



## REPORT HIGHLIGHTS PERFORMANCE AUDIT

### Office should enhance controls for ensuring fair, independent, and timely hearings

#### Our Conclusion

The Arizona Office of Administrative Hearings (Office) was established in 1995 to ensure that the public receives fair and independent administrative hearings. The Office has implemented several controls to help ensure that it provides fair, independent, and timely hearings, but it should implement statutorily required training programs, enhance its policies and procedures for ensuring fair and independent hearings, and better comply with statutory hearing time frame requirements. Additionally, the Office's method for calculating the rates for its services results in inequitable agency charges, and the Office has further inflated these rates to make up for a shortfall in its State General Fund appropriation. To address these issues, the Office should implement a cost-based rate-setting method to develop consistent rates to charge all agencies for its services, and work with the Legislature to address its State General Fund appropriation shortfall.

The Office was established in 1995 to ensure fair and independent hearings. Most state agencies are required to use the Office for hearings, over which administrative law judges employed by the Office preside. Of the almost 7,600 hearings requested in fiscal year 2013, 74 percent came from the Arizona Health Care Cost Containment System (AHCCCS) with another 18 percent coming from four other agencies, including the Arizona Registrar of Contractors (ROC).

**Office should implement training programs and enhance policies and procedures**—The Office has implemented several controls to help ensure that it provides fair and independent hearings, including a supervising judge who provides daily oversight of and guidance to the Office's administrative law judges, assisting self-represented parties with the hearing process, requiring judges to assess agencies' reasons for modifying or rejecting judges' decisions, and ensuring that judges' interactions with hearing parties are perceived as independent and impartial. However, to comply with statute, the Office should implement training programs for agencies and judges. In addition, to further ensure that it provides fair and independent hearings, it should enhance some of its policies and procedures related to analyzing agency responses to hearing decisions, its ethical code, and soliciting feedback on its hearing processes.

**Office should better comply with statutory time frame requirements**—Statute requires the Office to hold hearings within 60 days of an appeal or an agency's request for a hearing, unless the parties mutually agree to a delay or a party shows good cause for a delay. The Office met the required time frames in more than 76 percent of its cases in the first 6 months of fiscal year 2014, but has not always required evidence that all parties have agreed to a later hearing date. The Office should schedule hearings more than 60 days after the hearing request only when it receives documentation that all parties have agreed to a later date, unless a party shows good cause for a postponement.

#### Recommendations

The Office should:

- Develop and implement training programs for agencies and judges;
- Enhance some of its policies and procedures; and
- Schedule hearings more than 60 days after the hearing request only when it receives documentation that all parties have agreed to a later date, unless a party shows good cause for a postponement.

### Office should align rate-setting method with best practices

**Office should align its rate-setting method with best practices**—The Office used a complicated rate-setting method to ensure that it generated sufficient cash to pay its monthly expenses. The two components to the charges were an hourly rate for judge time and a charge for each hearing requested. However, this rate-setting method



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resulted in agencies paying different rates for the same services. For example, in December 2012, agencies paid between nearly \$68 an hour for one judge and nearly \$205 an hour for another judge, but in January 2013, the hourly rates agencies paid for these two judges were approximately \$80 and \$123, respectively. Additionally, the cost to request a hearing in March 2013 was approximately \$177 per hearing, while the cost in April 2013 was approximately \$116 per hearing.

These rate variations are inequitable because state agencies basically receive the same services from the Office. The Office reported that judges hear cases for a variety of agencies and that the amount and nature of work required to process a hearing request does not vary from case to case. We calculated the average rates that all agencies paid in fiscal year 2013 for judge time and hearing requests and compared these averages with what agencies actually paid during the fiscal year. Some agencies paid more and some less than if they had been charged the average rates. For example, the ROC paid about \$25,100 less than what it would have paid using the average rates, while AHCCCS paid about \$16,100 more. Additionally, the rate variations may jeopardize AHCCCS' compliance with federal regulations because it is not paying the same hearing rates as other agencies. Further, the Office's rate-setting method may not be clearly understood by billed agencies and requires complex rate-setting procedures that increase the risk of errors.

The Office should adopt a rate-setting method based on best practices. We reviewed fee-setting guidelines from several government sources, which indicate that the Office should calculate the total direct and indirect costs of providing services to determine user fees. Using this method, all users should pay the same fee for the same service. Another benefit of this method is that the Office could use its case management system for the accounting and billing, which currently is done manually.

**Office should take steps to address State General Fund appropriation shortfall**—State agencies that the State General Fund supports do not pay any charges for hearing services, and the Office receives a State General Fund appropriation that is supposed to cover the cost of those services. However, the Office reported that the appropriation has been insufficient to cover its hearing costs for these state agencies. Therefore, the Office annually determines the amount of the shortfall and adds an additional amount per hearing request and per hour of judge time to ensure it has sufficient monies to cover the shortfall. In fiscal year 2013, the ROC paid approximately \$41,000 and AHCCCS more than \$26,000 in additional charges to help cover the shortfall.

To address the State General Fund appropriation shortfall, the Office should determine whether it can charge some agencies it has previously not charged because the State General Fund no longer supports these agencies. The Office has already determined that the Arizona Department of Environmental Quality is one such agency and now charges it for hearing services. In addition, the Office should work with the Legislature on how to make up any continued State General Fund appropriation shortfall.

## Recommendations

The Office should:

- Align its rate-setting method with best practices, and
- Identify additional agencies that it can charge for its services and work with the Legislature to address any continued State General Fund appropriation shortfall.

## Examples of variations in the monthly rates charged per judge hour Fiscal year 2013

