

Office of Administrative Hearings

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Debra K. Davenport, CPA, Auditor General
Office of the Auditor General
State of Arizona
2910 N. 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport,

The Office of Administrative Hearings (Office) has reviewed the report of the Auditor General, "*A Performance Audit and Sunset Review of the Arizona Office of Administrative Hearings*" (Report No. 14-104, hereinafter referred to as "Report"), and responds as outlined below.

Introduction:

The Office has extracted and responded to each finding and each recommendation found in the Report, incorporating the appropriate statement to comply with the Joint Legislative Audit Committee's procedures.

It is the goal of the Office to fulfill its mission of providing full, fair, impartial, independent, and timely hearings to the highest level that it can attain. The Office has found the field work of the Office of the Auditor General in preparation of its Report to have been extremely beneficial to that end. Throughout the process, the Office has found the auditors assigned to it to have been thoroughly professional in their approach, and in response, the Office has already implemented improvements and refinements. The Office embraces the findings and recommendations of the Report to which it now responds as a continuation of that process.

Finding 1

"The Office of Administrative Hearings (Office) has implemented several controls to help ensure a fair, independent, and timely hearing process,



Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

but it can enhance these controls in some areas and should develop and implement a training program for agencies and office judges. Controls implemented by the Office include over seeing judges, reviewing and providing guidance for judges' hearings and decisions, limiting opportunities for inappropriate interactions between judges and case parties, and reviewing hearing decisions that agencies modify or reject. However, the Office should enhance these controls by revising its ethical code and policies and procedures, increasing its analysis of agency responses to hearing decisions, and revising its hearing evaluation form. Additionally, as statute requires, the Office should develop and implement a training program for agencies and office judges to further ensure it provides fair and independent hearings. Finally, although the Office generally meets timeliness requirements and standards for conducting hearings, it should take additional actions to better comply with these requirements."

Report, p. 5

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Finding 1 Recommendations

"1.1 To further enhance its policies and procedures for ensuring that it provides fair and independent hearings, the Office should:

- a. Develop and implement written policies and procedures for:
 - o Periodically analyzing agencies' responses to hearing decisions to identify trends in judge error or bias that might warrant further review and/or action;
 - o Providing additional guidance on judges' ethical behavior to include conflicts of interest, participation in outside activities, and other activities the NAALJ model code of ethics covers that are relevant to the Office's judges; and
 - o All informal procedures it has established, such as informing hearing participants that they have the right to appeal a decision."

Report, p. 12

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

“b. Add evaluation questions relating to decision fairness, clarity, and timeliness; review the timing of when it solicits evaluation feedback; and consider developing an electronic evaluation that either supplements or replaces the paper evaluation.”

Report, p. 13

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

“1.2 To comply with A.R.S. §41 -1092.01, the Office should develop and implement formal training programs for agencies and its judges. These training programs should:

- a. Include topics related to ensuring fair and independent hearings;
- b. Include policies for judge training that specify minimum training requirements, guidelines for appropriate training received from outside sources, and procedures for ensuring that judges receive the required training; and
- c. Identify potential training topics for judges based on information obtained through some of its oversight and feedback procedures, such as supervisory review of judges, external feedback on the Office’s performance, and review of agency responses to judges’ decisions.”

Report, p. 13

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

“1.3 To ensure that it complies with statutory time frames for holding hearings, the Office should only schedule hearings more than 60 days after the hearing request when it receives documentation showing that all case parties have agreed to a later date, unless a party shows good cause for a postponement or in cases where it has held a prehearing conference, and it should make such decisions on a case-by-case basis. The Office should also use its case management system to track cases that exceed the 60-day requirement and the reasons for the exceedances. Additionally, in order to ensure that nonagency parties do not face undue or unfair burdens, the Office should pay particular attention to meeting the 60-day requirement in cases involving appealable agency actions.”

Report, p. 13

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Finding 2

“The Office of Administrative Hearings (Office) should revise its rate-setting method to be consistent with best practices. The Office uses a cumbersome rate-setting method that results in agencies paying inequitable charges and other problems, such as jeopardizing another agency’s compliance with federal regulations and a lack of transparency. In addition, since fiscal year 2010, the Office has increased the charges to some agencies to cover shortfalls in its State General Fund appropriation and the amount it bills to the Arizona Department of Fire, Building and Life Safety. To address these issues, the Office should align its rate-setting method with best practices by developing and implementing a cost-based rate-setting method, developing and implementing written rate-setting policies and procedures, and taking steps to address any continued short fall between its State General Fund appropriation and the cost of services it provides to agencies the State General Fund supports.”

Report, p. 15

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Finding 2 Recommendations

“2.1 To further align its rate-setting method with best practices, the Office should develop and implement a cost-based rate-setting method that sets rates for at least 1 year at a time. In developing the method, the Office should:

- a. Examine the appropriate allocation of direct and indirect costs to its rates;
- b. Develop rates using average costs;
- c. Set its rates high enough to generate sufficient revenues during periods of high demand to build up enough cash reserves to cover its expenditures during periods of low demand; and
- d. Continue seeking to reduce costs as much as possible.”

Report, p. 25

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

“2.2 To ensure a consistent rate-setting method, the Office should develop and implement formal, written rate-setting policies and procedures that include a requirement and procedures for the periodic review of rates. Additionally, when developing these policies and procedures, the Office should solicit input from agencies and publicize its policies, procedures, and rates on its Web site.”

Report, p. 25

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

“2.3 To address the State General Fund appropriation shortfall, the Office should:

- a. Develop and implement written policies and procedures to periodically review the funding status of agencies. The Office should design its policies and procedures to allow it to identify any agencies it has been treating as State General Fund-supported agencies that may no longer receive State General Fund support and to negotiate interagency service agreements with them if it determines it has the authority to do so;
- b. Once it has implemented a cost-based rate-setting method and can more accurately quantify the cost of services it provides to agencies the State General Fund supports, work with the Legislature to clarify how the Office should make up any continued shortfall between its State General Fund appropriation and the cost of services it provides to agencies the State General Fund supports; and
- c. Work with the Arizona Department of Fire, Building and Life Safety to ensure that its fee for condominium and planned community association hearings is sufficient to cover the cost of services the Office bills, or work with the Legislature to change the way the fee for these hearings is determined.”

Report, p. 25

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Sunset Factors Recommendations

“2. The extent to which the Office has met its statutory objective and purpose and the efficiency with which it has operated.

* * *

• Office should improve its cash-handling, disbursement, and procurement practices—The Office should continue developing and implementing policies and procedures to address longstanding control weaknesses for cash handling and disbursements...”

Report, p. 28

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

“...In order to reduce the risk of fraud and theft and ensure management’s intentions for spending public monies are met, the Office should continue implementing its new and revised policies and procedures and develop and implement policies and procedures to guide its procurement activities to help ensure these activities comply with procurement laws and regulations.”

Report, p. 30

Response:

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Sincerely,

Cliff J. Vanell
Director