administrative law judge's revised proposed decision,** is the final agency decision.

* **Sec. 16.** [AS 44.64.060](#) is amended by adding new subsections to read:

(g) Except as otherwise provided by statute, agency regulation, or an ordinance in an administrative hearing subject to [AS 44.64.060\(a\)](#), an administrative law judge may, for good cause shown, issue a subpoena to compel the attendance and testimony of witnesses and the production of documents and records. This subsection shall not apply to hearings brought under AS 39.

(h) After a final agency decision has been issued under (e) of this section, the maker of the final decision may reopen a proceeding for a reason provided in Rule 60(b), Alaska Rules of Civil Procedure. This subsection does not supersede or modify authority to reopen a proceeding as otherwise provided by law.

* **Sec. 17.** [AS 44.64.080\(c\)](#) is amended to read:

(c) After an administrative hearing is referred by an agency to the office for hearing, the agency may not take further adjudicatory action in the case, except **for agency staff acting** as a party litigant **and the official or body with authority to render a final decision taking action under [AS 44.64.060\(e\)](#)** [OR TO RENDER A FINAL DECISION AS PROVIDED BY LAW]. This subsection does not otherwise limit the agency's authority to take action affecting a party to the case.

* **Sec. 18.** [AS 44.64.200\(1\)](#) is amended to read:

(1) "administrative hearing" means a quasi-judicial hearing before an agency **or entity**; it does not include an informal conference or review held by an agency **or entity** before a [FINAL] decision is issued or a ratemaking proceeding or other non-adjudicative public hearing;

* **Sec. 19.** [AS 44.64.200](#) is amended by adding new paragraphs to read:

(6) "entity" means a municipality, school district, or other governmental entity;

(7) "other proceeding" means an arbitration or alternative dispute resolution conducted under [AS 44.64.030\(b\)](#);

(8) "school district" means a borough school district, a city school district, or a regional educational attendance area under [AS 14](#).

* **Sec. 20.** [AS 44.64.055](#) is repealed.

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) The change in compensation made by [AS 44.64.010](#)(d), as amended by sec. 3 of this Act, applies only to an individual who is appointed on or after the effective date of sec. 3 of this Act.

(b) The four-year admission requirement in [AS 44.64.040](#)(a), as amended by sec. 7 of this Act, applies to an individual whose employment or retention as an administrative law judge by the office of administrative hearings established under [AS 44.64.010](#) begins on or after the effective date of sec. 7 of this Act.

(c) [AS 44.64.050](#)(c), as amended by sec. 10 of this Act, applies to a complaint against an administrative law judge or hearing officer received on or after the effective date of sec. 10 of this Act.

(d) In this section,

(1) "administrative law judge" has the meaning given in [AS 44.64.200](#);

(2) "hearing officer" has the meaning given in [AS 44.64.200](#).

* **Sec. 22.** Section 10 of this Act takes effect July 1, 2023.